

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/1406/2021
DATE: : TUESDAY 20TH FEBRUARY,
2024

BETWEEN:

**TOTAL ENGINEERING SOLUTIONS
INT'L LIMITED** } **CLAIMANT**

AND

1. HASAL MICROFINANCE BANK LTD. } **DEFENDANTS/
2. PETROLEUM TECH. DEV. FUND** } **APPLICANTS**

RE: 1. LAWRENCE WELLE } **PARTIES SOUGHT TO BE JOINED**
2. OJARICHI WELLE }

RULING

The 1st Defendant/Applicant approached this Honourable Court vide a Motion on Notice dated 3rd March, 2022, praying the Court for the following:-

1. An Order of the Honourable Court joining Lawrence Welle and Ojarichi Welle to this suit as 2nd and 3rd Claimants respectively, being necessary parties.
2. And for such other Order or Orders as this Honourable Court may deem fit to make in the circumstance

In support of the application is a 7 paragraph affidavit deposed to by Morenita Mbia, a Litigation Secretary in the Law Firm of counsel to the 1st Defendant/Applicant. It is the deposition of the 1st Defendant, that;

The Claimant filed a Writ of Summons before the Honourable Court on the 2nd July, 2021 with a sole Claimant - Total Engineering Solutions Int'l Ltd.

The entire facts surrounding the suit were not laid bare before the Honourable Court.

The Lawrence Welle and Ojarichi Welle are both Directors of the sole Claimant aforementioned and were not joined as parties to this suit. Furthermore, both Directors signed the All Assets Debentures over all the Claimant's assets, in favour of the 1st Defendant as one of the conditions to obtaining a loan facility from her. The All Assets Debentures signed by both Directors is annexed hereto as Exhibit "A", that Lawrence Welle is the MD/CEO of the Claimant.

That Lawrence Welle was specifically the person behind the veil that conducted all the transactions in respect of the term loan granted the Claimant by the 1st Defendant/Applicant.

That Lawrence Welle and Ojarichi Welle are necessary parties to this suit. Furthermore, the 1st Defendant intends to Counter-Claim and believes that any order on same will affect both Director one way or the other.

That one of the conditions for granting the Claimant the loan was a duly executed personal guarantee of Mr. Lawrence Welle so as to be held liable in the event of default of payment on the part of the Claimant. Furthermore, the liability of Mr. Lawrence Welle is not limited to the principal sum, but the accrued interest as well.

The said personal guarantee of Mr. Lawrence Welle is hereby annexed and marked Exhibit "B".

That the grant of this application will not in any way prejudice the Parties to this suit.

That it will serve the interest of justice to grant same.

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

Whether the 1st Defendant/Applicant has shown by affidavit evidence in support that Mr. Lawrence Welle, the MD/CEO of the Claimant is a necessary party to be joined in this suit?

It is the submission of learned counsel, that from the totality of our deposition, we have shown a cogent reason why this Application should be granted. Counsel humbly refer this Court to paragraphs 4(a) - (g) of the Affidavit in support of the Motion.

Learned counsel contended, that in as much as such an application is permissive under our rules of practice, joinder of a party is not granted as a matter of course or it is not an all comers affairs.

An Applicant must of necessity show or fulfill the following principles as laid down in plethora of cases namely:-

- i. That he has a claim against such a party to be joined.
- ii. That he wants the party or person to be joined to be bound by the outcome of the suit.
- iii. That except the party to be joined is joined the question or issue for determination in the suit cannot be effectually and completely settled unless the person sought to be joined is made a party.
- iv. That except the person sought to be joined is made a party, his interest would be irreparable prejudicial.

UKU VS. OKUMAGBA (1974) 2 S.C. 35.;

ODUTOLA VS. COKER (1981) 5 SC 197 were cited.

