

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 OSHO-ADEBIYI
SUIT NO. CV/1809/2020

BETWEEN

MOHAMMED TUNDE -----CLAIMANT/APPLICANT

AND

COL. JOSEPH EDUOKU-----DEFENDANT/RESPONDENT

RULING

By a Motion on notice brought pursuant to Order 13 Rule 4 and 5, Order 43 Rule 1 of the High Court of the FCT Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Court, the Claimant/Applicant is praying the Court for the following orders;

1. AN ORDER joining EDUNDU 2010 NIG. LTD as 2nd Defendant in this suit.
2. AND FOR SUCH FURTHER ORDER OR ORDERS as this Honourable Court may deem fit to make in this circumstances.

In support of the application is an 8 paragraph affidavit deposed to by Mr. Mohammed Tunde, the Claimant in this suit. The Applicant's Counsel also filed a written address. In moving the address, Applicant's relied on all the depositions in the affidavit and adopted his written address as argument in support of this application. Counsel raised a sole issue for determination in the written address, which is, "Whether based on the facts and circumstances of this case, the Court can join EDUNGU 2010 Nig. Ltd as the 2nd Defendant in this suit.

Counsel submitted that by the provision of Order 13 Rule 4 and the inherent powers of this Honourable Court, the Claimant is entitled to approach this court for joinder and prayed that EDUNGU 2010 NIG.

LTD be joined as the 2nd Defendant in this suit; having established that EDUNGU 2010 NIG. LTD has a direct interest in the suit and the outcome of the relief being brought in this suit will affect it and urged the Court to grant the application for joinder. Counsel relied on the following authorities: -

1. Gassol v. Tutare & Ors (2013) LPELR-20232 (SC) Per Galadima .S.C (p.29, paras E-G
2. Global West Vessel Specialist (Nig.) Ltd v. Nigeria Nig. Ltd & Anor (2017) LPELR - 41987 (S.C)
3. Chief Abuse David Green v. Chief (Dr.) E. T. Dublin Green (1987) NWLR (pt. 61) 481
4. Amon v. Raphael Tuck & Cons (1956) 1 WB357;
5. R. T. N. A & Ors v. M. H. W. V. N. & ors (2008) LPELR-3196 (S.C)
6. A G. Federation v. AG of Abia State (2001) LPELR 631 (SC) & Ors.
7. Oduola & Ors v. Coker & Ors (1981) LPELR-2254(SC)

The Defendant/Respondent in opposing this application, filed a counter affidavit of 8 paragraphs deposed to by the Defendant himself. Also filed is a written address wherein Respondent's Counsel raised a sole issue for determination, thus; whether this is an Application that can be granted considering the entire circumstances of this case.

Counsel submitted that the party sought to be joined cannot be joined to the Defendant as codefendant as Order 13 Rule 4 never contemplates a situation where a presumed competent party can be joined to an incompetent party.

Counsel submitted further that from the factual situation of this case, Applicant instituted this action against Respondent, but from the processes filed before this Court, the presumed dispute as regards the owner of the two Plots of land ought to have been between Applicant and EDUNDU 2010 NIG. LTD and not the Defendant on record. Counsel submitted that the Respondent even though a Director and has interest in EDUNDU 2010 NIG. LTD cannot be sued for the presumed liability of EDUNDU 2010 NIG. LTD or be added to the Respondent who is not a proper and a necessary party. Counsel conceded that though the Respondent has interest in EDUNDU 2010 NIG. LTD, joining EDUNDU 2010 NIG. LTD to an incompetent party is not possible in law, as doing so will amount to a nullity.

Counsel urged the Court to hold that the application cannot be granted as same is not a proper case for which an Order of joinder can be granted.

1. J&J Techno (NIG) LTD v. Y.H.Q.S. LTD (2015) 8NWLR (PT. 1460) Pl. at pp 25-26
2. Poroye v. Makarfi (2018) 1 NWLR (PT. 1599) P. 91 at pp. 142-143
3. Green v Green (1987) 3NWLR (PT.161) 480;
4. Olawoye v. Jimoh (2013) 13 NWLR (PT.1371) P. 362.
5. INEC v. Nyako (2011) 12NWLR (PT.1262) P.449 at pp. 513,563

Upon examining the Applicant's motion and affidavit in support as well as the counter affidavit of the Respondent. The issue to be determined is whether this Court can grant the Applicant's application.

