**LAGOS STATE TRAFFIC MANAGEMENT AUTHORITY (LASTMA)**

**V.**

**JOHNSON O. EZEZOOBO**

IN THE COURT OF APPEAL (LAGOS JUDICIAL DIVISION)

THE 13TH DAY OF MAY, 2011

SUIT NO: CA/L/817M/2007

**LEX (2011) - CA/L/817M/2007**

OTHER CITATION:

2PLR/2012/10 (CA)

(2011) LPELR-CA/L/817M/2007

**BEFORE THEIR LORDSHIPS:**

CLARA BATA OGUNBIYI, JCA

ADZIRA GANA MSHELIA, JCA

JOHN INYANG OKORO, JCA

**BETWEEN**

1. LAGOS STATE TRAFFIC MANAGEMENT AUTHORITY (LASTMA)

2. MR. GIWA

3. COMMISSIONER OF TRANSPORTATION LAGOS STATE

4. ATTORNEY GENERAL, LAGOS STATE - Appellants

AND

JOHNSON O. EZEZOOBO – Respondents

**REPRESENTATION**

OLAKUNLE LIGALI Esq. Principal State Council, Lagos State Ministry of Justice - For the Appellants

JOHNSON O. EZEZOOBO, Esq. - For the Respondents

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

TRANSPORTATION LAW – ROAD AND MOTOR VEHICLE – LASTMA:- Traffic offences – Jurisdiction of – How treated

PRACTICE AND PROCEDURE ISSUES

APPEAL - NOTICE OF APPEAL: Whether joinder of issues by parties affect amendment of Notice of Appeal by the Appellant

"It is trite law and even commonsense that where parties have joined issues in their briefs of argument filed and exchanged, it will not be fair to allow the Appellant to amend his Notice of Appeal to the detriment of the Respondent." Per OKORO, J.C.A.

APPEAL - NOTICE OF APPEAL: Whether a competent Notice of Appeal is the foundation of any appeal

"It is trite that a competent Notice of Appeal is the bedrock or foundation of any appeal before this court. Where a Notice of Appeal is incompetent, it is liable to be struck out. See Uwazurike v. A. G. Federation (2007) 8 N.W.L.R (pt.1035) 1; NIWA v. SPDC (2007) 1 N.W.L.R. (pt.1015) 305; Clev. Joshua Ltd. v. Tokimi (2008) 13 N.W.L.R. (pt.1104) 422. An incompetent and defective Notice of Appeal cannot be amended as you cannot put something on nothing.See UAC v. Mcfoy (1962) A.C. 152." Per OKORO, J.C.A.

APPEAL - NOTICE OF APPEAL: Whether a Notice of Appeal can be amended at any time before the appeal is heard

"It follows that once a Notice of Appeal is valid; it can be amended at any time before the appeal is heard. See F.B.N. Plc v. May Medical Clinics & Diagnostic Centre Ltd. & Anor. (2001) 9 N.W.L.R. (pt.717) 28; Okpala v. Ibeme (1989) 2 N.W.L.R. (pt.102) 208 and Adelaja v. Alade (1994) 7 N.W.L.R. (pt.358) 537. However, such amendments should not be made to overreach the Respondent but only to serve the ends of Justice and ensure that the complaints of the Appellants against the Judgment appealed against are laid and ventilated before the court." Per OKORO, J.C.A.

APPEAL - NOTICE OF APPEAL: Whether court has discretion to allow amendment of a notice of appeal

"This court has an undoubted discretion to allow an amendment of the notice of appeal at any time before the hearing of the appeal. However, such amendments should not be made to overreach the Respondent but only to serve the ends of justice and fairness and ensure that complaints of appellant against the judgment appealed against are laid and ventilated before the court. See: FBN Plc. v. May Medical Clinic & Diagnostic Centre Ltd & Anor. (2001) 9 NWLR (Pt.717) 28 at 40 and Pharmotek Industrial projects Ltd. v. Bayo Ojo (1996) 1 NWLR (Pt.359) 332 at 338." Per MSHELIA, J.C.A.

