COMMUNITY COURT OF JUSTICE,

ECOWAS

COUR DE JUSTICE DE LA COMMUNAUTE,

CEDEAO

TRIBUNAL DE JUSTIÇA DA COMMUNIDADE,

CEDEAO

No. 10 DAR ES SALAAM CRESCENT,

OFF AMINU KANO CRESCENT,

WUSE II, ABUJA-NIGERIA.

PMB 567 GARKI, ABUJA TEL/FAX:234-

9-6708210/09-5240781

Website: www.courtecowas.org

IN THE COMMUNITY COURT OF JUSTICE
OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)
HOLDEN AT ABUJA, NIGERIA

ON WEDNESDAY, MAY 04th, 2016

SUIT NUMBER: **ECW/CCJ/APP/11/14**
RULING NUMBER: **ECW/CCJ/RUL/07/16**

BETWEEN:
1. PLACID IHEKWOABA
2. EBERE UZOWURU
3. AMARAEGBU CHRISTIAN
4. IHEMEMOGU PARTICIA
5. VICTORIA ONYEGBULE — APPLICANTS
6. HILARY GBAJIA
7. PAULINE ONYI
8. BENEDICT OKORO
9. VICTOR IBE
10. CHARLES ALANEME
11, UGOCHI OSUOHA
12. IHEANACHOR JOHN
13. OHANELE VINCENT
14. NWALA MICHAEL
15. IBEAWUCHI EHIRM
16. FINE BOY IWUANYANWU
17. JOSEPH AMAJU
18. JULIUS ANYADIEGWU
19. PAULIUS DURUJI
20. RAYMOND OKORONKWO
(for themselves and as Residents of New Owerri Residential Layouts and Communities)

AND

1. PRESIDENT, FEDERAL REPUBLIC OF NIGERIA
2. FEDERAL GOVERNMENT OF NIGERIA
3. MINISTRY OF DEFENSE RESPONDENTS
4. R. S. B. HOLDINGS NIGERIA LIMITED
5. ATTORNEY-GENERAL OF THE FEDERATION
6. DEMINERS CONCEPT NIG. LTD
7. STATE SECURITY SERVICE (SSS)

COURT'S RULING ON PLAINTIFFS' MOTION TO DISCONTINUE/WITHDRAW THE SUIT AGAINST ALL DEFENDANTS

1. COMPOSITION OF THE COURT

Hon. Justice Friday Chijioke NWOKE – Presiding
Hon. Justice Maria do Ceu Silva MONTEIRO - Member
Hon. Justice Micah Wilkins WRIGHT – Member

Assisted by Mr. Aboubakar Djibo DIAKITE, Esq. – Registrar

2. COUNSEL FOR THE PARTIES AND ADDRESSES FOR SERVICE

For the Applicants:

Chief Noel Agwuocha C.
Onazaekpere Chambers, House 1,
First Avenue, Federal Housing Estate,
Egbeada, Owerri, Imo State,

Barr. Alex N. N. Williams
c/o A.N.N. Williams & Co.
Plot 3, Kokoma Close
Buchanan Crescent Behind Banex Plaza
Wuse 2, Abuja

For the Respondents:

1st, 2nd, 6th and 7th Respondents
Awudumopu Prince Onwa
Suite C06, Peace Park Plaza "A",
No. 35 Ajose Adeogun Street,
Peace Micro Finance Bank Building
Utako District, Abuja

The 3rd Respondent
Ministry of Defense
Defense Headquarters, Ship House
Olusegun Obassanjo Way
Area 10, Garki, Abuja

The 4th & 5th Respondents
Chief Charles H. T. Uhegbu
Lawlink Chambers, Suite 1, 5th floor,
Nicon Ins. Plaza, Mohammedu Buhari Way
Central Business District, Abuja

3. SUBJECT MATTER OF THE PROCEEDINGS

3.1. Injuries to Applicants and the continuous violations and threatening of the fundamental Human Rights of the Applicants by the continuous presence of bombs, landmines and other Explosive Remains of War in the Applicants' communities and environment.

4. SUMMARY OF PLEAS IN LAWS ON WHICH APPLICATION IS BASED

1. Articles 4, 5, 6, 12(1), 16 (1) (2), 18(1) (4), 19, 24 of the African Charter on Human and Peoples' Rights
2. Sections 33(1), 34(1), 35(1), 38, 41(1) 46(1) Cap IV, Constitution of the Federal Republic of Nigeria, 1999 (as amended)
3. Article 9 of the Supplementary Protocol (A/SP.1/01/05 of the ECOWAS Court
4. Articles 13(1) (6), 32, 33 of the Rules of Community Court of Justice
5. Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention 28 November 2003)

5. FACTS AND PROCEDURE

5.1. NARRATION OF FACTS BY THE APPLICANTS

5.1.1. Applicants are victims of Explosive Remnants of War, Landmines and Bombs. The Applicants are those whose Fundamental Human Rights are violated and threatened.

5.1.2. There are more bombs scattered in the Applicants Community/Environment in Imo State. The Applicants are a class of persons whose Fundamental Human Rights have been violated, and threatened by bombs and landmines in the kitty of the Respondents; and they did not fight the Nigerian Civil War, but were severely injured by landmines explosions, other Explosive Remnants of the War abandoned in their Autonomous Communities/ Environment by army after the Nigerian Civil War such having not been cleared by the Federal Government of Nigeria.

5.1.3. The Applicants are persons/victims injured after the Nigerian Civil War by landmines or other Explosives Remnants of Nigeria Civil War, who are still living in contaminated communities in Isiala Mbano, LGA, Imo State. Applicants have common interests and will enjoy common benefits by the outcome of this suit. They were affected by non-education and non-clearance of landmines and bombs after the Civil War.

5.1.4. The Applicants state that they have not been going to their farms since their accidents. The continuing threats and presence violate their right to life, right to satisfactory healthy environment and right to freedom of movement, as well as limited their abilities to attain adequate, effective and effectual physical and mental health and development as they are almost perpetually traumatized and disabled.

5.1.5. The Applicants state that the Federal Government represented by the Ministry of Defense, 3rd Respondent, hired the services of the 4th Respondent, R. S. B. Holdings Nig. Limited. They started work between 2009 and 2011 and midway in 2011, the contractors were stopped from clearing and since then they have not returned to work in spite of all pleas by Applicants.

5.1.6. The Applicants state that the 2nd, 3rd, and 5th Respondents have not allowed the 4th Respondent, R. S. B. Holdings Nig. Limited access to facilities to destroy the bombs, but have allowed the Applicants, their communities and environment to continue to live with live bombs.

5.1.7. Applicants aver that their contaminated Lands/Environment/farmlands should be treated for agricultural purposes and sustainable developments.

5.1.8. Applicants aver that Aquinas Secondary School premises were used by both Biafran Army Engineers and Nigerian Army Engineers who abandoned these bombs.

5.1.9. The Applicants state that victims include their families and communities.

5.2. PROCEDURE

5.2.1. The initiating Application (**Document number 1),** though dated June 18, 2014, was lodged in this Court on July 11, 2014, and was accordingly served on the Respondents.

5.2.2. The Respondents filed their respective Statements of Defense in response to the Originating Application, raising several very important issues of both law and fact. In addition to their Statements of Defense, the Respondents respectively filed Preliminary Objections to the suit of the Applicants, challenging this Court's jurisdiction and competence to entertain this suit as well as questioning the Applicants' own ability to bring this suit, and requesting this Court to dismiss this suit.

5.2.3. After pleadings rested and the case awaiting hearing and disposition of the various Preliminary Objections filed by the Defendants, the Applicants filed a Motion on September 14, 2015 praying for leave of the Court to allow the Applicants to withdraw and/or discontinue the proceedings in this Suit against all the Respondents (**Document number 10**).

5.2.4. On October 19, 2015, the 1st, 2nd, 6th and 7th Respondents filed a Motion for Extension of Time (**Document number 11)** within which to file their Counter Affidavit (**Document number 12)** in opposition to the Plaintiffs/Applicants' Motion to Withdraw.

5.2.5. Likewise, the 4th and 5th Defendants on November 30, 2015, filed a Motion for Extension of Time (**Document number 13**) within which to file their Counter Affidavit (**Document number 14**) in opposition to the Applicants/\Plaintiffs' Motion to Withdraw.

