

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 25TH DAY OF MARCH, 2025
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/969/2024

MOTION NO.: FCT/HC/M/16941/2024

BETWEEN:

MR INNOCENT EDE

CLAIMANT/RESPONDENT

AND

1. ONELINK INTERNATIONAL REO LTD

2. HANNAH SERIKI

DEFENDANTS/APPLICANTS

RULING

On the 23rd of January, 2024, the Claimant commenced this suit by way of a Writ of Summons dated the same date seeking the following reliefs against the Defendants:-

- 1. The sum of ~~₦~~5,000,000.00 (Five Million Naira) only invested in the Defendants' company on 16th September, 2020 with Security Identification Code (SIC):495W-C3XR-H2X4 for a period of 7 (seven) months and further rolled over on 9th May, 2022 for a period of one year.*

2. *The sum of ₦1,000,000.00 (One Million Naira) only being the total sum for the Return on Investment (ROI) for the period of 10 (Ten) months for the term ended April, 2023.*
3. *3% Monthly Return on Investment (ROI) on the investment sum till the final determination of this suit.*
4. *The cost of this litigation in the sum of ₦1,500,000.00 (One Million, Five Hundred Thousand Naira) only.*
5. *The sum of ₦10,000,000.00 (Ten Million Naira) only as general damages for breach of contract.*

Upon being served with the originating processes *via* substituted means pursuant to an order of this Court made on the 2nd day of May, 2024 upon a Motion *Ex Parte* to that effect with Motion Number M/32410/2024 dated the 23rd April, 2024 but filed on the 24th of April, 2024 which was brought by the Claimant, the Defendants filed their joint Statement of Defence on the 18th of December, 2024. On the same date, they also filed a Motion on Notice with Motion Number M/16942/2024 seeking for an Order of Court extending the time for them to file their Statement of Defence out of time and to deem the already filed Statement of Defence as having been properly filed and served. The Court granted the prayers sought on the 16th of January, 2025 when the application was moved. The Defendants also filed, on the same date,

that is, the 18th of December, 2024, this particular Motion on Notice with Motion Number M/16941/24 seeking the following reliefs:-

- a. *An Order of this Honourable Court striking out the name of the 2nd Defendant from the substantive suit of the Claimant as having been improperly joined by the Claimant.*
- b. *And for such further Order(s) as the Honourable Court may deem fit to make in the circumstances.*

Upon being served with this Motion on the 08th of January, 2025, the Claimant filed his Counter-Affidavit on the 15th of January, 2025. This Counter-Affidavit was served on the Defendants on the 16th of January, 2025 in the open Court.

On that same 16th of January, 2025 when this Court granted the order regularizing the processes of the Defendants, the parties herein adopted their processes for and against the instant application. Thereupon this Court adjourned for Ruling.

The kernel of the Defendants' application as extricated from the affidavit in support of the application is that the 2nd Defendant was wrongly joined in this present suit as she was not the alter-ego of the 1st Defendant but merely an employee of the 1st Defendant. The deponent of the affidavit, one Mr Ebuka Divine Udechukwu Feke, who described himself as the Legal Administrator in the law firm of West Point Advisory, further

averred that the 2nd Defendant was not a director of the 1st Defendant. Though he claimed to have exhibited the particulars of directors, commonly known as Form CAC 7 under the Companies and Allied Matters Act, 2020, he did not attach it to the affidavit in support of the application.

In the affidavit in support of the application, learned Counsel for the Defendants, Ugochukwu Ekenedilichukwu Ugwumadu, Esq. formulated a sole issue for determination, which is: *“Whether this Honourable Court has the powers to strike out the names of the 2nd Defendant being improper party to be joined in this suit between the Claimant and the company he invested with, the 1st Defendant.”*

In his submissions on this sole issue, learned Counsel quoted the provisions of Order 13 Rule 18(2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018 (same as Order 13 Rule 18(2) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2025) and the case of ***Adigun v. Governor of Osun State (1995) 3 S.C.N.J. 1 at 4*** where the Court held that a plaintiff could maintain an action only against a person against whom they had a claim.

He submitted further that there was no privity of contract between the Claimant and the 2nd Defendant to justify her joinder to the suit, adding that there was no legal basis for the 2nd Defendant to be joined to the

suit. He contended further that the 2nd Defendant was not a director in the 1st Defendant and that even if she was, acts of directors of a company were deemed acts of the company and the directors could not be held responsible for their actions which they executed for and on behalf of the company.

