

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT GARKI,ABUJA - FCT**

**CLERK: CHARITY ONUZULIKE**

**COURT NO. 10**

**SUIT NO: FCT/HC/CV/494/14**

**M/7252/2022**

**DATE: 26/1/2023**

**BETWEEN:**

**GASCOMEDIA NIGERIA LIMITED..... CLAIMANT/ APPLICANT**

**AND:**

**1. FEDERAL CAPITAL DEVELOPMENT  
AUTHORITY  
2. MINISTER, FEDERAL CAPITAL  
TERRITORY  
3. ASMAR PROPERTIES AND ESTATE  
DEVELOPERS LTD** } **DEFENDANTS/RESPONDENTS**

**RULING**

**(DELIVERED BY HON. JUSTICE S. B. BELGORE)**

This Ruling Concerns Motion on Notice number M/7252/2022. It is dated 31<sup>st</sup> May, 2022 and filed on the same day. This Motion brought

pursuant to **Section 242(1)** of the 1999 Constitution (as amended), **Order 43 Rules 1 and 2 of the Rules of this Court 2018** and the inherent jurisdiction of the Court was argued on 28<sup>th</sup> June, 2022. The application prayed essentially for the following one principal relief:

*“An Order granting leave to the Applicant to appeal against the Ruling of the Honourable Court delivered on 26<sup>th</sup> May, 2022 in this matter”*

The twin grounds for so praying are as follows:

1. The Honourable Court delivered a ruling on 26<sup>th</sup> May, 2022 and dismissed the Applicant’s application to amend its originating processes.
2. The Applicant intends to appeal and requires the leave of the Honourable Court to do so.

In support of the application is a 4 – paragraphs affidavit with two annextures marked as Exhibits GAS1 and Exhibit GAS2.

Exhibit GAS1 is the Ruling of this Court that gave rise to this application and Exhibit GAS 2 is the proposed Notice of Appeal. The said affidavit is deposed to by one Philips Wemandu and there is also a written address dated 31<sup>st</sup> May, 2022.

Upon service of the Motion on Notice under reference, on the Defendant, the 3<sup>rd</sup> Defendant filed a counter affidavit of 6 – paragraphs in response. It is deposed to be one FataiAdelodun and filed on 23<sup>rd</sup> June, 2022. The counter affidavit was supported by a written address dated 21-6-23 and filed on 23<sup>rd</sup> June, 2022.

As I said before, the application was taken on 28<sup>th</sup> June, 2022. Learned Counsel to the Applicant, Mr. Moses Ideh moved the application summarily. He referred to all this processes filed, adopted the written address filed as his argument and urged me to grant the application.

The gist of the Applicant’s Counsel argument is that this Court has the discretion to grant the application. He relied on **Section 242(1)** of

the 1999 constitution (as amended) and the cases of **OTUOKE v. PHILIP (2000) F.W.L.R. (PART 20) 762**; and **SULEMAN VS. COMMISSIONER OF POLICE (PLATEAU STATE) (2008) 21 W.R.N. 1.**

On his part, Learned Counsel to the 3<sup>rd</sup> Defendant/Respondent – Mr. A.S. Gobir relied on his written address and the depositions in the counter affidavit in objecting to the grant of the application. He urged me to refuse the application on the main ground that the Court lacks jurisdiction to entertain the application since the proposed appeal should have been filed within 14 days after the delivery of the Ruling which was not done. He cited the provision of **Section 2 of the Court of Appeal Act** and the cases of **WAZIRI v. GUMEL & ANOR. (2012) 9 N.W.L.R. (PART 1304) 185**; and **C.P.C. & ANOR. & ORS. (2011) L.P.E.L.R 23009 (SC).**

I have considered this application with due consideration to the facts and legal submissions of Counsel.

The grant or refusal of this application is subject to the discretion of the Court. See the case of **WAZIRI v. GUMEL (supra)** where the Supreme Court held as follows:-

*“...The power of the Court of Appeal to grant leave to the 1<sup>st</sup> Respondent to appeal ...is discretionary and all discretionary powers must be exercised with correct and convincing reason. Once this is done an Appeal Court is always loath to interfere with the way a judge exercises his discretion. On the other hand, an Appeal Court would be compelled to interfere where the discretion was wrongly exercised, or found to have been tainted with some illegality or irregularity or arbitrarily exercised. See; **UNIVERSITY OF LAGOS v. AIGORO (1985) 1 N.W.L.R. (PART 1) pages 143; DEMUREN v. ASUNI (1967) 3 (SC) pages 91; ENEKEBE v. ENEKEBE (1964) 1 All N.L.R. page 102; PRESIDENT IBADAN PROVINCE v. LAGUNJU (1954) 14 W.A.C.A. page 552...***”

The Applicant's application is time bound. It has to be filed and heard within 14 days of the delivery of Ruling in focus. From the facts in this application, the Application i.e. Motion M/7252/2022 was filed within 14 days after the delivery of the Ruling. The ruling was delivered on 26<sup>th</sup> May, 2022 while the Motion on Notice under reference was filed on 31<sup>st</sup> May, 2022. However, it was not served on the 3<sup>rd</sup> Defendant/Respondent until 16<sup>th</sup> June, 2022. And the 3<sup>rd</sup> Defendant/Respondent filed their response/counter affidavit on 23<sup>rd</sup> June, 2022. These were the facts that made the court to take the application on 28<sup>th</sup> June, 2022.

All these culminated in the facts that the Application for leave to appeal was argued well after 14 days of delivery of the Ruling.

This Court is therefore divested of jurisdiction to entertain this application. See **HALLMARK BANK LTD. V. AKALUSO (1995) 5 N.W.L.R. (PT. 395) 306.**

Furthermore, the Applicant fails to state any reasons why he seeks leave to appeal as to enable the Court evaluate the reason and to exercise its discretion in his favour. Other than stating that he was dissatisfied and that he intends to appeal against the decision, the Applicant did not attack the reasoning of the Court in arriving at its decision.

In **CPA & ANOR. V. NYAKO & ORS. (supra)** it was held;

*“...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 (NIG.) LTD. v.***

**HOLMAN BROTHERS (NIG.) LTD. (1980) 5 – 7** Supreme Court

*52. In the present application, the grounds of appeal contained in the notice of appeal in support of the application which clearly involves matters of constitutional and jurisprudential importance, in my view, have shown prima facie arguable appeal to justify granting this application...”*

It is from all the foregone reasons that I find no merit in this application and it is hereby refused accordingly.

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S.B. Belgore

(Judge) 26-01-23