

IN THE COURT OF APPEAL OF NIGERIA
IN THE OWERRI JUDICIAL DIVISION
HOLDEN AT OWERRI.

ON WEDNESDAY, THE 4TH DAY OF FEBRUARY, 2026
BEFORE THEIR LORDSHIPS.

OYEBISI F. OMOLEYE: PRESIDING, JUSTICE COURT OF APPEAL.
MOHAMMED LAWAL ABUBAKAR: JUSTICE, COURT OF APPEAL.
NTONG FESTUS NTONG: JUSTICE, COURT OF APPEAL.

APPEAL NO: CA/OW/300M/2024
SUIT NO: NICN/OW/05/2024.

BETWEEN:

- MR. E.E. J. AGWULONU**
- NKUM (JOY) IJEOMA OLUCHI**
(For herself and as Representing
The 2022 Shortlisted Candidates)

APPLICANTS/APPELLANTS

Suobo Zuofa Esq.
SENIOR REGISTRAR
COURT OF APPEAL OWERRI DIVISION

AND

- ATTORNEY GENERAL OF ABIA STATE**
- ABIA STATE JUDICIAL SERVICE COMMISSION**
(Excluding the Claimant)
- NATIONAL JUDICIAL COUNCIL**

**RESPONDENTS/
RESPONDENTS**

LEADING RULING
DELIVERED BY NTONG FESTUS NTONG, JCA.

This Ruling pertains to the Applicants' Motion on Notice dated 6/11/2024 and filed on 8/11/2024, seeking the following reliefs:

"(1) Extension of time within which to seek leave to appeal the final decision of the National Industrial Court, holding at Owerri and delivered on 26/7/2024.

- (2) Leave of the Court of Appeal to appeal against the final decision of the National Industrial Court, holding at Owerri and delivered on 26/7/2024.
- (3) Enlargement of time within which to file the Appeal brought by the Appellant outside the stipulated period or time to appeal against the final decision of the National Industrial Court, holding at Owerri and delivered on 26/7/2024.
- (4) An Order of Injunction pending Appeal restraining the 1st, 2nd and 3rd Respondents from commencing and/or continuing with any process of appointment of Judges of Abia State in another 2024 exercise during the relevant pending Appeals over the previous appointment of Judges of Abia State in the ongoing 2022 exercise in respect of the same vacancies in Abia State Judiciary and until the determination of the relevant appeals No. CA/OW/280/2023. CA/OW/281/2023 and CA/OW/298/2023 over the same appointment of Judges of Abia State”

The Application is predicated upon seven (7) grounds, to wit:

- “1. The Appellants/Applicants are aggrieved and dissatisfied with the judgment/decision of the National Industrial Court sitting at Owerri delivered in Suit No: NICN/OW/05/2024 on the 26th day of July, 2024 relating to the Appointment

of Judges of Abia State over the vacant positions of Judges of Abia State which includes subject matter of pending appeals Nos. CA/OW/280/2023, CA/OW/281/2023 and CA/OW/298/2023 and intends to appeal against the said decision of the National Industrial Court to Court of Appeal Owerri.

2. By the provision of Section 243 (2) of the Constitution, leave of the Court of Appeal is required to file the Appeal from the decision of the National Industrial Court to the Court of Appeal on grounds other than on fundamental rights contained in the constitution.
3. The Proposed Notice of Appeal contains arguable grounds of appeal and substantial/recondite points of law and issues of law over the appointment of Judges of Abia State concerning the same vacancies in the Abia State Judiciary covered by the 2022 exercise which is the res and subject matter of appeal No. CA/OW/280/2023, CA/OW/281/2023 and CA/OW/298/2023 pending at the Court of Appeal Owerri and by the 2024 exercise which is the subject matter of decided suit No. NICN/OW/05/2024 against which the Applicants seek leave of Court to appeal to the Court of Appeal Owerri.

CERTIFIED TRUE COPY

4. **The Appellants/Applicants timeously filed an earlier Notice of Application for leave to appeal at the Court of Appeal Owerri on the 16th August, 2024, against the final decision of the National Industrial Court sitting at Owerri to the Court of Appeal, holden at Owerri in Suit No. CA/OW/252/2017 delivered on 26th day of July, 2024 which was within the three (3) months stipulated period under section 24 (2) (a) of the Court of Appeal Act (as amended).**
5. **The initial timeous application for leave to Appeal was filed at the Court of Appeal Owerri, on the 16th day of August, 2024 within the limited three (3) months period as aforesaid but was neither fixed for hearing nor heard by the Court of Appeal until the three (3) months stipulated period elapsed, thereby necessitating this application with tripod prayers since the time within which to appeal from the decision of the National Industrial Court to the Court of Appeal has expired during the pendency of the initial Application which is abated.**
6. **The Applicants/Appellants are entitled to bring this application with the tripartite prayers sought on the motion paper where the time within which to appeal under section 24 (2) (a) of the Court of Appeal Act (as amended) and under section 243 (2) of the 1999 Constitution with leave from the**

CERTIFIED TRUE COPY

decision of the National Industrial Court to the Court of Appeal.

- 7. The Honourable Court has the power to grant this application in pursuant to S. 243 (2) of the 1999 Constitution of Nigeria and Order 2 of the Court of Appeal Rules 2021 and the inherent jurisdiction of the Honourable Court”**

The Motion on Notice is supported by an Affidavit of 14 paragraphs deposed to by **Emeka E. Agwulonu Esq.**, the 1st Applicant for and on behalf of the 2nd Applicant and himself. Attached to the said Affidavit are 3 exhibits, marked as **Exhibits CA1, CA2 and CA3** respectively. The Motion is accompanied with a Written Address in compliance with the extant rules of this Court. The 1st Respondent, upon receipt of the Motion on Notice opposed same by filing on 30/10/2025, a Counter Affidavit of 22 paragraphs, deposed to by one **Mr. Chibuzor Lucky**, a Senior Clerical Officer in the Abia State Ministry of Justice. The said Counter Affidavit was deemed proper and properly filed on 4/12/2025. The Counter Affidavit is also accompanied with the Written Address of Counsel in compliance with the rules of this Court. The 2nd Respondent's Counter Affidavit of 20 paragraphs deposed to by one **Ugochukwu Egekwu**, an Assistant Chief Administrative Officer in the Abia State Judicial Service Commission was filed on 5/12/2025 and is accompanied with a Written Address. The 3rd Respondent's Counter Affidavit of 22 paragraphs is deposed to by one **Miss Patient Okorie**, a litigation secretary in the law firm of Lucent Attorney was filed on 5/11/2025 but was deemed proper and properly filed on 4/12/2025.

CERTIFIED TRUE COPY

The Applicants further filed on the 11/12/2025, a Further Affidavit and Reply on Points of Law in answer to the 1st Respondent's Counter Affidavit and a Written Address. The Applicant's Further Affidavit in response to the 2nd Respondent's Counter Affidavit was filed on 11/12/2025. The Appellant's Further Affidavit in reply to the 3rd Respondent's Counter Affidavit was filed on 11/12/2025. Although the Applicant's Written Addresses and Reply on Points of Law for the 1st, 2nd and 3rd Respondents were settled by **O. O. Nkume, Esq.** of Learned Counsel for the Applicants, the Written Address of the 1st Respondent was settled by **Mrs. Chidima Gberemakor.,** of Learned Counsel for the 1st Respondent. The Written Address of the 2nd Respondent was settled by **J. N. Ikezu, Esq.** and the Written Address of the 3rd Respondent was settled by **Emeka E. Ekemedo, Esq.**

Having filed and exchanged all the processes by the respective parties, Application was heard by this Court on the 15/1/2026, wherein Learned Counsel for the Applicants, **O. O. Nkume, Esq.** moved the Applicants' Motion on Notice and further adopted the Applicants' Written Address and Reply on Points of Law to the 1st, 2nd and 3rd Respondents' Counter Affidavits in urging us to grant the Application. Learned Counsel for the 1st Respondent, **C. O. Ogo, Esq.** adopted the 1st Respondent's Counter Affidavit and its Written Address in urging us to dismiss the Application. Learned Counsel for the 2nd Respondent, **K. Nwaiwu, SAN,** adopted the 2nd Respondent's Counter Affidavit and its Written Address and urged us to dismiss the Application. Learned Counsel for the 3rd Respondent, **E. Okoroji, Esq.** adopted the 3rd Respondent's Counter Affidavit and its Written Address and urged us to dismiss the Application. After hearing the parties, the matter was then reserved for Ruling, and here we are today.

BRIEF FACTS OF THE APPLICATION: -

This Suit was commenced by way of Originating Summons seeking both Declaratory and Injunctive reliefs. The 1st Respondent was the Plaintiff while the Applicants were the 2nd and 3rd Defendants respectively. The 2nd Respondent was the 1st Defendant and the 3rd Respondent was the 4th Defendant. The reliefs sought in the Originating Summons over the power of the 2nd Respondent to call for expression of interest for the appointment of Judges of Abia State over certain existing vacancies for which the 2nd Applicant and other 2022 shortlisted candidates had been earlier recommended by the 2nd Respondent and duly interviewed by the 4th Respondent but because the 2022 process is stalled by litigation at the Federal High Court and now pending at the Court of Appeal, Owerri, the 1st Respondent sought to navigate out of the pending appeals by calling for another expression of interest which the Applicants sought to challenge as likely to foist a fait accompli on the pending appeals and for lack of jurisdiction of the trial Court to entertain the subject matter.

