IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA, ABUJA
ON THE 12TH DAY OF DECEMBER, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH
PRESIDING JUDGE.

SUIT NO. FCT/HC/CV/0237/2017

MOTION NO. M/10695/2022

MR. ODILIM ENWEGBARA …. PLAINTIFF/APPLICANT

AND

UACN PROPERTY DEVELOPMENT COMPANY PLC…. DEFENDANT/ APPLICANT

RULING

Before the Court is a Motion on Notice No. M/10695/2022 filed on 16th September, 2022 by the Plaintiff/Applicant pursuant to Orders 43 and 49 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court. The motion prays the Court for

1. *An Order of this Honourable Court extending the time within which the Plaintiff/Applicant can file and serve his Reply to the Defendant's Amended Statement of Defence, Defence to the Defendant's Counter Claim, and Additional Witness Statement on oath in this suit.*
2. *An order of this Honourable Court granting leave to the Plaintiff/Applicant to file Reply to the Defendant's Amended Statement of Defence, Defence to the Defendant's Counter Claim, and Additional Witness Statement on oath in this suit out of time.*
3. *An order of this Honourable Court deeming the Plaintiff/Applicant's Reply to the Defendant's Amended Statement of Defence, Defence to the Defendant's Counter Claim, and Additional Witness Statement on Oath all attached to the affidavit*

in support of this motion on notice as Exhibit A as properly filed and served same having been paid for both as an Exhibit and as court processes.

4. *An order of this Honourable Court recalling the PW1 to adopt his Additional Witness Statement on Oath in this suit.*
5. *And for such further order(s) as this Honourable Court may deem fit to make in circumstances of this case.*

The application is supported by an Affidavit of 15 paragraphs,deposed to by the Applicant himself, with attached Exhibits and a written address.

The Defendant/Respondent reacted by filing a Counter affidavit and written address on 26thSeptember, 2022 to which the Applicant filed a Reply Address and affidavit on 4th October 2022.

A summary of the facts upon which the Applicant has based his instant application as contained in his affidavit in support is that after the Defendant/Respondent had regularized its processes, the Applicant's Counsel, Remigius Ani Esq, had studied the Defendant/Respondent's Amended Statement of Defence and Counter Claim but could not file a Reply to same within the time limited by the Rules of this Court because of the pressure of work on said Counsel. That the Applicant's Reply to said processes are however now ready and paid for. That there is need for him to be recalled to adopt his Additional Witness Statement on Oath.

Although the Applicant did not formulate an issue for determination of this application, the Respondent did.

In view of the prayers before this Court, the affidavit evidence and the arguments of Counsel for and against the grant of the application, I am inclined to determine the instant application under the following issue;

Whether the instant application ought to be granted in the circumstances of this case.

The records of this Court in this case show that pursuant to filing and serving his originating processes on the Respondent, the Applicant had testified and concluded his testimony as PW1. The Respondent thereafter, with leave of this Court, filed its Statement of Defence/Counter Claim out of time in 2019. The Respondent subsequently obtained leave of this Court on 15th March 2022 to amend its said processes and record shows that the Amended Statement of Defence/Counter Claim was served on the Applicant on 22nd March 2022.

Now, if the Applicant did not file a reply/defence to the original statement of defence/counter claim, he had a limited period of time to do so upon being served with the amended version thereof. By the Rules of this Court, the Applicant had 14 (fourteen) days to file his Reply/Defence to the Respondent's Amended Statement of Defence/Counter Claim. See **Order 15 Rule 1(3) and Order 18 Rule 2 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018**.

It is not in dispute that the Applicant did not file his Reply/Defence to the Respondent's Amended Statement of Defence/Counter Claim within the period limited by the Rules for doing so and thetime has since elapsed.

The instant application is primarily one for extension of time to file the Applicant's Reply/Defence to the Respondent's Amended Statement of Defence/Counter Claim.

Order 49 Rule 4 of the Rules of this Court provides

> *4. The Court may, as often as he deems fit and either before or after the expiration of the time appointed by these rules or by any judgment or order of the Court, extend the time or adjourn for doing any act or taking any proceedings.*

It is not in dispute amongst parties that this Honourable Court haspower to grant the instant application. It is not also in dispute that the grant of such an application is at the discretion of this Honourable Court. It is however the law that such discretion, as with all cases of judicial discretion, must be exercised judicially and judiciously and based on convincing reasons. An

affidavit in support of an application for extension of time must therefore contain depositions which show good and substantial reasons why the applicant failed to carry out the act within the prescribed period. –see

ADENIYI & ANOR V. TINA GEORGE INDUSTRIES LTD & ORS (2019) LPELR-48891(SC) AT PP. 15 – 16 PARAS. C-B,

EDE & ANOR V. MBA & ORS (2011) LPELR-8234(SC) AT PP. 36 – 37 PARAS. D-C

and

BARAU V. INEC & ANOR (2010) LPELR-3853(CA) AT PP. 4 – 5 PARAS. D-C.

The reason given by the Applicant for failing to file his Reply/Defence to the Respondent's Amended Statement of Defence and Counter claim is due to the pressure of work on his Counsel who could not file same within time. He urged this Court not to punish him for this lapse of his Counsel. The Respondent has however contended that this is not cogent or sufficient reason for the failure to file the process within time.

