IN THE HIGH COURT OF JUSTICE OF THE F.C.T., ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 08TH DAY OF NOVEMBER, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/2880/2021

BETWEEN:

1. **SKOFAT VENTURES LIMITED**
2. **ABASA NIGERIA ENTERPRISE LIMITED** **CLAIMANTS/ APPLICANTS**
3. **ZUMA METALS & ENERGY RESOURCES LTD**

AND

1. **HON MINISTER OF FCT**
2. **FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
3. **ABUJA GEOGRAPHIC INFORMATION SYSTEMS**
4. **ABUJA INVESTMENT COMPANY LIMITED** **DEFENDANTS/RESPONDENTS**

RULING

This Ruling is on a Motion on Notice brought pursuant to section 36 (1) of the Constitution of the Federal Republic of Nigeria, 1999 and Order 49 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 in which the Claimants/Applicants are seeking the following reliefs:-

1. *An Order of this Court granting leave to the Claimants to file a Further and Better Witness Statement on Oath of Chief Innocent Ezuma.*
2. *An Order of this Honorable Court deeming the Further and Better Witness Statement on Oath of Chief Innocent Ezuma as having been duly filed and served.*
3. *And for such further or other Orders as this Honorable Court may deem fit to make in the circumstance.*

The grounds upon which this application is brought are that:-

1. The Claimants/Applicants commenced this proceeding and served same on the parties.
2. In the course of reviewing their case, Counsel saw the need for the Claimants/Applicants to file and serve on all parties to the proceedings, a Further and Better Witness Statement on Oath of Chief Innocent Ezuma.
3. The said Statement on Oath has been filed and served on parties to the suit.
4. The said Further and Better Witness Statement on Oath will effectually bring the case of the Claimant to the fore and afford them the right to be heard.

In support of the application is a 6-paragraph affidavit deposed to by one Philia Mic-Julius, a litigation secretary in the office of the Counsel to the Claimants/Applicants. In the affidavit, the deponent averred that the Claimants/Applicants commenced this proceedings and served same on parties and, in the course of reviewing the case file, the Counsel to the Claimants/Applicants saw the need for the Claimants to file and serve on all parties to the proceedings a Further and Better Witness Statement on Oath of Chief Innocent Ezuma *qua* their pleadings. According to the deponent, the said Further and Better Witness Statement on Oath has been filed and served on all the parties to the suit. She added that the said Further and Better Witness Statement on Oath will effectually bring the case of the Claimants/Applicants to the fore and afford them the right to be heard. In conclusion, she admitted that the grant of the application was discretionary, in which Counsel humbly appealed to the Honorable Court to find the application meritorious and deserving of grant.

In the Written Address in support of the application, learned Counsel to the Claimants/Applicants formulated one sole issue for the court to determine. This

issue is: *"Whether the Claimants/Applicants have eloquently pleaded their cause as to be granted the indulgences sought?"*

In his submissions on the sole issue, learned Counsel opined that it was undisputed that the powers of this Honorable Court to grant this application was discretionary and unquestionable. He submitted that the acknowledgement of this discretionary powers of the Court in applications of this nature impelled the Claimants/Applicants to urge the Court to exercise this power in their favour, considering the strength of the compelling circumstances of this application. He added that no harm would be done to the Defendants/Respondents and that they would not be overreached if the application is granted. Counsel cited the case of ***United Spinners Ltd v. CB Ltd (2001) 14 NWLR (Pt 732) pg. 125*****,** in support of his argument.

