

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

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: CV/1563/2020

BETWEEN:

ISMAIL IBRAHIM.....CLAIMANT/APPLICANT

AND

- | | | |
|--|---|------------------------|
| 1. INCORPORATED TRUSTEES OF
FULL PROOF PROPHETIC MINISTRY | } |DEFENDANTS |
| 2. NUHU SANI | | |
| 3. BAR.AKOR | | |
| 4. PERSONS UNKNOWN | | |

RULING

The applicant filed this motion ex parte pursuant to section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Order 6 Rule 6, Order 13 Rule 19 (1) and Order 43 of the Rules of this court and seeks for the following:

1. An order renewing the originating process filed on the 15th day of May, 2020;
2. An order striking out the names of the 1st defendant (Incorporated Trustees of Full Proof Prophetic Ministry) and 3rd defendant (Bar. Akor) as defendants in this suit.
3. And for such further or other order(s) as this Honourable Court may deem fit to make in the circumstances.

The motion is supported by a fifteen paragraphed affidavit, and a written address of counsel.

It is in the affidavit that this suit was filed on the 15th May, 2020 but the claimant/applicant has been unable to

serve the originating process on the defendants in this suit as a result of the lockdown occasioned by COVID 19 pandemic in the year 2020 and its ancillary consequences and also the Judiciary Staff Union of Nigeria (JUSUN) strike in 2021. That all the efforts of the claimant/applicant to serve the defendants the originating processes failed as a result of the circumstances stated earlier and that it is necessary to renew the life span of the processes to enable the claimant/applicant serve the defendants the processes and present his case before the court for determination.

It is also stated that the deponent knows for a fact that the 1st and 3rd defendants are no longer laying claim to the subject matter of this suit and as such, they will discontinue the suit against them and have their names struck out, and that the defendants will not be prejudiced by the grant of this application.

In his written address, the counsel to the claimant/applicant formulated one issue for determination, to wit:

Whether it is in the interest of justice for this Honourable Court to grant this application?

The counsel submitted that Order 6 Rule 6 of the Rules of this court empowers the court to renew the originating process when it is impossible to serve same on the defendant within its life span. He opined that the grant or refusal of this application is discretionary, however, it is trite that such discretionary powers be exercised judicially and judiciously, and he cited the case of **Amadi V. C.B.N (2013) All FWLR (pt 703) p. 1949.**

The counsel added that the facts contained in the affidavit in support of this motion shows difficulty the applicant has had in serving the defendants with the originating process. He further submitted that by virtue of

Order 13 Rule 1 of the Rules of this court, where the claimant wishes to strike out the name of the defendants from the suit, he can apply by way of motion to the court. He submitted that the 1st and 3rd defendants are no longer laying claim to the subject matter of this suit, and as such he wishes to have their names struck out, and he urged the court to grant the application.

Let me formulate the issue for determination in this application, to wit:

Whether the claimant/applicant is entitled to the reliefs sought?

Thus, Order 6 Rule 6 of the Rules of this court provides:

“(1) The life span of every originating process shall be 6 months.

(2) Where a court is satisfied that it has proved impossible to serve an originating process on any defendant within its life span and a claimant applied before its expiration for renewal of the process, the court may renew the original or concurrent process for three months from the date of such renewal. A renewed originating process shall be as in Form 7 with such modifications or variations as circumstances may require.”

By the above quoted provisions, it can be inferred that this court by its discretion can renew the writ before its expiration having satisfied that it was impossible to effect service of same on the defendant and this renewal can be for three months from the date of such renewal. The Rules of this court goes further and provide that the court may give order for two renewals upon prompt application, and with a proviso that no originating process shall be in force for longer than a total of nine months, this is pursuant to Order 6 Rule 7 of the Rules of this court.

Now, can the court give an order for the renewal of an expired originating process?

It is in the affidavit of the claimant/applicant that the writ of summons in this suit was filed on the 15th day of May, 2020 but the claimant has been unable to serve the defendant as a result of the lockdown occasioned by COVID 19 pandemic in the year 2020 and its ancillary consequences and the JUSUN strike in 2021, and this application was filed on the 11th day of October, 2021, and therefore from the 15th day of May, 2020 when the writ was filed to the 11th day of October, 2021 when this application was filed is barely seventeen months. So, the period of seventeen months is far beyond six months, and the claimant/applicant did not deem it appropriate to file his application for renewal within the six months, that is before the expiration. By this, it can be inferred that the writ of the claimant/applicant has expired since the 30th of November, 2020. It can also be inferred that after this period, it shall no longer be in force it would have become spent and will no longer take effect as a writ nor can it carry the normal legal consequences of a valid writ, however, it is still valid as its lifespan can still be extended for another three months. See Order 6 Rule 7 of the Rules of this court which provides:

“The court may order two renewals in each case strictly for good cause and upon prompt application, provided no originating process shall be in force for longer than a total of nine months...”

By this, it can be inferred to mean that the court may order for the renewal of the writ two times for a good cause and upon prompt application, with a proviso that no writ shall be in force for longer than nine months. By the above provisions and having computed the time between the

filing of this suit and the filing of this application to be about seventeen months, certainly it is beyond the normal duration of nine months which no writ shall be in force after the nine months; and by this, the claimant/applicant has not been prompt in bringing this application for renewal, and to this, I therefore so hold.

Even if this court were to go by the Order 6 Rule 6(2) of the Rules of this court, the claimant must satisfy the court that it has proved impossible to serve the writ on the defendants, and by paragraphs 6 and 7 of the affidavit in support the claimant/applicant stated that efforts to serve the writ proved unsuccessful as a result of the lockdown occasioned by COVID 19 and the subsequent JUSUN strike.

Thus, it is a matter of common knowledge that the Federal Capital Territory Abuja judiciary and that is all the courts resumed work on the 11th of May, 2020 after the two months lockdown, and by the date of filing this suit, it can be inferred that the courts in the FCT have resumed work and that led to him filing the application. The claimant/applicant did not state any efforts he has made after filing the writ of summons regarding service on the defendants. I also do not believe that the strike action embarked by Judicial Staff Union of Nigeria lasted from the 15th day of October, 2021, a day preceding the date of filing this application. To my mind, the claimant/applicant has not been so prompt in taking step towards renewing the writ of summons, and I therefore not so satisfied that the claimant/applicant has proved that the efforts he made in seeing that the writ of summons is served on the defendants were impossible, and I so hold that the claimant/applicant is not entitled to the first segment of the relief sought.

As the claimant/applicant has not succeeded in the grant of the relief No. 1, and so there is no need in granting the relief No. 2.

The application in the circumstances, is hereby refused accordingly.

Hon. Judge
Signed
31/5/2022

Appearances:

ThankGod S. Alfa Esq appeared for the claimant.