

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON TUESDAY, THE 28TH DAY OF JANUARY, 2020

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

JUDGE

SUIT NO.: FCT/HC/CV/1235/10

BETWEEN:

NENE NANCY UDENSI & 1 OR ----- APPLICANT

AND

IKENNA EKEKEDO & 4 ORS ----- DEFENDANTS

RULING ON WITHDRAWAL

The Court is in receipt of the notice of withdrawal which the Defendant Counsel has confirmed that the Plaintiff served on them. The Court is in receipt of the said application for withdrawal of the case against the all the Defendants. That application is dated 3/6/19. In it and predicated on **Order 24 Rule 1(3)** which stated that where a defence has been filed, the claimant may MAY with the leave of the Court discountenance or withdrawal the proceedings or any part on such terms and condition as the Court may Order.

It is imperative to note the use of the word MAY which connoted if they so wish. It should have been a different thing if the word SHALL was used in the said Rules **Order 24 Rule 1(3)**. That would have made it mandatory but with the word may, it makes it discretionary which means that the Plaintiff who wants to withdraw the case against the Defendant may or may not come or seek leave of Court. Though the Plaintiff Counsel is not around to move the application the Court deems it as moved.

In this case, contrary to the submission of the Defendant Counsel, the Plaintiff have decided by this application to come by way of notice in writing. The fact that they come like that means that they are already the final decision of the Court on that application.

I have never read or heard that where a party who brought another party to Court and decided along the way to end it all by filling a notice of withdrawal that the Court will insist that such party will go on with the case. The wide and unending discretionary power of the Court does not extend of forcing a Plaintiff to go on with the case against its will. This Court will not set that bad precedence.

The Court had on record noted through Defendant Counsel had filed a Counter claim since the Plaintiff have withdrawn their claim the Court is left with the Courter claim filed by the Defendant.

That being the case the Counter claim will now stand as the only claim in this suit because this Court hereby grant the application to withdraw the Plaintiff's claim against the Defendant in this suit.

The application is hereby granted and the suit of the present Plaintiff is hereby struck out by virtue of the said application. The Court will allow the Defendant Counsel to go on with the Counter claim.

This is the Ruling of this Court made today the 28/1/2020

K.N. OGBONNAYA

HON. JUDGE

28/1/2020

APPEARANCES:

E.C. Ikeji with kelechi Animba for the Defendant in this suit

Claimant absent no Counsel for the Claimant