IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 17TH OF MARCH,2022.
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH
(PRESIDING JUDGE)

SUIT NO: CV/2148/12

MOTION NO:M/4518/2021

BETWEEN

CLARISSA INTERGRATED CONCEPTS LTD……..PLAINTIFF/RESPONDENTS

AND

1. HON. MINISTER OF FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA)
3. ABUJA METROPOLITAN MANAGEMENT COUNCIL (AMMC)

] DEFENDANTS/ APPLICANTS

4. SARATU SABIU
5. HAUWA SULE UMAR

] DEFENDANTS/RESPONDENTS

RULING

Before this court is a motion on notice dated 13th July, 2021 and brought pursuant to order 43 Rule 1, Order 49 Rule 4 and Order 32 Rule 5 (2) of the High Court of the Federal Capital Territory (civil procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court and under Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The 1st – 3rd Defendants/Applicants pray for:

1. *An order extending the time within which to apply to set aside the order of this honourable court closing the Defence of the 1st, 2nd and 3rd Defendants.*
2. *An order setting aside the order of this honourable court closing the Defence of the 1st, 2nd and 3rd Defendants.*
3. *An order granting leave to the 1st,2nd and 3rd Defendants to re-open their case.*
4. *An order extending the time within which the 1st, 2nd and 3rd Defendants will file their statement of defence and witness statement on oath of her witness in this suit.*
5. *An order deeming as properly filed and served, the 1st,2nd and 3rd defendants statement of defence and the witness statement on oath of their witness.*

6. *An order of this honourable court recalling the plaintiff's witness in this suit, Dr. Virgy-Claire Nwafor for cross examination.*

And for such further or other orders as the court may deem fit to make in the circumstance.

The application is supported by a 7 paragraph affidavit, attached exhibits and written address.

The Plaintiff/Respondent reacted by filing an 8 paragraph counter affidavit, with attached exhibits and written address.

I have considered the application before the Court with all accompanying processes, counter affidavit with attached exhibits and written address and the oral submissions of counsel and I am of the view that the main issue arising for determination is:

Whether the application sought ought to be granted.

The 1st– 3rdDefendants/Applicants posit that their application ought to be granted in the interest of fair hearing, while the Plaintiff/Respondent argues*per contra* that they are not entitled to the grant of the application as same is devoid of merit and only a ploy to further delay this case.

First of all, in matters such as this where proceedings are at an advanced stage, in order to show his seriousness in prosecuting his defence if granted extension of time, it is desirable for an applicant for extension of time to file a statement of defence along with his application for extension of time. This is so that the matter would not be further delayed by an applicant who does not actually have a defence to file but simply wishes to use the application to further delay and frustrate the matter. It shows that an application for extension of time has been brought in good faith and not for some sinister ulterior motive.

Having failed to exercise their right to be heard at the appropriate time by entering their defence within the time prescribed by the Rules, the Applicants cannot now claim such privilege as of right. Leave to enter their defence at this time is no longer a right but a privilege whichis

granted at the discretion of this Court. It is elementary law that a party who seeks the favourable exercise of the discretionary power of the Court must place all relevant facts and material before the Court. See**SOGAOLU V. INEC & ORS (2008) LPELR-4966(CA)**.

Rules of Court are meant to be obeyed and not made for fancy.See **AKOLE & ORS V. ALONGE & ANOR (2012) LPELR-14793(CA) AT PP. 6 – 8 PARAS. F-B**. A party who failed to carry out an act at the time required to be performed and seeks enlargement of time to perform it must explain the default away to the satisfaction of the Court. Where no satisfactory explanation is provided, no indulgence is given by the Court. Case law is replete with this position. See **NOGA HOTELS INTERNATIONAL S.A. V. NICON HILTON HOTELS LTD. & ORS. (2007) 7 NWLR PT. 1032 P. 86 AT PP. 112-113 PARAS. F-B** per Odili JCA (as his lordship then was).

