

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 57 KUJE ABUJA
THIS 14TH DAY OF JULY, 2025
BEFORE HIS LORDSHIP: HON. JUSTICE ODUNAYO O. BAMODU, mni

SUIT NO. FCT/HC/CV/5624/2024
MOTION NO. M/8003/2025

BETWEEN

MRS. CHINYERE JEMIMA UGWUJA.....CLAIMANT/RESPONDENT

AND

ACCESS BANK PLC.....DEFENDANT/APPLICANT

REPRESENTATION

Dr. Chidi Nwankwo Esq, with Richard Uba Esq, for the Claimant.

Paul Jacob A. Esq, with Destiny E. Esq, and two others for the Defendant.

RULING

The Defendant/Applicant by a Motion on Notice dated and filed on 13th June 2025 and brought pursuant to Order 13 Rules 4,6(1), 19, 20 and Order 30 Rules 1 (1) & (2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2025 and the inherent jurisdiction by virtue of Section 6 (6A) of the 1999 Constitution, seeks the following reliefs.

1. An order of this Honourable Court joining Miss Wendy Adaeze Obi and Engr. Emmanuel Ogbonnaya Ochie as 2nd and 3rd Defendants respectively in this suit.
2. An order of this Honourable Court directing the Claimant/Respondent to amend the originating processes in this case so as to incorporate the names of the parties sought to be joined herein as co-defendants and to serve all the processes on all the Defendants.
3. And for such further order(s) as this Honourable Court may deem fit and just to make in the circumstances.

The application is supported by the grounds, a sixteen paragraph Affidavit deposed to by M. Enefiok Essien Esq., of counsel, and a Written Address.

In reaction, the Claimant/Respondent on 20th June 2025 filed a counter affidavit of 27 paragraphs deposed to by Richard Uba, of counsel, and a written address.

The Defendant/Applicant on 23rd June 2025 filed a further affidavit of 19 paragraphs, and a reply on points of law.

In support of his application, Solomon E. Umoh, SAN submits a lone issue for determination, namely: whether having regard to the peculiar facts and circumstances of this case, this is a proper case for the grant of this application.

Learned senior counsel submits further that the answer to the above issue is yes in the circumstances of the Claimant's claim, the interest of justice and fair hearing to all the parties to enable the court completely and effectually determine the issues in dispute between the parties. **[RMAFC v. A.G RIVERS STATE & ANOR (2023) LPELR-60355 (SC)]**. And that choice of Defendant is the prerogative of the claimant but a party must be joined if there is a question that cannot be determined without him.

Counsel also submits that Order 13 Rule 18 (3) and 19 (1), including Order 13 Rule 4 and Order 20 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2025 allow joinder of a party whose presence is necessary for the effectual and complete adjudication of the issues in dispute.

Learned senior counsel referred to the cases of **AZUBUIKE v. PDP (2014) 7 NWLR Pt.1406, 292 at 313 D-C; GREEN v. GREEN (2001) FWLR Pt.76, 795 at 814; ASSOCIATED DISCOUNT HOUSE LTD v. THE HON. MINISTER OF THE FCT & ANOR (2013) LPELR-20088 (SC); and IN RE MADUIKE (2019) 7 NWLR Pt.1671, 255 at 281 C**, outlining the conditions and rationale for the joinder of a necessary party.

Counsel submits further that application of the above principles to the facts of the instant case reveals that the case of the claimant and the defendant are built around the wrongful acts of the parties sought to be joined, and should be afforded fair hearing. Similarly, they ought to have been joined in

the first instance as co-defendants in the first instance for the complete and effectual determination of issues between the parties.

Counsel argues further that the outcome of the suit will affect the parties sought to be joined and that their joinder would avoid multiplicity of actions, citing *GREEN v GREEN*, supra, and *OGOLO & ORS v. FUBARA & ORS* (2003) 11 NWLR at 831.

The Claimant/Respondent also submits an identical issue for the determination of the court, thus: whether the parties sought to be joined are necessary without whom this matter cannot be effectually and effectively determined.

