

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/169/2024

SUIT NO.:CV/WZII/909/2023

BETWEEN:

MARCUS A. ABU APPELLANT/APPLICANT

AND

FIRST CITY MONUMENT BANK RESPONDENT

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 within which to seek leave to Appeal the decision of the District Court of the Federal Capital Territory Abuja, delivered by His Worship Hon. Abubakar Mukhtar on the 21st day of November, 2023 in suit No: **FCT/CV/WZII/ 909/2023**.
2. An Order granting leave to appeal the decision.
3. An Order for extension of time within which to appeal against the decision.
4. An Order deeming the Notice of Appeal already filed.
5. And such further Order or other Orders as this Honourable Court may deem fit to make in the circumstances of this Appeal.

The application is supported by 8 paragraph affidavit deposed to by Ekpeji Sani Mohammed, a legal practitioner in the Law Firm of counsel to Appellant. It is the Appellant's deposition that this

Notice of Appeal was filed within 3 months in the mistaken belief in the provision of the constitution and Court of Appeal Act.

That the Appellant inadvertently filed his Notice of Appeal out of time and that the delay in filing this appeal was neither deliberate nor an attempt to frustrate the hearing of this appeal.

That the granting of this application is in the interest of justice and the grant of same will in no way prejudice the Respondent.

The Appellant formulated a sole issue for determination to wit;

"Whether the Appellant/Applicant is entitled to the grant of this application."

It is the submission of the learned counsel, that this Honourable Court has the discretionary Power to grant extension of time for the Appellant to file Notice of Appeal on such terms as this Honourable Court may deem fit. Counsel refer this Court to the provisions of Order 50, Rule 6 of the High Court of the Federal Capital Territory (Civil Procedure Rules, 2018).

Learned counsel further submits, that the facts deposed to in their supporting affidavits are sufficient reasons upon which the Court's discretion can be favorably exercised as the failure to file

notice of appeal within time was due to mistaken belief in the provision of the constitution and Court of Appeal.

The case of ***E.F.P. CO. LTD. VS. N.D.I.C (2007) 9 NWLR (Pt. 1039) 216 at 258, Paragraph H*** was cited.

Learned counsel further submits that the other party of this Appeal would not be prejudiced by the granting of this application.

Learned counsel concludes by urging this Honourable Court to grant the application as prayed.

On the part of the Respondent's counsel who though did not file any counter affidavit, he contended that this Court being a Court of law should refuse the application in view of failure to file Notice of Appeal.

COURT:-

It is instructive to note that Respondent i.e First City Monument Bank who was served with the hearing notice, failed and or ignored to join issues with the Applicant, thereby making the application which is usually vide Motion on Notice supported by affidavit and written address, a one way matter.

The law on unchallenged averments is settled.

See ***OGUNYADE VS. OSHUNKEYE & ANOR (2007) LPELR (2355) SC.***

We need to state that the right to appeal against a decision of court in a matter be it interlocutory or final is basically statutory in that they are conferred on parties by the constitution and or some applicable statutes.

There is nothing like inherent right of appeal.

See ***ANAMBRA STATE GOVT. & ORS. VS. MADUKWE & ORS. (2011) LPELR – 3771 (CA).***

As it relates to Appeals from the Magistrates Court to the High Court, the District Court Rules of the FCT 2021 has made copious provision for that under Order XXVII i.e Order 27.

Order XXVII Rule 2(1)(b) gives moratorium of 30 days for an Appellant to lodge a notice of appeal.

Order XXVII Rule 4 (2) of the same Rules allows for enlargement of time vide Motion on Notice, upon being satisfied with reason for the delay in filing appeal within time.

It must be pointed out that the role of the Court in adjudication is to maintain a level playing field for the parties by offering them equal opportunity to present their cases or grievance, if they so wish. Once the opportunity is offered, it is the duty of a party to litigation or his counsel to utilize same in accordance with the rules of procedure and substantive law. Where, however, he or his counsel fails or neglects to utilize the opportunity so offered, he cannot turn around and blame the Court for the loss of the opportunity as the Court will not allow a party to hold the opponent or the Court to ransom under the guise of the desire to protect the principle of fair hearing.