See also;

ISIAKA V. OGUNDIMU (2006) 13 NWLR PT. 997 P. 401 AT P. 401 PARA. D

OKAFOR V. BENDEL NEWSPAPERS CORP. (1991) 9-10 SC P. 156 AT P. 170 LINES 24-29

DAVIES V. GUILDPINE LTD. (2004) 5 NWLR PT. 865 P. 131 AT P. 156 PARAS. A-G

JOHNSON V. OSAYE (2001) 9 NWLR PT. 719 P. 729 AT. P. 750 PARAS. G-H.

And

RIMI V. I.N.E.C. (2004) 15 NWLR PT. 895 P. 121 AT. P. 129 PARAS. F-G.

In the instant application, the Applicants have hinged their default to take necessary steps in this matter on their allegation that their Counsel

(who had been originally assigned the case file)had left their employment without filing any process or attending court in their defence and had left without formally handing over the case file.

The age long general position of the law is that the Courts will not punish a litigant for the mistake or inadvertence of his Counsel in procedural matters. If there is lapse in Counsel's office in respect of forgetting to file some papers, forgetting the date of hearing or such like procedural errors, the client should not be made to suffer. – see the Supreme Court decisions in the cases of **AKANBI V. ALAO (1989) 3 NWLR PT. 108 P. 118** and **IBODO V. ENAROFIA (1980) 5-7 SC 42**. Thus, where default to take procedural steps within the time prescribed by the Rules or within the time ordered by the Court is clearly and entirely the fault of Counsel, the Courts are more likely inclined to grant an extension of time. It must be noted that there are exceptions to this general Rule. – See **N.I.W.A V. S.P.D.C. (2008) 13 NWLR PT. 1103 P. 48**.

The Respondents in the instant application have however, in their Counter Affidavit, denied that theApplicants' Counsel left employment as alleged by the Applicants in their affidavit in support. The Applicants did not file a further affidavit to convince this Court of their bare allegation of Counsel leaving service despite the Respondent's denial of such allegation. This Court is therefore moved to believe that the allegation of Counsel leaving service is a mere afterthought which allegation the Applicants have not supported with any cogent evidence at all.

Even if this Court is minded to believe the Applicants' allegation of its original Counsel leaving their employment, can this excuse avail the Applicants in the peculiar circumstances of this case?

I have perused the records of this case. The peculiar circumstances of this case is that it has suffered a rather protracted history to which the Applicants have greatly contributed. The Applicants were served with the originating processes in this matter and entered appearance as far back as the year 2012.They did not file a defence then as required by the

Rules of this Court. It has been almost 10 years between filing their memorandum of appearance then and their instant application for extension of time to file their defence. What have THEY been doing ever since? They apparently briefed Counsel and went to sleep themselves!

The rule that a litigant should not be made to suffer because of the negligence of his counsel is only available to the litigant if the litigant shows that he has done all that he is required to do by giving 'prompt instruction'. Even where the litigant acted promptly in instructing his counsel, he is still expected to ensure that the counsel carried out the instruction. This is because a litigant who fails to ascertain that his counsel has taken the necessary steps is also guilty of negligence! – see the cases of **EMMANUEL V. GOMEZ (2009) 7 NWLR PT. 1139 P. 1**,**ALHAJI OSENI BALOGUN & ORS V. ALHAJI SHITTU BALOGUN (2014) LPELR-24310(CA)**,**N.W.A. V. S.P.D.C. (SUPRA)** and **ADELAJA V. C.M.S. GRAMMAR SCHOOL BARIGA & ORS (2017) LPELR-42729(CA)**.

The Applicants themselves have been indolent and negligent in the manner they have conducted themselves in this case. They cannot feign ignorance or surprise that their counsel did not do the needful. Their actions smack of a calculated effort to delay the instant case and thus frustrate the right to fair hearing and a speedy trial. Their excuse that their original counsel did not file a defence on their behalf cannot avail them in the peculiar circumstances of this case, which has been ongoing for over ten years.

Consequently, they cannot hide behind the general Rule that sins of counsel will not be visited on the litigant as their case falls squarely within the exception to that general rule.

