

SUPREME COURT OF NIGERIA
11TH JUNE, 1993. SC. 246/1991
CORAM:- A. G. KARIBI-WHYTE, S. KAWU,
S. M. A. BELGORE, U. OMO, I. L. KUTGI, JJSC

CECILIA IHUOMA NWANKWO APPELLANT
AND
EMMANUEL C. NWANKWO RESPONDENT

INTERLOCUTORY APPLICATIONS - *Before the Supreme Court - application for leave to amend notice of appeal - and extension of time within which to appeal - whether to be granted.*

INTERLOCUTORY - *Motion to amend and file additional grounds of appeal - purpose - attitude of court to vague prayer.*

FACTS

The Appellant/Applicant as Plaintiff secured judgment against her husband (Respondent) before the trial court. That was in respect of a business name she claimed solely belonged to her, and that the Respondent should be restrained from interfering with the business. Respondent's appeal to the Court of Appeal being successful on all the grounds, the Applicant appealed to the Supreme Court.

Applicant then filed this motion, subject of this ruling, seeking leave to amend her Notice of Appeal as indicated and for enlargement of time within which to appeal on those grounds raising issues of mixed law and facts. Applicant withdrew one of her prayers whilst one was vague and uncertain. Respondent vehemently opposed Applicant's motion on allegations of tardiness and non-disclosure of substantial reasons to warrant granting Applicant's prayers, moreso, when similar prayers of Applicant were refused by the Court of Appeal.

HELD (unanimously granting the application but refusing one of the prayers for being vague)

1. The affidavit in support of the motion is very clear as to the reason for the prayers which is, to put in proper focus the issues to be argued in the appeal before the Court. (P40 L34)

38 NWANKWO V. NWANKWO (1993) 7 KLR 37; (1993) 5 NWLR

2. The purpose of grounds of appeal is to clearly show areas of complaints in the judgment appealed against. It is in the interest of justice not only to allow for amendment of the grounds of appeal but also to allow for additional grounds to be filed if expedient. (p. 41 L 15)
3. The Appellant has not been tardy in bringing the necessary application to effect the rights and the principle is that such amendments and addition are done in good faith. (p. 41 L 19)
4. In an application for discretion, the applicant must make his prayers devoid of any ambiguity so that the court will act on certainty. Save for the prayer which is vague, the application together with the supporting affidavit and proposed grounds of appeal are perfectly in order. (p. 41 L25)

REPRESENTATION

U.N. Udechukwu with F. A. Chukwuka, for the Appellant

L.N. Umezuruike, for the Respondent

CASES REFERRED TO

1. South-Eastern State Newspaper Corporation v. Anwara (1975) 9-11 SC55
2. Okoronkwo v. I.G. of Police (1957) 2 FSC 9
3. Biode Pharmaceutical v. Adsell Ltd. (1986) 5 NWLR (Pt 46) 1070
4. Ojah & Ors. v. Ogboni & Ors. (1976) 4 SC 69

STATUTES & RULES

1. Evidence Act ss. 20 (1), 26, 150
2. Constitution of the Federal Republic of Nigeria 1979 ss. 6(6) (a), s. 213 (4)
3. Supreme Court Act 1990 s. 27 (4)
4. Supreme Court Rules 1985 0.2 rr.28 (3) & 31 (1), 0.6 r.2 0.8 rr. 2(5) & 4.

