

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA**

**IN THE APPEAL SESSION HOLDEN  
AT APO, ABUJA.**

**ON THURSDAY THE 24<sup>TH</sup> DAY OF JUNE, 2021.**

**SUIT NO.CV/322/2015**  
**APPEAL NO.CVA/220/2016**  
**MOTION NO.M/54/21**

**BETWEEN**

**MCFIDEWIS JAMES LTD-----APPELLANT/APPLICANT**  
**AND**  
**LINDA AKPAN HAKIM ----- RESPONDENT**

**BEFORE THEIR LORDSHIPS:**

*HON. JUSTICE S. C. ORJI [PRESIDING JUDGE]*  
*HON. JUSTICE F.E. MESSIRI [HON.JUDGE]*

**[RULING].**

**[DELIVERED BY HON JUSTICE F.E. MESSIRI].**

The Appellant/Applicant herein was the Defendant before the Senior District Court of the Federal Capital Territory, sitting at Life Camp, Abuja. While the Respondent herein was the Plaintiff.

The Appellant /Applicantbeing dissatisfied with the Judgment of the trial Court delivered by His Worship Mohammed Jubrin Kutigi, on the 6<sup>th</sup> day of April 2016 filed a Notice of Appeal dated the 7<sup>th</sup> day of June 2016, on the Grounds and Particulars of error set out in the said Notice of Appeal contained at pages 21-24 of the Record of Appealsettled by Innocent U Ugala Esq for the Appellant/Applicant, who from the records took no further step with regards to the Appeal.

The Appellant/ Applicant has now filed motion number M/54/21 on 5/3/2021 prayingthisCourtfor:

1. Anorder extending the time within which Appellant/Applicant can file her notice of Appeal against the Judgment of His Worship Mohammed Jibril kutigi of the Federal Capital TerritorySenior District Court sitting at Life Camp in suit CV/322/15
2. An order of Court granting leave to the Appellant /Applicant to file her Notice of Appeal dated the 6<sup>th</sup> day of June 2016 and filed 7<sup>th</sup> day of June 2016 out of time.
3. An order of Court deeming the Appellant/Applicant's Notice of Appeal dated 6<sup>th</sup> day of June 2016 and filed 7<sup>th</sup> day of June 2016 marked as exhibit 'A' as having been properly filed and served.
4. Anorder of Court granting leave for the Appellant/Applicantto compile and transmit record of appeal to this Honorable Court.
5. An order of Court deeming the Record of Appeal already compiled and transmitted as having been properly compiled and transmitted.
6. And the Omnibusprayer.

This motion is brought on the ground that;

1. That the time allowed by the rules of Court for the Appellant/Applicant to file Notice of Appeal and transmit Record of Appeal has since elapsed.
2. That the Notice of Appeal dated 6<sup>th</sup> June 2016 and filed 7<sup>th</sup> June 2016 is outside the time allowed by rules of this honorable Court.
3. That leave of this honorable Court is required for the Appellant /Applicant to file her Notice of Appeal out of time and to compile and transmit the Record of Appeal.

In support of this motion are, a 13-paragraph affidavit deposed to on the 5/3/2021 by one Florence U Agala, Written Address by Innocent Ugbede Agala Esq Counsel for the Appellant/ Applicant dated 5<sup>th</sup> day of March 2021 and an annexure marked as exhibit 'A'.

In Opposition to the Motion No. M/54/21 is a 16 paragraph Counter affidavit deposed to on the 18/3/2021 by one Cyril Ojong and written address dated the 17/3/ 2021 and filled on the 18/3/2021 on behalf of the Respondent .

At the hearing of this Motion on Notice on the 22/3/2021, Learned Counsel for the Appellant urged this Honorable Court to discountenance Respondent's Counter Affidavit on the ground that the Counter affidavit was deposed to by a legal practitioner who did not affix his NBA Seal on the Counter Affidavit and further that the written address in support of the Counter Affidavit has no NBA Seal of the Legal Practitioner who settled same.

