

PRINCE ABUBAKAR AUDU
BARR. HENRY OJUOLA

v.

1. **CAPTAIN IDRIS WADA**
2. **ARC. YOMI AWONIYI**
3. **PEOPLES DEMOCRATIC PARTY**
4. **INDEPENDENT NATIONAL ELECTORAL
COMMISSION**
5. **RESIDENT ELECTORAL
COMMISSIONER, KOGI STATE**
6. **ACTION CONGRESS OF NIGERIA**

SUPREME COURT OF NIGERIA

SC.332/2012

ALOMA MARIAM MUKHTAR, J.S.C. (*Presided*)

MAHMUD MOHAMMED. .1 .S.C. (*Read the Leading
Ruling*)

WALTER SAMUEL NKANU ONNOGHEN, J.S.C.

SE'LETMAN GALA DIM A, J.S.C.

NWAEI SYLVESTER NGWUTA. J.S.C.

MUSA D ATT I.I O MUHAMMAD. J.S.C.

CLARA BATAOGUNBIYI. J.S.C.

MONDAY, 10TH SEPTEMBER 2012

ACTION - Limitation of action - Limitation law - Effect of.

APPEAL - Notice of appeal - Election petition - Notice of appeal

*from Court of Appeal to
Supreme Court in governorship election matter - Time within
which to file - Paragraph 1, Practice Directions No. 33 of 2011.*

*COURT - Rules of court - Practice Direction - Nature and
importance of - Need to adhere strictly to.*

*ELECTION PETITION - Election matters - Nature of - Need to
dispose of timeously*

*ELECTION - Election matters - Nature of - Need to dispose of
timeously.*

*ELECTION PETITION - Electoral Act - Extension of time -
Whether Electoral Act or Schedule thereto provides for extension
of time.*

*ELECTION PETITION - Governorship election petition - Notice
of appeal in governorship election petition from Court of Appeal
to Supreme Court - Time within which to file -Paragraph 1,
Practice Directions No. 33 of 2011.*

*ELECTION PETITION - Notice of appeal - Governorship
election petition - Notice of appeal in governorship election
petition from Court of Appeal to Supreme Court - Time within
which to file - Paragraph 1, Practice Directions No. 33 of 2011.*

*LIMITATION LAW - Limitation of action - Limitation law –
Effect of.*

LIMITATION OF ACTION - Limitation law - Effect of.

PRACTICE AND PROCEDURE - Extension of time - Extension of time in election matters - Whether Electoral Act or Schedule thereto provides for extension of time.

PRACTICE AND PROCEDURE - Notice of appeal - Election petition - Notice of appeal from Court of Appeal to Supreme Court in governorship election matter - Time within which to file - Paragraph 7, Practice Directions No. 33 of 2011.

PRACTICE AND PROCEDURE - Rules of court - Practice direction - Nature and importance of - Need to strictly adhere to.

STATUTE - Electoral Act - Whether provides for extension of time.

STATUTE - Section 285(7), 1999 Constitution (as amended)-Paragraph 1, Supreme Court Practice Direction No. 33 of 2011 - Status of - Application of.

Issue:

Whether the applicants' application for extension of time to appeal to the Supreme Court in respect of a judgment of the Court of Appeal relating to governorship election was competent, and whether the Supreme Court had jurisdiction to entertain same.

Facts:

The applicants filed an application for an order of the Supreme Court extending the time within which they may file a notice of appeal against the judgment of the Court of Appeal in a governorship election matter

delivered on 14th July 2012.

The 1st and 2nd respondents as well as the 3rd respondent filed notices of preliminary objection to the application contending that the appeal was incompetent. The objection was predicated on the ground that the Supreme Court lacked the jurisdiction to entertain the application in view of the provisions of the Practice Directions No. 33 of 2011 with regards to election appeals from the Court of Appeal to the Supreme Court which prescribed 14 days within which to file such notice of appeal.

