

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON THURSDAY, 24TH DAY OF SEPTEMBER, 2020

BEFORE HON. JUSTICE SYLVANUS C. ORIJ

SUIT NO. FCT/HC/CV/2949/2017

MOTION NO. M/186/2019

BETWEEN

**THE INCORPORATED TRUSTEES OF
ASSOCIATION OF ALUMINIUM & ALLIED
PRODUCTS MANUFACTURERS OF NIGERIA**

**PLAINTIFF/
APPLICANT**

AND

- 1. CHIEF CYRIL UKABI**
- 2. MR. CHINEDU ONUKOWUSI**
- 3. IFEANYI NWOGBO**
- 4. OBUMEK INT'L LTD.**

**DEFENDANTS/
RESPONDENTS**

RULING

On 22/11/2010, the plaintiff instituted this suit at the Federal High Court with *Suit No. FHC/ABJ/CS/795/2010*. By Order of His Lordship, *Hon. Justice B. F. M. Nyako* of the Federal High Court dated 3/7/2017, the matter was transferred to the High Court of the Federal Capital Territory, Abuja and numbered as *Suit No. FCT/HC/CV/2949/2017*. The matter was assigned to me on 22/9/2017 by the Hon. Chief Judge of this Court. Uche Uwazuruonye Esq.

filed the writ of summons and has always represented the plaintiff in this matter.

This Ruling is on the plaintiff/applicant's *Motion No. M/186/2019* filed on 18/10/2019 by Kamin Bello Asunogie Esq. praying the Court for:

1. An order of Court granting leave to the plaintiff/applicant to change their *[sic]* counsel and to file notice to that effect pursuant to the rules of this Honourable Court.
2. An order to deem the notice of change of counsel filed alongside this application as properly filed and served appropriate filing fees having been paid.
3. Any other order or orders as the Court may deem fit to make in the circumstances of this case.

The grounds of the application are:

1. That the erstwhile counsel for the plaintiff in this matter was debriefed by the plaintiff/applicant on the 14th day of October, 2019.
2. Present counsel seeking to take over was briefed vide letter dated 10th October, 2019 but only received on 16th October, 2019.
3. By the rules of this Honourable Court, a notice of change of counsel requires leave of this Honourable Court.

Uzeru Bello, the litigation secretary in the Law Firm of KaminAsunogie& Co., filed an affidavit of 8 paragraphs in support of the application; attached therewith is Exhibit A. Kamin Bello AsunogieEsq. filed a written address with the motion. In opposition, Chief OsonduOkereke filed a 23-paragraph counter affidavit on 25/10/2019; attached therewith are Exhibits A, B, C, D1 & D2. UcheUwazuruonyeEsq. filed a written address along with the counter affidavit. On 28/10/2019, Uzeru Bello filed a further affidavit of 8 paragraphs; attached therewith is Exhibit A. Mr.Kamin Bello Asunogie filed a written address in support of the further affidavit. At the hearing of the application, both counsel adopted their respective processes.

In his affidavit, Uzeru Bello stated that:

- i. He was with his boss at his hospital bed in the National Hospital when an officer of the applicant called Chris Oraguzie, the secretary to the BOT [board of trustees], brought the letter of instruction on 16/10/2019 to his boss. A copy of the letter is Exhibit A alongside a copy of the notice of debriefing of the previous counsel.
- ii. In compliance with the instruction, they have filed a notice of change of counsel. This motion is to regularize the process of change of counsel to enable the new counsel bring the parties together to resolve this matter out of Court as they earnestly desire to do.

Before I go further, let me reproduce the two letters referred to in the affidavit i.e. the letter dated 10/10/2019 to Kamin Bello Asunogie Esq. to handle this matter for the plaintiff and the letter dated 14/10/2019 to debrief UcheUwazuruonye Esq.

The letter dated 10/10/2019 addressed to Kamin Asunogie Esq. was signed by Chris Oraguzie [as Secretary, Board of Trustees of the plaintiff] and Alh. Jimoh Dauda [as Exco-Chairman of the plaintiff]. It reads:

At the meeting of ExcOs and BOTs of the above association held on the 11/09/2019, it was resolved that Barrister UcheUwazuruonye of Noble Chambers be debriefed and stopped from representing this Association [Letter is dispatched to that effect]. It was equally decided that Barrister Kamin Asunogie & Co. be engaged to take charge of our Court issues as our counsel forthwith.

Looking forward to a good relationship with you as we hope you oblige us this request. We really do.

