

**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/5498/2020  
DATE: 16<sup>TH</sup> SEPTEMBER, 2020**

**BETWEEN:**

**LAWAN S. ABUBAKAR - CLAIMANT/RESPONDENT**

**AND**

**1. PRINCE SUNDAY BAMIDELE  
2. BWARI AREA COUNCIL  
3. LYDIA SARKI** } **DEFENDANTS**

Claimant in court while the Defendants absent.

James A. Ogenyi for the Claimant.

Gbenga Adesina for the 1<sup>st</sup> and 3<sup>rd</sup> Defendants.

Claimant's Counsel – The matter is for ruling. We are ready to take same.

## **R U L I N G**

This an application on notice dated 17/2/2020 brought pursuant to Section 36(1) of 1999 Constitution and under the inherent jurisdiction of this Honourable Court.

The application seeks for the following:

1. An Order for leave of this Honourable Court to set aside the foreclosure order made on the 1<sup>st</sup> and 3<sup>rd</sup> Defendant from cross-examining the PW1 made on the 22<sup>nd</sup> Day of January, 2020.

2. An Order for leave of this Honourable Court allowing the recalling and cross-examination of the PW1 by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants.
3. And for such further order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

In support of this application is a 6-point supporting affidavit dated 19/2/2020 deposed to by Mary Aderisola the Litigation Secretary in the office of Gbenga Adesina & Co. Reliance is placed on all the points of the said affidavit.

Learned counsel to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants/Applicants also filed a written address dated 12/2/2020 wherein counsel submitted that for the Applicants to succeed in this application, they must satisfy the court as to the following:

1. That they did not delay in bringing the application.
2. That they have cogent reason for defaulting.
3. They have a good defence to the suit.

It is further submitted that the Applicants brought this application timeously and the default was not out of disrespect to this Honourable Court. Court is referred to paragraph 4 – 6 of the supporting affidavit in support of this application.

It is submitted that the Applicants would not suffer for the mistake made by their counsel and that the Claimant would not be prejudiced by the grant of this application.

It is the submission that the Applicant have satisfied the requirements to setting aside the foreclosure order, considering the principle of fair hearing and this Honourable Court has the power to so do. Court is urged to grant the application.

In opposition to this application, the Claimant/Respondent filed a 4-point counter affidavit dated 6/3/2020 deposed to by Hannah Hammo, a Litigation Clerk in the law firm representing the Claimant/Respondent.

Learned counsel to the Claimant/Respondent equally filed a written address dated 6/3/2020 wherein counsel submitted that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants/Applicants has not shown sufficient reasons why the Honourable Court should grant its prayers. That the Defendant's prayers cannot be justified anywhere in their affidavit in support of this application. Court is urged to refuse the application.

It is the oral submission of counsel that if the court is mindful in granting the application, it must be in terms and counsel ask for cost of N200,000.00 on the ground that the Claimant resides in Kano and he has to travel all the way from Kano to attend court if the application is granted.

I have carefully considered the processes filed and submission of learned counsel on both sides, it is not in doubt that on 22/1/2020 this court in its wisdom foreclosed the 1<sup>st</sup> and 3<sup>rd</sup> Defendants from cross-examining the PW1 due to the absence of the said Defendants and their counsel in court.

However, in light of the deposition in paragraph 4(a) – (d) of the supporting affidavit to this application, it is the averment therein that the lead counsel to the Applicant had a delayed flight back to Abuja on the 22/1/2020 when the order of foreclosure was made. That he came to court late in the afternoon and discovered that court had risen.

It has been the law that the sin of counsel should not be visited on the client. And for the reason adduced in the supporting affidavit to this application, this court in the interest of justice will grant this application but not without cost. On 21/1/2020 in the cause of PW1's evidence-in-chief, he did stated that he lives in Kano, Kano State and therefore he is entitled to cost.

This application is accordingly granted as prayed in the interest of justice. Cost of N20,000.00 is awarded to the Claimant against the 1<sup>st</sup> and 3<sup>rd</sup> Defendant's counsel.

**(Sgd)**  
**JUSTICE SALISU GARBA**  
**(PRESIDING JUDGE)**  
**16/9/2020**

Claimant's Counsel – We thank the court for the ruling.

1<sup>st</sup> and 3<sup>rd</sup> Defendant's Counsel – On the last adjourned date counsel to the 1<sup>st</sup> and 3<sup>rd</sup> Defendant attempted to move Motion No. M/4195/18 and same was not allowed to be moved on ground that the Claimant's counsel objected that they wee not serve with the said motion.

We arrange for service of the said motion on the Claimant and the proof of service is before the court. We are ready to move the said motion.

Claimant's Counsel – We are not in receipt of the said motion. From the proof of service the Claimant was served through one Emmanuel Onoja. We do not have such counsel/person in our office.

1<sup>st</sup> and 3<sup>rd</sup> Defendant's Counsel – In the circumstance, we seek for a date to serve the Claimant with our application. We seek for 2 days.

Claimant's Counsel – No objection.

Court – Application for adjournment granted.

Suit adjourned to 28<sup>th</sup> and 29<sup>th</sup> October, 2020 for hearing of the 1<sup>st</sup> and 3<sup>rd</sup> Defendant's motion and continuation of hearing.

**(Sgd)**  
**JUSTICE SALISU GARBA**  
**(PRESIDING JUDGE)**  
**16/9/2020**