

**SUPREME COURT OF NIGERIA**  
30TH JANUARY, 1998. SC. 161/1990  
**CORAM:- M. L. UWAIS CJN, S. M. A. BELGORE, M. E.**  
**OGUNDARE, E. O. OGWUEGBU, A. I. IGUH, JJSC.**

FEDERAL HOUSING AUTHORITY ..... APPELLANT  
AND  
F. BOLAJI ABOSEDE ..... RESPONDENT

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*APPEALS - Extension of time to appeal - Good reasons for failure to appeal within time must be shown - Grounds of appeal must prima facie show good cause - Before the application will be granted.*

*APPEALS - Extension of time to appeal - Where no cogent reason for the delay was given - The application was rightly refused.*

*APPEALS - Extension of time to appeal - Proposed grounds of appeal - Did not merit the grant of the application.*

**FACTS**

The plaintiff/respondent filed an action against the defendant/apPELLANT before the High Court Lagos seeking inter alia, a declaration that the purported termination of his appointment is null and void and of no effect whatsoever. The respondent filed an application for an order of interlocutory injunction restraining the appellANT from ejecting him from the quarters occupied by him pending the determination of the action. The application was granted. The appellANT was dissatisfied with the Order but failed to appeal within the time prescribed by law. It later filed an application before the Court below praying for extension of time to appeal amongst other prayers.

The only reason for not appealing within time disclosed in the affidavit was that it proved difficult to obtain the corrected certified copy of the ruling. The Court of Appeal held that the reason for the delay cannot be regarded as good and sufficient and then dismissed the appli-

cation. It failed to comment on whether the proposed grounds of appeal *prima facie* showed good cause why the appeal should be heard. Being dissatisfied, appellant has appealed to the Supreme Court raising 4 issues.

### **ISSUES FOR DETERMINATION**

*"1. Whether the Court of Appeal exercised its discretion judicially and judiciously when it dismissed the Appellant's application dated 10/4/89.*

*2. Whether the lower Court was right in dismissing the said application of 10/4/89 without considering the substantiality of the Grounds of Appeal especially the 1st ground alleging that the learned trial judge made a pronouncement and/or final decision on the substantive matter which is a good and arguable ground of appeal.*

*3. Whether the reason averred in Appellant's affidavit for delay in filing the Appeal (which was not controverted by evidence) within the time stipulated by the constitution was substantial or not.*

*4. Whether there was unreasonable delay in filing the application of 10/4/89 or not."*

**HELD** (Unanimously dismissing the appeal per lead judgment of **OGUNDARE JSC**)

### ***Good reasons for failure to appeal within time must be shown***

1. An applicant must therefore, show by affidavit evidence that he has good and substantial reasons for failure to appeal within time and that his grounds of appeal *prima facie* show good cause why the appeal should be heard. The Court entertaining the application must be satisfied on these two requirements before granting the application. See Obikoya v. Wema Bank Ltd. (supra); Ebodo v. Enarofia (1980) 5-7 SC 42; Holman Brothers (Nig.) Ltd. v. Kigo (Nig.) & anor. (1980) 5-11 SC. 43. It is however, in the discretion of the Court to grant or not to grant the application and an appellate Court will be slow in interfering with the exercise of discretion of a lower court unless it is shown that the discretion was not exercised judicially or that it was based upon wrong principle or that the conclusion arrived at cannot be supported by the evidence. See Kudoro

v. Alaka (1956) 1 FSC 82. (p. 210 H)

***Where no cogent reason for the delay was given***

2. I have considered the materials placed before the Court below and upon which that Court ruled. The only reason given by the Appellant for not appealing within time was given in paragraph (9) of the affidavit in support. The Court below was of the view that the reason given in paragraph (9) was not cogent enough. The Appellant has not satisfied me that the conclusion of the Court below is perverse. And since that Court was not satisfied that "good and substantial reasons for failure to appeal within the prescribed period" has been shown, I find myself unable to interfere with the exercise of its discretion refusing the prayers before it. (p. 211 E)

***Extension of time to appeal - Proposed grounds of appeal***

3. Although the Court below made no observation about whether or not the proposed grounds of appeal prima facie showed good cause why the appeal should be heard, I have nevertheless perused these grounds in relation to the ruling of the High Court the appellant sought to appeal against. The grounds appeared not to attack the merits or otherwise of the High Court decision but to misconstrue the statement made in the High Court Ruling. Consequently, I do not think the grounds merit the exercise of the Court's discretion in favour of the Appellant. (p. 211 H)

