IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 20 GUDU-ABUJA
DELIVERED ON WEDNESDAY THE 24TH DAYOF MAY, 2023.
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO: FCT/HC/CV/2412/2021
MOTION NO: M/643/2023

BETWEEN
ALHAJI AHMED VANDERPUIJE---------- CLAIMANT
AND

1. THE REGISTERED TRUSTEES OF LIAS HOMES LANDLORD ASSOCIATION
2. MR. JOSHUA YAKUBU ---------- DEFENDANTS
3. MR. OLUSANYO ADEYEMI

RULING

By a motion on notice filed 28/04/2023, the Defendants prays for the following reliefs;

1. AN ORDER for extension of time within which the Defendants/ Applicants may file their Joint Statement of Defence and other accompanying processes in this suit, the time for filing same having lapsed.
2. AN ORDER deeming the Defendants/ Applicants' Joint Statement of Defence and other accompanying processes in this suit filed separately from this application as duly filed and served the necessary fees having been paid.
3. AND FOR SUCH FURTHER ORDERSOR OTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstance.

THE GROUNDS UPON WHICH THIS APPLICATION IS BROUGHT ARE;

a. The time limited by the rules within which the Defendants/ Applicants may file their Joint Statemen of Defence and other accompanying processes in this suit have expired.
b. The witness who was supposed to sign his oath before the Commissioner for oath had been sick and had travelled abroad a long time ago but only returned recently, hence, the counsel's inability to prepare and file same within time.
c. That the Defendants/ Applicants Joint Statement of Defence and other accompanying processes have already been filed separately from this application.

d. That the court has the power to grant this application in the interest of justice.

Attached to the application is an eight (8) paragraph affidavit deposed to by Constance Akpadolua Litigation Manager in the law firm of Messers BENJAMIN OGBAINI & ASSOCIATES, Counsel to the Defendants/ Applicantswherein the deponent averred summarily that the Claimant/ instituted this action against the Defendants vide a Writ of Summons.That the time limited by the rules within which the Defendants may file their Joint Witness Statement on Oath, Joint Statement of Defence and other accompanying processes in this suit had expired.That the witness who was supposed to sign his oath before the Commissioner for oath had been sick and had travelled abroad since over a long time but onlyreturned recently, hence, the counsel's inability to prepare and file same within time.That the Defendants/ Applicants Joint Statement of Defence and other accompanying processes have already been filed separately from this application.That the court has the power to grant this application in the interest of justice.That there was no undue delay by the Defendants/ Applicants in filing their Joint Statement of Defence and other accompanying processes in this suit.That the Applicants have conducted themselves in a way that makes the application worthy of sympathetic consideration.

Annexed to the affidavit is a written address wherein counsel raised a sole issue for determination to wit;

> Whether the Defendants/ Applicants have shown cause why this Honourable Court should exercise its discretion in favour of Defendants/ Applicants by granting this application?

Succinctly, counsel submitted that the position of the law is trite that what is relevant in an application such as the instant is not the length of the delay but that the applicant can show good and substantive reason explaining the delay. Counsel further submitted that noncompliance with the rules of the court is not disrespect or deliberate means to disobey the rules of this Honourable Court accordingly if its rigidity will lead to injustice and render justice grotesques, the need to do justice will supersede it. Counsel relied on **BANK OF THE NORTH V ALHAJI YAHAYA BAMIDELE (2004) 47 WRN PG 1 12 AT 127- 128; OTEJU V MAGMA MARITIME SERVICES LTD (2000) NWLR (PT 640) PG 331 AT PG 346, PARAS A — B; ORDER 49 RULE 4 OF THE HIGH COURT OF THE FCT ABUJA (CIVIL PROCEDURE) RULES 2018 and FEDERAL REPUBLIC OF NIGERIA V OBEGOLU (2006) 18 NWLR (PT 1010) PG 188 @ PG 217 PARAS H - A.**

In reply to the Claimant submission in opposition to this application, Defendants counsel relying on Nwachukwu V. State (2004) 17 NWLR Pt 902 Pg. 262 submitted that the court is enjoined not to allow rules defeat the ends of justice. That the ends of justice is best served if the Defendant is allowed to defend this suit and shut out on technicalities. That on issues of execution of document is an irregularity that can be curved by him appending his signature.