COURT - JURISDICTION: Whether the issue of jurisdiction can be raised at any stage

"It is trite that issue of jurisdiction can be raised at any stage and even for the fist time on appeal. See: Omomeji v. Kolawole (2008) 14 NWLR (pt. 1106) 180." Per MSHELIA, J.C.A.

**MAIN JUDGMENT**

JOHN INYANG OKORO, J.C.A. (DELIVERING THE LEADING JUDGMENT):

The Applicants, by a motion on notice filed on 27th October, 2009, prayed for the following orders:

"(1) An order for leave of court to amend the Appellants' Notice of Appeal dated January 20th 2007 in the manner underlined in the proposed Amended Notice of Appeal annexed as LASG1.

(2) An order to deem the Amended Notice of Appeal as properly filed and served".

In support of the said motion, the Appellants/Applicants filed an 11 paragraphs affidavit deposed to by one Olakunle Ligali, a legal officer with the Lagos State Ministry of Justice. Attached to the said affidavit is Exhibit LASG1, the proposed Amended Notice of Appeal. In further support of the application, the Applicants filed a further affidavit of 8 paragraphs with one Exhibit annexed which is marked LASG - a ruling of this court.

In opposing the application, the Respondent filed an eleven paragraphs counter affidavit with Exhibits A, B and C attached.

Arguing the application, the Applicants' learned counsel relied on all the paragraphs of the two affidavits in support and submitted that the amendment is to bring in the issue of Jurisdiction which is ground one in the proposed Amended Notice of Appeal. He submitted further that paragraphs 2, 5, 6 and 10 of Respondent's counter affidavit are opinion and legal argument and as such should be struck out. Also that issues raised in paragraphs 2, 6, 7, 8 and 9 of the counter affidavit have been addressed in the further affidavit. He then moved in terms of the motion.

In his response, the learned counsel for the Respondent who appeared in person, relied on all the paragraphs of the counter affidavit and submitted that none of the paragraphs of the counter affidavit offends against the evidence Act. He further submitted that since the parties have filed and exchanged briefs and the Respondent has raised preliminary objection to the competence of ground of appeal No. 1 in the Appellants' Notice of Appeal, he is not now allowed to amend his Notice of Appeal so as not to overreach the Respondent. That the Appellant argued issue of Jurisdiction in his brief without first amending his Notice of Appeal to reflect same. He cited the cases of George Odon v. Chief Nimi Barigha - Amange & Anor. (2010) 12 N.W.L.R. (pt.1207) 1 at 9 and Idanre Local Government v. Government of Ondo State (2010) 14 N.W.L.R. (pt. 1214) 509.

It was learned counsel's further contention that issues raised in the counter affidavit have not been addressed in the further affidavit and that the Notice of Appeal remains incompetent having not complied with Order 6 Rule 2(1) of the Court of Appeal Rules, 2007 . Therefore, it cannot be amended relying on the case of First Bank of Nigeria Plc v. TSA Industries Ltd. (2010) 15 N.W.L.R. (pt.1216) 247. He urged the court to refuse the application.

In a rejoinder, the learned counsel for the Applicant, Ligali Esq., submitted that the case of Odon v. Barigha (Supra) does not apply to the facts of this case because the application to amend Notice of Appeal preceded the filing and exchange of the briefs. That this motion was filed on 27/10/09 while the brief was filed on 13/5/10. That the Notice of Appeal sought to be amended did not contemplate the preliminary objection of the Respondent as contained in his brief filed long after the motion was filed.

On the issue of non competence of the Notice of Appeal, learned counsel submitted that the Respondent is stopped by the Ruling of this court annexed to the further affidavit. He urged the court to grant this application

The first issue I intend to settle in this application is whether the Notice of Appeal sought to be amended is competent. The Respondent had stated in paragraph 2 of his counter affidavit as follows:

"2. That I have been shown the Appellants' motion of 27th October, 2009 for leave to amend the Notice of Appeal of 20th January, 2007 which motion I verily believe as incompetent and the court lacks Jurisdiction to entertain it in that the Notice of Appeal sought to be amended is incompetent by virtue of Order 6 Rule 2 of the Court of Appeal Rules, 2007 as such is not capable of amendment".

