

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA
BEFORE HIS LORDSHIP HON. JUSTICE D.Z. SENCHI.
HON. JUDGE HIGH COURT NO.13
COURT CLERKS –T.P. SALLAH & ORS
DATE: - 28/01/2020
FCT/HC/CV/0043/17**

BETWEEN: -

FALZAL SECURITY & GUARDS LIMITED PLAINTIFF

AND

THE NATIONAL LIBRARY BOARD DEFENDANT

RULING

The instant suit was originally commenced vide the undefended list procedure of this Court. The Defendant filed its notice of intention to defend and a notice of preliminary objection challenging the competence of the suit. After hearing arguments, this Honourable Court in a considered Ruling delivered on 4th March, 2019, overruled the Defendant's preliminary objection but transferred the suit to the general cause list for proper trial. The Defendant has now filed the present motion on notice pursuant to the provisions of Order 61 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court praying for the grant of the following reliefs:-

- 1. An order of Court staying the proceedings of this matter pending the hearing and final determination of the appeal filed by the 1 (sic) Defendant/Applicant in the matter.*
- 2. And for such other or further orders as this Honourable Court may deem fit to make in the circumstances of the case.*

The grounds of the application:-

- a) *On the 4th day March 2019 the Honourable Court gave a ruling refusing the Defendant/Applicant's prayers in its Preliminary Objection dated the 5th of March 2018, that the suit be struck out because it did not follow the strict procedure for commencing a suit under the undefended list, that it be struck out because neither Claimant nor counsel signed the writ of summons and that the Court lacked jurisdiction to hear the suit.*
- b) *The Defendant/Applicant being dissatisfied with the orders made by the Honourable Court in its ruling has appealed the said ruling and now seeks a stay of proceedings in this matter until the final determination of the appeal.*

In support of the application the Defendant/Applicant filed an Affidavit of 4 paragraphs, attached documents as exhibits and also filed its Counsel's Written Address.

In opposition to the application the Plaintiff/Respondent filed a Counter Affidavit of 12 paragraphs as well as a Written Address.

Learned Counsel to the Defendant/Applicant formulated a sole issue which his counterpart for the Plaintiff/Respondent adopted to wit:-

"Whether the Applicant has satisfied the requirements of the law for the grant of an order of stay of proceedings pending appeal."

The Defendant/Applicant averred in its affidavit in support that being dissatisfied with the Ruling of this Court delivered by this Honourable Court on 4th March, 2019 in respect of its preliminary objection, it appealed against same vide Notice of Appeal dated 27th March, 2019. The CTC of the said Ruling and notice of appeal are attached to the affidavit as Exhibits A and B2 respectively. The Defendant/Applicant avers that the notice of appeal discloses arguable grounds and recondite points of law. That the instant matter was transferred to the general cause list for trial and if proceedings are not stayed pending appeal, irreparable harm will be done to the

Defendant/Applicant and judgment will be rendered nugatory in the event that he wins on appeal.

By its Counter Affidavit, on the otherhand, the Plaintiff/Respondent averred that the Ruling of this Court was delivered on 4th March, 2019 while the Defendant/Applicant's notice of appeal against same was filed on 15th April, 2019 which is 42 clear days after. That there is nothing to show that the Defendant/Applicant sought the leave of this Court to appeal against the interlocutory Ruling of this Court delivered on 4th March, 2019. That Victor Gwam who signed the notice of appeal is not a legal practitioner in employment of Government but a private legal practitioner. That there is no indication that the notice of appeal was paid for by the private legal practitioner who filed it.

Learned Counsel to the Defendant/Applicant argued in his address that the instant application for stay of proceedings pending appeal satisfies the requirements of Order 46 Rule 1 of the Rules of this Court. He relied on the case of **CARRIBEAN TRADING & FIDELITY CORPORATION V. NNPC (1991) 6 NWLR (PT.197) P. 352** on the principles to be considered by the Court in an application for stay of proceedings. He submitted that the Defendant/Applicant has a competent and arguable appeal dated 27th March, 2019 that was filed within the required statutory period. He contended that this Court is stripped of jurisdiction in respect of the instant suit and this constitutes special circumstances for granting stay of proceedings. It is Counsel's position that the balance of convenience is in the Defendant/Applicant's favour and its appeal will finally dispose of this matter before this Court. He urged this Court to grant the order of stay of proceedings sought in this application.

In his address, the Plaintiff/Respondent's Counsel relied on the case of **NIKA FISHING CO. LTD V. LAVINA CORP. (2008) 16 NWLR PT. 1114 P. 509** for the principles to be considered by the Court in an application for stay of proceedings. He

submitted that the Defendant/Applicant's notice of appeal which was filed outside the statutory 14 days of the delivery of the Ruling of this Court is invalid and cannot ground a stay of proceedings as it is in breach of Section 24(2)(a) of the Court of Appeal Act. He further contended that the Defendant/Applicant failed to comply with Section 14(1) of the Court of Appeal Act which requires leave to be sought before appealing against an interlocutory decision. It is also Counsel's position that the notice of appeal shows non-compliance with Order 7 Rule 2(4) of the Court of Appeal Rules 2016 which requires a notice of appeal to be signed by the appellant or his legal representative. He contended that the notice of appeal was not appropriately signed and the requisite filing fees of N5,000 was not paid for the notice of appeal. He submitted that the Defendant/Applicant's notice of appeal filed on 15th April, 2019 is incompetent and urged this Court to dismiss the Defendant/Applicant's application for being incompetent.

