

SUPREME COURT OF NIGERIA
FRIDAY 9TH MAY, 2014. SC. 335/2012
CORAM:- I. T. MUHAMMAD, B. RHODES-VIVOUR,
N. S. NGWUTA, O. ARIWOOLA, C. B. OGUNBIYI, JJSC

1. CHIEF UJILE D. NGERE
2. A. W. MBOSOWO APPELLANTS

(For themselves and as representatives
of the entire people of Ngere family
and Ngo Town)

AND

1. CHIEF JOB WILLIAM OKURUKET 'XIV'
2. PASTOR FINEFACE ARRON OKURUKET
3. NNADI PAUL IBOTILE RESPONDENTS
4. SIMEON AYAYI

(For themselves and as representatives of
the entire people of Uwuile Royal House
of Ngo Town)

JUDGMENTS - Effect - Judgments take effect upon delivery - And court has power to enforce judgments at once - But can only be interrupted by a stay of execution - Provided there is an appeal (H1)

ORDERS OF COURT - Obedience to - Hearing - So long as a party disobeys court order - He would not be granted hearing in any subsequent application - Except where inter alia he goes on appeal (H2)

APPEALS - Filing of - Time limit - Appellants had 3 months to appeal from CA judgment delivered on 7/8/94 - But since unable to appeal within time - SC Rules O. 2 r. 31 provides for enlargement of time (H3)

SUPREME COURT - Appeals - Extension of time - Application - Filed first in the SC is correct - Since as at 8/10/94 CA no longer had jurisdiction to grant applicant's leave to appeal (H4)

COURTS - Leave - Importance of - Where rules provide for leave before a process is filed - And the same is filed without leave - Such

3092 Ngere v. Okuruket 'XIV' (2014) 7 KLR (pt. 352) 3091:

a process would be thrown out (H5)

APPEALS - Extension of time - Application - Grant - Reasons - Supporting affidavit must show good and substantial reasons for failure to appeal within time - And grounds must show good cause why appeal should be heard (H6)

APPEALS - Jurisdiction - Extension of time - Application - Even if no good reasons for delay are before court - The application will be granted if a good ground for appeal is on jurisdiction (H7)

LEGAL PRACTITIONERS - Case - Conduct of - When counsel is briefed and he accepts - He has authority to decide how to conduct the case - And the client is bound by his conduct of the case (H8)

LEGAL PRACTITIONERS - Appeals - Filing - Failure - Decision of applicants' former counsel not to appeal - But to comply with CA order for retrial - Is within his professional competence - And cannot be taken as mistake of counsel (H9)

SUPREME COURT - Extension of time - Grant of - Could be based on a finding that failure to appeal within time - Was caused by pardonable negligence of counsel (H10)

APPEALS - Right to appeal - Extension of time - Application - Grant of the application is to ensure that justice is done to the parties - As a party should not be denied right to appeal - If he satisfies conditions for appeal (H11)

FACTS

Before the Supreme Court of Nigeria, defendants/applicants filed Motion on Notice brought under the enabling laws, making the trinity prayers for extension of time to appeal out of time about 19 years after judgment in the matter was delivered by the Court of Appeal in 1994. A 40 paragraph affidavit was deposed to in support of the application. Plaintiffs/respondents filed a 20 paragraph counter-affidavit in opposition of the motion on notice. The case between both parties is that dispute arose in 1970 following the selection of a

village head (Okan Ama) of Ngo a village in present day Rivers State. This necessitated the appointment of a Sole Commissioner in the defunct South Eastern State of Nigeria to inquire into the dispute.

A report was subsequently produced by the said Commissioner, recommending to the then State government that it recognized 1st applicant's predecessor as the right person to be made village head. The government accepted the result, but respondents did not. Much later, respondents commenced this action at the Rivers State High Court, seeking inter alia for a declaration that the chieftaincy stool of Okan Ama of Ngo town exists as the known traditional title. Applicants filed application seeking for a dismissal of the suit on the ground of lack of jurisdiction. The learned trial Judge in one breath ruled that he had jurisdiction and yet in another ruled that he had no jurisdiction. Following the latter ruling, respondents' action was dismissed. Dissatisfied, respondents appealed to the Court of Appeal Port Harcourt Division. The court not having resolved the issue of jurisdiction remitted the case to the High Court for retrial by another Judge of the court. Aggrieved, applicants appealed to Supreme Court against the retrial order.

ISSUES FOR DETERMINATION

1. Whether the applicants whilst still in disobedience of the orders of the Court of Appeal are entitled to a hearing in respect of their prayers seeking leave to appeal against the judgment of the Court of Appeal delivered on 7/7/94.

2. Whether there was compliance with section 233(3) of the Constitution and Order 2 Rule 28(4) of the Supreme Court Rules.

3. When would this court grant an applicant enlargement/extension of time to appeal.

HELD (Unanimously granting the application per

RHODES-VIVOUR JSC)

JUDGMENTS - Effect

1. The judgment of a court of competent jurisdiction subsists until upset on appeal. While the judgment subsists every person affected by it or against whom an order is made must obey it even if it appears wrong.

Judgments take effect immediately they are delivered and every court has inherent power to proceed to enforce judgments at once. The enforcements on delivery can only be interrupted by a stay of execution provided there is an appeal.

Parties are thus bound to obey court orders that are clear and unambiguous, notwithstanding the fact that the order may be wrong. (p. 3105 D)

ORDERS OF COURT - Obedience to

2. So long as a party refuses to implement or obey a court order he would not be given a hearing in any subsequent application.

There are exceptions to the above. A party in disobedience of a court order may be heard in subsequent application if –

(a) the party seeks to appeal against the order of which he is in contempt,

(b) he challenges the order on the ground of lack of jurisdiction;

(c) the order ought not to be sustained because there were procedural irregularities in the process of making the order.

