

SUPREME COURT OF NIGERIA
FRIDAY 15TH JUNE, 2012. SC. 105/2012
CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,
B. RHODES-VIOUR, N. S. NGWUTA,
M. U. PETER-ODILI, JJSC

ROTIMI CHIBUIKE AMAECHI APPLICANT
AND

1. CELESTINE OMEHIA
2. CHIEF CYPRIAN CHUKWU RESPONDENTS
3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
4. PEOPLES DEMOCRATIC PARTY

APPEALS - Extension of time - Reasons - From totality of the affidavit evidence including documents exhibited - Applicant has provided good and substantial reasons - For delay to appeal within prescribed period (H1)

COURTS - Discretion - Exercise of - Basis - Exercise of discretion in one case may guide a court - But cannot bind another court in its exercise of discretion - As such exercise depends on the peculiar facts of a given case (H2)

FACTS

By a Motion on Notice filed before the Supreme Court of Nigeria, pursuant to Order 6 Rule 2 of the Supreme Court Rules (as amended), section 22 of the Supreme Court Act and under the inherent jurisdiction of the Court, applicant seeks inter alia for an order extending the time within which he may seek leave to appeal on grounds of facts and/or mixed law and facts against the ruling of the Court of Appeal, Abuja Division, which ruling granted the application for leave to appeal as an interested party against the judgment of the trial Federal High Court, an order granting applicant leave to appeal on grounds of facts and/or mixed law and facts against the ruling of the Court of Appeal Abuja Division, which granted 1st respondent's application for leave to appeal as an interested party, extension of the time within which applicant may appeal and for an

order to stay proceedings of the Court of Appeal in Appeal No. CA/A/299/M/2011 until the hearing and determination of this appeal.

Applicant in his supporting affidavit gave several grounds to support the grant of his application. 1st respondent opposed the application and argued that the same is an abuse of court process as no arguable point of appeal has been shown. 1st respondent stated that he (1st respondent) showed sufficient interest in the Court of Appeal to warrant being let in to appeal as interested party. The situation that led to this application is that the Court of Appeal Abuja Division had in its ruling in Appeal No. CA/A/299/M/2011 granted leave to 1st respondent to appeal as an interested party against the judgment of the Federal High Court in Suit No. FHC/ABJ/CS/656/2010. Appellant's contention is that the affidavit in support of the application in the Court of Appeal did not disclose sufficient interest of 1st respondent to warrant his being allowed to appeal as an interested party.

ISSUE FOR DETERMINATION

Whether or not the application should be granted?

HELD (Unanimously granting the application per
NGWUTA JSC)

APPEALS - Extension of time - Reasons

1. Leave to appeal or application for leave to appeal is not granted as a matter of course. The grant or denial of such application is subject to the judicious exercise of discretion by the court. To succeed in this application, the applicant has to show, by his supporting affidavit, that he has good and substantial reasons for failure to appeal or apply for leave to appeal within the prescribed period. Further, the proposed notice of appeal must have grounds of appeal which show good cause why the appeal should be heard.

Having considered the totality of the affidavit evidence including the documents exhibited as well as the submission of learned counsel for the parties, I have come to the conclusion that the applicant has particularly in the circumstance, reading the date of the judgment close to Christmas and New Year holidays, provided good and substantial reasons for failure to

appeal or apply for leave to appeal within the prescribed period. And I hold that the proposed notice of appeal contains grounds of appeal which show good cause why the appeal should be heard.

In conclusion, I grant the application and made the following orders:

(1) Time is extended till today 15/6/2012 for the applicant to seek leave to appeal on grounds of facts against the ruling of the Court of Appeals, Abuja Division delivered on 20th December, 2011 in Appeal No. CA/A/299/M/2011.

(2) Leave is granted to the applicant to appeal on grounds of facts and/or mixed law and facts against the ruling of the Court of Appeal, Abuja Division, delivered on 20th December, 2011 in Appeal No. CA/A299M/2011.

(3) Applicant is to file the notice of appeal within 30 days from today, 15/6/2012. The 4th relief was withdrawn in and is struck out. (p. 3077 H/3080 H/3081 D)

COURTS - Discretion - Exercise of - Basis

2. As regards the case relied on by the 1st respondent in urging us to dismiss the application, the exercise of discretion in one case may guide a court but cannot bind another court in its exercise of discretion in the case before it. Exercise of discretion will depend on the peculiar facts and circumstances of a given case. (p. 3081 B)

NOTABLE POINTS OF INTEREST

NGWUTA JSC

1. Counsel to maintain respect for the court

Perhaps, I should remind learned counsel of their duty to maintain an unreserved respect for the court. Counsel should not make remarks that could lower the integrity of the court and should not allow clients to do so directly or indirectly. Few things can lower the integrity of the court more than proceeding furtively conducted. Such allegations, where founded on concrete facts as against sentiments and self-interests, should be made to the appropriate authority. (p. 3080 B)

2. Supreme Court judgment – Interpretation by FHC

In any case, the principle, if any, upon which the Federal High Court assumed jurisdiction to interpret the judgment of the apex court of the land appear novel in our jurisdiction and ought to be tested on appeal. (p. 3080 G)

REPRESENTATION

L. O. Fagbemi, SAN with S. I. Dappa-Addo, Esq.; A. O. Popoola, Esq.; B. A. Oyun, Nwakanma, Esq., for the Applicant
J.C.Ezike, Esq., with Bunmi A. Aina-Craig, Esq., Abdulrahman Aliyu, Esq., for the 1st Respondent
O. Jolawo, Esq. with A. Okubote, for the 2nd Respondent
4th Respondent and counsel absent though served.

D

CASES REFERRED TO

Ifekandu v. Uzoegwu (2008) 15 NWLR (pt. 1111) 508
Adili v. State (1989) 8 NWLR (pt. 103) 305
Irabor v. Ogaiaamen (1999) 8 NWLR (pt. 616) 517
Ikenna v. Bosah (1997) 3 NWLR (pt. 495) 503
Agbaje v. Adelekan (1990) 7 NWLR (pt. 164) 595-612
Owodunni v. Registered Trustees of the CCC (2000) 10 NWLR (pt. 675) 315
Momoh v. Olutu (1970) 1 ALL NLR 117
Odeneye v. Efunuga (1990) 12 SCNJ 15
Ariori v. Elemo (1983) 1 SC 13
UBN v. Ahmed (2001) 11 NWLR (pt. 724) 369
Joseph Holdings Ltd. v. Lornmead Ltd. (1995) 1 NWLR (pt. 371) 254
Ojora v. Odunsi (1964) 3 NSCL 34
Adeoji v. Awotorebo (1975) 1 NMLR 54
Nwafor-Orizu v. Anyaegbunam (1978) 5 SC 21
Atiku v. Yola L.G. (2003) 1 NWLR (Pt. 802) 498-499

H

STATUTES & RULES REFERRED TO

Supreme Court Rules (as amended), O. 6 r. 2
Supreme Court Act, ss. 22, 27

LEAD JUDGMENT BY NGWUTA JSC

In a motion on notice “brought pursuant to Ord. 6 Rule 2 of the Supreme Court Rules (as amended) Section 22 of the Supreme Court Act and under the inherent jurisdiction of the honourable court” and filed on 20/3/2012, the applicant prayed the court for the following reliefs:

“(1) An order of this honourable court extending the time within which the appellant/applicant may seek leave to appeal on grounds of facts and/or mixed law and facts against the ruling of the Court of Appeal, Abuja Division delivered on the 20th December 2011 in Appeal No. CA/A/299/M/2011 which ruling granted the application for leave to appeal as an interested party against the judgment of the trial Federal High Court.

