

IN THE HIGH COURT OFFEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO

CLERK: CHARITY ONUZULIKE
COURT NO. 15

SUIT NO: FCT/HC/CV/0751/18
M/494/18
DATE: 17/02/2021

BETWEEN:

BARR. PAUL ESHIEMOMOH.....PLAINTIFF

AND

ABUJA MARKETS MANAGEMENT LIMITED.....DEFENDANT

RULING
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

This Ruling concerns an application for joinder vide a Motion on Notice number M/494/18. It was made pursuant to Order 43 Rule 1 and Order 13 Rule 37 of the Rules of this Court. It prays for an order joining Abuja Environmental Protection Board as a Defendant in this case. In support is an 8-paragraphs affidavit and a written address.

There are 3 grounds upon which the application rested. They are:

- (1) The Honourable Court cannot judiciously determine this suit if the AEPB is not joined as a co-defendant.
- (2) The AEPB ought to have been joined as a co-defendant by the Plaintiff/Respondents while commencing this suit.

- (3) The AEPB's presence will be necessary in order for the Court to effectually and completely adjudicate upon all the issues involved in this suit.

Mr. IgwueUgochukwere who appeared for the applicant/defendant move the application *brevimanu* and urged me to grant the application.

The plaintiff/Respondent who appeared in person, opposed the grant of the application. He filed no counter affidavit but a written address dated 24/10/2019 and filed on 5/11/2019.

IgwueUgochukwere Esq, submitted one issue for determination which is whether the applicant sought to be joined in this suit is a necessary party. He answered in the affirmative and relied on the cases of **AKUNWATA OGBOGU MBANEFO VS NWAKAIBE HENRY MOLOKWU & 2 ORS (2014) LPELR-22257 (S); AKPAMGBO-OKADIGBO VS. CHIDI (2015) NWLR (PT 1466) 124 SC and OKWU VS. UMEH (2016) NWLR (PT. 1501) 120.**

On his part, the Plaintiff/Respondent adopted his written address as his *vivi voce* submitted. He argued that the applicant did not attach or exhibit any letter of authority to show that AEPB gave them the power to act the way they did in clapping his vehicle, imposing a fine and coercing him to pay the fine.

The Plaintiff submitted also a lone issue for determination which is whether having regards to the affidavit evidence in support of the application for joinder, the applicant has placed before this Court any material evidence in support of its application to be entitled to an order of joinder by this Honourable Court. He submitted that the applicant has not placed any material before the Court to support the joinder

application for all his submissions, he cited *inter-alia*, the cases of RE-MOGAJI (1986) 1 NWLR (PT. 19) 759; AZUBUIKE VS. PDP & 5 ORS (2004) 7 NWLR (PT. 1406) 292; ARCHIBONG VS ITAH (2004) 17 NSCQR 295, EZUMA VS NKWO MARKET COMM. BANK LTD (2000) FWLR (PT. 28) 2243 etc.

I have considered the argument of Counsel in this application.

Briefly put, the facts leading to this application is very simple and clear. On 28/11/2017, the Plaintiff (Claimant's) car was clamped by the officers of the Defendant/Applicant who alleged that he committed an offence of "wrong parking". He was fined and made to pay the "fine for wrong parking". Upon service of the originating summons on the Defendant - Abuja Market Management Ltd - they brought this application under scrutiny seeking for an order to join AEPB as a co-defendant. Their reason is that AEPB is a necessary party as they acted pursuant to the authority the (AEPB) gave them. They stated thus in paragraphs 4(a) and 5(a) of the supporting affidavits thus:

"4(a) That the Abuja Environmental Protection Board has appointed and authorised the Defendant/Applicant to enforce the Abuja Environmental Protection Board Laws within the Federal Capital Territory....."

"5(a) The Defendant /Applicant is an agent of Abuja Environmental Protection Board by virtue of the authorization to enforce the Abuja Environmental Protection Board's Laws within the Federal Capital Territory, Abuja owned markets"

The applicant's Counsel has argued that based on the above portion of their supporting affidavit, the AEPB is a necessary party and ought to be joined in this suit. But is that correct? I do not, with due respect to Mr. Ugochukwere, think so. A necessary party, is a party whose presence is essential for the effectual and complete determination of the claim before the Court. It is essentially, the party in whose absence the claim cannot be determined. See **RE-MOGAJI (Supra); MBANEFO (Supra); IGE VS FARINDE (1994) 7 NWLR (PT. 354) 42.**

Flowing from the above, therefore, can we say that AEPB is a necessary party? Can we say the claim or issues or prayers of the claimant cannot be determined effectively without the presence of the party sought to be joined - AEPB?

What is the claim of the claimant? By an originating summons dated the 25/1/2018, the claimant submitted eight (8) questions for determination and also prayed for nine (9) reliefs. The questions, submitted for determination, for purposes of clarity, are:

- (1) Whether having regards to sections 4(2) and 299(a) and (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Defendant a Limited Liability Company can legislate and/or make laws designating any road in FCT Abuja a "no parking zone", and penalize by way of imposing and collecting fines from the Plaintiff or any other person for wrongful parking whatsoever.
- (2) Whether having regard to Sections 36(8) and (12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended); "wrong parking" is an offence defined by

and/or punishable under any law within the Federal Capital Territory.

