

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
HOLDEN AT COURT 14 APO-ABUJA ON THE 29TH DAY OF
SEPTEMBER, 2016

BEFORE THEIR LORDSHIPS: HON. JUSTICE U. P. KEKEMEKE (PRESIDING JUDGE)

HON. JUSTICE V.V. VENDA (HON. JUDGE)

APPEAL NO: CVA/182/15

COURT CLERK: AMINU ZAKARI

BETWEEN:

PHEDET PROPERTIESPLAINTIFF.

AND

MR. ONYECHERE ANSLEM UGOCHIKWUDEFENDANT.

RULING

The Applicant's application dated the 30th day of June, 2016 is for an Order:

1. Re entering this Appeal No: CVA/182/2015 which was struck out.
2. An Order enlarging time within which the Appellant/Applicant can file his Appellants brief.
3. An Order deeming the Appellant's brief already filed as properly filed and served. Learned Counsel adopted.

4. And for such Order or Further Orders as the Honourable Court may deem fit to make in the circumstance.

Learned Counsel to the Applicant relied upon the Affidavit of Anselm Ugochukwu Onyechere of Plot 80 Gindin Dutse Kubwa, in the Bwari Area Council of the Federal Capital Territory, Abuja. The reasons for Applicant failure to attend Court when the Appeal was struck out can be garnered from page 5 – 13.

Succinctly it is as a result of the nature of his job wherein he was compelled to be on a team of Auditors that embarked on 2nd leg Official tour of Federal Government Colleges in the North West Geo - Political Zone of the Country for the purpose of auditing their school's accounts from the 14th – 28th of June, 2016 when his Motion came up. That his Counsel was also indisposed. That all other Counsel in chambers were engaged. That he was therefore unable to attend Court or send a Counsel to the Court and his Appeal was consequently struck out. That after the transmission of record of appeal, he could not properly brief his Counsel to prepare and file Appellant's brief of argument. That the Appellant brief of argument has now been prepared and is marked Exhibit A. That he is prepared to diligently prosecute the Appeal as he has strong points of law to canvass. That the Respondent will not be prejudiced. That it is in the interest of justice to grant this application.

Learned Counsel to the Respondent filed and relied on a Counter Affidavit dated 7/09/16. The Affidavit is deposed to by one Ekong Peter Edet. He deposed that his application for amendment dated 15/10/14 and filed on 17/10/14 was granted by the Court below. The Motion for amendment and the Ruling is Exhibit A1 and A2 attached. That the Applicant filed a Notice of Appeal and a Stay of Proceedings at the lower Court against the Ruling. That the Court below struck out the Motion for stay. The Ruling is Exhibit B.

That the facts contained in the Affidavit in support of this application is untrue. That Applicant's place of work as stated is untrue. That Applicant is always given excuses to avoid being in Court. That he had earlier written a letter to the Court below that he was attending NBA Conference in Port-Harcourt but was cited in Abuja a day later. That Applicant has so many lawyers in Chambers.

That Applicant's failure to appear on 20/06/16 or send a letter to the Court was a further effort to frustrate the matter at the Court below. That Appellant is living freely on the premises since 2012 without pay. That Judgment has since been delivered on the matter at the Court below on 6/08/16 in favour of the Respondent. That the Court should refuse the application.

We have also read the Further and Better Affidavit filed and adopted in support of the Motion. Counsel to both parties adopted their written addresses including the Respondent's reply on point of law.

The issue for determination in our view is whether the Applicant has made out a case so as to enable this Court exercise its discretionary power in relisting this Appeal. The reasons for the Applicant and Counsel's failure to prosecute the Appeal as we have said is contained in paragraphs 5 – 14.

By Section 131 – 133 of the Evidence Act, he who asserts a fact must prove same. Firstly, the Applicant deposed that he could not properly brief his Counsel due to the nature of his job. That he was compelled to follow a team of auditors that embarked on the 2nd leg of official tour of Federal Government Colleges in the North West Geo-Political Zone for the purpose of auditing their school accounts from 14th to 28th day of June, 2016.

There is nothing attached to the application as Exhibit in support of the above deposition even though in his further Affidavit, he deposed he works in the Ministry. It did not explain that he was compelled to go on a tour of schools in the North West. The 2nd explanation as to why his Counsel could not attend Court is because of a *“very high blood*

pressure” in the morning of the day the Appeal came up. He deposed that he had to stay back home to rest on Doctor’s advice. Again there is no medical report of unfitness to enable the Court believe the deposition. We observed that the name of four Counsel are listed in this Appeal as representing **ORESON LAW CHAMBERS**. We also observed that the Appellant/Applicant could not even have the courtesy of writing the Court for an adjournment.

In this era of globalization, the presence of a litigant in an appeal is in most cases unnecessary except in a trial Court. A Litigant can brief Counsel from anywhere in the world and monetary transactions can also be concluded from anywhere.

An application for relisting of a suit struck out is not granted as a matter of cause. An Applicant must give cogent and sufficient reasons why he or Counsel were not in Court to prosecute the Appeal. It is not enough for the Applicant to depose that all other Counsel were otherwise engaged, the Applicant must give particulars for such engagement.

In the instant case no such particulars are given. We also observed that the Appeal is an interlocutory one. The Applicant did not deny the fact that judgment has been entered in the lower Court. We have also read the Notice of Appeal. There is nothing to show that the Appellant brief

which is attached as Exhibit A has been filed. We are not convinced that the Appellant will be diligent in prosecuting the Appeal if relisted.

It is our view and we so hold that Appellant/Applicant has not put before the Court cogent and or sufficient reasons to enable the Court exercise its discretion in his favour. The application lacks merit and it is dismissed.

HON. JUSTICE U. P. KEKEMEKE
(PRESIDING JUDGE)

29/09/16

HON. JUSTICE V.V. VENDA
(HON. JUDGE)

29/09/16