

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 8 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

SUIT NO: FCT/HC/BW/CV/1123/2017

BETWEEN:

IFEKA INVESTMENT LIMITED --- PLAINTIFF/APPLICANT

AND

1. T & G PARTNERS LIMITED
2. TUNBAL GLOBAL SERVICE LIMITED - DEFENDANTS/RESPONDENTS

RULING

DELIVERED ON THE 5TH JULY, 2021

This an application brought by the applicant praying the court for the following Orders:

1. AN ORDER of this Honourable court granting leave extending time to the Plaintiff/Applicant textile its motion on notice to relist Suit No.: CV/1123/17 struck out on 11th December, 2019.
2. AN ORDER of this Honourable Court extending time within which to file and serve the said Plaintiff's motion on notice.
3. AN ORDER deeming the already filed and served Plaintiff's motion on notice to relist suit as properly filed and served, requisite fees having been paid.
4. AN ORDER of this Honourable Court relisting Suit No: CV/1123/17, which was struck out on 11th December, 2019 by this Honourable Court.
5. AN Order of this Honourable Court restoring all the interlocutory orders made ii the aforesaid suit.

6. And for such further or other ORDERS as the Honourable Court may deem fit to make in the circumstances of this suit.

In support of the application is an affidavit of seven paragraphs. The applicant also filed a written address in support of his case. Upon being served, the respondents filed a counter affidavit of five paragraphs annexed to the counter affidavit there where two exhibits. The Respondents also filed a written address alongside it counter affidavit.

When the matter came up on the 8 June, 2020 counsel to the parties adopted their written address as their oral argument. The graverment of this case is that the applicant suit was struck out on 11th December, 2019. The applicant filed this application to relist the suit on 4th March, 2020. The reason canvassed by the applicant in bringing this application as contained in the affidavit is to the effect that the counsel could not attend to court on 11th December, 2019 as one Bello, a staff of the court informed him that the court will not sit on the date. That he only came to know that the suit was struck out on 25th February, 2020.

As I said earlier, this application was filed on 4th March, 2020 that is almost one week after the counsel became aware that the suit had earlier been struck out on tie 11th December, 2019 apparently for the absence of counsel to the applicant and the applicant themselves. I want to put it on record that the counsel to the applicant did not dispute the facts that they were aware of the matter coming up on 11th December, 2019.

I have carefully scrutinize the affidavit filed by the applicant but I have failed to see anywhere any evidence is put before this court to prove that a certain Bello actually cave the applicant and his counsel the

information alluded to by the applicant that the court will not sit. When the matter came up last on 3th May, 2019 it was adjourned for hearing. When neither the counsel, the claimant's nor any of the witness was in court, Counsel has in his affidavit made an excuse for his absence in court on 11th March, 2019 but there is no excuse proffered for the absence of the plaintiff and its witness. By the provision of Order 32 Rule 5 of the Rules of court, the applicant had six days within which to apply for the matter to be relisted and the Judgment striking out the matter to be set aside.

In addition the applicant upon making this application is to show evidence of having paid the penalty of N200 per day from the date the matter was struck out till the date of filing the application. The proof of payment was to be attach to the application. In an application for the relisting of a suit the applicant is under obligation to advance good and substantial reason for the failure to come to court on the date the suit was struck out and good and substantial reason for the delay in bringing the application to relist the suit where the application is brought out of time see ATIKU V. YOLA LOCAL GOVT. (2003) 1 NWLR (Pt.802) 487 at 500.

In the instant case the applicant has not shown that he has paid the penalty as required by the rules of the court.

Furthermore, the reason advance for the absence of the plaintiff or claimant from court on 11th December, 2019 is not cogent enough to grant this application. Similarly the applicant and its counsel did not show diligent in bring this application well over three months after the suit was struck out. The applicant is the plaintiff. A plaintiff is suppose to be eager to have its case heard and disposed off diligently and timeously.

If one Bello informed the counsel that the court was not sitting on 11th December, 2019 what stopped the counsel from trying to find out what happen in court on the said 11th December, 2019or the next adjourned date for the matter, Infact the counsel did not even go to court to find out anything concerning the case until 25th February, 2020 over two months since the matter was struck out. This shows the lack of seriousness with which both the counsel to the claimant and the claimant itself handle this case.

It should not be forgotten and has rightly pointed out by counsel to the Respondents, this matter had earlier been struck out for lack of diligent prosecution. The striking of 11th December, 2019 is the second time the matter is being struck out. To my mind, I do not think the plaintiff and its counsel are interested in diligently prosecuting their case.

Having not paid the mandatory penalty in bringing this application and having not given good reason why the application to relist was not brought within six days from the date it was struck out, I hold that this application lacks merit and ought to be refused.

This shall be the Ruling of this court.

APPEARANCE

Christopher E. Okonkwo Esq. }
Nwoga Patrick Esq. } for the claimant.
Smart Ukponah Esq. for the defendants.

Sign
Hon. Judge
05/07/2021