

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU – ABUJA**  
**DELIVERED ON THE WEDNESDAY 11<sup>TH</sup> DAY OF DECEMBER, 2024.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI**  
**CHARGE NO.CV /268/2016**  
**MOTION NO: M/9521/2024**

**BASELINE FABRICATION LIMITED ---- PLAINTIFF/RESPONDENT  
AND**

- 1. NIGUS INTERNATIONAL  
INVESTMENTS LTD ----- DEFENDANTS/APPLICANTS**
- 2. PRINCE MALIK ADO-IBRAHIM**

**RULING**

On the 19<sup>th</sup> day of June, 2024 the Defendant filed a Motion on Notice dated 14/6/2024, brought pursuant to **Order 32 Rule 11 (1)** of the **FCT High Court Civil Procedure Rules 2018, Section 36(1)** of the **Constitution of the Federal Republic of Nigeria 1999 (as amended)** and under the inherent Jurisdiction of the Court praying the Court for the following orders:

- 1. AN ORDER** of this Honourable Court setting aside the order granted on 28<sup>th</sup> May, 2024 foreclosing the defence of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
- 2. AN ORDER** of this Honourable Court granting leave for the Defendants to substitute their sole witness - Mimi Jooji with a new witness - Onyegbule Chima Promise and accordingly open their defence.
- 3. AN ORDER** of this Honourable Court granting leave for the Defendants to substitute the witness statement on oath of Mimi Jooji filed on 4<sup>th</sup> May, 2018 with a new witness statement on oath of Onyegbule Chima Promise.
- 4. AN ORDER** of this Honourable Court deeming the Defendants' new witness statement on oath of Onyegbule Chima Promise, separately filed with appropriate fees paid, as properly filed.
- 5. SUCH FURTHER ORDER (S)** as this Honourable Court may deem fit to make in the circumstances.

Attached is an 11 paragraph affidavit deposed to by Tajudeen Ayeni, the litigation clerk in the law firm of J-K Gadzama LLP with a written address in support. The averment of the deponent summarily, is that the failure of the 1st and 2nd Defendants' sole witness to appear in Court to proceed with defence on 28<sup>th</sup> May, 2024 was not deliberate but as a result of the fact that she had left the employment of the Defendants and was no longer working with them. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have not been heard in this case and the overall interest of justice will be better served by the hearing of all sides by this Honourable Court. That the Defendants are desirous of substituting Mimi Jooji with Onyegbule Chima Promise as the new witness as he is available on ground to testify on their behalf. That an order of this court is needed to set aside the foreclosure order against the Defendants. That an order of this court is needed in order to substitute their witness and then put in their defence. That the Plaintiff will not be prejudiced by the grant of this application. Attached to the motion are two documents  
In the written address counsel raised a sole issue for determination to wit;

“Whether in the interest of justice, this Honourable Court ought to grant the relief sought”

In summary learned counsel submitted that this Honourable Court is empowered to set aside an order of foreclosure and grant leave for defence as sought in the instant application. That this power of the Court is discretionary and urged the Court to exercise its discretion judicially and judiciously in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants. That the law is now settled that in an application of this nature, the Court is to be mindful of the interests of the Parties. Counsel further submitted that this Honourable Court is empowered to grant leave for the substitution of the Defendant's witness Mimi Jooji as well as to deem the new witness statement on oath of Onyegbule Chima Promise already filed separately as properly filed as sought in the instant application. Counsel urged this Honourable Court to find in favour of the Applicants and grant the reliefs sought to enable the Defendants present their defence in this matter. Counsel relied on **Order 32 Rule 11 (1) of the FCT High Court (Civil Procedure) Rules 2018**.

In opposition learned counsel to the Defendants filed an 11 paragraph counter affidavit deposed by Chima Madumere a counsel in the firm of

Nwachukwu Nwachukwu & Co., counsel to the Claimant. The deponent averred that when this matter came up on the 8th May, 2024, the Counsel to the Defendants pleaded with the court for an adjournment on the ground that their witness was not in court. That in the magnanimity of the court, the court granted the application for an adjournment sought by the Defendants through their counsel and the case was adjourned to the 28th June, 2024. That on the 28th June 2024, there was no application for substitution of witness before the court and the Defendants/Applicants still failed to produce their witness. That since there was no application before the court on the 28th May, 2024, the Claimant's counsel moved the court to foreclose the Defendants and the Defendants were accordingly foreclosed. That the motion before this Court is a tactic by the Defendants to further delay and frustrate this case. That the said motion is incompetent before this Court and should be accordingly struck out and dismissed. That it is in the interest of justice to dismiss this application as it is lacking in merit.

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

“Whether this application is not liable to be dismissed with substantial cost for lacking in merit and a calculated attempt to further delay and frustrate this case”.

