

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR**

**COURT NO: 10**

**SUIT NO: FCT/HC/CV/889/2014**

**MOTION: M/7794/19**

**BETWEEN:**

**KEEB & COMPANY REALTORS LIMITED**

(Suing As Lawful Attorney To Wire Makers Nig Ltd)

.....**CLAIMANT/APPLICANT**

**VS**

**FAAMOUS CONSULTING LTD.....DEFENDANT/RESPONDENT**

**RULING**

By a Motion on Notice with Motion No. M/7794, dated 1/7/2019 but filed on 2/7/19 brought pursuant to Order 43, Rule (1) – (4), Order 49 Rule (1) – (4) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of court. The Applicant prays for the following reliefs;

- (1) An Order granting leave to the Claimant/Applicant to file his Final Written Address out of time.

- (2) An Order deeming the Claimant/Applicant's Final Written Address as properly filed and served the appropriate filing fees having been paid.
- (3) And the Omnibus relief.

The Motion is supported by a 9 Paragraph affidavit deposed to by Agbons Osawaru Erimwinrose Esq counsel in the law firm of Claimant/Applicant's counsel. Also filed is a Written Address and adopts same as oral argument.

Responding, Defendant/Respondent filed a Reply on points of law on 12/11/19 challenging the application and adopts the Reply as oral argument.

In the Written Address of the Applicant, Applicant's counsel submits that the purport of the application is to file their Written Address in line with Order 33 Rule (1) – (5) of the Rules of court. Urge court to exercise its discretion in favour of Applicant.

In her reply Defendant/Respondent Counsel, urge court to strike out the application for being incompetent. Submits that the Motion is not properly before the court same having not being file signed by the counsel who has paid his Annual Practice Fees contrary to the express Provisions of Rule 9 (1) (2) and Rule 10 (1) (2) of the Rules of Professional Conduct in the Legal Professional 2007. That the processes were signed by one Agbons .O. Erim Esq without the seal or stamp approved by the Nigeria Bar Association issued to the said Agbons .O. Erim evidencing his being called to the Bar and due payment of practicing fees and should attract the penalty stated in Section 10 (3) of the Rules of Professional Conduct for

Legal Practitioner 2007. That affixing the stamp of one Obazee Joly Osarchin violates the provision of Section 3 (1) (a) (b) of the said Rules of Professional Conduct. Refer to Tanimu Vs Rabiou (2018) 4 NWLR (PT.1610) 505 @ 523 Paras D – H, S.P.D.C.N Ltd Vs Sam Royal Hotel (Nig) Ltd (2016) 8 NWLR (PT.1514)318 @ 333 Paragraphs F-H and Sections 2 (1) and 24 of the Legal Practitioner Act.

Submit further that there is no sufficient material placed before the court to enable the court exercise its discretion to extend time in the favour of Applicant because the sole reason adduced by Applicant in moving the court is tantamount to an admission of tardiness and inefficiency by the office of Claimant's counsel, refer to the case of GTB CVs EST Master Construction Ltd (2018) 8 NWLR (PT. 1622) 483 @ 496 Paragraphs E-H and Ali Alaba International Ltd Vs Sterling Bank Plc (2018) 14 NWLR (PT.1639) 254 @ 270 Paras A – C.

Finally urge court to refuse the application and strike out same. And by way of adumbration during hearing of the Motion, refer court to the case of Jozebson Ind. Ltd Vs R.L. Import – Export (1988) 7 SCNJ 93 @ 108.

Replying on point of law, Claimant/Applicant's counsel refer court to the case of Senator Bello Sariki Yaki (Rtd) & Or Vs Senator Atiku Bagudu & Ors (201%) LPELR – 2572 SC and General Oil Ltd Vs Sunday Oduntan & Ors (1990) 7 NWLR (PT. 153) 423 @ 441, urge court to dismiss the submission of Defendant/Respondent counsel.

Having carefully considered the affidavit of the Applicant submission of counsel as well as judicial authorities cited, the court finds that the issue which calls for determination is;

“Whether the Motion of the Applicant is competent if yes; whether Applicant has placed before the court sufficient facts to warrant the grant of the reliefs sought”.

