

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/2385/2022

MOTION NO. M/1500/2025

DELIVERED ON THE 07/05/2025

BETWEEN:

MR. UGWA DANIEL.....CLAIMANT/APPLICANT

AND

MR. ALEX AKOJA.....DEFENDANT/RESPONDENT

RULING

The Claimants filed this suit vide a writ of summons dated the 15th July, 2022 on the same date. The Claimant prays this Honourable Court for the following orders:

1. *A **DECLARATION** of this Honourable Court that the Defendant, his servant(s), agent(s), assigns and privies are not entitled in law to invade, enter, interfere or attempt to interfere with the Claimant's peaceful possession of the said plot No. 3661 Lugbe 1 Extension Layout, Cadastral Zone 07 - 07, Airport Road Lugbe FCT, Abuja.*
2. *A **Declaration** of this Honourable Court that the occupation of plot No. 3661 Lugbe 1 Extension layout, Cadastral Zone 07 - 07 Airport road, Lugbe FCT, Abuja by the Defendant without the*

consent or consent of the Claimant is unlawful and amount to trespass.

3. ***An Order** of mandatory injunction directing the Defendant, his agents or assigns to vacate plot No. **3661** lugbe 1 Extension layout, Cadastral Zone **07 - 07** Airport road, lugbe FCT, Abuja with immediate effect.*
4. ***An Order** of injunction perpetually restraining the Defendant by himself his agent(s), assigns or servants from entering the said plot No. **3661** lugbe 1 Extension layout, Cadastral Zone **07 - 07**, Airport road, Lugbe FCT, Abuja or interfering in any manner whatsoever with the Claimant's peaceable and exclusive possession of the said plot.*
5. ***An Order** directing the Defendant to pay to the Claimant the sum of **₦200,000,000** (Two Hundred Million Naira) being general damages for unlawful interference, trespass and disruption of the Claimant's exclusive possession of the said plot No. **3661** lugbe 1 Extension layout, Cadastral Zone **07 - 07** Airport road, lugbe FCT, Abuja.*
6. ***An Order** directing the Defendant to pay to the Claimant the sum of **₦50,000,000** (Fifty Million Naira) being general damages for the destruction of the economic trees planted on the Claimant's land.*
7. ***An Order** directing the Defendant to pay to the Claimant the sum of **₦5,000,000** (Five Million Naira) being the cost of this suit.*

The writ is also accompanied with the statement of claim and the Claimant's 1st witness statement on oath and the Claimant's statement on oath as the 2nd witness for the Claimant.

The Defendant entered a conditional Memorandum of appearance on the 24th November, 2024 and filed a motion on notice on the 19/04/2023 for the extension of time within which to file his statement of defence out of time and for deeming the statement of defence so filed as having been properly filed and served. This Honourable court granted the said application on the 20th day of November, 2023. He, however filed a notice of preliminary objection accompanied by an affidavit of 27 paragraphs and a brief of argument on the 19th April, 2023. On the 25th November, 2024 the Claimant filed what is titled Claimant's response to the Defendant's Notice of preliminary objection filed on the 14th November, 2024, also accompanied by a brief of argument on the same 25th November 2024. He also filed another process titled Claimant's reply on point of law on the 5th February, 2025. Meanwhile the Defendant also filed a Notice of preliminary objection to the Claimant's application of 4th October, 2024 supported by a written address which was adopted as the oral argument of the learned counsel for the Defendant.

Both counsel, by order of this court moved and adopted their various applications and processes, to wit, the respective Notice of preliminary objections on the 06/02/2025 and the case was adjourned to 17/04/2025 for Ruling.

The only subsisting application before this Honourable court is the motion on notice dated the 10th day of September 2024 and filed on the 4th October, 2024. The motion on notice brought pursuant to section 6(6) of the 1999 constitution of the Federal Republic of Nigeria (as amended), order 32 rules 5(2), order 49 rule 4 of the rules of the FCT High Court

(Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court.

