

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU

SUIT NO: FCT/HC/CV/191/2023

MOTION NO: FCT/HC/M/13848/2024

DELIVERED: ON THE 09/04/2025

BETWEEN:

1. ABOKI NATHANIEL OBIN

2. ABOKI PHILIP ESON

*(Suing as Administrators of the Estate of Late
Ignatius Aboki)*

}CLAIMANTS/APPLICANTS

AND

1. HON. MINISTER, FEDERAL CAPITAL TERRITORY ABUJA

2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY

} DEFENDANTS/
RESPONDENTS

RULING

By a notice of preliminary objection dated 18/10/2024 and filed on 21/10/2024, the Claimants/applicants prayed for the relief set out below:

1. An order of this Honourable Court striking out the notice of change of counsel as currently constituted for being incompetent, null and void.

The grounds of the objection are as follows:

1. The 1st Defendant is the Minister of the Federal Capital Territory, Abuja, a constitutional creation and not a personal position.

- 2. The Defendants have legal departments that are statutorily saddled with the responsibility of representing them at legal matters involving them.**
- 3. That the 1st Defendant cannot hand pick a private counsel to enter appearance for it without the authorization of the Attorney General of the Federation.**
- 4. That only the Attorney General of the Federal can instruct a private practitioner to enter appearance for the 1st Defendant.**
- 5. The Defendants did not obtain the Fiat enabling the Learned Counsel herein to file his processes.**
- 6. There is a constitutional provision in respect of matters involving the 1st Defendant.**

It is supported by 7-paragraphs affidavit, and a written address. On 26/11/2024, learned counsel for the Claimants/Applicants filed a reply on points of law. In the written address, Alasan James Yissa, Esq. for the Claimants/Applicants raised one issue for determination by this Honourable Court as follows:

“Whether or not the 1st and 2nd Defendants can unilaterally change counsel without the Fiat of the Attorney General of the Federation first had and obtained.”

It is the submission of learned counsel for the Claimants/Applicants, that the 1st Defendant is a representative of the President of the Federal Republic of Nigeria, and as such, for matters involving the office of the 1st Defendant, it is only the Attorney General of the Federation or his appointed representative that can enter appearance for the 1st Defendant, and not the Minister of the FCT, i.e. 1st Defendant, to unilaterally appoint a private legal practitioner to represent him. He relied on **Sections 150, 195, 301(c) and 302 of the Constitution of the Federal Republic of Nigeria (as amended), 1999.**

It is also contended that all civil suits by or against the Government of the Federation, including all Departments of the Government, are

instituted by or against the Attorney- General. Learned counsel relied on the case of **Abacha v. A-G, Federation (2021) 10 NWLR (Pt. 1783) p. 129 @ 166 Paras A-E**. He submitted that failure by the Defendants to obtain the fiat of the Attorney General of the Federation before it changed counsel has rendered the notice of change of counsel dated and filed on 7/7/2024 by the Defendants fundamentally defective, null and void.

In the Claimants/applicants' affidavit in support of the notice of preliminary objection, it was deposed in paragraphs 4 and 5 as follows:

“4. *That on the 11th day of June, 2024 at our office at about 11am, I was informed by Alasan James Yissa, Esq. of learned counsel to the Claimants and I verily believe him to be true that;*

a. It is a fact that the 1st Defendant is a creation of law and not a personal office.

b. It is a fact that the 1st Defendant is in charge of the Federal Capital Territory which is treated like a state in Nigeria.

c. He knows for a fact that the 1st and 2nd Defendants have legal departments made up of legal practitioners who usually represent them in court matters within and outside of the FCT.

d. He knows for a fact that the 1st Defendant cannot retain the services of the private legal practitioner without the authority of the Attorney General of the Federation.

5. I was further informed by the said learned counsel to the Claimants at our office at the same time, and I verily believe him to be true that;

a. He knows for a fact that in the processes served on him, the Defendants did not attach the Fiat of the Attorney General of the Federation.”