It is trite that a competent Notice of Appeal is the bedrock or foundation of any appeal before this court. Where a Notice of Appeal is incompetent, it is liable to be struck out. See Uwazurike v. A. G. Federation (2007) 8 N.W.L.R (pt.1035) 1; NIWA v. SPDC (2007) 1 N.W.L.R. (pt.1015) 305; Clev. Joshua Ltd. v. Tokimi (2008) 13 N.W.L.R. (pt.1104) 422. An incompetent and defective Notice of Appeal cannot be amended as you cannot put something on nothing.See UAC v. Mcfoy (1962) A.C. 152.

It follows that once a Notice of Appeal is valid; it can be amended at any time before the appeal is heard. See F.B.N. Plc v. May Medical Clinics & Diagnostic Centre Ltd. & Anor. (2001) 9 N.W.L.R. (pt.717) 28; Okpala v. Ibeme (1989) 2 N.W.L.R. (pt.102) 208 and Adelaja v. Alade (1994) 7 N.W.L.R. (pt.358) 537. However, such amendments should not be made to overreach the Respondent but only to serve the ends of Justice and ensure that the complaints of the Appellants against the Judgment appealed against are laid and ventilated before the court.

In the instant application, the Respondent is saying that the Notice of Appeal sought to be amended is incompetent in that it offends Order 6 Rule 2 of the Court of Appeal Rules 2007.

In answer to this objection, the Applicants filed a further affidavit and annexed one exhibit. Paragraphs 2, 3, 4 and 5 of the further affidavit are relevant and are hereunder reproduced:-

"2. That the Honourable Court adjourned this case to 9th December 2010 to enable Applicants' counsel to bring to the attention of the Honourable court that the objection raised by the Respondent touching on "failure to specify part of the Judgment appealed against" has been considered and finally determined in the Ruling of the court dated 13th May , 2010.

3. That at page 2 of the Ruling, the Court of Appeal held as follows: "In any case in this appeal I do not agree that the Appellant did not specify which portions of the decision of the trial court they are appealing against".

4. That at page 4, the Court of Appeal concluded that "it is therefore not correct that the Applicants did not disclose which parts of the decision they are appealing against".

5. That the issue having been determined by the court cannot be raised again."

Exhibit LASG in the Ruling of this court in Appeal No. CA/L/817M/07 delivered on 13th May 2011 between the parties in this matter in which the issue of the competence of the Notice of Appeal sought to be amended was addressed. In the said Ruling, this court clearly states on page 2 of the Ruling thus:

"In any case on this appeal, I do not agree that the appellant did not specify which portions of the decision of the trial court they are appealing against".

and on page 4 the court further states:-

"It is therefore not correct that the applicants did not disclose which part of the decision they are appealing against".

By this decision of this court in an earlier application, the issue as to whether the Notice of Appeal complies with Order 6 Rule 2 of the Court of Appeal Rules, 2007 was determined. It is my view that the Respondent ought to be satisfied with that Ruling or he should proceed on appeal. It is not open for him to raise the issue at every stage of this appeal. I shall therefore refrain from reconsidering the matter at this stage. Rather, I shall abide by the earlier Ruling of this court in that matter. The Notice of Appeal has been held by this court to be competent and being competent or valid, it can be amended.

The other issue raised by the Respondent is that having filed and exchanged briefs and the Respondent having raised a preliminary objection to the competence of ground 1 of the Applicants' Notice of Appeal, he is not now allowed to amend his Notice of Appeal so as not to overreach the Respondent. Also that the issue of Jurisdiction was argued in Appellants' brief without amending his Notice of Appeal to incorporate that ground of appeal. The case of George Odon v. Chief Nimi Barigha - Amange & Anor (Supra) was relied upon.

