



IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

SUIT NO: NICN/ABJ/270/2022
MOTION NO;
APPEAL NO;

BETWEEN

ACADEMIC STAFF UNION OF UNIVERSITIES
AND

FEDERAL GOVERNMENT AND 1 OR

} APPELLANT

} RESPONDENTS

WRITTEN ADDRESS IN SUPPORT OF APPLICATION

1.0. INTRODUCTION

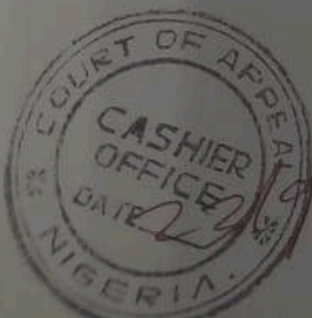
- 1.1 The Applicant filed this motion on Notice praying this honourable Court for the grant of leave to file an Appeal against the Ruling of the National Industrial Court of Nigeria with the suit No; **NICN/ABJ/270/2022** delivered on the 21st day of September, 2022 by his Lordship Justice P. I. Hamman. The motion is accompanied by a 17 paragraphs affidavit duly deposed to by Samuel Ameh on behalf of the Applicant/Appellant.
- 1.2 This written Address is filed in support of the said application. The Applicant relies on the affidavit filed in support of the application, the Grounds in support as well as this written Address and all the attached exhibits in urging this Honourable Court to grant the application.

2.0. ISSUE FOR DETERMINATION

- 2.1 The Applicant respectfully submit, for the determination of this Honourable Court, a lone issue, to wit:

"Whether this Honourable Court can grant the instant application "

- 2.2 It is our respectful submission that this Honourable Court is clothed with the vires to grant the instant application.
- 2.3 The foregoing submission finds validation in the provisions of **Section 243 (3) (a) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)**. The said provisions hereunder reproduced for ease of reference provides;



everything including employment. The point being made is that, even where the lost academic semesters/sessions are covered upon resumption, the increase in the age of these students who are being deprived of the opportunity to complete their studies as and when due cannot be reversed. Section 2 (2) of the National Youth Service Corps Act for example prohibits any person who is over the age of thirty (30) at the date of graduation from being enlisted into the Service Corps."

PARTICULARS OF ERROR

- i. There was no evidence before the lower court about the age of these innocent students being denied of the opportunity to complete their studies.
- ii. Even though the issue of National Youth Service was raised suo motu the Learned Trial Judge did not invite parties to address him on it.
- iii. The Learned Trial Judge made a case for the Respondents by relying on extraneous matters and thereby violated the fundamental right of the Appellant to fair hearing.

GROUND NINE

The learned trial judge erred in law and occasioned a miscarriage of justice when he held "*Even in the area of employment for instance, part of the requirement of persons who want to enlist into the Nigerian Army Direct Short Service Commission Course 26/2022 is to be between the ages of 20 and 30 years and 25-40 years of age for Medical Consultants. The same age requirement applies to the enlistment into the Nigerian Air Force Direct Short Service Commission Course, to mention but a few instances. See recruitment.army.mil.ng and careersngr.com*"

PARTICULARS OF ERROR

- i. The question of employment was raised suo motu by the Learned Trial Judge and parties were not allowed to address His Lordship on it.
- ii. The finding of the learned trial Court was contrary to and against the weight of evidence led at trial.

- iii. The learned trial Court acted against the weight of evidence, relied on extraneous materials and fished for evidence in arriving at a perverse conclusion.

GROUND TEN

The learned trial Judge erred in law when he held that the roll over strike is an infringement of the right of the Nigerian students and the government who is the owner of the universities.

PARTICULARS OF ERROR

- i. In embarking on the strike the Appellant followed the provisions of the Trade Union Act as amended.
- ii. There was no finding by the lower court that the Appellant embarked on an illegal strike.
- iii. The finding of the learned trial Court was contrary to and against the weight of evidence led at trial.
- iv. A court of law has no business delving into the arena and making a case for either parties to the suit.
- iv. A court cannot make a finding not supported by evidence led before him.

