

**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/GAR/CV/108/2023

MOTION NO: M/666/2024

MOTION NO: M/5161/2024

DELIVERED ON THE: 15/07/2024

BETWEEN:

SALMAD NIGERIA LIMITED.....CLAIMANT

AND

**1. FEDERAL CAPITAL TERRITORY ADMINISTRATION (FCTA) } DEFENDANTS
2. PSALM 127 LIMITED }**

CONSOLIDATED RULING

This Ruling is pursuant to Motion No. **M/666/2024** dated and filed the 28/2/2024 by the Claimant/Applicant and Motion No. **M/5161/2024** dated 8/3/2024 and filed the 2nd Defendant/Applicant.

In the Motion filed by the Claimant/Applicant, the following reliefs were sought to wit;

(1) An Order granting leave to the Claimant/Applicant to correct the name of the Claimant in its Amended Statement

of claim by removing the word “Nigeria” from the Claimant/Applicant’s name and for the name of the Claimant/Applicant to be Salmad Limited instead of Salmad Nigeria Limited.

- (2) An Order of this Hon. Court granting leave to the Claimant/Applicant to amend its Statement of Claim by inserting additional paragraph in the manner shown in the highlighted and underlined paragraphs of the proposed Amended Statement of Claim herewith attached and marked as Salmad 1.*
- (3) An Order granting leave to the Claimant/Applicant to use the witness Statement on Oath in support of the proposed amended Statement of Claim attached to the affidavit in support of this suit as Salmad 2 annexed to the Affidavit in support of this application.*
- (4) An Order of this Hon. Court joining the Hon. Minister of the Federal Capital Territory as the 1st Defendant in this suit.*
- (5) An Order of this Hon. Court joining PRACO International Limited as the 4th Defendant in this action.*
- (6) An Order of this Hon. Court deeming as properly filed and served the amended Statement of Claim and the witness Statement on Oath in support of the amended Statement of*

Claim as properly filed and served the appropriate fees having been paid.

- (7) And for such further order(s) as this Hon. Court may deem fit to make in the circumstances.*

The grounds upon which the application is brought are as follows:

- (1) This suit was instituted on the 18/12/2023; however the name of the Claimant/Applicant was wrongly captured on the processes filed, as Salmad Nigeria Limited instead of Salmad Limited.**
- (2) This Application seeks to correct the human error made by Counsel regarding the wrongful addition of Nigeria in the name of the Claimant/Applicant. The Claimant/Applicant is not in any way trying to misled nor cause any reasonable doubt as to the identity of the Claimant/Applicant.**
- (3) The Hon. Minister of Federal Capital Territory is a necessary party in this suit, hence joining it would enable this Hon. Court to effectually and completely determine this suit.**
- (4) The Hon. Minister of FCT, purportedly issued a new Right of Occupancy Certificate in the name of PRACO International Limited Pursuant to Court order in suit No. FCT/HC/M/2318/2022 over the subject matter of this suit being Plot No. 454 Cadastral Zone A09 Guzape**

District, Abuja. Therefore, it is only proper to join PRACO International Limited so as to be bound by the outcome of this proceeding.

(5) This Hon. Court has the vires from the express provisions of the rules of this Hon. Court to grant this application.

In support of the application, an affidavit of 11 paragraphs deposed to by one Catherine Joseph, front desk officer in the law firm of the applicant was filed.

It is her deposition that this suit was instituted on 18/12/2023 with the name Salmad Nigeria Ltd instead of Salmad Limited and this application seeks to correct the genuine human error regarding the wrongful addition of “Nigeria” in the name of the Claimant. Joining the Honourable Minister of the FCT and Praco International Ltd is necessary for the effectual and complete determination of this suit. The paragraphs sought to be added is also consequential to the joinder sought. The proposed Amended Statement of Claim and Witness Statement on oath in support were attached and marked **Exhibits Salmad 1 & 2** respectively. The party sought to be joined as 1st Defendant purportedly issued a new Right of Occupancy number **031573** in the name of the party sought to be joined as 4th Defendant in respect of the subject matter of this suit. A copy of the Right of Occupancy was attached and marked as **Exhibit Salmad 3**.

A written address was filed in compliance with law and procedure wherein a sole issue to wit, **“whether the Claimant/Applicant is entitled to the grant of this instant Application”** was formulated for determination.

