IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO
ON FRIDAY THE 27TH DAY OF NOVEMBER, 2026.

BETWEEN: ***SUIT NO: B142/2017***

AJOCA VINE CONCEPT LIMITED..... CLAIMANT/APPLICANT

AND

1. ALFRED IYAMU

2. CREAM TOWN NIGERIA LIMITED ....DEFENDANTS/RESPONDENTS

3. OSAYANDE AGHEDO

RULING

This is a Ruling on a Motion on Notice dated and filed on the 11th day of November, 2026, brought pursuant to ***Order 40 Rule 2(1), Order 40 Rule 5(1)*** and ***Order 45 Rule 4 of the Edo State High Court (Civil Procedure) Rules, 2018*** and under the inherent jurisdiction of this Court, wherein the *Claimant/Applicant is praying for the following orders:*

> ***1. AN ORDER extending the time for the Claimant/Applicant to file and serve her final written address in this suit until the 14th day of December, 2026 as the time allowed for her to do so pursuant to the rules of this honorable court has elapsed.***
>
> ***2. AND FOR such further order(s) as this Honourable Court may deem fit to make in the circumstance of this case.***

The application is predicated on nine grounds set out on the face of the motion. In summary, the grounds are that the suit has been pending for several years; that the Claimant has substantially prepared its proposed Final Written Address, which is attached to the motion; that upon reviewing the proposed address, the Claimant's Principal Counsel observed certain discrepancies between portions of it and the available records of proceedings; that the Principal Counsel directed that Certified True Copies of the relevant proceedings be obtained; that

the Claimant has applied to the Registry for the Certified True Copies and is awaiting their release; and that the Claimant requires a short and reasonable extension of time to complete the review and file a comprehensive and accurate Final Written Address. The Applicant asserts that the application is brought in good faith and is not intended to delay the determination of the suit.

The motion is supported by an affidavit of 23 paragraphs deposed to by one Joseph Okosun, a litigation clerk in the Law Firm of G.C. Igbokwe (SAN) & Co., together with a Written Address of counsel. Attached to the affidavit is the proposed Final Written Address of the Claimant, marked Exhibit A.

The Defendants/Respondents did not file a counter-affidavit. Their learned counsel, who stated that he was served with the motion at about 4:00 p.m. on the eve of the hearing, waived his right to time and elected to oppose the application on points of law. A Written Address in opposition was also filed on behalf of the Defendants/Respondents.

THE FACTS IN SUPPORT OF THE APPLICATION

From the facts contained in the supporting affidavit, the Claimant/Applicant's case is that after the close of the defence on the 18th of June, 2026, the Court ordered the parties to file their final written addresses within a stipulated time. The Defendants filed their final written address and served it on the Claimant's counsel on the 17th day of July, 2026. The deponent conceded that the Claimant had 21 days within which to file its own final written address, and that the time prescribed by the Rules for it to do so has elapsed.

The deponent averred that the Claimant had been taking steps to prepare its Final Written Address; that a proposed draft had been substantially prepared and forwarded to the Principal Counsel for his review; and that the Principal Counsel, who had been away from the office and had not physically resumed as at the time the application was filed, was unable to review the draft in person. The draft was therefore forwarded to him electronically through his e-mail.

He further averred that upon reviewing the draft remotely, the Principal Counsel drew the attention of the firm to certain portions of the proposed address which, in his view, required verification and reconciliation with the records of proceedings, and he directed that Certified True Copies of the relevant proceedings be obtained from the Registry of this Court. According to the

deponent, the Claimant's counsel has applied to the Registry for the Certified True Copies and is awaiting their release.

The deponent stated that the Claimant has no intention of delaying or frustrating the proceedings; that it undertakes to file and serve its Final Written Address on or before the 14th day of December, 2026; and that the grant of the application will not occasion any injustice or undue prejudice to the Defendants, whereas its refusal may deprive the Claimant of the opportunity to present a properly verified and comprehensive Final Written Address.

THE ARGUMENTS OF COUNSEL

In his Written Address in support of the motion, the learned counsel for the Claimant/Applicant, ***F.U. Mbaka Esq***., formulated a sole issue for determination as follows:

> ***"Whether having regard to the circumstances disclosed in the affidavit in support of this application, this Honourable Court ought to exercise its discretion in favour of the Claimant/Applicant by granting an extension of time to file and serve its Final Written Address."***

Arguing the sole issue, the learned counsel submitted that this Court has the jurisdiction to extend the time prescribed for the taking of any step or the doing of any act in proceedings before it. He referred to ***Order 45 Rule 4 of the High Court of Edo State (Civil Procedure) Rules, 2018,*** which provides that:

> "The Judge 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 or adjourn the time for doing any act or taking any proceedings."