In opposition counsel to the Claimant orally submitted that the Defendants have not filed a memorandum of appearance in this matter in accordance with **Order 9 Rules 1 & 2 of the Rules of this Honourable Court**. Hence, they do not have a right of audience before this court. That Defendants counsel having failed to file an application to regularize their appearance they do not have the right of audience. Secondly, that the processes having not been signed by counsel as prescribed by the Rules of this court is incompetent and urged the court to discountenance the process for being incompetent.

I have gone through the processes before this court, it needs be stated that the power of the Court either to grant the defendant an extension of time within which he may file his Statement of Defence or award judgment in default of pleadings, is discretionary and not mandatory. Such discretion, must at all times be exercised in the interest of justice.In **STERLING BANK V. OYOYO (2018) LPELR-46748(CA)**the principles governing the grant/refusal of an application for the extension of time within which to file pleadings was stated thus;

> *"…It is needless to stress that like any application for extension of time to file pleadings, is not granted as a matter of course. The applicant must show or exhibit good and substantial reason why the Court should invoke its discretion in his favour. A party who is out of time in taking any procedural step in doing an action must furnish the Court with substantial reasons in his affidavit explaining the delay in doing the act. Where he fails to do so or does so unsatisfactorily, the Court would be justified in refusing to condone the delay. The common slogan or verse with respect to an application for enlargement of time to take an action is "No cogent reason No indulgence".In legal prose, where no cogent reason or excuse is offered, no indulgence should be granted".*

See also **WILLIAMS VS HOPE RISING VOLUNTARY FUNDS SOCIETY (1982) 2 SC 145** where Idigbe JSC summed up the law in this way:-

> *"When a Court is called upon to make an order for extension of time within which to do certain things (i.e. extension of time prescribed by this Rules of Court for taking certain steps), the Court ought always to bear in mind the Rules of Court must prima facie be obeyed and that it therefore follows that in order to justify the exercise of the Court's discretion in extending the time within which a procedural step has to be taken, there must be some material upon which to base the exercise of that discretion; any exercise of the Court's discretion where no material for such exercise has been placed before the Court would certainly give a party in breach of the Rules of Court uninhibited right to extension of time and the provisions as to the time within which to take procedural steps set out in the Rules of Court would indeed in such circumstances have no contents... Prima facie if no exercise is offered, no indulgence should be granted."*

In considering what amounts to substantial and good reasons, the Court must bring to bear the facts of each case, the depositions in the affidavit and the justice of each case. In the instant case,it is imperative to start by pointing out that the defendants were served with the originating processes on 9/11/2021. The defendants never filed any process in response. On 26/01/2022, one Benjamin Ogbaini Esq. appeared for the defendants without filing any process and on the agreement of counsel on both sides the matter was adjourned to 23/2/2022 for definite hearing and on the said adjourned date Defendants and their counsel were not in court. On 7/7/2022, same Benjamin Ogbaini Esq. wrote a letter of adjournment on behalf of the defendants without filing memorandum of appearance or any process before the court. The claimant was therefore allowed to prove his case in the absence of the defendants who have shown no interest at defending the suit. Furthermore, there is nothing attached to the motion on notice to ascertain the avermentsthat the witness who was to sign the witness statement on oath for the defendants travelled out of the country on medical grounds. The witness international passport or flight ticket was not exhibited to show he was out of the country within the said period neither was there any medical report on the health of the witness attached. The Applicants have not

placed anything before this court for the grant of this application, all that is before this court are mere averments.

Claimant counsel raised the issue of theDefendants processes not signed by a legal practitioner and non filing of memorandum of appearance. It is important to perhaps, draw attention to the fact that the effect of an unsigned process was discussed by the apex Court in the case of **OMEGA BANK NIG PLC V. O.B.C LTD (2005) LPELR - 2636 (SC)**, where per NIKI TOBI, JSC had this to say;

> *"A document which is not signed does not have any efficacy in law. As held in cases examined, the document is worthless and a worthless document cannot be efficacious."*

The failure therefore of counsel to sign the motion on notice and jointstatement of defenceclearly borders on the question of jurisdiction and the competence of the Court to consider the motion on notice and joint statement of defence. a situation which is fatal to their application. The Supreme Court held in **FBN PLC & ORS V. MAIWADA & ORS (2012) LPELR-9713(SC)** that the purpose of **Sections 2 (1) and 24 of the Legal Practitioners Act Cap L5 Laws of Federation 2004** is to ensure that only a Legal Practitioner whose name is on the roll of this court should sign court processes.

