

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

**BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI**

**COURT CLERKS: T. P. SALLAH & ORS**

**COURT NUMBER: HIGH COURT NO. 12**

**DATE: 30/09/2020**

**FCT/HC/CV/224/2019**

**HONOURABLE JUSTICE KUMAI BAYANG AKAHHS ...CLAIMANT/  
RESPONDENT**

**AND**

**1. THE HON. MINISTER OF FEDERAL CAPITAL  
TERRITORY ADMINISTRATION, ABUJA** )  
**2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY,  
ABUJA** ) DEFENDANTS/  
**3. PERSONS UNKNOWN** ) RESPONDENTS

**4. NAGANDE SWATE** )  
**5. ROMBEC PROPERTIES NIG. LTD** ) DEFENDANTS/APPLICANTS

**RULING**

The instant suit was originally commenced by the Claimant vide Writ of Summons and Statement of Claim filed on 20<sup>th</sup> June, 2019 against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants claiming *inter alia* declaration of title, injunctive orders and damages. Upon their application, the 4<sup>th</sup> and 5<sup>th</sup> Defendants were subsequently joined as parties to the Claimant's suit by order of this Court made on 6<sup>th</sup> November, 2019. The matter went to trial at the end of which the suit was adjourned for final address.

The 4<sup>th</sup> and 5<sup>th</sup> Defendants have now filed the instant Motion on Notice No. M/073/20 dated and filed on 6<sup>th</sup> May, 2020, brought pursuant to Section 6(6)(a) & (b), Section 36(1) & (5) of the Constitution of the Federal Republic of Nigeria 1999 (as

amended), Order 49 Rule 4 and Order 56 Rule 1(1) of the High Court of FCT, Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Court praying for the following reliefs:-

1. An Order of this Honourable Court granting the 4<sup>th</sup> and 5<sup>th</sup> Defendants leave to enter appearance from the date and time the Amended Writ of Summons was served on them when they were joined in the case and to ignore the Memorandum of Conditional Appearance filed by Barrister Charles Ezeagu when the 4<sup>th</sup> and 5<sup>th</sup> Defendants were join in the case, because the Memorandum of Conditional Appearance hitherto filed was incompetent, academic exercise and abuse of Court process, adding that, the 4<sup>th</sup> and 5<sup>th</sup> Defendants were not join in the case but were join thereafter and was served with the Amended Writ od Summons which they have 21 days according to the Amended Writ of Summons to enter appearance, which Amended Writ is before the Court.
2. An Order of this Honourable Court granting the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants leave for an extension of time to re-open the case of the Claimant/Respondent that was foreclosed on the 12<sup>th</sup> March, 2020 and cross examine the Claimant/Respondent.
3. An Order of this Honourable Court granting the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants leave for an extension of time to re-open their defence that was foreclosed on the 12<sup>th</sup> March, 2020, file their Joint Statement of Defence out of time for the case to be heard on merit.
4. An Order of the Honourable Court deeming the Proposed Joint Statement of Defence, Witness Statement on Oath, Memorandum of Appearance, Notice of Change of Counsel and all other accompanying Court processes as properly filed and served, the requisite fees together with defaulting charges having been fully paid.
5. And for such further order or other orders as this Honourable Court may deem fit to make in the circumstances of this case.

The grounds for the application are set out and contained on the face of the motion papers.

In support of the application, the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants filed an Affidavit of 39 paragraphs (with exhibits) deposed to by one Romanus Eze, The Managing Director and Chief Executive Officer of the 5<sup>th</sup> Defendant/Applicant Counsel also filed his Written Address dated 6<sup>th</sup> May, 2020 on behalf the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents are not opposed to the application. The Claimant/Respondent however is opposed to the application and his Counsel sought and obtained leave of this Court to address the Court orally on points of law.

**ISSUE FOR DETERMINATION:**

Learned Counsel to the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants formulated a sole issue for the determination of his application to wit:-

*"Whether in the light of the present application the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants did not place cogent reasons and substantial materials to be entitled to the reliefs sought in the face of the application."*

The Claimant/Respondent did not file a counter affidavit or a written address as well the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. In other words, both the Claimant and 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not submit any issue for determination. To therefore resolve the issues in the instant application, I hereby adopt the sole issue distilled for determination by the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Respondents as follows:-

The facts as deposed to by the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants in support of this application are contained in their affidavit. Because of the nature of allegations of facts which the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants have made in said affidavit concerning this Court, it is imperative that I do not summarise their averments but reproduce same verbatim. In

their own words, the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants averred through their deponent as follows:-