LEAD JUDGMENT BY BELGORE JSC

The applicant, Mrs. Cecilia Ihuoma Nwankwo, was the plaintiff in the trial court where she was victorious against the present respondent, her husband under a marriage by native law and custom. The bone of contention concerned a business name she claimed as solely her own and that the respondent should be restrained from interfering with the business. The respondent appealed and was successful on all the grounds in the Court of Appeal whereby the trial court judgment was set aside. As a result of the Court of Appeal's decision the present appellant has appealed. By motion on notice in this court the appellant prayed as follows:

"1. *An order granting leave to the appellant/applicant to amend her Notice of Appeal as follows:*

- (i) *GROUND 1: To delete ground 1 in the Notice of Appeal entirely and to add a fresh ground of appeal as ground 1 vide the proposed amended Notice of Appeal exhibited.*
- (ii) *GROUND 2: To delete paragraph (v) of the particulars of error, vide the proposed amended Notice of Appeal.*
- (iii) *GROUND 3: To delete paragraph (ii) of the particulars and add a new paragraph (ii) as shown, underlined in the proposed amended Notice of Appeal.*
- (iv) *GROUND 4: To delete the words "based on the facts pleaded" in lines 4-5 of paragraph (1) of the particulars.*
- (v) *GROUND 5:*
 - (a) To delete the words "(EMCECO ENGINEERING COMPANY" came into being after the commencement of" at lines 2-3 of paragraphs*
 - (i) of the particulars and add the word "the formation, operation and management of "(EMCECO ENGINEERING COMPANY is governed by. "*

(b) To delete the words "upon a proper appraisal of the pleadings and evidence" at paragraph (iv) of the particulars.

(vi) GROUND 6: To delete paragraph (ii) of the particulars and add a new paragraph (ii) as shown, underlined in the proposed amended Notice of Appeal.

(vii) GROUND 7:

5 (a) To delete the words "support paragraph 11 of the plain tiff/appellant's statement of claim" at lines 3-4 of para graph (i) of the particulars and add the words "*come within the contemplation of sections 20(1) 26 and 150 of the EvidenceAct, as binding admissions*"

10 (b) To delete the words from "clearly" to "and" at lines 1-3 of paragraph (ii) of the particulars and add the words "being a sworn declaration under oath made by the de fendant/respondent against his interest"

15 (viii) GROUND 8: To delete GROUND 8 in the Notice of Ap peal entirely and to add a fresh ground of Appeal as ground 8 vide the proposed amended Notice of Appeal."

At the hearing the appellant/applicant withdrew prayer 6 and it was duly struck out. The court was thus left with prayers 1-5, 7 and 8 to consider. Earlier on the respondent had filed a motion seeking that the
20 appeal be struck out for want of prosecution as no Brief of Argument was filed by the appellant. However, as a result of the present motion the respondent withdrew the motion which was duly struck out.

Umezuruike, of counsel for the respondent opposed the motion on the contention that the applicant had not manifested in her motion suffi-
25 cient reasons why her prayers should be answered. In particular, he pointed at prayers 1 and 8 as not amending anything but are entirely new grounds of appeal for which leave of the Court must be sought and obtained. Counter-affidavit by the respondent clearly indicated the line of argument pursued at the hearing of this motion and in particular objected to prayers 2, 3 and
30 4 which, it was posited, out to have been brought long ago, unless substan- tial reasons are advanced. The appellant had applied for similar relief in the Court of Appeal which that Court refused to grant and that was the reason for making the same application in this Court.

The affidavit supporting the motion is very clear as to the reasons
35 for the prayers. It was brought under S.6 (6) (a) and S.213 (4) of the Constitution of the Federal Republic of Nigeria (1979) and also under Su- preme Court Act (1990) S.27 (4). Also relied upon are Order 2 rule 28(3) and 31(1), Order 6 rule 2 and Order 8 rule 2(5) and rule 4 Supreme Court Rules (1985) and also under inherent jurisdiction of this Court. There is a

Brief of Argument in support. The application is intended to put in proper focus the issues to be argued in the appeal before the Court and because all the rulings and judgments in the Courts below are in the record of appeal already transmitted to this Court the applicant implored this Court to rely on these documents by taking notice of them instead of attaching them to the application. This certainly will obviate unnecessary duplication of the record since the complete record is before the Court and the appeal had been entered. (*South-Eastern State Newspaper Corporation v. Edet Asuquo Anwara*) (1975) 91 S.C. 55, 66. All the prayers 1-5 in the application are in proper order and reliance had been placed under competent authorities in the Constitution, the Supreme Court Act and Supreme Court Rules.

