**NEMUEL PARON SAMARI & ORS**

**V.**

**BARR. IFEOLUWA DAVID FAWOYE & ANOR**

IN THE COURT OF APPEAL OF NIGERIA

ON WEDNESDAY, THE 19TH DAY OF FEBRUARY, 2020

CA/YL/131/2018(R)

**LEX (2020) - CA/YL/131/2018(R)**

**OTHER CITATIONS**

3PLR/2020/37 (CA)

(2020) LPELR-49507 (CA)

**BEFORE THEIR LORDSHIPS**

CHIDI NWAOMA UWA, JCA

JAMES SHEHU ABIRIYI, JCA

ABDULLAHI MAHMUD BAYERO, JCA

**BETWEEN**

1. NEMUEL PARON SAMARI

2. ERON BULUS

3. AZIZ JIBRILLAH

4. JOHN CHRISTOPHER - Appellant(s)

AND

1. BARR. IFEOLUWA DAVID FAWOYE

2. NIGERIA SECURITY AND CIVIL DEFENCE CORPS - Respondent(s)

**ORIGINATING COURT(S)**

[NOT AVAILABLE]

**REPRESENTATION**

F. R. Baiyo for Applicants. - For Appellant

AND

G. E. Akpanamasi, with him, V. N. Eze for 1st Respondent. - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

[NONE: This was a fully interlocutory application arguing a point of procedure]

**PRACTICE AND PROCEDURE ISSUES**

APPEALS - AMENDMENT OF NOTICE OF APPEAL:- Application for amendment of notice of appeal – When would be granted - Presence of mere irregularity – When would not be fatal to validity of notice of appeal as to sustain an application for amendment

PLEADINGS - AMENDMENT OF COURT PROCESSES/PLEADINGS:- Notice of Appeal – Competency of - Mode of signing a process – When will not impeach validity - Relevant considerations - Instances when an application to amend notice will be granted – Whether the presence of mere irregularity is fatal thereo

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

This arose from an interlocutory application brought pursuant to Order 7, Rules 4 and 8 and Order 6 Rule 9 of the Court of Appeal Rules, 2016 and under the inherent jurisdiction of this Court for the following:

1. AN ORDER of this Honourable Court, granting leave to the Appellants/Applicants to amend their Notice of Appeal by amending paragraph 3 of the Notice of Appeal, Ground 2 of the Grounds of Appeal, adding Omnibus Ground to the Grounds of Appeal and inserting the capacity in which E. N. IMANDI, ESQ. signed the said Notice of Appeal No: CA/YL/131/2019.

2. AN ORDER of this Honourable Court, deeming the Amended Notice of Appeal particularly, the copies filed separately as properly filed and served.

The motion was supported by an affidavit of eight (8) paragraphs to which two exhibits (original notice of appeal exhibit A and a proposed amended notice of appeal exhibit B) wee annexed. From the affidavit in support of the motion on notice, the Applicants want to amend the original notice of appeal by adding an omnibus ground of appeal and indicate that E.N. Imandi signed the notice of appeal as counsel for the Appellants. In oral argument before the Court, learned counsel for the Applicants, relied on the affidavit in support of the application and urged the Court to grant the application.

The 1st Respondent filed a counter affidavit in opposition of the application pointing out that issues have been joined and that the 1st Respondent challenged two grounds argued as being incompetent. He submitted that the amendments sought were overreaching.

DECISION(S) APPEALED AGAINST

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

Grounds for the Application brought upon the following grounds:

1. That the Appellants/Applicants filed their Notice of Appeal on the 4/9/2018.

2. That JOHNSON ALTAJIRI, ESQ., one of the Counsel to the Appellants/Applicants after careful perusal of the Notice of Appeal discovered that there are needs to amend the said Notice of Appeal by amending paragraph 3 of the Notice of Appeal and Ground 2 of the Grounds of Appeal, to add Omnibus Ground to the Grounds of Appeal and insert the capacity in which E.N. IMANDI, ESQ. signed the said Notice of Appeal.

