

**IN THE HIGH COURT 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/926/2024
MOTION NO: FCT/HC/M/7594/2024
DELIVERED ON THE 30/09/2024**

BETWEEN:

UMAR ABDULLAHI.....CLAIMANT/RESPONDENT

AND

- | | | |
|--|----------|---|
| 1. MISSOURI ENGINEERING LIMITED | } |DEFENDANTS/RESPONDENTS |
| 2. JOSEPH IDAKWO | | |
| 3. PERSONS NAMES UNKNOWN | | |
| 4. ADORF NIGERIA LIMITED | } | PARTIES SEEKING TO BE
JOINED AS DEFENDANTS |
| 5. JOHNSON SOMADINA ANENE | | |

RULING

The plaintiff filed this suit vide a writ of summons dated the 22nd day of January, 2024 and filed on the same date. The main claims of the plaintiff are as contained in both the writ of summons and the statement of claim.

When the processes of this court were served on the defendants, a notice of preliminary objection was filed by the defendants dated the 26th April, 2024 and filed on the same date. However, before the hearing of the preliminary objection another motion

was filed by the defendants dated the 7th day of May, 2024 and filed on the same date. The motion on notice seeks to join **ADORF NIGERIA LIMITED** and **JOHNSON SOMADINA ANENE** as the 4th and 5th Defendants in this suit as intended parties. The said motion on notice seeks for the following orders:-

- 1. An order of this Honourable court allowing **ADORF NIGERIA LIMITED** and **JOHNSON SOMADINA ANENE** to be joined as 4th and 5th defendants in this suit.*
- 2. An order of this Honourable court that all the originating processes be served on **ADORF NIGERIA LIMITED** and **JOHNSON SOMADINA ANENE** filed in compliance with the Rule as having been properly filed and served, filing fees having been paid.*

And for such further order or other orders as this Honourable court may deem fit to make in this circumstance.

The grounds upon which this application is brought include the facts that:-

1. The parties seeking to be joined to the 4th and 5th defendants are off - takers to the knowledge of claimant in this suit vide sublet development lease agreement of the subject matter with the 1st defendant.
2. The parties seeking to be joined have invested over **₦200,000,000.00** (Two Hundred Million Naira) pursuant to the agreement with the 1st defendant and has developed

over (2) units of houses in the subject matter in performance of the said agreement.

3. The parties seeking to be joined as 4th and 5th defendants have acquired an equitable interest in the subject matter and as such are necessary parties in the just determination of this suit.
4. This suit cannot be effectively determined without joining the 4th and 5th defendants as an interested party.
5. The final decision of this Honourable court would likely affect the party seeking to be joined.

In support of the motion on notice is an eleven-paragraph affidavit sworn to by one JOHNSON SOMADINA ANENE, one of the applicants seeking to be joined as the 5th defendant in this suit. The affidavit also has two Exhibits (**A & B**) attached to it and a written address in support of the application as their oral argument. The learned counsel to the Applicants, C. J. Chinwuba Esq, in his written address formulated a sole issue for determination in this application, to wit: -"*whether in the light of the facts before this court, the applicants are not entitled to a grant of this application*".

The learned counsel to the Applicants submitted that the provisions of **ORDER 13, RULE 19 of the High Court of FCT Civil Procedure Rules 2018** empowers the Applicants to bring this application for the purpose of joining a party as either Claimant or Defendant. He referred this Hon. Court to the case of **IBEGWURA ORDU AZUBUIKE V. PEOPLES DEMOCRATIC PARTY & ORS LPELR - (2014) SC 476/2012 or (2014) 7 NWLR (pt. 1406) pg 292**. Where it was

held per RHODES VIVOUR JSC that:- "*The court is expected in the interest of Justice to join as Plaintiff or Defendant anyone who may have a stake in the subject matter of the suit or maybe affected by the decision*". He further submitted that the parties seeking to be joined have both legal and equitable right over the properties in dispute at No. 42 Rhine street, Maitama, Abuja. He finally urged this Hon. Court to grant their prayers.