3. That I am a purchaser of NagandeSwate Plot MF22 of about 3500sq.m Kubwa Extension III (FCDA SCHEME), the 4<sup>th</sup> Defendant which I in turn sold it to Rombec Properties Nigeria Limited the 5<sup>th</sup> Defendant respectively.
4. That all the transaction copies which I retained my own copies are in my possession.
5. That I have the authority and consent of the 4<sup>th</sup> and 5<sup>th</sup> Defendants to depose to this affidavit.
6. That except otherwise stated, the facts I depose to in this affidavit are within my personal knowledge.
7. That the instant case was filed by the Claimant/Respondent on the 5<sup>th</sup> November, 2019 as reflected in the Writ of Summons.
8. That as the buyer from the 4<sup>th</sup> Defendant, I sold the land in contest to the 5<sup>th</sup> Defendant.
9. That the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants were served by substituted means which I came across through my security man that I placed there in the property because I still have active hands between the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants as the buyer from the 4<sup>th</sup> Defendant which I sold same to the 5<sup>th</sup> Defendant which I have the copies of the transaction between me, the 4<sup>th</sup> and 5<sup>th</sup> Defendants.
10. That when I discovered the Writ i.e. the Court processes, I caused the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants to be joined in the suit of the Claimant/Respondent.
11. That as it were, I have collected all the documents of transaction from the 5<sup>th</sup> Defendant/Applicant which I handed over to her for the purpose of this case and to present them at any point in time before judgment of the Court and that I am still in possession of the land.
12. That the documents are herewith attached and marked as Exhibit "A1", "A2", "A3", "A4", "A5", "A6", "A7", "A8", "A9" etc.
13. That since the case was filed by the

Claimant/Respondent, I was the one who consulted Barrister Charles Ezeagu to stand on behalf of the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants but the lawyer was not diligent to conduct the case the way and manner I wanted which fact caused me to debrief him and look elsewhere for another Counsel, and which I found Barrister OyedejiAyodele to do the case but he sent Mohammed Ali Esq.

14. That Barrister Charles Ezeagu was not diligent in our case to conduct same because he filed a Memorandum of Conditional Appearance even when the 4<sup>th</sup> and 5<sup>th</sup> Defendants were not party in the case. That I pray the Honourable Court to discountenancethe so called Memorandum of Conditional Appearance and accept the Memorandum of Appearance that is filed by my Counsel of Choice Chief Uwem U. UmoanwanEsq. because appearance can be entered before judgment and on this note my Counsel of Choice Chief Uwem U. Umoanwan has sought leave of this Honourable Court to enter appearance before the adoption of the Written Address out of time and to file Joint Statement of Defence and also to cross examine the Claimant as prayed in the face of the motion on notice.
15. That it will be in the interest of justice for the Court to allow him to enter a proper Memorandum of Appearance out of time because the former Memorandum of Conditional Appearance was not before the Court when the 4<sup>th</sup> and 5<sup>th</sup> Defendants were not joined in the case.
16. That when Barrister OyedejiAyodele filed a Notice of Change of Counsel and send Barrister Mohammed Ali to Court on the 11<sup>th</sup> March,2020 to conduct the case as a Counsel of choice he was not allowed to do the case before the Court with that Notice of Change of Counsel he filed may be filed four days preceding to the date of hearing the case which was not mandatory to deprive him to conduct the case or in the alternative the Court ought to adjourn the case for the interest of fair hearing for the matter to be heard.

17. That Mohammed Ali Esq. was shut out from conducting the case of the 4<sup>th</sup> and 5<sup>th</sup> Defendants on the 11<sup>th</sup> March,2020, thereby depriving him as my Counsel of Choice that I employed in the case contrary to the Constitution of the FRN 1999 (as amended).
18. That,that was why the Court did not hear Barrister Mohammed Ali on the 11<sup>th</sup> March,2020 and adjourned the case to the next day been 12<sup>th</sup> March,2020, while Mohammed Ali Esq., was shut out of the case and without affording me to take a Counsel of Choice to conduct the case of the 4<sup>th</sup> and 5<sup>th</sup> Defendants.
19. That I was aggrieved of the situation and by 1:00am on the 12<sup>th</sup> March,2020 the next day when the case was adjourned to, I proceeded to the Chambers of Anwan and met my former lawyer who was back from election petition from Benue State i.e. Chief Uwem U. UmoanwanEsq. to handle the case at hand.
20. That Chief Uwem U. UmonawanEsq. accepted to do the case but asked me of the file of the case for him to study same in that early morning by 1:00am on the 12<sup>th</sup> March,2020, but Barrister OyedejiAyodele who sent Barrister Mohammed Ali to do the case on 11<sup>th</sup> March,2020 did not handover the case file to me.
21. That the case file was not handed over to me by Mohammed Ali Esq. which I informed him (Chief Uwem U. UmonawanEsq.), but he advised me to pass through OyedejiAyodele's Chambers to collect the file and this was about 7:30am on 12<sup>th</sup> March,2020 which we did, but the chambers was not open as at the time we got there, and my CounselUwem U. UmoanwanEsq. advised me to move directly to Court to avoid a situation that when the matter is called the Court will not say that we are not serious over the matter.
22. That when we got to Court and sat down by 8:25am on 12<sup>th</sup> March,2020, the case was called by the Court as No. 1 been No. 8 in the cause list at 9:00am on the 12<sup>th</sup> March,2020.
23. That the Claimant Counsel stood up and announced his

