



This Ruling is at the instant of the Appellant/Applicant who approached this Court for the following:-

1. An Order of this Honourable Court for enlargement/extension of time within which to Appeal against the judgment of the District Court of the Federal Capital Territory sitting at Wuse Zone II, Abuja in Suit No. **AB/SDC/108/2020 between SAHAD STORES LTD. VS. METROPOLITAN SAFETY SYSTEM LTD.** delivered on the 15<sup>th</sup> day of December, 2021 by His Worship Musa I. Jobbo.
2. And for such Orders or other Orders this Honourable Court may deem fit to make in the circumstances.

The application is supported by a 10 paragraph affidavit deposed to by One Oluwolellori, a legal Practitioner.

It is his deposition that, the District Court of the Federal Capital Territory sitting at Wuse Zone 2, Abuja delivered a judgment on the 15<sup>th</sup> day of December, 2021 by His Worship Musa I. Jobbo in Suit No. AB/SDC/108/2020 between ***SAHAD STORES LTD. VS. METROPOLITAN SAFETY SYSTEM LTD.*** without proper evaluation of evidence adduced before the Court.

That the judgment of the Lower Court delivered on the 15<sup>th</sup> day of December, 2021 is a nullity; the Lower Court having failed to evaluate evidence on the issue of service of statutory notices and whether

the Respondent has the statutory power to allot electricity bill on the Applicant.

That the Judgment by the Lower Court was delivered outside the evidence of the two witnesses of the Plaintiff adduced before the Trial Court.

That the Appellant/Applicant Solicitor's father was sick and he had to go on leave for 3 months to attend to his medical needs.

That 30 days period within which to file appeal against the Judgment has expired.

That unless the Appellant/Applicant first files the instant application for enlargement or extension of time before this Honourable Court and the Honourable Court exercising its discretion in favour of the application; the Appellant/Applicant will be incapable of filing a Notice of Appeal to challenge

the judgment of the Lower Court delivered on the 15<sup>th</sup> December, 2022.

That the Appellant/Applicant has prepared his Proposed Notice of Appeal containing reasonable grounds of appeal.

That it is necessary of this Honourable Court to enlarge time within which the Appellant/Applicant can appeal against the Judgment of the District Court of the Federal Capital Territory, Abuja in Suit No. AB/SDC/108/2020 between **SAHAD STORES LTD. VS. METROPOLITAN SAFETY SYSTEM LTD.** delivered on the 15<sup>th</sup> day of December, 2021 by His Worship Musa I. Jobbo.

That the Appellant/Applicant is desirous and willing to pursue the appeal if permitted by this Honourable Court.

That the delay is not deliberate and was not meant to spite and/or slight the Honourable Court.

In line with the extant laws, a written address was filed wherein learned counsel to the Appellant/Applicant stated that the reason for failure to appeal against the judgment of the Lower Court within time has been succinctly deposed to in paragraph 4 of the supporting affidavit to this application. Order 49 Rule 4 and Order 50 Rule 6 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure Rules, 2018) were cited.

Counsel further submitted that except the court makes an Order for the Appellant/Applicant to file his Notice of Appeal out of time; the Appellant/Applicant will be unable to appeal against

the said judgment of the Lower Court delivered on the 15<sup>th</sup> of December, 2021.

***LONG-JOHN VS. BLAKK (1998)6 NWLR (Pt. 555) Pages 19 – 20 Paragraphs G – A*** was cited.

Counsel respectfully prays the Court to grant the application in the interest of justice to enable the Appellant exercise his right of Appeal against the Judgment of the Lower Court.

Respondent on its part filed a 5 paragraph affidavit deposed to by one Miss Rosemary Onaji in opposition to the Applicant's Motion.

It is her deposition that paragraphs 4, 6, 7, 8 and 9 of the Applicant's affidavit are misleading, untrue and false.

Contrary to paragraphs 4(a), (b), (c) of the Applicant's affidavit, the judgment delivered by His Worship Musa, I. Jobbo in suit No. AB/SDC/108/2020 between **SAHAD STORES LTD. VS. METROPOLITAN SAFETY SYSTEM LTD.** was delivered by the Court upon proper evaluation of evidence.

That as a matter of fact, the Court delivered the judgment after properly considering the facts in dispute between parties and the documentary evidences.

That contrary to paragraphs 4(d) & (e) of the Applicant's affidavit, the Applicant has not disclosed any sufficient, good and substantial reasons for its delay in filing the Appeal within the



prescribed 30 days specified by the Rules of this Court.

That as a matter of fact, facts as to the sickness of the Applicant's lawyer's father is a mere assertion and flimsy.

That as a matter of fact, such fact is an illusion and imaginary facts within the personal knowledge of the Applicant's Counsel.

That there has been an inordinate delay by the Applicant in filing the appeal.

That as a matter of fact the law office of Olujinmi&Akeredolu& Co. has more than 5 lawyers and the appeal could have been filed by another lawyer in the office if the Applicant's Solicitor was unavailable.

That the Respondent will be prejudiced if this application is granted.

A written address was filed wherein counsel raised a lone issue for determination to-wit;

***“Whether the Applicant has disclosed a good, sufficient and substantial reason for the Court to grant an application of this nature.”***

It is the submission of learned counsel that it is trite law that an application for extension of time to appeal can only succeed where the Applicant has disclosed a good and substantial reason for failure to appeal within the prescribed statutory period. **Order 50 Rules 7 Civil Procedure Rules, JOHN OBI VS. UDOCHUKWU OJUKWU & ANOR (2016) ALL FWLR (Pt. 533) Page 1941 Paragraphs B – D Page. 1973** were cited.

