

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ON THE 16TH DAY OF MARCH, 2022
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/2750/16

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

MR. DAVID AIYEDOGBON.....CLAIMANT

AND

MR. EMEKA UGWUONYE.....DEFENDANT

RULING

The Defendant's 1st application is M/6666/21. It is dated 11/10/21.

It prays the Court for:

- (1) An Order granting leave to the Applicant to continue and conclude Cross-examination of the Claimant.
- (2) An Order of Court granting leave to the Applicant to Cross-examine other Witnesses called by the Claimant.

The resume of the facts as deposed to by the Applicant in support of his application is that he had some case at the two Magistrate Courts and the High Court of the Federal Capital Territory. That his long detention in both the Police cells and Prison at the goading of the Claimant in this suit affected his livelihood and career as a lawyer. That he is in the best place to defend himself. That he conducted

Cross-Examination of the Claimant and was to continue before his incarceration.

That as a result of his forced absence orchestrated by the Claimant, he was not able to cross-examine the Witnesses called by the Claimant. That it will be harmful to his case if he does not have the opportunity to cross-examine witnesses called by the Police. The Claimant's Counsel relies on his 7 paragraph Counter Affidavit dated and sworn to by Florence Abu on 7/12/21.

I have read same and considered the Written Addresses of Counsel. This is a 2016 case. The Claim of the Claimant against the Defendant is for N10 Billion being aggravated damages for damage to his reputation and character.

And an injunction restraining the Defendant, agents, privies from making further defamatory publications against the Claimant and his family members.

The Defendant was served. The Claimant opened his case on 8/03/18 and gave evidence as PW1. The Defendant was not in Court and was not represented. The Court adjourned for Cross-examination.

On the adjourned date which was 16/05/18, the Defendant appeared in person. He cross examined the PW1. The Court took 8 pages of the Cross-examination. The case further adjourned to 28/06/18 for continuation.

On the said date, the Court still recorded 6 pages of proceedings in respect of the Cross-examination of PW1 by the Claimant. It was further adjourned to 25/10/18 for continuation of Cross-examination.

On 25/10/18, the Defendant further cross-examined for about one hour. The Court had a hand written record of about 3 pages when he asked for an adjournment to further cross examined the PW1 relying on Section 36 of the 1999 Constitution. The Court delivered a considered Ruling.

It was apparent the Defendant's intention was to frustrate the trial. Most of the questions are a repetition of previous questions. The Court ordered him to continue with Cross-examination of PW1 and Claimant said "***I cannot continue with Cross-examination***". The Claimant's Counsel applied that the Defendant be foreclosed. The Court granted the Order.

On the next date of adjournment which was 24/01/2019, PW1 gave evidence. The Defendant was not in Court neither was he represented. It was further adjourned to 28/02/19. He was served with Hearing Notice but he failed, neglected and or refused to attend Court. He was foreclosed from Cross-examining PW2. PW3 was a subpoenaed

witness. The case was adjourned to a further date to enable Claimant cross examine the witness.

On the adjourned date 9/10/19, one Peter Ugwuoke appeared for the Defendant. He said he had just been briefed. That the Defendant was in Prison Custody. He asked for an adjournment. The Court obliged.

On the adjourned date, another Counsel appeared for the Defendant named Obinna Aniorha. The Counsel refused to Cross-examine and was foreclosed.

This is 2022, the Defendant failed to file a defence. The Defendant has not put anything to show he was in incarceration or was arraigned before some Courts. The assertions in his Affidavit are bereft of proof. The Defendant was given all the opportunities to cross examine the witness. The Defendant stretched his right beyond the limit provided by law.

The application to recall witness is in bad faith. The Defendant will not be allowed to use his legal knowledge to frustrate and oppress. The application lacks merit and it is dismissed.

The 2nd application is dated 14/10/21. It is seeking for an extension of time within which the Defendant shall file a Statement of Defence.

(2) Deeming Order.

Learned Counsel relies on the 18 paragraph Affidavit. He also adopted his Written Address. He canvasses that it is the fundamental duty of the Court to ensure fair hearing in every case. That it is the constitutional right of the Applicant.

The Defendant was served with the Writ of Summons and all other Originating Processes on 21st November 2016. He was given 30 days within which to file a defence. Three years after he attended Court but failed, refused and or neglected to file a defence.

By order 56(d) of the Rules of Court, where a party defaults in filing any Court process other than a Memorandum of Appearance within the time prescribed under the provisions of these rules such party shall pay the sum of N200 for each day of default.

The law is that every application for enlargement of time such as this application shall be accompanied by proof of compliance with Rule 1 of this order. There is no such proof of compliance. The application is therefore incompetent. It is accordingly dismissed.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
16/05/22

