

**BETWEEN:**  
**FEDERAL REPUBLIC OF NIGERIA** --- **COMPLAINANT**

**1. HELEN OLOKPO**  
**2. EFFIONG ANWANAODUNG** } **DEFENDANTS**

In this Suit, Helen Olokpo and Effiong Anwanaodung are standing trial on a 7 Count Charge filed since 15<sup>th</sup> June, 2015. The offence is based on Advance Fee Fraud and other related offences.

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The matter started since 2015. The Prosecution had called 5 Witnesses and closed their case since 2022. Matter was reserved for Defence. But instead of opening Defence the Defendants/Defendants' Counsel filed Motion to recall all the Witnesses called by the Prosecution and as sought by the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant sought for PW5 to be recalled so they can Cross-examine him.

It is imperative to state that the PW1 – PW4 were all Cross-examined by Counsel for the 1<sup>st</sup> & 2<sup>nd</sup> Defendants. The PW4 was fully Cross-examined on 20<sup>th</sup> June, 2018 and matter was adjourned for PW5 to be fielded. Between the 20<sup>th</sup> June, 2018 to 20<sup>th</sup> May, 2019 there were several adjournments at the instance of the Defendants. Eventually, on the 20<sup>th</sup> May, 2019 one whole year after the PW4 testified, the Prosecution Counsel fielded the PW5. He was taken in chief. The 2<sup>nd</sup> Defendant Counsel was not in Court and did not give any reason for not coming. The Court had waited for him for over one year but he failed to come to Court. The Court allowed the PW to testify in chief as scheduled having on several occasions adjourned the matter for that purpose. The PW5 testified in chief and tendered only a single document which was already frontloaded and served on the 2 Defendants' Counsel long before that date, at the time the charge was filed. He testified on the 20<sup>th</sup> May, 2019. Matter was adjourned to 3<sup>rd</sup> July, 2029 for Cross-examination of the PW5 by the Defendants' Counsel. The matter was adjourned for 5 consecutive days – 22<sup>nd</sup> to 27<sup>th</sup> April, 2020 for Continuation of Trial/Cross-examination of the PW5 by the 1<sup>st</sup> Defendant Counsel and the 2<sup>nd</sup> Defendant Counsel.

There were several adjournments until 25<sup>th</sup> January, 2021. That day the parties (Defendants) were not ready and the Court vacated the date of 23<sup>rd</sup> to 27<sup>th</sup> April at the instance of the Defendants. Matter was adjourned to 7<sup>th</sup> February, 2022 after several other adjournments i.e. 10 months after the last date.

On the said 7<sup>th</sup> February, 2022 the Prosecution Counsel applied for foreclosure of the 1<sup>st</sup> & 2<sup>nd</sup> Defendants to Cross-examine the PW5 who had testified since 2019. The Defendants had no reason not to be ready to do the needful for over 3 years. Since the Court cannot wait for parties in perpetuity and the fact that justice and fair hearing is also open to the Prosecution and the Defendant, to be opened on 23<sup>rd</sup> May, 2022.

Rather than them open their Defence, the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants filed Motion to recall the 5<sup>th</sup> Witness who had testified in chief over 3 years ago.

The 2<sup>nd</sup> Defendant Counsel filed Motion to recall the PW1 – PW5 who testified in chief and were Cross-examined by the said 2<sup>nd</sup> Defendant Counsel since 2018. The 2<sup>nd</sup> Defendant Counsel also wants the PW5 to be recalled. Meanwhile, the PW5 had testified in chief since 2019. They both want the foreclosure Order to be set aside too.

Since both Motions are basically seeking the same Reliefs as per the Foreclosure Order and the recall of PW5, the Court shall consider same together by consolidation and deliver its Ruling together as one. On the recall of PW1 –

PW4 as the 1<sup>st</sup> Defendant wants, the Court will in addition deliver its Ruling on that too in this same Ruling.

The 1<sup>st</sup> Defendant Counsel supported his application with an Affidavit of 9 paragraphs while the 2<sup>nd</sup> Defendant Counsel supported its own with an Affidavit of 12 paragraphs. Both filed Written Address in support and Further and Better Affidavit to the Counter Affidavit of the Prosecution Counsel. The Prosecution Counsel also filed a Further and Better Counter Affidavit too. The Court deems as if set hereunder seriatim the facts in both Affidavit and Further and Better Affidavit.

