

The grounds upon which the application is brought are that the Respondent acted at the behest of the Economic and Financial Crimes Commission which had instructed it *via* a letter to the Respondent to place the account of the Applicant on post-no-debit status; and that the suit could not be determined conclusively without the joinder of the Economic and Financial Crimes Commission.

In support of the Motion on Notice are an 8-paragraph affidavit deposed to by one Ugwueke Kingsley, who is the Litigation Secretary in the law firm of the Counsel for the Respondent/Applicant and a written address. Attached to the affidavit is an exhibit, identified as **Exhibit A**, which is a letter dated the 26th of January, 2021 from the Economic and Financial Crimes Commission to the Managing Director of the Respondent/Applicant.

In the affidavit, the deponent who derived his information from one P. U. Adejoh Esq. described therein as the Counsel to the Defendant/Applicant stated that it was essential that the Economic and Financial Crimes Commission is joined to the suit as a necessary party, as it may bear the eventual liability either in whole or in part should the suit be determined against the Respondent/Applicant. According to the Respondent/Applicant, the application was crucial because the Respondent/Applicant acted at the behest of the Economic and Financial Crimes Commission. The deponent referred the Court to **Exhibit A** which was the letter of instruction from the Commission to the bank.

In the written address in support of the application, learned Counsel formulated the following issue for determination, to wit: “*Whether or not this Honourable Court can grant the reliefs sought by the Applicant.*” Arguing this sole issue, Counsel referred to the depositions in the affidavit in support of the application and Order 13 Rule 21 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 and submitted that the Court had the power to grant an application for joinder where a necessary party was not joined in the suit.

Counsel further submitted that the nature of the question which must be settled must be such that it could not be settled without the joinder of the party concerned. He added that the failure of the Applicants/Respondents to join the Economic and Financial Crimes Commission should not be overlooked by the Court. He cited in approval the case of ***African Democratic Congress (ADC) v. Yahaya Bello (2017) 1 NWLR (Pt. 1545) 112 at 116***. He further contended that the issue of joinder is intricately aligned with the right to fair hearing; and that it would be unconscionable for a person who was not a party to a suit to be affected by the decision of a Court. He referred to section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 and the case of ***G.M. Ent. Ltd. V. CR Investment Ltd (2011) 14 NWLR (Pt. 1266) 122 CA***. He finally urged the Court to exercise its discretion in favour of the Respondent/Applicant.

Responding to the application, the Applicants/Respondents filed a 6-paragraph Counter-Affidavit deposed to by one Chimbroma Owzor Esq., a legal practitioner in the law firm representing the Applicants/Respondents. The deponent, after denying some averments in the Respondent/Applicant's affidavit in support of its Motion on Notice, proceeded to swear that the Economic and Financial Crimes Commission was not investigating the Applicants since it did not extend an invitation to them to appear before it. The deponent further denied that the Commission wrote a letter to the bank directing it to place restrictions on the account of the Applicants.

It was stated on behalf of the Applicants/Respondents that the Respondent/Applicant failed to respond to the letter from the solicitor to the Applicants/Respondents dated the 16th of October, 2019 inquiring whether any law enforcement agency was investigating them. The deponent insisted that the Commission was not a necessary, proper or desirable party since the funds of the Applicants/Respondents were never in its custody. She added that there was no order of Court to justify what the Respondent/Applicant had done and concluded that the application was an academic exercise.

In the written address in support of the Counter-Affidavit, learned Counsel for the Applicants/Respondents submitted that the Respondent/Applicant had failed to show how the enforcement of the rights of the Applicants/Respondent would affect the party sought to be joined. Counsel cited with approval the dicta of the Courts in the cases of *The Registered Trustees of N.A.C.H.P.N.*

v. M.H.W.U.N. (2008) All FWLR (Part 412) 1013 at 1027 and *Ecobank of Nigeria Plc v. Metu & Ors (2012) LPELR-20846 (CA)*.

