

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON WEDNESDAY, THE 19<sup>TH</sup> DAY OF MARCH, 2025**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/449/2025**

**BETWEEN:**

**MARVIS OSSAI**

**CLAIMANT**

**AND**

**1. NED MUNIR NWOKO**

**2. INDEPENDENT NATIONAL ELECTORAL COMMISSION**

**3. PEOPLE'S DEMOCRATIC PARTY (PDP)**

**4. THE SENATE PRESIDENT, FEDERAL REPUBLIC OF NIGERIA**

**DEFENDANTS**

**RULING**

By an Originating Summons dated and filed on the 7<sup>th</sup> of February, 2025, the Claimant brought this suit seeking the determination of the following question:

*“Whether upon an intimate reading and complete understanding of section 68 (1)(g) of the 1999 Constitution of the Federal Republic of Nigeria as amended, and especially in view of the decision of the Nigeria Supreme Court in Abegunduv. Ondo State House of Assembly (2015) 8 NWLR (Part 1461) page 314, the 1<sup>st</sup> Defendant who defected to the All Progressives Congress (APC) from the People’s Democratic Party (on which platform he was elected Member of the Federal Senate of the Federal Republic of Nigeria and where there was no faction as at time of his defection) ought not to have his seat in the Senate declared vacant by this Honourable Court?”*

Upon a determination of this question, the Claimant seeks the following reliefs from this Court: -

- 1. A Declaration of this Honourable Court that upon an intimate reading and complete understanding of section 68(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended and especially in view of the decision of the Nigerian Supreme Court in Abegundev. Ondo State House of Assembly (2015) 8 NWLR Part 1461 page 314 the 1<sup>st</sup> Defendant who defected to the All Progressives Congress (APC) from the People's Democratic party (on which platform he was elected Member of the Nigerian Senate and where there was no faction as at the time of his defection) ought to have his seat in the Senate of the Federal Republic of Nigeria declared vacant by this Honourable Court;*
- 2. An Order of this Honourable Court declaring vacant the seat of Ned MunirNwoko and cancelling his certificate of return issued to him by the Independent National Electoral Commission;*
- 3. An Order of this Honourable Court directing the Independent National Electoral Commission (INEC) – the 2<sup>nd</sup> Defendant – to conduct a bye-election into the Delta North Senatorial District of the Nigerian Senate within sixty (60) days from the date of the delivery of Judgment herein.*
- 4. An Order of this Honourable Court mandating the 1<sup>st</sup> Defendant to refund into the Consolidated Revenue Fund of the Federation forthwith all the salaries, emoluments and allowances received by him since January, 2025 until the date of the final judgment in this matter.*
- 5. An Order disqualifying the 1<sup>st</sup> Defendant from standing election into any elective post under the amended 1999 Constitution of the Federal Republic of Nigeria until and unless he complies with every terms of the Judgment in this suit.*

6. *An Order of this Honourable Court mandating the 4<sup>th</sup> Defendant to immediately give effect to the Judgment of this Honourable Court.*
7. *Any other Order or Orders as this Honourable Court might deem fit to make in the entire circumstances of this case.*

Upon becoming aware of the suit, the 1<sup>st</sup> Defendant filed his Counter-Affidavit in opposition to the suit of the Claimant on the 27<sup>th</sup> of February, 2025. He also filed a Notice of Preliminary Objection challenging the competency of the suit. Surprisingly, the Claimant, upon being served with the 1<sup>st</sup> Defendant's processes, filed a Notice of Discontinuance which was served on the 1<sup>st</sup> Defendant on the 3<sup>rd</sup> of March, 2025.

When this suit came up on the 11<sup>th</sup> of March, 2025, the Claimant was neither in court nor represented by Counsel. The 1<sup>st</sup> Defendant was not in Court, but he was represented by learned Senior Counsel, Jeff Njikonye, SAN and four others. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were neither in Court nor represented by Counsel. The 4<sup>th</sup> Defendant, however, was not in Court but he was represented by Counsel, E. O. Agboola, Esq.

