

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. 13

CASE NUMBER : SUIT NO: GAR/CV/115/2024

DATE: : WEDNESDAY 6TH NOVEMBER, 2024

BETWEEN:

**KAMDI PROPERTY DEVELOPMENT CO. LTD. } CLAIMANT/
APPLICANT**

AND

**1. KOILA AGRO ALLIED NIGERIA LTD.
2. ABISO KABIR
3. EZUGWU UCHE } DEFENDANTS**

AND

**1. HON. MINISTER OF FCT.
2. DEPARTMENT OF DEVELOPMENT } PARTIES SOUGHT TO
CONTROL ADMINISTRATION (FCT). } BE JOINED**

RULING

This Ruling is at the instance of Claimant/Applicant who approached this Honourable Court praying for the following:-

- a. Leave of this Honourable Court joining Hon. Minister of Federal Capital Territory and Department of Development Control Federal Capital Territory Administration (FCDA) as Defendants in this suit.
- b. An Order of this Honourable Court joining Hon. Minister of Federal Capital Territory and Department of Development Control Federal Capital Territory Administration (FCDA) Abuja as Defendants in this suit.
- c. And for such further Order(s) as this Honourable Court may deem it fit to make in the circumstance of this application.

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

1. That the parties sought to be joined are necessary parties in this suit.
2. That from the circumstance of this case, the Claimant has a cause of action against the parties sought to be joined.

3. The Claimant has much to rely on the parties sought to be so joined as Co – Defendants in establishing its case.
4. It is necessary to join Hon. Minister of FCT and Department of Development Control Federal Capital Territory Administration (FCDA) as Co – Defendants in this suit for a just determination thereof.
5. That the Rules of this Honourable Court empowers this Honourable Court to grant this application.
6. That it will serve the interest of justice to grant this application.
7. That section 36(6) of the constitution of Federal Republic of Nigeria, 1999 as amended protects the right to fair hearing of parties.

In support of the application is an affidavit of 9 paragraph duly deposed to by one Samuel Doma, a litigation secretary in the office of the Claimant's counsel.

It is his deposition that the Claimant/Applicant commenced this suit by writ of summons dated 5th of January, 2024 without the party sought to be joined.

That there are issues touching on the parties to be joined and that the parties seeking to be joined are in charge of approval of development in Federal Capital Territory, Abuja.

That this suit cannot be determined affectively without the party sought to be joined and it will serve the interest of justice if the parties sought to be joined are giving fair hearing in this matter.

That all parties in this suit will not be prejudiced if this application is granted and this application will enable the court to hear both parties and determine this suit on the merit.

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

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

Whether this Honourable Court can grant the reliefs sought by the Claimant/Applicant.

Arguing on the above, learned counsel submits that it is a trite position of the law that any party with the right to any relief, is necessary for the just determination of a subsisting matter may be joined as a party to a suit. Order 13 Rule 4 of the FCT High Court (Civil Procedure) Rules 2018 was cited.

Learned counsel added that when a party becomes aware of a pending suit and the outcome of the suit will affect such person or any other person negatively or positively, such person may apply to be joined as a party to such suit. The case of ***BELLO VS. INEC (2010) 8 NWLR (Pt. 119) Page 417 Paragraph D – H was cited.***

Learned counsel further submits that the Honourable Court can make an Order suo moto joining the parties sought to be joined by this application where it appears that the matter cannot be effectively concluded without them being joined as a Co-Defendants. He cited Order 13 Rule 4 FCT – High Court (Civil procedure) Rule 2018.

It is the submission of counsel that the grant of this type of application is at the discretion of the court and such discretion should be exercised judicially and judiciously to the end of justice. See the case of ***CHIEF OF ARMY STAFF VS. LAWAL (2012) 10 NWLR (Pt. 1307) Page 74 Paragraph C – D was cited.***

Learned counsel further submits that this Honourable Court has the power vested on it by the rules of this court to exercise its discretion when the need arises for justice to be done particularly

in situation like this. ***ODUTOLA VS. KAYODE (1994) 2 NWLR (Pt. 324) 1 at 16 Paragraph F.***

Learned counsel contended that the Respondent will not be prejudiced in any way whatsoever if this application is granted as the case will be fairly determined by the court on merit and with all facts of the matter laid before it.

In conclusion, learned counsel urged the court to grant this application by joining the two parties as Co-Defendants to this suit in the interest of justice.