The above are some of the instances when a party in disobedience of a court order may be heard in a subsequent application. The applicants' application falls within the above instances especially (a). Since the applicants (1st applicant's) disobedience has not impeded the course of justice in this case by making it difficult for the court to find out the truth, together with the fact that the applicants are not asking this court to exercise its discretion to grant equitable reliefs, but to allow him exercise his constitutional right to appeal the court ought to exercise its discretion to hear the appeal, if the applicant satisfies the court that he is entitled to be allowed to appeal. (p. 3105 F)

APPEALS - Filing of - Time limit

3. This is a Civil appeal, and by virtue of section 27(2)(a), the applicants had three months to appeal from the Court of Appeal judgment delivered on 7th of July 1994. The applicants

had a Constitutional right of appeal if they appealed within three months from the 7th of July, 1994, but since they were unable to appeal within that time, Order 2 Rule 31 of the Supreme Court Rules provides succor, it provides for enlargement of time, and in applications such as this where leave (i.e. permission) is required since the grounds of appeal do not involve questions of law alone, (Section 233 (2) (a) and (3) of the Constitution) the applicants must seek leave. (p. 3106 G) B

SUPREME COURT - Appeals - Extension of time - Application

4. The applicants did not file their application in Court of Appeal. This application was made in first instance to this court. Is this correct? C

An application for leave to appeal is an appeal. This is a civil appeal. By the provisions of section 27(2)(a) of the Supreme Court Act, the applicant had three months to appeal against the judgment of the Court of Appeal, delivered on 7/7/94. As at 8/10/94 the Court of Appeal no longer had jurisdiction to grant the applicants leave to appeal. D

Consequently it is impossible or impracticable for the applicants to go before the Court of Appeal seeking leave to appeal nineteen years after the 7th day of July 1994. By virtue of subsection (4) of section 27 of the Supreme Court Act this court may extend the period of three months stipulated in section 27 (2) (a) supra. Filing this application in the first instance in this court is very much in order. (p. 3107 B) E
F

COURTS - Leave - Importance of

5. Leave means permission. Where the Rules provide for leave before a process is filed, and the process is filed without leave such a process would be thrown out, it being null and void. The applicants were right to apply for leave. (p. 3107 G) G

APPEALS - Extension of time - Application - Grant - Reasons

6. The grant of an application for extension of time to appeal is a matter within the discretion of the judge. That discretion is properly exercised if the judge considers the rules governing the particular application before granting the application. H

In an application for extension of time within which to appeal, the affidavit in support of the application must be detailed on -

(a) good and substantial reasons for failure to appeal within the prescribed period, and

B (b) grounds of appeal which prima facie show good cause why the appeal should be heard.

Good reasons for delay and arguable grounds of appeal, not necessarily grounds of appeal that would succeed must co-exist before an application for extension of time to appeal can be granted. Where the judge exercises his discretion in the absence of (a),(b) above he would be acting as he likes, and giving the applicant uninhibited right to extension of time thereby defeating the purpose of the rules and putting the conduct of litigation in disarray. (p. 3107 H)

APPEALS - Jurisdiction - Extension of time - Application

7. A judge would readily accede to an application for extension of time to appeal if a good ground for the appeal is on jurisdiction. Where this happens to be the case the application would be granted even if no good reasons for the delay are before the court.

F It is a serious issue of jurisdiction when the High Court delivers conflicting Rulings on jurisdiction. The applicants ground of appeal on jurisdiction justifies the hearing of this appeal. It is usually the practice of the courts that where the ground of appeal is substantial, the court may be inclined to grant the application even if the reason for delay is not substantial. This is premised on the reasoning that an applicant with an arguable appeal should not be denied his constitutional right to appeal.

H Where as in this application the proposed grounds of appeal complain of lack of jurisdiction and it is a strong and arguable point it would no longer be necessary to look into the reasons for the delay. Jurisdiction is a question of law. A fundamental issue in every case. A constitutional issue that can be raised at any time. (pp. 3108 D/3110 A)

LEGAL PRACTITIONERS - Case - Conduct of

8. The well laid down position of the law is that when counsel is briefed to handle a case and he accepts the brief, he has authority to decide within his own knowledge of the law how to conduct the case, and the client is bound by how the counsel conducts the case. The remedy open to the client if he is not satisfied with counsel is to withdraw the brief or sue for professional negligence if that appears to be the case.

(p. 3109 A)

Appeals - Filing - Failure

9. The question arising in this application is whether the decision by the applicants' former unnamed counsel not to appeal against the judgment of the Court of Appeal ordering a retrial amounts to inadvertent mistake of former counsel. To my mind it is not. The former counsel saw no reason to appeal against the Court of Appeal's decision. The fact that present counsel would have appealed does not make the decision of former counsel not to appeal wrong. Former counsel decided to go for retrial as directed by the Court of Appeal, amended his pleadings and proceeded to trial. It might well turn out that he was wrong, but he may also be right.

After the Court of Appeal delivered its judgment on 7/7/94 ordering a retrial, the former counsel had two options, (1) to comply with the judgment of the Court of Appeal or (2) appeal. He decided to comply with the Court of Appeal judgment and that to my mind is within his professional competence. By no stretch of imagination can it be said that the course the former counsel took amounts to inadvertence or mistake. In the circumstances the applicants have failed to explain the undue delay of nineteen years before this application was brought.

SUPREME COURT - Extension of time - Grant of

10. This court would exercise its discretion to extend time to appeal once satisfied that the failure to appeal within time was caused by pardonable inadvertence, carelessness or negligence of counsel. The length of time is immaterial if the ap-

plicant is able to show good cause or substantial reasons for the delay. That is to say if undue delay is not explained to the satisfaction of the court the application would fail. The reasoning being that when no credible excuse is given no indulgence can be granted.