5.2.6. Then on November 30, 2015 the Applicants/Plaintiffs filed their Reply on point of Law (**Document number 15)** to the Counter Affidavit of the 1st, 2nd, 6th and 7th Defendants. Finally on December 02, 2015, the Applicants/Plaintiffs also filed similar Reply on point of Law (**Document number 16**) to the Counter Affidavit of the 4th and 5th Defendants (**Document number 17**).

5.2.7. When this case was called on December 03, 2015, pursuant to a regular Notice of Assignment for hearing of the Preliminary Objections filed by the Defendants, and after the notation of representations/announcement of appearances, the counsel for the Plaintiffs/Applicants brought to the court's attention that he had, on September 14, 2015, filed in the Registry of this Court, a Motion on Notice begging leave of the Court for permission to withdraw and/or discontinue the proceedings in this suit against all the Respondents, (**Document number 10 aforesaid**).

5.3. PLAINTIFFS' MOTION FOR DISCONTINUANCE/WITHDRAWAL

5.3.1. In their Written Address to support their Motion for withdrawal/discontinuance, the Plaintiffs stated:

-
"FACTS:
"Applicants commenced this Suit by way of the Originating Motion in 2014 against the Respondents.

3.01**.** Counsel in this matter were privileged to be part of the Lawyers from the Owerri Branch of the Nigeria Bar Association (NBA) who participated in the 7th Judicial Retreat/Seminar of the **ECOWAS COURT OF JUSTICE, w**here Counsel learnt a few new things arising from discussions on the Application and Implementation of ECOWAS Court Rules."

"ISSUES FOR DETERMINATION:"
"Whether the Applicants can withdraw and/or discontinue the entire proceedings in this Suit against the Respondents at any stage before judgment."

"ARGUME NT:

"5.01. During the Retreat, a lot of issues were raised and discussed including Practice and Procedure as well as Improved Access to Court wherein Counsel for the Applicants learnt so many new things that made Counsel take steps to regularize innocent mistakes made in the commencement of the Originating Motion arising from typographical errors and/or mistake of Counsel when Counsel included the word "President"; to Federal Republic of Nigeria as a party while commencing the action. Humbly referred to paragraphs 6, 7, 8 and 9 of the Affidavit in Support."

"5.02. Leave of court as necessary to discontinue at this stage. Though hearing has not commenced but a date has been fixed for hearing. It is further submitted that where Notice of discontinuance is filed on or after the date the action was first fixed for hearing the judge or court has discretion to grant or refuse the Application. See Prof. Edozien & Ors vs. Chief Edozien (1993) I NWLR (Pt. 272) 678 or Abayomi Babatunde v Pan Atlantic Agencies Ltd &Ors (2007) All FWLR (PT. 372) 1721. It is argued that evidence has not been given and issues involve have not crystalized as to make it possible for Court to give a decision on the merits of the case."

"5.03. We submit that this is the mistake of counsel and not that of the Litigants. Humbly referred to paragraphs 9 and 22 of the Affidavit in Support."

"5.04. It is trite and the Courts have consistently held that the inadvertence of Counsel or that the Sins of Counsel should not be visited on the Litigant especially when such a decision would invariably lead the Court to reach a decision which would not or cannot be regarded as being a decision on the merit. In support of this Principle of Law, we humbly refer this Hon. Court to the decision in the case of Messrs Ude Ubaka & Sons V.C.C. Ezekwem& Co. (2000) 10 N.W.L.R. PT. 676 Page 600 – 612 particularly at Page 604 where the Court of Appeal (in Nigeria) stated that:
"An Applicant should not be punished for the mistake or inaction or inadvertence of his Counsel".

"5.05. It is submitted as trite that the mistake of Counsel cannot be visited on Litigants to vitiate a Suit.

"5.06. It is submitted that a Plaintiff in any Suit can discontinue or withdraw his Claims against any Defendant at any time. This is a trite principle of law."

"5.07. It is argued that the essence of the 7th Judicial Retreat is to ensure and facilitate improvements in the Application and implementation of ECOWAS Court Rules to enable the Hon. Court do Substantial Justice and not Technical Justice to the development of the Community law and improved access to Justice in ECOWAS Court. See paragraph 17 of Affidavit. Notice of Discontinuance is not collateral but part of Counsels implied authority as an Agent of his Client- the Applicant. See BAYKAM VENTURES LTD VS. OCEANIC BANK INTER. LTD (2005) ALL F.W.L.R (Pt. 286) 648 at 668 C.A."

"5.08. It is contended that hearing has not commenced in this Suit but a Hearing date has been fixed this is notwithstanding that the Hon. Court was gracious enough to grant the 1, 2, 3, 6, and 7th Respondents leave to file their Statement of Defence after a prolonged time. Also the 4th and 5th Respondents are yet to file their Statement of Defence. Humbly referred to paragraph 18 of the Affidavit."

"5.09. It is submitted that there is no Litis Contestatio between the Applicants and the 3rd Respondent."

"6.00. It is submitted that this Application is primarily to enable the Applicants repair their case in time and in line with Counsels new experiences and knowledge acquired at the 7th Judicial Retreat of the ECOWAS Court held in Owerri see paragraph 4 and 5 of the Affidavit and paragraph 17 of the Affidavit."

"6.01. This is strongly contended that this will enable the Hon. Court to do substantial Justice and preserve the Res which subject matters anchors on the need for save Humanity from extinction. See paragraphs 28. It has become necessary to effect these corrections at this stage as there is no provision for appeal when the Court takes a decision. See paragraphs 13, 14, 15, of the Affidavit."

"6.02. Punishment if any will be visited on Counsel if the Hon. Court refuses this Application. However, Article 28 of the ECOEAS Court Rules provides some privileges and immunity to actions of Counsel in a Suit pending before this Hon. Court while appearing as Counsel before it. See paragraph 26."

"6.03. The Applicants faced the misfortune of again losing all the case files when thieves broke into the vehicle of one of the Applicants Counsel at Owerri in June, 2015 which act necessitated a letter informing this Hon. Court and their Counsel of the development through a Sworn Affidavit of loss. See paragraphs 19, 20 and 21 of the Affidavit in Support."

"6.04. We therefore contend that Applicants have made out cogent reasons in the body of the Affidavit which the Hon. Court can lean towards in exercising its discretion in favour of the Applicants. This would be in line with doing Substantial Justice."

"CONCLUSION:
"The Hon. Court is urged to resolve the sole issue in the affirmative and grant the Applicants prayer. May it please the Hon. Court."

5.4. RESPONSES OF THE DEFENDANTS/RESPONDENTS

5.4.1. CONTENTIONS OF THE 1st, 2nd, 6th AND 7TH RESPONDENTS

As stated earlier, on October 19, 2015, the 1st, 2nd, 6th and 7th Respondents filed a Motion for extension of time (Document number 11) within which to file their Counter Affidavit and supporting Written Address(Document number 12) in opposition to the Plaintiffs/Applicants' Motion to Withdraw. In their written Address the said Defendants said

"INTRODUCTION"
"The Respondents received the applicants' motion on notice and a 24 paragraph affidavit praying the Honorable Court to withdraw and/or discontinue the suit which they filed against the respondents. We have filed our counter affidavit of 21 paragraphs and written address praying this Honorable Court to dismiss the suit."

"ISSUES FOR DETERMINATION"
"Whether the applicants can withdraw and/or discontinue the suit before this Honorable Court after exchange of pleadings and arguments thereon?"

"OUR ARGUMENT
"
"It is trite principle of law that innocent errors can be corrected if they be the same as claimed by the applicants. It would be procedurally defective at this stage for the applicants to seek withdrawal and/or discontinuance after brief of arguments have been filed, and preliminary objection argument set down for ruling."

"In YOUNG SHALL GROW MOTORS LTD V. OKONKWO &ANOR. (2010) 3-5 s.c. (Pt III) 124, the Supreme Court succinctly made a clear distinction between the following:"
Withdrawal of a brief before argument, and Withdrawal of a brief after arguments are settled/exchanged/filed by parties that is "litis contestation."

"…the principle governing withdrawal of an appeal on the date fixed for Hearing or any time thereafter, must take a cue from the principle of Discontinuance of Action at the Trial Court after the action has been fixed for hearing. In other words, after Briefs of Argument have been exchanged by the parties whereby issues between them became crystallized "litis contestatio" can be deemed to have been reached. A withdrawal of an appeal from that point in time

must, as an inflexible rule, lead to the dismissal of the appeal." "(Underlining mine.)"