- appearance, my Lawyer Chief Uwem U. UmoanwanEsq. stood up and announced his appearance as Counsel of Choice.
24. That at this point I was wondering why my lawyer Chief Uwem U. UmoanwanEsq. was accepted as my Counsel of Choice who for the first time appear in Court on the 12<sup>th</sup> March, 2020 without filing a Notice of Change of Counsel, but he announced his appearance before the Honourable Court that he is a Counsel of Choice for the 4<sup>th</sup> and 5<sup>th</sup> Defendants to conduct the case but the Court should give him a reasonable time to obtain the file from my previous Counsel Mohammed Ali Esq. whom Barrister OyedejiAyodele sent to Court on the 11<sup>th</sup> March,2020.
  25. That Chief Uwem U. UmoanwanEsq. on the first time of his appearance was asked by the Court to Cross Examine the Claimant without studying the case and obtain the case file from Barrister Mohammed Ali to know how to go on with the case adding that I consulted him at 1.00am on the 12<sup>th</sup> March,2020.
  26. That on that note the case of the 4<sup>th</sup> and 5<sup>th</sup> was foreclosed for cross examination on that day 12<sup>th</sup> March,2020.
  27. That on the same day 12<sup>th</sup> March,2020, the Honourable Court after ruling on the foreclosure of the cross examination insisted that the defence must be opened on that same day 12<sup>th</sup> March,2020, which my Counsel representing 4<sup>th</sup> and 5<sup>th</sup>Defendants Chief Uwem U. UmoanwanEsq. beg the Court that he should be given another day to study the case file of the 4<sup>th</sup> and 5<sup>th</sup>Defendants and file a defence for the matter to be heard on merit.
  28. That the Court ruled that there was no defence filed by the 4<sup>th</sup> and 5<sup>th</sup>Defendants and that the Defence is foreclosed on that same day 12<sup>th</sup> March,2020.
  29. That on that aspect the Court gave the Claimant's Counsel 7 days to file the Written Address while Counsel to the 4<sup>th</sup> and 5<sup>th</sup>Defendant reluctantly chose 21 days but adding that he will know what to do before the adoption

- of the Written Address to re-open the case for justice to be seen to have been done.
30. That after the Court session, I rushed and collected the file from Mohammed Ali Esq. who was sent by OyedejiAyodeleEsq. and gave it to my Counsel of choice Chief Uwem U. UmoanwanEsq. to study it and do the needful.
  31. That my Counsel Chief Uwem U. UmoanwanEsq. advises me and I verily believe him that the 4<sup>th</sup> and 5<sup>th</sup>Defendants before judgment as enunciated in the case of ***OJIIKUTU V. ODEH 1954 WACA 640 P. 9 paragraph B also SPARKLING BREW LTD VS. B.C.C.L (NIG) LTD (2003)3 NWLR (PT.806) P. 1 - 10*** must be given a room to file their defence for the case to be heard on merit and also to cross examine the Claimant.
  32. That he has prepared the Memorandum of Appearance, Proposed Joint Statement of Defence, Witness Statement on Oath, Certificate of Pre-Action Counseling, Notice of Change of Counsel, List of Witnesses, List of Documents sought to be relied upon, and all other Court processes in the matter are attached as Exhibits "B", "B1", "B2", "B3", "B4", etc.
  33. That the clean copy as well to make it as a deeming order has been filed separately.
  34. That the reason for the ruling of the Honourable Court when the Court urge the Counsel to the 4<sup>th</sup> and 5<sup>th</sup>Defendants to cross examine the Claimant/Respondent was very clear, because the Counsel to 4<sup>th</sup> and 5<sup>th</sup>Applicants informed the Court that he is Counsel of Choice and that since the previous Counsel like Mohammed Ali Esq. was shut out of the case, he was consulted by 1:00am on the 12<sup>th</sup> March,2020which he did not have access to the case file, that the Court should give him time, but the Court refused, and ruled on that same day that the cross examination was foreclosed.
  35. That on that same day 12<sup>th</sup> March,2020 after the ruling,



- my Counsel who represented the 4<sup>th</sup> and 5<sup>th</sup> Defendants said that another date should be given for him to enter defence, but the Court rejected adding that no defence was filed and that the defence have been foreclosed and that Counsel should take date to address the Court.
36. That the Proposed Joint Statement of Defence which the Court said that there was no defence has been prepared and filed and at the same time, the clean copy is file simultaneously to show that the 4<sup>th</sup> and 5<sup>th</sup> Defendants have defence in the case, to contest the case on merit for the Court to exercise its discretion judicially and judiciously to hear the case on merit.
  37. That all other Court processes hitherto highlighted in this affidavit, are also filed for the quick dispensation of justice and are attached as exhibits together with the clean copy.
  38. That it will be in the interest of justice to grant this application as this application will not prejudice the interest of the Respondents in any way.
  39. That I swear to this affidavit in good faith believing same to be true and correct and by the provision of the Oaths Act 2004.

