IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT GWAGWALADA

THIS MONDAY, THE 9TH DAY OF MARCH 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/2166/18
MOTION NO: M/5274/2020

BETWEEN:

SENATOR (ENGR) YISA EAST BRAIMOH.....CLAIMANT/RESPONDENT

AND

1. **HON. MINISTER FCT**
2. **FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA)**

.....DEFENDANTS/ APPLICANTS

RULING

By a motion on notice dated 12th February, 2020, the Defendants/Applicants seek for the following reliefs:

1. **An order of this Honourable Court granting leave for extension of time within which the Defendants/Applicants may file and serve their Memorandum of Conditional Appearance, Statement Defence and every other processes in this case out of time.**

2. **An order of this Honourable Court extending time within which the Defendants/Applicants may file and serve their Memorandum of Conditional Appearance, Statement of Defence and every other processes in this case on the Claimant out of time.**

3. **An order of this Honourable Court vacating the order of this Court that foreclosed the Defendants/Applicant from cross examining the Plaintiff's witness.**

4. **An order of this Honourable Court vacating the order of this Court that foreclosed the Defendants/Applicants' defence in this case.**

In support of the application is a seven(7) paragraphs affidavit with one annexure marked as **Exhibit AA.** A very brief written addresses was filed in which no issue was streamlined but the court was referred to **Order 49 Rule 4 of the Rules of Court** allowing for extension of time and the court was urged to grant the application.

At the hearing, counsel for the Defendants/Applicants relied on the paragraphs of the supporting affidavit and adopted the contents of the address in urging the court to grant the application. In opposition, the Plaintiff/Respondent filed a five(5) paragraphs counter affidavit with an equally very brief written address in which one issue was raised as arising for determination as follows:

"**Whether or not the Defendants have shown from their affidavit evidence and the statement of defence attached thereto, they have a defence on the merit to warrant the court vacating the order of foreclosure.**

It was submitted that the court can only accede to this type of application if sufficient materials are disclosed. That the Applicants in this case have not given any reasons for filing this application now and that they have equally not informed the court that the defence has any merit. That there is absolutely nothing on the affidavit disclosing any reasons to warrant the grant of this type of application.

At the hearing counsel to the Plaintiff/Respondent relied on the paragraphs of the counter-affidavit and adopted the submission in the written address in urging the court to dismiss the application.

I have carefully considered the processes filed on both sides of the aisle and the oral submission of learned counsel and the narrow issue to be resolved is simply whether the Applicants have advanced cogent reasons and or supplied concrete material upon which to base such exercise?

In resolving this issue, which encapsulates the four(4) reliefs sought, I shall give a brief background facts of this case to situate the justice or otherwise of the extent application. I will only highlight the facts relevant to a proper consideration of the application. The Plaintiff commenced this action on 22nd June, 2018. From the records, the Defendants were duly served with the originating processes and hearing notice on 12th October, 2018. On 12th February, 2019, the Defendants were represented by counsel, one Joseph Eriki who agreed that they have been served and a date be given for hearing and that they will file their defence and other processes. The matter was then adjourned to 25th March, 2019 for hearing. The matter however then came up for hearing on 2nd October, 2019. The Defendant were duly served with hearing notices as stated on the records but they were not represented and had also not filed any processes nearly eight(8) months after counsel had indicated that the Defendants would do so.

In the absence of Defendants' counsel or a representative from them, the court proceeded to hear the evidence of Plaintiff. At the conclusion of his evidence, leaned counsel to the Plaintiff moved the court to foreclose the right of Defendants to cross examine Plaintiff and also defend the action. The court in the absence of anything or any process indicating any desire or seriousness in cross-examining Plaintiff and defending the action granted the application. The matter was then adjourned to 27th November, 2019 for adoption of final addresses.

