

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA

THIS MONDAY THE 3RD DAY OF MARCH, 2025.

BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

SUIT NO: FCT/HC/CV/1780/24

MOTION NO: M/9307/24

BETWEEN:

MR. AKWE MOSES KINSLEY CLAIMANT/ RESPONDENT

AND

1. SUPPER STRUCTURE AND REALTY LTD.....DEFENDANT/APPLICANT
 2. MR. ABOLAJI OLUWASEGUN VICTOR
 3. LEISURE COURT LIMITED
- }DEFENDANTS

RULING

By a Notice of Preliminary Objection dated the 7th day of June, 2024 and filed on the 11th day of June, 2014.

The Applicant prays this Honourable Court for :

1. AN ORDER of this Honourable Court striking out the name of the 1st Defendant in this suit for lack of a reasonable cause of action against the 1st Defendant.
2. AND FOR SUCH further Order or other Order(s) as this Honourable Court may deem fit to make in the circumstances.

The GROUNDS upon which this application is brought are as follows:

1. No reasonable cause of action has been disclosed against the 1st Defendant.
2. The transaction which gave rise to this suit is between the Claimant and the 3rd Defendant and has nothing to do with the 1st Defendant.
3. The 1st Defendant cannot bear liability under a transaction which he was not a party to.
4. The 1st Defendant is not a necessary party in this suit.

In support of the application is 9 paragraph affidavit deposed to by one Christain-Harold Igboh, a counsel in the law firm of the Defendants'/Applicant Counsel. The affidavit is attached with "Exhibit TOA 1" and in compliance with the rules of Court the Applicant through his counsel filed a written address in support of the application.

The Claimant/Respondent in response filed a 15 paragraph Counter affidavit deposed to by one Esther Samuel a litigation secretary in the law firm of the Claimant's Counsel, in opposition to the application. The Claimant/Respondent through their counsel filed a written address as their legal argument in opposition.

1ST DEFENDANT/APPLICANT'S CASE

- a. That there was a transaction for a purchase of three plots of land between the Claimant and the 3rd Defendant.
- b. That it is as a result of failure of that transaction that this suit arose.
- c. That the transaction giving rise to this suit is between the Claimant and the 3rd Defendant.
- d. That after the Claimant made part payment for the plots, he was issued a receipt by the 3rd Defendant. The receipt evidencing the payment made by the Claimant to the 3rd Defendant is hereby attached and marked Exhibit TOA 1.

- e. That the said transaction never envisaged any third parties, assigns, and (or) agents of the 3rd Defendant.
- f. That there was no agreement or transaction between the 1st Defendant and the Claimant on record.
- g. That at no point did the 1st Defendant enter into any transaction with the Claimant.
- h. That the 1st Defendant was not a party to the transaction between the Claimant and the 3rd Defendant.
- i. That in the Claimant's Statement of Claim, there is no mention of any agreement or transaction between the Claimant and the 1st Defendant.
- j. That the 1st Defendant and the Claimant do not have any business relationship from which liability should arise.
- k. That the 1st Defendant cannot bear liability for a transaction which it was not a party to.
- l. That the Claimant has no legal standing to bring this action against the 1st Defendant.

6. That I verily believe that it will be in the interest of justice to strike out the name of the 1st Defendant from this suit.

7. That the Claimant/Respondent in this suit will not be prejudiced by the grant of this application.

8. That this application is brought in the interest of justice.

CLAIMANT/RESPONDENT'S CASE

...

5. That facts contained in paragraphs 5(a), (c), (e), (f), (g), (h), (i), (J), (k), and (I) (6) and (7) of the affidavit in support of the preliminary objection are false, misleading and are hereby denied in their entirety.
6. That in response to paragraph 5(a) of the affidavit in support of the preliminary objection, and in denial of facts therein contained, the Respondent states that there was discussions and transaction for the purchase

of three (3) plots of land between the Respondent and the 2nd Defendant who subsequently brought into it the 1st and 3rd Defendants both of whom the 2nd Defendant is their alter ego.