Held (*Unanimously dismissing the application*):

1. *On Nature of election matters -*

Election matters are *sui generis* by nature and hence the reason for the special enactment of set of laws regulating its procedure thereto. To urge the court to apply the ordinary rules of court would therefore greatly undermine the special nature of the Electoral Act and the other rules enacted for the purpose thereof. (P. 396, paras. F-G)

2. *On Need to dispose of election matters timeously –*

Election matters are time bound. There is no provision for extension of the time stipulated in the Practice Direction. It is in public interest that such matters be disposed of timeously and any extension of time will defeat the purpose of the Practice Direction. In the instant case, the appeal filed in breach of the Practice Direction was not initiated by due process. It was therefore incompetent and the court was without jurisdiction to entertain it. The application for

extension of time after the expiration of the time frame in the Practice Direction was incompetent. [*Madukolu v. Nkemdilim* (1962) 2 SCNLR 341 referred to.] (P. 394, paras. C-D)

3. *On Whether the Electoral Act provides for extension of time -*

There is no provision in the Electoral Act or the Schedule to the Act, stipulating extension of time.(P. 393, para. G)

4. *On Time within which to file notice of appeal from Court of Appeal to Supreme Court in governorship election petition -*

By the provision of Paragraph 1 of the Practice Directions No. 33 of 2011, an appellant in an election appeal from the Court of Appeal to the Supreme Court shall file in the Registry of the Court of Appeal his notice and grounds of appeal within 14 days from the date of the decision appealed against. [C.P.C. v. INEC (2011) 18 NWLR (Pt. 1279) 493 referred to.] (Pp. 391. paras. C-D; P. 394, paras B-C)

Per MOHAMMED, J.S.C. at pages 391, paras. E-H; 392, paras. C-E:

"There is no dispute that the judgment of the Court of Appeal sought to be appealed against, was delivered on 14/7/2012. The appellants did not file their notice and grounds of appeal until 2/8/2012. The applicants' notice of appeal was therefore not filed within the time prescribed by the Practice Directions. The applicants' appeal is therefore incompetent and cannot be heard. The question now is whether this court can extend the

time for the appellants to allow this court to hear their appeal. The answer is of course in the negative. The Practice Directions prescribing 14 days to file the notice and grounds of appeal also having been made pursuant to sections 236,233(2) (e) of the Constitution to enable this court to hear election appeals within 60 days prescribed by section 285(7) of the constitution, granting the applicants' application shall be quite contrary to the practice directions and the Constitution itself which was amended to give election petition and appeals expeditious hearing. I therefore hold that this court has no jurisdiction to grant the application to extend the time to appeal...

Granting the application will certainly result in pulling out the Practice Direction out of the root of the provisions of the Constitution in sections 233(2) (e) and 285(7) of the 1999 Constitution, which were specifically made to ensure expeditious hearing and determination of election petitions and appeal arising from such cases. In the result, as this court has no power to extend the time to appeal as prescribed in Paragraph 1 of the Practice Direction No. 33 of 20 11 and that even on the merit, the application has no chance whatsoever in succeeding in the circumstances of this case, the application is hereby refused and the same is hereby dismissed with no order on costs.

Consequently, there is no appeal before this court."

Per ONNOGHEN, J.S.C. at pages 392-393, paras. H-D:

"I agree with the lead ruling just read by my learned brother, Mohammed, JSC that the time fixed in the Practice Direction for filing appeal against the Judgment of the Court

of Appeal in relation to Governorship Election or any other relevant election cannot be, extended having regards to the nature of election matters in respect of which time remains of essence. The above notwithstanding and in the alternative it is very clear that no substantial reason has been offered by the applicants to explain why the appeal was not filed within the 14 (fourteen) days provided in the Practice Direction particularly when applicants collected the judgment (certified true copy) two days to the expiration of the time allotted for the filing of the appeal.

Secondly, learned senior counsel for the applicants did not satisfy the court that the grounds of appeal are substantial enough to warrant this court to exercise its discretion in their favour. In fact, he did not address the issue at all when the above requirement must coexist with that of substantial reason to explain why the appeal was not filed within time. In conclusion the application has no merit and is consequently dismissed. Consequently, there is no appeal before us."

Per GALADIMA, J.S.C. at page 393, paras. E-G:

"The judgment of the Court of Appeal affirming the decision of the Kogi State Governorship Election Tribunal against which the appellants purport to have appealed was on 14/7/2012. The appellants filed their notice and ground of appeal on 2/8/2012. By the combined effort of sections 233(2) (c) and 287 of the Constitution and Paragraph 1 of the Practice Direction for Election Appeal to Supreme Court made on 17/10/2011 the appellant had 14 days to file an appeal. The notice of appeal filed on 2/8/2012 was clearly out of time. The Practice Direction is mandatory."

