

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 13
CASE NUMBER : SUIT NO: CV/1306/2019
DATE: : FRIDAY 29TH NOVEMBER, 2024

BETWEEN:

NARROW WAY PHARMACY & STORES (WA) LIMITED } **CLAIMANT/RESPONDENT**

AND

1. FIDELITY BANK NIG. PLC. } **1ST DEFENDANT/APPLICANT**
2. ATLAS MICROFINANCE BANK LTD. } **2ND**
DEFENDANT/RESPONDENT

RULING

This ruling is at the instance of the 1st Defendant/Applicant who filed a Motion on Notice praying this court for the following:

1. An order of this Honourable Court dismissing this Suit No: CV/1381/2018 between the Claimant and the Defendants due to the Claimant inability to further appear in court in this suit or due to the Claimant's inability to further appear in court to prove His case before this Honourable Court in this Suit No: **CV/1306/2019** between **Narrow Way Pharmacy & Stores (WA) Limited (Claimant/Respondent) VS. Fidelity Bank Nig. Plc. (1st Defendant/Applicant) And Atlas Microfinance Bank Ltd. (2nd Defendant/Applicant)**
2. And for such further order or orders as this Honourable court may deem fit to make in the circumstance.

Or alternatively

- a. An order of this Honourable court striking out the proceeding in Suit No: **CV/1306/2019** between **Narrow Way Pharmacy & Stores (WA) Limited (Claimant/Respondent) VS. Fidelity Bank Nig. Plc. (1st**

Defendant/Applicant) And **Atlas Microfinance Bank Ltd. (2nd Defendant/Respondent)** for want of diligent prosecution.

- b. And for such further order or orders as this Honourable court may deem fit to make in the circumstance.

The grounds upon which this application is predicated inter-alia are as follows:

1. The Claimant/Respondent commenced this Suit No: CV/1306/2019 before this Honourable Court in which they sued the defendants herein/here above stated in this suit in 2019 claiming some reliefs jointly or severally against them.
2. The 1st Defendant on 11th July, 2019 filed it's 1st Defendant statement of defence, written statement on oath of his witness, copies of documents to be relied upon and tendered in the suit, list of witness as well as the certificate of pre-action counseling over 4 years ago.
3. The Claimant reply to 15th Defendant statement of defence in this Suit No: **CV/1306/2019** between the parties here above/herein mentioned was filed in 2019 over four years ago.

4. The Claimant had since over 4 years displayed acts of inability to appear in court or further appear in court to prove or to prosecute this Suit No: **CV/1306/2019** against the Defendants.
5. By virtue of the provision of Order 32 Rule 4 of the High Court of the Federal Capital Territory Civil Procedure Rules 2018, since the claimant has demonstrated inability to further appear in court in this suit or inability to further appear in court to prove his case before this Honourable Court in this Suit No: **CV/1306/2019 between Narrow Way Pharmacy & Stores (WA) Limited (Claimant/Respondent) Vs. Fidelity Bank Nig. Plc. (1st Defendant/Applicant) And Atlas Microfinance Bank Ltd. (2nd Defendant/Respondent)** for not less than 4 years since this suit was filed 5 years ago it is expedient and necessary for this suit to be dismissed by this Honorable Court.
6. By virtue of the provision of Order 32 Rule 21 of the High Court of the Federal Capital Territory Civil Procedure Rules 2018, in view of the fact that the claimant have aptly demonstrated lack of interest in prosecuting this Suit No:

CV/1306/2019, it is necessary that this Honourable court should strike out this suit.

7. Indeed having regard to the fact that it is now not less than five years that the claimant/Respondents have instituted this suit against the 1st Defendant/Applicant and the 2nd Defendant/Respondent, the Claimant have abandoned prosecuting the said Suit No: **CV/1306/2019** against the defendants, there is the need for same to be dismissed or struck out by this Honorable Court in the interest of justice or fair play.

The application is supported by a 9 paragraph affidavit deposed to by Sunday Enejo, a Litigation Secretary in the law firm of Counsel to 1st Defendant/Applicant. It is the averment of the 1st Defendant/Applicant, that the Claimant/Respondent had filed this Suit No: **CV/1306/2019** before this Honorable Court against the defendants claiming some reliefs as stated in the writ of summons and the statement of claim jointly and severally against the defendants since 2019 up till date.

That, the 1st Defendant equally filed it's statement of defence in this suit since on 11th July, 2019.

That, the claimant had also consequently there upon filed his reply in this suit after the Defendants had served Claimant with their Defendant statement of Defence.

That, after the parties have exchanged their pleadings in this suit for not less than four years six months ago, the Claimant had refused to further Appear in Court either by him or also on his behalf to prosecute this Suit No: **CV/1306/2019**.

The Claimant has displayed lack of interest in prosecuting this Suit No: **CV/1306/2019** since 2019 by not proving this suit before this Honourable Court.

