

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA - ABUJA
ON MONDAY THE 23TH OCTOBER 2023**

**SUIT NO: FCT/HC/CV/2426/2019
MOTION NO: M/5519/2023**

BEFORE HIS LORDSHIP: HON. JUSTICE A. I. AKOBI

BETWEEN

MRS. OGBONYEANU.....APPLICANT

AND

ABUJA MUNICIPAL AREA COUNCIL.....RESPONDENT

R U L I N G

Oti Stephen E. Esq, on behalf of the applicant filed a motion on notice dated 30/11/2022 and was filed on the 02/03/2023. The motion is brought pursuant to Order 43 Rule 1(1) and Order 49 Rule 4 of the High Court of the Federal Capital (Civil Procedure) Rules and under the inherent jurisdiction of this Honourable Court. The motion was moved after granting a similar application of the respondent. It seeks the following reliefs:

1. An Order extending time within which to file the Applicant's further affidavit and written address.

2. An Order deeming the Applicant's already filed further affidavit and written address as having been properly filed and served.
3. Such further order(s) as this Honourable Court may seem fit to make in the circumstances.

The application is supported with 7 paragraphs of affidavit deposed to by one Mrs Chukwu, a counsel in Oti Steve Ezenwa Law Firm of counsel to the applicant. Also filed in support is a written address. The learned counsel submitted in support of the issues raised in the written address that this court has the inherent power to grant this application in compliance with the principle of fair hearing. To support her stance the court is referred to order 49 rule 4 of the rules of this court and some judicial authorities and thereafter, urged the court to exercise its discretion in favour of the applicant and grant reliefs sought.

There is no counter affidavit in opposition to the application; however the court granted the counsel to the respondent Auta Nyada Esq leave to reply orally on point of law. The contention of Mr. Auta is that the application just moved has no basis in Fundamental Right Enforcement Procedure Rules. According to him what the applicant ought to have done was to file for amendment. The applicant swiftly responded that order 15 rules 4 of the Fundamental Rights rule permits the applicant to rely on the rules of this court if there appear to be a lacuna which they had done. The court is

urged to reject the submission of the respondent and grant reliefs sought.

I have listened to the arguments and submissions of both parties and it is apparent that the objection of the respondent to this application is based on Order VI (6) of the Fundamental Rights Enforcement Rules. The rules provide thus:

1. No ground shall be relied upon or any relief sought at the hearing of the application, except the grounds and the relief's are set out in the statement.
2. The Court may, on the hearing of the application allow the statement to be amended and may allow further affidavit too be used if they deal with new matters arising from the counter affidavit of any party to the application.
3. The application for amendment shall be supported by an exhibit of the proposed application to be amended and may be allowed by the court upon such terms or otherwise as may be just.
4. Where a party who obtained an order to amend fails to comply with the order within the time allowed by the order of court, such party shall be deemed to have abandoned the amendment unless he obtains all order of court for extension of time to file the same.
5. Where the applicant intends to ask to be allowed to amend his statement or use further affidavits, he must put

the other party or parties on notice of his intention to amend.

The main purpose of amendment is to cure all discernable defects, and to put the proposed amendment in line with what parties want and in order to do substantial justice between the parties see **Laguro v. Toku (1992) 2 NWLR (Pt. 223) pg.278** **Diko v. Ibadan South West L.G. (1997) 2 NWLR (Pt. 486) pg.235**. To ask the court as being done in the instance case to strike out the application for extension of time to regularize processes filed out of time because it did not form part of the grounds for the suit will be over stretching the arm of law. That is not the intention of order VI relied upon by the Mr. Auta Nyada. There is obviously no express provision under the Fundamental Rights Enforcement Procedure Rules for an application of this nature; however, the rules permit reliance on the civil procedure rules of the court where there is a gap to attain justice.

Order **XV Rule 4** provide thus: Where in the course of any Human Rights Proceedings, any situation arises for which there is or appears to be no adequate provision in these rules, the civil procedure rules of the court for the time being in force shall apply.

The Court is taken aback by the submission of the respondent counsel to the effect that this application has no premise in Fundamental Right Enforcement Procedure Rules when the same counsel filed similar application moved and was granted. I am satisfied that the applicant's application has the support of law. In

the light of the aforementioned, I hold that the objection of the respondent is misplaced and has no merit, it is hereby overruled.

Following the above conclusion, I hereby grant the application of the applicant and make the following orders:

1. Extending time within which the applicant may file her further affidavit and written address.
2. Deeming the applicant's already filed further affidavit and written address as properly filed and served.

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HON. JUSTICE A. I. AKOBI

23/10/2023