On the other hand, the learned counsel to the Claimant/Respondent, Ado Muhammad Ma'aji Esq, on behalf of the Claimant filed a counter affidavit of ten (10) paragraphs in opposition to the motion on notice. He equally filed a written address as their argument in support of their position. The learned counsel submitted while adopting the sole issue formulated by the learned counsel to the Applicants that this Hon. Court should hold the view that this application for joinder should not be granted. He submitted that the 4th and 5th defendants sought to be joined are not necessary parties to this suit because they are not privy to the JVA, exhibit AW, the subject of **FCT/HC/CV/926/2024** while the claimant is also not a privy to the purported off - takers agreement between the parties seeking to be joined and the 1st and 2nd defendants. He further submitted that there is nothing in exhibits A and B attached to the motion on notice that connects the Claimant to the transactions between the parties sought to be joined and the 1st and 2nd Defendants. The learned counsel referred this Hon. Court to a number of judicial authorities which include **KWARA STATE INTERNAL REVENUE SERVICE VS.**

SHERIFF & ORS (2021) LPELR - 55616 CA where it was held as follows:-

"It is a settled fundamental principle of law that only parties to a contract can sue and be sued on it and a stranger to a contract can neither sue or be sued thereon, even if the contract is made for his benefit. It is also trite law that a person who is not a party to a contract cannot enforce a contract or be held bound by it. This is what is called privity of contract".

He also referred to the cases of **NEGBENEBOR V. NEGENEBOR (1971) LPELR (1981) SC**, at pgs 12 - 13, **UNION HOMES SAVINGS & LOANS PLC & ANOR V. UBN (2022) LPELR - 58242 (CAP, POLARIS BANK LTD. V. IYEN & ORS (2022) LPELR - 58759 CA** amongst others.

According to the learned counsel to the Claimant, the present application is incompetent for failure to satisfy the condition precedent which requires compliance with mandatory provisions of ORDER 13 RULE 19 of the High Court of the Federal Capital Territory Abuja, Civil Procedure Rules, 2018. Order 13 Rule 19 provides as follows:-

1. Any application to add or strike out or substitute or vary the name of a claimant or defendant may be made to the court by motion.
2. Where the application is to add a claimant or a defendant, the application shall be accompanied by the statement of claim or defence as the case maybe, all the exhibits intended to be used and the depositions of all the witnesses,

except where the application is to substitute a deceased party with another person in which case the application, may not be accompanied by such documents specified above.

He urged this Hon. Court to hold that the application is incompetent having not been accompanied by the Statements of defence and Witness statement on oath. The court was referred to the cases of ISHOLA V. FRN (2023) LPELR - 60490 (CA), MOHAMMED V. FCDA & ORS (2022) LPELR - 57594 (CA) as well as OGEI & ANOR V. GOVERNOR OF BAYELSA STATE & ORS (2021) LPELR - 56097 (CA) respectively, to the effect that:-

"Rules of court are meant to be obeyed as they have the force of law and where there is no compliance with the rules of court sanctions for their breach must be invoked."

He finally urged this Hon. Court to refuse this application in the interest of Justice.

It will be in the interest of Justice to restate the fact that notwithstanding the filling of the Notice of Preliminary objection before the present motion was filed, yet this motion is being heard before the notice of preliminary objection. This is because, the Supreme Court in the case of MALLAM ABUBAKAR ABUBAKAR & 2 ORS V. SAIDU USMAN NASAMU & 5 ORS (2012) 17 NWLR (PT. 1330) PG 523 AT PG 549 RAYIO 29 held as follows:-

"Where there are two motions, one seeking to terminate a case and the other seeking to keep it alive for determination on the merit, and where a word bears two meanings, one in form of terminating a matter *in limine* and the other tending to keep it alive for determination on the merit the latter should be preferred to the former".

