

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 14th OF FEBURARY,2022.
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH
(PRESIDING JUDGE)

CHARGE NO: FCT/HC/CR/26/11

MOTION NO: M/8683/2021

BETWEEN

COMMISSIONER OF POLICE.....COMPLAINANT

AND

1. JUNAIDU HASHIMU

2. UMMA SANI

3. IBRAHIM ALIYU NAMADI ----- APPLICANT/APPELLANT

4. MOHAMMED HASHIMU

5. ABUBAKAR MOHAMMED

6. HASHIMU MUHAMMADU

RULING

Before the honourable court is a Motion on notice filed on the 2nd day of December, 2021 and brought pursuant to Section 35(1) of the constitution of the Federal Republic of Nigeria 1999 (as amended), section 24(2)(A) of the Court of Appeal Act, 20045 and under the inherent jurisdiction of this honourable court.

The applicant prays for:

1. An order extending the time within which the Appellant/Applicant may seek leave to Appeal against the Rulings of Honourable Maryann E. Anenih of the High Court of the federal Capital Territory, Abuja. In suit No.

- FCT/HC/CR/26/11 between Commissioner of Police VS. Junaidu Hashimu & 5 ORS delivered on the 15th November, 2021 in respect of the No case submission made by the Appellant/Applicant before this Honourable court.
2. An order granting leave to the Appellant/Applicant to Appeal against the Ruling of Honourable Justice Maryann E. Anenih of the high court of the Federal Capital Territory, Abuja. In suit No. FCT/HC/CR/26/11 between Commissioner of Police VS. Junaidu Hashimu & 5 ORS delivered on the 15th November, 2021 in respect of the No case submission made by the Appellant/Applicant before this Honourable court.
 3. An order granting leave to the Appellant/Applicant to appeal against the Ruling of Honourable Justice Maryann E. Anenih of the high court of the federal capital territory, Abuja delivered on the 15th November, 2021. In respect of a No Case Submission by the Appellant /Applicant on grounds of mixed law and facts.
 4. An order for enlargement of time within which Appellant/Applicant may file his Notice of Appeal against the Rulings of Honourable Maryann E. Anenih of the High Court of the Federal Capital Territory, Abuja delivered on the 15th November, 2021 in respect of a No Case Submission by the Appellant /Applicant before this honourable court.
 5. Any order(s) this court may deem fit to make in the circumstances.

Grounds of Application

- a. The Appellant/Applicant was arraigned before this honourable court on the 8th January, 2013 on a 4 count charge and his plea was taken same date.
- b. The original charge was amended by the 1st respondent with the leave of this honourable court on the 25th February, 2021. In

which the Appellant/Applicant was charged on 5 of the counts on the Amended counts.

- c. At the close of the case of the prosecution, the Appellant through his counsel made no case submission.
- d. The Appellant/Applicant address on no case was argued before this honourable court, after which this honourable court delivered its ruling on the 15th November, 2021, in which the Appellant/Applicant no case submission was overruled and the Applicant/3rd defendant was called upon to enter his defence.
- e. The Appellant/Applicant is dissatisfied with the ruling of this honourable court made on the 15th November, 2021, and he is desirous of appealing against same.
- f. The Appellant/Applicant is required to seek and obtain the leave of this honourable court in order to appeal against the ruling on ground of law and facts as well as for extension of time to appeal against same.
- g. This honourable court has the inherent powers to grant this application,

This application is supported by 19 paragraph affidavit, attached exhibits and a written address.

The respondent/complainant did not oppose this application.

I have considered the application before the court, the supporting affidavit with attached exhibits and the written address.

I am of the view that the main issue arising for determination is:

Whether the application sought ought to be granted

The appellant/applicants counsel submitted that the Appellant/Applicant has demonstrated in the proposed notice of Appeal (Exhibit MAM1) his grievances against the ruling of this honourable court delivered on the 15th November, 2021. That the grant of this application will enable the Appellant/Applicant exercise

his legal right of appeal against the ruling of this honourable court delivered on the 15th November, 2021.

