

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)

CLERK:

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

SUIT NO: FCT/HC/CVA/169/20

M/724/20

DATE: 14/9/21

BETWEEN:

RELIABLE INTEGRATED SERVICES LTD..... APPELLANT

AND

HUSSEIN R. AKOJI..... RESPONDENT

RULING

This Ruling concerns the Motion on Notice filed by the appellant dated the 21st day of December, 2020 and filed on the same date with suit No. CV/169/2018. The Motion seeks for the following Orders:

- (1) AN ORDER of this Honourable Court extending the time within which the Applicant would file its notice of Appeal.

- (2) And for such further Orders as this Honourable Court may deem fit and expedient to make in the circumstance.

Attached to the Motion on Notice is 13-paragraphs affidavit deposed to by Gift Michael of No. 22 Kigma Street, Wuse Zone 7, Abuja. The affidavit is dated 31st December, 2020.

Further attached to the Motion on Notice is a written address to Motion dated 21st of December, 2020. Also attached to the Motion on Notice is one Exhibit which is a copy of the Notice of Appeal which has not been filed in the appeal Court Registry.

On the other hand, the Respondent Counsel filed a 13 paragraphs counter-affidavit deposed to by Nkechi Augustine litigation Secretary in the law office of Forest Hall Attorneys, Counsel to the Respondent herein. Attached to the counter-affidavit is a written address dated the 8th July, 2021.

In his written address, learned Counsel for the appellant submits one issue for determination as follows:

“whether this Court ought to Grant this Application in the interest of fair hearing and justice.”

While on the other hand, learned Counsel for the respondent also submits for determination of this Honourable Court a sole issue for determination as follow:

“Whether this Honourable Court ought not to grant this application in the interest of fair hearing and justice”.

In arguing his issue for determination, learned Counsel for the appellant contends in the main that this Honourable Court has

inherent powers to grant this application and extend the time for the applicant to Appeal.

He submits that this Honourable Court aims at justice, the applicant is willing and desirous to appeal. He referred the Court to the cases of **AGBO VS. CBN (1996) 10 NWLR (PT. 478) Pg. at 379; C & C LTD VS. ATIME INDU. LTD (2004) 2 NWLR (PT. 857) Pg. 272 at 278. And OTAPO VS. SUNMONU (1987) 2 NWLR (PT. 58) Pg. 587.**

On whether this Honourable Court ought not to grant this application in the interest of fair hearing and justice. Learned Counsel for the respondent contended that the nature of the application sought by the Applicant is discretionary. In exercising discretion, Courts must exercise same judicially and judiciously. He refers to the case of **BRAITHWAITE VS. SCB (NIG) LTD (2012) 12 1 NWLR (PT. 1281) pg. 301.** That Courts in exercising its judicious discretion is to take a look at the facts and surrounding facts leading to the said application.

In the nutshell, learned Counsel to the Respondent contended that this application was filed to frustrate the case and oppress the Court. He cited **Section 36(1) of the 1999 Constitution of the Federation Republic of Nigeria (as amended).**

On the issue of proposed notice of Appeal, learned Counsel referred to the case of **NWORA V. NWABUEZE (2019) 7 NWLR PT. 1670 PG. 1** where it was held that it is mandatory for the appellant to compile and transmit the records for his appeal within the time specified by law. That in prosecuting matters, time is of essence, the said notice of appeal was never filed nor is there anything to show that the said records have been transmitted.

He urged this Honourable Court to strike out the application in its entirety as same is lacking in merit with substantial cost of **N250,000.00.**

We have carefully read the written submissions of both Counsel to the Appellant and Respondent, we have also listened attentively to their oral submission of both Counsel. In that vein, the issue which calls for determination is:

- (1) Whether the applicant herein has given cogent and compellable reasons to be entitled to the orders sought.

The applicant in his Motion on Notice dated 21st December, 2020 filed on 31st December, 2020 is praying this Court for an order for extension of time and an omnibus prayer.

Paragraph 5 of the applicant's affidavit in support of Motion is that the applicant Counsel took ill, he was at the isolation centre on medical advice. The learned Counsel in his wisdom did not deem it fit to exhibit medical certificate evidencing his state of health as contended by him.

A Perusal of the Exhibit attached to the Motion on Notice, the purported notice of Appeal did show that same was not filed. It is our humble legal view that motion on notice dated the 21st December, 2020 is a ploy to delay and frustrate the trial of this case, it is hereby struck out with **N50,000.00** cost awarded against the applicant. We hereby place reliance **on Order 50 Rule 30 of High Court of Federal Capital Territory, Abuja (Civil Procedure) Rules 2018.**

Suleiman B. Belgore
(Presiding Judge)
14/9/21

A. A. Fashola
(Hon. Judge)
14/9/21

APPEARANCES:

**NWAFOR C. J. ESQ, NGBWONFOR ESQ, J. P. AYAT ESQ
FOR APPELLANT**

NANSOK EMMANUEL ESQ, FOR RESPONDENT