It is clear from the content of the Notice of Preliminary Objection filed before this Hon. Court that it seeks to terminate the entire case while the present motion on notice seeks to keep the case alive to be determined on merit, hence the ruling on the motion for joinder of the 4th and 5th defendants before having the notice of preliminary objection.

The present motion on notice seeks to join the 4th and 5th defendants in this matter. The question to be addressed at this stage is whether or not they are necessary parties and if they are, what qualifies them to be joined as defendants in this matter. In the case of FEDERAL MINISTRY OF SCIENCE & TECHNOLOGY & 1 OR VS. FEDERAL MINISTRY OF WORKS & HOUSING & 1 OR (2009) 17 NWLR (Pt. 1171) pg 510 at pg 512 Ratios 3 and 4, In Ratio 3 it was held as follows:-

"The essence of joinder of parties is twofold, namely, (a) to put an end to litigation and not to have two parallel proceedings in which the same issue is raised, leading to different and inconsistent results and (b) to make the person joined to be bound by the result of the litigation ".

Ratio 4:-

"A person can be joined as a defendant against the wish of the plaintiff when the justice of the matter demands that the person has to be joined before the case can be properly determined ".

Similarly in the case of CONSOLIDATED RESOURCES NIG. LTD. VS. FEDERAL CAPITAL DEVELOPMENT AUTHORITY & 1 OR (2011) 6 ALR ABUJA LAW REPORTS, PG 202 AT PG 4 it was held as follows:-

"A person is regarded as having an interest in the subject matter of a case so as to be entitled to be joined as a party thereto, if he is aggrieved or has been wrongfully deprived of something or he is likely to be affected or aggrieved by a decision of court. Sufficient interest should be given a narrow construction but should be regarded as including any connection, association or interrelation between the Appellants and the matter to which the application relates".

Flowing from the above judicial pronouncements the subject matter of the substantive suit before this Hon. Court could be considered in relation with the affidavit in support of this application and the necessary documents attached thereto.

The necessary documents to be considered in this application include exhibits A & B attached thereto which are connected with the first defendant as well as both the 4th and 5th defendants sought to be joined in this suit. In the same vein, exhibit B in particular has a serious connection with the document referred to in the writ of summons as JVA (Joint Venture Agreement) marked as AU5. It is the humble view of this Hon. Court that

there are serious issues raised in these documents that could best be determined only when the 4th and 5th defendants are joined in this suit.

Furthermore, the learned counsel to the Claimant/Respondent submitted that the present application is incompetent, the condition precedent having not been satisfied which is the mandatory provision or order 13 Rule 19 of the High of the Federal Capital Territory Abuja Civil Procedure Rules 2018. The said order provides as follows:-

1. "Any application to add or strike out or substitute or vary the name of a claimant or defendant may be made to the court by motion.
2. Where the application is to add a claimant or a defendant, the application shall be accompanied by the statement of claim or defence as the case may be, all the exhibits intended to be used and the depositions of all the witnesses, Except where the application is to substitute a deceased party with another person in which case the application may not be accompanied by such documents specified above".

He urged this Hon. Court to read Order 13 Rule 9 along with Order 3 Rule 19 of the Rules of this Court. According to the learned counsel, Rules of court are not made for fun but meant to be obeyed. He referred this Hon. Court to the cases of **ISHOLA V. FRN (2023) LPELR - 60490 (CA)**, **MOHAMMED V. Fed Ors (2022) LPELR - 57594 CA** and **OGEI &ANOR V. GOV. OF BAYELSA STATE & ORS (2021) LPELR - 56097 (CA)** respectively.

However, in the case of **ALHAJI IDRISU SANNI VS. MALLAM AHMADU SALIHU BELLO AGARA (2010) 2 NWLR (Pt. 1178) pg 171 at pg 179 Ratio 10**, it was held as follows:-

"Rules of court are handmade to aid Justice. Where strict and rigid adherence to the rules will cause injustice, judicious and judicial discretion shall prevail and such rules in the circumstances of the matter under consideration shall not be allowed to prevail. The rules must give way to substantial Justice and not technical Justice".