Counsel for the Appellant relied on Rule 10 (2) of the Rules of Professional Conduct and the case of **YAKI AND ANOR V. BAGUDU AND ORS (2015) LPELR ,-2572- SC.**

In response, Learned Counsel for the Respondent submitted that the seal of the lawyer who deposed to the counter affidavit and who settled the Written Address in support thereof is affixed to the original copies of the processes.

We have meticulously read the processes, to wit the supporting affidavit and the annexure thereto, that is, Exhibit A as well as written address by Learned Counsel for the Appellant/Applicant. We have also looked at the Counter Affidavit and the Written Address filled on behalf of the Respondent.

We note that the Counter Affidavit filed on behalf of the Respondent was indeed deposed to by one Cyril Ojong a Legal Practitioner but carries the NBA Seal of a Legal Practitioner by name Efekemaraye C. Daniel. We note further that there is no NBA Seal affixed to the Written Address filed in support of the Respondent's Counter Affidavit.

Now the Supreme Court gave effect to the use of stamp and seal on legal documents by lawyers in the case of **YAKI & ANOR V. BAGUDU & ORS (2015) 18 NWLR PT. 1491 P. 288**

Where the Supreme Court held that ;

*“In this appeal this Court says that legal processes without stamp or seal are voidable. That is to say such documents are deemed not to have been properly signed and not that they are invalid. Such documents are redeemed and made valid by a simple directive by the judge or the relevant authority at the time of filing the voidable document for erring Counsel to affix stamp and seal as provided for in Rule 10 of the Legal Practitioners Act.” PER O. RHODES-VIVOUR, J.S.C”*

Further the Court gave its rationale why lawyers who prepared legal documents should affix their stamp and seal bearing their name and no other lawyer. There can't be a different name of counsel who signed the process in his name and goes ahead to borrow stamp of another lawyer bearing that Lawyer's name and Supreme Court enrolment number.

In the case of YAKI & ANOR (supra) the Supreme Court(PER S. N. ONNOGHEN, J.S.C ) gave the rationale for affixing stamp and seal on legal documents and also for lawyers to be given a chance to prove their call by affixing their personal stamp and seal, not borrowed ones whenever such objection is raised stating that;

*“It is only fair to the client, the legal profession and in the interest of justice that the Legal Practitioner involved be given opportunity to prove his call to Bar and enrollment at the Supreme Court of Nigeria by affixing his seal to the document involved at any stage in the proceeding including appeal or whenever an objection to the authenticity of the document is raised under the provisions of the said Rules of Professional conduct, 2007.”*

If the purpose of affixing the stamp and seal as stated above is to prove that a legal practitioner who has been called to bar is authentic then it won't be proper for a lawyer to sign a document and affix the stamp and seal bearing the name of another lawyer. If this is allowed to prevail, then the purport of Rule 10 of the Rules of Professional conduct would be defeated.

By Section 10 of the rules of professional conduct it is proper and good practice for a legal document to carry the name of the lawyer who signed it otherwise such document would be voidable at the instance of the party raising objection unless counsel on the other side applies to the Court to regularize it.

If the document is a motion, and the other Counsel objects to the borrowed stamp, it can lead to the Court not acting on the document because the process or document before the Court would be incompetent.

In the case of **NYESOM v. PETERSIDE & ORS (2016) LPELR-40036(SC)**

the Supreme Court reaffirmed its decision on failure to affix the approved seal and stamp of the NBA on a process stating that such failure does not render the process null and void. It is an irregularity that can be cured by an application for extension of time and a deeming order.

When a legal practitioner uses the stamp and seal of another lawyer such a document is voidable and incompetent unless regularized. In the circumstance where a lawyer runs out of stamp and seal and seeks to use the stamp and seal of another lawyer in the firm, the lawyer who has the stamp and seal should sign the process so as to have the signed name reflect the affixed stamp. The position of the law is that the stamp to be affixed must be that of the lawyer who signed it.

Where a lawyer borrows stamp of another lawyer and affixes same to a legal document, then such signed process or document would not be acted upon, it would be an incompetent document. See the case of **BARR. BENJAMIN WAYO vs. ENGR. GEORGE T. A. NDUUL & OTHERS (2017) LPELRSC.331/2016**.

