

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
(APPEAL DIVISION)

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE THEIR LORDSHIPS:

HON. JUSTICE Y. HALILU - PRESIDING

HON. JUSTICE A.O EBONG - MEMBER

APPEAL NO.:CVA/319/2018

SUIT NO.: CV/133/2017

BETWEEN:

ELIZABETH SAMPSON APPELLANT/RESPONDENT

AND

HAJIYA MARYAM ADAMU RABIU RESPONDENT/

(Suing Through His Lawful Attorney

Henry Chukwudi)

APPLICANT

RULING

This Ruling is at the instance of the Respondent/Applicant who approached this Honourable Court vide Preliminary Objection seeking for an Order of this Honourable Court dismissing/striking out this **APPEAL NO. CVA/319/2018** between **ELIZABETH SAMPSON VS HAJIYA MARYAM ADAMU RABIU** for being incompetent, academic and abuse of the process of this court.

The grounds upon which the application is brought are as follows:-

- a. The tenancy of the Appellant has been determined.
- b. The Appellant has yielded up possession of the premises since the 28th June, 2019.
- c. There is no controversy between the Appellant and the Respondent as regards possession or arrears of rent.
- d. The Appeal had become academic.

- e. This court lacks the jurisdiction to hear and determine the appeal.
- f. The whole appeal is an abuse of court process.

Affidavit of 10 paragraphs duly deposed to by One Safiya Jibrin Hamza a counsel in the Law Firm of the Applicant, was filed.

It is the deposition of the Applicant that the Judgment in this matter was delivered by the lower court on the 8th day of November, 2018, and the Writ of Execution was issued vide Exhibit 'A', and that the Execution Unit had carried out the Order of the Trial Court on the 28th June, 2019.

Court was urged to dismiss the appeal in the interest of justice.

In line with law and order, a written address was filed wherein a sole issue was formulated for determination to wit;

Whether there is any live issue to be decided by the Court, having regard to the relief sought in the Appellants Notice of Appeal, and the fact that the Appellant have yielded possession of the subject matter of this Appeal. If answered in the negative, whether this appeal has not become academic.

Learned counsel while arguing on the above contended that there is no more live issue to be decided by this Honourable Court in the circumstances of this case as the Court need not to waste its precious time deciding on issue which has no consequence on the parties.

ADE VS UNI ILORIN (2014) NSCQLR Page 984 at 1002.

Counsel argued further that the issue submitted to this Honourable Court for adjudication has become a mere academic exercise which this Court is not prepared to waste its precious time on.

BARKER MARINE LTD. VS CHEVRON (2006)
NSCQLR Page 1121 at 1137.

Court was finally urged to dismiss this Appeal.

Upon service, the Appellant filed Counter Affidavit of 3paragraph deposed to by the Appellant herself.

It is her deposition that the Judgment in this case was delivered in favour of the Respondent on the 8th November, 2018 and Notice of Appeal was filed on the 9th November, 2018. A copy of the Notice is attached as Exhibit 'A'.

That a Motion for Stay of Execution was filed vide Exhibit 'PO2' and the Judgment was partially stayed.. Another Motion for Stay of Execution was thereafter filed on the 31st January, 2019 and served on all the parties vide Exhibit 'PO3'.

It is the averment of the Respondent that the Appellant's brief of argument was filed at the Appeal Unit and the

Respondent had also filed their brief before the Respondent through his lawful Attorney unprofessionally, recalled the case file from the Registry of the Appeal Section and procured a warrant of Execution against the Appellant on the 28th June, 2019.

That the Appellant Appeal brought before this Court still has life despite the unlawful action of the Respondent in the execution of the Judgment.

In line with law a written address is filed wherein two issues was formulated for determination to wit;

- 1. Whether this Honourable Court sitting in its Appellate jurisdiction is duty bound to hear the substantive Appeal having received the complete record of proceeding between the parties.*
- 2. Whether it shall be in the interest of fairness and justice if the Substantive Appeal before this*

Honourable Court is heard and decided on the merit.

