

IN THE FEDERAL HIGH COURT
HOLDEN AT LAGOS, NIGERIA
ON FRIDAY THE 3RD DAY OF MARCH, 2017
BEFORE THE HONOURABLE JUSTICE
M.B. IDRIS

SUIT NO: FHC/L/CS/257/17

IN THE MATTER OF BROADBAND TECHNOLOGIES LIMITED

AND

**IN THE MATTER OF AN APPLICATION UNDER SECTION 205 OF
THE COMPANIES AND ALLIED MATTERS ACT, CHAPTER C20
LAWS OF THE FEDERATION OF NIGERIA (LFN), 2004**

IN RE:

FIRST BANK OF NIGERIA LIMITED APPLICANT

(A Public Limited Liability Company
Incorporated under the Laws of the
Federal Republic of Nigeria and
Interested in the All Assets Debenture
over the fixed Assets of BROADBAND
TECHNOLOGIES LIMITED)

JUDGMENT

This judgment is in respect of the application of the Applicant in the matter brought by way of an Originating

Summons dated 22nd February, 2017 seeking from this Honourable Court, the following order(s):

- (i) AN ORDER that the time for the registration with the Corporate Affairs Commission "the Commission" of the All Assets Debenture dated 17th September, 2015 "the All Assets Debenture" over the rights, title and interests of BROADBAND TECHNOLOGIES LIMITED "The Company" securing the banking facilities granted for the benefit of the Company be extended by a period of Ninety (90) days and on such terms and conditions as seems just and expedient to the Court.
- (ii) And for such further orders or other orders as this Honourable Court may deem fit to make in the circumstances.

2. The Applicant in support of its originating summons filed an affidavit of thirteen (13) paragraphs sworn to by one Oluseyi Aoko, a Legal Practitioner with the Law firm of Iluyomade & Co., Counsel retained by the Applicant. The Applicant seeks to rely on all the averments of the said affidavit.
3. This written address constitutes arguments in support of the Applicant's originating summons dated 22nd February, 2017 and sets out the legal and factual reasons why the Applicant's summons ought to be granted by this Honourable Court

SUMMARY OF FACTS

1. The Applicant herein granted credit facilities to Broad Band Technologies Limited "The Company" The Credit facilities granted the Company was secured by a debenture over the fixed assets of the Company.
2. A Deed of All Assets Debenture was subsequently entered into between the Applicant and the Company.

3. The Applicant subsequently proceeded to stamp the All Assets Debenture to cover an initial sum of ₦104,000,000 (One hundred and Four Million Naira)
4. The Applicant also sought to register a charge against the Company at the Corporate Affairs Commission (CAC), Abuja but upon registration at the CAC. It was discovered that there were some discrepancies in the All Assets Debenture which required amendment.
5. As a result of the facts in which I have deposed above, the Applicant and the Company were unable to register the All Assets Debentures dated 17th September, 2015 at the CAC within the time stipulated by the Companies and

Allied Matters Act (CAMA) for which reason it has become necessary to seek the order of this Honourable Court for an extension of time to register the All Assets Debenture.

The sole issue that arises for determination on a consideration of this present application is:-

“Whether this Honourable Court, having regard to the circumstance of this case, ought to grant the application of the Applicant.”

Section 251(e) of the Constitution empowers the Federal Republic of Nigeria, 1999 “the Constitution” empowers the Federal High Court to exercise jurisdiction over the operation of Companies and Allied Matters Act (CAMA), Cap C20, Laws of the Federation of Nigeria, 2004 or any enactment regulating the operation of Companies incorporated under Companies and Allied Matters Act.

In the instant case, the main relief sought by the Applicant is an order brought pursuant to the provisions of

the Companies and Allied Matters Act seeking for an extension of time within which to register the All Assets Debenture with the Corporate Affairs Commission; over the rights, interests and interests of Broadband Technologies Limited ("the Company") securing the banking facilities granted for the benefit of the Company.

Section 205 of Companies and Allied Matters Act provides for the power of the Courts to make the following order:-

"an order that the time for the Registration with the Corporate Affairs Commission of the particulars of a charge and the instrument evidencing same be extended on such terms and condition as seems just and expedient to the Court."

Section 205 of CAMA specifically provides thus:-

"The Court on being satisfied that the omission to register a charge within the time required by this Act or that the omission or misstatement of any

particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the Company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seems to the court just and expedient, order that the time for registration shall be extended or, as the case may be, that the omission or misstatement shall be rectified."

This provision of Companies and Allied Matters Act clothes this Court with the absolute discretion to grant orders extending the time within which Applicant may register a charge with the Corporate Affairs Commission.

This Honourable Court is empowered both by the above reproduced provisions of the Constitution and Companies and Allied Matters Act to make the said order.

The rule as to the time within which an Applicant may register with the Corporate Affairs Commission is provided under Section 197 of CAMA. The provision requires the particulars of every charge created by a Company, together with the instrument evidencing the creation of the charge is expected to be delivered to and filed at the Corporate Affairs Commission in the manner required under the Act within Ninety (90) days after the date of the creation of the charge.

