

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/PET/269/2018

MOTION NO: M/6106/2021

BETWEEN:

NGOZI BERNADETTE OBI.....PETITIONER

VS

IFEANYI PATRICK OBI.....RESPONDENT

RULING

By a Motion on Notice dated 23/9/2021 and filed same day, brought pursuant to Order III Rule 4 of the Matrimonial Causes Rules, Order 17 Rule II, Order 43 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Hon. Court, the Applicant pray the court as follows;

1. An Order setting aside the Ruling of this Hon. Court delivered on the 15th day of September, 2021 striking out the Cross-Petition.
2. An order re-listing Cross-Petition of the Applicant for hearing and determination.
3. And for such further order(s) as this Hon. Court may deem fit to make in the circumstance.

The grounds upon which this application is based are;

1. The Cross-Petitioner/Applicant was absent in court when the case came on the 15th day of September, 2021 wherein Counsel to the Petitioner applied for the striking out of the Petition and the court struck out both Petition and Cross-Petition.
2. That the Hon. Court was misled into striking out the Cross-Petition.
3. That the information got to our knowledge when we tried to inquire about the court's sitting in the matter, which from our record was meant to come up on the 21st September, 2021 only to be informed by the court officials that the matter had come up on the 15th September, 2021 and was struck out on application of the Counsel to the Petitioner/Respondent.
4. The Cross-Petitioner/Applicant is still desirous of seeing through the Cross-Petition to its conclusion.
5. The Order of this Hon. Court is required before this Cross-Petition can be re-listed.
6. That the Cross-Petitioner/Applicant was never communicated nor served hearing notice to be in court the day the Petition and Cross-Petition were struck out.

In support of the Motion is an affidavit of 11 Paragraph sworn to by Tolulope Oke. Also filed a Written Address in support. Also filed a

Further/Better affidavit on 2/11/2021 in response to the counter-affidavit of Petitioner/Respondent.

In opposition, the Petitioner/Respondent filed Counter-affidavit of 8 Paragraph deposed to by Angela Otor. Also filed a Written Address.

In the Written Address of Applicant settled by George Ibrahim, a sole issue was submitted for determination;

“Whether given the facts and circumstances of this case, this Hon. Court can grant the instant application”

In the Written Address of Petitioner/Respondent settled by A. A Otor, a sole issue was also submitted for determination;

“Whether or not the Cross-Petitioner/Applicant is entitled to the reliefs sought”

I have carefully considered the depositions in the affidavit of both parties, the submission of Counsel, the judicial authorities cited as well as the annexure VSI of Applicant and I find that only one (1) issue calls for determination which is;

“Whether the Applicant have made out a ground warranting this court to grant this application”

The grant or otherwise of the prayers of the Applicant is at the discretion of court which the court must exercise judicially and judiciously. And to be able to do so, the Applicant must place before the court cogent facts to rely on. In *Anachebe Vs Ijeoma* (2015) All FWLR PT. 784, 183 @ 195 Para. D – F the court held;

“The discretion vested in a court is required to be exercised judicially and judiciously, as it entails application of legal principles to relevant facts/materials to arrive at a just/equitable decision. It is thus not an indulgence of a judicial whim, but the exercise of judicial judgment based on facts and guided by the law or the equitable decision”

Overtime, the court have stated the grounds upon which it may set aside its own judgment. See the case of Babale Vs Eze (2012) All FWLR PT. 635, 287 @ 341 Para C – G.

In this instant case, the Applicant is praying the court to set aside its Ruling delivered on the 15th day of September, 2021 striking out the Cross-Petition and order the re-listing of the Cross-Petition for hearing and determination. The gravamen of the application are as set out in Paras 4 – 6 of the affidavit. Principally that the matter was struck out by this court on 15th day of September, 2021 without service of hearing notice on Applicant or his Counsel and not aware the matter came up on 15th day of September, 2021. Further that the matter was fixed without knowledge of Applicant or his Counsel consequent upon which the court sat and in their absence, Counsel to Petitioner/Respondent unilaterally moved the court for striking out the Petition without regard to the Cross-Petition.

On the other hand, the Respondent contends that the matter was fixed on 15th day of September, 2021 with the knowledge of the parties and their respective Counsel. That Counsel to Petitioner/Respondent never prayed the court to strike out the Cross-Petition of Cross-Petitioner/Applicant, rather only made an application for the Petition to be withdrawn from court

for the time being to avail well meaning individuals that want to intervene in the disputes between the parties intervene and also give parties opportunity to explore the option of settlement.

In the determination of the competing claims of the parties, the court must look at its records and this the court is empowered to do. See the case of *Agbareh Vs Mimra* (2008) All FWLR PT. 409 559 @ 585 Para D – F. I have looked at the records of court find that indeed this matter came up on 15/9/2021 and on the said day neither the Applicant nor his Counsel was in court. However, the court on the said 15/9/2021 did not strike out the Cross-Petition of Cross-Petitioner/Applicant, rather only struck out the Petition of Petitioner/Respondent consequent upon the application Counsel for the Petitioner/Respondent to withdraw the Petition which was granted in line with the Extant Law that the Petitioner who brought this action now seek to withdraw it, should be allowed.

Now, a Cross-Petition is like a counter – claim and its separate, distinct and entirely different and independent action from the main claim. See the case of *Nigeria Maritime Administration and Safety Agency Vs Nigeria LNG* (2020) All FWLR PT. 1073, 966. In effect, the Petitioner/Respondent having withdrawn her Petition does not in any way and manner effect the Cross-Petition of the Cross-Petitioner/Applicant as same still stand. Consequently, the Cross-Petitioner/Applicant is at liberty to proceed with his Cross-Petition, the Petitioner/Respondent having withdrawn her Petition. I so hold.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

25/1/2022

APPEARANCE:

F.O AKOR – FOR THE CROSS – PETITIONER/APPLICANT.

CHIKE OBI – FOR THE PETITIONER/RESPONDENT.