

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT KUBWA, ABUJA**

**ON FRIDAY THE 11<sup>TH</sup> DAY OF NOVEMBER, 2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/2430/2020**

**BETWEEN:**

**ANGELCOM RESOURCES LIMITED**

**----- CLAIMANT**

**AND**

**1. EL-KABIR GLOBAL BUSINESS NIGERIA LIMITED**

**2. DR. MOHAMMED KABIRU WALIKI**

**} DEFENDANTS**

## **RULING ON RECUSAL**

In this application chequered case the Claimant had sought for the claims as contained in the face of the Writ which is majorly on the Sub-contract Agreement on property development between the 1<sup>st</sup> Defendant and the Claimant on 2<sup>nd</sup> August, 2018 and involving claim of sum of ₦12.6 Million and also sum of ₦4.2 Million. Thirty Million Naira (₦30, 000,000.00) damages and Three Million Naira (₦3, 000,000.00) as cost of the Suit and 10% interest on the Judgment sum.

The Claimant also filed a Motion for Interlocutory Order and Affidavit of Urgency.

The Defendant filed a Preliminary Objection and Counter Affidavit to the Interlocutory application. The Court heard both Preliminary Objection and Motion on Notice for the Interlocutory Injunction the same day and reserved the matter for Ruling, stating that if the Preliminary Objection stands, it will not go on with the matter. But that if the Preliminary Objection fails, it will go on to deliver the Ruling on the Interlocutory application.

Before I go further, it is imperative to state that this Suit was filed during the 2020 vacation at the peak of the Covid-19 pandemic. It was transferred to this Court in late 2020 – November. The Court set the case for Hearing on the 15<sup>th</sup> February, 2021. All parties were notified. They were all in Court on that day. The Defendants' Counsel moved its Preliminary Objection while the Claimant's Counsel moved their Motion for Interlocutory Injunction. This Court adjourned for Ruling stating on record that if the Preliminary Objection stands that it will hands off its hands and if otherwise, it will deliver its Ruling on the Interlocutory Injunction. The Court adjourned to 14<sup>th</sup> May, 2021 or on an earlier date if the Ruling was ready.

On 17<sup>th</sup> June, 2021 the Court delivered its Ruling on the Preliminary Objection, dismissing same. The Court stated that it will subsequently deliver the Ruling on Interlocutory Injunction on a date to be communicated to the parties. That day both parties were in Court and the Defendants' Counsel, S.U. Garba thanked the Court for the Ruling. Because of the Judge's Vacation the matter was adjourned to 8<sup>th</sup> October, 2021. It was further adjourned to 11<sup>th</sup> October, 2021 for Ruling. The adjournment of 11<sup>th</sup> October, 2021 was because the Defendants' Counsel was not in Court. The Defendants' Counsel was duly notified about that day but failed to be in Court. So the Court in exercise of its discretionary powers adjourned the matter in the interest of fair-hearing for the Defendants. The Defendants' Counsel, S.U. Garba was duly notified.

On the said day that the matter was adjourned to, Defendants' Counsel was in Court represented by Mike Odey Esq. That day the Defendants' Counsel filed a Recusal urging the Court to suspend the delivering of the Ruling which it had reserved since July. This Court obliged them the application and allowed them to move the Motion for Recusal. The Claimant moved its Counter while the Defendants/Applicant moved it Further Affidavit in response to the Counter filed by the Claimant. The Court adjourned the matter to deliver Ruling on the Recusal. This is exactly what

actually transpired in this case. The Court refers to the Record of Proceeding in this case. There was no time limit for Ruling to be delivered.

Meanwhile, on the 1<sup>st</sup> July, 2021 when the parties were in Court the Judge was ill and adjourned the matter because of ill-health. The matter was adjourned to 5<sup>th</sup> July, 2021 in the presence of the Defendants' Counsel, K.O. Anabali holding the brief of S.U. Garba.

On the 5<sup>th</sup> July, 2021 because the Defendants failed to be in Court and no reason was given, this Court adjourned the case to 14<sup>th</sup> & 15<sup>th</sup> days of July, 2021 and asked the Claimant Counsel to communicate to the Defendants. The Defendants/Defendants' Counsel was duly communicated. See the Record of Proceeding of that day and the Bailiff's Affidavit.

On the 14<sup>th</sup> July, 2021 the Defendants were represented by S.U. Garba and C.N. Jato Esq. It was that day that the Defendants told Court that they have a Motion on Notice for Recusal and the Claimant Counsel stated that since their time is still running that they intended to respond in writing. They applied for a date for Hearing. It was based on that that the Court adjourned to 11<sup>th</sup> October, 2021 for Hearing of the Motion on Recusal, and further suspended the Ruling on the Interlocutory application which was

reserved and ready since the 15<sup>th</sup> day of February, 2021.

This Court decided to lay barely almost the day-to-day of all that transpired in this Suit for all to see that there was no element or iota of bias as the Defendants/ Defendants' Counsel had erroneously stated and that there was no cause to be biased against the Defendants who I do not know and had never seen and does not wish to know let alone being biased against.

This Court had looked at the Motion for Recusal and had seen that basically, the only ground for seeking for recusal is because this Court granted the application of the Claimant's Counsel for adjournment for 2 consecutive dates – 14<sup>th</sup> & 15<sup>th</sup> July, 2021 as contained in 1<sup>st</sup> ground paragraph (a) of the Ground for Recusal. It shows that the Defendants are all out to delay the Hearing of the Suit for reason best known to them.