(2) An order of this honourable court granting the appellant/applicant leave to appeal on grounds of facts and/or mixed law and facts against the ruling of the Court of Appeal, Abuja Division, delivered on the 20th December, 2011 in Appeal No. CA/A/299/M/2011 granting the 1st respondent’s application for leave to appeal as an interested party.

3. An order of this honourable court extending the time within which the appellant/applicant may appeal

7. That apart from exhibit B, I made several visits and attempts to obtain a copy of the ruling all to no avail.

8. That the above said substantially explains the reason for the delay in bringing this application.

9. That nevertheless after waiting tirelessly for a copy of the said ruling and same was not forthcoming, by which time applicant was already out of time, and applicant is still desirous of appealing against the ruling, hence this application.

10. That pursuant to the applicant’s insistent instruction a notice of appeal has now being (sic) prepared and the leave of this honourable court is sought to file and deem same proper. Attached hereto and marked exhibit is a copy of the proposed notice of appeal.

15(a) That the grounds of appeal in exhibit the proposed notice of appeal raises substantial and recondite issues of law, bordering on jurisdiction, locus standi and constitutional law.

(b) That the appeal to the Supreme Court if successful, is ca-

pable of rendering the entire proceedings and/or appeal before the court below unnecessary.

19 That the Federal High Court proceeded to hear the matter to conclusion in the absence of the 1st respondent herein because he is neither a desirable nor a necessary party.

B *20. That I know as a fact that the issues raised and considered in the trial Federal High Court did not affect 1st respondent's interest in any particular manner than the appellant herein.*

C *21. I equally know as fact that the proposed notice of appeal attached to the 1st respondent's motion exhibit herein does not contain any particulars or grounds which discloses any specific interest of the 1st respondent to entitle him to a favourable consideration of the application.*

D *22. That I know as a fact that election to the Office of Governor of Rivers State held in Rivers State on the 26th April 2011 with the participation of the appellant and 1st respondent herein, winner returned and in fact sworn in.*

E *24. That the 1st respondent failed in the said election and it was after failing that he went to the court below to pursue an application for leave to appeal as an interested party.*

25. I also know as a fact that the 1st respondent herein is no more complaining about the date of the election which has been held on 26th April 2011.

F *26. That the trial Judge in Suit FHC/ABJ/CS/656/2010 merely referred to the name of the 1st respondent as the usurper of the appellant's mandate as declared by the Supreme Court in the case of Amaechi v. INEC (2008) 5 NWLR (Pt. 1080) 227 in his judgment without more.*

G *27. In fact, the trial Federal High Court judgment clearly set out a date for the conduct of the said election by all willing contestants including the 1st respondent.*

H *30. That I know as a fact that the grounds of appeal exhibited by the 1st respondent in the court below are purported error in law, which in no way affected the interest of the applicant personally.*

31. Applicant did not show how the judgment of the trial Federal Court has affected him or his intention to contest the governorship election in Rivers State.

32. That the Court of Appeal, Abuja Division is set to hear the

appeal of the 1st respondent.

33. That unless an order of stay is given against further proceedings, the Court of Appeal will take the appeal. That if the court below takes the appeal, hear (sic) same and gives judgment, there can never be a return to status quo."

Applicant's further affidavit:

"6. That the 1st respondent's counter-affidavit did not disclose any germane and/or sufficient reason for the refusal of the appellant/applicant's application."

The rest of the paragraphs are more or less a recast of some of the averments in the main affidavit except paragraph 17 which avers:

"17. That I know as a fact that the application at the court below is distinct, separate and different from the present application before this honourable court."

Counter-affidavit:

"8. The said applicant filed this application 2 months after the said ruling and cannot blame the court for his conduct.

10. In answer to paragraph 18 of the applicant's affidavit, I rely on paragraph 2 of the 1st respondent's affidavit in support of his motion for leave to appeal, wherein he stated categorically that it was after the judgment of the Federal High Court was published in the mass media that he became aware of the said proceedings and promptly took steps to seek to set it aside.

11. That the 1st respondent told me, and I verily believe him that the proceedings were conducted furtively and no effort was made by the parties thereto to join him."

Further and better counter-affidavit

"5. The applicant's proposed appeal has not been entered herein. 6. There is no prayer before this honourable court for a deeming order and regarding the purported notice of appeal attached to the applicant's application therein."

In his brief which he adopted at the hearing of this application, the learned silk for the applicant, submitted that in hearing an application pursuant to Ord. 2 rule 3 of the Supreme Court Rules, the court bears in mind two essential matters, namely:

(a) Whether the appellant has given good and substantial reason for the failure to appeal within time, and

(b) Whether the applicant has shown prima facie good cause

why the appeal should be heard.

He added that once these conditions are satisfied, this court will grant the application. He cited *Chigozie Ifekandu & Ors v. G Julius Uzoegwu* (2008) 15 NWLR (Pt. 1111) 508 at 517 SC.

Learned senior counsel referred to the affidavit and documentary evidence before the Court and submitted that the applicant has satisfied the two conditions. He relied on *National Inland Waterways Authority v. The Shell Petroleum Development Company of Nigeria Ltd.* (2008) 13 NWLR (Pt. 1103) 48 at 64, 65, He relied On *Adili v. State* (1989) 8 NWLR (Pt. 103) 305 at 331; *Irabor v. Ogaamen* (1999) 8 NWLR (Pt. 616) 517 for the need to seek leave to appeal when Counsel is in doubt as to the classification of his grounds of appeal as ground of mixed law and fact or grounds of fact. He urged the court to exercise its discretion in favour of the applicant. He urged the court to invoke its powers under S.22 of the Supreme Court Act to stay further proceedings in the appeal.

In his own brief which he adopted at the hearing of the application, learned counsel for the 1st respondent described the application as “premised entirely on falsehood and propelled by a feeling of entitlement to hit pay dirt at the Supreme Court” for reason, he stilled in the brief.