Onnoghen JSC in **OKAFOR & ORS V. NWEKE & ORS (2007) LPELR-2412(SC)**had this to say

> *"Legal practice is a very serious business that is to be undertaken by serious minded practitioners particularly as both the legally trained minds and those not so trained always learn from our examples. We therefore, owe the legal profession the duty to maintain the very high standards required in the practice of profession in this country".*

Fair hearing does not mean that the business of the court is to be dictated by the whims and caprices of any party. See **Okocha v. HERWA LTD (2000) 15 NWLR (Pt. 690) pg. 249 at 258**, whereinOguntade JCA as he then was, had this to say about fair hearing:

> *"It is not fair or just to the other party or parties as well as the court, that the recalcitrant and defaulting party should hold the court and other parties to ransom. The business of the court cannot be dictated by the whims and caprices of any party. Justice must be even handed."*

Also, a party who fails to file a memorandum of appearance has not submitted himself to the jurisdiction of the court and cannot be heard; such a party cannot complain of want of fair hearing.See**MR. ADELANI ADEWOYIN V. THE EXECUTIVE GOVERNOR, OSUN STATE & ORS (2011) LPELR-8814 (CA)** where the court held;

> *"The significance of entering appearance by a defendant, as provided by the rules of the court, is very important and cannot be over-emphasized. The consequences of failure to enter an appearance by a defendant to a writ of summons or an originating process include a plaintiff having a judgment against such a defaulting defendant and or the defendant being denied the right to be heard"*

See also **INAKOJU V. ADELEKE (2007) All FWLR (Pt. 353) 1 at P. 138** where the Supreme Court per Katsina-Alu, JSC (as he then was) held that even when such a defendant intends to challenge the jurisdiction of the court, he must first file an appearance at least a conditional appearance for the reason that where the rules so demand, a defendant served must enter appearance.

As earlier stated,counsel by name Benjamin OgbainiEsq. appeared twice (on 26/01/2022 and 8/12/2022)without filing a memorandum of appearance even at the time of filing this motion on notice for extension of time the memorandum of appearance is still not before this court. Now same counsel mentioned above has filed this unsigned motionon notice and unsigned joint statement of defence of the defendants after over one year of being aware of the pendency of this case before this court and appearing before the court. Furthermore, Defendants were foreclosed on the 8/3/2023 and case was adjourned for adoption of final written address. There is no prayer for the court to set aside its order of foreclosure on the motion paper.

As for demonstration of readiness to defend the action, what is expected of the Defendants particularly of a lawyer in this case is for the Defendantssolicitor to file theirsigned memorandum of appearance, signed motion on notice to set aside the order of foreclosure/extension of time to file defenceand his proposed signed statement of defence and all other processes required by the Rules of this court. In the absence of those, there is no demonstration of readiness to defend the action. It is not a judicious discretion to grant the prayer for extensionof time and a deeming order then allow the applicants to take their time to bring

application for setting aside order of foreclosure or whatever application they may choose to bring thereafter at their own pleasure.

I do agree with counsel to the defendant that the era of technicality is gone and the courts have a duty to ensure substantial and not technical justice. I also agree with defendant counsel that the court ought not place heavy reliance on rules of court to distort the cause of justice; however, it is my view that the defendant counsel in this case has incurred incurable mistakes that cannot be clothed with technicality or irregularity. Rather these mistakes goes to the root of this case.

Accordingly, I exercise my discretion and refuse to grant this application.The motion is hereby dismissed for want of merit.Cost of N50,000.00 (Fifty Thousand Naira) is hereby awarded against the defendant to be paid to the Claimant before the next adjourned date.

PARTIES: Absent
APPEARANCES: Agebe Odeh appearing for the Claimant. Constance Akpadolu appearing for the Defendants.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
24TH MAY, 2023