

AN OVERVIEW ON APPEALS IN NIGERIA

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Introduction

The validity of an appeal depends on a number of considerations, such as franking, service and other requisite conditions precedent stipulated by the law. As a result, there have been several instances where appeals have been struck out for non-compliance and/or non-fulfilment of these conditions precedents.

This article discusses the appellate regime of the Nigerian judicial system, the appellate jurisdiction of Courts, the validity of an appeal, the difference between the right of appeal and appeal as of right, leave to appeal, and the proper way to fulfil the condition to seek leave to appeal where necessary.

Appeals Generally

Appeals entail the review of the decision of a court/tribunal (not of inquiry) by a higher court or upper bench. Like every other jurisdiction, appellate jurisdiction is conferred by statute. For the sake of completeness, an overview of courts with appellate jurisdiction is provided below:

S/N	Appellate Court	Jurisdiction
1	Magistrates' Court of Lagos State	Decisions of the Customary Court ¹
2	Federal High Court (FHC)	Decisions of the Appeal Commissioners, Magistrates' Courts (relating to criminal matters transferred by the FHC), etc ²
3	National Industrial Court (NIC)	Decisions from arbitral tribunals relating to matters within the jurisdiction of the NIC ³
4	High Court (HC) of Lagos State	Decisions relating to civil and criminal matters from the magistrates' courts ⁴
5	Court of Appeal	Decisions from all the lower courts. ⁵
6	Supreme Court	Decisions from the Court of Appeal ⁶

Like every other decision-making power of the court, the exercise of appellate powers depends on activation by litigants in whom the 1999 Constitution of Nigeria (as amended) ("the Constitution") and other applicable laws have conferred the right to approach the appellate courts (as outlined above) to ventilate their dissatisfaction with a decision of a lower court. Without the litigants exercising their rights of appeal, the appellate powers of the court remain dormant or at best, theoretical.

¹ Section 28(1)(d) of the Magistrate Court Law of Lagos State

² Section 28 of the Federal High Court Act

³ Section 7(4) of the National Industrial Court Act; Section 245(c)(i)

⁴ Section 26 of the High Court of Lagos State Law; Section 272(1) of the Constitution

⁵ Section 240(1) of the Constitution

⁶ Section 233 of the Constitution

VALIDITY OF APPEAL.

For an appeal to be valid, it must be commenced in accordance with due process of law and upon fulfilment of all condition precedents necessary to invoke the appellate powers of the court with the requisite appellate jurisdiction to hear the appeal.⁷ The validity of an appeal depends on whether the originating process, (i.e., Notice of Appeal or an Application for Leave to Appeal) used in initiating the appeal has been properly franked and served, as well as whether (in applicable instances) leave was properly sought before filing of the notice of appeal.

Franking of Originating Process

The originating process for commencing an appeal or cross-appeal differs, depending on whether or not the appeal is as of right. Where the appeal is as of right, the originating process is the Notice of Appeal. However, for appeals which are not as of right, the originating process will be an application for Leave to Appeal. In either case, the originating process must, in accordance with the Rules of Court, be properly franked and signed by a legal practitioner within the meaning of the Legal Practitioners' Act. Improper signing of the originating process will rob the appellate court of its jurisdiction to hear and entertain the appeal, consequently, vitiating the appeal.⁸

Service of Notice of Appeal.

Service of the originating process in an appeal is crucial for the assumption of jurisdiction by the appellate court. Ordinarily, a Notice of Appeal or Application for Leave to Appeal must be served on the party/parties in the appeal. This principle of law dictates that personal service is the prescribed mode of service. It was held in **Odey v. Alaga**⁹ that service on parties' counsel is ordinarily not proper service and may undermine the jurisdiction of the appellate court.

However, the Supreme Court in **Amaechi v. Gov. of Rivers State**,¹⁰ reversed this decision and held that service on counsel shall subsist as good service where the court is satisfied that the party has knowledge of the appeal.

While the decision in **Amaechi v. Gov. of Rivers State** is a welcome development, it is advised to err on the side of caution. The service of an originating process in respect of an appeal should always be personal and it is only where every effort to effect personal service proves abortive that the originating process can be served on the counsel representing the respondent.

