

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

BEFORE THEIR LORDSHIP: HON. JUSTICE Y. HALILU – PRESIDING JUDGE,
HON. JUSTICE A . A FASHOLA – HON. JUDGE
THIS 29TH DAY OF JANUARY, 2025.

SUIT NO. FCT/HC/CV/28/2021

BETWEEN:

ZURU SALISU USMAN RESPONDENT

AND

HON. ISAH IBRAHIM APPELLANT/APPLICANT

RULING

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

1. An Order for the extension of time within which to appeal against the final decision of the Senior District Court of FCT, Abuja delivered by his Worship Hon. Ahmed Bala Ndajiwo in Suit No: **CV/28/2021** on the 7th March, 2022.
2. And for such further orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which this Appeal is premised are as follows;

1. The time limited for bringing the appeal has lapsed;
2. The leave of this Honourable Court is required for applicant to appeal against the judgment of the lower court herein out of time;
3. The appeal contains arguable and good grounds of appeal;
4. The interest of justice will best be served if the Applicant is not shut out and this application is granted.

In support of the application is a 12 paragraph affidavit deposed to by one Thomas Alamba, Litigation Secretary in the Law firm of M.D Marafa & Co. counsel to the Appellant/Applicant.

It is the deposition of the Appellant, that the Judgment of the trial court below sought to be appealed against herein was delivered on the 7th day of March, 2022 by his Worship **Hon. Ahmed Bala Ndajiwo** sitting at Karu -Abuja, FCT. Copy of the said judgment marked as "**EXHIBIT A1**".

That the Appellant/Applicant not satisfied with the Judgment of the Court filed a post Judgment application praying the court to set aside/vacate the judgment delivered in **Exhibit "A1"**. The said motion is hereby annexed and marked as "**EXHIBIT A2**"

That the said motion mentioned in paragraph above was only taken and ruling delivered in April, 2023.

That the Appellant/Applicant dissatisfied now wants to appeal the Judgment of the lower court mentioned earlier, hence the reason this appeal was not brought within the stipulated time.

That the period limited by the rules of court to appeal the judgment of the trial court below has elapsed.

That having properly consulted with the Appellant/Applicant, the Applicant has already settled his Notice and grounds of appeal. The said notice is now produced marked as **EXHIBIT "A3"**;

That the delay in timeously filing this appeal is not willful nor out of disrespect to the rules and procedure of this Honourable Court but as a result of the reasons adduced herein.

That the Applicant has a good and arguable appeal in which the judgment of this court may be decreed in its favour;

That the grounds of appeal show good cause why the appeal should be heard as they contain substantial issues of facts and law for the consideration of this court of the decision of the court below.

That a refusal of the instant application for extension of time to appeal will have grave consequences on the Applicant who has shown his readiness to pursue the appeal on the merits.

That the appeal is not frivolous and has a good chance of success.

That the Applicant is prepared to prosecute the appeal expeditiously, and it is in the interest of justice to allow the appeal to be heard on its merit.

That it will be in the interest of Justice to grant the reliefs sought in this application to enable the Applicant exercise its constitutional right of Appeal.

In line with the law and procedure, learned counsel for the Appellant/Applicant filed written address wherein sole issue was distilled for determination to with;

"Whether the Applicant has made out a case for the grant of the prayers sought"

It is the submission of learned counsel, that from the case made out in the affidavit in support of this application, the Applicant has made out a case for the grant of this application. By Order 50 Rule 1 and 30 of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules, 2018, this court has the power to enlarge the time provided by the Court's rules for the doing of anything to which the Court's rules apply. He cited Order 50 Rules 1 & 30 of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules, 2018

"50 (1) Except for Interlocutory appeals which shall be brought within 15 days, every appeal shall be brought by notice of appeal lodged in the lower court"

within 30 days of the decision appealed from and served on all parties affected by the appeal."

"50(30) A court may, if it thinks fit, enlarge any period of time prescribed by this order."