In summary, the 1<sup>st</sup> Defendant stated that his lawyer was not around on the day the PW5 testified. That he was in Court but his lawyer was in hospital. He did not state which hospital or attached any document as evidence.

That the call of the recall of the PW1 – PW4 is because she has a new Counsel. Meanwhile, her Counsel had received the Record of Proceedings on this case several years ago. Strangely in paragraph 7 of the Affidavit the 1<sup>st</sup> Defendant averred that:

**“My Counsel was not present in Court on the date and the date fixed for Cross-examination of PW6.”**

Contrary to the above, it is imperative to state that there is no PW6 because the Prosecution only called 5 Witnesses, PW1 – PW5.

On their part, the 2<sup>nd</sup> Defendant Counsel/the 2<sup>nd</sup> Defendant averred that he was outside jurisdiction on the

date scheduled. That he was attending Court at Magistrate Court in Minna. That he informed the Prosecution Counsel but the Prosecution Counsel vehemently denied that fact; the Court Registrar told him that they could not give him date and insisted that it is the Prosecution that can apply for date. It is imperative to point out that application for a date can be made by any of the parties. This Court does not believe the averment of the 2<sup>nd</sup> Defendant Counsel. Besides, the 2<sup>nd</sup> Defendant has severally been absent from Court going by the Record of Proceeding.

In both Written Addresses the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Counsel submitted thus:

The 1<sup>st</sup> Defendant Counsel submitted referring and relying on **S. 256 ACJA 2015** in which it is provided that Court may at its own volition or upon application of any of the parties recall all the Witnesses. He also referred to the cases of:

**Theresa Ali & Ors V. The State**  
**(2010) 8 WRN P. 64 @ 72 – 73**

**Inyang V. Ebong**  
**(2001) 25 WRN 13**

He urged Court to grant same.

But it is important to point out that by the use of the word “MAY,” grant of such application is at the discretion of Court. It is therefore not mandatory. It can be granted by Court if it is on merit based on a very good and so much reasoning and not as a matter of course.

On their part the 1<sup>st</sup> Defendant Counsel raised a sole Issue for determination which is:

**“Whether Court has the discretion to entertain the application and grant same.”**

He answered in the affirmative. He also referred to the provision of **S. 256 ACJA 2015**. That the recall of PW5 is essential for the case of the 1<sup>st</sup> Defendant and for just determination of the case of the Defendant. That the Relief sought is entirely at the discretion of the Court. That Court is enjoined to treat each case according to its peculiar nature and circumstance. He referred to the case of:

**Noga Hotels International V. Nikon Hotels Ltd  
(2007) 41 WRN 125 @ 152 – 153 Lines 40 – 53 Ratio 7  
Per Peter Odili JCN**

That the Applicant is bound to present sufficient material to sue the Court to exercise its discretion in her favour. That refusal of the grant of the application tantamount to shutting out the 1<sup>st</sup> Defendant and violates her Right to Fair Hearing. He referred to **S. 36 (6) (b) & (d) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). He also referred to the cases of:

**Nwankwo V. Yar’Adua  
(2010) 45 WRN 1 @ 28**

**Onyemaizu V. Ojiako  
(2010) 23 WRN 1 @ 6**

That the Defendant is to be accorded adequate facilities to defend himself. That the 1<sup>st</sup> Defendant Counsel was

informed of the date when he was out of jurisdiction to attend to a case. That grant of the application will enable the 1<sup>st</sup> Defendant prove her case – Defence and assist Court to do justice in the case. He referred to the case of:

**CAC V. Aiyedun**

**(2005) 18 NWLR (PT. 957) 391 @ 398**

That it will be in the interest of justice to do so. That Court has power to set aside the Foreclosure Order and recall PW5 for Cross-examination.

In their 17 paragraphs Counter Affidavit in challenge of the application the Prosecution vehemently denied the averments in the Affidavit of the 1<sup>st</sup> Defendant Counsel and stated exactly what transpired and that the Court awarded cost against the 1<sup>st</sup> Defendant because of their attitude in prosecuting the matter. That the cost is even yet to be paid. That the 1<sup>st</sup> Defendant had deliberately delayed the case as seen in the Record of Proceeding as most adjournments were at their instance.