The purpose of grounds of appeal is to indicate clearly the areas of complaints against the judgment appealed against and it is always in the interest of justice to allow not only for amendments of the grounds of appeal but also to allow for additional grounds to be filed if expedient. The principle is that such amendments and additions are done in good faith and the appellant has not been tardy in bringing the necessary application to effect the rights. (*Okorokwo v. Inspector-General of Police* (1957) 2 FSC 128. The application and supporting affidavit and proposed grounds of appeal are perfectly in order except for prayer 7 which is vague. It is difficult to discern precisely what the prayer 7 is for.

In an application for discretion, the applicant must make his prayers succinctly and devoid of any ambiguity so that the Court will act on certainty.

It is quite obvious that prayers 1-5 are clear, and prayer 8 is also clear as to its intendment. I therefore allow this application in those parts after striking out prayer 6 that was withdrawn and prayer 7 that is vague. I therefore make the following orders:

1. To delete the original Ground 1 and replace it with the proposed new Ground 1.
2. To delete in the original Ground 2 the particular (v) thereof.
3. To replace particular (ii) in the original Ground 3 with the proposed new particular (ii) in this application.

4. In the original Ground 4 to delete the words based on the facts pleaded" as contained in particular (i) thereof in lines 4-5.

5. (i)(a) To delete the words (EMCECO ENGINEERING COMPANY came into being after the commencement of at lines 2-3 of paragraph (i) of the particulars and add the words the formation, operation and management of "(EMCECO ENGINEERING COMPANY is governed by."

(b) To delete the word "upon a proper appraisal of the pleadings and evidence" at paragraph (iv) of the particulars.

(ii). To delete paragraph (ii) of the particulars and add a new paragraph (ii) as shown, underlined in the proposed Amended Notice of Appeal.

(iii)(a) To delete the words "support paragraph 11 of the plaintiff/appellant's statement of claim" at lines 3-4 of paragraph (i) of the particulars and add the words come within the contemplation of sections 20(1) 26 and 150 of the Evidence Act, as binding admissions."

(b) To delete the words from "clearly" to "add at lines 1-3 of paragraph (ii) of the particulars and add the words "being a sworn declaration under oath made by the defendant/respondent against his interest.

(iv). To delete ground 8 in the Notice of Appeal entirely and to add a fresh Ground of Appeal as ground 8 vide the proposed amended Notice of Appeal.

Time is therefore enlarged for plaintiff/appellant/applicant within which to apply for leave on grounds 1-8 proposed raising issues of mixed law and facts. Time is also enlarged for the applicant to appeal on those grounds. Sixty days is given to the appellant to comply and to file Brief of Appellant Argument within the same period. The records from the Courts below now in Court will be used for this appeal except for the foregoing amendments to the Notice and Grounds of Appeal.

I also order, for the convenience of proper hearing of the appeal, that the appellant/applicant file a clean copy of Notice and Grounds of Appeal as ordered above. I award N100.00 as costs of this motion in favour of the respondent against the applicant.

KARIBI-WHYTE JSC

I have read the ruling of my learned brother Belgore, J.S.C. I agree that the prayers be granted in the manner indicated. This is a ruling on a motion by the appellant, seeking the order of the court in respect of the following prayers:

- 5
"1. An order enlarging the time within which the plaintiff/appellant/ applicant may apply for leave to appeal on ground or grounds raising issues of fact or mixed law and fact.
- 10
2. An order granting leave to appeal on a ground raising issue of fact as shown under ground 8 of the Applicant's Notice of Appeal contained at pages 253 to 259 of the Record of Appeal thereof, which record of appeal incorporating the notice of appeal is verified in the Affidavit in support of this motion as Exhibit 1C
- 15
3. An order granting leave to the applicant to pursue his grounds of appeal 1 to 7 in so far as they raise issues of mixed law and fact.
- 20
4. An order enlarging the time within which the applicant may appeal, against the judgment of the Court of Appeal delivered on 14th November, 1991.
- 25
5. An order deeming the Notice of Appeal filed on the 25th day of November, 1991 contained at pages 253 to 259 of Exhibit 1 afore said and verified as Exhibit 1(c) as being regularized and properly filed and served for the purpose of this appeal.
- 6. An order waiving compliance with the relevant Rules of Court by:*

 - 30
(a) Deeming as having been properly filed and served the Notice and Grounds of Appeal and the appellant's Brief of Argument in the Appeal referred to in the supporting Affidavit herein and marked as Exhibits 1(c) and 2 respectively, the appropriate filing fees having been paid.
 - 35
(b) Permitting the Record of Appeal duly compiled and transmitted to the Registry of this Court in respect of Appeal No. S.C. 40/92 between the parties herein to be used and relied on in this appeal.

7. *An injunction restraining the defendant/respondent from taking any steps pursuant to the Court of Appeals judgment pending the determination of this further appeal to the Supreme Court.*

8. *Any other order or orders which the Supreme Court may consider just for the purpose of maintenance of the status quo pending the final determination of this suit by the Supreme Court including an order staying further proceedings in suit No. HIN/3/92 Emmanuel C Nwankwo v. Cicilia Ihuoma Nwankwo now pending at the High Court of Abia State in the Isiala Ngwa Judicial Division.*

9. *Accelerating the hearing of this Appeal.*
AND FURTHER TAKE NOTICE that at the hearing of this application the applicant will make use of the Record of Appeal Exhibit 1 and rely on the Brief of Argument filed along with this motion paper."

Learned counsel to the respondent opposed the motion in its entirety. He adopted and relied on the brief of argument he filed in opposition to the application. His main contention was that applicant had not deposed in the affidavit adequate and satisfactory reasons why the prayers should be granted. Referring in particular to the prayers for amending the ground of appeal, Mr. Umezuruike learned counsel to the respondent submitted that Grounds 1 and 8 were not in fact amendment, but were entirely new grounds of appeal, for which leave of the court must be sought and obtained. It was the contention of Mr. Umezuruike that the application in respect of prayers 2, 3 and 4 ought to have been made long ago and ought not be entertained unless substantial reasons are advanced for the delay. It was finally submitted that applicant's application seeking similar relief in the Court of Appeal was refused by that Court. Respondent's application, seeking to strike out applicant's motion for want of prosecution was withdrawn and was accordingly struck out.

Chief Udechukwu before moving the motion sought and was granted leave to withdraw prayer 6. That prayer was accordingly struck out. The Court thus had to consider prayers 1-5, 7, and 8. Learned counsel referred to the affidavit in support of the motion. He pointed out that the application had complied with the rules of this Court by attaching the relevant documents as prescribed by Order 6 rule 2 of the rules of this Court (1985). He submitted that the application was brought under section 6 (6) (a) and 213(4) of the Constitution of the Federal Republic (1979) and also under section 27(4) of the Supreme Court Act, (1990). He also referred to

and relied on Order 2 rule 28(3) and 31(1), Order 8 rule 2(5) and (4) Rules of the Supreme Court (1985), and on the inherent jurisdiction of this court. He adopted and relied on the brief in support of the application.

Chief Udechukwu submitted that the purpose of the present application was to streamline the various amendments to the grounds of appeal, and to put in proper focus the issues to be argued in the appeal before the Court. Learned counsel further prayed the court to waive exhibiting the rulings, judgments in the courts below, because all these rulings are in the record of appeal already transmitted to this court. He implored us to rely on these documents which are already before us by taking notice of them. This it was submitted will avoid unnecessary duplication which will result from a strict compliance with the rules without waiver. He relied on South-Eastern State Newspaper Corporation v. Anwara (1979) 9-11 S.C. 55, 66.

