

IN THE HIGH COURT OF SIERRA LEON(GENERAL CIVIL DIVISION)

BETWEEN:

JACOB A. EVANGELISTA (AKA THERAPIST) - PLAINTIFF

AND

CRIBS INTERNATIONAL LTD - 1st DEFENDANTTHEOPHILUS SHO-COLE - 2nd DEFENDANTCOUNSEL

D. E. Taylor Esq. for Plaintiff

O. Jalloh Esq & D. Kamara (Ms) for the Defendants

RULING DELIVERED THIS 29TH DAY OF FEBRUARY 2024 BY HONOURABLE MRS. JUSTICE JAMESINA E. L. KING J.A

Background

1. This decision relates to an application on behalf of the 1st Defendant/Applicant dated 19th January 2023 for this Honourable Court to declare the Notice of Discontinuance dated 18th January 2023 to be an abuse of the process of the Court, irregular, filed in breach of the Rules of Court and therefore null and void. It is important to give a brief history of this matter.
2. The Plaintiff Jacob A. Evangelista (AKA Therapist) instituted a generally indorsed writ on 16th November 2022 against the Defendants for rescission of contract dated 22nd August 2022, an injunction restraining the Defendants, agents and privies from publishing materials that tarnishes the image of the Plaintiff and damages for fraudulent misrepresentation.
3. The Plaintiff is a musician and multimedia artist and the 1st Defendant is a management services for multimedia artists managed by the 2nd Defendant. It is alleged in the particulars of claim that the 2nd Defendant whilst in Nigeria with the Plaintiff, unduly influenced him to sign a "360 Multiple Rights Agreement" on the basis of fraudulent misrepresentation made to him by 2nd Defendant.
4. It is also alleged that the Plaintiff signed the contract and later discovered that suggested amendments agreed to be made before signing had not been made. It is further alleged that the 2nd Defendant pressured the Plaintiff into signing as a condition precedent for the recording of the remix of the song "Knack am" with a popular Nigerian Artist. Details of fraudulent misrepresentation and undue influence are set out in the Plaintiffs Particulars of Claim.

5. All efforts by the Plaintiff to get the suggested amendments incorporated into the contract proved futile and thereafter it is alleged that the Defendant started a smear campaign against the Plaintiff and as a result the Plaintiff has suffered damage to his reputation. An appearance was entered for an on behalf of the Defendants.

Defendants Notice of Motion dated 28th December 2022

6. In response to the Writ, the Defendants filed a Notice of Motion dated 28th December 2022 for a stay of proceedings in this matter on the basis that the action was initiated without reference to the agreed Mediation mechanism agreed upon in the Management Agreement between the Plaintiff and the 1st Defendant. The 1st Defendant also asked for interim and interlocutory injunctive reliefs restraining the Plaintiff from undertaking musical performances and doing any work for anyone other than the 1st Defendant in relation to the song "NACK" or any song made by him pending the Mediation process. In addition, the 1st Defendants also asked for preservation orders of revenues realized by the Plaintiff to be paid into an interest bearing account and for the appointment of a Receiver nominated by the Defendants to receive any and all funds that may accrue to the Plaintiff.
7. The application was supported by the affidavit of Theophilus Sho-Cole, Chief Executive Officer, a Director in the 1st Defendant sworn to on 28th December 2023 with a number of exhibits marked A – X. In his affidavit the 2nd Defendant narrated what transpired between himself and Plaintiff's mother in the review of the contract during various meetings and that on 19th August 2022 with the knowledge and consent of Mrs. Bangura the Plaintiff and himself travelled to Nigeria at the expense of the 1st Defendant in good faith with the understanding that the contract would be signed during the trip. Transcripts of the voice recordings of the exchange between the 2nd Defendant and Mrs. Bangura regarding the review, explanation of clause 5.1, the amendment of clause 2.2. and information of same to Mrs. Bangura were exhibited. The contract was signed on 22nd August 2022.
8. Shortly thereafter there were concerns raised by Mrs. Bangura regarding the financial records of the trip to Nigeria, queries made by solicitors acting on behalf of the Plaintiff regarding certain provisions of the contract which 1st Defendant Solicitors responded to and all Defendants efforts to contact Plaintiff proved futile.
9. Paragraphs 28 – 59 of the said affidavit and the exhibits evidenced conduct of the Plaintiff which included entering into recording contracts, holding meetings and booking shows to perform, live performances which allegedly constituted breach of his contract by the said acts and by instituting this action without recourse to the mediation mechanism agreed on. In particular, reference is made to the Contract which stipulated that all songs made are the property of the 1st Defendant and the conduct and actions of the Plaintiff and his mother which has caused enormous monetary loss on the part of the 1st Defendant who sought to promote the career and music of the Plaintiff with its resources.
10. He concluded that Plaintiff intends to continue his wrongful act unless restrained by the Court and 1st Defendant had made an undertaking as to damages if the Court deemed that it was not entitled to the injunctive reliefs sought.