Per OGUNBIYI, JLS.C. at pages 395-396, paras. H-B:

"It is obvious and also conceded to by all counsel inclusive of

the applicants' senior counsel that the purported notice of appeal was not filed within time and hence the reason for the application. With the specification of the law requiring that the appeal should be filed within 14 days of the judgment of the Court of Appeal, this application is outside the jurisdiction of this court and it cannot now exercise jurisdiction thereon. The court's jurisdiction cannot in other words be activated"

5. *On Nature of Practice Direction and need to give it the effect it sets out to achieve -*

The Practice Direction is a special provision and must be given the effect it clearly sets out to achieve. (P. 394, para.H)

6. *On Importance of Practice -Directions and need for parties to adhere strictly to same-*

The Practice Direction has the force of law and parties must adhere strictly to it. [CPC v. INEC (2011) 18 NWLR (Pt. 1279) 493; ANPP v. Coni (2012) 3 NWLR (Pt. 1298) 147; Nwankwo v. Yar'adua (2010) 12 NWLR (Pt. 1209) 518 referred to.] (P. 393. paras. G-H)

7. *On Status of Section 285(7) of the 1999 Constitution (as amended) and Paragraph I of the Supreme Court Practice Direction No. 33 of 2011 and application of-*

Section 285(7) of the 1999 Constitution (as amended) and Paragraph 1 of the Supreme Court Practice Directions No. 33 of 2011 have the status of limitation laws and must be applied as such. The paragraph gives the appellants 14 days to file their appeal. (P.

391, paras. D-E)

8. *On Effect of limitation law*

Where a statute imposes time limitation for the filing of an action, unless the very statute make provision for extension of time to enable the action to be filed out of time, the court would be without the power to grant the pray^{er} for extension of time for the filing of the belated action. [C.P.C. v. INEC (2011) 18 NWLR (Pt. 1279) 493 referred to.] (Pp. 394-395, paras. H.A)

Nigerian Cases Referred to in the Ruling:

ANPP v. Goni (2012) 3 NWLR (Pt. 1298) 147

C.P.C. v. INEC (2011)18 NWLR (Pt. 1279) 493

Madukolu v. Nkemdilim (1962) 2 SCNLR 341

Nwankwo v. Yar'Adua (2010) 12 NWLR (Pt. 1209) 518

Nigerian Statutes Referred to in the Ruling:

Constitution of the Federal Republic of Nigeria, 1999, Ss. 233(2)©, 236,258 (7)

Practice Direction No. 33 of 2012 Paragraph 1

Application:

This was an application for extension of time to appeal from the decision of the Court of Appeal to the Supreme Court in an election matter. The Supreme Court, in a unanimous decision, dismissed the application.

History of the Case:

Supreme Court:

Names of Justices that sat on the application:

Aloma Mariam Mukhtar, J.S.C. (*Presided*): Mahmud

Mohammed, J.S.C. (*Read the Leading Ruling*): water

Samuel Nkanu Onnoghen, J.S.C; Suleiman Galadima, J.S.C; Nwali Sylvester Ngwuta, J.S.C; Musa Dattijo Muhammad, J.S.C; Clara Bata Ogunbiyi, J.S.C *Appeal No.:* SC.332/2012