The application prays for the following orders:

1. *An Order for extension of time within which the Claimant/applicant shall apply to set aside the decision of this Honourable Court made on 20/11/2023, dismissing the instant suit No. FCT/HC/CV/2385/2022 for want of diligent prosecution.*
2. *An Order setting aside the decision of this Honourable Court made on 20/11/2023 dismissing the instant suit NO.FCT/HC/CV/2385/2022.*
3. *An Order relisting the instant suit NO.FCT/HC/CV/2385/2022 in the general cause list of this Honourable court for accelerated/expeditious hearing on the merit.*
4. *An Order of this Honourable court granting leave to the Claimant/Applicant to change his counsel to Ola Olanipekun SAN of Messrs Ola Olanipekun, SAN & Co. and any other counsel in chambers.*
5. *An Order of this Honourable court deeming the Claimant/applicant's reply on point of law dated 05/02/2025 already filed and served in response to the Defendant's Notice of preliminary objection instituted on the 08/06/2023 as properly filed and served, all necessary fees having been paid.*
6. *Such further or other orders as this Honourable Court may deem fit to make in the circumstances.*

The motion on notice is supported by a seven (7) paragraph affidavit sworn to by one Abdulrazak Adebayo a litigation Executive in the law firm of Messrs Ola Olanipekun, SAN & Co. The motion on notice is

also accompanied by a written address which was adopted as the oral argument of the counsel in support of the motion on notice. The affidavit in support of this application is also accompanied by various Exhibits such as Exhibits **A1**, **A2**, **B**, **C**, **D** and **E** respectively. It is important to emphasise the fact that Exhibit **A1** is the copy of the notice of change of counsel, **A2** is the application for the CTC of the records of proceedings of 31/10/2023 and 20/11/23, **B** is the CTC of the record of proceedings of 31/10/2023 and 20/11/23, Ext. **C** is the copy of the Medical Report dated the 27th September, 2024 showing the health condition of the Claimant since August 8, 2023 till date, Exhibit **D** is the copy of the Revenue Receipt for the payment of the default fees while Exhibit **E**. is the front page of the Claimant's written submission in opposition to the aforesaid Defendant's written address respectively.

In his submission, the learned counsel to the Applicant/Claimant, **A. U. S. Oguajamma** Esq formulated a lone issue for determination by this court, to wit:

"Whether in the circumstance of this case, the Claimant/Applicant is entitled to the prayers sought".

The learned counsel to the Claimant submitted that the application that led to the dismissal of the suit was made pursuant to Order 32 rule 4 of the FCT High Court (Civil Procedure) Rules 2018 which provides that:

"When a cause is called for hearing if the Defendant appears and the Claimant does not appear, the Defendant if he has no counter claim shall be entitled to judgment dismissing the action but if he has a counter claim, then he may prove such counter claim so far as the burden of proof lies upon him".

Above provision is now Order 38 rule 4 of the 2025 Rules of this court.

The learned counsel equally refers this court to Order 32 rules 5(2) of the FCT High court (Civil Procedure) Rules 2018 now Order 38 rule 5(2) of the 2025 Rules which grants the same court power to set aside its decision dismissing the suit. Order 38 Rule 5(2) of the FCT High court Civil Procedure Rules, 2025 provides thus:

"A judgment obtained where any party does not appear at the trial may be set aside by the court upon such terms as it deems fit".

He further referred to the case of **IKEME & ANOR V. UGWU (2013) LPELR - 20777 CA** where the court of Appeal considered order 37 rules 8 & 9 Plateau state High Court (Civil Procedure) Rules, 1987 which is similar to order 38 Rule 5(2) & (3) of the FCT High Court (Civil Procedure) Rules 2025 and held that:

"The Appellant cannot accept that this suit was dismissed by the trial court for want of prosecution and yet contend that the dismissal was on the merit. The trial court expressly founded his order of dismissal on order 37 Rule 8 of the Plateau state High court (Civil Procedure) Rules..... the trial court in the exercise of its inherent powers can dismiss a suit for want of prosecution where the dismissal is founded on the inherent powers, the dismissal can be equated to a striking out as the suit can be relisted on proper application".

He equally referred to order 32 Rule 5(3) of the FCT High court (Civil Procedure) Rules 2018 now Order 50 rule 5(1) of the 2025 Rules, which requires the Claimant to pay a default fee of **₦200.00** (now **₦500.00**) per

day from the time this Honourable court dismissed the suit before an application for relisting the suit can be considered and granted. He submitted further that by Ext. D attached to the affidavit in support of this application, the applicant has complied with the payment of default fees which qualifies him to be considered in this application.

According to the learned counsel for the Claimant, by the rules of this court, an extension of time could be granted to the Claimant to bring the present application.

He referred to the case of **OLORO V. EKITI STATE GOVERNMENT (2001) ALL FWLR pg 381 pg 962 ratio 4** where it was held that:

"The courts have sufficient amplitude to enlarge time for the doing of any act in a giving case in order to avoid injustice being meted to parties before them".