11. Submissions were made by both Counsel in respect of the Motion of 28th December 2022 and this Court on 9th January 2023 granted interim orders inter alia restraining the parties from doing anything with the song "NACK" without the consent of the 1st Defendant, from publishing any libelous or slanderous materials in any news or social media platforms which also applied to bloggers for a period of two weeks from 9th January 2023 ending 23rd January 2023. The Court also ordered the Plaintiff to file an affidavit in opposition and the Defendant to file an affidavit exhibiting a draft defence to the Plaintiff's claim which was Order 5. Order 6 was to the effect that without prejudice out of Court settlement should be pursued by the parties and in Order 7, the matter was adjourned to 6th February 2023 subject to the Court's intervention on an earlier date if necessary.
12. However, whilst the said interim orders were in force until 23rd January 2023, the Plaintiff on 18th January 2023 discontinued the action. The Defendants responded by filing a Notice of Motion dated 19th January 2023 to declare the Notice of Discontinuance an abuse of the process of the court.

The Defendants Application of 19th January 2023

13. By a Notice of Motion dated 19th January 2023, the 1st Defendant applied to the Court for the following orders:
 1. That this Honourable Court declares the Notice of Discontinuance dated 18th January 2023 to be an abuse of the process of the Court, irregular, filed in breach of the Rules of Court and therefore null and void on the following grounds:
 - i. that as at the time the filing of the said Notice of Discontinuance there was a Notice of Motion dated 28th December 2022 being heard before the Honourable Mrs. Justice Jamesina E. L. King.
 - ii. that at the time of the filing of the said Notice of Discontinuance there was subsisting a validly obtained Order of Court injunctioning the Parties in the action.
 - iii. that the Defendant had caused a Defence and Counterclaim to be filed and brought to the attention of the Plaintiff.
 2. Any further order(s) that this Honourable Court may deem fit and just.
 3. That the cost of this Application be borne by the Plaintiff.
14. The affidavit of the same date of Theophilus Sho-Cole the Chief Executive Officer, a Director in the 1st Defendant and the 2nd named Defendant in this action supported the Motion together with the several exhibits attached thereto as well as the affidavit of Ida Williams sworn to on 24th May 2023 and the exhibit attached thereto recounting the proceedings as set out above.
15. Paragraph 10 – 17 of the affidavit of Mr. Sho- Cole germane to the application state as follows:

"10. That I have also been informed by the said Osman Jalloh which I verily believe that the said Defence and Counterclaim was duly shared with lead Counsel for the Plaintiff at 0945 hours on the 17th instant. About 90 minutes thereafter he received the Notice of Discontinuance.

11. That I have been advised by my solicitors and I verily believe that our Counterclaim is not affected by the Plaintiff's attempt to discontinue the; hence the same is to be proceeded in this action.