Date of Ruling: Monday, 10th September 2012 ^ N^

Names of Counsel: Chief Charles Edosomwan (SAN) (with him, Benson Igbanoi, Abdullahi Haruna, Isaac E. Ekpa, Nurudeen A. Ogbara, Kunle Adegoke, Maymuna Audu, Mutiu Olaoye, Panama Magdalene [Mrs.], Abdullahi Garba Ogbeide, Godwin Iyinbor, ' Dominic Ezerioha and Chibuike Ezeokwuora) - for the Appellants L. O. Fagbemi (SAN) (with him, P.A. Akubo (SAN), Dr. J.O. Olatoke, Akin Oladeji, H.T. Fajimite, J.A. Akubo, J.S. Adesola. B.O. Adesina, Hadeem Afolabi, A.O. Popoola, A.F. Yusuf, B.A. Oyun, Akeem Umoru, Y.O. Ishola [Miss], A.B. Daibu, M.T. Hambolu, G.A. Ashaolu, M.A. Adelodun, K.C. Bon Nwakamma and A.D. Eribake) - for the 1st and 2nd Respondents Chief Chris Uche (SAN) (with him, Emeka Okoro, S.I. Okonkwo. Maduakolam Igwe, Kanayo Okafor, Nnamdi Nwafor, Bashir Bulama, Frank Molokwu, Adebayo Inyanda, Nonye Otiji [Miss] and Adanna Uomuanya [Miss]) - for the 3rd Respondent Yusuf Ali (SAN) (with him, A.O. Adelodun (SAN), Otunba Kunle Kalejaiye (SAN). Dr. Wahab Egbewole, K.K. Eleja, Chief [Mrs.] Olufunmilayo Awomolo, S.A. Oke, R.O. Balogun, Yakub Dauda, A.O. Abdukadir, Adetunji Muraina, N.N. Adegboye, Tahir Aduagba, K.T. Sulyman [Miss], A.O. Orire, , Akinyosoye Arosayin. T.E. Akintunde (Mrs.), K.O. Lawal, Foluke Moronfoye [Miss], F.F. Kadir [Miss], Taiye Oloyede, A. Adeyi and Chidi Amaeze) - for

the 4th and 5th Respondents

Dr. Muiz Banire (with him, Tayo Olatunbosun, Dare Oketade, and Ibukun Fasanmi) - for the 6th Respondent

MOHAMMED, J.S.C. (Delivering the Lead Ruling):

The applicants motion is for an order of this court extending the time within which the applicants may file their notice of appeal against the judgment of the Court of Appeal delivered on July 14th 2012. The application is supported by a 18 paragraph affidavit to which the judgment of the Court of Appeal of 14/7/2012 and the notice of appeal filed on 2/8/2012 were exhibited. However, the 1st and 2nd respondents together with the 3rd respondent have raised preliminary objection that this court has no jurisdiction to entertain the application and grant the same in view of the present state of the law regarding the application having regard to the entire circumstances of this matter. That having regard to the provisions of the Practice Directions No. 33 of 2011 which must be observed and applied by this court in the hearing and determination of election appeals from the Court of Appeal which prescribes 14 days within which to file their appeal, this court does not have the jurisdiction to hear this application extending the time for the applicants to file their notice of appeal. Paragraph 1 of the Practice Directions No. 33 of 2011 states:-

"The appellant shall file in the Registry of the Court of Appeal his notice and grounds of appeal within 14 days from the date of the decision appealed against."

The application of this provision has been considered by this court in the case of C.P.C. v. INEC (2011) 18 NWLR (Pt.1279)

493 where this court held that the unambiguous words used in that paragraph of the Practice Direction 2011, show that section 283(7) of the 1999 Constitution (as amended) and paragraph 1 of the Practice Directions have the status of limitation laws and must be applied as such. The paragraph gives the appellants 14 days to file their appeal. There is no dispute that the judgment of the Court of Appeal sought to be appealed against, was delivered on 14/7/2012. The appellants did not file their notice and grounds of appeal until 2/8/2012. The applicants' notice of appeal was therefore not filed within the time prescribed by the Practice Directions. The applicants appeal is therefore incompetent and cannot be heard. The question now is whether this court can extend the time for the appellants to allow this court to hear their appeal. The answer is of course in the negative. The Practice Directions prescribing 14 days to file the notice and grounds of appeal also having been made pursuant to sections 236, 233(2) (e) of the Constitution to enable this court to hear election appeals within 60 days prescribed by section 285(7) of the Constitution, granting the applicants' application shall be quite contrary to the Practice Directions and the Constitution itself which was amended to give election petition and appeals expeditious hearing. I therefore hold that this court has no jurisdiction to grant the application to extend the time to appeal.

In any case even on the merit of the application, the affidavit of the applicants in support of the application has not disclosed any cogent and valid reasons for the appellant's failure to file their appeal within the time allowed. Reasons of the failure of the applicants to receive the copy of the judgment in time cannot be relied upon to obtain the discretion of this court. The affidavit of the applicants has not even addressed the second requirement of

granting such application that the notice of appeal contained grounds of appeal which show good reasons why the appeal must be heard. Thus the requirement of the law not having been met, the application must fail.