GROUND ELEVEN

The learned trial judge erred in law and occasioned a miscarriage of justice when he granted the order of interlocutory injunction in favour of the Respondents without exercising his discretion judicially and judiciously.

PARTICULARS OF ERROR

- i. The Referral was not based on an objection against the Award of the Industrial Arbitration Panel pursuant to Section 18 of the Trade Disputes Act.
- ii. The Respondents did not establish any legal right to entitled them to the discretion of the lower court.

IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

SUIT NO: NICN/ABJ/270/2022
MOTION NO;
APPEAL NO;

BETWEEN

ACADEMIC STAFF UNION OF UNIVERSITIES
AND

FEDERAL GOVERNMENT AND 1 OR

} APPELLANT

} RESPONDENTS

AFFIDAVIT IN SUPPORT OF NOTICE-OF-MOTION

I, **SAMUEL AMEH**, Male, Adult, Christian, Nigerian citizen of Falana & Falana's Chambers of No 22, Mediterranean Street, Imani Estate, Maitama, Abuja do solemnly depose to this affidavit and state as follows:

1. That I am a Senior Litigation and Research Assistant with the law firm of Falana & Falana's Chambers, Abuja, and by virtue of my job description, I work closely with the team of counsel designated by the law firm and charged with the responsibility of prosecuting this appeal on behalf of the applicant/appellant.
2. That by virtue of my above position, I am very familiar with and well abreast of the facts giving rise to the instant application of the applicant/appellant.
3. That I have the consent and authority of my employer: Falana & Falana's Chambers, as well as that of the applicant/appellant to depose to this affidavit.
4. That the facts deposed to herein are facts within my personal knowledge, except wherein expressly asseverated, gained by virtue of my job designation and particularly, by working closely with the team of counsel designated by the law firm and charged with the responsibility of prosecuting this appeal on behalf of the applicant/appellant, as well as the team of counsel that prosecuted the suit before the lower court which ultimately led to the instant appeal.
5. That I know as a fact that the National Industrial Court coram Honourable Justice P.I. Hamman in **SUIT NO: NICN/ABJ/270/2022** between **FEDERAL GOVERNMENT OF NIGERIA & 1 OR. VS ACADEMIC STAFF UNION OF UNIVERSITIES** on **Wednesday 21st day of September, 2022** delivered ruling in

GROUND FOURTEEN

The learned trial judge erred in law when he held that "pursuant to Section 17 of the Trade Dispute Act, Section 18(1) E mandates the members of the Defendants/Respondents not to take part in any strike pending the determination of the suit".

PARTICULARS OF ERROR

- i. By virtue of Sections 17 and 18 of the Trade Disputes Act the National Industrial Court can only entertain appeals arising from the decision of the Industrial Arbitration Panel with respect to issues arising from trade dispute.
- ii. The Referral filed by the Honourable Minister of Labour and Productivity has not arisen from the decision of the Industrial Arbitration Panel.

4. RELIEFS SOUGHT FROM THE COURT OF APPEAL;

AN ORDER allowing the Appeal

AN ORDER setting aside the ruling of the National Industrial Court delivered on 21st day of September, 2022 per Hon. Justice P. I. Hamman [Vacation Judge].

SUCH FURTHER ORDERS as the Court may deem fit.