- B The rule does not say that the grounds of appeal should succeed rather it says that the grounds of appeal should show good cause why the appeal should be heard. A ground of appeal which shows good cause why the appeal should be heard is one which raises substantial issues of fact or law.**
C (p. 3109 D/H)

APPEALS - Right to appeal - Extension of time

- 11. The grant of this application is geared towards ensuring that justice is done between the parties. A party should never be denied the right of appeal if he satisfies the conditions for appeal. In this case the applicants have satisfied this court to exercise its discretion in their favour because of the serious ground on jurisdiction. Application is granted.** (p. 3110 G)
E

NOTABLE POINTS OF INTEREST

NGWUTA JSC

1. Jurisdiction – Fundamental nature of

- F** The applicants' case is that the trial High Court ruled that it had jurisdiction to hear and determine the matter. The Court then proceeded to hear and determine the matter. At the end of the trial, the same trial Court reversed itself and ruled that it had no jurisdiction in the matter. The Court cannot approbate and reprobate on the issue of jurisdiction in the same case as the want of jurisdiction is fatal to the proceedings no matter how well it is conducted. (p. 3111 G)
G

ARIWOOLA JSC

2. Litigant not to be punished for mistake of counsel

- H** However, in view of the settled principle of law that a litigant should not be punished for the mistake or inadvertence of his counsel, an application for extension of time to appeal ought to be granted if the court is satisfied that the failure to appeal within the period prescribed

by law was due to the true and genuine mistake or error of judgment of counsel. In other words, where the court is satisfied that the delay was indeed occasioned by the genuine mistake of counsel it will be up to the respondent to show in what respect he would be prejudiced if the application is granted. (p. 3114 B)

B

3. Extension of time – Each case to be determined on its merit

It has also been held that in the determination of application for enlargement of time to appeal, each case is to be treated and decided on its own peculiar facts and circumstances' The reason is that the facts to be taken into consideration by the court are not exhaustive. (p. 3114 D)

C

REPRESENTATION

O. Akoni, SAN with O. Awonuga, E. Pila, O. Ben Omotehinse L. Dunkwu, for the Appellants
Chief U. N. Udechukwu, SAN with F. Eweawaji, M. Mailumo C. I. Mbrachu, for the Respondents

CASES REFERRED TO

E

Afribank v. Akwara (2006) 1 SC (pt. ii) 47
Holman Bros Ltd v. Ltd (1980) 8-11 SC 27
FHA v. Kalejaiye (2010) 12 SC (pt. iii) 1
Enyibros Processing v. NDIC (2007) 3 SC (pt. ii) 175
Nwora v. Nwabueze (2011) 15 NWLR (pt. 1271) 467
Akinpelu v. Adegbore (2008) 4-5 SC (pt. ii) 75
PDP v. Adeyemi (2002) 10 NWLR (pt. 776) 529
Odogwu v. Odogwu (1992) 2 NWLR (pt. 225) 539
Ojora v. Bakare (1976) 1 SC 26
Alade v. Alemulike (1988) 1 NWLR (pt. 69) 207
Noibi v. Fikolati (1987) 1 NWLR (pt. 52) 619
AG Anambra State v. AG Federation (2005) 9 NWLR (pt. 935) 572
Governor of Lagos State v. Ojukwu (1986) 3 NWLR (pt. 26) 39
Adewumi v. Osibanjo (1988) 3 NWLR (pt. 83) 483
Oloba v. Akereja (1988) 3 NWLR (pt. 84) 508

F

G

H

STATUTES RULES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, ss. 233(3),

283(3)

Supreme Court Act, s. 27(1)(2)

Supreme Court Rules, O. 2 rr. 28(1)(4) and 31, O. 6 r. 2(1) and O. 8 r. 4

B

LEAD JUDGMENT BY RHODES-VIVOURE JSC

In the Notice of Motion filed on the 28th day of June, 2013 and brought under section 233(3) of the Constitution, section 27(1) and (2) of the Supreme Court Act, Order 2 Rules 28(1), (4) and 31, C Order 6 Rule 2(1) and Order 8 Rule 4 of the Supreme Court Rules, and under the inherent jurisdiction of this Honourable Court the applicants pray for the following:

1. An order enlarging the time within which the applicants may seek leave to appeal on grounds of facts and/or mixed law and facts, D against the judgment of the Court of Appeal, delivered on the 7th day of July, 1994.

2. An order granting the applicants leave to appeal against the judgment on grounds of facts and/or mixed law and facts:

3. An order enlarging time within which the applicants are to E appeal against the judgment.

4. Such further orders as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the application is a 40 paragraph affidavit filed F on the 28th day of June, 2013, deposed to by the first applicant. Annexed to it are seven documents marked Exhibits BO1, BO2, BO3, BO4, BO5, BO6 and BO7. A 13 paragraph further affidavit filed on the 20th day of September 2013, deposed to by A. B. Ige Esq., a legal Practitioner in chambers of learned counsel for the applicants.

G Opposing the application, learned counsel for the respondents filed a 20 paragraph counter-affidavit on the 31st day of July 2013, deemed properly filed and served on the 18th day of February 2014. It was deposed to by D. Ibegbu Esq., a legal Practitioner in chambers of learned counsel for the respondents.

H Annexed to the counter-affidavit are documents marked Exhibits R1-R6.

This application is brought about nineteen years after judgment was delivered by the Court of Appeal on the 7th day of July, 1994.

At the hearing of the application on the 18th day of February 2014 learned counsel for the applicants,

Mr. O. Akoni, SAN adopted his brief filed on the 28th day of June, 2013 and his reply brief filed on the 18th day of February 2014.

Learned counsel for the respondents Chief Udechukwu, SAN B adopted his brief deemed duly filed and served on the 18th day of February 2014.