12. That I verily believe that solicitors acting for the Plaintiff in England have been piloting the idea of abandoning the litigation in Sierra Leone and forum shop in the Courts of England and Wales all in the attempt to continue to adversely and materially affect our' rights whilst the Plaintiff defaults on his obligations.

13. That I verily believe that the actions of the Plaintiff are a continuation of his methods, follies and processes to adversely affect and prejudice our rights and an abuse of the processes of the Court.

14. That myself and the 1st Defendant have invested significant funds in the litigation with the current bill being in excess of the Leones equivalent of the sum of USD\$10,000.00 (Ten Thousand United States Dollars) to prosecute the current litigation.

15. That we instructed our solicitors and our position was duly brought to the attention of the solicitors for the Plaintiff by letter of the 18th instant. A copy of the said letter is now exhibited and marked "EXH H".

16. That myself and the 1st Defendant have been advised by our solicitors and we very believe that the issues between ourselves and the Plaintiff have their closest and most real connection with Sierra Leone hence we concur with the Plaintiff invoking the jurisdiction of the Court of Sierra Leone.

17. That we remain committed to pursue our Counterclaim and defend the Plaintiff's claim."

16. There is an affidavit in opposition sworn to by Drucil Evelyn Taylor partner of GPK Legal Solicitors for the Plaintiff/Respondent sworn to on 12th May 2023 with two exhibits. In paragraphs 3 & 4 he stated that during the subsistence of the matter the Defendant did not file any Defence and or Counter-claim to the Writ, and they received service of same after service of the Notice of Discontinuance on the Defendant as well as the Court. He referred to Counsel for the Defendant's position about the need to proceed to Alternative Dispute Resolution at the material time during the application for an injunction which he promptly communicated to the Plaintiff who employed the service of an English trained entertainment negotiator, and it was after the said ADR commenced that he was instructed to discontinue the action. He communicated his instructions to Counsel for the Plaintiff at about 5.12pm on 17th January 2023 and it was at that point Counsel informed him of his desire to file a Statement of Defence and Counter-claim which was completely inconsistent to his posture in court.

17. He then proceeded to file the Notice of Discontinuance and at the time he checked with the registry and registrar and confirmed that the statement of Defence was not filed at the time.

18. Paragraphs 10 – 14 of the said affidavit states as follows:

"10. The fact deposed to by the 2nd Defendant herein in Paragraph 10 of his Affidavit in Support dated the 19th January 2023 are completely false as we have proof of the service of

the said Statement of Defence and Counter-claim at GPKLegal and the said service was done at 10.29 am on the 18th January 2023. Proof of this is captured by the CCTV camera at the Reception of GPKLegal. A footage of the said service is hereby contained in a flash drive which is exhibited and attached herein and marked as DET-1.

11. That in response to a letter dated the 18th January 2023, I wrote a letter dated the 19th January 2023 and challenged the Defendants' Solicitors to file an Affidavit of Service stating that we were served a Statement of Defence at 9.45 of the 17th January 2023 but luckily that affidavit was not filed. A copy of the said letter is hereby exhibited and marked as DET2.

12. I recorded the footage exhibited above from the CCTV set at No. 32 Bathurst Street, Freetown with my phone, Z-Fold2 Samsung and subsequently transferred same to the USB Stick attached herein and contained the said footage of service.

13. Up to the filing of this affidavit, intensive negotiations are ongoing between the UK based entertainment negotiator and that of OJP for the parties herein and I therefore find concerning that Solicitors and Counsel for the Defendants are filing conflicting application before the Honourable Court which said posture is improper and in consequence therefore an abuse of the court process.

14. That it is within the right of the Plaintiff to discontinue an action without the leave of the court any time before the service of the statement of Defence."

