

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)**

HOLDEN AT COURT 11, BWARI, ABUJA

BEFORE THEIR LORDSHIP:

HON. JUSTICE S. B. BELGORE (PRESIDING JUDGE)

HON. JUSTICE A. A. FASHOLA (HON. JUDGE)

CLERKS:

- (1) ESEOGHENE EJOVI
- (2) GBENGA FATADE
- (3) PRECIOUS UGO DIKE

SUIT NO: FCT/HC/M/43/21

DATE: 13/9/21

BETWEEN:

ABRAHAM OYEWOLE SULE..... APPELLANT

AND

GODSMART NIG. LTD.....RESPONDENT

RULING

This Ruling concerns the Motion on Notice M/43/21 just argued before us a few minutes ago. The Motion prayed essentially for an order of this Appellate Court granting enlargement or/extend time within which to appeal against the Judgment of the District Court sitting at Wuse Zone II, Abuja in suit No. CV/180/2019.

In support of the application is a 10-paragraph affidavit deposed to by one Isaac Mazo of 28 Blantyre Street, Wuse II, Abuja. The supporting affidavit has in attached to it, two Exhibits i.e. the

Judgment of the lower Court and the Notice of Appeal. There is also a further and better affidavit deposed to by the same deponent – Isaac Mazo. It is of 7-paragraphs.

The supporting affidavit is dated 24/2/21 and filed same date while the further and better affidavit is dated and filed 9/7/21.

Furthermore, the further and better affidavit has two annexures one of which is the record of proceedings in the lower Court and it is marked as Exhibit ‘C’.

Upon service of the supporting affidavit on the Respondent, they filed a counter affidavits of 10-paragraphs deposed to by one Ifeoluwa Ajani Esq. of 5th Floor Nikon Insurance Plaza, Central Business District. The counter-affidavits has 10 Exhibits marked as G1 – G10. There are written addresses filed by Counsel in support of their respective processes as filed.

A short while ago, learned Counsel to the appellant, Gabriel OromOkpata moved the application swiftly. He referred to all the processes filed and adopted his written address as this argument in support of the application. Mr. Okpata urged us to grant the application.

In a short reply Mr. Oluwole Ilori of Counsel to the Respondent referred to their 10-paragraphs affidavit and the 10 Exhibits G1 – G10 attached thereto. He argued that this application is an abuse of Court process because the appellant had earlier filed an appeal in this same case before this same Court. Learned Counsel urged us to refuse and dismiss the application for abuse of Court process.

We have considered this application summarily as it was moved. In our view there is no abuse of Court process in the position as taken and canvass by the appellant. Abuse of Court process would surface whereby a party filed multiple suits or process on the same

matter before the same Court or different Court to the annoyance or irritation of the opposing or the other party. See **SARAKI VS. KOTOYE**.

We find no such thing in this present application under reference. We say this because, the earlier appeal filed in this case was against the Ruling of the District Court Judgment refusing the application to set aside. See 6(10) of the further and better affidavits. And the same paragraph which was not challenged made it clear that the 2nd Notice of Appeal filed was against the main Judgment, the setting aside of which was unsuccessful.

So, it is abundantly clear that the two processes i.e. Notices of appeal were different in nature and substance though in the same case. That takes care of that and we agree with Mr. Okpata of Counsel to the appellant that no abuse of Court process here.

This leads us to the main gist of this Ruling. We ask, what is the merit in this simple application for extension of time within which to appeal against the Judgment of the District Court Judgment? The basic consideration that would be of utmost importance here is whether or not there was delay in bringing this application. After all, delay can defeat equity at times where fairness is the consideration. To resolve this, we have to look at the facts relating to date and time when Judgment was given and the time the Notice of appeal surfaced in this appeal session.

The Judgment under reference was given on 17/2/20. The appellant became aware of it on the 18/6/20. And they filed this application for enlargement of time to enable them appeal in 24/2/21. This is about the 8 months after they became aware of the pendency of a Court Judgment against them. The curiosity for any discerning mind here is what was the appellant doing within that 8 months that prevented them from filing an appeal against the Judgment they now seek to upturn? Were they simply sleeping? Were they

confused as to what step to take? We found the answer in the affidavit evidence.

Paragraphs 6(9) said the appellant filed a Motion on Notice to set aside the Judgment for reasons of default of appearance on 6/8/20. The Motion was heard and refused by the lower Court. The Ruling of court was delivered 15/12/20. These potent facts were not denied by the Respondents in their counter-affidavits. The appellant as a further step now are desirous of challenging that Judgment of 17/2/20 and have brought this application for enlargement of time.

In our firm view, the reason for their delay can be reasonably explained. It was not that they did nothing between the time the Judgment was brought to their notice and simply ignored it, No. They did not. They took some steps, infact legal steps allowed in law and perceived properly to be quicker. When that failed, they brought this application.

There is considerable merit in their approach to this appeal session and they should be allowed to ventilate their grievances further in this Court. This application is therefore allowed. We rely on **Order 43 Rule 1 and 2, Order 49 Rule 4, and Order 50 Rule 6** of the Rules of this Court.

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Suleiman B. Belgore
(Presiding Judge)

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A. A. Fashola
(Judge)
13/9/21

APPEARANCES:

GABRIEL UROM OKPATA ESQ. FOR APPELLANT
OLUWOLE ILORI ESQ. FOR RESPONDENT