"We therefore submit most humbly that the appropriate order for this Honorable Court to make in the circumstance is dismissal of the suit. The applicants cannot be allowed to withdraw and/or discontinue a suit at a point when "litis contestatio" had been reached and we urge Your Lordships to so hold. See: YOUNG SHALL GROW MOTORS LTD V. OKONKWO &ANOR, supra."

"2.1. Therefore, it is crystal clear that applicants' counsel are on a sticky wicket journey shopping around this court in multiplicity and duplicity of actions looking for whichever that might favor them and we urge this court to resist same."

"Further, the applicants contended in their written address in support of their motion that mistake or sin of the counsel cannot be visited on the litigants. We submit that such argument of counsel in that regard can only hold water where the purported "mistake of counsel" is one bothering on statements of fact or facts alone and in which case the courts are enjoined to allow amendment in respect thereof at any time before judgment is delivered, but certainly not on matters law, practice and procedure as in the instant case."

"It is clear from the affidavit of the applicants that the alleged mistake of counsel is one of law, practice and procedure and therefore the case of Ubako V Ezekwem cited by the applicants cannot come to their aid as same is manifestly inapplicable. The purported mistake of counsel came about as a result of limited knowledge of the law, practice and procedure or insufficiency of common law rules of practice, and thus cannot avail the applicants and we urge the court to so hold."

"2.2. We further submit that even if the applicants' application ought to be given any consideration at all, the law requires that cogent and convincing materials must be placed before the court as evidence of the alleged mistake of fact and not of law (if any) to enable them be entitled to any relief whatsoever."

"Again, the pertinent question that comes to the mind of any right thinking person at this point would be: whether parties can frivolously file an action before any competent court of law and withdraw same at will without recourse to any laid down rules of procedure? To the above question we answer in the negative."

"We submit that applicants' counsel having been properly briefed and retained are deemed to have full knowledge of the rules and practice of the court in respect of

that case. It behooves counsel to acquaint themselves with the said rules of court before invoking the jurisdiction of the court."

Consequently, we urge this Honorable Court to answer the lone issue submitted by the respondents in the negative and dismiss the applicants' application in its entirety as lacking in merit and constituting an abuse of the process of this court and award heavy cost against the applicants and their counsel."

5.4.2. CONTENTIONS BY THE 4th and 5th RESPONDENTS

5.4.2.1. Just like the other Respondents, the 4th and 5th Respondents/Defendants also filed their own Motion for Extension of Time, Counter Affidavit, and Written Address, opposing the Plaintiffs' Motion to Withdraw and/or Discontinue their suit. Similarly, we herein reproduce the full texts of the Motion and the Counter Affidaivt of the 4th and 5th Defendants:

5.4.2.2. In their Written Address in support of the Counter Affidavit, the 4th and 5th Defendants stated:

"INTRODUCTION:"
"My lord, the Applicants filed this Suit No: ECW/CCJ/APP/11/14 and have 17 months after brought this motion praying the court for leave to withdraw/and or discontinue proceedings against all the Respondents in the suit. The 1st, 2nd, 4th, 5th, 6th and 7th Respondents have filed their Statements of Defence and the Applicants have in fact filed their Replies to the defences so far filed."

"ISSUE FOR DETERMINATION:"
"We have formulated only one issue for the court's determination:-
"WHETHER THE COURT SHOULD NOT DISMISS THE APPLICANTS' SUIT AS ISSUES HAVE BEEN JOINED BY THE PARTIES?"

"ARGUMENT:"
"In the case of THE YOUNG SHALL GROW MOTORS LTD. V. OKONKWO (2002) 38 WRN 98**,** the Nigerian Court of Appeal made reference to some Supreme Court cases and held;

"In SOETAN V. TOTAL NIGERIA LTD. (1972) 1 ALL NLR (PT. 1) 1, 3, the effect of withdrawal of an action under sub-rule 1 (2) of order 28 of the Western Nigeria

High Court Civil Procedure Rules was considered by applying the test of litis contestatio, meaning the process of coming to an issue. The test denotes the stage when the party withdrawing his action is deemed to have lost his dominus litis, i.e. mastery of the suit and has, therefore, lost the privilege of moving the court for the particular final order to be made which in the changed circumstances is dictated by the justice of the particular case. In ERONINI V. IHEUKU (1989) 2 NWLR (PT. 101) 46; (1989) 1 NSCC 503, the doctrine was expounded by the Supreme Court where, at page 520, Nnaemaka-Agu, JSC, opined that:

"In my view the rationale of the rule" i.e. in Soetan's case, "is that once issues have been joined to be tried and the stage set for the conflict, then once a certain stage has been reached the plaintiff is no longer dominis litis and cannot be allowed to escape through the back door to enter again through another action."

"The facts of Eronini's case amply vindicate the merit of the doctrine. At the trial, after a few halting steps with the first witness for the plaintiff the plaintiff's counsel who was taken aback by the witnesses evidence that was at variance with the plaintiff's pleading stopped the witness from concluding his evidence and applied to the court to discontinue the case; the application was granted and the case was struck out. On appeal against the order striking out the action the Court of Appeal of Appeal affirmed the decision of the learned trial Judge. On a further appeal to the Supreme Court the decision was reversed and an order dismissing the action substituted therefore on the ground that at the time the plaintiff discontinued his action litis contestatio had been reached."

"In the instant case, the Respondents have filed their defences and some have gone further to file preliminary objection and the stage is set for conflict only for the Applicants to bring this application for withdrawal so that they can escape through the back door enter again and bring another action. We submit that at this stage of the case ***litis contestaio*** has been reached and the Applicant cannot be allowed to re-file after withdrawal. Consequently, we humbly but strongly urge the court to dismiss the Applicants' suit after withdrawal."

"We further refer My Lord to the case of OMO V. AMANTU (1993) 3 NWLR (Pt. 280) 149*where the court held; "There are several decided cases to the effect that any suit withdrawn after issues have been joined should be dismissed and not merely struck out. (See the case of ERONINI & ORS. V. IHEUKU (1989) 2 NWLR (PT. 101) 46; OLAYINKA RODRIGUES & ORS V. THE PUBLIC TRUSTEE &*

ORS. (1977) 4 S.C. 29; AND A.F. SONEKAN V. P.G. SMITH (1967) 1 ALL NLR 3 29).”

“In ERONINI V. IHEUKU supra, the Supreme Court held;
“In such circumstances, withdrawal of the suit from court could never be nor could it ever be conceived as of right or automatic. It was not for the learned counsel in the court below to appear to dictate to the court what order to make in consequence of his application for leave. That was a matter exclusively for the court in due deliberate exercise of its judicial discretion which naturally and inevitably must entail the weighing of all the circumstances of the case in the interest of justice and the balancing of the interest of the parties involved including the balance of convenience and disadvantages which might be suffered by any of the parties concerned. It is after the court shall have given consideration to such matters that it can arrive at what is undeniably a difficult decision which must

appear reasonable in all the circumstances of a particular case. It is then the duty of the court on the principles stated above to decide:
to grant leave for the suit to be withdrawn simply on terms that the same be struck out subject to payment of costs; or to grant leave for the suit to be withdrawn subject to the imposition of certain conditions to be fulfilled before a fresh suit concerning the same subject matter and the same parties may be instituted in the court; or to refuse such leave in which case the suit must be dismissed also on terms as to costs.”

“We humbly submit that the case of the Applicant is no longer ***dominis litis*** because parties in the suit have joined issues by filing their defences to the suit. The proper order for the court to make in the circumstance is dismissal. It is settled law that there has to be an end to litigation. If every litigant is allowed to withdraw his suit at will and file another afterwards even when issues are joined, then there will be no end to litigation.”

“In the case of ATTORNEY GENERAL OF RIVERS STATE V. UDE (2001) SC 423, the supreme court of Nigeria per Aloysius IyorgyerKatsina-Alu, J.S.C. held;
“I cannot agree more. It seems to me that if every party who is given ample opportunity to prosecute his case, contemptuously ignores the Court, he cannot turn round on appeal and claim that he was not given a fair hearing. Such a party does not deserve further indulgence. There must be an end to litigation.”

