

IN THE COURT OF APPEAL
KADUNA JUDICIAL DIVISION
HOLDEN AT KADUNA
ON WEDNESDAY THE 26TH DAY OF FEBRUARY, 2020
BEFORE THEIR LORDSHIPS

O.O. DANIEL- KALIO
O.A. ADEFOPE-OKOJIE
JAMES GAMBO ABUNDAGA

JUSTICE, COURT OF APPEAL
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CA/K/468/C/2018

BETWEEN

1. IBRAHIM SHEHU SHEMA
2. SANI HAMISU MAKANA
3. LAWAL AHMAD SAFANA
(ALIAS LAWAL A RUFAT SAFANA)
4. IBRAHIM LAWAL DANKABA
(ALIAS ALGON IBRAHIM)

APPELLANTS

AND

FEDERAL REPUBLIC OF NIGERIA RESPONDENT

RULING

(DELIVERED BY OBIETONBARA DANIEL-KALIO, JCA)

There is pending before this court four appeals, that is, CA/K/468/C/2018; CA/K/468A/C/2018; CA/K/468B/C/2018; and CA/K/468C/C/2018 against the Ruling of M. Bako, J of the High Court of Katsina State. Before hearing the appeals, S. T.

Ologunorisa SAN for the respondent/ cross-appellant in CA/K/468/C/2018 informed the Court that the learned trial judge, M. Bako, J is dead. He contended that by reason of the demise of the learned trial judge, the case at the lower court would have to start de novo. In view of that, the appeals here he argued, would amount to an academic exercise. The view that the appeal is now an academic exercise was vigorously opposed by the other Counsel in all the four appeals. Considering the view raised by the learned Senior Advocate of Nigeria, S.T. Ologunorisa, this Court decided to hear all the learned Counsel in all the four appeals on the view raised.

Arguing his view, S.T. Ologunorisa, SAN, submitted that consequent on the demise of the learned trial judge, the appeals on his Ruling are now academic and have no utilitarian value. The learned Senior Advocate of Nigeria submitted that a look at the reliefs in all the Briefs in the four appeals will show that they have to do with Exhibits 3 and 4 admitted by the trial Court. The said exhibits he contended were admitted by late Justice Bako and the case before the late judge will have to be heard by another judge now that he is dead. He argued that even if this court were to hold that the two documents are rejected, that decision will not affect the new judge that would hear the case de novo. He

argued that to hear and decide on the documents would amount to putting the cart before the horse. He argued that the appeal here is in respect of an interlocutory decision and not a final judgment.

In his argument in response, Adedayo Adedeji, Esq. who appeared for the appellants in CA/K/ 468/C/2018, submitted that the appeals are not academic. He argued that the live issues in the appeals are issues of law and cannot be personalized to the late judge whose Ruling is the subject of the appeals here as any decision of this court in the appeals will bind whosoever takes over the hearing of the case at the trial Court. He cited *Adesigbin v. Military Governor of Lagos State (2017) LPELR-41666 (SC)*; *Emodi & ors v. Kwento & ors (1998) LPELR-1135 (SC)*; **CA/K/432/C/2018: Ibrahim Shema v. Federal Republic of Nigeria** (unreported) delivered on 5/2/19. He finally submitted that the constitutional right of appeal cannot be taken away on account of the death of the trial judge.

In his own submission on the point, Eboka Okoye, Esq. the appellant's Counsel in CA/ K/468A/C/2018, agreed with the submission of Adedayo Adedeji, Esq. In addition to his learned friend's submission, he contended that the issues in the appeals

are live issues and that the issues have a utilitarian value as the resolution of same will enrich the development of the law and will serve as precedent in similar cases.

Arguing further on the point in contention, E. Y. Kurah, SAN, Counsel to the appellant in CA/K/ 468B/ C/ 2018, submitted that the pronouncement of a Court cannot be set aside by a Court of coordinate jurisdiction. He contended that the successor judge to late Justice Bako that hears the matter de novo, will be bound by the decision of the late judge. He cited the case of **Customary Court of Appeal Benue State v. Abura Tsegba & ors (2017) LPELR-4407 (CA)**.

In his argument in contribution, Uyi Igumma, Esq. the appellant's Counsel in CA/K/ 468C/C/2018, submitted that the decision of the late Justice Bako subsists, even though he is now dead.

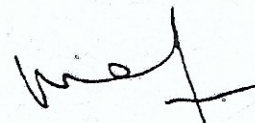
In a brief reply on point of law, S.T Ologunorisa SAN, submitted that the unreported case of Shema v. Federal Republic of Nigeria cited by Adedayo Adedeji, Esq. is inapplicable here as there was nothing to prove afresh in the lower court in that case. He referred us to the case of **Kenneth Anielo v. Madubira (2018) LPELR-44681 (CA)**.

