

UNDERSTANDING THE INTRICATE DOCTRINE OF *STARE DECISIS* AND WHY ALL CRIMINAL APPEALS CANNOT BE ACADEMIC OR LIFELESS IN SITUATIONS WHERE APPELLANT HAS FINISHED SERVING HIS TERM OF IMPRISONMENT: ANALYSIS OF THE CASE OF EMMA AMANCHUKWU V. THE FEDERAL REPUBLIC OF NIGERIA VIS-À-VIS THE REASONING OF HIS LORDSHIP HON. JUSTICE O.A. ADEGBEHINGBE, JCA IN THE CASE OF EMMANUEL ODAFE IGBINI V. FEDERAL REPUBLIC OF NIGERIA

ABIODUN A. OLUBUSADE, Esq.*

Abstract

This paper critically examines the doctrine of *stare decisis* and its nuanced application to criminal appeals, particularly in cases where the appellant has completed a term of imprisonment before the appeal is determined. It interrogates the often-misconceived interpretation of the Supreme Court's decision in *Emma Amanchukwu v. Federal Republic of Nigeria*, which has been repeatedly invoked to dismiss criminal appeals as academic or lifeless once a convict has served the sentence. Through a doctrinal and comparative analysis, the paper juxtaposes that decision with the more recent reasoning of Hon. Justice O.A. Adegbehingbe, JCA, in *Emmanuel Odafe Igbini v. Federal Republic of Nigeria*, to highlight the evolving judicial understanding that the right of appeal remains a fundamental constitutional safeguard that survives the effluxion of a custodial term. The discourse further explores impediments to the exercise of the right of appeal in Nigeria – ranging from procedural delays, indigence, and administrative inefficiencies to judicial misapprehension of precedent – and argues for a more context-sensitive application of *stare decisis* that aligns with the principles of fair hearing and substantive justice. Ultimately, the paper concludes that not all criminal appeals become academic upon the completion of a sentence, and that the courts must preserve the utilitarian and corrective functions of appellate review to maintain public confidence in the administration of justice.

Keywords: Stare Decisis, Right of Appeal, Criminal Jurisprudence, Academic Appeal, Fair Hearing, Nigerian Appellate Courts, and Constitutional Justice

1. INTRODUCTION

Many times students, teachers, lawyers, and even *judex* have found themselves in the web of relying on the particular holding of court(s) as precedents in subsequent cases without taking time to consider the *ratio decidendi*, and the premise upon which that court had reached the said decision. That is the situation in the case of *Emma Amanchukwu v. The Federal Republic of Nigeria*¹ where reliance had been placed severally on the unimpeachable *dictum* of his lordship Hon. Niki Tobi, JSC (of eventful memory) as being the absolute position of the law on an appeal being an academic exercise or spent issues in situations where the appellant had finished serving his jail and/or term of imprisonment. Limiting one's self to the holding of the court *per incuriam*,

* Abiodun. A. Olubusade, LL.B (Hons.), LL.M, BL, Managing Partner, A.A. Olubusade & Co., biodunbusade@gmail.com +234 7039404331.

¹ [2009] 8 NWLR (Pt. 1144) 482.

had dashed the hopes of some litigants who would have loved to challenge their incarceration even if they served or were to serve only a period of two (2) months in a correctional facility. This paper espouses the judgment of the Supreme Court of Nigeria cited above, vis-à-vis the decision of the Port Harcourt division of the Court of Appeal in *Emmanuel Odafe Igbini v. The Federal Republic of Nigeria*² only as it relates to the remedies available to a willing convict, present or ex, who may wish to pursue an appeal no matter how minute the term of imprisonment he has served, or presently serving as a result of a criminal conviction.