He also submitted that the Appellant/Applicant's affidavit in support of this application contains good and substantial reason for the failure to file this application within the period prescribed by the provisions of the law for filing of an interlocutory Appeal as in this instant case.

He prayed the court to consider the facts in this Application and resolve issue in the Applicant's favour.

It is elementary that in considering an application for leave to appeal out of time, the length of time that has elapsed is always a material factor. See

SAANTALI ZHITSU & ANOR v. CHIEF JOEL OGUNDEJI & ORS (2014) LPELR-22549(CA) (Pp. 13 paras. A-A)

There are however conditions to be satisfied by an applicant seeking for extension of time to appeal. This application is founded on Order 7 Rule 10(1 and 2) of the Court of Appeal Rules 2011 which provisions are reproduced hereunder:-

"10. (1) The Court may enlarge the time provided by these Rules for the doing of anything to which these Rules apply except the filing of notice of intention not to contest an application under Rule 8 above.

(2) Every application for an enlargement of time within which to appeal, shall be supported by an affidavit setting forth good and substantial reasons for failure to appeal within the prescribed period, and by grounds of appeal which prima facie show good cause why the appeal should be heard. When time is so enlarged a copy of the order granting such enlargement shall be annexed to the notice of appeal."

It is trite that the grounds of appeal contained in the Notice of Appeal in support of the application should involve matters of constitutional and jurisprudential importance. See

CONGRESS FOR PROGRESSIVE CHANGE & ANOR v. ADMIRAL MURTALA NYAKO & ORS (2011) LPELR-23009(SC) (Pp. 15-16 paras. C)

"...this Court in a plethora of cases had laid down principles for granting application for leave to appeal simpliciter which is also included in the requirement under Section 233(5) of the Constitution for application for leave to appeal as person having interest in the matter.

The general rule is that an application for leave to appeal will be granted where the grounds of appeal raise issues of general importance or novel points of law or where the grounds of appeal show a prima facie arguable appeal. See *Kigo (Nigeria) Ltd Vs Holman Brothers (Nigeria) Ltd. (1980) 5-7 S.C. 52.*"

Suffice to say that, in my view, this application ought to be granted in the overall interest of justice.

Consequently, this application succeeds and orders hereby made as follows:

1. Leave is granted to the Appellant/Applicant extending the time within which Appellant/Applicant may seek leave to Appeal against the Ruling of this Honourable Court in suit No. FCT/HC/CR/26/11 between Commissioner of Police VS. Junaidu Hashimu & 5 ORS delivered on the 15th November, 2021 in respect of the No case submission made by the Appellant/Applicant before this Honourable court.
2. Leave is granted to the Appellant/Applicant to Appeal against the Rulings of Honourable Justice Maryann E. Anenih of this Honourable Court in suit No. FCT/HC/CR/26/11 between

Commissioner of Police VS. Junaidu Hashimu & 5 ORS delivered on the 15th November, 2021 in respect of the No case submission made by the Appellant/Applicant before this Honourable court.

3. Leave is granted to the Appellant/Applicant to appeal against the Ruling of this Honourable Court delivered on the 15th November, 2021 in respect of a No Case Submission made by the Appellant /Applicant on grounds of mixed law and facts.
4. Leave is also hereby granted for enlargement of time within which Appellant/Applicant may file his Notice of Appeal against the Ruling of this Honourable Court delivered on the 15th November, 2021 in respect of a No Case Submission by the Appellant/Applicant before this Honourable Court.

Signed

Honourable Judge

Representation

Chinyere Momeme Ms with I.M Chieshe Ms. And Doon Nnenga Miss holding brief for Simon Lough SAN for prosecution.

K.O Duruzo Esq for the 1st,2nd,4th,5th and 6th defendant.

Danjuma G. Ayeye Esq with Okechukwu Edeze Esq,Rabiu Suleiman Esq, Rufaida Adam Ms. And Rabiu L. Uba Esq for 3rd defendant.