Arguing further, learned Counsel submitted that the Claimants/Applicants had made full and frank depositions necessitating this application and that there was no wrongdoing on the part of their part; adding that the conditions arose from circumstances beyond the control of the Claimants/Applicants' Counsel. Referring to the depositions of the deponent in the supporting affidavit, Counsel submitted that there was the need to lead material evidence in furtherance of the case to be heard and *ipso facto* help this Honorable Court in coming to a just determination of this matter entirely on the merits of each party's case. He added that granting the application will accord with the old and entrenched principle of fair hearing. Counsel relied on the cases of ***Aluko v. Emmanuel Ajiboye (2011) LPELR-8836 (CA), Longjohn v. Blakk (1998) 6 NWLR (Pt 555) 524, Ogundoyin v. Adeyemi (2001) 33 WRN 1, Sumanya Issah Torri v. The National Park Service of Nigeria (2011) LPELR-8142 (SC)***.

In response to the Claimants/Applicants' application, the 1st, 2nd, 3rd and 5th Defendants did not file any process in opposition to the application. The 4th Defendant, however, filed a 5-paragraph Counter-Affidavit with a supporting

Written Address to the Claimants/Applicants' Motion on Notice. The 4th Defendant relied on the facts averred in the Counter-Affidavit and the legal arguments as expostulated in the Written Address in arriving at the conclusion that the Further and Better Witness Statement on Oath was an abuse of court process.

Summarily, the thrust of the argument of the 4th Defendant was that the Claimants' application was unknown to law and dead on arrival, adding that same was not proper before the Court as it was not signed as provided by Sections 2 and 24 of the **Legal Practitioners Act, 2004**. Counsel further submitted that the Motion on Notice offended the above sections which require that all processes filed in the Court shall be endorsed by a legal practitioner called to the Nigerian Bar. This, according to the learned Counsel, robbed the Court of jurisdiction to hear the Claimants' application. Counsel relied on **Rule 10(1) of the Rules of Professional Conduct of the Legal Profession Act,** and the case of ***Yaki v. Bagudu (2015) 11 SCNJ 1 at 36 lines 15-13***. Counsel to the 4th Defendant contended that this omission on the part of the Claimants rendered the application incompetent and liable to be struck out. He relied on the case of ***Okafor v. Nweke (2002) 10 NWLR (Pt. 1043) page 521*** to support his arguments in this regard.

Counsel further submitted that the document of the Claimants/applicants has no stamp of any Counsel and that the entire process amounted to a nullity not been signed in accordance with the law. Counsel relied on the cases of ***Guaranty Trust Bank Plc v. Innoson Nigeria Ltd LER 2017 SC 694/2014, Corporate Ideal v. Ajaokuta (2014) 2 SCNJ 204 at 235-236, Bala v. Dikko (2012) 12 SCNJ (Pt. 111) 905 at 914 lines 25***. Learned Counsel went ahead to argue that the Claimants' Motion on Notice was undated which makes the document worthless and ought to be discountenanced by this Honorable Court. He cited the case of ***Olabode v. Kila (2010) 13 WRN 73 at 128-129 lines 45-5.***

Counsel urged the Court to strike out the Motion on Notice for being filed out of time in line with the above submissions, adding that the objection of the 4th Defendant is that the Claimants' suit has no valid witness Statement on Oath and, thus, by the recent application of the Claimants', it is an admission to the 4th Defendant's objection. Counsel relied on the cases of ***Madukolu & Ors v. Nkemdilim (1962) 1 All NLR 587, Durbar Hotel Plc v. Ityogh & Ors (2016) LPELR-42560 SC, Eneh v. NDIC & Ors (2018) LPELR-44902 (SC), Monday Iyore Osagie & 4 Ors v. Victor Enoghama & 5 Ors Legalpedia citation (2022-06), Legalpedia-32323(CA)***.

