SALIENT ISSUES IN APPEALS AGAINST FINAL JUDGMENTS IN CIVIL AND CRIMINAL CASES

PART A: TIME TO APPEAL

Court of Appeal Act

1. Section 24(1) of the Court of Appeal Act provides that when a person desires to appeal to the Court of Appeal from the High Court they must file the notice of appeal within the times prescribed. Section 24(2) provides that in civil cases, appeals against interlocutory decisions must be filed within 14 days and appeals against final decisions must be filed within 3 months. In criminal cases, appeals against final decisions must be filed within 90 days. However, where the notice of appeal is not filed within the prescribed period, the Court of Appeal has power by virtue of section 24(4) of the Court of Appeal Act to enlarge the time within which an appellant may appeal. The Rules of the Court of Appeal also give the Court power to enlarge the time for doing anything under the Rules.

Supreme Court Act

2. Section 27(1) of the Supreme Court Act provides that when a person desires to appeal to the Supreme Court from the Court of Appeal they must file the notice of appeal or application for leave to appeal within the times prescribed. Section 27(2) provides that in civil cases, appeals against interlocutory decisions must be filed within 14 days and appeals against final decisions must be filed within 3 months. In criminal cases, appeals against final decisions must be filed within 30 days. However, where the notice of appeal or application for leave to appeal is not filed within the prescribed period, the Court of Appeal has power by virtue of section 27(4) of the Supreme Court to enlarge the time within which an applicant may appeal. The Rules of the Supreme Court also give the Court power to enlarge the time for doing anything under the Rules.

Extension of Time

3. Where a notice of appeal is not filed within the time prescribed by statute and extension of time or permission is not granted to file the notice of appeal out of time, the notice of appeal is incompetent and not valid. In **Okoro v State (2023) LPELR-59949(SC)**, Garba JSC said,

> "A valid and competent Notice of Appeal can be given or filed after the expiration or outside the periods of time stipulated under the provisions of Section 27 (2) of the Act, when and only if, the periods of the time was extended by the Court, as a condition precedent. Accordingly, the prior permission or leave of the Court, by way of extension of the relevant period of time within which to

give the notice of appeal, is necessary and required for the validity and competence of a notice of such an appeal to the Court. Without the prior permission first sought and obtained by an Appellant for extension of time to appeal before giving or filing a Notice of Appeal in the Court, a purported Notice of Appeal given or filed after the expiration or outside the limited period of time, would be fatally and incurably, invalid and incompetent, thereby depriving the Court of the requisite jurisdiction to entertain and adjudicate over the appeal."

4. An appellant who brings an application to file an appeal out of time must show good and substantial reasons to justify the application for extension of time to appeal. In **Ngere v Okuruket (2014) 5 MJSC (pt.2) 195,** Rhodes-Vivour JSC said,

> "In an application for extension of time within which to appeal, the affidavit in support of the application must be detailed on; (a) good and substantial reasons for failure to appeal within the prescribed period; (b) grounds of appeal which *prima facie* show good cause why the appeal should be heard. Good reasons for delay and arguable grounds of appeal, not necessarily grounds of appeal that would succeed, must co-exist before an application for extension of time to appeal can be granted."

See also, Nwora v Nwabueze (2011) 12 MJSC (Pt.1) 77, Gov Of Kaduna State & Ors v Durbar Hotel Plc (2022) LPELR-58261(CA), Waltersmith Petroman Oil Ltd v Isiodu (2022) LPELR-58892(CA),Tompolo v FRN (2019) LPELR-47435(SC)

The Trinity Prayers

5. When an appellant is out time to appeal and also seeks leave to appeal, the practice is to bring an application seeking what is known as the trinity prayers for; (i) An order granting the appellant extension of time to seek leave to appeal against the final judgment; (ii) An order granting the appellant leave to appeal against the final judgment; and (iii) An order granting the appellant extension of time to appeal against the final judgment. In **Folio Communications Ltd v Daily Times Of (Nig) Plc (2021) LPELR-56234(CA),** Adumein JCA said,

