

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

BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU

**SUIT NO: FCT/HC/CV/4336/2024
MOTION NO: FCT/HC/M/584/2025
DELIVERED ON THE 06/10/2025**

BETWEEN:

DOGAB OIL LIMITED.....CLAIMANT/APPLICANT

AND

- | | | |
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| <ul style="list-style-type: none">1. NIGERIAN NATIONAL PETROLIUM COMPANY LIMITED2. MR. GODDY JEDDY AGBA3. FEDERAL MINISTRY OF INDUSTRY, TRADE & INVESTMENT4. INTERNATIONAL ALLIANCE RESOURCES LLC5. IBOM INTERNATIONAL6. EASE CHINA HOLDINGS LIMITED7. K & K GLOBAL LLC | } |DEFENDANTS/
RESPONDENTS |
|--|---|--|

RULING

The Claimant/Applicant took out a Writ of Summons and Statement of Claim against the Defendants/Respondents and sought for various reliefs as contained on the face of the writ. Upon being served with the writ and statement of claim, the 2nd Defendant/Respondent (Mr. Goddy Jeddy Agba) filed a motion challenging the suit of the Claimant for been statute barred and that same offends Section 6(2) of the NNPC Act. The Claimant upon being served with the said motion, and having been out of time to

response to the 2nd Defendant application brought this application under consideration and sought for the following reliefs:

- (1) *An order of the Hon. Court granting leave and extending the time within which the Claimant/Applicant can file and serve its counter affidavit in opposition to the 2nd Defendant's application filed on 06/01/2025.*
- (2) *An **Order** of the Hon. Court deeming the Claimant/Applicant's counter-affidavit, already filed and served as properly filed and served.*
- (3) *And for such further or other orders as this Hon. Court may deem fit to make in the circumstances.*

The said application is supported by 10 paragraphs affidavit deposed to by one Daniel Ahimbe, a litigation clerk in the law firm of the Claimant/Applicant's counsel. In the said affidavit, the applicant seeks for the leave of this Hon. Court allow it to file its counter affidavit to the application of the 2nd Defendant/Applicant challenging the suit of the Claimant.

A written address was filed wherein learned counsel submit that this Hon. Court has the inherent jurisdiction to grant application.

Reacting to the application under consideration, learned counsel for the 2nd Defendant/Respondent filed a reply on point of law wherein the issue whether in the circumstances of the present application put side by side with the 2nd Defendants motion on notice, the Claimants reply on point of law and the written reply/response of the 2nd Defendant, the court can grant the relief sought by the Claimant and allow him file a counter affidavit at this stage in the proceeding was formulated for determination.

It is the submission of learned counsel that the Claimant has only 7 days to file a reply or counter affidavit to it motion filed since 06/01/2015 by virtue of Order 43 Rules 1 (3) of Now Order 30 Rule 3 of 2025 Rules of this Hon. Court.

Learned counsel urged the court to refuse this application in the interest of justice.

Upon service, the Claimant/Applicant filed a reply on points of law wherein counsel submitted that, the argument of the learned counsel for the 2nd Defendant is misleading and therefore same be dismiss.

I have gone through the application of the Claimant applicant as aptly captured by the affidavit and written address in support of same, I have equally read and understood the argument of the learned counsel for the 2nd Defendant in opposing the grant of the said application, I shall be brief but succinctly in addressing the issue before me in the interest of justice.

Order 30 Rule 3 of the Rules of this Hon. Court 2025 provides as thus;

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

It is on record that the 2nd Defendant filed it application before this Hon. Court on the 06/01/2025. The Claimant upon service chooses to reply on points of law as contained in his reply filed on the 10/01/2025. The Claimant however, brought this application to filed a counter affidavit to the motion filed by the 2nd Defendant.

The 2nd Defendant is opposing the application on the ground that paragraph 6 of the affidavit is an opinion prayer, legal argument and

conclusion and therefore court should dismiss the application. For avoidance of doubt, paragraph 6 of said affidavit is hereby reproduce;

Paragraph(6)

“Upon a further review of the issues in this suit, there is a need to file a counter affidavit in opposition to the application of the 2nd Defendant.”

Learned counsel for the 2nd Defendant submitted that the said paragraph of the affidavit which is the main crux of the applicant’s Application is incompetent and therefore, the entire application be struck out.

Indeed, the law is that every motion must be supported by an affidavit; however, the affidavit to be used by the Court must be competent.

The Court held in *NIMASA VS. WASAGU 7 ANOR (2025) LPELR 60502 (CA)*

“The incompetence of the supporting affidavit means that there are no materials furnished by the applicant and which are to be considered in order to ascertain the court to exercise in their favour by grant of the application. afortiori, since by Order 6 Rule1 of the Court of Appeal Rules 2021, an application shall be supported by an affidavit, the incompetence of the supporting affidavit renders the application incompetent since there is no affidavit in support of the application. In the circumstances, the application ought to be struck out for being incompetent.”

The question that follows naturally is does paragraph 6 of the supporting affidavit reproduced in the preceding part of this ruling make the affidavit incompetent?

Section 115(1) of the Evidence Act provides thus;

“Every affidavit used in the court shall contain only a statement of facts and circumstances to which the witness

deposes, either of his own personal knowledge or from information which he believes to be true.”

A cursory look at the affidavit in support of the application will reveal that the deponent stated in paragraph 3 of the affidavit as thus; ***“Counsel for the Claimant/Applicant informed me at our office address stated above on 17/01/2025 at about 3.32pm and I verily believe him as stated hereunder.”***

This to my mind, this is in compliance with Section 115(3) & (4) of the Evidence Act by stating the circumstance and source of his information and where and when the information was acquired. Indeed, the practice for deposition to and use of affidavits in court proceedings is set out in Evidence Act.

Nothing stops a third party from swearing to an affidavit in a matter in which he is not a party provided the affidavit contain only statement of facts which are within the deponent’s own knowledge or which he obtained from information which he believes to be true, but, if his belief is from sources other than his own personal knowledge, he must state explicitly in the affidavit.

I must state here that my duty as a judge is to do substantial justice, stark justice based on fairness which to all intent and purposes, seeks to not only ensure fairness in dispensing justice, but which is manifestly seen and duly acknowledge by all and sundry and justice both in content and context. I am not judicial technician in the workshop of technical justice. The jurisprudence or logic of reasoning is and as humanly possible, would be devoid of technicalities. The need to do substantial justice and avoid delving into the error of technicality is well settled by the apex court of the land. ***OYAYEMI & ORS VS. OWOEYE & ANOR (2017) LPELR 41903 (SC).***

Indeed, the argument of the learned counsel for the 2nd Defendant/Respondent is technical in nature, this is so because, foreclosing the Claimant/Applicant from filing its counter to the Application of the 2nd Defendant on the ground that, paragraph 6 of the Motion for extension of time is a conclusion will surely not be in the interest of justice *OYEMYEMI & ORS VS. OWOEYE & ANOR (2017) LPELR 41903 (SC)*.

Having observed thus, I shall grant this application in the overall interest of justice. Consequently, I hereby made the following orders:

- (1) **An order** is hereby made granting leave and extending the time to the Claimant/Applicant to file and serve its counter affidavit in opposition to the 2nd Defendant's application.

An order is further made deeming the Claimant/Applicants counter affidavit, already filed and served as properly filed and served.

SIGNED:
HON.JUDGE
06/10/2025

APPEARANCE:

Stanley C. Nwakor, Esq, for the Claimant/Applicant

Obi C. Nwakor, Esq, with C. T. Nwamoh-Okezie, Esq, for the 2nd Defendant/Respondent