

**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/7350/2020
DATE: 21ST SEPTEMBER, 2020**

BETWEEN:

**1. GILAT TELECOM LTD., ISRAEL
2. GILAT SATCOM NIGERIA LTD** } **CLAIMANTS/APPLICANTS**

AND

**1. G-NET COMM. VENTURES LIMITED
2. MR. CHIKA GABRIEL SYLVESTER** } **DEFENDANTS/RESPONDENTS**

Parties absent.

C.T. Anene for the Claimant.

J.O. Olabode for the Defendants.

Claimant's Counsel – The matter is for ruling and we are ready to proceed.

R U L I N G

This is an application on notice dated 3/6/2020 brought pursuant to Order 43 Rule 1 and Order 49 Rule 4 of the Rules of this Court 2018 and under the inherent jurisdiction of the Honourable Court.

The application seeks for the following:

1. An Order of this Honourable Court setting aside the Order made on the 29/5/2020 foreclosing the right of the Claimants/Applicants to file and serve the Claimants/Applicants final address.
2. An Order of this Honourable Court extending the time within which the Claimants/Applicants may file and serve their final written address the time delimited by the rules of this court having expired.
3. An Order of this Honourable Court deeming the Claimant's final written address already filed and served as properly filed and served the appropriate filing fees having been paid.
4. And for such further orders as the Honourable Court may deem fit to make in the circumstances of this case.

The grounds upon which the application is brought are as follows:

1. The time within which the Applicant may file his final written address has elapsed.
2. That the delay was due to neither the fault of the Claimants/Applicants nor as a result of the inadvertence of his counsel, but due to unforeseen circumstances which is attributed to the Covid-19 Pandemic.
3. That Counsel to the Claimants/Applicants resides in Lagos and as such encountered difficulties in sending the final written address to the jurisdiction of this court in Abuja for filing.

4. Further to 2 and 3, Supra, the delay in sending the final written address for filing in Abuja was occasioned by the inter-state travel ban as issued and directed by the President of the Federal Republic of Nigeria in his attempt to curb the spread of the Covid-19 in Nigeria.
5. That the final written address was eventually sent to our contact person in Abuja through DHL on Thursday, 28th May 2020 as a result of the fact that every other means employed in sending the final written address were unsuccessful due to the Covid-19 Pandemic.
6. Further to 5 supra, our contact person in Abuja upon receipt of the said final written address on Thursday 28th May 2020 was unable to file same as a result of the fact that the registry of this Honourable Court was not open for filing in total compliance with the guidelines issued by the Presidential Task Force on Covid-19 as it relates to the First Phase of the gradual easing of the lockdown which states that government offices shall only be open three times a week (Monday, Wednesday and Friday).
7. Counsel to the Claimants/Applicants have been diligent in the prosecution of this suit and have never missed a day in Court since the beginning of trial.
8. Although the time within which to file the final written address has elapsed, this Honourable Court can extend same.

9. The said final written address has since been filed and served; however, the leave of this Honourable Court is required to regularize the process.
10. The Defendants/Respondents will not be prejudiced if this application is granted.

In support of the application is 16-paragraph affidavit dated 5/6/2020 deposed to by Louisa Ejafe, a Legal Practitioner in the law firm of Esezobor & Partners. Attached thereto is document marked as Exhibit A. Reliance is placed on all the paragraphs of the affidavit.

In compliance with the Rules of this court, learned counsel to the Claimant/Applicant filed 6-page written address dated 3/6/2020 wherein counsel distilled a lone issue for determination, thus:

“Whether the Claimant/Applicant have made out a case for the grant of this application”

On this singular issue, it is the submission that by Order 49 Rule 4 of the Rules of this court 2018 which provides as follows:

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

Submits that in line with the above provision of the Rules of this court have the inherent powers to extend time within which to take procedural steps in an action.

In the case of LAGOS STATE GOVERNMENT & ANOR v BENEFICIAL ENDOWMENT LTD (2018) LPELR – 45779 (CA) the Court of Appeal held thus:

“That the Honourable Court has the powers to grant orders extending the time within which the Claimants/Applicants may file, serve and adopt the Claimant’s final written address and deem same as having been properly filed and served”

The grant of this application would enable the Claimant/Applicants present their case and also enable the Honourable Court determines the matter on the merit.

In paragraph 6 of the affidavit in support of this application, it was deposed that the delay in filing the written address was due to neither the fault of the Claimants/Applicants nor as a result of the inadvertence of his counsel, but was due to the unforeseen circumstances which was attributed to the Covid 19 pandemic.

Deposed in paragraph 7 that counsel to the Claimant/Applicant resides in Lagos and as such encountered difficulties in sending the final written address to the jurisdiction of this Honourable Court in Abuja for filing.

Deposed in paragraph 8 that further to paragraph 6 and 7 the delay in sending the final written address for filing in Abuja was occasioned by the inter-state travel ban as issued and directed by the President of Federal Republic of Nigeria in his attempt to curb the spread of the Covid 19 virus in Nigeria.