The Judgment of the trial Court was delivered on 26/7/2024. The Applicants being dissatisfied with the decision of the National Industrial Court of Nigeria, and having been out of time to file their Notice of Appeal, brought this Application for leave. The Applicants, in this Application, formulated lone issue for the determination of this Application to wit:

“(A) Whether the Applicants/Appellants are entitled to the grant of this Application by the Honourable Court having satisfied the conditions for the grant of the reliefs sought in this Application”

The 1st Respondent formulated lone issue for determination of this Application to wit:

CERTIFIED TRUE COPY

“Whether this Application ought to be dismissed for lacking in merit, in view of the Applicants’ failure to disclose any arguable ground of appeal to establish any existing legal right or interest”

The 2nd Respondent formulated one issue for the determination of this Application as follows:

“Whether in the circumstances of the case, the Applicants failed to prima facie disclose any good arguable issue and failed to establish any legal right/interest, entitling it to the reliefs sought by their Application”

Whereas the 3rd Respondent formulated one issue for the determination of this Motion as follows:

“Whether the instant Application is competent, has merit and grantable from Affidavit evidence before this Honourable Court”

APPLICANTS’ ARGUMENTS: -

Learned Counsel for the Applicants submitted that they have satisfied the requirements for the Application for extension of time for leave to appeal from the final decision of the National Industrial Court to the Court of Appeal having regards to the facts deposed to in the supporting affidavit and the relevant documents exhibited or annexed to the affidavit in support. Learned Counsel referred us to Exhibits **CA1, CA2** and **CA3**.

Learned Counsel for the Applicants relied on the authority of **G.T.B Vs. EST MASTER CONSTRUCTION LTD (2018) 8 NWLR (PT.1622) 483 AT 495 PARAS C-E**; and submitted that the copious grounds of appeal in Exhibit CA2 prima facie show good cause why the appeal should be

heard because they raise not only arguable substantial issues of law but recondites points of law showing that the decision of the trial Court was perverse and not supported by any documentary evidence before the trial Court which led to a grave miscarriage of justice. Learned Counsel again referred us to grounds 1, 2, 3, 4 and 5 of the Proposed Notice of Appeal.

It is the submission of the Applicants that the Affidavit in support of the Application set forth good and substantial reasons for the failure to lodge the appeal within the prescribed period occasioned by the delay after hearing the initial timeous Application filed at the Court of Appeal, Owerri in Exhibit CA3 which was not the default of the Applicants/Appellants and cannot with utmost respect be visited on the Applicants/Appellants. Arguing further, learned Counsel maintained that since the initial Application had become incompetent by the effluxion of time, the grant of this Application becomes imperative in order to prosecute the Appeal to a logical conclusion.

Learned Counsel argued that the injunction pending Appeal seeks a preemptory preservative order, in order to preserve the res and keep matters in status quo over the same subject matter of this Appeal and the pending relevant Appeals Nos: CA/OW/280/2023, CA/OW/281/2023 and CA/OW/298/2023, over the same appointment of Judges of Abia State. The case of **AKEEM Vs. UNIVERSITY OF IBADAN (2001) 15 NWLR (PT.736) 352 AT 358-360, RATIOS 3, 4, 5, 6, 7**. Learned Counsel for the Applicant finally relied on the case of **IKEME Vs. ANAKWE (2000) 8 NWLR (PT. 669) 484 AT 492 PARAS B-C**; and submitted that an Appeal includes Application for Leave to Appeal. He therefore urged us to resolve the lone issue in the affirmative in support of the Applicants.

1ST RESPONDENT'S ARGUMENT: -

CERTIFIED TRUE COPY

Learned Counsel for the 1st Respondent argued that the Applicants have woefully failed to disclose any good, arguable or substantial ground to warrant the indulgence of this Honourable Court by way of leave to appeal against the decision of the trial Court and that this Application is devoid of merit and constitutes a gross abuse of judicial process which this Court is enjoined not to condone. Learned Counsel maintained that the Applicants have failed to establish an existing legal right or established that it has the requisite locus standi to institute this appeal and that Application for Interlocutory Injunction can only be granted in protection of a clearly established legal right because the Applicants have not demonstrated any specific or vested right arising from the 2022 judicial appointment exercise nor have they shown that such right has been violated or threatened.

Learned Counsel for the 1st Respondent relied on the case of **OWODUNNI Vs. REG. TRUSTEES OF CCC (2000) 10 NWLR (PT. 675) 315**; and submitted that the Applicants interest are superficial and imaginary and this Honourable Court cannot exercise its discretion in their favour because the balance of convenience in the grant of this Application does not lie with the Applicants. Learned Counsel argued that the Applicants have not discharged the burden placed on them as their Affidavit and Written Address are completely bereft of any material averments showing how the balance of convenience could conceivably favour them.

Learned Counsel further submitted that the Applicants' undertaking as to damages is a mandatory equitable requirement for the grant of this Application because it is incumbent on the Applicants to furnish credible evidence of financial capacity to satisfy such undertaking should the injunction be found to have been improperly granted. He referred us to

the case of **OYESOLA Vs. NNEBEDUM (1992) 3 NWLR (PT. 299) 315 AT 344**; Learned Counsel for the 1st Respondent submitted that the Applicants have not shown any evidence whatsoever of the nature or extent of any irreparable harm allegedly suffered from the 2022 appointment process, nor have they demonstrated that the 2024 judicial appointment exercise would occasion any such injury and that their claims are speculative, unsubstantiated, and legally unsustainable.

It is the argument of the 1st Respondent that the Applicants' misuse of the machinery of this Honourable Court to harass, irritate, and obstruct the lawful discharge of judicial functions constitutes a flagrant abuse of the process. Learned Counsel relied on the case of **IKINE Vs. EDJEREDE (2001) 18 NWLR (PT.745) 446**. He finally urged us to refuse the grant of the Application and award substantial costs in favour of the 1st Respondent.

2ND RESPONDENT'S ARGUMENT: -

Learned Counsel for the 2nd Respondent answered the question formulated by the 2nd Respondent in the affirmative and contended that the Applicants have failed to disclose any good or arguable case to entitle them to the grant of leave to appeal against the decision of the trial Court and that same amounts to abuse of this Honourable Court. Leaned Counsel cited the case of **OBEYA MEMORIAL HOSPITAL Vs. A.G. FRDERATION (1987) 7 SCNJ 198**; and submitted that equitable relief on Interlocutory Injunction must be refused particularly where the Court finds out that the Applicants does not have right to do so and that the establishment of such right by the Applicants is a sine qua non and the condition precedent for the grant of the equitable relief. See **ADENUGA Vs. ODUMERU (2003) LPELR-248 AT 60 (SC)**.

CERTIFIED TRUE COPY

Learned Counsel for the 2nd Respondent cited the case of **ACB Vs. AWOGBIRO (1991) 2 NWLR (PT.176) 711 AT 719**; and argued that the onus is on the Applicants to show the balance of convenience in their favour to warrant the grant of this Application and that the Applicants must also possess the capacity to meet its undertaking as to damages because it is relevant and necessary for the Applicants to tender in evidence particulars of its financial position. Learned Counsel submitted that the Applicants have not given any undertaking as to damages or evidence or particulars of their financial position and that they also failed to indicate how they will be able to meet the said undertaking.

Relying on the authorities of **NWAUBANI Vs. A.G ABIA STATE (2020) 11 NWLR (PT.1735) 267 AT 296 PARAS A-H; IKINE Vs. EDJEREDE (2001) 18 NWLR (PT.745) AT 446**; learned Counsel submitted that an Application of this kind must show irreparable damage before a Court can grant an order for injunction and that the Applicants have not shown any likelihood of the nature of irreparable damages. He finally urged us to dismiss the Application of the Applicant seeking leave to appeal on the grounds that the Applicants have failed to disclose any good or arguable case to be entitled to the reliefs sought.

3RD RESPONDENT'S ARGUMENT: -

Learned Counsel for the 3rd Respondent submitted that the Applicants' Application is incompetent, lacks merits and unknown to law and that it is trite that where a law prescribed for a manner with which a particular thing is to be done, no party is at liberty to do it in a different way. He cited the authority of **INSPECTOR GENERAL OF POLICE Vs. MOBIL PRODUCING NIGERIA INLIMITED (2018) EJSC VOL. 95 AT 76**; and further submitted that neither the extant Rules of this Honourable Court nor that of the trial Court or any other law permits the Applicants

Learned Counsel contended that the Applicants' Application and order for injunction is an attempt to stay the Judgment of the trial Court and that Orders 13 and 64 of the National Industrial Court Rules, 2017 provides elaborately the manner with which an Application for stay of injunction can be filed and that assuming without conceding that the Applicants have filed a motion for stay at the lower Court and it was refused, the proper thing is to file a separate Application for stay and not to smuggle in an injunctive relief in an Application for leave. He argued that the Applicants never exhibited any of the Appeal mentioned in the supporting affidavit to their Motion on Notice.

Learned Counsel contended that the Proposed Notice of Appeal did not disclose good or arguable case to entitle the Applicants to the grant of leave to appeal against the judgment of the trial Court and that the Applicants did not meet the legal requirement for the grant of injunctive relief. See **OBEYA MEMORIAL HOSPITAL Vs. A.G. FRDERATION (1987) 7 SCNJ 198**. It is the argument of the learned Counsel for the 3rd Respondent that the Applicants have not shown that they have any legal right or how they will suffer irredeemable damage if this Application is not granted. The appointment of judicial official is a continuous exercise and the Applicants can apply in subsequent exercise and that the trial Court held that the stage at which the 2022 exercise was stalled did not vest any legal right on the Applicants.

