

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

20TH DAY OF APRIL, 2023

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

SUIT NO. FCT/HC/CV/2701/2020

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

JACOB OBANDE AJENE CLAIMANT

AND

MAJOR ALHAJI AJENE (RTD) DEFENDANT

JUDGMENT

The claim before this Court against the Defendant vide a Writ of Summons and Statement of Claim is dated the 22nd day of September 2020. It was served on the Defendant on the 23rd October 2020.

On the 1st day of November 2020, the Defendant entered appearance and filed a Statement of Defence with a Counterclaim embedded therein.

What ordinarily should be Statement of Defence and Counterclaim was titled “Defendant’s Statement of Defence” misleading and inappropriate in the circumstance.

However, on the 4th of February 2021, the Claimant applied to withdraw the claim pursuant to his Notice of Discontinuance dated and filed on 9/11/2020. The case was accordingly struck out and the Counterclaim subsequently set down for hearing.

In proof of his case, the Defendant/Counterclaimant gave evidence for himself. He said he is Major Henry Alhaji Ajene (Rtd) of House A64, Basic Estate, Lokogoma, Abuja.

He adopted his Written Deposition on Oath. He repeats paragraphs 1 to 59 of his Oath in respect of the claim and further states that the Defendant to Counterclaim has been harassing him by filing Court cases against him when he has no cause of action against him.

That Suit MHC/332/2018: JACOB OBANDE AJENE, ESQ. & 4 ORS. vs. JACOB OGIRI AJENE & 4 ORS. in which he was 3rd Defendant. That he was compelled to engage a Counsel to defend himself. That it caused him to expend his hard earned fund. That he expended ₦4.5 Million as legal fees.

That the particulars of special damages are:

- (a) Bill of Charges from Solicitors and Solicitors' letter forwarding same.
- (b) Payment Receipt from Solicitors issued to him for the settlement of Bill of Charges.

That Defendant to Counterclaim filed this suit even though the suit does not disclose any cause of action against him. That he has been compelled again to engage a lawyer to defend himself. That he will surely engage a lawyer, pay for filing fees and attend Court.

That the Defendant to Counterclaim is simply using the Court process to harass and annoy him for no just cause thereby putting him into making unnecessary legal expenses.

That he is aggrieved and claim against the Defendant the following:

- (1) Special damages in the sum of ~~₦~~4.5 Million.
- (2) An Order of Perpetual Injunction restraining the Defendant to Counterclaim from frivolous Court actions.
- (3) General Damages in the sum of ~~₦~~5 Million for harassment, abuse of Court process and unnecessary legal expenses.

The Counterclaimant tendered Exhibits A - A2, i.e.

- (1) Letter from Counterclaimant's Solicitors with Bill of Charges dated 20/01/2019 and Receipt of Payment.
- (2) Proceedings in MHC/5049M/2018.
- (3) Certified True Copy of Writ of Summons in MHC/332/2018.

Under Cross-Examination by the Defendant to Counterclaim, the Counterclaimant answered as follows: That Suit MHC/332/2018 was instituted. He was added as a party but his name was later removed from the case.

To another question, he answered that it is this particular case that makes him incur ~~N~~4.5 Million. That it is still pending.

The Defendant to Counterclaim failed to file a Defence to Counterclaim. He did not therefore enter a defence.

The Counterclaimant's Final Written Address is dated 22/10/2022 but filed on 28/10/2022. He raised one issue for determination. It's whether the Counterclaimant established his claim to be entitled to judgment.

That Defendant did not file any Defence to Counterclaim. That Defendant to Counterclaim never intended to contest the Counterclaim and indeed has not contested the Counterclaim. That it is an admission.

That the evidence of the Counterclaimant is not controverted. He urges the Court to resolve the issue in favour of the Counterclaimant having discharged the burden of proof.

The Defendant to Counterclaim adopted his Final Written Address dated and filed on 25/12/2022. He canvasses that the Counterclaim does not disclose a cause of action.

That Counterclaimant has not proved any legal right which Defendant to Counterclaim has breached. That filing a case against the Counterclaimant in court is not a breach of any cognizable legal right.

That if an award of Court is warranted it would be asked for and awarded at the end of each case. That the claim for Solicitors' fees has now been frowned against by the Court.

On whether having discontinued the claim before filing the Counterclaim, the Counterclaim can stand. He argues that the moment the Claimant filed a Notice of Discontinuance, the entire suit before the Court dies a natural death.

