

The Learned SAN relied on Order 43 Rule 3 of the Rules of this Court. He argued that they are entitled to 7 days within which they are to file their counter-affidavit and a written address. He urged the Court to give them the opportunity to defend this contempt proceeding.

In opposing this oral application, learned counsel to the applicant, B.E.I. Nwofor argued that all the documents they applied for or which they are desirous of getting from the Registrar of the Court are already attached to form 49 which were served on them. They are Exhibits B and C.

Mr. Nwofor further argued that Order 43 of our Rules of 2018 is not applicable in this proceeding. He said only Order 47 of the same rules and Order 9 Rule 13(2) of the Sheriff and Civil Process Act is applicable.

He urged me to allow this proceeding to proceed especially that we had adjourned yesterday till today to enable that to be done.

In a short reply, Chief Awomola SAN, replied that service of form 49 on them is not denied. What they want according to the learned SAN is the opportunity to defend the action in line with S.36 of the 1999 Constitution (as amended). And the document they want from this Court is a CTC of the documents already attached to Form 49 so that they can be sure of what they are dealing with.

I have considered the two arguments. Some basic facts are too clear to me:

1. The Respondents were served on 21- 2 – 20 which was on Friday and by Monday 24 – 2 – 2020 which was on Friday and by Monday, 24 – 2 – 2020 they are in Court.
2. All the processes the learned SAN said they are desirous of obtaining from the Registrar of this Court are attached to form 49 already served on them.

These two facts are agreed to by both sides.

Now, the crux of the Application for adjournment is that the Respondents want to be given, according to their counsel, 3 days in the maximum from today to be able to file necessary processes to enable them defend this proceeding. He said so in clear terms and prayed that in the interest of Justice they should not be shut out.

In my considered view, the provision of Order 9 Rule 13 of the Sheriff and Civil Process Act referred to by Mr. Nwofor deals specifically with the 2 days within which the Respondent must file their Reply or Counter-affidavit upon service of Form 48 on them. Not upon service of Form 49 on the Respondents.

The appropriate provision, it seems to me is Order 44 Rule 12 which provides that;

“Upon service of the application for committal issued in a case to which Rule 10 of this order applies, the Respondent shall before the Return date stated in the application file a statement stating the reasons why an order for attachment should not be issued.”

Now, what is the return date stated on the face of the application by the Registrar of this court? It is Monday, the 24th of February, 2020. Meaning therefore that the Respondents are expected to file their statements either on Saturday the 21st or Sunday 23rd. Obviously, the Registry of this court would not be open on a Saturday nor on a Sunday. So, the earliest time to file would have been yesterday. And yesterday, Mr. Fatokun who appeared for the Respondents was in Court and intimated the Court that they were served and are in the process of filing their Responses just as they have done to Form 48. We

adjourned till today to enable them do that much especially that he said they have filed motion number M/5553/20.

From all the above, it seems clear again to me, that the Respondents are in reality and with all seriousness desirous of filing some Counter-affidavits and Addresses in the proceeding. Also, the return date of 24th February, a Monday is too soon to file any process.

So, I have not seen any laxity on the part of the Respondents to say they are not serious or to say they are wasting the time of the Court or employing delay tactics. Rules of the Court must be interpreted just like any statutory provision with some element of liberalism. We cannot be slaves to the Rules and if purport is fair meaning, then the Respondents must be accommodated within reasonable limit. After all, if a case has merit, it would be obvious no matter how soon or how late.

What I am labouring hard to say is that in the circumstance of this case and having regard to the principle of fair hearing and interest of justice, 3 days of grace to enable the Respondents file whatsoever process they want to serve cannot do any damaging harm to this contempt proceeding.

In essence, I grant opportunity or window to the Respondents to enable them file their counter-affidavit and written address to this Form 49. In short, this Application is granted.

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Suleiman Belgore
(Judge) 25-2-2020.