That it is now not less than five years ago i.e 2019 that the Claimant had instituted this Suit No: CV/1306/2019 against the Defendants/Applicants before this Honourable Court.

That the Claimant has abandoned this Suit No: CV/1306/2019 since 2019 and up till date without prosecuting same.

That there is the need for this Honorable Court to dismiss this Suit No: **CV/1306/2019** between their parties mentioned.

That there is the need for this Honorable Court to strike out Suit No: **CV/1306/2019** between the feuding parties here-above stated.

That the Claimant/Respondent is dis - interested in prosecuting this Suit No: **CV/1306/2019** against the Defendants.

That the Claimant/Respondent will not be prejudiced if this Application is granted.

In line with procedure, written address was filed wherein two (2) issues were formulated for determination to-wit;

- 1. Whether the claimant had demonstrated and/or displayed lack of interest in appearing in court to prove or prosecute this Suit No: CV/1306/2019 which was instituted five years ago against the Defendants up till conclusion having not ensured that the said suit is proved and determined up till date before this Honourable Court.**
- 2. Whether the Claimant had ensured that the proceeding in the above mentioned suit No: CV/1305/2019 between the parties herein is diligently prosecuted as required by law.**

It is the submission of learned counsel, that having regards to the fact that the claimant had displayed lack of preparedness to

conclude his case before this Honourable court by ensuring that the proceeding in Suit No: CV/1306/2019 between the parties herein stated has not been prosecuted and proved five years thereafter upon the institution of this suit No. CV/1306/2019, this is an Application that calls for the exercise of this court's discretion to dismiss this Suit No: CV/1306/2019 between the Claimant and the Defendants.

Learned counsel further submits, that the 1st Defendant/Applicant is entitled to be heard in this suit as regards the determination of its civil right within a reasonable time by this Honourable Court as required by law as per the provision of Section 36(1) of the 1999 Constitution as Amended which the Claimant/Respondent have not implored in this suit since same was filed by the said Claimant/Respondent in 2019 before this Honourable Court hence the need that this Application should be granted. Section 36 (1) CFRN 1999 (as amended) was cited.

In conclusion, learned counsel vehemently submits that it will be easier for a Camel to pass through the Eye of a Needle than for the said Claimant to surreptitiously insist on prosecuting a claim in which the Claimant has ceased to prosecute the cause of action because the Claimant is no longer interested in maintaining the

said suit any longer against the Defendants hence the need that the above mentioned proceeding in this suit should be dismissed or struck out as the case may be. ***GOVERNOR OF LAGOS STATE VS. OJUKWU (1986) 1 NWLR (Pt. 18) Page 621;***

ADEYINKA ABOSEDE BADEJO VS FEDERAL MINISTER OF EDUCATION & 2 ORS (Supra) Page 15 Ratio 1 at Page 41 Paragraphs B – C were cited.

This Honourable Court is urged to grant this Application as prayed.

COURT:-

I have read and assimilated the argument of 1st Respondent/Applicant which touches on in-diligence in prosecuting this matter and the need to dismiss/strike out the suit.

I observe the fact that Parties filed pleadings and joined issues.

I also note the fact that Claimant/Respondent failed and or ignored to attend to their claims by prosecuting the case with diligence despite repeated service of hearing notice on them.

I am minded to state at this juncture that pleadings and evidence are two things all together.

Any facts pleaded that is not supported by evidence is deemed abandoned; and similarly, any evidence led in prove of what has not been pleaded, goes to no issue... cases are won on evidence.

See ***ALECHENU VS. MTN NIGERIA COMMUNICATION LTD. (ELC) 2021 3520 (SC).***

Having not led evidence in aid of their claim, the said claims in law are deemed abandoned.

See ***SANI ABACHA FOUNDATION VS. UBA (2010) NSCQR VOL. 41 Page 360 (4866).***

This act of abandonment can easily be gleaned from the conduct of the Claimant/Respondent.

Black's Law Dictionary 6th edition defines "abandonment" to mean desert, surrender, forsake, or relinquish one's right or interest.

See ***ABUER – EGBELO & ORS. (2017) CA.***

I cannot aid and abet Claimant's lackadaisical attitude and approach to issues of this nature... This court is not a warehouse where effects such as this could be abandoned.

Orphaned by lack of attention; the said suit becomes vulnerable to predatory attack, one of which counsel for the 1st Defendant/Applicant has just done.

Shrouded with the provisions of Order 32 Rule 21 of the Rules of this Honourable Court, said suit shall be struck – out.

Suit No. CV/1306/2019 is hereby struck out.

Justice Y. Halilu
Hon. Judge
29th November, 2024

APPEARANCES

J.O Adele, SAN, - for the 1st Defendant with P.T Iorvee, Esq.

Claimant not in court and or represented.