Now having set out the facts verbatim of the 4<sup>th</sup> and 5<sup>th</sup> Defendants Respondents, in his written address learned Counsel to the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants submitted that their statement of defence which this Court said there was no defence is now available to this Court for them to contest the Claimant/Respondent's case before adoption of written address. He relied on the cases of **OJIKUTU V. ODEH WACA 640 P.9 and SPARKLING BREW LTD V. B.C.C.L (NIG) LTD (2003) 3 NWLR (PT.806) P. 1**. He submitted that when a matter is still subsisting, the adversary will be given an opportunity to be heard in the case before the adoption of the written address or before judgment on the merit, even when he was foreclosed. He pointed out that a party is entitled to Counsel of his choice and the purpose of allowing a party to engage a new Counsel will be defeated if the new Counsel is not allowed to conduct the matter in a

manner he considers will best suit the just determination of the case. He cited the case of **EDEMEKONG & ORS V. EKPO & ORS (2012) LPELR-19705(CA)**. It is Counsel's position that the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants have stated in their affidavit that their old Counsel could not diligently conduct their case which was why they consulted their new Counsel. Counsel submitted that the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants have satisfied the requirement for this Court to exercise its power setting aside the order of foreclosure made against the 4<sup>th</sup> and 5<sup>th</sup> Defendants. He urged this Court to exercise the power in favour of the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants. He relied on Order 49 Rule 4 of the Civil Procedure Rules of this Court as well as the cases of **UBA PLC V. MODE NIGERIAN LIMITED (2001) NWLR (PT.693) P. 141** and **FAYEMI V. ONI (2009) ALL FWLR (PT.472)**. He finally urged this Court to allow the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants cross-examine and enter their defence in this case.

Responding on points of law, Counsel to the Claimant/Respondent referred this Honourable Court to the third and fourth prayers of the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants' instant motion. Counsel stated that Order 15 Rule 2 of the Rules of this Court provide that pleading shall contain statements of fact. She contended that the Proposed Statement of Defence is argumentative, speculative and scandalous especially at paragraphs 3, 5, 8, 10, 11, 13, 14, 15, 16, 24 and 27. She urged this Court to strike out the said paragraphs. She further submitted that Order 56 Rule 1 provides for a penalty of ₦200.00 per day to be paid by a party in default from the date of default. She posited that the 21 days within which the 4<sup>th</sup> and 5<sup>th</sup> Defendants had to file their processes lapsed on 11<sup>th</sup> February, 2020 and the period from that date till when the instant motion was filed is 85 days which makes the amount payable as default to ₦17,000.00 and not the ₦8,800.00 reflected on the instant motion paper. Counsel's third point is that Order 55 of the Rules of this Court requires change of Counsel. She posited that the Counsel on record was Charles and he was appearing for the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants. Counsel submitted therefore that first relief of the instant application cannot be granted.

Replying to the Claimant/Respondent's Counsel, the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants' Counsel submitted that issues were joined in this suit on 1<sup>st</sup> January, 2020 and on 30<sup>th</sup> March, 2020 but unfortunately the Country experienced Covid19. He submitted that the Claimant/Respondent has joined issues on the offending paragraphs of the Proposed Joint Statement of Defence in their defence to counter-claim. He reiterated that the memorandum of appearance filed by Barrister Charles is incompetent for persons unknown to be joined in this suit.

Now, the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants averred in their affidavit as to facts in respect of events at the proceedings of this case. I had to reproduce their affidavit verbatim because the facts averred to are not a true reflection of proceedings in this case. The actual records of the proceedings of this suit before me show the following:-

1. After the instant suit was commenced by the Claimant/Respondent against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, pursuant to an application for joinder brought by their Counsel Charles Ezeagu Esq, the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants were joined as parties to this suit by order of this Court made on 6<sup>th</sup> November, 2019. The 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants' said Counsel informed the Court that his clients were interested in settlement and thus sought an adjournment for that purpose. The application for adjournment was granted and the matter was adjourned to 21<sup>st</sup> January, 2020 for report of settlement.
2. On 21<sup>st</sup> January, 2020 Counsel, including Charles Ezeagu Esq informed the Court that settlement could not be achieved by parties. The 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants' Counsel did not oppose the Claimant/Respondent's application to amend the originating processes which said application was granted. Charles Ezeagu Esq informed this Court that he intended to file his statement of defence to the amended processes. The case was thus adjourned to 11<sup>th</sup> and 12<sup>th</sup> of

March, 2020 for hearing and defence. This Court made it clear to parties that no other adjournments will be entertained.

3. On 11<sup>th</sup> March, 2020, one Mohammed Ani sought to appear as Counsel for the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants **who were absent from Court**. The said Mohammed informed the Court that he was coming into the matter for the first time and that he had filed his notice of change of Counsel just the previous day 10<sup>th</sup> March, 2020. The Claimant/Respondent's Counsel however objected to the notice of change of Counsel on grounds that it was not in compliance with the Rules. Mohammed Ani thus withdrew his notice of change of Counsel and it was accordingly struck out by this Court. The matter proceeded to hearing which was the business of the day with PW1 testifying and being cross-examined by the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's Counsel. The matter was adjourned for cross-examination of PW1 by the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants.
4. On 12<sup>th</sup> February, 2020 which was the next adjourned date, Chief U. U. Umoanwan appeared for the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants **who were represented in Court** by one Romanus Eze (the MD & CEO of the 5<sup>th</sup> Defendant). Chief Umoanwan applied for an adjournment as he had just been briefed. Counsel to the Claimant/Respondent opposed the appearance of Chief U. U. Umoanwan because he failed to come formally with an application for change Counsel. This Honourable Court Ruled granting Chief U. U. Umoanwan audience as Counsel for the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants considering they were themselves present in Court (albeit by representation) confirming that he was their Counsel of choice. The application for adjournment was however refused and PW1 was made available for cross-examination by the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants. Chief U. U. Umoanwan said he had no questions for PW1 and upon the Claimant/Respondent's Counsel's application, PW1 was discharged from giving further evidence. It was observed that although the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants had been served with the amended statement of claim, they neither filed a statement of defence nor an application for