In opposition, the Defendants/Respondents filed a counter affidavit of 9 paragraphs and a written address. In the written address, Onyebu J.

Iheko, Esq. for the Defendants/Respondents distilled the following issue for determination, to-wit:

“Whether in all the circumstances of this case, the Honourable Court can exercise jurisdiction to entertain the reliefs sought in the Applicants’ Notice of Preliminary Objection, and if determined in the affirmative, whether the Applicants are entitled to the said reliefs.”

Onyebu J. Iheko, Esq. submitted that the notice of preliminary objection filed by the Claimants/Applicants raises no real jurisdictional issues, and therefore, not capable of achieving the purport of a notice of preliminary objection, which is terminating the suit *in limine* or putting an end to the hearing of the suit. It is an improper process for challenging the notice of change of counsel filed by the Defendants’ counsel.

He further contended that although the applicants’ application is titled notice of preliminary objection, it is merely an invitation to the Court to embark on an inquiry into the authenticity of the counsel who entered appearance for the Defendants/Respondents, which the Applicants and the Court lacks the vires to look into such issues. He referred the court to **EFET V. INEC (2011) 7 NWLR (PT. 1247) 423 @ 444 PARAS. A-B** and **AKALONU V. MR. S. O. OMOKARO (2002) LPELR-7131 (CA)**.

Onyebu J. Iheko, Esq. argued that the Defendants/Respondents have an unrestricted constitutional right to instruct, hire and retain any legal practitioner of their choice to defend them in any action, and the law does not impose any duty on such counsel to tender written evidence to prove that he has been so briefed. He relied on **Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)** and **Daily Times of (Nig.) Plc v. IGP & Ors (2021) LPELR-54676 (CA)**.

In the counter affidavit in opposition of the notice of preliminary objection, Yakubu Shekwonumwaza Kureh, a Senior Land Officer in the Department of Land Administration, Federal Capital Territory Administration, deposed, *inter alia*, as follows:

“5. *I know that the Defendants recently engaged the services of E. C. Ukala, SAN of Messrs E. C. Ukala & Co., to represent the Defendants in this action and further to their instructions he filed a Notice of Change of Counsel in this matter.*

6. *That I am informed by Reginald W. B. Nnwoka, Esq., of Counsel in E. C. Ukala & Co., during a review of this matter in his office at No. 18 Thomas Sankara Street, Asokoro, Abuja, on 23rd October 2024 at about 2.00m and I verily believe him as follows:*

- a) That this Honourable Court does not exercise its jurisdiction to hear and determine motions challenging or questioning the appearance of counsel in any action the moment such counsel enters or announces appearance as having been instructed to act for a litigant in an action.*
- b) That the Applicants lack the vires to challenge or question the authority of a counsel who announces or enters appearances for a litigant in a matter via the filing a Notice of Change of Counsel or otherwise.*
- c) That the Defendants have a constitutional right to instruct and retain any counsel of their choice, including private legal practitioners and the fiat of the Attorney General of the Federation is not required before they can exercise that right because they are not agents of the Federal Government of Nigeria but agents of the Federal Capital Territory.*
- d) That the Federal Capital Territory is administered like other States of the Federation and its establishment act and the regulations made thereunder have expressly created various ministries of the Federal Capital Territory, which are referred to as the Federal Capital Territory Secretariats.*

- e) *That a Legal Services Secretariat which is headed by a General Counsel was established for the Federal Capital Territory and they are responsible for ensuring legal representation for the Federal Capital Territory, its management and staff as well as defending legal actions against the Federal Capital Territory including ensuring legal representation for the Defendants in this case.*
- f) *That the Applicants have no interest or stake in the decision and choice of legal counsel instructed and retained by the Defendants to represent them in this suit.*
- g) *That the Applicants' Notice of Preliminary Objection raises no jurisdictional or competence issues."*

