

**Ezekiel Abiodun Famoroti**

**Amos Akinrinola**  
*IN THE SUPREME COURT OF NIGERIA*  
*HOLDEN AT ABUJA*

*SC.114/2008*

***UWANI MUSA ABBA AJI***

***EMMANUEL AKOMAYE AGIM***

***IBRAHIM MOHAMMED MUSA SAULAWA***

***CHIDIEBERE NWAOMA UWA***

***OBANDE FESTUS OGBUINYA***

*FRIDAY, 4<sup>TH</sup> JULY 2025*

Appeal: Notice of appeal - when to file notice of appeal to the Supreme Court - sec. 27(1)(2)(a) of the Supreme Court Act, 2004 considered - effect of non-compliance

Appeal: Notice of appeal - when filed out of time without order of extension of time - whether appeal is invalid and incompetent

Appeal: Where incompetent - proper order - whether appeal is to be struck out

Appeal: Issues for determination - where have become academic - whether no longer have any functional value

1. Whether the Learned Court of Appeal Justices were right in holding that the appellant's Constitutional right to fair hearing was not breached.
2. Whether in the circumstances of the case, the lower court was right in holding that the respondent established his case *for* title to the land in dispute.

The Appellant was dissatisfied with the judgment of the High Court of Oyo State Ibadan, and unsuccessfully appealed to the Court of Appeal Ibadan, hence a further appeal to the Supreme Court.

At the Supreme Court, both parties filed their briefs of argument. The Respondent's brief contained a preliminary objection on the ground that:

- I. The appeal was filed out of time
- II. The grounds of appeal filed at the Supreme Court are incompetent
- III. The appeal raised fresh issues without leave of court.

The Supreme Court considered and determined this appeal based on grounds on the preliminary objection.

1. *On when to file notice of appeal to the Supreme Court-*

The record of this appeal show that the judgment of the Court of Appeal was delivered on 21-5-2007, that the appellant herein on 9-8-2007 applied for the leave of that court to appeal against the said judgment, that the leave was granted on 27-9-- 2007, 119 days after the said judgment and

the notice of appeal commencing this appeal was filed on 2-10-2007, 124 days after the judgment appealed against. The notice of appeal was filed contrary to S.27(1 ) and (2)(a) of the Supreme Court Act, 2004 which requires that the notice of appeal against the judgment of the Court of Appeal be filed within three months from the date the judgment was delivered.

2. *On effect where notice of appeal was filed out of time without an order of extension of time-*

As the record of appeal show, the notice of this appeal was filed over three months after the 21-5- 2007, the date the judgment appealed against was delivered by the Court of Appeal. No order for extension of time was applied for and granted by this court before the notice of this appeal was filed. Therefore, the notice of this appeal filed on 21-5-2007 is invalid and incompetent.

3. *On proper order where appeal is incompetent-*

It is hereby struck out. Since an appeal cannot be sustained on an incompetent notice of appeal, this appeal and the entire processes herein are consequentially incompetent and are hereby struck out.

4. *On effect where issues for determination have become academic-*

As it is, it is no longer useful to determine other issues raised in this case as they no longer have any functional value and have become mere academic questions.

On the whole, this appeal is struck out.

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*Names of Justices who sat on the appeal: UWANI MUSA ABBA AJI, EMMANUEL AKOMAYE AGIM (delivering the lead judgment), IBRAHIM MOHAMMED MUSA SAULAWA, CHIDIEBERE NWAOMA UWA, OBANDE FESTUS OGBUINYA*  
*Appeal No.: sc.114/2008*  
*Date of judgment: Friday, 4<sup>th</sup> July 2025*  
*Names of Counsels: S.O. Ikani Esq. for Appellant, Patrick Okoh Esq. for Respondent*

This appeal is against

the judgment of the Court of Appeal delivered on 21-5-2007 in Appeal No. CA/1/290/2001 dismissing the appeal to it against the judgment of the High Court of Oyo State sitting at Ibadan delivered on 29-2-2000 in Suit No. 1/698/93 .

The parties herein filed, exchanged and adopted their respective briefs as follows- appellant's brief, respondent's brief and appellant's reply brief.