19. There is an affidavit in reply sworn to by Mr. Sho-Cole on 16th May 2023 in which he referenced the supplemental order requiring their Solicitors to file an affidavit exhibiting their draft defence to the Plaintiff's claim during the hearing of the Motion of 28th December 2022. He also made reference to the conversation between his Solicitor and Plaintiff's Solicitor wherein his Solicitor informed Counsel of his intention to file his Defence and Counterclaim on the 17th at about 5.12pm when Counsel stated his intention to discontinue the action. According to information received from Mr. Jalloh the Defence and Counterclaim dated 17th January 2023 was filed in the morning of 18th January 2023 as stated in the affidavit in opposition and not 17th as set out in his earlier affidavit. He was also informed by Mr. Jalloh that based on the current filing system he cannot tell which solicitor filed first, but this notwithstanding the service of the Notice of Discontinuance was done after the service of the Defence and Counterclaim on the Plaintiff's Solicitors.

Summary of Submissions by Counsel for both parties

Counsel for the Defendant/Applicant

20. Counsel for the Defendant/Applicant Mr. Jalloh submitted that:

- the Plaintiff's unilateral decision to discontinue the proceedings without leave of the court took away the power of the court to fully determine the Defendant's Motion of 28th December 2022 and is an abuse of the process of the court and irregular;
- by Order 24 R 6 of High Court Rules 2007 (HCR) the Notice of Motion filed can only be withdrawn by the leave of the court;

- a valid, substantive and subsisting order was in force dated 9th January 2023 to lasts until 23rd January 2023 when on 18th instant the Plaintiff unilaterally discontinued the action;

-Order 5 of the said Court Order was active as it had directed the defendant to file a draft defence;

-Plaintiff ought to have sought the leave of the court and because it was not done it is an abuse of process, has occasioned injustice and deprived the Defendant of the benefit of the injunction granted by the court which was to have lasted till 23rd January 2023;

- by the unilateral discontinuance without leave, Plaintiff have sought to usurp the powers of the court to determine when orders can have validity and it is a dangerous precedent as they can now stop an order without direction of the court;

-will materially adversely affect the administration of justice and in that case lawyers will now suo moto override what the Judge says, a process to escape by a side door and avoid contest without the leave of the court when the parties were appearing face to face;

-at the time of filing the Notice of Discontinuance a defence and counter claim had been put in and brought to the attention of Counsel for the Plaintiff;

-Counterclaim survives even if the Plaintiff desires to discontinue the action, Defendants are desirous of proceeding with it and

- the matter has its closest and most real connection with Sierra Leone, the most appropriate place to try this case and the Plaintiff was right when he invoked the jurisdiction of the court as the parties and witnesses are residence in Sierra Leone and evidence readily available here.

21. In relation to his submissions above, he cited several authorities, *Mohamed Bobo Bah v Fatmata Binta Bah* Supreme Court No.7/2019 unreported ruling of 2nd December 2022 wherein, the Plaintiff sought the leave of the court to discontinue which the Court granted and accepted the ratio in the case of *Fox v Star News Paper Co* 1898 1QB 636 see Chitty J's statement, the White Book and the cases referred therein. He also referred to the Ruling of Justice Thompson JSC at page 4 para 9 of *Bobo Bah* and submitted that the Defendant is seeking to go through the back door and enjoy the advantages he had, and the Court will refuse leave to discontinue. He stated that England is not the proper place to try the matter and referred to *A.P Moller v Hadson Taylor & Co. Civ. App No.10 of 1988* unreported C/Appeal of 4th July 1991 more particularly to the ratio at page 3 & 4.

Counsel for the Plaintiff/Respondent

22. Mr. Taylor Counsel for the Plaintiff/Respondent submitted that

– the application of the Defendant seeks to nullify the Notice of Discontinuance filed on 18th relates to Order 24 Rule 2 (1) of HCR;

