

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT:28

DATE: 6TH JUNE, 2022

FCT/HC/CV/959/2013

BETWEEN:

FAIRMOUNT NIGERIA LIMITED..... PLAINTIFF/APPLICANT

AND

ASO SAVINGS AND LOANS PLC..... DEFENDANT/RESPONDENT

RULING

Claimant's Counsel have a motion dated 22nd April, 2022 and filed on 25th April, 2022 with motion number M/4802/2022 same is praying For the following relief.

1. An order granting leave to the Plaintiff Applicant to file additional list of documents.
2. And for such further order(s) as this Honourable Court may deem fit to make in the circumstances.

The motion is supported by 8 paragraph affidavit deposed to by Amarachi Ifunzu same is attached with 14 exhibits as exhibit E-R.

In compliance with the rules of the Court Counsel filed a written address Counsel urged the Court to grand this application Chukwu Ndauka filed a counter affidavit dated and filed an 11th

May, 2022 and also filed a written address Counsel also attached same exhibits. Counsel refers the Court to deem the process as properly filed and served.

Written reply on point of law Omotayo Counsel to the Claimant relied on order 56 Rule 1. The defendant was served with the motion filed on 21st April, 2022 15 days after the have failed to file a counter affidavit only for them to bring a counter affidavit today. 11th May, 2021 which they were expected to filed 7 days after. No application for enlargement of time. The document before the Court is not proper we urge the Court to dismiss same and also award cost of ₦500,000.00 for wasting the time of the Court. Having severally reproduced the main gist of the application I deem it just not to go into the merit or de-merit of the application. I however restrict myself to order 56 of the rules of this Court and order that the penalty of ₦200,00.00 be paid for having filed the counter affidavit out of time. On the other hand going by order 5 rule 1 of the rules of this Court. I deem it just to consider the non filing of the counter affidavit which form as a mere irregularity which can be corrected.

The sole issue for determination is whether it is in the interest of justice to grant this application order 49 Rule (4) of the Rule of this Court states "a Court may as often as he deem fit and either

before or after the expiration of time appointed by those rules or by any judgment or order of the Court extend time or adjourn for doing any act or taking any proceedings in" **ATANGAR VS EFFIM (2001) FWLR (Pt 58) 1013 – 1215 CA.**

The right to fair hearing is enshrined in section 36 (1) of the Constitution and it goes much more than that of a party participated at the trial. Both parties must be give adequate opportunity to present their cases and the Court must hear both sides before coming to its decision.

Also in **U.TC VS PROMOTIE (2002) FWLR PART 129-1576 SC.** the rules of Court " are designed to assist the parties in putting forward their case before the Court. They are not intended to deny parties of the opportunities of preparing their cases though resulting in injustice." Also in **KOLOWALE VS ALBERT--- (2002) FWLR part 130- 1768 SC"** the Court may also often as it thinks fit and either before or after the expiration of the times approved by the rules or by any judgment order,, rule of Court extend or adjourned the time for doing any act or taking any proceedings" from the above judicial authorities it becomes imperative on the part of this Court to grant this application. Application filed by the Claimant Counsel is hereby granted. The Defendant Counsel shall ensure full compliance of

the above order of ₦200,000.00 per day upon filing after the expiration of time and I also award cost of ₦10,000.00 against the Defendant.

HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)

APPEARANCE

T.O Omolye :- Appearing with Amoralhi Ifurueze for the Claimant.