He submitted that the provision empowers the Court to grant the extension sought where sufficient circumstances have been placed before it to justify the exercise of its discretion.

Learned counsel contended that the application is not borne out of a lack of interest in the prosecution of the matter or an attempt to delay its determination. He reiterated the facts deposed to in the supporting affidavit concerning the review of the draft address by the Principal Counsel, the discrepancies observed, and the application for Certified True Copies of the records. He

submitted that a final written address is an important procedural document through which a party presents its legal arguments on the evidence and issues in the proceedings, and that it is in the interest of justice that the address should accurately reflect the proceedings and evidence before the Court.

He submitted that the Claimant had demonstrated its seriousness by substantially preparing the proposed address, submitting it for review and taking steps to obtain the Certified True Copies; and that the short extension sought is reasonable and will not occasion any injustice to the Defendants. He relied on the case of *Bowaje v. Adediwura (1976) 6 SC 14* for the proposition that applications for extension of time are granted liberally, particularly where no prejudice will be occasioned to the adverse party; and on ***Doherty v. Doherty (1968) NMLR 241*** for the proposition that matters should be determined on their substance rather than on technicalities. He urged the Court to exercise its discretion judicially and judiciously in favour of the Claimant/Applicant and to grant an extension of time up to and including the 14th day of December, 2026.

At the hearing of the motion, the learned counsel adopted his Written Address and added that the Claimant's lead counsel, ***G.C. Igbokwe, SAN***, had reviewed the proposed address remotely and noticed some discrepancies with the court's record; that the Claimant was awaiting the record of proceedings so as to align its final written address with the record; that the application is not prejudicial to the Defendants; and that the Claimant is not abandoning its case but merely seeks a little time to properly bring its final written address.

In opposition to the application, the learned Senior Counsel for the Defendants/Respondents, ***K.E. Mozia, SAN,*** contended that on 21/10/2026, based on a letter written by the Claimant's counsel, this case was adjourned to 12/11/2026, being one of the dates suggested by counsel, for the last time for the adoption of final written addresses. He pointed out that the matter had previously been adjourned on two earlier dates for the same purpose, that is, on 5/10/2026 and 21/10/2026.

He argued that the said order being a subsisting order of Court, the application for extension of time is not grantable, as no prayer for the order to be vacated or set aside has been sought or granted.

Furthermore, he referred to ***Order 46 Rule 8 of the High Court (Civil Procedure) Rules of Edo State***, which provides that:

> ***"Subject to particular Rules, the court may in all causes and matters, make any order which it considers necessary to do substantial justice."***

He submitted that a party like the Claimant, who fails to avail itself of several opportunities to file a final written address, cannot validly complain about lack of fair hearing. He relied on the case of *Niger Construction Ltd v. Okugbeni (1987) 4 NWLR (Pt. 67) 787, per Oputa, J.S.C. at 793,* where the Court held that:

> ***"Addresses are designed to assist the court. Cases are normally not decided on addresses but on credible evidence hence no amount of brilliance in a final speech can make up for the lack of evidence to prove and establish or else disprove and demolish points in issue."***

He also relied on the case of ***Newswatch Communications Ltd v. Attah (2006) 12 NWLR (Pt. 993) 144.***

At the hearing, the learned Senior Advocate added that the Defendants had filed and served their final written address since July, 2026; that the Claimant had come before the Court on three previous occasions seeking time to file its address; and that public policy demands that there must be an end to litigation. He submitted that the application, made in the face of a subsisting order adjourning the matter for the last time, is a call on the Court to exercise its discretion, which the Court ought to decline.

Premised on the foregoing, he urged the Court to refuse the application for extension of time and to allow the Defendants/Counter-Claimants, who have filed their Final Written Address since the 6/7/2026, to adopt same. He submitted that this will meet the justice of this case, which has been pending since 2017.

ISSUE FOR DETERMINATION

I have carefully considered the motion, the supporting affidavit, the exhibit attached thereto and the written and oral submissions of the learned counsel for the parties. I have also had recourse to the record of proceedings of this Court in this suit, of which I am entitled to take judicial notice. I am of the view that the

sole issue for determination is the issue formulated by the learned counsel for the Claimant/Applicant, which I adopt with a slight modification, as follows:

> ***Whether, having regard to the facts and circumstances of this case, the Claimant/Applicant has placed sufficient materials before the Court to warrant the exercise of the Court's discretion in its favour by extending the time within which to file and serve its Final Written Address.***

RESOLUTION OF THE ISSUE

There is no doubt that this Court has the power to extend the time for the doing of any act or the taking of any step in the proceedings before it. ***Order 45 Rule 4 of the Edo State High Court (Civil Procedure) Rules, 2018***, earlier reproduced in this Ruling, expressly confers that power on the Court, and it may be exercised either before or after the expiration of the time appointed by the Rules or by any order of the Court.