Dr. Chidi Nwankwo submits that no reliefs were claimed nor any allegations levelled against the parties sought to be joined in the Claimant's claim, neither would any decision of the court bind them therefore they are not necessary parties. (*MOGAJI v. MOGAJI* (1986) 1 NWLR Pt.19, 759, ratio 8 (sic). That the Defendant/Applicant is not the proper person to complain about denial of fair hearing for the parties sought to be joined, citing **AMALE v. SOKOTO LOCAL GOVT. (2012) 5 NWLR Pt.1292, 181** ratio 7 (sic).

Learned counsel submits further that the action of the claimant is based on breach of contract which does not include parties sought to be joined, and by the doctrine of privity of contract cannot be made parties to the suit (**FEBSON FITNESS CENTRE v. CAPP H. LTD (2015) 6 NWLR Pt.1455, 263, ratio 4; B.B APUGO & SONS LTD v. O.H.M.B (2016) 13 NWLR Pt.1529, 206**, ratio 10. It was argued further that the first party sought to be joined is an agent of a disclosed principal, the defendant who is liable for the actions of the agent (**ISC SERVICES LTD v. G.C LTD (2006) 6 NWLR Pt.977, 481, ratio 7**).

Learned counsel also submits that the court would not join a party simply because the defendant heaped all blames on her, citing **LAJUMOKE v. DOHERTY (1969) 1 NMLR 281**. And further that if the persons sought to be joined have critical information to the determination of the case they could be called as witnesses. That the motive of the defendant is to frustrate the hearing of the case as the whereabouts of Miss Wendy are unknown creating the difficulty of serving court processes on her.

Counsel further argues that an action cannot be defeated on the ground of non-joinder of parties, as codified in Order 13 Rule 18 (1) of the Court's Rules, and citing **A.G KADUNA STATE v. A.G FED. (2023) 12 NWLR Pt.1899, 537 at 589 D-G; KALU v. ODILI (1992) 5 NWLR Pt.440, 1; AYANKOYA v. OLUKOYA (1996) 4 NWLR Pt.440, 1; INRAHIM v. N.U.B LTD (2004) 11 NWLR Pt.865, 573; NABARUMA v. OFFODILE (2004) 13 NWLR Pt.1196, 342; PEENOK INVEST. LTD v. ABDUL-RAHEEM (2009) 18 NWLR Pt.1173, 384;** and for factors to consider in joinder of parties, **GREEN v. GREEN, supra.**

Claimant urges the Court to dismiss the application as non-joinder will not prejudice the interests of the persons sought to be joined, and joinder would only cause embarrassment to them.

In a further response, the Defendant/Applicant makes some further submissions which I believe have been previously argued except for the issue of agency, which also could have been reasonably anticipated. However, in the interest of justice I am inclined to consider this issue only. For this, learned senior counsel argues that an agent who exceeds the limits of his authority will be personally liable for the wrongful act, citing **COTECNA INTL LTD v. CHURCHGATE NIG LTD & ANOR (2010) LPELR-897 (SC); ERIC PAC (NIG) LTD v. UNTOUCHABLE (2024) LPELR-62000 (CA).** And that an agent who contracts personally while representing a principal can be sued on personally liability. (**STANBIC IBTC BANK PLC v. LONGTERM GLOBAL CAPITAL LTD & ORS (2025) LPELR-81128 (SC).**

Learned senior counsel further submits that there is no vicarious liability in criminal law in Nigeria, citing **ADAMS v. STATE (2021) LPELR-55641 (CA); and ALIYU v. FRN (2025) LPELR-80353 (CA),** and that the submission of the claimant on the issue is misplaced.

