

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE GWAGWALADA JUDICIAL DIVISION

HOLDEN AT GWAGWALADA- ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/GWD/106/2022

BETWEEN:

CHIEF PETER IBEABUCHI.....CLAIMANT

AND

1. GWAGWALADA AREA COUNCIL	}DEFENDANTS
FCT-ABUJA.....		
2. MR OMEDE YAHAYA HARUNA		

RULING

This ruling is in respect of a notice of discontinuance of Suit No: GWD/CV/106/2022 between:

Chief Peter Ibeabuchi--Claimant

AND

1. Gwagwalada Area Council, FCT, Abuja
2. Mr. Omede Yahaya--Defendants

Filed by ifeanyi Okhan the claimant counsel dated the 3rd day of May, 2023.

In response to the said notice of discontinuance, the defendant counsel informed this court of the reason of the notice of discontinuance, and submits that, the facts that pleadings have been exchanged in the matter, is a matter of fact that this matter commenced by way of an originating summons and that parties indeed file all their processes and the matter was part heard.

Further that it is their firm believe that claimant has the right to withdraw or discontinue this suit at any point.

However, given that this suit/matter has proceeded to hearing urge this court to make an order dismissing the suit as they have gotten to a point of no return. Referred this court to the following cases:

1. Soetan V Total Nig. LTD (1972) ALL NLR (PT.111) at 3.

Finally, command the court to the authority of Moujeh V Adamawa State (2019) LPELR 47723 CA.

Before I proceed, I shall briefly highlight the issue generally on abandonment of claim:

When a person believes that a cause of action has arisen and therefore takes steps to initiate a court proceedings or any similar action, then he or she is the claiming party. In order to prove his case such party must provide sufficient evidence to justify his claim. He must also be willing to prosecute the matter to its logical conclusion.

Notwithstanding, no one can be forced to proceed with a cause which he finds not to be beneficial or fulfilling or of advantage to him. Hence, a number of times, claiming parties have been seen to abandon their claims very early in the proceeding, midway or even at the nick of the conclusion of the matter. Although the law does not preclude a claiming party from discontinuing, withdrawing or abandoning his case at anytime he so wishes to do so, the court in allowing such must consider certain factors before it will grant or allow such abandonment. In other words, a claiming party who chooses to abandon or discontinue his matter may face consequence such as compensation or costs to the other party.

The rationale behind the payment of cost is to forestall the abuse of the court process by persons who feel they could use the legal process to intimidate or harras

others. There are difference factors the court with consider when a claiming party seeks to withdraw from further prosecuting a claim and they include.

- a. Agreement of both parties
- b. Stage of the proceeding
- c. Whether or not the defending party has made counter claims.

As I stated earlier, that a claiming party in a civil suit is free to discontinue or withdraw his matter, at any time before judgment. However, the court once it perceives that the claiming party has abandoned or is seeking to discontinue its case must make a consequential order at which will be either to strike out the matter or dismiss the suit. The court will also consider the stage of the matter and if need be award costs to the defending party.

Another factor the court will consider, before granting an order of discontinuance is whether the parties are “litis contestation” that is whether hearing has commenced in the suit or evidence has been led by both parties. The rules provide that where such is the case, the party seeking to withdraw must obtain the leave of the court and must put the other party notice while doing so.

In *Nwokedi V Roxy Travel Agency Ltd & 2 ors* (2002)6 NWLR (PT.762)P.181, the court holds that there are three things the court can do where a party seeks the leave of the court to discontinuance and these three response are:

- i. Strike out the action and discontinue same against any or all of the defendant
- ii. Grant the leave sought by dismissing the action against any or all Defendant and in addition award cost to the deserving party.
- iii. Refuse the application for discontinuance and if the plaintiff refuses to continue, dismiss the action with cost to the deserving party.

At this stage, the court is left to choose between either striking out of the suit or dismissing of the suit. Where there has not been “litis contestatio” in the matter, then the proper action will be to strike out the suit. However, where there is ‘litis contestatio’ the proper order for the courtis to dismiss the suit.

Here in this instant case/suit, it was filed dated the 21st November, 2022 application filed and moved, the Defendant counsel file a memorandum of

appearance dated the 13th November, 2022, file notice of preliminary objection for the court to strike out the suit or alternatively directing parties to file pleadings. This was moved and the court granted the alternative and order parties to file pleadings instead of the claimant to file its pleading file a motion on form 48 & 49 for contempt proceedings against the defendants. This was refused hence the filing of the notice of discontinuance filed by the claimant counsel.

This has shown a total disregard to the court, I say no more.

Now to the cases cited by the Defendants counsel, that once issue has been joined on it is in this case, the court is enjoyed to dismiss the case rather than strikeout so that the plaintiff/claimant should not use the opportunity to go to another court to file another suit.

In this case the claimant having file its originating summon the defendants has on the 14-12-2022 file the Respondent counter affidavit that in opposition to the originating summon on the 22nd November, 2022 meaning they by filing the counter issues have been joined.

This was the submission of the Defendant counted, that some pleadings have been exchanged and the matter has been fixed for hearing or rather proceeded to hearing urge this court to dismiss the suit.

I have to agree with the Defendant counsel, that pleading having been file and the matter adjourned for hearing is conclusive that issues have been joined and therefore filing a notice for discontinuance when issues have been joined, meant dismissing the suit.

In Bola Tinubu V IMB Securities (2001) 16 NWLR (PT 740 AT 722. the Supreme court defined the word“Discontinuance” to been “ENDING” or causing the cease” the word has been used to describe the cessation of the proceedings in an action, whereby the claimant or counter- claimant to a counter claim, voluntary puts an end to the action either by giving notice to the defendant before he does that or by seeking the requisite leave of court depending on the stage the matter has reached before the decision to discontinuance is taken. It is important to note that, once pleadings have been filed in a given case, and issues joined between the parties a case for withdrawal at that state will be dismissed.

In view of the above decision and the submission of the learned counsel to the defendant, I am of the firm view that the proper order for the court in this instant case is for to dismissal.

Hence I shall order as follows:

1. Case No: CV/106/2023 between Chief Peter Ibeabuchi
AND
Gwagwalada Area Council FCT, Abuja & Mr Omede Yahaya Haruna is hereby Dismissed.
2. The Defendant having ask for the court, award N500,000.00. I shall only award the sum of N250,000.00 against the Claimant, the said cost be paid within two weeks.

This is my Ruling

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HON. JUSTICE A. Y. SHAFI

APPEARANCE:

1. I. A. Aliyu with E. O. Rabo
and H. O. Mustapha for the Defendant.