

**IN THE HIGH COURT OF JUSTICE OF THE  
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/CV/167/2017**

**BETWEEN:**

**CHIEF AYINDE AJAYI.....CLAIMANT/APPLICANT**

(Suing through Lawful Attorney Dr Ona Ekhomu under an irrevocable power of Attorney dated 5<sup>th</sup> June 1997 and registered in the Land Registry Office Abuja)

**CHIEF (MRS) VICTORIA EKHOMU .....(THE PARTY SOUGHT TO BE  
SUBSTITUTED)**

**VS**

**1. HON. MINISTER OF THE FCT**

**2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY**

**3. MRS. OLUWA FOLAKEMI OGUNLEWE**

**4. ALHAJI JAMIL GWAMNA**

**5. ABUJA METROPOLITAN MANAGEMENT COUNCIL.....DEFENDANTS/  
RESPONDENTS**

**RULING**

By a Motion on Notice dated 17/12/2021 but filed on 14/12/2021 with Motion No: M/9169/2021, brought pursuant to Order 13 Rules 30 (1) (2) of the High Court of FCT (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the court, the Applicant seek the following reliefs;

- (1) An Order of this Honourable Court substituting Dr Ona Ekhomu with Chief (Mrs) Victoria Ekhomu as the Claimant in this suit.
- (2) And the Omnibus relief.

The Applicant is supported by a Twelve (12) Paragraph affidavit with one (1) Exhibit attached and marked Exhibit "VEI" deposed to by the Applicant Chief (Mrs) Victoria Ekhomu. Also filed a Written Address and adopts same as oral argument in urging the court to grant the relief.

The processes were served on the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants. The said Defendants did not file their respective Counter-Affidavit, the implication of this is that, the evidence of the Applicant remains unchallenged and uncontroverted.

In the Written Address of Applicant, S. Oseremen Airiohuodion Esq. of Counsel formulated a sole issue for determination that is;

"Whether the Honourable Court should grant the order for substitution as sought by the Applicant"

Submits that order 13 Rule 30 permits the application, that the depositions of the Applicant in Paragraph 5, 7.1, 7.2, 7.3, 7.4 and 7.5 is cogent to ground the application having met the threshold of the law.

Submits that substitution is permissible in law even at the Appellate stage. Refer to Messrs U. Maduka Enterprise (Nig) Ltd Vs Bureau of Public Enterprise & 2 Ors (2019) 12 NWLR 440 Paras D – H, Re Apeh (2017) 11 NWLR (PT. 1576) 252 and Eyesan Vs Sanusi (1984) 1 SCNLR 353.

Replying on the case of Omeruo Eju Vs Iroche Vs HRH Eze Boniface Izuogu & 2 Ors (2020) 4 NWLR 240 Paras A – E submits that the pleadings and claims show conclusively that the claim is in representative capacity. Refer further to Yakubu Vs Bukola (2014) LPELR 22769, Osagauma Vs Military Governor of Ekiti State (2001) 4 SCNJ 30 and Arowolo Vs Akapo (2006) 18 NWLR (PT. 1010) 94, urge court to grant the application and order the substitution of the Applicant in place of the dead Claimant especially as Exhibit “VEI”, conclusively and satisfactorily proves the demise of the Claimant. And the application places the Applicant the Legal Next of Kin and Wife of the deceased in a proper position to substitute her late husband as per the Rules of Court.

Having carefully considered the unchallenged affidavit evidence of the Applicant and the submission of Counsel as well as the judicial authorities cited, I find that only one issue calls for determination that is;

“Whether the Applicant has made out sufficient ground so as to be entitled to the grant of the relief sought”

Order 13 Rule 30 of the Rules of Court allows for change or substitution of parties by death or otherwise. And generally substitution of parties is permitted in deserving cases, upon furnishing to the court, cogent reasons for the substitution. See Insider Communication Ltd Vs Citi Bank & Anor (2019) LPELR 47005 (CA) 14-16 Para A – B. Eyesan Vs Sanusi (1984) 4 SC 115 @ 137. See also Ajandairo Vs Dodo & Ors (2018) LPELR 45137 (CA).

In the instant case, the Applicant states the ground for this application in Paragraph 5,6,7 of the affidavit in support of the application, which is the

demise of Ona Ekhomu as shown in Exhibit "VEI" and who commenced this suit as Lawful Attorney to Chief Ayinde Ajayi Although the 3<sup>rd</sup>/4<sup>th</sup> Defendant did not challenged the affidavit in support of the application, but observes that the Motion to substitute to Donee of Power with the wife is not necessary since the Donor is still in court and has the power rested via the said Power of Attorney.

On the purport of a Power of Attorney the Supreme Court in the case of Chime Vs Chime (2001) All FWLR (PT. 39) 1457 @ 1478 Para D – E have this to say;

"A Power of Attorney is a document and may be under seal which authorize a person to act for another person as his agent. The person who donates the power is called the Donee"

The deceased Claimant as record of court shows, was appointed Attorney by Chief Ayinde Ajayi Via an Irrevocable Power of Attorney dated 5/6/1997 over the property, subject matter of this suit and on the import of a Power of Attorney that is irrevocable the Supreme Court in the case of Chime Vs Chime (Supra) 1484 – 1485 Paras H – B stated;

"It is where a Power of Attorney is expressed to be irrevocable and is given to secure a proprietary interest of the Donee or the performance of an obligation owed to the Donee that it is irrevocable either by the Donor without the consent of the Donee or by death, in capacity bankruptcy, winding up or dissolution of the Donor so long as the Donee has the interest or the obligation remains un discharged"

Thus the Power of Attorney donating power to the deceased Claimant remains with the deceased, even at his demise, going by the authority cited above. The question which follow is whether the Applicant can be substituted as lawful Attorney to the Donor upon the death of the Donee suing as lawful Attorney. In *Innocent Obiora Nwakwo Vs Comfort Agwuna* (2007) LPELR 8445 (CA) Ogebe JCA (As he then was) held that;

“A Power of Attorney cannot confer title on a Donee. It is a mere delegation of the Powers of the Donor to the donee”

Flowing from all of the above, the power donated to the Donee remains with the deceased as it was given as irrevocable. Secondly, the deceased is merely a delegate of power and it is trite law that a delegate of power cannot delegate the power given to him to a third party, therefore the powers donated to the deceased cannot be donated to another hence the Applicant cannot be substituted as lawful Attorney of the donor by this court.

Consequently having found that the said deceased suing as lawful Attorney, himself being a Donee of Power upon his demise cannot donate the powers donated to him to another. The court holds that the application lack merit and is accordingly refused.

**HON. JUSTICE C.O. AGBAZA**

Presiding Judge

22/6/2022

**APPEARANCE:**

S. OSEREMAN AIRIOHUODION FOR THE APPLICANT

NO APPEARANCE FOR 1<sup>ST</sup>/2<sup>ND</sup> DEFENDANT/RESPONDENT

U.V. EGELEMBBA FOR THE 3<sup>RD</sup>/4<sup>TH</sup> DEFENDANT/RESPONDENT