DECISION

In considering this application, I start with the comment of Oputa JSC in the case of **CHIEF ABUSI DAVID GREEN v. CHIEF DR. E.T DUBLIN GREEN (1987) 3 NWLR Pt.61, 480 at 488 B** that *“The issue of joinder, non-joinder and mis-joinder has agitated and has been agitated in the Courts from time to time, and there is no paucity of principles or dicta in this branch of the law. The only difficulty that may arise is the*

application of those principles and dicta to the facts and circumstances of any particular case.”

The rules of Court for joinder applicable in the circumstances of this case are as follows:

Order 13 Rule 4 “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.

Rule 6 (1) “It shall not be necessary for every Defendant to be interested in the relief sought in every cause of action included in any proceeding against him.

Rule 18 (1) “No proceedings shall be defeated by reason of misjoinder or nonjoinder of parties, and the Court may deal with the matter in controversy so far as regards the rights and interest of the parties actually before him...

(3) The Court may order that the names of any party who ought to have been joined or whose presence before the Court is necessary to effectually and completely adjudicate upon and settle the questions involved in the proceedings be added.”

I shall next consider the factors a court should consider for joinder of parties.

CHIEF AJIBOLA ARIBISALA, SAN v. ASSET MANAGEMENT CORPORATION OF NIGERIA & ORS (2025) LPELR-80552 (SC) This is a case similar in some particulars to the present case. The Supreme Court held at pp.24-25 G-C ***“The primary purpose of joinder of parties is to enable a court to effectually resolve and settle issues arising for determination in a matter. This helps to avoid multiplicity or duplicity of actions and also saves the court and litigants valuable cost and time. Hence, it is necessary to provide an avenue by which all the parties in whose absence the issues arising for determination in the case cannot be resolved can be present and assist the court in resolving all relevant questions once and for all in a single case. Another reason for joinder is***

to enable persons who will be bound by decision of the court in an action to have an opportunity to be heard so that they will not be prejudiced."

The Court held further at p.28-29 C-B that "It should however be borne in mind that the principle that proceedings or an action will not be defeated by non-joinder is not an absolute one. Where a person whose presence is necessary for the determination of all the questions in a suit is not added as a party, the failure will have fatal consequences and the judgment will be unsustainable. Similarly, where the Plaintiff claims a relief or reliefs which when granted will have a binding effect on a person who is not a party to the action, the action becomes incompetent as a necessary party would not have been joined...

...Deriving from the foregoing, a court faced with an application for the joinder of a person as a party to an action will consider the following:

- a. Is it possible for the court to adjudicate upon the cause of action set up by the plaintiff unless the person is added as a defendant?
- b. Is the person someone who ought to have been joined as a defendant in the first instance?
- c. Is the cause or matter liable to be defeated for non-joinder?
- d. Is the person someone whose presence before the court as defendant will be necessary in order to enable the court effectually and completely to adjudicate on and settle all the questions involved in the cause or matter?"

See **CHIEF ABUSI DAVID GREEN v. CHIEF DR. E.T DUBLIN GREEN (1987) 3 NWLR Pt.61, 480 at p.492 C-E** where the Supreme Court explained "*proper parties*", "*desirable parties*," and "*necessary parties*" in these words, "In legal proceedings the parties, generally speaking, are the persons whose names appear on the record as Plaintiffs or Defendants. Again a Plaintiff who conceives that he has a cause of action against a *particular Defendant* is entitled to pursue his remedy against that Defendant only and should not be compelled to proceed against other persons whom he has no desire and no intention to sue... But when the suit has been filed the trial judge becomes dominus litis and then assumes... the duty and responsibility to ensure that the proceedings accord with the justice of the case by joining either as Plaintiff or Defendants "all the

persons who may be entitled to, or who claim some share or interest in the subject-matter of the suit, or who may be likely to be affected by the results" if these had not already been made parties. This joinder by the Court suo motu can be done at any state of the proceedings.