By the instant application the Defendant/Applicant is asking for an order staying proceedings in the present suit pending determination of an appeal it filed against an interlocutory decision of this Honourable Court. To therefore resolve determine this pending application I will and I hereby adopt the sole issue distilled by the Defendant/Applicant's Counsel thus:-
"Whether the Applicant has satisfied the requirements of the law for the grant of an order of stay of proceedings pending appeal."

The principles guiding the grant or refusal of stay of proceedings pending appeal are as follows:-

- i. There must be a pending appeal: A stay of proceedings can be granted only if there is a pending appeal, which is valid in law.
- ii. There must be an arguable appeal: The appeal, which forms the basis of an application for stay of proceedings, must be competent and arguable on its merits. Where an appeal is frivolous, vexatious or an abuse of Court process, an appeal Court will decline jurisdiction to entertain the application.

- iii. Where the appeal will dispose of the proceedings: Where the interlocutory appeal following an application for stay of proceedings will *finally dispose of the case or put an end to* the proceedings in the lower Court, stay of proceedings would be granted. An example is where an appeal raises an issue of jurisdiction of the lower Court. An appellate Court will grant an application for stay of proceedings if on the face of the appeal, the Court is satisfied that there is a real issue of jurisdiction to be tried as the decision on appeal will dispose of the proceedings in the lower Court. Such other issues include issues as to "**locus standi**", propriety of cause of action, admissibility of material evidence in the case of one of the parties and an appeal in which the ruling is one on material issues, but manifestly wrong.
- iv. Where the "**res**" will not be preserved: Where the "**res**" will be destroyed, damaged or annihilated before the matter is disposed of, an appellate Court will grant stay.
- v. Where greater hardship will be caused: The Court would be reluctant to grant an application for stay of proceedings if it would cause greater hardship than if the application were refused.
- vi. Where it will render the order of the appellate Court nugatory: A stay of proceedings will be granted where to do otherwise will tend to render any order of the appellate Court nugatory.

See the cases of **LATISCO PETROLEUM (NIG.) LTD. V. UNION BANK OF NIG.PL. (2009) 3 NWLR (PT. 1127) P. 22 at PP. 45-46 paragraphs B-D, NIKA FISHING CO. LTD. V. LAVINA CORP. (2008) 16 NWLR (PT. 1114) P. 509 at PP. 540 – 542 PARAS. B-D and N.N.P.C. V. O.E (NIG.)LTD. (2008) 8 NWLR (PT. 1090) P. 583.**

It is trite that an application for stay of proceedings can only be granted if there is a pending appeal, which is valid in law. A Court of law will not consider an application for stay in respect of an incompetent or invalid appeal. See **LATISCO PETROLEUM (NIG.) LTD. V. UNION BANK OF NIG.PL. (supra), NIKA**

FISHING CO. LTD. V. LAVINA CORP. (supra) and N.N.P.C. V. O.E (NIG.) LTD. (supra). The question whether there is a pending, valid and competent appeal must be answered from the notice of appeal.

The Plaintiff/Respondent has contended that the Defendant/Respondent's appeal is incompetent as the notice of same was not appropriately signed. I have looked carefully at the Defendant/Applicant's notice of appeal attached to its affidavit in support of the instant application as Exhibit B2. On the notice of appeal, the appellant is the 'National Library Board' (i.e. the Defendant/Applicant in this case). The said notice of appeal indicates one of the parties to be affected by the appeal to be the "National Library Board c/o its counsel L.O. Gwam & Co.". The notice of appeal further indicates on the last page that it was signed by one Victor Gwam of L.O. Gwam & Co. In other words, the notice of appeal was signed by the appellant's counsel. This is in substantial compliance with the provisions of **Order 7 Rule 2(4) of the Court of Appeal Rules 2016** which requires a notice of appeal to be signed by the appellant *or his legal representative*. It would be allowing unnecessary technicalities over substantial justice to hold otherwise.

On the issue of non-payment of filing fees, the general position of the law is that payment of filing fees is very crucial to the competence of a Court process. – see the case of **ONWUGBUFOR V. OKOYE (1996) 1 NWLR (PT. 424) P. 252**. The Defendant/Applicant's notice of appeal in this case does not indicate that filing fees was paid for it but rather shows that it was filed as 'official'. It would appear that the Defendant/Applicant is a Government department who is entitled to be exempted from payment of filing fees for Court processes under **Order 52 Rule 11 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018**. The Plaintiff/Respondent does not seem to dispute this. It appears that the Plaintiff/Respondent's grouse rather is that the Defendant/Applicant's Counsel who filed the notice of appeal is

a private legal practitioner who ought to have paid filing fees. Let me state that the exemption from payment of filing fees under the Rules of this Court is for the benefit of the Defendant/Applicant and not its Counsel who files Courtprocesses on its behalf. The exemption afforded the Defendant/Applicant from paying filing fees for its notice of appeal is therefore in accordance with the Rules of Court.