- service by WhatsApp is not proper service as what was shared to him on the phone was a draft defence and Counter claim and he initiated the call on 17th and informed Mr. Jalloh that on the basis of the posture in court they must negotiate;
 - both Notice of Discontinuance and Defence and Counterclaim were filed on the same day;
 - even before service of the Defence the Notice of Discontinuance was filed and served;
 - the rules are clear that a notice of discontinuance can be filed before filing of defence and counterclaim or within 14 days of filing the defence and no leave of the court is necessary in these instances;
 - on abuse of process this is predicated on the reflection of the effect or better put the cumulative effect of all the applications filed by the Defendants/Applicants;
 - the first application filed was for a stay on grounds that there is a reference to the management agreement which states that dispute arising should be settled by mediation, and an order emanated from it, Order 6, relating to the said mediation;
 - Counsel then communicated what transpired in Court to the Plaintiff and was instructed to discontinue as much attention will be given to the ADR;
 - subsequently Counsel for the Defendant filed another application for the Notice of Discontinuance filed to be declared a nullity;
 - Counsel has struggled to see the efficacy behind this application by the Defendant and the more he looks at it he sees it as an abuse of process;
 - Notice of Discontinuance was filed in accordance with the Rules Order 24 (2) which provides that the Plaintiff may without leave discontinue at any time not later than 14 days after service of the Defence and Counterclaim were served, which is clear in the prayer and affidavit in support of the application;
 - the Defendants are now backtracking in the affidavit in reply about service of the Notice of Discontinuance which they say was served and the 2nd Defendant says his Solicitor cannot be certain as to whether Notice of Discontinuance was filed before the Defence and Counter Claim was filed and
 - the affidavit in opposition stated in no uncertain terms that they went to the Registry and confirmed that at the point of filing the Notice of Discontinuance, no defence and counter claim had been filed and the position was the same when they checked with the Registrar, this confirmed that the filing and service of the said Notice preceded the filing and service of the counterclaim and this is the ordinary and proper use of the procedure in the Rules;
23. On the aspect that there were pending orders Counsel submitted that at the time of issuance of those orders Counsel had not shown this Court that he had any serious issues to be tried as he had not filed a cause of action. In this case he said, the Defendant had not shown that there was a serious case to be tried because there was no statement of Defence and Counterclaim at the time of filing and serving of the Notice of Discontinuance. He maintained that you cannot have an injunction without a cause of action. He stated that the very application that culminated in those orders of the court was primarily seeking to stay the Court's jurisdiction over the matter and submit the proceedings to the arbitration clause or ADR clause.

24. He further stated that in one breath, counsel is seeking for Clause 37(1) of the Agreement to be enforced by the Court and in another breath is filing a Defence and Counterclaim; in one breath again Counsel is arguing that by filing a defence and counterclaim he will be submitting to the Court and in consequence thereof nullifying the provision in clause 37(1) and could only settle to exhibit a draft defence, in another breath after the proper and ordinary use of the Rules, counsel is filing a defence and counter-claim.
25. Counsel submitted that after the filing of the Notice of Discontinuance it is improper and out of the ordinary, to file pleadings in the same cause or action. He pointed out that the Notice of Discontinuance filed before the Defence and Counterclaim meant that the matter is dead as if it never existed. As regards the injunction Counsel submitted that it was an interim order and would only last for 7 days, and both Counsel were to come back on 23rd to check whether the matter had been taken to the ADR and to see how they will proceed. The 18th was the date of the filing of the Notice of Discontinuance and the interim injunction was granted on the 9th.
26. Counsel submitted that the bulk of the submission of Counsel predicated on *Mohamed Borbo Bah v Fatmata Binta Bah* is misplaced, as those submissions were predicated where you have the Defence and Counterclaim before the Notice of Discontinuance. In Bah's case he maintained, pleadings were closed all that was outstanding were oral arguments. At hand he said was only a generally indorsed Writ and particulars of case was filed. To support his submissions, he cited several authorities including *Hunter v Chief Constable of West Midlands* 1981 3 All ER 727 at p. 729, *AG v Barker* 2000 and *Horse Import & Export Co. Ltd v I.G Undersheriff Ibrahim Bazzi & anor.* Unreported C.C. 261/11. He provided the court with the Bobo Bah decision, *House of Spring Gardens v Waite and Others* 1990 1 QB p.241, and *Zuckerman Civil Procedure Principles of Practice* 3rd Ed at para 11.239 at p. 619. The latter states that one of the principal aims of the abuse of process jurisdiction is to enable the court to deal with problems to which the rules either provide unsatisfactory solutions, or altogether fail to address. The learned author quoting Lord Bingham CJ in *A-G v Barker* 2000 2 F.C.R. 1, 1 FLR. 759 abuse of process, consists, in "*using that process for a purpose or in a way significantly different from its ordinary and proper use.*" Relying on this dictum which is the cornerstone on abuse of process, Counsel submitted that the circumstances that actually begs the question, is was the filing of the Notice of Discontinuance used in a way that is significantly different from its ordinary and proper use, and he said the answer is no.
27. In reply, Mr. Jalloh submitted that the documents he filed on 18th January 2023 one of which was his defence and counter-claim could not have been put together in 10 hours and his conversation with Plaintiff Counsel on 17th at 5.12 pm were not an abuse of process.