Learned Counsel relied on the case of **ACB Vs. AWOGBIRO (1991) 2 NWLR (PT.176) 711 AT 719**; and submitted that the Applicants failed to show how the balance of convenience sways in their favour to be entitled to the injunctive reliefs sought and that the Applicants did not

make any undertaking in their supporting affidavit in the event that Application turns out to be a frivolity. He relied on the case of **SOLA Vs. NNEBEDUM (1992) 3 NWLR (PT.315) 344**; and admitted that the Applicants Application is an abuse of judicial process because they are using the Court process to hold the appointment of judicial officers in Abia State at ransom. He therefore urged this Court to hold that the Applicants Application lacks merit and should be dismissed with heavy cost.

It should be noted that the Applicants' reply on point of law to the 1st, 2nd and 3rd Respondents' Counter Affidavit are the same in substance and to that effect, this Court shall adopt the argument and submissions of the Applicants' reply on point of law to the 1st Respondent for the 2nd and 3rd Respondents.

APPLICANTS' REPLY ON POINT OF LAW TO THE 1ST, 2ND AND 3RD RESPONDENTS' COUNTER AFFIDAVIT: -

Learned Counsel to the Applicants submitted that grounds 15, 16 and 17 of the Proposed Notice of Appeal raise and disclose the fundamental issue of lack of jurisdiction of the National Industrial Court to entertain any action bordering on or concerning the appointment of Judges which falls within administrative action or decision of National Judicial Council which is an agency of the Federal Government and such actions fall within the executive jurisdiction of the Federal High Court under Section 251 (q) and (r) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). He cited the case of **AYOOLA Vs. BARUWA (1999) 11 NWLR (PT.628) 595 AT 611**.

Learned Counsel further submitted that Section 230 (1) (s) of the 1979 Constitution is also entrenched and re-enacted as Section 251 (r) of the

1999 Constitution of the Federal Republic of Nigeria (as amended) and that the decision of the Court of Appeal in the case of **AYOOLA Vs. BARUWA (supra)** is also binding on the National Industrial Court to divest it of the jurisdiction to entertain the subject matter of the Suit and of this Appeal concerning the appointment of Judges.

Learned Counsel again, submitted that the issue of lack of jurisdiction of the trial Court raised in the grounds of Appeal is substantial and constitutes an exceptional circumstance to warrant the grant of the leave to appeal sought by the Applicants. He therefore submitted that this Honourable Court has a duty to grant the injunction pending Appeal to preserve the res of litigation in the pending Appeals.

RESOLUTION OF ISSUES: -

Having scrupulously, meticulously and painstakingly read the Applicants' Motion on Notice, the 1st, 2nd and 3rd Respondents' Counter Affidavit in opposition to the Applicants' Motion on Notice and the Applicants' Reply on Point of Law to the 1st, 2nd and 3rd Respondents' Counter Affidavit, I shall in the determination of this Application adopt the lone issue formulated by the Applicants and subsume therein the issues formulated by the 1st, 2nd and 3rd Respondents. The Applicants herein are seeking for extension of time to seek leave to appeal and leave for enlargement of time to appeal the final decision of the National Industrial Court of Nigeria delivered on 26/7/2024 in favour of the Respondents. However, by virtue of the provision of Section 24 (2) (a) of the Court of Appeal Act (as amended), the period for giving notice of appeal or notice of application for leave to appeal in a final decision in a civil cause or matter is three months beginning from the date of the final decision.

CERTIFIED TRUE COPY

Hence, by virtue of Order 6 Rule 9 (1) of the Court of Appeal Rules 2021, an application for extension of time to appeal or to seek leave to appeal or to do both when the time provided for appeal has elapsed is not granted as a matter of course. Every case or matter before a Court of law ought to be considered by the Court according to its peculiarities and merits especially as every case or matter is peculiar to itself. The Applicant must establish by the affidavit in support of his application that there are exceptional circumstances which would warrants the exercise of the Court's discretion in his favour. *See the authorities of J.M.R LTD. Vs. M/T MATHER BENEDICTA (2019)12 NWLR (PT. 1686) 323 AT 329; AGU Vs. NICON INS. PLC. (2000)11 NWLR (PT. 677) 187; MIDLAND GALVANISING PRODUCT LTD. Vs. O.S.I.R.S (2015) 8 NWLR (PT. 1640)29; ELIAS Vs. ECOBANK (NIG.) PLC. (2019)4 NWLR (PT. 1663) 381.*

The discretion of a Court is not a jamboree, discretion of a Court is not vague, discretion of a Court is not fanciful, discretion of a Court is not arbitrary, discretion of a Court is not according to the whims and caprices of an individual Judge, discretion of a Court is exercise according to the law and it follows the law. Therefore, an Applicant seeking the indulgence of a Court to exercise its discretion, must place adequate materials before that Court in order to assist the Court exercise its discretion judicially and judiciously in his or her favour.

An Applicant seeking the indulgence of a Court to exercise its discretion must place adequate material before the Court in order to assist the Court exercise its discretion in his or her favour.

The Supreme Court of Nigeria in the case of **C & N INV. LTD. Vs. STERLING BANK PLC (2025) 1 NWLR (PT.1974) 485 PARAS C-D;** held inter alia:

"An Application for enlargement of time to appeal or seek leave to appeal is not granted as a matter of mere routine. Every such Application is to be granted or refused at the discretion of the Court. And the Court must exercise its discretion judicially and judiciously. Therefore, every Application for extension of time to appeal or to apply for leave to appeal should be supported with an Affidavit, setting out good and substantial reasons for the failure to appeal or apply for leave to appeal within the prescribed period of time, and grounds of appeal prima facie showing why the appeal should be heard, amongst others. Failure by an Applicant to satisfy these two conditions would result in the dismissal of such Application"

Accordingly, in determining the Application before us, this Court must take cognizance of the facts and peculiarities of the instant case. That is to say, this Court must carefully look at the Applicants' Affidavit and Counter Affidavit of the Respondents and by extension the Applicants' grounds of appeal because for the Applicants to succeed in their Motion for extension of time to appeal, they must support their Motion with an affidavit setting forth good and substantial reasons for their failure or refusal to appeal or to apply for leave to appeal within the prescribed period and to set aside grounds of appeal which prima facie show good cause why the appeal should be heard. It is also instructive to assert that the two conditions or requirements must be satisfied conjunctively or else the Applicants' Motion on Notice would fail. *See and compare the authorities of BOWAJE Vs. ADEDIWURA (1976) 6 SC 143; YUSUF Vs. CO-OPERATIVE*

CERTIFIED TRUE COPY

BANK (1989) 3 NWLR (PT. 110) 483 AND GENERAL OIL LTD. Vs. ODUNTAN (1990) 7 NWLR (PT. 163) 423.

In the instant case, the reasons for the Applicants' failure to appeal the Judgment of the National Industrial Court within the prescribed period of three months was attributed to the appellate Court's failure to fix hearing date for the first Application filed on 16/8/2024 for leave to appeal. The Applicants herein lied on oath when they stated in paragraph 5 of their Affidavit that they had earlier filed a Motion on Notice on 16/8/2024 but the trial Court failed to fix hearing date until the prescribed three months period elapsed. This cannot be the true position of facts, and I vehemently refuse to believe same because the Applicants on 6/11/2024 filed at the Court of Appeal, Owerri Division a Notice of Discontinuance to withdraw the Motion on Notice dated 16/8/2024 in Appeal No. CA/OW/300M/2024. It should be noted that three months period had not elapsed as at when the Applicants filed their notice of discontinuance which ordinarily ought to have expired on 16/11/2024. Section 167 (d) of the Evidence Act, 2011 (as amended) provides as follows:

"167. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relationship to the facts of the particular case, and in particular the Court may presume...

(d). that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it"

CERTIFIED TRUE COPY

In the case of **MUSA & ORS Vs. YERIMA & ANOR (1997) LPELR-1928 (SC)**, it was held that:

"There is presumption of withholding evidence, where:

- (1) The evidence exists
- (2) The evidence could be produced
- (3) The evidence has not been produced
- (4) The evidence has been withheld by the person who could produce it"

From the foregoing, there is no scintilla or modicum of doubt that the Applicants stylishly, mischievously and cunningly refused to draw the attention of the Court to the Notice of Discontinuance of their earlier Motion on Notice filed on 16/8/2024 and they Applicants equally lied on oath that it was the Court of Appeal that failed to issue hearing notice for the Application to be heard. The Applicants knew that the said evidence if produced, would definitely be unfavourable to them, then decided not to mention the issue of the Notice of Discontinuance or rely on it. That conduct of the Applicants is to say the least inelegance and mischievous. The law is settled that Application for extension of time to appeal will be granted when the reasons for the delay in appealing within the prescribed period are attributable to mistake, negligence or inadvertence of Counsel. However, such reason must be substantial and acceptable to the Court. See **AKINYEDE Vs. APPRAISER (1971) 1 ALL NLR 162 AND DOHERTY Vs. DOHERTY (1964) 1 ALL NLR 299**. It suffices to hold that the Applicants' reasons for the delay in appealing within the prescribed period is unacceptable and cannot be relied upon by this Court.