The matter then came up on 25th January, 2020. The Defendants were not in court or represented despite service of hearing notice. From the records, they were also served the final address of Plaintiff as far back as 22nd October, 2019 but they again elected not react to it. The court's attention was drawn to the fact a counsel has filed a notice of change of counsel and has written praying for an adjournment. The application was vehemently opposed and the court gave a considered Ruling refusing the application for adjournment and proceeded to adopt the final address of Plaintiff and adjourned to 9th March, 2020 for Judgment. The Defendants then filed the extant application.

I have at length provided the above background facts as it provides both factual and legal template in determining Whether the reliefs sought can be granted. I start with the first two reliefs seeking for an extension of time to file the memorandum

of appearance, statement of defence and every other processes in this case out of time.

As stated earlier, the Applicants relied on the provision of other **49 Rule 4 of the Rules of Court.**

Now the said **Order 49 of the High Court of Federal Capital Territory, Abuja (Civil procedure) Rules 2018** provides as follow:

"The court may, as often as he deems fit and either before or after the expiration of the time appointed by these rules or by any judgment or order of the court, extend or adjourn the time for doing any act or taking any proceedings."

The above provision gives this Honourable Court the power and unfettered discretion to extend time to do any act provided that the condition as to the payment of penalty for late filing has been compiled with under **Rule 5 of Order 49.**

In the case **of Procter & Gamble Nigeria Limited V. Nwanna Trading Stores Ltd (2011)LPELR 4880(CA),** the Court of Appeal held that:

"The rationale is that the court in exercising its discretionary power to grant an extension of time to file a process should do so judicially and judiciously, leaning towards accommodating the interest of the parties without allowing mere procedural irregularities brought about by counsel to stifle the determination of a case on the merits."

However and this is important, in **Long-John V. Blakk (1998)6 N.W.L.R (pt.555)524 at 542 para D-E** the Supreme Court per Iguh J.S.C held as follows:

"When therefore, there is an application for an extension of time within which to do certain things or take certain procedural steps prescribed by the rule of court, the court should always bear in mind that rules of court must prima facie be obeyed and that to justify the exercise of its discretion, there must be some concrete material upon which to base such exercise of discretion."

The point here is that the exercise to grant an extension of time is not granted as a matter of course or on whimsical grounds or no grounds at all. Now in this case, what are the reasons given for seeking the court's indulgence. I here take my bearing from the affidavit in support of the application and I shall reproduce the whole affidavit thus:

1. **That I am a Legal Assistant in the litigation registry of the Defendants/Applicants and by virtue of my position I am conversant with the facts herein stated.**

2. **That I have the consent and authority of the Defendants/Applicants to depose to this affidavit.**

3. **That Defendants/Applicants are out time to file their court processes in this case.**

4. **That for the said Defendants/Applicants' processes to be file and served out of time, the leave of this court must be first sought and obtained.**

5. **That the Defendants/Applicants' processes have been filed and a copy is hereby attached as Exhibit AA.**

6. **That it is the interest of justice for this Honourable Court to grant this application.**

7. **That I make this oath conscientiously believing same to be true and correct and by virtue of Oaths Acts Cap 333 Laws of the 1990.**

The above is self explanatory. There is absolutely no reason(s) disclosed or material furnished to allow for the judicial and judicious exercise of the court's discretion to extend time in favour of the applicants. The court cannot act in a vacuum or in absence of concrete materials and grant the application for extension of time. The point to underscore is that Rules of Court are made by courts to assist them in their efforts to determine issues or controversies before them. It is the orderly adherence or compliance with the rules that makes for a quicker and efficient administration of justice. In other words, the provisions of the Rules of

Court are meant to be obeyed. See **Oyegun V. Nzeribe (2010)7 N.W.L.R (pt.1194)577 at 593 E-G; 595H, 596A.**

In this case, the Applicants would appear to have gambled that the application to extend time is granted as a matter of course. The gamble clearly has failed. With the complete dearth of materials or cogent reasons to grant the application particularly in the context of the trajectory of the ample time they had to react to the processes filed by Plaintiff, the reliefs (1) and (2) clearly are not availing.

