

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

Date:- 30th MAY, 2022

SUIT NO:- CV/3126/2017

MOTION NO:- M/3400/2022

BETWEEN

**PAUL NATHANIEL DANGANA (SUING THROUGH
HIS LAWFUL ATTORNEY KAYODE OJO PLAINTIFF/RESPONDENT
AND**

ALHAJI BUKAR BAMA REDOX DEFENDANT/APPLICANT

RULING

The Defendant by a Motion on Notice dated 16th March,2022 and filed on 17th March,2022 brought this Application pursuant to **ORDER 49 RULE (4) OF THE FCT HIGH COURT (CIVIL PROCEDURE) RULES, 2018, SECTION 36(1) OF THE CONSTITUTION OF FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED) AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT** praying this Honourable Court for the following Orders:-

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1. **AN ORDER FOR LEAVE** extending time within which the Applicant may file and serve out of time his Statement of Defence, Witness Statement on Oath and other attachments, permitted time to file same having expired.
2. **AN ORDER** deeming the already filed Statement of Defence, Witness Statement on Oath and other attachments as properly filed and served on the Respondent, the appropriate fees having been paid.
3. **AND FOR SUCH FURTHER OR OTHER ORDERS** as this Honorable Court may deem fit to make in the circumstance of this case.

The Application was supported by a 5 paragraphed Affidavit deposed to by one **Jane Agbo**, of suite 47, 1st Floor, Trinity House, Mabushi, FCT Abuja. **Attached to the Statement on Oath are two (2) Annexures marked Exhibits A and B.**

The Application is also accompanied by a Written Address in support of the Motion on Notice. Also filed in support of the Application is a Defendant's Address on the propriety of applying to file his defence after the close of Plaintiff's Case.

The Plaintiff/Respondent in response to the Motion on Notice filed an 18 Paragraphed Counter-Affidavit deposed to by one Grace Victor of suite C06, No. 35 Ajose Adeogun Street, Abuja. **Attached to the Counter-Affidavit are 2 Annexures marked Exhibit A & A1 respectively.** A Written Address is also attached in support of the Counter-Affidavit. The Plaintiff/Respondent also filed an address on the propriety of the Defendant's request for time to file a motion for extension of time to file Statement of Defence.

The Defendant/Applicant in their Written Address on the Propriety of Applying to file his defence after the close of Plaintiff's case raised a sole issue for determination to wit:-

"Whether this Court can grant the Application of the Defendant"

Conversely, learned Counsel for the Plaintiff/Respondent raised the following issues for determination to wit:-

1. Whether the Defendant's request to be given time to file motion for extension of time and file his statement of defence can be granted as a matter of course.

2. Whether the Defendant has placed material facts before this Honourable Court to entitle him to the grant of the request.

From the submissions of parties, the sole issue is whether from the circumstances of this case, the Defendant's application for extension of time to file his statement of defence and for deeming order on the statement of defence already filed and served should be granted.

Learned Counsel for the Defendant/Applicant had contended that this Court has enormous vires to grant the application of the Defendant notwithstanding the position and disposition of the Plaintiff. The Applicant states that the grant of the Application is an exercise of discretion which must be done judicially and judiciously.

Counsel to the Defendant/Applicant stated that it is trite that a court of law is bound to hear application that is in its file and decide on it one way or the other, even if it is brought late. Counsel to the Applicant also stated that the Plaintiff cannot succeed in urging the court to jump into the adoption of final written address and consequently deliver judgment especially now that a motion for hearing the other side is before the court.

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Counsel cited the case of ***NIGERIAN GERMAN CHEMICALS PLC V A.R.M.S LTD (2019) NWLR (PT 1651) 409.***

Counsel to the Applicant further submitted that for a matter that began De novo on 24th January,2022, it is only pertinent and substantial justice that the Defendant is allowed to come in and be heard to accord the rule of fair hearing – Audi Alterem Partem. Counsel cited the case of ***CHIEF MON OKPO & HRH AKANOWO & ORS (2003) 16 NSCQR 448 at 494-495.***

Counsel to the Applicant in summary submitted that the Plaintiff will not be overreached since issues are joined only on pleadings and the Plaintiff will have opportunity to cross-examine the Defendant's witness and even if he needs a reply to the Defence or opening of his case afresh. Counsel urged the Court to grant their application and allow the Defendant to enter his defence having placed before the Court materials upon which discretion could be exercised.