Moreso, paragraph 8 of the Applicants' Affidavit in support of the Motion on Notice states that the grant of this Application will give the Applicants

the opportunity to exercise their constitutional right of appeal which bothers on the appointment of Judges of Abia State over the existing vacancies in the Abia State Judiciary in the 2022 process now being the subject matter of the pending appeal Nos. CA/OW/280/2013, CA/OW/281/2023 and CA/OW/298/2023 at the Court of Appeal. On the contrary, the 1st Respondent's averment in paragraphs 10 of his Counter Affidavit in opposition of the Applicants' Motion on Notice states that the 2022 judicial appointment exercise is wholly distinct and independent from the 2024 judicial appointment exercise. The 2024 process does not constitute a continuation, extension, or repetition of the 2022 exercise, nor does it pertain to the same vacancies or previous nominations. The 2022 appointment process was compelled to be discontinued owing to widespread irregularities, corruption, and gross procedural misconduct, hence it became imperative to obtain a fresh and distinct approval from the National Judicial Council to lawfully initiate the 2024 appointment exercise, pursuant to which a new call for expression of interest was issued and the Applicants alongside other eligible candidates submitted applications which directly signifies participation in an entirely fresh judicial appointment process. No Court or any reasonable Tribunal, Committee or Body will be friendly with any form of corruption or illegalities in any procedure or any exercise be it a judicial appointment, employment or any other employment in any society.

The 1st Respondent further avers in paragraph 11 of his Counter Affidavit in opposition to the Applicants' Motion on Notice that the Applicants poses no vested legal right or cognizable interest arising from the 2022 judicial appointment exercise which could confer upon them the locus standi to impugn or challenge the 2024 judicial appointment process and that the Applicants' current application for injunctive order, are in effect seeking

the opportunity to exercise their constitutional right of appeal which bothers on the appointment of Judges of Abia State over the existing vacancies in the Abia State Judiciary in the 2022 process now being the subject matter of the pending appeal Nos. CA/OW/280/2013, CA/OW/281/2023 and CA/OW/298/2023 at the Court of Appeal. On the contrary, the 1st Respondent's averment in paragraphs 10 of his Counter Affidavit in opposition of the Applicants' Motion on Notice states that the 2022 judicial appointment exercise is wholly distinct and independent from the 2024 judicial appointment exercise. The 2024 process does not constitute a continuation, extension, or repetition of the 2022 exercise, nor does it pertain to the same vacancies or previous nominations. The 2022 appointment process was compelled to be discontinued owing to widespread irregularities, corruption, and gross procedural misconduct, hence it became imperative to obtain a fresh and distinct approval from the National Judicial Council to lawfully initiate the 2024 appointment exercise, pursuant to which a new call for expression of interest was issued and the Applicants alongside other eligible candidates submitted applications which directly signifies participation in an entirely fresh judicial appointment process. No Court or any reasonable Tribunal, Committee or Body will be friendly with any form of corruption or illegalities in any procedure or any exercise be it a judicial appointment, employment or any other employment in any society.

The 1st Respondent further avers in paragraph 11 of his Counter Affidavit in opposition to the Applicants' Motion on Notice that the Applicants poses no vested legal right or cognizable interest arising from the 2022 judicial appointment exercise which could confer upon them the locus standi to impugn or challenge the 2024 judicial appointment process and that the Applicants' current application for injunctive order, are in effect seeking

to improperly fetter, obstruct, and indefinitely
future judicial appointment exercise, thereby holding the process ad-
in infinitum in perpetual abeyance without lawful justification. By the
Applicants' conduct, the Applicants are like a catfish called Asukpak Ebai
in Anang language. The catfish will not enter the net and will not allow
others to enter. It is opprobrious and unwholesome for any citizen of a
State to hold to ransom for his or her failure to achieve a feat in that
State. Even if the parties do not raise and canvas such illegalities or
corruption before the Court, where the Court becomes aware of it, the
Court can act *suo motu*. See and compare **SHODIPO Vs. LEMMINKAINEN OY & ANOR (1986) 1 ANLR 69 AT 75.**

Going further, paragraph 12 of the 1st Respondent's Counter Affidavit in
opposition avers that the appointment of judicial officers is a periodic and
recurring administrative exercise, and not a regular or continuous process
capable of precluding or obstructing subsequent judicial appointment
exercises in Abia State and that each appointment exercise is
independently initiated and conducted only upon obtaining the requisite
prior approval of the National Judicial Council which constitutes a
mandatory procedural prerequisite for the validity of every judicial
appointment process. The 2024 judicial appointment exercise represents
a fresh, distinct, and autonomous process, wholly unconnected to and
independent of the 2022 appointment exercise.

The 2nd Respondent, in paragraph 11 of his Counter Affidavit in opposition
to the Applicants' Motion on Notice denied paragraphs 9, 10 and 11 of the
Applicants' affidavit in support and avers contra that the subject matter in
Suit No. NICN/OW/05/2024 relates to the propriety or otherwise of the
constitutional power and authority of the 2nd Respondent to call for a fresh
2024 appointment exercise of expression of interest and shortlist

candidates for recommendation to the 3rd Respondent for appointment as Judges in Abia State Judiciary with necessary approval obtained from the National Judicial Council whilst the subject matter in Appeal Nos. CA/OW/280/2023, CA/OW/281/2023 and CA/OW/298/2023 bothers on the qualification of the shortlisted candidates of the 2022 appointment exercise of the six Judges of the High Court and two Judges of the Customary Court of Appeal in Abia State and that the pending Appeals do not bother on the same subject matter or with the same appointment exercise as alleged.

The 2nd Respondent further avers in paragraph 14 of his Counter Affidavit that the Applicants do not have any legal vesting right or interest under the 2022 appointment exercise entitling them to challenge the 2024 appointment exercise and that the Applicants by their Application for injunctive orders are basically attempting to hold the entire Abia State hostage of any further judicial appointment exercise in perpetuity. God forbid!

The 3rd Respondent did not contradict the averments of the 1st and 2nd Respondents in respect to the Applicants vesting right or interest in the 2022 appointment exercise of judicial officers in Abia State and the distinctive nature of the pending appeals but corroborated same by stating clearly in paragraph 13 (a), (b), (c), and (d); of his Counter Affidavit in opposition to the Applicants' Motion on Notice that the 2022 judicial appointment exercise is distinct and separate from the 2024 judicial appointment exercise because the 2024 judicial appointment exercise is a fresh exercise that was commenced on the basis of new approval by the 3rd Respondent and not a continuation of the 2022 exercise. That the 2022 judicial exercise was put on hold because of corrupt practices and the stage where the 2022 exercise was stalled did

not vest any legal right on the Applicants. That the 2nd Respondent initiated a new process consequent upon a fresh approval by the 3rd Respondent. The 2024 appointment exercise is not a repeat of the 2022 exercise that was put on hold because of corrupt practices. That the 2024 judicial appointment exercise was open to all qualified Applicants including the Applicants in this case who were not disqualified from applying in any manner.

The 3rd Respondent further avers in paragraph 14 of his Counter Affidavit that the 2024 appointment was based on 2023 appropriation as contained in letters from the 3rd Respondent to the Chief Judge of Abia State and the President Customary Court of Appeal respectively communicating the approval of National Judicial Council to the exercise and that the 2024 judicial exercise has the approval of Court of competent jurisdiction in Suit No. NICN/OW/05/2024 before it was commenced.

Flowing from the above detailed excerpt emanating from the Applicants' Affidavit and Counter Affidavits of the 1st, 2nd and 3rd Respondents, there is no doubt that the Applicants have not shown or demonstrated before this Court the relationship between the 2022 appointment exercise of judicial officers and the 2024 appointment of judicial officers in Abia State and why this Court should grant an injunction restraining the process of appointment of judicial officers in Abia State. It is so because the many reasons stated in their Affidavit in support of their Motion on Notice are very epileptic and cannot enthrall this Court to so grant. This Court believes the Counter Affidavits of the 1st, 2nd and 3rd Respondents in that the 2022 judicial appointment exercise is distinct from the 2024 exercise and that while the 2022 exercise was marred by corruption, irregularities and gross procedural misconduct, the 2024 exercise is a fresh exercise altogether and has nothing to do with the 2022 exercise. It is not a

delay and grounds of appeal showing prima facie merit. While the explanation offered-reliance on the misrepresentation of one Musa Ahmed-is not the strongest, the proposed Grounds of Appeal undeniably raise issue of jurisdiction, particularly concerning the Respondent's locus standi in filing the Suit. Once jurisdiction is challenged, as in this Case, judicial discretion weighs in favour of a permissive approach to avoid foreclosing a potentially meritorious Appeal. The principle is well grounded in our jurisprudence, as stated in *Adigwe v. FRN*. Accordingly, I concur that the Application merits a grant. Time is hereby extended for the Applicants to appeal, and they shall file their Notice of Appeal within 14 days"

The above law is a good law, no doubt, but it is inapplicable to the facts, circumstances and peculiarities of the extant case. While the case above deals with the Respondent's locus standi to initiate the Suit, the extant case bothers on the exercise of the appointment of judicial officers in Abia State. The Applicants technically included the issue of jurisdiction in their grounds of appeal to delay the 2024 exercise of the appointment of judicial officers in Abia State. This is evident in their Notice of Discontinuance earlier filed to suspend litigation and the precious time of the Court and litigants. However, the Applicants' afterthought to pursue a case where their interest is moribund and not defined clearly reveals their predicted delay tactics and nothing more pretentious. Frivolous issues of jurisdiction that a Court lacks the authority to hear a case are treated as serious abuses of the legal process. Simply because jurisdiction is very fundamental in any proceeding, does not mean it can be raised recklessly

CERTIFIED TRUE COPY

or falsely to tactically delay or harass the other party and the Court. This cannot be welcomed in our jurisprudence.

