

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU - ABUJA**  
**ON THURSDAY THE 25<sup>TH</sup> DAY OF MAY, 2023.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI**  
**SUIT NO. CV/276/2006**

**DR. A. T. POPOOLA -----PLAINTIFF/APPLICANT**  
**AND**

- 1. LEADERSHIP NEWSPAPERS GROUP LTD**
- 2. SAM NDA-ISALAH -----DEFENDANTS/RESPONDENTS**
- 3. ANDREW OOTA**

**RULING**

The Plaintiff by a motion filed on the 21<sup>st</sup> day of January, 2022 prayed this Court to relist this suit already struck out for want of diligent prosecution on 22/11/2021. The Applicant attached a 13 paragraph affidavit deposed to by Ifeanyi L. Iroh the legal practitioner to the Plaintiff wherein the deponent deposed to the fact that after serving the first Defendant through its head office, Plaintiff counsel was a few minutes late on the next adjourned date due to morning rush hour traffic congestion and upon arrival in court the matter had been adjourned to November 22, 2021. That upon the matter being adjourned to November 22, 2021, due to their client's medical appointment in Canada and the difficulty of his being able to attend the case, they wrote to this Honourable Court a letter filed on 18th November 2021 requesting for an adjournment. That the said filed letter requesting for an adjournment was inadvertently not brought to the court's attention by the court staff. That the Plaintiff is still very interested in this case as it is his only chance to clear his good name for posterity.

Also filed is an address where an issue was raised, which is "Whether it is in the interest of justice for the application to be listed" Counsel arguing the sole issue, submitted that shutting out the Plaintiff from prosecuting his case due to an error not committed by him or his legal representative would fit the description of denial of fair hearing and urged this Honourable Court based on their submissions to kindly grant their application and relist the suit.

Opposing the application, the Respondent filed a counter affidavit of 8 paragraphs deposed to by Iorlumun Joseph, a litigation Clerk with MESSRS M.S. IBRAHIM (SAN) & CO. counsel to the 1<sup>st</sup> Defendant. Respondent's counsel also filed a written address as argument wherein he raised two issues for determination to wit;

- i. Whether the Claimant has satisfied the condition precedent provided by the rules of this court, before praying this Honourable court to re-list his case which was struck out on the 22<sup>nd</sup> of November, 2021.
- ii. Whether by the reason of failure of the Claimant to appeal against the order of this Honourable court striking out his case on the 22<sup>nd</sup> of November, 2021, that order is still subsisting and binding

Summarily, counsel submitted that the Claimant's application lacks merit by reason of his failure to comply with the provisions of the rules of this Honourable court by not appealing against the order of this court striking out his case, neither has he applied that the order should be set aside and urged the court to dismiss the Claimant's application with cost.

I have examined the application and counter affidavit of the parties. The principle of law is that a suit struck out may be relisted with the leave of court, if the circumstances warrant doing so and if there is an application to restore. Hence, it is in the discretion of the court whether or not to relist the suit depending on the ground upon which the suit was struck out and other circumstances of the case. Where the failure to be present in court on the scheduled date of hearing is deliberate for example, to delay the hearing of this case, the application to relist will not be granted when the reasons tendered are not satisfactory to the court. However, when the failure to appear was not deliberate or due to the fault of the Applicant, the application for re-listing will be granted as was held in the case of **OSHUNRINDE VS. AKANDE (1996) LPELR-280(SC)**.

In this case, the Claimant from the affidavit attached to the motion for relisting stated that the reason for the delay was due to their client's medical appointment in Canada and the court staff inadvertent failure of bringing the letter for adjournment to the court's attention. This piece of evidence was not contradicted by the 1<sup>st</sup> Defendant in the counter affidavit, instead, facts relating to the application of extension

of time and payment of default fees were stated in the counter affidavit. The 1<sup>st</sup> Defendant has not in the counter affidavit shown to this court how the grant of this application will prejudice them, therefore, it will be in the interest of justice that the suit be relisted for the substantive suit to be heard on the merit. The Claimant shall comply with the provision of **Order 32 Rule 5(3) of the Rules of this Honourable court** and proof of payment presented to the court on the next adjourned date.

The Claimant's suit is hereby relisted. I make no order as to cost. Case is adjourned to the 14<sup>th</sup> day of June for hearing.

**Parties:**Absent

**Appearances:**M. Z Tijjani appearing for the 1<sup>st</sup> Defendant. Plaintiff, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants not represented.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI**  
**JUDGE**  
**25<sup>TH</sup> MAY, 2023**