Upon service, Defendants/Respondents filed counter affidavit of 10 paragraph duly deposed to by one Peace Sampson, a litigation secretary in office of counsel to the Defendants/Respondents.

It is his deposition that the affidavit has not disclosed any claim against Hon. Minister of Federal Capital Territory and the Department of Development Control Federal Capital Territory Administration now sought to be joined as Co – Defendants.

That the Claimant's claim against the Defendant is the alleged breach of the lease Agreement which the Claimant had with the Defendant and that the parties sought to be joined are not

parties to the said lease agreement, the alleged breach of which is the case of action in this case.

That the 2nd person sought to be joined is not a juristic person, it is an agent of the 1st person sought to be joined as Co-Defendant.

That the Applicant's motion is not in compliance with the rules of this Honourable Court.

Learned counsel for the Defendants/Respondents filed written address, wherein adopts the Claimant/Applicant's lone issue for determination to wit:

Whether this Honourable Court can grant the reliefs sought by the Claimant/Applicant?

Arguing on the above, learned counsel submits that Order 13 Rules 7 of the Rules of this Honourable Court allows the Claimant to only join as party's person who may be liable on any contract, so that in an action for breach of contract as in this case, the only persons that can be joined as parties are persons who will be liable as per the breach of the contract.

Learned counsel argued that the Claimant's claim in this case is an alleged breach of contract i.e breach of lease Agreement and

not claim for title, unfortunately, the parties sought to be joined were not parties to the said lease contract, they will therefore not be liable on any clause of the contract and they will also not be affected by whatever judgment that will be handed down by this Honourable Court.

It is the submission of counsel that one of the factors in determining the application for joinder is that the party sought to be joined must be a necessary party who will be affected by the outcome of this suit.

Learned counsel contends that the Claimant/Applicant in this suit has not been able to show either by affidavit evidence or other documentary evidence how the parties sought to be joined are necessary parties and how they will be affected by the judgment that will be handed down by this court.

Learned counsel further submits that the affidavit of the Applicant in support of this extent motion is riddled with speculation and Applicant's imagination. It is trite that courts act on real and substantial facts and not on speculation. The case of ***IKENTA BEST (NIG.) LTD. VS. A.G RIVERS (2008) LPELR – 1476 (SC) was cited.***

Learned counsel urged the court to dismiss this application.

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 the entire 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 -conditions 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 Claimant/Applicant Application for joinder on one hand and the counter affidavit and written address of the Defendant/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 Claimant/Applicant's paragraph 1, 2, 3, and 4, Applicant stated that there are issues touching on the parties to be joined and that the parties seeking to be joined are in charge of approval of Development in Federal Capital Territory, Abuja.

Applicant further averred that this suit cannot be determined effectively without the parties sought to be joined.

On their part, Defendant/Respondent filed counter Affidavit copiously denying all the averments as contained in the affidavit in support of the application in opposition to Claimant/Applicant by stating that the affidavit has not disclosed any claim against the Hon. Minister of the Federal Capital Territory and the Department of Development Control, Federal Capital Territory Administration sought to be joined as Co-Defendant.

It is indeed the words of the Defendant/Respondent that the claimants' claim against the Defendants is the alleged breach of the Lease Agreement which the claimant had with the Defendant and the parties sought to be joined are not parties to the said Lease Agreement the alleged breach of which is the cause of action in this case.

It is now firmly settled peradventure 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;***

TEJU INVESTMENT AND PROPERTY CO. LTD VS SUBAIR (2016) CA.

I have seen the Lease Agreement attached to the Writ of Summons to this suit mentioned in paragraph 6 and 7 of the counter affidavit in opposition to the application for joinder to the effect that the parties sought to be joined were not parties to the said Lease Agreement which is the cause of action in this case.

It is instructive to note that the aforestated facts contained in the counter affidavits of the Defendant/Respondent 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, guided by wisdom and reasoning, this is one application that this court should not grant.

It is my firm view that the parties sought to be joined are not necessary parties at this point in time in view of the averments contained in the paragraphs of the Defendant/Respondent counter affidavit.

On the whole therefore, I refuse the application for joinder as provided by law and the fact that the conditions for joinder have not been met.

Accordingly, the said motion paper dated 11th day of June, 2024 is hereby and accordingly dismissed.

Justice Y. Halilu
Hon. Judge
6th November, 2024

APPEARANCES

Emmanuel O., Esq. – for Claimant.

Lawrence Ereweke, Esq., with Ada D., Esq. – for Defendants