

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
HOLDEN AT MAITAMA – ABUJA.

BEFORE THEIR LORDSHIPS: HON. JUSTICE Y. HALILU – PRESIDING JUDGE,
HON. JUSTICE A.A. FASHOLA – HON. JUDGE

THIS 29TH DAY OF JANUARY, 2025.

APPEAL NO.:CVA/438/2024

SUIT NO.:CV/WZII/1649/2023

BETWEEN:

CHI OBI APPELLANT/APPLICANT

AND

CITY PARK LIMITEDRESPONDENT

RULING

This Ruling is at the instance of the Appellant/Applicant who approached this Court for the following:-

1. An Order for extension of time for the Appellant/Applicant to file Notice of Appeal challenging the Judgment in suit No. CV/WZII/1649/2023 delivered by His Worship, Mrs. Thereza Nten Out, Senior Magistrate Court 12 District Court of the Federal Capital Territory Wuse Zone 2 Abuja on the 12th day of December, 2023.
2. An Order for extension of time for the Appellant/Applicant to compile and transmit Record of Proceedings in respect of suit No. CV/WZII/1649/2023 delivered by His Worship, Mrs. Thereza Nten Out, Senior Magistrate Court 12 District Court of the Federal Capital Territory Wuse Zone 2 Abuja on the 12th day of December, 2023.
3. An Order deeming the Appellant's Notice of Appeal already filed and Record of Proceedings already compiled, transmitted and served on the Respondent as having been properly filed, compiled and transmitted respectively.

4. And for such further or other Order (s) as this Honorable Court may deem fit to make in the circumstances of this case.

The grounds upon which this Application is brought are as follows:

1. The Judgment in Suit No: CV/WZ11/1649/2023 was delivered by His Worship, Mrs. Theresa Nten Otu, Senior Magistrate, Court 12, District Court of the Federal Capital Territory, Wuse Zone 2, Abuja, on the 12th day of December, 2023.
2. The interval within which the Appellant should file Notice of Appeal, compile and transmit Record of Proceedings in respect of the Appeal as provided by the extant Rules of the Honourable Court had expired.
3. The Honourable Court is sufficiently imbued with the requisite powers to extend the time for the Appellant and to deem the Notice of Appeal already filed, the Record of Proceedings already compiled and transmitted in respect of the Appeal as proper respectively.

4. It will be in the interest of justice, equity and fair play to grant this Application.

This application supported by 21 paragraph affidavit deposed to by Mrs. Chi Obi, the Appellant/Applicant in this suit. It is her deposition that she occupied a glass shop as a tenant in the City Park premises owned by the Respondent sometime in March 2018 to December 2020 wherein she operated a boutique business.

That during the lockdown arising from the COVID 19 Pandemic in March 2020, thieves invaded the glass shop boutique and stole many of her wares and goods that worth about N4,700,000.00 (Four Million, Seven Hundred Thousand Naira) which she informed the management of the Respondent via a Letter dated 24th December 2020. The copy is hereby attached as Exhibit "A".

That having realized that the business environment is no longer safe coupled with the fact that the management of the Respondent was adamant to resolve her complaint she delivered vacant possession of the shop immediately after the robbery incident.

That the Respondent later responded to her complaint and request for settlement of the stolen goods long after she had vacated the shop as well as the business premises via a Letter

dated 22nd January 2021. The copy is hereby attached as Exhibit "B".

That the exchanges of these correspondences had established a reliable address for service of court processes even through counsel when the Respondent decided to institute the suit before the Lower Court.

That besides having established the reliable address for service even through counsel, the Managing Director of the Respondent – Mrs. Susan Okoro whom she had personal relationship with has her phone number during the pendency of the suit before the Lower Court but never informed or communicated her.

That she was never informed, communicated or served with the originating Process or other court Processes during the pendency of the suit before the Lower Court even when the management of the Respondent is aware of her address for service and had exchanged correspondences with her counsel.

That the non-service of the originating and/or other Processes of the Lower Court on her was a calculated attempt which deprived her the opportunity to be part of the entire proceedings that led to the judgment of the Lower Court.

That the deliberate attempt of the Respondent not to avail her the originating Process and/or other Processes of the Lower Court has also forestalled the exercise of her constitutional right of fair hearing before the Lower Court.

That she was not also served with the Order Nisi granted by the Lower Court On 29th April, 2024 in enforcement of the judgment via garnishee proceedings. That she was shocked to the marrows on 25th May, 2024 to discover that she cannot conduct withdrawals on her Account No: 2120801662 domiciled with United Bank for Africa Plc.

That upon her enquiries she realized that "Post No Debit" has been placed on the account vide an Order of Lower Court, thus this Application.

