

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ON THE 28TH DAY OF OCTOBER, 2021
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/669/2014

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

AYODEJI ADELEKE AKINJOKUN.....PLAINTIFF

AND

- | | | |
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| <p>1. CAPITAL HOTELS PLC
(Doing business as Sheraton Hotels & Towers)</p> <p>2. MR. MORTEN EBSESEN</p> <p>3. MR. BRUCE (ASST. GENERAL MANAGER)</p> | } | DEFENDANTS |
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RULING

This Motion is M/8069/2020 dated 18/06/2020 but Claimed to have been filed on 15/06/2020. It is brought pursuant to Order 32(1)(5) 1 – 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Court. It prays for:

- (1) An Order setting aside the Order made on 31/01/18 same having been made without jurisdiction.
- (2) An Order relisting the suit.
- (3) An Order affirming the orders made on 10/06/20 as orders made in aid of justice.

(4) Any or further orders as the Court may deem fit to make in the circumstance.

The grounds for the application are on the Motion paper. Learned Counsel rely on the 25 paragraph Affidavit sworn to by the Claimant/Applicant. He deposes that the Defendants have employed series of methods to frustrate this suit. That he was not aware that the suit was coming up neither was he served with hearing notice. That since 2014 till date, the Defendants have employed one method or the other to preclude the hearing of this matter. That the file was at a time declared missing but was retrieved at the instruction of the Hon. Chief Judge. That it is in the interest of justice to grant the application.

The 1st Defendants/Respondent Counsel rely on the 7 paragraph Counter Affidavit deposed to by Karkago John sworn to on the 23/09/20. He deposes essentially that the Claimant/Applicant presented himself as a Legal Practitioner who obtained a fiat, from the then Chief Justice of Nigeria to practice law in Nigeria. That Claimant could not produce a document to that effect. The case was struck out for want of diligent prosecution. That Claimant was in Court on 10/11/16 and 31/01/2018 when the order striking out the suit was

made. That this application was made on 15/06/20. That it is in the interest of justice to refuse the application.

I have read an Affidavit titled Further and Better Affidavit to Plaintiff/Respondent's Counter Affidavit sworn to on 23/09/2020 deposed to by 1st Respondent. The Claimant did not file a Counter Affidavit in this motion. So I do not know what the said Affidavit was responding to. The Claimant/Applicant also filed what he called further Counter Affidavit to Defendant's Further and Better Affidavit. It is also a strange process.

By Order 43 Rules 1 (1) – (4), of the High Court of the FCT (Civil Procedure) Rules 2018, the relevant Affidavit in this application are:

- (1) An Affidavit in support.
- (2) Counter Affidavit.
- (3) A reply Affidavit.

In the circumstance of this case the two Affidavits mentioned inter alia are irrelevant, strange and unnecessary dissipation of energy. They are accordingly discountenanced.

The Claimant/Applicant adopted his Written Address filed along with the Motion. He postulated two issues for determination:

- (1) Whether the order striking out the suit was made without jurisdiction.
- (2) Whether the power of Court to declare the order made on 10/06/20 has a retroactive effect.

I have read both issues. While the 2nd issue is irrelevant to this application, the 1st is not competent before this Court. This Court struck out the suit for want of diligent prosecution. If Claimant/Applicant is challenging the competence of the order or the fact that this Court has no jurisdiction to make that order. The proper venue to ventilate that dissatisfaction is the Court of Appeal. The real issue as contained in the Claimant/Applicant's Motion in my view is whether or not the Claimant/Applicant has made out a case for relisting the suit struck out in his absence for lack of diligent prosecution.

As rightly argued by 1stDefendant/Respondent Counsel in his Written Address, the factors to be taken into consideration in application such as this are:

- (1) The reasons for Applicant's failure to appear in Court.

- (2) Whether there has been undue delay in making the application.
- (3) Whether the Respondent would be prejudiced or embarrassed upon an order for re-hearing being made so as to render it inequitable to permit the case to be reopened.

The Claimant/Applicant, stated in his Affidavit and Written Address that he was not served with hearing notice. I have gone through the records of the Court. On 9/11/17, the Court was informed by the Clerk of Court that it was the Claimant who came to Court to pick that date but the Claimant was absent on the said date he picked. The case was further adjourned to 31/01/18.

On 31/01/18, the Claimant was still absent and the case was struck out. The Claimant initiated this case. He was in Court to pick the earlier date. It is the duty of litigant/counsel to be abreast of his case. If he fails to track his case or when he is reasonably supposed to be aware and he fails to attend Court in respect of a case he filed, he cannot stand on the roof top to shout lack of fair hearing. A delinquent litigant cannot have the support of our Courts. Equity aids the vigilant and not the indolent. The first factor is therefore resolved in favour of the Defendant/Respondent against the Claimant/Applicant.

On whether there is undue delay in bringing this application. The order for striking out this suit was made on 31/01/18. This Motion was filed on 15/06/20, a period of more than 2 years. One of the grounds for the application is that the order for striking out the suit was not brought to Claimant/Applicant's attention on time. The Claimant also deposed to the facts that the case file was missing or that Complaints were made to the Hon. Chief Judge. There are no materials to prove those assertions. In my humble view, there has been undue delay in bringing the application for relisting and I so hold.

On the 3rd condition whether the Respondent will be prejudiced upon an order for rehearing. The Defendants/Respondents' Counsel argued that they will be prejudiced if the application is granted because the 2nd & 3rd Defendant/Respondents who are Foreign National have completed their term of employment and have left Nigeria. By Order 32 Rule 5(3) of the rules of Court states that a party who fails to file an application to relist a cause struck out or to apply to set aside a judgment within 6 days after the order or judgment was delivered or such longer period as the Court may allow shall at the time of filing the application pay a fee

of N200 for each day of default. Proof of payment shall be attached to the application for extension of time.

I have looked at the Motion on Notice. The logo of the NBA is not embossed on the processes as enjoined by the Practice Direction made pursuant to the Civil Procedure Rules 2018. This application was filed more than 2 years after the suit was struck out. The Claimant/Applicant failed or neglected to seek for an extension of time within which to file the application. The Claimant also failed to pay the requisite N200 fee for each day of default after the expiration of the requisite 6 days. The application is incompetent.

For the reasons stated, the application for relisting fails and it is dismissed.

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HON. JUSTICE U.P. KEKEMEKE
(HOH. JUDGE)
28/10/2021