It was the contention of learned Counsel that applications of this nature were not granted as a matter of course, adding that the Respondent/Applicant had not satisfied the minimal requirements for the grant of applications of this nature. Particularly, he asserted that the Respondent/Applicant had not established that the party sought to be joined was responsible for the restriction placed on the accounts of the Applicants/Respondents. He added that the contention of the Respondent/Applicant that the non-joinder of the party sought to be joined robbed the Court of jurisdiction went to no moment. He relied on the case of *F.U.T. Yola v. A.S.U.U. (2013) 1 NWLR (Pt. 249)*. He therefore urged the Court to dismiss the application with substantial cost.

Responding to the Counter-Affidavit, the Respondent/Applicant filed a Further and Better Affidavit to which it attached an exhibit which it marked as **Exhibit UOS1** which is a letter from the Economic and Financial Crimes Commission dated 7th January, 2019. The deponent to the Further and Better Affidavit, one Austine Odobi, a litigation secretary in the law firm representing the Respondent/Applicant, denied the depositions contained in the Counter-Affidavit. He also insisted, while referring to **Exhibit UOS1**, that the Commission ordered the restriction placed on the account of the Applicants/Respondents, adding that it was apparent from the exhibits that the Commission was investigating the Applicants/Respondents. He maintained

that the bank was merely acting according to the instruction of the Commission and denied the charge that the application was an academic exercise.

In the written address in support of the Further and Better Affidavit, Counsel began by urging the Court to strike out the Counter-Affidavit of the Applicants/Respondents for its manifest inconsistency with the provisions of section 115(2) of the Evidence Act, 2011. He also reiterated his arguments that this Court had the powers under Order 13 Rule 21 of the Rules of this Court, 2018 to order for joinder. Counsel cited and relied on the cases of ***African Democratic Congress (ADC) v. Yahaya Bello (2017) supra***, ***Ecobank of Nigeria Plc v. Metu & Ors (2012) supra*** and ***G. M. Ent. Ltd v. CR Investment Ltd (2011) supra*** and urged the Court to find that the Commission should be joined as a party to aid the Court in the effectual and efficient determination of the suit.

The above are the facts and the legal arguments adduced by parties in this suit in their respective submissions on the subject of joinder of the Economic and Financial Crimes Commission and the propriety of the joinder thereof. In resolving this issue, I will adopt *mutatis mutandis* the Issue that Counsel for the Respondent/Applicant formulated in his Written Address in support of the Respondent/Applicant's application for joinder of the Economic and Financial Crimes Commission as a party to this suit. The Issue, therefore is: "***Whether this Court does not have the power to make an Order joining the***

Economic and Financial Crimes Commission as a necessary party to this suit?"

Before I embark on this Ruling, I must say something about the depositions of the deponent to the Further and Better Affidavit in paragraph 5(a) and the contentions of learned Counsel in his Reply on Points of Law that the Counter-Affidavit of the Applicants/Respondents was incompetent for reason of being in violation of the provisions of section 115(2) of the Evidence Act, 2011. Though the Respondent/Applicant did not point to any specific paragraph of the affidavit that offended the statutory provisions, I can identify paragraphs 3(iv), (vii) and (viii) of the Counter-Affidavits as paragraphs that contain extraneous materials by way of legal arguments. Accordingly, by virtue of the provisions of section 115(2) of the Evidence Act, 2011, I hereby strike out those offending paragraphs. I shall therefore resolve the Issue herein formulated on the basis of the affidavit in support of the Motion on Notice, the surviving competent paragraphs of the Counter-Affidavit and the Further and Better Affidavit as well as all the legal arguments relating thereto.

I will begin the resolution of this Issue by embarking on a brief voyage into the province of the Rules of this Court in order to determine the extent of the Court's powers in this regard. The relevant provisions are found in Order 13 Rules 4, 8, 18(3), 20 and 21(1) and (2). I have taken the pains to reproduce the provisions below:-

Rule 4:

“Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. Judgment may be given against one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.”

Rule 8:

“Where a claimant is in doubt as to the person from whom he is entitled to redress, he may, in accordance with this Rules, or as may be prescribed by any special order, join two or more defendants, so that the question as to which, if any, of the defendants is liable and to what extent, may be determined as between all parties.”