2. RIGHT OF APPEAL

One of the most important Constitutional guarantee available to any accused person is the right to fair hearing³ which include, but not limited to the right to appeal⁴. As important as the right of appeal is, there are arguments that the right to appeal is not contained in any of the sections of the Constitution on fundamental human rights, but has been described as a fundamental right nonetheless⁵. His lordship, Karibi-Whyte, J.S.C. in *Wilson v. Oshin*⁶ held that a party convicted of an offence has the right of appeal. It is a constitutional right. See also, *Mohammed v. Olawunmi*⁷. His lordship Chima Centus Nweze, JSC, in the case of *Mercantile Bank (Nig.) Plc. v. Imesco Ent. Ltd.*⁸ maintained that an aggrieved party has a constitutional right of appeal to challenge the decision of the court.⁹

2.1 IMPEDIMENT(S) TO THE EXERCISE OF RIGHT TO APPEAL

There are a lot of factors that inhibit the effective exercise of the right to appeal in Nigeria. Starting from failure of the (trial) court to release copies of the judgments to parties after the delivery of same, which indeed is a breach of the Constitutional rights of parties before and by the court itself. It is quite appalling that six months and even up to a year after judgment had been delivered, trial judges hold on to judgments, thereby frustrating parties to have the decisions further tested on appeal. At a later time when such judgments are released, the burning passion of litigants and their counsel had already been quenched by the imaginary water of delay at the instance of the trial court, which is clearly not good for our jurisprudence. By virtue of section 294(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), every court established under the Constitution shall deliver its decision in writing not later than ninety days

² CA/PH/31CR/2022. The lead judgment was delivered by His lordship Hon. Justice Olabode A. Adegbehingbe, JCA, on 13 July, 2022

³ Section 36 of the Constitution of the Federal Republic of Nigeria (as altered).

⁴ By the combined effect of the provisions of Sections 241(1)(a) and (b) of the 1999 Constitution of the Federal Republic of Nigeria (as altered), there is a right of appeal when the complaint is as regards any criminal or civil proceedings before the Federal High Court or a High Court sitting at first instance.

⁵ See the case of *A.G. Federation v. Bi-Courtney Limited* [2014] LPELR-22968 (CA), also Fadesike Salu, on the Right of Appeal and Cause of Justice: Africa Law Practice & Company Law Journal <https://www.alp.company/sites/default/files/Right%20of%20Appeal%20ans%20Cause%20of%20Justice.pdf> retrieved on 13 May, 2025.

⁶ [2000] 9 NWLR (Pt. 673) 442 at 461.

⁷ [1993] 4 NWLR (Pt. 287) 254 at 279.

⁸ [2023] 4 NWLR (Pt. 1873) 165, 201 – 202, Paras H-A.

⁹ His lordship came to the said conclusion placing reliance on the following cases - *Ugwuh v. A.-G., East Central State* [1975] 6 SC 13; *Adigun v. A.-G., Oyo State* [1987] 2 NWLR (Pt. 56) 197; *W.A.E.C. v. Adeyanju* [2008] 9 NWLR (Pt. 1092) 270; and *National Bank of Nigeria Ltd. v. Weide and Co.(Nig.) Ltd.* [1996] 8 NWLR (Pt. 465) 150.

after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof. This provision of the law has gotten judicial approval in a plethora of cases.¹⁰ Hence, it is not a matter of discretion, choice, or the whimsical abuse of power of a trial judge to hold on to judgments in perpetuity.

The technical nature of appeals and the inability of appellate counsel to master the timelines for appeals is another impediment. By virtue of Section 24 (2) (a) of the Court of Appeal Act,¹¹ the time to file an interlocutory appeal is fourteen days after the delivery of the decision, while the time to appeal against a final judgment is three months after its delivery.¹² On appeal, procedures, filing and other connected issues, more importantly, those that would make an appellant in particular, proper before the court are time-regulated, with attendant consequences wherever a breach occurs. The notoriety of this rule informed the reasons why his lordship Hon. Justice Niki Tobi, JSC, in *Kraus Thompson Org. v. N.I.P.S.S.*¹³ posited that:

By virtue of Order 6 rule 10 of the Court of Appeal Rules, failure on the part of an appellant in the Court of Appeal to file his brief within time will result in the sanction of dismissal of the appeal on the application of the respondent. It does not give the court any discretion once the respondent applies under the rule, the appeal must be dismissed and such dismissal is fatal. [Ogbu v. Urum [1981] 4 SC 1; Olowu v. Abolore [1993] 5 NWLR (Pt. 293) Akunjinwa v. Nwaonuma [1998] 2 NWLR (Pt. 583) 632 referred to.] (Pp. 58, paras. C-E; 63-64, paras. H-A)

The extremely poor situation of an indigent accused convict/appellant is another situation to factor into consideration. More often than not, in criminal cases, convict who in his mind would have ordinarily loved to appeal the decision of court does not have the means to do so. As much as the law and the rules of court make adequate provision for the indigent accused¹⁴ a lot of persons do not know that such provision exists, and even when they know, activating it to the advantage of the convict is another herculean task.

