

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

THIS MONDAY, THE 28TH DAY OF MARCH, 2022.

BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

**SUIT NO: FCT/HC/CV/1443/2021
MOTION NO: M/7462/2021**

BETWEEN:

TRUB PROPERTIES LIMITED -----CLAIMANT/RESPONDENT

AND

AWWAL MOHAMMEDDEFENDANT/APPLICANT

RULING

By a Motion on Notice brought pursuant to Section 6(6) of the Constitution of the Federal Republic of Nigeria 1999 As Amended, Order 49 Rule 4 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and Under the Inherent Jurisdiction of the Honourable Court. The Defendant Applicant prays the Court for the following Orders:

1. AN ORDER of Court setting aside the order made by the Honorable Court on 13th October,2021, awarding costs in the sum of N70,000.00 (seventy thousand naira only) against the Applicant in this suit.
2. AN ORDER of Court extending the time within which the Defendant/Applicant may file and serve his statement of Defence in the suit.
3. . AN ORDER of Court granting leave to the Defendant/Applicant to file and serve his statement of Defence in this suit out of time.

4. AN ORDER of Court deeming the Applicant's Statement of Defence already filed and served, a copy of which is herewith attached as Exhibit A, as properly filed and served appropriate filing fees having been paid.
5. AND FOR SUCH FURTHER ORDER(S) as this Honorable Court may deem fit to make in the circumstances.

TAKE FURTHER NOTICE that the grounds upon which this application is brought are as follows:

1. The order was obtained through false information given to the Court by the Claimant, in that the Claimant did not have any witness in court as claimed by his counsel; the Claimant has only one witness on record, and one Mr. Chris Olang Ekpong who was present in court is not the claimant's witness on record.
2. The Applicant had filed his defence and notice of preliminary Objection which had already served same on the Claimant; the case could not have gone into hearing while the Notice of Preliminary was still pending.
3. Even if the Claimant had a witness in Court, record shows that the address of the Claimant's witness on court is 18, Umaru Dikko Street, Jabi, Abuja and not Uyo where the said witness was said to have come from.
4. Pleading in the case had not yet closed and the case was not yet ripe for hearing.
5. It is in the interest of justice that the said order FOR COSTS OF N70,000.00 made against the Applicant in the circumstances of this case be set aside.
6. Documents and materials for preparation of defence were not readily available to counsel to enable him prepare the Applicant's statement of defence and file same within time.

7. At the time the document and materials became available, the time allowed for filing defence had already elapsed and, at the time the Applicant's defence was ready, it was too close to the date fixed for hearing of the matter and there was no time left for counsel to confirm from Registry when applicant's time for default payment started running before filing the Applicant's Defence.
8. Applicant's Defence was filed out of time without leave and without paying default fees.
9. The default fee have now been ascertained and have been fully paid.

The motion is attached with an eight (8) paragraphed Affidavit deposed to by one Harrison A.Ajali an estate manager in the employment of the Defendant Applicant in this case. In compliance with the rules of this Court, the Applicant filed a written address as his legal argument in support of his application.

At the hearing of this Application the Defendant/Applicant Counsel adopted his written address and urged the Court to vacate the order of cost made on the 13th day of October, 2021.

I have listened to counsel for the Defendant/Applicant in this application, it is trite law that cost follows event the said order was granted in the circumstances of the facts before this Honourable Court to meet the justice of the case this court having exercised its discretionary powers in granting cost against the Defendant/Applicant. See the case of **CHIEF OBIOMA O. A. MGBOJI & ORS v. CHIEF C. B. C. AJUZIEOGU & ORS (2016) LPELR-40079(CA)** the court held thus:

The law is trite that a Court has discretion to award costs in favour of a successful party in any civil proceedings before the Court unless the loser is able to show special reasons or convince the Court that it ought not to award costs in the circumstance.

The Court concerned is also enjoined to act judicially and judiciously so that the cost will not be punitive.