7. In response to paragraph 5(c), (e), (f) and (g) of the affidavit in support of the preliminary objection, and in denial of facts therein contained, Respondent states that the transaction giving rise to this suit involved active participation and roles by all 3 Defendants as the 2nd Defendant brought into it the 1st Defendant who received all of the payments made by the Respondent to the Defendants for the purchase of the said 3 plots of land.
8. In further response to paragraph 5(c), (e) (f) and (g) of the affidavit in support of the preliminary objection, it was the 2nd Defendant who introduced the Applicant into the transaction and, as the alter ego of the Applicant, supplied the Naira and USD Account details of the Applicant to whom the Respondent paid part payments of N5, 000,000 and \$60,000 USD (Sixty Thousand Dollars) only, respectively, subject matter of this suit. The transaction receipt dated the 01/17/2023 showing the payment of \$60,000 USD (Sixty Thousand Dollars) only received by the 1st Defendant/Applicant is hereby annexed as Exhibit R1.
9. Still in response to paragraph 5(c), (e), (f) and (g) of the affidavit in support of the preliminary objection, Respondent states that when the transaction fell through, the Applicant (not the 3rd Defendant) promptly refunded the said N5,000,000 paid into its Naira account, to the Respondent. Respondent's bank statement showing the said refund by the Applicant is hereby annexed as Exhibit R2.
10. In response to paragraph 5(h) of the affidavit in support of the preliminary objection, Respondent states that every discussion about the purchase of the

3 plots of land was made with the 2nd Defendant who brought in the Applicant and the 3rd Respondent as players in the transaction.

11. In response to paragraphs 5(i) and (j) of the affidavit in support of the preliminary objection, and in denial of facts therein contained, Respondent did mention in paragraphs 11 and 12 of his Statement of Claim the transactions between him and the Applicant on the subject matter of this suit from which liability arises against the Applicant for the refund of monies had and received.

12. In response to paragraphs 5(k) and (l) of the affidavit in support of the preliminary objection, and in denial of facts therein contained, Respondent states that the Applicant and the 2nd and 3rd Defendants are jointly and severally liable to refund Respondent monies had and received.

13 That I know that it will be in the interest of justice to adjudicate this suit with the Applicant as a necessary party.

14 That I verily believe the Applicant's instant preliminary objection is brought mala fide against the interest of justice.

COURT'S ANALYSIS

The 1st Defendant/Applicant is asking this Court to strike out its name: Supper Structure and Realty Ltd, for lack of a reasonable cause of action against it. The question is: what then is a cause of action? Going by judicial authorities,

A cause of action is the fact which establishes or gives rise to a right of action; that is the factual situation that gave rise to a judicial relief. In **BELLO V. AG OYO STATE (1986) LPELR 764@81, KARIBI-WHIYTE, JSC** explained what a cause of action is in the following way:

...a cause of action is constituted by the bundle or aggregate of facts which the law will be recognised as giving the plaintiff a substantive right to make the claim against the relief or remedy being sought. Thus, the factual situation on which the plaintiff relies to support his claim must be recognized by the law as giving rise to a substantive right capable of being claimed or enforced against the defendant. In other word, the factual situation relied upon must constitute the essential ingredients of an enforceable right of claim.

I derive my authority from Per LAMIDO ,J.C.A in **INEC V. ADP & ANOR (2023) LPELR-60333(CA) (PP. 22-23 PARAS. C.** The following case also support the above definition **THOMAS V. OLUFOSOYE (1986) LPELR 3237, EGBE V. ADEFARASIN (1987) LPELR 1032, TUKUR V. GOVT. OF GONGOLA STATE (1989) 4 NWLR (PT 112) 517 AND UBA PLC V. ABDULLAHI (2003) 3 NWLR (PT 807) 359.**

More so, who is a necessary party in a suit ? In the case of **Amaechi vs. Governor of Rivers State & Ors (2017) LPELR-43065 (CA)**, the Court held:

The law is well settled that, a person will be a proper and necessary party when his or her joinder as a party to the action will enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the action. Therefore, the interest of the Appellant cannot be said to be oblique in the instant matter, rather, his interest is directly in issue in ensuring that justice is done in the subject-matters of the inquiry to be conducted by the 3rd Respondent. This is our firm view and we so hold. See the cases of: (1) Green v. Green (1987) NSCC P. 115; (2) Ede v. Nwidenyi

(1988)12 S.C. (Pt.3) p.12 and (3) Carrena v. Akinlase (2008)14 NWLR (Pt.1107) p. 262." Per OMOLEYE, J.C.A (Pp. 97-98, paras. E-C).

