



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF



SUIT NO: FCT/HC/CV/350/16

BETWEEN:

WHITEPLAINS BRITISH SCHOOL LTD.....PLAINTIFF

AND

1. FIRST BANK OF NIGERIA LTD)
 2. GUARANTEE TRUST BANK PLC).....DEFENDANTS

RULING

This is a transferred case. The action which was originally commenced against the Defendants jointly and severally on the 30th day of November, 2016 is principally founded on breach of contract. The matter came up before this Court sometimes on 31/01/2019 for trial denovo but the Plaintiff and its Counsel were absent in Court. Karina Williams Esq who appeared for the 1st Defendant informed the Court as follows:

“I am surprised the Plaintiff is absent. We have filed a motion challenging the jurisdiction of this Court. I seek for adjournment.”

The 1st Defendant brought an application dated and filed on 30th January, 2019 seeking the following reliefs:

1. An Order of this Honourable Court dismissing this suit in its entirety for being abuse of Court process.

OR ALTERNATIVELY

2. An Order of this Honourable Court striking out this suit in its entirety for lack of jurisdiction.

3. And for such further other orders(s) that this Honourable Court may deem fit to make in the circumstance of this case.

In another vein, the Plaintiff filed a notice of withdrawal/discontinuance on 11th April, 2019. The grounds for discontinuance were listed as follows:

1. Based on the development to the fact that the Plaintiff has just discovered that the tripartite legal mortgage which had formed the fundamental instruments that is the basis of the relationship

between the 1st Defendant was actually forged and not real and this affects the position of the case. It will be clumsy to attempt an amendment in respect thereof.

- 2. To confine the reliefs/claim of the Plaintiff to damages only.**
- 3. It is therefore considered proper to withdraw the suit, prepare the case to reflect the true position the Plaintiff's case and refile same.**

Parties filed lengthy processes in opposition to the respective applications which in my opinion are needless given the facts and circumstances of this case.

Now I must say that by necessary implication the notice of discontinuance filed by the Plaintiff ought to enjoy priority of audience. I shall therefore consider same forthwith.

The Plaintiff has filed Notice of Discontinuance of this matter. The point then is whether the Plaintiff Company ought to be allowed to withdraw at this stage of proceedings. The 1st Defendant is vehemently opposed to the withdrawal of this suit and contended that the Plaintiff's suit should either be dismissed or struck out for want of jurisdiction.

Now by the express provision of Order 24 Rule 1(1):

“The Claimant may at any time before receipt of the defence or after the receipt, before taking any other proceeding in the action, by notice in writing duly filed and served, wholly discontinue his claim against all or any of the Defendants or withdraw any part or parts of his claim. He shall pay the Defendant’s costs of action, or if the action be not wholly discontinued, the costs occasioned by the matter withdrawn.”

I am mindful of the fact that parties have duly exchanged pleadings but the point must be made that trial is yet to commence in this matter. If that be the case, I am of the firm view that the Plaintiff can take advantage of the above provision of the Rule.

Furthermore, the discontinuance of the suit will also have the same effect as striking out the matter which is the alternative relief sought by the 1st Defendant on the face of its application set out above. There is a need to remind the 1st Defendant that where the Court have no jurisdiction to entertain any given matter, the Court cannot make an Order of dismissal. The rationale is simply that an Order of

dismissal suggests full hearing and determination of such matter which is not the case in this matter.

Accordingly, I hold that the Plaintiff's suit is duly discontinued pursuant to the Notice of Discontinuance filed by the Plaintiff on the 30th December, 2019 subject to the payment of cost by the Plaintiff to the 1st Defendant. The suit is accordingly struck out.

SIGNED.
HON. JUSTICE H. B. YUSUF
(PRESIDING JUDGE)
28/01/2020