Lethargic attitude and disposition of the registry of the trial court, limited sensitization of staff, corruption and so on are some of the other vices.

¹⁰ *Mohammed Ali v. The State* [2021] 12 NWLR (Pt. 1789) 159, also, *Olu Charles Faluyi v. Nigerian Union of Teachers* [2021] 5 NWLR (Pt. 1768) 98.

¹¹ Cap. C36, Laws of the Federation of Nigeria, 2010.

¹² *Seriki v. Aduralere* [2007] 3 NWLR (Pt. 1020) 127, *Lovleen Toys Ind. Ltd. v. Komolafe* [2013] 14 NWLR (Pt. 1375) 542 and so on.

¹³ [2004] 17 NWLR (Pt. 901) 44.

¹⁴ Oguntade, JSC held *Obiter* in the Amanchukwu's case, supra @ page 482 that at the point the accused said before the court that he had no money to retain a counsel, the Court ought to have assigned one to him. The court may assign counsel, the Legal Aid may offer assistance, which the accused appellant is equally at liberty to reject as was the case in the Supreme Court decision in *Razaq Olanrewaju v. The State* [2023] 13 NWLR (Pt. 1901) 305. For instance, in civil appeals, the provisions of Order 8 rule 11 of the Court of Appeal rules, 2021, excludes an indigent person from the payment of security deposits when lodging an appeal.

2. CASE ANALYSIS AND FACTUM IN THE IGBINI CASE

In Suit No: FHC/PH/153C/2014, the appellant, Emmanuel Odafe Igbini was charged to Court under the Economic and Financial Crimes Commission Establishment Act 2004 for failure to make full disclosure in his assets declaration while he was being investigated by the EFCC. On 26/10/2019, the learned trial judge sentenced Mr. Igbini to six months imprisonment. Pronto, he filed a Notice of Appeal on 16/11/2019; which Notice he subsequently amended in order to pursue his appeal on quintuplet grounds. He satisfied the requirements of the law by putting-in all his papers in pursuit of the appeal, urging the appellate court to set aside his conviction, since according to him, the judgment is unreasonable, unwarranted and cannot be supported having regard to the evidence adduced at trial.

The appeal was heard on 31 May, 2022, which is about 31 months since the judgment of the trial court in 2019. Needless to say that as of the appeal hearing date, Mr. Igbini had finished serving the 6 months jail term. This, despite having been raised much earlier, must be the reason for the respondent counsel's contention at raising a preliminary objection on five grounds, the principal ground of complaint, being that the appeal has become a mere academic exercise in view of the fact that the appellant has successfully served out his prison terms. He relied on the case of *Amanchukwu v. FRN*,¹⁵ where, according to him, an appeal was dismissed for being an academic exercise, since the appellant had fully served the term of imprisonment passed on him. He urged the Court of Appeal to dismiss the appeal for having no practical utilitarian value.

3. THE POSITION OF THE COURT OF APPEAL AND THE RECENT VIEW OF THE COURT(S)

The Court of Appeal in a unanimous decision, dismissed Mr. Igbini's appeal in its entirety. However, as expected, the court resolved the fundamental issue of jurisdiction as to the competence of the appeal especially on the issue(s) identified above. His lordship the Hon. Justice O.A. Adegbehingbe, JCA, wrote the lead judgment; which judgment was delivered on 13 July, 2022. In cognizance of the request of the respondent's counsel to have the appeal terminated, his lordship posited at page 11 of the said judgment that:

... if attention is paid to the first ground listed in the notice of preliminary objection, it will be acknowledged that the respondent complains that this appeal has become an academic exercise and useless. If this court agrees with the poisonous dart thrown at the temple of this appeal, that will result in the demise of the appeal. This is because it is an accepted staple principle that a court of law does not indulge in academic exercise or issue opinions about potential cases. See *Umanah v. Attah* [2006] 17 NWLR (Pt. 1009) 503 at 520.