Arguing the lone issue in his brief, learned counsel referred to “Ord 2 r. 31 (2)” of the Supreme Court Rules for the need for the applicant for enlargement of time to file in support of the motion an affidavit setting “forth good and substantial reasons for failure to appeal or apply for leave to appeal within the prescribed period,” He referred to what he called “subparagraph (c) of the aforementioned paragraph 31 (2) of the rules” and said there is also a stipulation that there should be annexed to the application “grounds of appeal which show good cause why the appeal should be heard.”

He said the ruling was delivered on 20th day of December. 2011 and the application for a certified ruling of the court below was dated 23rd February, 2012 and for the above, he submitted that the applicant failed to scale the first hurdle to provide good and substantial reasons for failure to appeal or apply for leave to appeal within the time prescribed in the rules, He relied on *Ikenna v. Bosah* (1997) 3 NWLR (Pt. 495) 503 at 513 in which a delay of two months to obtain a certified copy of the ruling before filing the application, was

held not to be good and substantial reason for failure to appeal within the prescribed period.

He argued further that the applicant failed to establish “special circumstances” which made it impossible or impracticable to apply to the court below, Learned counsel submitted further that the applicant cannot cross the second hurdle because the grounds of appeal in the proposed notice of appeal are not arguable, He said that the court below found that the 1st respondent was a party to Amaechi v. INEC (supra), the judgment of which was interpreted by the court below to the effect that the 1st respondent “was a candidate at the 2011 governorship election under the banner of APGA... it is obvious here that the applicant was a party before the Supreme Court in the decision in Amaechi v. INEC.”

In view of the above, he said that the issue of jurisdiction and locus standi raised by the applicant are frivolous and do not constitute special circumstances to warrant the exercise of the court’s discretion in favour of the applicant. He relied on Agbaje v. Adelekan (1990) 7 NWLR (pt. 164) 595-612, 617.

He argued further that the fact that the 1st respondent was a party before the Supreme Court means that he is also a party to the proceedings for interpretation of the judgment of the Supreme Court. He referred to the finding of the Federal High Court that the 1st respondent was a governorship candidate in 2007 and 2011 and argued that the 1st respondent has the locus standi to challenge the judgment which made it possible for the applicant to contest the 2011 elections. He relied on Owodunni v. The Registered Trustees of the CCC (2000) 10 NWLR (pt. 675) 315; Momoh v. Olutu (1970) 1 ALL NLR pg. 117 at 123; Odeneye v. Efunuga (1990) 12 SCNJ at 15, (1990) 7 NWLR (Pt. 164) 618. He relied on Ariori v. Elemo (1983) 1 SC 13, (1983) 1 SCNLR 1 and argued that a right donated by the Constitution to the 1st respondent cannot be waived and that it is the Constitution that confers locus standi on the 1st respondent. He relied on UBN v. Ahmed (2001) 11 NWLR (Pt. 724) 369; Joseph Holdings Ltd. v. Lornmead Ltd. (1995) 1 NWLR (Pt. 371) 254 at 264 in urging the court not to stay proceedings as the grounds of appeal are not arguable. He urged the court to dismiss the application.

Leave to appeal or application for leave to appeal is

not granted as a matter of course. The grant or denial of such application is subject to the judicious exercise of discretion by the court. See *Ojora v. Odunsi* (1964) 3 NSCL 34 at 48. **To succeed in this application, the applicant has to show, by his supporting affidavit, that he has good and substantial reasons**
 B **for failure to appeal or apply for leave to appeal within the prescribed period. Further, the proposed notice of appeal must have grounds of appeal which show good cause why the appeal should be heard.** See *Adeoji v. Awotorebo & Anor* (1975)
 C 1 NMLR 54 at 55.

Based on his supporting affidavits and arguments in his brief, the learned senior counsel for the applicant has urged us to grant the application on the grounds that the applicant has satisfied the two conditions stated above. On the contrary, learned counsel for the 1st
 D respondent, based on his counter-affidavits and argument in his brief, has said that the applicant has failed to scale any of the two hurdles stated above.

I have reproduced paragraphs of each party's affidavit which I consider relevant to the determination of the single issue into which I
 E have resolved the issues formulated by learned Counsel for the parties which I have resolved the issues formulated by learned counsel for the parties which is whether or not the application should be granted.

In paragraphs 5 to 8 of the main affidavit in support of the application and paragraphs 8 to 10 and 12 of the further affidavit in support, which have been reproduced in this ruling, the applicant gave reasons for his failure to appeal or apply for leave to appeal within the prescribed period. I reproduced relevant paragraphs of
 F the 1st respondent's affidavit.
 G

As part of his case against the grant of this application, the 1st respondent in his counter-affidavit stated a reason for his failure to apply to be joined as a party to Suit No. FHC/ABJ/CS/656/2010 from which appeal No. CA/A/299/M/2010 arose.

H In paragraph 10 of the counter-affidavit, in order to show that the 1st respondent has locus standi and would have applied to be joined in the Suit in the Federal High Court, it was averred on his behalf as follows:

"10. In answer to paragraph 18 of the applicant's affidavit, I

rely on paragraph 2 of the 1st respondent's affidavit in support of his motion for leave to appeal wherein he stated categorically that it was after the judgment of the Federal High Court was published in the mass media that he became aware of the said proceedings and promptly took steps to seek to set it aside."

If this is meant to show that the 1st respondent has locus standi and that the application for leave to appeal the order granting him leave to appeal as an interested party ought to be refused, the 1st respondent withheld relevant facts. It cannot be true that the 1st respondent, a party to the proceedings in which the Supreme Court made a finding to the effect that he was a pretender to the seat of power in Rivers State, was not aware of the commencement of the proceedings brought to interpret the judgment against him.

The 1st respondent at all material time is a politician who aspired to and did occupy the seat of power in his State albeit "illegally". Political cases of high profile attract publicity and I find it incomprehensible that the 1st respondent, who did not say he was ill or out of the country at the material time, knew of the matter only from the mass media.

In view of this reply to paragraph 18 of the affidavit in support of the motion and in addition to the applicant's reason for delay the issue of the 1st respondent's locus standi and ipso facto the jurisdiction of the lower court to grant the application for leave to appeal as an interested party ought to be examined on appeal.

First respondent cannot rely on his indolence as a sword to deny the applicant's application for leave to appeal the ruling that granted him leave to appeal as an interested party. He did not say he was held incommunicado anywhere at the material time, nor did he say when and where he learnt of the judgment in the mass media.

In an abortive attempt to excuse his indolence by indulgence the 1st respondent called the integrity of the proceedings in the Federal High Court and ipso facto that of the court itself in question. It was sworn on his behalf and to his knowledge and to the knowledge of learned counsel who acted for him in paragraph of the counter-affidavit, thus;

"11. That 1st respondent told me and I verily believe him that the proceedings were conducted furtively and no effort was made by the parties thereto to join him".

