

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT:28

DATE: 21ST FEBRUARY, 2022

FCT/HC/GWD/CV/126/21

BETWEEN:

OLUSEUN OLUMIDE FADELE-----

APPLICANT

AND

ECONOMIC AND FINANCIAL CRIMES COMMISSION-----

RESPONDENT

RULING

The Applicant in this motion on notice No: M/9264/ 2021 dated and filed on the 15th December, 2021 prays the Court for the following:-

1. An order of this Honourable Court extending time within which the Respondent/Applicant may file and serve the following:-
 - a. Respondent/ Applicant's memorandum of appearance.
 - b. Respondent/Applicant's counter affidavit to the Applicant's or originating summons and written address in support of the said counter affidavit .
2. An order of this Honourable Court deeming as properly filed and served the following process already filed and served by the Respondent/Applicant to wit.
 - a. Respondent/Applicant's memorandum of appearance.

- b. Respondent/Applicant's originating summons and written address in support of the said counter affidavit.
3. And for such order or further orders as this Honourable Court deems fit to make in the circumstances of this case.

In support of this application the Applicant filed a 6 paragraph affidavit and a written address all dated the 15th December, 2021.

The affidavit relied upon by the Respondent/Applicant was deposed to by one Samson Oloje of Economic and Financial Crimes Commission(EFCC) Plot 301/302 Research and institution District Jabi, Abuja, and contains among others the following facts:-

1. That the deponent is a litigation secretary of Economic and Financial Crimes Commission (EFCC) and thus is conversant with the facts of this case from personal knowledge and information received in the course of work.
2. That he was assigned to handle this matter on the 10th December, 2021 and believes the following information to be true.
 - a. That the Respondent/Applicant was served with the Applicant/Respondent's motion for the enforcement of the fundamental rights of the Applicant and other processes on the 12th November, 2021.
 - b. That the matter was assigned to Lamin Esq but he was already out of jurisdiction.
 - c. That Lamin Esq realized that by the time he came back to the Jurisdiction the time within which to file the counter affidavit had already elapsed hence he was out of time.

- d. That Lamin Esq right away then prepared a memorandum of appearance and counter affidavit and a written address in opposition to the Application, all of which have been filed before this Honourable Court.
- e. That failure to file the memorandum of appearance and other processes within the stipulated time was not out of disrespect to the Court but due to circumstances beyond the Counsel.

In Respondent/Applicant's written address, a Sole issue was raised for determination, which is " *whether this Honourable Court has the power to grant the orders prayed for on the face of motion paper*"

Respondent/Applicant relied on order 49 Rule 4 of the High Court of the FCT (civil Procedure) Rules 2018 and order 11 of the Fundamental Rights Enforcement procedure Rules these provide for extension of time and enforcement of an individual's human rights respectively.

Respondent/Applicant also relies on the case of ***ABUBAKAR V CHUS (2007) 18 NWLR (pt. 1066) 386 PG 422 paragraph B-F, and AMAECHI V INEC (2007) 18 NWLR (pt1065) page 170 and one other.***

There was no objection in Court from opposing Counsel. Order 49 (4) of the federal High Court Rules which respondent/Applicant relied upon provides thus:-

"The Court may, as often as he deems fit and either before or after the expiration of the time

appointed by these rules or by any judgment or order of the Court, extend the time or adjourn for doing any act or taking any proceedings'

Also, in the case of ***AUTO IMPORT EXPORT V ADEBAYO (2002) 18 NWLR (pt 799) 554 at 584-585***, Tobi, JSC opined thus:-

"Rules of Court provide for the period or time within which a Court process should be filed and the rules expect parties to file the process within the period or time stipulated. Because of human failings, exigencies and contingencies, there could be situation where a Court process is not filed within the period or time stipulated by the rules Rules of Court anticipate such situations and make provision for extension of time within which a Court process could be filed. The rules allow a party in default to file a Court process out of time if he seeks leave"

See also the case of ***EMERALD ENERGY RESOURCES LTD V SIGNET ADVISORS LTD (2020) LEPELR 51385 (CA) and ABUBAKAR V CHUKS (2007) 18 NWLR (pt 1066), 386***.

Finally, as cited by Respondent/Applicants, it was held in the case of ***NBN LTD VARE BROTHERS NIGERIA LTD (1997)6 SC at Page 107*** , that

"The Court has an inherent jurisdiction to extend time in any given case with a view to avoidance of

in justice to the parties upon the application of a party in default.”

In addition to this, there was no objection from opposing Counsel, and it would be in the interest of justice to grant this application and also deeming the processes properly filed and served, accordingly I hereby grant the prayers. The attainment of substantial justice is the general position of our law.

HON. JUSTICE M.S IDRIS
(Presiding Judge)
21/2/ 2022