**NOTABLE POINTS OF INTEREST**

**IGUHJSC**

***1. Extension of time to appeal - Two conditions that must be established***

In the first place, although an applicant is not required to show that the appeal would succeed at all event if leave were granted, the court must be satisfied that the proposed grounds of appeal relied on by the applicant are arguable or that prima facie they disclose good cause for the prosecution of the appeal. Secondly, and equally important, such an applicant must also show good and substantial reasons for his failure to appeal within the prescribed period allowed by law. See Ukpo Ibodo and others

**206** Federal Housing Authority v. Abosede (1998) 1 KLR  
v. Iguasi Enarofia and others (1980) 5-7 S.C. 42 at 51-53, Holman Bros  
(Nig.) Ltd v. Kigo Nig. Ltd and another (1980) 8-11 S.C. 43 at 62-63. I  
think it ought to be stressed that both factors or conditions must be  
established to the satisfaction of the court otherwise the application may  
B stand no chance of succeeding. (p. 213 D)

*2. Delay in obtaining a copy of the ruling - Is not a good reason*

In the second place, it seems to me established that the time for giving  
C notice of appeal will not be extended merely because there was delay in  
obtaining a copy of the judgment or ruling sought to be appealed against.  
This is because an appellant or his legal representative ought to be in a  
position to file grounds of appeal he conceives are available to him within  
the time prescribed by law without a certified true copy of the judgment  
D appealed against and to obtain leave subsequently to file additional or  
amended grounds of appeal after his receipt of a certified true copy of  
the judgment in question. (p. 214 H)

**E REPRESENTATION**

Parties absent and not represented by counsel

**CASES REFERRED TO**

- F Obikoya v. Wema Bank Ltd. (1989) 1 NWLR 157  
Ebodo v. Enarofia (1980) 5-7 SC 42  
Holman Brothers (Nig.) Ltd. v. Kigo (Nig.) (1980) 5-11 SC. 43  
Kudoro v. Alaka (1956) 1 FSC 82  
Charles Osenton and Co. v. Johnson (1942) AC 130, 138  
G Ike v. Ugboaja (1993) 6 N.W.L.R. (Part 301) 539 at 556  
Anyanwu v. Mbara (1992) 5 N.W.L.R. (Part 242) 386 at 400

**RULES REFERRED TO**

- H Supreme Court rules O. 6 r. 8 (vii)  
Court of Appeal Rules O. 3 r. 4 (ii)

**LEAD JUDGMENT BY OGUNDARE JSC**

Following the institution by the Respondent of an action in the High Court of Lagos State claiming against the Appellant:

*"(a) A declaration that the Plaintiff is still the Assistant Chief Town Planning Officer of the Defendant Authority.*

*(b) A declaration that the purported termination of the appointment of the plaintiff as Assistant Chief Town Planning Officer of the Respondent Authority by letter Ref. FHA/2343K dated 5/12/88 is null and void and of no effect whatsoever on the ground that it is contrary to the terms of conditions of service of the Plaintiff's employment.*

*(c) An order directing the Defendant to reinstate the Plaintiff in his post as Assistant Chief Town Planning Officer of the Defendant Authority.*

*(d) An order directing the Defendant to pay the Plaintiff all his salaries, allowances and other entitlements from the date of the Plaintiff's suspension from work till the day of judgment."*

he brought an application before the trial Court for an order of interlocutory injunction restraining the Appellant from ejecting him from the quarters occupied by him pending the determination of the action. The application was granted by the trial High Court on 6/3/89. The Appellant was dissatisfied with the order of the trial High Court but as it failed to appeal to the Court of Appeal within the time prescribed by law, an application dated 10th April 1989 was brought before the Court of Appeal praying for the following orders:

*"(1) An order for extension of time to appeal against the ruling of the High Court delivered by Honourable Justice C. O. Segun sitting at Lagos and dated the 6th day of March 1989 attached herewith as exhibit MB5.*

*(2) An order for extension of time within which to apply for leave to appeal.*

*(3) An order granting leave to the Applicant herein to appeal H against the said ruling of C. O. Segun J. dated 6/3/89.*

*(4) An order to deem the Notice of Appeal attached herewith as Exhibit MB4 as properly filed subject to payment of filing fees.*

(5) *An order for stay of Proceedings in the Lower Court in this cause pending the hearing and determination of the Grounds of Appeal in this matter by this Court.*

(6) Such further or other orders as this Honourable Court may deem fit to make in the circumstances."

