

**IN THE HIGH COURT OF JUSTICE OF THE  
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/CV/2120/2018**

**BETWEEN:**

**W. HOSPITALITY LIMITED.....CLAIMANT**

**VS**

**NATIONWIDE INTERNATIONAL HOTELS LTD.....DEFENDANT**

**RULING**

By a Motion on Notice with No: M/5607/2021 dated 1/9/2021, but filed on 8/9/2021 brought pursuant to Order 43 and Order 25 of the High Court of FCT, Abuja (Civil Procedure Rules, 2018) Section 36 (1) of Constitution of Federal Republic of Nigeria 1999 (As Amended); Section 258 (1) Evidence Act, 2011 and under the inherent jurisdiction of this court, the Claimant/Applicant prays for the following reliefs;

- (1) An Order of this Honourable Court granting leave to the Claimant/Applicant to file an Additional Witness Statement on Oath of Mr. Trevor Ward, Chief Executive Officer of the Claimant who is to replace Chuks Henry as the witness in this suit.
- (2) An Order of this Honourable Court granting leave to the Claimant/Applicant's witness to give evidence virtually via any

existing, reputable and user-friendly electronic platform and or by adopting the use of modern technology devices to enable the Claimant's witness give his evidence, electronically.

- (3) An Order directing and permitting proceedings relating to the evidence and cross-examination of the Claimant's witness to be led by **Live Video Examination**; via Zoom, Google, Microsoft teams or any other platforms that this Honourable Court shall so direct and;
- (4) And for such further or other order(s) as this Honourable Court may deem fit to make in the circumstances.

In support of the application is 4 Paragraph affidavits, sworn to by Adamu Shauibu, with one (1) Exhibit marked "AO1" attached. Also filed is a Written Address. Also filed a Further Affidavit dated 2/11/2021 in response to Defendant Counter-Affidavit with 4 Exhibit marked "AO2 – AO5". And a reply address.

Upon receipt of the process, the Defendant/Respondent, filed a 4 Paragraphs Counter-Affidavit sworn to by Enor Onose. Also filed a Written Address in opposition.

Both Counsel on 8/3/2022 adopted their respective Written Addresses.

In the Written Address of the Claimant/Applicant settled by Priscilla Ajayi Esq. two (2) issues was formulated for determination, which are;

- (1) Whether this Hon. Court ought to grant the Claimant application to substitute her witness?

- (2) Whether considering the circumstance, this Hon. Court ought to grant the Claimant's application.

On issue I, submits relying on Order 25 Rule 1 of the Rules of Court and the case of Bank of Baroda Vs Iyalabani Company Ltd (2002) 13 NWLR (PT. 785) 551, urged the court to grant this prayer in exercise of the courts discretion.

On issue II, relying on Section 258 (1) of the Evidence Act, 2011 and several judicial authorities cited, urged the court to hold that it can exercise its discretion to grant these prayers 2 and 3.

In the Written Address of the Defendant/Respondent, settled by O.B Omale Esq. no issues were formulated. The Defendants however are not opposed to prayer 1, but in opposition to prayers 2 and 3, submits that the facts as contained in the affidavit are benefit of facts to assuage this court to grant this relief sought, cited Section 205, 212 and 213 of the Evidence Act, 2011. And urged the court to dismiss this instance application.

I have carefully considered the affidavit evidence, submission of both Counsel and the judicial authorities cited; I found that the issue for determination is whether the Applicant has made out a ground to be entitled to the reliefs sought.

The grant or otherwise of an application of this nature, calls for the exercise of the courts discretion, which must be done judicially and judiciously, taking into cognizance, the facts before it. See Anachebe Vs Ijeoma (2014).

On issue (1), the Defendant/Respondent is not opposed to the grant of the relief. On a careful perusal of the facts submitted, the court finds that it is within the purview of the court to grant the reliefs sought based on the said reasoning giving and more so the Respondent is not opposed, accordingly this relief 1 is hereby granted as prayed.

On the reliefs 2 and 3 taken together, the Applicant relies on the Provisions of Section 255 (1) Evidence Act, and in countering the position of the Respondent contend in their Further Affidavit, relies on Paras 4, 5, 6, 7, 8, 9 and 10, including Exhibit "AO2-AO5" that these facts are sufficient to assuage this court to grant the relief sought.

On the other hand the Respondent relying on Paras 3 (a-k), vehemently opposing contend that this application does not find the favour of the court to exercise its discretion in his favour.

Having carefully considered the submission of both Counsel and note that the grant or otherwise is at the exercise of the court's discretion and also noting that the use of electronic visuals to conduct trial, in our climes, is currently in use, it's the courts firm view that there should be mutual Agreement between the parties to enable them assist the court to bring to effect the conduct of visual in court upon such Agreement.

Under the prevailing situation in our courts, and the facts that the both parties are not in Agreement to have the visual proceedings, it is the court firm view that this application should be refuse in the circumstance. Accordingly, the relief 2and 3 is hereby refused.

From all of these the relief 1 is granted as prayed, while the relief 2 and 3 are hereby refused.

**HON. JUSTICE C. O. AGBAZA**

Presiding Judge.

21/6/2022.

**APPEARANCE:**

O.L. OFORDILE ESQ FOR THE DEFENDANTS

PRISCILLA AJAYI ESQ FOR THE CLAIMANT