

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU'AZU

SUIT NO. FCT/HC/CV/585/2023

MOTION NO. FCT/HC/M/7240/2024

DATE: 15/07/2024

BETWEEN:

COMPUWORLD LIMITED.....CLAIMANT

AND

- | | | |
|---|---|---|
| 1. CHIEF ENGR. A.O. SUCCESS | } |DEFENDANTS |
| 2. PRACO INTERNATIONAL LIMITED | | |
| 3. THE HON. MINISTER, FEDERAL CAPITAL TERRITORY | | |
| | | |
| 4. OWELLE PRINCE DR. NICHOLAS UKACHUKWU | } | PERSONS SEEKING TO
BE JOINED AS 4 TH AND
5 TH DEFENDANTS. |
| 5. PRINCE AND PRINCESS PROPERTIES LIMITED | | |

RULING

The Claimant (CompuWorld Limited) initiated this suit against the Defendants on record seeking for Declaratory and various mandatory Orders of this Court against the Defendants.

The parties seeking to be joined/Applicants filed a Motion dated and filed the 30/4/2024 and sought for the following reliefs from this Court.

1. *An Order joining Owelle Prince Dr. Nicholas Ukachukwu and Prince and Princess Properties Limited as 4th and 5th Defendants respectively in this suit.*

(1) *An Order that all the processes filed in this suit be served on the persons seeking to be joined/Applicants.*

(2) *And for such further or other order this Honourable Court may deem fit to make in the circumstances.*

The grounds upon which the application was made are as follows:

(1) The Deed of Power of Attorney/Deed of Assignment by the 1st and 2nd Defendants in respect of the various plots set out in this suit are nonexistent having been earlier donated to the Applicants by virtue of their executed agreement in June, 2001.

(2) In the year 2011 when the 3rd Defendant refused to release the title documents which were submitted to the 3rd Defendant's ministerial Committee in the year 2002 by the 1st and 2nd Defendants on behalf of Applicants and their other clients, the 1st and 2nd Defendants requested for service of the Applicants and a non-circumvention agreement was entered by them for recovery of the title documents set out in this suit and others contained in the agreement. The agreement was also followed by a Power

of Attorney donated by the 1st and 2nd Defendants to the Applicant on 7th day of July, 2012.

- (3) In exercise of the above powers, the Applicants have carried out several actions aimed at executing their mandate under the Power of Attorney which includes but not limited to instructing the law firm of Olusola Oke (SAN) & Co. amongst others to institute action for the recovery of all the title documents to plots of lands, subject matter of this suit.**
- (4) The title documents and the plots of land to which they relate, the subject matter of this suit are the same as the ones donated to the Applicants in the year 2001 and the subsequent agreement as well as power of attorney executed in favour of the Applicants.**
- (5) The presence of the Applicants as the 4th and 5th Defendants to this suit is necessary so that the Court can effectively and effectually determine all the issues raised in this suit.**
- (6) The outcome of the suit will adversely affect the interest of the Applicants.**
- (7) The Applicants are necessary and proper parties to this suit.**

(8) It is in the interest of justice that the Applicants be joined as a parties to this suit.

In support of the application is an affidavit of 18-paragraphs deposed to by one Wisdom Okeke, the Administrative Manager in the Head office of the 1st Applicant.

It is the deposition of the applicant that 1st and 2nd Defendants had earlier donated the various plot set out in this suit to the Applicant by virtue of an agreement in June, 2001. And the applicant returned the original title to the 1st and 2nd Defendants when the 3rd Defendant's Ministerial Committee requested the title documents for verification in the year 2002.

That following prolonged refusal of the 3rd Defendant's Ministerial Committee to release to the 1st and 2nd Defendants their documents, the 1st and 2nd Defendants engaged services of Applicant to recover same and sequel to that, a non-circumvention agreement was entered between the parties and followed by a Power of Attorney.

It is further the contention of the Applicants that the reliefs sought in this suit relates to and concern the title documents and the plots of land earlier donated to the Applicant in June, 2001. And that it will be in the interest of justice to grant this application.

A written address was filed wherein the issue “***whether the applicants have made out a case for the grant of the reliefs sought was formulated for determination.***”

Learned Counsel while arguing the above issue submitted that, where it is obvious to a Court that any person or persons who are not parties to a case may eventually be liable in whole or in part, the Court may upon application allow that person to be joined as party. Order 13 Rule 4 and 19 of the Rules of this Court, and the case of **IGBOKWE VS. KEHINDE (2008) 2 NWLR (PT. 1072) 441 at 451 para. G – H** was cited by Learned Counsel in urging the Court to grant this application.

Reacting to the application, the Claimant filed a counter-affidavit of 5 paragraphs deposed to by one Oluchi Richard, a Litigation executive in the law office of the Claimant's/Respondent.

It is deposition of the Claimant that it had no transaction with either Owelle Prince Dr. Nicholas Ukachukwu or Prince and Princess Properties Limited in relation to the subject matter of Litigation and not a party to non circumvention service agreement or Power of Attorney annexed by the party seeking to be joined.

The Claimant avers that the party seeking to be joined by Power of Attorney and Non-circumvention Service Agreement admitted already that they are agent of a disclose principal who is the 1st and 2nd Defendants.

