

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY IN  
THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ABUJA**

**ON ..... 10<sup>TH</sup> DAY OF MARCH, 2021**

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS**

**CHARGE NO: FCT/HC/GWD/01/2021**

**MOTION NO: M/1316/2021**

**BETWEEN:**

**COMMISSIONER OF POLICE .....COMPLAINANT**

**AND**

**GIDEON DANTANI; M; 18 YEARS.....DEFENDANT**

**RULING**

The accused person was charged and arraigned before the court on the 12/2/2021 for committing the offence of having unlawful carnal knowledge with One Rejoice Dantani his Sister, aged 13 years old by inserting his Penis in to her virginal thereby, committing the offence contrary to section 31(1) and punishable under section 31(2) of the Child Right Acts CFL 2003.

However, on the 15/2/21 the prosecution brought an application for discontinuance. Attached to the motion for bail detention the 12/2/21. The father of the both the victim and the defendant made a sworn declaration defend the 28/1/21 be withdrawn against the

defendant. Equally application for the withdrawal of the case was made by the same defendant the 12/2/21 addressing the court on the 3/3/21 the prosecution submitted that his application filed by the prosecution for the discontinuance of the case was in line with section 108 of the ACJA 2015 and that the whole essence of justice was for peace and tranquility. Prosecution charged the court to take in to consideration the ordinary interest of justice and grant his application. Also the prosecution relied on section 355 ACJA 2015 and section 174 of the 1999 constitution as (amended) same urged the court to grant this application. In support of this application the Prosecution reviews 1<sup>st</sup>ly. On section 174 of the 999 constitution. This section of the law cannot and does not apply.

However, section 174 (1) (c) of the constitution states the Attorney-General of the Federation shall have the power to discontinue at any stage before Judgment is delivered any such Criminal proceeding instituted or undertaken by him at any other authority or person.

In **ATTORNEY-GENERAL KADUNA STATE VS. MADAM HASSEN USMAN (1985) NWLR (PT 8) 483 UWAIS JSC** stated that before the parents of the Attorney-General can be exercised by any person, it must have been expressly donated to him to him to the effected that such person should exercise the power as he has already obtained the Fiat of the A.G.

This power either be exercised by the A.G. or by a private prosecutor. This is done to preclude an accused person from criminal liability in respect of same or all the charges preserved against him. In exercising this, the A.G. is entitled to do so orally or otherwise through a legal document/instrument. However, where the power to enter a nolle Prosequi has been delegated to officers of his department or to a private prosecution, such instrument delegating the power must be in writing.

Thus a state counsel cannot enter a nolle prosequi or discontinuance any criminal proceeding before any court in Nigeria unless the instrument authenticating such delegation and effecting such discontinuance is tendered in court. See **STATE VS. CHUKWURA (1964) NWLR 64**. This section cannot apply because no instrument was given to the prosecution.

2<sup>ndly</sup> prosecution relied on see 108 (1) ACJN same provides:

*“In any trial or proceeding before a court a prosecution may or on the instruction or on the instruction of the A.G. in case of offence against an Act of the national Assembly. May at any stage before Judgment is pronounced withdraw the charge against any defendant either generally or in respect of one or more of the offences with which the*

*defendant is charged. From the content of this section aforesaid given the prosecution the power to discontinue or the A.G this section is disjunctive. Either the A.G. or a prosecution may apply for withdrawal of a case against the defendant. For the above two sections of the law there is a conflict of law section 1744 (c). Given the A.G the power to discontinue or any legal officer having delegated such power to do so while section 108 of ACJA gave both the A. G and the Prosecution the power to withdraw although the constitution is the grand none nevertheless the purpose of the two law is to ensure the attainment of justice judiciously.*

3<sup>rdly</sup> the Prosecution also relied on section 355ACJA which stated:

*“Where can a Plaintiff at any time before a final order is made in a case satisfies the court that there are sufficient grand for permitting him to withdraw his complaint the court may permit him to withdraw the complaint and shall thereupon acquit the defendant”.*

This section can also apply in favour of the defendant reasons being that the complaint has sufficiently advanced reason as contain in his declaration and the application of withdraw. Both the victim and the defendant are from the same parental background.

He also advances that in order for piece to maintain in the family hence the need for the withdrawal. Order 17 Rule 3 of the Child Rights Act LFN 2003 states:

*“Court shall in considering the application for withdrawal of a case before court be guided by the overriding interest of the child. Also order 17 Rule 4 states “the court shall have the power to discontinue any proceedings at any time if the circumstance arise which make the discontinue of the proceedings the best way to dispose of the proceedings. The duty of this court is to also take into consideration the welfare of the child involved. See **ODUGWUVSO (1992) LPECR 2229 SEC PER BELGORE JSC 30-31 PARAGRAPHED C** define welfare of a Child as not the material provision in the house good cloths, food, air conditioner, television all gadgets normally associated with the middle class. It is more of the happiness of the child and his psychological developing.*

Having exhaustively analyzed the provisions of the constitution, the ACJA and the Child Right Act 2003. It is in the best interest of the child for this matter to be withdrawn reason being that the child may be exposed to series of lifestyle Eventually Order 14 Rules of the Child Right Act have taking care on her the trial can be

concluded. On the other hand the eventual conviction of the defendant if established may bring a permanent enmity to the whole family this also satisfy the requirement of order 17 Rule 4 of the Child right Act 2003.

Also the explanation made by the father to the victim and the Defendant made me to agree with him in his solemn declaration. Although going by the premium of section 355 of ACJA the complaint is the Child nevertheless the application of other sections of the law made me to safely allow the withdrawal of this charge against the Defendant. Both the victim and the Defendant are being children. Repentance of the Defendant in my opinion should be encouraged. I therefore, allow the withdrawal of the charge.

In the sprint of substantial justice I call on the parent to take into consideration the upbringing of their children and also not to allow particularly the defendant to have anything to do with victim which might expose them to sexual activities illegal. AWARD IS ENOUGH FOR THE WISE

Signed  
Hon. Judge  
10/3/2021