

**SUPREME COURT OF NIGERIA**

4TH JUNE 1999, SC. 240/1992.

**CORAM:- M. L. UWAIS CJN, A. B. WALI, A. I. IGUH, S. O.  
UWAIFO, E. O. AYOOLA, JJSC.**

YESUFU OBA	.....	APPELLANT
AND		
S. A. B. EGBERONGBE	.....	RESPONDENT

---

***APPEALS** - Extension of time - Within which to appeal - The crucial factors to take into consideration - In granting such an application.*

***APPEALS** - Incompetence - Ground of appeal - And the issues formulated therefrom - Which are unrelated to the reason for the decision - Are incompetent.*

**FACTS**

In an action brought by the plaintiff/respondent against the defendant/appellant in the High Court of Lagos State, the appellant was adjudged liable to the respondent in trespass, and an injunction was ordered against him from committing further trespass on the land in dispute. The appellant's appeal to the Court of Appeal having failed, he brought an application to the High Court apparently with the objective of having that court pronounce that the injunction ordered related to an area of land described on a plan which he had then put before that court. The application was dismissed on February 17, 1987.

On March 19, 1987 the appellant brought an application before the Court of Appeal for orders granting extension of time within which to apply for leave to appeal, leave to appeal and extension of time within which to appeal. The application was unsuccessful. Dissatisfied with the decision of the Court of Appeal, the appellant has now appealed to the Supreme Court pursuant to the leave granted by that court. The appellant purported to formulate two issues for determination from the solitary ground filed. And both the ground of appeal and the issues formulated

therefrom completely ignored the reason given by the Court of Appeal, for refusing the application for extension of time.

**ISSUE FOR DETERMINATION**

*"Whether the ground of appeal and issues formulated therefrom in the present case which do not arise from the judgment appealed against are competent"*

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

***Appeals - Incompetence***

1. Grounds of appeal and, consequently, issues formulated therefrom must arise from the judgment. In the case of Saraki & Ors v. Kotoye (1992) 3 N.S.C.C. 331 this court (per Karibi-Whyte, J.S.C.) at page 345 said, and it bears repetition, that:

*It is well settled proposition of law in respect of which there can hardly be a departure, that the grounds of appeal against a decision must relate to the decision and should constitute a challenge to the ratio of the decisions."*

In the present case, the ground of appeal and the issues formulated therefrom being unrelated to the ground or reason of the decision are incompetent. For that reason the appeal should fail. (p. 1671 D)

***Appeals - Extension of time***

2. The argument by the appellant that the Court of Appeal should have taken "the peculiarity and importance of the substance of the case into consideration before dismissing the application" is utterly misconceived and not supported by any principle of law. The crucial factors to take into consideration in granting extension of time within which to appeal are whether there are good reasons for failure to appeal in time and whether there are good grounds of appeal. Both must coexist. Where either or both of these factors do not exist, the court cannot rely on an alleged peculiarity and importance of the case to exercise a discretion to extend time within which to apply for leave to appeal or, as the case may be, to appeal. (p. 1672 D)

## **NOTABLE POINTS OF INTEREST**

### **AYOOLA JSC**

#### *1. Application for leave to appeal from a final decision made in error - Effect of*

For yet some other reasons, the appeal must fail. It is incomprehensible how a party who himself sought leave of the court below to appeal on the footing that the decision appealed from was an interlocutory decision, could turn round and contend on appeal that the court below erred in treating the decision not as a final decision but as an interlocutory decision. A party conceives that he has, in error, sought leave to appeal from a decision which he regards as final decision, when such was not needed, should proceed to appeal as of right, if he was still within time, or seek leave to appeal out of time if not within time, rather than appeal from a ruling refusing leave. If, as now contended by the appellant, leave had not been required, the appellant cannot rightly claim to be aggrieved by a decision refusing an extension of time within which to apply for leave to appeal and leave to appeal. If the appellant had been right in his contention that as the decision of Hotonu, J. was a final decision he did not need leave to appeal and that he, consequently, had liberty to appeal as of right within 3 months of the decision, his application to the Court of Appeal, brought within the period of three months of the decision, would be incompetent. The power of the Court of Appeal to extend the period within which a party can appeal should normally be invoked after the expiration of the period prescribed for lodging an appeal. (p. 1671 G)

### **REPRESENTATION**

Parties absent and unrepresented

### **CASE REFERRED TO**

Saraki v. Kotoye (1992) 3 N.S.C.C. 331

### **LEAD JUDGMENT BY AYOOLA JSC**

This appeal arose from the refusal of the Court of Appeal to grant the appellant's application for orders granting extension of time

within which to apply for leave to appeal, leave to appeal and extension of time within which to appeal. The appellant was defendant in an action brought against him by the respondent, then plaintiff, in the High Court of Lagos State whereby he was adjudged by Agoro, J. (as he then was) liable to the respondent in trespass, and an injunction was ordered against him from committing further trespass on land described as No. 2 Aderupoko Street, Iwaya, Yaba. The appellant's appeal to the Court of Appeal having failed, the appellant brought an application to the High Court apparently with the objective of having that court pronounce that the injunction ordered related to an area of land described on a plan which he had then put before that court. The matter came before Hotonu, J. who being of the view that the appellant's application was not only to review his judgment but also to give order inconsistent with the decision of the Court of Appeal, dismissed the application on February 17, 1987. On March 19, 1987 the appellant brought the application with which this appeal is concerned before the Court of Appeal. On January 21, 1988, the Court of Appeal in a short ruling dismissed the application. That court in its terse ruling said: "Application for extension refused because with a little bit of diligence, the Ruling which was ready within the time limited for the appeal could have been set (sic) for application either to this court or for use in the Court below". The appellant had in the affidavit in support of his application to the court below given as the sole reason for his failure to seek leave to appeal within the prescribed time of 14 days of the decision of the High Court, an alleged impossibility for him to obtain a certified copy of the ruling delivered by Hotonu, J. On February 17, 1987. It is clear from the ruling of the court below that that court did not find the reason acceptable.

