

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,  
IN THE BWARI JUDICIAL DIVISION,  
HOLDEN AT COURT NO. 11 BWARI, ABUJA.**

**BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA**

**SUIT NO: FCT/HC/BW/CV/895/2019**

**MOTION NO.: M/13035/2020**

**BETWEEN:**

1. LAKES AND LAGOONS TECHNICAL SERVICES LIMITED
2. BLUEBAND ENGINEERING LIMITED

} CLAIMANTS

**AND**

1. KHAFIHAN TECHNICAL INTERNATIONAL LIMITED
2. ALHAJI NUHU AMANABO
3. MERITAGE HOMES LIMITED
4. ALHAJI MOHAMMED ABUBAKAR BELLO
5. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
6. THE HON. MINISTER, FEDERAL CAPITAL TERRITORY
7. PERSONS NAMES UNKNOWN

} DEFENDANTS

**RULING**

**DELIVERED ON THE 19<sup>TH</sup> FEBRUARY, 2021**

By a motion dated 14/12/2020 but filed on 15<sup>th</sup> December 2020, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants are praying this Court for:

1. AN ORDER of this honourable court setting aside the order dated 3<sup>rd</sup> March, 2020 discharging Architect Ishaka Ojogbeme and Lukil Muhammed who testified as PW1 and PW2 respectively.
2. AN ORDER of this Honourable Court recalling Architect IshakaOjogbeme and Lukil Muhammed who testified as PW1

and PW2 respectively on 3<sup>rd</sup> March, 2020 for the purpose of cross-examination.

The application is supported by a 4 paragraphed affidavit and a written address.

On their part, the Claimants filed a 7 paragraphed counter affidavit deposed to by Evelyn Aroh on 23<sup>rd</sup> December, 2020 and a written address dated the same 23<sup>rd</sup> December, 2020. The 1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants did not respond to the application.

I have carefully read through the aforementioned processes. The summary of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants' application is that on account of a mix-up in Counsel's office diary, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants erroneously believed that the case would come up on 13/03/2020 and not 03/03/2020; that subsequently while going through the record of proceedings they discovered that on the said 03/03/2020 PW1 and PW2 testified in the absence of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and were discharged, where after this Court foreclosed them from cross-examining the witnesses; that subsequently the 3<sup>rd</sup> and 4<sup>th</sup> Defendants have attended Court diligently and that it will be in the interest of fair hearing and justice to allow the 3<sup>rd</sup> and 4<sup>th</sup> Defendants cross examine PW1 and PW2 for the purpose of ascertaining the truth.

The Claimant's counter argument is that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants absented themselves from the proceedings of

03/03/2020 and that they thereby threw away their rights to enter their defence; that it will take considerable expense to make them available and that the application is prejudicial, an abuse of court process and contrary to all known rules of procedure.

I have considered the argument of Counsel. From my record, on 03/03/20 when this matter came up, the Defendants in this matter did not appear before the Court. Upon the oral application of Claimant's counsel, this Court made an order foreclosing the Defendants from cross examining PW1 and PW2 but gave room for the defendants to apply to recall the witnesses, upon giving satisfactory reasons.

There is no doubt that the decision to recall witnesses is at the discretion of the Court, having regard to the overall interest of justice. See **TIWANI LTD v. CITI TRUST MERCHANT BANK LTD (1997) LPELR-6339(CA); KHALIFA v. ONOTU & ANOR (2016) LPELR-41163(CA)**. The essence of a trial is for the Court to reach a just determination of the case before it. It is therefore in the interest of justice that a party who seeks to cross-examine a witness be allowed to do so. For these reasons, I am satisfied from my review of the affidavit in support of this application that satisfactory reasons have been adduced by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants for the witnesses PW1 and PW2 to be recalled and that it is in the interest of justice to do so.

I therefore find merit in this application and grant same. I make the following orders:

1. An order is made setting aside the order made on 03/03/2020 discharging Architect Ishaka Ojogbeme and Lukil Muhammed who testified as PW1 and PW2 respectively;
2. An order is made recalling Architect Ishaka Ojogbeme and Lukil Muhammed who testified as PW1 and PW2 respectively on 03/03/2020 for the purpose of cross-examination by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

I make no order as to costs.

This suit is adjourned to 19<sup>th</sup> May, 2021 for cross-examination of PW1 and PW2.

### **APPEARANCE**

Abimbola Oluwasegun Esq. for the claimant.

A.C. Amadi Esq. for the 5<sup>th</sup> & 6<sup>th</sup> defendants.

1<sup>st</sup> – 4<sup>th</sup> are absent.

Sign  
Hon. Judge  
19/02/2021