

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

ON MONDAY 20TH DAY OF JANUARY, 2020

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/1677/2017

MOTION NO. M/8701/2019

BETWEEN

**MOUNTAINCREST INVESTMENT
SERVICES LIMITED**

} PLAINTIFF/RESPONDENT

AND

GOSH PROJECT NIGERIA LIMITED

--- DEFENDANT/APPLICANT

AND

**ECONOMIC AND FINANCIAL CRIMES
COMMISSION [EFCC]**

**} PARTY SOUGHT TO
BE JOINED**

RULING

This Ruling is on the defendant's motion on notice *No. M/8701/2019* filed on 11/9/2019 seeking: [i] an order of the Honourable Court joining the Economic and Financial Crimes Commission [EFCC] as 2nd defendant in this suit; and [ii] such further or other order[s] as this Honourable Court may deem fit to make in the circumstance.

AkandeGbenga, a legal practitioner in the law office of Akus& Co., filed an affidavit of 21-paragraphs in support of the motion; attached therewith are Exhibits Gosh A1, A2, B, C, D, E & F. Hardy ChudeAkusEsq. filed a written address with the motion. In opposition, Godfrey Omoha, a litigation assistant in the law office of K. C. Opara& Associates, filed a 5-paragraph counter affidavit; attached therewith are Exhibits K.C. 1 & 2. Martin OparaEsq. filed a written address with the counter affidavit.

In the affidavit in support of the application, AkandeGbenga stated that:

1. The plaintiff instituted this action claiming the sum of money paid for the construction of a 100-Room Hotel at Lekki Phase 1 Area of Lagos State.
2. The Federal Government of Nigeria and the Economic and Financial Crimes Commission [EFCC] instituted *Suit No.FHC/ABJ/CS/541/17* at the Federal High Court, Abuja seeking to forfeit to the Federal Government of Nigeria the same sum of money the plaintiff is seeking to recover from the defendant.
3. The said money which is the subject of this suit is the subject of litigation pending at the Federal High Court, Abuja in *Suit No. FHC/ABJ/CS/541/17*.
4. On 30/6/2017, EFCC secured an interim forfeiture order to the Federal Government of Nigeria of the said money the plaintiff is seeking to

recover from the defendant. The motion filed by EFCC and the order of the Federal High Court are Exhibits Gosh A1 & A2 respectively.

5. The plaintiff herein applied and was joined as a party in *Suit No. FHC/ABJ/CS/541/17* at the Federal High Court. A copy of the plaintiff's motion is Exhibit Gosh B.
6. The Federal High Court refused to make the interim forfeiture order absolute. EFCC was aggrieved by that decision and appealed to the Court of Appeal, Abuja. A copy of the Notice of Appeal filed on 30/11/2017 with *Appeal No. CA/A/886/2017* is Exhibit Gosh C. All the parties including the plaintiff herein have filed their respective briefs in the Appeal.
7. Part of the money the plaintiff is claiming in the instant suit is currently in the custody of the party sought to be joined which is seeking the final forfeiture of the said sum of money to the Federal Government.
8. The party sought to be joined is very much interested in the subject matter of this suit; and it is a necessary party whose presence is needed being the agency alleging that the money the claimant is seeking to recover is a proceed of money laundering.
9. The contract could not be executed because of the investigative activities of the party sought to be joined.

In the counter affidavit on the other hand, Godfrey Omoha stated that:

1. The plaintiff brought this action for the recovery of various contract sums it advanced to the defendant for the construction of a 100-room Hotel at Lekki Lagos, Lagos State.
2. *Suit No. FHC/ABJ/CS/541/17* has been disposed of. The Ruling of His Lordship *Hon. Justice NnamdiDimgba* dated 17/11/2017 is Exhibit K. C. 1.
3. The forfeiture proceeding was in relation to the sum of 500,000.00 US Dollars. The plaintiff, in reaction to a newspaper publication inviting interested parties to show cause why the interim forfeiture order should not be made final, succeeded to show good cause before the Federal High Court. The Court declined to make the forfeiture order absolute but set aside the interim order of forfeiture.
4. There is an appeal against the Ruling of *Hon. Justice NnamdiDimgba* of 17/11/2017 and all the parties to the appeal have filed their respective briefs. The said appeal has no nexus with the present suit and the plaintiff herein has no privity of contract with the party sought to be joined and the cause of action before this Court is for recovery of money had and received founded on contract.
5. It is untrue that part of the money sought to be recovered by the plaintiff from the defendant is in custody of EFCC. The plaintiff has written the Central Bank of Nigeria [CBN] to demand the release of the money but CBN confirmed that it is not in possession of the said sum. A copy of the letter by CBN dated 4/1//2018 is Exhibit K. C. 2.