⁷ Madukolu v. Nkemdilim (1962) 1 SCNLR 341

⁸ Emmanuel Okafor & Ors v. Augustine Nweke & Ors (2007) 10 NWLR (Pt. 1043) 541

⁹ (2021) 13 NWLR (Part 1792) 1

¹⁰ (2022) 17 NWLR (Part 1858) 1

RIGHT OF APPEAL & APPEAL AS OF RIGHT.

While statutes and/or the Constitution may have conferred appellate jurisdiction on the courts, such jurisdiction (as we know) can only be invoked by a party in whom the Constitution or a statute has reposed such right.

It is pertinent to note that “right of appeal” is quite different and distinct from “appeal as of right”. While right of appeal is akin to locus standi, appeal as of right is the liberty of a party to commence an appeal without seeking the leave of court, trial or appellate Court.

Right of Appeal

Where no right of appeal is conferred, no party or person can appeal the decision of that court to the upper bench, without the leave of court. In some instances, the statute or the relevant provisions of the Constitution conferring the right of appeal limits the decision of the court which may be appealed and, in some cases, confers finality of a decision of a specified court in a given subject matter. For example, there is no right of appeal against:

- i. the interlocutory decision of the Magistrate Court¹¹;
- ii. the decision of the High Court granting unconditional leave to defend or against an order absolute in a matrimonial cause¹²
- iii. the decision of the Court of Appeal exercising appellate jurisdiction over decisions of the National Industrial Court¹³
- iv. the decision of the Court of Appeal in respect of the decision of the Court in appeals arising out of National and State Houses of Assembly Election Petition¹⁴

Appeal as of Right

The Constitution and statutes typically make provisions for the circumstances in which a party is at liberty to appeal the decision of a court without the need to obtain the leave of any court. These circumstances are categorically provided and delineated in the laws and as it is settled, they cannot be derogated from.

Appeals from the Court of Appeal to the Supreme Court shall be as of right (i.e., without leave of court) when¹⁵ such appeal is:

- i. on grounds of law alone;
- ii. on interpretation of the Constitution;
- iii. on whether the fundamental right of a person has been contravened or is likely to be contravened;
- iv. against decisions affirming or imposing death sentence; or
- v. against decisions on questions relating to the validity of election, cessation of office, and vacancy of the office of the President, Vice President, a Governor, or a Deputy Governor.

¹¹ Section 70 (3) of the Magistrate Court of Law of Lagos State

¹² Section 241(2)(a)(b) of the Constitution

¹³ Section 243(4) of the Constitution

¹⁴ Section 246(3) of the 1999 Constitution

¹⁵ Section 233 (2) of the Constitution

An appeal shall be as of right from the decision of the High Court (Federal and State) where:

- i. the High Court was sitting as a court of first instance;
- ii. the grounds of appeal are on questions of law alone;
- iii. the decision is on the interpretation of the Constitution;
- iv. the decision is on whether the fundamental right of a person has been contravened or is likely to be contravened;
- v. the appeal is against decisions imposing death sentence; or
- vi. the decisions are in relation to liberty of a person (bail) or custody of an infant, injunctions, and appointment of Receiver; decree nisi in a matrimonial cause; decisions as to liability in an admiralty cause, etc.

An appeal shall be as of right from the National Industrial Court of Nigeria to the Court of Appeal on questions involving fundamental human right(s)¹⁶

An appeal shall be as of right from the decisions of the Sharia Court of Appeal and Customary Court of Appeal on questions on Sharia Law and Customary Law, respectively¹⁷

Furthermore, an appeal shall be as of right to the Court of Appeal in respect of¹⁸:

- i. decisions of the Code of Conduct Tribunal;
- ii. decisions of the National and State Houses of Assembly Election Tribunals; and
- iii. decisions on questions as to valid election, cessation of office, and vacancy of office of the President, Vice President, Governor, and Deputy Governor.

Leave to Appeal

Where the Constitution or any other statute does not provide for appeal as of right, but a right of appeal exists on the matter, such an appeal shall only be commenced after leave to appeal, has been sought from the trial or the appellate court. Where appeal lies with leave of court, the grant of such leave is a condition precedent to the validity of the appellate process. Therefore, failure to obtain leave in such an instance is fatal to the appeal.