Arguing per contra, learned Counsel for the Plaintiff/Respondent submitted that as at the 14th February,2022 when the Defendant's Counsel made the request that this matter be adjourned to enable him file his statement of defence, that there

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was no motion filed before this Court for extension of time to file the said defence neither was there any statement of defence already filed for the Court to deem as properly filed and served. Counsel submits that this Court couldn't have adjourned for an act that was to happen in future and that will amount to this Court acting on speculation. Counsel cited the case of ***IKENTA BEST (NIG.) LTD V AG RIVERS STATE (2008) 6 NWLR. Pt. 1084. Pg. 612*** to the effect that this Court cannot act on speculation.

Counsel to the Plaintiff/Respondent contends that by the records of this Honourable Court, the defendant participated at all the stages of its trial. He filed motion for extension of time to enter appearance and file counter Affidavit, he filed is counter affidavit in opposition to the Plaintiff's application for interlocutory injunction and cross-examined all the Plaintiff's witnesses. Counsel submitted that for the Defendant not to have filed his motion to seek for extension of time to file defence before that 14th February,2022 is akin to asking this Court to act on speculation; and the law abhors this.

Counsel further contended that the grant or refusal of an application for extension of time to do an act is within the discretionary powers of this Honourable Court. However, such discretionary powers of this Honourable Court must be exercised judiciously and judicially. Counsel in buttressing the fact that this Court in exercising its discretion should bear in mind that the rules of this Honourable Court must prima-facie be obeyed, cited the case of ***ADEGBOLA & ORS V IDOWU & ORS (2017) NWLR (Pt. 1595) Pg. 353, (2017) LPELR-42105 (SC) (2018) All FWLR Pt. 944 at Pg. 777.***

Counsel to the Plaintiff/Respondent contended that the Writ of Summons in this case was filed and served on the Defendant on the 8th of November 2017 and under the 2004 rules of this Honourable Court. That the Defendant filed motion number; M/460/2017 wherein he sought the leave of the court to enter appearance which the Court granted. By Order 23 (2) of the 2004 rules of this Court, the defendant was required to file his statement of defence within 14 days from the date he was served with the Writ of Summons in the Suit which is 8th November 2017. And that by Order 15 (1) (2) of the 2018 rules of this

Court, the defendant has within 21days to file his statement of defence.

Counsel to the Plaintiff/Respondent contended that there was no material evidence before this Court as at 14th February,2022, that there is nothing before this Court for this Court to exercise its discretion over. Counsel to the Plaintiff/Respondent also stated that in the event this Court refuses the defendant's request, it will not amount to denial of the defendant's right to fair hearing. Counsel cited the case of ***OSUN STATE INDEPENDENT ELECTORAL COMMISSION & ANOR V ACTION CONGRESS & ORS (2010) 19 NWLR Pt. 1226 Pg. 273.***

Learned Counsel to the Plaintiff/Respondent also contended that granting the defendant's request to file his defence at this stage will be over reaching and occasion injustice on the Plaintiff because the Plaintiff will have to file his reply to the defendant's statement of defence, apply to reopen his case and then recall all his witnesses for purposes of giving additional evidence in support of the reply. That the Plaintiff has not told this Court why he did not file his defence alongside when he filed his Counter Affidavit in opposition to the Plaintiff's motion for interlocutory

injunction. That as a matter of fact, the same facts which constituted the defendant's counter affidavit should have constituted his statement of defence. That the only inference this Court will deduce from the action of the defendant is that the defendant does not have any defence to the Plaintiff's claim urging the Court to so hold.

Counsel to the Plaintiff/Respondent in summary urged the Court to refuse the Application of the defendant's Counsel as there is nothing for this Court to grant and it will occasion injustice particularly that it will be over-reaching on the Plaintiff.

I have considered the submissions of the parties. It is trite law that for an Application for extension of time to succeed, a party must provide convincing reasons for the delay which will enable the Court exercise its judicial discretion in his favour. See ***OROEGBU V OKWORDU (1990) 6 NWLR (Pt. 159) 643, Per Oputa JSC at pages 658, 660; and WILLIAMS V HOPE RISING VOULTARY SOCIETY (1982) 2 SC 145.***

This trite legal position was emphasized by the Court of Appeal in ***EZECHUKWU V ONWUKA (2005) LPELR-6115 (CA) Per Nzeakor, JCA,*** thus:-

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"An applicant seeking extension of time in order to successfully invoke the exercise of the discretion of the Court must adequately/satisfactorily explain the cause of the delay to act within time and proffer cogent and substantial reasons".