In amplification of their briefs, learned counsel for the applicants explained the delay in filing this application. He submitted that the real issue in the appeal is jurisdiction. Learned counsel for the respondents vigorously opposed the application. He referred to paragraph 4 of his counter-affidavit for the reason why this application should not be granted. C

The facts are these. D

Ngo is a village in present day Rivers State. In 1970 it had serious problems selecting its village Head. The Chiefs found it very difficult to make a unanimous choice, and so the Government of the now defunct South Eastern State of Nigeria, which included Rivers State appointed, Mr. E. A. Udoh, as sole Commissioner to enquire E into the Ngo Village Headship dispute. After hearing from, all sides the Sole Commissioner produced a Report in 1972. The Report is titled, *"Report of Enquiry into Ngo Village Headship Dispute"*. In that Report the sole Commissioner recommended to the Government of the South Eastern state that it recognize the 1st applicant's predecessor as the right person to be made village Head (i.e. the Okan Ama of Ngo.) The Government accepted the Report of the Sole Commissioner. The respondents did not accept the Report. After a considerable length of time the respondents as plaintiffs filed suit No.BHC/41/ 86. In that suit they claimed the following: F G

(i) A declaration that the Chieftaincy stool of Okan Ama of Ngo Town exists as the known traditional title.

(ii) A declaration that the plaintiffs' Uwuile family is the rightful family that keeps and maintains the Okan Ama title. H

(iii) A declaration that the 1st plaintiff is the rightful Okan Ama of Ngo Town.

(iv) Perpetual Injunction restraining the defendants by themselves, their servants, their agents or privies from parading them-

selves as the Okan Ama of Ngo Town and from laying claim the Chieftaincy stool of Okan Ama Ngo Town.

The applicants were the defendants. They filed an application before a Rivers State High Court, asking that the suit be dismissed because according to them the court had no jurisdiction to determine the issues. ICHOKU, J presided. On the 9th day of June, 1987 his lordship overruled the objection of the applicants and ruled that he had jurisdiction to hear the case.

On 30th day of May, 1990, ICHOKU, J heard the same parties on the merits and entered judgment for the applicants. He dismissed the respondents' case, and proceeded to rule that he had no jurisdiction to hear the case. Dissatisfied with this judgment plaintiffs/respondents filed an appeal. The Court of Appeal delivered judgment on the 7th day of July 1994. The Court of Appeal allowed the respondents appeal and remitted the case back to the trial court for retrial before another judge. In one breath the learned trial judge ruled that he had jurisdiction to hear the case and in yet another breath he ruled that he does not have jurisdiction to hear the case. The Court of Appeal now, sends the case back for retrial when the issue of jurisdiction is unresolved. This application is brought because the applicants who were respondents in the Court of Appeal are dissatisfied with that court's judgment delivered on the 7th day of July, 1994 ordering a retrial of the case before another judge of the High Court. They seek to appeal against the retrial order.

The issues for determination are:

1. Whether the applicants whilst still in disobedience of the orders of the Court of Appeal are entitled to a hearing in respect of their prayers seeking leave to appeal against the judgment of the Court of Appeal delivered on 7/7/94.

2. Whether there was compliance with section 233(3) of the Constitution and Order 2 Rule 28(4) of the Supreme Court Rules.

3. When would this court grant an applicant enlargement/extension of time to appeal.

Learned counsel for the applicants Mr. O. Akoni, SAN observed that by virtue of section 233(3) of the Constitution and Order 2 Rule 28(4) of the Supreme Court Rules this application ought to have been brought before the Court of Appeal before it can be brought here. He further observed that this was not possible due to inadvert-

ent error of counsel for the applicants twenty years ago when this application ought to have been brought. Relying on section 27(4) of the Supreme Court Act he submitted that this court is vested with Sole jurisdiction to grant an extension of time whether to extend time to seek leave to appeal or simply to appeal without the need to seek leave. Reliance was placed on *Afribank v. Akwara* 2006 1 SC (Pt. ii) B p.47, *Holman Bros Ltd v. Ltd* 1980 8-11 SC p.27.

Learned counsel observed that what was required was for the applicant to show -

(a) good and substantial reasons for failure to appeal within C the prescribed period, and;

(b) ground/s of appeal which prima facie show good cause why the appeal should be heard.

Reliance was placed on *FHA v. Kalejaiye* 2010 12 SC (Pt. iii) p1, *Enyibros Processing & Anor v. NDIC & Anor* 2007 3 SC (Pt. ii) D p.175.

Paragraphs 6 to 35 of the affidavit in support of the application. He submitted that the reason for the delay in appealing within time was as a result of the unfortunate inadvertence of counsel for the applicants. Relying on *Nwora v. Nwabueze* 2011 15 NWLR (Pt. E 1271) p.467, *Akinpelu v. Adegboire & 3 Ors* 2008 4-5 SC (Pt. ii) p.75.

He submitted that the reason for the delay is good. On (b) learned counsel observed that the proposed grounds of appeal reveal substantial and arguable grounds which show why the appeal F should be heard.

On jurisdiction learned counsel observed that the length of time before the application is brought is irrelevant if the judgment sought to be appealed against was given without jurisdiction. He submitted that since jurisdiction is a strong point in this application, the application should be granted as it is never too late to appeal against a judgment given without jurisdiction. He urged this court to grant the application. Learned counsel finally observed that his clients cannot be in contempt or abuse of the judicial process where they are seeking to exercise a constitutional right of appeal. Reliance was placed on *F.A.T.B. v. Ezegbu* 1992 9 NWLR (Pt. 264) p.132, *PDP v. Adeyemi* 2002 10 NWLR (Pt. 776) p.529, *Odogwu v. Odogwu* 1992 2 NWLR (Pt. 225) p.539. H

He urged this court to grant the reliefs sought in the motion paper, allowing the applicants to exercise their constitutional right of appeal.

Opposing the application learned counsel for the respondents observed that the application is inequitable and oppressive to the respondent since the case has been concluded on amended pleadings and there is an appeal pending on same before the Supreme Court. Reference was made to SC/54/12.

He further observed that the appeal is being made nineteen years after judgment of the Court of Appeal and the issue of jurisdiction raised in this application has been raised in SC/54/12. He submitted that the fact that the applicants decided to change their counsel in 2012, cannot be a good and substantial reason for the failure to appeal within the prescribed period. Reference was made to A. Ojora v. S. A. O. Bakare 1976 1 SC p.26.