If the 1st respondent was not aware of the proceedings at the material time, he could have hardly known how the proceedings were conducted. And if he was aware of the proceedings, as the facts show he was, why did he wait for any party to apply to join him in the matter? And for the paragraph reproduced above, rather than bring the court and its proceedings in the case into disrepute, learned counsel for the 1st respondent has impugned his own integrity as counsel.

Perhaps, I should remind learned counsel of their duty to maintain an unreserved respect for the court. Counsel should not make remarks that could lower the integrity of the court and should not allow clients to do so directly or indirectly. See *Nwafor-Orizu v. Anyaegbunam* (1978) 5 SC 21. Few things can lower the integrity of the court more than proceeding furtively conducted. Such allegations, where founded on concrete facts as against sentiments and self-interests, should be made to the appropriate authority.

In the further and better counter-affidavit, it was deposed to for the 1st respondent in paragraph 5 and 6 that:

"5. The applicant's proposed appeal has not been entered herein. 6. There is no prayer before this honourable court for a deeming order regarding the proposed notice of appeal to the applicants application herein."

I have stated the requirement for the reliefs sought herein earlier in this ruling. The entry or even filing of appeal is not one of them nor can the application be denied simply because the applicant has not prayed for a deeming order regarding his proposed notice of appeal in the body of his motion.

The import of the Supreme Court judgment is that the 1st respondent who occupied the Seat of Power in Port Harcourt, Rivers State, was a pretender to the exalted Seat. And it is in this respect that the Federal High Court made several references to the 1st respondent in its judgment interpreting that of the apex court.

In any case, the principle, if any, upon which the Federal High Court assumed jurisdiction to interpret the judgment of the apex court of the land appear novel in our jurisdiction and ought to be tested on appeal. See *Holman Bro Nig Ltd v. Kigo Nig Ltd* (1980) 2 NSCC 251 at 259- 260.

Having considered the totality of the affidavit evidence

including the documents exhibited as well as the submission of learned counsel for the parties, I have come to the conclusion that the applicant has particularly in the circumstance, reading the date of the judgment close to Christmas and New Year holidays, provided good and substantial reasons for failure to appeal or apply for leave to appeal within the prescribed period. And I hold that the proposed notice of appeal contains grounds of appeal which show good cause why the appeal should be heard.

As regards the case relied on by the 1st respondent in urging us to dismiss the application, the exercise of discretion in one case may guide a court but cannot bind another court in its exercise of discretion in the case before it. Exercise of discretion will depend on the peculiar facts and circumstances of a given case. See Atiku & Anor v. Yola L.G. (2003) 1 NWLR (Pt. 802) 498-499.

In conclusion, I grant the application and made the following orders:

(1) Time is extended till today 15/6/2012 for the applicant to seek leave to appeal on grounds of facts against the ruling of the Court of Appeals, Abuja Division delivered on 20th December, 2011 in Appeal No. CA/A/299/M/2011.

(2) Leave is granted to the applicant to appeal on grounds of facts and/or mixed law and facts against the ruling of the Court of Appeal, Abuja Division, delivered on 20th December, 2011 in Appeal No. CA/A299M/2011.

(3) Applicant is to file the notice of appeal within 30 days from today, 15/6/2012. The 4th relief was withdrawn in and is struck out.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead ruling of my learned brother, NGWUTA JSC just delivered.

I agree with his reasoning and conclusion that the application has merit and should be granted.

My learned brother has exhaustively dealt with the issues relevant to the determination of the application and I have nothing

useful to add.

I accordingly grant the application and abide by the consequential orders made in the said lead ruling including the order as to costs.

B GALADIMA JSC

I have had the opportunity of reading the draft of the ruling just delivered by my learned brother, Ngwuta JSC.

The facts of this case before us make the exercise of our discretion, in the circumstances imperative and thereby making the order staying proceedings in Appeal No. CA/C/299/2011 before the court below, pending the hearing and determination of this appeal.

D RHODES-VIVOUR JSC

I read in draft the leading Ruling delivered by my learned brother, Ngwuta JSC. There would be no need of me restating the facts as this has been carefully reproduced in the Ruling. The central issue for determination is when or what should a court look for before granting extension of time to appeal. Section 27 of the Supreme Court Act Cap S1 Vol.14 Laws of the Federation of Nigeria reads:

1. Where a person desires to appeal to the Supreme Court he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of court within the period prescribed by subsection (2) of this section that is applicable to the case.

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;

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

3. Where an application for leave to appeal is made in the first instance to the court below, a person making such application shall, in addition to the period prescribed by subsection (2) of this section, be allowed a further period of fifteen days, from the date of the hearing of the application by the court below, to make an application

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

Order 6 Rule 2 of the Supreme Court Rules merely sets out what an application for leave, or extension of time within which to appeal or to seek leave to appeal should contain. The applicant satisfied that requirement. Now, where the applicant is/was unable to appeal or seek leave to appeal within the time prescribed he can still appeal, and this court has jurisdiction under subsection (4) of section 27 of Cap S.15, Vol. 4 Laws of the Federation of Nigeria to grant or refuse the application.

The granting of extension of time is entirely at the discretion of the judge/s who hear the application, and as with all exercise of discretion judges' cannot act as they like, or on their whim and fancies rather they should consider the rules governing the matter under consideration. For an application for enlargement of time to succeed the affidavit in Support of the application and supporting documents must be detailed in showing;

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

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

See *Mobil Oil (Nig.) Ltd. v. Agbadaigho* (1988) 2 NWLR (Pt. 77) p.383; *Oba v. Egberongbe* (1999) 8 NWLR (Pt. 615) p. 485 (a) and (b) must co-exist.

Difficulty in obtaining the judgment appealed against is not a good reason for not appealing within time. On the contrary where there is a good ground of appeal complaining of lack of jurisdiction the application should be granted even if reasons for the delay are not good. Mistake or inadvertence of counsel is also a good reason for the grant of the application.

In granting this application my learned brother said:

"I have come to the conclusion that the applicant has, particularly in the circumstances reading the date of the judgment close to Christmas and New Year holidays, provided good and substantial reasons for failure to appeal or apply for leave to appeal within the prescribed period. And I hold that the proposed Notice of Appeal contains grounds of appeal which show good cause why the appeal should be

heard.”

I am in complete agreement with the above reasoning and if I may add the issue of jurisdiction of the Federal High Court to interpret the judgment of the apex court is not a trial issue.

B In this application for leave to appeal the Rules make it mandatory that the ruling or judgment appealed against must be exhibited. Difficulty in obtaining that judgment is a good reason for failure to seek leave to appeal.