> "Where a person is a party to an action, case, cause or matter and he seeks to appeal against a decision, which the law requires him to first obtain leave of Court, and if he files his application out of time, his motion on notice must include three prayers, known as or usually referred to as the "trinity prayers". The trinity prayers are normally couched in words or manner as follows: "1. Enlargement of time to seek leave to appeal; 2. Leave to appeal; 3. Extension of time within which to appeal". - per Uwais, CJN in In Re: Madaki (1996) 7 NWLR (Pt. 459) 153 at 165. See also the cases of Tunji

Bowaje v. Moses Adediwura (1976) 6 SC 143; Amudipe v. Arijodi (1978) 9 - 10 SC 27; Iroegbu v. Okwordu (1990) LPELR-1539(SC), and Odofin v. Agu (1992) 3 NWLR (Pt. 229) 350; (1992) 3 SCNJ 161."

See, The Incorporated Trustees Of Ladies Of Saint Mulumba, Nigeria v Ekhator (2022) LPELR-57831(SC)

PART B: LEAVE TO APPEAL TO THE SUPREME COURT

Constitutional Provisions

1. Section 233(2) of the Constitution FRN 1999 (as amended) grants an appellant a right of appeal to the Supreme Court from decisions of the Court of Appeal in any criminal or civil cases in the circumstances enumerated in the section. Section 233(3) of the Constitution FRN 1999 requires an appellant to seek leave to appeal in all other cases. Where the ground of appeal involves a question of facts or mixed law and facts, an appellant must seek leave to appeal for the Supreme Court to be seized of jurisdiction to entertain the appeal.

Failure to Obtain Leave

2. Where the grounds of appeal raise questions of mixed law and facts or grounds of facts alone, the leave of the Supreme Court must be sought and obtained before those grounds can be validly raised. In **Ammani v Balarabe (2022) LPELR-58906(SC),** the Supreme Court considered the effect of failure to seek leave to appeal when leave is required. Kekere-Ekun JSC delivered the lead judgment and said,

> "It has been held in a plethora of decisions of this Court that failure to obtain leave where leave is required will render the notice of appeal incompetent. See, Abubakar v Waziri (2008) 14 NWLR (pt.1108) 507 LPELR-54(SC at 38, Allanah v Kpolokwu (2016) 6 NWLR (pt.1507) 1 LPELR-40724(SC) at 53-54, Nwagbara v Jadcom Ltd (2021) LPELR-55329(SC) at 10F. The seeking and obtaining of leave to appeal, where leave is required is a condition precedent to the exercise of jurisdiction by the Court."

See also, Mainasara v FBN (2021) LPELR-56612(SC), Amaran v ETF (2022) LPELR-57288(SC), Access Bank v NSITF (2022) LPELR-57817(SC), Yaro v. Arewa Construction Ltd. (2007) 17 NWLR (pt. 1063) 333, 7up Bottling Company Limited v Abiola & Sons (Nig.) Limited (2001) NWLR (Pt. 730) 469

Classification of Grounds of Appeal

3. It must be noted that a ground of appeal is not classified simply by the name or label given to it and the Court will examine the grounds to

determine whether they are actually grounds of law or grounds of fact or mixed law and fact. In **Ikponmwen v Asemota (2022) LPELR-56594(SC),** the Supreme Court examined all the seven grounds of appeal in the notice of appeal, even though the grounds were described as an error of law or a misdirection of law, and held that they were all grounds of facts or mixed law and facts and accordingly struck out the appeal. Garba Lawal JSC said,

> "This Court has the responsibility to ensure that the grounds of appeal in respect of the matter before it fall within its constitutional competence. In this regard, therefore, a ground of appeal is not let off the hook simply because it is tagged an error in law. This Court must be satisfied it is so. See Ojemen & 4 Ors. v. Momodu II (1983) 3 SC 173. The consequence for not seeking leave where a ground of appeal is of mixed law and fact is fatal to the ground."