Learned Counsel contended that the Claimants who were seeking the discretionary power of the Court should not be heard as they had offended settled statutory provisions and rules of this Honorable Court. He relied on section 13 of the Oaths Act and **Order 2 of the High Court of Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018** in support of his submissions. He also cited the cases of ***Francis v. F.R.N (2020) 5 SCNJ (Pt 1) 64 at 82 lines 10-20, Adigwe v. F.R.N. (2015) 5 SCNJ (Pt II) 620 at 653-654 30-5***. He also argued that the suit was dead on arrival and the Claimants intends to put a Further and Better Witness Statement on Oath when there was no foundation, adding that this amounted to putting something on nothing, which is a void act. He relied on ***Francis v. F.R.N. (supra) at 86 line 15*** to support his argument. He went ahead to state that the suit of the Claimants as constituted was fundamentally defective and legally non-existent and the action was dead at the point of filing thus robbing this Honorable Court of the jurisdiction to entertain the matter. He pointed out that jurisdiction cannot be conferred by the parties. Counsel relied on the case ***Skypower v. U.B.A (2022) 1 SCJN (Pt 1) 141 at 187 lines 5***.

Another submission of the learned Counsel to the 4th Defendant was that, the Claimants brought this application under section 36 of the Constitution of the Federal Republic of Nigeria, 1999 and came under the fair hearing principle,

which, according to Counsel did not avail him because fair hearing was not a magic wand which was available for the asking. Counsel relied on the case of ***Okeke v. Uwaechina (2022) 2 SCNJ (Pt 1) 189 at 223 lines 5-25***, to support his submissions. Learned counsel finally concluded his arguments by stating that, the argument that mistake of Counsel cannot be visited on litigants was old school story because the courts have long moved from that perspective. He cited the case of ***Adigwe v. FRN (2015) 5 SCJN (Pt II) 620*****.** Learned Counsel urged this Honorable Court to uphold the above-cited decisions and refuse the application with punitive cost and strike out the entire suit for lack of competence.

Having considered the facts and legal arguments in support of and in opposition to this application, this Honorable Court hereby formulates a single issue for determination to wit:

> ***"Whether the reliefs sought by the Claimants/Applicants are grantable?"***

A party before the Court has the right to present their case in such a way that it captures the essence of their claims before the Court. One of the means of doing so is by drafting their pleadings in a way that captures the claims sought. The rules of court allow the party to do so subject to the discretion of the Court. One of such conditionalities is that the other party should not be overreached by the relief sought in the application. This also accords with the principle of fair hearing, which is stated in section 36 of the Constitution of the Federal Republic of Nigeria, 1999.

The 4th Defendant has filed a Counter-Affidavit challenging the competency of the application. The grounds of its objection to the grantability of the application is that the Motion on Notice was not signed by a lawyer because there was no NBA seal affixed to the Court process and that the application was an abuse of court process. On the application not signed by a legal practitioner called to the

Nigerian Bar, learned counsel relied on the case of ***Nwafor v. Okeke (supra)*** to urge the Court to strike out or dismiss the application.

My scrutiny reveals that the application was signed by one S. M. Oyeghe Esq. It is immediately obvious from the records of this Court that the Writ of Summons is signed by the same S. M. Oyeghe Esq. The NBA seal, I can also see, is affixed to the Writ of Summons. Further to this, the same S. M. Oyeghe Esq. has been appearing in this matter since the commencement of proceeding in this suit. It is not difficult for me to find that the non-fixing of the seal on the application is an inadvertence on the part of Counsel for the Claimants/Applicants which this Court, by virtue of Order 5 Rule 1 of the Rules of this Court, has the powers to treat as an irregularity. Order 5 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018, states that and I quote:

> ***"1 (1) where in beginning or purporting to begin any proceedings there has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, such failure shall not nullify the proceedings.***
> ***(2) where at any stage in the course of or in connection with any proceedings there has by reason of anything done or left undone been a failure to comply with the requirements as to time, place, manner or form, such failure may be treated as an irregularity. The Court may give any direction as he thinks fits to regularize such step.***
> ***(3) The Court shall not wholly set aside the proceedings or writ or other originating process by which they were begun on the ground that the proceedings are required by any of these rules to be begun by an originating process other than the one used."***