The law is trite on what ought to be done when a process of Court is not filed within time allowed. Where an Appeal is filed outside the statutory period as provided under the Rules, the Applicant must seek for leave of court to so do as done by the Appellant/Applicant herein.

Let us state here that the two conjunctive conditions for the grant of such an application are:-

1. That there are good and substantial reasons for failure to appeal within the prescribed period and;
2. That the proposed grounds of appeal show good cause.

See ***NIGERIAN LABORATORY CORPORATION VS. PACIFIC MERCHANT BANK LTD. (2012) LPELR – 7859 (SC);***

IKENTA BEST (NIG.) LTD. VS. A.G RIVERS STATE (2008) LPELR – 1476 (SC).

We need to emphasize that the power given to the Court to grant an extension of time is discretionary. The exercise of discretion is unfettered only to the extent that it should not be exercised as a matter of course, but must be exercised judicially and judiciously. It ought to be exercised in favour of an Applicant if an exceptional circumstance for his being out of time is established to the satisfaction of the Court.

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 21st day of November, 2023 till the 12th day of February, 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 on one hand and we have also gone through the oral submission of the Respondent on the other hand.

The reason for this delay is that the Notice of Appeal was filed within 3 months in the mistaken belief in the provision of the Constitution of Appeal Act and that it was neither deliberate nor an attempt to frustrate the hearing of the appeal.

Respondent in his oral submission stated that there is no Notice of Appeal attached to the Application and Appellant's brief of Argument.

A successful party shall be allowed to reap the dividends of litigation always, unless there is any good reason to the contrary.

The reason adduced by the Applicant is one that does not support reason and reasoning.

As stated in the preceding part of this Ruling that two conjunctive conditions are required before the grant of such an application; namely:

1. That there are good and substantial reasons for failure to appeal within the prescribed period and;
2. That the proposed grounds of appeal show good cause.

To our minds also, where the Applicant fails to place before the Court good and sufficient reason, then there is no need for this court to dissipate its energy in considering any other requirement. We therefore so hold.

On whether there was Notice of Appeal attached to the processes filed, we have gone through the processes filed before this Court, we have not seen the notice of Appeal.

It is instructive to note; that Notice of Appeal is an Originating process and without a valid Notice of Appeal therefore, any such brief of argument filed would have been so improperly filed.

The Appellant as it were so called did not file any such Notice of Appeal for him to be able to gain access into this Court thereby making whatever step taking as a misstep as the law would not recognize him.

As a matter of procedure and law, the Appellant needed to have filed a Notice of Appeal even though out of time and seeking trinity prayer for time to be extended for such Notice of Appeal, Brief of Argument etc. See the case of ***DOCTOR STEVEN ADIODEY VS. CHIEF JOHN ALAGA AND 2 ORS ECL (2021) 7912 SC P 1.***

Where the purpose of the rules is to provide a time-table for conduct of litigation, there must be strict compliance with the rules, because to do otherwise will defeat the purpose of the rules. See the case of ***ADEGBOLA VS. IDOWU (2018) ALL FWLR (PT.-948) P- 782 AT 808 PARAS F-G.***

We therefore agree with the Respondent's argument that having not filed Notice of Appeal but proceeded to file Brief of Argument will amount to indeed putting something on nothing and expect it to stand. ***MACFOY VS. UAC LTD (1962) A.C. 150.***

Suffice to say that, in our view, this application ought not to be granted in the overall interest of justice.

It is against this backdrop that we have come to the conclusion that the reliefs sought from the said Motion cannot be granted.

In consequence, therefore, the said Motion is refused and hereby struck-out.

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

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

APPEARANCES

Ekpeji Sani M., Esq. – for the Appellant.

I. Ighorhiohwunu, Esq. – for the Respondent.