

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS
COURT:28
DATE:6TH APRIL, 2022**

SUIT NO: FCT/HC/GWD/CV/94/2021

BETWEEN

SADARE OLUMIDE DAMILOLA – APPLICANT/ RESPONDENT

AND

GUARANTY TRUST BANK PLC – RESPONDENT/ APPLICANT

RULING

I have carefully perused the Motion on Notice filed by the Respondent/Applicant seeking to join the Independent Corrupt Practices and Other Related Offences Commission as 2nd Respondent in this matter. The Respondent/Applicant brought the Application pursuant to Order 13 Rules 18(3) of the High Court of the FCT Civil Procedure Rules 2018 and under the inherent jurisdiction of the Honourable Court seeking for the following reliefs:-

1. An Order joining “Independent Corrupt Practices and Other Related Offences Commission (ICPC) as a Co-Defendant in this suit.
2. And for such further or other Order(s) as this Honourable Court may deem fit to make in the circumstances of this suit.

I have equally gone through the grounds upon which this application is brought as contained on the face of the motion paper. The Application is supported by an affidavit deposed to by Margaret Ogbonna of No.19 Enugu Street, Garki, Abuja with accompanying exhibits. Also attached is a written address in support of the Application urging the Court to grant his prayers.

In response to this application for joinder, the Applicant/Respondent filed a counter-affidavit in opposition to the application. The counter-affidavit is deposed to by Alhaji Salisu Isah of Plot 612 Web Palace, UATH Gwagwalada, Abuja. Also attached is a written address in support, urging the Court to strike out the application for joinder.

Having carefully analyzed the arguments of Counsel in light of the application for joinder, same can be readily narrowed down to a sole issue to wit:-

"Whether in the circumstances of the case, the Independent Corrupt Practices and Other Related Offences Commission (ICPC) can be joined as a Co-Defendant in this suit".

The provision for joinder of parties and the power of this Honourable Court to grant same has been readily provided for by the rules of this Honourable Court in **Order 13 Rule 18(3) of the FCT High Court Civil Procedure Rules, 2018**. The rule states thus:-

"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".

Flowing from the above, it is pertinent to bring to bear the conditions or factors that the Court should consider with respect to joinder of parties. The Supreme Court in **Green v Green (1987) 3 NWLR (PT.61) 480** stated thus:-

"A Court should ask itself the following questions:-
1. Is the cause or matter liable to be defeated by the non-joinder? 2. Is it possible for the Court to adjudicate on the cause of action set by the plaintiff unless the third party is added as a defendant? 3. Is the third party a person who ought to have been joined as a defendant? 4. Is the third 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 questions involved in the cause or matter?"

It is my informed view that upon considering the Claims of the Applicant and the defence as proffered by the Respondent, the above questions will

be answered in the affirmative. The Applicant/Respondent in his Counter-affidavit has asserted to not having a cause of action against the party sought to be joined in this suit, the Respondent/Applicant has also tailored reasons why the Order for joinder should be granted.

The Supreme Court in ***MOGAJI V MOGAJI & ORS (1986) LPELR-SC.249/1984***. On the consideration of the Court in granting an Order for joinder of parties stated thus:

"This rule deals essentially with joinder of parties to an action. Such joinder can be made by the Court suo motu or on application by a person or persons who can satisfy the requirements that his joinder is necessary to enable the Court effectually and completely adjudicate upon and settle all questions involved in the matter."

Similarly the Court of Appeal in ***JIMOH V OYINLOYE (2006) 6 SCN 141*** at 156 in emphasizing the purpose of joinder of parties in an action stated thus:-

"The purpose of joinder of parties in an action is to enable the Court effectually and completely adjudicate upon and settle all questions involved in the cause or matter"

The Court of Appeal in ***KWARA POLY & ORS V OYEBANJI (2007) LCN/2352 (CA)*** in further stressing the purpose of joinder of parties stated that:-

"It has been submitted and I am in total agreement with learned counsel for the Respondent that the essence of joinder of a party is that he should be bound by result of the action or question to be settled and once there is a question which cannot be effectually and effectively tried without the party, then that party becomes a necessary party."

It is trite law, that applications of this nature are solely at the discretion of the Court and only the Court exercising the discretion can limit itself. The exercise of this discretion by a Court must depend on the facts and peculiar circumstances of each case. See the case of ***NHT INT. S.A v N.H.H. LTD (2007) 6 NWLR (PT. 1032) 589 CA.***

Therefore, it is my considered view that the Rules of this Court empowers this Court to grant an application of this Nature where the presence of such party is necessary to effectually and completely adjudicate upon and settle the questions involved in the proceedings.

The Respondent/Applicant in his accompanying affidavit and exhibits attached thereto has shifted the focal question of this matter to a third party being ICPC and as such ICPC in my view has questions to answer in

other to enable this Court justly determine the questions between parties to this action.

The discretion of this Honourable Court is hereby exercised in favour of the Respondent/Applicant and the Independent Corrupt Practices and Other Related Offences Commission (ICPC) is joined as 2nd Respondent in this Suit. Parties are to serve all relevant processes in this matter on them forthwith.

It is necessary to note that the rule is that joinder of parties, if found necessary may be made at any time during trial with a view to adjudicate upon and settle all question involved in the case. The interest of justice demands that as far as possible, the issue between parties should be determined once and for all so as to avoid multiplication of proceedings see ***ODAHE VS OKEYEMI & ORS (1973) 11 SC ASSOCIATED DISCOUNT HOUSE LIMITED VS HON. MINISTER OF THE FCT & ANOR 2013 LEPLR 29.*** From the application in this case it becomes expedient to grant this application. It is always the duty of the Claimant to bring to Court a party whose presence is crucial to the resolution of his case where the Plaintiff fails to do so, the Appellate Court would strike out the action or order a retrial of the action. What is significant is that only the claimant can decide on the person he believes he has a right of relief against and then institute an action against him before the Court

Though , a person whose interest may be affected by the outcome of the case, may apply to join as a Co- defendant see ***JIMOH VS OYINLOYE 92006) 15 NWLR (pt 674) 116, IBRAHIM VS OJONYE (2012) 3 NWLR (pt 1286) 108.*** Based on the combine effect of the above judicial authorities and the rules of this Court I therefore so hold.

**HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)**

6/4/2022