I have given a careful consideration to the processes filed on both sides of the aisle and the authorities relied on. The issue to be resolved, in my opinion is ***"whether the Notice of Change of Counsel filed on 7/7/2024 by the Defendants/respondents complied with the rules of the Court."***

It is the contention of the Applicants that a private legal practitioner acting on behalf of the Minister of the Federal Capital Territory in its official capacity must first obtain a fiat of the Attorney General of the Federation to represent the Defendants. The Claimants/Applicants in paragraphs 4 and 5 of the affidavit in support of the notice of preliminary objection filed on 21/10/2021 which I have the relevant portions reproduced above, deposed that the Defendants did not obtain the fiat of the Attorney General of the Federation to enable Emmanuel C. Ukala, SAN represent the Defendants in this suit.

Alasan James Yissa, Esq. argued that the failure of the 1st Defendant, a representative of the President of the Federal Republic of Nigeria to obtain a fiat, has rendered the notice of change of counsel filed on 7/6/2024 by the Defendants fundamentally defective, null and void. He urged the Court to strike out the said notice of change of counsel. He has not cited any authority in support of this contention and I can find no support for it in the constitution or decided cases. With due respect to learned counsel, I do not agree that the principle in **ABACHA V. A-G,**

FEDERATION (2021) 10 NWLR (PT. 1783) P. 129 @ 166, PARAS. A-Ecited by learned counsel for Claimants/Applicants is applicable in the instant case. The principle in that case, in my humble opinion, is applicable to “*civil suits by or against the Government of the Federation, including all Departments of the Government*” of the Federation. The Government of the Federation is not a party in this suit.

On their part, learned counsel for the Defendants/Respondents argued that the Federal Capital Territory enjoys the status of a state and has its legal services secretariat for legal services for the FCT, in which the Attorney General of the Federation has no role to play. He submitted further that the 1st and 2nd Defendants are not agents of the Federal Government but are agents of the Federal Capital Territory. He urged the Court to dismiss the preliminary objection.

The position of the law is that it does not lie in the mouth of a litigant to question the authority of the legal practitioner representing his adversary on the proceedings, nor is it for the Court to embark on an enquiry as to whether he has such instructions or not. See the case of **KENNY MARTINS V. FRN (2018) 13 NWLR (PT. 1637) 523 @ 543, PARAS B-C**. It is also trite law that once a counsel appears in Court in a case and announces his appearance, the Court assumes he has authority of his client for the conduct of the case. See **UGBORU V. UDUAGHAN (2023) LPELR-20805 (SC)**.

In **TUKUR V. GOVT. OF GONGOLA STATE (1988) 1 NWLR (PT. 68) P. 39 @52, PARAS B-C**, the Supreme Court made an instructive pronouncement when it held thus:

Also, the Courts usually and normally take counsel’s words for it when counsel announces that he is appearing for a client. The Courts do not require counsel to tender written evidence to prove that he had been so briefed. It will be a sad day for the legal profession in Nigeria when counsel can no longer be believed that he is appearing for a client and it does not matter if that client is a state government. This is as it should be.

On the other hand, it is not in dispute and there is no doubt that under Section 299 of the 1999 Constitution of the Federal Republic of Nigeria, the Federal Capital Territory, Abuja has the status of a State and is classified as a State.