Besides, I find the case of ***Nwafor v. Okeke*** wholly distinguishable and therefore inapplicable to this application. In that case, the contention was that the writ of

summons was not issued by a legal practitioner, as same was signed by a law firm. In this case, the contention is not that, S. M. Oyeghe Esq. is not a legal practitioner; but that his seal was not affixed to his process. The Courts have held in a plethora of cases that the non-fixing of a seal on a process does not invalidate the process; it only makes same inchoate until a seal is affixed thereon. See the case of ***Edem & Ors v. NSEMO (2022) LPELR-56989 (CA) at pp 16-17 (paras A-F)***, where the Court of Appeal per Muhammed Lawal Shuaib JCA held that, and I quote:

> ***"Issue 1 is a challenge to the appellants' brief of argument for failure to affix the stamp and seal of the Nigeria Bar Association as required by Rules 10 (1) of Rules of Professional Conduct, 2007. The purpose of the said Rule 10 of the Rules of Professional Conduct is that legal documents including counsel's brief of argument shall bear the seal and stamp of the Nigerian Bar Association. It was however held in plethora of judicial authorities that the failure to affix the approved seal and stamp of the NBA on a process does not render the process null and void. It is an irregularity that can be cured by an application for extension of time and a deeming order. See YAKI V. BAGUDU also reported in (2015) 18 NWLR (Pt. 1419) 288. The respondent's contention is that the appellants cannot at this stage, withdraw the appellants' brief and that same can only be struck out for being incompetent. In WAYO V. NDUUL (2019) 4 NWLR (Pt. 1661) 60 per PETER ODILI, JSC at page 74 paras, B-C: said: "Therefore the appellant not having done the needful by regularizing the defective notice of appeal and the appellant's brief, the defect remained and since the processes were voidable and in view of the objection of the 1st respondent they remained defective and produced the incompetence of the appeal as being espoused by***

the 1st respondent. It follows that there is no way of wriggling out of the authority of YAKI V. BAGUDU (2015) 18 NWLR (Pt.1491) 288 in which the Supreme Court had laid down what is being done in the event of a document filed by a legal practitioner without the legal seal and stamp of that practitioner." Unlike the situation in the above case, and since the offending document is the appellants' brief of argument alone without the notice of appeal, same in my view can be remedied at any stage in the proceeding by an application for and production and fixing the seal. Again, failure to affix the NBA seal and stamp cannot also in my view take away the right of a party to fair hearing."

See also the cases of ***Senator Bello Sarkin Yaki (rtd) & Anor v. Senator Atiku Abubakar Bagudu & Ors (2015) LPELR-25721 (SC) at pg. 6-8 paras A-E*** *and* ***Ajagungbade v. Gov of Oyo State & Ors (2018) LPELR-45968 (CA) at pg. 13-17 paras B-B****.* To this end, therefore, I hold that the Motion on Notice is competent, same having been signed by a legal practitioner properly called to the Nigerian Bar.

On the issue of the application being an abuse of process of Court, the Courts have delineated the concept of abuse of Court of process. Though the province of abuse of Court process is not closed, the Courts have, however, held that a suit, or an application, constitutes an abuse of Court process if it is brought to undermine the integrity of the Court, to waste precious judicial time and resources, it is intended to annoy or overreach the other party or where there are multiple applications or suits on the same subject matter and between or among the same parties. See the case of ***Customary Court of Appeal Benue State v. Tsegba & Ors (2017) LPELR-44027 (CA) pp 37-38 paras D-A***, where the Court of Appeal per Joseph Eyo Ekanem (JCA) held that, and I quote:

“"Abuse of judicial process is an imprecise concept as it involves circumstances and situations of infinite variety and conditions. Its one common feature is the improper use of the judicial process by a party in litigation to harass, irritate and annoy the adversary and interfere with the administration of justice such as instituting different actions between the same parties simultaneously in different Courts even though on different grounds. The abuse consists in the intention, purpose and aim of irritation of the opponent and interference with administration of justice. The concept applies only to proceedings that are wanting in good faith. See Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156, Ogoejeofo v. Ogoejeofo (2006) 3 NWLR (Pt. 966) 205 and Federal Republic of Nigeria v. Dairo (2015) 6 NWLR (Pt. 454) 141."

