

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE GWAGWALADA JUDICIAL DIVISION**

**HOLDEN AT GWAGWALADA- ABUJA**

**THIS THURSDAY 7<sup>TH</sup> DAY OF MARCH, 2024**

**BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAEA**

**SUIT NO: FCT/HC/CV/761/2022**

**BETWEEN:**

**ADAI SAMUEL OKOJOKWU..... CLAIMANT/RESPONDENT**

**AND**

**SUNTRUST BANK NIGERIA LIMITED (STBNL).....DEFENDANT**

### **RULING**

This ruling is on an application by the learned defence counsel on C. Ogalagu orally for the court to expunge the evidence of PW1 and to strike out this suit for lack of diligent prosecution.

I will first deal with the first leg of expunging the evidence of the PW1 applied for by the defence counsel.

On this it is the submission of the learned Defence counsel that for the 3<sup>rd</sup> consecutive time neither the Claimant nor his counsel, were before this court on the 9/01/2024 and neither the claimant nor his counsel were represented in court.

That in view of the earlier absence, we apply that this court expunged the evidence of the witness and the case be struck out for want of diligent prosecution.

That this court in the interest of justice decided to give the Claimant another opportunity by refusing their application and the matter was adjourned to 6-02-2024.

He further submitted that on that day neither the Claimant nor his counsel were in court. That he repeated the same application for the court to strike out this matter and expunged the evidence of the PW1 but the court in the interest of justice decided to refuse the application and particularly asked him to come one more time so that the court might have done justice.

That it is that one more time that the court granted the claimant that brought to them to the court today.

That here again they refused to honour the court. That it is giving the claimant fair hearing but has manifestly done that. Further more that it is very clear that the Claimant is not interested in the matter as he cannot take occasion to the numerous opportunities granted to him by this Honourable Court, as the court cannot force a litigant he therefore submitted and applied that the court should expunge the evidence of the witness and strike out this matter for lack of diligent prosecution.

I have carefully listened to the submission of the learned counsel to the Defendants and the reason given in it's submission which I will agree entirely with his reasoning.

It is a fact before this Honourable Court that PW1 gave evidence before this court since the 13/07/23 and the matter adjourned to the 4/10/2023 for cross examination on the 9/10/2024 when this matter came up for cross-examination parties were absent but one Said Ako appeared for the Claimant, where on that day the learned counsel to the Claimant informed the court that they have not yet complied with the order of this court and all because of health challenges of the Claimant.

Based on the above reason and in the absence of the Defendant and it's counsel the matter was again adjourned to 9/01/2024 for cross-examination.

On the 9/01/2024, parties were absent C. Ogalagu appeared for the Defendant while none appeared for the Claimant.

On this date the learned Counsel to the Defendant made an Application for this court to expunge the evidence of PW1 and for the court to strikeout this suit for lack of diligent Prosecution.

In my ruling I refused the two applications in the interest of fair hearing and advised that the Claimant be served with hearing notice on the next date of adjournment and this matter was again adjourned to 6/2/2024.

On the 6/2/2024 being today, the same application was made by the Defendant counsel based on the absence of the Claimant and his counsel.

From the above stated facts it is clear that this court has given the Claimant enough time and opportunities based on the failure to where to the opportunity given to time. It is true that delay defects equity. Also the law aids the diligent and not those who sleep.

Vigilantibus at non dormientibus Jura Subsequuntur. In other words even equity waters down structure of such application of law, loathes and will not aid the indolent. See *Re: Yar'adua* (2011) 17 NWLR (Part 1227) 567.

It is equally clear that Equity aids the vigilant and not the indolent when a person sleeps on his right, it may turn out to be a costly or expensive step with irreversible consequences. See *Crutech V Obeten* (2011) 15 NWLR (Part. 1271) 5 page. 588

It is also trite law that he who comes to equity must come with clean hands and must do equity.

This court from its record has given the Claimant enough opportunity to come forward to proceed with its case but to no avail. The Claimant who has been given fair hearing in this matter.

As fair hearing principles or question is not just an issue of Dogma, whether or not a party has been denied of his right to fair hearing is to be judged by the nature and circumstances surrounding a particular case.

The crucial determinant is the necessity to afford the parties equal opportunity to put their case to the court before the court gives its judgement.

That the court has given enough and ample opportunity for the Claimant to come forward but he failed to do same. It is trite that once a court has given a party ample opportunity to define itself, and the party does not avail himself of that opportunity, then the party cannot complain that he was deprived of the right vested in him by section 36 (4) and (6) of the 1999 CFN as annexed See *Uguru V State* (2002) 9 NWLR (Part 771) 90.

Therefore, a party who was given an opportunity to present his case but for whatever reason failed to do so, has waived his right to complain See. Idowu V L. P.D.C (1971) ALL NWR 126 and Oladipo V Moba LGA (2010)5 NWLR (Part 1180) 117.

In view of the foregoing, I shall grant the two applications applied for by the learned counsel to the Defendant.

Hence, the Application made by the learned Counsel to the Defendant is hereby granted

It is hereby ordered that the evidence of PW1 given on the 13-07-2023 is hereby expunged from the record of this court and Secondly for the non appearance of the Claimant before this court for several adjustments entitled the court to grant the second application by an order striking out this suit for lack of diligent prosecution.

This is my ruling.

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**Hon. Justice A. Y. Shafa**

**Appearance:**

1. C. Ogalagu for the Defendant.