It is unfortunate that S.U. Garba, Counsel for the Defendants lied that the Defendants opted to settle the matter out of Court. There was no such thing in the length and breadth of the Record of Proceedings in this case. Parties never planned to explore settlement. Besides, there is no law that stops a Court from going on with the Hearing of the Suit while parties explore

settlement. Again, there is nothing in the Recording of this Court to show that the Defendants ever wanted settlement. If the S.U. Garba, the Counsel is on the side of both and had actually wanted settlement out of Court, why file the Preliminary Objection? Why frown at adjournment for 2 days consecutively?

On the issue of altercation between the Claimant Counsel and the Defendant Counsel, that has nothing to do with the Judge in this case.

It is unfortunate that the Defendants' Counsel, S.U. Garba should descend to the demeaning level of lying about the issue of settlement.

On the fact in paragraph 5 (e) – on the Judge according accelerated Hearing, it is imperative to point and/or refresh the mind of the Defendants' Counsel, S.U. Garba that accelerated Hearing is not only based on application of the parties. That the Judge, as the master of its Court, can suo motu Order for accelerated Hearing. Besides, I never ordered accelerated Hearing. I only gave the 2 consecutive days for Hearing based on the application of the Claimant Counsel for 14<sup>th</sup> & 15<sup>th</sup> July, 2021. I never adjourned for 1<sup>st</sup> & 5<sup>th</sup> July, 2021. I adjourned for 1<sup>st</sup> July, 2021 and subsequently to 5<sup>th</sup> July, 2021 because the Defendants' Counsel, for reason best known to it and to deliberately delayed the Hearing of the case, did not

come to Court on the 5<sup>th</sup> July, 2021 and never gave any reason for not being in Court as statutorily required. Meanwhile, the Defendants' Counsel was in Court represented by K.O. Anabali holding the brief of S.U. Garba. The said K.O. Anabali wished the Court quick recovery on the 1<sup>st</sup> July, 2021 when the Judge told the parties that she was sick and cannot go on with Hearing of the case. Record of Proceeding of 1<sup>st</sup> July, 2021 refers. The same Defendants' Counsel was in Court when the matter was adjourned to 5<sup>th</sup> July, 2021 for Ruling.

Meanwhile, the same S.U. Garba, on the 2<sup>nd</sup> July, 2021 filed a Notice of Change of Address which he served on the Court and the Claimant Counsel. Meanwhile, the matter was adjourned for 14<sup>th</sup> & 15<sup>th</sup> July, 2021 and he was served Hearing Notice to that.

Meanwhile, it was on the 13<sup>th</sup> July, 2021 a day before the 14<sup>th</sup> July, 2021 date that he filed a Motion for Recusal. Aside from filing the Motion for Recusal, he wrote the Court a letter dated 7<sup>th</sup> October, 2021 just 4 days before the Hearing of the Motion and all other applications pending. Contrary to the lies that the Defendants filed Motion for Discontinuance M/4476/21, there was no such Motion for Discontinuance. Besides, the Defendants cannot discontinue a Suit it never instituted and where it has

not filed a Counter-Claim too. There was no Motion for Discontinuance. The Defendants filed Motion M/4476/21 which is the Motion for Recusal.

Again, contrary to what the Defendants' Counsel, S.U. Garba had stated, it was the Claimant Counsel who stated on record that they want to respond to the Motion for Recusal. Besides, it is the right of any party to respond to any Process served on it. I never ordered that the Claimant Counsel should file any Counter as the Defendants' Counsel had lyingly stated. It is a shame that the Defendant Counsel did not disclose the so called reason why the Court did not deliver the Ruling. The simple reason is that, the Court, in exercise of its discretion, did not deliver the Ruling because the Defendants/Defendants' Counsel had for reason best known to it tried as can be seen to delay the Hearing and delivering of the Ruling.

The Court gave ample time to the Defendants for the scheduling of the Hearing of the Motion for Recusal. The Defendants was duly notified.

The National Judicial Council (NJC) as well as the Supreme Court (SC) in several of its decision has held that notification for Hearing of any Motion, Ruling and even Judgment should be done not less than 48 hours. But in this case, the Defendants' Counsel was notified on 7<sup>th</sup> October, 2021 for the Hearing of their

application on Recusal scheduled for 11<sup>th</sup> October, 2021. That notification was for 3 days. Besides, the Chief Justice of the Nigeria has on the Practice Direction for Court sitting during Covid-19 ordered that notifications are to be done via Telephone and SMS. There are decisions of the Supreme Court that once parties have taken bold steps in a matter, the Court need not serve them Hearing Notices for everyday the matter is scheduled. That it is incumbent on the parties to check and know when matter is scheduled.

In this case, the Defendants had deliberately absented themselves from Court without reason or notification even on days when it was around when the adjournment was given. Besides, most adjournments were done at the instance and on the interest and for benefits of the Defendants. The Court refers to the Record of Proceeding in this case.

One wonders why the Defendants' Counsel is paranoid about the outcome of the Ruling in the Motion for Interlocutory Injunction which the Defendants' Counsel was given ample time to counter as he did.

From all indication, it is glaringly clear that the Defendants' Counsel is all out to delay the Hearing of this case that is why it has come up with all sought of applications and yet not satisfied.

Based on the above, it is very clear that there is no way I have compromised myself in the prosecution of this matter. Yes, there has been delay in the delivering of the Ruling on the Recusal. There has also been delay in delivering the Ruling on Interlocutory Injunction which the Defendants' Counsel had laboriously tried to frustrate and captivate by absenting itself from Court and changing address of his office. That occasioned delay.

This Court will therefore not recuse itself from handling this Suit. From all indication, the application for Recusal is not meritorious. It is therefore DISMISSED.

The Court will go on to deliver the Ruling on the Interlocutory Injunction.

**This is the Ruling of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2022 by me.**

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**K.N. OGBONNAYA**  
HON. JUDGE