

***Computation of Time to Appeal – Whether from Date of Judgement or Service of Judgement***

In the Supreme Court of Nigeria  
Holden at Abuja  
On Friday, the 11<sup>th</sup> Day of April, 2025

**Before Their Lordships**  
Mohammed Lawal Garba  
Adamu Jauro  
Jummai Hannatu Sankey  
Moore Aseimo A. Adumein  
Abubakar Sadiq Umar  
*Justices, Supreme Court*

**SC/342/2011**

**Between**

**BAYNAN (NIGERIA) LIMITED      ...      APPELLANT**

**AND**

**GERALD ONWUEKWEIKPE      ...      RESPONDENT**

***(Lead judgement delivered by Honourable Abubakar Sadiq Umor, JSC)***

**Facts**

The Appellant and the Respondent were parties to an arbitration proceedings, wherein the Appellant was the Respondent, while the Respondent in this appeal was the Claimant. On 1<sup>st</sup> June 2001, the sole Arbitrator rendered an award in favour of the Respondent herein, in the sum of ₦12,912,000.00 (*Twelve Million, Nine Hundred and Twelve Thousand Naira Only*). Consequently, the Respondent filed a Motion on Notice dated 12<sup>th</sup> July 2001 before the Federal High Court, praying the

court to make the arbitral award a final judgement of the court. In response, the Appellant filed a Notice of Preliminary Objection, urging the trial court to set aside the arbitral award. However, the Appellant failed to attend court proceedings on five consecutive occasions. Accordingly, on 11<sup>th</sup> December 2002, in the absence of the Appellant, the trial court struck out the Preliminary Objection for want of diligent prosecution and granted the Respondent's prayers.

In a surprising turn of events, five years and eight months later, the Appellant filed a Notice of Appeal dated 2<sup>nd</sup> September 2008 before the Court of Appeal, Port Harcourt Judicial Division seeking to set aside the judgement of the trial court. In response, the Respondent filed a Notice of Preliminary Objection challenging the jurisdiction of the Court of Appeal to entertain the appeal on the ground that being a civil matter, it was filed outside the three-month period prescribed under Section 24(2)(a) of the Court of Appeal Act, 2004. The Court of Appeal upheld the objection of the Respondent and dismissed the appeal for being incompetent. Dissatisfied with the decision of the Court of Appeal, the Appellant further appealed to the Supreme Court.

### **Issue for Determination**

The Supreme Court considered a lone issue for the determination of the appeal, to wit:

*Whether the lower court was right to have dismissed the Appellant's appeal?*

### **Arguments**

Arguing the sole issue, the Appellant contended that the judgement of the trial court was delivered in its absence and that it only became aware of the said judgement on 25<sup>th</sup> August 2005, when the Respondent served its Managing Director with the said judgement. Thereafter, the Appellant filed a Notice of Appeal against the judgement at the lower court on 2<sup>nd</sup> September 2008. The Appellant argued further that, by the proper interpretation of Section 24(2)(a) of the Court of Appeal Act 2004, a Notice of Appeal in a civil matter need not be filed within 3 (three) months from the date of the decision appealed against, unlike in a

criminal matter where an appeal must be entered within ninety (90) days from the date of the decision appealed against. It was contended further on behalf of the Appellant that by virtue of Section 294 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Appellant was entitled to be notified of the judgement of the trial court by the Registrar of the trial court, but that this was not done. Relying on the decision of court in **OHUKA v STATE (1988) 1 NSCC 288 at 294**, the Appellant argued that the court must consider the peculiar circumstances of each case to determine whether a Notice of Appeal was filed within the prescribed period. In addition, the Appellant submitted that the time within which to file an appeal does not begin to run until the Appellant has notice of the decision being appealed against, relying on **ALADEGBEMI v FASANMADE (1988) 1 NSCC 1087 AT 1104**.

Finally, the Appellant, while urging the Supreme Court to set aside the decision of the lower court, relied on the authority of **BURAMOH OLORIODE v SIMEON OYEGBI & ORS (1984) 1 SCNLR 390** to submit that assuming but not conceding that the appeal before the lower court was incompetent, the lower court ought to have struck out the appeal rather than dismissing it.

The Respondent, on the other hand, contended that it was untrue for the Appellant to claim that it only became aware of the judgement of the trial court in August 2008. The Respondent argued that by virtue of the trial court proceedings of 24<sup>th</sup> June 2002, the Appellant reasonably had notice that judgement would be delivered on 11<sup>th</sup> December 2002. He submitted further that although the right of appeal is constitutional, it is not absolute and must be exercised in accordance with the provisions of the Court of Appeal Act, 2004 and the Court of Appeal Rules, 2007. In this regard, the Respondent argued that since the Court of Appeal Act mandates that a Notice of Appeal must be filed within 3 (three) months when the appeal is against a final decision of the trial court, the Appellant's right of appeal became extinguished due to its failure to file the appeal within the prescribed period. He posited that after the expiration of the three-month timeline, such a right can only be revived where the Court of Appeal grants leave for enlargement of time to appeal upon a formal application.

To support his argument that the Supreme Court should dismiss the appeal, the Respondent relied on Section 24(2)(a) of the Court of Appeal Act, 2004; **J.O. EVESON v SANUSI (1984) 4 SC 115 AT 136**; **AKINSANYA v UBA LTD. (1986) 4 NWLR (PT. 35) 273**; and **ESUKU v KEKO (1994) 4 NWLR (PT. 340) 625 AT 632**.