“CONCLUSION:”
“In conclusion, the 4th and 5th respondents have proved that issues have joined in the suit and as such the proper order to make in the circumstance is dismissal. The Respondents have filed the various defences to the suit. There has to be an end to litigation. The Applicants filed the suit 17 months before they purportedly

discovered they made a mistake. The applicants are being economical with the truth because they cannot claim not to have noticed their mistakes after going through the various defences filed by the Respondents. The Supreme Court has in a plethora of authorities severally held that when issues have been joined, the proper order to make in an application by a Plaintiff or counterclaimant for withdrawal is dismissal."

"The Applicants' application is an Originating Application brought under the African Charter on Human and Peoples Rights and the Constitution of the Federal Republic of Nigeria 1999 as amended where all documentary evidence have been front loaded and oral evidence may not be called."

"We humbly urge the court to exercise its discretion in favour of the Respondents in this case by dismissing the suit with substantial cost."

5.5. PLAINTIFFS' REPLY ON POINTS OF LAW

5.5.1. In response to the various Counter Affidavits of the Respondents opposing the Applicants right to withdraw and/or discontinue their suit, the Plaintiffs/Applicants then filed two separate but similar (almost repetitive) responses/REPLIES on POINTS of Law, in rejoinder to the issue raised by the said Respondents. Likewise, we herein reproduce the full texts of the Applicants rejoinder/ie. REPLY on POINT of LAW:

"REPLY ON POINT OF LAW TO APPLICATION OF THE 1ST, 2ND, 6TH AND 7TH RESPOND ENT S AGAINST APPL ICANTS' MOTION FOR LE AVE TO
DISCONTINUE THIS SUIT"

"INTRODUCTION"

"On the 14th day of September 2015, the Applicants filed their application for LEAVE of this Honorable Court to allow them withdraw/discontinue this suit based on the reasons stated therein including but not limited to the awareness or better understanding garnered by Counsel from the 7th Judicial Retreat of this Honorable Court at Owerri, Imo State as it concerns proper parties before the Court. On the 19th day of October, the 1st, 2nd, 6th and 7th Respondent their "COUN TER AFFID AVIT IN SUPPOR T OF ARGUMEN T AGAINST THE
APPLICANTS MOTION ON NOTICE FOR WITHDRAWAL/OR DISCONTINUA NCE" Obviously, the 1st , 2nd , 6th and 7th Respondents do not
understand applicants' application as they misconstrued it to be withdrawal/discontinuance simpliciter. It is not, it is application for leave……"

“The term leave is defined by the Nigerian Supreme Court in the case of Broad Bank Nigeria Limited VsOlayiwola& Sons Limited (2005) 4M.J.S.C 133 at 143 paragraph E per I. C. Pats-Acholonu, JSC thus:-

“The term "leave" in judicial context imports the exercise of the court's discretion either positively or negatively as it would be outside the bounds of reason to take for granted that the court would willingly grant an application”

“The Court of Appeal of Nigeria defined leave as spelt out in the case of ASONIBARE v. MAMODU & ANOR (2013) LPELR-22192(CA) (P. 22 paras. D-E) Per DANIEL-KALIO, J.C.A. thus:-
"Leave of Court" according to Black's Law Dictionary, 9th Edition means "Judicial permission to follow a non-routine procedure". According to that dictionary, it is often shortened to "Leave,"

“The Supreme Court of Nigeria also made it clear the consequences of failure to seek the leave of Court to do an act where leave is required. In the case of EkanemEkpoOtuVs ACB International Bank PLC (2008) 3M.J.S.C. 191 at 206 paragraph G.
“Where leave is required either in the Constitution or in the rules of Court and leave is not sought and granted, the Court has no jurisdiction to grant the motion as it is incompetent”

“A communal reading of paragraphs 1.0.1 to 1.0.3 above will reveal among other things that a party seeking “leave” of court for a relief has on his own admitted that the relief sought is not expressly granted by court but derivable through the court’s discretion exercised judiciously and judicially.”

“It is settled law that there is no dichotomy between error of counsel based on fact and error of counsel based on law in the long settled principle of not visiting the sins/inadvertence of counsel on the litigant. Contrary to the erroneous submission of Counsel for 1st, 2nd, 6th and 7th Counsel, the position of the law is that litigants are masters of facts while counsel is master of the law. It therefore follows that errors/inadvertence of Counsel is more likely to occur in the realm of law and rules and not of facts. The Honorable Court is humbly invited to discountenance the argument of Counsel for 1st, 2nd, 6th and 7th Respondents with regard to Court not visiting the sins of Counsel on the litigants. We are not ashamed to admit our error as Counsel and urge this Honorable Court to incline itself to substantial justice and not visit our errors/inadvertence on the litigants. We pray for striking out of this suit and not dismissal.”

"The Nigerian Supreme Court of Nigeria held as follows in the case of LEONARD ERONINI & ORS. V FRANCIS IHEUKO (1989) LPELR-1161(SC) (P. 13, Paras. C-F) PER OBASEKI J.S.C.

"It is clear therefore, that a plaintiff and or a defendant who counterclaims may withdraw his claim or counter-claim at any stage of the proceedings before judgment. In some cases (no leave is required), these are mainly in circumstances where no date has been fixed for hearing. No leave is required."

"However, where the case has been fixed for hearing, leave to withdraw is required as the Rule gives power to the court to allow discontinuance. Leave may be granted on terms as to costs and as to any subsequent suit and otherwise as to the court may deem just. In other words, the court must consider the justice of allowing subsequent suit and otherwise."

"It is in clear understanding of the above that the Applicants sought the **LEAVE** of the Honorable Court to discontinue this suit for reasons so stated."

"It is trite law that the Court exercises her discretion based on the facts disclosed by the party seeking to benefit from the discretionary jurisdiction of the court. The case on hand is one where the applicants seek to benefit from the discretionary powers of this Honorable Court by asking for permission to discontinue this suit and for this suit to be struck out instead of dismissal."

"The core reason behind the application for leave to discontinue is that we, applicants' Counsel have come to the undeniable realization that this honourable Court lacks the requisite jurisdiction to hear and determine this action based on the fact disclosed on the face of all the processes filed by the parties that the plaintiffs herein have been proceeding against wrong defendants/wrongly described defendants. "Wrong defendants" in the sense that 1st, 3rd, 4th , 5th, 6th and 7th Defendants herein are not state parties as required by the law governing the Honorable ECOWAS Court and "wrongly described defendant" in that the 2nd Defendant herein, though may pass for a state party in local and national understanding and practices in Nigerian Municipal and Federal Courts does not qualify as STATE PARTY under the ECOWAS Court understanding and practices hence the need to discontinue and start afresh based on clearer understanding of the ECOWAS Court practices and procedure."

"The reason for our application for leave to withdrawal/discontinuance is not because the Applicants lack cause or right of action or that the suit is Statute

Barred as contended by the 1st, 2nd 6th and 7th Respondents in Document 3. This suit is not statute barred because the threat complained of is in continuum."

"The 4th and 5th Defendants (Field Experts and agents of 1st, 2nd, 3rd , 6th and 7th Defendants never denied the injuries of the Applicants but simply stated at paragraph 13 of page 6 of their defence (Document 2) that "4 th and 5th Respondents aver that they are not in a position to state where and when the applicants sustained
t h ei r i n ju ri es o r wh ere they co
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"The 4th and 5th Defendants never denied the presence of unexploded bombs and threats associated thereto but gave excuses why they have continued to disobey the orders of this court made on the 7th day of November 2013. The earliest excuse on record was that the Nigerian Police and Ministry of Mines and Power denied them permit to acquire and deploy dynamites to destroy the bombs and the said agencies of Government had long given them all their requested permits and nothing has been done by the contractors till date. Now their latest excuse is that they are storing those lethal items because of their reasons stated at paragraph 27 of page 8 of their defense that "t h ei r case wil l b e jeo pardi zed i f th e bo mb s wh i ch are part o f
t h ei r ev id en ce were des tro yed befo re th e co u rt 's vi sit
is carri ed out"

"The 4th and 5th Respondents, (agents of 1st, 2nd, 3rd, 6th and 7th Respondents) stated on oath and admitted at paragraph 6 that they actually found objects of threat; "war relics such as Abandoned Armored Vehicles, Gun Boats, Fixed Anti-Aircraft Machine Guns, One crashed Military Aircraft FROM WHICH the 4th and 5th Respondents removed unexploded bombs, bomb sites in many places, in public b ui ldi ng " In other words only bombs among the threats enumerated by the field
experts has been removed. The Applicants contends that bombs are still found in their communities."