In view of the foregoing judicial authorities, this Honourable Court is of the humble view that the failure of applicants to have complied with the mandatory provisions of ORDER 13 RULE 9 of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules, 2018 does not invalidate the present application. This does not render this application incomplete to the extent of refusing the application.

Consequently, the rules must give way to substantial Justice and not technical Justice.

Furthermore, it will be in the interest of Justice to refer to the content of JVA (Joint Venture Agreement) clause 7.5 which reads as follows:-

"That the representatives of the parties executing this agreement on their behalf or as representatives of other persons or corporate bodies have been duly authorized to bind the company or other members of the board".

It could safely be observed or held at this stage that by the content of Exhibits **A and B** attached to the affidavit in support of this application, the 4th and 5th defendants sought to be joined are connected with the present suit. They have a stake in this matter especially that they could be said to be the representatives of the defendants in carrying out the execution of the project at the site.

It has been held in the case of **OLAWOYE V. JIMOH & ORS (2013) LPELR - 20344 (SC)** that *"Ordinarily, the main reason for the necessity in making a person a party to an action in court is so that he should be bound by the result of the action in the judgment of the Court"*.

It will be in the interest of Justice to equally refer to the statement of claim before this Hon. Court there is no doubt that this suit was filed vide a writ of summons and statement of claim by the Plaintiff/Claimant against the 1st and 2nd Defendants/Applicants as well as the 3rd defendants who were referred to as "PERSONS UNKNOWN". The statement of claim as per paragraph 4 states as follows:-

"The 3rd defendants are persons whose names are unknown and strangers to the JVA parading themselves as persons having interest in the project property covered by Certificate of Occupancy, No. If blow – 14 C4C – 4 C87r - FC38U - 10, with file No. **S010158**, dated the 19th May, 2006.....".

Furthermore, in paragraph 45 of the statement of claim, the plaintiff states as follows:-

"The claimant avers that persons named unknown have been visiting the project property site and parading themselves as owners of some of the houses and threatening to take possession".

In the same vein, paragraph 46 states as follows:-

"The claimant avers that his rights, title, interest and security over the project property and its appurtenances are being threatened by the action of the defendants".

It is the humble position of this Honourable Court that by the content of paragraph 4, 45 and 46 of the statement of claim the 4th and 5th defendants could possibly be the "PERSONS' NAMES UNKNOWN" already sued by the plaintiffs in this suit. It is equally clear that by the content of the above-mentioned paragraphs 4, 45 and 46, the persons named **Unknown** has serious issues in this suit which requires them to be joined before the just determination of this case. Unfortunately, there is nowhere in the counter affidavit of the claimant where it is deposed to the fact that the 4th and 5th defendants sought to be joined are not the "Persons Named Unknown" being referred to by the Plaintiff/Respondent. It could safely be concluded that the 4th and 5th defendants sought to be joined are the Persons Names Unknown already sued in this matter by the plaintiff. Their names have now been made available and are necessary parties to this suit and ought to be joined accordingly as the 4th and 5th defendants. Consequently, this application ought to be granted and is accordingly granted.

Having granted the Application for joinder, it is only just that the 4th and 5th Defendants are made parties and served the notice of preliminary objection earlier filed by the 1st and 2nd Defendants. Accordingly, parties shall amend their processes to reflect the names of the 4th and 5th Defendants and duly serve them.

SIGNED:
HON. JUDGE
30/09/2024.

Appearance:

*A. M. Ma'aji, Esq, with L. Hamza, Esq, and Amina Kabir Ahmed, Esq
for the Claimant/Respondent*

*C. E. Odum, Esq, with A. D. Ubua, Esq, for the 1st and 2nd Defendants
Applicant are no Represented.*