That the Appellant/Applicant being embarrassed by the lien placed on the account but has realized that the period to appeal to the Appellate Court of the FCT has expired the Judgment of the Lower Court having been delivered on 12th day of December 2023, thus this Application.

That the Notice of Appeal has been duly filed and Record of Proceedings compiled, transmitted and served on the Lower Court and Respondent vide Counsel respectively. Copies of the Proof of

Service are hereby exhibited and marked as Exhibits "C" and "D" respectively.

That the grounds of appeal raise crucial, important and serious issues or questions on the jurisdiction of the court to determine whether the failure of the Respondent to effect service of the court processes on the Appellant/Applicant during the pendency of the suit is not a breach of her constitutional right to fair hearing and thus render the judgment of the Lower Court a nullity.

That this Honourable Court is sufficiently imbued with the requisite powers to extend the time and deem the Appellant's Notice of Appeal already filed and Records of Proceedings already compiled and transmitted as having been properly filed, compiled and transmitted in the circumstances of the present Appeal.

That the preponderance of justice and chances of the appeal succeeding is very high. That the Respondent will not be prejudiced by the grant of this Application.

That it will be in the interest of justice to grant the Application being sought by the Applicant in the circumstance of the suit.

The Appellant formulated a sole issue for determination to wit;

"Whether from the facts placed before this Honourable Court, the Appellant/Applicant is entitled to a grant of the orders sought herein"?

Learned counsel submits, that the Rules of this Honourable Court empower the Court to allow the Appellant/Applicant extension of time to file Notice of Appeal, compile and transmit Record of Proceedings before this court. Order 43 Rules 1 & 2, Order 50, Rules 1 & 6 of the Rules of this Honourable Court.

Learned counsel further submits, that for the exercise of the power of the Court to grant extension of time for the performance of an act or otherwise comply with the Rules of Court, the Appellant must give good, substantial or exceptional reasons or satisfactorily explanation for the delay. ***LONG- JOHN VS. BLAKK (1998) 6NWL (Pt. 555) 524, the Supreme Court*** was cited.

In conclusion, learned counsel urge this Honourable Court to exercise its discretion in favour of the Appellant/Applicant by extending time to enable Notice of Appeal, compile and transmit record of proceedings and to deem the already filed and served processes as properly filed and served on the Respondent.

Learned counsel urge the Court that in the interest of justice, it is prudent that the Appellant/Applicant's prayers be granted.

Upon receipt of service, Respondent/Respondent filed counter affidavit in opposition to the Appellant/Applicant's motion dated 8th October, 2024 but filed on 11th October, 2024. This application is supported by 15 paragraph affidavit duly deposed to by Emeka Akaogwu, the manager of the Respondent/Respondent.

It is the deposition of learned counsel, that except the facts stated at paragraphs 1, 2, 13, 14 and 15 of the Appellant/Applicant's said affidavit, which are true and admitted, all other facts stated at the remaining paragraphs of the said Affidavit are false and denied.

That in specific response to the facts stated at paragraphs 3 to 6 of the said Affidavit, the truth of the matter is that the Appellant/Applicant took a shop as a Tenant in the Respondent/Respondent's Premises (City Park Field, behind Access Bank PLC, Adetokunbo Ademola Crescent, Wuse II, Abuja), for a term of one (1) year certain, from the 1st day of March, 2018, to the 28th day of February, 2019.

That the rent payable for the said term was the sum of N800,000.00 (Eight Hundred Thousand Naira), only, payable in

advance, which the Appellant/Applicant paid then, and she was issued with both a receipt and a Tenancy Agreement, (which terms and conditions were mutually agreed to, by both Parties), for her to sign and return back to the Respondent/Respondent, for its own execution, but regrettably, she refused to sign, yet still refused to return same back to the Respondent/Respondent.

That upon the expiration of the said term of one (1) year certain on the 28th day of February, 2019, the Appellant/Applicant, neither complied with one of the most material or fundamental and express terms or conditions of the said Tenancy Agreement, being the payment of the rent for a new term of one (1) year certain, from the 1st day of March, 2019, to the 29th day of February, 2020, (which payment if she had made, would have been an indication of her intention to renew her tenancy), nor did she deliver up possession of the said Premises, as proof of her contrary intention, not to renew same.

That in specific response to the facts stated at paragraphs 7 to 12 of the said Affidavit, the Respondent/Respondent states that the Bailiff of the lower Court went to the Appellant/Applicant's place of business at No. 4 Libreville Street, Wuse II, Abuja, to attempt

to personally serve her with the Plaint and other accompanying processes in the suit at the lower Court, but she refused service.

