

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA ON THE 13TH DAY OF DECEMBER, 2022

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/1555/19

MOTION NO. M/776/2022

COURT CLERK: JOSEPH ISHAKUBALAMI&ORS.

BETWEEN:

1. OLUSOLA BELLO
2. OLAWALESAHEED ADEBAYO } CLAIMANTS/APPLICANTS

(Carrying on business under the name
and style Ojuelegba Restaurant andOutdoor Services)

AND

1. MRS. OLAYINKA FAYOMI
2. RED SPARROW LTD
3. MESSRS. KAFEDANTAMAR GARDENS LTD } DEFENDANTS/
RESPONDENTS

RULING

I have carefully gone through the Motion on Notice brought by the Defendants to Counterclaim/Applicants. It prays the Court for an Order striking out the name of the 1st Claimant/Defendant to Counterclaim because the said party is deceased.

An Order setting aside the Order foreclosing the Defendants to Counterclaim.

An Order granting leave to 2nd Defendant to Counterclaim to file his defence

In support of the application is an 8 paragraph Affidavit. The deposition in support of the Affidavit is to the effect that the Applicants were not able to file their defence because their Solicitor was given a political appointment. There was therefore lack of communication between the Solicitor and Applicants.

That the 1st Claimant further suffered a protracted illness that lasted over one year which eventually led to the demise of the 1st Claimant. The 2nd Applicant got wind of this case when he was called to pick up Hearing Notice served on his erstwhile Solicitor's office. He has now got a new Solicitor.

An Applicant such as in this case must succeed on the strength of his case. One of the reasons for the Applicants' inability to prosecute their Defence is as a result of protracted illness of the 1st Applicant who eventually died. The Applicant did not place before the Court any medical certificate to prove that assertion. Death is a painful exit from the world. A Certificate of Death from the Hospital is a proof of death of a person. The Applicant did not avail this Court

with a certificate of death. Parading an unmarked Exhibit referred to in the Affidavit as Exhibit 01 titled "Farewell SB".Service of Songs, Order of Service/Order of service is not a conclusive proof of death.

The deposition that the Applicant's Counsel got a political appointment is also not a good reason why they would not prosecute their defence.

In totality the Applicant has not shown sufficient cause why the reliefs sought should be granted. For a Court of competent jurisdiction to set aside its order, the Applicant must satisfy the following conditions:

- (1) The reasons for the Applicant's failure to appear at the hearing.
- (2) Whether there has been undue delay.
- (3) Whether the party in whose favour the order subsists will be prejudiced.

(4) Whether the Applicants' case is manifestly unsupportable.

(5) The conduct of the Applicants throughout the proceedings.

See **ARO vs. LAGOS ISLAND LOCAL GOVERNMENT COUNCIL (2004) 4NWLR (PT. 757) 385.**

The Applicants failed and are unable to prove the above conditions. The Motion fails and it is dismissed.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
13/12/2022

Parties absent.

Dr. Adekunle Oladapo Otitoju with Christiana F. Asoegwu, Esq. for
the Claimants.

Mohammed Lukeman, Esq. for the Defendants

A. A. Orire, Esq. for Interested Party/Applicant.

COURT: Ruling delivered.

(Signed)

HON. JUDGE

13/12/2022