The application was supported by an affidavit the penultimate paragraphs of which read:

"(2) That I am informed by M. B. WALI & CO. the Counsel to the applicant and I verily believe same to be true that an interlocutory application for injunction was argued before the Lower Court on 9/1/89.

(3) That I am further informed by counsel that Ruling on the aforesaid application for injunction was delivered on 6th day of March, 1989 by the Lower Court.

D       (4) That I am informed by the applicant's Solicitors and I believe them that serious questions of law are involved in the said application for injunction and ruling thereon which call for argument and eventual decision of the Court of Appeal.

[illegible]

(9) That it proved difficult to obtain the corrected certified copy of the Ruling of the Lower court, hence the delay in filing this appeal."

Annexed to the affidavit were a proposed notice of appeal wherein the Appellant raised three grounds of appeal. The Ruling of the trial High Court was also annexed to the motion papers. A counter-affidavit and further affidavit were later sworn to and filed. The matters subsequently came before the Court of Appeal (Lagos Division) for hearing. After disposing of the preliminary objection raised by the Respondent by dismissing it the Court below heard arguments on the application before it after which it delivered a short Ruling as follows:

*"This application for leave to extend time for Applicant to ask for leave to file notice of appeal in this case against the order of the lower H Court restraining him from ejecting tenants would be refused, because:-*

*1. The applicant has not shown any reason whatsoever for the delay in appealing in time to this Court.*

2. *The reason given in para. 9 of the affidavit cannot be regarded as good and sufficient reason for the delay.*

*Application dismissed with N50.00 costs in favour of Respondent."*

It is against this Ruling that the Appellant has now appealed to this Court upon the following ground of appeal.

*"The Court of Appeal erred in law when it dismissed the application for extension of time within which to apply for leave to appeal and extension of time within which to appeal to the Court of Appeal and thereby exercised their judicial discretion wrongly which was unduly fettered thus denying the appellant its constitutional right of appeal.*

#### PARTICULARS

(A) *The Court of Appeal failed to consider the reason for the delay in filing the appeal as averred to in the affidavit in support of the application.*

(B) *The Court of Appeal failed to consider the substantiality or otherwise of the Grounds of Appeal when in fact the first ground of Appeal complained against the decision of the trial judge who made pronouncement and or final decision on the substance of the case before him, by finding against the Appellant without trial.*

(C) *The Court of Appeal failed to be guided by the governing principles enunciated by the Supreme Court in the case of OBIKOYA V. WEMA BANK LTD. (1989) part 96 1 NWLR 157.*

(D) *The Court of Appeal wrongly exercised its judicial discretion which was unduly fettered to deprive the appellant the constitutional right to appeal.*

(E) *The Court of Appeal failed to take into consideration the fact that there was no undue delay in bringing the application."*

Appellant filed a brief. The Respondent however, failed to file one. When the matter came before this Court on 3/11/97 for hearing both parties were absent and were not represented by counsel. The appeal was, pursuant to Order 6 rule 8(vii) of the Supreme Court Rules, regarded as having been argued on that brief and judgment was reserved.

In the Appellant's brief the following issues are set down as calling for determination:

"1. *Whether the Court of Appeal exercised its discretion judicially and judiciously when it dismissed the Appellant's application dated 10/4/89.*

B 2. *Whether the lower Court was right in dismissing the said application of 10/4/89 without considering the substantiality of the Grounds of Appeal especially the 1st ground alleging that the learned trial judge made a pronouncement and/or final decision on the substantive matter which is a good and arguable ground of appeal.*

C 3. *Whether the reason averred in Appellant's affidavit for delay in filing the Appeal (which was not controverted by evidence) within the time stipulated by the constitution was substantial or not.*

4. *Whether there was unreasonable delay in filing the application of 10/4/89 or not."*

D It is argued that the lower Court wrongly exercised its discretion in dismissing the Appellant's application without considering the substantiality of the grounds of appeal and that that Court was wrong in holding that there was no reason whatsoever given for failing to appeal from the High  
E Court to Court of Appeal in time or that the reason given was not substantial. It is equally argued that the Court below failed to be guided by the governing principles enunciated by this Court in Obikoya v. Wema Bank Ltd (1989) 1 NWLR 157. The Appellant in its brief argues that  
F there was no undue or unreasonable delay in bringing the application.