Learned Counsel for the Claimant/Applicant submitted that Amendments are always granted so as to ensure that justice is done to the parties to the dispute and that where a procedural irregularity can be cured without causing any injustice to the adverse party, an amendment would be allowed. Counsel cited the case of ***NJOKU & ORS VS. ONWUNELEGA (2017) LPELR-43384 (CA)*** and ***Order 13 Rule 2*** of the Rules of this court. Counsel urged the Court to grant the application in the interest of justice.

Reacting to the application, the 2nd Defendant filed a counter-affidavit of 8 paragraphs deposed to by one Simon Nnaemeka, Legal Officer/Secretary of the 2nd Defendant.

It is the deposition of the 2nd Defendant that the Claimant stated in paragraph 5 of the Statement of Claim that by a letter dated 7/7/2023, the Federal Capital Territory Administration purported to revoke the Right of Occupancy of the Claimant on the ground that Judgment in suit No. **FCT/HC/M/2318/2022** delivered by the High Court of the Federal Capital Territory on the 6/3/2023 had restored the title of Psalm 127 Ltd the same Plot of land owned by the Claimant. That the applicant by this application intends to change the character of this suit and confer on the Court the jurisdiction which the Court does not have *abinitio*.

A written address was filed wherein the issue “**whether having regard to the facts of this application and the applicable law, this Court ought not to refuse the orders sought.**”

Learned Counsel submitted that the Claimant had by paragraph 5 of its Statement of Claim stated that the 1st Defendant on record revoked the Right of Occupancy of the Claimant in favour of the 2nd Defendant and now changing it to party sought to be joined. Counsel urged the Court to refuse this application.

On the second Motion i.e. Motion No. **M/5161/2024** filed by the 2nd Defendant/Applicant. The following reliefs were sought to wit;

1. *An Order of this Hon. Court dismissing this suit for failure to disclose reasonable cause of action against the Defendants.*
2. *An Order of this Hon. Court dismissing this suit for being incompetent and on the ground that this Hon. Court lacks the jurisdiction to entertain the suit which constitute an abuse of Court process.*
3. *An Order of this Hon. Court dismissing this suit having been instituted against a non-juristic person.*
4. *An Order of this Hon. Court dismissing and/or striking out reliefs c, (i), (ii), (iii), d, e and paragraph 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the Statement of the Claim on the ground that the relief and the paragraphs of the Statement of Claim constitute an invitation to the Hon. Court to sit on*

appeal or review the Judgment of Court of coordinate jurisdiction.

5. *The reliefs and the paragraphs of the Statement of Claim is glaring incompetent if aggrieved, the Claimant not being a party to suit No. **FCT/HC/M/2318/2022** wherein Judgment was delivered on 6th March 2023 can only appeal against the Judgment as an interested party.*

In support of the application is an affidavit of 11 paragraphs deposed to by Simon Nnaemeka Nwani, the Secretary of the 2nd Defendant.

It is the deposition of the Applicant that the allegation contained in the paragraph 14 of the Statement of Claims relate to the interest of the Claimant which was revoked and restored to one Praco International Ltd. And no evidence to show that the subject matter was allotted to the 2nd Defendant.

That the party sought to be joined as 1st Defendant purportedly issued a new Right of Occupancy number **031523** in the name of the party sought to be joined as 4th Defendant in respect of the subject matter of this suit arising from the Court order in suit No. **FCT/HC/M/2318/2022**.

It is further the deposition of the 2nd Defendant/Applicant that the Claimant on 28/9/2023 filed Motion no. **M/1101/23** in suit no. **FCT/HC/M/2318/2023** between Praco Nigeria Limited & Anor v. Mohammed Musa Bello, Minister of FCT & Ors seeking Order of court joining him. And it is upon the same facts, issues, grounds

and averment that the instant suit is based. And that this suit was filed on 18th of December, 2023, during the pendency of Claimant's Motion No. **FCT/HC/GAR/1101/2023** in suit No. **FCT/HC/M/2318/2022**. That it will be in the interest of justice to grant this application.

A written address was filed wherein a sole issue, to wit; **“Whether the suit is competent and the Court has requisite jurisdiction to entertain same”** was formulated for determination.

Learned Counsel argued extensively that this Court lacks jurisdictional competence to entertain this suit as same is incompetent, discloses no reasonable cause of action, an abuse of court process and instituted by a non juristic person. The cases of *A.G. LAGOS STATE VS. DOSUNMI (1989) 3 NWLR (PT. 111) 55*; *C.S.S & DF LTD VS. SCHLUMBERGER NIG. LTD (2018) 15 NWLR (PT. 1647) 238 at 261*; *IJAODOLA VS. UNILORIN GOVERNING COUNCIL (2018) 14 NWLR (PT. 1638) 33 at 45* were cited and relied upon by the Applicant.