It is trite law and even commonsense that where parties have joined issues in their briefs of argument filed and exchanged, it will not be fair to allow the Appellant to amend his Notice of Appeal to the detriment of the Respondent.

I agree with the position taken by this court in Odon v. Barigha Amange (Supra) that where the contending parties have already filed and exchanged briefs of argument in an appeal, it will work injustice and unfairness to the Respondent to allow the Appellant amend the Notice of Appeal and the brief of argument to correct the issues already joined. In Odon v. Barigha - Amange (supra) the application to amend was refused. In the instant application, there is a distinction. In Odon's case, the application for amendment was filed after briefs were filed and exchanged. Issues were also joined. However, in the instant application, the motion for amendment was filed on 27/10/09 while the Application brief was filed on 13/5/10. The Respondent's brief was filed on 28/6/10 and was deemed filed in 7/3/11. The truth is that the application for amendment preceded the filing and exchange of briefs. In other words, when the motion for amendment was filed, it did not contemplate the contents of the Respondent's brief or even the objection raised therein. Therefore, the case of Odon v. Barigha - Amange (Supra) does not apply to the facts of this case. Each case is always decided on its own peculiar facts. It is my view that there is nothing to show that the application was filed to overreach the Respondent since the motion was filed long before the Respondent filed his brief of argument wherein the said objection is raised.

The amendment sought by the applicant in this appeal is to incorporate a ground of appeal bordering on the Jurisdiction of the lower court to have entertained the matter. Issue of Jurisdiction, as has been held in a plethora of authorities both in this court and the Apex Court is a threshold issue and can be raised at any time and even for the first time on appeal. See Omomeji v. Kolawole (2008) 14 N.W.L.R. (pt.1106) 180. The Respondent will not suffer any prejudice or injustice if the application is granted. The last thing I wish to say is that I have perused all the paragraphs of the counter affidavit and none offends any section of the evidence Act.

On the whole, this application is meritorious and is hereby granted as prayed. Accordingly, leave is hereby granted the Applicants to amend their Notice of Appeal dated 20th January, 2007 in the manner underlined in the proposed amended Notice of Appeal annexed to the affidavit in support of this motion and marked Exhibit LASG1. The amended Notice of Appeal separately filed on 27th October, 2009, is hereby deemed as properly amended, filed and served today. I shall make no order as to costs.

**CLARA BATA OGUNBIYI, J.C.A.:**

I read in draft the lead ruling just delivered by my brother John Inyang Okoro JCA and I agree that the application has merit and succeeds. I therefore adopt the ruling of my brother as mine and abide by all the orders made therein.

**ADZIRA GANA MSHELIA, J.C.A.:**

I have had a preview of the ruling of my learned brother, Okoro, J.C.A. and I agree with his reasoning and conclusion. I only wish to add few words of mine for the purpose of emphasis. Once there is a valid notice of appeal, it can be amended. This court has an undoubted discretion to allow an amendment of the notice of appeal at any time before the hearing of the appeal. However, such amendments should not be made to overreach the Respondent but only to serve the ends of justice and fairness and ensure that complaints of appellant against the judgment appealed against are laid and ventilated before the court. See: FBN Plc. v. May Medical Clinic & Diagnostic Centre Ltd & Anor. (2001) 9 NWLR (Pt.717) 28 at 40 and Pharmotek Industrial projects Ltd. v. Bayo Ojo (1996) 1 NWLR (Pt.359) 332 at 338.

In the instant case, the amendment sought by the applicant is to incorporate a ground of appeal bordering on the jurisdiction of the lower court to have entertained the matter. It is trite that issue of jurisdiction can be raised at any stage and even for the first time on appeal. See: Omomeji v. Kolawole (2008) 14 NWLR (pt. 1106) 180.

For the reasons given above and for the fuller reasons in the lead ruling of my learned brother Okoro, JCA which I adopt as mine, I too will grant the application and abide by the consequential orders in the lead ruling.