Applicant filed this Motion on Notice under Order 43 Rule (1) –(4) of the Rules of Court. This Order guides the process of filing and service of an application of this nature. The Order 43 Rule (1) – (4) stipulates that any application is permitted to be made by Motions supported by affidavit and accompanied by a Written Address. Attached to the Motion is an affidavit and a Written Address in compliance with the Rules of Court. Thus the application is in compliance with the said Order of Court. However the grouse of the Defendant/Respondent is that the name on the seal affixed on the process is different from the name of the counsel who signed the process contrary to Rule 9 (1) (2) and Rule 19 (1) (2) of the Rules of Professional Conduct in the Legal Profession 2007. The implication of not complying to the said Rules of Professional Conduct for Legal Practitioner is to deem the process is not properly signed or filed. But in this instant case, there is affixed on the Motion a stamp and seal bearing the name different to the name of the counsel who sign the Motion and this is different from the situation envisaged by the above mentioned Rules of Professional Conduct deeming the Motion as not properly signed and filed, will mean pandering to technicalities in the circumstance and the courts have over time being enjoined to do substantial justice and not to rely on

technicalities. See the case of *Ajuwa Vs S.P.D.C. (Nig) Ltd* (2012) ALL FWLR (PT. 615) 200 @ 223 Para F – G. This is more so as the court finds seal in the name of the counsel in another process in the court's record. On the basis of this court holds that the Motion is competent and will proceed to determine it on the merit.

On the second leg of the issue distilled above, that is whether the Claimant/Applicant has placed sufficient facts to warrant the grant of the relief.

The grant or otherwise of the prayers of the Claimant/Applicant is at the discretion of court which the court must exercise judicially and judiciously. And to be able to do so, the Applicant must place before the court cogent facts to rely on. See the case of *Anachebe Vs Ijeoma* (2015) ALL FWLR (PT. 784) 183 @ 195 Paras D – F; See also *Amgbare Vs Sylva* (2008) ALL FWLR (PT.419) 526 @ 600 Paras D – E. In *Taraku Mills Ltd Vs Sant Engr Ltd* (2008) ALL FWLR (PT 430) 798 @ 804 Para G – H P.805 – 806 G – A the court held that;

“An application for extension of time for the doing of anything is not granted as a matter of course. Such a request for extension of time must be accompanied with good and substantial reasons such an act was not done within the prescribed period. The Applicant must convince the court that the delay was caused through certain circumstances beyond his control. It also becomes very necessary to state the dates and time when events that caused the delay took

place. This is to help the court to determine whether the occurrence of that event took place within or outside the prescribed period.

In the instance case, the Applicant stated the reason for the delay as was as the dates and times when the events occasioning the delay in filing within the prescribed period occurred. On the other hand, Defendant/Respondent did not challenge nor controvert the depositions of the Applicant in support of the application. It is settled law that where an affidavit does not attract a counter-affidavit the facts deposed to therein are therefore uncontroverted and deemed to have been admitted and must be taken as true. See *Gana Vs FRN* (2012) ALL FWLR (PT. 617) 793 @ 800 Para D – E,. The Defendant/Respondent only raised the issue of being tardy against the application in their address, it is trite law that the address of counsel cannot, no matter how brilliant cannot suffice as evidence. It is on this ground that I find the facts adduced by the Claimant/Applicant as reason for the delay in filing their Written Address within the prescribed period as cogent and sufficient for court to extend the time within which to file the said address. I so hold.

In conclusion this application has merit and is hereby granted. The court accordingly orders as follows:-

- (1) Leave is hereby granted to the Claimant/Applicant to file his Final Written Address out of time.

- (2) The Claimant/Applicant's Final Written Address is deemed properly filed and served, the appropriate filing fees having been paid.

**HON. JUSTICE O.C. AGBAZA**

Presiding Judge

1/7/2020

**APPEARANCE**

A.O. ERIM - FOR THE CLAIMANT/APPLICANT

I.A. ADENIYI WITH HIM M.O. OLAJIDE FOR THE  
DEFENDANT/RESPONDENT.