He argued that the applicants are estopped from appealing against the decision of the Court of Appeal delivered in 1994 prior to the amendment of the Writ of Summons and statement of Claim, contending that even if they had a right of appeal, it ceased to exist once the Writ of Summons and Statement of Claim were amended. Reliance was placed on Alade v. Alemulike 1988 1 NWLR (Pt. 69) p207, Noibi v. Fikolati 1987 1 NWLR (Pt. 52) p.619.

Learned counsel observed that the reliefs claimed should not be granted since the applicants including the 1st applicant are still disobeying an injunctive order of the Court of Appeal which restrained them from laying claim to the stool of Okan-Ama of Ngo. Reliance was placed on section 287 (3) of the Constitution.

A.G. Anambra State v. A.G. Federal Republic of Nigeria and 35 Ors 2005 9 NWLR (Pt. 935) p.572.

Concluding he observed that the applicants have not shown prima facie grounds of appeal showing good and substantial reasons why the appeal should be heard in terms of their prayers for extension of time to appeal.

H ISSUE 1

Whether the applicants whilst still in disobedience of the orders of the Court of Appeal are entitled to a hearing in respect of their prayers seeking to appeal against the judgment of the Court of Appeal delivered on 7/7/94.

The Court of Appeal granted a perpetual injunction restraining the applicants from laying any claim to the stool of Okan-Ama of Ngo yet while that order still stands the 1st applicant in his affidavit introduced himself as of the Palace of Okan-Ama Ngo. This amounts to disobedience of the orders of the Court of Appeal. The question to be answered is whether the 1st applicant (who is now a contem-
nor) should be heard and can be entitled to the discretion of this court?

Section 287(3) of the Constitution reads:

“(3) The decisions of the Federal High Court the National Industrial Court, a High Court and of all other courts established by this Constitution shall be enforced in any part of the federation by all authorities and persons, and by other courts of law with subordinate jurisdiction to that of the Federal High Court, the National Industrial Court, a High Court and those other courts, respectively.”

The judgment of a court of competent jurisdiction subsists until upset on appeal. While the judgment subsists every person affected by it or against whom an order is made must obey it even if it appears wrong. Judgments take effect immediately they are delivered and every court has inherent power to proceed to enforce judgments at once. The enforcements on delivery can only be interrupted by a stay of execution provided there is an appeal.

Parties are thus bound to obey court orders that are clear and unambiguous, notwithstanding the fact that the order may be wrong. So long as a party refuses to implement or obey a court order he would not be given a hearing in any subsequent application. See *Odogwu v. Odogwu* 1992 2 NWLR (Pt. 225) p.539, *Governor of Lagos State v. Ojukwu* 1986 3 NWLR (Pt. 26) p.39.

There are exceptions to the above. A party in disobedience of a court order may be heard in subsequent application if –

(a) the party seeks to appeal against the order of which he is in contempt,

(b) he challenges the order on the ground of lack of jurisdiction;

(c) the order ought not to be sustained because there

were procedural irregularities in the process of making the order.

The above are some of the instances when a party in disobedience of a court order may be heard in a subsequent application. The applicants' application falls within the above instances especially (a). Since the applicants (1st applicant's) disobedience has not impeded the course of justice in this case by making it difficult for the court to find out the truth, together with the fact that the applicants are not asking this court to exercise its discretion to grant equitable reliefs, but to allow him exercise his constitutional right to appeal the court ought to exercise its discretion to hear the appeal, if the applicant satisfies the court that he is entitled to be allowed to appeal.

D ISSUE 2

Whether there was compliance with Sections 233(3) of the Constitution and Order 2 Rule 28(4) of the Supreme Court Rules. Section 27 of the Supreme Court Act provides for appealing. It reads:

E (2) The periods prescribed for the giving of notice of appeal or notice of application for leave to appeal are -

(a) in an appeal in a civil case, fourteen days in an appeal against an interlocutory decision and three months in an appeal against a final decision.

F (b) in an appeal in a criminal case thirty days from the date of the decision appealed against.

(4) The Supreme Court may extend the period prescribed in subsection (2) of this section.

G This is a Civil appeal, and by virtue of section 27(2)(a), the applicants had three months to appeal from the Court of Appeal judgment delivered on 7th of July 1994. The applicants had a Constitutional right of appeal if they appealed within three months from the 7th of July, 1994, but since they were unable to appeal within that time, Order 2 Rule 31 of the Supreme Court Rules provides succor, it provides for enlargement of time, and in applications such as this where leave (i.e. permission) is required since the grounds of appeal do not involve questions of law alone, (Section 233 (2) (a) and (3) of

the Constitution) the applicants must seek leave.

Now, Order 28 Rule 4 of the Supreme Court Rules states that

“(4) *Wherever under these Rules an application may be made either to the court below or to the court it shall not be made in the first instance to the court except there are exceptional circumstances which make it impossible or impracticable to apply to the court below.*”

The applicants did not file their application in Court of Appeal. This application was made in first instance to this court. Is this correct?

An application for leave to appeal is an appeal. This is a civil appeal. By the provisions of section 27(2)(a) of the Supreme Court Act, the applicant had three months to appeal against the judgment of the Court of Appeal, delivered on 7/7/94. As at 8/10/94 the Court of Appeal no longer had jurisdiction to grant the applicants leave to appeal.

Consequently it is impossible or impracticable for the applicants to go before the Court of Appeal seeking leave to appeal nineteen years after the 7th day of July 1994. By virtue of subsection (4) of section 27 of the Supreme Court Act this court may extend the period of three months stipulated in section 27 (2) (a) supra. Filing this application in the first instance in this court is very much in order.

ISSUE 3

What is required of an applicant applying to the Supreme Court for enlargement/extension of time within which to appeal.

I must emphasize the importance of leave and asking for it, since this is an application that requires leave.