5. PERSONS AFFECTED BY THE APPEAL AND THEIR ADDRESSES.

THE RESPONDENT,

**The Attorney General of the Federation and Minister of Justice
FMOJ Hq, Maitama, Abuja**

THE ACADEMIC STAFF UNION OF UNIVERSITIES,

**National Headquarters,
University of, Abuja
Gwagwalada, Abuja**

**MINISTER OF LABOUR AND EMPLOYMENT
Federal Secretariat, Abuja**

**MINISTER OF EDUCATION
Federal Secretariat,
Abuja, Garki, Abuja.**

"In the exercise of a right of appeal against a decision of the National Industrial Court which section 240 of the 1999 Constitution (as amended) vests in an aggrieved person, and with respect to any appeal from any civil jurisdiction as stated in section 243(4) of the Constitution, all a prospective appellant need to do is to comply with the provision of section 24(1) of the Court of Appeal Act, an existing Act of the National Assembly. The appellant needs, equally, to rely on Order 7 rules 5 and 10 (1) of the Court of Appeal Rules, 2011, a subsidiary legislation, with binding effect by virtue of section 18(1) of the Interpretation Act. These two enactments set out the procedure of appeals either as of right or with leave of the Court of Appeal. In effect within the framework of the existing enactment, namely section 24(1) of the Court of Appeal Act and order 7 rules 5 and 10(1) of the Court of Appeal Rules, an aggrieved litigant can exercise a right of appeal against a decision of the National Industrial Court, in the circumstance, there is no procedural lacuna on the mode of exercising a right of appeal with leave against an Industrial Court. decision of the National. The combined provisions of section 36(2)(b), 240 243 and 254c (5) (6) of the 1999 Constitution (as amended) create a right of appeal from a decision of the National Industrial Court to the Court of Appeal. Such an appeal is as of right in fundamental rights cases and criminal matters, and with leave of the Court of Appeal in all other civil matters where the National Industrial Court exercised its jurisdiction."

- 2.7 In the case of **SKYE BANK PLC. V. VICTOR ANEMEM IWU SC. 885/2014 (2017) LPELR 42595**, the Supreme court in the words of NWEZE, JSC held thus:

"I find and hold that, on harmonious construction of Sections 240, 241(1), 243(1)(a) and 243(4) of the 1999 Constitution, a litigant who is aggrieved by the trial of the (National Industrial Court) in other civil matters, can exercise a right of appeal with the leave of the Court of Appeal. The only innovation in this regard is that it makes the Court of Appeal the final court with respect to such appeal; Section 243)" at page 6.

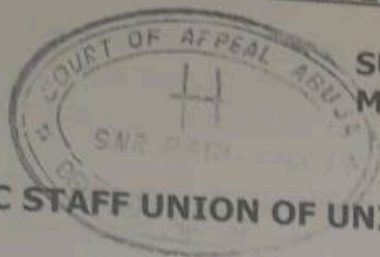
- 2.9 On account of the foregoing, e most respectfully urge your Lordship to grant Prayer one, the Applicant herein having established their entitlement to same.
- 2.10 In **OGUNREMI V DADA (1962) 1 ALL NLR 670** the Supreme Court relying on **Wilson v. Church No (1)21 1 (1879) II Ch. D. 576** per Brett F. J and with which Taylor and Bairamian F. JJ concurred, observed as follows:

an interlocutory application brought by the Claimants / Respondents herein. A copy of the ruling is hereto attached as **EXHIBIT AA1**.

6. That the Applicant herein is desirous of appealing the decision of the lower Court forthwith. A copy of the proposed notice of Appeal is hereto attached as **EXHIBIT AA2**.
7. That after a thorough consideration of the judgment of the lower court, the applicant/appellant dissatisfied with the decision of the Honourable trial Court, instructed our law offices to lodge an appeal against the said decision of the lower court.
8. That on the 22nd day of September, 2022, lead Counsel to the Defendant/Applicant; **Femi Falana, SAN** informed me at our office situate at Maitama, Abuja at about 13.00 GMT of the following fact which I believed and still do believe, to wit;
9. That by virtue of **Section 243 [3] of the 1999 Constitution** as amended, the Applicant requires the leave of this Honourable Court to appeal against the said ruling.
10. That the applicant/appellant has now filed the instant application seeking, *inter alia*, the leave of this Honourable Court to appeal the decision of the lower court and to file its Notice of Appeal.
11. That the Applicant is bringing this appeal both on grounds of law and on grounds bothering on Fundamental Human Rights.
12. That the Applicant has brought this application to obviate any doubt associated with the nature of the appeal.
13. That the Grounds of Appeal contained in the said applicant's/appellant's proposed Notice of Appeal contains recondite and arguable points of law and stand a good chance of success at the Court of Appeal.
14. That the ruling of the Court per Honourable Justice P.I. Hamman in SUIT NO: NICN/ABJ/270/2022 between FEDERAL GOVERNMENT OF NIGERIA & 1 OR. VS ACADEMIC STAFF UNION OF UNIVERSITIES delivered on Wednesday 21st day of September, 2022 affects the fundamental rights of the Applicant and its members to fair hearing, *inter alia* and it would be in the interest of justice to stay the execution of same pending the hearing and determination of the Appeal arising herein.

