

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/736/2024

DATE : THURSDAY 11TH JULY, 2024

BETWEEN:

**1. CHIEF JOHN OGWU
2. HON. JUSTICE MUADA BALAMI } JUDGMENT DEBTORS
/RESPONDENTS**

AND

**1. ENGR. GOODNEWS GOODMANAGBI
2. MR. PIUS ACHILIKE } JUDGMENT CREDITORS
APPLICANTS**

RULING

This Ruling is at the instance of Judgment/Creditor Applicants who approached this Honourable Court praying for the following;

- a. An Order of the Honourable Court joining the Deputy Sheriff FCT High Court as the 3rd Respondent to the Motion on Notice number **M/7378/2019.**
- b. An Order directing the Applicants to serve the party joined and the parties with the amended originating processes and all other processes in this application.
- c. And for such further Order(s) as the Honourable Court may deem fit to make in the circumstances of the suit.

The grounds upon which this application is brought are as follows:-

1. That the Deputy Sheriff of the High Court of Justice FCT, Abuja is a necessary party to this application.
2. That the enforcement of judgment of court is the exclusive preserve of the Deputy Sheriff FCT, High Court Abuja.

3. That this application cannot be determined effectively and effectually without joining the Deputy Sheriff as a necessary party to this application.

In support of the application is an affidavit of 14 paragraphs duly deposed to by one Ikechukwu Obi Dike, Esq. an employer in the law firm of the counsel to the Applicant.

It is the deposition of the Applicant that the Deputy Sheriff of the High Court of Justice, FCT – Abuja is a necessary party to this application that the enforcement of judgment of court is the exclusive preserve of the Deputy Sheriff, FCT High Court.

That the execution sought to be set aside which is the subject matter of this application was carried out by the office of the Deputy Sheriff High Court of the FCT.

That all the facts and circumstances surrounding the said execution is best known to him and that this application cannot be determined effectively and effectually without joining the Deputy Sheriff as a necessary party to this application.

That the Order for stay is an afterthought, procured through the back door, meant to deceive the Honorable Court as there was no

time the Applicant/Judgment Creditors were served with any motion on notice for stay of execution from FCT High Court.

That both the Deputy Sheriff High Court of Justice FCT – Abuja and the execution Unit FCT High Court were not served with the Motion on Notice before it was allegedly moved by the Respondents.

That the judgment sought to be stayed by Respondents has not being appealed against till date by the Applicant neither has it been set aside.

That Plot E27 together with the development thereon is now the bonafide property of the Respondents in line with the FCT High Court No. 10 judgment delivered by A.M Talba in suit No. **FHC/HC/CV/736/2004.**

That it is in the best interest of justice to grant this application.

In line with the procedure, written address was filed, wherein sole issue was distilled for determination to wit:-

Whether this Honourable Court can exercise its discretion to make an Order for the joinder.

Arguing on the above, learned counsel submits that the provision of Order 13 Rules 7, 18 (3), 18(5) and 19 of the High Court of the FCT (Civil Procedure Rules) 2018 coupled with the averments in the affidavit in support of Motion on Notice that this Honorable Court can exercise its discretion to make an Order for joinder of Deputy Sheriff as necessary party in this suit and the court is urge to so hold.

Learned counsel submits that it is trite law that in an application of this nature i.e joinder of person(s) to an action, the court has absolute discretion to Order that a person or certain persons be joined in action in sole interest of justice. He cited Order 13 Rule 18(3) and 18(5) of the FCT High Court (Civil Procedure Rules) 2018.

Learned counsel further submits that a clear clinical interpretation of the above shows that this Honourable Court can exercise its discretion by ordering a joinder of the Deputy Sheriff for the purpose of determining the real questions or issue in dispute between the parties. ***ATTORNEY GENERAL OF THE FEDERATION VS. ATTORNEY GENERAL OF ABIA STATE & 35 OTHERS (2001) NWLR (Pt. 725) Page 689 at Page 753 Paragraphs C – D was cited.***

In conclusion, learned counsel submits and urge the court on the strength of the authorities cited to exercise its discretion and make an Order for the joinder of the Deputy Sheriff as a necessary party in this instant suit.

Upon service, 2nd Plaintiff /Judgment/Debtor Respondent filed counter affidavit of 5 paragraphs deposed to by Ilenumabojon M. Igomu counsel in the law firm of counsel to the 2nd Plaintiff /Judgment Debtor/Respondent.

It is the deposition of Plaintiff/Judgment Debtors/Respondent that paragraph 4 of the affidavit in support is false and incorrect, as the Deputy Sheriff of the High Court only acted based on the writ of possession issued by the court as a result of the deceit of the Judgment Creditors/Applicants. Exhibit A is a certified true copy of the writ of possession.

That paragraph 7 of the Applicant's affidavit is false and misleading as the Deputy Sheriff knew nothing about the genuineness of the facts presented to the court by the judgment Creditors/Applicants, which warranted the issuance of the writ of possession, as the Deputy Sheriff only carried out the execution based on the document presented before him from the court.