In the instant case, the counter affidavit deposed to by Cyril Ojong without NBA seal together with the written address which has no seal are voidable and could have been regularized by this Court if the Appellant's Counsel made an application to regularize them, since there was no application in that regard, the processes cannot be

countenanced or used by this Court in the determination of the Application under focus. We so hold.

We now turn to the merit of the Application before us. Learned Counsel for the Appellant submits that, there are cogent and compelling reasons prompting his urging this Honorable Court to exercise its discretion in favour of the Appellant/Applicant.

What is contained in paragraph 3 of the affidavit in support of this motion is that the director of the Appellant/Applicant called his Learned Counsel on phone in May 2016, to inform him that a certificate of Judgment was served at his office; and that the learned Counsel for the Appellant/ Applicant finally discovered the particular Court where the Judgment emanated from at 3:00pm on Friday 6<sup>th</sup> May 2016 .

Also disclosed in paragraph 3(e) of the Applicant's affidavit is the fact that Innocent U. Agala Esq applied to the registry of the trial Court for certified true copy of all processes and record of proceedings including Judgment and Certificate of Judgment in the suit number CV/322/15 which the registrar acknowledged but has failed to compile timeously.

In an application of this nature which invokes the discretionary powers of the Court, it is not given for the asking it is given on good and substantial ground explaining the reason for the failure to do the thing at the time it was supposed to be done. Only upon such compelling reasons may the Court exercise its discretion to grant the application.

**See, ISIAKU V. OGUNDINMU (2006) 13 NWLR PT 997 P 401 ALSO TURAKI MILLS LTD & ANOR V.SANT ENGINEERING LTD & ANOR(2008)LPELR -8489**

ORDER XXVII Rule (4) of the District Court Rules[Cap].33 provides that;*“On application of the Appellant the Appeal Court may enlarge the time prescribed in this Order on such terms as it may deem fit or just”*, Similarly;

Order 50 rule 30 of the Rules of the High Court of the Federal Capital Territory 2018 gives this Court the power to enlarge any period of time prescribed by the said order if it thinks fit.

Therefore, the Court must deem it fit before it will exercise its discretion in favour of the Applicant.

In **LONG-JOHN & ORS V. BLAKK & ORS (1998) SC** the apex Court held that;

*"There can be no doubt that for an application for an extension of time within which an appellant may file his brief of argument out of time or, indeed, for an extension of the time prescribed by the rules of Court for taking certain procedural steps, to succeed, the Applicant must establish good, substantial or exceptional reasons or circumstances to explain satisfactorily the delay in filing his brief or taking the steps in issue and thus justify the grant of the extension of time applied for, whatever decision a Court arrives at in such applications must entirely depend on the exercise of its discretionary jurisdiction, having regard to the general principles of law governing the exercise of discretionary powers by the Courts and guided by the consideration of doing justice to all the parties to the dispute".*

**SEE ALSO THE CASE OF CHIEF T.O.S. BENSON V. NIGERIA AGIP OIL CO. LTD. (1982) 5 SC 1.**

As observed earlier we fail to understand or appreciate why it took the Applicant herein from 2016 up until 2021 to bring this motion on notice to regularize the Notice of Appeal filed in 2016.

In the light of the foregoing especially having not disclosed any cogent or satisfactory reason why the Appellant/Applicant failed to bring this application since 2016 till date, we are not persuaded nor do we find any reason to exercise our discretion in favour of the Appellant/Applicant by granting the Application sought in motion number M/54/2021.

The prayers sought are therefore refused, the motion is dismissed thus leaving the Appeal number CVA /220/2016 strangled with no hope to outlive the Motion. It must therefore suffer the same fate. Accordingly, the Appeal NO. CVA/220/2061 is dismissed.

We make no order as to cost .

---

**HON. JUSTICE F.E. MESSIRI**

**[HON. JUDGE]**

---

**HON. JUSTICE S.C. ORIJI**

**[PRESIDING JUDGE]**

**Appearance of counsel:**

