

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/2618/2018

BETWEEN:

ARC. NEHEMIAH OGBAJI IHUMAH

(Trading under the Name & Style

"METROMARK SERVICES"CLAIMANT/RESPONDENT

VS

ATLAS MICROFINANCE BANK LIMITED....DEFENDANT/APPLICANT

RULING

By a Motion on Notice dated 18/3/2019 but filed on 19/3/2019 with Motion No.M/4321/19 brought pursuant to Order 13 Rule 4 of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018, Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and under the inherent jurisdiction of this court the Applicant seek the following relief;

1. An Order of this Honourable Court joining Adinnu Marycorlet Chinenye as the 2nd Defendant in the instant suit.
2. And the Omnibus relief.

In support of the Motion is a 6 Paragraph affidavit, deposed to by Watchman Oshekun a Lawyer in the Law Firm of Applicant's Chamber, and also filed a Written Address in compliance with Rules of Court.

Responding, Claimant/Respondent filed a reply on points of law to the Defendant/Applicant's Motion on 26/6/19 and adopts the Written Address as oral submission.

In the Written Address of the Applicant, Applicant's Counsel formulated a sole issue for determination namely;

"Whether it will better serve the interest of justice to join Adinnu Marycorlet Chinenye as 2nd Defendant in the instant suit"

Submits that, the Applicant is entitled to fair hearing and this right exclusively rest on the joinder of Adinnu Marycorlet Chinenye. Refer to Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and the case of Bello Vs INEC (2010) 8 NWLR (PT. 1196) 417 Para D – H. Urge court to hold that the Defendant has a right to fair hearing and accordingly grant the application.

In the same vein, Respondent's Counsel formulated a sole issue for determination that is;

"Whether it will better serve the interest of justice to join Adinnu Marycorlet Chinyere whom the Claimant has no Claim/relief against as 2nd Defendant in the instant suit?"

Submits that it is the prerogative of the Claimant to determine the Defendant in a suit and can only join a party whom he has a claim/relief

against and whom will be bound by the outcome of the proceedings. Refer to the case of Green Vs Green (1987) 3 NWLR (PT. 61) 480 and Order 13 Rule 4 of the Rules of court.

Submits further that the Claimant has no relief against the party sought to be joined and as such do not intend for her be bound by the outcome of the suit as all issues raised by the Claimant for adjudication can be conveniently settled without joining the party sought to be joined. Refer to the case of Ajayi Vs Jolayemi (2001) 10 NWLR (PT. 722) 516 Ratio 2.

Submits that the party being a party with adverse interest according to the facts in support of the application, urge court to discountenance the application. Relying on the case of Bello Vs INEC (Supra) also cited by the Applicant further urge court to hold that the party sought to be joined is not a necessary party for the just adjudication of this suit and ought not to be joined in the suit.

Submits finally that court should take judicial notice of the facts presented by the Applicant that the party, Applicant seeks to join has obtained judgment against the Applicant, levied execution and taken possession of needed material to enable them put up a Defence to this suit. Urge court not to heed to their bidding of the Applicant to interfere as items recovered during execution lies with enforcement unit and not with the party sought to be joined, if Applicant has any legitimate claim thereto they should proceed through the Deputy Sheriff assuming those items have not been auctioned in view of Exhibit "B" attached. Urge court to strike this application.

Having carefully considered the submission of Counsel the judicial authorities cited as well as the affidavit in support of the application, I find that only one issue calls for determination, that is;

“Whether the Defendant/Applicant has made out a ground so as to be entitled to the relief sought”

The grant or otherwise of an application of this nature is at the discretion of court which the court must exercise judiciously and judicially. And for an Applicant to persuade the court to exercise its discretion in his favour, that Applicant must place before the court cogent facts upon which the court will consider the application.

In the instant case, the Applicant seek to join another person as 2nd Defendant in this suit the principles guiding the joinder of parties have been stated in a Plathoral of cases in Adefarasin Vs Dayekh (2007) All FWLR (PT. 348) 911 @ 933 Paras E – G the court stated the principles as;

- (a) Is the cause or matter liable to be defeated by the joinder?
- (b) Is it possible for the court to adjudicate on the cause of action set up by the Plaintiff unless the third party is added as a Defendant?
- (c) Is the third party a person who ought to have been joined as a Defendant?
- (d) Is the third party a person whose presence before the court as Defendant will be necessary in order to enable the court

effectually and completely adjudicate upon and settle all the questions involved in the cause or matter?

See also Green Vs Green (2001) All FWLR (PT. 76) 795 @ 820 Paras F – B.

The ground upon which Applicant seek joinder of Adinnu Marycorlet Chinenye as 2nd Defendant as stated in their affidavit is that only the party they seek to join in the suit can produce the necessary information they would need to enter a Defence to the suit, on the other Claimant/Respondent contends that the suit can be effectually decided without the presence of the party sought to be joined. I have taken a look at the contending claims of the parties and applying the principles which guides the court in an application for joinder stated above, I find that the presence of the party sought to be joined is not necessary to be present for the court to adjudicate on the matter brought before it. I am more convinced of this view because the Claimant has no claim against the party sought to be joined in the suit and cannot be bound by the outcome of the case, it must also be stated that it is improper to compel a Claimant to proceed against a Defendant whom he has no desire to sue. See Green Vs Green (Supra).

From all of these, I find that the application of the Defendant/Applicant as lacking in substance, the grounds upon which she seek joinder not cogent to warrant the grant of the application. The application for joinder is hereby refused and is accordingly dismissed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

9/12/2019

APPEARANCE:

C.U. EZEUKWE WITH O.O. ADETOLA ESQ FOR THE
CLAIMANT/RESPONDENT

WATHCMAN OSHEKUM FOR THE DEFENDANT/APPLICANT