G-41/251 2

**IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**



SUIT NO: NICN/ABJ/270/2022
MOTION NO:

BETWEEN

ACADEMIC STAFF UNION OF UNIVERSITIES).....APPELLANT

AND

FEDERAL GOVERNMENT AND 1 ORS.)..... RESPONDENTS

PROPOSED NOTICE OF APPEAL

TAKE NOTICE that the Appellant being dissatisfied with the ruling of the National Industrial Court of Nigeria, Abuja Judicial Division delivered by Honourable HON. JUSTICE P. I. HAMMAN on the **21st Day of September, 2022**, do hereby appeal to the Court of Appeal on the grounds set out in paragraph three (3) and will at the hearing of the appeal seek the reliefs set out in paragraph four (4).

The appellant further states that the addresses of the persons directly affected by the appeal are set out in paragraph five (5).

2. THE PART OF THE DECISION COMPLAINED OF:

The whole decision.

3. GROUNDS OF APPEAL

GROUND ONE

The learned Trial Judge erred in law and thereby occasioned a miscarriage of justice when he decided to hear and determine the Respondents' motion for interlocutory injunction when he knew or ought to have known that the substantive suit filed by the Claimant was not initiated by due process of law.

PARTICULARS OF ERROR

- i. The finding of the learned trial Court was contrary to and against the weight of evidence led at trial as there was uncontroverted evidence led to show that the strike commenced since February 14, 2022.
- ii. It is not in dispute that the Claimant only sent the referral instrument on the 08th September, 2022.
- iii. The learned trial judge relied on extraneous matters and fished for evidence in justifying the order of interlocutory injunction granted in favour of the Respondents.
- iv. The Appellant having shown through uncontroverted and irrefutable evidence that the Claimants waited for about seven months before approaching the trial Court for an order of interlocutory injunction, the court ought to have refused the application and proceeded on the accelerated hearing it already granted.

GROUND SIX

The learned trial Judge misdirected himself in law and thereby occasioned a miscarriage of justice when he held that the balance of convenience, legal right and all other conditions tilt in favour of the claimants.

PARTICULARS OF ERROR

- i. The finding of the learned trial Court was contrary to and against the weight of evidence at trial as there was nothing from the Claimants to rebut the unflinching, credible and uncontroverted evidence led by the Defendant/Appellant at trial.
- ii. The learned trial Court delved into the arena, relied on extraneous matters and fished for evidence to arrive at his finding.
- iii. Having regard to the defective affidavit filed by the Respondents and the state of the law the Learned Trial Judge did not exercise his discretion judiciously and judicially.

PARTICULARS OF ERROR

- i. The Referral dated 08th September was made without complying with the mandatory steps and procedure stipulated in part 1 of the Trade Disputes Act.
- ii. The learned trial judge acted ultra vires and without requisite jurisdiction in assuming jurisdiction.
- iii. The law is trite that it is only individuals that have direct access to the trial court, where unions and employers are involved in a trade dispute they must go through the Industrial Arbitration Panel (IAP).
- iv. The Hon. Minister of Labour and Employment failed to comply with the provisions of Part 1 of the Trade Disputes Act and thus this failure renders the referral and every process filed pursuant thereto incompetent as held in *Uzo V. Dangote Cement Plc* (2013) 31 NLLR (Pt. 82) at 229, *PENGASSAN V. Schlumberger* (2008) 11 NLLR (Pt. 29) 164 at 188, *NUSDE V. SEWUN* (2013) 35 NLLR (Pt. 106) at 606 and *Olurotimilayo V. AG Federation* (2015) 62 NLLR (Pt. 217) 31.