In the Written Address he raised one question which is:

**“Whether the Defendant’s application should be granted in view of the prevailing circumstance.”**

He answered in the Negative. That since 21<sup>st</sup> June, 2019 the PW5 testified and till 7<sup>th</sup> February, 2022 the case has suffered serious delay occasioned by the Defendants. That the Defendants has not put before this Court any reason cogent enough for Court to grant the application. That the Defendants are lackadaisical about the case. That since

21<sup>st</sup> June, 2019 the Defendants did not file any Motion like this until few days to the scheduled hearing in which the Defendants were duly notified. That there is no good faith and seriousness in the part of the Defendants. That because of their attitude the Court had awarded cost against the Defendants on 2 occasions.

That there should be an end to litigation as this case was filed in 2015 – 9 years ago. He urged Court to refuse the application. They cited the cases of:

**Osakwe V. Federal Republic of Nigeria  
(2004) 14 NWLR (PT. 893) 457 – 466**

**Ani V. State  
(2002) 1 NWLR (PT. 747) 217 to 231**

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a Further and Better Affidavit. The 2<sup>nd</sup> Defendant Counsel filed Written Address.

On the part of the 1<sup>st</sup> Defendant, she filed Reply on Points of Law and attached Record of Proceedings for 7<sup>th</sup> February, 2022.

The 2<sup>nd</sup> Defendant stated that the absence of his lawyer was because of ill-health; but there is no evidence to prove that. He even denied been represented by a lawyer when PW1 – PW5 testified. That averment is not true – **paragraph 3 (g) Further and Better Affidavit of the 2<sup>nd</sup> Defendant.** The Record of Proceeding shows that the 2<sup>nd</sup> Defendant Counsel/2<sup>nd</sup> Defendant were in Court and Cross-examined the PW1 – PW4. The Court refers to the Record of Proceeding.



Contrary to what the 2<sup>nd</sup> Defendant stated in Further Affidavit, there was a Counsel for the 2<sup>nd</sup> Defendant throughout the time the PW1 – PW4 testified and the Counsel for the 2<sup>nd</sup> Defendant on record Cross-examined the said Prosecution's Witnesses and they were all discharged.

In the Written Address in support of the Further and Better Affidavit the 2<sup>nd</sup> Defendant Counsel submitted that there is need to Cross-examine the PW5. He referred to the case of:

**Pyramid Hotels Limited & 1 Or V. Union Homes and Savings Limited**  
**(2021) 9 NWLR (PT. 1782) 391 @ 423**

He referred to **S. 256 ACJA 2015** where it was clearly stated that Court can recall a Witness or all Witnesses to be recalled based on application of a party or the exercise of the discretion of the Court. They referred to the cases of:

**Theresa Ali & Ors V. The State**  
**(2010) 8 WRN P. 64 @ 72 – 73**

**Inyang V. Ebong**  
**(2001) 25 WRN 13**

He urged Court to grant same and allow the recall of all the Witnesses called by the Prosecution – PW1 to PW5.

In their Further and Better Counter Affidavits of 10 paragraphs the Prosecution averred that paragraphs 3 – 6 of the Further and Better Affidavit of the 2<sup>nd</sup> Defendant are false and misleading. That Court granted several adjournments for the 2<sup>nd</sup> Defendant to Cross-examine the

PW5 but he did not do so. That the 2<sup>nd</sup> Defendant Counsel was in Court and Cross-examined the PW1 – PW4.

That the PW1 – PW4 are no longer available as most of them have left the country and it is practically impossible for them to be brought back to testify.

That cost were awarded against the 2<sup>nd</sup> Defendant and he has never any of it. That it will be in the interest of justice to refuse the application.

The 2<sup>nd</sup> Defendant Counsel also reiterated all he said the Affidavit in support of same as to the issue of cost awarded against the 2<sup>nd</sup> Defendant and elaborate on JUSUN Strike. He urged Court to grant the application so that he can Cross-examine the PW5. He attached the Record of Proceeding for 7<sup>th</sup> February, 2022.

On Reply on Points of Law, he submitted that the 1<sup>st</sup> Defendant has a right to apply to Set Aside the Order of Foreclosure made against her. He referred to the case of:

**Rossek V. ACB**  
**(1993) 10 SCNJ 20 @ 39 – 40**

They urged Court to grant the application as doing so will be in the interest of justice and advance the end of justice too. That his failure to be in Court should not be visited on the 1<sup>st</sup> Defendant. He referred to the cases of:

**Emmanuel V. Gomez**  
**(2001) 50 WRN 161**

**Sam V. State**  
**(2018) 12 WRN 57 @ 58**

# **COURT**

Order of Court is meant to be obeyed even if it hurts until it is set aside by another superior Court or vacated by the Court that gave the Order.

