

IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY

BETWEEN:

SUIT NO: B/XXX

MR. AB

..... Plaintiff/Respondent

AND

1. **CORPORAL CD**

2. **COMMISSIONER OF POLICE,
EDO STATE**

} Defendants/Applicants

MOTION ON NOTICE
BROUGHT PURSUANT TO ORDER 22 RULE 3 OF THE HIGH COURT
(CIVIL PROCEDURE) RULES 1988, APPLICABLE TO EDO STATE

TAKE NOTICE that this Honourable Court will be moved on the day of..... 2007, at the hour of 9'0 clock in the forenoon or so soon thereafter as the Counsel for the Defendants/Applicants may be heard praying this Honourable Court for the following Orders:

- (a) An Order for extension of time within which the Defendants/Applicants may enter their appearance in this suit, the time allowed under the Rules having expired;
- (b) An Order for leave to enter appearance in this suit;
- (c) To deem as properly filed and served, the Notice of Appearance, annexed herewith as Exhibit 'A';
- (d) An Order for extension of time within which the Defendants/Applicants may file their Joint Statement of Defence to this suit, the statutory time having expired;

(e) To deem as properly filed and served, the Joint Statement of Defence attached herewith as Exhibit 'B'.

AND for such Order and/or further Order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

DATED at Benin City, this day of 2007.

GURU GURU Esq.

Defendants/Applicants' Counsel.

FOR SERVICE ON:

Plaintiff/Respondent
c/o His Solicitor

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} Defendants/Applicants

AFFIDAVIT IN SUPPORT OF MOTION

I, **GURU GURU** (M), Nigerian, Christian, Legal Officer in the Edo State Ministry of Justice, do hereby make oath and state as follows:

1. That I am the Legal Officer assigned to conduct this case on behalf of the Defendants.
2. That I am quite seised of the facts of this case.
3. That from the official records in the Ministry of Justice, I observed that the Motion for Judgement was forwarded to this office by the Defendants on the 17th of July, 2006.
4. That the court process was mistakenly filed in a closed file in the Litigation Registry of our Ministry, hence the process was not brought to the attention of the Director of Civil Litigation.
5. That it was only on the 22nd of January, 2007 that I eventually exhumed the file to enable me prepare a suitable defence.
6. That upon a close perusal of the court processes, together with the brief forwarded by the Defendants/Applicants I observed that there is a defence to this action.
7. That the time granted us under the Rules to enter appearance and to file our Statement of Defence has since expired.

8. That it will be in the interest of justice and fair play for the court to extend the time to enable us enter appearance and file our Statement of Defence to this action.
9. That a copy of the Notice of Appearance and a copy of the Joint Statement of Defence are attached herewith as Exhibits 'A' and 'B', respectively.
10. That I depose to this affidavit in good faith and in accordance with the provisions of the Oaths Act, Laws of the Federation of Nigeria.

DEPONENT

SWORN to at the
High Court Registry,
Benin City, this day
of 2007.

BEFORE ME:

COMMISSIONER FOR OATHS

IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
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HOLDEN AT BENIN CITY

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MR.AB

..... Plaintiff

AND

1. **CORPORAL CD**

2. **COMMISSIONER OF POLICE,
EDO STATE**

}
..... Defendants

JOINT STATEMENT OF DEFENCE OF 1ST AND 2ND DEFENDANTS

1. Save and except as hereinafter expressly admitted, the Defendants deny each and every allegation of fact contained in the Plaintiff's Statement of Claim as if each and every such allegation of fact were specifically set out and traversed seriatim.
2. The Defendants specifically deny paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22 and 24 of the Statement of Claim.
3. The Defendants state that on the 12th day of June, 2004, the 1st Defendant was in a team of policemen posted to Auchi/Oluku by pass, napping point, on routine patrol, when a motorist plying the route alerted them of the presence of armed robbers operating in the vicinity.
4. That when the police patrol team received the report, they informed the complainant that they did not have any patrol vehicle to go in pursuit of the armed robbers and immediately a driver of ZZ. Motors, volunteered his commercial vehicle to assist the police.
5. The police took possession of the vehicle and borrowed civilian clothes from the passengers of the vehicle to cover up their police uniforms and swiftly went in search of the robbers.

6. When the police got to the scene of the robbery, the driver of ZZ. Motors showed the police the spot where the robbers blocked the road and they described the robbers to the police as some young boys within the age group of 20-30 years. Furthermore, he told the police that the robbers were armed with guns and cutlasses.
7. While the police were combing the area in search of the robbers, a boy suddenly emerged from the bush with a cutlass in his hand and the driver quickly identified him as one of the robbers.
8. The 1st Defendant who was standing next to the driver, immediately ordered the boy to stop and identify himself. But the boy fled into the bush and the 1st Defendant fired at him to apprehend him.
9. The police team promptly arrested the boy who was shot and who was later identified as the Plaintiff. He was taken to the Anti-Robbery Section of the State C.I.D. for interrogation.
10. Three months later, the 1st Defendant received a signal to report at the Office of the O/C of the State C.I.D. for interview in relation to the matter of the shooting of the Plaintiff and the 1st Defendant gave an explanation of the incident resulting in the shooting.
11. In answer to the Plaintiff's claim the Defendants shall contend that they are both agents of the Federal Government and that this Honourable Court has no jurisdiction to entertain this suit.
12. Furthermore, the Defendants shall contend that the Defendants are Public Officers within the contemplation of the provisions of the Public Officers Protection Act, and that this action was filed on the 8th day of November, 2004, whereas the act complained of, occurred on the 12th of June, 2004, thereby making the action statute barred.
13. The Defendants will at the trial, evoke all equitable and legal defences available to them in defence of this action.
14. The Defendants shall contend that the Plaintiff's claim against the Defendants jointly, and severally is vexatious, speculative, frivolous and should be dismissed with costs.

DATED at Benin City, this day of 2007.

GURU GURU ESQ.

Defendants/Applicants' Counsel.

FOR SERVICE ON:

Plaintiff/Respondent
c/o His Solicitor

FORM 12

NOTICE OF ENTRY OF APPEARANCE AFTER LEAVE OBTAINED

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MR.AB

..... Plaintiff

AND

1. **CORPORAL CD**

2. **COMMISSIONER OF POLICE,
EDO STATE**

}
..... Defendants

TAKE NOTICE that the Defendants have obtained leave to appear to the Writ of Summons in this action and that I have this day entered appearance on their behalf.

DATED this day of 2007.

GURU GURU ESQ.