

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON TUESDAY THE 13<sup>TH</sup> DAY OF FEBRUARY, 2024**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**

**SUIT NO.: FCT/HC/CR/360/2023**

**BETWEEN:**

**INSPECTOR GENERAL OF POLICE ---- COMPLAINANT**

**AND**

**IFEANYI GRANDSON CHUKWU ---- DEFENDANT**

## **BENCH JUDGMENT**

Yes, a person who instituted an action in Court can easily withdraw same where the matter is civil in nature. But it is not so in the criminal matter. This Suit is premised on crime.

Today the matter is for Trial, for the Prosecution Counsel to open their case. But instead the Prosecution Counsel hinted the Court that it has an application to withdraw the case because of some developments. The Defendant Counsel opposed that vehemently. The Court asked the Defendant if he is aware of the development. The Defendant said no.

The Prosecution Counsel said he has filed a Notice to withdraw but not yet served on the Defendant Counsel. Since it is not served the Court shall deem the application as oral. He relied on **S. 108 (2)(a) ACJA 2015** and urged the Court to grant the application.

The Defendant Counsel applied that the Defendant be therefore discharged and acquitted in line with **S. 108 (5) ACJA 2015**.

Prosecution Counsel referred to the case of:

**Romrig Nigeria Limited V. FGN  
(2014) LPELR – 22759 (CA)**

That withdrawal is not acquittal and only a discharge. He opposed acquittal. He urged Court to discountenance the argument of the Defendant Counsel and grant their application. I leave it at the discretion of the Court to decide.

The Defendant Counsel also said that leave the decision of acquittal at the discretion of the Court.

I have taken a holistic look and in-depth look on the **S. 108** and the **Subsection 5** of the **S. 108 ACJA 2015**. It gives a Prosecution Counsel the right to withdraw. It also gives Attorney General of the Federation right to withdraw a charge against a Defendant fully, wholly or in respect of some of the charge. It can be made before Defence or after the Defendant has opened Defence – discharge and acquit.

**S. 108(3)**

States that where there is a withdrawal before Defence is opened, Court may acquit in exercise of its discretion, if Court is satisfied on the merit of the case, that the Order is proper once and that when the Order of acquittal is made the Court shall endorse its reasons for making the Order on record.

**S. 108(4)**

Where a private Prosecution has made application for withdrawal, the Court may award cost against the Prosecutor.

The Court has x-rayed the **S. 108 ACJA** to lay bar what it entails. From the foregoing especially by **S. 108(3)** of the Act, the Court can grant acquittal where there is an application to withdraw made before the Defendant is called upon to defend if the Court is satisfied.

In this case, the question is, based on this oral application and submission of both parties for and against, should this Court grant the application to withdraw and discharge and not acquit the Defendant as sought by the Prosecution Counsel or discharge and acquit the Defendant as sought by the Defendant Counsel?

It is the humble view of this Court that based on **S. 108(3) ACJA 2015** this Court shall not only discharge the Defendant as sought by the Prosecution Counsel, but shall also acquit the said Defendant – Ifeanyi Grandson Chukwu in all the offences charged against him in this Suit

PERPETUALLY since the Prosecution had applied to withdraw the Suit.

That means that this Court hereby grants the application to withdraw and hereby DISMISSES the Suit CR/360/2023.

**This is the Bench Judgment of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2024 by me.**

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**K.N. OGBONNAYA**  
HON. JUDGE