See also the case of **Amaefule & Anor v. State (1988) 2 NWLR (Pt 75) 156 at 177,** where the Supreme Court held that, and I quote:

“To amount to an abuse of process, the proceeding or step in the proceeding complained of, will in any event, be lacking in bona fides. It has to be an improper use or perversion of process after it had been issued. The term abuse of process has an element of malice in it. It thus has to be a malicious perversion of a regularly issued process, civil or criminal, for a purpose and to obtain a result not lawfully warranted or properly attainable thereby.”

I have studied the application of the Claimants/Applicants. The Claimants/Applicants are seeking for leave to file Further and Better Witness Statement on Oath. I must note that the Claimants/Applicants acknowledged the fact that such applications are grantable at the discretion of the Court. The Court, in exercising its discretion on whether to grant or refuse to grant the application, has been enjoined to exercise its discretionary powers judiciously and judicially. See the case of ***Mude v. Iorkohol (2021) LPELR-56630 (CA) pp 16-16 paras***

D-E. In another Court of Appeal case of ***Mercantile Bank (Nig.) Plc v. Imesco Enterprises Ltd (2016) LPELR-41203 (CA) pp 9-10 (paras C-B)***, it was held per Paul Obi Elechi (JCA), and I quote:

> ***"The discretionary powers of the Court must be exercised judicially and judiciously. See ODUSOTE v. ODUSOTE (1971) 1 NWLR (PT. 228), OFFORDILE v. EGWUATU (2006) 1 NWLR (PT. 961) 421. A judicial and judicious discretion is that power of a Judge or Court directed by sound judgment in determining the right of litigation where such right is not absolute. It is not to give effect to the will of the Judge but to that of the Law. It is the liberty of the Judge to decide and act in accordance with that which is fair and equitable under the peculiar circumstances of the particular case, guided by the spirit of the Law. In UBN v. ASTRA BUILDERS (2010) 41 NSCQR 1016 at 1038 - 1939 where His Lordship Adekeye JSC said: An exercise of discretion is an act or deed, based on one's personal judgment in accordance with one's conscience free and unfettered by any external influence or suggestions. A judicial discretion means the power exercised in an official capacity in a manner which appears to be just and proper under a given situation."***

In exercising its discretionary powers, the Court must have regard to all the facts and circumstances of the case before it. Above all, in granting leave for a party to file further pleadings, or further witness statement on oath as in this case, the Court must ensure that the other party is not overreached, or placed in a quandary, or subject to such legally debilitating condition that will affect their right to fair hearing. See the case of ***Arije v. Arije & Ors (2018) LPELR-44193 (SC) pp19-20 (paras A-F)***, where his Lordship, per Kudirat Motonmori Olatokunbo Kekere-Ekun JSC held that and I quote:

"Now the right to fair hearing is one of the fundamental rights guaranteed in Chapter IV of the 1999 Constitution. See Section 36 (1) thereof. It is one of the twin pillars of natural justice which support the Rule of Law. The pillars are an indispensable part of the process of adjudication in any civilized society. They are: audi alteram partem (hear the other side i.e. one must be heard in his own defence before being condemned) and nemo judex in causa sua (no one may be a judge in his own cause). See: R Vs. Rand (1866) LR Q.B. 230; Ndukauba Vs Kolomo & Anor. (2005) 4 NWLR (PT. 915) 411; Ikomi Vs The State (1986) 5 SC 313; Akpamgbo Okadiobo Vs Chidi (2015) LPELR-24564 (SC) 1 @ 39 E - F. The concept of fair hearing encompasses not only the principle of natural justice in the narrow technical sense just referred to, but in the wider sense of what is right and fair to all concerned and is seen to be so. See: Unibiz Nig. Ltd. Vs Commercial Bank Credit Lyonnais Ltd. (2003) 6 NWLR (Pt. 816) 402. Fair hearing requires that the trial must be conducted according to all applicable legal rules with a view to ensuring that justice is done to all parties before the Court. The law is trite that any proceedings conducted in breach of the right to fair hearing are a nullity and liable to be set aside. See: Ariori Vs Elemo (1983) 1 SC 81; Kotoye Vs C.B.N (1989) 1 NWLR (Pt.98) 419. It is equally trite that where the principle of natural justice is violated, it does not matter whether if the proper thing had been done, the decision would have been the same, the proceedings would still be null and void. See: Salu vs. Egeibon (1994) 6 NWLR (Pt. 348) 23; Adigun vs. A.G. Oyo State (1987) 1 NWLR (Pt. 53) 678; Bamgboye vs University of Ilorin (1999) 10 NWLR (Pt. 622) 290. All the authorities referred to above underpin the importance attached to the observance of the principles of natural justice in