Now the records show that the Respondent had, through an application with Motion No. M/3052/19, sought extension of time to file its statement of defence/counter claim out of time. The reason which the Respondent had adduced and relied on in its affidavit in support for not filing its statement of defence/counter claim within the time prescribed by the Rules is the pressure of workload on its Counsel. The Respondent's application was granted by this Court on 19th November 2019 in the interest of justice. The same Respondent is now turning around to speak from the other side of its mouth to say that such a reason as pressure of workload on Counsel is not sufficient reason for failing to file processes within the time prescribed by the Rules. In the peculiar circumstances of this case therefore, it does not lie in the mouth of the Respondent to say such a reason is not cogent or sufficient and I so hold.

It is this Court's view that pressure of workload on Counsel as a reason for failure to file processes within time or take appropriate steps as at when due is a rather reprehensible and depreciable one. It ought to be discouraged in practice. Be that as it may, the litigant ought to be spared the effect of such dereliction of duty except the litigant himself is complicit along with his Counsel. The general principle is, and it has been held in a long line of decided cases, that the courts which consider applications for extension of time do not normally punish a litigant for the mistakes, negligence or inadvertence of his counsel. – see **EZECHUKWU & ANOR V. ONWUKA (2005) LPELR-6115(CA)**.

More particularly, on the issue of pressure of workload on Counsel, it was held by the Supreme Court per Galinje JSC in **ADEGBOLA & ORS V. IDOWU & ORS (2017) LPELR-42105(SC) AT PP. 15 – 16 PARAS. D-C** as follows;

> *"In an application to appeal, this Court has held that it may not amount to sufficient reason merely to say that the counsel was ill or that there was dereliction of duty on the part of his junior or that the volume of chamber work made the counsel forget to file the appeal. See Omoregie v Emovon (1987) 6 SC 6; Benson v Nigerian Agip Oil Co. Ltd (1982) 5 SC 1. However, it is accepted as good reason where counsel commits error of judgment and fails to do what he is supposed to do.*
>
> *In this respect counsel's carelessness cannot be visited on the litigant where such carelessness is pardonable. See Doherty v Doherty (1964) 1 All NLR 299; Bowaje v Adediwura (1976) 6 SC 143.*
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> *In an appeal, the Court's discretion should always be exercised towards hearing the parties on the merit. This Court can therefore not shut out the Appellant when he has shown that the brief is available for deeming. I am therefore of the firm view that justice will be better served if this application for extension of time to file the Appellant's brief of argument is granted as prayed."*

This Court is therefore,in the circumstances and in line with the casescited supra, inclined to find the reason given by the Applicant for his failure to file his Reply/Defence to the Respondent's Amended Statement ofDefence/Counter Claim sufficient to grant him an extension of time to file his said process. The said processes have been filed and served and there is absolutely no reason not to grant the extension and deem the processes filed as properly filed and served. The Applicant will be granted the extension of time, leave and deeming orders sought vide the first, second and third prayers of his instant application.

The fourth prayer of the instant application is one to recall the Applicant's witness who had already testified as PW1 and had been discharged from giving any further testimony in this case.

Again, it is settled law that the grant or refusal of an application by a party seeking to recall a witness is entirely at the discretion of the trial judge, which must be exercised judicially and judiciously, having regards to sound principle of law and relevant circumstances of the case. –see **CHIEF OF ARMY STAFF & ANOR V. ISAH (2017) LPELR-41979(CA) AT PP. 27 – 28 PARAS. B-E**.

See also **KHALIFA V. ONOTU & ANOR (2016) LPELR-41163(CA) AT PP. 44 – 46 PARAS. D-A** where it was held that an application by a party to recall a witness who had already given evidence should succeed where it is shown why he wants the witness recalled and that it is in the interest of justice; such as where an amendment to the originating process is allowed and a party to the proceedings wishes to exercise his right to recall witnesses to testify on the amended processes.

In the instant case, the purpose for which the Applicant wishes PW1 recalled is to adopt his witness statement on oath which has just been filed in respect of the Applicant's Reply/Defence. This Court has earlier found in this Ruling that the Applicant is entitled to extension of time to file his Reply/Defence to the Respondent's Amended Statement of Defence/Counter claim. The Applicant is therefore entitled to give evidence on these further processes. The result is that he is entitled to

recall his PW1 to give such additional evidence. The Applicant is thus entitled to the fourth prayer of the instant application and I so hold.

The Respondent has not indicated in its Counter Affidavit what nature of damage, injury or even inconvenience it would suffer if the instant application is granted by this Court. The Respondent did not even state that it would suffer any. I, for one, do not see what inconvenience the Respondent would possibly suffer if the instant application is granted at this stage of proceedings. The injury which the Applicant would suffer should the application be denied is however apparent. It is therefore in the interest of justice that the instant application be granted by this Court.

The sole issue for determination is thus resolved in favour of the Appellant and against the Respondent.

Consequently, this Court finds merit in the instant application and it is hereby accordingly granted as prayed.

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Honourable Justice M. E. Anenih

APPEARANCES:

Remigius Ani Esq appears for the Plaintiff/Applicant.

Adetayo Adeyemo Esq appears with Abdullahi Ibrahim Tahir Esq for the Defendant/Respondent.