The Courts have held 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. Therefore, it will only be necessary to join a person as a party if his interest will be irreparably prejudiced if he is not joined in the action. The law is also settled that a person will be joined in an action if his presence will assist or enable the court to effectually and completely adjudicate upon and settle all question involved in the cause or matter. See **Awoniyi&Ors. Vs. The Regd. Trustees of the Rosicrucian Order, AMORC (Nig.) (2000) 10 NWLR (Pt. 676) p. 522.** In this instant case, the Applicant from his affidavit in support of this application particularly in paragraphs 5 and 6 stated that from the averment of the Defendant in his notice of preliminary objection before this Court, the party sought to be joined have interest in the matter pending before this Court in this suit and that the interest of EDUNGU 2010 Nig. Ltd (Party sought to be joined will be greatly affected by the outcome of this suit. This fact was undisputed by the Respondent as the Respondent in fact admitted in their paragraph 5 counter affidavit by not challenging this fact. However, Counsel to the Respondent contended that this suit is incompetent on the ground that the Applicant is not suing the proper party as he has no cause of action against the Defendant on record, therefore this application cannot be granted. The law is trite that in order to determine whether there exists a cause of action against the Defendant in a suit, all the Court needs to do is to examine the Writ of Summons and Statement of claim of the Claimant before the Court as it is the Claimant's claim that gives him the right to initiate the action for the alleged wrongful act. See **Bello vs. INEC (2010) 8 NWLR (Pt. 1196) p. 342; Dantata vs. Mohammed (2000) 7 NWLR (Pt. 652) p. 215; and Ogbobo vs. INEC**

(2005) 15 NWLR (Pt. 948) p. 376. In this instant case, from the Writ of Summons before this Court, the Claimant is claiming for declaratory reliefs as well as damages for trespass. The Claimant particularly in reliefs c and e is claiming for;

c. A declaration that the Defendant trespassed on the Claimant's plots No. CRD MF56 and CRD MF57 measuring approximately 6,354.486m² respectively within Lugbe 1 Layout of Abuja Municipal Area Council.

e. the sum of N10,000,000.00 (Ten Million Naira) only as damages against the Defendant for trespass committed by him when he went and uprooted the Claimant's survey beacons and stationed military men on the land to scare away the claimant.

The Claimant in his statement of claim particularly in paragraphs 17, 23, 24, 25 stated thus;

Paragraph 17:- On or about the 1st day of February, 2019, the Claimant's brother-Mr. Musbau Okunola who visited the land on periodic basis went to the said pieces or parcels of land and discovered that the Defendant had uprooted all the survey beacons on the plots and had stationed military men on the land on the instruction that nobody should be allowed to enter the land.

Paragraph 23:- Since the Defendant has been intimidating, harassing and threatening the Claimant with army uniform and disallow him access to the plots aforesaid.

Paragraph 24:- Sometime in December 2019, the Claimant went to the plots with his workers with a view to commencing construction

on the plots but the Defendant pursued him and his workers and threatened that if he dares come to the plot again, he is going to shoot him.

Paragraph 25:-The Defendant had stationed his agents and military men on the land to prevent Claimant from developing the plots aforesaid.

From the reliefs sought in the Writ of summons and statement of claim particularly the excerpts as reproduced above, it is my considered view that there exists a reasonable cause of action against the Defendant as the Defendant has a direct involvement and played a vital role leading up to the Claimant instituting this suit and it is in my view that the Defendant is a proper party. The argument of the Respondent's Counsel that the Defendant who is a Director and has interest in Edundu 2010 Nig. Ltd (the party sought to be joined) cannot be sued for the presumed liability of the Company cannot be taken at this stage as doing so will touch on the substantive case. It is the prerogative of the Claimant to determine the Defendant in the suit. The Liability of each party in the suit would be determined having regard to the pleadings and evidence led by the Claimant in the light of the applicable laws.

In the result, the party sought to be joined (EDUNDU 2010 NIG. LTD) be joined as the 2nd Defendant in this suit.

Parties: Absent

Appearances: J. A. Kolawole for the Claimant. Respondent not represented.

HON. JUSTICE MODUPE OSHO-ADEBIYI

JUDGE

6TH JULY, 2021