

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU**

**SUIT NO: FCT/HC/ CV/6850/2023
MOTION NO. FCT/HC/M/1861/2024
DELIVERED ON THE 04/04/2025**

BETWEEN:

1. EMOTAN GLOBAL VENTURES LTD
2. JOSEPHINE IRAHMEN EMOTAN
3. P. N. IGWEZE & SONS LTD
4. ONWARD ALUMINUM COMPANY LTD
5. PIRAMENT VENTURES LTD

} CLAIMANTS/RESPONDENTS

AND

1. MINISTER, FEDERAL CAPITAL TERRITORY.....DEFENDANT/APPLICANT
2. ABUJA MUNICIPAL AREA COUNCIL.....DEFENDANT/RESPONDENT
3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY.....DEFENDANT/APPLICANT

RULING

The Claimants filed this suit against the Defendants dated the 17/07/2023 and served same on all the parties. The Claimants then amended their originating processes by leave of Court on the 15/04/2024. After the amendment, the Claimants opened their case on the 08/05/2024 and called the 2nd Claimant as their PW1, 1st and 3rd Defendants through their Counsel cross examined PW1 on the same 16/10/2024. Similarly, PW2 was called and subsequently cross examined by the learned Counsel for the 1st and 3rd Defendants. The Claimants closed their case to pave way for defence, the 1st and 3rd Defendants through a Motion on Notice dated the 25/10/2024 with Motion No. **M/1861/2024** approached this Hon. Court and sought for the following:

- (1) *An Order of the Hon. Court granting leave to the 1st and 3rd Defendants/Applicants to file their Memorandum of conditional Appearance, Statement of Defence/Counter claim, witness statement on oath and other necessary pleading documents out of time.*
- (2) *An Order of the Hon. Court deeming the already filed memorandum of conditional appearance, statement of defence/counter claim, witness statement on oath and other pleading documents against claimants originating processes, as properly filed and served.*

The Claimants upon been served with the said motion, filed a counter affidavit to the said motion. However, the Court ordered parties to address it on the propriety of a Defendant filing his defence after the close of Claimant's case.

This Ruling is therefore pursuant to the said order. Learned Counsel for the Claimant in it written address before the Court stated that where a law has set down the procedure for doing an act or taking a step, the procedure laid down by law must be followed. *NWANKWOVS. YAR'ADUA (210) ALL FWLR (Pt. 5384) page 3, at page 24 para G – H.*

Learned Counsel argued further that the 1st and 3rd Defendants are in breached of Order 11 Rule (1) (2) of the Rules of this Court 2025.

Upon service, learned Counsel for the 1st and 3rd Defendants filed it written address wherein learned Counsel submit that to arrive at a just determination and avoid miscarriage of justice, and in the interest of justice which the Court stands for at all times, Counsel for litigants must be given the same deserved attention as the party seeking a remedy from the Court, and unless this is done, the Court will fail in its duty vested in

it by the law and decision will be declared null and void. ***SALU VS. EGEIBON (1994) 6 NWLR (Pt. 348) Page 482 para A – B.***

Learned Counsel for the 1st and 3rd Defendants stated that the writ was served on them on the 19/10/2023 and the case file was assigned to another Counsel who was sick and travelled abroad without handing over the file. And that upon assigning the file to the new Counsel Prudence Ukeje Esq, it was discovered that memorandum of appearance was not filed and or statement of defence.

Learned Counsel submit that where a trial judge faced with both motion for leave to enter Judgment in default of defence and an application for extension of time to enter defence, the trial Court must take the application for extension of time first. ***MOHAMMED VS. MUSAWA (1985) 3 NWLR (Pt. 11) 89.***

The Claimant's Counsel again filed a reply on point law wherein Court was urge to dismiss the 1st and 3rd Defendants application.

