

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/M/4825/2020
DATE: 11TH JUNE, 2020**

BETWEEN:

HASAL MICROFINANCE BANK LIMITED

-

PLAINTIFF

AND

- 1. C.C. JAMES & CO NIG. LIMITED**
- 2. CHIDUME JAMES**

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DEFENDANTS

Parties absent and not represented.

Court – The matter is for ruling and this is the decision.

R U L I N G

The Defendants/Counter Claimant in this suit brought an application by way of Motion on Notice pursuant to Order 43 of the Rules of this court 2018 seeking for the following orders:

1. An Order of the Honourable Court for extension of time within which the Defendants may file defence and counter-claim and an order deeming the statement of defence and counter-claim filed on the 13th Day of September 2019 already before the court as properly filed and served the filing fees and penalty having been paid.
2. An Order of the Honourable Court granting the Defendants counter-claimants leave to serve the 1st Defendant to the

counter-claim and other subsequent court processes in this case by pasting or by giving the processes to any adult person in her last known address at Shop 587, Abuja Line, Utako Market Abuja.

3. Any other the court may deem fit to make in the circumstance of this case.

The application is supported by 9-paragraph affidavit and a written address.

Adopting the said processes, the learned counsel for the Defendant/Applicant urged the court to grant the application.

On his part, the learned counsel to the Claimant/Respondent submitted that he has no objection to prayer 1. However, he went on to point out that the Defendant/Applicant was in default of filing the defence for 99 days while he paid for only 45 days.

As regard to the 2nd prayer, the Claimant/Respondent's counsel objected to it on the ground that the 1st Defendant to counter claim (Amaka Chidume) is not a party to this suit. And there was no sufficient reason advanced as to why the court should order for substituted service of the counter-claim on the 1st Defendant to the Counter-claim.

In his reply, the learned counsel to the defendant/applicant submitted that they were out of time to file the defence for 45 days and not 99 days as canvassed by the learned counsel for the Claimant/Respondent as the court was on vacation.

As regard to the service of the counter claim on Amaka Chidume, who is currently not a party to the case, the learned counsel to the Defendant/Applicant refer the court to Order 17 Rules 7, 8, 9 and 10 of the Rules of this court and urge the court to grant the prayer.

It is also the submission of the learned counsel for the Defendant/Applicant that they can apply for substituted service of the court processes under Order 7 Rule 11(1) & (2) (a) & (b) of the Rules of this Court 2018.

In conclusion, the learned counsel for the Defendant/Applicant urged the court to grant the application.

On the part of the court after listening carefully to the submission of the learned counsel on both sides and going through the processes filed in this application is of the considered view that the Defendants/Applicants were out of time for 45 days not 99 days in view of the fact that around that period the court was on vacation.

It is equally clear that by virtue of Order 17 Rule 5, 7 & 8, the Defendant can serve a counter-claim on a person who is not a party to the suit at the filing of the counter claim.

Order 7 Rule 11 (1) & (2) of the Rules of this Court 2018 permit a party to a suit to apply for a substituted service of a court processes.

In the circumstance, I hold the view that the application is in order and it is hereby granted as prayed.

However, I order for the service of the counter claim on Amaka Chidume by pasting same at her last known Address/Shop 587, Abuja Line, Utako Market, Abuja. Case adjourned to 14/7/20 for continuation of hearing. I order that hearing notice be served on all the parties since they are not in court.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
11/06/2020