Leave means permission. Where the Rules provide for leave before a process is filed, and the process is filed without leave such a process would be thrown out, it being null and void. The applicants were right to apply for leave.

The grant of an application for extension of time to appeal is a matter within the discretion of the judge. That discretion is properly exercised if the judge considers the rules governing the particular application before granting the application. In an application for extension of time within which to

appeal, the affidavit in support of the application must be detailed on -

(a) good and substantial reasons for failure to appeal within the prescribed period, and

B (b) grounds of appeal which prima facie show good cause why the appeal should be heard.

C Good reasons for delay and arguable grounds of appeal, not necessarily, grounds of appeal that would succeed must co-exist before an application for extension of time to appeal can be granted. Where the judge exercises his discretion in the absence of (a),(b) above he would be acting as he likes, and giving the applicant uninhibited right to extension of time thereby defeating the purpose of the rules and putting the conduct of litigation in disarray.

D A judge would readily accede to an application for extension of time to appeal if a good ground for the appeal is on jurisdiction. Where this happens to be the case the application would be granted even if no good reasons for the delay are before the court.

E On (a) above the applicant is expected to give a detailed explanation for the delay. He should show something that entitles him to the exercise of the courts discretion. e.g. pardonable inadvertence, mistake or negligence of counsel. See Adeyemi v. Ike Oluwa & Sons Ltd 1993 8 NWLR (Pt. 309) p.27, FHA v. Kalejaiye 2010 12 SC (Pt iii) p.1, Ibodo v. Enarofia 1980 5-7 SC p.42, Kotoye v. Saraki 1995 5 NWLR (Pt. 395) p.256, Akinpelu v. Adegboire & 3 Ors 2008 4-5 SC (Pt. iii) p.75, Nwora v. Nwabueze 2011 15 NWLR (Pt. 1271) p. 467.

G According to learned counsel for the applicants the reasons for the delay can be explained as follows:

H “Iyagba, Esq. represented the applicants at first trial. By the time retrial was ordered Iyagba, Esq. was ailing and the applicants had to instruct another counsel. The applicants’ new counsel that took over from Iyagba did not advice the applicants that an appeal be filed against that appellate decision which ordered retrial.”

Learned counsel concluded, that this application should be granted because of the very unfortunate inadvertent mistake of the former counsel of the applicants.

The well laid down position of the law is that when counsel is briefed to handle a case and he accepts the brief, he has authority to decide within his own knowledge of the law how to conduct the case, and the client is bound by how the counsel conducts the case. The remedy open to the client if he is not satisfied with counsel is to withdraw the brief or sue for professional negligence if that appears to be the case. B

The question arising in this application is whether the decision by the applicants' former unnamed counsel not to appeal against the judgment of the Court of Appeal ordering a retrial amounts to inadvertent mistake of former counsel. To my mind it is not. The former counsel saw no reason to appeal against the Court of Appeal's decision. The fact that present counsel would have appealed does not make the decision of former counsel not to appeal wrong. Former counsel decided to go for retrial as directed by the Court of Appeal, amended his pleadings and proceeded to trial. It might well turn out that he was wrong, but he may also be right. C D

This court would exercise its discretion to extend time to appeal once satisfied that the failure to appeal within time was caused by pardonable inadvertence, carelessness or negligence of counsel. The length of time is immaterial if the applicant is able to show good cause or substantial reasons for the delay. That is to say if undue delay is not explained to the satisfaction of the court the application would fail. The reasoning being that when no credible excuse is given no indulgence can be granted. E F

After the Court of Appeal delivered its judgment on 7/7/94 ordering a retrial, the former counsel had two options, (1) to comply with the judgment of the Court of Appeal or (2) appeal. He decided to comply with the Court of Appeal judgment and that to my mind is within his professional competence. By no stretch of imagination can it be said that the course the former counsel took amounts to inadvertence or mistake. In the circumstances the applicants have failed to explain the undue delay of nineteen years before this application was brought. G H

The rule does not say that the grounds of appeal should

succeed rather it says that the grounds of appeal should show good cause why the appeal should be heard. A ground of appeal which shows good cause why the appeal should be heard is one which raises substantial issues of fact or law. It is a serious issue of jurisdiction when the High Court delivers conflicting Rulings on jurisdiction. The applicants ground of appeal on jurisdiction justifies the hearing of this appeal. It is usually the practice of the courts that where the ground of appeal is substantial, the court may be inclined to grant the application even if the reason for delay is not substantial. This is premised on the reasoning that an applicant with an arguable appeal should not be denied his constitutional right to appeal. See *Adewunmi v. Osibanjo* (1988) 3 NWLR (Pt. 83) p.483.

Where as in this application, the proposed grounds of appeal complain of lack of jurisdiction and it is a strong and arguable point it would no longer be necessary to look into the reasons for the delay. Jurisdiction is a question of law. A fundamental issue in every case. A constitutional issue that can be raised at any time. See *Usman Dan Fodio University v. Kraus Thompson Organization* 2001 15 NWLR (Pt. 736) p.305, *Oloba v. Akereja* 1988 3 NWLR (Pt. 84) p.508, *Ukwu v. Bunge* 1997 8 NWLR (Pt. 518) p.483.

This application should be granted because the jurisdiction issue is very important. Whether a High Court can give a Ruling saying that it has jurisdiction, then proceed to hear the case on the merits after the issue of jurisdiction had been settled, then reverse itself and say it does not have jurisdiction.(sic) This appeal challenges the order of retrial made by the Court of Appeal and not the appeal that emanated from the retrial on amended pleadings now pending in this court as SC.54/2012. I fail to see how the grant of this application would be oppressive to the Respondent. After all this application is granted SC.54/2012 ought to be withdrawn.

The grant of this application is geared towards ensuring that justice is done between the parties. A party should never be denied the right of appeal if he satisfies the conditions for appeal. In this case the applicants have satisfied this court to exercise its discretion in their favour because of the serious ground on jurisdiction. Application is granted.

