

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

BEFORE: HON. JUSTICE O.C. AGBAZA

COURT CLERKS: UKONUKALU&GODSPOWEREBAHOR

**COURT NO: 11
SUIT NO: FCT/HC/CV/2227/16
MOTION NO:M/8958/19**

BETWEEN:

- 1. HITS FURNITURE NIGERIA LIMITED**
- 2. MR SAMI HAIDAR.....CLAIMANTS/APPLICANTS**

AND

- 1. CLINICAL PLASTICS LIMITED**
- 2. ALHAMWU BABA KUSA**
- 3. MOHAMMED AMIN.....DEFENDANTS/RESPONDENTS**

RULING

By a Motion on Notice No. M/8958/19 dated 26th September, 2019 brought pursuant to Section 242 (1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) Section 14 (1) of the court of Appeal Act 1976 (As Amended) and under the inherent jurisdiction of this court, Claimants/Applicants prays the court the following refers;

- (1) An Order of this Honourable Court granting leave to appeal against the Interlocutory decision of the court delivered on the 10th day of September, 2019 in Motion No. M/9594/18.

(2) And the Omnibus relief.

The Motion is supported by a 6 Paragraph affidavit deposed to by one Fredrick Joseph a litigation clerk in the law firm of Claimants/Applicants counsel in the said affidavit is accompanied with two (2) Exhibits. Also filed is a Written Address and adopts same as oral submission in support of the Motion.

The processes were served on the 1st Defendants/Respondents on 12/11/2019 and in response they filed a 15 paragraph counter-affidavit with two Exhibits attached. Respondents also filed a Written Address and adopt same as oral argument in support of their counter-affidavit.

In the said Written Address, Claimants/Applicants' counsel formulated a sole issue for determination that is;

“Whether this Hon. Court can grant the Applicants' application for leave to appeal against the Ruling of 10th day of September, 2019”.

Submits that this court have the power and discretion to grant leave to appeal as stated in both the Constitution and Court Appeal Act. Refer to Section 242 (1) of the Constitution and Section 14 (1) and 24 (2) of the Court of Appeal Act.

Submits further that, the Applicants have demonstrated good faith by complying with the Provisions of the laws mandating them to obtain leave from the court of first instance before filing their Notice of Appeal. Refer to

the case of AkwaIbom State University VsIkpe (2016) 5 NWLR (PT.1504) 146 @ 167.

Submits finally that the grant of this application would seriously aid the Applicants' right of fair hearing and further promote the interest of justice.

1st Defendant/Respondent counsel adopted the sole issue formulated by Claimants/Applicant's counsel submits that the authorities cited by the Claimants/Applicants counsel allows an aggrieved party to pursue an appeal against an interlocutory decision of the lower court, but however, the court have discouraged the acts of litigants and their counsel pursuing an interlocutory appeal with the sole aim of delaying the smooth course of justice and frustrating the fair trial and determination of the case at the lower court. Refer to UmeanaduVs A.G. Anambra State (2008) 9 NWLR (PT. 1091) 196 – 197 Paras G – D, U.T.B. Ltd VsDolmelsch Pharm (Nig) Ltd (2007) 16 NWLR (PT.1061) 544 Paras D –F IwuaguluVsAzyka (2007) 5 NWLR (PT.1028) 632Paras A – B and Leaders & Co. Ltd VsKusamotu (2004) NWLR (PT. 864) 542 Paras D – F. Submits further on the strength of those authorities that the leave sought by the Claimants/Applicants is unnecessary, brought in bad faith and geared towards frustrating the smooth administration of justice.

Submits that counsel should not hinder the smooth administration of justice and should avoid the misuse of Constitutional right. Refer to BrathwaiteVsDalhatu (2016) 13 NWLR (PT.1528) 57 Paras C – F, Mobil Oil (Nig) PlcVsKena Energy Ltd (2004) 8 NWLR (PT.874) 131-132 Paras H-D.