In the instant case, the Applicants neither filed a proper statement of defence nor did they attach any 'proposed' statement of defence in support of this application. What the Applicants have done is to filea document referred to as and titled 'STATEMENT OF DEFENCE' and

*inter alia*applied for same to be deemed as a properly filed and served statement of defence.

Firstly, I have observed that the said document is unsigned.

Secondly,the purported Statement of Defencepleaded documents in various paragraphs thereof but is not accompanied with any statement on oath, copies of exhibits nor list of witnesses as prescribed by the rules vis; **Order 17 Rule 1 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018**. The Applicants have thus failed to file a competent Statement of Defence which is capable of being deemed as properly filed and served by this Court. Essentially, therefore, the Applicants have failed to show willingness and preparedness to actually proceed with their defence in the event that this Court finds it expedient to grant them extension of time to put in their defence and recall the Plaintiff/Respondent'switnesses at this stage.

In as much as this court is mindfulof the position of the law on shutting out a party from defence, it does not appear that these Defendants are ready to proceed with their defence if called upon to do so, even after over ten years sequel to the filing of their memorandum of appearance.This situation is even more daunting considering that the Applicants have also contributed in no small measure to the protracted nature of this proceeding.He who comes to equity must not only come with clean hands, but must also do equity. – see **NIMASA & ANOR V. HENSMOR NIG. LTD (2012) LPELR-7931(CA) AT P. 9 PARAS. A-C** per Pemu JCA (delivering the lead Ruling).

The filing of a proper statement of defence to accompany this application would not only have shown good faith but also formed a reasonable basis for the Court to favourably consider this eleventh hour application.It could also have been sufficient leverage to impel the court to hold in the circumstance that the Applicants have at least, albeit late in the day, made some appreciable effort to regularize their position to have their own defence heard and considered.

Ordinarily, the filing of proper defence may have formed sufficient grounds and reasonable opportunity to expeditiously recall the claimant's witnesses as prayed and allow the Applicants present their defence at this eleventh hour. Unfortunately, that is not to be.

The 1st - 3rd Defendants do not appear to have fully woken up from their slumber after over ten years. It appears they are still dilly dallying and engaging in continuous attempt to further delay the expeditious determination of this case. The Respondent has since served the Applicants with their counter affidavit which referred to the irregularity of the document purportedly filed as statement of defence. However, the Applicants remained silent and chose not to take any steps to regularise same up until this moment.

TheApplicantswould not be encouraged to hold the Court and other parties to ransom by their continuous delay of this action. It is elementary that the rules of natural justicecontemplates a fair hearing within reasonable time, hence the phrase'Justice delayed is Justice denied'. See**OBASI V. STATE (2020) LPELR-51080(SC)**.

See also **NNAJIOFOR & ORS V. UKONU & ORS (1985) LPELR-2056(SC) AT PP. 41 – 42 PARAS. F-A** where the Supreme Court held that whereas reasonable delay may be unavoidable (if parties are to be given adequate time for the preparation and presentation of their cases) and may not always amount tothe maxim 'justice delayed is justice denied', inordinate and inexcusable delay is repugnant to the concept of fair hearing.

A continuousdelay in this circumstances is most unacceptable if proper and cogent explanation is not provided.

There is no law or rule of court that arrogates fair hearing to only one party in an action. All parties, howsoever construed are entitled to fair hearing within reasonable time. The court can only create an enabling environment for fair hearing, it cannot however force the parties to take advantage of same. The Applicants in this case had sufficient time prescribed by the Rules of this Court within which to file their defence

and make their case (if they had any). They did not do so. They were accorded the environment for fair hearing by this Court but did not take advantage of same. Fair hearing simply means giving equal opportunity to the parties to be heard in the litigation before the court and where parties are given opportunity to be heard, they cannot complain of breach of fair hearing where they choose not to make use of the opportunity. – see the cases of **OGUNMOLA V. KIDA (2001) 11 NWLR PT. 726 P. 93**, **BILL CONST. CO. LTD. V. IMANI & SONS LTD. (2006) 19 NWLR PT. 1013 P. 1** and **S.C.E.N. V. NWOSU (2008) ALL FWLR PT. 413 P. 1399**.