For all his submissions on this sole issue, learned Counsel cited and relied on the following cases among other cases: ***Cargill Ventures Ltd v. Coastal Service (Nig.) Ltd (2012) 9 NWLR (Pt. 1304) 81 paras G-H, Makwe v. Nwukor (2001) 32 W.R.N. 1, Orient Bank (Nig) Plc v. Bilante Int'l Ltd (1997) 8 NWLR (Pt. 515) 37 at 76, NNSC v. Alhaji Hawa Joda Sabana Co. Ltd (1988) 2 NWLR (Pt. 74) 23, J & J Techno Nig. Ltd. v. V.Y.H.Q.S. Ltd 2015 8 NWLR (Pt. 1460) 1, Marina Nominees v. F.B.I.R. (1986) 2 NWLR (Pt. 20) 48, New Nigerian Newspapers Ltd v. Olayinka Agbomabini (2013) LPELR-20741 (CA)***. He also relied on section 42 of the Companies and Allied Matters Act, 2020. In all, learned Counsel for the Claimants urged the court to grant the reliefs sought and strike out the name of the 2nd Defendant from the suit.

Responding to the application of the Defendants, the Claimant, in his 4-paragraph affidavit deposed to by Ms. Gabriella Gaius, the litigation secretary in the law firm of Larry S. (SAN) & Co., the solicitors for the

Claimant, denied that the 2nd Defendant was wrongly joined, adding that she was not a mere employee of the 1st Defendant, but, in fact, its alter-ego. She further swore that the suit could not be concluded effectually without the 2nd Defendant, as the 2nd Defendant was the person the Claimant transacted the business with and therefore a necessary party to this suit.

In the Written Address in support of the Counter-Affidavit, learned Counsel for the Claimant distilled a sole issue for determination, to wit: *“Whether the 2nd Defendant/Applicant ought to be a party to this suit.”*

In his submissions on this issue, Counsel for the Claimant, Ibere Chimeziem Nzeagwu, Esq. argued that it was the prerogative of the Claimant to sue anybody who he believed he had a claim against, adding that whether the Claimant would succeed in his suit was dependent on his pleadings and the evidence he adduced in support of same.

Counsel directed the court to the pleadings of the Claimant, particularly paragraphs 4, 6 and 10(a) of the Statement of Claim as well as the reliefs sought in the suit and concluded that the Claimant had made out a cause of action against the 2nd Defendant. Besides, Counsel submitted that the 2nd Defendant was bound by the doctrines of estoppel and holding out because of her conduct in the course of the transaction that

culminated in the contract she engineered between the Claimant and the 1st Defendant.

For all his submissions on the sole issue he formulated, learned Counsel cited and relied on ***Dantata v. Mohammed (2000) 7 NWLR (Pt. 664) 176, Adekoya v. FHA (2000) NWLR (Pt. 652) 215, Bello v. INEC (2010) 8 NWLR (Pt. 1196) 342, 416-417, Takum Local Govt. v. UCB (Nig.) Ltd (2003) 16 NWLR (Pt. 46) 288 at 300 and Ayankoya v. OLukoya (1996) 4 NWLR (Pt. 440) 1 at 17-18, 27*** among other cases. He also cited and relied on Order 13 Rule 4 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 (*in pari materia* with Order 13 Rule 4 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2025. In all, he urged the court to answer the sole issue he had formulated in the affirmative and to discountenance the application of the Defendants.

In determining this application, this Court shall adopt the issues nominated for determination by the Counsel for the parties and reframe the issues thus: ***“Whether from a perusal of the originating processes filed in this suit the joinder of the 2nd Defendant in this suit does not constitute a misjoinder?”***

I shall commence the resolution of this issue by an examination of the state of the rules of this Court on joinder of parties. First, the right of a

claimant to sue the person against whom they believe they have a claim must be respected. That is the purport of Order 13 Rule 4 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2025. This rule states that ***“Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. Judgment may be given against one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.”***

As a counter-poise, a defendant who believes they were improperly joined in a suit may apply to the court to have their name struck out of the suit. This situation is envisaged under Order 13 Rule 18(2) of the rules of this Court where it is provided that ***“The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the names of any parties improperly joined be struck out.”***

While the Defendants contend that the 2nd Defendant is a mere employee of the 2nd Defendant who acted for the 1st Defendant and therefore cannot be held liable in any form for the acts of the 1st Defendants, more so as she was not privy to the contract between the Claimant and the 1st Defendant, the Claimant argues that the 2nd

Defendant is the alter-ego of the 1st Defendant and in appropriate circumstances can be held liable for the actions for the 1st Defendant either jointly with the 1st Defendant or severally.