He finally referred to the case of **COCOA MARCH LTD V. COMMODITIES SALES LTD (1993) 1 NWLR (PT. 271) PG 630** to the effect that Courts need to avoid technicalities when considering application for extension of time. He therefore urged this Honourable Court to grant all the reliefs sought by this application.

On the other hand, the Defendant/Respondent filed a counter affidavit of seven (7) Paragraphs deposed to by **Evelyn Joseph Esq** in response to the motion on notice dated the 4th October, 2024.

It will be in the interest of Justice to refer to some of salient paragraphs of the counter affidavit especially as it relates to the averments contained in the affidavit in support of the motion on notice of 4th October, 2024. The deponent in paragraph 5(b) acknowledged the fact that a statement

of defence was filed as well as a notice of preliminary objection. In paragraph 5(g) it was deposed to the effect that **Ifeanyi Okereke Esq** appeared on behalf of the Claimant and even informed the court that the former counsel travelled out of the country. This is a fact that corroborates the averments of the Claimant/Applicant that their former counsel travelled out of the country.

Similarly, paragraph 5(j) equally confirmed that the suit was dismissed at the instance of the Defendant for want of diligent prosecution under order 32 rule 4 of the FCT High court (Civil Procedure) Rules 2018.

In arguing the counter affidavit, the learned counsel to the Defendant/Respondents **Kehinde Pele Esq** formulated one issue for determination by this Hon. Court to wit:

"Whether the facts and circumstances of this case, this court ought to consider this application in favour of the claimant".

The learned counsel submitted that by virtue of sections 131 and 132 of the Evidence Act 2011 as amended and the case of **DEMATIC NIG. LTD V. UTUK & ANOR (2022) LPELR - 56878 (SC)** it is for the Claimant/Applicant to prove to this Honourable court that he is deserving of the reliefs sought in this application. He also refers to the case of **ACHOLONU & ORS V. OHIRI (2016) LPELR - 40445 (CA)** to the effect that when a suit is dismissed the court becomes functus officio.

It was also the submission of the learned counsel for the Respondents that the present application constitutes an abuse of court process and ought to be dismissed. He referred to the case of **OJO & ORS V. A. G.**

OYO STATE (2008) 15 NWLR (Pt. 1110) pg 309 at pg 323 where it was held that:

"It is also an abuse of court process where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness".

He therefore submitted that the Applicant ought to have appealed against the order of dismissal of this suit made on the 20th November, 2023 instead of the present application.

Having thus analysed the various processes filed before this Honourable court in respect of this case this court is of the view that a lone issue to be determined by this Court is:

"Whether this honourable court has jurisdiction to relist this suit having dismissed same for want of diligent prosecution".

It will be in the interest of Justice to consider order 32 rule 4 of the FCT High Court (Civil Procedure) Rules 2018 which permits this court to dismiss this suit for want of diligent prosecution arising from absence of the Claimant in court.

However, by order 32 rule 5(2) of the Rules of this court:

"A judgment obtained where any party does not appear at the trial may be set aside by the court upon terms as it deems fit".

These terms include being able to convince the court as to why the Claimant and his counsel were not in court leading to the dismissal of the suit. It should be observed that the content of paragraphs 3 - 6 of the affidavit in support of this application has clearly explained the circumstances that worked against the Claimant which led to the

dismissal of the suit by this court. In addition, Exhibits A - C have also corroborated the content of paragraphs 3 - 6 of the affidavit in support of the motion on notice. Similarly, Ext D, the copy of the Revenue Receipt for the payment of the default fees has satisfied the requirement of order 32 rule 5(2) for the payment of ₦200 (Two Hundred Naira) for each day of the default.

Again, by virtue of order 49 rule 4 of the FCT High court (Civil Procedure) Rules 2018;

"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 proceeding".

In fact, in the case of **OLORO V. EKITI STATE GOVERNMENT (2001) ALL FWLR Pt. 381 pg 962 Ratio 4** it was held that:

"The courts have sufficient amplitude to enlarge time for the doing of any act in a given case in order to avoid injustice being meted to parties before them".

Let me at this stage refer to the case of **WAPIN V. NIGERIA TOBACCO (1987) 2 NWLR (Pt. 56) pg 306** where the Court of Appeal lists as one of the conditions that the Applicant must satisfy as a reason for the Applicant's failure to appear in court at the hearing or trial of the case in which judgment was given in his absence.