Reacting to the application, the Claimant filed a counter-affidavit of 8 paragraphs deposed to by Ahmadu Adamu Mu'azu, the Managing Director of the Claimant.

It is the deposition of the Claimant/Respondent that the cause of action is predicated upon the letter dated 07/07/2023 written by the Federal Capital Territory Administration which purports to revoke the Right of Occupancy of the Claimant in favour of the 2nd Defendant under the guise of abiding by the Judgment of this Hon. Court and the decision to join the 1st and 4th Defendants arose as

result of the subsequent action of the parties sought to be joined in respect of the subject matter of this suit..

That the challenge of the jurisdiction of the Court as per paragraphs 7 and 8 of this application on the content of the Motion on Notice No. **FCT/GAR/M/666/2024** which is merely yet to be moved or granted is incompetent and cannot constitute a ground challenging the competence of the suit.

A written address was filed wherein learned Counsel argued the issue of abuse of court process, reasonable Cause of action, competence of the party before the Court and urged the Court to dismiss this application.

I have gone through the affidavit in support of the reliefs sought in both Motions under consideration as contained on the faces of the application in view, on one hand, and the counter affidavit in opposition to both applications on the other hand.

I shall be brief but succinctly at addressing the issues before me in the interest of justice and fair play. I shall do so by considering Motion no. **M/666/2024** filed by the Claimant/Applicant first. It is not only filed before 2nd Defendant's Application, it seeks to regularize the case of the Claimant. It is a well-known principle of law that where there are two conflicting applications, one to give life and another to 'kill', the application to give life, even if filed subsequently, would be taken first. See ***JATAU TETE YOHANNA & ORS v. AGBASHI GABRIEL & ORS(2018) LPELR-44137(CA), MOBIL PRODUCING NIGERIA UNLIMITED V***

MONOKPO (2003) LPELR-1886(SC); APC V MBAWIKE (2017) LPELR-41434(CA). Our adjectival law leans heavily in favour of amendments and is generally against the refusal of amendments. Although the pendulum tilts in favour of amendment, courts of law are entitled to refuse amendment in deserving cases. Trial courts must examine the application for amendment very carefully in the light of the affidavit evidence. The peculiarity of each case shall be considered. ***AKANINWO VS NSIRIM (2008) 1 SC (Pt. 111) 151.***

It is established that every opportunity must be afforded parties to a dispute in court to put their case fully before the court. In cases conducted on the basis of pleadings, it certainly cannot be said that a party has been allowed to put his case before the court when the opportunity to amend his Pleadings has been denied him.

I however must be quick to mention that all cases are not the same. There are instances upon which application for amendment can be refused. The following are factors to be considered in granting or refusing an application for amendment.

- a. The attitude of parties
- b. Nature of amendment sought in relation to the suit.
- c. The question in controversy
- d. The time application is made
- e. The stage at which it is made and
- f. All other relevant circumstances. ***ANAKWE VS OLADEJI (2008) 2 NWLR (Pt. 1072) 506 at page 550 – 521***

The grant or refusal of amendment involves an exercise of discretionary power and such discretion must be exercised judicially and judiciously. ***OJEBODE & ORS VS AKANO & ORS (2012) LPELR 9696.***

The Claimant on the face of the writ of summon is Salmad Nigeria Limited. The Plaintiff brought this motion for an order of this Honourable Court deleting the name “Nigeria” from the Claimant’s name and for it to read Salmad Limited.

The law is settled that a misnomer occurs when the correct person is before the court under a wrong name. A misnomer will arise where a party is sued in the wrong name and the court will usually grant amendments to correct that, even on an Appeal. The position of the law has always been that for a misnomer to vitiate proceedings, it must be one that raises a reasonable doubt as to the identity of the person intending to sue or be sued. See ***NJOKU V. U.A.C (1999) 12 NWLR (PT. 632) 557.***

When an incorrect name is given in a writ and the parties are not misled in that they know the identity of the person suing or being sued, such is a misnomer which the court will permit the parties to amend.

