

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY,  
HOLDEN AT APO, ABUJA.**

**ON TUESDAY, THE 14TH DAY OF DECEMBER 2021**

**BEFORE HIS LORDSHIP:**

**HON. JUSTICE FRANCES ERHUVWU MESSIRI.**

**(JUDGE.)**

**SUIT NO. FCT/ HC/CV/984/2020.**

**MOTION NO: M/6312/2021.**

**BETWEEN**

**ECOMAXX ENGINEERING PROJECT LIMITED ---- CLAIMANT**

**AND**

- 1. MR.GBADEGESIN LUKMAN**
- 2. FABIYI A. OLADEMEJI-----DEFENDANTS/APPLICANTS**
- 3. KAZIM MAHMOOD**

**[ RULING.]**

This Claimant, Ecomaxx Engineering project Limited, in suit No. CV/984/2020, vide a writ of Summons dated and filed on the 4/2/2020 prays for:

1. An order directing the defendant to deliver up vacant possession of the seven(7) bedroom duplex situate at Mark Okoye Close, Asokoro Extension ,Abuja held over by the defendant to the Claimant forthwith.
2. An order compelling the Defendants to pay to the Claimant the sum of ₦4,958,333.3 being seven months' rent arrears for the seven (7) bedroom duplex described above
3. An order compelling the Defendants to pay to the Claimant the sum of ₦708,333,33 per month as mesne profit from 10/01/2020 until vacant possession is delivered to the Claimant.

4. ₦500,000.00 as cost of this suit
5. Statutory interest of 10 percent per annum on the judgment sum from date of judgment until judgment is liquidated

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The 3<sup>rd</sup> defendant upon receipt of the Claimant's writ of summons has now filed a notice of preliminary objection praying this Honourable Court for :

1. An order striking out the name of the 3<sup>rd</sup> Defendant in this suit and setting aside all the processes served on him by the Claimant as they disclose no reasonable cause of action against the 3<sup>rd</sup> Defendant.
2. An order striking out this suit same being incurably bad and incompetent. Consequent upon which the Honourable Court lacks the jurisdiction to entertain same especially as it is constituted

against the 3<sup>rd</sup> Defendant for misjoinder of party to the suit.

3. An order awarding the sum of ₦500,000,00 (five hundred thousand naira only in favour of the 3<sup>rd</sup> Defendant and against the claimant as cost of Litigation.
4. An Order striking out this suit same being incurably bad as a result of misjoinder of party thereby robbing this honourable court of the requisite jurisdiction to hear and determine same.
5. And for such order/s as this honourable court may deem fit to make in circumstances of this case.

The above reliefs are predicated on the following grounds namely :

1. That the Claimant and the 1<sup>st</sup> Defendant entered into tenancy agreement for its property the subject matter of this suit.

2. That the 1st Defendant was in arrears of rent for use of occupation of the property subject matter of this suit.
3. That the Claimant instituted this action without any prior demand on the 3<sup>rd</sup> Defendant as guarantor
4. That the rent in issue has since been paid and there is no live issue before this Court presently for determination.
5. That subject to the payment of the rent , the 3<sup>rd</sup> Defendant wrote to the Claimant withdrawing his guarantorship of the 1<sup>st</sup> Defendant with respect to the property.
6. That the letter of withdrawal of suretyship was duly received and acknowledged
7. That despite the payment of rent and withdrawal of guarantorship by the 3<sup>rd</sup> Defendant, the Claimant have continued to maintain this action against the 3<sup>rd</sup> Defendant.
8. That the 3<sup>rd</sup> Defendant has no interest in the subject matter of this suit as either necessary or desirable party to the suit.

9. That the present action as constituted is bad for misjoinder of parties.
10. That due to the defective nature of the action , the Court lacks the necessary jurisdiction to hear and determine the action
11. That is in the interest of justice to grant this application as prayed and strike out the name of the 3<sup>rd</sup> Defendant from this suit.

This preliminary objection is supported by a 5-paragraph affidavit deposed to by one Chinwe Ibeneme on the 30/9/2021, with 2 Exhibits marked as exhibit A and Exhibit B. Learned Counsel for the 3<sup>rd</sup> Defendant/ Applicant, Chidi Ezenwafor Esq. filed a written address dated 29/9/2021 .

The said written address was adopted at the hearing on the 10/12/2021.

Learned Counsel formulated the following issues for resolution to wit :

Whether or not the 3<sup>rd</sup> Defendant is a necessary party in the dispensation of this suit and whether or not this Honourable Court is poised with the jurisdiction to entertain suit No: CV/984/2020.

Arguing both issues together Learned Counsel for the 3<sup>rd</sup> Defendant/Applicant submits that the 3<sup>rd</sup> Defendant joined in this suit is not a necessary party in this case. He relied on the case of **AZUBUIKE V. PDP & 6 ORS (2014) 7 NWLR 292 AT 313 -314** and submits that the matter herein can be adjudicated on without the applicant and further that the applicant is not a party whose presence is needed to enable the Court effectually and completely settle all the questions involved in the cause name of the 3<sup>rd</sup> Defendant