On this appeal from the decision of the court below brought pursuant to leave granted to the appellant by this court on May 10, 1988, the only ground of appeal relied on by the appellant is that:

*"The learned justices of the Court of Appeal were in error when they failed to consider the merits of the application before them."*

The particulars of error subjoined to this solitary ground were that the application before Hotonu, J. was brought to have Agoro, J's judgment

enforced; that the ruling of the High Court was not an interlocutory decision but was a final decision; and, that the delay in filing the application in the Court of Appeal was not sufficient to bar the appellant from seeking justice. The appellant purported to formulate two issue for determination from the solitary ground as follows:

*"(a) Whether or not the ruling of the learned trial court was a final decision; and*

*(b) If it is not a final decision, whether the learned justices of the Court of Appeal ought not to have taken the peculiarity and importance of the substance of the case into consideration before dismissing the application for extension of time within which to appeal."*

It is clear from the ground of appeal and the issues formulated, purportedly, therefore, that the appellant had completely ignored the reason given by the court below for refusing the application for extension of time. The ground of appeal and the issues formulated by the appellant are unrelated to that reason. **Grounds of appeal and, consequently, issues formulated therefrom must arise from the judgment. In the case of Saraki & Ors v. Kotoye (1992) 3 N.S.C.C. 331 this court (per Karibi-Whyte, J.S.C.) at page 345 said, and it bears repetition, that:**

*It is well settled proposition of law in respect of which there can hardly be a departure, that the grounds of appeal against a decision must relate to the decision and should constitute a challenge to the ratio of the decisions."*

**In the present case, the ground of appeal and the issues formulated therefrom being unrelated to the ground or reason of the decision are incompetent. For that reason the appeal should fail.**

For yet some other reasons, the appeal must fail. It is incomprehensible how a party who himself sought leave of the court below to appeal on the footing that the decision appealed from was an interlocutory decision, could turn round and contend on appeal that the court below erred in treating the decision not as a final decision but as an interlocutory decision. A party conceives that he has, in error, sought

leave to appeal from a decision which he regards as final decision, when such was not needed, should proceed to appeal as of right, if he was still within time, or seek leave to appeal out of time if not within time, rather than appeal from a ruling refusing leave. If, as now contended by the  
B appellant, leave had not been required, the appellant cannot rightly claim to be aggrieved by a decision refusing an extension of time within which to apply for leave to appeal and leave to appeal. If the appellant had been  
C right in his contention that as the decision of Hotonu, J. was a final decision he did not need leave to appeal and that he, consequently, had liberty to appeal as of right within 3 months of the decision, his application to the Court of Appeal, brought within the period of three months of the decision, would be incompetent. The power of the Court of Appeal to extend the period within which a party can appeal should normally be  
D invoked after the expiration of the period prescribed for lodging an appeal.

**The argument by the appellant that the Court of Appeal should have taken "the peculiarity and importance of the substance  
E of the case into consideration before dismissing the application" is utterly misconceived and not supported by any principle of law. The crucial factors to take into consideration in granting extension of time within which to appeal are whether there are good reasons for  
F failure to appeal in time and whether there are good grounds of appeal. Both must coexist. Where either or both of these factors do not exist, the court cannot rely on an alleged peculiarity and importance of the case to exercise a discretion to extend time within  
G which to apply for leave to appeal or, as the case may be, to appeal.**

The appeal was heard on the appellant's brief of argument only. The respondent failed to file a brief of argument and was neither present nor represented by counsel at the hearing of the appeal. Although the appellant's brief was settled and filed by Mr. Folarin Popoola neither the  
H appellant nor his counsel was present at the hearing of the appeal. Be that as it may, the appeal is so utterly devoid of merit that not only do I feel no hesitation in dismissing it, but also must express dismay that such frivolous and manifestly unmeritorious appeal found its way to this court.

For the reasons I have given, I would dismiss the appeal. Since the respondent has taken no step in the appeal and had neither been present at the hearing of the appeal, nor shown any interest whatsoever in the appeal, I would not order any costs.

---

B

**UWAIS CJN**

I have had the privilege of reading in draft the judgment read by my learned brother Ayoola, J.S.C. I am in complete agreement with him that this appeal is devoid of merit. C

Accordingly, I too hereby dismiss it and make no order as to costs.

---

D

**WALI JSC**

I have read before now the lead judgment of my learned brother Ayoola, JSC and I agree with his reasoning and conclusion for dismissing the appeal. I adopt them as mine. E

For the same reasons, I also dismiss the appeal with no order as to costs.

---

**IGUH JSC**

F

I have had the privilege of reading in draft the judgment just delivered by my learned brother Ayoola, J.S.C. and I agree entirely with the reasoning and conclusion therein reached.

This appeal lacks substance and the same is hereby dismissed by me with no order as to costs. G

---

**UWAIFO JSC**

I read in advance the judgment of my learned brother Ayoola JSC delivered. I agree with him for the reasons he has given. I too find no merit in the appeal and accordingly I dismiss it. I make no order as to costs. H