

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT APO – ABUJA**

**THIS 3<sup>RD</sup> DAY OF MARCH, 2025.**

**BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE**

**SUIT NO: FCT/HC/CV/745/2022  
MOTION NO. M/7270/2024**

**BETWEEN  
OLAGUNDOYE GBENGA. ....PLAINTIFF/RESPONDET**

**AND  
CHISCO TRANSPORT (NIG) LTD .....DEFENDANT/APPLICANT**

**RULING**

**INTRODUCTION**

By a Motion on Notice dated the 12<sup>th</sup> day of Mach, 2024, and brought pursuant to Order 7 Rues 1, and 2 of the FCT High Court (Civil Procedure) Rules, 2018 and Under the Inherent Jurisdiction of the Honourable Court.

The Applicant prays for the following releifs:

1. AN ORDER extending the time within the Defendant can file her Memorandum of Appearance, Statement of Defence and other court process on the Claimant out of time.
2. AN ORDER of the Honourable Court deeming the Memorandum of Appearance, Statement of Defence and other Court process already filed and served on the Claimant as having been properly filed and served on the Claimant.
3. AND FOR such further orders(s) as this Honourable Court may deem fit to make in the circumstances of this case.

The motion is attached with an four (4) paragraphed Affidavit deposed to by the Counsel to the Defendant/Applicant in this case. Attached with the motion is exhibit A, In compliance with the rules of this Court, the Applicant filed a written address as his legal argument in support of his application.

By way of opposition, the Claimant/Respondent filed a 17 paragraph Counter Affidavit deposed to by Olagundoye Gbenga the Claimant/Respondent himself. In compliance with the rules of this Court, the Respondent filed a written address as his legal argument in opposition to the application.

At the hearing of this Application the Defendant/Applicant Counsel adopted his written address and urged the Court to grant his application. Likewise the Claimant/Respondent counsel.

#### COURT'S ANALYSIS

After due consideration of this application. It is usually at the discretion of the court, even though no counter-affidavit was filed in this application. In the interest of justice it will be fair to grant this application.

Therefore the court is inclined to use its discretion judicially and judiciously in favour of the Claimant/Applicant in this application

**Order 43 Rule 1 of the FCT High Court (civil procedure) Rules 2018** provides thus:

- (1) Whereby in this Rules any application is authorised to be made to the court, it shall be made by motion which may be supported by affidavit and shall state the rule of court or enactment under which the application is brought.**
- (2) Every application shall be accompanied by a written address.**

**(3) Where the other party intends to oppose the application, he shall within 7 days of the service on him of such application file his written address and may accompany it with a counter affidavit.**

**(4) The applicant may within 7 days of being served with the written address of the opposing party file and serve an address in reply on points of law with a reply affidavit.**

Also Order 49 Rules 1, 2, 4 and 5 of the same FCT High Court (civil procedure) Rules 2018 provides thus:

**(1) Where by any law or order made by the court a time is appointed or limited for the doing of any act, the period shall be reckoned:**

**(a) As excluding the day on which the order is made or on which the event occurs;**

**(b) Where the last day of the period is a holiday the time shall continue until the end of the next day following which is not a public holiday**

**(c) Where the act is required to be done within a period which does not exceed 6 days, holiday shall be left out of account in computing the period.**

**(2) In this order "holiday" means a day which is a Sunday or a public holiday.**

**(4) The court may, as often as he deems fit and either before or after the expiration of the time appointed by these rules or by any judgment or order of the court, extend the time or adjourn for doing any act or taking any proceedings.**

### **Penalty for default**

**(5) Any party who defaults in performing an act within the time authorized by the court or under these rules, shall pay to the court an additional fee of N200.00 (Two hundred naira) for each day of such default at the time of compliance.**

Paragraphs 11, 12, 13, 14, 15 and 16 of the Claimant's/Respondent's Affidavit in opposition states thus:

Paragraph 11

That on the 8<sup>th</sup> January, 2024, the Defendant was foreclosed from defending this matter and the Defendant has not seek leave of court to defend this matter.

Paragraph 12

That the Defendant filed its Statement of Defence on the 12<sup>th</sup> March, 2024 and has been out of time for a period of 679 (sixty hundred and seventy nine) days.

Paragraph 14

That by the rules of this court, the Defendant who is out of time to file its Statement of Defence is expected to pay the sum of 200 (Two Hundred Naira) for each day of default to its Statement of Defence.

Paragraph 15

That the Defendant who is out of time for a period of 679 days is expected to pay the total sum of N135,800.00k (One Hundred and Thirty Five Thousand, Eight Hundred Naira ) only as penalty for filing Statement of Defence out of time.

Paragraph 16

That the Defendant did not pay this money and not also exhibit evidence of payment to show compliance with the rules of this court.

By the records of this Court, the Defendant was duly served with the process of this on the 11<sup>th</sup> day of April, 2023 by dropping the Originating process at the Defendants cooperate office at plot 176, Utako Abuja by the bailiff of this court, when the secretary of the company insisted that the bailiff should go to their Lagos head office to effect the service.

I also observed from the affidavit of services deposed by the bailiffs of this court that the Defendant is in the habit of refusing services for both the service of the originating summons and the subsequent services of hearing notice from this court, reason being that the Abuja office is not their cooperate head office.