C I would grant this application and I am in complete agreement with the orders proposed by my learned brother N. Ngwuta, JSC.

PETER-ODILI JSC

D This is a motion on notice brought pursuant to Order 6 rule 2 of the Supreme Court Rules (as amended) section 22 of the Supreme Court Act and under the inherent jurisdiction of the honourable court.

The applicant seeks the following reliefs and upon the grounds as stated hereunder, viz:

E (1) An order of this honourable court extending the time within which the appellant/applicant may seek leave to appeal on grounds of facts and/or mixed law and facts against the ruling of the Court of Appeal, Abuja Division delivered on the 20th December, 2011 in
F Appeal No: CA/A/299/M/2011 ruling granted the application of the 1st respondent for leave to appeal as an interested party against the judgment of the trial Federal High Court.

(2) An Order of this honourable court granting the appellant/applicant leave to appeal on grounds of facts and/or mixed law and
G facts against the ruling of the Court of Appeal, Abuja, Division, delivered on the 20th December, 2011 in Appeal No CA/A/299/M/2011 granting the 1st respondents application for leave to appeal as an interested party.

H (3) An Order of this honourable court extending the time within which the appellant/applicant may appeal against the ruling of the Court of Appeal, Abuja Division delivered on the 20th December, 2011 in Appeal CA/A/299/M12011 granting the 1st respondent's application for leave to appeal as an interested party.

(4) An Order of stay of proceedings of the Court of Appeal in

Appeal No: CA/A/299/M/2011 until the hearing and determination of this appeal.

And for such further orders as this honourable court may deem fit to make in the circumstances.

Also take notice that the grounds of the application are:

(1) Applicant is desirous of appealing against the ruling of the Court of Appeal, Abuja Division delivered on 20th December, 2011 in Appeal No: CA/A/299/M/2011; B

(2) Upon the delivery of the said ruling, applicant made concerted efforts to get a copy of same and also applied for a certified copy of the said ruling to enable him prepare a detailed and comprehensive notice of appeal and appeal against same but to no avail until the 19th March, 2012; C

(3) The non - availability of the Certified True Copy of the said ruling made it practically impossible for Applicant to seek leave and appeal against the said ruling of 20th December, 2011 within time; D

(4) That appellant/applicant is in doubt as to whether the grounds of appeal are pure grounds of law or (grounds) of mixed law and facts;

(5) Appellant/applicant is in doubt as to which the ground of appeal are pure grounds of law or grounds of mixed law and facts. E

(6) Leave to appeal is necessary in the circumstance of doubt expressed above;

(7) The grounds of appeal are substantial;

(8) Unless the proceedings of the lower court is stayed pending the determination of the applicants ' appeal in this court, situation of complete helplessness will be foisted on the Supreme Court and the judgment of the Supreme Court rendered nugatory. F

Facts G

The ruling (exhibit BA) in supporting affidavit leading to the instant application and/or appeal was delivered by the Court of Appeal, Abuja Division in respect of the 1st respondent's application (exhibit D) seeking for leave to appeal as an interested party against the judgment of the trial Federal High Court of 7th October, 2012 in suit No: FHC/ABJ/CS/6S6/2010, which exhibited the said motion for leave to appeal as an interested party. H

In the said ruling, the Court of Appeal Abuja Division granted leave to the 1st respondent to appeal as an interested party against

the Federal High Court judgment since reference was made on the 1st respondent in the decision of the trial court.

According to the appellant/applicant, the affidavit in support of the application in the court below did not disclose sufficient interest or grievance of the 1st respondent and none was demonstrated
B to the court of Appeal.

The 1st respondent's stance is that this application is an abuse of court's process as the applicant has not shown an arguable point of appeal while the 1st respondent had shown sufficient interest in
C the lower court to warrant their being let in to appeal as interested party.

For a clearer picture of the materials available in this application for and against it seems necessary that the supporting affidavit, further affidavit counter affidavit and further and better counter affidavit are put on display. They are as follows:
D

"Affidavit in support

I, Ashaolu Gbenga, Male, Christian. legal practitioner and Nigerian Citizen of 4th Floor, Rivers State Office Complex, Plot 83, Ralph Shodeinde Street, Opposite Federal Ministry of Finance, Central Area, Abuja do hereby make Oath and state as follows:
E

(1) That I am a legal practitioner in the law firm of Lateef O. Fagberni, SAN lead counsel to the appellant/applicant herein.

(2) That by virtue of my involvement in this case as a legal practitioner, I am very conversant with the facts deposed herein.
F

(3) That I also have the consent, information and authority of the appellant/applicant and my employer to depose to this affidavit.

*(4) That on the 20th day of December, 2011, the Court of Appeal. Abuja division delivered her ruling granting the 1st respondent's application seeking for leave as an interested party against the judgment of the trial Federal High Court in Suit No: FHC/ABJ/CS/6S612010. (Copy of the record of proceedings of 20th December, 2011 evidencing the grant of the application for leave to appeal as an interested party against the judgment of the Federal High Court is
G attached and marked "Exhibit A"*
H

(5) That the applicant being dissatisfied with the said ruling of the court below made all efforts to get a copy of the said ruling of the court to enable him appeal against same promptly by filing a comprehensive notice of appeal against same within time but to no avail.

(6) That I know as a fact that up till Friday, 16th March, 2012 Certified Copy of the ruling was still elusive in spite of the application for same and all our efforts. Copy of the said application is attached herewith and marked "Exhibit B1".

(7) That apart from Exhibit B, I made several visits and attempts to obtain a copy of the ruling all to no avail. B

(8) That the above said substantially explains the reason for the delay in bringing this application.

(9) That nevertheless after waiting tirelessly for a copy of the said ruling and same was not forthcoming, by which time, applicant was already out of time and applicant is still desirous of appealing against the ruling, hence this application. C

(10) That pursuant to the applicants insistent instruction, a notice of appeal has not been prepared and the leave of this honourable court is sought to file and deem same proper. Attached hereto and marked "Exhibit E is a copy of the proposed notice of appeal. D

(11) That it was only on Monday, the 19th March, 2012 that I was able to obtain a copy of the decision of the lower court now sought to be appealed against. A copy of the said ruling is herewith attached and marked "exhibit B1" E

(12) I know as a fact that the applicant has also been to our chambers several times to urge that appeal be lodged against the decision of the Court of Appeal delivered on 20th December, 2011.

(13) That Barrister Lateef Fagbemi, SAN informed me in chambers at 4th Floor, River State Office Complex, Plot 83, Ralph Shodeinde street, Opposite Federal Ministry of Finance, Central Area, Abuja at about 12 noon on 19th March, 2012 and I verily believe him as follows: F

(i) That he is in doubt as to whether the proposed grounds of appeal are pure grounds of law or of mixed law and fact; G

(ii) That in the circumstances mentioned above, wise counsel dictates that leave be sought to appeal;

(iii) The grounds of appeal are substantial.