any adjudication. It follows that if the appellant's contentions are well founded, and the lower Court raised certain issues suo motu without the benefit of any input from the parties before reaching its decision, the entire proceedings, no matter how well conducted would amount to a nullity."

See also the case of ***Anuforo v. Dauda (2016) LPELR-42971 (CA) pp 25-25 (paras D-A)***. Above all, the Court must accord all the parties before it the equal rights and opportunities to place all the material particulars relevant to the strength of their respective cases before the Court in order to enable the Court deal with all the issues conclusively.

In this case however, the Claimants/Applicants are seeking for leave to file its Further and Better Witness Statement on Oath. It is my opinion, and I so hold, that the Claimants/Applicants have the right to bring this application. It is also my opinion that this Court has the discretion to grant or refuse same subject to its effect on the case of the Defendants/Respondents and whether the application will overreach the Defendants/Respondents or otherwise prejudice the Defendants/Respondents. I have paid particular attention to the facts and circumstances of this case. It is my considered view, and I so hold, that granting this application will not overreach the 4th Defendant/Respondent or otherwise prejudice its defence. The 4th Defendant/Respondent is not precluded from filing a Further and Better Witness Statement on Oath on its behalf if it does not agree with, or it intends to challenge the depositions in the Further and Better Witness Statement on Oath of the Claimants/Applicants. In view of these, therefore, I have no hesitation in finding that the application of the Claimants/Applicants has merit and is worthy to be granted. Same is hereby granted.

In conclusion, I must say I am not pleased with the draftsmanship of learned Counsel to the Claimants/Applicants. Apart from a slew of grammatical blunders, there were manifest evidence of extremely poor efforts at copy and paste. In

going through the process of the Claimants/Applicants, I noticed he did a lot of copying and pasting. In fact, Counsel was referring to himself as a Defendant. In as much as legal draftsmanship is all about precedents, lawyers should not be slaves to precedents. The Counsel to the Claimants/Applicants should know that a lawyer's tool is his ability to have a good command of the English language. Though a lawyer is a legal practitioner and not a legal perfectionist, learned Counsel is, however, advised to improve on his drafting skills because, as one of the platitudinous English expressions goes, practice makes perfect.

In view of the foregoing therefore, I do not see any merit in the Counter-Affidavit of the 4th Defendant/Respondent challenging this application. Conversely, I find the application of the Claimants/Applicants entirely meritorious and the reliefs sought therein grantable. The same reliefs sought therein are hereby granted as follows:

1. **THAT AN ORDER IS HEREBY MADE granting leave to the Claimants/Applicants to file a Further and Better Witness Statement on Oath of Chief Innocent Ezuma.**
2. **THAT the Further and Better Witness Statement on Oath already filed in the registry of this Court and served on the Defendants/Respondents is hereby deemed as duly filed and served on all the parties in this suit.**

This is the ruling of this Honorable Court delivered today on the 8th day of November 2022.

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HON. JUSTICE A. H. MUSA
JUDGE
08/11/2022