That consequently, the Respondent/Respondent obtained an order of the lower Court for substituted service of the said Plaint and other accompanying processes to be effected on the Appellant/Applicant at the same address, which was duly carried out by the Bailiff of the lower Court, by pasting the said processes at her said address. Attached hereto, and marked Exhibits "A", "B", and "C", are certified true copies of the an Affidavit of the attempted personal service of the Default Summons/Plaint, dated 11th October, 2023, enrolled Order for the substituted service of the said court processes, and the Affidavit of substituted service of the same, dated 15th November, 2023, respectively.

That in default of the Appellant/Applicant's appearance and/or defence of this matter at the lower Court, Judgment was entered against her, and in favour of the Respondent/Respondent, in the sum of N2,533,333.00(Two Million, Five Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Naira) only.

That in further response to the facts stated at paragraphs 4, and 5 of the Appellant/Applicant's said Affidavit, the Respondent/Respondent states that, apart from the fact that the Appellant/

Applicant persistently defaulted in her payment of rents for the said Premises when she was still in possession of same, she also persistently defaulted in her payment of the security levies and other service charges on the said Premises, which resulted in the security Personnel stationed thereon, to be withdrawn therefrom, which in turn, resulted to the wares and goods of, not only her own being stolen, but also, those of the other Tenants or other Occupants of the said Premises.

That when a criminal complaint or Petition was laid to the Nigerian Police Force, its Investigation Report did not indict the Respondent/Respondent of complicity or negligence for the invasion of the said Premises, rather, the Appellant/Applicant was blamed for causing the incident, by her persistent failure to pay for security levies thereon, which led to the said withdrawal of the security Personnel therefrom, and which in turn, caused Invasion of the said Premises, and the theft of the wares and goods thereat.

That the Notice of Appeal (Exhibit "C") attached to the Appellant/Applicant's said Affidavit, was not duly filed, contrary to the deposition of facts stated at paragraph 14 thereof, since the 30 days' time limit stipulated by law within which it ought to have

been filed, has since lapsed on the 14th day of January, 2024, excluding the public holidays of the 25th and 26th of December, 2023, and the 1st day of January, 2024, the Judgment of the lower Court sought to be appealed against, having been delivered on the 12th day of December, 2023.

That the said Notice of Appeal, being an originating process, is not one of the court processes that can be first filed, prior to bringing an application for leave to extend the time within which to file same, then a Court will subsequently deem same as properly filed.

That in the absence of a valid Notice of Appeal, a Record of Appeal compiled and transmitted thereon, will be useless and of no moment.

That neither a copy of the Judgment of the lower Court sought to be appealed against, nor a Proposed Notice of Appeal against the said Judgment, was attached to the Appellant/Applicant's said Affidavit.

That the Appellant/Applicant did not give any explanation in her said Affidavit, reasons for the delay for every day, week, or month forming part of the period of the delay from the 25th day of May, 2024, when she became aware of the said Judgment and

the 13th day of June, 2024, when she filed her said Notice of Appeal.

That it is in the interest of justice to refuse and dismiss this application, to enable the Respondent/Respondent to enjoy the fruit of its success at the Lower Court.

That the Appellant/Applicant will not be prejudiced thereby.

The Appellant/Applicant formulated a sole issue for determination to wit;

Whether the instant application is not competent at all, and therefore, ought to be dismissed.

The competence or otherwise of the Instant application will be based on two (2) fronts:

- a. Preliminary/jurisdictional basis; and
- b. Merits of the Application.

Learned counsel submits that a court of law can only have and also properly exercise its jurisdiction to hear and to determine a case or motion before it where all of the following exist:

1. The proper Parties are before the Court,

2. The Court is properly constituted as to its membership and qualification,
3. Where the subject matter of the case is within its jurisdiction and there are no features in the case which prevent the Court from exercising its jurisdiction
4. Where the case comes before the Court Initiated by due process of the law, and upon fulfilment of any condition precedent to the assumption of jurisdiction. ***P.D.P. VS. EDEDE (2022) 11 NWLR (Pt. 1840) 55 @ P. 93, PARAS A - D.***

Learned counsel further submits, that the source of the jurisdiction of a court to determine an interlocutory application such as the Instant one, is derived from the jurisdiction to entertain the substantive suit. ***DEMATIC (NIG) LTD VS. ETUK (2022) 8 NWLR (Pt. 1831) 7 1 @ (Pt. 102), PARAS B-C.***

Similarly, the source of the jurisdiction of an Appellate Court such as the instant one, is derived from that of the trial court, in the sense that the originating processes at the trial court is the jurisdictional source of the Appellate Court. ***DEMATIC (NIG) LTD VS. ETUK (SUPRA) @ (Pt. 103), PARAS C-D.***

Learned counsel contends that in the instant application, there is a feature which prevents this Honourable Court from exercising its jurisdiction to entertain same, coupled with the fact that a condition precedent to the exercise or assumption of the said jurisdiction was not fulfilled, and that defect, feature or condition precedent, is the failure or neglect of the Appellant /Applicant to attach to her affidavit in support of the instant application, a copy of the Judgment of the lower court which she is seeking an extension of time within which to appeal against.

