

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT NO. 4, MAITAMA ON THE**

**23<sup>TH</sup> DAY OF OCTOBER, 2023**

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

**SUIT NO. FCT/HC/CV/495/2005**

**MOTION NO. M/9455/2023**

**COURT CLERKS: JOSEPH ISHAKU BALAMI & ORS.**

**BETWEEN:**

1. XELA NIGERIA LIMITED } ..... CLAIMANTS/APPLICANTS  
2. SEN. ALEX KADIRI }

**AND**

1. NAVY CAPTAIN M. D. YAKUSAK } ..... DEFENDANTS/  
2. HERITAGE BANK PLC } RESPONDENTS

**RULING**

The application is dated the 12<sup>th</sup> day of May 2023. The Claimant/Applicant prays this Court for:

- (1) An Order of this Court granting leave to the Claimants/Applicants to prosecute this suit and proceed with the trial of the suit relying on the Originating Court Processes contained at pages 1 - 120 of the Certified True Copy (CTC) of the Records

obtained from the Court of Appeal, Abuja Division as the original case file of this suit in the High Court is missing and cannot be found.

- (2) And for such Order or further Orders as the Court may deem fit to make in the circumstances.

The grounds for the application as contained on the face of the Motion paper are:

- (1) That this suit having been properly filed ought to be heard.
- (2) To enable Claimants ventilate their grievances before the Court.
- (3) To enable Court ascertain and determine the rights of the Claimants.
- (4) To ensure fair hearing.

Learned Counsel to the Claimants relies on the 4-paragraph Affidavit filed in support of the application. Celine Amuzie A. of No. 4, Kontangora Close, Off Jos Street, Area 3, Garki, Abuja deposes:

That this case was instituted on 10/05/2005 against Defendants before this Court.

The Defendants did not file any process and were unrepresented throughout the proceedings.

That the case proceeded to Judgment and Judgment entered in favour of the Claimants.

That Defendants filed an application to set aside the Judgment which was refused.

The Defendant thereafter filed an appeal at the Court of Appeal.

That the Court of Appeal delivered Judgment on 3/03/2021 in favour of Defendants and ordered a retrial.

That he applied for the original case file but it could not be located at the Court of Appeal.

He applied for the CTC of the Records of Appeal containing all the processes filed.

That the only record of the Originating Processes in this suit can be found only in the Record of Appeal. That the said CTC is marked Exhibit A.

That the Registrar of this Court made efforts at the Registry, Appeal and Archives but those efforts proved abortive as the original case file cannot be found.

The CTC of documents marked Exhibit A are transmitted by this Court to the Court of Appeal represents the actual document filed before this Court. That the Defendants will not be prejudiced.

The Defendants were served with all processes of Court but failed to respond to the application.

Learned Counsel to the Claimants canvassed that this Court has the discretion to grant the application in the circumstance of this case.

That mistake of Court staff or Registry should not be visited on a party to a suit. That it will be inequitable and unjust for Claimants to be punished for the administrative error or fault of Registry and staff of the Court.

Learned Senior Counsel urges the Court to allow Claimants use the CTC of documents.

I have read the facts as contained in the Affidavit and considered the Written Address of Counsel. The Claimants had initiated a suit, which went to the Court of Appeal and now back.

The evidence is that the original case file cannot be traced despite all efforts. The Court of Appeal ordered a retrial.

The Claimants cannot ventilate their grievances unless the original case file is found or this Court grants this application allowing the use of Certified True Copies

compiled and transmitted to the Court of Appeal by this Court.

The Claimants will suffer untold hardship if the application is refused.

The justice of this case demands that I exercise my discretion in favour of the Claimants.

Orders are granted as prayed.

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**HON. JUSTICE U. P. KEKEMEKE**  
(HON. JUDGE)  
23/10/2023

Parties absent.

Abdullahi Haruna, Esq. for the Claimant/Applicant with  
me is C. P. Aninwonya, Esq.

J. T. Mchauan, Esq. for the Protest.

**COURT:** Ruling delivered.

(Signed)  
**HON. JUDGE**  
23/10/2023