See also, Ogbechie v Onochie (1986) 1 NSCC 443, Nwadikwe v Ibekwe (1987) NWLR (pt.67) 718, NNPC v Famfa Oil (2012) LPELR-7812(SC), Southbeach Co. Ltd v Williams (2021) LPELR-57746(SC)

4. The classification and description of grounds of appeal is a thorny issue which has generated a plethora of judicial decisions on the point. However, the Supreme has laid down guidelines for examining and categorising grounds of appeal. In **Akinyemi v Odu'a Inv. Co. Ltd. (2012) LPELR-8270(SC)**, Muhammad, JSC (as he then was) said,

> "1. Where a ground complains of a misunderstanding by the lower Court of the law, or a misapplication of the law to the fact already proved or admitted, it is a ground of law; 2. Where a ground questions the evaluation or facts before the application of the law, it is a ground of mixed law and facts; 3. A ground, which raises a question of pure fact, is certainly a ground of fact; 4. Where the lower Court finds that particular events occurred although there is no admissible evidence before the Court that the event did in fact occur the ground is that of law; 5. Where admissible evidence has been led, the assessment of the evidence is entirely for that Court. If there is a complaint about the assessment of the admissible evidence, the ground is of fact;
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> 6. Where the lower Court approached the construction of a legal term or part in a statute on the erroneous basis that the statutory wording bears its ordinary meaning, the ground is that of law; 7. Where the lower Court or tribunal applying the law to fact in a process which requires the skill of a trained lawyer, this is a question of law; 8. Where the lower Court reaches a conclusion which cannot reasonably be drawn from the facts as found, the appeal Court will assume that there has been a

misconception of the law, this is a ground of law. 9. Where the conclusion of the lower Court is one possible resolution but one which the appeal Court would not have reached if seized of the issue, that conclusion is not an error in law; 10. Where a trial Court fails to apply the facts which it has found correctly to the circumstances of the case before it and there is an appeal to a Court of Appeal which alleges a misdirection in the exercise of the application by the trial Court, the ground of appeal alleging the misdirection, is a ground of law, not of fact; 11. When Court of Appeal finds such application to be wrong and decides to make it own findings, such findings made by the Court or Appeal are issues of facts and not of law; 12. Where the Court of Appeal interferes in such a case and there is a further appeal to a higher Court of Appeal on the application of the facts, the ground alleging such misdirection by the lower Court of appeal is a ground of law not of facts; 13. A ground which complains that the decision of the trial Court is against evidence or weight of evidence or contains unresolved contradictions in the evidence or witnesses, it is purely a ground of fact."

See also, Ikponmwen v Asemota & Anor (2022) LPELR-56594(SC), A. I. C. Ltd v Technip & Ors (2023) LPELR-59618(SC),

6. The Supreme Court can *suo motu* raise the issue of the classification and validity of the grounds of appeal. However, where the issue is raised by the respondent in preliminary objection, it is their duty to accurately specify the basis of their objection. See, **Super Ceramics Manufacturers Ltd v H.E.P. Engineering (Nig) Ltd (2020) LPELR-55369(SC)**, Ngwuta JSC said,

"The onus is on the respondent to satisfy the Court that the ground he objected to is not a ground of law and that it is either a ground of facts or a ground of mixed law and facts. He has to specify the basis of his objection - whether it is a ground of facts or of mixed law and fact. The ground cannot be of mixed law and fact and of fact as alleged in the preliminary objection. It has to be one - a ground of mixed law and fact or a ground of fact. It is improper for learned counsel to guide the Court on how to determine whether a ground of appeal is one of law, mixed law and fact or of fact, and then invite the Court to undertake a scrutiny of the ground to determine its status. See Ogor v. Emereinyedkwe (2016) All FWLR (Pt. 841) 1540. A primary objection to an appeal ought to be formally raised and argued than merely directing the Court on how to determine the status of a ground of appeal. See Nsefik v. Muna (2014) 2 NWLR (Pt.1390) 151 SC. Having enumerated the guidelines for determining the nature of a ground of appeal the respondent's counsel ought to have applied the guidelines to the

ground of appeal to determine that it is not a ground of law as he claimed in his preliminary objection."