Analysis & Decision

28. Order 24 of the High Court Rules provide that a Plaintiff can discontinue an action without leave (Rule 2) and with leave (Rule 3). According to Rule 2 an action can be discontinued by the Plaintiff at any time not later than 14 days after the service of the defence on him. An action can be discontinued with leave in Rule 3 which provides as follows:

“3. (1) Except as provided by rule 2, a party may not discontinue an action (whether begun by writ or otherwise) or counterclaim, or withdraw any particular claim made by him in the action or counterclaim, without the leave of the Court, and the Court hearing an application for the grant of such leave may order the action or counterclaim to be discontinued, or any particular claim made in it to be struck out, as against any or all of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.”

29. Applying Order 24 to the instant case the Plaintiff was entitled to withdraw anytime not later than 14 days after the service of the defence on him. In so far as the time limit is concerned the Plaintiff at the time it filed its Notice of Discontinuance was on the face of it compliant with the provisions in Rule 2. This is whether or not the Defence was filed before or after the service of the Notice of Discontinuance as long as it was not later than 14 days after service of the Defence.
30. In the instant case, if the Defendant only had a defence then it mattered not when the discontinuance was filed provided it was within the prescribed time limit. Giving the provisions of Rule 2 its plain meaning as expressed, the filing of a Notice of Discontinuance with the time limited effectively brings the matter to an end whether or not a defence has been filed. If that was the case in this matter, there will have been no need for this application but given the background stated above there were proceedings ongoing. A notice of discontinuance filed without leave of the court after a Defence and Counterclaim is filed and served will in effect discontinue the Plaintiff's claim, but the Defendant's Counterclaim will stand and may be proceeded with. The Plaintiff will then have to file a defence to the Counterclaim and the matter proceed to trial.
31. I will understand it to mean that once a Counter-claim is filed and where there are pending proceedings and subsisting orders in force, then Rule 2 is ideally not applicable rather Rule 3 becomes operative and leave of the Court is desirable and I will even say imperative. In the instant case I will take it that the Notice of Discontinuance was filed on the same day with the Defence and Counterclaim.
32. At paragraph 7 of the Dissenting Judgment of Hon. Justice G Thompson JSC in SC No.7/2019 Mohamed Bobo Bah v Fatmata Bah delivered on 2nd November 2020, she stated that *“the court has a wide discretion in exercising its powers under Order 24 r3. If the court accedes to the Plaintiff's request, it may, after considering all the circumstances do so on terms for example that no other action shall be brought by the Plaintiff. It may, in like manner refuse leave to discontinue and give judgment for the defendant.”* In that case, the plaintiff desiring to withdraw its application, sought the leave of the Court.
33. The Plaintiff's failure to seek leave, deprived this Court from considering not only the circumstances to be considered on a request for discontinuance, but more importantly deprived it from proceeding with the interlocutory application pending before it and dealing with the interim injunction in force whether to discharge it or extend it. This interim injunction in favour of the Defendant was subsisting and the Defendant had also applied for other orders primarily to safeguard their financial interest.