Rule 18 (3)

“The court may order that the names of any party who ought to have been joined or whose presence before the court is necessary to effectually and completely adjudicate upon and settle the questions involved in the proceedings be added.”

Rule 20

“Where a defendant is added or substituted the originating process shall be amended accordingly and the claimant shall unless otherwise ordered by the court file an amended

originating process and cause the new defendant to be served in the same manner as the original defendant.”

Rule 21 (1) and (2)

“(1) Where it appears to the court that any person not a party in the proceedings may bear eventual liability either in whole or in part, the court may upon an ex parte application allow that person to be joined as a Third Party by any of the defendants. The application shall state the grounds for the applicant’s belief that such third party may bear eventual liability.”

“(2) The order and existing processes shall be served on the third party within the time prescribed for delivering the defence.”

In determining whether to join a party to a pending suit in Court, the Courts have delineated the factors to consider in this regard. In the *locus classicus* of ***Green v. Green (1987) LPELR-1338 (SC)***, the Supreme Court per the erudite Oputa, JSC ***at pages 16 – 17, paras F*** drew a distinction between the different classes of parties thus:

“This now leads on to the consideration of the difference between ‘proper parties’, ‘desirable parties’, and ‘necessary parties’. Proper parties are those who, though not interested in the Plaintiff’s claim, are made parties for some good reasons, e.g. where an action is brought to rescind a contract, any

person is a proper party to it who was active or concurring in the matters which gave the plaintiff the right to rescind. Desirable parties are those who have an interest or who may be affected by the result. Necessary parties are those who are not only interested in the subject-matter of the proceedings but also who in their absence, the proceedings could not be fairly dealt with. In other words, the question to be settled in the action between the existing parties must be a question which cannot be properly settled unless they are parties to the action instituted by the plaintiff."

In the exercise of its discretion in this regard, the Court must highlight the facts and evidences placed before it, and, in highlighting these facts and evidences, the Court must address its mind to the following questions:-

- i. Is the cause of action liable to be defeated by non-joinder?
- ii. Is it possible for the Court to adjudicate on the cause of action set up by the Claimants' claims only?
- iii. Is the party sought to be joined ought to be joined as a co-defendant in this suit?
- iv. Is the party sought to be joined a person whose presence before this Court is necessary in order to enable the Court effectually and completely adjudicate on and settle all the questions involved in the matter?

See the cases of *Portland Paints and Products (Nig.) Ltd v. Olaghere (2019) 2 NWLR (Pt. 1657) 541 at 563, paras D-E; Inyang v. Ebong (2002) 2 NWLR (Pt. 751) 284 at 340-341, paras. H-D; Osunrinde v. Ajamogun (1992) 6 NWLR (Pt. 246) 156 at 171 para C.*

I have carefully considered the facts and circumstances of the present application with a view of aligning them with the principles enunciated by the Courts. The Respondent/Applicant has adduced facts to show that it acted at the behest of the Economic and Financial Crimes Commission and that the Commission ought to be joined as a Respondent for the purpose of bearing the whole or the part of the liability should the Court find in favour of the Applicants/Respondents. Though the Applicants/Respondents in paragraph 3(iii) and (ix) argued stridently that the party sought to be joined was not responsible for the restrictions placed on their account, the Respondent/Applicant, however, exhibited two letters from the Commission as the reason the bank account of the Applicants/Respondents domiciled with the Respondent/Applicant was frozen. The exhibits are **Exhibit A** attached to the affidavit in support of the Motion on Notice for joinder and **Exhibit UOS1** attached to the Further and Better Affidavit.

Exhibit UOS1 was first in time, having been dated the 7th of January, 2019.

The relevant portion reads:

*“INVESTIGATION ACTIVITIES: ACCT NAME: COASTERNERS
ENGINEERING & BUILDING SERVICES LTD - 1019820476*

The Commission is investigating a case in which the above account name and number featured.