Granting the application will certainly result in pulling out the Practice Direction out of the root of the provisions of the Constitution in sections 233(2)(e) and 285(7) of the 1999 Constitution, which were specifically made to ensure expeditious hearing and determination of election petitions and appeal arising from such cases. In the result, as this court has no power to extend the time to appeal as prescribed in paragraph 1 of the Practice Direction No. 33 of 2011 and that even on the merit, the application has no chance whatsoever in succeeding in the circumstances of this case, the application is hereby refused and the same is hereby dismissed with no order on costs. Consequently, there is no appeal before this court.

MUKHTAR, J.S.C.: This court has no jurisdiction to hear this p application in view of the provision of the Practice Direction for Election Appeals of 2011. In addition, the application has no merit, as it has not disclosed good and substantial reasons for the delay in filing the notice of appeal within the time allowed by the law to warrant the exercise of our discretion in favour of the applicants, The application is therefore dismissed. Consequently, there is no appeal before this court.

ONNOGHEN, J.S.C.: I agree with the lead ruling just read by my learned brother, Mohammed, JSC that the time fixed in the Practice Direction for filing appeal against the judgment of the Court of Appeal in relation to Governorship Election or any

other relevant election cannot be extended having regards to the nature of election matters in respect of which time remains of essence. The above notwithstanding and in the alternative it is very clear that no substantial reason has been offered by the applicants to explain why the appeal was not filed within the 14 (fourteen) days provided in the Practice Direction particularly when applicants collected the judgment (certified true copy) two days to the expiration of the time allotted for the filing of the appeal.

Secondly, learned senior counsel for the applicants did not satisfy the court that the grounds of appeal are substantial enough to warrant this court to exercise its discretion in their favour. In fact he did not address the issue at all when the above requirement must co-exist with that of substantial reason to explain why the appeal was not filed within time. In conclusion, the application has no merit and is consequently dismissed. Consequently there is no appeal before us. I abide by the consequential orders made in the said lead ruling including the order as to costs.

GALADIMA, J.S.C.: I have read the lead ruling delivered by my learned brother, Mohammed. JSC. I agree with him that this application lacks merit and it must be dismissed.

The judgment of the Court of Appeal affirming the decision of the Kogi State Governorship Election Tribunal against which the appellants purport to have appealed was on 14/7/2012. he appellants filed their notice and ground of appeal on 2/8/2012. By the combined effort of sections 233(2) (c) and 287 of the Constitution and paragraph 1 of the Practice Direction for Election Appeal to Supreme Court made on 17/10/2011 the

appellant had 14 days to file an appeal. The notice of appeal filed on 2/8/2012 was clearly out of time. The Practice Direction is mandatory.

There is no provision in the Electoral Act or the schedule to the Act, stipulating extension of time. The Practice Directions has the force of law and parties must adhere strictly to it. See: *CPC v. INEC* (2011) 18 NWLR (Pt. 1279) p. 493 *A.N.P.P. v. Goni* (2012) 3NWLR (Pt. 1298) 147@ 187 and *Nwankwo v. Yar'adua* (2010) 12 NWLR (Pt. 1209) 518 at 563.

Since counsel for the appellants and respective respondents have alluded to the merits of the motion: our carefully consideration of the application does not equally show merit. No reasonable or special circumstances have been shown to merit the granting of the application. In the circumstances, the application fails and it is dismissed. Consequently, there is no appeal before this court.

NGWUTA, J.S.C.: I entirely agree with the ruling just read by my learned brother. Mohammed, JSC. Paragraph 1 of the Practice Direction 2012 makes it mandatory that appeals from the judgment of the Court of Appeal on Governorship Election Petition be filed within 14 days after the delivery of the judgment appealed against. Election matters are time bound. There is no provision for extension of the time stipulated in the Practice Direction. It is in public interest that such matters be disposed of timeously and any extension of time will defeat the purpose of the Practice Direction. The appeal filed in breach of the Practice Direction has not been initiated by due process. It is therefore incompetent and the court is without jurisdiction to entertain it. See *Madukolu & ors v. Nkemdilim* (1962) 2 NSCC 372; (1962) 2 SCNLR 341. The application for extension of time after the

expiration of the time frame in the Practice Direction is incompetent.

Assuming without conceding that the application is competent, the applicant failed to provide valid reason for the delay. Furthermore, the applicant did not refer to the ground of appeal or show that he has arguable grounds of appeal. The application has no merit and for the more comprehensive reason in the lead ruling, I also dismiss same. I make no order for costs.

