

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: CV/0489/2017
MOTION NO.: M/7610/2020

BETWEEN

GREGORY MANGOR LAR -----
PLAINTIFF/APPLICANT

AND

- 1. BUNJOA CONCEPTS NIG. LIMITED
 - 2. BARR MRS. CECILIA OKPANACHI
 - 3. PERSON UNKNOWN
- (BUILDER OF PROPERTY ON PLOT 03 NOW RENUMBERED PLOT B2, PRIMESIGHT ESTATE, PLOT 63, CAD ZONE B09, OPP NEXT SUPERMARKET, KADO DISTRICT, ABUJA).
- DEFENDANTS

RECORD OF PROCEEDINGS

18/02/2020

Parties absent and not represented

Court - The case is for hearing. Parties are absent and not represented it was adjourned to this Court on the 15/1/18. It has come up severally for hearing. The plaintiff and counsel are absent and there is no written explanation for their absence. This shows lack

of diligence in prosecution. Accordingly, this Court has no option but to strike it out. Thus suit No. CV/0489/17 is accordingly struck out.

Signed
18/02/2020

04/11/2020

Plaintiff in Court

Chief Gideon Musa Kuddu – for the plaintiff/applicant with him D.J. Gusen Esq and Mary Abanumebo Ejiro Esq

Defendants absent and not represented

Mr. Kuddu - The case is for hearing of the motion which has been served on the defendants.

Signed
04/11/2020

Court - There is a letter asking for adjournment by the defendants.

Signed
04/11/2020

Mr. Kuddu - We have seen the application which with all humility is belated and we urge the Court to permit us move the motion.

Signed
04/11/2020

Court - Proceed.

Signed
04/11/2020

Mr. Kuddu - Our motion is M/7610/20. We are praying for the order stated on record. In support is an affidavit of 10 paragraphs and a written address which we hereby adopt. We urge the Court to grant the application as prayed.

Signed
04/11/2020

RULING

Before this Court is a motion on notice brought pursuant to the provisions of Order 32 Rule 5, Order 55 Rule 2 of the Rules of this Court. The application is praying for the following:

1. An order relisting suit No. CV/0489/17 which was struck out for want of diligent prosecution.
2. An order for change of counsel and leave to Chief Gideon Musa Kuttu of G.M. Kuttu & Co. (Nanrie Chambers) No. A11, Olatokunbo Ademola Street, Dawaki, Hillside Estates, Near Koraf Hotels, Limited, Dawaki Extension 1, FCT, Abuja to take over from Mr. Caleb Ramnap Esq. and prosecute for and on behalf of the claimant/applicant.
3. An order granting leave to the claimant/applicant to amend his statement of claim and other accompanying processes.
4. An order deeming the amended Statement of Claim and other accompanying processes as separate processes duly filed and served and the requisite filing fees paid.
5. And for such further orders as this Court may deem fit to make in the circumstances.

The grounds of the application are as follows:

- a) The overall need for doing substantial justice to all parties rather than emphasis on technicality.
- b) The need to observe and enforce the principles of fair hearing as enshrined under Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) in the hearing and determination of this motion on notice.
- c) The need to hear and determine the real issues in the suit between the parties.
- d) The readiness to prosecute without further delays this suit.
- e) The fact that the change of counsel and amended statement of claim and all other processes will not prejudice the defendants.

In support of the application is an affidavit of 10 paragraphs and a written address duly adopted by learned counsel to the applicant **Chief Gideon Musa Kuttu Esq.** Counsel argued that this Court has the powers and authority to relist an application or suit

struck out in the interest of justice since the suit has not been determined on its merit. Reference was made to Ajijola vs. Rasaki (2019) All FWLR (part 1014) SC 80 at 95, Ibrahim vs. Dangwaram (1997) 1 NWLR (part 479) 87 at 96. He added that an application to relist is not granted as a matter of course. That the applicant must of necessity satisfy the Court with cogent reasons the circumstances to grant the application. And the applicant from the affidavit has furnished sufficient facts to warrant the grant of this application. He cited Odigwe vs. JSC, Delta State (2010) LPELR – 4678 (CA), Atiku vs. Yola Local Govt. (2007) 1 NWLR (part 802) 487 at 500, Obasi Brother Merchant Co. Ltd vs. Merchant Bank of Africa Securities Ltd (2005) 2 SCNJ 272. He urged the Court to grant the application.