On issue, *whether this Honourable Court sitting in its Appellant jurisdiction is duty bound to hear the substantive Appeal having received the complete record of proceeding between the parties.*

Learned Counsel submit that an Appellate Court is duty bound to hear an Appeal especially when the records of proceeding between the parties transmitted is complete. ***CHIEF OKOCHI & 2 ORS VS CHIEF ANIMKWOI & 2 ORS (2003) 2 SCNJ 260.***

Learned Counsel argued that it is only the Court that is clothed with power to pronounce an Appeal as academic and not what a Litigant assumes ***OKE VS MIMIKO (2013) N.S.C.Q.L.R 496.***

On issue two, whether it shall be in the interest of fairness and justice if the Substantive Appeal before this Honourable Court is heard and decided on the merit.

Learned Counsel submit that it is a breach of a party's fundamental right to fair hearing anchored on the principle of Natural Justice if a Court refuses to hear a pending Appeal or application before it. ***DINGIYADI VS INEC (NO. 2) (2010) 18 NWLR (Pt. 1224) 154.***

Court was urged to dismiss this application.

Court:- We have gone through the Notice of Preliminary Objection as aptly argued by the Learned Counsel for the Respondent/Applicant and the reaction of the Learned Counsel for the Appellant/Respondent. We shall be brief in resolving the conundrum in the interest of justice and fairplay.

Indeed, a Court does not concern itself with academic discussion or matters. All court of law are enjoined to

adjudicate between parties in relations to their compelling legal interest and never to engage in mere academic question or argument or discourse no matter how erudite or beneficial it may be to the public.

BARKER MARINE LTD. VS CHAVRON (2006)
N.S.C.Q.L.R Page 1121 at 1137.

Similarly Court should on no account spend precious judicial time on issues that are academic. Only live issues and those are issue that would meet the end of justice should be dealt with ***MAMMAN VS F.R.N (2013)***
N.S.C.Q.L.R Page 183 at 194.

Who then determine when a substantive Appeal becomes academic?

It is the Court that is clothed with power to pronounce an Appeal as academic and not what a Litigant assumes it is.

Is the present appeal academic..?

We hereby ask...

It is evident before this Court that Appellant filed its Notice of Appeal on the 19th of November, 2018 and thereafter filed a Motion on Notice for Stay of Execution on the 31st January, 2019. Records of proceedings between the parties was subsequently filed and transmitted to this Court and parties exchanged their briefs of argument.

Indeed, Appellate Court is bound by the record of Appeal, which means that Court is not allowed to venture outside the perimeter of its content. ***PML NIG. LTD. VS F.R.N (2017) LPELR 43480 (SC).***

Similarly an Appellate Court has no jurisdiction to read into the record what is not there and it equally has no jurisdiction to read out of the record what is there. Both are forbidden areas of Appellate Court. ***ORUGBO VS UNA (2002).***

As stated in the preceding part of this Ruling, the Court is in receipt of the complete record of proceedings of this

Appeal and both the Appellant and the Respondent's brief of argument were duly exchanged before this Notice of Preliminary Objection was filed.

It is trite that a Court sitting on Appeal has the duty to hear and determine all Appeals pending before it by giving a Judgment one way or the other to avoid denying a party right to fair hearing.

It is the law that the test of fairness in an Appeal proceeding is different from the test of fairness at the Court of first instance where the true test is the impression of a reasonable person who was present at the trial, whereas at the appeal court, the test is whether having regards to the rules of court and the law, justice has been done and appears to have been done to the parties. Justice was not done to a party whose case before the Appellate Court was not considered on his brief before a decision affecting his right be reached. ***TUNBI VS OPAWOLE (2000)LPELR 3274 (SC).***

What Respondent/Applicant seeks from this court can be likened to an attempt to suffocate an embryo or fetus before its development and eventually birth.

There is no merit found in the Preliminary Objection and same is on the strength of what we have observed afore is liable to be dismissed.

The Order dismissing the said Preliminary Objection is hereby made.

Preliminary Objection is hereby dismissed. Appeal adjourned to next session.

Hon. Justice Y. Halilu
Presiding Judge
17th December, 2020

Hon. Justice A.O Ebong
Hon. Judge
17th December, 2020

APPEARANCES

JONATHAN MADUKA – for the Appellant/Respondent.

IFECHI ALEKE – for the Respondent/Applicant.