**MADAM ALAKE AROYEWUN**

**V.**

**JOSEPH ADEBANJI**

SUPREME COURT OF NIGERIA

19TH DAY OF NOVEMBER, 1976

SUIT NO. SC 165/1976

**LEX (1976) - SC 165/1976**

OTHER CITATIONS

(1976) 11 SC 33

2PLR/1976/82 (SC)

**BEFORE THEIR LORDSHIPS:**

UDO UDOMA, J.S.C.

MOHAMMED BELLO, J.S.C.

CHUKWUNWIKE IDIGBE, J.S.C.

**BETWEEN**

MADAM ALAKE AROYEWUN – Appellant

AND

JOSEPH ADEBANJI – Respondent

**ORIGINATING COURT(S)**

1. HIGH COURT OF LAGOS STATE

2. SENIOR MAGISTRATE IN THE MAGISTRATES COURT, LAGOS STATE (V. B. A. Famakinwa Esquire, Presiding)

**REPRESENTATION**

M. A. AGBAMUCHE - for the Appellant

H. ATOLABI LARDNER - for the Respondent

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

CONSTITUTIONAL LAW:- Section 117(4)(c) of the 1963 Constitution – Leave of Court to bring an appeal from decisions of the High Court exercising appellate jurisdiction over other courts – Whether mandatory - Duty of party to comply with same

CONSTITUTIONAL LAW AND HUMAN RIGHTS:- Access to Court to bring an appeal - Whether not a matter of common right but of special provision – Whether different standards of access to court apply to trial courts and appellate courts

CHILDREN AND WOMEN LAW: *Women and Justice Administration* – Access to court over property rights - Need to employ diligent and competent lawyers – *Women and Real Estate –* Defence thereof – Need for diligent and competent lawyer

**PRACTICE AND PROCEDURE ISSUES**

APPEAL**:-** Preliminary objection relating to absence of Leave of Court to bring an appeal from decisions of the High Court exercising appellate jurisdiction over other courts – Constitutional and statutory basis – Need for court to interpret same strictly

COURTS:- Enactments regulating the procedure in courts – Procedural provisions given by the constitution and relating to appellate proceedings – Duty of court thereto

ACTION:- Motion for Extension of time – Whether can be granted at discretion of court without formal application

INTERPRETATION OF STATUTE:- Section 31(2)(a) of the Supreme Court Act – Whether mandatory – Duty of court thereto

**MAIN JUDGEMENT**

IDIGBE, J.S.C. (DELIVERING THE JUDGMENT OF THE COURT):

This appeal is from the Judgment of O.R.I. George J. dated 11th April, 1975, in the High Court of Lagos State in suit No. LD/43A/72 dismissing an appeal by the appellant, herein, from the decision of V. B. A. Famakinwa Esquire, sitting as Senior Magistrate in the Magistrates Court, Lagos State, dated 12th November, 1971, in suit No. 724/71 by which he entered judgment in favour of the respondent, herein, on a claim “for possession of the premises (one shop) at 66 Martins Street, Lagos...” At the hearing of the appeal objection in limine was taken by learned counsel for the respondent to the effect that “there is no appeal by the appellant pending before this court” and the ground of objection was that the appellant did not obtain leave of the lower court (in this case, the High Court) before filing his appeal. In support of his contention learned Counsel for the respondent drew our attention to Section 117(4)(e) of the Constitution of the Federation No. 20 of 1963 which provides that “an appeal shall lie from decisions of the High Court of a territory to the Supreme Court with the leave of the High Court or the Supreme Court” in respect of decisions in “any civil or Criminal proceedings in which an appeal has been brought to the High Court from some other court”

Now, the decision of the High Court which is the subject of this “appeal” was given on the 11th April, 1975 and Notice of appeal was filed, in the High Court, by the appellant on 30th April, 1975, but leave was not obtained prior to filing the said Notice of appeal; Under the provisions of Section 31(2)(a) of the Supreme Court Act No. 12 of 1960, the appellant should have filed a Notice of application for leave to appeal from the decision of the High Court, in the instant case, within three month of the said decision, and it is only after leave to appeal has been granted that the appellant could properly file his notice of appeal (see order VII, rule 3(2) of the Supreme Court Rules).

Learned Counsel for the appellant unable to resist, rightly, in our view, conceded the contentions and submissions in support of the preliminary objection but asked that he be allowed there and then, or granted time subsequently, to argue a motion filed on behalf of the appellant (but not listed before us) praying for an order of this court granting the appellant “leave to obtain leave out of time to appeal against the decision of the Hon. Mr. Justice O.R.I. George” aforesaid.

We are satisfied that the preliminary objection of learned counsel for the respondent must be upheld; the provisions of the Constitution (section 117(4)(c) of the Constitution of the Federation) and Section 31(2)(a) of the Supreme Court Act are clearly mandatory and effect must be given to the said provisions. Enactments regulating the procedure in courts are usually construed as imperative and this must be so where procedural provisions (1) are given by the constitution and (2) relate to appeals. “An appeal is not a matter of common right, but of special provision” (The King v. The Justice of Oxfordshire (1813)105 E.R. 167 per Lord EIlenborough C.J. at 168); “and when once a court of competent Jurisdiction has decided a case on its merits, the party dissatisfied with, and wishing to appeal from its decision, must act strictly in conformity with the procedure laid down, and the same indulgence will not [be] allowed in the procedure regulating appeals as in the proceedings prior to the determination of the matter in dispute” (Young Jim Fouchee vs Oruward Henry Braid (1913)2 N.L.R. 102 at 105 per Osborne C.J.). We must, therefore, give effect to the preliminary objection. As there is no motion for extension of time listed before us, we cannot, therefore, entertain the application of learned counsel for the appellant; in passing, however, we must observe that, in view of the provisions of section 121 E (1) of the Constitution of the Federation (as provided by Section 1(b) of the Constitution Amendment (No. 2) Decree No. 42 of 1976), we think, that notwithstanding the provisions of section 4(4) of Decree No. 42 aforesaid, we ought not, in any event in the circumstances of the matter before us to entertain such an application.

Accordingly this appeal will be and is hereby struck out. The respondent shall have costs of this appeal fixed at N142.

Appeal struck out.