

**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/287/2009

BETWEEN:

- 1. CHROME AIR SERVICES LTD**
- 2. CHROME OIL SERVICE LTD.....APPLICANTS**

VS

FIDELITY BANK PLC.....DEFENDANT

RULING

By a Motion on Notice dated 18/9/2020, but filed on 17/10/2020, with No. M/10504/2020, the Applicant herein, is praying for the following reliefs:-

- (1) An Order of this Honourable Court varying the order of this court given the 14th day of September, 2020.
- (2) And for such further order(s) as this Hon. Court may deem fit make in the circumstance.

The grounds upon which the application is predicated are as follows:-

- (1) Paying arrears for the last Six Months by the end of September, 2020 in the light of the effect of the Covid – 19 Pandemic on the businesses of the Applicants has become unrealizable.

(2) That the court is expected to vary a stringent order.

In support of the application is a 6 Paragraph affidavit, sworn to by Salihu Omeiza with Five (5) Annexures marked as 1 – 5. Also filed is a Written Address, dated 18/9/2020 and adopted in urging the court to grant the reliefs sought.

Responding, Learned Silk Dr S.S. Ameh (SAN) with Leave of Court, submits in opposition, that the court had earlier granted the Applicant an indulgence of paying by installments vide Exhibit 2, but failed to do so, further that the Applicant have not shown any good faith in his application, having failed to attach any payment to the Motion. Therefore, urge the court to refuse this instant application.

In the Written Address of the Applicant, settled by Onyinye Princess James, Esq, counsel formulated only 1 (one) issue for determination, namely;

“Whether this Honourable Court is robbed with the power to grant the reliefs as sought by the Applicant”.

And submits that the grant of this relief is a discretionary one which the court has inherent power to exercise. Relying on the following judicial authorities; Provisional liquidator of Tapp Ind. Ltd & Ors Vs Tapp Ind. Ltd & Ors (1995) LPELR – 2928 (SC), Gallaher Ltd & Ors Vs British America Tobacco (Nig) Ltd & Ors (2014) LPELR – 24333 (CA) and Nigeria Social Insurance Trust Fund Vs Iten & Or (2014) LPELR – 224438 (CA). And urge the court to consider the facts circumstances stated in this application and

grant the reliefs that is to vary the order of this court granted on 14th September, 2020.

The Respondent Counsel did not file any counter nor file an Address wherein issues could be distilled, rather made oral submission in urging the court to refuse this application.

I have carefully considered this instant application. The Applicant is inviting this court to exercise its discretion to grant the reliefs sought, which to vary the Order of Court granted to it on 14th September, 2020. In the consideration and exercise of that discretion, the court must be guided by the facts placed before it, in that call for exercise of discretion.

It is correct that power to the grant of Exhibit 1 – Order of Court for payment of outstanding arrears of the instalmental payment granted earlier on 4/12/2019, the Applicant have by Exhibit 2, 3, 4 and 5 made payments of instalmental payments, thereafter began to be in default of compliance of the order of installmental payment and the further order of 14/9/2020. It is consequent upon this that the Applicant is now seeking this court to further exercise its discretion, to vary its earlier order.

It is settled law that this court has the discretionary power to consider an application of this nature based on facts placed before it. See *Anachebe Vs Ijeoma* (2015) ALL FWLR 784 183 (SC).

The basic reason proffered by the Applicant for this application is hindered on the Covid-19 Pandemic, which is alleged has affected the Applicants business.

In this instant application, the Applicant havenot placed before it, any commitment cheque along with the application. It is settled law that he who comes to equity, must come with clean hands. The Applicants, in view of this court, have failed to do so.

It is in the light of this, that this court will unable to exercise its discretion to grant the relief sought.

Accordingly, the application fails and is hereby refused.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

8/3/2021

APPEARANCE:

ONYINYE PRINCESS JAMES ESQ FOR THE APPLICANTS

DR .S.S. AMEH (SAN) FOR THE JUDGMENT CREDITOR WITH M.S. AREMO