A mere cursory reading of the motion and the supporting affidavit reveals that there are two classes of prayers on the face of the motion. There are the first group of prayers 1-5, 8 which are concerned with the perfection of the appeal filed. These prayers seek enlargement of time to apply for leave to appeal, on grounds raising issues of fact or mixed law and facts or on grounds of facts simpliciter, Prayer 4 is seeking an order for enlargement of time to appeal against the judgment delivered on 14th November, 1991. Prayers 5 is seeking an order to deem the notice of appeal filed on the 25th November, 1991 to have been regularly and properly filed for the purpose of this appeal.

The second class of prayers are those in 6, and 7 seeking injunctions, and stay of proceedings. The affidavit in support of this application has traced the fortunes of the application relating it back to the Court below where it was struck out. It is admitted judgment in the Aba High Court was delivered on the 24th September, 1990. The Court of Appeal, Port Harcourt Division, reversed that decision on the 14th November, 1991. The applicant had applied to the Court below for order of injunction and was refused on 24th February, 1992. Applicant subsequently filed a motion to the Supreme Court on the 28th April, 1992. This application was fixed for hearing on the 16th Nov., 1992. Applicant was compelled to withdraw the motion when it was discovered to be defective. It was accordingly struck out. Applicant filed another motion on the 4th December, 1992 dated 23rd November, 1992 seeking the same prayers as in the present application. This was fixed for hearing on 5th April, 1993. The application before us was filed on the 11th February, 1993.

The basis of the opposition to the application as disclosed by the respondent's affidavit is that applicant has been tardy in the prosecution of that appeal.

5 Paragraph 19, 20, 21, 22, 23 aver as follows:

"19. That at the time the present application was filed by the appellant/applicant the said hearing notice had already gone out.

10 20. That after the said counter affidavit of 1st February, 1993 together with the respondent's brief of argument in opposition to the appellant/applicant's application of 23rd November, 1992, was served on the appellant/applicant. Through her counsel on the said 4th February, 1993, the appellant/applicant filed the present application dated 11th February, 1993.

15 21. That with regard to paragraph 11 of the affidavit in support of the appellant/applicant's motion dated 11th February, 1993, there is no appeal by the appellant/applicant against the ruling of the Court of Appeal alleged to have been made out of time.

20 22. That paragraph 12 of the affidavit is not true. There are places in Aba where the documents can be produced at the cost of N1.00 (one naira) per copy especially where the documents are bulky.

25 23. That with regard to paragraphs 13, 14 and 15, of the affidavit, the facts now stated therein in support of the present application dated 11th February, 1993 were not stated in their application dated 23rd November, 1992."

30 I have read the affidavit in support of the application. I do not see how the above averments or the others in the affidavit of the respondent show that applicant has been tardy in bringing the necessary application. On the contrary, they disclose convincing facts that appellant/applicant was diligent and anxious to prosecute the appeal. The purpose of formulating grounds of appeal is to clearly and precisely allege the errors of the trial court in respect of the judgment appealed against. Hence where there is obscurity or ambiguity in the framing of the grounds of appeal, the court is always ready to exercise its discretion to allow such amendments to the grounds of appeal that will bring out clearly the error of law or fact alleged.

The principle is that such amendments proposed in good faith would be allowed if they are consistent with the errors alleged and at a time when they will not prejudice the position of the respondent to the appeal.

I have carefully examined the amendments to the grounds of appeal and the supporting affidavit. I am satisfied that the amendments proposed bring out the errors of law of facts complained of where applicable. They are amendments to and improvement on the original grounds.

I have critically examined prayer 7 which appears to me vague, the prayer is seeking an order for the maintenance of the Status quo by the Supreme Court, including an order staying further proceedings in suit No. HIN/3/92 Emanuel C. Nwankwo v. Cecilia Ihuoma Nwankwo now pending at the High Court of Abia State in Isiala Ngwa Judicial Division. This prayer seeks two separate orders. First maintenance of status quo pending the final determination of this suit by the Supreme Court. The suit is still in the High Court. What is before the Supreme Court is the refusal of the application by the Court of Appeal.

Secondly, it is not clear whether and how this application is related to the proceedings in Suit No. HIN/3192 Emanuel C. Nwankwo v. Cecilia Ihuoma Nwankwo. It is therefore difficult to comprehend how and why a stay of proceedings in that suit should be granted on this application. I have carefully read the supporting affidavit and averments in support of such a prayer are conspicuously absent. Thus apart from the fact that the prayer is vague and lacking in clarity, there is no averment in support. In the circumstances, it is difficult to determine precisely what the prayer 7 really stands for.

Prayers 1-5 and 8 are clear and unambiguous in their intentment. They are accordingly granted. Prayer 6 having been withdrawn and prayer 7 on the grounds of vagueness and ambiguity are struck out.

I therefore make the following orders:

1. To delete the original ground 1 and replace same with the proposed new Ground 1.
2. To delete in the original ground 2 the particular (v)
3. To replace particular (ii) in the original ground 3 with the proposed new particular (ii) in this application.
4. In original ground 4 to delete the word based on the facts pleaded as contained in particular (i) thereof in lines 4-5.

5. (i) (a) to delete the words (EMCECO ENGINEERING COMPANY came into being after the commencement of) at lines 2-3 of paragraph (i) of the particulars and add the words the formation, operation and management of
- 5 EMCECO ENGINEERING COMPANY is governed by"
- (b) To delete the words "upon a proper appraisal of the pleadings and evidence" at paragraph (iv) of the particulars.
- 10 (ii) To delete paragraph (ii) of the particulars and add a new paragraph (ii) as shown, underlined in the proposed amended Notice of Appeal.
- (iii) (a) To delete the words "support paragraph 11 of the plaintiff/appellant's statement of claim" at lines 15 3-4 of paragraph (1) of the particulars and add the words come within the contemplation of sections 20(1) 26 and 150 of the Evidence Act as binding admissions."
- (b) To delete the words from "clearly" to "and" at 20 lines 1-3 of paragraph (ii) of the particulars and add the word "being a sworn declaration under oath made by the defendant/respondent against his interest."
- (iv) To delete Ground 8 in the Notice of Appeal 25 entirely and to add a fresh Ground of Appeal as Ground 8 vide the proposed amended Notice of Appeal.

Time is enlarged for plaintiff/appellant/applicant to apply for leave 30 in respect of grounds 1-8 proposed, raising issues of mixed law and facts. Time is also enlarged to enable applicant to appeal on those grounds. Appellant/applicant is to comply and file appellant's brief of argument within the same period. Appellant/applicant is required to file a clean copy of the Notice and Grounds of Appeal as amended. The records from the courts 35 below now in Court will be used for the appeal.

Applicant shall pay N100.00 as costs to respondent in this application.

KAWU JSC

I have read the draft of the ruling of my learned brother, Belgore, J.S.C. which has just been delivered. I agree there is merit in the application. I will therefore grant enlargement of time within which the appellant may apply for leave to file Grounds 1-8 which raise grounds of mixed law and fact. I will also grant time to the applicant's application. I abide by the other orders made in the lead ruling of my brother, Belgore. J.S.C., including the order as to costs.

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OMO JSC

The appellant/applicant (as plaintiff) sued the respondent (as defendant) in the Imo State High Court for a declaration that she is the sole proprietor of the business known as "EMCECO ENGINEERING COMPANY" which was registered as a Business Name. She also sought an order restraining the respondent from further interfering with the business, damages for undue interference and injunction to restrain the defendant from further interference with appellant's control and management of the business.