GROUND TWO

The Learned Trial Judge misdirected himself in law and thereby occasioned a miscarriage of justice when he held that, *'I have also seen that the bulk of the other submissions of Falana, SAN relate to the competence of the Referral dated 8th September, 2022 and the substantive suit which have been argued in the Notice of Preliminary Objection filed on the 16th day of September, 2022. Since the court is neither considering the Notice of Preliminary Objection nor the substantive suit, it will be premature to delve into those arguments at this stage of hearing the Application for Interlocutory Injunction. Those issues can only be considered at the point of hearing the Notice of Preliminary objection and the substantive suit'*.

PARTICULARS OF ERROR

- i. In law, an application challenging the jurisdiction of a court takes precedence above any other application in a suit.

'I hesitate to propound any general principle without a more complete review of the authorities and of the history of the jurisdiction, than we have had in this case, than we have had in this case, but the authorities appear to me at least to justify the proposition that a court of record whose judgments are subject to appeal has inherent power to stay the execution of any judgment against which an appeal has been brought, in order to render the right of appeal more effective. It is clearly not an appellate power, since it is possessed in England by the court from which an appeal lies as well as by those to which the appeal is brought.'

- 2.11 Idigbe JSC [as then was] in the case of **SODEINDE V. REGISTERED TRUSTEES OF AHMADIYA MOVEMENT -IN ISLAM -ISLAM (1980) 1-2 SC** 163 AT 170, explained the position [this was the position taken by Cotton LJ. in *Polani v Gray* (1879) 12 Ch.D 438 at 447 which Idigbe JSC cited with approval];

"...the court, pending an appeal ... suspends what it has declared to be the right of one of the litigant parties.... On this ground, that where there is an appeal about to be prosecuted the litigation is to be considered as not at an end, and that being so, if there is a reasonable ground of appeal and if not, making the order to stay the execution of the decree to the distribution of the fund would make the appeal nugatory, then it is the duty of the court to interfere and suspend the right of the party who, so far as litigation has gone, has established his right".

- 2.12 Relying on **OGUNREMI V DADA (1962)**, **SODEINDE V. REGISTERED TRUSTEES OF AHMADIYA MOVEMENT -IN ISLAM -ISLAM (1980)** (and a host of other authorities abiding by the cited authorities, it is our further submission that the Applicant having shown a strong desire to pursue the instant appeal and having shown strong grounds of Appeal, it is our humble submission that the Applicant/Appellant having shown their entitlement to relief two would be granted same.

- 2.13 It is submitted that this Honourable Court is empowered to grant an order of stay of proceedings or execution even where an appeal has not been filed. In **NDLEA v. Okordudu (1997) 3 NWLR (PT 492) 221** at 243 this Honourable Court held *inter alia*:

"The general principle is that stay of proceedings or execution will be entertained until an appeal has been lodged: "See Mobil Oil Ltd. v. Agadaigho (1982) 2 NWLR (PT 77) 383. But it has long been decided that in exceptional or appropriate cases, the order of stay may be granted

SAMUEL OGALA, ESQ
PROF. PATRICK UCHE, ESQ,
DR. EDOR EDOR, ESQ,
FEMI ADEDEJI, ESQ,
ERNEST OLAWANLE, ESQ
MARSHAL ABUBAKAR, ESQ
FATIMA RIBADU, ESQ
APPELLANT'S COUNSEL,
FALANA & FALANA'S CHAMBERS,
22, MEDITERRANEAN STREET,
OFF SHEHU SHAGARI WAY,
MAITAMA, ABUJA.
08136570994
alanahumanright@gmail.com
Funmifalana@nigeriabar.ng

FOR SERVICE ON:

The Respondent,
The Attorney General of the Federation
Federal Ministry of Justice
Abuja.