The appellant's brief raised the following issues-

- 1. Whether the Learned Court of Appeal Justices were right in holding that the appellant's Constitutional right to fair hearing was not breached.**
- 2. Whether in the circumstances of the case, the lower court was right in holding that the respondent established his case *for* title to the land in dispute.**

The respondent's brief raised one issue for determination as follows-

**"Whether in the circumstances of this Appeal the Appellant has made out a case to warrant the setting aside of the concurrent findings of facts and judgments of both the Court of Appeal and the trial court. "**

The respondent in his brief raised and argued a preliminary objection on the grounds that the leave to bring this appeal was granted out of time and the notice of this appeal filed out of time without an order of this court extending the time for this appeal to be filed, that the grounds of this appeal raise fresh issues without the leave of court to do so and that this court no longer has jurisdiction to entertain and determine appeals on grounds of facts or mixed law and facts outside those listed in Subsection (2) of S.133 of the Constitution of the Federal Republic of Nigeria 1999.

Let me determine the respondent's preliminary before I delve into the consideration of the merits of the issues raised for determination in this appeal, if the need to do so remains.

Let me start with the ground of objection that the leave to bring this appeal was granted out of time and the notice of this appeal was filed out of time.

Learned Counsel for the respondent argued that the notice of this appeal was filed 134 days after the judgment appealed against was delivered, that this court should take judicial notice that this was outside the statutory period stipulated for commencing an appeal as of right, that extension of time was neither sought for nor granted, that therefore the notice of this appeal is incompetent and that this appeal should be dismissed *for want of jurisdiction* .

Learned counsel for the appellant in the appellant's reply brief did not respond to this argument that the appeal was filed out of time. In spite of this absence of an answer to the points raised in this ground of the preliminary objection, I refuse to automatically uphold it as valid and will proceed to consider its validity on the basis of the facts in the record of appeal and the existing relevant law. **See ECHERE VS. EZIRIKE (2006) All FWLR (pt. 323) 1597 at 1608 (SC) and AGBABLA VS. OKOJIE (2004)15 NWLR (897) 503**

The record of this appeal show that the judgment of the Court of Appeal was delivered on 21-5-2007, that the appellant herein on 9-8-2007 applied for the leave of that court to appeal against the said judgment, that the leave was granted on 27-9-- 2007, 119 days after the said judgment and the notice of appeal commencing this appeal was filed on 2-10-2007, 124 days after the judgment appealed against. The notice of appeal was filed contrary to S.27(1 ) and (2)(a) of the Supreme Court Act, 2004 which requires that the notice of appeal against the judgment of the Court of

Appeal be filed within three months from the date the judgment was delivered. As the record of appeal show, the notice of this appeal was filed over three months after the 21-5- 2007, the date the judgment appealed against was delivered by the Court of Appeal. No order for extension of time was applied for and granted by this court before the notice of this appeal was filed. Therefore, the notice of this appeal filed on 21-5-2007 is invalid and incompetent. It is hereby struck out. Since an appeal cannot be sustained on an incompetent notice of appeal, this appeal and the entire processes herein are consequentially incompetent and are hereby struck out.

As it is, it is no longer useful to determine other issues raised in this case as they longer have any functional value and have become mere academic questions.  
On the whole, this appeal is struck out.

I have had the advantage to read beforehand the lead judgment delivered by my learned brother, **Emmanuel Akomaye Agim, JSC:** , and I am in complete concurrence with his reasoning and conclusion that the Appellant's appeal be struck out.

Where the notice of appeal filed by the Appellant is incompetent, as in the instzlt appeal, having been filed out of time, without the leave of this

Court, it is deemed to be invalid and incompetent and only liable to be struck out.

Appeal struck out.

I am in full concurrence with the reasoning postulated in the draft of the judgment just delivered by my learned brother, the Hon. Justice Emmanuel Akomaye Agim, JSC, to the conclusive effect that the instant appeal is grossly incompetent.

Hence, having adopted the said reasoning postulated in the judgment as mine, I too hereby come to the most inevitable conclusion that the instant appeal ought to be, and same is hereby struck out for being incompetent.

Appeal struck out.

I had the privilege of reading in advance a draft copy of the lead judgment just delivered by my learned brother, **Emmanuel Akomaye Agim, JSC**, I agree that the Notice of Appeal filed 21/05/2007 is incompetent and ought to be struck out *for* the reasons advanced therein. I adopt his lordship's well-articulated reasoning and conclusion in the lead judgment. I also strike out the Notice of Appeal for being incompetent .