Learned counsel argues that in the instant application, the reasons proffered by the Applicant for his failure to file his appeal within the stipulated time are as per the grounds of the application and particularly at 5-11 of the affidavits in support of this application. On the first condition as set out above, counsel submit, with respect, that the reason adduced by the Applicant in the affidavit are well found, adequate and sufficient under the law to persuade the court to exercise its discretion in favour of the Applicant.

Learned counsel submits that at this stage, the merit of the proposed grounds of Appeal shall not be delved into while considering an application for extension of time to appeal. See the case of ***E.F.P CO. LTD. VS. NDIC (2007) 9 NWLR (Pt. 1039) 216; (2007)3 S.C (Pt. 11) 175 was cited.***

Learned counsel further submits that in the instant application, from the affidavit in support, the reasons for the delay in appealing within time was the fact that a post judgment

application was filed and the ruling was just delivered in April, 2023. This fact leads to the inability to file the appeal within the time frame.

Learned counsel contends that in an application for extension of time within which to appeal such as this, the length of delay in filling the application cannot be a ground to refuse the grant of the application so long as the Applicant proffers good and substantial reasons to absolve the delay. ***UNION BANK OF NIGERIA PLC VS. ALHAJI MOHAMMED NDACE (1998) 3 NWLR (Pt. 541) 331 was cited.***

It is further the argument of the counsel that in law, in as much as possible would not support an Applicant with arguable appeal to be shut out from bringing an appeal for the sole reason of delay unless the delay is unduly unwarranted. He cited the case of ***THE MINISTER OF PETROLEUM & MINERAL RESOURCES & ANOR. VS. EXPO SHIPPING LINE (NIG. LTD. (2010) 12 NWLR (Pt. 1208) 261 SC.***

In the circumstances of this application, counsel urge the court to hold that the reasons adduced by the Applicant for the delay in filling his appeal, is satisfactorily logical, good and substantial to sway the mind of the court to grant this application.

Learned submits further that the grounds marked as **Exhibit "A3"** contained therein have prima facie showed good cause why the appeal should be heard. From the proposed notice of appeal, it is clear that the grounds of appeal therein are basically attack on errors in law by the lower Court in which case an Appellant Court will need to consider the alleged errors to ascertain whether the lower court rightly applied the principles of law in the determination of the issues before him:

Finally, learned counsel submits that the grant or refusal of application of this nature is clearly at the discretion of the court and the Rules of Court vest the court with the discretion to grant or refuse the application.

In conclusion, learned counsel most humbly pray that this application be granted in the interest of justice.

COURT:

The fulcrum of this application is whether the Applicant/Appellant has advanced good and substantial reasons to warrant the grant of his application for an extension of time to appeal against the decision of the Lower Court.

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 7th day of March, 2022. 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 the said Appeal.

We are fortified by the adduced reason for not filing appeal against the decision of the Trial Magistrate Court within time, to say that it is neither willful nor out of disrespect to the rules and procedure of this Court.

We have similarly considered the grounds of the said Appeal which indeed revealed good cause why the Appeal should be heard as they contain substantial issues of facts and law for the consideration of this Court.

It is instructive to state that the two conjunctive conditions mentioned must be present before the grant of the application for extension of time within which to appeal against the decision of the trial court.

We have gone through the proposed Notice of Appeal attached and found that the Appellant has a good and arguable appeal.

Suffices to say, that in our view this application ought to be granted in the overall interest of justice.

Consequently, the application succeeds and order is hereby made as follows;

1. Leave is granted to the Appellant/Applicant extending the time within which Appellant/Applicant may seek leave to Appeal against the final decision of the Senior District Court of FCT Abuja delivered by His Worship Hon. Ahmed Bala Ndajiwo in suit No **CV/28/2021** on the 7th March, 2022.

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

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

APPEARANCES

G.B Ajibulu, Esq. – for the Appellant/Applicant.

A.Y Jibrin, Esq. – for the Judgment Creditor/Respondent.