The same fate equally applies to Reliefs (3) and (4). Again the application to vacate the orders of foreclosure under Reliefs (3) and (4) is clearly an order of court which the court granted having properly considered the facts and circumstances of the case, and the applicable rules of court. Once the court had so ruled or decided as in this case, the court is not empowered to go back to review it on the authorities except in few precisely streamlined situations or cases. In this case, there is absolutely nothing in the affidavit streamlining any reason(s), basis or feature allowing the court to vacate its order and the court cannot speculate. Generally and as already alluded to but perhaps, I need to underscore the point, once a court delivers a judgment or ruling on an issue, the court becomes functus officio, and will have no jurisdiction to reopen it or alter same unless of course there are elements like absence of jurisdiction, fraud, misrepresentation or illegality affecting the validity of the ruling or decision. See **Megwalu V. Megwalu (1996)2 N.W.L.R (pt.428)104; Nwoga V. Bengamin (2010)All F.W.L.R (pt.518)924 at 947; Dili V. Adamu & Anor (2016)LPELR-40227(CA).**

Here as stated earlier, there is absolutely nothing put forward by Applicants providing factual or legal basis putting the court in a commanding position to vacate its orders enabling the court to grant Reliefs (3) and (4). The affidavit in support earlier highlighted is bereft of any reason or reasons to allow for the grant of Reliefs (3) and (4). These reliefs are equally not availing.

As I round up, it is important to state that from the Records, the Defendants have had more than ample time to defend this action if they so desired but they chose or elected not to avail themselves of the opportunity. The principle appears settled now that while the right to be heard is of wide application and great importance in any well conducted proceedings, it is a right that must be confined within

circumscribed limits and not allowed to run wild. See **London Borough of Hounslow V. Twickenham Garden Dev. Ltd (1970) 3 ER 326 at 347.** No party, including Defendants have till eternity to present their case or defence as the case may be. The courts have an obligation to provide an even template for parties to air their grievances and in doing so, ensures that the rules governing the proceedings are respected by all parties and no impression is created that one party is given an unfair advantage over the other.

In **Chief Nicholas Banna V. Telepower Nigeria Ltd(2000)S.C 407-2001** delivered on 7th July 2006, the Supreme Court in similar situations as presented in the extant case held per Oguntade JSC as follows:

"It is needful that it be stressed that a Plaintiff who is not ready to pursue his suit with diligence upon which the court must insist has no business bringing such case to court. Counsel and parties alike must bear in mind that the time of the Court is valuable and must be apportioned between the different cases requiring attention. It is the duty of the court to proceed with the hearing of the cases before it expeditiously. The courts in the land must exact from parties and counsel as much diligence in the prosecution of their eases as would enable the court consign the incidence of congestion in our courts to history."

The respected jurist further added at page 6 of the judgment thus:

"The provision dealing with fair hearing under Section 36 of the 1999 Constitution of Nigeria is for the protection of all the parties to a case the Plaintiffs and the Defendants alike. It will be oppressive to interpret the provision as conferring, a protection on just one of the parties to a case. In this connection, I like to call to mind the views of this Court per Oputa, J.S.C in Willoughby V. International Merchant Rank (Nig) Ltd. (1987)1 N.W.L.R (pt.48)105 at 131 para 11:

"...the court's primary function is to do justice between the parties to a dispute. One sided justice will amount to injustice... The law is made to ensure justice. Rules of Court are hand maids of justice. It is only by the orderly administration of law and obedience to the rules that legal justice can

be attained. When a particular decision is against all known rules; against all known principles, then it is certainly, not made in the interest of justice."

I need not to add to the above instructive exhortations.

On the whole as demonstrated above, the application completely lacks merit and is accordingly dismissed.

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Hon. Justice A. I. Kutigi

Appearances:

1. **E. Jatto, Esq for the Plaintiff/Respondent**

2. **Abdulrasaq Jimoh, Esq for the Defendants/Respondents**