That on 12/11/2020 when the Counterclaimant filed his Defence/Counterclaim, there was no existing suit and no claim upon which a Counterclaim can be validly set up.

That the relief of the Counterclaimant cannot be granted. There is no cause of action. That there is no actionable wrong upon which the claims can be based. That failure of Defendant to Counterclaim to file a Defence does not automatically entitle Counterclaimant to the reliefs sought.

The Defendant to Counterclaim filed and also adopted his Reply on Points of Law. I have equally read and considered same. The issues for determination as can be garnered from the parties' Written Addresses are as follows:

- (1) Whether the Counterclaimant has made out any reasonable cause of action.
- (2) Whether having discontinued the original suit before the Counterclaimant filed his Counterclaim, the said Counterclaim can stand in law.
- (3) Whether the Counterclaimant established his claim so as to be entitled to judgment.

On the first issue, ***whether the Counterclaimant has made out a reasonable cause of action to be entitled to the reliefs sought:***

A cause of action has been defined to mean the fact or facts which established or giving rise to a right of action and that it is a factual situation which gives a person the right to judicial relief.

It is every fact which is material to be proved to entitle a Claimant to succeed on all those things necessary to give a right to relief in law or equity.

See **A-G FEDERATION vs. A-G ABIA STATE & 35 ORS (2001)**
1 NWLR (PT. 725) 689 at 733
MILITARY GOV. ONDO STATE vs. KOLAWOLE & 4 ORS.
(2008) 4-5 SC (PT. 11) 158 at 184 - 185.

It is sufficient for a Court to hold that a cause of action is reasonable once the Statement of Claim in a claim discloses some cause of action or some questions fit to be decided by a single judge notwithstanding that the case is weak or unlikely to succeed.

I have read the Counterclaim. His allegation is that the Defendant to Counterclaim and other conspirators have been harassing him by filing Court cases against him without cause. He listed MHC/332/2018. That he was the 3rd Defendant in that case. That the case did not disclose a cause of action. That he engaged a Solicitor to defend him. That he spent ~~N~~4.5 Million as legal expenses.

Exhibit A1 is a Record of Proceedings of the High Court of Benue State striking out the name of the Counterclaimant being the 3rd Defendant in the earlier

case. He had the opportunity to ask for cost or out of pocket expenses but did not do so.

However, what he is claiming in this Court by his Counterclaim is not cost but professional fees paid to his Counsel for joining him in a case that does not disclose a cause of action against him. That he has been put to some expenses.

The wrong is the filing of a frivolous case against him. The injury is the payment of the sum of ₦4.5 Million to a lawyer to defend the cause.

In my humble view, the Counterclaim discloses a reasonable cause of action and I so hold.

On whether the Counterclaim still stands after the withdrawal of the claim:

The Notice of Withdrawal was filed on 9th of November 2020 and served on the Defendant/Counterclaimant on 12/11/2020. The Defendant/Counterclaimant filed his

Counterclaim on the same date he was served, i.e. 12th November 2020.

I agree with Learned Counsel to the Defendant to Counterclaim to the effect that a Notice of Discontinuance automatically brings the suit to an end from the moment it is filed.

In this instance, the Notice of Discontinuance was filed on the 9th of November 2020. The Statement of Defence and Counterclaim filed on 12th of November 2020 has nothing to hang on as there is nothing to counter.

There must be a claim for the Counterclaim to exist. As at the 9th day of November 2020 at the filing of the Notice of Withdrawal, the claim before the Court fizzled out since the 9th.

The argument of Learned Counsel to the Counterclaimant that the Defendant to Counterclaim must serve and pay cost before the rule will avail the Defendant to Counterclaim is of no moment.

The law is firmly established that a Notice of Discontinuance when filed in the Registry of the Court where the matter is pending puts an end to it. It is from the moment it is filed. It is not a Motion to be formally argued.

On *whether the Counterclaimant has proved his case so as to be entitled to judgment*, it is unfortunate that there is nothing to prove as the Counterclaim collapsed into the bottomless pit.

In totality, the Counterclaim fails and it is dismissed.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
20/04/2023

Parties absent.

O. D. Ulegede, Esq. for the Defendant/Counterclaimant.

Henry Iyanya, Esq. for the Defendant to Counterclaim.

COURT: Judgment delivered.

(Signed)
HON. JUDGE
20/04/2023