Time is extended to today for the applicants to seek leave to appeal.

Leave is granted the applicants to appeal on grounds of facts and/or mixed law and facts against the judgment of the Court of Appeal delivered on 7/7/94 in appeal No. CA/PH/210/90.

Time is extended by 21 days from the date of this Ruling for the applicants to appeal against the said judgment. Costs of N50,000.00 to the respondents.

C

MUHAMMAD JSC

The application moved by the learned counsel for the applicant has merit and it should be granted. I hereby make an order granting the application as prayed and as granted by my learned brother, Rhodes-Vivour, JSC. I abide by all consequential orders as granted in the lead Ruling.

E

NGWUTA JSC

My Lords, I read with admiration the lead ruling just delivered by my learned brother, Rhodes-Vivour, JSC. While I agree entirely with the reasoning and conclusion reached, I wish to add a few words by way of support.

The applicants seek leave to appeal on issue of jurisdiction.

Jurisdiction here is used in the sense of the limits the law imposes upon the power of a validly constituted Court to hear and determine a matter brought before it. It is determined on the basis of the subject matter in issue, the persons between whom the issue is joined and the kind of relief sought. See *Ikin v. Edjerode* (2001) 92 LRCN 3288 at 3316; *Aladegbemi v. Fasanmode* (1988) 3 NWLR 129; *Adeyemi v. Opeyori* (1976) 9-10 SC 31.

The applicants' case is that the trial High Court ruled that it had jurisdiction to hear and determine the matter. The Court then proceeded to hear and determine the matter. At the end of the trial, the same trial Court reversed itself and ruled that it had no jurisdiction in the matter. The Court cannot approbate and reprobate on the issue of jurisdiction in the same case as the want of jurisdiction is fatal to the proceedings no matter how well it is conducted. See *Ndeayo*

v. Orunnaya (1977) 1 SC 11; Madukolu v. Nkemdilim (1962) 1 All NLR (Pt. 4) 587; Okafor v. Ezenwa (1992) 4 NWLR (Pt. 237) 611.

In an appeal to it, the lower Court, with the issue of jurisdiction still hanging and not resolved one way or the other, ordered that the case be retried by another Judge of the State High Court. The Court below ought to have resolved the jurisprudential question of the trial Court, assuming and declining jurisdiction in the same case.

The Court, trial or appellate, has no omnipotent authority to make orders. See Chia v. COP (1989) BNLR 118. The Court acts within the limits of its powers and the powers do not include the power to assume and decline jurisdiction in the same case or to reverse itself as if sitting on appeal over its judgment/ruling.

Effluxion of time or estoppel cannot affect the right of a party to raise the issue of jurisdiction as judgment delivered without jurisdiction is, and remain for all times and purposes, a nullity. See Penok Ltd v. Hotel Presidential Ltd (1982) 12 SC; National Bank v. Soyoye (1977) 5 SC 181; Barclays Bank v. Central Bank (1976) 6 SC 175.

Ordinarily, inordinate and excusable delay may defeat an application for leave to appeal. The period from 2/7/1994 when the judgment sought to be appealed was delivered and 28/6/2013 when the motion for leave to appeal was filed would, in other cases, be considered inordinate and inexcusable.

However, in determining the inordinate and inexcusability of the delay, the Court will take into consideration not only the period of the delay but the circumstances or idiosyncrasies of the delay. Where the delay is justified then it becomes excusable and the application cannot be dismissed on the ground of inordinate delay. See Mr. Janneth J. Okereke v. Liquid Investment Nig Ltd (1998) 5 NWLR (Pt. 560) 260.

It is inherent in the issue of jurisdiction herein that no delay, no matter its duration, can be said to be inordinate or inexcusable. Exercise of judicial discretion in favour of the applicant is, on the fact before this Court, in accord with common sense. See Odusote v. Odusote (1971) NMLR 228.

It is for the above and for the more comprehensive reasoning in the lead ruling that I also grant the application. I abide by the consequential orders including order for costs as contained in the lead ruling.

ARIWOOLA JSC

My learned brother, Bode Rhodes-Vivour, JSC obliged me with the draft of the lead ruling just delivered. I am in agreement with the reasoning therein and the conclusion arrived thereat, that there is merit in the application. B

The applicants had sought the following reliefs:-

(i) An order enlarging the time within which the applicants may seek leave to appeal on grounds of facts and /or mixed law and facts against the judgment of the court of appeal delivered on the 7th day of July, 1994. C

(ii) An order granting the applicants leave to appeal against the judgment on grounds of facts and/or mixed law and facts.

(iii) An order enlarging time within which the applicants are to appeal against the judgment. D

And such further orders as this Honourable court may deem fit to make in the circumstances of this case.

As expected the respondents opposed the application vigorously.

There is no doubt as clearly shown on the records that the delay in bringing an application for extension of time in 2014 to enable the applicants seek leave to appeal against the judgment of the court below delivered since July 1994, appears rather inordinate. But because the grant of such an application is at the discretion of the Judge, it allows for consideration of the grounds and reasons for the delay in seeking leave. E

Ordinarily, the principle governing the application for enlargement of time within which to appeal has been settled, and restated over and over again by this court in several decisions. See; *Ibodo v. Enarofia* (1980) 5-7 SC 42; *Lamai v. Orbih* (1980) 5-7 SC 28; *Osinupebi v. Saibu* (1982) 7 SC 104; *Shittu and Anor v. Osibajo & Anor* (1988) 1 SCNJ (Pt. 1) 37 (1988) 3 NWLR (Pt. 83) 483. F

By the provisions of the Rules of this court, for an applicant to be entitled to favour of the discretion of the court to appeal out of time, the following conditions must be satisfied:- H

(1) Good and substantial reasons for failure to appeal within the prescribed period; and

(2) Grounds of appeal which prima facie show good cause

why the appeal should be heard. See Order 2 rule 31 (2) Supreme Court Rules; *Alagbe v. Abimbola & Ors* (1978) 2 SC 39 Chief Yesufu v. Co-operative Bank Ltd (1989) NWLR (Pt. 110) 483.

