

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU-ABUJA
ON THURSDAY THE 9TH DAY OF MARCH, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO: FCT/HC/CV/2686/2020

BETWEEN

- | | | |
|--|---|----------------|
| 1. MESSRS UCHE OKORONKWO &
OBI OKORONKWO COMPANY LTD..... | } |CLAIMANTS |
| 2. MECMERAB RESOURCES NIGERIA} | | |
- AND

MRS NONYE JOHN DANOR

- | | | |
|---|---|------------|
| 1. ECONOMIC AND FINANCIAL CRIMES COMMISSION
(EFCC) | } | DEFENDANTS |
| 2. THE CHAIRMAN –ECONOMIC AND FINANCIAL CRIMES
COMMISSION (EFCC) | | |
| 3. MR DARE FOLORIN – (HEAD PFS) | | |
| 4. SAMIRA MOHAMMED (IO) | | |

BENCH RULING

I have listened to parties’ oral submission before this court. The learned counsel to the claimant has submitted that the Defendant Counsel does not have a right of hearing, a right of appearance nor a right of filing of any process as they failed to abide by **Order 55 Rule 1, 2 &3 of the High Court of the FCT (Civil Procedure) Rules 2018**.Also, that the EFCC failed to abide by **Order 43 Rule 1of the High Court of the FCT (Civil Procedure) Rules 2018** which states that an application before the court be accompanied by a written address. That the Preliminary Objection is devoid of a written address. I will incorporate the reply of both Learned Counsel in the body of this ruling.

First and foremost, the Learned Counsel to the defendant in reply had stated:

“The rules of court states that where a counsel appears in error or files a process wrongly or in error but which does not go to the fundamentals of the suit, Order 5 avails us.”

For purpose of emphasis, **Order 5 of the FCT High Court Civil Procedure Rules** summararily is to the effect that where there has been a failure to comply with requirements as to time, place, manner or form in the filing of a writ or application such failure ought not to vitiate the proceedings but the court should treat it as an irregularity. There is nowhere in the rules where a court can rely on the rule of irregularly when a counsel appears in error. Submission of Defendant Counsel that where a counsel appears in error, then **Order 5of the FCT High Court Civil Procedure Rules** would avail

him is a mistaken belief. This is not the law. It is not provided and nowhere in our civil procedure Rules or laws in Nigeria or the Rules of Professional conduct does it permit a lawyer to appear before a court in error and to continue appearing in error as the Learned Counsel has submitted. Such submission should never have been said before this court. There is no excuse for such absurd submissions by Defendant Counsel.

Nevertheless, Plaintiff Counsel in his submission has cited the case of **CHUKWUOGOR VS CHUKWUOGOR (2021) 15 NWLR 1799 at 306** to buttress the point that where the word "SHALL" is used as in **Order 55 of the FCT High Court Civil Procedure Rules** it behooves that a change of counsel must be filed. This is also a mistaken belief by the Plaintiff Counsel as nowhere in the case he cited does it refer to the word "SHALL" when used in a rule of court. What the case states is that when the word "SHALL" is used in a statute it makes it imperative and compulsory that the said provision be adhered to contrary to submissions of Plaintiff Counsel. Rules of court are made by courts to assist and regulate courts and moreover help parties in the presentation of their case. The Apex Courts have reiterated on so many occasions that rules of court should not be elevated to statutes. Both are completely different, a rule of court as in the FCT High Court Civil Procedure Rules which Plaintiff Counsel relied upon heavily remains a rule and not a law. Rules of court are not meant to asphyxiate litigants or lawyers rather they are made for fair and quick dispensation of justice. Rules of court should never be interpreted to defeat justice. Under no circumstances should the court use a rule of court to defeat access to justice which is guaranteed under the constitution. See **FIDELITY BANK PLC VS MONEY (2012) NWLR PRT. 631 Pg. 1412 @ 1439 Para D-G per Adekoje JSC**.

To set the records straight, it is the law that non-compliance with rules of court does not prima facie invalidate proceedings and non-compliance should be treated as an irregularity. As regards the submission of Learned Counsel in respect of the EFCC filing a Preliminary Objection without a written address, Counsel relied on **Order 43 Rule 1 (2) of the FCT High Court Civil Procedure Rules**. **Order 43 Rule 1 of the FCT High Court Civil Procedure Rules** deals strictly with motion on notice, hence sub rule 2 when it referred to applications is a rollover of **Order 1 Rule 1 of the FCT High Court Civil Procedure Rules**. It is my view that since **Order 43 Rule 1(1) of the FCT High Court Civil Procedure Rules** specifically deals with motions on notice then the same **Order 43 Rule 1 (2) of the FCT High Court Civil Procedure Rules** is a rollover of Rule 1 and can be interpreted to deal with motions also. In essence **Order 43 Rule 1 (4) and (2) of the FCT High Court Civil Procedure Rules** deals strictly on motions on notice to be accompanied by an affidavit and written address. There is a grave difference between a

motion and a Preliminary Objection while a motion on notice can deal with facts and law; a Preliminary Objection on the other hand goes strictly to the jurisdiction of the court which is an issue of law. There is no challenging the competence of an application that deals with the jurisdiction of the court. It is trite that a Preliminary Objection can be filed any time before judgment and the court is enjoined to listen and rule on same whether regular or irregular, as its competence cannot be vitiated by a rule of court.

In essence **Order 43 of the FCT High Court Civil Procedure Rules** does not deal with Preliminary objections. I have listened to submission of all counsel and it is my view that nowhere in **Order 55 of the FCT High Court Civil Procedure Rules** does it preclude a litigant from changing his counsel; it is the right of a litigant to change his counsel without leave of court and without giving any reasons. Where a counsel fails to file a letter of withdrawal before the court it is an irregularity and a breach of professional duty of which the new counsel as in this case Chief Mbanefo cannot be sanctioned nor penalized. The right to fair hearing is paramount and should be the pillar of justice in any matter before a court and a litigant cannot be denied that right as it would be in conflict with the Fundamental Human Right of the litigant.

Consequently, the submissions/objections of plaintiff counsel hereby fails in its entirety. The court is adjourned to first hear the Preliminary Objection before the motion on notice.

Parties: Absent

Appearances: Charles Abalaka appearing with A. J. Onosi for the Claimant. Chief Mbanefo Ikwegbue appearing with Ifeanyi Agufor the defendants.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
9TH MARCH, 2023