Not swayed by the respondent's arguments, the court, per Adegbehingbe, JCA resolved that there is no merit in the respondent's preliminary objection as argued. The court came to its conclusion by distinguishing the troubled *Amanchukwu*'s case from this particular case.

In the *Amanchukwu*'s case, the appellant therein at trial, pleaded guilty to the charge laid against him, upon which he was sentenced to 15 years imprisonment. He made a binding confession, which the tribunal and/or court must accept as such. He served the term in full before thinking of

¹⁵ n 2.

appealing against his sentence. On the other hand, the appellant in the Igbini's case promptly appealed his case where there was a full trial at the Federal High Court and also did not plead guilty to the alleged offenses. As was noted above, the Court found that the delay at having the appeal determined before the expiration of the term imposed on him was not the appellant's fault, as he did all that was necessary for the pursuit of the appeal. At page 13 of the said judgment, the court held as follows:

The appellant's appeal was filed at the time the sentence or term of imprisonment imposed on the appellant had started to run and pended until it expired. That the term was fully served before the appeal was heard and determined is not the fault of the appellant. The appellant did all that was necessary for the appeal to be validly filed, heard and determined. Appellant's appeal was, therefore, pending before this court at the time the term of imprisonment was fully served. Thus, at the point of the filing of the original notice of appeal, on 16/11/2016, (sic) the appellant acquired an accrued right, under section 241(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria, to prosecute this appeal to its conclusion, which may not be short-circuited by the effluxion of the term of appellant's imprisonment. See Karibi-Whyte, J.S.C. in **Wilson v. Oshin [2000] 9 NWLR (Pt. 673) 442 at 461**. A party convicted of an offence has the right of appeal. It is a constitutional right. See **Mohammed v. Olawunmi [1993] 4 NWLR (Pt. 287) 254 at 279**.

It must be noted that Amanchukwu was sentenced to 15 years imprisonment in 1990. His appeal to the Supreme Court was determined on 27 February, 2009 where from all indications he must have finished serving the 15-year jail term. He claimed not to have been accorded fair hearing. In distinguishing this case from the Amanchukwu's case, the court in Igbini's case made copious references to the *obiter dictum* of Hon. Justice George Adesola Oguntade JSC (as he then was) who was on that panel. At page 12 of the judgment, Adegbehingbe, JCA, quoted Oguntade JSC, *ipsissima verba* thus:

The circumstances of this appeal are rather constraining. The appellant was sentenced in 1990 and would appear to have exhausted the sentence in prison. It is not prudent to ask him to now face a new trial where he would be afforded the right to legal representation. I am also unable to set him free given the fact that he himself, an adult, admitted that he committed the offence and offered a most untenable reason for doing so. Were the circumstances different I would have given consideration to a retrial.

The Supreme Court in the case of *Onuwa Kalu v. The State*¹⁶ held that once there is a denial of the right to fair hearing, the only order that could be made on appeal is one of re-trial or re-hearing. This is to enable the appellant to be properly heard. Apart from the fact that he made

¹⁶ [2017] 14 NWLR (Pt. 1586) 522, *Otapo v. Sunmonu* [1987] 12 NWLR (Pt. 58) 587; *Salu v. Egeibon* [1994] 6 NWLR (Pt. 348) 23; *Danladi v. Dangiri* [2015] 2 NWLR (Pt. 1442) 124, and so on.

unequivocal admission and gave reasons why he committed the offence of concealing 600 grammes of heroin in his body, it is practically impossible to have the appellant in that case retried again having served his imprisonment religiously. On the other hand, Adegbehingbe, JCA in the Igbini's case while appraising the utility of the appeal, considered the provisions of Sections 250(1) and (2) of the Evidence Act, 2011 which provides for the evidence of previous conviction that may be proved against a person. Hence, his lordship held that *as the facts currently exist, on public record the appellant is a convict of the criminal law and the court. This appeal is not an academic exercise. This appeal may alter that status.*