"The reason for our application for leave to withdrawal/discontinuance is not because the Applicants' failed to exhaust local remedies before coming to this Court."

"The same field experts and agents of 1st, 2nd, 3rd, 6th and 7th Respondents at paragraph 11 of the same Document 2 admitted on oath and stated as follows:-
"Th e 4 th and 5th Respondents partly deny paragraph (1.0.1) of page (4) of the
Ap pl i cant s ' pl ead ings and st at e th at t he 4 TH AND 5TH RESPONDENTS ARE AWARE that some individuals in the past have made COMPLAINTS to various quarters about the PRESENCE OF BOMBS IN THEIR

COMMUNITIES/
ENVIRONMENT."

"The applicants exhausted local remedies through COMPLAINTS about the presence of BOMBS in their communities/environment but nothing came out of it and they approached this court for justice. The bombs have not been removed."

"The above averments of the field agent of 1st, 2nd, 3rd 6th and 7th Defendants conclusively annihilated the points raised in Document N0. 3 by the Counsel to 1st, 2nd, 6th and 7th Defendants with regard to THIS SUIT BEING STATUTE BARRED."

"We urge the Honorable Court in exercising her discretion to take judicial notice of the fact that as averred at paragraphs 4 and 5 of Document 10, the Applicants' Counsel in a bid to better themselves attended the 7th Judicial Retreat of this Honorable Court held at Owerri, Imo State of Nigeria from 6th to 7th July 2015 and imbibed the lessons learnt from there. Considering how thorough the Honorable Court is, this suit if allowed to proceed as presently constituted will still come to the inevitable stone wall of jurisdiction arising from suing a wrong person."

"Even if the parties elect to waive the issue of jurisdiction arising from wrong defendants just because the said wrong defendants have joined issues; that will not remedy the fact that they are not state parties. It is trite law that parties cannot waive issues of substantial jurisdiction like proper parties."

"It is trite law that the Court lacks jurisdiction when wrong defendants are sued as in this case and it will serve the immediate and enduring interest of justice to terminate this suit on the grounds of want of jurisdiction due to wrong parties than to occupy the time of the Court in vain after the awareness that accompanied the said 7th Judicial retreat of this Honorable Court. It is also trite law that the proper order to make when Court lacks jurisdiction due to suing a wrong party is striking out and not dismissal."

"We therefore urge the Court to grant the Applicants' reliefs sought in Document 10 and strike out the suit and not dismiss it."

"REPLY ON POINT OF LAW TO APPLICATION OF THE 4TH AND 5TH RESPONDENTS A GAINST APPLICA NTS' MO TION F OR LEAVE TO
DISCONTINUE THIS SUIT"

"INTRODUCTION"

"On the 14th day of September 2015, the Applicants filed their application for LEAVE of this Honorable Court to allow them withdraw/discontinue this suit

based on the reasons stated therein including but not limited to the awareness or better understanding garnered by Counsel from the 7th Judicial Retreat of this Honorable Court at Owerri, Imo State as it concerns proper parties before the Court. On the 19th day of October, the 1st, 2nd, 6th and 7th Respondent their "COUN TER AFFID AVIT IN SUPPOR T OF ARGUMEN T AGAINST THE APPLICANTS MOTION ON NOTICE FOR WITHDRAWAL/OR DISCONTINUA NCE" Obviously, the 1st , 2nd , 6th and 7th Respondents do not understand applicants' application as they misconstrued it to be withdrawal/discontinuance simpliciter. It is not, it is application for leave……"

"The term leave is defined by the Nigerian Supreme Court in the case of Broad Bank Nigeria Limited VsOlayiwola& Sons Limited (2005) 4M.J.S.C 133 at 143 paragraph E per I. C. Pats-Acholonu, JSC thus:-
"The term "leave" in judicial context imports the exercise of the court's discretion either positively or negatively as it would be outside the bounds of reason to take for granted that the court would willingly grant an application"

"1.0.2. The Court of Appeal of Nigeria defined leave as spelt out in the case of ASONIBARE v. MAMODU & ANOR (2013) LPELR-22192(CA) (P. 22 paras. D-E) Per DANIEL-KALIO, J.C.A. thus:-
"Leave of Court" according to Black's Law Dictionary, 9th Edition means "Judicial permission to follow a non-routine procedure". According to that dictionary, it is often shortened to "Leave,"

"1.0.3. The Supreme Court of Nigeria also made it clear the consequences of failure to seek the leave of Court to do an act where leave is required. In the case of EkanemEkpoOtuVs ACB International Bank PLC (2008) 3M.J.S.C. 191 at 206 paragraph G.
"Where leave is required either in the Constitution or in the rules of Court and leave is not sought and granted, the Court has no jurisdiction to grant the motion as it is incompetent"

"1.0.4. A communal reading of paragraphs 1.0.1 to 1.0.3 above will reveal among other things that a party seeking "leave" of court for a relief has on his own admitted that the relief sought is not expressly granted by court but derivable through the court's discretion exercised judiciously and judicially."

"1.0.5. The distinguishing factor in all the cases cited and relied on by the respondents and applicants' application here is that while the parties who withdrew or discontinued those cases made applications to withdraw/discontinue, the Applicants chose the path of **"Judicial permission to follow a non-routine procedure."** The Applicants are seeking leave of the Honorable Court. Also, the

procedure involved in those cited cases is entirely different from the procedure of the ECOWAS Court. Furthermore, oral evidence in proof of the facts contained in the writs and statements opf claim in the cases cited and relied on had commenced; in other words, the plaintiffs therein withdrew/discontinued on the realization that their case as constituted had no merit and threw in the towel without leave. In the Applicants' case here, the Applicants are seeking "leave" to discontinue the case because of lack of proper defendants recognized by the ECOWAS Court, otherwise the Applicants will not change one punctuation from the originating processes as presently constituted before the Court."

"1.0.6. The Applicants firmly stand by their submission before this Honorable Court with regard to pleadings as to fact and law. The only setback which we have over flogged is that we, Counsel discovered after the 7th Judicial Retreat of this Honorable Court that we were wrong concerning proper parties and not on real or perceived shortcoming on the cause/right of action and the case is not statute barred. The reality of the said 7th Judicial Retreat and lessons imbibed therefrom cannot be ignored with the wave of the hand. The retreat took place, Counsel participated and the issues of improper or wrongly designated parties and implication formed part of the retreat."

"1.0.7. It is settled law that there is no dichotomy between error of counsel based on fact and error of counsel based on law in the long settled principle of not visiting the sins/inadvertence of counsel on the litigant. The position of the law is that litigants are masters of facts while counsel is master of the law. It therefore follows that errors/inadvertence of counsel is more likely to occur in the realm of law and rules and not of facts as inb this case where we designated the 2nd Respondent here as "FEDERAL GOVERNMENT OF NIGERIA" instead of FEDERAL REPUBLIC OF NIGERIA. We are not ashamed to admit our error as Counsel and urge this Honorable Court to incline itself to substantial justice and not visit our errors/inadvertence on the litigants."

"The Supreme Court of Nigeria held as follows in the case of LEONARD ERONINI & ORS. V FRANCIS IHEUKO (1989) LPELR-1161(SC) (P. 13, Paras. C-F) PER OBASEKI J.S.C."
"It is clear therefore, that a plaintiff and or a defendant who counterclaims may withdraw his claim or counter-claim at any stage of the proceedings before judgment. In some cases (no leave is required), these are mainly in circumstances where no date has been fixed for hearing. No leave is required."

"However, where the case has been fixed for hearing, leave to withdraw is required as the Rule gives power to the court to allow discontinuance. Leave may be granted on terms as to costs and as to any subsequent suit and otherwise as to the court may deem just. In other words, the court must consider the justice of allowing subsequent suit and otherwise."

"It is in clear understanding of the above that the Applicants sought the LEAVE of the Honorable Court to discontinue this suit for reasons already stated."