Consequently, from the avalanche of uncontradicted affidavit evidence as contained in the 1st, 2nd and 3rd Respondents' Counter Affidavits, the Applicants are not desirous to pursue the appeal but to truncate, delay, interrupt, and stand down the 2024 appointment exercise of judicial officers in Abia State in perpetuity without any justification whatsoever. I do not also see any legal right established by the Applicants to ignite and activate the jurisdiction of this Court to grant an injunction restraining the 1st, 2nd and 3rd Respondents from commencing with the process of appointment of Judges of Abia State. This is so because Application for Interlocutory Injunction can only be granted in protection of a clearly established legal right. The Applicants have not demonstrated any specific and known vested right arising from the 2022 judicial appointment exercise nor have they shown that such right has been violated or threatened. It should be noted that the existence of such right is a sine qua non to the invocation of equitable jurisdiction of the Court. Thus, the Supreme Court of Nigeria in the case of **OWODUNNI Vs. REG. TRUSTEES OF CCC (2000) 10 NWLR (PT.675) 315**; held that:

"The interest which a Plaintiff alleges must be such as pleaded, which can be considered to be real, not superficial or merely imaginary"

On the whole, I see that the Applicants tried so hard to technically cajole or lure us to make pronouncements of the substance of the pending Appeals before us. Frivolous Application, no matter how brilliant the paragraphs of the Affidavit appear, would amount to a futile process particularly where superior uncontradicted averments are contained in the Respondent's Affidavit. I wonder what exactly the Applicants are chasing

because one cannot continue to chase shadows of what ordinarily does not belong to him. Employment or appointment of judicial officers are not justiciable. Exhibit CA1 being the judgment of the trial Court brilliantly highlighted the stage at which a successful candidate can be laced with statutory flavour in accordance with the National Judicial Council Rules to be so clothed with irreversible right. The Applicants never wore the garment of statutory flavour to be so entitled to the alleged right. They are on a frolic of their own. Therefore, the grant of this Application will not just be prejudicial to the Respondents alone but to the entire Abia State people who long for justice. Justice is a food or puddly meant for all and sundry in Nigeria and all the States in general and Abia State in particular. Justice is a beautiful, handsome, and fair Groom or Bride: And like rain, justice falls on the roof of all; not segregating, not selective, not acrimonious, not rancorous and does not have enemies. That is the reason I follow justice sheepishly. And where justice goes, I follow him or her, where justice stands, there I also stand. I, as a person and all the Courts in Nigeria including our local community Courts or panels ought to do substantial justice to every person standing before them.

The Applicants cannot lure me and my learned brothers to embark on a journey of futility which will cause us to hear an Appeal that is dead on arrival or an Appeal that will suffer a stillbirth.

In conclusion, relying on the Supreme Court of Nigeria authority in **C & N INV. LTD. Vs. STERLING BANK PLC** (supra), I make bold to hold that the Applicants failed to conjunctively satisfy the conditions or requirements for the grant of their Application for enlargement of time to appeal or seek leave to appeal. Consequently, the failure of the Applicants to satisfy the twin requirements amount to dismissal of the Application.

CERTIFIED TRUE COPY

Accordingly, the Applicants Application is bereft of merit and is hereby dismissed.

Cost of **₦3,000,000.00** (Three Million Naira) only is hereby awarded against the Applicants and in favour of the 1st, 2nd and 3rd Respondents at **₦1,000,000.00** (One Million Naira) each.

**NTONG FESTUS NTONG, JCA.
JUSTICE, COURT OF APPEAL.**

**Suobo Zuofa Esq.
SENIOR REGISTRAR
COURT OF APPEAL OWERRI DIVISION**

COUNSEL REPRESENTATION

APPLICANTS' COUNSEL

J.U. Amad Esq., holding the brief of O. O. Nkume Esq.,

1ST RESPONDENT'S COUNSEL

- Ikechukwu Uwanna SAN, Attorney General, Abia State.
- Chinedu Onyike Ogwo Esq., Acting Director, Civil Litigation Department.
- Nkolika Cleopatra Ubani Esq., Principal State Counsel.
- Akeem Muyiwa Eletu., Pupil State Counsel.
- F. O. Ugwumadu PSC.

2ND RESPONDENT'S COUNSEL

VERIFIED TRUE COPY

F. O. Nwabueze-Ohajimadu Esq.,
T. B. Godson Esq.,

3RD RESPONDENT'S COUNSEL

E. Okoroji Esq.,
C. I. Achiniuu

CERTIFIED TRUE COPY

TheNigerianLawyer

CA/OW/300M/2024

CONTRIBUTION

OYEBISI FOLAYEMI OMOLEYE, JCA.

The background facts in the case the subject of this application are that, sometime in 2022, the Abia State Judicial Service Commission commenced an exercise for the appointment of judicial officers to fill the existing vacancies in the Abia State Judiciary. Pursuant to that process, expressions of interest were invited, candidates were shortlisted, and the shortlisted candidates were forwarded to the National Judicial Council for further actions in the appointment process. Interviews were conducted by the National Judicial Council for the shortlisted candidates in October 2022. However, no final appointments were made following the interviews.

Subsequently, disputes arose in relation to the 2022 judicial appointment exercise. Litigation connected with that exercise was instituted at the Federal High Court, and appeals arising therefrom were later filed at the Court of Appeal, Owerri Division.

In 2024, the Abia State Judicial Service Commission initiated a fresh judicial appointment process for the same state judiciary vacancies. The 2024 exercise involved a renewed call for expressions of

CERTIFIED TRUE COPY

interest and steps were towards shortlisting candidates for appointment.

Following the commencement of the 2024 exercise, the Attorney General of Abia State the 1st Respondent herein as plaintiff instituted Suit No. NICN/OW/05/2024 the subject of the instant application at the National Industrial Court of Nigeria, Owerri Division. The suit was commenced by originating summons and sought the interpretation and application of the relevant provisions of the 1999 Constitution, as amended, the Revised National Judicial Council Guidelines and Procedural Rules for the Appointment of Judicial Officers. The suit sought judicial clarification and declaratory reliefs affirming the powers of the Abia State Judicial Service Commission to proceed with the 2024 appointment exercise in the face of the inconclusive 2022 exercise, the disputes and pending appeals connected with the said exercise.

The Abia State Judicial Service Commission, the National Judicial Council, the 2nd and 3rd Respondents herein and the 1st and 2nd Applicants herein were joined defendants in the said suit. Processes were filed and exchanged, including affidavits and counter-affidavits. Jurisdictional objections were raised, and a counterclaim

CERTIFIED TRUE COPY

was filed by some of the defendants, which was later withdrawn during the proceedings.

On 26 July 2024, the National Industrial Court delivered judgment in the referenced Suit No. NICN/OW/05/2024. That Court held that it is imbued with the requisite jurisdiction to adjudicate on the suit and it therefore proceeded to determine the substantive issues raised by the originating summons. At the conclusion of the trial, the Court declared that the Abia State Judicial Service Commission the 2nd Respondent possesses the authority to commence the 2024 judicial appointment exercise and it restrained any interference with the process. The NIC further directed that the 2024 appointment exercise should continue. On the contrary, the counterclaim filed by the affected defendants was dismissed.

Being dissatisfied with the judgment of the National Industrial Court delivered on 26 July 2024, the Applicants took steps to challenge the decision on appeal., albeit they out of time in doing so.

Consequently, the instant application was brought by the Applicants before this Court, seeking the following reliefs:

- 1. EXTENSION OF TIME within which to seek leave to appeal by the Appellants against the final decision of**

CERTIFIED TRUE COPY

the National Industrial Court, holding at Owerri and delivered on the 26th day of July 2024 in Suit No. NICN/OW/05/2024 to the Court of Appeal, Owerri.

2. LEAVE OF THE COURT OF APPEAL TO APPEAL against the final decision of the National Industrial Court, holding at Owerri and delivered on the 26th day of July 2024 in Suit No. NICN/OW/05/2024 to the Court of Appeal, Owerri.
3. ENLARGEMENT OF TIME within which to file the appeal brought outside the stipulated period or time to appeal against the final decision of the National Industrial Court, holding at Owerri and delivered on the 26th day of July 2024 in Suit No. NICN/OW/05/2024 to the Court of Appeal, Owerri.
4. AN ORDER OF INJUNCTION PENDING APPEAL restraining the 1st, 2nd, and 3rd Respondents from commencing and/or continuing with any process of appointment of Judges of Abia State in another 2024 exercise during the pendency of the relevant appeals over the previous appointment of Judges of Abia State in the ongoing 2022 exercise in respect of the same

CERTIFIED TRUE COPY

vacancies in the Abia State Judiciary, and until the determination of Appeals Nos. CA/OW/280/2023, CA/OW/281/2023, and CA/OW/298/2023 over the same appointment of Judges of Abia State.

AND Such further order as this Court may deem fit to make in the circumstances.

The application is supported by an affidavit deposed to by the 1st Applicant. Exhibits were attached to the supporting affidavit, including a certified true copy of the judgment of the National Industrial Court delivered on 26 July 2024, a proposed notice of appeal setting out the grounds of appeal, and copies of the earlier application for leave to appeal filed within time. The Applicants also filed a written address in support of the application.

In response to the application, the 1st Respondent filed a counter-affidavit opposing the grant of the application and the injunctive relief sought. The 1st Respondent also filed a written address in opposition to the application. While the 2nd Respondent simply filed a counter-affidavit opposing the application and a written address in opposition to the application.

The 3rd Respondent also filed a counter-affidavit opposing the application, together with a written address.

CERTIFIED TRUE COPY

Following the filing of the counter-affidavits and written addresses by the Respondents, the Applicants filed further affidavits in reply to the counter-affidavits of the 1st, 2nd and 3rd Respondents respectively. The Applicants also filed replies on points of law in response to the 1st, 2nd and 3rd Respondents' respective written addresses.

The Applicants in their written address formulated a sole issue for determination as follows:

"Whether the Applicants/Appellants are entitled to the grant of this application by the Honourable Court having satisfied the conditions for the grant of the reliefs sought in this application?"