extension of time to file one. This Court thus closed their defence and adjourned for final addresses. Chief U. U. Umoanwan asked for 21 days to file the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants' final address.

5. The 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants have however now brought the instant application.

I needed to set the record straight in view of insinuations of unfairness by the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants' in the instant application and averments in their affidavit especially paragraphs 16-36 which have cleverly distorted the true events at proceedings.

For avoidance of doubt, the notice of change of Counsel filed by Mohammed Ani was to have been filed three days before proceedings (see Order 55 Rule 2 of the Rules of this Court). Mohammed Ani who filed same withdrew same after which it was struck out. As the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants were absent from Court on that date, it could not be confirmed that they had changed their Counsel on record and that Mohammed Ani was their new Counsel in this case. Audience could not therefore be accorded Mohammed Ani.

In the case of Chief U. U. Umoanwan's appearance on 12<sup>th</sup> March.2020, the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants were present in Court (albeit represented) and this was confirmation enough that Chief U. U. Umoanwan was their new Counsel of choice. It was under these circumstances that Chief U. U. Umoanwan was accorded audience on behalf of the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants by this Court.

For avoidance of doubt, this Court did not stop the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants from cross-examining the Plaintiff's witness. Rather, it was their Counsel that stated that he had no questions to ask PW1. Furthermore, as the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants did not file any statement of defence, there was absolutely no point adjourning the matter any further for their defence.

I have set the record straight and or facts of proceedings prior to the 22<sup>nd</sup> September,2020.

Thus, the first relief of the instant application is quite an interesting one. The 4<sup>th</sup> and 5<sup>th</sup>Defendants/Applicants want this Court to grant them leave to enter appearance from the date the writ of summons was served on them. In the same relief, they also want this Court to find a Memorandum of Conditional Appearance filed by Barrister Charles Ezeagu as incompetent.

The purpose which the 4<sup>th</sup> and 5<sup>th</sup>Defendants/Applicants intend to achieve with this relief is not clear.

I have looked at the records of this Court. There is a Memorandum of Conditional Appearance dated 4<sup>th</sup> Novenber,2019 filed on 5<sup>th</sup> November,2019 by Charles Ezeagu Esq of Charles Ezeagu & Co. on behalf of the 4<sup>th</sup> and 5<sup>th</sup>Defendants. I have looked at the said Memorandum of Conditional Appearance. It was filed before the order joining the 4<sup>th</sup> and 5<sup>th</sup>Defendants/Applicants as parties to this suit was made on 6<sup>th</sup> November,2019. Yes, the said Memorandum of Appearance is incompetent as it was filed at a time when the 4<sup>th</sup> and 5<sup>th</sup>Defendants/Applicants were not even parties to the instant suit. It stands to reason that a stranger to a case who is not a party to that case cannot purport to enter appearance thereto. But does this help the 4<sup>th</sup> and 5<sup>th</sup>Defendants/Applicants predicament in the instant circumstance? No one has said that the 4<sup>th</sup> and 5<sup>th</sup>Defendants/Applicants entry of appearance should not be from when they were served Amended Writ of Summons giving them notice to enter appearance.

It is still on record that Charles Ezeagu Esq filed the motion on behalf of the 4<sup>th</sup> and 5<sup>th</sup>Defendants/Applicants by which they were joined as parties to this suit by order of this Court. It is on record that the 4<sup>th</sup> and 5<sup>th</sup>Defendants/Applicants were served with the amended originating processes in this suit (pursuant to their joinder) through their said Counsel Charles

Ezeagu. It is on record that the said Charles Ezeagu Esq appeared at proceedings of this case as Counsel for the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants on different occasions after they had been joined. The 4<sup>th</sup> and 5<sup>th</sup> Defendants have not at any time denied that Charles Ezeagu Esq was their Counsel in this case. In fact, in their affidavit in support of this application they copiously made it clear that he was their Counsel whom they changed because of their dissatisfaction with the manner in which he was handling their case.

The effect of **Order 55 Rule 1** of the Rules of this Court is that having originally engaged Charles Ezeagu Esq as the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants' Counsel in this case, he was bound to conduct the case for them till final judgment. Where the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants decide to change him as their Counsel for any reason (as is their Constitutional right), they must file an application for change of Counsel in the manner required under **Rule 2 of Order 55**. Consequently, even where the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants file a proper memorandum of appearance by their new Counsel, it does not relieve them of the duty to file a notice/application for change of Counsel as the case may be.