The letter dated 14/10/2019 addressed to UcheUwazuruonye was also signed by Chris Oraguzie and Alh. Jimoh Dauda. The letter, which referred to *Suit No. FCT/HC/CV/2949/2017*, reads:

All previous correspondences and instructions in respect of the above subject matter refer. Please recall particularly our letter dated 10th June 2019 and the contents therein. Note particularly further that our instruction in the said

letter to you was to withdraw the case from the court to enable us settle ourselves out of the court as members of one family. This clear instruction from us as your clients and “principal” has not been carried out till date. Again what happened in court subsequently after you received our instruction in the letter was embarrassing.

We have therefore decided to use this medium to disengage and debrief you in respect of the suit. This decision has been arrived at by the decision making organ of the body with the Executive Council, having observed that your disposition has ceased to be one of acting in the interest of us as the Claimant.

Take note, that you are hereby implored to hand over the entire case file with all processes to the undersigned to enable us brief another Counsel with the definite instruction to discontinue and terminate this suit forthwith.

We thank you for your understanding while wishing you the best in all your endeavours.

In his counter affidavit, Chief OsonduOkereke stated that:

- i. He is the Chairman of board of trustees of the plaintiff. He has the consent of “*other available and relevant trustees and majority members of the plaintiff*” to depose to the counter affidavit.
- ii. When the plaintiff’s counsel, UcheUwazuruonyeEsq., drew their attention to the letter dated 14/10/2019 purportedly debriefing him in respect of this suit, they replied and appealed to him to ignore the

- letter as it never emanated from them; a copy of their letter dated 18/10/2019 is Exhibit B. The authors of the letter to their counsel and to Karim Bello Asunogie are mischief makers who have no respect for this Court and due process of law.
- iii. It was the board of trustees of the Association who briefed UcheUwazuruonyeEsq. to file this suit on behalf of the plaintiff in 2009 by a letter of instruction signed by himself, Bright Oriaku and Lawrence Oluohia. The letter dated 21/9/2009 is Exhibit C.
 - iv. The authors of the letter debriefing UcheUwazuruonyeEsq. are the masterminds and parties to the motion for the joinder of Godwin Ufere, Alh. DaudaJimoh, Anyanwu Geoffrey and Joseph Anyim. The motion was dismissed by the Court in its ruling delivered on 26/3/2019. The present motion is contrived by the applicants to impose themselves on the Court and subvert the course of justice.
 - v. The defendants are fully aware that he [i.e. OsonduOkereke], Bright Oriaku and Lawrence Oluohia [as trustees of the plaintiff] are the persons who filed this suit against them since 2010 on behalf of the plaintiff. This is well stated in paragraphs 22, 23 & 24 of the 1st-3rd defendants' amended statement of defence; the relevant pages of the said process are Exhibits D1 & D2.
 - vi. The persons who instructed UcheUwazuruonyeEsq. to file this suit on behalf of the plaintiff later in 2010 appointed Alh. DaudaJimoh as

- the leader of the interim committee. The appointment has lapsed and the other members of the committee [including IkechukwuEzenwa] have ceased to parade themselves as executives of the plaintiff except Alh. DaudaJimoh.
- vii. When attempt was made to resolve the matter, the defendants teamed up with Alh. DaudaJimoh to further dissipate the assets of the plaintiff against the interest of majority of the members of the Association. Despite the order of injunction of the Federal High Court, Alh. DaudaJimoh has been selling the properties of the Association and applying the proceeds to himself.
 - viii. They have confidence in UcheUwazuruonyeEsq. to continue representing the plaintiff in this suit.

The letter dated 18/10/2019 addressed to UcheUwazuruonyeEsq.[Exhibit B] was signed by Sir OsonduOkereke, Mr. Bright Oriaku and Nze Lawrence Oluohia. The letter reads:

We are in receipt of your letter of 15th October 2019 and we appreciate your effort in bringing same to our attention.

We request that you ignore the "Notice of Debriefing" sent to you as same did not emanate from our office.

You will recall that we the undersigned and majority of the members of the Association persuaded you to handle this and other related matters since 2009.

We later appointed Alh. JimohDauda and others as interim management body who we introduced to you, their tenure has expired and we have instructed them to steer clear of the affairs of the Association.

We are satisfied with the services rendered so far and are willing to continue with same till the matter reaches logical conclusion.

Thanks for your anticipated co-operation.

The letter dated 21/9/2009 [Exhibit C] addressed to the Principal Partner of The Noble Chambers was signed by Sir OsonduOkereke [Chairman, BOT] and Mr. Bright Oriaku [Secretary, BOT]. It reads:

APPOINTMENT AS LEGAL COUNSEL

We the members of Association of Aluminium and Allied Products Manufactures of Nigeria [ALPROMN] during our monthly general meeting held on 2nd September 2009, unanimously agreed to engage Barrister UcheUwazuruonye of the Noble chambers as our solicitor and Legal Adviser.

We hope you will accept our offer.

