6/03/2026

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO: **CV/3844/2025**

MOTION NO: GHR/M/547/26

BETWEEN

1. **BERKSHIRE INVESTMENT COMPANY LIMITED**
2. **NATHANIEL JOSHUA OGWUCHE ----------**
   APPLICANT

And

DANIEL NDUBUISI JOHNSON ---------- RESPONDENT

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 43, ORDER 13 RULES 4, 19 & 20, OF THE FEDERAL CAPITAL TERRITORY HIGH COURT CIVIL PROCEDURE RULES 2025, AND SECTION 6 (6) OF THE CONSTITITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED) AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this honourable Court shall be moved on the _____ day of _____, 2026 at the hours of 9'o' clock in the forenoon or so soon thereafter as counsel on behalf of the 1st and 2nd defendant/applicant may be heard praying the Court for the following reliefs:

1. **AN ORDER** of this honourable Court granting leave for an extension of time to the 1st and 2nd defendant/applicant to file his **Counter-Affidavit and other supporting documents** in reaction to the plaintiff's/ respondent' Originating Summons dated 3rd day of October, 2025.
2. An order extending the time within which the 1st and 2nd defendant/applicant can file his **Counter-Affidavit and other supporting documents** in reaction to the plaintiff's/ respondent' Originating Summons dated 3rd day of October, 2025.

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3. An order deeming the **counter-Affidavit and other supporting documents** as properly filed and served, necessary fees having been paid
4. And for such orders and further orders as this honourable Court may deem fit to make in the circumstance of this case.

DATED this 6, day of 03, 2026

IO IBRAHIM

Dr. Dayo G. Ashonibare, Esq. LL. Aciarb..
R.E. Okwori, Esq.,
Simiat Suleiman, Esq.,
S.F. Wofuru, Esq.,
A.B. Etamesor Esq.,
(Applicant's COUNSEL)
Levite Solicitors & Arbitrators,
Flat 4, Salis Court,
Efire Ileogun Street,
(Around Jabi Airport Junction)
Gwarimpa II,
FCT-Abuja
08033661414, 08100485744

levitesolicitors@gmail.com

FOR SERVICE ON

THE RESPONDENT:

DANIEL NDUBUISI JOHNSON ESQ.

ERUGO'S ATTORNEYS AND CONSULTANTS

PLOT 724 ZONE B APO RESETTLEMENT ABUJA

09026366921

EACLAWFIRMS@GMAIL.COM

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IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

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SUIT NO: **CV/3844/2025**

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BETWEEN

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   APPLICANT

And

DANIEL NDUBUISI JOHNSON ---------- **RESPONDENT**

AFFIDAVIT IN SUPPORT OF MOTION

I, **Comfort Ikechukwu**, female, adult Christian Nigeria citizen, litigating secretary of Levite Solicitors and Arbitrators of Flat 4, Salis Court, Efire Ilcogun Street, (Around Jabi Airport Junction) Gwarimpa II, FCT-Abuja make oath and state as follow:

1. That I am the Litigation Secretary in the law office of Levite Solicitors and Arbitrators by virtue of which I am very conversant with the facts of this case
2. That I have the consent of the 1st and 2nd defendant/applicant and my employer to depose to this affidavit
3. That the applicant, the 2nd Defendant/Applicant came to our office on 27th February, 2026 at about 10.am while I was on duty and informed me of the following facts which I verily believe:
   (a) That the applicant was granted an adjournment on the last adjournment to file his processes in this matter.
   (b) That the applicant's counsel lost a close family member in Kogi State and travelled out of jurisdiction.

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(c) That at the time he returned the time within which to file the Counter-Afidavit and accompanying processes had expired.

(d) That the inadvertence was occasioned by the counsel to the applicant

(e) That the delay in filing the Said processes was not deliberate but as a result of the aforementioned reasons.

(f) That it is necessary to bring this application for extension of time for applicant to file its Counter-Affidavit.

4. That it would be in the interest of justice and fair hearing to grant this application
5. That I know that this Court has the discretionary powers to grant this application and it will be in the interest of justice to grant same.
6. That I make this oath in good faith believing same to be true and correct to the best of my knowledge and in accordance with the Oath Act in force.

DEPONENT

Sworn to at the Registry of the High Court Of Justice, FCT, Abuja this ..... day of 2026

BEFORE ME

COMMISSIONER FOR OATHS

DATE

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   APPLICANT

HIGH COURT OF THE FCT. ABUJA NASIRU USMAN HADEJE REGISTRAR SIGN DATE 3

And

DANIEL NDUBUISI JOHNSON ---------- RESPONDENT

WRITTEN ADDRESS IN SUPPORT

OF MOTION ON NOTICE FOR EXTENSION OF TIME

This is the written address of the applicant in support of his prayer in his humble application before this honourable Court for;

1. **An ORDER** of this honourable Court granting leave for an extension of time to the 1st and 2nd defendant/applicant to file his **Counter-Affidavit and other supporting documents** in reaction to the plaintiff's/ respondent' Originating Summons dated 3rd day of October, 2025.
2. **AN ORDER** extending the time within which the 1st and 2nd defendant/applicant can to file his **Counter-Affidavit and other supporting documents** in reaction to the plaintiff's/ respondent' Originating Summons dated 3rd day of October, 2025.
3. **AN ORDER Counter-Affidavit and other supporting documents** as properly filed and served, necessary fees having been paid
4. And for such orders and further orders as this honourable Court may deem fit to make in the circumstance of this case.

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2.00 BRIEF FACTS OF THE APPLICATION

The brief facts of this application are as disclosed in the affidavit in support of this application.

3:00: ISSUE FOR DETERMINATION

The lone issue arising from the affidavit evidence is whether in view of the affidavit evidence before the Court, this application is meritorious

4:00: SUBMISSIONS/ARGUMENTS ON THE ISSUE

4:01: My lord, it is trite law that a party who wishes to file any process in Court out of time is expected to first obtain the leave of Court before doing so and my lord is empowered by law to grant same in the interest of justice. See To Order 43, Order 13 Rules 4, 19 & 20, Of The Federal Capital Territory High Court Civil Procedure Rules 2025

4:02: we submit that the defendant/applicant has through his affidavit in support of the application shown that the failure to file and serve his processes within time is not a deliberate act.

4:03: My lord, the defendant/applicant has disclosed in paragraph 3(c-e) that the delay in filing his process before this honourable Court is not deliberate but due to the ill-health of one of his principal witnesses which made it impossible to take his brief to enable the counsel handling this case to prepare his witness statement on oath.

4:04: It is our further submission that this noble Court has the discretionary power to grant this application. What an applicant seeking extension of time to take any procedural steps is required by law to do is to satisfy the Court by affidavit evidence with good and satisfactory reason for failing to file his processes timeously. We refer my lord to the case of **Akinpelu V Adegboro (2008) 10 NWLR (pt1096) pg. 531.**

4:05: we submit that the applicant has demonstrated this requirement of law by affidavit evidence in support of this application before the Court

CONCLUSION

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By the authority cited above and the affidavit evidence placed before this honourable Court we urge this honourable Court to hold that this application has merit and should be granted in the interest of justice.

Lists OF Authorities

1. Akinpelu V Adegboro (2008) 10 NWLR (pt1096) pg. 531.

DATED this 6 day of 03, 2026

J. O Ibrahim Esq.

Dr. Dayo G. Ashonibare, Esq. Ll. Aciarb.,
R.E. Okwori, Esq.,
Simiat Suleiman, Esq.,
S.F. Wofuru, Esq.,
A.B. Etamesor Esq.,
(Applicant's COUNSEL)
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