In response, the 1st Respondent raised a sole issue for determination in his Address as follows:

"Whether this application ought to be dismissed for lack of merit, in view of the Applicants' failure to disclose a arguable ground of appeal to establish any existing legal right or interest?"

In similar fashion, the 2nd Respondent in its written address raised a sole issue for determination to wit:

CERTIFIED TRUE

“Whether in the circumstances of the case, the Applicants failed to prima facie disclose any good and arguable issue and failed to establish any legal right/interest, entitling them to the reliefs sought by their application?”

The 3rd Respondent also distilled a sole issue for resolution as follows:

“WHETHER THE INSTANT APPLICATION IS COMPETENT, HAS MERIT AND GRANTABLE FROM THE AFFIDAVIT EVIDENCE BEFORE THIS HONOURABLE COURT?”

I have considered the sole issue formulated by the Applicants and the respective sole issues distilled by the 1st, 2nd and 3rd Respondents. Although differently couched, the issues are substantially the same and are directed at the competence and merit of the application and whether the Applicants have disclosed any legal right or interest entitling them to the reliefs sought. I therefore formulate a sole issue which I believe is apt for the proper determination of this application, the same having been robustly submitted upon by all the parties as follows:

Whether, having regard to the affidavit evidence and the grounds of appeal, the Applicants have disclosed any good

CERTIFIED TRUE COPY

and arguable issue and established any legal right or interest entitling them to the reliefs sought?

To put it in different words, it is my firm view and I find that the determination of this issue will effectively resolve the application, as the grant or refusal of the reliefs sought is dependent on whether the Applicants have met the requisite legal threshold disclosed by the materials placed before this Court.

I shall now proceed to firstly consider the submissions of learned counsel for the respective parties.

THE SUMMARY OF THE SUBMISSIONS OF THE APPLICANTS' COUNSEL

Learned counsel to the Applicants submitted that the Applicants have duly satisfied all the requirements for the grant of an application for extension of time within which to seek leave to appeal against the final decision of the National Industrial Court to this Court. He argued that this is evident from the facts deposed to in the affidavit in support of the application, as well as the documents exhibited and annexed thereto, marked as Exhibits CA 1, CA 2 and CA 3 respectively. Learned counsel placed reliance on the case of: **G.T.B v. Est Master Construction Ltd (2018) 8 NWLR (Pt. 1622) 483 at 495 paragraphs C–E.**

CERTIFIED TRUE COPY

Learned counsel further submitted that the copious Grounds of Appeal contained in Exhibit CA 2 prima facie disclose good cause why the appeal ought to be heard. He contended that the said grounds raise not only arguable and substantial issues of law, but also recondite points of law, demonstrating that the decision of the trial Court was perverse, unsupported by any documentary evidence before the trial Court, and occasioned a grave miscarriage of justice to Applicants.

In aid of this submission, learned counsel referred this Court to Grounds 1, 2, 3, 4 and 5 of the Proposed Notice and Grounds of Appeal contained in Exhibit CA 2.

Learned counsel also submitted that the affidavit in support of the application clearly sets forth good and substantial reasons for the Applicants' failure to lodge the appeal within the prescribed period. He posited that the delay was occasioned by events following the hearing of an initial, timeously filed application at the Court of Appeal, Owerri, as shown in Exhibit CA 3. Learned counsel maintained that the delay was not attributable to the Applicants and the same ought not to be visited upon them.

Learned counsel submitted that since the initial application had become incompetent by effluxion of time, the grant of the present

CERTIFIED TRUE COPY

application has become imperative to enable the Applicants prosecute their appeal to a logical conclusion. Counsel once again relied in this wise on the case of: **G.T.B v. Est Master Construction Ltd (2018) 8 NWLR (Pt. 1622) 483 at 495 paragraphs E–F.**

Learned counsel further submitted that the application for injunction pending appeal seeks a peremptory preservative order to preserve the *res* and maintain the status quo in respect of the same subject matter of this appeal, as well as the pending related appeals, namely Appeal Nos. CA/OW/280/2023, CA/OW/281/2023 and CA/OW/298/2023, all concerning the same appointment of Judges of Abia State. He placed reliance on the case of: **Akeem v. University of Ibadan (2001) 15 NWLR (Pt. 736) 352 at 358–360, ratios 3, 4, 5, 6 and 7.**

Learned counsel added that it is settled law, pursuant to the Court of Appeal Act and the Rules of this Court, that an appeal includes an application for leave to appeal. He relied on the case of: **Ikeme v. Anakwe (2000) 8 NWLR (Pt. 669) 484 at 492 paragraphs B–C.**

CERTIFIED TRUE COPY

Consequently, learned counsel urged this Court to resolve the lone issue in favour of the Applicants and grant the reliefs sought in the application.

SUMMARY OF THE SUBMISSIONS OF THE 1ST RESPONDENT'S COUNSEL

Learned counsel to the 1st Respondent submitted that the Applicants have woefully failed to disclose any good, arguable, or sustainable ground upon which this Court can exercise its discretion to grant leave to appeal against the decision of the trial Court. He argued that the application is completely devoid of merit and amounts to a gross abuse of judicial process, which all Courts including this Court are enjoined not to condone.

He further submitted that the Applicants have failed to establish any existing legal right or demonstrate that they possess the requisite locus standi to institute the appeal, thereby disentitling them to the reliefs sought in this application.

Learned counsel posited that the law is firmly settled that an application for interlocutory injunction can only be granted for the protection of a clearly established legal right, the existence of

CERTIFIED TRUE COPY

which is a *sine qua non* for the invocation of the Court's equitable jurisdiction.

He contended that, in the instant case, the Applicants have not demonstrated any specific or vested right arising from the 2022 judicial appointment exercise, nor have they shown that any such right has been violated or threatened.

Learned counsel referred to the case of: **Owodunni v. Registered Trustees of CCC (2000) 10 NWLR (Pt. 675) 315**, where the Supreme Court held that the interest alleged by a plaintiff must be real and substantive, and not superficial or merely imaginary. Counsel submitted that the interests asserted by the Applicants are at best superficial and imaginary, and urged this Court not to exercise its discretion in favour of the Applicants.

Learned counsel further contended that the balance of convenience in respect of the application does not lie with the Applicants. He argued that the onus rests squarely on an Applicant to establish that the balance of convenience tilts in his favour before the Court can grant the relief sought.

Counsel maintained that the Applicants have failed to discharge this burden, as both their affidavit evidence and written address

CERTIFIED TRUE COPY

are bereft of any material averments demonstrating how the balance of convenience could favour them.

It was further submitted that an undertaking as to damages is a mandatory equitable requirement for the grant of the application, and that it is incumbent on an Applicant to place before the Court credible evidence of financial capacity to honour such undertaking if the injunction is later found to have been wrongly granted.

In support, learned counsel cited the case of: **Oyesola v. Nnebedum (1992) 3 NWLR (Pt. 299) 315 at 344**, where it was held that failure to provide particulars of financial position or an undertaking as to damages is fatal to such an application.

Counsel submitted that a careful examination of the supporting affidavit reveals that the Applicants neither furnished particulars of their financial standing nor gave any undertaking as to damages, and that on this ground alone, the application is liable to be dismissed.

Learned counsel submitted that the Applicants have failed to show any evidence of the nature or extent of any irreparable harm allegedly suffered from the 2022 appointment process, or that the 2024 judicial appointment exercise would occasion any such injury.

CERTIFIED TRUE COPY

He argued that the claims are speculative, unsubstantiated, and legally unsustainable.

He further contended that the Applicants' resort to the processes of this Court is for the purpose of harassment, irritation, and obstruction of the lawful discharge of judicial functions and the same constitutes a flagrant abuse of court process.

Counsel relied on the case of: **Ikine v. Edjerode (2001) 18 NWLR (Pt. 745) 446**, where it was held that any process employed for an improper purpose, particularly to annoy or prejudice the opposing party, amounts to an abuse of judicial process, and urged this Court to hold that the present application is a classic example of such abuse.

APPLICANTS' REPLY

Learned counsel to the Applicants submitted that the 1st Respondent, in paragraph 3.1 of his Written Address wrongly contended that the Applicants had woefully failed to disclose any good, arguable, or sustainable ground to warrant the indulgence of this Court by way of leave to appeal against the decision of the trial Court. Counsel argued, on the contrary, that grounds 15, 16, and 17 of the proposed Notice and Grounds of Appeal clearly raise and disclose the fundamental issue of lack of jurisdiction of the

National Industrial Court to entertain any action bordering on or concerning the appointment of Judges. He posited that such matters fall within the realm of administrative actions or decisions of the National Judicial Council, an agency of the Federal Government, and therefore lie within the exclusive jurisdiction of the Federal High Court pursuant to Section 251(q) and (r) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Learned counsel further submitted that this legal position finds firm support in the case of: **Ayoola v. Baruwa (1999) 11 NWLR (Pt. 628) 595 at 611, paragraphs D–F**, which he urged this Court to take cognizance of and be bound by.

He added that Section 230(1)(s) of the 1979 Constitution was re-enacted and entrenched as Section 251(r) of the 1999 Constitution (as amended), and contended that the decision of the Court of Appeal in **Ayoola v. Baruwa (supra)** is binding on the National Industrial Court, thereby divesting it of jurisdiction to entertain the subject matter of the suit and, by extension, the present appeal relating to the appointment of Judges.

Counsel further contended that the issue of lack of jurisdiction raised in the grounds of appeal is substantial and constitutes an

CERTIFIED TRUE COPY

exceptional circumstance sufficient to warrant the grant of leave to appeal sought by the Applicants.