Again, to receive from Court, one must have obeyed the Orders of Court. No one who disobeyed the Court Order has a right to seek Order from the same Court. He who comes to equity must come with very clean hand and conscience too.

The Record of Proceedings of Court is open to all and it holds the recorder, the litigants and the Counsel who make submission that are recorded captive.

The antecedents of a party or parties are seen from what is recorded. So also the merit and demerits of applications made before a Court. That is particularly so to the extent of who came to Court and who did not and any excuse given in-between. The Court will not waste time in stating who came and who absented itself from Court and on what day and in what frequency. All those are there in the Record of Proceeding in this case.

The Court has summarized the stances of the parties in these applications. The Court answers the questions raised thus:

This Court has the discretion to entertain these applications and has the discretion to grant same. But that will be based on the merit of the application. In that case the Applicant must give ample cogent reason why the

Court should exercise its discretion in such Applicant's favour. Otherwise it will be held that that the discretion is not judicially and judiciously exercised. It is therefore incumbent on the Applicants – 1<sup>st</sup> & 2<sup>nd</sup> Defendants to show good reason why the PW1 – PW4 should be recalled as sought and why the PW5 should be recalled.

The Court has gone through the Affidavit of the 1<sup>st</sup> Defendant/1<sup>st</sup> Defendant Counsel and the Written Address as well as that of the 2<sup>nd</sup> Defendant/2<sup>nd</sup> Defendant Counsel and the Written Address and that of the Prosecution.

It is the humble view of this Court that it shall not grant the application for the recall of PW1 – PW4 as sought by the 2<sup>nd</sup> Defendant. This is because the 2<sup>nd</sup> Defendant/2<sup>nd</sup> Defendant Counsel were in Court and the 2<sup>nd</sup> Defendant Counsel fully Cross-examined the PW1 – PW4 before they were discharged as Witnesses. There is no cogent reason given by the 2<sup>nd</sup> Defendant that will warrant the Court to grant the application to recall them, they having testified fully before this Court as Witnesses.

The said application to recall the PW1 – PW4 is done in bad faith because it is only for further delay of the case by the 2<sup>nd</sup> Defendant. This Court shall not grant that because doing so is not in the interest of justice and quick dispensation of justice. Because justice and right to be heard is also open to the Prosecution too. If the 2<sup>nd</sup> Defendant has anything it can be taken care of in their Final Written Address. They also have the privilege of having the Record of Proceeding of the case long before now. Anything they want to do with the PW1 – PW4 can be

done in their Final Written Address. They have that chance to raise those issues there.

On the recall of the PW5 as sought by both the 1<sup>st</sup> & 2<sup>nd</sup> Defendants; yes it is true that the 1<sup>st</sup> & 2<sup>nd</sup> Defendants never Cross-examined the PW5. It was all their fault and they know it. They were given ample time to do so as they have stated in their Affidavit in support and as the Prosecution Counsel had eloquently presented in their own Counter and Further Counter Affidavit.

The 1<sup>st</sup> Defendant Counsel attaching only the Record of Proceeding of 7<sup>th</sup> February, 2022 is not fair because he should have referred to the several days – 2 years which was given for the PW5 to be Cross-examined by them – 1<sup>st</sup> Defendant Counsel and 2<sup>nd</sup> Defendant Counsel. But every time the matter is adjourned they come with one story or the other.

As it stands, since they did not Cross-examine the PW5, the Court will grant them one more chance and lift the Foreclosure Order on the 1<sup>st</sup> & 2<sup>nd</sup> Defendants to Cross-examine the PW5. But that can only be possible if the PW5 is still within Nigeria. If the PW5 is outside Nigeria as the Prosecution Counsel had stated that it is practically impossible to recall them, then the 1<sup>st</sup> & 2<sup>nd</sup> Defendants/Defendants' Counsel should make due with his testimony in chief and due whatever they can in their Final Written Addresses to tackle the testimony of the PW5.

Therefore, where it is possible to still present the PW5 let him be recalled. If it is practically impossible then he/she will not be recalled.

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

**Delivered today the \_\_\_\_ day of \_\_\_\_\_ 2024 by me.**

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

**APPEARANCE:**

PROSECUTION COUNSEL: T.M. AMANEZE HOLDING THE  
BRIEF OF ELIZABETH ALABI  
ESQ.

1<sup>ST</sup> DEFENDANT COUNSEL: A.O. AGBONLAHOR ESQ.

1<sup>ST</sup> DEFENDANT COUNSEL: NOT REPRESENTED.