Now, by virtue of the provisions of **Section 241 and 242 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** an appeal against an interlocutory decision of a Court shall be with leave of Court except the grounds of such an appeal involves a question of law alone. An appeal based on mixed law and fact, which is against an interlocutory decision of a Court, can therefore only be brought after leave of Court has been sought and obtained. See the case of **HON. ZAKAWANU I. GARUBA & ORS V. HON. EHI BRIGHT OMOKHODION & ORS (2011) LPELR-1309(SC)** wherein it was held per Chukwuma-Eneh JSC as follows:-

It is trite law that an appeal against an interlocutory decision other than on grounds of law requires leave of Court.

The decision of this Court rendered in its Ruling of 4th March,2019 overruling the Defendant/Applicant's preliminary objection and transferring the suit to the general cause list for trial is clearly an interlocutory decision. There is however nothing to show that the Defendant/Applicant sought and obtained leave of Court before filing its notice of appeal against that interlocutory decision of this Court. The only circumstance the notice of appeal filed by the Defendant/Applicant will be competent is if the grounds of appeal contained therein allinvolve questions of law only.

My attention is particularly drawn to the fourth ground of the Defendant/Applicant's notice of appeal. It reads as follows:-

- (4) *The Court erred in law when it held that it had looked closely at the Writ and that the names of the legal practitioners who issued the writ is Max Ogar & Dominic Anyiador.*

Particulars of Error

- (a) The Writ was issued by "Max Ogar & Dominic Anyiador etc", there is nothing separating Max Ogar from "& Dominic Anyiador etc".
- (b) The Court turned a blind eye to the manner the name was written and concluded on its own that the name was for two solicitors.
- (c) The Court reached the conclusion that the signature on the name was a certain name instead of the entire name.
- (d) The writ of summons served on the Defendant did not have the seal of any solicitor thus it was impossible to determine that the signature was for anyone apart from the name on the writ of summons.

By the above ground of appeal and particulars thereof, the Defendant/Applicant is calling into question the finding of facts by this Honourable Court in arriving at its decision of 4th March, 2019. It is trite that where the grounds would require questioning the evaluation of facts by the lower Court before the application of the law, the question in the involved grounds would be of mixed fact and law. – see the cases of **OGBECHIE V. ONOCHIE (1986) 2 NWLR (PT.23) P. 484, ALAMIEYESEIGHA V. C.J.N. (2005) 1 NWLR (PT. 906) P. 60 and ONONYE V. CHUKWUMA (2005) 17 NWLR (PT. 953) P. 90.** The Defendant/Applicant's grounds as contained in its notice of appeal against the interlocutory decision of this Honourable Court are therefore based on questions of mixed fact and law. By virtue of **Section 241 and 242 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** leave of Court is required before the filing of the Defendant/Applicant's appeal. Having failed to obtain leave of Court before filing its notice of appeal, the said appeal is incompetent and invalid.

Further thereto, **Section 24(1) & (2)(a) of the Court of Appeal Act** requires a notice of appeal against an interlocutory decision in a civil cause to be filed within 14 days. A notice of appeal (against an interlocutory decision) filed outside this period is therefore incompetent. – see **EKANEM V. UMANAH (2007) 11 NWLR (PT.992) P. 510** and **EZENWOSU V. NGONADI (1992) NWLR (Pt.228) P. 154**. See also **OWONIBOYS TECH. SERV LTD. V. U.B.N. LTD. (2003) 15 NWLR (PT. 844) P. 545** where the Supreme Court held that the time for appealing must be observed irrespective of whether the appeal is as of right or not.

The Ruling delivered by this Court was delivered on 4th March, 2019. Although the Defendant/Applicant's notice of appeal against same is dated 27th March, 2019 it was actually filed at the registry of this Court on 15th April, 2019 (see Exhibit B2 to the affidavit in support of the instant application). The said notice of appeal was therefore filed outside the 14 days statutory period allowed for filing same against the Ruling of this Court of 4th March, 2019. For this reason also, the Defendant/Applicant's appeal (brought by notice of appeal in Exhibit B2) is incompetent. It has been held that an appeal filed where there is no right of appeal is frivolous and amounts to an abuse of Court process. – see **KENNEDY V. I.N.E.C. (2009) 1 NWLR (PT. 1123) P. 614 at P. 632 paragraph E**.

From all the foregoing, it is evident that there is no competent appeal pending before the Court of Appeal. The present application for stay of proceedings is sought pending an incompetent appeal. Thus the notice of appeal being incompetent the sole issue for determination is hereby resolved against the Defendant/Applicant and in favour of the Plaintiff/Respondent. The application is hereby refused and accordingly dismissed.

**HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)**

28/01/2020

Parties:- Absent

Plaintiff's Counsel absent

IkeazorIgbokwe:-For the Defendant.

Max Ogar:- For the Plaintiff. I apologize for coming in late.

Court:- Adjourned to the 30th March, 2020.

Sign

Judge

28/01/2020