That this application can be determined without the joinder of the Deputy Sheriff as he did not participate in carrying out the deceit which led to the procurement of the issuance of the writ of possession to wit, concealment of facts pending appeal, transmission of Records to the Court of Appeal and even the existence of order of stay of execution granted by Hon. Justice Halilu.

That the Order of stay was never obtained through the back door as all the processes filed and served are in the court's records. The court has power to take judicial notice of its records.

That both the Deputy Sheriff and the execution Unit of the High Court were duly served with the motion for stay before it was moved. The said proof of service on both is resident in the court file of which the court can take judicial notice.

That paragraph 11 of the affidavit in support of the judgment Creditor's Motion on Notice is false as there is a pending appeal before the Court of Appeal. EXHIBIT B is the record of proceedings of the Court of Appeal for 14th March, 2017 showing that the court is seized of all matters relating to the suit.

That the deposition of the Applicant in paragraph 12 of the affidavit is false as there was an Order for stay of execution from

the court of which the Applicants were aware of and also a pending appeal in respect of the property.

That paragraph 12 of the affidavit is not just false but misleading as the issue before this court has to do with the deceit practiced on the court before taking over possession.

That it is not in the best interest of justice to grant this application as same will prejudice the 2nd Plaintiff/Judgment Debtor/Respondent and render the appeal nugatory.

That the said order for stay is still subsisting having not been appeal against or set aside.

Learned counsel for the 2nd Plaintiff/Judgment Debtor's Respondent filed written address, wherein sole issue was distilled for determination to wit: whether the Applicant's application is liable to be defeated by reason of non – joinder of the deputy sheriff as 3rd Respondent.

It is the submission of the learned counsel that it is notorious principle of law that the Applicant has the choice to determine against whom he maintains an action. ***ONU VS. NWUBA (2016) ALL F.W.L.R (Pt. 864) 1805 at 1838 – 39, paragraph F – G and A-B.***

Learned counsel contends that the Applicant is incompetent to choose a co – respondent in the person of the Deputy Sheriff of the FCT High Court for the present 2nd Plaintiff/judgment Debtor/Respondent, the sought out Respondent cannot be co-Respondent without their consent. ***FADAYOMI VS. SADIPE (1986) 1 NSCC Vol. 17 Page 570 lines 15 – 25 was cited.***

Counsel submits that this application is funny, strange and a sham intended only to frustrate the 2nd Plaintiff/Judgment Debtor's earlier application. The law is that the court and indeed the law cannot aid, a sham. He cited ***JOLABON INV. (NIG.) LTD. VS. OYUS INT. COMPANY (NIG.) LTD. (2015) 18 NWLR (Pt. 1490) 30 at 43 – 44 paragraphs A, C and E.***

Learned counsel further submitted that the only reason which makes a party a necessary party and so a party against whom an order of joinder may be made is that he may be bound by the result of the case which cannot be effectually and completely decided without him. He is not a person whose absence would preclude this Honorable Court from deciding this case. See the case of ***O.K CONTACT POINT VS. PROGRESS BANK (1999) 5 NWLR (Pt. 604) 631 at 634 was cited.***

Counsel contended that assuming without conceding that the Deputy Sheriff is a necessary party but not joined by the 2nd Plaintiff, the law is that non – joinder or misjoinder of necessary party does not defeat the action of the Plaintiff who must either stand or fall as he is duty bound to succeed on the strength of his case. ***TANKO VS. NONGHA (200 5) ALL FWLR (Pt. 286) 774 at 793 paragraphs D – G. was cited.***

Learned counsel submits that it is clear that the party to be joined as a co-respondent must have a relief against the Defendant from the same transaction involving the present Plaintiff.

In conclusion, counsel submits that the Judgment Creditors/Applicants have clearly shown his willingness to genuinely allow the 2nd Plaintiff/Judgment Debtor proceed to ask the court to rescind its order of execution via the writ of possession granted to the Judgment Creditors. He cannot be allowed to delay the 2nd Plaintiff/Judgment Debtor's application by frivolous applications such as this, at such a time as this, when quick dispensation of justice is the order of the day, this application cannot see the light of the day, it is dead on arrival by law. In view of the above, the court is urge to dismiss the application with cost.

COURT

I shall be brief but most succinct in considering the application in issue.

Black's law Dictionary, 7th Edition page 841 defines joinder as follows:-

"Joinder", the uniting of parties in a single law suit".

The Supreme Court in ***GREEN VS. GREEN (1987) 3 NWLR (Pt. 61) 480 at 498 followed the guide suggested in the result (1958) 1 ALL ER 839 at 841 – 842 as to the factors to be borne in mind... Supreme Court said the court should ask itself the following questions:-***

- a. Is the cause or matter liable to be defeated by the non - joinder.
- b. Is it possible for the court to adjudicate on the cause of action set up by the Plaintiff unless the 3rd party is added as a Defendant?
- c. Is the 3rd party a person who ought to have been joined as a Defendant?