In the instant application the applicant's reasons are contained in paragraphs 3 - 6 of the supporting affidavit. In paragraph 3(b) the deponent deposed to the fact that:

- b. "That Messrs Ola Olanipekun, SAN & CO. was recently briefed by the Claimant to take over the conduct of this case on behalf of the Claimant.**
- e. That the Registry of this Honourable Court there after processed and issued certified true copy of the record of proceedings of 20/10/23 and 20/11/23 adjourned date."**

Copy of the CTC of record of proceedings was hereto attached as exhibit B.

- (f) That exhibit B shows that on the 20/11/23 last adjourn date, learned counsel to the Defendant placed reliance on the provisions of order 32 rule 4 of the FCT High Court (Civil Procedure) Rules 2018 to apply that the instant suit be dismissed for want of Claimant's appearance. In line with the application of counsel the suit was accordingly dismissed.**

In further advancing reasons for the non - appearance of the Claimant in court on the date the suit was dismissed it was deposed in paragraph 4(a - c) of the affidavit in support of this application thus:

- (a) That he (Victor Emenike Esq) was earlier briefed by the Claimant to personally handle this case on his behalf.**
- (b) That he left Nigeria to United Kingdom long before the instant suit was dismissed on 20/11/23 for want of Claimant's appearance and or diligent prosecution.**
- (c) That at the material time when he was about to leave Nigeria, all attempts made by the counsel to reach the Claimant for debriefing and to hand over his case file to enable him brief another counsel proved abortive until sometimes this year 2024.**

The content of paragraph 5 of the supporting affidavit also shows clearly that the learned counsel was unable to contact the Claimant because he was bedridden as a result of diabetes, hypertension and old age being a 73 years old septuagenarian resident in Kano State of Nigeria, outside the territorial jurisdiction of this Honourable Court. In the same vein, Exhibit C attached to the affidavit in support of this application is a copy of Medical Report dated the 27th September, 2024 showing the health condition of the Claimant since August 8, 2023 till date.

The deponent also states as follows in paragraph 5(1):

"That non - prosecution of the instant suit before 20/11/2023 was due to the health condition of the Claimant and the unavailability of his then counsel, Victor Emerike Esq at all material times including 20/11/2023 last adjourned date".

Similarly, by paragraph 5(e) of the supporting affidavit the Claimant has shown;

that he is still desirous of prosecuting this matter on the merit and want to change his counsel now to be Ola Olanipekun SAN, of Messrs Ola Olanipekun, SAN & CO and all other counsel in the chambers of the learned Senior Advocate.

It could be said at this juncture that the Claimant has clearly complied with the requirement of the law to furnish this Honourable court with sufficient reasons why this application should be granted. Thus, in the case of **ATIKU V. YOLA L.G (2003) 1 NWLR Pt. (802) pg 487 at pg 500 paragraphs E - F** it was held as follows:

"It goes without saying that in an application seeking to have struck out suits relisted, the consideration rests on the following factors:

- 1. Good and substantial reasons for the failure to come to court on the date the suit was struck out.**
- 2. Good and substantial reasons for the delay in bringing the application to delist the suit".**

Again, in the case of **N. H. INT. S. A Vs. N. H. H. Ltd (2007) 7 NWLR (Pt. 1032) pg 86 at pg 111 paragraphs E - G.** It was held that:

"The issue is whether the Applicant have given cogent reason(s) to justify the exercise of my discretion in their favour".

There is no doubt in my mind and I am convinced that the Applicant/Claimant has shown sufficient and cogent reasons to enable this court give a favourable consideration to this application.

However, a further requirement exists in order 37 rule 5(3) of the FCT High Court (Civil Procedure) Rules 2018 which mandates the Applicant/Claimant to pay certain default fees. Order 32 rule 3(2) provides:

"A party who fails to file an application to relist a cause struck out or to apply to set aside a judgment within 6 days after the order or judgment was delivered or such longer period as the court may allow shall at the time of filling the application, pay a fee of N200 (two hundred naira) for each day of the default. Proof of payment shall be attached to the application for extension of time".

In fulfilment of the above requirement of order 32 rule 5(3) of the FCT High Court (Civil Procedure) Rules, 2018 the Claimant/applicant has deposed in paragraph 6 of the supporting affidavit as follows:

"6(c) That by the time the Claimant and both his former and new counsel became aware that the instant suit was dismissed on 20/11/2023 the six (6) days period provided by the rules within which the Claimant was required to apply to set aside the judgment of this Honourable Court has elapsed.