Learned counsel submits; that it has been held in a plethora of cases, a certified true copy of a decision for which an extension of time is sought to appeal against, must be attached, exhibited, or annexed to such application.

Counsel also submits, that this Honourable Court is humbly urged, based on the above identified absence of a copy of the Judgment of the lower court sought to be appealed against, in the affidavit of the Appellant/Applicant in support of this application, same is not competent and this Honourable Court does not have the jurisdiction to entertain same in turn. This court is humbly urged to dismiss this application.

It is the submission of the learned counsel, that even if the above issue or defect is overruled, this application does not still succeed on its merits, for the grounds or reasons stated below.

Learned counsel argued, that first, a Notice of Appeal, being an originating process for appeals, is not one of such processes that the Honourable Court can deem properly filed subsequently, once it is a nullity, whether it falls within the appeal filed out of time or without leave, where leave is a necessity and mandatory. The resultant effect is that the appeal is null and void ab-initio.

SANNI VS. THE PEOPLE OF LAGOS STATE (2022) 4 NWLR (Pt. 1820) 399 @P. 415, PARAS A – B was cited.

On that last ground of the failure of the Appellant/Applicant to first seek and obtain the leave for extension of time before filing her Notice of Appeal, counsel humbly urge this court to dismiss this application and strike out the said Notice of Appeal, relying on the case of ***KABIRU VS. STATE (2022) 10 NWLR (Pt. 1838) 255 @ PP. 260 - 261, PARAS D - D.***

Learned counsel concludes by urging the Court to so hold.

COURT:-

On the part of the court we have carefully considered the affidavit in support of the Application on the one hand and counter affidavit of the Respondent on the other hand.

We have equally considered argument canvassed by Counsel in their respective addresses. We hold the firm view that the issue "Whether the Applicant has made out a case to entitle him to the grant of the reliefs sought" is apt for determination.

The Law is settled and Courts are unanimous on the position of the law that for an Application for trinity prayers, just like in this application, to succeed it must be accompanied by;

1. An affidavit stating good and substantial reason for the failure to Appeal within the period prescribed by the appropriate law; and
2. Grounds of Appeal which prime facie shows good cause why the Appeal should be heard. In the ***RE WILLIAMS (NO.1) (2001) A NWLR (Pt. 718) 329 OF 342 Para F***, the Court lucidly stated that it is sufficient if the grounds of Appeal are arguable and not frivolous.

See ***ROSEEBILL LTD VS. OKPORO VENT. LTD (2005) LPELR – 7540 (CA);***

IWUNZE VS. FRN (2014) LPELR – 22254 (SC).

In an application of this nature seeking an extension of time within which to appeal, we are dealing with an Applicant who failed to file an appeal against a decision of the District Court delivered on the 12th day of December, 2022, till the 13th day of June, 2024. The Court must not lose sight of the fact that when the time for appeal has lapsed, and lapsed without any kind of protest from a-would be Appellant, the Respondent has a certain accrued right which, though may not be permanent, neither should it be ignored. Thus, the court can only extend this indulgence to an Applicant on settled principles. An Applicant who asks the Court to grant him leave to exercise of it must show something, as a rule, either lack of means, mistake or accident. This is not an exhaustive list.

See ***LAUWERS IMPORT-EXPORT VS. JOZEBSON IND. LTD. (1988) LPELR – 2934 (SC).***

We have gone through the affidavit of the Appellant and reasons stated so far for the delay in filing Appeal, and the reason for not filing the appeal timeously against the decision of the Trial

Magistrate Court is because the Appellant was never informed, communicated or served with the originating process or other court processes during the pendency of the suit before the lower Court even when the management of the Respondent is aware of the Appellant's address for service and had exchanged correspondences with her counsel.

It is instructive to note that if either party to a case was not served, it means that they were not properly given documents notifying them of a lawsuit or Court proceedings. This indeed dovetails to right of fair hearing which is constitutional.

See Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

See the case of ***DR. STEPHEN ADI ODEY VS. CHIEF JOHN ALAGA & 2 ORS (2021) ELC 7912 (SC) Page 1.***

We have also considered the proposed Notice of Appeal attached to the affidavit in support and it is obvious that the grounds of appeal are arguable and not frivolous as contended.

On the whole therefore, the Court is minded to favourably grant the said application.

Accordingly, application is hereby granted as prayed.

***Hon. Justice Y. Halilu
(Presiding Judge)
29th January, 2025***

***Hon. Justice A.A. Fashola
(Hon. Judge)
29th January, 2025***

APPEARANCES

Michael Ikechukwu O., Esq. – for the Appellant/Applicant.

U.C. Ndubuisi, Esq. – for the Respondent.