

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON TUESDAY THE 6TH DAY OF JULY 2021.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI
SUIT NO. CV/2887/2020

BETWEEN

1. COASTERNERS ENGINEERING & BUILDING SERVICES LTD
 2. MR KOLA ADEGOKE =====APPLICANT
- AND
- ZENITH BANK PLC=====RESPONDENT
- AND
- ECONOMIC AND FINANCIAL
CRIMES COMMISSION =====PARTY SOUGHT TO BE
JOINED

RULING

The Applicants brought this suit against the Respondent under the Fundamental Rights Enforcement Procedure Rules claiming for five (5) reliefs. The Respondent has now filed an application pursuant to Section 36 (1) of the 1999 Constitution and Order 13 Rule 13(3) and (2) of the High Court Civil Procedure Rules, praying the Court for the following reliefs;

1. An Order of this Honourable Court granting leave to the Respondent/Applicant to join the Economic and Financial Crimes Commission (EFCC) as a Respondent in this suit.
2. An Order of this Honourable Court joining the Economic and Financial Crimes Commission (EFCC) as a Respondent in this suit.
3. And for such other orders as this Honourable Court may deem fit to make in the circumstances.

In support, Respondent filed an affidavit of 15 paragraphs deposed to by one Remigius Ugwu, an employee of the Respondent. Respondent also filed a further affidavit of 11 paragraphs in response to the Applicant's counter affidavit. The summary of the facts that necessitated this application for joinder is that the Respondent received a letter dated 7th January, 2019, with Ref No. CR: 3000/EFCC/ABJ/PFS/HQ/TC/VOL.5/853 from the Economic and Financial Crimes Commission (EFCC), instructing the Respondent to place a "Post No Debit" status on account numbers 1013950063 and 1012375830, and to effect the arrest of the account holders and contact the commission (EFCC), on the ground that the accounts are under investigation by the EFCC. The said letter is attached and marked as Exhibit ZB1. That upon receipt of Exhibit ZB1, the account number 1013950063 belonging to the 1st Applicant was restricted. That the Respondent had to obey to forestall administrative and other sanctions as has been experienced in the past when the Respondent failed to comply with the EFCC's lawful directives. That the Respondent has neither received any other directive or letter from the EFCC to remove the "Post No Debit" restriction on the account nor an order of Court of competent jurisdiction to sustain the temporary restriction and as a result, the Respondent removed the restriction on the 11th of January 2019 placed on the said account to enable the 1st Applicant resume operation on same. That the Applicant still went ahead to file this suit against the Respondent. That it is expedient that the EFCC be joined to this suit for the Respondent/Applicant to adequately defend this suit.

Attached to the motion is a written address wherein Respondent's Counsel raised a sole issue for determination which is "Whether from the statement of facts as placed before the Honourable Court by the Respondent/Applicant, the Respondent/Applicant ought to be granted the prayers sought in this application". Arguing the sole issue, Counsel submitted that the party sought to be joined as a Respondent in this suit, being the agency of the Federal Government on whose lawful instruction the Respondent placed the said restriction on the account belonging to the 1st Applicant, is a necessary party in this instant suit and a joinder in this suit is most appropriate. Submitted that the question as to whether there is a cause of action against the Respondent cannot be effectively and completely settled as between the parties to this suit as presently constituted, without joining the party sought to be joined. Submitted further that the said third party sought to be joined has sufficient interest in the subject matter and its interest will be irreparably prejudiced if this application seeking for an order to join the party is not made.

Counsel submitted finally that this application will not prejudice the Applicants but will rather enable this suit to be completely and effectually dealt with and will serve the interest of fair hearing as guaranteed by section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) to grant this application.

Counsel urged the Court to exercise its discretion in the Respondent's favour and grant all the prayers sought in this application.

Counsel relied on the following authorities to drive home their point:

1. Odeleye Vs. Adepegba (2001) 5 NWLR (PT 706) 330 at pg.349
Para D.

2. Green Vs. Green (1987) 3 NWLR (PT 61) 488.
3. Green Vs. Green (2001) All FWLR (PT 76) Pg 814. G-H.
4. Abekoni Vs. Kazeem (2008) All FWLR (Pt 406)1985-1986 Paras H-B.
5. Green Vs. Green (2001) All FWLR (PT 76) Pg 814. D-F.
6. E. F. P. CO. LTD VS NDIC (2007) 7 NWLR (PT 1039) 54 AT 69 para A-D.

In response, the Applicants filed a Counter affidavit of 6 paragraphs deposed to by Blessing James a lawyer in the firm of the Applicants. The facts derived from the counter affidavit are that there was no Order of Court as provided by the EFCC Act 2014 (as amended) accompanying the said Letter that ought to have warranted restrictions placed upon the account of the 1st Applicant hence, the Applicants business was totally grounded as a result of the Respondent's unilateral action. That the Respondent has a Legal Department which ought to have advised it on the decision to take on such letter emanating from the EFCC before restriction is placed on the Applicants account. That the knowledge of the Respondent's act of restricting the account outside the provisions of the law, raised the the issue of court order from a Competent court of law after infringing on the Applicants. That Applicants are still unable to operate the said account till date as the Respondent has refused to remove the restriction even after the filing of the substantive application. That the party sought to be joined does not have any interest in the subject matter of this suit since the said party is neither a signatory to the account in question nor did it claim in its letter that the money in the said account was a proceed of

crime. That the substantive application in this suit can be effectively determined without the joining of the party being sought be joined in the Respondent's application and the Court should therefore refuse the application.

In the written address filed by the Applicants in opposing the motion, Counsel adopted the sole issue formulated by the Respondent's Counsel to wit: whether from the statement of facts as placed before the Honourable Court by the Respondent/Applicant ought to be granted the prayers sought in this application?