However, the power is discretionary. An application for extension of time is not granted as a matter of course or for the mere asking. The applicant has the burden of placing before the Court sufficient materials, by way of good and substantial reasons, to explain the failure to take the step within the time allowed and to persuade the Court to exercise its discretion in its favour. Like every judicial discretion, it must be exercised judicially and judiciously, upon the facts and circumstances of the particular case, and not as a matter of sentiment. See: ***Williams v. Hope Rising Voluntary Funds Society (1982) 1-2 SC 145; and University of Lagos v. Olaniyan (1985) 1 NWLR (Pt. 1) 156.***

I will first deal with the contention of the learned Senior Counsel for the Defendants/Respondents that the application is not grantable because the Claimant/Applicant did not pray the Court to vacate or set aside the order of 21/10/2026 adjourning the matter for the last time.

I have perused the record of proceedings of the 21st of October, 2026. On that date, the learned Senior Advocate for the Claimant, ***G.C. Igbokwe, SAN***, was absent and had written a letter seeking an adjournment on the ground that the date was inconvenient for him. The learned Senior Advocate for the Defendants informed the Court that he had filed and served his final written address since July, and he stated that the least the Claimant's counsel ought to have done was to file an application for extension of time. He nevertheless obliged the

Claimant with the 12th of November, 2026, being one of the dates suggested by the Claimant's counsel in his letter. The Court thereupon adjourned the suit to Thursday, the 12th of November, 2026 ***"for final written addresses for the last time."***

With respect to the learned Senior Advocate, I do not think that the omission of a prayer to vacate the order of 21/10/2026 is, by itself, fatal to the application. By the express wording of ***Order 45 Rule 4***, the Court may extend the time for doing any act even after the expiration of the time appointed "by any judgment or order of the Court." An application for extension of time is, in substance, an invitation to the Court to enlarge the time it had earlier fixed.

That said, the order of 21/10/2026 remains extant, and it was made at the instance of the Claimant and on a date of its own choosing. A party who seeks a further indulgence in the face of an order adjourning a matter for the last time for the very step in question must squarely confront that order and show compelling reasons why the Court should depart from it. The Claimant/Applicant did not do so. Its motion and supporting affidavit make no reference whatsoever to the order of 21/10/2026, or to the two earlier adjournments granted for the same purpose. This is, in my view, a weighty consideration in the exercise of the Court's discretion.

I now turn to the reasons proffered by the Claimant/Applicant for the extension sought.

The first point to note is the length of the delay. On the Claimant's own showing, the Defendants' final written address was served on it on the 17th of July, 2026, and the Claimant had 21 days thereafter to file its own address. The time therefore expired in the first week of August, 2026. The matter subsequently came up on the 5th of October, 2026 and on the 21st of October, 2026 for the adoption of final written addresses, and on each occasion it was adjourned to accommodate the Claimant. On the 21st of October, 2026, the learned Senior Counsel for the Defendants pointedly observed, in open court, that the Claimant ought at least to have applied for extension of time. Yet the Claimant waited until the 11th of November, 2026, the eve of the date fixed for the last time, to file this application, and served it on the Defendants' counsel at about 4:00 p.m. on that day.

The supporting affidavit offers no explanation whatsoever for the period between August, 2026 and November, 2026. It does not state when the draft address was prepared, when it was forwarded to the Principal Counsel, when the alleged discrepancies were observed, or when the application for Certified True Copies was made. An applicant for extension of time is required to explain the delay; an affidavit which is silent on the entire period of default does not discharge that burden.

The second point concerns the reason given, namely the absence of the Principal Counsel from his office. The affidavit itself discloses that notwithstanding his absence, the Principal Counsel reviewed the draft address remotely and communicated his observations to the firm. His absence therefore did not prevent the review of the address. Besides, the Claimant is represented by a firm of legal practitioners, and counsel from the firm have been appearing in this matter. The prosecution of a client's case is not the personal preserve of one counsel, such that the case must stand still for as long as he is unavailable. When the Court enquired at the hearing as to the whereabouts of the learned Senior Advocate, his learned junior candidly stated that they did not know, as he had not been around. The Court stood the matter down for twenty minutes to enable counsel to reach him, but he did not appear. Indeed, the record shows that this is not the first time that the matter has been stalled on account of the unavailability of the learned Senior Counsel for the Claimant.

