

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON WEDNESDAY, THE 23RD DAY OF JUNE, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO. FCT/HC/BW/CV/323/20

BETWEEN:

**1. COL.DANIEL AMUTA AGBO (RTD) ... CLAIMANT/RESPONDENT
2. MICHEAL OLU ROTIMI APPLICANT**

AND

PERSONS UNKNOWN

RULING

On the 10/11/20 the Plaintiff Col. Daniel Amuta Agbor (Rtd) & Michael Olu Rotimi sued unknown persons claiming the following:-

That they are the bonafide owner in possession as holder of the Statutory Right of Occupancy dated 15/3/2005 of Plot A157 measuring approximately 1129.99 Mpape II layout signed by the Zonal Land Manager on behalf of the Minister of FCT.

Perpetual Injunction restraining the Defendant, their agents, privies assigns from trespassing to the Res.

An Order directing the Defendant to render Account fully and accurately on all rent mesne profit collected from Tenants in the Res and to pay same to the Claimant.

Also an order directing Defendants to immediately remove all structures constructed on the Res.

The Defendant to pay ~~₦~~80, 000,000.00 for the act of trespass on the Res.

Also Defendant to pay Specific damages of ~~₦~~3, 000,000.00 million for the demolition of the fence.

General Damages of ~~₦~~20, 000,000.00 Million for delay in preventing the Plaintiff's to have access to the Res.

~~₦~~2, 000,000.00 Million as cost of Suit.

The Defendants was served with the writ via Order of substituted means made by this Court on the 21/1/21. The service was by pasting.

On the 24/2/21 the 2nd Plaintiff –Michael Olu Rotimi filed a Motion on Notice to strike out his name as 2nd Plaintiff as he was wrongfully joined as a party in this Suit. The application was based on the ground that he is the sole owner of the Res A157 measuring about 950 sqm located at Mpape II layout. That he did not sell the Res to the 1st Plaintiff as he claims nor to any other person. That he is still enjoying the peaceful possession of the Res till date. That he never gave the 1st Plaintiff the authority to include his name in this Suit; neither did he gave his consent to institute the action.

That in the face of the present Writ he is not claiming any relief from any of the parties to be joined as a part.

And that it will be in the Interest of Justice to grant this application as granting same will not in any way prejudice the Defendant will not be prejudice.

He filed an affidavit of 16 paragraphs and a Written Address. In the Written Address the applicant raised a issue for determination which is:

“Whether this Court can grant this Application.”

He answered that the Court can grant it, particularly as the grant will aid the Court to do substantial Justice in this case. He referred to Order 13 R.2 FCT High Court Rules 2018.

That he was wrongfully joined as a Claimant. That he never sold the Res to 1st Plaintiff or any other persons or any part thereof. That he had enjoyed the peaceful possession of the Res until sometimes in 2011 when some unknown persons started to encroach into the Res. That he wrote a letter to the Zonal Land Manager in a letter dated 23/2/2011 complaining about the illegal encroachment and trespass. He attached the letter as Exhibit G. That he never gave the 1st Plaintiff authorization to add his name as Plaintiff and never gave his consent too. That he is still in possession and is not claiming any Relief in this case. He urged Court to strike his name out as doing so will not prejudice the parties.

The 1st Plaintiff filed a Counter-Affidavit of 22 paragraphs opposing the application. He attached a Conveyance of Provisional Approval dated 15/10/2001 in the name of the 2nd Plaintiff Applicant. He claimed that he bought the land from someone named Olu Rotimi and that he eventually changed the Res to his name. he attached 2

documents, Conveyance of Approval and Letter to the Police complaining about trespass by unknown person and his cohort.

In the Written Address he raised an Issue for determination which is:

“Whether from the facts and circumstances in the affidavit evidence and Exhibits, the applicant is one and the same person as the 2nd Claimant in this Suit.”

He submitted that the Applicant is not same person as the 2nd Plaintiff for the Court to grant the prayers contained in the motion paper as can be denied from the Counter Affidavit and the Exhibits. That the applicant who claimed to be the 2nd Defendant only attached some documents which apparently appeared to be cloned without going further to attach any means of self-identification to show that he is the same person as 2nd Plaintiff. That the onus is on the applicant to show that he is the same as 2nd Plaintiff. He referred to the case of:

YUSUF & ANOR Vs MASHI & OR (2015) LPELR-40757(CA)

That Exhibit A attached to the Motion in an effort to show that he bears the name of the 2nd Plaintiff is entirely different document that with that attached by the 1st Plaintiff Exhibit CO1. That Exhibit A is dated 9/11/2001 while Exhibit CO1 is dated 15/10/2001. That Olu Rotimi in the Exhibit CO1 is Olu Rotimi while in the Exhibit A it is one word Olurotimi. That the Zonal Manager signature is different in the 2 documents. That from all that it is clearly shows that the applicant is not

same as the 2nd Plaintiff. That Applicant failed to prove that he is same and the 2nd Plaintiff. He referred to the case of:

UNION BANK Vs RAVIH ABDUL CO.LTD (2018) LPELR-46333(SC)

That the Exhibit CO1 which form the root of title of the 1st Plaintiff is different from that which the Applicant has attached to his Affidavit as Exhibit 1. He further submitted that applicant failed to establish that he is the same as 2nd Plaintiff. He urged the Court to dismiss the application- for lacking in merit and direct the Applicant to file his Statement of Defence.

Upon receipt of the Counter Affidavit the 2nd Defendant file a Reply on point of law. He raised an Issue which is-

“Whether 1st Plaintiff has been able to controvert all the averments in the 2nd Plaintiffs Affidavit (in support of the motion).”