3. That this Application is necessary for the Appellants/Applicants to amend their Notice of Appeal and to be deemed as properly filed and served.

*BY RESPONDENTS*

The 1st Respondent filed a counter-affidavit, opposing the application on the grounds that briefs have been exchanged between the Applicants and the 1st Respondent; that the original notice of appeal is “fundamentally defective and incompetent;” and that the amendment sought relates to issues on which arguments have been advanced.

*AS ADOPTED BY COURT*

[Resolved Appeal based on grounds as advanced by both parties]

DECISION OF COURT OF APPEAL

1. The failure of learned counsel for the Appellants to indicate that he was appearing for the Appellants does not render the notice of appeal incompetent. It was in my view a minor slip.

2. As the notice of appeal is competent, the Appellants should be allowed to ventilate their grievances against the proceedings and judgment of the Court below. It does not matter that the 1st Respondent has filed 1st Respondent’s brief of argument. 1st Respondent can be compensated by costs.

3. The application is granted as prayed.

4. An Order is made granting leave to the Appellants to amend their Notice of Appeal by amending paragraph 3 of the Notice of Appeal, Ground 2 of the Grounds of Appeal, adding Omnibus Ground to the Grounds of Appeal and inserting the capacity in which E. N. Imandi, Esq. signed the Notice of Appeal in Appeal No. CA/YL/131/2018.

**MAIN JUDGMENT**

JAMES SHEHU ABIRIYI, J.C.A. (Delivering the Lead Ruling):

This application brought pursuant to Order 7, Rules 4 and 8 and Order 6 Rule 9 of the Court of Appeal Rules, 2016 and under the inherent jurisdiction of this Court is for the following:

1. AN ORDER of this Honourable Court, granting leave to the Appellants/Applicants to amend their Notice of Appeal by amending paragraph 3 of the Notice of Appeal, Ground 2 of the Grounds of Appeal, adding Omnibus Ground to the Grounds of Appeal and inserting the capacity in which E. N. IMANDI, ESQ. signed the said Notice of Appeal No: CA/YL/131/2019.

2. AN ORDER of this Honourable Court, deeming the Amended Notice of Appeal particularly, the copies filed separately as properly filed and served.

The Application is brought upon the following grounds:

1. That the Appellants/Applicants filed their Notice of Appeal on the 4/9/2018.

2. That JOHNSON ALTAJIRI, ESQ., one of the Counsel to the Appellants/Applicants after careful perusal of the Notice of Appeal discovered that there are needs to amend the said Notice of Appeal by amending paragraph 3 of the Notice of Appeal and Ground 2 of the Grounds of Appeal, to add Omnibus Ground to the Grounds of Appeal and insert the capacity in which E.N. IMANDI, ESQ. signed the said Notice of Appeal.

3. That this Application is necessary for the Appellants/Applicants to amend their Notice of Appeal and to be deemed as properly filed and served.

The motion is supported by an affidavit of eight (8) paragraphs to which two exhibits (original notice of appeal exhibit A and a proposed amended notice of appeal exhibit B) are annexed.

The 1st Respondent filed a counter affidavit in opposition of the application. Annexed to the 1st Respondent’s counter affidavit are exhibits R1, the original notice of appeal, R2, the Appellants brief of argument and R3, Respondent’s brief of argument.

From the affidavit in support of the motion on notice, the Applicants want to amend the original notice of appeal by adding an omnibus ground of appeal and indicate that E.N. Imandi signed the notice of appeal as counsel for the Appellants.

On the evidence contained in the counter affidavit, the 1st Respondent is opposing the application because briefs have been exchanged between the Applicants and the 1st Respondent and that the original notice of appeal is “fundamentally defective and incompetent.” That the amendment sought relates to issues on which arguments have been advanced.

In oral argument before the Court, learned counsel for the Applicants, relied on the affidavit in support of the application and urged the Court to grant the application.