That the entire application for leave to appeal as an interested party filed by the 1st respondent in the court below together with all the exhibits which included the judgment of the trial Federal High Court in Suit FHC/ABJ/CS/65612010 is attached herewith and marked as exhibit D". H

(15) *That I was further informed in chambers located at 4th Floor, Rivers State Office Complex, Plot 83 Ralph Shodeinde Street, Opposite Federal Ministry of Finance, Central Area, Abuja at about 12:00pm on the 19th March, 2012 by Lateef O. Fagbemi, SAN and I verily believed him as follows;*

B (a) *That the grounds of appeal in “exhibit E” - the proposed notice of appeal, raise substantial and recondite issues of law, bordering on jurisdiction, locus standi and constitutional law.*

C (b) *That the appeal to the Supreme Court, if successful is capable of rendering the entire proceedings and/or appeal before the court below unnecessary:*

(c) *That this honourable court has the power to grant this application.*

D (16) *That the applicant is able, ready, willing and desirous of prosecuting his appeal to the Supreme Court and would take all legitimate steps to ensure the early determination of the appeal at the Supreme Court.*

E (17) *That the leave of this honourable court is required to enable the applicant appeal against the ruling of the Court of Appeal of 20th December, 2011 and I strongly believe that it will serve the interest of justice if the said leave is granted.*

(18) *That the 1st respondent herein never made any application to be joined in the suit at the Federal High Court.*

F (19) *That the Federal High Court proceeded to hear the matter to conclusion in the absence of the 1st respondent herein because he is neither a desirable nor a necessary party.*

G (20) *That I know as a fact that the issues raised and considered in the trial Federal High Court did not affect 1st respondent’s interest in any peculiar manner than the appellant herein.*

H (21) *I equally know as fact that the proposed notice of appeal attached to the 1st respondent’s motion “exhibit D” herein does not contain any particulars or grounds which discloses any specific interest of the 1st respondent to entitle him to a favourable consideration of the application.*

(22) *That I know as a fact that election to the office of Governor of Rivers State held in Rivers State on the 26th April, 2011 with the participation of the appellant and 1st respondent herein: a winner returned and in fact sworn in.*

(23) *That I know as a fact that the 1st respondent herein was no longer a member of the 1st respondent having resigned his membership to contest the said Governorship office under the platform of another political party, namely the All Progressive Grand Alliance (APGA) even before the filing of his motion to appeal as an interested party in the court below.* B

(24) *That the 1st respondent failed in the said election and it was after failing that he went to the court below to pursue an application for leave to appeal as an interested party.*

(25) *I also know as a fact that the 1st respondent herein is no more complaining about the date of the election which has been held on 26th April, 2011.* C

(26) *That the trial judge in suit FHC/ABJ/CS/656/2010 merely referred to the name of the 1st respondent as the usurper of the appellant's mandate as declared by the Supreme Court in the case of Amaechi v. INEC (2008) 5 NWLR (Pt. 1080) 227 in his judgment without more.*

(27) *In fact, the trial Federal High Court judgment clearly set out a date for the conduct of the said election by all willing contestants including the 1st respondent.* E

(28) *I know as a fact that the 1st respondent was at all times the Governorship candidate of All Progressive Grand Alliance (APGA) in Rivers State.*

(29) *Apart from the processes referred to above, I have also thoroughly read through the proposed notice of appeal attached to "exhibit D" the motion of the 1st respondent, as applicant in the court below and discovered that none of the complaints in the 1st respondent's said application personally affects the interest of the 1st respondent.* F

(30) *That I know as a fact that the grounds of appeal exhibited by the 1st respondent in the court below are purported error in law, which in no way affected the interest of the applicant personally.* G

(31) *Applicant did not show how the judgment of the trial Federal High Court has affected him or his intention to contest the governorship election in Rivers State.* H

(32) *That the Court of Appeal Abuja Division is set to hear the appeal of the 1st respondent.*

(33) *That unless an order of stay is given against further pro-*

ceedings the Court of Appeal will take the appeal.

(34) That if the court below takes the appeal, hear same and gives judgment, there can never be a return to status-quo.

(35) That I swear to this affidavit conscientiously believing the facts hereof to be true and correct in accordance with the Oaths Act.

B The further affidavit riled on 13/4/12 is quoted verbatim as follows:

“I Gbenga Ashaolu, Male, Christian, legal practitioner and Nigerian Citizen of 4th floor, Rivers State Office Complex, Plot 83, Ralph Shodeinde street, Opposite Federal Ministry of Finance. Central Area,

C Abuja do hereby make Oath and state as follows:

(1) That I am a legal practitioner in the law firm of Lateef O. Fagbemi, SAN counsel to the appellant/applicant herein.

(2) That by virtue of my position. I am conversant with the facts deposed herein, which is further to my earlier affidavit in sup-
D port of the instant application.

(3) That I have the consent, information and authority of the appellant/applicant as well as that of my employer to depose to this further affidavit.

(4) That I have seen, read and understood the 1st respondent’s counter affidavit as well as the further and better counter affidavit in opposition to the appellant/applicant’s motion on notice dated
E 16th March, 2012 and filed on the 20th March, 2012.

(5) That the 1st respondent’s counter affidavit did not disclose
F any genuine and/or sufficient reason for the refusal of the appellant/ applicant’s application.

(6) That I know as a fact that Appeal CA/A/293/2011 filed by the appellant/applicant before the lower court is distinct, separate and different from the 1st respondents appeal No: CA/A/299/M/2011
G against appellant/ applicant appealed, and both maintain their individual identity.

(7) That I know as a fact that the appellant/applicant, after the delivery of the lower court ruling of the 20th day of December, 2011, instructed his counsel to appeal against same, and I did, in further-
H ance of same, orally requested for a copy of the same ruling but was told by the registry of the court below that same was not yet available.

(8) That I know as fact that after the ruling of the 20th day of December 2011, the court below went on Christmas and New Year

break/vacation and did not resume until sometime in January, 2012 after the expiration of the 14 days statutory period within which applicant may appeal.

(9) That I know as fact that immediately after the Christmas and New Year holidays, I made frantic and serious effort to secure a copy of the said ruling delivered on the 20th day of December, 2011 from the registry of the court below but could only get a copy of the records of proceedings (exhibits A attached to the affidavit in support of this motion on notice) instead of the ruling.

(10) Contrary to paragraph 7 of the 1st respondent's counter affidavit I know as a fact that the 1st respondent also found it difficult in getting a copy of the said ruling of 20th December, 2011, and was also unable to exhibit same in his application of 30th January, 2012 before the lower court "exhibit C" attached to his counter affidavit and had to settle instead for the record of proceedings.