- 2. In view of the above, you are kindly requested to place the account on Post-No-Debit status, effect the arrest of the account holder and inform this office via 07034592479 and 08038793366 for pick-up.”*

Exhibit A, which is latter in time, as it was dated the 26th of January, 2021 reads in part:

“Our letter with Ref. No. CR: 3000/EFCC/ABJ/PFS/HQ/TC/VOL.5/857 dated 7th January, 2019 on the above subject refers.

- 2. In light of the foregoing, you are kindly requested to maintain the Post-No-Debit on the accounts, effect the arrest of the account holder and contact the Commission via 08032215997 and 08066894802 for pick-up.”*

The Applicants/Respondents, in their vehement opposition to the application, either advertently or inadvertently failed to speak to these exhibits. Exhibits attached to affidavits are treated as components of the affidavits to which they are attached. In ***Zakhem Oil Serve Ltd. v. Art-in-Science Ltd. (2021) 18 NWLR (Pt. 1808) 341 S.C. at 358, para A***, the Supreme Court held that “***The exhibits attached to an affidavit form part of the affidavit.***” The failure to address the validity of those exhibits is deemed to be an admission of the

contents of those exhibits. The Court, therefore, is bound to act on same so long it is cogent, compelling and credible. In **Central Bank of Nigeria v. Dauda D. Jubril & Others (2022) LPELR-57185(CA)** at 33 – 35, paras F – A, the Court per Senchi, JCA restated the law on this subject when it held that ***“On the effect of uncontroverted facts in an Affidavit, this Court held in the case of NIPCO Plc v. Hensmor (Nig.) Ltd (2011) LPELR 9264 as follows: “Once averments in an Affidavit are not effectually denied or controverted, the Court is bound to accept and act upon such depositions as representing the correct and true position of the facts so deposed...”***

Owing to the unmitigated pellucidity and effulgence of the exhibits and their contents which I have highlighted above, it is my considered view, and I so hold, that the suit of the Applicants/Respondents cannot be effectually and effectively determined, and this Court cannot completely adjudicate upon and settle the questions involved in the suit if the Economic and Financial Crimes Commission is not made a party to this suit. In other words, unless the Commission is made a party, it will be impossible to determine who was responsible for the restriction placed on the account of the Applicants/Respondents and the purpose of the restriction. In ***Portland Paints and Products (Nig.) Ltd v. Olaghere (2019) 2 NWLR (Pt. 1657) 541 at 561, para H***, the Court, citing with approval the decision in ***Babayelu v. Ashamu (1998) 9 NWLR (Pt. 567) 546*** held that ***“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 of the action, which cannot be effectually and completely settled unless he is a party.

On the other hand, I find it somewhat incongruous that the Applicants/Respondents would put up such stern resistance to the application for joinder considering that the application, though brought by the Respondent/Applicant, actually inures to the benefit of the Applicants/Respondents.

In conclusion, I must clarify that the application before this Court is an application for joinder of a person as a party *simpliciter* and not a Third Party Proceeding as Counsel for the Respondent/Applicant seemed to suggest in both the reliefs sought and in his legal arguments before the Court. Third Party Proceedings are a specialized proceeding suitable for peculiar circumstances and which are commenced by way of a Motion *Ex Parte*. This can be seen from Order 13 Rule 21(1) and (2) reproduced above. See ***UBA Plc v. Okonkwo (2004) 5 NWLR (Pt. 867) 468 CA*** and ***Okonkwo v. UBA Plc (2011) 16 NWLR (Pt. 1274) 614 SC*** where the Supreme Court upheld the decision of the Court of Appeal.

I therefore find the application meritorious and same is hereby granted on the following terms:-

1. THAT the Economic and Financial Crimes Commission is hereby joined as the 2nd Respondent to the suit of the Applicants/Respondents.
2. THAT all parties herein are hereby ordered to amend all their processes before this Court to reflect the joinder of the Economic and Financial Crimes Commission as the 2nd Respondent in this suit.
3. THAT all parties herein are hereby ordered to serve their amended processes on the Economic and Financial Crimes Commission joined by the Order of this Court as the 2nd Defendant.

This is the Ruling of this Court delivered today, the 22nd day of November, 2022.

HON. JUSTICE A. H. MUSA
22/11/2022
JUDGE