Now, de novo simply means anew; that is, to start all over again. See **Obiweubi v. CBN (2011) LPELR-2185 (SC)**. Its implication is that it is as if no trial whatsoever had been had in the first instance. See **Kajubo v. State (1988) LPELR-1646 (SC)**. Explaining the ramifications of the concept of a trial de novo, the Supreme Court in the case of **Fadiora v. Gbadebo (1978) 1 LRN p.97 at 104 per Idigbe JSC**, stated that "we think that in a trial de novo the case must be proved anew or rather reproved de novo and therefore, the evidence and the verdict given as well as the judge's findings as at the first trial are completely inadmissible on the basis that prima facie they have been discarded or got rid of." It is clear to me that when a matter commences de novo, it is like going back to the drawing board. Everything starts afresh, that is, the evidence of witnesses, evaluation of evidence by the court; in short, the entire proceedings. This Court in the case of **Orisa v State (2015) LPELR-24636 (CA)** quoted in extensor an earlier decision of this court per Okoro JCA, now JSC in the case of **Cletus Okechukwu Iche v. The State (2013) LPELR 1 at 48-49** which decision I find is quite illuminating. I think the words of His Lordship Okoro JCA as he then was, are worth repeating here. Said his Lordship:

"To start a case de novo means to start all over again.....What this means is that even though plea was taken before Justice Duruoha-Igwe, a new plea must be taken before Okoronkwo J who heard the case de novo. The prosecution has to call all his witnesses to prove the case afresh so also the defense. All the exhibits tendered before the previous judge, must be re-tendered at the de novo trial. If there is any objection to the tendering of any document, the trial de novo judge has to consider and rule on it. If a party had laid foundation to tender a document which is a photocopy before the previous judge, he has to do so again before the trial judge hearing the matter de novo. A party seeking to tender such a document cannot just point out to the de novo trial judge that since this document was tendered or rejected by the former judge, he (the new judge) should be bound by it". The elucidation by Okoro JCA now JSC, I find, addresses directly some of the submissions of learned Counsel here as for example, the submission that the earlier ruling of Bako J will be binding on the de novo judge since the the new judge will have coordinate jurisdiction with late Bako J. That cannot be the case. The purpose of a de novo trial, clearly, is that the new judge is not fettered in anyway whatsoever by what transpired at the earlier trial. As Okoro JCA (as he then was)

stated, "all the exhibits tendered before the previous judge, must be re-tendered at the de novo trial. If there is any objection to the tendering of any document, the trial de novo judge has to consider and rule on it". Should this Court go ahead and hear the appeals, it would have emasculated the de novo judge that would hear the case and handed him a fait accompli as far as having an independent view and consideration of the documents the subject of the present appeals are concerned, should there be any objection to them if they are tendered afresh before him. Let us consider this scenario, farfetched as it may seem, but not entirely implausible: the matter before the lower Court by reason of the death of Justice Bako, commences de novo and the new judge proceeds full throttle with the hearing with a view to quickly disposing of it. He gets to the stage of objection to the admissibility of the very documents the subject matter of the present interlocutory appeals. In this imaginary situation, this court is yet to deliver its decision on the interlocutory appeals. What does the new trial judge do in this scenario? Go ahead and give a ruling on the objection to the documents or await the decision of this court? It is to avoid this needless puzzle or dilemma that a de novo trial cannot mean anything other than to start all over again. A judge hearing a matter de novo must not

be constrained in any manner whatsoever; he must not have one hand tied behind his back, metaphorically speaking. For this reason, I agree with S.T Ologunorisa, SAN that it will not be proper to proceed with the appeals before us. Consequently, the appeals, that is to say, appeal numbers CA/468/C/2018; CA/468A/C/2018; CA/468B/C/2018 and CA/468C/C/2018 are struck out to enable the matter to be tried unfettered and unencumbered by a new judge, de novo.



OBIETONBARA O. DANIEL-KALIO
JUSTICE, COURT OF APPEAL

COUNSEL

IFEANYI CHUKWURAH ESQ	1ST APPELLANT
1. J. Y. MADAKI ESQ	}	3RD APPELLANTS
2. GIDEON A. SOLOMON ESQ		
1. NAPOLEON O. IDENALA ESQ	}	4TH APPELLANTS
2. MISS JENNIFER ANIEH ESQ		
D. S. ABDULRAHMAN ESQ	RESPONDENT

CA/K/468/C/2018

RULING

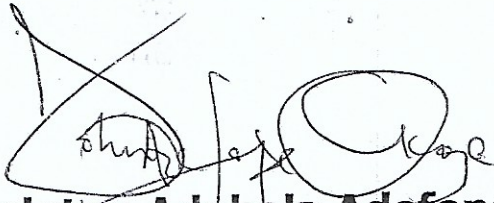
(DELIVERED BY OLUDOTUN A. ADEFOPE-OKOJIE, JCA)

I have had a preview of the Ruling of my learned brother **Obietonbara Daniel-Kalio JCA**. I am in agreement with His Lordships reasoning and decision striking out the appeals therein mentioned.

When a case is started de-novo, it begins afresh. All exhibits tendered before the lower court will have to be tendered again, subject, of course, to any agreement by counsel.

If thus serves no purpose to entertain an appeal in respect of the wrongful admission/rejection of documents when the trial Judge before whom the case was part heard is deceased, rendering the cases in question liable to hearing de novo.

Entertaining the appeals, I hold, would serve no utilitarian value and would be merely academic, which courts are adjured to refrain from. Courts deal only with live issues. See ***Dahiru v. APC (2017) 4 NWLR (Part 1555) Page 218 at 244 Para E-G per Rhodes-Vivour JSC; FRN v Dairo (2015) 6 NWLR (Part 141) at 170-180 Para H per Nweze JSC.***


Oludotun Adebola Adefope-Okojie
Justice, Court of Appeal.

APPEAL NO: CA/K/468/C 2018

RULING

I have read the draft of the ruling delivered by my learned brother, Obietonbara Daniel Kalio, JCA. I agree with reasoning and conclusion reached in the ruling. Hence, Appeal Numbers CA/465/C218, CA/468A/C/2018 and CA/468B/2018 are hereby struck out.



JAMES GAMBO ABUNDAGA,

JCA.