In the further affidavit, Uzeru Bello stated that the following facts were revealed to him and his boss by the secretary to the board of trustees, Mr. Chris Oraguzie, at about 11.30 a.m. on 26/10/2019:

- i. OsonduOkereke has never been the chairman of the board of trustees of the plaintiff and Exhibit C attached to the counter

- affidavit was only concocted as the trustees never briefed UcheUwazuruonyeEsq. in writing.
- ii. Chief OsonduOkereke is not a member any more of the board of trustees of the plaintiff. The extant names of all trustees of the Association since 2010 are as reflected in the certificate of registration dated 7/12/2010 [Exhibit A] and his name is not there.
 - iii. Since 2010, the chairman of the board of trustees of the plaintiff has been Mr. Cyril Ukabi [the 1st defendant in this suit] as part of the decision of all the members to resolve the matter out of court, which effort has been frustrated by OsonduOkereke.
 - iv. The decision to change counsel was reached because the present counsel has no desire to assist members to reach an out of court settlement.

In his written address, KaminAsunogieEsq.stated that the application is to regularize the process of change of counsel to align with the rules of the Court. He relied on the grounds for the application and the facts in the affidavit of Uzeru Bello; and urged the Court to grant the application.

In the written address filed along with the further affidavit, KaminAsunogieEsq. submitted that the only issue relevant for consideration in an application for change of counsel is the desire of the party who is willing to change his counsel, in this case the plaintiff. By Exhibit A attached

to the further affidavit, the deponent of the counter affidavit [Chief OsonduOkereke] is no longer a trustee of the plaintiff and as such, he cannot hold the plaintiff to ransom by insisting on a litigation which does not benefit the Association and its members. Mr.Asunogie pointed out that the Court has a duty to encourage parties to resolve their differences whenever they so wish.

On the other hand, UcheUwazuruonyeEsq. stated that Chris Oraguzie and Alh. DaudaJimoh,who are purporting to debrief the plaintiff's counsel,have never appeared as the plaintiff's representativessince 2017 when this suit was transferred to this Court. Also, at all times, they have never protested the consistent representation of the plaintiff by Bright Oriaku, OsonduOkereke, Lawrence Oluohia and many other members of the Association. He argued that it is despicable that they now want to "*jump the fence*" and become the representatives of the plaintiff by purporting to debrief the plaintiff's counsel.

Mr.Uwazuruonyealso pointed out that Alh. DaudaJimoh and three others had applied to be joined as defendants in this suit and the application was refused by the Court in its Ruling delivered on 26/3/2019. He contended that the present application is part of the desperation of Alh. DaudaJimoh and his cohorts to be part of this suit with the sole aim of frustrating the aggrieved trustees and members of the plaintiff to ventilate their grievances in court.He further argued that in view of the Ruling of the Court delivered on 26/3/2019, this motion is an abuse of court process in the sense that it is contrived to

irritate and annoy the plaintiff and its aggrieved trustees and members and the motion is also a clog in the machinery of administration of justice.

The further submission of UcheUwazuruonyeEsq. is that before a person can debrief a counsel in a suit, he must show that he is the person represented by the counsel and/or that he engaged the counsel in the first place. It is on the platform of having engaged a counsel that a party can disengage him. The applicants have not shown that they engaged the plaintiff's counsel to file and prosecute this suit. He concluded that the applicants are "*uncivilized meddlesome interlopers*" who have no regard for this Court.

Now, it is evident from the depositions in the affidavits and the letters reproduced above that there is disunity or division amongst the members of the Association of Aluminium and Allied Products Manufacturers of Nigeria. It appears that there are two groups in the Association. There is the group led by OsonduOkereke, Bright Oriaku and Lawrence Oluohiaon the one hand and the group led by Chris Oraguzie and Alh. DaudaJimoh on the other. Be that as it may, one significant fact from the affidavits of the parties is that Chris Oraguzie and Alh. DaudaJimoh- who wrote the letter dated 14/10/2019 to UcheUwazuruonyeEsq. to debrief him - were not the persons that briefed him to represent the plaintiff.

It is clear from the letter dated 21/9/2009 [i.e. Exhibit C attached to the counter affidavit] that OsonduOkereke and Bright Oriaku were the persons that engaged the services of UcheUwazuruonyeEsq. to represent the plaintiff. In

the further affidavit, it is deposed that the said Exhibit C “*was only concocted as the trustees never briefed UcheUwazuruonyeEsq. in writing.*” I am of the view that the averments in paragraphs 22 & 24 of the amended statement of defence of the 1st-3rd defendants [attached to the counter affidavit as Exhibits D1 & D2] erase every doubt as to who briefed UcheUwazuruonyeEsq. to file this suit on behalf of the plaintiff. In paragraph 24 thereof, it is averred:

“... the Defendants state that Messrs Bright Oriaku, OsonduOkereke, Lawrence Oluohia and their cohorts who purportedly filed this Suit in the name of the Plaintiff did not make financial contribution to the purchase of the said plots of land, neither did they make contribution to the growth of the Association.” [Underlining is mine for emphasis].