Learned counsel submits, that the Applicant has fulfilled the principle referred to above. Paragraph 4 (a-g) of the affidavit in support of the Motion and Exhibits "A" and "B" attached thereto, clearly established the fact that Lawrence Welle is a guarantor to the Claimant in respect of the loan facility granted the Claimant by the 1st Defendant and should be held liable for the entire

indebtedness of the Claimant as well as Ojarichi Welle who is also a Director, the Claimant having failed, refused and neglected to liquidate same.

Learned counsel further submits, that it is trite and long settled aspect of our laws that a party who would be affected by an Order or Judgment of a Court is enjoined to defend such an action against him. It is a constitutional right which cannot be denied a party to a suit. The case of ***ALAMIEYESEIGHA VS. TEIWA (2001) 33 WRN 144*** was cited.

Learned Counsel finally concludes by praying this Court to grant this application in the interest of justice and exercise your discretion in favour of the 1st Defendant/Applicant.

On their part, Claimant filed 8 paragraph counter affidavit deposed to by Tijani Ramat, Legal Practitioner assisting the lead counsel to the Respondent. It is the deposition of Respondent.

That paragraphs 2, 4b, 4e, 4f, 4g, 5, 6 and of the affidavit in support of the Applicant's Motion are not true.

That the loan agreement which metamorphosed into the present suit before this Court was granted to the Claimant and not the

Directors of the Claimant. A copy of the loan offer is attached as Exhibit "A1".

That the loan amount was N40,000,000 to enable the claimant complete the construction of the departmental building of the 2nd Defendant at Rivers State University of Science & Technology, Port Harcourt, Rivers State pursuant to the contract dated 11th February, 2014 between the claimant and the 2nd Defendant attached to the originating processes before the court.

That the Lawrence Welle and Ojarichi Welle as Directors of the Claimant were not parties to the loan agreement between the claimant and 1st Defendant and also not parties to the contract agreement between the Claimant and the 2nd Defendant.

That the present action filed by the claimant is to recover from the 2nd Defendant the loan amount and the accrued interest from the said loan obtained from the 1st Defendant which was utilized by Claimant for the construction of the departmental building of the 2nd Defendant as agreed with the 1st Defendant.

That the Directors of the claimant have no claims against the Defendants in this suit.

That the motion filed by the 1st Defendant is an abuse of court process.

That the originating processes in this suit was served on the 1st Defendant on the 2nd July 2021 while the 1st Defendant neglected to file her defence to this action till date. A copy of the proof of service is attached and marked as Exhibit "A2".

That the 1st Defendant instead of filing her defence to this suit filed a pending notice of preliminary objection dated 29th November, 2021 seeking the order of court striking out her name from this suit for no cognizable cause action disclosed against her.

That the Claimant filed no counter affidavit to the said pending preliminary objection of the 1st Defendant.

During the pendency of the said notice of Preliminary Objection of the 1st Defendant, the 1st Defendant again brought this unsolicited application to join the Directors of the Claimant to this suit.

That the Directors of the Claimant are not necessary parties in the circumstance of the claims and reliefs filed by the Claimant in this suit.

That the Directors of the Claimant have no claims against the Defendants in this suit and it would be unreasonable and unnecessary to join them or Odebode Adefunsho and Henry Akpan who are respectively Secretary and Director of the 1st Defendant to this suit merely because they executed some of the loan documents in this suit on behalf of the 1st Defendant.

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

In line with procedure, written address was filed wherein two (2) issues were formulated for determination to-wit;

- 1. Whether the application filed by the 1st Defendant/Applicant is not an abuse of Court process and liable to be dismissed in the circumstance of this case.***
- 2. Whether the Directors of the Claimant are necessary parties to be joined as 2nd and 3rd Claimant to this suit.***

On issue 1, learned counsel submits, that abuse of process of the Court is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive. Abuse of process can also mean abuse of legal procedure or improper use

of legal process. ***MESSRS NV SCHEEP & ANOR VS. THE MV'S ARAZ & ANOR (2000) 15 NWLR (Pt. 691) 622 at Page 664, Karibi*** was cited.