This court after holding that the service of the originating process to the Defendant's Abuja cooperate office was a proper service, proceeded to the hearing of this suit on the 23<sup>rd</sup> day of March, 2023. After four (4) adjournments as opportunities given to the Defendant to cross-examine and or defend this suit failed, the court foreclosed the Defendant on the 8<sup>th</sup> day of January, 2024 and adjourned for final addresses.

Now from the blues, the Defendant appears with this application. Ordinarily the Court should have refused this application. A party would not be justified to complain of denial of fair hearing, having been given opportunity to come to Court and present their case. I seek refuge in **INEC VS MBAWIKE (2017) LPELR - 41623 CA:"**

...One cannot complain of denial of fair hearing, when he aborted every opportunity given to him to state his case or to be heard. See the case of Kaduna Textiles Ltd Vs Umar (1994)1 NWLR (Pt. 319) 143 at 159, where it was held: "Where a party to a suit has been accorded a reasonable opportunity of being heard in the manner prescribed under the law, and for no satisfactory explanation, it fails or neglects to attend the sitting of the Court, the party cannot thereafter be heard to complain of lack of fair hearing. The question is, is it fair and just to the other party or parties as well as the Court, that a recalcitrant and defaulting party should hold the Court and other parties to ransom? Should the business of the Court be dictated by the whims and caprices of any party? I think not..." See also Newswatch Communication Ltd Vs Atta (2006)7 MJSC 38 at 95; (2006)12 NWLR (Pt.993)144; (2006) LPELR -1986 SC, where the Apex Court said: "It is the duty of the Court to create the atmosphere for a fair hearing of a case but it is not the duty of the Court to make sure that a party takes advantage of the atmosphere or environment by involving himself in the fair hearing of the case. A party who refuses or fails to take advantage of the fair hearing process created by the Court cannot turn round to accuse the Court of

denying him fair hearing. That is not fair to the Court, and Counsel must not instigate his client to accuse the Court of denying him fair hearing. A trial Judge can indulge a party in the judicial process for some time but not for all times. A trial Judge has the right to withdraw his indulgence at the point the fair hearing principle will be compromised, compounded or will not really be fair as it affects the opposing party"

**Per Tobi JSC. I think in this case that Appellants appeared to have demonstrated consistent lack of interest to defend, as shown in delays to file memorandum of appearance and defence or come to Court to defend it, and the case having been adjourned for judgment but later aborted on the plea of the Appellants, to enable them take steps to defend, but again abandoning the defence, and defying the Court order, I do not think Appellants are right to complain of denial of fair hearing, when the Court ran out of patience to further indulge them in their dilatory games. The Respondent too had a right to fair hearing of this old case, to a conclusion. A party who fails to utilize opportunity of prosecuting his case, cannot turn round to blame the Court for not being given fair hearing. GTB PLC Vs FADCO INDUSTRIES Nig. LTD. & Anor (2013) LPELR 21411 (CA). In the case of F.H.A. Vs Kalejaiye (2011) All FWLR (Pt.562)1633, ratio 8, it was held: "The role of the Court in the adjudication is to maintain a level playing field for the parties by offering them equal opportunity, to present their case or grievances; if they so wish. Once the opportunity is offered, it is the duty of a party to litigation or his Counsel to utilize same in accordance with the rules of procedure and substantive law. Where, however, he or his Counsel fails or neglects to utilize the opportunity so offered, he cannot turn round to blame the Court for the loss of the opportunity as the Court will not allow a party to hold the opponent or the Court to ransom under the guise of the desire to protect the principles of fair hearing.**

I derive my authority from the case of **YAKUBU DAMISHI & ANOR v. ZAINAB ZURGU & ORS (2022) LPELR-57783(CA)** also the cases of Chelvron

Nig Ltd Vs Osigwe (2014) LPELR - 23534 (CA); Jude Agbaso Vs Simeon Iwunze & Ors (2014) LPELR - 24108 (CA); FHA Vs Kalejaiye (2011) All FWLR (pt.552) 1633; Newswatch Communications Ltd Vs Atta (2006)12 NWLR (pt. 993)144." Per MBABA ,J.C.A in damishi & anor v. zurgu & ors (Pp. 20-24 paras. F) are backing the above principles of law.

#### COURT'S DECISION

However, the Court is a Court of justice, she will bend backwards to accommodate the Defendant in the interest of justice. Consequently this application has a considerable merit and is hereby granted.

In the circumstances therefore, the court makes the following orders:

- 1. AN ORDER extending the time within which the Defendant can file her Memorandum of Appearance, Statement of Defence and other court process on the Claimant out of time.**
- 2. AN ORDER of the Honourable Court deeming the Memorandum of Appearance, Statement of Defence and other Court process already filed and served on the Claimant as having been properly filed and served on the Claimant.**
- 3. An Order compelling the Defendant who is out of time for a period of 679 (Six Hundred and Seventy Nine) days to file it Statement of Defence, to pay the total sum of N135,800.00k (One Hundred and Thirty Five Thousand, Eight Hundred Naira ) only to the FCT High Court as penalty for filing Statement of Defence out of time.**
- 4. An Order directing the Defendant to present the evidence of payment on the next adjourned date.**

This is the ruling of the Court.

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**Hon. Justice Jude O. Onwuegbuzie**

**Appearances:**

1. Ikechukwu Obidike Esq., for the Defendant/Applicant.
2. G.P Olagundoye Esq., for the Claimant/Respondent.