And at p.492 G-H, that "Under our law one reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action... Under our law also a person whose interest is involved, or is in issue in an action and who knowingly chose to stand-by and let others fight his battle for him is equally bound by the result in the same way as if he were a party"

The Court went on to say at p.493 E-H that "This now leads on to the consideration of the difference between "proper parties", "desirable-patties" and "necessary parties" Proper parties are those who, though not interested in the Plaintiffs claim, are made parties for some good reasons e.g. where an action is brought to rescind a (contract, any person is a proper party to it who was active or concurring in the matters which gave the plaintiff the right to rescind. Desirable parties are those who have an interest or who may be affected by the result. Necessary parties are those who are not only interested in the subject-matter of the proceedings but also who in their absence, the proceedings 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. A distinction must be drawn between the *desirability* of making a person a party and the *necessity* of making him one. In *Settlement Corporation supra* it was held that joining a person as a party to proceedings *did not arise merely because the relief sought in the cause or matter might affect someone who was not a party* in respect of his rights at common law or in equity. In *Peenok v. Hotel Presidential* (1983) 4 N.C.L.R. 122 this Court per Idigbe, J.S.C. and Obaseki, J.S.C. drew the necessary distinction between what it is desirable to do and what it is necessary to do and came to the conclusion that although it was desirable to join the Rivers State Government whose Edicts Nos. 15 and 17 were under attack, it was not necessary to join them *before the Court could decide on the claims of the parties before it.*"

In **CHIEF EMMANUEL BELLO v. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS (2010) 8 NWLR Pt.1196, 342 403-404 D-B** the Supreme Court referred to **PEENOK v. HOTEL PRESIDENTIAL (1983) 4 NCLR 122 at 146** where the meaning of a necessary party was provided by Devlin J. in **AMON v. RAPHAEL TUCK & SONS LTD [1956] 1 QB 357 at 380** that “The person to be joined must be someone whose presence is necessary as a party. What makes a person a necessary party? It is not, of course, merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought of relevant arguments to advance and is afraid the existing parties may not advance them adequately. That would mean that on the construction of a clause in a common form contract many parties would claim to be heard, and if there were power to admit any, there is no principle of discretion by which some could be admitted and others refused. The court might often think it convenient or desirable that some of such persons should be heard so that the court could be sure that it had found the complete answer, but no one would suggest that it is necessary to hear them for that purpose. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled therefore must be a question in the action which cannot be effectively and completely settled unless he is a party.”

Coming back to the present case, what is the question for determination, and what are the reliefs sought?

From the Claimant’s claim it would seem to me that the question for determination is whether, on the basis of a banker/customer relationship between the Claimant and the Defendant, money could be removed from her account without her consent.

And the reliefs sought are mainly against the Defendant for refund of the money so removed without her consent.

What again, at least, are the main grounds upon which the application for joinder are made?

One of them is that the reliefs sought by the Claimant emanate/condescend from the actions of the parties sought to be joined. Another is that Adaeze Wendy Obi acted outside her authority as an agent of the Defendant. And yet another that the parties to be joined have critical information necessary for the determination of the case and should be afforded fair hearing.

The choice of whom to proceed against, where the actions of a person engender the cause of action upon which a Claimant bases his action, is dependent on the cause of action and the reliefs claimed. And the factor to consider has always been whether the interest of the person sought to be joined would be adversely affected otherwise. As the present claim stands, I have not been able to see how the interests of the parties sought to be joined would be adversely affected by the reliefs sought.

The argument that Adaeze Wendy Obi acted outside the colour of her authority suggests a defence open to the Defendant in the circumstances of this case. This state of affairs, even if true, has not been established. A defence available to a party through the act or conduct of another does not invariably make that other person a necessary party if his rights and interests will not be affected. It would therefore be wrong to employ same as a ground for joinder.

And, lastly, having critical information indicates the imperativeness of that person being a witness but not necessarily a party.

The above grounds appear to present valid issues for consideration, but in the final analysis they would seem to put the parties sought to be joined more in the belt of desirable parties rather than necessary parties.

In view of the foregoing, the application of the Defendant for joinder is hereby dismissed.

HON. JUSTICE O. O. BAMODU, mni
(Presiding Judge)