

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE NYANYA JUDICIAL DIVISION**  
**HOLDEN AT NYANYA ON THE 3<sup>RD</sup> DAY OF FEBRUARY, 2021**  
**BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE**

**SUIT NO.FCT/HC/CV/3164/17**

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

**BETWEEN:**

FIRST BANK OF NIGERIA PLC.....PLAINTIFF

**AND**

1. RISSUN NIGERIA LIMITED  
2. CHIEF ERIC OGUOMA  
3. AZUIKE UCHENNA } .....DEFENDANTS

**RULING**

The 3<sup>rd</sup> Defendants/Applicants motion dated 12/10/20 prays the Court for:

- (1) An Order of this Court to relist the 3<sup>rd</sup> Defendant/Judgment-Debtor/Applicants Motion No. FCT/HC/NY/M/116/20 between First Bank Nigeria Vs. Rissun Nigeria Limited & 2 ors dated 6/07/20 and filed on 7/07/20 struck out on 6/10/20.

- (2) An Order to consequently file a reply.
- (3) And such Order or further Orders as the Court may deem fit to make in the circumstance.

The grounds for the application are contained on the face of the motion paper:

- (1) The Applicant has a right to be heard on the merit.
- (2) The sin of Counsel should not be visited on the litigant.
- (3) The Respondent shall not be Prejudiced.
- (4) That efforts to serve the 1<sup>st</sup>& 2<sup>nd</sup> Respondent proved abortive.
- (5) It was also different to get Affidavit of non service from the bailiff.

I have also read the Affidavit in support. He deposed essentially that the bailiff of Court made several efforts to serve without success. That the lead Counsel also

travelled out of jurisdiction. That the bailiff of this Court also fell sick and travelled to Bauchi State for medical attention. That the 3<sup>rd</sup> Defendant/Judgment/Debtor/Applicant could not get Affidavit of non service. That the Applicant has not delayed.

The Claimant/Judgment Creditor/Respondent relied on its counter Affidavit of 19 paragraphs. The deponent deposed that the application is a delay tactics to frustrate the judgment creditor. The application for relisting was filed on 7/07/20 and listed for hearing on 6/10/20 but failed to serve same.

The 2<sup>nd</sup> Counter Affidavit of Claimant/Judgment Creditor deposed to on 22/12/20 is incompetent as it is contrary to Order 43(1) of the High Court of the FCT (CivilProcedure) Rules 2018. It is therefore discountenanced. This

application seeking to relist Motion FCT/HC/NY/M/116/20 was filed on 13/10/20. The said motion was struck out on 6/10/20. There was no undue delay in bringing this motion to relist.

The next factor to consider is whether the 3<sup>rd</sup> Defendant/Judgment Debtor has a good, cogent and genuine reason for not prosecuting the application timeously. The said application to set aside was dated 6/07/20 and filed on 7/07/20. It was fixed for hearing on 6/10/20, three months after. When it came up, the 1<sup>st</sup>& 2<sup>nd</sup> Defendant had not been served. There was no motion for substituted service to suggest that 3<sup>rd</sup> Defendant had difficulty in serving personally.

I have read the reasons deposed to in 3<sup>rd</sup> Defendant/Judgment Debtors application. This Court is not aware that a bailiff of Court was sick and had to

travel to Bauchi for treatment. There is also no medical certificate. This Court resumed from vacation on the 1<sup>st</sup> week of September.

Aside, the Court was not closed and workers of the High Court of the FCT were not on vacation except those who went on annual leave. The conduct of the 3<sup>rd</sup> Defendant/Applicant is not worthy of any sympathetic consideration. The other excuse that their lead Counsel travelled out of jurisdiction does not absolve- the 3<sup>rd</sup> Defendant of responsibility.

In totality, the 3<sup>rd</sup> Defendant/Judgment Applicant has not put before this Court good and cogent reasons why the motion must be relisted. It lacks merit and it is accordingly refused.

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**HON. JUSTICE U.P. KEKEMEKE**

**(HOH. JUDGE)**  
**03/02/2020**