34. Order 35 R 1 (3) in exceptional circumstances and in a case of urgency where the action has not been instituted, enables the court to entertain an ex parte application and grant an interim injunction. In the instant case the action had been instituted by the Plaintiff. Even though the Defendants had not filed their defence before making the application for an interlocutory injunction which was served on the other party, it was appropriate for an interim injunction to be granted based on the statement of claim and the affidavit evidence supporting the application. In granting the interim injunction, the Court then requested the Plaintiff to file an affidavit in opposition and the Defendant to exhibit its draft defence. Both should have provided facts for the Court to exercise its discretion whether to grant or refuse the interlocutory injunction and other orders prayed for.
35. On the issue of abuse of process, paragraph 18/19/18 of Supreme Court Practice 1999 states that the process of the court must be used bona fide and properly, must not be abused and the court will prevent the improper use of its machinery, and in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.
36. Irrespective of when service was done of the Notice of Discontinuance, one has to consider what had transpired prior to the Notice of Discontinuance. Pending proceedings were before the Court and based on the Order of the Court on 9th January 2023 it was reasonable and imperative for both parties to comply with the court's orders, and to contemplate the possibility that whatever out of court settlement or alternative dispute resolution was being pursued it was without prejudice to the proceedings pending in court. Given the circumstances in this case, particularly when an injunction was in force albeit an interim one, the court had given orders to be complied with by the parties and the matter was adjourned to a specific date for further hearing and to report on compliance. This meant that if discontinuance were to have happened it should have been done in compliance with Rule 3, leave of the court should have been sought.
37. The attempt to remove the matter from the Court without recourse to it at the very least to report on the directions that had been given on the 9th January 2023 one of which contemplated the pursuance of an out of court settlement which precipitated the discontinuance is an abuse of process.
38. The court has a wide discretion under the High Court Rules as well as under its inherent jurisdiction to safeguard its authority and processes and take necessary action to address conduct, which will amount to abuse of process. This Court finds itself in an unsatisfactory situation wherein interlocutory proceedings and interim orders were pending and without any reference to it was brought to an abrupt end.
39. The Defendant in its application in the Notice of Motion dated 28th December 2022 had applied for a stay of proceedings in view of the mediation clause in the Management Agreement. Obviously if granted this would have also halted the proceedings at the instance of the Defendant and that is why Counsel for the Plaintiff after informing his client of the posture of the Defendants, carried out his client's instructions to discontinue the proceedings.

40. However, it was obvious from the orders prayed for in the said Motion and papers filed before the Notice of Discontinuance and even the feisty arguments and submissions by Counsel for both parties, that there were contentious issues if not resolved by the mediation process, litigation was bound to be proceeded with. Besides the interim injunction granted restraining the Plaintiff from carrying certain activities in relation to his song "Nack", other orders specifically prayed for were for the Court to grant an order for the preservation of revenues realized by the Plaintiff from his breach of the Agreement between himself and the 1st Defendant. The request was that they should be paid into an interest bearing account managed by both solicitors and for an order for the appointment of a Receiver nominated by the Defendants to receive any and all funds that may accrue to the Plaintiff. This was the state of things before the Notice of Discontinuance was filed.
41. In *Bobo Bah*, Hon. Justice E. E. Roberts JSC quoting Civil Litigation (5th Edition) by John O'Hare & Roberts N. Hill at page 376, "the leave requirement is imposed to prevent a discontinuance that would unfairly prejudice the defendant". One of the unfair prejudice referred to is the possibility of future proceedings which is evident in this case particularly if the mediation process contemplated or pursued is not proceeded with or the outcome is unfavorable, of course subject to the provisions of the agreement.
42. Having regard to the above the Notice of Discontinuance ought not to have been filed without leave of the Court. In the result the Notice of Discontinuance is set aside. Costs in the cause.



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HON. MRS. JUSTICE JAMESINA E. L. KING J.A.