

*J. 1.46pm
30/11/2020*
OFFICIAL

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No. ...
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IN THE COURT OF APPEAL
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU STATE
ON THE 24th DAY OF JUNE, 2019
BEFORE THEIR LORDSHIPS:

COURT OF APPEAL
ENUGU
OFFICIAL
Signature ...
Date ... *30/11/2020*

HON. JUSTICE M.B. DONGBAN-MENSEM - JUSTICE, COURT OF APPEAL
HON. JUSTICE J. O. K. OYEWOLE - JUSTICE, COURT OF APPEAL
HON. JUSTICE A.S. UMAR - JUSTICE, COURT OF APPEAL

APPEAL NO.:CA/E/75/2015

BETWEEN:

MR. CHUKWUEMEKA ILOZOR ==APPELLANT

AND

TOTAL NIGERIA PLC ==RESPONDENT

JUDGMENT

DELIVERED BY MONICA BOLNA'AN DONGBAN-MENSEM, JCA

1. Whether The Non-Regularization Of The Respondent's Statement Of Defence And Other Processes Out Of Time Is A Mere Irregularity

On the issue of whether the Non-Regularization of the Respondent's Statement of Defence and other processes filed out of time is a mere irregularity, **Order 9 Rule 1 of the National Industrial Court Rules 2007** provides that:

"Where a party served with a complaint and the accompanying documents as stipulated in Order 3 of these Rules intends to

defend and/or counter-claim in the action, the party shall not later than 14 days or any other time prescribed for defence in the complaint, file:

- a. A statement of defence and counter claim (if any)
- b. List of witnesses
- c. Copies of documents to be relied upon at the trial



However, **Order 5 Rule 1 and 3** of the same Rules provides thus:

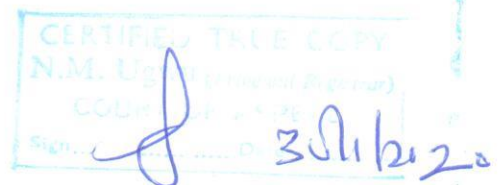
- (1) "Failure to comply with any of these Rules may be treated as an irregularity and the court may give any direction as it thinks fit"
- (2) "The Court may direct a departure from these Rules where the interest of Justice so requires"

This Order gives the Court the discretion to treat as an irregularity; non-compliance with the Rules. In the interest of Justice, it also arms the Court with the power to depart from these Rules, especially where the non-departure would result to the miscarriage of Justice which it ought to uphold.

2. On Whether A Party Should Be Punished For The Wrong Done By Counsel

It would be unfair to punish a party for the wrong done by his Counsel. The Rules of Court saddles the court with the discretion to treat as an irregularity; non-compliance with the Rules. This discretion should be used judiciously.

The Appellant's objection to the Non-Regularization of the Respondent's Statement of Defence filed out of time was not raised within a reasonable time in line with **Order 5 Rule 2 of the National Industrial Court Rules**. For not doing so, the Appellant



is deemed to have waived any irregularity in the Non-Regularization of the processes and Statement of Defence of the Respondent.

In the interest of Justice, the Non-Regularization of the Respondent's Statement of Defence and other Processes filed out of time is a mere irregularity.

3. On Termination Of Employment

In a Master-Servant Relationship, an Employer need not give reason to terminate a contract of employment. The letter of termination given to the Appellant stated that his services with the company will no longer be required with effect from August 15, 2012.

If an Employer terminates an Employee's contract of employment without following the procedure laid out in the contract i.e. the employment letter of the Appellant, the Employee could institute an action for wrongful termination.

4. On The Import Of Section 11 Of The Labour Act, 2004

Section 11 of the Labour Act 2004 is in two folds; Termination and Resignation; Termination at the instance of the Employer and Resignation at the instance of the Employee. The said Section provides that either party to a contract of employment may terminate the contract on the expiration of notice given by him to the other party of his intention to do so.

Where an employee resigns, he is expected to give a Month's notice and cannot bring an action for claims.