I have carefully considered the argument adduced by the Appellant in its brief. Order 3 Rule 4(ii) of the Court of Appeal Rules provides:

G (2) *Every application for an enlargement of time in which to appeal shall be supported by an affidavit setting forth good and substantial reasons for failure to appeal within the prescribed period, and by grounds of appeal which prima facie show good cause why the appeal should be heard. When time is so enlarged a copy of the order granting such enlargement shall be annexed to the notice of appeal."*

H **An applicant must therefore, show by affidavit evidence that he has good and substantial reasons for failure to appeal within time and that his grounds of appeal prima facie show good cause why the appeal should be heard. The Court entertaining the application**



must be satisfied on these two requirements before granting the application. See Obikoya v. Wema Bank Ltd. (supra); Ebodo v. Enarofia (1980) 5-7 SC 42; Holman Brothers (Nig.) Ltd. v. Kigo (Nig.) & anor. (1980) 5-11 SC. 43. It is however, in the discretion of the Court to grant or not to grant the application and an appellate Court will be slow in interfering with the exercise of discretion of a lower court unless it is shown that the discretion was not exercised judicially or that it was based upon wrong principle or that the conclusion arrived at cannot be supported by the evidence. See Kudoro v. Alaka (1956) 1 FSC 82 where a passage in the judgment in Charles Osenton and Co. v. Johnson (1942) AC 130, 138 was quoted with approval. That passage reads:

*"The appellate tribunal is not at liberty merely to substitute its own exercise of discretion for the discretion already exercised by the judge. In other words, appellate authorities ought not to reverse the order merely because they would themselves have exercised the original discretion, had it attached to them, in a different way. But if the appellate tribunal reaches the clear conclusion that there has been a wrongful exercise of discretion in that no weight, or no sufficient weight, has been given to relevant considerations such as those urged before us by the appellant, then the reversal of the order on appeal may be justified."*

I have considered the materials placed before the Court below and upon which that Court ruled. The only reason given by the Appellant for not appealing within time was given in paragraph (9) of the affidavit in support. The Court below was of the view that the reason given in paragraph (9) was not cogent enough. The Appellant has not satisfied me that the conclusion of the Court below is perverse. And since that Court was not satisfied that "good and substantial reasons for failure to appeal within the prescribed period" has been shown, I find myself unable to interfere with the exercise of its discretion refusing the prayers before it.

Although the Court below made no observation about whether or not the proposed grounds of appeal prima facie showed good cause why the appeal should be heard, I have nevertheless perused these

grounds in relation to the ruling of the High Court the appellant sought to appeal against. The grounds appeared not to attack the merits or otherwise of the High Court decision but to misconstrue the statement made in the High Court Ruling. Consequently, I do not think the grounds merit the exercise of the Court's discretion in favour of the Appellant.

For the reasons I have given above I have no hesitation in dismissing this appeal which is hereby dismissed. As the Respondent filed no brief and was absent at the hearing, I make no order as to costs.

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**UWAIS CJN**

I have had the privilege of reading in advance the judgment read by my learned brother Ogundare, J.S.C. I agree that the appeal lacks merit and that it should be dismissed for the reasons contained therein.

Accordingly the appeal is hereby dismissed with no order as to costs.

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**BELGORE JSC**

I agree with the judgment of Ogundare, J.S.C., which I had the privilege of reading in advance. The exercise of the discretion in the decision of the Court of Appeal has not been shown to be perverse or irregular in accordance with the law or rules of court. I also dismiss the appeal. I make no order as to costs as the respondent never filed any brief of argument in respect of this appeal.

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**OGWUEGBU JSC**

I have read the judgment of my learned brother Ogundare, J.S.C., in this appeal and I agree with him that the appeal has no merit.

For the reasons given in the lead judgment of my learned brother Ogundare, J.S.C I too dismiss the appeal with no order as to costs.

## IGUHJSC

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Ogundare, J.S.C. and I agree that this appeal lacks merit and ought to be dismissed.

The facts that culminated in this appeal have been set out adequately in the leading judgment and it is unnecessary to recount them all over again. It suffices to state that the main issue for consideration revolves on whether or not delay in obtaining a certified true copy of a judgment of court appealed against per se is a good or sufficient ground for extension of time within which to appeal outside the period prescribed by law. B C

It is beyond dispute that in the exercise of its discretionary powers, two vital factors must be considered by the court before deciding whether or not an application for leave to appeal or for an extension of time within which to appeal out of time may be granted or refused. In the first place, although an applicant is not required to show that the appeal would succeed at all event if leave were granted, the court must be satisfied that the proposed grounds of appeal relied on by the applicant are arguable or that prima facie they disclose good cause for the prosecution of the appeal. Secondly, and equally important, such an applicant must also show good and substantial reasons for his failure to appeal within the prescribed period allowed by law. See Ukpo Ibodo and others v. Iguasi Enarofia and others (1980) 5-7 S.C. 42 at 51-53, Holman Bros (Nig.) Ltd v. Kigo Nig. Ltd and another (1980) 8-11 S.C. 43 at 62-63. I think it ought to be stressed that both factors or conditions must be established to the satisfaction of the court otherwise the application may stand no chance of succeeding. D E F G