Indeed, whether an error in name sought to be amended is a misnomer or not is a question of fact. It depends on the attitude of the reasonable man confronted with the writ in the circumstances of the case. If his answer on the examination of the writ would be of course it must mean me but have quoted my name wrongly, then of course the error would be that of misnomer. Where enquires are required on the part of the reasonable man to ascertain if the writ in

fact refers to him, then the error has gone beyond misnomer. I find that the addition of NIGERIA in the Claimant/Applicants name is a misnomer.

The approach of Nigerian courts when there is a misnomer has been to grant leave to amend so that real issues in controversy between the parties can be properly determined. Thus, a misnomer can be corrected by an amendment. *SEE PFIZER INCORPORATED V MOHAMMED (2013) 16 NWLR (PT. 1379) 155 AT 174*. Courts would rather not impose sanctions merely for mistakes by parties. This has been decided in a plethora of cases *MINISTRY OF CO-OPERATIVE & COMMUNITY DEVELOPMENT GOMBE STATE & ORS V GUARANTEE TRUST BANK PLC & ANOR (2018) LPELR-44091(CA)* *ALSTHOM S. A. V CHIEF SARAHI (2000) 14 NWLR (PT. 687) P. 415; ALHJ MOHAMMED YUSUFU & ANOR V CHIEF OLUSEGUN AREMU OLAKIOLA OBASANJO & 56 ORS (2003) 9-10 SC 53*. It is therefore important that in deciding whether or not a misnomer can be amended, the court focuses on the rights and substance of the parties and their case. This is more likely to achieve justice rather than punitively striking out cases with substance for mere mistakes of parties. Accordingly, it is my finding that the Claimant is a juristic person and I so hold. Consequently, I hereby grant leave to correct the Claimant's name as prayed and all the other reliefs for amendment and joinder of parties are as well hereby granted to allow the court to have an effectual and complete consideration and determination of all issues involved.

Having granted the reliefs sought in motion no. **GAR/M/666/2024**, I shall now consider motion no **M/5161/2024**. I have already found that the Claimant is a juristic person and hold the firm view that reliefs 4 (a) & (b) are not jurisdictional issues but issues to be determined at the judgment stage. Accordingly, the issues of cause of action and abuse of court process are the issues up for determination.

On the issue of whether the suit has disclosed a cause of action, the answer to this issue is in the affirmative. The Claimant has disclosed in its statement of claim filed before this Honourable Court that it has been in possession of Plot 154, Guzape District since the 2001 and it had always enjoyed quiet and peaceful possession of the property in addition to fulfilling all the requirement of the law including payment of ground rent and other statutory obligation until, as it alleges, suddenly and without any lawful justification whatsoever it received the letter dated 7 July 2023 but delivered on the 18th, July 2023 purporting to revoke the right of occupancy of the Claimant in favour of the 2nd Defendant herein, Psalm 127.

For emphasis, the purported revocation was made by the party joined as 1st Defendant in the first Application. It is thus obvious to me that looking at the Writ of summons before the court and the annexed proposed Amended Statement of claim, a cause of action has been disclosed against Defendants including those joined by my earlier ruling in motion no. **GAR/M/666/2024**.

Finally, on the issue of this suit being an abuse of court process, the claimant is accused of filing Motion No.

FCT/HC/CV/M/1101/2023 in Suit No: **FCT/HC/M/2318/2022** Between Praco Nigeria Limited v. Mohammed Musa Bello & Ors seeking to be joined as Defendant and later filing this suit as Claimant on the same subject matter. The claim of Abuse of court process is dependent on the alleged pendency of motion no. **M/1101/2023** filed in suit no. **FCT/HC/M/2318/2022**. I have perused motion no. **M/1101/2023** and the claims of the Claimant in this suit, it is obvious that although the parties are similar and the subject matter is the same, the Claimant's case here is not seeking to join the suit as Defendant but to challenge the action of parties in relation to the subject matter. The motion said to be pending has not been moved as such no claim can be made that the Claimant is a party in both suits. Here, I find that the argument of the objector is misconceived. This suit is not an abuse of court process. I so hold.

In view of my findings above, the 2nd Defendant/Applicant's Application fails and is hereby dismissed.

SIGNED
Hon. JUDGE
15/07/2024.

Appearances:

Mustapha Abdulkadir, Esq, with A.G. Bello, Esq, for the Claimant

M. A. Maiyamba Esq, for the 1st Defendant

J. M. Mathew Esq, with Frankling Agu Esq, N. O. Ahmed Esq. and C. I. Owuru Esq, for the 2nd Defendant