Some instances where leave is required include:

- i. all appeals from the Magistrate Court to the High Court¹⁹;
- ii. interlocutory decisions of the High Court where the grounds of appeal border on mixed law and facts, or facts *simpliciter*²⁰;
- iii. a consent judgment or cost orders of the court;²¹
- iv. the decisions of the National Industrial Court of Nigeria in civil matters (not under Chapter 4 of the Constitution)²²; or

¹⁶ Section 243(2) of the Constitution

¹⁷ Sections 244 and 245 of the Constitution

¹⁸ Section 246(1) of the Constitution

¹⁹ Section 72 of the Magistrate Court Law of Lagos State, 2009

²⁰ Section 242 of the Constitution

²¹ section 241(2)(c) of the Constitution

²² Sky Bank Plc v. Iwu (2017) 16 NWLR (Pt 1390) 24

v. the decisions of the Court of Appeal on mixed law and facts²³

Given the importance of grounds of appeal in determining whether an appeal is as of right or with the leave of court, it is paramount that the Notice of Appeal be crafted in a manner that will not defeat the appellate process or hamper the jurisdiction of the court. No doubt, final decisions are appealable as of right. However, interlocutory decisions may be appealed against either as of right or with the leave of court depending on the grounds of appeal.

Over the years, there have been debates on when a ground of appeal of (i) law alone, (ii) mixed law and facts and (iii) facts. The Supreme Court laid the issue to rest in **Akinyemi v. Odua Inv. Co. Ltd.**²⁴ In the said case, the apex court per Muhammad JSC²⁵, held with finality that:

- i. Where a ground complains of a misunderstanding by the lower court of the law or a misapplication of the law to the facts already proved or admitted, it is a ground of law.
- ii. Where a ground of appeal questions the evaluation of facts before the application of the law, it is a ground of mixed law and fact.
- iii. A ground which raises a question of pure fact is certainly a ground of fact.
- iv. Where the lower court finds that particular events occurred although there is no admissible evidence before the court that the event did in fact occur, the ground is that of law.
- v. Where admissible evidence has been led, the assessment of that evidence is entirely for that court. If there is a complaint about the assessment of the admissible evidence, the ground is that of fact.
- vi. Where the lower court approached the construction of a legal term of art in a statute on the erroneous basis that the statutory wording bears its ordinary meaning, the ground is that of law.
- vii. Where the lower court or tribunal applying the law to the facts in a process which requires the skill of a trained lawyer, this is a question of law.
- viii. Where the lower court reaches a conclusion which cannot reasonably be drawn from the facts as found, the appeal court will assume that there has been a misconception of the law. This is a ground of law.
- ix. Where the conclusion of the lower court is one of possible resolutions but one which the appeal court would not have reached if seized of the issue, that conclusion is not an error in law.
- x. Where a trial court fails to apply the facts which it has found correctly to the circumstances of the case before it and there is an appeal to a court of appeal which alleges a misdirection in the exercise of the application by the trial court, the ground of appeal alleging the misdirection is a ground of law not of fact.
- xi. When the Court of Appeal finds such an application to be wrong and decides to make its own findings such findings made by the Court of Appeal are issues of fact and not of law.
- xii. Where the appeal court interferes in such a case and there is a further appeal to a higher court of appeal on the application of the facts, the grounds of appeal alleging such misdirection by the lower court of appeal is a ground of law not of fact.

²³ Section 233 of the Constitution

²⁴ (2012) 17 NWLR (Pt. 1329) 209

²⁵ at pages 230-231

- xiii. A ground of appeal that complains that the decision of the trial court is against evidence or weight of evidence or contains unresolved contradictions in the evidence of witnesses, is purely a ground of fact (which requires leave for an appeal to a court of appeal or a further court of appeal).



CONCLUSION

To allay objections to the validity of the appeal or ground of appeal, counsel must be wary of the above-mentioned pitfalls and properly craft the ground(s) of appeal to capture the grouse of error of law or misdirection of facts contained in the decision being appealed against. More so, since the grounds of appeal will determine whether leave must first be sought and obtained before the filing of the appeal, counsel are advised to get familiar with the decision of court in *Akinyemi v. Odua Inv. Co. Ltd* (supra) and other related and relevant judicial authorities on what constitutes a ground of law or fact with the purpose of discerning where leave to appeal must first be sought and obtained. before initiating an appeal. Finally, counsel must ensure that the Notice of Appeal or the Motion for Leave to Appeal is properly franked and served in a manner recognized by the law and Rules of Court.

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