True enough, the court below was in error by its failure to consider the substantiality or otherwise of the proposed grounds of appeal relief upon by the applicant, it is, however, not every mistake or error in a judgment that must result in an appeal being allowed. It is only when the error is substantial in that it has occasioned a miscarriage of justice that the appellate court is bound to interfere. See Onajobi v. Olanipekun (1985) 4 S.C. (Part 2) 156 at 163, Oje v. Babalola (1991) 4 N.W.L.R. H

214 Federal Housing Authority v. Abosede (1998) 1 KLR Iguh JSC  
(Part 185) 267 at 282, Azuetonma Ike v. Ugboaja (1993) 6 N.W.L.R.  
(Part 301) 539 at 556, Anyanwu v. Mbara (1992) 5 N.W.L.R. (Part 242)  
386 at 400 etc.

B In the present case, the court below considered whether or not  
the appellant showed good and substantial reason for its failure to appeal  
within the prescribed time but came to the conclusion that it did not. If  
this decision of the court below is sound, its dismissal of the application  
must be upheld. This is because, no court can grant an application for  
C leave to appeal out of the time without, as I have already indicated, show-  
ing good and substantial reason for failure to appeal within the period  
prescribed by law. The real question must therefore be whether the  
court below was right in holding that the appellant failed to show good  
and substantial reason for its failure to appeal within time.

D The one and only reason advanced by the appellant for its failure  
to file its appeal within time is that there was delay in obtaining certified  
true copy of the ruling sought to be appealed against. This is contained in  
paragraph 9 of the affidavit in support of the application which went thus  
E -

*"9. That it proved difficult to obtain the corrected certified copy  
of the ruling of the lower court, hence the delay in filing this appeal."*

F It was the view of the court below that the said reason contained in  
paragraph 9 of the affidavit in support of the application "could not be  
regarded as good and sufficient reason for the delay."

G In the first place, no details were deposed to as to how long after  
the delivery of the ruling the appellant applied for the all important certi-  
fied true copy of the ruling in question, the alleged difficulties it experi-  
enced in obtaining the said ruling and the precise date the appellant ob-  
tained a copy of the ruling. These are vital facts which would have  
assisted the court below in coming to a conclusion whether or not to  
exercise its discretion in favour of the appellant.

H In the second place, it seems to me established that the time for  
giving notice of appeal will not be extended merely because there was  
delay in obtaining a copy of the judgment or ruling sought to be appealed  
against. This is because an appellant or his legal representative ought to

be in a position to file grounds of appeal he conceives are available to him within the time prescribed by law without a certified true copy of the judgment appealed against and to obtain leave subsequently to file additional or amended grounds of appeal after his receipt of a certified true copy of the judgment in question. In this regard, de Comarmond, S.P.J. B in Ayinla v. S.C.O.A. 20 N.L.R. 154 explained the position as follows -

*"The defendant or his legal advisers were certainly in a position to file grounds of appeal within the prescribed period and it would not have been difficult to obtain leave to file additional or modified grounds of appeal after obtaining a copy of the judgment."* C

*The West African Court of Appeal recently refused an application based on similar grounds and remarked that, as copies of records were seldom obtained within the time fixed for appealing, the statutory period would become virtually inoperative if such applications were granted."* D

*I respectfully agree with that remark, the more so as in the present case, another 12 days relapsed, after the copy of the judgment had been obtained, before the motion papers were filed."*

With the greatest respect, I am in complete agreement with the E above observations of de Comarmond, S.P.J. and fully endorse them. I am therefore unable to accept that delay in obtaining a copy of the judgment or ruling sought to be appealed against is, per se, a valid and sufficient ground for an extension of time within which to file a notice and F grounds of appeal in a suit. I agree with the court below when, in the present case, it ruled as follows.

*"The reason given in paragraph 9 of the affidavit cannot be regarded as good and sufficient reason for the delay."*

It is for the above and the more detailed reasons contained in the G judgment of my learned brother, Ogundare, J.S.C. that I, too, dismiss this appeal as unmeritorious and lacking in substance. I abide by the order as to costs therein made.

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