

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA, ABUJA

BEFORE THEIR LORDSHIP: HON. JUSTICE Y. HALILU (PRESIDING JUDGE)
HON. JUSTICE H. MU'AZU (HON. JUDGE)

ON 02 DAY OF FEBRUARY, 2022

APPEAL NO: FCT/HC/CVA/711/2021

SUIT NO: FCT/HC/CV/180/2019

MOTION NO: FCT/HC/M/252/2021

MOTION NO: FCT/HC/M/236/2021

BETWEEN:

ABRAHAM OYEWOLE SULEAPPELLANT/APPLICANT.

AND

GODSMART NIG LTD RESPONDENT.

(Suing through His Attorney KAY & EYE INT'L)

CONSOLIDATED RULING

On the 2nd of November, 2021 when this matter came up for hearing, by an order of this Court, two Applications were consolidated and taken together.

In the first application, the Respondent/Applicant, by a Motion on Notice filed on the 12th of October, 2021, brought pursuant to Order 43 and 50 Rules 1, 15 and 26 of the Rules of this Court, 2018 seeks for the following reliefs, to wit:

- (1) *An order dismissing this appeal for being incompetent by which robbing this Honourable Court of jurisdiction.*
- (2) *An order affirming the judgment of the Lower Court, this appeal having being incompetent.*
- (3) *An order directing the Appellant to pay to the Applicant/Respondent or to the interest yielding account of the Registrar of the Honourable Court of the sum of ~~N~~4,873,933.33 which is the unpaid judgment debt being the unpaid balances of the arrears of rent which the Appellant deliberately refused to pay.*
- (4) *And for such further Order(s) that this Honourable Court may deem fit to make in this circumstances.*

The Respondent/Applicant's application was predicated on the following grounds.

- (1) *This appeal is incompetent because the Notice of Appeal which is the foundation of this appeal being an interlocutory appeal was filed out of time.*
- (2) *The order of Lower Court is still subsisting and alive.*
- (3) *The Appellant is still indebted to the Respondent/Applicant of the unpaid arrears of rent.*
- (4) *The Appellant is in disobediences to the Court Judgment and Orders.*

In support of the Respondent/Applicant's Application is a 17 paragraph affidavit deposed to by Jideuche Ezi Esq. having three annexure marked exhibits A-C.

Also, a Written Address was filed wherein Learned Counsel for the Respondent/Applicant distilled a sole issue for the determination of the Court, to wit:

"Whether there is a competent appeal before this court, notice of Appeal and the Record of Appeal having been filed, compiled and transmitted out of time."

Learned Counsel argued the issue succinctly in urging the Court to grant the application.

We shall refer to relevant, averments and submissions in the affidavit and address of Counsel respectively where necessary in this Ruling.

In response, the Appellant/Respondent filed a Counter affidavit dated 26th October, 2021 deposed to by one Isaac Mazo of 28, Blantyre Street, Wuse II, Abuja. A Written Address of Counsel was also filed where Counsel for the Applicant/Respondent formulated two issues for the determination of the Court, to wit:

- (1) *“Whether there is a valid appeal pending before this Honourable Court.”*
- (2) *“Whether reliefs 2 and 3 to this application are supported by law.”*

Learned Counsel for the Appellant argued the issue succinctly in praying this Court to dismiss the application.

Further, the Respondent/Applicant filed a reply on points of law wherein further arguments were canvassed in support of the application.

In closing their respective case Counsel on both sides placed reliance on averments in their respective affidavits and Exhibits

and also adopted their addresses as their arguments in support of their respective cases.

We have carefully considered the Motion Paper and the affidavit of the Respondent/Applicant on the one hand and the Counter Affidavit of the Applicant/Respondent. I have also carefully considered the argument canvassed by Counsel on both sides.

We shall in the cause of this Ruling refer to relevant averments and submission where necessary.

For the due determination of this matter it is my firm view that, this issues that are up for the determination are as formulated by the Counsel for the Applicant/respondent, to wit:

1. *“Whether there is a valid appeal pending before this Court.”*
2. *“Whether reliefs 2 and 3 to this application are supported by law.”*

On the 1st issue, the Learned Counsel for the Respondent/Applicant has argued that this being an Interlocutory Appeal, it ought to have been filed within 15 days after the decision appeal against and relied on Order 50 Rule 1 of the Rules of this Court, 2018.

For clarity, Order 50 rule 1 provides thus;

“Except for interlocutory appeals which shall be brought within 15 days, every appeal shall be brought by Notice of appeal lodged in the Lower Court within 30 days of the decision appealed from and served on all parties affected by the appeal.”

Counsel placed reliance on the authorities in **OMONUWA V. SHODIN (1985) 2 NWLR (Pt.10) p.924 at 942** and **ALOR V. NGENE (2007) 17 NWLR (Pt.1062) p.162.**

On the other hand, Counsel for the Appellant submitted that the Appellant’s Notice of Appeal filed on the 12th of January, 2021 is competent and in compliance with **Order 50 Rule 1** and valid. Learned Counsel contends that the decision of the Lower Court refusing the set asides its judgment delivered 15th of December, 2020 was a final decision which gives the Appellant 30 days and not 15 days to file his Notice of Appeal, and that was done.

Parties are agreed that the Notice of Appeal was filed on the 12th of January, 2020.

At this point the question that begs for an answer is whether an order of Court refusing to set aside its judgment is an interlocutory or final decision?