In his submissions on the effect of the Notice of Discontinuance, learned Senior Counsel for the 1<sup>st</sup> Defendant argued that since the Notice of Discontinuance was served on the 1<sup>st</sup> Defendant after he had filed his Counter-Affidavit, the Court should dismiss the suit, since issues have been joined. He cited a number of authorities such as ***Young Shall Grow Motors Limited v. Ambros O. Okonkwo & Anor (2010) 15 NWLR (Pt. 1217) 524 SCat540, paras A-C, 550, para A, Raphael OkwudiNwokedi v. Roxy Travels Agency Ltd & 2 Others (2002) 6 NWLR (pt. 762) 181 CA at 197, paras C-F, Efetiroroje & 2 Others v. Okpalefe II & 2 Others (1991) 5 NWLR (Pt. 193) 517 SC.*** He also placed reliance on the provisions of the Rules of this Court. He urged the Court to

dismiss the suit of the Claimant and pray the court to award 2,000,000:00 as cost against the Claimant for bringing 1<sup>st</sup> Defendant to Court.

Counsel for the 4<sup>th</sup> Defendant aligned himself with the submissions of learned Senior Counsel for the 1<sup>st</sup> Defendant. The Court thereafter adjourned for Ruling.

I have considered the submissions of learned Senior Counsel for the 1<sup>st</sup> Defendant vis-à-vis the Notice of Discontinuance. The issue before me is quite narrow and that is: ***“Whether issues have not been joined in this suit of the Claimant as to merit an Order of dismissal of same upon the filing of a Notice of Discontinuance by the Claimant.”***

I shall begin the resolution of this sole issue by an examination of the provisions of Order 23 Rule 1 and 2 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2025. The Order provides as follows:-

***“1. (1) The claimant may, by notice duly filed and served, at any time before receipt of the defence, wholly or in part, withdraw or discontinue his claim or any proceedings, against all or any of the defendants.***

***(2) Where a defence has been filed, the claimant may with the leave of the Court discontinue the proceedings or any part thereof on such terms and conditions including orders as the Court may deem fit.***

***(3) Where proceedings have been struck out upon a claimant's withdrawal or discontinuance under this Order, no subsequent claim shall be filed by him on the same or substantially the same facts until the terms imposed on him by the Court have been fully complied with.***

**(4) The Court may in the same manner and discretion as to terms, upon the application of a defendant order the whole or any part of his alleged grounds of defence or counterclaim to be withdrawn or struck out.**

**2. When a cause is ready for trial, it may be withdrawn by either claimant or the defendant upon producing to the Registrar a consent in writing signed by the parties and thereupon the Court shall strike out the matter without the attendance of the parties or their legal practitioner.**

**3. Where a suit is withdrawn or discontinued after the party withdrawing has called evidence, the suit shall be liable to be dismissed.”**

Notice of Discontinuance is a voluntary termination of his suit by a claimant. In ***Bi Courtney Ltd v. Aso Savings and Loan Plc (2023) 17 NWLR (Pt. 1912) 1 CA at 34, paras D-E*** the Court of Appeal explained that **“A notice of discontinuance connotes a voluntary termination of a suit or appeal by a claimant or appellant.”** This definition was adopted and applied in the case of ***Wahili Estates Ltd. v. U.B.N. Plc (2024) 3 NWLR (Pt. 1925) 221 CA at 245, para D.***

It would seem, from a construction of Order 23 Rule 1(2) of the Rules of this Court that the effect of a Notice of Discontinuance after a defence has been filed is not an order merely striking out the said suit. This notion is reinforced because the choice of words leaves the decision at the discretion of the Court. To determine the effect of a notice of discontinuance on a pending suit and the appropriate order to make, recourse will be had to judicial pronouncements.

