

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT GARKI, ABUJA**

**CLERK: CHARITY ONUZULIKE  
COURT NO. 10**

**SUIT NO: FCT/HC/CV/3228/2022  
FCT/HC/CV/3229/2022  
FCT/HC/CV/3230/2022  
DATE: 31/03/2023**

**BETWEEN:**

**INCORPORATED TRUSTEES OF THE NIGERIA  
GOVERNORS' FORUM** (By itself and as Representatives  
of All the states in Nigeria including the Federal Capital  
Territory Abuja, as well as all the Local Government  
Areas and Area Councils in Nigeria) } **CLAIMANT**

**AND**

1. **PANIC ALERT SECURITY SYSTEMS LTD**  
2. **DR. GEORGE UBOH**  
3. **IKECHUKWU EZECHUKWU, SAN**  
(Doing business as Ikechukwu Ezechukwu & Co.)  
4. **UNITED BANK FOR AFRICA PLC** } **DEFENDANTS**

**RULING**  
**(DELIVERED BY HON. JUSTICE S. B. BELGORE)**

On 20/3/2023, when these matters came up in Court, learned Counsel to the Claimant, Mr. E. Akomaiye informed me that this case has been overtaken by events. Learned Counsel referred the Court to the Notice of discontinuance dated 10/10/2023 and filed on 11/10/22. In essence, he wants the matter to be struck out.

Learned Counsel to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants – Mr. Idumodin Ogumu on the other hand wants the case to be dismissed. He rested his position on the argument that he filed counter-affidavit and Preliminary Objection to the Originating process thereby joining issues with the Claimant. And according to the learned Counsel, since issues have been joined the right order to be pronounced by the Court is an order dismissing this suit in its entirety. Mr. Ogumu cited the following cases to buttress his argument:

- (1) **EFETIROROJE VS. OKPALEFE (1991) 5 NWLR (PT. 193) 517**
- (2) **EGBUKOYA VS. ONYEGBOLE (2015) 8 NWLR (PT. 1461) 317**
- (3) **NWOKEDI VS. R.T.A. LTD (2002) 6 NWLR (PT. 762) 181**
- (4) **ANIREJU EKUDANO & ANOR VS. SUNDAY KEREGBE & ORS (2008) LPELR 100 (SC); (2008) 4 NWLR (PT. 1077) 422.**

Finally, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Counsel urged me to invoke the provisions of Order 24 Rule 1 and 2 of the Rules of this Court and award a cost of One Million Naira (**N1,000,000.00**) only against the Claimant.

Mr. Akomaiye, of Counsel to the Claimant reacted in contradiction to the above argument. He submitted that the case that was filed on 27/9/2022 was never served on the Defendants. But that subsequently, their Notice of discontinuance was then filed on 11/10/2022. According to him “assuming the processes were served on them, they would have 14 days within which to respond. The processes he said they filed were filed on 24/1/2023. We were not aware that an application to file any process out of time was granted by this Court. In effect, no process of the defendants properly before this Court.

Mr. Akomaiye then summarised his submissions that they have effectively discontinued since Defendants took no steps before the date of discontinuance. Learned Counsel urged me to

disregard all the authorities cited since they are not relevant. He urged me to also disregard prayer for cost and strike out the suit.

I have given very anxious and deep consideration to this oral application to which both parties have dissipated much energy. I actually have no problem with that.

The concern of this Court is what is the true facts vis-à-vis the Notice of the Plaintiff seeking to discontinue this matter. Ordinarily, this should cause no fuss at all. But then the question of what is the nature of the order the Court should give – a strike out or an outright DISMISSAL?

This is the crux of the matter. The law is that if issues were joined prior to Notice of discontinuance, the order would be DISMISSAL otherwise it would be STRIKING OUT. See *NWOKEDI VS. R. T. A. LTD* (2002) 6 NWLR (PT. 762) 181; *EGBUKOYA VS. ONYEGBOLE* (2015) 8 NWLR (PT. 1460) 317.

The *locus classicus* authority on this principle in **EFETIROJE VS. OKPALEFE** (1991) 15 NWLR (PT. 193) 517.

