

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON THURSDAY THE 31ST DAY OF MARCH, 2022.

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO -ADEBIYI

SUIT NO. CV/1735/2020

1. MR. ABIMAJE EBUTE

2. MR. JERRY OKOLO ----- CLAIMANTS/RESPONDENTS

AND

**ABUJA ELECTRICITY DISTRIBUTION ---- DEFENDANT/APPLICANT
COMPANY PLC**

RULING

This is a ruling in respect of the Defendant/Applicant's Motion on Notice No. M/9342/2021 dated 16/12/2021 and filed 20/12/2021. The Motion was brought pursuant to Order 6 Rules 4 of the Court of Appeal Rules, 2016; Section 242 (1) of the 1999 Constitution (as amended) and under the inherent jurisdiction of this Court. The Defendant/Applicant sought for the following reliefs:

1. An Order for Extension of time within which the Applicant may seek leave to Appeal against the Ruling of this Honourable Court in this Suit delivered 2/11/2021. Annexed hereto as Exhibit A.
2. An order of this Honourable Court granting leave to the Applicant to Appeal against the Ruling of this honourable court in this Suit delivered on 2/11/2021.
3. An Order for Extension of time within which the Applicant may Appeal against the Ruling of this Honourable Court in this Suit

delivered on 2/11/2021 As per the Notice and Grounds of Appeal annexed as Exhibit B.

And for such further Order or other Orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which this application was brought were as follows:

- a. That the Claimant/Respondent did not fulfil the condition in The NERC's Customer Complaint Handline Standards and Procedure Regulation 2006, before instituting the present Suit.
- b. That this Honourable court lacks jurisdiction to entertain this suit in the face of Non-fulfilment of the Condition Precedent.

The application was supported by a 6 paragraph affidavit deposed to by one Favour Idowu, a litigation secretary in the law office of Joy N. Onyekwuluje & Co., the law firm representing the Defendant/Applicant. The content of the supporting affidavit was essentially that on 2/11/2021, this Honourable Court delivered its Ruling wherein he Dismissed the defendant's Notice of Preliminary Objection, Challenging the Jurisdiction of this honourable Court to entertain the suit for non- fulfilment of Condition Precedent. That Consequent upon the above, the Applicant is dissatisfied with the Ruling and is desirous to Appeal to the Court of Appeal. That the time set by the Rules of Court to appeal an Interlocutory has elapsed due to the delay in obtaining a certified true Copy the Ruling from the Court. That leave of this Honourable Court is required to extend the time within which the applicant may apply for leave to Appeal. That Leave of this Honourable Court is required to enable the Applicant appeal the interlocutory decision. That the Grounds of Appeal raises Arguable and Recondite points of law. That the balance of convenience is tilted in favour of granting this application. That the Applicant undertakes to pay damages in the event that this application ought not to have been granted.

The Ruling delivered 2/11/2021 and a Proposed Notice of Appeal was attached to the affidavit as Exhibit A and B. A Written Address was also filed.

The learned Counsel for the Defendant/Applicant raised the following sole issue for determination:

“WHETHER this honourable should exercise its discretion in favour of the Applicant to grant this application in the light of circumstances of this application.”

Learned counsel submitted that in an application of this nature wherein this Court is called upon to exercise its discretion, this Court is enjoined to do so, not arbitrarily, but judiciously and judicially. That this Court is clothed with the requisite powers to grant this application for an extension of time within which a party may do an act provided for by the Rules and urged this Court to exercise its discretion in favour of the Applicants and grant this application. Counsel cited the case of **CBN vs. Ahmed (2001) 5 S.C (part 11) 146 at 171.**

Plaintiff/Respondent counsel informed the court that they were reserved and submitted that applicant is seeking leave for extension of time to seek leave to appeal an interlocutory ruling. That going by **Section 24 (1) & (2) of the Court of Appeal Act** this court has 14 days within which to grant this leave and failure of which they can only go to the Appeal Court for the same prayers.

From the submissions of the counsel for the respective parties, there are two (2) issues for determination to wit: (a) **whether having been brought out of time this Court is competent to entertain the application**, while the second, which is dependent on resolution of the first issue in the affirmative, relates to (b) **whether the application can be granted.**

I will take both issues simultaneously, learned Counsel for the Defendant referred the Court to **Section 24(1) & (2) of the Court of**

Appeal Act to the effect, inter alia, that in an appeal against interlocutory decision the period for giving notice of appeal or notice of application for leave to appeal is fourteen days. Counsel submitted that same having elapsed, this Court has no jurisdiction to grant an extension of time as that it is the sole discretion of the appellate court to either extend the time to appeal or grant an extension of time to seek leave to appeal. Defendant/Applicant counsel in response urged the court to discountenance the submission of the Claimant/Respondent.

It is trite that filing an appeal out of time without taking steps to file for extension of time is an incurable irregularity. See **Auto Import Export V. Adekoyo(2003) 7 NWLR 1 SC at pg. 15 & 16**. Applicant in this case has filed out of time and consequently brought this application containing the trinity prayers;

1. Extension of time to seek leave to appeal;
2. Leave to appeal;
3. Extension of time to appeal against the ruling.

It is not the duty of the Court to asphyxiate applicants seeking to appeal against an interlocutory decision more so as the major steps of seeking leave to appeal out of time was filed which includes the trinity prayer as stated in the application and replicated above. I am of the view and I so hold that applicant's motion for the trinity prayers succeeds as condition precedent has been fulfilled. Application is hereby granted.

It is hereby granted as follows;

- a. The Applicant is hereby granted extension of time within which to seek leave to Appeal against the Ruling of this Honourable Court in this Suit delivered 2/11/2021.
- b. The Applicant is hereby granted leave to Appeal against the Ruling of this honourable court in this Suit delivered on 2/11/2021.

- c. Time within which the Applicant may Appeal against the Ruling of this Honourable Court in this Suit delivered on 2/11/2021 is hereby extended.

Parties: Absent

Appearances: F. I. Nnaba appearing for the Claimant. Joy Onyekwuluje appearing for the Defendant.

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
31ST MARCH, 2022**