Be that as it may, the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants are already out of time for filing a proper Memorandum of Appearance which they ought to have filed within 21 days of being served with the Amended Writ of Summons. Rather than simply ask this Court for extension of time to file their memorandum of appearance out of time, they are seeking leave of Court recognizing that they should enter appearance from when they were served. The first prayer is vain, hypothetical and academic. It adds no value to anything or serve any real purpose. It is trite that the Court does not act in vain and does not make vain orders. See the case of **FIDELITY BANK PLC V. KATES ASSOCIATED INDUSTRIES LTD. (2012) LPELR-9790(CA)**. In the case of **NWORA & ORS V. NWABUNZE & ORS (2011) LPELR-23008(SC)** the Supreme Court held that it is trite law that the Court ought not to make

an order in futility or which serves only academic purpose as it will not affect the rights of the parties in the matter.

Consequently, the first relief of the instant application must be refused and it is accordingly refused and dismissed.

By the second relief of the instant application the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants seek leave reopening the Claimant/Respondent's case and re-calling his witness (PW1) for cross-examination by them.

In civil actions, whether to grant or refuse an application to recall a witness is a discretion which a Court is expected to exercise judicially and judiciously. See **ONWUKA V. OMOLEWA (2001) 7 NWLR (PT. 713) P. 695 at P. 713 paragraphs E-F**. It thus behoves the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants in the instant case, who are seeking to reopen the Claimant/Respondent's already closed case to recall his witness, to show good and cogent reasons why this Honourable Court ought to exercise its discretion in favour of granting their application. – see the cases of **NEBO V. FCDA (1998) 1 NWLR (PT.574) P. 480** and **ONWUKA V. OWOLEWA (supra)**.

In the instant case, the records show that PW1 gave evidence in chief on 11<sup>th</sup> December, 2014 and was made available for cross-examination by the Defendants. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents' Counsel did cross-examine PW1 and because the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants were absent to cross-examine PW1, the matter was adjourned till the next day for them to cross-examine PW1. On the next day, their Counsel sought an adjournment which was refused and he said he had no questions for PW1. PW1 was thus discharged from giving any further evidence while the Claimant/Respondent closed his case.

I have looked at the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants' affidavit in support of the instant application. There is nothing but distortion of facts and half-truths about what transpired at proceedings leading to the discharge of PW1. I have already



set the record straight earlier from the record of proceedings in this case. In the circumstances, I must hold the view that there is nothing in the affidavit in support to convince this Honourable Court to exercise its discretion in favour of the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants by reopening the Claimant/Respondent's case and recalling PW1 solely for cross-examination by the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants. Let me just add that, depending on the success of the prayers in this application for extension of time to defend this suit, should PW1 feel the need to give additional evidence, the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants may then cross-examine him as of right. I however do not see any cogent reason to compel him to appear before this Court by recalling him simply to be cross-examined by the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants. The 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants lost that right when they refused to cross-examine PW1 when he was presented to them for cross-examination for the second time. The second relief of the instant application ought to be refused and it is accordingly refused and dismissed.

The third prayer of the instant application is essentially one granting extension of time to the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants to file their statement of defence in this case out of time and present their defence.

The records of this Court show that the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants were served with the Amended Statement of Claim and other processes in this suit on 21<sup>st</sup> January, 2020 through their Counsel. By virtue of the Rules of this Honourable Court, a Defendant who intends to defend a claim against him shall file his statement of defence not later than 21 days after service of the originating processes on him. See **Order 15 Rule 1(2) of the High Court of the FCT, Abuja (Civil Procedure) 2018**. It doesn't appear to be in dispute that the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants failed to file a statement of defence within 21 days in compliance with the Rules of this Court.

Now, **Order 49 Rule 4 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018** clearly empowers this

Court to, *as often as it deems fit*, extend the time appointed by the Rules *before or after* the expiration of such time. In essence, this Court has power to extend the time for filing the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants' statement of defence even after the expiration of the time limited for doing so.

On extension of time within which to do an act, it was held in ***NOGA HOTELS INTERNATIONAL S.A. V. NICON HILTON HOTELS LTD. & ORS. (2007) 7 NWLR (PT.1032) P. 86*** by the Court of Appeal, per Odili JCA, as follows:-

*"When a Court is called upon to make an order for an extension of time within which to do certain things, that is extension of time prescribed by the rules of Court for taking certain procedural steps, the Court ought always to bear in mind that rules of Court must **prima facie** be obeyed and that in order to justify the exercise of the Court's discretion in extending time within which a procedural step has to be taken, there must be some material; upon which to base the exercise of discretion, and the exercise of Court's discretion where no material for such exercise has been placed before the Court would certainly give a party in breach of the rules of Court, uninhibited right to extension of time and the provisions as to time within which to take procedural steps set out in the rules of Court would in such circumstances have no legal content. Non-compliance with rules of Court do not **prima facie** invalidate proceedings unless reasons for such non-compliance are not advanced to the Court and, in addition if the party in breach fails to place before the Court sufficient material upon which to exercise its discretion to waive or overlook the omission, *prima facie* if no excuse is offered, no indulgence would be granted. See **DAVIES V. GUILDPINE (2004) 5 NWLR (Pt. 865) 131 at 156; WILLIAMS V. HOPE RISING VOLUNTARY FUNDS SOCIETY (1982) 1-2 SC 145.**"*