Counsel submitted that from the affidavit of the Respondent, there is nowhere it is stated how the enforcement of the Applicant's right against the Respondent will affect the party sought to be joined. Contended that the party sought to be joined will neither be incapacitated at implementing the provisions of Act that establishes it nor be prevented by the decision of this Court from carrying out its statutory mandate under any law.

Submitted further that the main issue in this case is the restriction placed on the Applicant's account by the Respondent and the party sought to be joined has not been shown to have any claim or any interest in the subject matter of this suit. Counsel submitted further that the Respondent failed to comply with the Order 13 Rule 19 (2) of the Rules of this Court. Counsel urged the Court to hold that the Respondent has not made out any case on the merit to warrant the grant of this application and dismiss the application with substantial cost. Counsel relied on 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 page 1027 and *Eco Bank of Nigeria Plc V. Metu & Ors* (2012) LPELR-20846 (CA).

Having read the motion together with the parties' affidavit and the written address of respective Counsel, I will adopt the issue raised by the learned counsel for the Respondent.

“Whether from the statement of facts as placed before this Honourable Court by the parties, the Respondent/Applicant ought to be granted the prayers sought in this application?”.

The law is settled that a person may be joined as a party to an action if he will be directly legally or financially affected by an order made or likely to be made by the Court in the proceedings, or if the presence of the party before the Court is necessary to enable the Court effectively and completely determine the matter and all questions before it once and for all, as to avoid multiplicity of suits. See the case of AZUBUIKE v. PDP & ORS(2014) LPELR-22258(SC).

Bearing in mind the above position, in this instant case, the application of the Respondent was as a result of a letter emanating from the EFCC to the Respondent to place a restriction on the Applicant's account which Respondent complied with as there is a legal and civic obligation on the part of the Respondent to comply with the directive of the EFCC and it will be pertinent to join the EFCC as the judgment of this Court will affect the EFCC. The only reason a party would be said to be a necessary or relevant party who should be entitled to an order for joinder is one that would be bound by the result of the case and which question cannot be effectually settled without joining same. The question that begs to be answered at this point is whether the claims or reliefs sought by the Applicant in the substantive suit be defeated for the non-joinder of the EFCC? In answering this question, it will be pertinent to look at the reliefs as claimed by the Applicant in the instant suit as the law is trite that

it is the Applicant's claim that gives him right to initiate an action for an alleged wrongful act. Going by the reliefs sought by the Applicant in the substantive suit, the Applicant is seeking for the Court to declare that the restriction placed on the Applicant's account as unlawful, illegal and a gross violation of the Applicant's fundamental right; an order directing the Respondent to lift the restriction placed on the Applicant's account, an order of perpetual injunction restraining the Respondent from further placing restriction without due process of the law and an order directing the Respondent to pay compensation. All these reliefs sought by the Applicant against the Respondent does not in any way affect or relate to the party sought to be joined (EFCC) as contended by the Respondent's Counsel.

From the claim of the Applicant in the substantive application, the Applicant clearly has no grievance against the party sought to be joined and a party is not bound to sue a particular party that he has no grouse against. The Supreme Court in the case of **SAPO & ANOR v. SUNMONU(2010)LPELR-3015(SC), Per IKECHI FRANCIS OGBUAGU, JSC (Pp 19 - 22 Paras E - B) held** "*.....It is the undisputed right of a plaintiff, to choose the person or persons against whom he wishes to proceed.....*"

Hence it would therefore be improper to join as co-defendants persons against whom the claimant has no cause of action.

The Respondent is urging on this Court to join the EFCC as they are necessary party having given the Respondent the instruction to restrict Applicant's account and without whose presence, the Court cannot effectively determine and conclude this case. Having examined the originating application as well as the motion for joinder, I am of the view that the Applicant has no case against the

party sought to be joined neither can the order/judgment of this Court embrace the party sought to be joined. What prompted the substantive suit is the alleged breach done by the Respondent by restricting the Applicants' account and the fact is not disputed that the Respondent indeed restricted the Applicant's account. The Respondent in fact in paragraph 7 of their affidavit in support of the application stated, "*That the Respondent/Applicant was constrained to comply with the directives of the EFCC to forestall administrative and other sanctions as they had been experienced in the past when the Respondent failed to comply with the EFCC's lawful directive.*"

Which therefore means that they believed the directive of EFCC to restrict the Applicant's account is a LAWFUL DIRECTIVE, therefore, it is for the Respondent to prove that the alleged breach was done in compliance with the law. Also, in paragraph 10 of the affidavit of Respondent attached to the motion duly deposed to by Remigius Ugwu states:

"Notwithstanding that the Respondent/Applicant's actions and inactions were in due compliance with the lawful instructions/directives of the EFCC, whose establishment enactment gives power to so direct..."

It therefore follows from the above that applicant simply has the onus of proving that their action in posting a "No debit" status on Claimants account was done in due compliance with the LAWFUL instruction/directives of the EFCC and in line with the EFCC Act".

In my view the issue can be completely and effectually determined without the presence of the EFCC sought to be joined. The fact that the Respondent was acting on the request of the party sought to be joined is not enough reason to warrant or pray the Court to join the

party sought to be joined (EFCC) rather onus is on the Applicant to simply prove it was done complying with LAWFUL PROCEDURE. From the entire facts of the affidavit of the Applicant/Respondent in support of their application there are no convincing facts to persuade this Court to exercise its discretion in their favour by joining the EFCC as a party.

Consequently, the application for joinder is hereby refused.

Parties: Absent

Appearances: B. O. Ameh for the Applicant. T. T. Ahua for the Respondent.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
6THJULY,2021