(d) That the Claimant has paid the necessary default fees computed by the Central Registry of this Honourable Court in accordance with the provisions of order 32 rule 5(3) of the FCT High Court (Civil Procedure) Rules, 2018. Copy of the Revenue Receipt for the payment of the default fees is hereby attached and marked as Exhibit D".

In view of the above uncontroverted averments of the Claimant/Applicant in the affidavit in support of this application, I find that this is a proper application that deserves the favour of this court. This conviction is further supported by the decision in the case of **OBASI BROTHERS C. MERCHANT BANK OF AFRICA SECURITIES LTD (2005) 9 NWLR (Pt. 929) pg 117 at pg 129 paragraph E - F** per PATS ACHOLONU JSC where it was held that:

"It is not in all cases where the matter is dismissed that it completely terminates the case. Where it is dismissed but circumstances show that such dismissal could not possibly denote the determination as to put finality to the case, such dismissal is mere striking out".

Again, in **SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LTD V. AGBARA (2016) 2 NWLR (Pt. 1496) pg 326 at pg 410 Para D - E I. T. Muhammad JSC (as he then was) held:**

"A court of law will not allow the provisions of an enactment to be read in such a way as to deny any litigant access to justice. A rule of court stands to guide the court in the conduct of its business and it must not hold as a mistress but as a hand maid".

Let me also refer to the case of **EKEME & ANOR V. UGWU (supra)** where the issue before the court had to do with order 37 rules 8 & 9 of the Plateau State High court Civil Procedure Rules, 1987 which is similar to order 32 rule 5(2)(3) of the FCT High Court (Civil Procedure) Rules 2018 where it was held as follows:

"These rules vests jurisdiction on the trial court to dismiss a suit where the plaintiff fails to appear to lead evidence in his case and further statutorily empowers the court to set aside any judgment so obtained provided the plaintiff applies for the order setting aside the judgment.....the trial court in the exercise of its inherent powers can dismiss a suit for want of prosecution. Where the dismissal is founded on the inherent powers, the dismissal can be equated to a striking out as the suit can be relisted on proper application".

Finally, the Applicant/Claimant in paragraph 6(e) of the supporting affidavit deposed to the following facts:

"That the Claimant has seen the written submission of the Defendant challenging the jurisdiction of this Honourable

court and has prepared a written response in opposition. Front page of the Claimant's written submissions in opposition to the aforesaid Defendant's written address is hereby attached and marked as Exhibit E".

The above averment is meant to convince this Honourable court in granting the prayers of the Claimant deeming the Claimants/Applicants reply on point of law already filed and served in response to the Defendant's Notice of Preliminary Objection instituted on 08/06/2023 as properly filed and served, all necessary fees having been paid.

Once again, let me emphasize the fact that the averments of the Applicant's affidavit have not been controverted in any way. No cogent or convincing reasons have been shown to prevent the granting of this application.

In conclusion therefore, I find this to be a proper case where I should exercise my discretion in favour of the Applicant and grant the prayers in this motion. The prayers are hereby granted. Accordingly, leave is hereby granted to the Claimant/Applicant for an extension of time within which to apply for the setting aside of the decision of this Honourable Court made on the 20/11/23 dismissing suit No. **FCT/HC/CV/2385/2022** for want of diligent prosecution.

2. **An Order** of this court is hereby made setting aside its decision dismissing this suit on the 20/11/23.
3. It is further ordered that suit No. **FCT/HC/CV/2385/2022** dismissed on the 20/11/23 be relisted to the general cause list of this Honourable Court for accelerated/expeditious hearing on the merit.

4. **An Order** of this Honourable Court is hereby made granting leave to the Claimant/Applicant to change his counsel to Ola Olanipekun SAN of Messrs. Ola Olanipekun SAN & CO and all other counsel in chambers.
5. **An Order** of this Honourable court is also made deeming the Claimants/Applicant's reply on point of law already filed and served in response to the Defendant's Notice of Preliminary Objection instituted on 08/06/2023 as properly filed and served, all necessary fees having been paid.

**SIGNED:
HON. JUDGE
07/05/2024.**

APPEARANCE:

A. U. S. Oguajamma, Esq, for the Claimant/Applicant
Evelyn Joseph, Esq, for the Defendant/Respondent