

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

THIS WEDNESDAY THE 11TH DAY OF JANUARY 2023

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

**SUIT NO: CV/565/2019
MOTION NO: M/4220/2022**

BETWEEN:

ADOKAM NIGERIA LIMITED CLAIMANT/RESPONDENT

AND

1. AKAGBUWOYE O. SUCCESS
2. AUTO LADY GARAGE AUTO MEDIC LTD } **... DEFENDANTS/
APPLICANTS**

RULING

By a Motion on Notice dated 4th April, 2022, the Defendants/Applicants pray for the following Reliefs:

- 1. An Order for the leave of this Honourable Court, joining “THE HON. MINISTER OF THE FCT; AND THE FEDERAL CAPITAL DEVELOPMENT ADMINISTRATION (FCDA)”, as the 3rd and 4th Defendants in this suit respectively.**
- 2. An Order directing the claimant and defendant in this suit to serve the Parties sought to be joined, the Originating Process and all other processes relating to this action, to be served on “THE HON. MINISTER OF THE FCT; AND THE FEDERAL CAPITAL DEVELOPMENT ADMINISTRATION” as the 3rd and 4th Defendants in this action respectively.**

- 3. An Order of this Honourable Court directing the claimant to correctly stated the name of the 1st Defendant in this suit as “AKAGBURUONYE O. SUCCESS” and not “AKAGBUWOYE O. SUCCESS” as contained in the writ to this suit.**
- 4. And for such further or other orders as the Court may deem fit to make in the circumstance of this case.**

The Grounds of the Application as contained on the motion paper are as follows:

- 1. That the Defence of the Defendants as reflected in the Amended 1st and 2nd Defendants’ Joint Statement of Defence filed on the 18th of June 2020 discloses acts of collusion of the office of the Hon. Minister of the FCT and the Federal Capital Development Administration (FCDA) which makes the mentioned persons necessary parties to be joined in respect of the subject matter of this suit, as their non-joinder will occasion a miscarriage of justice and will not aid the effectual and complete settlement of the issues before this Honourable Court.**
- 2. That the 1st Defendant has been in effective peaceable possession of the subject matter of this suit since 1992 when its location was ordinarily accessible to vehicles and farms and cultivated the plots of the subject matter of this suit at the material time.**
- 3. That the parties sought to be joined through the Ministry of Federal Capital Territory sometime in 2002, invited the 1st Defendant vide a letter dated 8th April, 2002 to appear before a committee on Land Records and Allocation in the FCT (“Ministerial Committee”) on the 10th of April 2022, during which the 1st Defendant honored the said invitation taking along with him the Original titles and other documents relating to the subject matter of this suit, which documents were retained compulsorily by the said committee on Lands Records and Allocation without returning same to the 1st Defendant till date.**
- 4. That for many better reasons as stated in the Amended 1st and 2nd Defendants’ Joint Statement of Defence filed on the 18th June, 2020, the parties sought to be joined will aid the effectual and complete settlement of all the issues before this Honourable Court.**

The Application is supported by a six (6) paragraphs affidavit and a written address. In the address, one issue was raised as arising for determination as follows:

“Whether the 1st and 2nd Defendants/Applicants has made out a case necessary for the parties sought to be joined to this action as 3rd and 4th Defendants respectively?”

The address then dealt with the settled principles governing the grant of joinder of parties and it was contended that on the materials supplied, the parties sought to be joined are necessary parties whose presence will enable the court completely and effectively adjudicate over all the issues raised by this action and prevent multiplicity of actions. The cases of **Chinweze V. Masi (1989) 1 NWLR (pt.97) 254 at 267 B; Iyimoga V Governor of Plateau State (1994) 8 NWLR (pt.360) 73 at 93** were referred to.

The Defendants/Applicants also filed a further and better affidavit of six (6) paragraphs with six (6) annexures marked as **Exhibits M1-M6** which counsel stated were inadvertently not attached to the first or initial affidavit in support of the application. A Reply on points of law was filed along with this further affidavit which essentially sought to accentuate the points earlier made.