(11) That the appellant/applicant's counsel did not get a copy of the ruling from the registry of the lower court until the 19th day of March, 2012 in spite of all his effort.

(12) That I know as a fact that the appellant/applicant's time within which he may appeal against an interlocutory decision was 14 days which had elapsed while he was still waiting endlessly for a copy of the ruling.

(13) All efforts made by the appellant/applicant to secure a copy of the said ruling (exhibit B1 attached to the motion on notice) within time to appeal against the said ruling proved abortive.

(14) That I know as a fact that the appellant/applicants' application at the court below being referred to by the 1st respondent herein in paragraph 3 of his further and better counter affidavit was simply for a further stay of proceedings at the Court of Appeal pending the determination of this present application before this honourable court in line with respect for hierarchy of courts.

(15) That I also know as a fact that this instant motion on notice before this honourable court is praying inter alia for stay of further proceedings pending the determination of this appeal and was duly filed first in time.

(16) That I know as a fact that the application at the court below is distinct, separate and different from the present application before this honourable court.

(17) That the appellant/applicant's instant application is competent meritorious and in good faith.

(18) That I depose to this affidavit in good faith believing the contents to be true and correct in accordance with Oaths Act, 2004".

B For balance the Counter affidavit of the 1st respondent filed on 16/8/11 is this:

I, C. Okwy Ejezie, male, Christian, Nigerian, Legal Practitioner of No. 24 Campbell Street, Lagos, doth hereby make oath and state as follows.

C 1. I am a Legal Practitioner in the Chambers of Messrs. J. C. Ezike & Co who are the solicitors and counsel to the 1st respondent herein.

D 2. By virtue of my position I am fully conversant with the facts of this case in which I have obtained the consent of the said Law Firm and the authority of the 1st respondent to depose to this counter-affidavit.

3. I have seen and read the affidavit of Ashaolu Gbenga Esq which was deposed to on behalf of the applicant on 20th March 2012.

E 4. That the applicant failed to disclose in his affidavit and brief of argument that he had appealed from the same decision of the Federal High Court which the Court of Appeal has granted the 1st respondent leave to appeal from and which the applicant opposes. Now shown to me attached hereto and marked exhibit "A" is a copy
F of the notice of appeal filed by the applicant.

5. That the said appeal has been entered as Appeal No. CA/A/293/2011 and the applicant had since 7/9/2011 filed his appellant's brief of argument as witness the Certified True Copy of the same
G which is now shown to me attached hereto and marked exhibit "B".

6. The 1st respondent has also filed and served his own brief of argument and by a motion in that behalf applied to consolidate the 2 appeals on the same decision.

H 7. Even though I live in Lagos, I had no difficulty in getting a copy of the ruling from which the applicant has appealed.

8. The said applicant filed his application 2 months after the said ruling and cannot blame the court for his conduct.

9. It was only when the applicant and his counsel were served our brief of argument and motion that they hurriedly filed a raft of

applications in the Supreme Court and the Court of Appeal seeking to derail the appeal of the 1st respondent.

10. In answer to paragraph 18 of the applicant's affidavit, I rely on paragraph 2 of the 1st respondent's affidavit in support of his motion for leave to appeal wherein he stated categorically that it was after the judgment of the Federal High Court was published in the mass media that he became aware of the said proceedings and promptly took steps to seek to set it aside. B

11. The 1st respondent told me, and I verily believe him that the proceedings were concluded furtively and no effort was made by the parties thereto to join him. C

12. The said affidavit of the 1st respondent belies the opinions, arguments and conclusions of the said deponent for the applicant contained in paragraphs 15,16,17,19,20,21,22,23 24, 25,26,27,29,30,31,32. D

13. I depose to this counter-affidavit in good faith believing same to be true and correct in accordance with the Oaths Act.

The further and better counter-affidavit filed on 28/3/12 is shown below, viz:

"I, Aramide Adeogun, Male, Christian, Nigerian Citizen and Legal Practitioner of No. 24 Campbell Street, Lagos Island, Lagos State, doth hereby make oath and state as follows:

1. I am a Legal Practitioner in the Law Firm of Messrs. J. Ezike & Co and who are the Solicitors and counsel to the 1st respondent herein and by virtue of my position I am fully conversant with the facts of this case. F

2. I have the consent of the said law firm and the authority of the 1st respondent to depose to this further and better counter-affidavit in furtherance to the counter affidavit filed on selfsame 26/03/12 and deposed to by C. Okwy Ejezie Esq on behalf of the respondent herein. G

3. The applicant did not disclose in the affidavit deposed on his behalf before this honourable court, that on the selfsame 20/03/12 on which he filed his application herein, he also filed another application in the court below in which he sought a relief similar to his prayer 4 herein by which he seeks an order of stay of the proceedings in the court below. Now shown to me, attached hereto and marked exhibit "T" is a copy of the applicant's motion paper in the court below. H

4. *The applicant had never before 20/03/12 applied for a stay of proceedings in the court below.*

5. *The applicant's proposed appeal has not been entered herein.*

B 6. *There is no prayer before this honourable court for a deeming order regarding the proposed notice of appeal attached to the applicant's application herein.*

C 7. *I depose to this Further and Better Counter-Affidavit in Opposition to the applicant's motion in good faith and conscientiously believing same to be true and correct in accordance with the Oaths Act".*

D At the hearing of the motion on notice aforesaid on the 22nd day of May 2012, learned counsel for the appellant/applicant Lateef Fagbemi SAN adopted their brief filed on 20/3/12 in which was framed a sole issue namely:

Whether or not it is appropriate to grant the applicant's application herein in the light of the materials before this honourable court?

E For the 1st respondent, learned counsel on his behalf, Mr. James C. Ezike adopted their reply brief tiled on 26/3/12 wherein the 1st respondent formulated a single issue, viz:

Whether in the circumstances, the application herein is grantable?

F It can be seen that the two issues are substantially the same though created differently by either party. Therefore I would go in straight for the arguments as presented by counsel on each side of the divide.

G Mr. Lateef Fagbemi SAN for the applicant submitted that it is most appropriate for this court to grant the application sought in the peculiar circumstances of this case. That the Supreme Court when hearing application under Order 2 rule 31 of the Supreme Court Rules bears in mind two essential matters namely:

- H (a) Whether the applicant has given good and substantial reason for the failure to appeal within time, and
(b) Whether the applicant has shown prima facie good cause why the appeal should be heard.