Learned counsel further submits, that a party must be consistent in the case put forward to the court. A party cannot blow hot and cold at the same time and as he likes. Thus, a party in law cannot approbate and reprobate at the same time. The case of the ***SUPREME COURT ASABORO & ANOR VS. PAN OCEAN OIL CORPORATION (NIG) LTD & ANOR (2017) LPELR-41558(SC)*** was cited.

Learned counsel respectfully urge the Court to dismiss the Motion seeking to join the Directors of the Claimant as an abuse of Court process.

On issue 2, learned counsel contended that the writ of summons and statement of claim of the Claimant before this Honourable Court would show and confirm that the action is mainly for a breach of contract, payment for work done and damages for breach of the contract dated 11th February, 2014 between the claimant and Defendant for the construction of departmental building of the 2nd Defendant at Rivers State University of Science & Technology, Port Harcourt, Rivers State which was the purpose

of the loan of N40,000,000 advanced to the claimant by the 1st Defendant.

Learned counsel argued, that based on reliefs (i) to (v) claimed in this suit, the Claimant further in reliefs (vi) and (vii) prayed this Honourable Court to direct the 2nd Defendant to pay the 1st Defendant all the outstanding balance on the loan amount and accrued interest in the sum of N82,770,344.00 into the Claimant's account with the 1st Defendant for liquidation of the said load and afterwards discharge the Claimant from its obligation under the loan contract with the 1st Defendant.

Learned counsel contended, that while the parties sought to be joined have no claims or cause of action before the court against any of the Defendants in this suit, the claim before the court can be effectively and effectually settled without the joinder of the directors of claimant and the defendants to the suit.

Learned counsel further contended, that it is settled law that a company like the Claimant is a separate legal entity with capacity to enter into contract and can sue or be sued. The separate legal entity of a company is distinct from its alter egos or Directors.

Learned counsel submits, that the cause of action before the Court has no connection to the Directors of the Claimant in this

suit. Thus, their joinder as 2nd and 3rd Claimants is needless and serves no useful purpose in this suit.

In the forgoing, learned counsel urged the Court to also resolve issue 2 in favour of the Claimant and dismiss the Motion of the 1st Defendant as lacking in merit, frivolous and misconceived.

COURT:-

I have read and assimilated the affidavit in support of the reliefs herein contained on the face of the application in view; on one hand, and the Counter affidavit to 1st Defendant/Applicant's motion for joinder.

Having regard to the circumstances of this suit, it appears to me that the question to be determined is ***whether the parties sought to be joined are persons whose presence before the Court as Defendants will be necessary in order to enable the Court effectually and completely adjudicate upon and settle all the question involved in the cause or matter?***

The first point that must be made here is that joinder of persons or parties in one action as Defendants is clearly permissible under

the provisions of Order 13 Rule 3(1) of the High Court of the Federal Capital Territory Abuja (Civil Procedure Rules) 2018.

There are however two conditions that must be met for such joinder to be made, to wit:-

- i. Is the cause or matter liable to be defeated by the non-joinder of the third party as a Defendant?
- ii. Is the third party a person who ought to have been joined as a Defendant so that he may be bound by the result of the trial or his presence before the court as a Defendant is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter. See ***AJAYI V. JOLAYEMI (2001) 10 NWLR (Pt.722) (PP. 29-30, PARAS. F-A)*** and ***CROSS RIVER STATE NEWSPAPERS CORPORATION VS ONI & ORS (1995) 1 NWLR (Pt. 371) (P. 23, paragraphs. G-C).***

The governing principle which is a cardinal rule for the administration of justice is that determination of litigation must be in the public interest. Hence where the issues between the parties involve third parties whose interest are affected and the non-joinder of the party will result in further litigation, such parties are

a necessary parties. Therefore, those whose presence will be necessary for the effectual and complete adjudication of the matter before the Court, and their presence as parties is important, the Court with or without an Application, can joined them as parties.

