

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 5TH DAY OF MAY, 2022.
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH
(PRESIDING JUDGE)

CHARGE NO:FCT/HC/CR/176/16

MOTION NO:M/6732/2021

BETWEEN

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT/APPLICANT

AND

- | | | |
|-------------------------------------|---|------------|
| 1. GEORGE LOTACHUKWU ODABI | } | DEFENDANTS |
| 2. DEO GRATIAS INTERNATIONAL SCHOOL | | |

RULING

Before this court is a motion on notice filed on the 12th October, 2021 and brought pursuant to section 6(6) and 36 of the 1999 Constitution, section 351(1) of the Administration of Criminal Justice Act, 2015 and under the inherent jurisdiction of the honourable court. The Applicants prays for the following:

1. An order of this honourable court reopening the case of FRN V. George Lotachukwu Odabi & anor Charge No. CR/176/2016
2. And for such further order or orders as this honourable court may deem fit to make in the circumstances of this case.

The application is supported by a 6 paragraph affidavit and a written address.

In opposition the defendants filed on the 17th November 2021 a 14 paragraph affidavit with attached exhibits and a written address.

I have considered the motion on notice before the court, the supporting affidavit, accompanying written address, the counter affidavit with attached exhibits, accompanying written address and the oral submission of both counsel. I am of the view that the issues arising for determination are:

1. The effect of annexures A and B of the Respondent's counter affidavit in this application.
2. Whether the applicant has adduced cogent and satisfactory reasons sufficient to impel this court to grant this application.

The first issue is on the effect of Exhibits A and B on this application.

The defendant /respondent contented that the nominal complainant wrote an application informing the complainant and the court of his intention not to further prosecute this matter. It is trite that a complainant can withdraw a case if it satisfies the court with reasonable grounds for withdrawal. See Section 355 of the Administration of Criminal Justice Act which is reproduced under:

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

See also FRN V. ONONYE (2018) LPELR-45067(CA)PP. 5-12 para D

I have read both Respondent's Exhibits A and B. the respondents contention is that based on the nominal complainants letter to the complainant and this court applying for withdrawal of the case as shown in Exhibits A and B, this application ought to be refused. They

relied on section 355 and 494 of the Administration of Criminal Justice Act in support of this contention.

The applicant on the other hand argued that the instant case being one filed by way of an information and not a summary trial cannot be withdrawn by the nominal complainant. Applicants counsel relies on section 355 and 494 of the Administration of the Criminal Justice Act for the withdrawal of complainant and interpretation of complainant and summary trial. As rightly observed by applicant, the definition of the terms “complainant” and “summary trial” in section 494 of the Administration of Criminal Justice Act puts paid to the defendants contention that this application cannot be granted in view of section 355 of the Administration of the Criminal Justice Act.

See also ADIO V FRN (2019)LPELR-46793 (CA) pg 24

It is also pertinent to observe here that the application before the court is for reopening of the prosecution’s case and not in respect of leave for withdrawal of this case. For this reason it is unnecessary to say more on this issue. See ADIO V FRN (supra).

The above provision however gives that right of withdrawal to the complainant in this case, that is the prosecution in a trial by information and not a nominal complainant as contended by the defendant. The instant criminal proceedings was commenced by the Complainant/Prosecution and it is only this party that can competently withdraw the criminal proceedings under section 355 of the Administration of Criminal Justice Act. The mere fact that the nominal complainant in this case has written for a withdrawal of the case does not preclude the court from reopening the prosecution’s case nor from further continuing with the prosecution of this case, particularly where the court so directs.

Suffice to say that issue one is resolved in favour of the applicant against the respondent.

The second issue is basically centred on whether or not the applicant is in the circumstance entitled to a grant of this application.

The grant or refusal of an application such as the instant one is at the discretion of the court. An exercise of discretion in this regard albeit ought to be done judicially and judiciously.

It is trite that a court has the unfettered discretion in appropriate cases to reopen a case for further evidence and argument in any matter before the court. See

UTIH & ORS V. ONOYIVWE & ORS (1991) LPELR-3436 (SC) PP.114-115, Paras. D-A.

It would be important to give a brief recap of the proceeding preceding this application.

From the records of the court, the complainant has called two witnesses. On the 10th December, 2019, 19th March 2020, the complainant was not in court to call its remaining witnesses hence the defence counsel applied that the case of the complainant be foreclosed. The application of the defence counsel was granted. On the 19th March 2020 the case was adjourned to the 6th May 2020, unfortunately that was the covid 19 period and the case was further adjourned to 15th September 2021. The complainant however filed a motion for leave to reopen its case on the 12th October 2021.

It is imperative that justice is not a one way traffic, particularly in this instance, it's a three way traffic, Justice for society at large, the prosecution and defendant who are entitled to have their case heard and determined within reasonable time.

The complainant in her submission rests on the issue of fair hearing. It is trite that fair hearing is for both the complainant and the defendant. See

INEC V MUSA (2003)LPELR- 24927(SC)PP. 94 paras A.

It is also trite law that the rules or principles of equity help only the vigilant and they do not assist an indolent party who fails to pursue his right diligently and within a reasonable time.

See

FEDERAL UNIVERSITY OF TECHNOLOGY, YOLA v. BRIGHT CHIBUZO NKIRE (2014) LPELR-24202(CA) (Pp. 34-35 paras. F)

The position of the law on when the case of a party may be reopened is that it is at the discretion of the court, whether or not to do so bearing in mind the doctrine of fair hearing. This a principle of natural justice and fair hearing was enunciated in the case of WILOUGHBY V. INTERNATIONAL MERCHANT BANK (NIG) LTD (1987) LPELR-3495(SC) PP. 22 PARA A.

And

ALIYU V. ALMU (2013) LPELR-21857(CA)PG 7-9 per Aboki Jsc

Suffice to say that my thinking is in tandem with that of the applicant that section 355 of the Administration of Criminal Justice Act cannot avail the respondent against the grant of this Application.

The applicant has given reason for its absence in court in the supporting affidavit. The respondent on the other hand opines that the very fact that it took so long to file this application is an indictment of show of lack of diligence. That the delay is unjustifiable.

Suffice to say that I am of the view that considering the facts presented by the prosecution, satisfactory reason has been adduced by applicant and that they ought to be allowed to re-open their case in the overall interest of justice and in the spirit of the doctrine of fair hearing.

Issue two is therefore resolved in favour of the complainant/applicant.

Consequently, this application succeeds, it is granted and order is accordingly made re-opening the case of prosecution in the case of FRN V. George Lotachukwu Odabi & Anor Charge No. CR/176/2016.

Signed

Honourable Judge

Representation

Maryam Aminu Ahmed Ms for prosecution

Ifeanyi M. Nrialike Esq with Ifeoma I. Okeke Ms for defendant.