He said once the above conditions are satisfied this court will grant the application. That in the case in hand the applicant has so met the two requirements from the affidavit and documentary evi-

dence before the court. The cited the cases:

1. Chidozie Ifekaudu & Anor v. Julius Uzoegwu (2008) 15 NWLR (Pt. 1111) 508 at 517 SC

2. National Inland Waterways Authority v. The shell Petroleum Development Company of Nigeria limited (2008) 13 NWLR (Pt. 1103) 48 - 64

Mr. Fagbemi SAN went on to state that where counsel is in doubt as to the exact nature of a ground of appeal whether same is of mixed law and fact or otherwise it is advisable to seek leave of the court and that is the prevailing situation. He referred to paragraph 13 of the supporting affidavit; Adili v. State (1989) 8 NWLR (Pt. 103) 305 at 331; Irhabor v. Ogaïamien (1999) 8 NWLR (Pt. 6 I 6) 517.

Learned Counsel for the applicant however withdrew relief No.4 for an order to stay the proceedings on the Court of Appeal until the hearing and determination of this appeal. This not being objected to the relief was struck out.

Continuing, learned senior advocate said the grounds of appeal contended in the proposed notice of appeal “exhibit C” are strong and substantial bordering on jurisdiction, locus standi and rec-ondite issues of law giving rise to this appeal. That the affidavit evidence and documents attached to the motion on notice also clearly justify the grant of the application herein.

In response, Mr. Ezike for the 1st respondent said that Order 2 Rule 31 (2) of the Rules of Supreme Court demand that in every application for enlargement of time, should be supported by an affidavit setting forth good and substantial reasons for failure to appeal or apply for leave to appeal within the prescribed period. Also that sub paragraph (c) of the said paragraph 31(2) of the Rules also stipulates that there should be annexed to such an affidavit grounds of appeal which show good cause why the appeal should be heard. That the applicant having conceded in paragraphs 1.02(1), 1.02(2), 1.02(3) and 102(7) of its brief herein as well as in its affidavit that the ruling appealed from was delivered on the 20th of December 2011, that its belated application for the Certified True Copy of the Ruling of the court below by its exhibit “B” which is dated 23rd February 2012 amounts to a concession that the application had failed.

Learned counsel for the 1st respondent said the applicant having failed to scale the first hurdle cannot continue the race in

accordance with the rules having had two weeks to file but rather did not apply until after 2 months. He cited *Ikenna v Bosah* (1997) 3 NWLR (Pt. 495) 503 at 513.

That the applicant has equally failed to establish special circumstances which make it impossible or impracticable to apply to the court below. He stated on that assuming this court indulges the applicant as to saying they showed diligence the second hurdle cannot be crossed in that the grounds in the proposed grounds of appeal are not arguable. He cited *Agbaje v. Adelekan* (1990) 7 NWLR (Pt. 164) 595 at 616 - 612; *Owodunni v. The Registered Trustees of C.C.C.* (2000) 10 NWLR (Pt. 675) 315.

Mr. Ezike said that the 1st respondent has the locus standi to seek to appeal as an interested party on the interpretation of a suit in which he was a principal participant and that his undoubted continuous and continuing aspiration to the office of Governor also gives him the locus standi to challenge such a judgment. He cited *CPC v. Nyako* (2011) 6 - 7 SC (Pt.II) 193 at 213 - 214, (2011) 17 NWLR (Pt. 1277) 451; *Momoh v. Olotu* (1970) 1 ALL NLR 117; *Odeneye v. Efunuga* (1990) 12 see at 15, (1990) 7 NWLR (Pt. 164) 618; *Adefulu v. Oyesile* (1989) 5 NWLR (Pt. 122) 377.

Mr. Ezike of counsel further contended that the applicant's 3rd ground of appeal and its conflicting particulars have nothing to do with the locus standi of the 1st respondent and is a mere allegation of a "waiver". That in the 1st respondents' proposed notice of appeal attached to the applicants' motion herein, grounds 1, 3, 4, and 5 dwell on the crucial issue of jurisdiction while ground 2 is a question of constitutional interpretation which issues cannot be waived, He cited *Okolo v. UBN* (2004) 3 NWLR (Pt. 859) 87 at 108; *Ariori v. Elemo* (1983) 1 SC 13, (1983) 1 SCNLR 1.

For the 1st respondent was canvassed that the affidavit of the applicant is no more than the deponent's opinions, conclusions and arguments and should be discountenanced with the result that there is nothing left to carry the application herein. He cited *Governor of Lagos State v. Ojukwu* (1986) 1 NWLR (Pt. 18) 62] at 640 - 641; *Josien Holdings v. Lornamead* (1995) 1 NWLR (Pt. 371) 254 at 205.

In this contest based on Order 2 rule 31, Rules of the Supreme Court, while the applicant posit that they have met the requirements stipulated in the Rules aforesaid namely:

(a) That the applicant has given good and substantial reason for the failure to appeal within time, and

(b) That the applicant has shown prima facie good cause why the appeal should be heard.

The 1st respondent on their part disagreed saying the applicant was not vigilant and his explanation for the delay was not good enough apart from the fact that there is no substantial arguable ground for the appeal. B

Going by what has been made available before court in terms of the necessary materials, the applicants have shown the extent to which they went to get at a copy of the ruling appealed against. Also to show their displeasure in the ruling which was not made available to be utilized the next best thing, the record of proceedings which they could get at. Clearly, the delay in filing their appeal within time had adequately been explained. C D

Also in the matter of the second requirement in an application such as this they proffered sufficient materials by affidavit evidence and the exhibits viz:

(1) The record of proceedings by 20th December, 2011 evidencing the grant of the application for leave to appeal as an interested party, exhibit A; E

(2) Application of 16th March, 2012 for a copy of the ruling, exhibit B.

(3) The visits made by the deponent of the supporting affidavit to get at the ruling. F

(4) The proposed notice of appeal, exhibit C.

(5) A copy of the ruling obtained on 19th March, 2012 marked exhibit B1.

The application was from the proposed grounds of appeal with the back - up documents including the ones stated above established that there is indeed prima facie good cause why the appeal should be heard. The proposed notice of appeal exhibit C has pushed forward strong and substantial grounds bordering on jurisdiction, locus standi and some peculiar issues of law none of which can be ignored. The 1st respondent's position and arguments seem centred on when the appeal if allowed is heard on the merits. That is not the stage at this preliminary point, since the possibility or otherwise of success of the appeal is not our concern nor relevant at this point in time, I rely on G H

the following cases:

1. Chidozie Ifekandu & Anor v. Julius Uzoegwu (2008) 15 NWLR (Pt. 1111) 508 at 517 SC.

2. National Inland Waterways Authority v. The Shell Petroleum Development Company of Nigeria Limited (2008) 13 NWLR (Pt. 1103) 48 64.

From the foregoing and the better articulated lead ruling of my learned brother, Nwali Sylvester, Ngwuta J.S.C., I answer the question posed in the sole issue positively and in favour of the applicant. The application is granted as I abide by the orders made in the lead ruling.

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