Submits finally that the Claimants by their attitude to the matter cannot claim that they were not accorded the right of fair hearing. Refer to the case of Leaders & Co Ltd VsKusamotu (Supra) 541 Paras G- B. That the principle of fair hearing is co-joined with the Rules of equity and natural justice. Refer to Nigerian Laboratory Corp. VsP.M.B. Ltd (2012) 15 NWLR (PT. 1324) 525 Paras E – H. And urge court to refuse this application.

Having carefully considered the affidavit evidence of both parties, the submission of counsel for and against the grant of the application as well as the judicial authorities cited. I find that only one (1) issue calls for determination which is;

“Whether or not the Applicant has satisfactory shown good ground warranting this court to grant this application”.

The grant or otherwise of the prayer of the Applicant is at the discretion of court which the court must exercise judicially and judiciously. And to be able to do so, the Applicant must place before the court cogent facts to rely on. An AnachebeVsIjeoma (2015) ALL FWLR (PT. 784) 183 @ 195 Paragraph D – F the Supreme Court held;

“The discretion vested in court is required to be exercised judicially and judiciously, as it entails the application of legal principles to relevant facts/materials to arrive at a just/equitable decision. It is thus, not an indulgence or in judicial whim, but the exercise of judicial judgment based on facts and guided by the law or the equitable decision”

In the instant case, contained in paragraphs 4 (a) – (j) of the Applicant's supporting affidavit is that the court dismissed their application for the renewal of the life span of the writ for service on the 2nd Defendant/Respondent having found it unmeritorious that the Applicants are desirous of filing an appeal against the Ruling of court dismissing their application on 10/9/2019. That the presence of the 2nd Defendant/Respondent is germane to the just determination of this suit being a principle party to whom the Applicants have cause of action against. On the other hand, Defendants/Respondents stated in paragraph 8 and 9 of their counter-affidavit that the 2nd Defendant is not a principal party in the suit as there is no relief in the Claimants Writ of Summons dated 25/7/2016 directed against the 2nd Defendants/Respondents. And that the Suit can be effectively and effectually determined without the presence of the 2nd Defendants/Respondents.

Parties to a suit are an important aspect of a suit to consider before an action is commenced. However, the crux of this application should not be whether the 2nd Defendant/Respondent is a party to the Suit as strongly contended by the 1st Defendant/Respondent. I am of the view that this is not the platform to make a pronouncement whether or not 2nd Defendant is a party to the suit. What this court is called upon to decide is whether or not to grant leave to the Applicant to appeal the Ruling of court as prayed. I have said in the course of this Ruling that all that the Applicant need do is to place cogent facts before the court for consideration whether or not to grant their prayers. The question is, are the facts relied on for the grant of this application cogent enough to ground the prayers of the Applicants?

I have considered the competing positions of the parties and I must state at this juncture that the paramount consideration of court is what should promote the interest of justice in this case. In their supporting affidavit, Applicants stated in paragraph 4 (a) of their supporting affidavit that it became impossible to serve the 2nd Defendant the Writ of Summons they sought to renew before it expired, but they failed to state what effort made by them to explore available options provided by the Rules of Court to cater for such circumstances, to serve on the 2nd Defendant the Writ of Summons before it expired. The Right to fair hearing as raised by the Applicants in their Address, is a two way traffic and they have failed to consider the other parties in the said two way traffic. Granting this application in the light of this would mean indulging the Applicants and this the court must resist. I am of the firm view that the cause of justice will be better served if this application is refused. I so hold.

From all of these and having found that it will be in the interest of justice to refuse this application, this court hereby hold that the application lacks merit and is hereby refused.

HON. JUSTICE O.C. AGBAZA

Presiding Judge

18/5/2020

J.M. JAI WITH G.O.EGBULE; O.J. AGU AND MARTIN LUTHER OKERE FOR
THE CLAIMANTS/APPLICANTS

C.B. ONUORAH WITH HIM A.N. YUNUSA, F. AKPATA FOR THE 1ST
DEFENDANT/RESPONDENT

NO APPEARANCE FOR 2ND& 3RD DEFENDANTS/RESPONDENTS