Finally, learned counsel submitted that this Court is under a duty to grant the injunction pending appeal in order to preserve the *res* of the litigation in the pending appeals, namely Appeal Nos. CA/OW/280/2023, CA/OW/281/2023, CA/OW/298/2023 as well as the proposed appeal for which leave is sought in this application.

SUMMARY OF THE SUBMISSIONS OF THE 2nd RESPONDENT'S COUNSEL

Learned counsel to the 2nd Respondent submitted that the answer to the poised question is in the affirmative. He contended that the Applicants have failed to disclose any good or arguable case that would entitle them to the grant of leave to appeal against the decision of the trial Court. Learned counsel added that the application is an abuse of the process of this Court.

He submitted further that the law is settled that the equitable relief of interlocutory injunction must be refused in all cases where the conditions precedent have not been satisfied. Counsel relied on the case of: **Obeya Memorial Hospital v. A.G., Federation (1987)** 7 SCNJ 198.

CERTIFIED TRUE COPY

Counsel argued that an application for interlocutory injunction will only be granted to support an existing legal right, and that the establishment of such a right is a sine qua non and condition precedent for the grant of the relief. Learned counsel referred to the case of: **Adenuga v. Odumeru (2003) LPELR-24860 (SC) at pages 18–19.**

Learned counsel further submitted that the onus lies on the Applicants to show that the balance of convenience is in their favour. He relied on an earlier the decision of this Court in the case of: **ACB v. Awogbiro (1991) 2 NWLR (Pt. 176) 711 at 719.** Counsel contended that the Applicants failed to discharge this burden, as they made no averments in their affidavits nor addressed in their written address how the balance of convenience favours them.

He posited that another crucial factor in the consideration of an application for injunction is the undertaking as to damages and the applicant's ability to meet such undertaking. Counsel submitted that it is incumbent on an applicant to place before the Court evidence of its financial capacity. However, in the instant case, the Applicants neither gave any undertaking as to damages nor provided particulars of their financial position or how they intend

CERTIFIED TRUE COPY

to meet such undertaking. He urged this Court to refuse the application on this ground alone, relying on the case of: **Oyesola v. Nnebedum (1992) 3 NWLR (Pt. 229) 315 at 344.**

Learned counsel further submitted that an applicant must show the likelihood of irreparable damage before an injunction can be granted. He argued that the Applicants failed to demonstrate any irreparable damage occasioned by the 2022 judicial exercise or how the conduct and conclusion of the 2024 appointment process of judicial officers in Abia State would cause such damage. Counsel relied on the case of: **Nwaubani v. A.G., Abia State (2020) 11 NWLR (Pt. 1735) 267 at 296, paragraphs A–H.**

Counsel contended that the improper use of the judicial process of this Court to irritate and annoy the Respondents, as evident in the instant application, amounts to an abuse of court process. He referred to the case of: **Ikine v. Edjerode (2001) 18 NWLR (Pt. 745) 446.**

Learned counsel submitted that the application is frivolous, annoying, irritating, and vexatious, and he thereby urged this Court to strike it out.

APPLICANTS' REPLY

CERTIFIED TRUE COPY

Learned counsel to the Applicants submitted in reply to the written address filed by the 2nd Respondent, particularly his submission at the conclusion thereof that the proposed Grounds of Appeal do not disclose any good or arguable issue to warrant the grant of leave sought by the Applicants. Learned counsel submitted, on the contrary, that Grounds 15, 16 and 17 of the proposed Notice and Grounds of Appeal clearly raise and disclose the fundamental issue of lack of jurisdiction of the National Industrial Court to entertain any action bordering on or concerning the appointment of Judges. He argued that such matters fall within the realm of administrative action or decision of the National Judicial Council, the 3rd Respondent, an agency of the Federal Government, and consequently fall within the exclusive jurisdiction of the Federal High Court pursuant to Section 251(q) and (r) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). He relied in this wise on the case of: **Ayoola v. Baruwa (1999) 11 NWLR (Pt. 628) 595 at 611, paragraphs D–F.**

He further submitted that Section 230(1)(s) of the 1979 Constitution was entrenched and re-enacted as Section 251(r) of the 1999 Constitution (as amended), and contended that the decision of this Court in the case of: **Ayoola v. Baruwa (supra)** is binding on the National Industrial Court and operates to divest it

CERTIFIED TRUE COPY

of jurisdiction to entertain the subject matter of the suit, the subject of the proposed appeal, which concerns the appointment of Judges.

Learned counsel also posited that the issue of lack of jurisdiction of the trial Court, as raised in the proposed Grounds of Appeal, is substantial in nature and constitutes an exceptional circumstance sufficient to warrant the grant of leave to appeal as sought by the Applicants.

Finally, learned counsel submitted that this Court has a duty to grant the injunction pending appeal in order to preserve the *res* of the litigation in the proposed appeal for which leave is sought to file in this application.

SUMMARY OF THE SUBMISSIONS OF THE 3rd RESPONDENT'S COUNSEL

Learned counsel to the 3rd Respondent submitted that the issue before this Court ought to be resolved in the negative. Counsel submitted that the instant application is incompetent, lacking in merit, and unknown to law.

He posited that it is trite law that where a statute or rule prescribes a particular procedure for doing an act, parties are bound to strictly comply with such procedure and are not at liberty to adopt any

other method. Learned counsel relied on the decision of the Apex Court in the case of: **Inspector General of Police v. Mobil Producing Nigeria Unlimited (2018) EJSC Vol. 95 at page 76.**

Learned counsel further contended that neither the extant Rules of this Court nor those of the National Industrial Court, nor any other known law, permit the Applicants to combine or lump an application for injunctive relief with an application seeking leave to appeal against the judgment of the National Industrial Court.

He argued that it is alien to both the Court of Appeal Rules, 2021 and the National Industrial Court Rules for a party to seek an injunctive order in the same application wherein leave to appeal is being sought. According to learned counsel, the injunctive relief contained in the instant application is clearly an indirect attempt to stay the judgment of the trial Court.

Counsel added that Orders 13 and 64 of the National Industrial Court Rules, 2017 clearly and elaborately provide the procedure for bringing an application for stay of execution of its judgment.

Assuming without conceding, learned counsel submitted, that even if the Applicants had filed a motion for stay of execution of judgment at the trial Court and same was refused, the proper and

lawful step would have been to file a separate application for stay of execution of judgment before this Court, and not to smuggle an injunctive relief into an application for leave to appeal.

Learned counsel further submitted, still assuming without conceding, that even if the application were competent, it nonetheless lacks merit. He argued that the Applicants failed to exhibit any of the notices of the alleged appeals referred to in the supporting affidavit attached to their Motion on Notice.

He contended that the purported proposed Notice of Appeal does not disclose any good, substantial, or arguable grounds of appeal capable of entitling the Applicants to the grant of leave to appeal against the decision of the trial Court.

With respect to the injunctive relief sought, learned counsel submitted that the Applicants failed to satisfy the settled legal requirements for the grant of injunction as laid down by the Apex Court in the case of: **Obeya Memorial Hospital v. A.G. Federation (1987) 7 SCNJ 198.**

He argued that the Applicants did not demonstrate the existence of any legal right nor how they would suffer irreparable or irredeemable damage if the application is refused. Learned counsel added that the appointment of judicial officers is a continuous

exercise and that the Applicants can always apply in a subsequent exercise.

Counsel further submitted that the suspended 2022 exercise was marred by corrupt practices, and that the trial Court had properly held at paragraph 135 of its judgment that the stage at which the 2022 exercise was stalled did not vest any legal right in the Applicants. He contended that no legal right can be founded on or flow from an inconclusive exercise tainted by corrupt practices as pronounced by the Court.

Learned counsel also submitted that the Applicants failed to show that the balance of convenience tilts in their favour, a prerequisite for the grant of injunctive relief. He relied on the case of: **ACB v. Awogbiro (1991) 2 NWLR (Pt. 176) 711 at 719.**

He further argued that the Applicant failed to give any undertaking as to damages in their supporting affidavit, should the application eventually turn out to be frivolous. Learned counsel submitted that this omission alone is sufficient to warrant a refusal of the application, relying on this position on the case of: **Oyesola v. Nnebedum (1992) 3 NWLR 315 at page 344.**

Learned counsel finally contended that the application constitutes an abuse of judicial process, as the Applicants are using same to

hold the appointment of judicial officers in Abia State to ransom. He urged this Court not only to dismiss the application but also to rebuke the conduct of the Applicants.

Learned counsel submitted, on the strength of the arguments canvassed and authorities cited, that the application lacks merit and urged this Court to dismiss same with substantial costs.

APPLICANTS' REPLY

Learned counsel to the Applicants submitted in response to the 3rd Respondent's contention that the present application is unknown to law, that the said submission is misconceived. He argued that the application is firmly grounded in the constitutional provisions requiring the leave of this Court to appeal against the judgment of the National Industrial Court.

Learned counsel further submitted in answer to paragraph 2.8 of the 3rd Respondent's counter-affidavit, wherein it was alleged that the proposed Grounds of Appeal disclose no good or arguable issue to warrant the grant of leave, that the said contention is untenable. He contended that Grounds 15, 16, and 17 of the proposed Notice and Grounds of Appeal clearly raise and disclose the fundamental issue of lack of jurisdiction of the National Industrial Court to

CERTIFIED TRUE COPY

entertain matters bordering on or concerning the appointment of Judges.

He posited that issues relating to the appointment of Judges fall within administrative actions or decisions of the National Judicial Council, an agency of the Federal Government, and that such matters properly fall within the exclusive jurisdiction of the Federal High Court by virtue of Section 251(q) and (r) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Learned counsel added that the above legal position finds support in the case of: **Ayoola v. Baruwa (1999) 11 NWLR (Pt. 628) 595 at 611 paragraphs D-F**, which was commended to this Court for guidance.

