

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.
FCT/HC/CV/540/2014**

BETWEEN:

M/S VIC-REME ENTER. INDUSTRY LTD --- PLAINTIFF/RESPONDENT

AND

1. ALPHACELL GROUP LIMITED	}	--- DEFENDANTS/APPLICANTS
2. VICREME ENTERPRISES		
3. HON. MINISTER OF F.C.T		
4. FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA)		

RULING
DELIVERED ON THE 19TH MARCH, 2021

This application was brought by the 1st and 2nd defendants/applicants seeking for the following Orders:-

1. AN ORDER for leave to appeal against the decision of this Honourable Court delivered on the 8th of March 2018 in this suit.
2. AN ORDER deeming the Notice of Appeal dated 15th March 2018 and filed on 21st March 2018 as properly filed and served on the Plaintiff.
3. AND for such further order or orders as the Honourable Court may deem fit to make in the circumstances.

The application is supported by a six paragraphs affidavit which has two annexures attached to it. The applicants also filed a written address of counsel. On being served the Respond/plaintiff filed a counter affidavit of 10 paragraphs and also a written address. When this case came up on

11th October, 2018 counsel for the parties adopted their written address as their oral submission.

I have carefully read all the processes filed by parties and the argument of the various counsel. This application is a result of a decision of this court delivered on 8th March, 2018. The applicants herein was dissatisfied with the decision of the court which in the main refused their application for the court to decline its Jurisdiction to entertain the plaintiff suit on the ground that the plaintiff lacks the locus standi to institute the action.

The appeal was filed on the 9th May, 2019. Both parties agreed that the decision of the court is an interlocutory decision and the leave of the court is required for an appeal to be entered against the decision. The question of a right to appeal against a decision of a court whether in a final decision or interlocutory decision is as enshrined in section 241 and section 242 of the constitution of the Federal Republic of Nigeria as Amended.

Where the decision of the court is final, the right to appeal is as of right. See section 241 (1) of the constitution. However where the decision sought to be appeal against is an interlocutory decision which does not dispose of the matter between the parties before the court, the leave of the court is required before a party can appeal against such decision see section 242 (1) of the constitution.

The leave to appeal is not at large the time to seeks such leave is circumscribe by law and a party seeking the leave of the court to appeal against an interlocutory decision must bring its application within the time prescribe by law. In this case, the time within which to obtained the

leave of the court to appeal is 14 days see section 242 of the constitution as amended.

Where a party does not seek the leave of the court before filing its appeal, such appeal will be incompetent and liable to be struck out upon an application. In the instance case, the applicants had on 21st March, 2018 filed a notice of appeal 13 days after the ruling of the court was delivered. However in filing the said notice of appeal, the applicants did not seek the leave of the court. Per haps on realising this, the applicant now filed this application.

My understanding of the law on this issue is that the leave of the court must first be sought and obtained before the notice of appeal can be properly file. Again, the said leave must be obtained within the 14 days prescribed by the law. This presupposes that any notice of appeal filed without the leave of the court obtained within the 14 days period and incompetent notice of appeal is bad in law.

No court can entertain it as it is incapable of revving to life the Jurisdictional vires of the court. Again as I said earlier the application for leave to appeal must be brought within 14 days after the ruling sought to be appealed against and the court must deliver its decision one way or the other within the 14 days time frame. Any application for leave to appeal against an interlocutory decision brought outside the time frame is incompetent. Similarly any decision by the court granting leave to appeal outside the 14 days time is giving without Jurisdiction. In the instance case the notice of appeal was filed without the leave of the court first sought and obtained.

I hold that the said notice of appeal is incompetent. Again the application for leave to file or appeal out of time was brought outside the 14 days time frame. The court therefore lacks the Jurisdiction to entertain the application as to do so will render any decision reach incompetent see the case of Allanah Vs. Kpolokwu (2016) 6 NWLR (Pt.1507) page 37 paragraph E-H.

I agree with the counsel to the Respondent that this application is incompetent and for this reason I shall decline the Jurisdiction to entertain the application. This application is liable to be struck out and I hereby strike out same.

APPEARANCE

Taslim Dauda Esq. for the Plaintiff/Respondent.

Sign
Hon. Judge
19/03/2021