M. D. MUHAMMAD. J.S.C.: *I agree with the decision contained in the lead ruling just delivered by my learned brother, Mahmud q Mohammed, JSC that the application lacks merit, Firstly, by virtue of paragraph one of the Supreme Court Election Appeals Practice Direction 2011 enacted pursuant to S.233 (2) and S.236 of the 1999 constitution as amended, this court lacks the powers to grant the applicant the reliefs he seeks. The Practice Direction is a special H provision and must be given the effect it clearly sets out to achieve. In a seemingly endless chain of decisions, the court has held that where a statute imposes time limitation for the filing of an action, for our purpose this appeal, unless the very statute makes provision for extension of time to enable the action to be filed out of time, the court would be without the power to grant the prayer for extension of time for the filing of the belated action. See CPC v. INEC & Ors (2011) 12 SC 1.; (2011) 18 NWLR (Pt. 1279) 493.*

Secondly, granted that the court has the jurisdiction to grant the reliefs being sought, the applicant has not satisfied the criteria he must meet to enable the court grant him the reliefs. He has neither satisfactorily explained why he failed to appeal within the time provided by the Practice Direction for appealing nor

satisfied me that the grounds in the proposed notice of appeal are prima facie arguable.

In sum, for the forgoing and more so the fuller reasons contained in the lead ruling, the application is hereby refused and dismissed.

OGUNBIYI, J.S.C.: The application at hand seeks leave to bring an application for extension of time within which to file the notice of appeal against the judgment of the Court of Appeal delivered on the 14th July, 2012. It also seeks an order extending the time within which to file the notice of appeal against the judgment and further order deeming as properly filed and served the notice of appeal, completed record of appeal and appellant's brief. Against the application are two sets of preliminary objections by the 1st and 2nd respondents as well as the 3rd respondent that the appeal is incompetent. The 1st objection borders on the jurisdiction of this court on the account of the notice having been filed out of time and secondly that grounds 19, 24 and 26 of the grounds of appeal are grounds which do not directly attack the *ratio decidendi* of the judgment. All parties extensively addressed the court on the application with the appellant's counsel relying on all the paragraphs of the affidavit in support as well as the exhibits attached and also the replies to the respondent's written addresses. From the cumulative deduction on the submissions of all counsel, it is obvious that this court as rightly submitted by the learned 1st to 5th respondents' counsel is bereft of any jurisdiction to entertain this application. This is especially, having regard to the Practice Direction election appeals to the Supreme Court and section 285(7) of the Constitution of the Federal Republic of Nigeria as

amended. The Practice Direction in other words, has the force of A law. It is obvious and also conceded to by all counsel inclusive of the applicant's senior counsel that the purported notice of appeal

was not filed within time and hence the reason for the application. With the specification of the law requiring that the appeal should be filed within 14 days of the judgment of the Court of Appeal, this application is outside the jurisdiction of this court and it cannot now exercise jurisdiction thereon. The court's jurisdiction cannot in other words be activated. Furthermore and even if taken for granted the court had jurisdiction to entertain same, the merit of the application requires that for the applicant to earn the discretion of this court he must adduce good and substantial reasons why discretion could be exercised in his favour. The reasons advanced and upon which reliance is anchored are twofold; that is to say the inability of the applicant in obtaining the CTC copy of the judgment of the Court of Appeal within time and secondly that the applicant's counsel had the erroneous belief that the appeal was to be filed within 21 days of the judgment as against 14 days. These are borne out at paragraphs 9 and 14 of the affidavit in support of the motion. It is on record that the applicant's counsel was in court on the date the judgment of the Court of Appeal was read in court. It has also been pronounced upon by the number that failure to obtain CTC judgment is not a good reason for inability to appeal within time.

On the conclusion of the two reasons advanced, same I hold do not qualify as sufficient for this court to grant the application even on the merit of the case as it were. It is sufficient to re-iterate that election matters are *sui generis* by nature and hence the reason for the special enactment of set of laws regulating its

procedure thereto. To urge the court to apply the ordinary rules of court would therefore greatly undermine the special nature of the Electoral Act and the other rules enacted for the purpose thereof. On the totality of this application and whichever way it is looked at the entire case I hold is grossly incompetent and or devoid of any merit which same is hereby dismissed in terms of the lead ruling. Consequently, I therefore agree that there is no appeal before us and I also abide by the order made as to cost.

Application dismissed