That it will be in the interest of justice to dismiss this application.

A written address was filed wherein the issue “***whether the Hon. Court should grant or refuse the instant Motion No. M/7240/2024 seeking for joinder***” was formulated for determination.

Learned Counsel argued that the party seeking to be joined is not a necessary party and therefore, Court should dismiss this application.

The parties seeking to be joined filed a further affidavit in support of their application upon been served with the Claimant’s counter affidavit.

It is further affidavit of the applicant that this suit disclosed a cause of action against the Applicants and therefore Court should so hold.

Let me state here, that anyone whose presence is crucial and fundamental to the resolution of a matter before the court must be made a party to the proceedings. See the case of ***RICO CONSTRUCTION CO. LTD VS VEEPEE IND. LTD & ANOR (2005) 3 - 4 SC 1.***

The joinder of parties, whether as Plaintiffs or Defendants, is subject to two conditions, namely, the right to relief must in each case be in respect of or arises out of the same transaction or series of transactions and there exist some common question of law or facts to be decided between the parties. See ***THE REGISTERED TRUSTEES OF NATIONAL ASSOCIATION OF COMMUNITY HEALTH PRACTITIONERS OF NIGERIA & ORS VS MEDICAL & HEALTH WORKERS UNION OF NIGERIA & ORS (2008) 1 SC (PT. 111) 1 also (2008)LPELR-319 (SC)***

Similarly, a court of law shall not delve into the merits of a case in the course of determining an application for joinder. On the duty of court

faced with an application for joinder, see the case of **IGE & ORS V FARINDE & ORS (1994) NWLR (PT. 354) also (1994) LPELR-1452 (SC)** where it was advised thus;

“The point I desire to make is that it is sufficient, on the question of the evidential burden of proof, that the trial court hearing such an application for joinder of parties should only confine itself to whether there is a prima facie case for joinder but should not be invited at that stage of the proceedings with the merits of the substantive case.”

Similarly, on who is a necessary party, see the authority of **IGE & ORS VS FARINDE & ORS (Supra)** where it was stated that, a necessary party to a proceeding has been said to be a party whose presence is essential for the effectual and complete determination of the claim before the court. It is the party in the absence of whom the claim cannot be effectually and completely determined.

A perusal of the statement of claim, motion for joinder and the opposing counter affidavit will clearly show whether the 4th and 5th Defendants /Applicants are necessary parties to the suit.

The Plaintiff has clearly stated in his paragraphs 3 that he purchased the subject matter of this litigation from the 1st and 2nd Defendants in 2001 by Deed of Assignment and Power of Attorney duly registered.

It is worthy of note at this stage and I must re-emphasize, that my duty at this stage, is to find out whether a *prima facie* case for joinder from the available facts averred in both affidavits has been made out without necessarily delving into the merits of the case.

On their part, however, the parties seeking to be joined have maintained that by virtue of Power of Attorney and the Non-Circumvention of Service Agreement they have interest in the subject matter worth protecting.

From the documents annexed by the parties seeking to be joined i.e. The Power of Attorney and the Non-circumvention Service Agreement, it is clear from their contents that the persons seeking to be joined have no separate act being called to question in this suit and no claim can be maintained against them. They cannot stand on their own as they are agents of a disclosed principal i.e. 1st and 2nd Defendants.

Indeed, an agent is a person who has been legally empowered to act on behalf of another person or entity. In simple terms, an agent is one who is authorized to act for or in place of another. **ANI & ORS. VS. OUT & ORS (2023) LPELR 59602 (SC).**

From the content of the Non-circumvention Service Agreement annexed by the parties seeking to be joined, the remedy available to the persons seeking to be joined in the event that the 1st and 2nd Defendants default or fail to uphold the terms of the agreement is clearly stated in paragraph 3.1 as thus;

“The Property Developers, their agents or privies shall not circumvent, or cause to be circumvented the services providers or any other persons so engaged that is working for the resolution of the dispute from receiving his fair and full entitlement from the transaction. Where the infraction occurs, the property Developer and its agents or privies shall be liable to the monetary damages of what would be the

value of what circumvented party is entitled to in the transaction.”

From the above, it is obvious that the interest of the persons seeking to be joined if any was derived from the 1st and 2nd Defendants who are already parties to this case, therefore joining the parties seeking to be joined becomes unnecessary.

On the whole, therefore, I find the argument of learned Counsel for the Plaintiff/Respondent most sustainable and believable. I also agree with the submission of learned Counsel for the Plaintiff/Respondent that indeed the 4th and 5th Defendants are not necessary parties to this suit.

Consequently, on the authority of ***JAMBO VS GOVERNOR OF RIVERS STATE (2007) 17 NWLR (PT. 1062)198 at 223***, Motion on Notice M/7240/2024 is hereby and accordingly dismissed.

Signed
Hon. Judge
15/07/2024.

Appearance:

A.U.S. Oguajamma, Esq, for the Claimant.

J.M. Mathew, Esq, with M.A. Ahmed, Esq, for the 1st and 2nd Defendants.

A.S. Haruna, Esq, for the 3rd Defendant.

Abass O. Shittu Esq, for party seeking to be joined.