IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 13TH DAY OF APRIL, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/982/2022

BETWEEN:

1. **SANI BELLO**
2. **AHMED UMAR**
3. **GAIUS JACOB** — **APPLICANTS**
4. **USMAN BAWA**

AND

THE COMMISSIONER OF POLICE,
F.C.T. POLICE COMMAND, ABUJA — **RESPONDENT**

RULING

APPEARANCE:

For the Applicants: O. I. Olorundare SAN with F. I. Nnaba Esq.

For Respondent : Seidu Jibrin Esq.

Before this Court is an application for extension of time within which the Respondent can file and serve his Counter-Affidavit. The Motion on Notice seeking this prayer, a Notice of Preliminary Objection and the Counter-Affidavit of the Respondent to the application of the Applicants were all filed on the 12th of April, 2022 and served on the Counsel for the Applicants on the same 12th of

April, 2022 at 2:34pm and on the Court at 3:08pm of the same date – less than twenty-four hours to the date this Court fixed for Judgment in this application.

Today, the 13th of April, 2022, learned Counsel for the Respondent moved the Motion on Notice for extension of time in terms of the Motion papers which Motion on Notice was supported by an 8-paragraph affidavit deposed to by one Abuker Jibrin, a Litigation Clerk in the Law Firm of Seidu Jibrin & Associates and a Written Address.

Learned Senior Counsel for the Applicants, in a swift reaction, opposed the application for extension of time on points of law. He observed that the concept of arrest of Judgment was unknown to our jurisprudence; adding that the conduct of the Respondent in bringing this application less than twenty-four hours to the date the Court had set for Judgment was calculated to arrest the Judgment of this Court. He cited the case of ***Newswatch Comm. Ltd. v. Atta (2006) 12 NWLR (Pt. 993) 144***. He contended that it was not the fault of the Court that the Respondent did not utilize the time given to him by the Fundamental Rights (Enforcement Procedure) Rules, 2009 to file his response to the application of the Applicants. He added that the duty of the Court in this case was to ensure that the Respondent was served with the Applicants' processes and not to compel him to enter appearance or file a response.

In his submission on the effect of absence of Motion Number on the Motion papers, learned Counsel for the Respondent argued that the absence of Motion Number on the Motion papers was a mere administrative issue which did not affect the validity of the application and could be resolved by the Registry of this Court. He cited and relied on the case of ***Nwoko v. Nwaboshi (2020) 13 NWLR (Pt. 1742) 395***.

The above is the argument of Counsel on this application. It must be stated here for the record that the Respondent had every opportunity to defend the suit of the Applicants by filing a Counter-Affidavit; but he chose to sleep on his rights. The Latin maxim, *vigilantibus non dormientibus jura subveniunt* (the law will not help those who sleep on their rights) is very apposite here. See the cases of ***Total Upstream Nig. Ltd. v. A.I.C. Ltd. (2016) 2 NWLR (Pt. 1497) 467 at 489 paras B-D, Braimah v. Abasi (1998) 13 NWLR (Pt. 581) 167 at 187 para G,*** and ***Society Bic S.A. v. C.I. Ltd. (2014) 4 NWLR (Pt. 1398) 497***. In ***Idiagbon v. A.P.C. (2019) 18 NWLR (Pt. 1703) 102 at 119 para F-H***, the Supreme Court held that "***Equity protects and aids the vigilant and does not aid the indolent or lay about means that a party who has been seeing certain hostile moves taken against his interest must be vigilant so as not to have that interest scuttled without a whimper.***"

Besides, this instant application, brought after this Court had adjourned for Judgment and after learned Counsel for the Respondent had been heard by this Court, on the 7th of April, 2022, challenging the jurisdiction of this Court can only amount to an attempt by the Respondent, through his Counsel, to arrest the Judgment of this Honourable Court. The Courts have always frowned at applications brought *malafide* with the intention of arresting the judgment of the Court. A closer look at the said Motion on Notice for extension of time will reveal that it has no Motion Number – an indication that it was hurriedly filed to arrest the Judgment of this Honourable Court.

In ***Newswatch Comm. Ltd. v. Atta (2006) 12 NWLR (Pt. 993) 144 at p.179, paras. F-G***, the apex Court held that "***The rules of court do not make provision for an application to arrest a judgment which is about to be delivered by a court. Therefore, an application not recognised by the rules of court cannot be described as a proper application. In the instant case, the application to arrest the judgment about to be delivered was a cynical attempt to taunt the trial court, given the fact that the appellant had before then, disdainfully refused to put in its defence. In the circumstance, the appellant was not denied its right to fair hearing.***" See also the case of ***Shetima v. Goni (2011) 18 NWLR (Pt. 1279) 413 at pp. 446,***

paras. A-C; 485, paras. D-E where the Supreme Court tersely held that "***The rules of court do not have provision for the arrest of judgments.***"

Besides, this Court had made an order on the 30th of March, 2022 wherein it ordered the Respondent to produce the Applicants in Court on the 6th of April, 2022. The Respondent has been in contempt of this Order of this Court as he neither produced the Applicants in Court on the day specified in the Order nor did he produce them in Court on any other day. The law is settled that a contemnor cannot be heard by a Court whose Order they have flouted. In ***Chukwuogor v. Chukwuogor (Nig.) Ltd. (2007) 17 NWLR (Pt. 1064) 589 at 604 – 60, para F-A***, the Court of Appeal held that "***Although the general rule is that a contemnor will not or cannot be heard, there are some recognized exceptions to the said rule which are:- (a) where the party is seeking leave to appeal against the order for which he is in contempt; (b)where the contemnor tends to show that because of the procedural irregularities in making the order, it ought not be sustained; (c) where the order is being challenged on the ground of lack of jurisdiction; and (d) where the contemnor seeks to be heard in defence of the order.***" See also the cases of ***Ezenwaji v. UNN (2006) 3 NWLR (Pt. 967) 325; Fame Publications Ltd. v. Encomium Ventures Ltd. (2000) 8 NWLR (Pt. 667) 105***; and ***INEC v. Oguebego (2018) 8 NWLR (Pt. 1620) 88*** where the Supreme

Court held at ***101 para C-E*** that "***Generally, a person in contempt cannot be heard in the cause unless he purges himself of the contempt.***"

It is my considered view that none of the circumstances envisaged in the exceptions to the general rule that a contemnor cannot be heard exists in this application. Having failed, refused, and neglected to purge himself of his contempt, the Respondent cannot be heard.

For the above reasons, therefore, I find this application by the Respondent for extension of time within which to file his processes out of time *malafide*, vexatious, unmeritorious and an attempt to arrest the judgment of this Honourable Court. This Court will not be drawn into that trap by the Respondent. The Motion on Notice dated and filed on the 12th of April, 2022 but without Motion Number is accordingly dismissed.

This is the Ruling of this Honourable Court delivered today, the 13th of April, 2022 on the Motion on Notice for extension of time filed by the Respondent.

This Court will, therefore, proceed to deliver its Judgment in the substantive suit.

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HON. JUSTICE A. H. MUSA
JUDGE
13/04/2022