### **Court's Judgement and Rationale**

In resolving the sole issue identified for determination, the Supreme Court held that *by the provisions of Section 24(2)(a) of the Court of Appeal Act, 2004, an appeal against the final judgement of a trial court must be filed within three (3) months of the delivery of such judgement, and not 5 (five) years thereafter as was done by the Appellant in this case.* The court relied on **ONWUZULIKE v STATE (2020) LPELR-52016(SC)**; **OLALI v NIGERIAN ARMY (2020) LPELR-50631(SC)**; **OSUN STATE GOVERNMENT v DANLAMI NIGERIA LTD. (2007) 9 NWLR (PT. 1038) 66**; and **JALLCO LTD. v OWONIBOYS TECHNICAL SERVICES LTD. (1995) 4 NWLR (PT. 391) 534**. Their Lordships observed that if indeed the Appellant was unaware of the decision of the trial court until August 2008, the appropriate step would have been to file a motion for enlargement of time within which to appeal and to depose to the facts of such unawareness in an affidavit in support of that application. The court held that the Appellant could not “gate-crash” a Notice of Appeal at the lower court without first obtaining the requisite leave.

Relying on its earlier decisions in **INCAR (NIG.) PLC & ANOR v BOLEX ENTERPRISES (NIG.) LTD. (2001) 12 NWLR (PT. 728) 646**; **ODOFIN & ORS v AGU & ORS (1992) 3 NWLR (PT. 229) 350**; and **AKEREDOLU v AKINREMI (1986) 2 NWLR (PT. 25) 710**, the Supreme Court affirmed the decision of the Court of Appeal that the Appellant's Notice of Appeal was incompetent. Consequently, the court held that, since there was no competent Notice of Appeal before the lower court, there was, in law, no valid appeal - **CBN v OKOJIE (2004) 10 NWLR (PT. 882) 488**; **OLANREWAJU v BON LTD. (1994) 8 NWLR (PT. 364) 622**; **TUKUR v GOVERNMENT OF GONGOLA STATE (1988) 1 NWLR (PT. 68) 39**.

In considering the proper order which the lower court ought to have made in the circumstance, the Supreme Court held that the proper order to be made where an

appeal has not been heard on its merits is one striking out the appeal, and not an order of dismissal, in line with the decisions in **DICKSON OGUNSEINDE VIRYA FARMS LTD. v SOCIETE GENERALE BANK LTD. & ORS (2018) 9 NWLR (PT. 1624) 230**; **PETGAS RESOURCES LTD. v MBANEFO (2017) LPELR-42760(SC)**; and **FHOMO (NIG.) LTD. v ZENITH BANK (2019) LPELR-47983(SC)**. Invoking its general powers under Section 22 of the Supreme Court Rules to determine the appeal on its merit and make any order as it deems fit, Their Lordships held that given the peculiar circumstances of this case, wherein the Appellant was given multiple opportunities to be heard through several adjournments but failed to utilize same, exhibiting a disinterested attitude and being repeatedly absent without representation or explanation, the Supreme Court held that it will not be in the interest of justice to afford the Appellant another opportunity of delaying justice in the case. The court stressed that there must be an end to litigation and that the antics of the Appellant were aimed at perpetuating endless proceedings. The cases of **ADIGUN v A-G OYO STATE (NO. 2) (1987) 2 NWLR (PT. 56)**; **TERIBA v ADEYEMO (2010) 3 FWLR (PT. 540) 7167**; **CIVIL DESIGN CONSTRUCTION (NIG.) LTD. v SCOA (NIG.) LTD. (2007) LPELR-870(SC)**; and **BUSWELL v GOODWIN (1971) 1 ALL ER 418 AT 421**, were relied on.

A party who abandons its case cannot later invoke the constitutional right to fair hearing as a shield for its own negligence or indolence. The right to fair hearing guaranteed under Section 36(1) of the 1999 Constitution does not oblige a court to compel a recalcitrant party to be heard; rather, it is sufficient for the court to provide an enabling environment for the party to present its case. A party who fails to take advantage of such an opportunity cannot accuse the court of denying fair hearing. Reliance was placed on **MFA v INONGHA (2014) 4 NWLR (PT. 1397) 343**.

Regarding the submission on notification of delivery of judgement by the court, the Supreme Court rejected the arguments of the Appellant that pursuant to Section 294(1) of the 1999 Constitution, it ought to have been notified by the trial court of the judgement. The apex court held that *the obligation of the court under that section is merely to make copies of its judgements or rulings available within seven (7) days of delivery, so that parties can apply to obtain authenticated copies. The failure of the*

*Appellant to obtain a copy of the trial court's judgement delivered on 11<sup>th</sup> December 2002 until August 2008 could not be attributed to the court.*

The court determined the sole issue in favour of the Respondent. The appeal was dismissed as lacking in merit, with costs of ₦5,000,000.00 (*Five Million Naira*) awarded in favour of the Respondent against the Appellant.

*Appeal dismissed.*

### **Representation**

Ogochukwu Mbamalu, Esq. for the Appellant.

Dan Magbo, Esq. for the Respondent.

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