At the hearing, counsel to the Defendants/Applicants relied on the contents of the two Affidavits filed and adopted the submissions in the written address and the Reply on points of law in praying or urging the court to grant the application.

In opposition, the Claimant/Respondent filed a ten (10) paragraphs counter-affidavit with a written address which raised one issue as arising for determination:

“Whether the claims of the claimant/respondent in this suit cannot be effectively decided/settled by this Honourable Court unless the Honourable Minister FCT and Federal Capital Development Authority (FCDA) are joined as co-defendants?”

The address equally dealt with the settled principles governing the grant of joinder of parties to an action and it was contended that on the materials presented by Applicants, the parties sought to be joined are not such parties in whose absence the case cannot be effectively and effectually settled.

It was submitted that from the claims formulated by the claimant in this case, which is essentially for title, trespass and damages for trespass, that the case can be determined completely and independent of the parties sought to be joined. It was further submitted that they, the claimant cannot be compelled by Defendants/Applicants to proceed against the parties sought to be joined whom it has no complaints or claims against. The case of **Eco Bank Nig. Plc V Michael C. Metu & ors (2012) LPELR-20846 (CA) 30-31, Dr. (Mrs.) Olaitan Nwankwo V First Bank of Nigeria Plc (2018) LPELR-45336 (CA) 29-30** were cited.

At the hearing, counsel to the Claimant/Respondent relied on the contents of the counter-affidavit and adopted the submissions in the written address in praying that the application be dismissed with substantial cost.

Before dealing with the substance of the application, let me quickly state that since Relief 3 on the motion paper with respect to the correct spelling of the name of 2nd Defendant is not opposed, the relief will accordingly be granted. We need not therefore suffer to be detained by the said prayer.

Now to the crux of the application.

I have given an insightful consideration to the processes filed on both sides of the aisle and the oral adumbration made by respective learned counsel. The simple issue to be resolved is whether the parties sought to be joined are necessary parties within the contemplation of the Rules. It is an issue to be resolved on a settled legal template.

It is settled principle of general application that a necessary party to a proceedings is a party whose presence and participation in the proceedings is necessary or essential for the effective and complete determination of the claim before the court. See **In-Re Mogaji (1986) 1 N.W.L.R (pt.19) 579**.

As a logical corollary, a necessary party is a party who will be affected by the decision of a court. His right will be affected either positively or negatively by the outcome of the case. A court of law qua Justice will certainly not make an order or give a Judgment that will affect the interest or right of a party that is not before it. And the only reason which makes it necessary to make a person a party to an action is that he should be bound by the outcome of the matter. There must be a question in the action which cannot be effectually and completely settled unless he is a party. See **Green V Green (2001) 45 WRN 90; Tafida V Bafarawa & ors (1999) 4 N.W.L.R (pt.597) 70 at 83**.

Having provided the above legal template, let us look at the claims of plaintiffs to determine whether the parties sought to be joined are likely to be affected by the extant proceedings. I prefer to take my bearing from the statement of claim.

I have carefully read and scrutinized the 12 paragraphs statement of claim and most importantly the Reliefs sought which are fairly straightforward as follows:

- a. A Declaration that the Plaintiff is the beneficial owner of the property situate and known as Plot 1164 Cadastral Zone B03, Wuye District, Abuja with File Number MIC 55438 and measuring 7,335.81sqm having been issued with the Certificate of Occupancy.**
- b. An Order of Perpetual Injunction restraining the Defendants from further trespassing into Plot 1164 Cadastral Zone 03, Wuye District, Abuja with File Number MIC 55438 and measuring 7,335.81sqm.**
- c. The sum of N500, 000, 000.00 (Five Hundred Million Naira only) as General Damages.**

In so far as can be evinced from the pleadings, the case is specifically against the Defendants on record for declaration of title over a defined plot of land known as Plot 1164 Cadastral Zone B03, Wuye District, Abuja, trespass, injunction and General damages. These are precisely streamlined or defined issues to be determined on fairly settled principles. The determination of these issues can however only be made against the person(s) the plaintiff has made claims against. The Defendants/Applicants are however in no legal position to seek to expand the remit of the grievance of plaintiff to include anyone plaintiff has no claims against or to seek to force plaintiff to proceed against anybody especially those they have not made any claims against.