- ii. A court of law is bound to decide the question of its competence, one way or the other before taking steps in hearing and deciding any other issue in the suit.
- iii. The law is trite that once a Referral has been filed before the court no party is allowed to go outside the Referral as held in the case of Seafarers Collaborative Union V. NUPENG (2013) 3 NLLR (Pt. 88) 137, National Headquarters of Nigerian Union of Civil Service, Typists, Stenographic and Allied Staff V. Federal Branch of NUCSTSAS (2010) 21 NLLR (Pt. 58) 24.
- iv. The relief in the Application for interlocutory injunction is the same as relief 'F' in the Referral which is the substantive suit, same cannot be granted at this interlocutory stage.
- v. The lower court disregarded the case of DEREXEL ENERGY AND NATURAL RESOURCES LTD V TRANS INTERNATIONAL BANK LTD & ORS. (2008) 18 NWLR (PT.1119) 388 SC, (2009) 15 W.R.N. 1 SC where the Supreme Court held that a court must resolve the issue of jurisdiction before considering any other matter.
- vi. The lower court was wrong to have assumed jurisdiction for the sole purpose of granting the Respondents' motion for interlocutory injunction.

GROUND THREE.

The Learned Trial Judge erred in law and thereby occasioned a miscarriage of justice when he granted the Respondents' application for interlocutory injunction pending the determination of the substantive suit on the basis of the incurably defective Referral filed on September 8, 2022.

PARTICULARS OF ERROR

- i. A court is bound to resolve issues surrounding the competence and validity of an initiating process before proceeding to grant reliefs in an application emanating therefrom.
- ii. It was established before the learned trial court that the Referral was incurably defective and bad and thus ought to be discountenanced as the learned trial court hath no business assuming jurisdiction.

everything including employment. The point being made is that, even where the lost academic semesters/sessions are covered upon resumption, the increase in the age of these students who are being deprived of the opportunity to complete their studies as and when due cannot be reversed. Section 2 (2) of the National Youth Service Corps Act for example prohibits any person who is over the age of thirty (30) at the date of graduation from being enlisted into the Service Corps."

PARTICULARS OF ERROR

- i. There was no evidence before the lower court about the age of these innocent students being denied of the opportunity to complete their studies.
- ii. Even though the issue of National Youth Service was raised suo motu the Learned Trial Judge did not invite parties to address him on it.
- iii. The Learned Trial Judge made a case for the Respondents by relying on extraneous matters and thereby violated the fundamental right of the Appellant to fair hearing.

GROUND NINE

The learned trial judge erred in law and occasioned a miscarriage of justice when he held "*Even in the area of employment for instance, part of the requirement of persons who want to enlist into the Nigerian Army Direct Short Service Commission Course 26/2022 is to be between the ages of 20 and 30 years and 25-40 years of age for Medical Consultants. The same age requirement applies to the enlistment into the Nigerian Air Force Direct Short Service Commission Course, to mention but a few instances. See recruitment.army.mil.ng and careersnqr.com*"

PARTICULARS OF ERROR

- i. The question of employment was raised suo motu by the Learned Trial Judge and parties were not allowed to address His Lordship on it.
- ii. The finding of the learned trial Court was contrary to and against the weight of evidence led at trial.

15. That this application is made in utmost good faith and in the overall interest of justice.
16. That the granting of this application will not prejudice the respondent in any manner.
17. That I swear to this affidavit conscientiously believing same to be true and in accordance with the oaths Act of 2004.

