

SUPREME COURT OF NIGERIA
7TH APRIL, 1995. SC.194/1988
CORAM:- M. BELLO CJN, LL. KUTIGI, M.E. OGUNDARE,
Y.O. ADIO, A.L. IGU, JJSC.

ITYALABANI COMPANY LTD APPELLANT

AND

BANK OF BARODA RESPONDENT

APPEALS - Extension of time to appeal - Explanation of the delay is required
- Where the delay is Counsel's fault - Whether the party will be punished for the mistake of his counsel.

APPEALS - Extension of time to appeal - Where the proposed grounds of appeal disclose arguable issues - The question whether the appeal will succeed - Is not to be considered at that stage.

COURTS - Discretion - Of Court of Appeal in granting extension of time to appeal - Whether properly exercised.

FACTS

Respondent as plaintiff filed an action before the Lagos High Court against the appellant/defendant. The trial court dismissed the respondent's action for alleged non-disclosure of reasonable cause of action and for lack of competence. The respondent wanted to lodge an appeal against the trial court's decision. But it could not do so until the time prescribed by law expired. The affidavit showed that failure to appeal within time was substantially due to inadvertence, fault or negligence of respondent's counsel.

The Court of Appeal granted extension of time to appeal as prayed. The appellant being dissatisfied has appealed to the Supreme Court to determine whether there were good and substantial reasons for the failure to lodge the appeal within the prescribed period and whether the grounds of appeal, *facie*, show good cause to hear the appeal.

HELD (Unanimously dismissing the appeal per lead reasons of ADIO JSC)

Extension of time to appeal - Explanation of the delay

1. What the law requires, in the circumstance, is not a justification for the period of delay but an explanation in relation to it which could in some cases be the negligence, inadvertence, or fault of counsel. In the present case, there was the fact that the respondent was overseas and not in Nigeria at all material times and the fact that one of the learned counsel acting for the respondent deposed in an affidavit that the delay was caused by the inadvertence, negligence or fault of the respondent's counsel and that he, the learned counsel, accepted responsibility for what happened. A court does not, in a matter like this, punish a party for the mistake of his counsel. (p.844B)

Extension of time to appeal - Disclosure of arguable issues

2. The issues raised by the grounds of appeal included the issues whether the appellant had accepted or dishonoured the bills of exchange which formed the basis of the action; whether the learned trial Judge was right in holding that the respondent had no locus standi to institute the action; and whether the respondent was a legal entity that was capable of instituting the action. While dealing with an application for extension of the time within which to appeal, it is not for a court to be concerned, at that stage, with the question whether the appeal will succeed. All that is necessary when an application for an extension of the time within which to appeal is brought is that the applicant should show that his proposed grounds of appeal disclose arguable issues. Thus, whether during the hearing of the appeal itself the arguable issues disclosed by the grounds of appeal will succeed is not material (p. 844 E)

Discretion of Court of Appeal - Extension of time to appeal

3. The question, whether the respondent's application should be granted and for time within which to lodge an appeal against the decision of the learned trial Judge should be extended is entirely within the discretion of the court below. When a court is satisfied, from the facts deposed to by an applicant in support of the application, that the application should be granted, it will exercise its discretion in favour of the applicant. The court below considered and accepted the explanation given by the respondent in relation to the delay and rightly held that the proposed grounds of appeal, *prima facie*, showed good cause why the appeal should be heard. The respondent had satisfied the conditions precedent to the granting of its application and the court below was right in granting it. (p. 844 H)

NOTABLE POINTS OF INTEREST**BELLO CJN*****1. Client not to suffer for the fault of his counsel***

It was clearly established that the delay in filing the appeal to the Court of Appeal within time was entirely due to the fault of counsel of the appellant thereat. This court has in numerous cases decided that a client should not suffer for the fault, negligence or inadvertence of his counsel. Furthermore the grounds of appeal were substantial and showed good cause why the appeal should be heard. (p. 845 D)

IGUHJSC***2. Application for extension of time - Satisfactory material***

There was sufficient and satisfactory material before the court below in explanation of the respondent's failure to file its Notice of Appeal within the time prescribed by law. It is also clear that no case of inordinate delay or laches was established against the respondent especially as its place of residence is in the United Kingdom and allowance must be given for consultations with its solicitors. The proposed appeal prima facie establishes the existence of arguable and substantial grounds of appeal. It is my view therefore that no ground was established by the appellant upon which this court would be justified in interfering with or disturbing the decision of the court below. (p. 846 E)

REPRESENTATION

L .B Shopeym Esq. for the appellant.