It may also decide not to award costs. See: AKINBOBOLA V. PLISSON FSKO (1991) I SC (Pt 11) 1 and NNPC V. CLIFCO (NIG) LTD (2011) 4 SCM 194 AT 215 B-C where RHODES VIVOUR, JSC said thus:

The award of costs is entirely at the discretion of the Court, costs follow the event in litigation. It follows that a successful party is entitled to costs unless there are special reasons why he should be deprived of his entitlement. In making an award of costs, the Court must act judiciously and judicially. That is to say with correct and convincing reasons. See: Anyaegbunam v. Osaka (1993) 5 NWLR (Pt. 294) p. 449; Obayagbona v. Obazee (1972) 5 SC p. 247." Per IGE ,J.C.A (Pp. 45-46 paras. F)

I hold that the Court is *funtus officio* in this regard and cannot review its own orders having exercised its discretion judicially and judiciously I leaned my support with the authority of the case of **STABILINI VISINONI LIMITED v. MALLINSON & PARTNERS LIMITED (2014) LPELR-23090(CA)** where the court said:

Both parties are ad idem about the position of the law - costs follow the events, and the award or refusal of costs is at the discretion of the Court -see NBCI v. Alfijir (Mining) Nig. Ltd. (1999) 14 NWLR (Pt. 638) 176 SC, where it was held - "The award of costs or refusal to award costs is at the discretion of the Court, subject to the only qualification that the Court's discretion must be seen to have been judicially and judiciously exercised in this regard. - - Assessment of the amount allowed in terms of an award of costs is the responsibility of the Court - - -And when the Court in exercise of its discretion orders the cost payable and does so without being capricious i.e. in the sense that it is ordered in honest exercise of his discretion, it will not be questioned". [Per Achike, JSC] Still, costs are not designed or meant to be a bonus to the successful party, and they are not imposed as punitive

measures on the losing party either - see *UBN v. Nwaokolo* (supra) cited by both parties, wherein Onu, JSC, explained that - "While it is true that a successful party should not be denied costs unless for good reasons, a defeated party ought not to be damnified in costs for no cause or on flimsy, capricious and unfounded grounds. - - Costs, it must be borne in mind, are not awarded as punitive measures" .

The Appellant contends that there is no verifiable basis for the costs awarded by the lower Court; that it did not indicate what it considered in its estimate of the sum awarded neither was any reason given for the award of the said sum. In arguing to the contrary, the Respondent referred to Order 49 Rule 1(1) and 1(2) of the Lagos State High Court (Civil Procedure) Rules, which says - (1) In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been necessarily put - -- - as well as compensated for his time and effort in coming to Court. (2) When costs are ordered to be paid, the amount of such costs shall, if practicable, be summarily determined by the Judge at the time of - - Judgment or making the order.

The bottom line is that the Court has an absolute and unfettered discretion to award costs or not to award them; what is paramount is to take into account all circumstances of the case - see *Rockshell Int'l Ltd. V. B.Q.S. Ltd*, (supra). It is also a well-established principle that an appellate Court, does not as a matter of course, interfere with the exercise of discretion by a trial Court, unless it is NOT exercised in accordance to law or it was exercised in a perverse manner - see *Osakwe V. FGN* (2004) 14 NWLR (Pt.893) 305 *Likita V. C.O.P.* (2002) 11 NWLR (Pt. 777) 145, *Atiku V. The State* (2002) 4 NWLR (Pt. 757) 265." Per AUGIE ,J.C.A (Pp. 77-79 paras. D)

See also Order 56 Rules 1 (3) and (4) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 which provides thus:

3. In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been necessarily put in the proceedings, as well as compensated for his time and effort in coming to court. The court may take into account all the circumstances of the case.

4. When costs are ordered to be pad, the amount of such costs shall, if practicable, be summarily determined by the court at the time of delivering the judgment or making the order.

See also Order 56 Rules 2,6,10,11,12, and 13 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018.

After due examination and evaluation of this application therefore, I find no reason to disturb the order made on the 13th day of October, 2021 against the Defendant/Applicant.

To this end the application to set aside the cost awarded against the Defendant/Applicant that is the payer (1) on the face of the motion paper is hereby refused and consequently fails.

For prayer (2) on the face of the motion, time is hereby extended for the Defendant/Applicant to file and serve his Statement of Defence in this case.

For prayer (3), Leave of the Court is hereby granted to the Defendant/Applicant to file and serve his Statement of Defence in this case out of time.

And finally for payer (4), the Defendant/Applicant's Statement of Defence already filed and served that is the "Exhibit A" is hereby deemed as properly filed and served appropriate fees having been paid.

Hon. Justice Jude O. Onwuegbuzie

Appearances:

1. Okwudili Anozie Esq., for the Claimant/Respondent.

2. Bassey Enwang Esq., for the Defendant/Applicant.