IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 15TH DAY OF JULY, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/2882/17
MOTION NO.:-FCT/HC/CV/10151/2020

BETWEEN:

DR. JOHN EZEUHWE SABO:...CLAIMANT/RESPONDENT

AND

CHIEF DAVID SABO KENTE:……..DEFENDANT/APPLICANT

Appearance: None.

RULING.

The Defendant/Applicant by a Motion on Notice dated 22nd September, 2020 and filed on 25th September, 2020, brought this application praying the court as follows:

1. An order of mandatory injunction compelling the Claimant to refund immediately and in full, the sum of N4,000,000.00 (Four Million Naira) paid by the Defendant in settlement of his (the Claimant's) legal fees incurred in this case and as a condition for his (Claimant's) consent to amicable settlement and discontinuance of the case.
2. An order of this honourable court staying further proceedings in this case pending the immediate and full refund by the Claimant of the N4,000,000.00 paid by the Claimant(sic).
3. Any further order(s) this honourable court may deem fit to grant in the circumstances of this case.

The facts leading to this application, as per the affidavit in support of the Motion on Notice, is that the Defendant/Applicant, in deference to the court's directive that the parties to this suit, being blood brothers, should explore amicable out of court settlement of the dispute leading to this suit, arranged a settlement meeting between the parties and notable friends and family members.

The Defendant/Applicant averred that the Claimant/ Respondent at the said meeting, gave two conditions to be met by theDefendant/Applicant before he the Claimant/Respondent would accede to amicably resolve this matter and withdraw the suit, to wit;

1. That the Defendant pays the legal bill incurred by him (the Claimant) for the suit, which legal bill he stated to be N4,000,000.00.
2. That the Defendant writes a letter of apology to the Claimant's former employer, NISA Premier Hospital, for the alleged defamatory words which led to the suit.

The Defendant/Applicant stated that on 12th November, 2019, he complied with the conditions stipulated by the Claimant/Respondent by paying the sum of N4,000,000.00 as the Claimant's legal fees incurred in this case, and also co-signed a letter to NISA Premier Hospital dated 12th November, 2019. That the Claimant having accepted theN4,000,000.00, rejected the apology letter already delivered to NISA Premier Hospital.

He statedthat in a show of complete good faith, he agreed to co-sign another letter to NISA Premier Hospital dated 7th January, 2020 and delivered to the hospital on 8th January, 2020, but surprisingly, the Claimant again rejected the

2nd apology letter despite the clear and unreserved nature of the retraction and regret expressed in it.

The Defendant/Applicant averred that despite receiving the N4,000,000.00 through his lawyer, and despite knowledge of two(2) retraction letters submitted to his employers, the Claimant/Respondent has refused to consent to amicable resolution or to withdraw this case, hence the instant application.

In his written submission in support of the application, learnedDefendant/Applicant's counsel, B.O. Onamusi, Esq., raised a sole issue for determination, namely;

> ***"Whether this Honourable Court ought to grant our application in the circumstances of this case?"***

Proffering arguments on the issue so raised, learned counsel contended that given the factual circumstances of this case as lucidly stated in the affidavit in support ofthis application, this honourable court ought to grant this application. He posited that the courts are entitled to exercise their judicial discretion in accordance with the facts and circumstances of the matter before them.

He referred to **Panalpina World Transport Holdings A.G. v. JEIDOC Limited &Anor (2011) LPELR-4828 (CA),** and submitted that it will accord with justice, equity and fair play if this application is granted.

Arguing that the Claimant having taken undue advantage of the Defendant's keenness to settle out of court, cannot be allowed to holdunto the money received as condition for settlement, he urged the court to grant the application in the interest of justice, equity and fair play.

In opposition to the Application, the Claimant/Respondent filed a five paragraphs counter affidavit dated 13th day of November, 2020 and deposed to by one Kingsley Duru, a litigation secretary in the law firm of Claimant's Solicitors.

The Claimant/Respondent averred that the Defendant/Applicant wrote and signed the first letter, but instead of retracting the untrue words said about the Claimant, the Defendant said he had avalanche of credible witnesses, but that family matters are best kept within the family. That when he rejected the first purported retraction letter, the Defendant wrote the second apology letter but only witnessed and refused to author the letter.

He stated that the purported letter of apology not authored by the Defendant has further offended his (Claimant's) sensibilities.

