

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/9048/2010

BETWEEN:

- 1. USMAN ADAM**
- 2. MOH'D ADAM.....APPLICANTS**

VS

- 1. MBANEFO & BROTHERS (NIG) LTD**
- 2. MR. JOHN CHIBUZOR.....RESPONDENTS**

RULING

By a Motion on Notice dated 24/11/2020 and filed same day, Claimants/Applicants herein prays the court for the following reliefs.

- (a) An Order of Court setting aside its order made on 19/3/2020 awarding the cost of Twenty-Five thousand Naira against the Claimants/Applicants in this suit.
- (b) And for such further order's as the court may deem fit to make in the circumstance.

In support of the application is a 15 Paragraph affidavit sworn to by James Okoroafor. Also filed is a Written Address in compliance with the Rules of Court.

The process was served on the Defendants, but they failed and/or neglect to react to the process. It is deem unchallenged and uncontroverted. It is trite that the court can accept the facts containing in the affidavit as true and correct and act on it. See C.B.N VsIgwilo (2007).

In the written of the Applicants settled by Okoroafor James Esq. only one(1) issue was formulated for determination, which is;

“Whether there is a reasonable ground for the grant of this application in the light of facts placed before the court”

And submits, relying on judicial authorities cited and the Rules of Court, that the essence of the Rules are not meant to punish a litigant for mistake of Counsel. That in this instance has stated succinctly in the affidavit in support that Applicants explained away, why he was not in court and communicated the facts to the Defendant Counsel and to court clerk via Sms, but rather than given the court appropriate information, the Defence Counsel misled the Court and consequently led the court to grant of request of Counsel in the award of cost. Therefore, urge the court to set aside this order of cost, as this is a case were Defence Counsel in seeking to take undue advantage of Applicant. Finally urged the court to note that since the Commencement of this trial, the Claimant/Applicant Counsel has been diligent in his appearance in court during trial.

I have carefully considered this instant application, the unchallenged affidavit evidence and the judicial authorities cited; the court finds that only one(1) issue calls for determination;

“Whether the Applicant has placed before the court, sufficient facts to warrant the grant of the reliefs sought”

The grant of otherwise of an application of this nature is at the discretion of the court and in exercising of that discretion; courts are enjoined to exercise it judicially and judiciously. To be able to do so, the Applicant must before the court sufficient facts to rely on. See Case of AnachebeVsIjeoma (2015) All FWLR (PT. 784) 183 @ 195 Para D – F. Supreme Court held;

“The discretion vested in court is required to be exercised judicially and judiciously, it entails the application of legal principles to relevant facts/materials to Answer at a just/equitable decision. It is thus, not an indulgence of a judicial whim, but to the exercise of judicial judgment based on facts and guided by the law or equitable decision”

In this instance application, the facts relied on by the Applicants for the grant of this application are as stated in Paragraphs 3 - 14 of the supporting affidavit.

On the other hand, the Defendant failed to react to the facts. This court has stated the position of the law and will act on it.

I have carefully perused the facts and taken notice of the history of this case since its commencement, and find that indeed the Claimant Counsel has always been diligent in his appearance at every trial date. More importantly, the reasons stated for Claimant inability to be in court on the date the court made the said order, are in the court’s firm view cogent

enough. The Defendant Counsel who was sent the Sms of Claimant Counsel predicament hides this fact from the court.

Having so found, the court holds that this is an occasion, in line with the law and the Rules where it can exercise that discretion in favour of the Applicant.

Accordingly, this application has merit and succeeds. It is hereby ordered that, the order of court made on 19/3/2020, in awarding cost of Twenty-Five Thousand Naira against the Claimant, is hereby set aside. I so hold.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

17/1/2022

APPEARANCE:

OKOROAFOR JAMES FOR THE CLAIMANTS/APPLICANTS

NO APPEARANCE FOR THE DEFENDANTS/RESPONDENTS