Part C: ESSENTIALS OF A GOOD APPEAL BRIEF

The Brief

1. A brief contains the facts, arguments and submissions of counsel for consideration by the appellate court. The appellant's brief must be filed first, then the respondent will file a brief in response to the appellant's brief. The appellant then has the right to file a reply brief to respond to fresh issues raised in the respondent brief. Any preliminary objection can be raised in the Respondent brief. A well written brief must contain the following sections; (i) the introduction; (ii) the statement of facts; (iii) the appeal; (iv) the issues for determination; (v) the arguments; (vi) the conclusion; and (vii) the list of authorities. In **Ports and Cargo Handling Services Co Ltd v Migfo (Nig) Ltd (2012) LPELR-9725(SC),** Galadima JSC said,

> "A brief of argument has the connotation of really concise and succinct expression of the appellant's complaint and the respondent's reaction on the issue or issues presented to Court for consideration. Clarity, simplicity and directness of expression are the hallmarks of a good brief."

The Rules of the Court of Appeal and the Supreme Court prescribe the time within which an appellant and respondent must file their briefs and any party that intends to file a brief out of time must seek and be granted an extension of time to do so.

The ABC of Brief Writing

2. **Engineering Enterprise of Niger Contractor Company of Nig v A.G Kaduna State (1987) LPELR-1143(SC),** Oputa JSC stated some essentials of good brief writing,

> "The lawyer confronted with the task of preparing a Brief would do well to remember what may be called the A.B.C of all legal writing, namely Accuracy, Brevity and Clarity. **Accuracy**: The statement of facts in a Brief must be accurate. There should be an honest and straightforward presentation of all the salient and relevant facts of the case. Facts are sacred. What is also important is that the statement of fact must be factual and not argumentative. The facts must be stated as they really and truly are without undue bias or/and embellishment. Unfavourable facts as well as favourable facts must be given equal emphasis otherwise the integrity of the Brief would have been seriously compromised and the effectiveness of the Brief will suffer, as the Court may then approach the Brief with a degree of

scepticism or even disbelief. Honest and frank statement of all the facts (the good and the ugly) will no doubt inspire confidence. The statement of the facts affords counsel a wonderful opportunity to state the equities of the case in such a way that the Court will feel that justice will be done by deciding as is urged by the Brief-writer. The facts included in the "Statement of Facts" must of course be facts supported by the record and there should therefore be a cross-reference (on the right hand corner) to the pages of the record of proceedings where those facts can be found. Accuracy thus implies a correct, fair, straightforward and honest statement of the facts of the case. **Brevity**: As the name implies a Brief should be brief. It should however be short enough to be attractive and yet long enough to cover the substance. The goal of brevity is not easy to achieve unless counsel is very familiarly with all the facts and circumstances of his case, can distinguish between the crucial and non-crucial, the important and the unimportant, the crux of the matter and the merely peripheral, the central issues and the subsidiary ones. Brevity does not imply what Mr. Ijaodola did in this case. He filed a one page Brief. Brevity here implies a flexible standard of conciseness in relation to the complexity of the case. Everything germane must be included. Counsel writing a Brief must bring to bear on such writing time, effort and professional skill. A lazy or casual presentation of fact is of little help to the Court and absolutely of no help to counsel. The goal here is to' attain maximum brevity consistent with accuracy and clarity. **Clarity:** When counsel is easily understood then that is clarity. Clarity begins with straightforward thinking. When counsel does not understand himself, he cannot possibly make the Court understand him. Clarity of understanding must therefore and inevitably precede clarity of expression. No knowledge, however thorough of the art of legal composition or exposition will compensate for the want of knowledge of the facts and the law relating to the particular case in which counsel' is called upon to prepare his Brief. Having the facts very clear in his mind and being in possession of the right words to use, clarity becomes easily attainable but not otherwise."

See, Hamidu v FRN (2022) LPELR-57760(SC), The Brief System in Nigerian Courts by Niki Tobi JSC & Manual of Brief Writing In The Court Of Appeal and Supreme Court of Nigeria by Nnaemeka-Agu JSC.

3. In **Ilokson & Co. (Nig) Ltd v Union Bank (2021) LPELR-55626(SC),** the Supreme Court criticized a 55 page appellant brief as, "irritating and cumbersome" and referred counsel to the ABC of brief

writing expressed in the above quoted judgment of Oputa JSC. Happily, the Rules of Court have now restricted the number of pages for briefs filed by counsel.

Legal Effect of Poor Brief

4. What is the effect of a bad brief or the attitude of an appellate court to a poorly written brief? An appellate court should not dismiss an appeal or the case of a party only on account of a bad or poorly written brief. In **Ekpemupolo v Edremoda (2009) LPELR-1089(SC),** Tabai JSC said,

> "Admittedly, there were substantial flaws in the Appellant's brief before the Court below and the Court highlighted them. But was the Court right to dismiss the appeal because of those flaws? It is my firm view, with respect, that the Court of Appeal erred. There are numerous authorities on the principle that the inelegance or flaws in a party's brief of argument notwithstanding, an appellate Court has a duty to examine the arguments contained therein and decide the case on its merits. OBIORA v OSELE (1989) 1 NWLR (Part 97) 279 cited in the Appellant's Amended Brief of Argument is very apposite on the point. The dismissal of the appeal on the ground that it was not argued in the Appellant's Brief in accordance with the rules and principles governing the writing of briefs as stated in the judgment is tantamount to the determination of the appeal without giving the Appellant a fair hearing. Therefore, if this were the only ground for the dismissal of the appeal at the Court below, this appeal would have been allowed on that ground alone."

See also, Ndukwe v The State (2009) LPELR-1979(SC),

Issues for Determination

5. The grounds of appeal against the judgment of the trial court or lower court are contained in the notice of appeal filed by the appellant. Counsel must then distill the grounds of appeal into issues for determination for the consideration of the court. Once issues for determination have been settled, the appeal is then argued on the issues for determination and not on the grounds of appeal. In **Ezeuko v The State, (2016) LPELR-40046 (SC)**, Ngwuta JSC said,

> "The main purpose of formulation of issues for determination in an appeal is to enable the parties to narrow the issues in controversy in the grounds of appeal in the interest of accuracy, clarity and brevity."

6. Issues for determination must arise from the grounds of appeal. Counsel must ensure that issues raised in their briefs must relate to the grounds of appeal and it is good practice for counsel to identify and state

the particular ground of appeal from which an issue for determination arises. Appellate courts often frown upon the proliferation of issues for determination in an appeal. Therefore, one issue for determination may cover and encompass more than one ground of appeal but one ground of appeal should not give rise to several issues for determination.

7. An issue for determination that does not arise from the grounds of appeal cannot be argued before an appellate court and a ground of appeal not covered by an issue for determination will be deemed to have been abandoned by the appellant. Furthermore, even where an issue properly arises from and is covered by a ground of appeal, if counsel fails to put forward any arguments in the written brief in elaboration of the issue, then that issue will be deemed to have been abandoned. In **Odeh v FRN (2008) 5 MJSC 1**, Musdapher JSC (as he then was) said,

> "It is now settled law which does not require any authority, that issues for determination cannot be formulated outside the grounds of appeal. Issues for determination formulated must be related to the grounds of appeal. Every issue for determination must be formulated from and related to or distilled from a competent ground of appeal. In other words, an issue not distilled from any of the grounds of appeal, is incompetent and must be discountenanced together with the arguments advanced there under."

See, Bille v The State (2016) LPELR-40832(SC), Mobil Producing (Nig) Unlimited v Monokpo & Anor (2003) LPELR-1886(SC).

Thank you for your kind attention.

Olabode Rhodes-Vivour JSC CFR