

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)

BEFORE

HIS LORDSHIP HON. JUSTICE M. E. ANENIH

AND

HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU

ON THE 8<sup>TH</sup> DAY OF DECEMBER, 2020

APPEAL NO: CVA/38/2019

SUIT NO: CV/FCT/15/2017

BETWEEN:

JEDO INVESTMENT COMPANY LIMITED -----APPELLANT

AND

F. N. MKPARU AND SONS LIMITED -----RESPONDENT

*DR. A. S. ISA KOLO for the Appellant/Respondent*

*ANDERSON OJOSHIMITE for the Applicant/Respondent*

**RULING**

**Delivered by: His Lordship Hon. Justice A. S. Adepaju**

This is a ruling in respect of an application on Notice Dated the 19<sup>th</sup> day of October, 2020 and filed on the 27<sup>th</sup> day of October, 2020, wherein the respondent/applicant seeks for the following reliefs:

1. Leave of Court extending the time within which the respondent may compile and serve additional records of appeal out of time.
2. Leave of Court enlarging time for the respondent to file and serve the respondent's brief of argument out of time.

3. An Order of court departing from the rules for the purpose of doing substantial justice in the circumstance of this application.
4. An Order of court deeming the additional records of appeal and respondent's brief of argument as having been properly filed and served.
5. And for such further Order(s) as this honourable court may deem fit and just to make in the circumstances of this application.

In support of the application is an eight paragraph affidavit of one **Gloria Ofoh**, a litigation secretary in the law firm of **Ojoshimite & Associates** with three documents attached as Exhibits FN1 – FN3 respectively. The respondent/applicant placed reliance on all the paragraphs of the affidavit. And in accordance with the rule of the court, the learned counsel to the applicant filed a written address and also a reply on points of law to the counter-affidavit of the appellant/respondent.

In opposing the application, the appellant/respondent filed a 6 paragraph counter-affidavit deposed to by one **James Martha** a litigation officer in the law firm of the appellant's counsel. The argument of the appellant's counsel is also embodied in the written submission which was adopted by the counsel as his oral argument.

We have calmly considered the reliefs sought by the applicant, the facts in the affidavit in support, the exhibits attached and the reply on points of law with the written submissions of the Learned Counsel. We have equally noted the facts deposed to in the appellant/respondent counter-affidavit and the written arguments of the Learned Counsel for the appellant/respondent. We wish to state that we are not impressed with the reasons adduced by the respondent/applicant in the affidavit in support of the application for extension of time. It is very apparent that the applicant and his counsel were not diligent in complying and filing the additional record of appeal for which the leave of the court for extension of time is being sought.

Furthermore, it is mandatory that the respondent/applicant comply with the provision of Order 49 Rule 4, 5 and Order 56 (1) of the Rules of Court by paying the default fees. It is trite that the Rules of Court are not for fancy, they are meant to be obeyed. As rightly submitted by the appellant's counsel, the payment of the default fees is a fulcrum upon which the competence of the application for extension of time is anchored. We are not unmindful of the fact that appeal is the constitutional right of any of the parties. It must however be in accordance with the defined rules of the court.

Therefore, notwithstanding the tardiness on the part of the respondent/applicant's counsel, we shall allow the application for extension of time as prayed, however the records of appeal are to be deemed as properly filed and served upon payment of the accrued default fees as assessed by the Registrar of the Appeal Division of this Court.

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**HON JUSTICE M. E. ANENIH**

**Presiding Judge**

**8/12/2021**

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**HON JUSTICE A. S. ADEPOJU**

**Hon. Judge**

**8/12/2021**