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The High Court on 5/9/90 refused the appellant damages but proceeded to grant her the other orders sought. The respondent appealed to the Court of Appeal against that judgment. Following an accelerated hearing of the appeal, the Court of Appeal on 13/11/91 allowed the appeal, set aside the decision of the High Court and dismissed the appellant's claim. Dissatisfied with that judgment the appellant filed his first notice of appeal against same on 18/11/91.

Several applications to this Court thereafter, the appellant, has filed a motion dated 11/21/92 seeking 8 orders. The first order, which is for leave to amend her notice of appeal, has been set out in detail in the lead judgment of my learned brother, Alfa Belgore. J.S.C. I do not propose to set them out fully in this judgment. Prayers 2 to 8 in the motion paper seek:

- "2 *An order enlarging the time within which the plaintiff/ appellant/applicant may apply for, leave to appeal on grounds 1 and 8 of the proposed Amended Notice of Appeal raising issues of mixed law and facts and facts respectively.*

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3. *An order granting leave to appeal on grounds raising issues of mixed law and facts under grounds 1 and 8 of the applicant's proposed amended Notice of Appeal here to attached and verified in the supporting Affidavit as*

5 *Exhibit 2.*

4. *An order enlarging the time within which the applicant may so appeal on those grounds.*

10 5. *An order enlarging the time within which the appellant/applicant may file her brief of argument in the appeal.*

15 6. *An Injunction restraining the defendant/respondent from taking any steps pursuant to the Court of Appeals judgment pending the determination of this further appeal to the Supreme Court.*

20 7. *Any other order or orders which the Supreme Court may consider just for the purpose of maintenance of the locus quo pending the final determination of this suit by the Supreme Court including an order staying further proceedings in Suit No. HIN/3/92 Emanuel C.Nwankwo v. Cecilia Ihuoma Nwankwo, now pending at the High Court of Abia State in the Isiala Ngwa Judicial Division.*

25 8. *An order directing a departure from Order 6 rule 2 of the Supreme Court's rules in so far as filing (as separate exhibits) contents of the record of proceedings at the High Court and the court below which are already part of the record of appeal is concerned."*

30 In the course of oral argument in this Court, prayer 6 was withdrawn and struck out. Prayer 5 was not opposed and was therefore granted. Prayer 7 was not pressed and must be refused because there is no basis for it. Prayers 2 to 4, which are usually sought by applicants who are out of time in complying with the rules/orders of court, were opposed by
35 respondent's counsel solely on the ground that sufficient reasons for delay in filing the present application had not been shown. Respondent's counsel sought to confirm this by facts adduced in his 27 paragraph counter affidavit. Nothing in that counter-affidavit shows that the appellant is not anxious to prosecute his appeal. Nor is therein disclosed any reasons why the

appellant should be prevented from proceedings with the appeal so that it can be determined on its merits. The law is that such applications, which are meant to ensure that the appellant's case is properly and fully placed before the Court, are usually granted unless they are brought mala fide and grant of them will do injustice to the respondent vide Biode Pharmaceutical v. Adsell Ltd. (1986) 5 NWLR (Pt. 46) 1070 respondent has not shown what injustice will result from the present application. It is also trite that delays for which counsel can be held responsible should not be laid at the doors of his client (appellant). It is also the principle observed by the courts that very late applications for amendment of pleadings and other papers filed shall be granted so long as the interest of justice is thereby served vide Chief Ojah & ors v. Chief Ogboni & ors (1976) 4 S.C. 69 (77).

There is really no merit in the opposition to this application. Prayers 1, 2, 3 and 4 on the motion paper are hereby granted, on the terms set out in the lead judgment of my brother Alfa Belgore. J.S.C. with which I am in full agreement. The respondent is entitled to costs which asses at N100.00 only.

KUTIGI JSC

I have had a preview of the ruling just delivered by my learned brother Belgore, J.S.C. I agree with it and endorse the order for costs.