The Applicants have prayed for order of extension of time to apply to set aside the order of this court and an order setting aside the said order.

It is trite that an application for extension of time even though usually unharmful is not granted just for the asking because it calls for the exercise of discretion by the Court. Discretion which is exercised judicially and judiciously and usually upon materials placed before the court. See **EGECHUKUWU V ONWUKA (2005) LPELR-6115(CA)AT PP. 48 – 50 PARAS. F-E**.

In the circumstance also, an order setting aside the order or judgment of a court requires a strong case to be established before it would be granted. See **AYUBA BANGUL V NGWAMA JINGI (2017) LPELR -432 70(CA) AT P. 13 PARA. A**.

In view of the lack of merit herein before already exposed in the prayers and contention of the Applicants, the application for extension of time and corresponding prayers to set aside the order ofCourt cannot be granted.

Suffice to say the Applicants prayers for extension of time and orders to set aside and reopen their case, file theirstatement of defence and open their defence ought to be refused and it is accordingly refused.

Regarding the prayer to recall the Respondent's witness and reopen the case, the law is that in civil actions, to grant or refuse an application to

recall a witness is a discretion which a court is expected to exercise judicially and judiciously, reluctantly and with great circumspect. – see**WILLOUGHBY V. I.M.B. LTD. (1987) 1 NWLR PT48 P. 105** and**ONWUKA V. OMOLEWA (2001) 7 NWLR PT. 713 P. 695 AT P. 713 PARAS. E-F**. It thus behoves the Applicants in the instant case, who are seeking to reopen the Respondent's already closed case and recall its witness, to show good and cogent reasons why this Honourable Court ought to exercise its discretion in favour of granting their application. – see the cases of **NEBO V. FCDA (1998) 1 NWLR PT. 574 P. 480** and **ONWUKA V. OWOLEWA (SUPRA)**.

It is settled law that a party seeking to have a witness recalled must supply the Court with good enough facts as to why he wants the witness recalled and particularly what questions he intends to ask the witness. It is only when these are done that the trial Judge may exercise his discretion to grant the application. – See **WILLOUGHBY V. I.M.B. LTD. (SUPRA)** and**MUSA V. DALWA(2010) LPELR-9154(CA) AT PP. 8 – 9 PARAS. C-D**.

In the instant case, the Applicants had the opportunity to cross-examine the Respondent's witness when he testified. Through their own fault, the Applicants did not make use of the opportunity by being present in court to cross-examine the witness who had been made available. The witness was thus accordingly discharged from the witness box from giving any further evidence. I have perused the Applicants' affidavit in support of the instant application. Aside of simply wanting another bite at the proverbial cherry, the Applicants have not indicated why it is absolutely necessary to recall the Respondent's witness for the purported cross-examination. What issues or questions are so important that it becomes imperative for this Court to recall the said Respondent's witness who has hitherto been discharged for the purpose of cross-examination? The Applicants have not placed the necessary facts or materials before this Court to enable it exercise its discretion in their favour by granting an order recalling the Respondent's witness. The Applicants who have that duty to convince the Court to exercise its discretionary power in their favour have failed in their duty. The prayer to recall Respondent's witness must thus be refused in the circumstances.

In the light of the foregoing therefore the instant application of the 1st - 3rd Defendants/Applicants is found to be entirely devoid of merit, it is refused and hereby accordingly dismissed.

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Honourable Justice M. E. Anenih

APPEARANCES:

Adetola Olulenu Esq appears for the Plaintiff/Respondent.

J.D. Elogun Esq appears for the 1st, 2nd and 3rd Defendants/Applicants.

R.O. Mohammed (Ms) appears with A.K. Titilola (Ms) for the 4th Defendant/Respondent.

M.I. Tola Esq appears for the 5th Defendant/Respondent.