

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 11**

**SUIT NO: FCT/HC/CV/2087/19**

**BETWEEN:**

- 1. DAVID AVONGS KABOSHIYO**
- 2. MARGARET DAVID KABOSHIYO**
- 3. EL-MARAK ENTERPRISE LTD**
- 4. MAGAMI TECHNICAL CONSTRUCTION LTD...CLAIMANTS/RESPONDENTS**

**VS**

**LAMI IBRAHIM.....APPLICANT/DEFENDANT**

**RULING**

By Motion on Notice with No. M/5940/18 dated 11/5/18 and filed same day, the Applicant seek the court for the following;

1. An Order Extending Time within which the Defendant/Applicant shall file and serve her Statement of Defence.
2. An Order deeming the Defendant/Applicant's Statement of Defence, deposition of witness property filed and serve and the appropriate filing fee having been duly paid.

3. An Order of this Hon. Court extending time to the Defendant/Applicant to file and serve her counter affidavit to the Plaintiff/Applicant's application filed on the 22<sup>nd</sup> of January 2018 out of time.
4. And the Omnibus relief.

In support of the Motion is a 4 Paragraph affidavit deposited to by one Joy Yohanna with 1 Exhibit annexed and marked Exhibit "LMI". Also filed a Written Address and adopt the said Address, in urging the court to grant the application.

Upon being served and in response, the Claimant/Respondent filed on 8 Paragraph Counter – affidavit on 23/5/18, deposited to by Abdullahi Bello. Also filed a Written Address, in urging the court to discountenance the application of the Applicant.

In the Written Address of Applicant, Abu Hurairah Musa of Counsel submitted only one (1) issue for determination and that is;

"Whether this is an appropriate case for the court to extend the time for filing of the process and to deem same as properly filed and served having paid the appropriate fees".

And submit that by Order 43 Rule 1 of the Rules of Court, a party who intends to file processes out of time ought to seek and obtained leave of court. That it is in the interest of justice that the Applicant be allowed to be heard to avoid being caught by an event which is not the making of Applicant. Further that that affidavit of Applicant disclosed sufficient,

cogent and convincing reasons to grant the application, refer the court to *Bullet International (Nig) Ltd Vs Adamu (1997) 3 NWLR PT. 493, 348 – 349*, Section 36 (1) of the Constitution of Federal Republic of Nigeria 1999 (As Amended) and *Amgbare Vs Slyva (2008) All FWLR PT. 419, 576 @ 600*.

In the Written Address of Claimants/Respondents, Abdullahi Bello, counsel for Respondent, submits two (2) issues for determination;

1. Whether this Hon. Court can take cognizance of this application as it stands, same not property signed and filed.
2. Adopts the sole issue raised by Applicant in her Written Address in support of the Motion.

On issue 1, submits the application is shown to be signed by Abu Hurairah Musa, a lawyer without an approved stamp by the NBA affixed to it as required by law. That the signing and filing of the application is a clear infraction of Rule 10(1) of Rules of Professional conduct, refer also to Order 2 Rule 9 of Rules of Court and case of *Yaki Vs Bagudu (2015) All FWLR PT. 810 1026 @ 1059 Paras E – F*.

On issue 2, whether this is an appropriate case for the court to extend the time for filing of the process and to deem same as property filed and served having paid the appropriate fees, submit in an application of this nature, the Applicant has the responsibility to show to court that the delay to perform the act sought to be performed outside the prescribed time was brought about by circumstance beyond his control, or was not deliberate or as a result of neglect to perform the act within time and refer to *Taraku Mills Ltd Vs Sant Engineering Ltd (2008) All FWLR PT. 430 798 @ 804 –*

805. That from the facts averred in the affidavit of Applicant, in particular Para 8(a) (b), (c) no reasonable explanation can be said to exist to the advantage of the Applicant for failing to file her Defence within time therefore not entitle to the equitable relief sought. That as stated in their counter-affidavit, their Motion for Judgment and Hearing Notice was served on Applicant on 5/3/18 in compliance with Order of Court, that on the said date, Counsel to Applicant was in court and this is clear proof that notice of the process got to Applicant. Further that the originating process in this suit was served in the same manner as the Motion and Hearing Notice against 5/3/18, therefore the facts as deposed in Para 8(e) is out of place. That nowhere, on the face of the application or otherwise, is shown that Applicant paid default fee that has accrued by virtue of her failure to file at the prescribed time, refer Order 56 Rule 1(1) and (2).

Having considered the submission of Counsel, the affidavit evidence and the statutory and judicial authorities cited, the court finds that only one (1) issue calls for determination, and that is;

“Whether or not the Applicant have furnished sufficient and cogent reasons to enable the court grant the reliefs sought”.

It is settled under the Rules of Court and Plethora of Judicial authorities that the court has the power and indeed the discretion to grant leave for extension of time within which a party is required or authorized by the Provision of the Rules of Court. See the case of T.M Ltd Vs S. Engineering Ltd (2009) 6 NWLR PT. 1131, 1 @ 4. However, the application for extension of time for the doing of an act is not granted as a matter of

course, but such request for extension of time must be supported with good and substantial reason why such act was not done within the prescribed period. See T.M Ltd Vs S. Engineering Ltd (Supra) @ 4.

In this instant case, the Applicant in Paragraph 4 a-e of her affidavit evidence stated the reasons why she could not comply with the Rules as regards time within which to file her Statement of Defence to the Plaintiffs suit and annexed the Exhibit "LMI" - posting letter in furtherance of her case.

The Claimants/Respondent has by the counter-affidavit, in particular, Paras 3 – 6 stated reasons why the application of the Applicant should not be granted.

The court is now left with the duty to answer the only issue for determination; whether or not the Applicant has furnished sufficient and cogent reasons to enable it grant the relief sought? My answer to this question is in the affirmative. I say so because the application is made to afford the Applicant the opportunity to defend the case made out against her by Plaintiffs, refusing the application would amount to breach of fair hearing on the part of Applicant which the court overtime is enjoined to refrain from, rather ensure opportunity for fair hearing. See the case of Adamu Vs FRN (2018) All FWLR PT. 958, 1042. More so that the Rules of court allows for extension of time where sufficient reasons are adduced for the delay in taking steps.

On the issue that the Applicant was signed by Abu Hurairah Musa, a lawyer, without an approval NBA stamp affixed to it in violation of the

Rules. I have looked at the said application and find that indeed it was signed by Abu Hurairah Musa, a lawyer, and has his NBA seal affixed to it, which in the view of court, is substantial compliance with the Rules. In any event by Order 5 Rule 2 of the Rules, failure to comply with the requirements of the Rules as to time, place, manner or form as treated as irregularity.

From all of these and having found the reasons adduced by Applicant in seeking the reliefs, the court holds that the application has merit and should. Accordingly it is hereby ordered as follows;

1. An Order extending time within which the Defendant/Applicant shall file and serve her Statement of Defence.
2. An Order deeming the Defendant/Applicant's Statement of Defence, deposition of witness properly filed and serve the appropriate fee having been paid.
3. An Order extending time to the Defendant/Applicant to file and serve her counter-affidavit to the Plaintiff/Applicant application filed on 22/1/18.
4. The Plaintiff/Respondent is at liberty to reply to the pleadings of the Defendant/Applicant.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

29/1/2020

**APPEARANCE:**

ABU HURAIRAH MUSA – FOR THE DEFENDANT/APPLICANT

ABDULLAHI BELLO – FOR THE CLAIMANTS/RESPONDENTS