It must be stated that whether an application or motion for an extension of time will be granted or refused largely depends on the materials placed before the Court by the applicant. Judicial discretion donated to the Court must be exercised judicially and judiciously. ***DENUS HOLDINGS LTD & ANOR VS. OYEFESO & ANOR (2017) LPELR 4384 (CA).***

The power of the Court either to grant the Defendant an extension of time which he may file his statement of defence or award Judgment in default of pleadings, is discretionary and not mandatory. Such discretion, must at all times be exercised in the interest of justice. The practice has always been to give priority to hearing motion seeking to regularise a process. That is the hallmark of a proper exercise of discretion. If the motion to regularise succeeds, the other motions or motion seeking to terminate the proceedings will be withdrawn, and

inappropriate cases there will be compensation by way of costs. *AHMADDAMZOMO VS. MUSA & ANOR (2013) LPELR 20767 (CA)*.

The Supreme Court in *UBA LTD VS. NWORA (1979) 11 – 12 SC* stated that where no statement of defence has been filed, the Court in its discretion has the power to extend the time in order to enable a defendant to file his statement of defence.

It must be noted that Order 11 Rule (1) of the Rules of this Hon. Court, 2018, now Order 15 Rule 1 (2) in the extant Rules provides thus:

“A Defendant shall file his statement of defence, set-off or counter claim, if any not later than 21 days after services on him of the originating process and accompanying documents.”

From the above, it is obvious that the Rules provide for 21 days from the date of service for the Defendant to join issue with the Claimant by filing his defence.

However, where a party for whatever reason fail to join issues within the time stipulated by the rules aforesaid, he may seek solace under the provision of Order 50 Rule 5 for leave to file his pleading out of time.

The question is does the order contemplate a situation where after the closed of the Claimant’s case for the Defendant to file a motion for extension of time to file it defence?

It is the law that where a law has set down the procedure for doing an act or taking a step that procedure laid down by law must be followed. Order 11 Rule (1) of the Rules of this Hon. Court 2025 provides **“subject to the provisions of the Sheriff and Civil Process Act, a**

defendant served with an originating process shall within twenty-one (21) days, file in the registry as many copies of the completed and signed memorandum of appearance for service on the other parties.”

It is clear from the above reproduced provision of the rules that Defendant has 21 days from the date of service on him of the originating process or statement of claim to join issue with the Claimant by filing his defence.

It is instructive to state here that if a party for whatever reasons failed to join issues within the time stipulated by the rules above, he may seek solace under the provision of Order 50 Rule 5 (1) of the Rules of this Hon. Court 2025 for leave to file his pleading out of time.

The 1st and 3rd Defendant brought this application anchoring their reasons for not filing their statement of Defence in line with the law on the ill health of the first Counsel who is no longer on the employment of the 1st and 3rd Defendant.

It is interesting to note that the 1st and 3rd Defendant have participated in the proceedings and have even cross examined the Claimant’s witnesses in this case.

The question is, when did the 1st and 3rd Defendants realise that they do not have their statement of defence before the Court?

Can the Court grant this application at this stage of proceedings after cross examining Claimant’s witnesses and after the close of Claimant’s case?

Indeed, it would be prejudicial to the case of the Claimant, after allowing the 1st and 3rd Defendants to test the weight of the Claimants case through their cross examination of Claimants witnesses to be

allowed to file a defence. This is because, even though after filing defence, the Claimant has the right to respond to same, there is no way the 1st and 3rd Defendants would divorce the facts obtained during trial from the conduct of their statement of defence.

The law is trite that a party whom an opportunity is given to be heard but chose not to utilize it by doing the right things by refusing to file it statement of defence in line with law and procedure cannot be heard to complain of denial of fair hearing. ***OKOYE & ORS. VS. NIGERIAN CONSTRUCTION & FURNITURE CO. LTD & ORS. (1991) 6 NWLR (Pt. 199) 501 at 541.***

From the facts of this case, I am inclined to exercise my discretion against the 1st and 2nd Defendants/Applicants. it is therefore my Ruling that this motion **M/1861/2024** is not meritorious and therefore same is hereby dismissed.

**SIGNED:
HON.JUDGE
04/04/2025**

APPEARANCE:

Johnbull Adaghe, Esq, for the Claimants/Respondents

Prudence Ukeje, Esq, for the 1st & 3rd Defendants/Applicants

2nd Defendant/Respondent is absent and not represented