The learned Claimant/Respondent's counsel, P.O. Iyaji, Esq., raised a sole issue for determination in his written address in support of the counter affidavit to wit;

> ***"Whether this honourable court can grant this application given the fact that the Defendant has failed to fulfil the condition in the agreement?"***

The learned counsel submitted that Order 19, Rule 1 of the Rules of this court encourages settlement of disputes by parties.

He posited that what this entails is that parties must endeavour always to abide by the content of their agreement.

He argued that while it was the decision of the parties to resolve their differences by complying with certain terms and conditions, the Defendant unfortunately succeeded in fulfilling

one leg of the conditions, which is payment of legal bill, but defaulted in writing the letter in accordance with the agreed context.

He referred to **SergiusOnyekweli v. Elf Petroleum Nig. Ltd (2009) All FWLR pg 469** on the point that parties are bound bythe wording of their agreement.

He contended that this application amounts to abuse of court process, and is intended to annoy, irritate the Claimant, as an application for stay of proceeding without an appeal is not recognizable in law.

He urged the court to dismiss this application as same is lacking in merit.

On the 20th day of February, 2020, this case was adjourned to 19th March, 2020 to enable the parties explore out of court settlement. On the said 19th March, 2020, the parties informed the court that they were willing to resume hearing as their attempt at settlement had failed.

When the matter eventually came up for continuation of hearing, wherein the Defendant was to open his defence, the Defendant filed the instant application urging the court to mandate the Claimant to refund the sum of N4,000,000.00 paid as his legal fees by the Defendant towards the out of court settlement which had failed.

The Claimant/Respondent admitted that the said sum of N4,000,000.00 was paid by the Defendant for his legal fees as pre-condition for the out of court settlement, but has urged the court to dismiss this application for lacking in merit as, according to him, the Defendant has failed to comply with the second leg of the pre-condition, which is to write a retraction letter to NISA Premier Hospital.

I have taken a critical look at the supposed retraction letter purportedly written by the Defendant/Applicant, and I cannot but agree with the sentiments expressed by the Claimant/Respondent.

From the affidavit evidence of the parties the Defendant was required to write a retraction/apology letter to NISA Premier Hospital retracting words he spoke about the Claimant which were considered untrue. What this simply means is that theDefendant/Applicant who allegedly spoke those words should author the retraction/apology letter.

However, looking at the letter Exhibit “HM5” attached to this application, it is evident that the letter was authored by a third party, one Hon. Josiah Sabo Kente, who is not a party to this suit. The Defendant who was expected to author the said letter merely signed as “witness”.

It is my considered view, for all intents and purposes, that the Defendant did not write the said letter, and accordingly, I agree with the Claimant/Respondent that theDefendant/Applicant did not comply with the second condition precedent to their proposed out of court settlement.

Having said that, it remains a trite position of the law that he that comes toequity must come with clean hands and that he who seeks equity must do equity. See**Alalade v. National Bank of Nigeria Ltd (No.2) (1997) LPELR-5540(CA).**

The Claimant through his counsel received the sum of N4,000,000.00 from the Defendant as part of the pre-conditions for settlement out of court. The Claimant has however, informed the court that he cannot continue with the settlement process as the Defendant has failed to comply with the 2nd condition precedent.

It is an age long aphorism that you can take a horse to the stream, but you cannot force it to drink water.

The Defendant cannot be forced to comply with amicable settlement out of court. At the same time, the Claimant is not entitled to hold onto the money paid by the Defendant as pre-condition for the settlement which has now failed. It willonly accord with justice and good conscience for the Claimant to refund to the Defendant the said sum of N4,000,000.00 while the parties proceed with their legitimate rights to ventilate their claims via litigation in court.

With regards to relief 2 in this application;although it is within the discretion of this court to stay proceedings in a matter pending the compliance with its orders, I do not consider it to be in the interest of justice in this case to grant the order of stay of proceedings prayed for by the Defendant/Applicant.

The instant application therefore, partly succeeds and this court orders as follows;

1. The Claimant is ordered to refund immediately and in full, the sum of N4,000,000.00 (Four Million Naira) paid by the Defendant in settlement of his (the Claimant's) legal fees incurred in this case and as a condition for his (Claimant's) consent to amicable settlement and discontinuance of the case.
2. Order for stay of proceeding in this case is refused.
3. The Claimant is ordered to comply with the order in (1) above on or before the next adjourned date.

HON. JUSTICE A. O. OTALUKA
15/7/2021.