HKS

DEPONENT

SWORN TO AT THE REGISTRY OF THE COURT OF APPEAL, ABUJA

THIS 23rd DAY OF SEPTEMBER, 2022



when the applicant gives an undertaking to file the notice of appeal without delay: See *Oladapo v. African Continental Bank Ltd.* (1950) 13 WACA 110, recognized by the Supreme Court in *Intercontractors v. United Bank for Africa Company of Nigeria Ltd.* (1988) 2 NWLR (PT 76) 303 at 324. It seems to me that when leave to appeal has been granted upon the grounds of appeal already proposed and there appears to be some urgency about the matter, or the situation is such that a stay is desirable, the court may well be disposed to consider the application for stay and grant it before the notice of appeal is actually filed provided the applicant gives an undertaking to the court to do so without delay. The court may also impose a time limit."

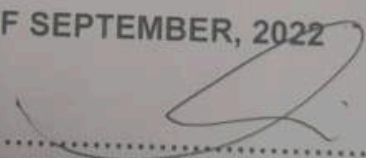
2.14 In this case the Appellant / Applicant has made a strong case for the grant of stay of execution of the order of the lower court pending the determination of the appeal to be filed herein. In addition the Applicant has Made an undertaking to file the appeal within 24 hours upon the grant of this application. We therefore urge this Honourable Court to grant the application.

3.0. CONCLUSION

3.1 In the light of the above statutory and judicial authorities and arguments canvassed therein, we humbly urge this Honourable Court to grant the Applicant application in the interest of justice.

3.2 Much obliged.

DATED AT ABUJA, THIS ____ DAY OF SEPTEMBER, 2022


.....
FEMI FALANA, SAN
PROF. JOASH AMOPITAN, SAN,
PROF. ALPHONSUS ALUBO, SAN,
FUNMI FALANA, MRS,
SAMUEL OGALA, ESQ
PROF. PATRICK UCHE, ESQ,
DR. EDOR EDOR, ESQ,
FEMI ADEDEJI, ESQ,
ERNEST OLAWANLE, ESQ
MARSHAL ABUBAKAR, ESQ
FATIMA RIBADU, ESQ
APPELLANT'S COUNSEL,
FALANA & FALANA'S CHAMBERS,

"An Appeal shall lie from the decision of the National Industrial Court to the court of Appeal as may be prescribed by an Act of the National Assembly:

Provided that where an Act or Law prescribes that an appeal shall lie from the decisions of the National Industrial Court to the Court of Appeal, such shall be with the leave of the Court of Appeal "

- 2.4 Conversely, Order 6 rule 1 (a) and 2 of the 2 of the Court of Appeal Rules (Civil Procedure) Rules, 2021 provides that:

"1 (a) Every application to the court shall be by Notice of motion, stating the rule under which it is brought, the grounds from the relief sought and shall be supported by an affidavit and a written Address:

Provided that the respondent (s) shall have five (5) days within which to file processes in response (if any) to the Notice of motion and the applicant shall have three (3) days to file a reply (if any) to the processes of the respondent (s)

- 1. any application to the court for leave to appeal (other than an application made after the expiration of the time for appealing) shall be by Notice of motion, which shall be served on the party or parties affected "*

- 2.5 The applicant is desirous of challenging the judgment of the National Industrial Court and as such it has become imperative for the applicant to seek leave of this honourable Court to file its appeal on grounds other than the ground of fundamental human rights. The power of the Court to grant this applicant is unfettered. May we most respectfully refer my lords to the cases of **LOCAL GOVERNMENT SERVICE COMMISSION, EKITI STATE & AMPR VIIA/ KEGEDE (2013) LPELR – 21131, LOCAL GOVERNMENT SERVICE COMMISSION; EKITI STATE & ANOR V. M.K. BAMISAYE (2013) LPELR 20407; LOCAL GOVERNMENT SERVICE COMMISSION, EKITI STATE & ANOR V. FRANCIS OLUYEMI OLAMIJU (2013) LPELR – 20409**. In all three cases, the Court of Appeal sitting in Ado-Ekiti Division held that applicants may appeal with leave of the Court of Appeal on all matters besides matters of fundamental rights which is as of right.

- 6 In **SKYE BANK PLC. V. IWU (2017) 16 NWLR (Pt. 1590)**, this Honourable Court held thus: