

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER : HIGH COURT NO. 14**

**CASE NUMBER : SUIT NO: CV/531/2018**

**DATE: : THURSDAY 10<sup>TH</sup> FEBRUARY, 2022**

**BETWEEN**

**PHARMACIST (MRS)IFEYINWA CLAIMAN/  
GRACE OHIAERI RESPONDENT**

**AND**

**1. THE HON. MINISTER OF FCT DEFENDANTS/  
2. FED. CAP. DEV. AUTHORITY APPLICANTS  
(FCDA)  
3. MR. INECHIOMA CHRISTIAN DEFENDANT/  
RESPONDENT**

# **RULING**

Pursuant to Order 9 Rule 1, Order 15 Rule 2 of the FCT Civil Procedure Rules, 2018, 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants approached this court for the vide a motion dated the 21<sup>st</sup> October, 2021 and filed on the 25<sup>th</sup> October, 2021 for the following reliefs:

- i. An Order of the Honourable Court granting leave to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants to file their memorandum of appearance, statement of defence, witness statement on oath and other necessary pleading documents out of time.
- ii. An Order of the Honourable Court deeming the memorandum of appearance, statement of defence, witness statement on oath and other

pleading documents against Claimant's originating process, filing fee having being paid.

iii. And for such further Order(s) as this Honourable Court may deem fit in the circumstances of this case.

In support of the application is a 4 paragraph affidavit deposed to by SaiduWodi.

It is his deposition that the case file was given to one Yusuf BolajiAbdulrahaman Esq. to handle and that subsequently, the file was retrieved from him and added to the case file to be firm out by the legal services secretariat.

That it was recently the legal services secretariat through the litigation department reverted the said file and others to the counsel to handle.

That not until 27<sup>th</sup> of September, 2021 when the hearing notice was served on the secretariat and same was forwarded to the said counsel that other earlier filed processes by the Claimant were included.

That the delay in filling the necessary pleadings by the Defendants is not intentional and neither to look down on the court but due to the administrative red – tapism in the legal services secretariat of the FCTA.

That allowing the Defendants to file their memorandum of appearance, statement of defence and witness statement on oath out of time will not in any way affect the case of the Claimant nor change the substance of the case rather it will aid in comprehensive grapple of the case by the court and

quick and speedy dispensation of the case without unnecessary delay.

In compliance with the Rules of this Court, learned counsel filed a written address wherein a sole issue was raised for determination to wit;

***“Whether this Honourable Court has power to grant this application?”***

Learned counsel maintains that for justice of this matter which the court stands for at all time to be achieved the Defendants need to be heard. The court always makes sure its discretionary power is judicially and judiciously. ***ACHI VS EBENIGBE & ORS (2013) LPELR – 21884 (CA);***

***POROYE & ORS VS MAKARFI & ORS (2017) LPELR – 42738 (SC) were cited.***

Counsel urged the court to consider this application as prayed and exercise her discretionary power in granting same.

In reply to the Motion on Notice, Claimant/Respondent filed a counter affidavit of 3 paragraph dated the 27<sup>th</sup> day of October, 2021 duly deposed to by Evelyn Aroh.

It is the deposition of the Claimant/Respondent that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, from the affidavit of service of the originating processes in the courts file were served with the Claimant's originating processes on the 14<sup>th</sup> March, 2019 over two years ago, and have been consistently served with all hearing notices in this case, such that on the 10<sup>th</sup> December, 2020, they were foreclosed from cross – examining the Claimant as PW1, while PW2 gave

evidence in the presence of their counsel, was discharged and Claimant closed her case and the matter set down for the Defendant.

That having regard to Exhibit “A” that the Claimant who comes all the way from Enugu to seek justice and who diligently obey the rules of this court and expends to diligently put the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on notice to defend this suit, until she closed her case after over two years of putting the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on Notice will be gravely prejudiced if this application is granted.

In compliance with the rules of this court, learned counsel filed a written address wherein two issues were formulated for determination to wit;

- a. Whether prima – facie, the application is competent and not an abuse of court process

having regard to all the facts and circumstances of this case?

- b. Whether this instant application is meritorious so as to enable this Honourable Court grant same?

Arguing on issue one, learned counsel submits that the instant motion is fundamentally and irredeemably incompetent, an abuse of Court process and that the court lacks the jurisdiction to entertain same.

It is settled law that the relief for extension of time, in the light of the facts of this case goes to issue of jurisdiction. ***SANUSU VS AYOOLA (1992) 9 NWLR (Pt. 265) Page 275;***



***FEDERAL POLYTECHNIC IDAH VS ONOJA (2012) 12 NWLR (Pt. 1313) Page 72 at Pages 93 - 94 Paragraphs E-C were cited.***

Counsel further submits that where there is no application, praying the court for requisite leave, the court cannot unilaterally accept the filed application and /or act on it as this court cannot grant what is not prayed for. ***JIM JAJA VS COP RIVER STATE & ORS (2012) LPELR 20621 (SC) PAGE 18 -19 Paragraphs G-A;***

***NIGERIA AIR FORCE VS SHEKETE (2002) 12 SCNJ 35 at 5253 were cited.***

Counsel further submits that is a well settled law that a process filed outside the statutory period without the leave of court is incompetent and a court lacks jurisdiction to hear it. ***SANUSI VS AYOOLA (1992)***

*9 NWLR (Pt. 265) page 275 at page 300 paragraphs A-E was cited.*

Learned counsel submits that Order 9 Rule 5, Order 49 Rule 5 and Order 56 Rule 1(1) and 10 of the Rules of this Court, prescribed mandatory penalties which must be paid by party in default of timeline for filing any process in court. Thus, the Defendants/Applicants have not done. They have not paid penalty for two years and six months they are out of time, apart from failing to pray for extension of time.

On issue 2, Counsel submits that sequel to the deposition contained in the affidavit evidence before this Court, the Applicants have not laid cogent and verifiable facts warranting their inability to comply with the Rules as it specifically relates to the filing

of their processes in response to this suit, outside the prescribed statutory period. All that are contained in the affidavit are speculative stories of their house arrangement which have not set out timelines.

Counsel submits further that where a party to a suit has been accorded reasonable opportunity of being heard and for no justifiable or cogent reason, neglects to attend sittings of the court, he is thereafter deemed to have abandoned his case and cannot complain of breach or denial of fair hearing.

***AUDU VS INEC (NO. 2) 2010 13 NWLR (Pt. 1212) Page 456 at 546;***

***NEWSWATCH COMMISSION LIMITED VS ATTAH (2006) NWLR (Pt. 998) 146.***

On the whole counsel urged the court to resolve the issues against the Applicants and dismiss the application.

**COURT:-**

I have considered all the process filed with respect to the application under consideration. From the totality of legal argument proffered by both learned counsel for the Claimant and the Defendants for and against the application, who then has the benefit of the law?

Can the Applicants find shelter in law and or equity or both? I shall be brief but exhaustive in dealing with the above posers.

Equity is a source of law which has always retained the characteristics of infusing elements of fairness or Justice into the legal system as a whole by the very process of mitigation of strict legal rules.

The principle of equity, as recourse to principal of Justice to correct or supplement the rigidity of the common law, possessing the quality of mercy with their palliative and soothing herds, are not only for one of the parties in the litigation, but for all the parties.

Much as the Defendants/Applicants needs the principles of equity to aid them, so do the Claimant/Respondent. ***OGBEDE VS OSIFO (2007) Vol. 37 WRN 61 at 79- 80 lines 25 -15.***

It must be realised that the aim of filing statement of defence, witness statement on oath and written address in court is primarily to save time and obviate unnecessary delay in the administration of Justice. The reverse certainly is the end result if an order to file address is made according with law and

procedure and failure to file is obviously a measure meant to delay case.

The processes are not directed at the court alone, the purport of the address by a party is to let the court and his adversary known what his summing up is on the facts and the law as revealed by the evidence before the court. Therefore denied a party to file an address with definitely occasion injustice.

I must state here that the primary duty and objective of the court in the exercise of its discretion must be to attain substantial Justice. The interest of both parties must be considered along with peculiar facts and circumstance of the case in order to arrive at a just and fair decision. That is when the court can truly be said to have exercised its discretion both

judicially and judiciously in accordance with establish principle of law.

***KASUMU VS SHITTA BAY (2007) ALL FWLR (Pt. 356) 741 at 783-784 Paragraph G-A.***

Justice is not a one way traffic, nether it is for the highest bidder, it is always for the prudent and diligent litigant who is also vigilant.

***EDOZI JSC (as he then was) in BASHIR MOHAMMED DALHATU VS IBRAHIM SAMNU (2003) 7 SC1.***

On the whole, I find the argument of learned counsel for the Claimant/Respondent intelligently packaged and succinctly presented than that of the Defendants/Applicants. But regrettable for reasons advanced on the body of this ruling i.e interest of

Justice, I shall reluctantly allow this motion and dismiss the argument of the Claimant/Respondent.

Consequently, Reliefs 1 and 2 as endorsed on the Motion on Notice are hereby and accordingly granted.

Above is the ruling of this court.

*Justice Y. Halilu*  
*Hon. Judge*  
*10<sup>th</sup> February, 2022*

**APPEARANCES**

Arome Joseph, Esq. holding the brief of Josiah Daniel E., Esq.- for the Plaintiff.

Yusuf Bolaji A., Esq. – for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

3<sup>rd</sup> and 4<sup>th</sup> Defendants not represented in this matter.