Learned counsel for the 1st Respondent relied on the counter affidavit as well as the exhibits attached thereto. He pointed out that issues have been joined and that the 1st Respondent challenged two grounds argued as being incompetent.

He submitted that the amendments sought were overreaching.

Learned counsel for the 1st Respondent filed a list of authorities. In Okwuosa vs. Gomwalk (2017) 9 NWLR (Pt. 1570) 259 and Okpe vs. Fan Milk Plc (2017) 282, the notices of appeal were held to be incompetent because they were not signed by persons known to law but by law firms. In the instant notice, the 1st Respondent has not shown that the person who signed the notice of appeal is unknown to law, so those two cases are not applicable to this application. Odon vs. Barigha - Amange (No. 1) (2010) 12 NWLR (Pt. 1207) 1 was in respect of an election appeal. Election appeals are sui generis and are not governed by ordinary civil Court Rules. So that case too is not applicable to the instant notice of appeal. In First Bank of Nigeria Plc v. May Medical Clinics And Diagnotics Centre Ltd & Anor (1996) 9 NWLR (Pt. 471) 195 the application to amend the notice of appeal was dismissed because appellant was derelict. Appellant did not bother to forward the exhibits when he was compiling the record and he claimed also that part of the manuscript of the judgment was irretrievably lost. So this case is not helpful to the 1st Respondent.

However, the Court in this case (FBN vs. May Medical Clinics supra) held that leave to amend notice will be granted where there is mere irregularity in procedure in the filing of the process either by omission or commission. Leave to amend the notice of appeal will however not be granted if it will not cure the defect.

The Supreme Court has held in several cases that once a notice of appeal is competent it can be amended by alteration, addition or subtraction from the original ground of appeal filed.

See Fajebe & Anor vs. Opanuga (2019) LPELR-46348 SC. page 21 and Coker vs. United Bank For Africa Plc (1997) LPELR-880 SC.

The purpose of such amendment must be to ensure that the complaints of the appellant against the proceedings or judgment in question are laid and ventilated by the Court. The fact that briefs of argument have been filed and exchanged and an appeal virtually ready for hearing will not prevent the Court from exercising its undoubted discretion to allow an amendment both to the notice and grounds of appeal and the brief of argument so long as the amendment would serve the ends of justice and fairness and the other party can be compensated by costs. See First Bank of Nigeria Plc vs. May Medical Clinics And Diagnostics Centre Ltd & Anor (2001) LPELR-1282 (SC) page 27.

The failure of learned counsel for the Appellants to indicate that he was appearing for the Appellants does not render the notice of appeal incompetent. It was in my view a minor slip.

As the notice of appeal is competent, the Appellants should be allowed to ventilate their grievances against the proceedings and judgment of the Court below. It does not matter that the 1st Respondent has filed 1st Respondent’s brief of argument. 1st Respondent can be compensated by costs. 1st Respondent is awarded N30, 000.00 costs to be paid by the Appellants/Applicants.

The application is granted as prayed.

1. An Order is hereby made granting leave to the Appellants to amend their Notice of Appeal by amending paragraph 3 of the Notice of Appeal, Ground 2 of the Grounds of Appeal, adding Omnibus Ground to the Grounds of Appeal and inserting the capacity in which E. N. Imandi, Esq. signed the Notice of Appeal in Appeal No. CA/YL/131/2018.

The Amended Notice of Appeal already filed on 16th May, 2019 dated 14th May, 2019 is deemed duly filed and served today.

**CHIDI NWAOMA UWA, J.C.A.:**

I read in advance a draft copy of the Ruling delivered by my learned brother JAMES SHEHU ABIRIYI, JCA. I agree with the order granting the application as prayed, to amend the Appellants’/Applicants’ Notice of Appeal as sought. I abide by the order of costs made in the lead Ruling in favour of the 1st Respondent.

**ABDULLAHI MAHMUD BAYERO, J.C.A.:**

I agree.