On the pleadings, there is clearly no defined dispute between plaintiff and parties defendants seeks to join or bring into this case and the plaintiff has not made any claims against them providing any basis, legal or factual to join them to this action. Joinder is not granted as a matter of course or routine or on whimsical grounds or no grounds at all. It is not also granted on the mere say so of a defendant particularly in the absence of materials to situate the joinder as in this case.

The point must be made that a party is at liberty to proceed against whomever he wishes within and or as guided by the applicable Rules. He cannot be

compelled to do otherwise. It is therefore his claim and claim alone that denotes the cause of action.

In law, a cause of action is defined as the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements:

- a. The wrongful act of the Defendant which gave the plaintiff his cause of complaint, and
- b. The consequent damage. See **Akibu V Oduntan (2000) 13 N.W.L.R (pt.685) 446 and 463.**

As already alluded to, the facts or combination of facts on which the plaintiff has premised its right to sue defendants was clearly defined. The alleged wrongful acts of trespass made against defendants and the damages plaintiff suffered have clearly been set out in the statement of claim and within the context of those pleaded facts, the parties sought to be joined are certainly not parties that will be affected by the outcome one way or the other, neither are they parties whose presence is necessary for the effective and complete adjudication of the key issues raised by the present enquiry.

It is really difficult to situate any factual and or legal template to join the parties to this action as contended by defendants. The fact that the parties mentioned may have relevant evidence to give on the contested assertions does not make them necessary parties. Also, the mere fact that they were mentioned in the statement of claim does not automatically make them necessary parties.

I therefore consider it apposite to call attention to the following instructive decision of the Supreme Court on the precise parameters for joinder. In **Peenok Investments Ltd V Hotel Presidential Ltd (1982) 12 SC (Reprint) 1**, the Apex Court adopted the observations of Devlin .J. in **Amon V Raphael Truck & Sons Ltd (1956) 1 All ER 273** which I find relevant as follows:

“... What makes a person necessary party? It is not, of course, merely that he has a relevant evidence to give on some of the questions involved; that would make him a necessary witness. It is not merely that he has an interest in the correct solutions of some questions involved and has thought of some relevant arguments to advance and is afraid that the existing parties may not advance them adequately. That would mean that on the consideration of a clause in a common form contract, many parties would

claim to be heard and if there were power to admit any, there is no principle of discretion by which some would be admitted and others refused. The court might often think it convenient or desirable that some of such persons should be heard so that the court should be sure that it had found a complete answer, but no one would suggest that it is necessary to hear them for that purpose. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result and the question to be settled therefore must be a question in the action which cannot be effectually and completely settled unless he is a party.”

The above observations are very pertinent in this case.

As stated earlier and borne out clearly by the decision of the Apex Court above, one of the fundamental reasons for joinder or what makes it necessary to join a party to an action is that he should be bound by the result and the question to be settled in the action must be such that cannot be effectually and completely resolved unless he is made a party. For him to be so bound, he must be aware of the case against him and given every reasonable opportunity to react. Where no case or complaint is however made against a party, it really has no business in such a case.

That is the situation in this case. The parties defendant therefore seeks to join in this case are clearly not necessary parties. I call on parties to now act post haste to see that this fairly straightforward matter is resolved without any further delay.

On the whole, except for Relief 3 which is granted, the other Reliefs on the motion paper have no basis and must fail. The claimant is ordered to amend the originating processes within 14 days from today to reflect the correct names of 1st Defendant. For the avoidance of any doubt, save for Relief 3 which is granted, the Application however completely lacks merit and it is accordingly dismissed.

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Hon. Justice A. I. Kutigi

Appearances:

- 1. Phillips Yaor, Esq., for the Claimant/Respondent.***
- 2. Obinna S. Nwosu, Esq., for the Defendants/Applicants.***