I agree with the view of UcheUwazuruonyeEsq. that before a person can debrief a counsel in a suit, he must show that he is the person represented by the counsel or that he engaged the counsel. Since Chris Oraguzie and Alh.DaudaJimoh have not shown that they were the persons who engaged the services of UcheUwazuruonyeEsq. to file this suit on behalf of the plaintiff, I hold that they are not entitled to the leave or permission of the Court to debrief the said counsel and replace him with Kamin Bello AsunogieEsq.

What I have said so far is sufficient to dismiss this application. However, I consider it necessary to refer to the depositions in paragraphs 5[b] & [c] of the further affidavit to the effect that: [i] Chief OsonduOkereke is not a member

anymore of the Board of Trustees of the plaintiff; [ii] the extant names of the trustees of the Association since 2010 are as reflected in the certificate of registration dated 7/12/2010; and [iii] since 2010, the chairman of the board of trustees has been Mr. Cyril Ukabi [the 1st defendant]. From the above depositions, it appears that Chris Oraguzie and Alh. Dauda Jimoh are relying on the certificate of registration dated 7/12/2010 to show that Osondu Okereke lacks the competence to engage the services of Uche Uwazuruonye Esq. to represent the plaintiff in this suit.

It is worthy of note that on 11/1/2019, Godwin Ufere, Alh. Dauda Jimoh, Anyanwu Geoffrey and Joseph Nyam filed *Motion No. M/2012/2019* for an order joining them as co-defendants in this suit. In the affidavit in support of that motion, Godwin Ufere stated that he is a trustee of the Association based on the said certificate of registration dated 7/12/2010.

The Court in its Ruling delivered on 26/3/2019 dismissed the motion. The Court considered the certificate of registration dated 7/12/2010 and held:

“Now, the basis for the application for joinder of the 1st applicant [Godwin Ufere] is that he is a trustee of the Association. The trustees of the Association when it was registered are stated in the Certificate of Registration of the Association attached to the counter affidavit as Exhibit A. The name of the 1st applicant is not in Exhibit A. Exhibit 1 attached to the applicants’ affidavit is a Certificate of Registration of the said Association dated 7/12/2010. Exhibit 1 certified that by special resolution, the trustees of the Association have been

reconstituted with the 9 trustees listed therein, including the 1st, 2nd & 3rd defendants [Cyril Ukabi, Chinedu Onuekwusi and Ifeanyi Nwogbo] and the 1st applicant [Godwin Ufere].

The said change of the trustees of the Association took place after the filing of this suit. It is stated in the counter affidavit that the trustees of the Association affected by the said change filed Suit No. FHC/ABJ/CS/501/2011 to challenge the change of trustees. I note that in the Ruling of Hon. Justice D. U. Okorowo of the Federal High Court in this suit delivered on 1/2/2012, while granting the plaintiffs' motion for interlocutory injunction, said:

"It is not proper as alleged by the Plaintiff/Applicant that while this matter was pending the Defendants/Respondents changed the trustees of the Association and returned the Certificate of Incorporation of the Association to the Corporate Affairs. The conduct of the Defendants/Respondents is reprehensible."

In my respectful opinion, the change of the trustees of the Association, which has been deprecated by the Federal High Court in this suit, cannot be a basis for the Court to join the 1st applicant as a defendant in this suit; more so as the change of trustees is still a subject of litigation. ..."

I have referred to the above decision of the Court to emphasize the point that the certificate of registration of the plaintiff dated 7/12/2010 cannot be a basis

or ground for the grant of this application, especially as the change of trustees is still a subject of litigation.

Finally, I agree with the view of Mr. Asunogie that a court has a duty to encourage parties to resolve their differences out of court whenever they so wish. In this case, the Court had repeatedly encouraged the parties to settle their dispute amicably out of Court; the Court cannot compel parties to settle their dispute out of court. From the depositions in the affidavit in support of this application, it seems that the main purpose for seeking leave of Court to change the plaintiff's counsel is for Mr. Asunogie to resolve the matter out of Court. Let me remark that Mr. Asunogie does not need to be a counsel in the matter before he can assist the parties to reach an amicable settlement of their dispute.

CONCLUSION

From all that I have said, this application lacks merit. It is dismissed.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of counsel:

1. UcheUwazuruonyeEsq. for the claimant; with Emmanuel AgwungwuEsq.
2. Noah Abdul for the 1st-3rddefendants; with Praise AhiabaEsq.