- d. Is the 3rd party a person whose presence before the court as Defendant will be necessary in order to enable the court effectually and completely adjudicate on and settle all the question involved in the cause or matter.

Once the court is satisfied that any of the above condition exists, then a party becomes a necessary party in a matter.

Let me state here however, that anyone whose presence is crucial and fundamental to the resolution of a matter before the court must be made a party to the proceeding. ***RICO CONSTRUCTION CO. LTD VS. VEEPEE IND LTD & ANOR (2005) 3-4 SC1***

Joinder of parties whether as Plaintiff or Defendant is subject to two -condition to wit;

1. The right to relief must in each case be in respect of or arise out of the same transaction or series of transactions.
2. There must be some common question of law or facts.

REGISTERED TRUSTEES OF NATIONAL ASSOCIATION OF COMMUNITY HEALTH PRACTITIONERS OF NIG & ORS VS. MEDICAL & HEALTH WORKERS UNION OF NIG & ORS (2008) 1SC (Pt. 111) 1

A court of law shall not delve into the merits of a case in the course of determining an application for Joinder. A 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 the stage with the merits of the substantive case.

For a court to join a party in a suit, the party sought to be joined must be a necessary party, i.e 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. ***IGT & ORS VS. FOUNDE & ORS (1994) NWLR (Pt. 354).***

I have gone through the affidavit and written address in support of the Judgment Creditors/Applicants application for joinder on one hand and the counter affidavit and written address of the Judgment Debtors/Respondents on the other hand.

I shall highlight on paragraphs affidavits in support and against the Application for better and proper understanding of the kernel of the Application.

From the affidavit of the Judgment Creditors/Applicants, on the one hand, and those of the Judgment Debtors/Respondents, on the other hand, the issue seems to have been narrowed to the Order of stay of execution granted by this Honorable Court.

From the affidavit of the Judgment Creditors/Applicants' paragraph 7, 8, 9, 10 and 11, the Judgment Creditors/Applicants' stated that all the facts and circumstances surrounding the said execution is best known to Deputy Sheriff FCT High Court and this application cannot be determined effectively and effectually without joining him.

Applicant further averred that the order for stay is an afterthought, procured through the back door as there was no time the Judgment Creditors/Applicants were served with any Motion on Notice for stay of execution from FCT High Court and that the Judgment sought to be stayed by the Respondent has not being stayed and has not being appealed till date and neither has it been set aside.

On their part, 2nd Plaintiff/Judgment Debtor/Respondent filed counter affidavit copiously denying all the averments as contained in the affidavit in support of the application in opposition to Judgment Creditors/Applicants by stating that the Deputy Sheriff

of the FCT High Court only acted based on the documents presented before him and that this application can be determined without the joinder of Deputy Sheriff as he did not participate in carrying out the deceit which led to the procurement of the issuance of the writ of possession to wit, concealment of facts pending appeal.

It is now firmly settled per-adventure that documentary evidence is the best evidence. It is the best proof of the contents of such document, and no oral evidence will be allowed to discredit or contradict the contents thereof, except where fraud is pleaded. See ***AG BENDEL STATE VS UBA LTD. (1986) 4 NWLR (Pt. 337) 547 at 563. See also TEJU INVESTMENT AND PROPERTY CO. LTD VS SUBAIR (2016) CA.***

I have seen Exhibits mentioned in paragraph 4c and i of the counter affidavit in opposition of the application for joinder.

It is further the evidence of the Judgment Debtors/Respondents that the order for stay was never obtained through the back door as both the Deputy Sheriff and the Execution Unit of the High Court were duly served with the motion for stay before it was moved.

Indeed, it is the words of the Judgment Debtors/Respondents against that of the Judgment Creditors/Applicants. Now the Judgment/Respondents vehemently denied the allegation in their counter affidavit, why did the Judgment Creditors/Applicants not file a further and better affidavit to put the record straight.

It is instructive to note that the afore stated facts contained in the counter affidavits of the Judgment Debtors/Respondents were not contradicted or countered. The evidence remained unchallenged and unchallenged evidence is deemed admitted and Court is at liberty to make use of same. I find solace in the case of ***HYDRO TECH (NIGERIA LTD. & 1OR VS. LEADWAY ASSURANCE CO. LTD. & 1OR (2016) LELR.***

In view of above factors and guided by wisdom and reason, this is one application that this court should not grant.

It is my firm view that the party sought to be joined is not necessary party at this point in time.

On the whole therefore, I refuse the application for joinder for the fact that the conditions for joinder have not being met.

Accordingly, the said motion dated 28th day of June, 2024 is hereby and accordingly dismissed.

***Justice Y. Halilu
Hon. Judge
11th July, 2024***

APPEARANCES

D.A Akatugba, Esq. with O. Idofe Ukonga, Esq. – for the Respondents.

Applicants not in court and not represented.