There is no question that a company such as the 1st Defendant is a corporate entity with a legal personality that is distinct from the members or shareholders who incorporated it. Section 42 of the Companies and Allied Matters Act, 2020 provides that ***“As from the date of incorporation mentioned in the certificate of incorporation, the subscriber of the memorandum together with such other persons as may become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the powers and performing all functions of an incorporated company including the power to hold land, and having perpetual succession, but with such liability on the part of the members to contribute to the assets of the company in the event.”***

This statutory provision has been accorded judicial amplification in a number of judicial pronouncements such as ***Salomon v. Salomon & Co. Ltd. (1897) AC 22; Ecobank Trans Inc. v. Broad Comms. Ltd. (2021) 5 NWLR (Pt. 1769) 209 CA; Royal Pet. Co. Ltd. v. F.B.N. Ltd. (1997) 6***

NWLR (Pt. 510) 584 CA at 599, para E; New Res. Intl Ltd. v. Oranusi (2011) 2 NWLR (Pt. 1230) 102 CA at 124-125, paras. H-B.

Because a company is not a natural person, though vested with legal personality, it acts through human agents. These human agents are the officers or servants of the company. In **MTN Nigeria Communications Ltd v. Mr Akinyemi Aluko & Anor (2013) LPELR-20473(CA)** the Court of Appeal held *inter alia* that:-

“...a company is recognized as a corporate body that can sue or be sued. Admittedly, it is a legal fiction that exists only in the eyes of the law. This is due to the fact that a company has no brain, eyes or hands of its own. It acts through human beings/natural persons such as its Directors or Shareholders whose actions are invariably binding on it. See Ladejobi v. Odutola Holdings Ltd. (2002) 3 NWLR (Pt.753) 121.”

Similarly, in the case of **Saleh v. B. O. N. Ltd (2006) NWLR (Pt.976) 316 at 326 – 327** where the Supreme Court held thus: **“A company is a juristic person and can only act through its agents or servants.”** See **Melrose General Services Ltd. v. E.F.C.C. (2025) 1 NWLR (Pt. 1972) 1 SC at 130-131, paras. H-B; Ogbaji v. Arewa Textiles Plc. (2000) 11 NWLR (Pt. 678) 322 CA at 337, paras C-E;**

Olawepo v. S.E.C (2011) 16 NWLR (Pt. 1272) 122 CA at 145, paras F-G.

The Court of Appeal was more lucid in the case of **Dike v. Key Key Constr. Ltd (2017) 14 NWLR (Pt. 1584) 1 CA** at where it held thus:-

“A corporation is an abstraction. It has no mind of its own any more than it has a body of its own. Its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. The doctrine attributes to the company the mind and will of the natural person or persons who manage and control its actions. Their minds are its mind; their intention its intention; their knowledge its knowledge. Those natural persons who by the memorandum and articles of association or as a result of action taken by the directors, or by the company in general meeting pursuant to the articles are entrusted with the exercise of the powers of the company.”

For this reason, therefore, the acts of the directors of the company are deemed acts of the company. See sections 87 and 89 of the Companies and Allied Matters Act, 2020. The sections provide thus:

Section 87:

(1) A company shall act through its members in general meeting or its board of directors or through officers or agents appointed by, or under authority derived from, the members in general meeting or the board of directors.

(2) Subject to the provisions of this Act, the respective powers of the members in general meeting and the board of directors shall be determined by the company's articles.

(3) Except as otherwise provided in the company's articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Act or the articles required to be exercised by the members in general meeting.

(4) Unless the articles otherwise provide, the board of directors, when acting within the powers conferred upon them by this Act or the articles, is not bound to obey the directions or instructions of the members in general meeting provided that the directors acted in good faith and with due diligence.

(5) Notwithstanding the provisions of subsection (3), the members in general meeting may—

(a) act in any matter if the members of the board of directors are disqualified or unable to act because of a deadlock on the board or otherwise;

(b) institute legal proceedings in the name and on behalf of the company, if the board of directors refuse or neglect to do so;

- (c) ratify or confirm any action taken by the board of directors; or**
 - (d) make recommendations to the board of directors regarding action to be taken by the board.**
- (6) No alteration of the articles invalidates any prior act of the board of directors which would have been valid if that alteration had not been made.'**

Section 89

Any act of the members in general meeting, the board of directors, or a managing director while carrying on in the usual way the business of the company, shall be treated as the act of the company itself and the company is criminally and civilly liable to the same extent as if it were a natural person:

Provided that—

- (a) the company shall not incur civil liability to any person if that person had actual knowledge at the time of the transaction in question that the general meeting, board of directors, or managing director, as the case may be, had no power to act in the matter or had acted in an irregular manner or if, having regard to his position with or relationship to the company, he ought to have known of the absence of such power or of their irregularity; and**
- if in fact a business is being carried on by the company, the company shall not escape liability for acts undertaken in connection with that business merely because the**

business in question was not among the business authorised by the company's memorandum.