Counsel further submits, that the Applicant's reason is flimsy, illusive, imaginary and mere assertion which can only be ascertained upon proofs. The Applicant did not attach any document to proof their assertion. Sympathy cannot override the clear provision of the Rules of Court.

***MR. EDU ENYA EVEMILL VS. THE STATE (2013) ALL FWLR (Pt.711) Page 1576 Paragraphs E – H*** was cited.

Counsel urge the Court to dismiss the Applicant's application with cost.

**COURT:-**

The fulcrum of this application is whether the Applicant/Appellant has advanced good and substantial reasons to warrant the grant of his

application for an extension of time to appeal against the decision of the Lower Court.

We need to state that the right to appeal against a decision of court in a matter be it interlocutory or final is basically statutory in that they are conferred on parties by the constitution and or some applicable statutes.

There is nothing like inherent right of appeal.

See ***ANAMBRA STATE GOVT. & ORS. VS. MADUKWE & ORS. (2011) LPELR – 3771 (CA).***

As it relates to Appeals from the Magistrates Court to the High Court, the District Court Rules of the FCT 2021 has made copious provision for that under Order XXVII.e Order 27.

Order XXVII Rule 2(1)(b) gives moratorium of 30 days for an Appellant to lodge a notice of appeal.

Order XXVII Rule 4 (2) of the same Rules allows for enlargement of time vide Motion on Notice, upon being satisfied with reason for the delay in filing appeal within time.

It must be pointed out that the role of the Court in adjudication is to maintain a level playing field for the parties by offering them equal opportunity to present their cases or grievance, if they so wish. Once the opportunity is offered, it is the duty of a party to litigation or his counsel to utilize same in accordance with the rules of procedure and substantive law. Where, however, he or his counsel fails or neglects to utilize the opportunity so offered, he cannot turn around and blame the Court for the

loss of the opportunity as the Court will not allow a party to hold the opponent or the Court to ransom under the guise of the desire to protect the principle of fair hearing.

The law is trite on what ought to be done when a process of Court is not filed within time allowed. Where an Appeal is filed outside the statutory period as provided under the Rules, the Applicant must seek for leave of court to so do as done by the Appellant/Applicant herein.

Let us state here that the two conjunctive conditions for the grant of such an application are:-

1. That there are good and substantial reasons for failure to appeal within the prescribed period and;

2. That the proposed grounds of appeal show good cause.

See ***NIGERIAN LABORATORY CORPORATION VS. PACIFIC MERCHANT BANK LTD. (2012) LPELR – 7859 (SC);***

***IKENTA BEST (NIG.) LTD. VS. A.G RIVERS STATE (2008) LPELR – 1476 (SC).***

We need to stress that the power given to the Court to grant an extension of time is discretionary. The exercise of discretion is unfettered only to the extent that it should not be exercised as a matter of course, but must be exercised judicially and judiciously. It ought to be exercised in favour of an Applicant if an exceptional circumstance for his being out of time is established to the satisfaction of the Court.

In an application of this nature seeking an extension of time within which to appeal, we are dealing with an Applicant who failed to file an appeal against a decision of the District Court delivered on the 15<sup>th</sup> day of December, 2021 till the 6<sup>th</sup> day of April, 2022. The Court must not lose sight of the fact that when the time for appeal has lapsed, and lapsed without any kind of protest from a-would be Appellant, the Respondent has a certain accrued right which, though may not be permanent, neither should it be ignored. Thus, the court can only extend this indulgence to an Applicant on settled principles. An Applicant who asks the Court to grant him leave to exercise of it must show something, as a rule, either lack of means, mistake or accident. This is not an exhaustive list.



See *LAUWERS IMPORT-EXPORT VS. JOZEBSON IND. LTD. (1988) LPELR – 2934 (SC)*.

We have gone through the affidavit of the Appellant and reasons stated so far for the delay in filing Appeal on one hand and we have also gone through the response of the Respondent on the other hand.

The reason for not filing appeal against the decision of the Trial Magistrate Court is because the Appellant/Applicant's solicitor's father was sick and he had to go on leave for 3 months.

Now, it is clear that the Appellant is different from his solicitors.

The case is that of the parties and not the lawyer. It is though true that the sin of counsel ought not be

visited on a client, it is not on all occasion..  
Sometimes, the sin of counsel is visited on a client.

See ***REGISTERED TRUSTEES OF THE  
PREFECTURE APOSTOLIC OF IBADAN VS.  
AARE LATOSA & ORS. (2019) LPELR – 48118  
(CA).***

A successful party shall be allowed to reap the dividends of litigation always, unless there is any good reason to the contrary.

The reason adduced by the Applicant is one that does not support reason and reasoning.. Appellant had all the time to have engaged the services of other lawyers to file appeal after the judgment of the Trial Court and not to keep vigil on a lawyer that has gone to attend to his sick father.

We are sure had counsel stayed for more than one year, the Applicant would still be expecting the Judgment Creditor/Respondent to wait on him.

Learned counsel for the Applicant/Appellant is not a Prophet of God and therefore cannot be the messiah that is being awaited.

We cannot therefore encourage the court to wait on his coming.

We find no merit in the instant application.

Same is refused and accordingly dismissed.

***HON. JUSTICE Y. HALILU    HON. JUSTICES. U BATURE***

***(Presiding Judge)***

***(Hon. Judge)***

***16<sup>th</sup> September, 2022***

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