In the instant case, the Defendant/Applicant have deposed in the supporting affidavit of Jane Agbo, that the delay in filling defence was as a result of Counsel having a busy schedule in the office and courts and could not remember preparing and filling them . The deponent averred that the failure to file defence processes within time was also as a result of the Defendant/Applicant travelling for a long period of time to overseas and was not available to sign his Statement on Oath till he returned recently due to the Covid-19 restrictions. The deponent finally averred that it is in the interest of justice that the application be granted, the grant of which will not prejudice the rights and interest of the Plaintiff/Respondent.

The deposition in the counter-affidavit of Grace Victor however, were to the effect that Paragraphs 3b, c, d and 4 of the

Applicant's affidavit in support of the motion are not correct. It was also deposed that the Writ of summons in this suit filed on the 10th October, 2017 alongside the motion for interlocutory injunction was served on the Defendant in November 2017. That on the 13th of November 2017, the Defendant filed Motion No: M/460/2017 for extension of time to enter appearance and to also file his counter affidavit to the interlocutory injunction out of time. It was also deposed that the defendant personally deposed to the counter affidavit which he filed in opposition to the Plaintiff's motion for interlocutory injunction. That trial in this suit commenced and the Plaintiff had led 3 (three) witnesses in evidence before the trial Judge Hon. Justice A.B Mohammed (now JCA) was elevated to the Court of Appeal. Thereafter the matter was re-assigned to this Honourable Court for trial whereupon the matter started de-novo.

It was also deposed that from the commencement of trial in 2017 to the 14th February, 2022 when the Plaintiff closed his case that the defendant participated in all stages of trial and cross-examined all the plaintiff's witnesses, that the Defendant did not file his Statement of defence. It is also deposed that the

Defendant did not pay the penalty due in this motion, the said penalty being a condition that the Applicant must comply with in filing this motion. Also deposed is the fact that the Plaintiff has closed his case already and that if the application is granted, it will entail the plaintiff filling his reply to defence and recalling all his witnesses, his witnesses according to the deponent being out of jurisdiction will incur more hardship in transporting them down to Abuja and accommodating them in Hotels during the period of trial. The deponent finally averred that it will be in the interest of justice to dismiss the motion.

Although the above is what is revealed from the record of the Court, I am conscious of the fact that this application is brought when this suit is at the stage of the Defendant's defence. Hence, the Plaintiff had only just closed his case and the matter is for the Defendant to open his defence. This being the case, the Court will be reluctant to shut out the Defendant/Applicant from being heard, especially when they have already filed and served a Statement of Defence on the Plaintiff/Respondent which they now seek to regularize to enable them defend this suit.

The natural justice principle of audi alteram partem is so weighty a principle that a Court cannot close its eyes on it, especially in this case where the Defendant have put forward a Statement of Defence which they seek to regularize before opening their defence to this suit. Speaking on natural justice principle of audi alteram partem, His Lordship Rhodes Vivour, JSC held in ***MILITARY GOV. OF LAGOS STATE & ORS V ADEYIGA & ORS (2012) LPELR-7836 (SC)*** that:-

“Audi Alteram Partem means please hear the other side. A Judge should allow both parties to be heard and should listen to the point of view or case of each side before giving a decision. This is what fair hearing entails. (Page 57, paras. B-D)”

Underscoring this imperative of hearing both sides to a dispute, the Supreme Court, per Belgore, JSC (as he then was) stated thus in ***COUNCIL OF FEDERAL POLYTECHNIC, MUBI V YUSUF & ANOR (1998) LPELR-3168 (SC)*** :-

“In all the trials, whether judicial or administrative, the person against whom a

complaint is laid must be heard in compliance with the principle of audi alteram partem. This is the crux of S.33 of the Constitution of the Federal Republic of Nigeria, 1979 and always reflected in statutes where persons could be put on trial or investigated with possible consequence or reprimand and or punishment. For every accusation there must be a right to be heard. (Page 10, paras. E-G).