He further submitted that Section 230(1)(s) of the 1979 Constitution was re-enacted as Section 251(r) of the 1999 Constitution (as amended), and that the decision in the case of: **Ayoola v. Baruwa (supra)** remains binding on the National Industrial Court, thereby divesting it of jurisdiction to entertain the subject matter of the suit, the subject of the present application and relating to the appointment of Judges.

In conclusion, learned counsel submitted that the issue of lack of jurisdiction raised in the proposed Grounds of Appeal is substantial

and constitutes an exceptional circumstance sufficient to warrant the grant of the leave to appeal being sought by the Applicants.

RESOLUTION

I have scrutinised the record before the Court in the matter of this application, that is, the affidavit evidence, the exhibits attached thereto, the subsisting judgment of the National Industrial Court delivered on 26 July 2024, and the written submissions of the learned counsel for the respective parties in support of and opposing the application.

The Applicants' case, as disclosed on the face of the motion, the supporting affidavit and Exhibits CA1, CA2 and CA3, rests on two central assertions. The first is that they were shortlisted and interviewed in the 2022 judicial appointment exercise and therefore possess a protectable interest in the outcome of that exercise. The second is that the failure to appeal within time was occasioned by the non-hearing of an earlier application for leave allegedly filed within the statutory period.

On the first assertion, the supporting affidavit admits, without qualification, that no appointment emanated from the 2022 exercise. Paragraphs 9, 10 and 11 of the affidavit do not assert that any recommendation was made by the National Judicial Council to

CERTIFIED TRUE COPY 26

the Governor, nor that any appointment was concluded. What is asserted is that interviews were conducted and that the Applicants are "awaiting the result". This assertion must be read together with Exhibit CA1, the certified true copy of the judgment of the National Industrial Court. At paragraphs 133 to 135 of that judgment, the trial Court made a clear finding, on the affidavit evidence before it, that the 2022 exercise was stalled at the stage of NJC interviews, that no candidates emerged for recommendation for appointment, and that no vested right accrued to any of the participants in the exercise. That finding subsists and has not been set aside. The Applicants' affidavit before this Court does not controvert that findings with any documentary evidence showing any recommendation or appointments. There is no letter, no minute, no NJC communication, and no gubernatorial instrument exhibited to contradict the trial Court's conclusion. The assertion of a vested right therefore stands unsupported on the record and remains a bare allegation.

The Respondents, in their respective counter-affidavits, expressly denied that the Applicants possess any vested or enforceable right arising from the 2022 exercise. They relied on the same factual premise articulated by the trial Court, that the process did not culminate in any appointment. That denial was not displaced by

CERTIFIED TRUE COPY

ny further affidavit evidence from the Applicants. The legal consequence of this state of the record is that the Applicants have failed to establish, even prima facie, the existence of a legal right capable of being protected by either leave to appeal or an injunction pending appeal.

The Applicants placed heavy reliance on Grounds 15, 16 and 17 of the proposed Notice of Appeal in Exhibit CA2, contending that they raise the issue of lack of jurisdiction of the National Industrial Court. A careful reading of those grounds shows that they challenge the competence of the Attorney-General of Abia State the 1st Respondent to institute the suit and the jurisdiction of the trial Court over matters touching on judicial appointment. However, the subsisting judgment of the trial Court expressly addressed both issues which are on the originating summons and affidavit evidence before it, finding that the action concerned the interpretation and application of constitutional and statutory provisions relating to employment and appointment processes, and that the 1st Respondent sued in his official capacity as Chief Law Officer of Abia State. Those findings are matters of record. Jurisdiction is determined by the claims and pleadings of the claimant and the jurisdictional facts disclosed therein- see the cases of: **Goldmark Nigeria Limited v. Ibafof Company Limited (2012) 10**

NWLR (Pt. 1308) 291 and Madukolu v. Nkemdilim (1962)

2 SCNLR 341. The Applicants have not shown, by affidavit evidence or exhibits, that those findings were made in the absence of jurisdictional facts or in disregard of the originating processes. At this stage, the proposed grounds merely seek to reopen conclusions already reached, without pointing to any document or admitted facts on the record that were ignored or misconstrued by the trial Court. Standing alone, that does not amount to the disclosure of a good and arguable issue within the meaning required for the grant of leave to appeal.

On the explanation for delay, the affidavit evidence admits that an earlier application for leave was filed on 16 August 2024. Exhibit CA3 is a copy of that application. There is, however, no affidavit evidence showing any step taken thereafter by the Applicants to move the Court to hear it within time. There is no letter requesting an accelerated hearing, no proof of service issues, and no explanation as to why the Applicants waited until after the statutory period elapsed before bringing the present application. The respondents denied that the delay was excusable and contended that the Applicants were indolent. On the state of the affidavit evidence, the explanation for delay remains incomplete and unpersuasive. This Court is left with an admission that time lapsed

CERTIFIED TRUE COPY

and no concrete material explaining why it did without remedial steps.

The prayer for injunction pending appeal is entirely dependent on the establishment of a legal right and the likelihood of irreparable harm. The affidavit evidence asserts that if the 2024 appointment exercise proceeds, the subject matter of the appeal will be destroyed. That assertion is contradicted by the subsisting judgment, which found that the 2024 exercise is a fresh process and not a continuation of the 2022 exercise. That finding is on record and remains binding for present purposes. The Applicants did not exhibit any document showing that the 2024 exercise was restricted to the same vacancies in a manner that would legally extinguish any concluded right of theirs. Furthermore, it is not disputed on the record that no undertaking as to damages was given in the supporting affidavit. That omission was specifically raised by all the Respondents and was not responded to by any further affidavit evidence to contradict the very germane condition. The legal consequence is unavoidable. As stated by the Apex Court in the case of: **Mufutau Akinpelu v. Egunola Adegboye (2008) 10 NWLR (Pt. 1096) 531,**

CERTIFIED TRUE COPY

"no order for an interlocutory injunction should be made on notice unless the applicant gives a satisfactory undertaking as to damages."

In the absence of such an undertaking, the equitable relief sought cannot be granted.

The argument of abuse of process was raised by the Respondents on the basis that the Applicants are seeking, by interlocutory orders, to halt a constitutionally sanctioned appointment process while relying on an interest or right which the trial Court found to be non-existent. While the affidavit evidence does not require this Court to make a positive finding of mala fides, the record clearly supports the conclusion that the Applicants are attempting to preserve, by interim orders, a position which the subsisting judgment has already held not to confer any enforceable right. That circumstance further weakens, rather than strengthens, their application.

I have also considered the contention that an appeal includes an application for leave to appeal. That proposition, even if accepted, does not advance the Applicants' case on the record. The issue here is not whether leave can be sought, but whether the conditions for its grant have been satisfied. On the affidavit

CERTIFIED TRUE COPY

evidence and exhibits, I hold that the conditions have not been satisfied. In sum, every material plank of the Applicants' case rests on assertions that are either expressly denied by the Respondents or contradicted by the subsisting judgment of the trial Court, and none is supported by documentary evidence capable of displacing those denials or findings.

Although the reliefs sought in this application are discretionary, it must be emphasised that judicial discretion is not exercised at large or on the basis of sympathy, but judicially and judiciously, upon the facts and circumstances placed before the Court. Discretion only arises where the applicant has, by affidavit evidence and exhibits, laid a proper factual foundation entitling him to the Court's indulgence. As stated in the case of: **Okon Bassey Ebe v. Commissioner of Police SCER[2008] SC.141/2005**, judicial discretion must be "founded upon the facts and circumstances presented to the court from which the court must draw a conclusion governed by law and nothing else."

In the present case, the Applicants' affidavit evidence does not establish any vested or enforceable right arising from the 2022 judicial appointment exercise, nor does it controvert the subsisting

CERTIFIED TRUE COPY

findings of the trial Court that no such right accrued. The explanation for delay is incomplete on the record, and the equitable conditions for injunctive relief, including an undertaking as to damages, are altogether deficiently absent. In these circumstances, there is no factual or legal basis upon which this Court's discretion can be exercised in favour of the Applicants.

For the foregoing reasons, derived strictly from the pleadings, affidavit evidence, exhibits and the subsisting judgment of the trial Court, the sole issue for determination is resolved against the Applicants and in favour of all the Respondents. Consequently, I also hold that this application is entirely bereft of merits, it fails and I dismiss it accordingly.

I abide by the order of costs made in the leading ruling of my learned Brother, Ntong Festus Ntong, JCA.

CERTIFIED TRUE COPY


JUSTICE OYEBISI F. OMOLEYE
PRESIDING JUSTICE, COURT OF APPEAL

Suobo Zuofa Esq.
SENIOR REGISTRAR
COURT OF APPEAL OWERRI DIVISION

APPEAL NO: CA/OW/300M/2024
MOHAMMED LAWAL ABUBAKAR, JCA.

I have read the draft Ruling of my learned brother **NTONG F. NTONG JCA**, and I agree with the reasoning and conclusion that this is a frivolous application lacking in merit. The Applicant woefully failed to satisfy the conditions for the grant of the Application of this nature. It is hereby dismiss.

I abide with the cost of **₦3,000,000 (Three Million Naira)** against the Applicants and in favour of the 1st, 2nd and 3rd Respondents.

CERTIFIED TRUE COPY



MOHAMMED LAWAL ABUBAKAR
JUSTICE, COURT OF APPEAL

Suobo Zyofa Esq.
SENIOR REGISTRAR
COURT OF APPEAL OWERRI