"It is trite law that the Court exercises her discretion based on the facts disclosed by the party seeking to benefit from the discretionary jurisdiction of the court. The case on hand is one where the applicants seek to benefit from the discretionary powers of this Honorable Court by asking for permission to discontinue this suit and for this suit to be struck out instead of dismissal."

"To dismiss this suit based on the inadvertence of Counsel will go against the driving and core intendment of the framers of the Nigeria Fundamental Rights (Enforcement Procedure) Rules 2009, the principal instrument upon which this application is brought. The Court is by the Nigeria Fundamental Rights(Enforcement Procedure) Rules 2009 (FREP2009) expected to constantly and conscientiously seek to give effect to the overriding objectives of the FREP 2009 at every stage of human rights action especially when it exercises any power given it by the rules of FREP 2009 or any other law and whenever it applies or interprets any rule. We humbly refer the court to Aryicle 3 of the Preamble of the FREP 2009 and urge Milords to lean towards substantial justice and away from technical justice as espoused by the Respondents."

"1.12. The reason for our application for leave to withdrawal/discontinuance is not because the Applicants lack cause or right of action or that the suit is Statute Barred as contended by the 1st, 2nd 6th and 7th Respondents in Document 3. This suit is not statute barred because the threat complained of is in continuum."

"1.13. The 4th and 5th Defendants (Field Experts and agents of 1st, 2nd, 3rd , 6th and 7th Defendants never denied the injuries of the Applicants but simply stated at paragraph 13 of page 6 of their defence (Document 2) that "4 th and 5th Respondents
aver that they are not in a position to state where and when the applicants sustained t h ei r i n ju ri es o r wh ere they co
me fro m"

"1.14. The 4th and 5th Defendants never denied the presence of unexploded bombs and threats associated thereto but gave excuses why they have continued to disobey the orders of this court made on the 7th day of November 2013. The

earliest excuse on record was that the Nigerian Police and Ministry of Mines and Power denied them permit to acquire and deploy dynamites to destroy the bombs and the said agencies of Government had long given them all their requested permits and nothing has been done by the contractors till date. Now their latest excuse is that they are storing those lethal items because of their reasons stated at paragraph 27 of page 8 of Document 2 that "t h eir cas e wil l b e jeop ardized if the b o mb s whi ch are part of th ei r ev id en ce were dest ro yed b efo re t h e cou rt 's vis it is carried o ut ."

"One wonders what the case of the 4th and 5th Respondents are before this Court because they are not here as plaintiffs and did not Counter-claim on record."

"1.15. The 4th and 5th Respondents, (agents of 1st, 2nd, 3rd, 6th and 7th Respondents) stated on oath and admitted at paragraph 6 of Document 2 that they actually found objects of threat; "war relics such as Abandoned Armored Vehicles, Gun Boats, Fixed Anti-Aircraft Machine Guns, One crashed Military Aircraft FROM WHICH the 4th and 5th Respondents removed unexploded bombs, bomb sites in many p l aces , in p ubl i c bu il din g" In other words only bombs among the threats enumerated by the field experts has been removed. The Applicants contends that bombs are still found in their communities and the bombs they removed are still stocked in an open place under the elements in a densely populated mixed residential and commercial district of Owerri, Imo State."

"1.16. The reason for our application for leave to withdrawal/discontinuance is not because the Applicants' failed to exhaust local remedies before coming to this Court. The same field experts and agents of 1st, 2nd, 3rd, 6th and 7th Respondents at paragraph 11 of the same Document 2 admitted on oath and stated as follows:- "Th e 4 th and 5th Respondents partly deny paragraph (1.0.1) of page (4) of the Ap pl i cant s ' pl ead ing s and s tat e t hat t he 4 TH AND 5TH RESPONDENTS ARE

AWARE that some individuals in the past have made COMPLAINTS to various quarters about the PRESENCE OF BOMBS IN THEIR COMMUNITIES/ ENVIRONMENT."

"The applicants exhausted local remedies through COMPLAINTS about the presence of BOMBS in their communities/environment but nothing came out of it and they approached this court for justice. The bombs have not been removed."

"1.17. The above averments of the field agent of 1st, 2nd, 3rd 6th and 7th Defendants conclusively annihilated the points raised in Document N0. 3 by the Counsel to 1st, 2nd, 6th and 7th Defendants with regard to THIS SUIT BEING STATUTE BARRED. The threats are real, present and continuous."

"1.18. Even if the parties elect to waive the issue of jurisdiction arising from wrong defendants just because the said wrong defendants have joined issues; that will not remedy the fact that they are not state parties. It is trite law that parties cannot waive issues of substantial jurisdiction like proper parties. It is trite law that the Court lacks jurisdiction when wrong defendants are sued as in this case. It is also trite law that the proper order to make when Court lacks jurisdiction due to suing a wrong party is striking out and not dismissal."

"1.19. We therefore urge the Court to grant the Applicants' reliefs sought in Document 10 and strike out the suit and not dismiss it."

6. OBSERVATIONS

6.1. We observe that this instant case is a sister case or companion case to that of **Dr. Sam Emeka Ukaegbu and Others**, which we disposed of recently; see **RULING Number ECW/CCJ/RUL/29/15, delivered on December 02, 2015**. The two cases are identical in every respect, except as to the Plaintiffs; that is to say, the subject matter is the same, the Defendants are all the same; the issues raised as well as the claims for relief are all the same; the setting is the same, as well. The Motion to withdraw/discontinue, as well as the responses in opposition thereto, are equally identical. The Legal Counsel on both sides are the same, and their arguments are all the same. The only difference between the two cases is that of the Plaintiffs in both cases.

6.2. In the cited case, the Plaintiffs/Applicants applied to this Court for leave to be allowed to withdraw and/or discontinue their case against all the Defendants. This Court granted the Application/Motion of the Plaintiffs/Applicants and ordered that the case be withdrawn and/or discontinued against all the Defendants/Respondents. The justification by the Plaintiffs for seeking the discontinuance in the cited case are the same reasons stated in this instant Motion, now subject of this Ruling.

6.3. On the basis of **judicial precedence** and that of ***stare decisis***, we are constrained and inclined to similarly rule granting the Motion of the Plaintiffs for the same legal reasons stated by us in our previous Ruling in the cited case. Accordingly, the Ruling in the cited case is herein incorporated by reference and adopted as the Ruling in this instant case, as it stands on all fours.

6.4. As stated earlier, when the case was called for hearing on December 03, 2015, legal representations were respectively announced for all the parties, and

immediately thereafter, the Counsel for Plaintiffs/Applicants informed the Court that he had filed a Motion seeking the special leave of court for permission to withdraw and/or discontinue their case against all the Defendants/Respondents.

6.5. ORAL ARGUMENTS BEFORE COURT

6.5.1. After listening to the information of Counsel for Plaintiffs as to his desire to withdraw or discontinue his suit against all the Defendants, the Counsel for the 1st, 2nd, 6th and 7th Defendants responded by informing the Court that in essence, he does not oppose the withdrawal or discontinuance of the suit by the Plaintiffs so long as the Plaintiffs will not re-file or come back in a new suit.

6.5.2. Counsel argued that it is the duty of counsel to professionally conduct the business of his client, and where the counsel blunders, he must bear the consequences of his action (and/or in-action). Counsel strenuously argued that the case had now reached a determinant factor to decide whether or not to dismiss the case or have it withdrawn. He continued that all pleadings had been filed, exchanged - rested, and that the Defendants had filed Preliminary Objections to the suit awaiting disposition by the court only for the Counsel for Plaintiffs to come at that crucial moment to say he wants to withdraw or discontinue the suit. Counsel argued that this court cannot be reduced to a kindergarten school.

6.5.3. Counsel for1st, 2nd, 6th and 7th Defendants argued that for the Plaintiffs to withdraw this suit and re-file another suit would amount to abuse of court process. The 1st, 2nd, 6th and 7th Defendants further argued that a trial court has the jurisdiction to strike out a case with an order barring Plaintiffs from coming back with the same action. 1st, 2nd, 6th and 7th Defendants also contended that where issues have been joined in a case, the proper order to make in an application for discontinuance of an action is dismissal. Therefore, 1st, 2nd, 6th and 7th Defendants prayed the court to dismiss Plaintiffs' case in its entirety. Counsel then prayed to be awarded costs in an amount equal to 10% of the damages claimed by the Plaintiffs in their originating application.