- (3) Whether having regard to Section 36 (6) of the Constitution of the Federal Republic of Nigeria 1999, (as amended), the Defendant can impose penalty and punish the Plaintiff for “wrong parking” without fair hearing.
- (4) If the answers to questions 1, 2 and 3 above are in the negative, whether the Defendant through its officers was right in clamping the tyre of the Plaintiff’s car on the ground of “wrong parking”.
- (5) If the answer in question 4 above is in the negative, whether the Plaintiff is not entitled to exemplary/aggravated damages for the physical and psychological trauma he was subjected to in the course seeking the release of his car detained by the Defendant’s officers and paying fine for “wrong parking” imposed by the Defendant.
- (6) Whether the act of clamping the Plaintiff’s car tyre by the Defendant does not amount to trespass to the Plaintiff’s chattel.
- (7) If the answer in the question 6 above is answered in the affirmative, whether the Plaintiff is not entitled to damages for trespass against the Defendant.
- (8) Whether the Plaintiff is not entitled to the refund of the sum of N5000.00 (Five Thousand Naira) he was coerced to pay as fine for offence of “wrong parking” by the Defendant.

And the eventual prayers are:

- (1) A Declaration that the Defendant, a private company not statutorily clothed with authority to make laws, impose and/or collect fines for offence(s), cannot penalize the act of the Plaintiff or any other person parking on the roadside in Abuja; impose and collect fine at will against the Plaintiff or any other person for a purported offence of “wrong parking” unknown to law or for any other offence(s) whatsoever.
- (2) A Declaration that the imposition by the Defendant of a fine of N5000.00 (Five Thousand Naira) as punishment for the offence of “wrong parking” against the Plaintiff and without any trial or conviction by a Court of law, amounts to a breach of his Fundamental Rights to Fair Hearing guaranteed under the 1999 Constitution (as amended).
- (3) A Declaration that the Defendant’s act of charging, imposing and collecting the sum of N5000.00 (Five Thousand Naira) as “fine” from the Plaintiff for the offence of “Wrong Parking” is unlawful, illegal, null and void.
- (4) A Declaration that the Defendant’s act of clamping the tyre of the Plaintiff’s car, with Registration Number: KUJ 645 AJ on the 28/11/2017 at Gudu Market road, Abuja for a purported offence of “wrong parking”, amounts to trespass against the Plaintiff’s property.
- (5) An order of this Honourable Court directing the Defendant to forthwith refund to the Plaintiff the sum of N5,000 (Five Thousand Naira) illegally/wrongfully

collected from the Plaintiff by the Defendant without any legal authority whatsoever.

- (6) The sum of N10,000,000.00 (Ten Million Naira) only, as general damages to the Plaintiff against the Defendant for trespass to the Plaintiff's chattel (car) by the Defendant.
- (7) The sum of N10,000,000.00 (Ten Million Naira) only, as exemplary/aggravated damages to the Plaintiff against the Defendant for the wilful and unlawful detention to the Plaintiff's car by the officers of the Defendant without any lawful authority and the physical stress and psychological trauma the Plaintiff was put through in order to effect the release of his car.
- (8) 10% interest on the judgment sum from the date of judgment to the date of final liquidation of the judgment sum.
- (9) The cost of this action.

Can we say, I repeat that the above questions cannot be answered unless and until AEPB is joined as a co-defendant? I sincerely do not think so. If the argument is that the Defendant has a written authority to do what was alleged, they should have produced same by way of an annexure to their supporting affidavit or to their counter-affidavit if any and when eventually filed.

It seems to me that this effort to join AEPB is unnecessary and amount to chasing shadow. I ask, when joined, what is the claim they are expected to answer or put differently, what is the claim against them? Nothing! The Supreme Court has long decided that where there is no claim against a defendant, there

can be no jurisdiction to make any order of joinder in respect of such perceived Defendant. See **RE-MOGAJI (Supra)**.

Furthermore, I am in complete agreement with the Plaintiff/Respondent, that this matter relates intoto to a traffic offence of “wrong parking”. What has AEPB got to do with traffic offences or issues for which they would be entitled to give authority to another Agency of government? They are not Federal Road Safety Corps nor are they Vehicle Inspection Office (or VIO Officers)? I believe even if there is such letter of authority (and none is even exhibited) it would be *ultra vires* their powers. See paragraphs 4.10 - 4.19 of the Respondent’s address.

In effect therefore, I hold that this application is devoid of all merit. The applicant having not shown by affidavit evidence the purported letter of authority, and since the issue involved has to do with traffic offence of wrongful parking, this application for joinder of AEPB is surely on slippery ground. It is bound to fail and it is hereby dismissed.

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S. B. Belgore
(Judge) 17-2-21.