What are the facts as found by me in this case? Very simple and straight forward.

- (1) The 1<sup>st</sup> and 2<sup>nd</sup> Defendants were not served with the writ in this case by the Claimant at all. See paragraph 3 of the counter-affidavit of 1<sup>st</sup> and 2<sup>nd</sup> Defendant.
- (2) When 1<sup>st</sup> and 2<sup>nd</sup> Defendants got information about the pendency of the matter in Court, they swiftly reacted to it by filing their counter-affidavits.
- (3) The Claimant filed a Notice of discontinuance.

The question is when did 2 and 3 happened?

- (1) The Claimant's Notice of discontinuance was filed on 11<sup>th</sup> October, 2022.
- (2) 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed two processes to wit: Counter-Affidavit and Preliminary Objection were filed on 24<sup>th</sup> January, 2023.

By the above clear dates, it's crystal clear that the Claimant has exercised his right to put an end to this matter which they voluntarily instituted. This solid fact made a mess of the oral application of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants application asking me to dismiss this suit. It cannot be. I agree with the learned Counsel to the Plaintiff that all those authorities cited by the learned Counsel to the two Defendants cannot avail him. I agree and hold that they are not relevant.

Perhaps I should lend credence to my position by referring to just one authority that is the case of **IMPERIAL HOMES MORTGAGE BANK LTD VS. MOUNT GILGAL INVESTMENTS LTD & ORS. (2017) LPELR – 42711 (CA)**. In that case it was held thus:

***“.....This brings up the import of a Notice of discontinuance means the termination of a law suit by the Plaintiff, voluntary dismissal on non-suit. The notice has the effect of the Plaintiff removing the suit and put to end the questions sought to be determined at the Court of trial. The Rules of Court provides for Notice of discontinuance with a regime of the order to be made depending on the stage of proceedings. Usually before issues are joined, it requires the filing of a Notice of discontinuance but when issues have been joined or the matter has gone into hearing, then it should***

**be by way of Motion on Notice for discontinuance and in such situations, the Court can impose conditionalities for discontinuing the suit. Generally, a Notice of discontinuance once duly and validly filed cannot be recalled, because the moment it is effectively filed, the suit ceases to exist and is legally discontinued. The Supreme Court in the case of OGUNKUNLE VS. ETERNAL SACRED ORDER, C & S (2001) 12 NWLR (PT. 727) 359 held: “A discontinuance in my view, brings the action or that part of the action as is discontinued to an end against the defendants or such of them whom the action has been discontinued without further intervention from the Court.” The Applicant has failed to understand the import of the mere filing of the Notice of discontinuance. The situation can be likened to a corpse in the Mortuary waiting to be buried on a latter day. It cannot be withdrawn nor can any legal step be taken on the matter except burial formalities and burial ceremonies are not in the interest of the dead but for the health of the society that demands that the dead must be properly buried. The Court must not end the matter formally by an Order. The idea of filing an objection to require a hearing is uncalled for. All the defendants need to do is to demand for conditions to be placed on the withdrawal because the Court cannot take any step in the matter other than those necessary for formally terminating the suit, once the notice is filed. The Court and the other party cannot force the plaintiff to continue with the suit. The essence of the requirement to either file just a notice or a Motion on Notice is dependent on the stage of proceedings and to allow the Court make certain orders when the**

***matter has gone to a particular stage. It is not to allow a defendant contest the discontinuance. No, not at all. The Applicant further argued that the suit did not automatically cease, the question is whether in law, the matter was alive? Once the notice is filed, the matter has legally ceased and it would not matter whether the final order was made one year later” PER NIMPAR, JCA***

In effect and having regard to the foregone, this case has been effectively discontinued as far back as 11<sup>th</sup> October, 2022. The oral application asking for dismissal has no merit and it is hereby refused.

Consequently, suit numbers **FCT/HC/CV/3228/2022, FCT/HC/CV/3229/2022, CV/3230/2022** are hereby struck out.

SIGNED

**S. B. Belgore**

(Judge) 22/3/2023