

**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/1464/2020

BETWEEN:

JOY JAMES OTOWO.....CLAIMANT

VS

BABERO OBANYIRO.....DEFENDANT

RULING

By a Motion on Notice dated 8/10/2020 and filed same day, brought pursuant to Order 17 Rule 14, 43 Rule (1) and 49 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Honourable Court, the Claimant/Applicant seeks the following prayers;

- (1) An Order of the Honourable Court granting an extension of time within which the Plaintiff shall file her Reply to the Preliminary Objection of the Defendant dated 17th day of August 2020.

- (2) An Order of the Honourable Court granting an extension of time within which the Plaintiff shall file her Reply to the Statement of Defence dated 17th day of August, 2020
- (3) An Order of the Honourable Court deeming the Plaintiff's reply to the Preliminary Objection and Reply to the Statement of Defence already served on the Defendant as properly filed, the necessary filing fees having been paid.
- (4) And the Omnibus relief.

In support of the Motion is a 5 Paragraph affidavit deposed to by one Grace Antai a Litigation Secretary in the law firm of Applicant's counsel. Also filed a Written Address and adopts same in urging the court to grant the prayers sought.

Responding Defendant/Respondent filed a Reply on point of law to Plaintiff's application for Extension of Time on 16/10/2020, in urging court to refuse the application.

In the Written Address of the Claimant/Applicant, Prof. Agbo J. Madaki Esq for Applicant formulated, that is;

"Whether in the circumstance of this case, the Honourable Court is empowered to exercise her unfettered discretion favourably in granting the reliefs sought by the Plaintiff?

Submits that under the Rules of court the court can grant extension of time that the court is empowered by relevant laws to exercise her discretion in

favour of the Claimant having placed sufficient materials before the court. Refer to the case of NPA Vs SAMA & ORES (1016) LPELR 40126 pp 23 – 24 Paras C – A.

In their Written Address, Defendant/Respondent's counsel Chief Henry Akunebu Esq formulated a sole issue for determination that is;

“Whether having regard to the averments in support of the application, mistake or omission of counsel being the reason for the delay have been established as to move the court to exercising its judicial discretion in favour of the Applicant”.

Submits that from the Applicant's averment the cause of delay in filing their processes is mistake or omission of counsel due to enormous work, for the court to determine the application, the court must take a look at the affidavit to ascertain the status of the deponent. And since the deponent in this case is not a counsel, the mistake or omission as claimed as reason for the delay should not be taken as that of a counsel for which a litigant may not be punished. Refer to the case of Murry Industries Ltd Vs Estate Community Bank Nig Ltd (2005) 3 CWLR Vol. 1 Pg 870 @ 884 – 885. Thus the failure of counsel to admit the omission or mistake is fatal to the application.

Having considered the submission of counsel, the judicial authorities cited as well as the affidavit evidence of the Claimant/Applicant , the court finds that only one issue calls for determination that is;

“Whether the Claimant/Applicant has made out a ground to warrant the grant of the prayers sought”.

It is settled under the Rules of court and judicial authorities that the court has the power or jurisdiction and indeed the discretion to grant leave for extension of time within which a party is required or authorized by the Provision of the Rules of court. See the case of T.M. Ltd Vs S. Engineering Ltd (2008) 6 NWLR (PT. 1136) 1 @ 4. However an application for extension of time for the doing of anything is not granted as a matter of course, but such request for extension of time must be supported with good and substantial reason why such acts was not done within the prescribed period, see the case of T.M Ltd Vs Engineering Ltd (Supra) 4 Ratio 2.

Claimant/Applicant in Paragraph 4 (c) (d) (e) of his supporting affidavit stated the reasons why they could not comply with the Rules as regards time within which to file their reply to the Statement of Claim of the Defendant as well as his reply to the Preliminary Objection of the Defendant on the other hand Defendant/Respondent did not file a counter-affidavit, the implication of this is that the facts contained in Applicant's supporting affidavit is deemed admitted. See the case of Tukur Vs Uba (2012) ALL FWLR (PT. 652) 1024 @ 1653 Paras B – C where the Supreme Court stated;

“An affidavit evidence constitutes evidence and must be so construed hence any deposition therein which is not challenged or controverted is deemed admitted”

The question which follows is, has the Claimant/Applicant given sufficient facts to enable the court exercise its discretion to grant the reliefs in favour of Applicant? My answer to the question is yes, I say so because the application is made to afford the Applicant opportunity to defend the case made out against the Applicant refusing the application would tantamount to denying Applicant the opportunity to reply the Defendant. I am further convinced of my view by the submission of the Defendant/Respondent, which make heavy weight on the status of the deponent which in my opinion is of no moment as the Rules of court never specified the particular person to depose to an affidavit in support of an application of this nature. Furthermore, the Rules of court allows for extension of time, where sufficient reasons are adduced for the delay in taking steps.

Having found the reasons adduced by the Applicant in seeking the reliefs sought, this court hereby holds that the application has merit and should succeed.

Accordingly, it is hereby ordered as follows;

- (a) An Order extending time within which the Claimant shall file her reply to the Preliminary Objection of the Defendant dated 17th day of August, 2020.
- (b) An Order extending time within which the Claimant shall file her reply to the Statement of Defence dated 17th day of August 2020.

- (c) An Order deeming the Claimant's reply to the Preliminary Objection and reply to the Statement of Defence already served on the Defendant as properly filed the necessary filing fees having been paid.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

10/3/2021

APPEARANCE:

M.P ANUDOO ESQ FOR THE CLAMANT/APPLICANT

P.T. LONGINUS FOR THE DEFENDANT/RESPONDENT