The case of **Global West Vessel Specialist (Nig) Ltd vs. Nigeria NLG Ltd & Anor (2017) LPELR-41987 (SC)** also presents another view of who is a proper/necessary party to a suit. Who is a proper/necessary party to a suit, was thus defined in that case:

It has long been held that proper parties are those who though not interested in the plaintiff's claim, are made parties for some good reasons, for example, in an action instituted to rescind a contract, any person who was active or concurring in the matters which gave the plaintiff the right to rescind, is a proper party to the action. Necessary parties are those who are not only interested in the subject matter of the proceedings but also who in their absence, the proceeding could not be fairly dealt with. In other words, the question to be settled in the action between the existing parties must be a question which cannot be properly settled unless they are parties to the action instituted by the plaintiff. I call in aid **Chief Abusi David Green v. Chief (DR) E. T. Dublin Green (1987) NWLR (pt. 61) 481 (1987) LPELR SC206/1986; Amon v. Raphael Tuck & Cons (1956) 1 WB 357; Re Vandervills Trust (1971) A.C. 812; Re Vandervelle (1969) 3 All ER 497. Per ARIWOOLA ,J.S.C (Pp. 31-32, paras. D-B).**

Also in **T. Delak Distribution Service Ltd & Anor vs. Ugbowanko (2018) LPELR-46480 (CA), per Garba, JCA (Pp. 28 - 29, paras F - C).**

The decision of whether a party is a necessary party or not, goes beyond the claims/reliefs sought by the plaintiff/claimant in the case. It involves a consideration of the pleadings and evidence adduced in support of the pleaded

facts. I derive my support from Per ABUNDAGA ,J.C.A in **TERI V. AUGUSTINE (2021) LPELR-52655(CA) (PP. 13-15 PARAS. A-A)**.

In this instant case, the Claimant/Respondent in paragraph 7,8, and 9 of his Counter-Affidavit in opposition to the preliminary objection that:

7. In response to paragraph 5(c), (e), (f) and (g) of the affidavit in support of the preliminary objection, and in denial of facts therein contained, Respondent states that the transaction giving rise to this suit involved active participation and roles by all 3 Defendants as the 2nd Defendant brought into it the 1st Defendant who received all of the payments made by the Respondent to the Defendants for the purchase of the said 3 plots of land.
8. In further response to paragraph 5(c), (e) (f) and (g) of the affidavit in support of the preliminary objection, it was the 2nd Defendant who introduced the Applicant into the transaction and, as the alter ego of the Applicant, supplied the Naira and USD Account details of the Applicant to whom the Respondent paid part payments of N5, 000,000 and \$60,000 USD (Sixty Thousand Dollars) only, respectively, subject matter of this suit. The transaction receipt dated the 01/17/2023 showing the payment of \$60,000 USD (Sixty Thousand Dollars) only received by the 1st Defendant/Applicant is hereby annexed as Exhibit R1.
9. Still in response to paragraph 5(c), (e), (f) and (g) of the affidavit in support of the preliminary objection, Respondent states that when the transaction fell through, the Applicant (not the 3rd Defendant) promptly refunded the said N5,000,000 paid into its Naira account, to the Respondent. Respondent's bank statement showing the said refund by the Applicant is hereby annexed as Exhibit R2.

I think with the above paragraphs this court thinks that the 1st Defendant/Applicant is a necessary party in this suit. I find and so hold.

On the other hand, It is alleged the 1st Defendant/Applicant received and as well refunded sum amounts in issue via Exhibit R1 and Exhibit R2. Now assuming the decision of this court goes in favour of the Claimant/Respondent and the 1st Defendant is removed as a party in this suit, how would the order/or decision of this court be binding on it? It is therefore, my considered judicial view that this suit cannot conveniently be determined without the 1st Defendant as a party in the suit. I so hold.

In the final summation, the preliminary objection of the 1st Defendant/Objector fails and is consequently dismissed.

This is the ruling of this Court.

Hon. Justice Jude O. Onwuegbuzie

Appearances:

1. Emanuel O. Nwafor Esq., for the 1st Claimant/Respondent
2. Christopher O. Richard Esq., for the 1st Defendant/Applicant.