

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY IN
THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON 25TH DAY OF MARCH, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS
MOTION NO: M/663/2021

BETWEEN:

IJAGILA JOHN HAMMAN }
TED ANTAGU JOHN HAMMAN }.....**PLAINTIFF/APPLICANTS**

AND

FEDERAL INLAND REVENUE SERVICE.....DEFENDANT/RESPONDENT

RULING

The motion expert No M/663/21 was filed by the applicant praying for the following Orders:

- (1) An Order of this Honourable Court directing the Defendant to amend the Cheques issued earlier to the applicants being the death benefits of John Amos Hamman to pay into the Estate of John Amos Hamman account at Stabic Ibtc Bank.*
- (2) And for such further order(s) as this Court may deem fit to make in the Circumstance.*

Attached to this application are a 22 paragraph affidavit deposed to by Ijagila John Hamman the 1st applicant, 5 exhibits and a writer

address, the facts as contained in the affidavit include inter alia: that the 1st applicant is the biological mother and guardian of the 2nd Applicant who is a minor.

That the Applicants are the widow and son respectively of the late John Amos Hamman who died on the 15/8/2018 and until his death was a staff of the FIRS.

That the letter of Introduction by the defendant/Respondent dated 21/8/2019 and the letter of Administration obtained at probate department of the High Court of FCT dated 9/5/2019 lists the applicant as the deceased next of kin.

That the Defendant issued 3 Cheques of the total sum of 26,110,512.00 dated 20/2/20 to pay the applicants being the death benefit of the deceased.

That 1st applicant took the 3 Cheques to lodge them into the estate of John Amos Hamman account at STANBIC IBTC BANK with account number 0036416874. The Bank refused to accept the Cheques because the 2nd applicant whose name is also on the Cheques is a minor who does not operate an account.

That the defendant has since refused neglect or omitted to amend the Cheques which has caused a lot of hardship to the Applicants.

In the applicants written address, he contends that for the court to grant an application seeking its indulgence or exercises of the discretion of the court, the party seeking such equitable remedy, has the duty to place all material before the court to enable it exercise its discretion. Applicants relied on **IBORI VS. FRN (2009) ALL FWLR (PT 488) @ 285** and submits that the applicants have placed germane material facts before the court and cogent reasons, why the order should be granted. Applicant urged the court to grant their prayers. **PER IKYEGH JCA (APP 44 PARAGRAPHS D in FBN PLC VS. ATUNRASE CARPETS & UNDERLAYS LTD (2011) LPELR 4161 (CA)** define a Cheque thus:

A Cheque has defined as a prescribed instrument "Under section 2 (1) of the Bills of Exchange Act (CAP. 35) CFN of Nig 1999 and recognized as such a bill of exchange. Halbury's law of English 4th edition Volume 4 pg 130 paragraphs 306 also defines a Cheque in Similar terms thus "A Cheque is a bill of exchange drawn on a banker payable on demand".

Exhibit E of the applicants are three Crossed Cheques issued to the applicants instructed "account" payee only.

See 73 of the Bill of Exchange Act Cap. 35 LFN 1990 provides that a Cheque is a bill of exchange drawn on a banker payable on demand and except as otherwise provided in this part, the provisions of the Act applicable to a bill of exchange payable on demand apply to a Cheque the Applicants are praying the court to order the FIRS to correct the name on the Cheques according to section 7 (2) Bill of Exchange Act Cap. 35 CFN 1990.

A bill may be made payable to two or more payees jointly or it may be made payable in the alternative to one or two or one or some of servant payees and may also be made payable to the holder of an office per the time being

From the above position of the law and the affidavit attached to the Respondent application I deem it fit to grant this application accordingly to prayer concluded on the motion exparte are hereby granted as prayed.

Signed
Hon. Judge
25/3/21

APPEARANCE:

Abubaka A. For the Plaintiff/Respondent.