In the Supreme Court decision of **ISIAKA V. OGUNDIMU (2006) 13 NWLR (PT. 997) P. 401 at P. 401 paragraph D, Katsina-Alu JSC** stated thus:-

*"It is now settled practice that rules of Court for doing an act must be obeyed. Where an Applicant fails to do an act within a stipulated period, he must explain away the delay to the satisfaction of the Court. Where he fails to do so, no indulgence should be granted to him."*

I also refer to the case of **OKAFOR V. BENDEL NEWSPAPERS CORP. (1991) 9-10 SC P. 156** where the Supreme Court per Akpata JSC held thus:-

*"All that a party who applies to Court for extension of time within which to take a procedural step within the purview of Order 3 rule 4(1) needs to do, is to offer explanation to justify an extension of the prescribed time. In effect substantial reasons should be shown for the delay in complying with the rule of Court."*

See also the cases of **DAVIES V. GUILDPINE LTD. (2004) 5 NWLR (PT.865) P. 131, JOHNSON V. OSAYE (2001) 9 NWLR (PT.719) P. 729 and RIMI V. I.N.E.C. (2004) 15 NWLR (PT.895) P. 121.**

In the case of **STERLING BANK V. OYOYO (2018) LPELR-46748(CA)**, the Court of Appeal held that the Court's discretion to grant enlargement of time to file a statement of defence must be based on cogent materials placed before it and if no cogent excuse or reasons for the delay is given, no indulgence should be granted. The appellate Court further held in that case that the appellant in that case deserved no indulgence of the lower Court who was right in refusing the application for enlargement of time.

I have looked at the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants' affidavit in support of their application. They did not exactly

state why their statement of defence was not filed within 21 days in compliance with the Rules of this Court. However, from the content of their affidavit, they seem to be blaming their former Counsel i.e. Charles Ezeagu Esq. generally for the tardiness in handling their case. The Claimant/Respondent did not file any counter affidavit to dispute this. The record also shows that at the proceedings of 21<sup>st</sup> January, 2020, the said Charles Ezeagu Esq informed the Court that he intended to file his statement of defence to the amended originating processes with which he had just been served. There is however no explanation why the said 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants' statement of defence was not filed by Charles Ezeagu Esq. within the time prescribed by the Rules.

The age long general position of the law is that the Courts will not punish a litigant for the mistake or inadvertence of his Counsel in procedural matters. If there is lapse in Counsel's office in respect of forgetting to file some papers, forgetting the date of hearing or such like procedural errors, the client should not be made to suffer. – see the Supreme Court decisions in the cases of **AKANBI V. ALAO (1989) 3 NWLR (PT.108) P. 118** and **IBODO V. ENAROFIA (1980) 5-7 SC 42**. The apex Court has however also held that there are exceptions to this principle of law. See **N.I.W.A V. S.P.D.C. (2008) 13 NWLR (PT.1103) P. 48**.

The rule that a litigant should not be made to suffer because of the negligence of his Counsel is only available to the litigant if the litigant shows that he has done all that he is required to do by giving 'prompt instruction'. Even where the litigant acted promptly in instructing his Counsel, he is still expected to ensure that the Counsel carried out the instruction. This is because a litigant who fails to ascertain that his Counsel has taken the necessary steps is also guilty of negligence – see the cases of **EMMANUEL V. GOMEZ (2009) 7 NWLR (PT.1139) P. 1**, **ALHAJI OSENI BALOGUN & ORS V. ALHAJI SHITTU BALOGUN (2014) LPELR-24310(CA)**, **N.W.A. V.**

***S.P.D.C. (supra) and ADELAJA V. C.M.S. GRAMMAR SCHOOL BARIGA & ORS (2017) LPELR-42729(CA).***

In the instant case, the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants did not tell this Court (in their affidavit) what steps exactly they took to avoid being caught by time for filing their statement of defence (so as not to be classified as an indolent litigant). This Court will however consider the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants' effort on record to change their allegedly erring Counsel i.e. Charles Ezeagu Esq. In the interest of justice, this Court in its magnanimity will not visit the sin of Counsel on the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants. This Court will thus exercise its discretion in their favour by enlarging the time limited by the Rules for filing their statement of defence and presenting their case to this Court. The third prayer of the instant application ought to be granted and it is accordingly granted.

It has however been brought to this Court's attention that the amount which the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants were assessed as liable to pay as penalties for the default in filing their statement of defence may not be in compliance with the Rules of this Court.