While confronted with this question, the Court of appeal in **GITTO CONST GENERALI (NIG) LTD V. INNOVATE & CO. ENT & ANOR (2015) LPELR-25725** held that:

“What has been subject of judicial interpretation is when a decision can be said or classified to be final or interlocutory. Our Courts have devised certain criteria of such a determination, famous and most current and acceptable of which is the “nature of the order test.” This is the criterion or test applied to a decision to determine whether it is final or interlocutory. The fact that an order is made in an interlocutory application does not necessarily make the order interlocutory. It is interlocutory or final depending on its effect..... The decision appealed against by the Appellant in this appeal is the ruling of the trial Court refusing to set aside the default judgment entered on the 29/10/2010 in favour of the Respondent against the Appellant.....I must therefore hold that the said order of 24/02/2011 made by the Lower Court refusing to set aside its default judgment of 29/10/2010 is a Final Judgment.

The court went further to hold that;

The notice of appeal filed on 14/03/2011 against the final decision of the Lower Court in its Ruling delivered on 24/02/2011 refusing to set aside its default Judgment of 29/10/2010 which was barely 18 days after the said Ruling, is competent.

See: OGOLO V. OGOLO (2006) LPELR-2311 & UGO V. UGO (2017) LPELR-44809 (SC).

In line with above authorities we must therefore hold that the decision of the Lower Court of 15/12/2020 refusing to set aside its Judgment is a final decision requiring the Appellant to file his Notice of Appeal within 30 days as against 15 days as argued by the Respondent/Applicant.

Accordingly, the Notice of Appeal filed by the Appellant Respondent on the 12th of January, 2021 against the final decision of the Lower court in its ruling delivered on the 15th of December, 2020 refusing to set aside its judgment, 28 days after the said Ruling is competent.

The 1st issue is resolved in favour of the Appellant /Respondent.

On the issue 2

Whether relief 2 and 3 to this application as supported by law.

In view of the finding on the 1st issue and the fact that the 2nd and 3rd reliefs are dependent on the success of the 1st relief which has failed, the two reliefs must fail as well. I so hold.

Accordingly, **Motion No: FCT/HC/M/236/2021** fails and same is hereby dismissed.

Signed
Hon. Justice Y. Halilu
(PRESIDING JUDGE)

02/02/2022.

Signed
Hon. Judge H. Mu'azu
(HON. JUDGE)

02/02/2022.

In the second Application, Appellant/Applicant by a Motion on Notice filed 29/06/2021 brought pursuant to Order 50 Rules 7, 10 and 14 and Order 43 Rule 1 of the Rules of this Court, 2018 prays for the following relief.

1. An order of the Honourable Court for leave to amend the Notice of Appeal in this suit.
2. An order of this Honourable Court for the amendment of the Notice of Appeal in this suit in the manner stated in the annexed proposed Amended Notice of Appeal to this application.
3. An order of this Honourable Court for extension of time within which to fill Appellant's brief of Argument.
4. An order of this Honourable Court deeming the amended Notice of appeal and Appellant's brief of Argument in this suit as already filed and served; appropriate filing fees and default having been duly paid.

5. And for such further Order(s) that this Honourable Court may deem fit to make in the circumstances.

The Appellant/Applicant filed in support of the application a 7 paragraph affidavit deposed to by Isaac Mazo of 28 Blantyre Street, Wuse II, Abuja with one annexure marked Exhibit A (the proposed Amended Notice of Appeal).

In support of the application is a Written Address Wherein Counsel for the Applicant/Appellant made submissions in urging the Court to grant the application.

In Response, the Respondent/Respondent filed a Counter Affidavit of 9 paragraphs dated 13/07/2021 deposed to by Jideuche Ezi Esq with one annexure marked as Exhibit A (which is record of Appeal

In support of the Counter Affidavit is a Written Address dated 12/07/2021 where Counsel for the Respondent raised a sole issue for determination of this Court, to wit:

“Whether there is a competent appeal before this Honourable Court, the Notice of Appeal and Record of Appeal having been filed, compiled and transmitted out of time.”

Counsel argued the issue succinctly in urging the Court to dismiss the application.

The Appellant/Applicant response to the Counter affidavit of the Respondent filed a further and Better Affidavit of 8 paragraphs dated 26/10/2021 deposed to by Isaac Mazo and a reply on points of law.

Counsel at the hearing of the matter placed reliance on the averments in their respective affidavits and adopted their addresses in support of their respective cases.

The contention of the Respondent here is that, like in the other application, the Notice of Appeal is incompetent and an invalid Notice of Appeal cannot be amended. We have earlier in the preceding part of this Ruling held that the Notice of Appeal is competent. Accordingly, we shall not indulge in the same issue again. In the case of *GT BANK PLC v. INNOSON (NIG) LTD & ORS* (2018) LPELR-48686 (CA) the Court of appeal held thus:

“Where there is valid Notice of Appeal before the Court, It can be amended and the amended Notice of Appeal takes the place of the initial Notice of Appeal.”

In line with above authority I find that the Application of the Appellant has considerable merit. The application succeeds. The reliefs are accordingly granted as prayed.

Signed
Hon. Justice Y. Halilu
(PRESIDING JUDGE)
02/02/2022.

Signed
Hon. Judge H. Mu'azu
(HON. JUDGE)
02/02/2022.