On the effect of filing a notice of discontinuance, the Courts have held that a suit ceases to exist immediately a notice of discontinuance is duly and validly filed. See the case of ***Ansa v. Cross Lines Ltd. (2005) 14 NWLR (Pt. 946) 645 CA at***

**669, paras B-E** where the Court held that **“A notice of discontinuance once duly and validly filed cannot be recalled as the suit ceases to exist the moment it is effectively discontinued subject to payment of costs. All that remains is for the trial court to strike out the suit formally. The notice of discontinuance having been filed before the date of hearing in compliance with the rules successfully terminated the instant suit. The suit having been effectively discontinued could not ground an application to relist the suit.”**

Thus, in this suit, the Claimant having filed a Notice of Discontinuance, the suit stands automatically terminated. What remains is the proper order the Court will make in the circumstance. The Courts have held that the order the court will make depends largely on the circumstances of the case and the stage of the proceedings. See ***Abidogun v. Arowomokun (1990) 6 NWLR (Pt. 158) 618 CA at 628, paras. D-E; Ezeonu v. Agheze (1991) 4 NWLR (Pt. 187) 631 CA at 643, paras. E-F.***

In ***A.P.G.A. v. Umeh (2011) 8 NWLR (Pt. 1250) 544 SC at 567, paras. A-G; 568, para. A; 572-573, paras. G-A,*** the apex court held thus:-

**“When an application for discontinuance of an action is made, one of the things to be considered by a trial court is at what stage it is made. If it is made before a hearing date has been fixed, the proper order to make is one of striking out. This is because there is no *litiscontestatio* and a determination on the merit has not been made after hearing evidence of either the whole or some fundamental part of the claim. If the application is made after hearing has commenced, the trial court must weigh and consider all the circumstances of the case in the interest of justice and thus balance the interest of the parties involved including the balance of**

***convenience and disadvantage which might be suffered by any of the parties concerned.”***

Similarly, in *Ecobank Trans Inc. v. Broad Comms. Ltd. (2021) 5 NWLR (Pt. 1769) 209 CA at 243-244, paras. F-D*, the Court held that:-

***“A notice of discontinuance connotes a voluntary termination of a suit or appeal by a claimant or appellant. A notice of discontinuance/withdrawal filed by a party is not submissive to withdrawal by him. A party, a plaintiff or an appellant, is endowed with the right to withdraw his suit or appeal respectively. Discontinuance of an action or appeal can be before and during hearing of it. It can be done unilaterally or with the leave of court or consent of the opposing party, depending on the stage of the proceedings. It is at the discretion of a court to grant an application to discontinue a matter. Withdrawal of suit, either by dint of notice of withdrawal or oral application, can lead to its being struck out or dismissed by the court depending on whether or not the parties had reached *litiscontestatio*.”***

These judicial authorities are united in their effect that where issues have not been joined, the proper order the court will make is an order of striking out. Where issues have been joined, or hearing has commenced, the proper order to make will be an order of dismissal.

In cases such as this that are fought on the basis of affidavit evidence, issues are joined where a counter-affidavit has been filed. That is the situation in this case. The 1<sup>st</sup> Defendant having filed his Counter-Affidavit, what is left for the court and the parties to do is to set a date for adoption of the processes already filed and thereafter Judgment. In effect, therefore, parties have joined issues in so far as this suit is concerned. Issues having been joined, the appropriate order this court

will make following the filing of a Notice of Discontinuance by the Claimant will have to be an order of dismissal of this suit. I so hold.

Accordingly, having been fortified with statutory and judicial authorities at my disposal, this suit is hereby dismissed, as no cost is awarded; parties should bear their own costs.

This is the Ruling of this Honourable Court delivered today, the 19<sup>th</sup> day of March, 2025.

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**HON. JUSTICE A. H. MUSA**  
**JUDGE**

**19/03/2025**