Chief F.R.A. Williams SAN, with Miss O.K.

Johnson, U.B. Anekwe and A. A., Edu for the respondent.

CASES REFERRED TO

Yesufu v. Co-operative Bank Ltd. (1989) 3 N.W.L.R. (Pt. 110) 463

Holman Brothers (Nig.) Ltd. v. Kigo (Nig.) Ltd. (1980) 8-11 S.C.

Obikoya v. Wema Bank Ltd. (1989) 1 N.W.L.R. (Pt. 96) 156

General Oil Ltd. v. Oduntan (1990) 7 N.W.L.R. (Pt. 163) 423

LEAD JUDGMENT BY ADIO JSC

The respondent, as plaintiff, brought an action in the High Court of

Lagos State against the defendant/appellant in respect of a sum due and

payable in U.S. Dollars on some bills of exchange. The appellant, on showing cause was granted unconditional leave to defend the suit. Later, the appellant brought an application to strike out the Statement of Claim because it disclosed no reasonable cause of action and to strike out the name of the respondent for lack of competence to bring the action. The learned trial Judge granted the application and dismissed the action.

The respondent wanted to lodge an appeal against the decision of the learned trial Judge but could not do so until the time prescribed by law for lodging such an appeal expired. The application for an extension of the time within which to lodge an appeal made by the respondent to the Court of Appeal was granted by the court. The present appeal is against the decision of the court below.

When this appeal came before this court on the 23rd day of January, 1995, we dismissed the appeal with N1,000.00 costs to the respondent, after hearing the learned counsel for the appellant. We indicated that we reserved our reasons till today. I now give my own reasons.

The parties filed and exchanged briefs in which each party identified certain issues for determination. In my own view, the fundamental or crucial issues, which were identified in the respondent's brief itself, are two, namely, whether there were good and substantial reasons for the failure to lodge an appeal within the prescribed period; and whether there were grounds of appeal which, *Prima facie*, showed good cause why the appeal should be heard. See *Yesufu v. Co-operative Bank Ltd.* (1989) 3 NWLR (Pt. 110)483; and *Holman Brother v. (Nig.) Ltd. V. Kigo (Nig.) Ltd.* (1980) 8-11 S.C. 43. In the affidavit and further affidavit in support of the application for extension of the time within which to lodge an appeal against the decision of the learned trial Judge, the deponent deposed to certain things for the purpose of showing that failure to appeal within the period prescribed by law was substantially due to inadvertence, fault or negligence of the counsel acting for the respondent. In the notice of appeal from the High Court to the court below, issues were raised about whether the appellant had accepted the bills of exchange which formed the basis of the action or had dishonoured them; whether the learned trial Judge was right in holding that the respondent had no *locus standi* to institute the action; and whether the respondent was a legal entity that was capable of instituting the action.

Each of the parties made submissions in its brief on the issue whether there were good and substantial reasons for the failure to lodge an appeal within the period prescribed by law and on whether there were grounds of

844 Balogun v. Adejobi (1995) 1 KLR Ogundare JSC
appeal which, prima facie showed good cause why the appeal should be heard. With reference to the first issue, the position of the appellant. based on the submissions in its brief. seemed to be that an applicant for extension of the time within which to appeal must justify the delay in respect of every day, week or month forming part of the period of delay. What the law requires, in the circumstance, is not a justification for the period of delay but an explanation in relation to it which could in some cases be the negligence, inadvertence, or fault of counsel. In the present case, there was the fact that the respondent was overseas and not in Nigeria at all material times and the fact that one of the learned counsel acting for the respondent deposed in an affidavit that the delay was caused by the inadvertence, negligence or fault of the respondent's counsel and that he, the learned counsel, accepted responsibility for what happened. A court does not in a matter like this, punish a party for the mistake of his counsel. See *Bowaje v. Adediwura* (1976) 6 S.C. 143.

With reference to the question whether there were grounds of appeal which, prima facie showed good cause why the appeal should be heard, the court below held that there were. The submission for the appellant was that the respondent's grounds of appeal were weak and were not arguable. The submission for the respondent was that the court below was dealing with an application for extension of time and was not dealing with the appeal itself. I think that there is substance in the submission made for the respondent. One really cannot see or understand how it can reasonably be said that the grounds of appeal which raised the issues, which I have earlier set out in this judgment were weak and did not raise any arguable issue. The issues raised by the grounds of appeal included the issues whether the appellant had accepted or dishonoured the bills of exchange which formed the basis of the action; whether the learned trial Judge was right in holding that the respondent had no locus standi to institute the action: and whether the respondent was a legal entity that was capable of instituting the action. While dealing with an application for extension of the time within which to appeal, it is not for a court to be concerned, at that stage, with the question whether the appeal will succeed. All that is necessary when an application for an extension of the time within which to appeal is brought is that the applicant should show that his proposed grounds of appeal disclose arguable issues. Thus whether during the hearing of the appeal itself the arguable issues disclosed by the grounds of appeal will succeed is not material. See *Yesufu's case*, supra: *Holman Bros. (Nig) Ltd. Kigo (Nig.)* supra: and *Obikoya v. Wema Bank Ltd*, (1989) 1 NWLR (Pt.96) 157.

The question, whether the respondent's application should be granted

and the time within which to lodge an appeal against the decision of the learned trial Judge should be extended is entirely within the discretion of the court below. When a court is satisfied, from the facts deposed to by an applicant in support of the application, that the application should be granted, it will exercise its discretion in favour of the applicant. See *General Oil Ltd; v. Oduntan* (1990) 7 NWLR (Pt.163) 423. The court below considered and accepted the explanation given by the respondent in relation to the delay and rightly held that the proposed grounds of appeal, prima facie, showed good cause why the appeal should be heard. The respondent had satisfied the conditions precedent to the granting of its application and the court below was right in granting it. The appeal lacks merit and that was why we dismissed it with N1,000.00 costs when it came before us on the 23rd January, 1995.

BELLO CJN

I had the opportunity of reading in advance the reasons for judgment delivered by my learned brother, Adio, J.S.C.. I entirely agree.

It was clearly established that the delay in filing the appeal to the Court of Appeal within time was entirely due to the fault of counsel of the appellant thereat. This court has in numerous cases decided that a client should not suffer for the fault, negligence or inadvertence of his counsel. Furthermore, the grounds of appeal were substantial and showed good cause why the appeal should be heard. It was for these reasons which have been fully considered by my learned brother that I dismissed the appeal on the 25th day of January, 1995.

KUTIGI JSC

When this appeal came for hearing on the 23rd day of January, 1995, we heard it, dismissed it with N1,000.00 costs and remitted the case back to the Court of Appeal for hearing. We indicated then that we shall give our reasons today.

I have since read the reasons for judgment just delivered by my learned brother Adio, J.S.C. I agree with him and adopt them as mine.

OGUNDARE JSC

This appeal was dismissed by me on 23rd January, 1995 and I stated then that i would give my reasons later. I now proceed to give my reasons for dismissing the appeal.

I have had the privilege of a preview of the reasons given by my learned brother. Adio, J.S.C., for dismissing the appeal also. I agree with those reasons and I adopt them as mine.

C IGUH JSC

On the 23rd January, 1995, I dismissed this appeal and then indicated that I would give my reasons for so doing today.

I have since had the advantage of reading in draft the reasons for judgment just delivered by my learned brother, Adio, J.S.C., and I agree entirely with the reasoning and conclusions therein.

An appellate court in considering whether or not to grant or refuse a prayer for extension of time within which to appeal ought to consider:-

- (i) Any explanation for the delay in filing the notice of appeal within the prescribed period;
- (ii) Any evidence of delay or laches in making the application for extension of time: and
- (iii) The existence of good and substantial grounds of appeal.

There was sufficient and satisfactory material before the court below in explanation of the respondent's failure to file its notice of appeal within the time prescribed by law. It is also clear that no case of inordinate delay or laches was established against the respondent especially as its place of residence is in the United Kingdom and allowance must be given for consultations with its solicitors. The proposed appeal prima facie establishes the existence of arguable and substantial grounds of appeal. It is my view therefore that no ground was established by the appellant upon which this court would be justified in interfering with or disturbing the decision of the court below.

It was for the above and the more detailed reasons contained in the lead "*Reasons for Judgment*" of my learned brother, Adio. J.S.C., that I dismissed the appeal with N1.000.00 costs to the respondent. Appeal dismissed.