

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
HOLDEN AT ABUJA**

**THIS MONDAY, THE 24<sup>TH</sup> DAY OF JANUARY, 2022**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**SUIT NO: FCT/HC/CV/2207/16  
MOTION NO: M/538/2022**

**BETWEEN:**

**AFRICAN HEART HOSPITAL LTD .....CLAIMANT/RESPONDENT**

**AND**

- |   |   |                                    |
|---|---|------------------------------------|
| <b>1. FEDERAL CAPITAL DEVELOPMENT<br/>AUTHORITY</b>   | } | <b>DEFENDANTS/<br/>APPLICANTS</b>  |
| <b>2. HON. MINISTER OF THE FCT</b>  |   |                                    |
| <b>3. SAMUEL BAKO</b>   | } | <b>DEFENDANTS/<br/>RESPONDENTS</b> |
| <b>4. TANKO BAHAGO</b>  |   |                                    |
| <b>5. ELISHA SHEKWAGU</b><br>(the 3 <sup>rd</sup> , 4 <sup>th</sup> and 5 <sup>th</sup> Defendant for themselves and<br>On behalf of the indigenes of Piwoyi Village, FCT,<br>Abuja.) |   |                                    |

**RULING**

By a Motion on Notice dated 20<sup>th</sup> January, 2022, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants pray for the following reliefs:

- 1. An Order of this Honourable Court striking out the Claimant/Respondent's Amended Writ of Summons dated 4<sup>th</sup> December, 2019 and other accompanying processes as same is incompetent and filed in disobedience to the Rules of this Honourable Court.**

**2. And for such further Orders as this Honourable Court may deem fit to make in the circumstances of this case.**

**GROUND UPON WHICH THIS APPLICATION IS BROUGHT ARE AS FOLLOWS:**

- i. The Claimant/Respondent vide a Motion E-parte sought an order of this Honourable Court for the Amendment of the Writ of Summons dated 21<sup>st</sup> July, 2016 by substituting the 3<sup>rd</sup> Defendant i.e. Chief John Bigata (the Head Chief of Piwoyi Village, for himself and on behalf of the indigenes of Piwoyi Village, FCT, Abuja) with Samuel Bako, Tanko Bahago and Elisha Shekwagu (The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants for themselves and on behalf of the indigenes of Piwoyi Village, FCT, Abuja) consequent on the demise of the 3<sup>rd</sup> Defendant.**
- ii. By an Order of this Honourable court dated 31<sup>st</sup> day of October, 2019, this Honourable Court forthwith granted the Order for the Amendment of the Writ of Summons.**
- iii. That pursuant to the provisions of Order 25 Rule 4 of the High Court of the Federal Capital Territory Civil (Procedure) Rules, 2018, a party who has obtained an order to amend is mandated to file the Amended Process within the period as ordered by the court, or where no time is limited, then within 7 days from the date of the order.**
- iv. That the Claimant/Respondent in the instant case filed the Amended Writ of Summons on the 4<sup>th</sup> day of December, 2019; a period of 34 days from the day of the Order of Court and there is nothing before this Honourable Court to show that the Claimant/Respondent regularised the said Amended Writ of Summons.**
- v. Rules of Court are not mere technical rules. They partake of the nature of subsidiary legislation by virtue of Section 18 of the Interpretation Act. Consequently, rules of court have the force of law.**
- vi. Hence, the Claimant/Respondent's instant Amended Writ of Summons having been filed outside the period stipulated by the Rules of this noble court is therefore grossly incompetent.**

**vii. That the Claimant/Respondent's instant Amended Writ of Summons is frivolous and a gross abuse of judicial process and same is liable to be struck out by this Honourable Court.**

**viii. In consequence of the foregoing, the Claimant/Respondent's Amended Writ of Summons is manifestly incompetent and this Honourable Court lacks the jurisdiction to entertain same.**

**ix. It is in the interest of justice to grant the instant Application.**

The application is supported by an 8 paragraphs affidavit and a written address. In the address, one issue was raised as arising for determination as follows:

**“Whether giving the circumstances of this instant case, the claimant/respondent's Amended writ of summons is competent before this Honourable Court?”**

Submissions were made on the above issue which forms part of the Record of Court. The summary of the submissions is that this court granted an Order on 31<sup>st</sup> October, 2019 allowing the Amendment of the writ of summons of plaintiff. That by the provision of **Order 25 Rule 4 of the Rules of Court**, they were expected to file the Amended process within seven (7) days from the making of the order if no time was streamlined by the order of court as in this case.

It was contended that the plaintiff failed to file the Amended writ of summons within 7 days as allowed by the Rules which rendered the entire writ of summons defective and liable to be struck out.

At the hearing, **Olalekan Bosede** of counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants/applicants relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in urging the court to strike out the extant action.

Olaitan D. Ajayi who appeared for the 3<sup>rd</sup> – 5<sup>th</sup> defendants/respondents left the matter to the court's discretion.

In opposition, counsel to the plaintiff/respondent, **G.N. Chigbue** did not file any process in opposition but urged the court to dismiss the application as completely bereft of merit and in doing so to rely on its records particularly the proceedings of 8<sup>th</sup> March, 2021 where this court granted an order extending

time to file the writ of summons and deeming same as properly filed and served. He further added that the 1<sup>st</sup> and 2<sup>nd</sup> defendants were represented by counsel on the day the application was granted and they did not oppose the application.

I have carefully considered the submissions on both sides of the aisle. The narrow issue is simply whether the Amended writ of summons of plaintiff was filed within time as allowed by the Rules?

Now it is true that on the Record, the plaintiff obtained an order Amending the originating court process on 31<sup>st</sup> October, 2019.

From the records, the court did not define or streamline a time frame to file the Amended originating process. By the provision of **Order 25 Rule 4 of the Rules**, the plaintiff was then expected to file the Amended process within 7 days. The Applicants contention here is that the plaintiff did not file the Amended process within seven (7) days thereby rendering the action as presently constituted incompetent.

On the other side of the aisle, the plaintiff stated that on the Record, this court granted an order regularising the process on 8<sup>th</sup> March, 2021.

The task before the court is simple and that is to situate what the Record provides. Yes it is correct that the plaintiff did not file the Amended process within seven (7) days after the order for Amendment was obtained but it is equally correct that on 8<sup>th</sup> March, 2021, the plaintiff file an application extending time to file the Amended originating court process which were filed out of time and to deem same as properly filed and served and the court **granted the application**. Indeed from the Record, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were duly represented by counsel on the said date and no objection was raised to the application.

The bottom line is that the Amended originating process was properly regularised by order of court. It is clear that the extant application has no foundation to stand and completely undermined.

On the whole, the application lacks merit and is accordingly dismissed.

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**Hon. Justice A. I. Kutigi**

**Appearances:**

- 1. Godwin N. Chigbue, Esq., for the Plaintiff/Respondent.**
- 2. Olalekan Bosede, Esq., with Aisha Mohammed for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants.**
- 3. Olaitan D. Ajayi, Esq., holding the brief of M.M. Hirse, Esq., for the 3<sup>rd</sup> – 5<sup>th</sup> Defendants.**