

**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: 23/11/2020

BETWEEN:-

FCT/HC/CV/2241/2020

HONOURABLE JUSTICE KUMAI BAYANG AKAHHS ...CLAIMANT

AND

- 1. THE HON. MINISTER OF FEDERAL CAPITAL TERRITORY ADMINISTRATION, ABUJA**
 - 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY, ABUJA**
 - 3. PERSONS UNKNOWN**
 - 4. NAGANDE SWATE**
 - 5. ROMBEC PROPERTIES NIG. LTD**
- DEFENDANTS**

RULING

This case is slated today for adoption of final written addresses. And the parties in the suit have filed their respective final written address. However, the Counsel to the 4th and 5th Defendants filed a motion on notice dated and filed on 16th October, 2020 with motion No FCT/HC/M/10869/2020 praying the Court for the following orders or reliefs:-

1. An order of this Honourable Court setting aside the order of foreclosure of the 4th and 5th Defendants/Applicants right of defence in this suit made on the 12th day of October, 2020.
2. An order of this Honourable Court granting leave to the 4th and 5th Defendants/Applicants to open their case and present their defence in this suit out of time having been elapsed.
3. An order of the Honourable Court deeming the further amended joint statement of defence as properly filed and served, the requisite fees together with defaulting charges having been fully paid.

4. 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 upon which the application is predicated are numbered (a)-(d) on the face of the motion papers. In further support of the application is an 18 paragraph affidavit with one exhibit attached. Learned Counsel to the Applicants also filed a written address in compliance with the Rules of this Court and same was adopted by her. Counsel finally urges me to grant the application.

In response the learned Counsel to the Claimant/Respondent filed a counter affidavit together with a written address. The Counsel equally adopted the written address as her oral submission and urged me to refuse the application.

Having perused the orders sought by the Applicants and the affidavit evidence in support of same, and having also

perused the counter affidavit of the Respondent in opposition, I will want to draw the attention of both Counsel once again to the ruling of this Honourable Court on the 12th October, 2020. The Court says:- " On the 7th October, 2020, the matter came up for defence of the 4th and 5th Defendants. The 4th and 5th Defendants including their Counsel , Chief U.U Umoanwan Esq, were absent and no reason was given for their absence. The case was then adjourned to day for defence. The 1st and 2nd Defendants called their witness and closed same. The witness of the 4th and 5th Defendants is in Court but the Counsel is not ready to proceed on the ground that he has not prepared the witness. Thus, on the facts on record, I have obliged the 4th and 5th Defendants sufficient time and opportunity to open and close their defence.

However by the antecedents of Counsel and his disposition before the Court that his brief has not been perfected there is no good reason for this Court to adjourn this matter. I have indulged the 4th and 5th Defendants Counsel so much and I am of the view that I should retrace my steps. This is because justice is not a one way traffic. It is tripartite i.e to both parties and the society. The Claimant desires his case to be heard and indeed all parties timeously so that their rights and obligations would be determined."

The above ruling of this Honourable Court was pursuant to the several applications filed by the 4th and 5th Defendants and the

applications disposed off but the Counsel to the 4th and 5th defendants refused to put their witness in the witness box to testify. In fact on 12th October, 2020, Counsel to the 4th and 5th Defendants submitted thus, "I have only one witness. The witness is in Court but I did not prepare him. I apply for a short adjournment.

Now this case was filed in 2019 and all parties have filed their pleadings. However, the 4th and 5th Defendants are not willing to commence their defence. What the Counsel to the 4th and 5th Defendants are interested in is continuous adjournment of the case.

Having said the above, as I said I have perused the affidavit of the 4th and 5th Defendants in support of application. At paragraph 12 of the affidavit in support, the deponent of the affidavit in support of the application states:-

" That on the same 12th October, 2020, the claimant Counsel told the Honourable Court to foreclose the case of the 4th and 5th Defendants which the Honourable Court did without considering the substantial reason proffered by the 4th and 5th Defendants."

Now the substantial reasons given to open the instant case for defence by the 4th and 5th Defendants are as stated at paragraphs 10,11,15 and 16 of the affidavit in support which reads thus:-

(10)That his brief was not perfected.

- (11)) That in the circumstance, the Honourable Court should give him fair hearing as he did not prepare the witness of the 4th and 5th Defendant adding that his brief was not perfected.
- (15) That to shoot out the 4th and 5th Defendants in the case from contesting the Claimant's case on merit will perpetrate an injustice.
- (16) That it will be in the interest of justice to grant the instant application as this application will not prejudice the interest of the Respondents in any way.

The above are not material reasons given by the Applicants to enable this Court exercise its discretion to vacate its earlier order of 12th October, 2020. On record, the 4th and 5th Defendants were given adequate opportunities to open their defence and indeed, their only witness was in Court but Counsel refused or failed to call him to testify on the ground that he has not prepared him and his brief not perfected. Hence as long as this Court has afforded the 4th and 5th Defendants the opportunities to open their defence in line with section 36 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and as long as no cogent reason is shown before the Court in the affidavit in support of application for this Court to vacate its order of 12th October, 2020 and further, as long as the business of the Court is for adoption of addresses by parties and all the parties had filed same, this

instant application cannot be granted in the circumstances. Accordingly the application dated and filed on 16th October, 2020 is hereby refused. Parties to proceed to adopt their respective final written addresses.

HON. JUSTICE D. Z. SENCHI
(Presiding Judge)
23/11/2020

Parties:- Claimant present in Court.

1st and 2nd Defendants absent

5th Defendant represented by RomanousEze the Managing
Director of the 5th Defendant

4th Defendant absent in Court.

KaunaPenzin:- with me is Reuben kinya and Daniel Iduh for the
Claimant

David Z. Dada:- with me is Mikiah Y Mathew for the 1st and 2nd
Defendants

Joy Bestman:-for the 4th and 5th Defendants.

Sign
Judge
23/11/2020