The third point concerns the alleged discrepancies and the application for Certified True Copies of the proceedings. The affidavit does not identify any of the alleged discrepancies, nor does it state which proceedings the Certified True Copies relate to. No copy of the application for Certified True Copies, nor any receipt of payment for them, is exhibited. The Court is therefore left with a bare averment, unsupported by any document, that such an application was made. Furthermore, these facts were deposed to by a litigation clerk who did not state that he was personally involved in the review of the draft address, and who did not disclose the source of his information or the time and place at which he received it, as required by ***Section 115(3) and (4) of the Evidence Act, 2011.***

I must also observe that the affidavit describes the deponent in one breath as a legal practitioner and in another as a litigation clerk, and describes the Claimant's solicitors as the "1st Defendant Solicitors". These lapses, in my view,

betray the hurried manner in which the application was put together on the eve of the date fixed for the last time.

In any event, the Claimant's counsel participated in the trial of this suit throughout. The evidence closed on the 18th of June, 2026. A party who intended to rely on the Certified True Copies of the proceedings in order to write its final address had more than four months within which to apply for and obtain them. The need for them cannot, at this late stage, constitute a good and substantial reason for a further extension.

The fourth point, which I consider decisive, is that the Claimant/Applicant was not shut out by this Court. On the 12th of November, 2026, when the application came up, the Court noted that the Claimant had already attached its proposed Final Written Address (Exhibit A) to the motion. The Court then offered the learned counsel for the Claimant the option of applying orally for the proposed address to be deemed properly filed and served, so that it could be adopted that day. The learned counsel declined the offer, preferring to ask the Court to stand the matter down so that the learned Senior Advocate could be called. As already stated, the Court obliged him, but the learned Senior Advocate did not come. The Claimant thereafter elected to move the motion for a further extension of over one month.

It is settled law that the right to fair hearing guaranteed by ***Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)*** is a right to be afforded the opportunity to be heard. Where a party has been afforded that opportunity and fails or neglects to utilise it, he cannot be heard to complain that his right to fair hearing has been breached. See: ***Newswatch Communications Ltd v. Attah (2006) 12 NWLR (Pt. 993) 144,*** relied upon by the learned Senior Counsel for the Defendants. In the instant case, the Claimant has been afforded not one but several opportunities to present its final address, including the opportunity, which it declined, to adopt the very address it had already prepared.

I must also emphasise that fair hearing is not a one-way traffic. The same ***Section 36(1) of the Constitution*** entitles every party to a fair hearing "within a reasonable time". This suit was filed in 2017. The Defendants, who are also Counter-Claimants, filed their final written address in July, 2026 and have been ready to adopt it since then. They are entitled to the conclusion of this case. Moreover, by ***Section 294(1) of the Constitution,*** this Court is enjoined to

deliver its judgment within ninety days after the conclusion of evidence and final addresses. A court cannot keep a case open indefinitely, at the pleasure of one of the parties, after evidence has closed. I therefore cannot accept the averment in the supporting affidavit that the grant of the application will occasion no prejudice to the Defendants.

As rightly observed by the learned Senior Counsel for the Defendants, addresses are designed to assist the Court, and cases are decided not on addresses but on credible evidence. See: ***Niger Construction Ltd v. Okugbeni (1987) 4 NWLR (Pt. 67) 787 at 793***. The evidence in this suit has been concluded and is on record. The Court is under a duty to evaluate that evidence, and will do so, whether or not the Claimant files a final written address.

I have also considered the cases of ***Bowaje v. Adediwura (supra) and Doherty v. Doherty (supra),*** relied upon by the learned counsel for the Claimant/Applicant. While it is true that the courts have adopted a liberal attitude to applications for extension of time, and lean towards the determination of cases on their merits rather than on technicalities, that liberality is not a licence for indolence. It does not relieve an applicant of the duty to place before the Court good and substantial reasons for its default. The refusal of this application is not founded on any technicality; it is founded on the Claimant's failure to explain a delay of over three months and its failure to utilise the several opportunities afforded to it by the Court. The merits of this case will still be determined on the evidence before the Court.

Sequel to the foregoing, I hold that the Claimant/Applicant has not placed sufficient materials before the Court to warrant the exercise of the Court's discretion in its favour. The sole issue for determination is accordingly resolved against the Claimant/Applicant and in favour of the Defendants/Respondents.

In the event, the application lacks merit and it is hereby refused. For the avoidance of doubt, I make the following orders:

> ***1. The application of the Claimant/Applicant dated and filed on the 11th day of November, 2026 for an order extending the time within which to file and serve its Final Written Address until the 14th day of December, 2026 is hereby refused.***

2. The Claimant/Applicant is deemed to have waived its right to file a Final Written Address in this suit.

I make no order as to costs

P.A. AKHIHIERO
JUDGE
27/11/2026

<u>COUNSEL</u>:

G.C. Igbokwe SAN and F.U. Mbaka Esq..... Claimant/Applicant.

K.E. Mozia, SAN .....Defendants/Respondents.