See also on this: **BILL CONSTRUCTION COMPANY LTD V IMANI & SONS LTD SHELL TRUSTEES LTD (2006) LPELR-782 (SC), Per Onnoghen, JSC at Pages 8-9, Paras. E-B; and EGHOBAMIEN & ORS V EGHOBAMIEN (SAN) & ORS (2008) LPELR-8551 (CA), Per Eko, JCA (as he then was) at page 20, paragraphs E-F.**

Indeed, it is trite that Courts of today are concerned with deciding matters on the merit, allowing each party ample opportunity to ventilate his/her case provided there will not be prejudice on the other party. See: ***AMAKO V THE STATE (1995) LPELR-451(SC), per Adio, JSC at page 13, paragraph. C-D; and***

AJUWA & ANOR V SPDC NIG. LTD. (2011) LPELR-8243(SC), per Fabiyi, JSC at page 40, paragraphs D-G.

In this case, I note that the reasons given by the Defendant/Applicant are not mutually exclusive since the Defendant has not clearly substantiated its reasons for not filing his Statement of defence within time. However, as this matter is for defence and the Defendant have filed a Statement of Defence which they now seek to regularize in order to defend the suit, the Court cannot close its eyes and proceed to shut out the Defendant from defending the suit. More so when the Defendant's right to defence has not been foreclosed and the matter is indeed at the stage of the defence of the Defendants. To do so, would seem to prevent the Defendant from being heard on their defence which they have already filed and served on the Plaintiff and are by this application seeking to regularize same. Rather, the Court will be predisposed to considering the concerns raised by the Plaintiff in allowing the Plaintiff reopen his case if he so desires.

It is in the light of the above that I resolved the sole issue in this case in the affirmative and hold that from the circumstances of

this case, the Defendant/Applicant's application for extension of time to file defence and for deeming order on the Statement of defence already filed and served should be granted.

Accordingly the application is hereby granted and it is hereby ordered as follows:-

1. An Order is hereby granted extending time within which the Applicant may file and serve out of time his Statement of Defence, Witness Statement on Oath and other attachments, the permitted time to file same having expired.
2. An Order is hereby granted deeming the already filed statement of Defence, Witness Statement on Oath and other attachments as properly filed and served on the Plaintiff/Respondent.
3. An order is hereby made that any penalty if any regarding the nonpayment of the prescribed fee must be made by the Applicant immediately.

It is pertinent in this ruling to add that this case is a transferred matter to this Court as stated above in this ruling. The Plaintiff have closed its case. The inability of the Defendant Counsel to

have filed this statement of defence timeously can be seen that the Defendant always travelled out of the country and also the particular issue of covid 19 all the above issues are not strongly and substantially a material facts to be considered when granting this kind of application nevertheless the Court cannot shut its eye in the interest of justice and fair play issue of fair hearing raised by the Applicant in his application is a relative term which consistently must always be looked into by the Court before adhering to the same. There is a serious limitation to that principle of law where either party failed to do the needful such party cannot complain of denial of fair hearing I have looked at the affidavit in support of the application and also the counter affidavit filed by the Claimant Counsel . I convincingly hold as stated above in this ruling full opportunity should be given to parties in the interest of justice without due regards to technicalities. Gone are the days when Court of law were only concerned with doing technical and abstracts justice based on arid legalism. These are the days when Courts of law do substantial justice in the light of the prevailing circumstance of a case. The days of the Court doings technical justice should not surface again see ***EKPENETUS VS OFEGBI suit No***

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CA/C/NAEA/2801/2011 also cited in (2012) is NWLR P. 279. See also **ABUBAKAR VS YAR ADUA (2008) 4 NWLR (pt1078) 465.** As a general rule, a breach of rule of procedure is regarded as an irregularity which can be corrected or remedied. In other word, when there is a breach of compliance by a party either in commencing a case or in defending one, the breach will not result in declaring the suit a nullity or declaring a defence closed because a wrong step was taken. The extent to which the well articulated judicial authorities cited above will certainly satisfy all the issues raised by both the Applicant and the Respondent in this ruling. Consequently based on the above stated reason I so hold and grant the application accordingly filed by the Defendant/Applicant.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Lawrence Erewele:- For the Claimant

S.N Mbaezue:- For the Defendant.

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