In my respectful opinion, the issue of status of the Federal Capital Territory, Abuja was laid to rest in **BAKARI V. OGUNDIPE & ORS (2020) LPELR-49571 (SC)**, when the Supreme Court held thus:

“It is very important to decide the status of Abuja and whether the 2nd and 3rd Respondents are agencies of the Federal Government of Nigeria. A decision would lay to rest once and for all time proper Court to hear the Plaintiff’s claim. Section 299 of the Constitution states that: 299. The provision of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation; and accordingly (a) all the Legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the Courts of a State shall respectively, vest in the National Assembly, the President of the Federation and in the Courts which by virtue of the foregoing provisions are Courts established for the Federal Capital Territory, Abuja; (b)..... (c)..... By virtue of the provisions of Section 299 of the Constitution, it is so clear that Abuja, the Federal Capital of Nigeria has the status of a State. It is as if it is one of the States of the Federation. An Agency is an executive or regulatory body of a State, such as state Offices, Departments, Divisions, Bureaus, Boards and Commissions. The 2nd Respondent, i.e. the Minister of the Federal Capital Territory, though a Minister of the Federal Government occupies a similar position of Governor of a state, since Abuja is classified as a State by Section 299 of the Constitution. The 2nd Respondent is thus the Chief Executive of the Federal Capital Abuja. The Federal Capital Development Authority i.e. the 3rd Respondent is established by Section 3 of the Federal Capital Territory Act. It is a Government Agency of the Federal Territory, Abuja. It is the

actions of the 2nd and 3rd Respondents that are challenged. They are both agents of the Federal Capital territory, Abuja, which has the status of a State. They are not agencies of the Federal Government of Nigeria.”

Having stated the above, I must proceed to examine the notice of change of counsel filed in this suit, to ascertain whether the Defendants complied with the rules of the Court.

The notice of change of counsel filed by the Defendants reads:

“NOTICE OF CHANGE OF COUNSEL

BROUGHT PURSUANT TO ORDER 55 RULE 2 OF THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY (CIVIL PROCEDURE) RULES AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT.

TAKE NOTICE that the 1st and 2nd Defendants have changed their Counsel from F. U. IBANGA Esq. to EMMANUEL C. UKALA SAN.

Dated this 7th day of June 2024.

Emmanuel C. Ukala SAN
Onyebu Josephine Iheko Esq.
Okechukwu Umeodu Esq.
Reginald W. B. Nnwoka Esq.
U. S. Onyeoguzo Esq.
H. P. Roberts Esq.
Godsgift Eyoka Esq.
I. Ijibike Esq.
E. C. UKALA & CO
No. 18 Thomas Sankara Street,
Asokoro, Abuja.
07068731569
lawyerukala@gmail.com

SERVICE ON:

1. The Claimant,
Their Counsel,
Alasan James Yissa Esq.
KurahDangana Jerry Esq.
NnajiUchechukwu Christy Esq.
Ndana Gloria Kashi Esq.
SurayyaIsah Esq.
Alasan James & Co.,
Mebehel Solicitors,
No.7 Ajayi Crowther Street, Asokoro,
Abuja.
alasanjames@nigerianbar.org
08035971741

2. F. U. Ibanga Esq.
Legal Services Secretariat,
F.C.T.A. No. 1 Capital Street,
Area 11, Garki, F.C.T.
Abuja.”

Order 55 Rule 2 of the Rules of the Court, 2018 is reproduced as follows:

“2. An application for a change of legal practitioner or withdrawal may be made by the Claimant, Defendant or the legal practitioner as the case may be, not less than 3 clear days before the date fixed for hearing.”

I have examined the notice of change of counsel filed in this suit, viz-a-viz, Order 55 rule 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018. I am satisfied that the notice of change of counsel filed on 07/07/2024 by E. U. Ukala & Co., legal practitioner for the 1st and 2nd Defendants complied with Order 55 rule 2 of the Rules

of the Court, and to that extent, I must hold that the notice of change of counsel filed on 07/07/2024 in this suit is competent.

I therefore, with respect, find no substance in learned counsel for the Claimants/applicants' contention. I refuse the relief sought by the Claimants/applicants. The preliminary objection fails and is accordingly dismissed.

I award cost of... against the Claimants and in favour of the respondents.

**SIGNED:
HON.JUDGE
09/04/2025**

APPEARANCE:

O. J. Iheko, Esq, for Defendants/Respondents