

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/PET/51/2016

BETWEEN:

MRS. TIMYA PONFA VONGKOR.....PETITIONER

VS

ENGINEER PONFA VONGKUR.....RESPONDENT

RULING

By a Motion on Notice dated 23/7/2021 and filed same day with Motion No: M/4748/2021, brought pursuant to Order 49 Rule 4 of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Honourable Court, Petitioner/Applicant prays the court the following reliefs;

- (a) An Order seeking leave for Extension of time within which the Petitioner/Applicant may file her Counter-Affidavit to the Notice of Preliminary Objection.
- (b) An Order of this Honourable Court deeming the Petitioner/Applicant Counter-Affidavit to the Preliminary Objection as properly filed and served.
- (c) And the Omnibus relief.

In support of the Motion is Seven (7) Paragraphs affidavit deposed to by the Petitioner with one (1) Exhibit attached and marked Exhibit "A". Also filed in compliance with the Rules of Court is a Written Address and adopt same as oral argument in urging the court to grant the application.

The Processes were served on the Respondent on 25/10/21 who on the other hand Respondent did not file his counter affidavit, but submits on point of law for court to refuse the application. The implication of these is that the evidence of the Petitioner/Applicant remained unchallenged and uncontroverted. In *Gana Vs FRN (2012) All FWLR (PT. 617) 793 @ 800* Paras D – E the court held that;

“Where an affidavit does not attract a Counter-Affidavit, the facts deposed therein have been admitted and must be taken as true”

In the Written Address of the Applicant Ese Bolokor Esq. formulated a sole issue for determination which is;

“Whether this Honourable Court can grant leave to the Petitioner/Respondent for Extension of Time to file her Counter-Affidavit to the Notice of Preliminary Objection having regard to the reasons adduced in the affidavit in support of this application”

In summary, the submission of Applicant’s Counsel is that the Rules of Court are made for the smooth administration of Justice and the Rules of Court are made to advance the course of Justice, submits that the court can exercise its discretion to advance fair and equitable access to justice by granting leave to the Petitioner/Respondent Extension of Time to file her Counter-Affidavit to the Motion on Notice. But in doing so court should

apply the principles laid down in the cases of Williams Vs Hope Rising Voluntary Funds Society (1982) NSSC 36 @ 39 – 40 and Noga Hilton Int'l SA Vs Nicon Hilton Hotels Ltd (2007) 7 NWLR (PT. 1032) 86 @ 112 – 113 Paragraph's F – B.

Submits further that Order 49 Rule 4 of the Rules of Court permits the grant of application for Extension of Time but Applicant must show good grounds for the application to succeed. And Applicant has shown good cause in her affidavit in support of the application.

Finally, urge court to exercise its discretion and resolve the issue infavour of the Petitioner/Respondent.

Responding on point of law, Respondent's Counsel relying on Order 49 Rule 5 of the Rules of Court submits that Applicant is in default of fees having failed to comply to the said Rules of Court therefore urge the Court to strike out the application for incompetence and lack of jurisdiction that if court finds the application competent, be asking for cost of ₦200,000 for truncating the business of the day.

Having carefully considered the affidavit evidence of the Applicant, the submissions of Counsel and the Judicial authorities cited the court finds that only one (1) issue calls for determination that is;

“Whether the Applicant has made out a ground so as to be entitled to the reliefs sought”

The grant of an application for Extension of Time to do an act is at the discretion of court. In *Amgbare Vs Silva* (2008) All FWLR (PT. 419) 576 @ 600 Paragraph D-E the court held;

“In granting or refusing an application for enlargement or Extension of Time in which to file a process the court is called upon to exercise its discretion and that is to say the discretion must be exercised judicially and judiciously and not on the whim and fancy of the judge, judicially and judiciously means in this context the exercise of discretion with sufficient, correct and convincing reasons”

Thus the Applicant’s affidavit must disclose sufficient materials before the court which can establish good and substantial or exceptional reasons that can explain the delay in not taking appropriate steps at the time they ought to have been taken.

In the instant case, contained in Paragraph 3 (a) (b) (c) (d) are reasons which occasioned the delay in Applicant taking the appropriate step at the time it ought to have been taken as well as an undertaking to pay the default fees on the other hand Respondent did not file a Counter-Affidavit to challenged the said depositions but submits that Applicant must comply to Order 49 Rule 5 which prescribes that Applicant pay default fees. Thus from the unchallenged and uncontroverted evidence of the Applicant, I find the reasons stated in the depositions of the Applicant cogent and substantial enough to warrant the grant of the application. However there is no evidence that Applicant have fulfilled her undertaking to pay the default fees prescribed by the Rules of Court. The question is, is this compelling enough to hold that this application is incompetent in the

circumstance? I am of the firm view that the Applicant having undertaken to pay the Default fees in her affidavit has shown good faith in obeying the Rules of Court, therefore to hold that the application is incompetent in the circumstance would be tantamount to applying technically as well as the Rules of Court to defeat the course of justice. And the court have been admonished severally to refrain from applying technicalities to matters before it. In a Plethoral of authorities the court have stated what should be the correct attitude, when called upon to strictly follow its Rules, in Chime Vs Onyia (2009) All FWLR (PT. 480) 673 @ 708 Paragraph C – F.

“The attitude of court is that where a strict adherence to the Rules of Court or practice Directions would clash with the Fundamental Principles of Justice the court would lean heavily on the side of doing justice. Strict adherence or reliance on technicality leads to injustice as justice can only be done its substance of the matter rather than form is examined”

Thus in this case the court will insist on the substance of the matter rather than the form and having found the reasons adduced for the delay in taking steps which Applicant ought to have taken and having undertaking to pay the default fees in their supporting affidavit this court hereby exercise its discretion in favour of the Applicant and grant the reliefs as prayed and accordingly Ordered;

- (a) That the time within which the Petitioner/Applicant may file her Counter-Affidavit to the Notice of Preliminary objection is

hereby extended within the time permitted by the Rules of Court.

- (b) The Counter-Affidavit of the Petitioner/Applicant to the Notice of Preliminary Objection attached as Exhibit "A" is hereby deemed as properly filed and served.
- (c) The Petitioner/Applicant shall show evidence of payment of the default fees before the hearing of the Notice of Preliminary Objection.
- (d) The Respondent's Counsel prayer for cost is hereby refused.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

5/4/2022

APPEARANCE:

E. F. OGUNDARE ESQ. HOLDING BRIEF OF ESE BOLOKOR FOR THE PETITIONER/APPLICANT

L.T. JIMEN ESQ. FOR THE RESPONDENT.