Thus, it is pertinent to raise the question; Are Lawrence Welle and Ojarichi Welle necessary parties in this suit so much that their absence will effect the adjudication of the matter before this Court?

It is the averment of the Applicant, that Lawrence Welle and Ojarichi Welle are both Directors of the sole claimant aforementioned, and were not joined as parties to this suit. Both Directors signed the All Assets Debentures over all the Claimant's assets, in favour of the 1st Defendant as one of the conditions to obtaining a loan facility from her.

That one of the conditions for granting the Claimant the loan was a duly executed personal guarantee of Mr. Lawrence on the part of the Claimant. Furthermore, the liability of Mr. Lawrence Welle is not limited to the principal sum, but the accrued interest as well.

On their part, Respondent's counsel contended, that the Lawrence Welle and Ojarichi Welle as directors of the Claimant were not parties to the loan agreement between the Claimant and 1st Defendant, and also not parties to the contract agreement between the Claimant and the 2nd Defendant.

That the present action by the Claimant is to recover from the 2nd Defendant the loan amount and the accrued interest from the said loan obtained from the 1st Defendant which was utilized by Claimant for the construction of the departmental building of the 2nd Defendant as agreed with the 1st Defendant. Thus, the directors are not necessary parties in the circumstances of the claims and reliefs filed by the Claimant in this suit.

It is pertinent to state here, that a company is an artificial person who acts through living persons. But it is not the act of every servant of the company that binds the company. Those whose acts bind the company are their alter ego. Those persons who because of their positions are the directing mind and will of the company, the very ego and corporate personality of the company.

LEONARDS CARRYING CO. LTD VS ASIATIC PETROLEUM LTD (1915) A.C 705.

Gone are the days when Directors will get away with making binding decisions and evading responsibility for those decisions.

Let it be known that since the decision of the House of Lords in 1897 in the celebrated case of ***SALOMON VS. SALOMON & COY. LTD. (1897) AC 22***, which established firmly the concept of corporate personality which is to the effect that once a company is incorporated under the relevant laws, it becomes a separate entity from the individual who are its members, with the legal capacity to sue and be sued... such a company is said to have legal personality and is always referred to as an “artificial person”.

I am however minded to state here, that even though a company incorporated under CAMA enjoys absolute corporate personality, its affairs are often conducted by natural human beings and therefore where such natural beings in charge of the affairs of a company act ultra-vires the memo and articles of such a company which result into a crime thereby jeopardizing the image of the corporate entity of such a company, the same law allows for such natural persons to be questioned under the doctrine of piercing of the veil of incorporation.

See ***FARCLINE PHARMACEUTICAL INDUSTRIES LTD. & ANOR VS. TRUST ADJUSTERS NIG. LTD. (2012) LPELR – 20860 (CA) Page 32 Paragraphs C – D.***

Lifting the veil of incorporation or piercing the corporate veil is the judicial act of imposing personal liability on otherwise immune corporate officers, directors or shareholders for the corporation's wrongful acts.

It has crystallized that from the evidence led before this court, Lawrence Welle and Ojarichi Welle should be joined in this instant suit being the directors who acted on behalf of the company regarding the subject matter of dispute herein.

From what has played out here, it is clear that Lawrence Welle and Ojarichi Welle's actions in law bind the company and vice versa.. I so hold.

Consequently, application of learned counsel for the Applicant seeking to join Lawrence Welle and Ojarichi Welle as 2nd and 3rd Claimants in this suit is hereby and accordingly granted.

Justice Y. Halilu
Hon. Judge
20th February,
2024

APPEARANCES

Ramat Tijjani, Esq. – for the Claimant.

A.N. Zaphaniah, Esq. – for the 3rd Defendant/Applicant.