In his analogy, his lordship further noted by making a dichotomy in a situation whereby a person is convicted and sentenced to payment of a fine, which is akin to serving a term of imprisonment – being a form of punishment for an offence adjudged committed. In Igbini's case his lordship held that:

The fact that the fine ordered is paid by the person, ordered to do so, does not mean that on the event of success in an appeal, the sum paid as fine, cannot and will not be refunded to the person who paid the fine. A successful appellant who has paid a fine, whose conviction and sentence is set aside is naturally or implicitly entitled to the refund of the fine paid, as the order setting aside his conviction and sentence has the effect of the conviction and sentence being wiped off and becoming non-existent. The fact that the fine has been paid will not automatically short-circuit the person's constitutional right to proceed on appeal, against the judgment of the court.

Before now, and a little before the decision of court in the Igbini's case, His lordship, Hon. Justice Oludotun Adebola Adefope-Okojie, JCA (as he then was) had in year 2021 in the case of Commissioner of Police, Bayelsa v. Oputa Freeman,¹⁷ later reported in year 2024, distinguished the Amanchukwu's case on a similar premise, only as it relates to admissions to guilt and a contest thereof on the other hand. Be that as it may, his lordship Adefope-Okojie JCA in that case, reiterated appellant's right of appeal as a constitutional and fundamental right when he held as follows:

The right of appeal is a fundamental right which is constitutionally guaranteed and therefore cannot be fettered other than as provided under the Constitution or the statute creating same. A right of appeal is a constitutional right which a party is entitled to exercise in accordance with the rules of Court. Where a party is aggrieved by a decision or order of court or tribunal, and he sets out to appeal, that aggrieved party is simply doing no more than exercising his constitutional right. Nothing must be done or left undone which is capable of thwarting the exercise of that right.

4. OBSERVATIONS AND RECOMMENDATIONS

This paper observes that the doctrine of *stare decisis* has often been misunderstood and rigidly applied in Nigerian criminal jurisprudence, particularly through the misinterpretation of Emma

¹⁷ [2024] 1 NWLR (Pt. 1920) 537.

Amanchukwu v. FRN, which is wrongly cited to mean that all criminal appeals become academic once a sentence has been served. It notes that Justice O.A. Adegbehingbe's reasoning in *Emmanuel Odafe Igbini v. FRN* corrected this misconception by affirming that the right of appeal, being constitutional, remains valid even after the completion of a sentence especially where delays are not the appellant's fault.

The paper further identifies systemic impediments - such as delayed release of judgments, bureaucratic inefficiencies, and lack of awareness among indigent convicts as major barriers to the effective exercise of this right. Finally, it highlights an emerging judicial shift toward a more liberal and justice-oriented interpretation of precedents, reflecting a gradual move from technical rigidity to substantive fairness in Nigerian appellate practice. Hence, the recommendations that:

1. Courts should interpret and apply precedents contextually, with due regard to the peculiar facts and legal issues in each case. Judicial decisions should not be treated as inflexible formulas detached from their factual foundations.
2. The judiciary and legal practitioners must continue to affirm that the right of appeal is fundamental and survives the expiration of a custodial sentence, except where there is an unequivocal plea of guilt or admission of offence.
3. Mechanisms should be established to ensure prompt release of judgments, efficient transmission of records, and better sensitization of registry staff to prevent unnecessary delay in criminal appeals.
4. The Legal Aid Council and human rights organizations should intensify awareness campaigns and streamline procedures to assist convicts who wish to appeal but lack the means to do so.
5. Continuous judicial education should emphasize proper understanding of *ratio decidendi* and the dangers of *per incuriam* application of authority, ensuring that the principle of *stare decisis* advances justice rather than hindering it.

5. CONCLUSION

Factoring the time within which to comply with the processes of appeal and other clog that may arise, the *Igbini's* case has given a respite to the seemingly impossible that the case of *Amanchukwu* portends in the strict sense of that decision. The right of appeal is a fundamental human right, and no one is to be stopped from exercising his rights under the law, except in a situation of clear and unequivocal admission.

For an efficient justice system, every actor in the legal arena has important roles to play. Understanding judicial precedents on its peculiarity of facts, nature and surrounding circumstances would enhance a robust jurisprudence, just as being awake to the demands and responsibilities of office would assist at timely appeals.