

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

BEFORE HIS LORDSHIP:	JUSTICE SALISU GARBA
COURT CLERKS:	FIDELIS T. AAYONGO & OTHERS
COURT NUMBER:	HIGH COURT TWO (2)
CASE NUMBER:	FCT/HC/M/946/2019
DATE:	8TH JUNE, 2020

BETWEEN:

SIR AMARIGHA EDWARD HART - **PLAINTIFF**

AND

VINTAGE PRESS LIMITED & 2 ORS. - **DEFENDANTS**

Parties absent.

Uche Uzuokwu for the Claimant.

A.A. Achegbulu for the 1st and 2nd Defendants/Respondents.

Claimant's Counsel – The matter is for ruling and we are ready to take same.

Registrar/Legal Assistant (Sani Lawal) – I sent a text message to the 3rd Defendant's counsel informing him of today's date.

The 3rd Defendant's counsel informed me he is based in Port-Harcourt and because of the lockdown due to corona virus he cannot make it to court today.

Claimant's Counsel – I urge the court to deliver its ruling and thereafter adjourn the matter.

1st and 2nd Defendant's Counsel – I aligned myself with the submission of the Claimant's counsel that the court should proceed and deliver its ruling.

Court – The application by the Claimant's counsel and the 1st and 2nd Defendant's counsel for the court to deliver its ruling and thereafter adjourn the case is hereby granted since doing so will not prejudice the 3rd Defendant.

R U L I N G

This is an application on notice filed by the 3rd Defendant dated 11/3/2020 brought pursuant to Order 61 Rule 1 of the Rules of this court 2018 and under the inherent jurisdiction of the Honourable Court.

The application seeks for the following orders:

1. An order staying further proceeding in this suit pending the hearing and determination of the appeal against the ruling of this Honourable Court delivered on 17th Day of February, 2020 by the Applicant.
2. And for such order or further orders as the Honourable Court may deem fit to make in the circumstances of this suit.

The motion is supported by a 10-paragraph affidavit dated 11/3/2020 deposed to by Dorathy Appoles, a Litigation Secretary in the chambers of A.A. Olusegun & Associates. Annexed thereto are 2 documents: the ruling of this court marked as Exhibit A and the Notice of Appeal marked as Exhibit B. Reliance is placed on all the paragraphs of the affidavit.

Learned counsel to the 3rd Defendant/Applicant filed 3-page written address wherein counsel formulated an issue for determination to wit:

“Whether in view of the pending notice and grounds of appeal filed against the ruling of this court delivered on the 17//2020, the 3rd Defendant/Applicant is entitled to the grant of the stay of proceedings of this court pending the determination of the appeal”

On this sole issue, it is the submission that in the instant case, the 3rd Defendant/Applicant has filed his Notice of Appeal against the ruling of the court pursuant to the stipulation of the law as postulated in CROWN ESTATE LTD v ADEWUNMI (2004) FWLR (Pt 232) at 1547 Para A. See also IKERE L.G. v ADELUSI (2008) All FWLR (Pt 404) 1534 at 1548 Paras C – D.

In conclusion, learned counsel to the 3rd Defendant/Applicant urged this Honourable Court to grant this application.

The 1st and 2nd Defendant’s counsel was served with this application but learned counsel inform the court that he has no objection to the application.

In opposition to this application, learned counsel to the Claimant choose to reply orally on points of law. Learned counsel drew the attention of the court to Section 24(2) (a) of the Court of Appeal Act and submit that Exhibit B attached to the affidavit in support of the application was filed on 3/3/2020 seeking to appeal the interlocutory ruling of this court delivered on 17/2/2020, that was 15 clear days from the date the ruling was delivered.

On the above ground, Exhibit B the Notice of Appeal is incompetent. See FORBY ENG. CO LTD & 1 OR v AMCON 2018

LPELR (43861) C.A. where it was held that Notice of Appeal in interlocutory appeal must be filed within 14 days.

In the instant case, the 3rd Defendant filed their Notice of Appeal 15 days after the court's ruling. Learned counsel urge the court to refuse the application and further submit that his witness came all the way from Port-Harcourt and the Motion was filed and served on him on (12/3/2020) that goes to show that it was deliberate attempt to frustrate the trial in this matter for (12/3/2020 and (13/3/2020).

In the circumstance, learned counsel urged the court to dismiss the application with cost of N150,000 in favour of the Claimant.

In reply to the application for cost, learned counsel to the 3rd Defendant submits that the matter was slated for 12/3/2020 and 13/3/2020. The party in court is the representative of the Claimant. The payment of transport from Port-Harcourt to Abuja is normal and the Claimant should bear same.

On the part of the court after a careful consideration of the process filed and the submissions of learned counsel on both sides, it is trite law that an appeal per se does not operate as a stay of further proceedings. Thus any party appealing against an interlocutory decision of a court is under a duty to apply for stay of proceedings pending appeal; if he believes the result of his appeal will affect further proceedings in the matter.

In the instant case, the ruling that the 3rd Defendant is seeking to appeal against was delivered on the 17/2/2020 and the Notice of

Appeal against the interlocutory ruling was filed on the 3/3/2020 15 clear days after the ruling was delivered. By virtue of Section 24 (a) of the Court of Appeal Act, learned counsel is supposed to file his Notice of Appeal against the Interlocutory ruling within 14 days. See also the case of FORBY ENG. LTD v AMCON 2018 LPELR (43861) CA.

In the circumstances I hold the considered view that the said Notice of Appeal is incompetent; consequently, I find no merit in this application and it is hereby dismissed.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
08/06/2020

Claimant's Counsel – We thank the court for the ruling. We ask for a date in July for continuation of hearing. We undertake to serve the 3rd Defendant with hearing notice.

1st and 2nd Defendant's Counsel – We thank the court for the considered ruling. We also ask for a date for continuation of hearing. We suggest 8/7/2020 as the next adjourn date.

Court – Suit adjourned to 8/7/2020 for continuation of hearing. I order that hearing notice be served on the 3rd Defendant.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
08/06/2020