

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA
ON TUESDAY THE 5TH DECEMBER, 2023**

SUIT NO: FCT/HC/GWD/CV/26/2019

BEFORE HER LORDSHIP: HON. JUSTICE A.I. AKOBI

BETWEEN

JUMAI I. ETSU KWALI.....CLAIMANT

AND

**1. MR. INNOCENT NGENE
2. THE REGISTERED TRUSTEES OF THE
REDEEMED CHRISTIAN CHURCH OF GOD** }.....**DEFENDANTS**

R U L I N G

This matter came up on the 10/10/2023 for continuation of hearing. It is on record that the Claimant testified before this court on 25/10/2021 and fully cross examined. Mr Julius Angbashim informed the Court unfortunately that the Claimant is late; and went further to inform the Court that their next witness willfully refused to come to Court hence, they are closing their case.

Chinyere A. Nduka of counsel to the 1st Defendant admitted that she was informed of the unfortunate death of the Claimant, but stated the position of law that in circumstances of this nature, before a further step would be taken on the matter the name of the deceased person must be substituted with a living person. Mr. Agbashim told the court they were doing something about it;

however that he had informed the Court they were closing their case. To avoid a further heated argument on the subject matter, I called on the parties to address the me on whether the counsel to the Claimant can go on to close his case without first substituting the Claimant who is now deceased with a living person.

The 1st defense counsel in addressing the court stated that, in the eyes of the law a death person does not have the right to sue or be sued, and that in the course of proceedings, if the circumstance of a party change making the party unable to proceed with the case, the necessary step is to apply to substitute the party, in this case the deceased person with living person to continue with the proceedings.

Mr. Julius Angbashim on the other hand argued that it is the rules of this Court that guides the proceedings of the court. He alleged how he had read wholly the rules of this Court and found no provision on party passing on with respect to substitution of deceased person. In view of that gap that they are left with no option but to rely on the discretion of the Court. He referred the court to Order 13 Rule 30 of the rules of this court to say that death of a party will not stalled the Judgment of the Court.

I have listened to the submission of the parties and relying on some judicial authorities I cannot but agree with the counsel to the 1st defendant that a dead man cannot sue or be sued. There are legion of judicial authorities in support of this. The Supreme Court held in **SGB LTD VS. BURAIMOH (1991) 1 NWLR (pt. 108) 428, 436**; that in the eyes of law a dead person ceases to exist. He cannot therefore maintained, sustained or commence action in his name. Also in **APC V. INEC (2014) LPELR-24036 (SC)** it was held inter alia that: "Dead persons whether natural or artificial, lack the vires of initiating and maintaining an action.

After conducting personal research on this subject, the most disturbing and pressing question in my mind right now is whether personal action as in this case dies with the party or the law allows substitution of the name of the living person with the death person? To resolve this, it is not enough for parties to address the Court as done or requested; I therefore ordered the party requesting to be substituted or for substitution to file a motion on notice to that effect.

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HON. JUSTICE A. I. AKOBI
05/12/2023