He submitted that 1st Plaintiff has failed to discredit the said averment and as such has admitted the facts therein.

He is praying Court to strike out his name from the Suit as a Plaintiff. That he is not claiming any reliefs from any party in the Suit and he never gave his consent to be a Plaintiff in the Suit. That there is a conflict of interest between the 1st and 2nd Plaintiff to be joined together as Plaintiff's in this Suit, hence this application to strike out the name of the 2nd Plaintiff from the Suit. He referred to paragraph 14-16 of his Affidavit in support of the Application. He submitted that 1st Plaintiff never

challenged nor discredited those facts as stated in the Affidavit.

That he did not urge the Court to grant their prayers. That those facts are therefore admitted. He referred to the case of:

UKIRE Vs GECO-PRAKLA NIG.LTD (2010) ALL FWLR (PT.534) 53(SC)

OMOREGBE Vs LAWANI (1980) 3-4 SC 108

That since the 1st Plaintiff failed to oppose those facts the Court should strike out his name from the suit as a party and or order the 2nd Plaintiff to be joined as 2nd Defendant so he can join issue as with the ownership tussle in the land with the 1st Plaintiff.

On his identity not been same as the one on the face of the Writ, he submitted that the 1st Plaintiff failed to present before the Court the identity of the 2nd Defendant who he claimed he bought the land from. That he had attached several documents exhibiting that he is the one and the same person as the one on the face of the Writ.

That the 1st Plaintiff had attached all these fake document which he had claimed for the purpose of this Suit and has denied existence of the same 2nd Plaintiff and had alleged that he is a trespasser. That the 1st Plaintiff should be stopped from denying the existence of the 2nd Plaintiff in this Suit. He rely on the case of:

ADEFORO Vs UBN PLC (2007) ALL FWLR (PT.396) 590@630

He submitted that referring to S.134 E.A 2011 that he had attached documents to show that he is same as the 2nd Plaintiff. That he is not claiming any right to be joined as Party –Co- Plaintiff particularly when his consent was not obtained before the 1st Plaintiff filed the action. That standard of proof is not static. He referred to S. 133(2) E.A 2011 as amended.

He urged the Court to disregard the argument of the 1st Plaintiff as lacking in merit and grant his applicant and better still direct that the 2nd Plaintiff be joined as the 2nd Defendant in this Suit.

COURT

The Court of law as Court of Justice is called upon to ensure that justice is done and dispatched timeously at every stage. The Court has also been called to make orders whether sought or suo moto for and in the interest of Justice at every stage as the circumstance of each case warrants. That is what is called Court exercising its discretionary power. Any party who will one way or the other be affected by the outcome of the decision of the Court in a case can be joined as a party either as a Plaintiff or defendant as the situation warrants. That can be done based on an application of already existing parties or an application independently made by a party who seeks to be joined. The Court can also suo moto order that a party be joined who was not a party before. All these are done in the interest of the justice of the case.

But where a party is joined who has no claim or no defence to the case the Court can order that such party

be removed as a party, once doing so will not prejudice the interest of the parties. Again where a party is wrongly joined as Plaintiff or Defendant, the Court can order that such party upon application pointing out the wrong joinder, order that the wrongly joined person be rightly joined either as a defendant or a plaintiff. All this is done in the interest of justice of the case.

In the present Suit the 2nd Plaintiff had filed this application urging Court to strike his name as the 2nd Plaintiff having not had any claim against the Defendant who are presently unknown persons.

He had stated that he is the owner of the Res Plot C157 and that he had ever had quiet enjoyment of the Res until 2017 when he reported the matter of trespass to the FCTA and that ever after he had had quiet enjoyment of the Res until sometime late 2020 when he saw a Court process at this gate of the Res. That prompted him to file the notice to Court to remove his name as 2nd Plaintiff. That he never sued anyone or consented for anyone to sue in his name or on his behalf. He had attached documents showing that the plot A157 belong to him.

The 1st Plaintiff has claimed that he is the owner having purchased the Res from one Olu Rotimi. He had attached 2 documents, one the Conveyance of Approval and a Letter to the Police complaining about encroachment into the Res. Meanwhile the 2nd Plaintiff had claimed that he had enjoyed quiet occupation of the Res since 2001 when the allocation was given while the 1st Plaintiff claimed that he bought from Olu Rotimi and changed the title to his name through some other person. He has claimed that the 2nd Plaintiff in the Writ is not same Olu Rotimi

who he bought the land from. But he was not able to present or identify the Olu Rotimi he claimed is the 2nd Defendant. Meanwhile the Defendant is unknown person.

The 2nd Plaintiff has asked the Court to either strike his name out as a Plaintiff and or join him as a co-defendant since his interest in the Res is in issue as it were.

From the totality of the argument for and against on this motion it is the humble view of this Court that Justice of this Court will be better served if the 2nd Plaintiff's name is removed as the 2nd Plaintiff and add as a Co-defendant since he is also laying claim to the said A157 though he is not claiming any relief in the Suit.

This Court therefore orders that the 2nd Plaintiff- Michael Olu Rotimi be joined as a Co-defendant in this Suit. In the same vein the Court hereby order that the name of Michael Olu Rotimi be removed as 2nd Plaintiff in this Suit. That means that the application motion M/1849/21 hereby granted.

The said Applicant is directed to file his Statement of Defence and service same on the Plaintiff and the unknown person.

This is the Ruling of the Court.

Delivered today the ____ day of _____ 2021 by me.

**K.N. OGBONNAYA
HON. JUDGE**