Summarily counsel submitted that the Defendants/Applicants are bringing this kind of application to lure the wheel of justice to roll anticlockwise. That the record of the court shows that the Defendants/Applicants have been given ample opportunity which they failed to utilize as evident by the court's record which is binding not only on the parties but also on the court. That this court cannot wait for the Defendants/Applicants ad infinitum. Counsel further submitted that the law is settled and has not changed that the court should not grant any application which tends to overreach the other party or parties as the case may be. That the Claimant had closed its case, the defendants have been foreclosed and the Claimant's final written address filed and served on the Defendants/Applicants before filing this application. That there is no doubt that this application if granted, the Claimant will be overreached and prejudiced. That there cannot be more indulgence than what the court had accorded the Defendants/Applicants but the Defendants/Applicants failed and neglected to utilize the opportunity. Counsel submitted that the Defendants/Applicants are not entitled to the

grant of this application. That the grant of this application requires the discretion of the court to be exercised judicially and judiciously taking into consideration the competing interest of the party and where granting an application will occasion injustice to the other party, the court will definitely refuse such application. Counsel relied on the following authorities amongst others; **GARUBA & ORS. V. OMOKHODION & ORS (2011) LPELR-1309(SC); FRAMAN ENTERPRISES LTD & ANORv. SPRING BANK PLC & ORS (2016) LPELR-41394(CA); IZEJIOBI-V-EGBEBU (2016) LPELR-40507 (CA) PP 55-56 Paras F-C; National Inland Waterways Authority-V-SPDC (Nigeria) Ltd (2008) LPELR-1963 SC; MojeedSuara Yusuf-v-Madam Idiatu Adegoke &Ors (2007) LPELR-3534 (SC);Nwora-v-Nwabueze (2019) 7 NWLR (PT 1670) SC 1 at 34 paragraph B-C; Section 36 of the 1999 Constitution of the Federal Republic ofNigeria (As Amended); A. ARIORI & ORS. v. MURAINO B.O. ELEMO &ORS (1983) LPELR-552(SC); Socio-Political Research Dev. V. Min, FCT (2019) 1 NWLR (PT 1653) SC 313 at P 331 Paras B-C;Amaechi.v.omehia (2013) 16 NWLR (PT 1381) 417 @ 437 Paras F-G and ABOSELDEHYDE LAB PLC-V-UMB LTD (2013) 13 NWLR (PT 1370) 91 SC @ P126 Paras E-F.**

I have gone through the processes filed by respective counsel and I have also read the record of proceedings of 28/5/2024.I will refer to the case of**EZEOFOR V. HONEY KING MEDIA LTD(2018) LPELR-44558 (CA)**on importance of fair hearingwhich held thus;

*"Fair hearing is so fundamental and is a cardinal principle. It is fair hearing when every reasonable and fair minded observer watching the proceedings is able to come to the conclusion that the Court has been fair to all the parties concerned..."*

*PER WILLIAMS DAWODU, JCA*

The Claimant closed its case on the 7/3/2024 and thereafter case was adjourned to 28/5/2024 for defence. On the 28/5/2024 defendants' counsel was in court but their witness was not in court. Defendants' counsel informed the court of their application to substitute their witness, however the said application was not in the court file. Hence counsel for the Claimant prayed the court that they be foreclosed and the application was granted. The conduct of the Defendants' counsel is not worthy of sympathetic consideration, this motion was filed 19/06/2024 that is 3months 12days gap. Certainly, there has been undue delay in bringing

this application. In all litigations it is the duty of the Court to aim at doing and to always do substantial justice. However, I have to consider that the sins of the counsel should not be visited on the litigants. Although the Defendant counsel has not been diligent in prosecuting this matter. I am of the view that justice would not be served with the order for foreclosure of defence as it is the litigant who would have been denied fair hearing consequent upon the mistake of their counsel which should not be visited upon the litigant. It is a well-established principle of law that the mistake of a counsel should not be visited upon the litigant' this fact was observed in **CROPPER VS. SMITH (1884) 26 CUD 700 @ 710** wherein **Bowen, L. J. stated**

*"It is a well-established principle that the object of a Court is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights, I know of no kind of error or mistake which, if not fraudulent or intended to overreach the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy..."*

This court in exercise of its discretion will be gracious to give the defendants the last opportunity to defend this suit in the interest of justice as justice is not only to the parties involved but to the general public. And "the fair hearing" concept is not subjective or based on sentiments but on objective views or opinion of a dispassionate reasonable man sitting among the audience in court as to whether all the parties were afforded adequate and equal opportunity to present their cases before the court as held in **DIDE & ANOR. V. SELEILETIMIBI & ORS.(2008) LPELR-4037 (CA)**. As earlier stated, this Court will consider the principle that the sins of Counsel should not be visited on the litigants and adjourn this case for defence. Defence counsel should be in Court on the said date with their witness. This Court will not entertain any further adjournment by either party. In compliance with the rules of this court in **Order 32 Rule 5 (3) of the FCT High Court (Civil Procedure) Rules 2018**, the proof of payment of default in filing this motion by the Claimant must be presented at the next adjourned date.

Therefore, it is hereby ordered as follows;

1. The court hereby sets aside the order of this court dated 28<sup>th</sup> May, 2024 foreclosing the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
2. The Defendants are hereby granted leave to substitute their sole witness - Mimi Jooji with a new witness - Onyegbule Chima Promise and accordingly open their defence.
3. The Defendants are hereby further granted leave to substitute the witness statement on oath of Mimi Jooji filed on 4<sup>th</sup> May, 2018 with a new witness statement on oath of Onyegbule Chima Promise.
4. The Defendants' new witness statement on oath of Onyegbule Chima Promise, separately filed with appropriate fees paid is deemed as properly filed.
5. This application is accordingly granted as prayed in the interest of justice. Cost of N20,000.00 is awarded to the Claimant against the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's counsel.
6. Defendants are to bring their witnesses to court unfailingly every date of hearing.

**Parties:** Absent

**Appearances:** Oloruntoba Elisha appearing for the Claimant. Mark Asu-Obi appearing for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

**HON. JUSTICE M. OSHO-ADEBIYI  
JUDGE**

**11<sup>TH</sup> DECEMBER, 2024**