It is the deposition in paragraph 10 that the final written address was eventually sent through their contact in person in Abuja through DHL on Thursday 28/5/2020 as a result of the fact that every other means employed in sending the final written address were unsuccessful due to the Covid 19 pandemic.

It is the deposition in paragraphs 11 and 12 that the Applicant contact person Esther Akugue called the Deponent on phone that she has taken delivery of the final written address on Thursday 28/5/2020 but could not file same day as a result of the fact that the Registry of this Honourable Court was not open for filing in total compliance with the guidelines issued by the Presidential Task Force on COVID-19 as it relates to the First Phase of the gradual easing of the lock-down which states that government offices shall only be open three times a week Monday, Wednesday and Friday. That the contact person of the Claimant/Applicant finally filed on Friday 29/5/2020 but was unable to serve the Defendant same day and that the case had come up on the same 29/5/2020 and the Defendant had adopted their final written address and the court has adjourned for judgment.

In opposition to this application, the Defendant/Respondent filed 19-paragraph counter affidavit dated 11/6/2020 deposed to by Okwara Ojimadu Tochukwu, a counsel in the Office of Messr Adekunle Oladapo Otitoju & Co.

Learned counsel also filed 9-page written address wherein counsel formulated an issue for determination to wit:

“Whether the Claimant/Applicant have made out a case for the grant of their application”

On this sole issue, it is the submission that whether to grant or not to grant an application of this nature is at the discretion of the court and the court's discretion must be exercised judiciously and judicially. In the exercise of the court's discretion, the Applicant must put before the court material evidence to warrant the court to exercise her discretion in her favour; failure of the Applicant to do so will mean that such discretion must be refused in the interest of justice.

Submits that in the instant case the Claimant/Applicant have not put any material evidence before this court to allow the court to exercise her discretion in their favour, all their evidence as borne out of their affidavit are false and misleading as they failed to inform this Honourable Court why they failed to file their Claimant's final written address within time as required by Order 32 Rule 16 of the Rules of this Court 2018, and upon extension of time for them by the court on

the 16th of March 2020 when the Claimant's counsel urged the court to grant them a short time to file their written address, and the court reluctantly granted them an adjournment to 26th of March 2020 for adoption of final written address, the Claimant failed to file and serve same. Submits that the Applicant are now using the pandemic and lock-down as an excuse for their inability to file their address whereas their failure is not in any way attributable to the lock-down or pandemic as it was clear that from 23/3/2020 – 26/3/2020 there was no lock-down or pandemic in Nigeria. Why the Claimant failed to file and serve their final written address during this period was not explained in their affidavit in support of their application and hence the court must dismiss this application.

Learned counsel refers to the case of OSUJI v EKEOCHA (2009) All FWLR Pt 490 at 614.

Further submits that the Claimant failed to obey rules of court in filing the final written address and even when the court granted her the opportunity for the second chance blew it up and now trying to cling on straw to look for a lame excuse that is not tenable.

In conclusion, learned counsel urged the court to dismiss this application. However, if the court is incline to grant the application, learned counsel ask for a cost of N100,000.00.

In response to the counter affidavit, learned counsel to the Claimant/Applicant filed a 15-paragraph Further Affidavit dated

22/6/2020 deposed to by Louisa Ejaife, a Managing Associate in the law firm of Ezezobor & Partners.

It is the deposition in paragraph 8 of the Further Affidavit that Lagos State Government imposed a lockdown on the 23/3/2020 prior to the lock-down imposed by the Federal Government; therefore their Lagos office had to be shut down.

It is the deposition in paragraph 10 and 11 that at the time the lock-down was lifted, the Claimants/Applicants Lagos Office was opened and they forwarded their written address to the office within jurisdiction via DHL Courier Services. The office within jurisdiction however did not resume immediately after the lock-down was lifted due to the number of persons in the firm as instructed by the Federal Government.

Further deposed in paragraph 13 that the Defendants/Respondents will in no way be prejudiced by the grant of this application.

I have carefully considered the processes filed and the submissions of learned counsel on both sides, it is clear that the grant and/or refusal of an application of this nature is solely at the discretion of the court. It is the deposition in paragraph 8 of the Further Affidavit of the Claimant/Applicant dated 22/6/2020 that Lagos State Government imposed a lock-down on the 23/3/2020 prior to the lock-down imposed by the Federal Government and therefore the office of the Claimant/Applicant was shut down. This piece of

averment was never challenged by the Defendant/Respondent's counsel.

From the foregoing, this court is of the considered view that the delay in filing the final written address was due to unforeseen circumstance, which is attributed to the COVID-19 Pandemic. From the foregoing, I am satisfied that the Applicant has shown good cause to warrant this court to exercise its discretion in her favour; more so, the Defendant/Respondent did not show how the grant of this application will prejudice her.

In conclusion, I am of the view that this application is grantable and it is accordingly granted as prayed for. I award no cost.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
21/09/2020