Under **Order 56 Rule 1(1)** of the Rules of this Court, the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants are liable to pay the sum of N200 for each day in default. The 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants were served with the Amended Statement of Claim on 21<sup>st</sup> January, 2020. The 21 days within which they were expected to file their statement of defence expired on 11<sup>th</sup> February, 2020. Counsel to the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants mentioned the Covid19 pandemic which prompted a lockdown in the FCT on 30<sup>th</sup> March, 2020. This cannot however avail the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants in any way as they were already out of time and in default on 12<sup>th</sup> February, 2020, long before the lockdown occurred. The instant application for enlargement of time was filed on 6<sup>th</sup> May 5, 2020. The 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants were therefore in default of filing their statement of defence by 84 days. It follows that the sum which the 4<sup>th</sup> and

5<sup>th</sup>Defendants/Applicants are liable to pay as penalty on the default is ~~₦~~16,800.00 and not the ~~₦~~8,800.00 assessed on the instant motion paper. The 4<sup>th</sup> and 5<sup>th</sup>Defendants/Applicants can be made to pay this sum or its shortfall and present proof of payment of the sum by the next adjourned date failing which the leave granted them to file their statement of defence out of time may be vacated. Thus, the 4<sup>th</sup> and 5<sup>th</sup>Defendants/Applicants are hereby ordered to pay up the difference as penalty and exhibit a receipt of payment before the next adjourned date.

The fourth prayer of the instant application is for an order of this Court deeming the 4<sup>th</sup> and 5<sup>th</sup>Defendants/Applicants' Proposed Joint Statement of Defence and other processes as properly filed and served.

The Claimant/Respondent's Counsel has posited that paragraphs of the Proposed Joint Statement of Defence attached by the 4<sup>th</sup> and 5<sup>th</sup>Defendants/Applicants to their affidavit in support offend the provisions of Order 15 Rule 2 of the Rules of this Court and are liable to be struck out. It is contended that the said paragraphs are argumentative, speculative and scandalous especially paragraphs 3, 5, 8, 10, 11, 13, 14, 15, 16, 24 and 27.

The 4<sup>th</sup> and 5<sup>th</sup>Defendants/Applicants' Counsel does not dispute that the paragraphs of their Proposed Joint Statement of Defence offend the Rules of Court. He however contends that the Claimant/Respondent had joined issues on those paragraphs by filing a further pleading in response.

Now, until this Court has granted an order deeming any statement of defence filed before leave was granted to them as properly filed, any such statement of defence filed by the 4<sup>th</sup> and 5<sup>th</sup>Defendants/Applicants is incompetent. In such circumstances, any pleading which the Claimant/Respondent filed tentatively to such statement of defence cannot be considered as a waiver to fundamental defects. The Claimant/Respondent can raise objection to the prayer seeking to

cure the defects in the Proposed Statement of Defence. It is not yet deemed a proper process before this Court.

Now by **Order 15 Rule 2(1)** of the Rules of this Court, every pleading must contain a statement in a summary form *of the material facts*.

The position of the law has been held by the Supreme Court that pleadings must contain facts and facts on which a party relies for his case only. Thus, such facts can only be material facts. See the case of **MOROHUNFOLA V. KWARA STATE COLLEGE OF TECHNOLOGY (1990) LPELR-1912(SC)**. Even the law is not permitted to be pleaded but facts. – see the case of **USMAN V. GARKE (1998) LPELR-5283(CA)**.

I have read through the copy of the Proposed Statement of Defence attached to the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants' affidavit in support of the instant application. I do agree that recurring paragraphs of the Proposed Statement of Defence are argumentative, quarrelsome, speculative and as such scandalous. The 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants clearly left the realm of material facts. The Proposed Statement of Defence does not contain just material facts as it ought to. The paragraphs of the Proposed Statement of Defence offend against the cardinal Rules of pleading.

In the case of **UGBODUME & ORS. V. ABIEGBE & ORS. (1991) LPELR-3316(SC)** the Supreme Court held that once the rules of pleadings are infringed or brushed aside, the trial cannot be free and fair and there will consequently be no fair hearing.

Had the Proposed Statement of Defence attached to the instant application (and filed separately by the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants) been properly before this Court, this Court would have struck out the offending paragraphs. As it is not yet proper before this Court (having not yet been deemed so by order of Court), the only proper step to take is

to refuse the prayer deeming it as properly filed. The fourth relief of the instant application is therefore hereby refused.

Pursuant to all the foregoing, the issue for determination is resolved partly in favour of the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants. The instant application succeeds in part.

In conclusion, relief no. 3 of the instant application is hereby granted. And the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants have 5 days from today to file their joint statement of defence and on service on the claimant, the claimant have two (2) days to file a consequential reply if he so desires.

That is the position of this Honourable Court.

-----  
**HON. JUSTICE D. Z. SENCHI**  
**(Presiding Judge)**  
**30/09/2020**

Parties:- 4<sup>th</sup> Defendant present and represent the 5<sup>th</sup> Defendant

Kigai Zontong:- With me is Daniel Ideh for the Claimant.

N. Babuwa:- With me are denial D. Dada and Micah Y. Mathew for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

U.U Umuan Anwan:- For the 4<sup>th</sup> and 5<sup>th</sup> Defendants.

Emmanuel R. Sadiq: For the party seeking to be joined.

**Sign**  
**Judge**  
**30/09/2020**