6.5.4. The 4th and 5th Respondents, by and thru their counsel made a similar submission to that made by the 1st, 2nd, 6th and 7th Defendants and stressed or emphasized that once issues have been joined in a case, a party is not allowed to withdraw or discontinue his case but rather the trial court should properly dismiss and not merely strike out the suit.

6.5.5. Counsel for the 4th and 5th Defendants reminded the Court that this suit is a further abuse of court process, in that there is already a suit filed in this Court, bearing Suit No. ECW/CCJ/APP/06/12 (Vincent Agu and 19 others), by the same lawyers for the Applicants against the same Defendants, involving the same subject matter, and presenting the same issues for determination.

6.5.6. In defense of his Motion to withdraw or discontinue his case, Counsel for the Applicants contended that the granting or denial of an application depends on the reliefs sought. Plaintiffs further argued that there is a difference between withdrawing or discontinuing a case as of right and doing so by special permission or leave of the court.

6.5.7. Counsel said it is unethical and deceptive to the Plaintiffs for counsel to continue pursuing this case and it constitutes a waste of time and money. He said this discontinuance is not based on the fact that their case is statute barred.

6.5.8. Plaintiffs argued that the cases cited by the Defendants are not relevant or analogous to this instant case in that, in the cited cases, the cases had been heard on the merits and the withdrawal or discontinuance was as of right; whereas, in this

case, the case has not yet been heard on the merits and the withdrawal or discontinuance sought is not one of right but by special leave of court.

6.5.9. Therefore, Plaintiffs' counsel prayed the court to overrule the objections of the Defendants and grant his prayer and permit the Plaintiffs to withdraw or discontinue their case. He also prayed that costs be disallowed because none of the parties specifically claimed or demanded costs in their pleading, as required by the Rules of this Court.

7. A. QUESTIONS SUBMITTED

7.1. The Defendants/Respondents have contended that after issues have been joined in a case, the said case cannot be withdrawn or discontinued by the Plaintiff.

7.2. The Respondents have also contended that this Motion to withdraw or discontinue will amount to an abuse of court process if the Plaintiffs are allowed to subsequently re-file the same suit after its discontinuance.

7.3. The 4th and 5th Respondents have also contended that this suit of the Plaintiffs is an abuse of court process considering the existence of the prior suit of Vincent Agu, et al and therefore incompetent.

7. B. ISSUES TO BE RESOLVED

7.4. The basic legal question this Court shall answer is whether or not after issues have been joined in a case, the said case can be withdrawn or discontinued by the Plaintiff?

7.5. A secondary issue which is not necessarily decisive of this case is, what constitutes abuse of court process, and does it exist in this instant case?

8. DISCUSSIONS

8.1. The first question this Court shall answer is whether or not after issues have been joined in a case, the said case can be withdrawn or discontinued by the Plaintiff?

8.1.1. To answer this question, we shall look to the Rules of Procedure governing this Court for guidance.

The **Rules of Procedure, Title II Procedure, Chapter 7 Discontinuance**, provide as follows:

"Article 72

"If, before the Court has given its decision, the parties reach a settlement of their dispute and intimate to the Court the abandonment of their claims, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Article 66(8), having regard to any proposals made by the parties on the matter."

"Article 73

"If the Applicant informs the Court in writing that he wishes to discontinue the proceedings, the President shall order the case to be removed from the register, and shall give a decision as to costs in accordance with Article 66(8) of these Rules."

8.1.2. We observe that the Rules provide two ways by which a case in this Court can be discontinued: (a.) by the parties reaching a settlement, and (b.) by the Applicant informing the Court in writing. We note that the Rules are silent on whether the joinder of issues is a prerequisite or if there are other conditions forming the bases of a party to be allowed to withdraw or discontinue his case.

8.1.3. For this, we shall look to the jurisprudence of this Court for possible guidance.

8.1.3.1. In the case, **Suit No.ECW/CCJ/APP/01/09 AMOUZOU Henri & 5 o thers vs . Co te d'Ivo i re, Ruling No. ECW/CCJ/JUD/04/09**, this Court allowed
the withdrawal of three of the Plaintiffs, and ruled as follows: "The Court accedes to the first request, since the Applicants are at liberty to withdraw from the case at any stage of the procedure." See page 15 of the Judgment delivered 17 December 2009.

8.1.3.2. Further, in the case, Suit no. **ECW/CCJ/APP/13/08 El-hadji Tidjani Aboubacar vs. Etat du Niger & BCEAO, Ruling no. ECW/CCJ/JUD/01/11**, this Court allowed the Applicant, Mr. Tidjani Aboubacar to discontinue his suit against the 1st Defendant Bank BCEAO without the approval or intervention of the 2nd Defendant, Republic of Niger. See pages 6-7 of the Judgment delivered 08 February 2011.

8.1.4. The Defendants have argued that once issues have been joined, the Plaintiffs are not allowed to withdraw their case against the Defendants; whereas, the Plaintiffs have countered that they can withdraw or discontinue their suit either as of right or by special permission or leave of the Court.

8.1.5. We resolve this dispute by referring to our Rules, and as we have seen above, a Plaintiff is allowed to discontinue his case either (a.) by consensus or agreement of the parties in which case, they will jointly inform the court of their decision to abandon their claims and their determination as to costs, or, (b.) by the Plaintiff informing the court in writing of his desire to do so, and the President in both instances, shall give an order to have the case removed from the register.

8.1.6. Based on the above, we resolve this issue by conceding to the position of the Plaintiffs in this case to the effect that they have the right to withdraw or discontinue their case against all the Defendants. Accordingly, the application of the Plaintiffs is hereby granted and the case against all the Defendants is hereby discontinued.

8.1.7. In opposing the withdrawal or discontinuance of the suit by the Plaintiffs, the Defendants argued that if it is allowed, the Plaintiffs will come back in a new suit on the same subject matter and in that case, it would amount to abuse of court process. To this, we say that in the event the Plaintiffs elect to come back with a new suit on this same subject, the Court will, at that point, decide whether on the basis of what is (re)filed, there is an abuse of process and thus take the appropriate action under the circumstances; we should not pre-empt the Plaintiffs. Thus, for the sake of clarity, we grant the Plaintiffs' Motion for Discontinuance/Withdrawal of

their action against all the Defendants and herein declare that we determine that this Motion does not amount to an abuse of court process.

8.1.8. Even in the cases **AMOUZOU Henri,** and **El-hadji Tidjani Aboubacar** cited above, we observe that the Court has been liberal in allowing Applicants to withdraw or discontinue their cases. Further, our Rules provide for the award of costs of the parties in prosecuting their respective sides of the case, so that they do not incur unnecessary expenses or experience financial losses. For one thing, the withdrawal or discontinuance of a case saves/reserves the time and resources of the court and the parties to engage in other endeavors; further, it lessens the burden and strain on them; most importantly, it speaks to the honor and ethics of the party

withdrawing or discontinuing the case if he knows it is no longer worth the effort, time and exercise to continue in a bad case, or an illegal venture, or a fruitless and frivolous exercise. We therefore follow the tradition of our predecessors to grant an application of the Plaintiffs to withdraw or discontinue their case. See ECW/CCJ/RUL/29/15, delivered December 02, 2015, supra.

8.3. The second and final issue we shall address ourselves to is what constitutes abuse of court process, and does it exist in this instant case?

8.3.1. Abuse of Court process is a term generally applied to a proceeding which is wanting in bona fide, and is frivolous, vexatious and oppressive. Abuse of court process is when a party improperly uses judicial processes to the harassment, annoyance and irritation of his opponent and to interfere with the administration of justice**. Saraki vs. Kotoye (1992) 9 NWLR (pt 280) 131; Amaefuna vs State (1988) 2 NWLR (pt 75) 156 at 177**.

8.3.2. The 4th and 5th Defendants /Respondents have contended that this suit is an abuse of court process because it is similar in all respects to three prior cases already filed involving the same parties, the same subject matter and the same source and transaction. The cases are:

ECW/CCJ/APP/06/12 between **Vincent Agu** and 19 others vs. Federal republic of Nigeria, ministry of Defense, R.S.B. Holdings Nigeria Ltd., Deminers Concept Nigeria Ltd., and the Attorney General of the Federation;

FHC/OW/CS/93/2014 between **Dr. Ignatius Nnanna Onyenekwu and Mrs. Chinyere Onyegekwu** vs. R.S.B. Holdings Nigeria Ltd., Deminers Concept Nigeria Ltd., Dr. Emeka Uhegbu, Attorney General of the Federation, and Minister of Defense.