The above provisions have been construed and given effect to in a number of judicial authorities such as: ***Bank PHB V. CBN & Ors (2019) LPELR-47383(CA); Odutola Holdings Ltd Vs Ladejobi 2006 12 NWLR Pt 994 pt. 321; Adegbenro Vs Akintilo (2010) 3 NWLR Pt 1182 p.541 at 562; Plateau State Government v. Crest Hotel & Garden Ltd (2012) LPELR-9794(CA); African Continental Bank Plc v. Haston Nigeria Limited (1997) LPELR-5218(CA); United Investments Limited v. The Registrar Of Titles, Lagos State & Ors (2016) LPELR-41406(CA); The Attorney General Of Lagos State v. Eko Hotels Limited & Anor (2006) LPELR-3161(SC) and Citec International Estates Limited & Ors v. Josiah Oluwole Francis & Ors (2021) LPELR-53083(SC).***

In determining whether the act of a company can be deemed the acts of the company, the status of the human agent through which the company acted must be ascertained. In the application before me, the Defendants argued that the 2nd Defendant is a mere employee of the company. In proof of this, they attached **Exhibit B** which is the letter of employment of the 2nd Defendant. The letter was addressed to Hannah Chukwunoyenim Eboraka. It is titled "Letter of Promotion to General Manager (GM)" It was dated the 7th of February, 2018 and signed by one

Amb. Nma A. Ahmed who signed off the letter as the Chairman/CEO of the 1st Defendant. The name of the 2nd Defendant as it appears on the processes in this suit and in the documents the Claimant frontloaded is Hannah Seriki. This Court is precluded from jumping into speculative conclusions as to whether Hannah Chukwunoyenim Eboraka is the same person as Hannah Seriki the 2nd Defendant in this suit. See **AMCON v. Suru Worldwide Ventures (Nig.) Ltd. (2022) 2 NWLR (Pt. 1813) 163 CA at 181, paras B-D; G-H; 182. para. D.**

I note with interest that the Defendants averred in paragraph 11 of the affidavit in support of the application that they have attached **Exhibit A** which is the CTC of Form CAC 7 as proof that the 2nd Defendant is not a director in the 1st Defendant. I have carefully checked the process and the entire file and cannot find **Exhibit A**. I believe it is safe for this Court to apply the presumption created in section 167(d) of the Evidence Act, 2011. The paragraph stipulates that **“(d) evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it”**.

Because of the uncertainty surrounding the identity of the 2nd Defendant and her status in the 1st Defendant, this Court believes that it will be premature for this Court to strike out her name from this suit. This is because her status will assist the court in arriving at a decision whether

to absolve her of liability or whether the circumstances exist in this case to enable the court lift the veil of incorporation of the 1st Defendant so as to hold its officers and human agents liable for its acts. This, this court believes, can be unraveled only at the trial of this suit and not at this interlocutory stage.

Besides, the Claimant has raised the issues of estoppel and holding out to counter the Defendants challenge of privity of contract which they have raised to ground the absolution of the 2nd Defendant from the suit of the Claimant. These are substantive issues that can only be settled at trial and not at this interlocutory stage when evidence has been taken.

See *U.B.A. v. Immarches (Nig.) Ltd. (2003) 6 NWLR (Pt. 817) 529 CA at 543-544, paras. G-B.*

Moreover, the effect of a combined reading of Order 13 Rules 4 and 18(2) is that the court can strike out a party who ought not to have been joined in the first place from the suit at any stage of the proceedings, including at the point of Judgment. I believe this provision, that is Order 13 Rule 4 of the Rules of this Court exists to prevent situations where the court finds that it has struck out a party from a suit prematurely.

For the foregoing reasons, I am constrained to dismiss the application. Accordingly, the principal relief sought in the application embodied by the Motion on Notice with Motion Number M/16941/24 dated and filed on

the 18th of December, 2024 is hereby refused. The Motion on Notice itself is hereby dismissed.

This is the Ruling of this Honorable Court delivered today, the 25th of March, 2025.

HON. JUSTICE A. H. MUSA
JUDGE
25/03/2025