It is now settled law that a party applying that his matter struck out or dismissed for want of diligent prosecution be relisted must fulfill the following conditions:

- a. There must be good reasons for being absent at the hearing.
- b. That there has not been undue delay in bringing the application as to prejudice the respondent.
- c. That the respondent will not be prejudiced or embarrassed if the order for re-hearing is made.
- d. That the applicant's case is not manifestly unsupportable.
- e. That the applicant's conduct throughout the case is deserving of sympathetic consideration.

See S & D Construction Co. Ltd vs. Ayoku & anor (2011) LPELR – 2965 (SC).

It was emphasized in Williams vs. Hope Rising Voluntary Funds Society (1982) 13 NSCC page 36 that all of these matters ought to be resolved in favour of the application of the applicant before the judgment/order should be set aside. It is not enough that some of them can be so resolved and others are not.

For the first requirement, for a reason to be good, it must be satisfactory; favourable; not bad in the sense that it is unacceptable; it must be an essential material or important

reason. Reasons which are peripheral or strange cannot suffice. In the case of **Ikenta Best (Nig) Ltd vs. A.G. Rivers State (2008) 6 NWLR (part 1084) page 612 at 642** the apex Court put the meaning of 'good reason' more clearly. It held thus:

“The reason must be good. In other words, the reason must possess the quality that is satisfactory; favourable, useful or suitable to the application. The reasons must not be bad in the sense that they are unacceptable. Substantial reasons are essential material and important reasons. Reasons which are peripheral or dance around the periphery strangely cannot suffice. The pendulum should weigh in favour of granting the application, and not just enough to balance the weight or on an even keel.”

See also **Ikeme & anor vs. Ugwu (2013) LPELR – 20777 (CA)**.

The reason put forward by the applicant in the supporting affidavit is as captured in paragraph 2 and 3 therein as follows:

- “2. That I know that I had earlier on briefed Mr. Caleb N. Ramnap Esq, to handle the prosecution of my matter in this suit.*
- 3. That I have been in and out of the country and have just returned to find out that my matter in this suit was struck out of want of diligent prosecution.”*

The plaintiff/applicant on the first time the case came up appeared for himself and subsequently Mr. Ramnap started appearing for the applicant. This case has come up 4 times and in 3 of these times, applicant was ably represented in Court but with excuse not to proceed with the prosecution of this case. On the 18/2/2020 when the suit was struck out, the applicant was absent in Court and there was no proof of service of hearing notice on any of the defendants.

It is settled concept that the exercise of judicial discretion is governed by several factors at the same time. These factors are not necessarily constant, but changes with changing circumstances and time and cannot be regarded as immutable and applicable for all times. See **Ibegwura Ordu Azubike vs. PDP &**

ors (2004) SC 476 and Haliru vs. FRN (2008) All FWLR (part 425) 1697 at 1726 – 1727. The guiding principle for the exercise of discretion being judicial must at all times be exercised not only judicially but also judiciously on sufficient material. See Ugbona vs. Olisa (1971) All NLR 8, Ideozu vs. Ochona (2006) 4 NWLR (part 970) 364.

In Osho & ors vs. A.G. Osun State (cited supra) Oniyangi, JCA stated thus:

“Discretion, they say know no bounds, in its general usage it is that freedom or power to decide what should be done in a particular situation.”

In this instance, the grant of an order to relist is an indulgence. Where no sound reason is given for seeking such, no such indulgence should be granted. See Onwuka vs. NPA (2018) LPELR – 45013 (CA).

From the reasons canvassed in this application can this Court exercise its discretion in favour of the applicant? The answer herein is not farfetched. The applicant has not adduced satisfactory reasons to convince the Court to exercise its discretionary power in its favour.

Another condition which I dare say is notorious is the issue of delay in filing the application. It is noted that the suit was struck out on the 18/2/2020 and the motion to relist was filed on the 16/6/2020. There is undue delay in my view in filing this application after a period of 4 months.

As this is a predominant condition guiding the Court while considering this type of application, it is my view that the applicant has been guilty of delay herein and the averments in the supporting affidavit are bereft of any cogent reason to enable this Court exercise its discretion in favour of granting the application.

For the above reason this application is refused and it is hereby dismissed.

Signed

04/11/2020