The Applicant herein is out of time having failed to deliver the All Assets Debenture for filing within the stipulated period of Ninety (90) days. It has therefore become necessary to bring this present application by way of an originating summons ex parte seeking an order of this Court that the time for the registration of the All Assets Debenture with the Corporate Affairs Commission over the rights, title and interests of Broadband Technologies Limited securing the banking facilities granted for the benefit of the Company be extended on such terms and conditions as seems just and expedient to the Court.

The grant of the order being sought by the Applicant is entirely within the Court's discretion.

The principle guiding the grant or refusal of an application for extension of time to take a procedural step (as in this matter) has been the subject matter of a number of judicial pronouncement. It has been stated in the case of **UNITED BANK FOR AFRICA PLC VS. MODE NIGERIA LTD (2001) 1 NWLR (PT 693) 141 @ PAGE 148** wherein Honourable Justice (Mr.) S.A. Olagunju (J.C.A) stated thus:-

“the discretion of the Court as to the range of matters for which the court may grant the indulgence of extending the time within which to do an act or take a step in pre-trial, trial or post trial proceedings appear to be infinite. The only limitation is that since the dispensation to extend time is discretionary, it must be exercised judicially and judiciously by balancing the interest of the parties appreciating the epigram that discretion is not a one way traffic”

The justice of this case is one which dictates that the Applicant be granted an extension of time within which the Applicant may register the All Assets Debenture dated 17th September, 2015 at the Corporate Affairs Commission.

The reasons for the Applicant's delay in delivering to and filing the All Assets Debenture dated 17th September 2015 at the Corporate Affairs Commission within the time prescribed by the Companies and Allied Matters Act is one deserving of the discretion of the Court being exercised in the Applicant's favour.

The Applicant's reason (s) for the delay in registering the All Assets Debenture dated 17th September, 2015 at the Corporate Affairs Commission in consonance with the rules of this Court is set out in paragraphs 10 and 11 of the affidavit in support of the application.

I hold that upon a close scrutiny of these averments, this Honourable Court will observe the reasons for the delay by the Applicant in the registration of the All Assets Debenture dated 17th September 2015.

In addition to the particulars stated above, the purpose for which the Applicant seeks an order of this Honourable Court is to ensure that any further delay in the registration and filing of the All Assets Debenture dated 17th September, 2015 at the Corporate Affairs Commission does not seriously prejudice the Applicant's position as the continued non- registration/non filing of the All Assets Debenture by the Applicant herein will result in the All Assets Debenture being void against any liquidator or other creditor(s) of the Company.

The requirements an Applicant must fulfill for a court to grant an order of extension of time for the registration of a charge has further been laid down by the Courts in the case of **UNITED BANK FOR AFRICA LIMITED VS. THE REGISTRAR OF COMPANIES (1960) FRCR 201.**

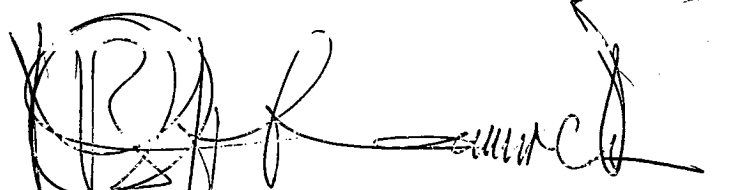
“to enable the order to be made, the Applicant must show that the omission to register the charge was : (a) accidental (b) due to inadvertence, the nature which must be set out (c) is not of a nature to prejudice

the position of creditors or shareholders or (d) that there are other grounds on which it is just and equitable to grant the relief (e) that no winding up order has been made or resolution for winding up has been passed and (f) that the Company is carrying no business and that no judgment has been delivered against them which remains unsatisfied"

I hold that the laid down requirements have been complied with by the Applicant in Paragraphs 5-13 of the affidavit in support of the Originating Summons.

I hold further that in the light of the foregoing, it must be noted that the most important duty of the Court is to ensure that justice as it is known in Law is pursued vigorously and done. To achieve such end result, recourse should not be made to technicalities, most especially of a procedural nature, strict adherence to which might lead to a miscarriage of justice. See **NIDB LIMITED VS. S.S. DRINKS LIMITED (1992) 5 N.W.L.R (PT. 242) 471 AT 481.**

Based on the facts place before this Honourable Court, this Court will exercise its discretion in favour of the Applicant and grant the Applicant's application brought by way of Originating Summons for an extension of time within which to register the All Assets Debenture dated 17th September, 2015 at the Corporate Affairs Commission as it is just and equitable to grant the relief in favour of the Applicant and in view of the genuine reasons given for the delay in registering the All Assets Debenture at the Corporate Affairs Commission.



M.B. IDRIS
JUDGE
03/3/2017

I. Aoko Esq for the Applicant