ECW/CCJ/APP/11/14 between **Placid Dr. Sam Emeka Ukaegbu** and Others vs. President, Federal Republic of Nigeria, Federal Government of Nigeria, Ministry of Defense, R.S.B. Holdings Nig. Ltd., Deminers Concept Nig. Ltd., Attorney General of the Federation, and State Security Services. (SSS).

8.3.3. The Defendants/Respondents have contended that a multiplicity of suits which involves the same parties and the same subject matter amounts to an abuse of court process, and this Court has the duty to strike out or dismiss the said suit.

8.3.4. In review of the three prior cases referred to by the Defendants/Respondents, the Court takes judicial notice that they all have the subject matter of landmines, war relics, unexploded bombs and other such remnants of the Nigerian civil war which occurred between 1967-1970 in the various States in the South-East and South-South Zones of Nigeria. The Applicants in all these cases complained of abandoned war relics, remnants of the civil war, unexploded ammunitions, injuries to their persons, damage to their environment and communities, deprivation of rights and freedoms, etc.

8.3.5. The facts are that the Federal Republic of Nigeria accepted to assume responsibility to identify, clear, demine, remove and destroy all such war relics and remnants of the Nigerian civil war and contracted the services of Messrs. R.S.B. Holdings and Deminers Concept, respectively, to carry out these tasks. The functionaries of the Government are those persons listed as Respondents along with the private contractors.

8.3.6. Therefore it is not in dispute that the parties are the same, the subject matter and transaction and sources are all the same, the reliefs sought in all the suits are the same, the Respondents sued are all the same and even the counsel for the Applicants are the same in all the other cases as well as this.

8.3.7. The Supreme Court of Nigeria held inter alia: "It is settled law that generally, abuse of process contemplates multiplicity of suits between the same parties in regards to the same subject matter and on the same issues. This manner of using court process which is obviously lacking in bona fide leads to the irritation and annoyance of the other party and this impedes the administration of justice" **R Victor Umeh vs. Iwu (2008) 8 NWLR (PT 1089) 225 at 243-244**. Thus we declare that to institute an action during the pendency of another action claiming the same relief is an abuse of court process and the only course open to the court is to put an end to the subsequent suit. See **Okorodudu vs. Okoronodu (1977) SC2**; **Abubakar vs. B.O & AP Ltd. (2007) 18 NWLR PT 1066, 319 at 377; NTUKS vs. NPA (2007) 13 NWLR (PT 1051) 392 at 419-420; Ibok vs Honesty II (2007) 6NWLR (PT 1029) 55 at 70**.

8.3.8. The law frowns on multiplicity of suits, and rather favors consolidated or joint actions which would bring closure to matters in a comprehensive manner and not in piece meal. A party is expected to bring all his claims belonging to the same subject matter at once and at the same time. If he chooses to bring them by piece meal, he may be faced with the doctrine of res judicata. See the case, **Yakubu vs.**

AS CO Ltd. (2010) 2 NWLR (pt 1177) 167. To sustain a charge of abuse of court process, there must coexist inter alia (a.) a multiplicity of suits (b.) between the same opponents (c.) on the same subject matter and (d.) on the same issues. Also, the court will consider the contents of both suits and determine whether they are aimed at achieving the same purpose. See, **Agwasim vs. Ojichie (2994) 10 NWLR (PT 992) 613**. From a careful examination, these criteria are all present in this instant case.

8.3.9. We observe that the Applicants in the previous suits sued for themselves and all the members of the communities affected by landmines except where a person opposes the suit; in this case, are we to take it that these Applicants are or were opposed to the previous suits herein referred to? We think not; that is, they were certainly aware of these suits and did not join in, but have elected to bring their claims in this separate suit, which we find to be very vexatious and will not be countenanced by this Court.

8.3.10. The Respondents have contended that the Applicants in this case were aware of the filing of these prior suits and did nothing to join in and pursue their own interests but have waited until these other suits have been filed before coming forward. In the one instance, the Respondents have said that these Applicants are part of the Applicants in the other cases and are only trying to extort money from the Respondents and benefit more than once. The Respondents specifically cite case of **Vincent Agu and 19 0thers** which has progressed to an advanced stage where the parties entered into negotiating a settlement, which is to be reported to this Court on the progress of the terms of their agreement and settlement.

9. CONCLUSION

9.1. It is a matter of historical fact and public knowledge, of which this Court takes judicial notice, that there was a civil war in Nigeria between 1967 and 1970 and obviously there were damages and destruction on all sides to the war, with a lot of remnants left behind. It is also not deniable that there is need to clean up the environment and restore the communities to a habitable state. It has not been controverted by the Applicants that the Government undertook to do just that and proceeded to set up the Task Force to evaluate and assess the impact and extent of the environmental damage and degradation. It is also not denied by the Applicants

that when the Government carried out this assessment and enumeration that they, the Applicants herein were not among those enumerated; also, they have not said what prevented them from participating or from benefitting.

9.3. Lest we forget, as has been stated earlier in this RULING, we do not comment on the question of whether or not the fundamental human rights of the Applicants were violated and if so by whom. Our comments in this RULING only deal with the preliminary questions of the propriety of the withdrawal or discontinuance of this suit by the Plaintiffs after issues had been joined.

9.4. One final comment to make is that during oral argument before this BENCH, Counsel for the Plaintiffs contended that costs should not be awarded to the Defendants because they did not specifically pray for costs in their pleadings. Counsel cited the Rule of this Court to support that argument.

9.5. We hereby hold that yes, the Rules do provide that the party(ies) must request for cost to be awarded cost, but that requirement is in contemplation of the case being disposed of in the ordinary course of things, that is, the case going through to its logical conclusion. We do not believe that the framers of the Rule intended that a party can wait until pleadings have rested, issues joined, and then unilaterally withdraw or discontinue his case with no regard to the situation of the other party(ies).

9.6. The Court will not lend itself to such practices. If the Plaintiffs had allowed the case to go to its logical ending in a judicial determination on the merits of the case or even on the legal issues as raised in the respective Preliminary Objections, then a conclusive decision would terminate the case one way or the other. Therefore, the argument of the Plaintiffs counsel is unreasonable, unjust, unfair, and hence untenable, and accordingly overruled.

10. DECISION

The Court, adjudicating in a public sitting, after hearing both parties, in last resort, after deliberating in accordance with the law;

As to Motions for Extension of Time

10.1. Declares that all the Motions for Extension of Time filed by all the parties be granted and the same are hereby granted.

As to granting the Motion on Notice for Withdrawal or Discontinuance

10.2. Declares further that the Plaintiffs' Motion or prayer for the discontinuance or withdrawal of the Application against all the Respondents be and the same is hereby granted.

As to the case being an abuse of court process

10.5. Lastly, on the suit being an abuse of court process, the Court rules that Motion for Discontinuance/Withdrawal is not an abuse of court process; as to the instance where another action is subsequently filed on this same subject matter, the Court rules that the arguments of the Defendants/Respondents is not sustained and is considered premature and presumptive; as regards the existence of a prior suit on the same subject matter between the same parties as seen in the case of Vincent Agu, et al, the Court rules that indeed this instant case is an abuse of court process, and were it not for the withdrawal or discontinuance filed by the Plaintiffs which is herein granted by this Court, this case ought to properly be dismissed as to the 4th and 5th Defendants.

As to costs

10.6. The Court rules that costs are hereby awarded to the Defendants in the discontinuance of this case by the Plaintiffs at this juncture.

Thus made, adjudged and pronounced in a public hearing at Abuja, this 04th day of May, A.D.2016 by the Court of Justice of the Economic Community of West African States.

THE FOLLOWING JUDGES HAVE SIGNED THIS RULING

Hon. Justice Friday Chijioke NWOKE – Presiding

Hon. Justice Maria do Ceu Silva MONTEIRO - Member

Hon. Justice Micah Wilkins WRIGHT – Member

Assisted by Mr. Aboubakar Djibo DIAKITE, Esq. – Registrar

SEAL OF COURT