

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT NO. 4, MAITAMA ON THE**  
**14<sup>TH</sup> DAY OF FEBRUARY, 2023**

**BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE**

**SUIT NO. FCT/HC/CV/738/2019**  
**MOTION NO. M/5656/2022**

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

**BETWEEN:**

**ADESOLA CLARA YEMI .....**

**CLAIMANT/APPLICANT**

**AND**

<b>1. FRANK AKPAN</b>	}	<b>DEFENDANTS/ RESPONDENTS</b>
<b>2. PERSON UNKNOWN</b>		
<b>3. MAMMAN YAKUBU BARRY</b>		
<b>4. VICTOR IBRAHIM GARBA</b>		
<b>5. FEDERAL CAPITAL DEVELOPMENT AUTHORITY</b>		

**RULING**

I have read the Motion, the Affidavit and Counter Affidavit. I have also considered the Addresses of Counsel. The grounds for the application essentially is that the Claimant was late to Court due to traffic gridlock. That Claimant's Counsel arrived shortly after the case was called.

The Claimant should not be punished for the mistake and or error of Counsel. That the case was for Mention and not Hearing.

Generally speaking, when a trial Court such as this, gives an Order, the Court is *functus officio* in relation to the issue decided. It cannot ordinarily reopen such issue for fresh hearing.

However, a trial Court such as this, has power to set aside its decision and relist a matter for Hearing. This power is discretionary, the discretion is governed by certain factors:

- (1) Reasons for Applicant's failure to appear at the hearing.
- (2) Whether there has been undue delay in bringing the application.
- (3) Whether the party in whose favour the Order subsists will be prejudiced.
- (4) Whether the Applicant's case is manifestly unsupportable.

The above requirements are to be construed conjunctively.

In this instant, the reasons adduced for the Claimant's absence or that of his Counsel is traffic. Every litigant/Counsel from that axis came to Court from that area. The reason given for his absence/lateness is not cogent.

The Claimant ought to have amended its processes as ordered by the Court on 24/01/2022 but failed to do so on 9/05/2022 when the case came up. He was absent with his client.

The Claimant/Applicant's case is not worthy of sympathetic consideration. The application is a sheer waste of precious judicial time. It is accordingly dismissed.

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**HON. JUSTICE U. P. KEKEMEKE**  
(HON. JUDGE)  
14/02/2023

Parties absent.

Anderson Ojoshimite Ejiofor, Esq. for the Claimant.

Michael P. Omosogbon, Esq. with Emmanuel Jarikre, Esq.  
for the 1<sup>st</sup> Defendant.

Joseph Eriki, Esq. for the 5<sup>th</sup> Defendant.

**COURT:** Ruling delivered.

(Signed)  
**HON. JUDGE**  
14/02/2023