

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA APPEAL JUDICIAL DIVISION**

**HOLDEN AT JABICOURT NO. 12**

**BEFORE HIS LORDSHIPS: HON. JUSTICE D.Z. SENCHI (PRESIDING JUDGE)**

**HON. JUSTICE M.B IDRIS (JUDGE)**

**DATED:-10/11/2020**

**APPEAL NO.CVA/04/2018**

**BEWTEEN:**

**1.PLURIFLASH NIGERIA LIMITED-----**

**2.ALHAJI AHMED SHUAIBU GARA GOMBE**

**APPELLANTS**

**AND**

**ALHAJI SANI LAWAL-----**

**RESPONDENT**

## **RULING**

**(DELIVERED BY HON. JUSTICE D.Z. SENCHI)**

The Applicant filed the instant motion No. M/79/2018 dated 20<sup>th</sup> July, 2018 and filed on 26<sup>th</sup> July, 2018. The motion prays the Court for the reliefs as follows:-

1. An order for extension of time within which to seek leave to appeal against the ruling of Hon. AbdulrazaqMusa Eneye of Senior District Court, Abuja dated the 10<sup>th</sup> day of June, 2014 in suit No. CV/04/2018.
2. An order for leave to appeal against the ruling of Hon. Abdulrazaq MusaEneye of Senior District Court, Abuja dated the 10<sup>th</sup> day of June, 2014 in suit No.CV/04/2018.
3. An order for extension of time within which to appeal against the ruling of Hon. Abdulrazaq Musa Eneye of senior District

Court, Abuja dated the 10<sup>th</sup> day of June, 2014 in suit No. CV/04/2018.

4. And for such other order or further orders as the Honourable Court may deem fit to make in the circumstance.

The grounds for the application are predicated on the following:-

1. The trial Court delivered its ruling on the 10<sup>th</sup> day of June, 2018.
2. The right of the Applicant to appeal against the decision of the trial Court is guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (as amended)
3. The time within which to appeal has elapsed.
4. The Honourable Court has the power to enlarge or extend the time.

The Applicant, in support of his motion deposed and filed an affidavit of 11 paragraphs with one exhibit marked exhibit 1. The learned Counsel to the Applicant also filed a written address and he adopted same as his oral arguments in this application.

The Counsel to the Respondent acknowledged service of the motion on notice. He however submitted that he did not file any counter affidavit or any process in opposition but he sought leave of this Court to reply on points of law orally.

Having said the above the Court drew the attention of Counsel to the Applicant to have a second look at the reliefs sought on the face of the motion papers to the effect that the decision of the Lower Court complained against was delivered even before the suit was filed. The learned Counsel in response referred the Court to the affidavit in support to contend that the decision was delivered on 10<sup>th</sup> June, 2018. He later however applied for an adjournment in order to put his house in order.

Learned Counsel to the Respondent opposed the application for an adjournment on the ground that the Applicant at the lower Court applied for stay of proceedings which the lower Court refused and now filed the present incompetent application in this Court.

After listening to the submissions of both Counsel either for or against the grant of the application; firstly, the law is trite that a party to a motion who intends to oppose the application shall file a written address and may accompany same with a counter affidavit. (See order 42 Rule 1 (3), FCT High Court (Civil Procedure) Rules 2018. Records have shown that the Respondent was served with the motion on notice and he failed to file a written address or a counter affidavit in opposition in accordance with the Rules of this Court. In the circumstance it appears the Respondent do not intend to oppose the application and therefore the leave to reply on points of law is not grantable and hence leave is hereby refused.

On the application for an adjournment for the Appellant to put his house in order, considering the time the interlocutory ruling of the lower Court was delivered, the Applicant has all the time in this world to file appropriate processes in this Appeal. In other words the Appellant has not shown good grounds for the adjournment. Thus, granting an adjournment will invariably affect the Respondent who is desirous of this matter being heard and determined and the respective parties know their rights and obligations. Thus, therefore the application for an adjournment is hereby refused as there is no good reason shown by the Applicant to warrant the matter been adjourned.

In respect of the main application of the Applicant, we have perused the reliefs sought by the Applicant on the face of the motion and the affidavit evidence in support of same.

The reliefs 1-3 on the face of the motion papers bothers on a decision of the Senior District Court of Honourable Abdulrazak Musa Eneye dated 10<sup>th</sup> June, 2014 which decision was delivered even before the suit No. CV/o4/2018 was instituted. The law is trite that reliefs sought on a motion are granted based on and or supported by affidavit evidence. The learned Counsel referred us to paragraph 3 of the affidavit in support of the application which says as follows:-

*"That I know on the 10<sup>th</sup> June, 2018 the senior District Court of Federal Capital Territory delivered its ruling in this suit."*

The affidavit evidence is at variance with the reliefs sought. In other words, the affidavit evidence did not support the grant of reliefs 1-3 of the Applicant. Hence, therefore, the Applicant having failed to adduce evidence in support of the reliefs, the reliefs sought are hereby refused and they are accordingly dismissed.

The notice of appeal filed on 26<sup>th</sup> July, 2018 is invariably incompetent and it is accordingly dismissed as well.

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**HON. JUSTICE M.B IDRIS**  
**(HON. JUDGE)**  
**10/11/2020**

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

**10/11/2020**

Parties:- Absent.

Ibrahim Ashiru:- For the Appellant.

F U. Egwemi: With me is Mohammed for the Respondent.

**Sign**  
**Judge**  
**10/11/2020**