

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

(APPEAL DIVISION)

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE THEIR LORDSHIPS:

HON. JUSTICE Y. HALILU - PRESIDING

HON. JUSTICE H. MU'AZU - MEMBER

APPEAL NO.:CVA/11/2020

SUIT NO.: CV/54/2019

BETWEEN:

MAL. GAMBO IBRAHIM APPELLANT /RESPONDENT

AND

MAL.ABDULMUMIN SHAMAKI

**} RESPONDENT
/APPLICANT**

RULING

This Ruling is at the instance of the Respondent/Applicant who approached this Honourable Court vide a motion seeking for;

- a. An Order of this Honourable Court dismissing or striking out the Appellant/Respondent's Notice of Appeal dated the 27th day of March, 2020 for lack of diligent prosecution and as an abuse of court process.

In support of the motion is 14 paragraph affidavit deposed to by Mal.AbdulmuminShamaki the Applicant himself.

It is his deposition that on the 9th day of March, 2020, the Grade 1 Area Court Holden at Abuja, FCT – Abuja delivered a judgment in his favour for the

sum of Four Hundred and Ten Thousand Naira (N410,000.00) against the Appellant/respondent.

That the Appellant/Respondent filed a notice of Appeal at the Registry of High Court Apo, FCT – Abuja dated the 27th day of March, 2020 and same was served on the Respondent/Applicant.

That the Appellant/Respondent filed a motion for stay of execution before the Grade 1 Area Court, dated the 30th day of May, 2020 and was struck out for non – appearance of both the Appellant/Respondent and his counsel in court on the 9th June, 2020.

That the counsel to the Appellant/Respondent abandoned the said notice of Appeal and failed, neglected and/or refused to file Appellant brief of

Argument since the notice of Appeal was filed on the 27th day of March, 2020.

That this Honourable Court should or strikes out the Appellant/Respondent's notice of Appeal dated the 27th day of March, 2020 for lack of diligent prosecution and as an abuse of court process.

In line with the law, a written address was filed along with the application wherein counsel formulated a sole issue for determination to wit:-

“Whether the filing of a notice of Appeal without diligent prosecution by the Appellant/Respondent does not amount to an abuse of court process”

Learned counsel submits that the filing of the notice of Appeal by the Appellant/Respondent without diligently prosecuting same even after a prolonged

period amount to an abuse of court process.
OGBONMWAN VS AGHIMIER (2016) LPELR – 40806 (CA);

SARAKI VS KOTOYE (1992) 9 NWLR (Pt. 264) 156 at 188 Paragraphs E – G were cited.

Learned counsel urged the court to grant the application as prayed with cost.

On their part, Appellant/Respondent filed a counter affidavit deposed to by Mal. Gambo Ibrahim the Appellant/Respondent himself.

It is the deposition of the Appellant/Respondent that the Respondent was unable to pursue the Appeal due to the fact that the counsel by name A.Y Zubairu declined from handling the matter as a result of the petition that was written against him by the Respondent/Applicant.

That as a result of the disengagement of the former counsel from handling the matter delayed the compilation, hearing and determination of the Appeal.

That the Applicant is much aware that the respondent was not having a counsel to handle this matter until now that he has engaged the services of a new counsel to continue with the matter.

That the Respondent is willing and ready to pursue the Appeal to its logical conclusion without any further delay on his part.

In support of the affidavit counsel formulated a sole issue for determination in his written address to wit:-

“Whether the Applicant has made out a case for the grant of the reliefs sought in the application.”

Arguing on the issue, learned counsel submits that the grant of an application of this nature is at the discretion of the court, which the court would exercise judiciously and judiciary. It is well settled that any proceeding conducted in breach of a party's right of fair hearing, no matter how well conducted would be rendered a nullity.

NICHOLAS CHUKWUJEKWU UKACHUKWU VS PEOPLES DEMOCRATIC PARTY & 3ORS (2014) SC;

UNIVERSITY OF LAGOS & ANOR VS. AIGORO (1985) 1 NWLR (Pt. 1) 143 at 148;

UNIPETROL (NIG.)LTD VS MUSA (1992) 7 NWLR (Pt. 251) 63 at 72 were cited.

Learned counsel respectfully urged the court to dismiss the application in view of the reasons

averred in the counter affidavit and the position of the law concerning an application of this nature as stated above.

COURT:-

We have considered the arguments of the Respondent/Applicant and that of the Appellant/Respondent which touches on indiligence in prosecuting the said Appeal and the need to dismiss/strike – out the said Notice of Appeal which was lodged at the Appeal registry of this Court on the 23rd March, 2020.

We observe that Appellant's application for stay at the lower court was struck – out for want of attention. We equally observe that after this Notice of Appeal was lodged, Appellant clearly went back

to continue what he is used to.. Appellant clearly has abandoned this Appeal.

Court shall give support to successful party to benefit and or enjoy their fruits of labour. Much as Appeal either as of right or on mixed – facts and law has the constitutional right to file Appeal against Respondent, such an Appellant shall however in exercise of his right take steps to prosecute such Appeal diligently without any delay.

We are not oblivious of the fact that some litigants either as Defendant or Plaintiff merely rush to the registry of the court of Appeal unit to lodge Notice of Appeal only for the purpose of filing and obtaining stay of execution to frustrate such successful parties from enjoying their fruit of labour.

We agree with the Respondent/Applicant that Appellant/Respondent clearly abandoned this Appeal and has gone to sleep.

This act of abandonment can easily be gleaned from the conduct of the Appellant.

Black's Law Dictionary 6th edition defined "abandonment" to mean desert, surrender, forsake, or relinquish one's right or interest.

See *ABUER – EGBELO & ORS (2017) CA*.

We cannot aid and abet Appellant's lackadaisical attitude and approach to issues of this nature.

This court is not a warehouse where effects such as this could be abandoned.

We agree with learned counsel for the Respondent that this present Appeal has not been attended to.

Orphaned by lack of attention, the said Notice of Appeal becomes vulnerable to predatory attack, one of which counsel for the Respondent has just done.

For the said reason, said Notice of Appeal shall be struck – out.

Said Appeal No. CVA/11/20 is hereby struck – out.

HON. JUSTICE Y. HALILU
Presiding Judge
2nd February, 2022

HON. JUSTICE H. MU'AZU
Hon. Judge
2nd February, 2022