It must be noted that the good reasons for the delay in appealing on time and prima facie arguable grounds of appeal must co-exist to earn the applicant the favour of the court order to appeal out of time.

However, in view of the settled principle of law that a litigant should not be punished for the mistake or inadvertence of his counsel, an application for extension of time to appeal ought to be granted if the court is satisfied that the failure to appeal within the period prescribed by law was due to the true and genuine mistake or error of judgment of counsel. In other words, where the court is satisfied that the delay was indeed occasioned by the genuine mistake of counsel it will be up to the respondent to show in what respect he would be prejudiced if the application is granted. See; *Iroepofru v. Okwodu* (1990) 6 NWLR (Pt. 159) 643; *Imegwu v. DPP & Ors* (2013) 2 SCM 81.

It has also been held that in the determination of application for enlargement of time to appeal, each case is to be treated and decided on its own peculiar facts and circumstances' The reason is that the facts to be taken into consideration by the court are not exhaustive. See; *University of Lagos v. Olaniyan* (1985) 1 NWLR (Pt. 1) 1 SC C.C.B. (Nig) Ltd v. Ogwuru (1993) 3 NWLR (Pt. 284) 630.

In the instant case as shown clearly already in the leading ruling, the reason for the delay in appealing within the time prescribed was as a result of the unfortunate inadvertence of the applicants' former counsel handling the matter. The learned counsel now had argued that the reason for appealing against the judgment was lack of jurisdiction in the trial court. The court is enjoined to grant the application in that circumstance.

It is trite law that the question of jurisdiction is basic and fundamental, and may be raised at any stage of a proceeding and even for the first time in the court of last resort such as this court, as a judgment handed down by a court without jurisdiction is a nullity and therefore void. See *Timitimi v. Amahebe* 14 WACA 379; *Mustapha v. Governor of Lagos State* (1987) 5 SCNJ 143 (1987) 2 NWLR (Pt. 52) 539, *Tukur v. Government of Gongola State* (1989) 4 NWLR

(Pt. 117) 517; *Alhaji Oloyede Ishola v. Ajiboye* (1994) 7-7 SCNJ 1; (1995) 1 NWLR (Pt. 352).

The trial court had earlier held that it had jurisdiction to entertain the matter before it and then proceeded to hear it. But later in its final judgment held that it lacked jurisdiction. This is blowing hot and cold to say the least and it is unacceptable and should be discouraged. The issue of jurisdiction of the trial court must therefore be thoroughly examined and finally resolved before the merit of the case can be entertained. It is trite law that where a court does not have jurisdiction to entertain a matter, its decision amounts to nothing. The entire proceedings and decision are void no matter how well conducted. See; *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341; *Nwankwo & Ors v. Yar'dua & Ors* (2010) 12 NWLR (Pt. 1209) 518; (2010) 6 SCM 121, *Chief Olaba v. Akereja* (1988) 3 NWLR (Pt. 84) 508.

I am in agreement entirely with the applicants counsel that as the issue being sought to canvas is on lack of jurisdiction of the lower court in making the order, and the fact that the right to so appeal is constitutionally guaranteed, the instant application has merit and should be granted.

As stated earlier, the issue of jurisdiction can be raised at any stage of the proceedings. Our rules of practice permit this and this court had stated so over and over again that indeed the issue of jurisdiction can be raised up to the final determination of an appeal by this court. The reason being that the existence or absence of jurisdiction in the court of trial goes to the root of the matter so as to sustain or nullify the decision or order of the trial judge in respect of the subject matter. See *Obikoya v. The Registered of companies and Official Receiver of Pool House GRP* (1975) 4 SC 31; *Adegoke v. Adibi & Anor* (1992) 5 NWLR (Pt. 242) 410; (1992) 6 SCNJ 136.

Having read the facts deposed in the supporting affidavit and the grounds of appeal in the proposed Notice of Appeal, I am satisfied that the applicants have disclosed good and substantial reasons for their failure to appeal within the prescribed period so to do; and that prima facie, the grounds of appeal disclose good cause why the appeal should be entertained.

Without any further ado, for the above brief reason and the detail and fuller reasoning in the lead ruling of my learned brother

Rhodes-Vivour, JSC, I hold that the application has merit and deserves to succeed and be granted. It is granted by me as sought.

I abide by the consequential orders including that on costs.

B

OGUNBIYI JSC

I read in draft the lead Ruling just delivered by my learned brother Rhodes-Vivour, JSC. I also agree that the application should be granted in the interest of justice.

C

The law is trite and well settled that for an applicant to succeed in an application of this nature, he must satisfy the following two conditions:-

1. Good and substantial reasons why he had failed to appeal within the time prescribed by the law.

D

2. Grounds of appeal must prima facie show good cause why the appeal should be heard.

E

It is also the requirement of law that the two conditions stipulated ought to co-exist conjunctively; however and despite the general rule, where the issue involves question of jurisdiction, the merit of the application should be considered as it is the case at hand. In other words, where the grounds of appeal relate to jurisdiction, it is good enough a reason to oblige discretion in favour of the application which may not necessarily require any further reason why the applicant failed to come within the time allowed.

F

The right to appeal is constitutional which should not be denied a party without any just cause. This is even more apparent in the case at hand where the quest to appeal is predicated on the reason of lack of jurisdiction. Jurisdiction is the bedrock of any adjudication and where a court is not imbued with such, it would have no business to do with a case brought before it. The refusal to grant this application would be unjust to the cause of the applicants, who ought to have the benefit of appealing the judgment of the lower court.

G

In the result therefore, I also endorse the ruling by my brother Rhodes-Vivour, JSC, that the application has merit and is hereby granted in terms of the lead ruling.

H