6. The party sought to be joined is not an interested party to this suit and is neither a necessary nor proper party whose presence is required for the effective and effectual determination of this suit.
7. The plaintiff's suit before this Court is for money received for a failed consideration; it is independent of the forfeiture proceedings and the appeal there from.

From the processes filed by the parties and the submissions of both learned counsel, the issue for determination in this application is whether EFCC sought to be joined as the 2nd defendant in this action is a necessary party.

Learned counsel for the defendant referred to several cases including **Ayoade v. Spring Bank Plc. [2014] 4 NWLR [Pt. 1396] 93** and **Azubuike v. PDP [2014] 7 NWLR [Pt. 1529] 206** on the meaning of a necessary party to a suit. He argued that there is unchallenged evidence that the party sought to be joined is already in custody of part of the money which is the subject matter of this suit. The party sought to be joined has also filed an appeal for the permanent forfeiture of the money in its custody to the Federal Government of Nigeria. The questions about why the contract was not executed and the money to be recovered, which are to be determined in this action between the parties, cannot be properly settled unless EFCC is made a party to the action. Mr. Hardy Chude Akus submitted that the presence of EFCC is necessary to effectually and completely determine the questions in this case.

The submission of learned counsel for the plaintiff [claimant] is that the party sought to be joined is not a necessary party whose presence is required for the effective and effectual determination of this suit. The defendant has failed to show in its affidavit the interest of EFCC in this suit or how EFCC would be affected by the judgment of the Court in the suit. Martin Opara Esq. further submitted that the cases cited by the defence counsel are good authorities which are against the grant of the application.

In Ayoade v. Spring Bank Plc. [supra], it was held that necessary parties are those who are not only interested in the subject matter of the proceeding 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 parties cannot be properly settled unless they are parties to the action instituted by the plaintiff. Anyone whose presence is crucial and fundamental to the resolution of a matter before the court must be made a party to the proceedings.

In the case of Azubuike v. PDP [supra], the principle was restated that the reason for making a person to be a party to an action is that he should be bound by the result of the action. The questions to be settled in the action must be questions which cannot be effectually and completely settled unless he is a party. The court is expected to join as plaintiff or defendant anyone who may have a stake in the subject matter of the suit or may be affected by the decision.

There are questions which a court is required to consider in an application to join a person as a defendant in an action. These questions - which are set out in the cases of Green v. Green [1987] 3 NWLR [Pt. 61] 480 and Bello v. INEC & Ors. [2010] LPELR-767 [SC]- are:

- i. 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?
- ii. Is the person someone who ought to have been joined as a defendant in the first instance?
- iii. Is the cause or matter liable to be defeated for non-joinder?
- iv. Is the third party a person whose presence before the court as a defendant is necessary in order to enable the court effectually and completely adjudicate or settle all the questions involved in the cause or matter?

In the light of the above principles, it is important to refer to the case of the claimant in order to determine whether EFCC is a necessary party in this suit. In the amended statement of claim filed on 22/6/2018, the claimant averred that on 13/12/2016, the parties entered into a contract for the construction of a 100-room Hotel in Lekki Phase one, Eti-Osa Local Government Area of Lagos State for the total contract sum of N1,550,950,000.00. In fulfilment of its obligation in the contract, the claimant made payments of the total sum of 2,262,000 US Dollars to the defendant's accounts in 4 tranches. By letter dated

7/4/2017, defendant confirmed being in receipt of the various sums deposited into its accounts but spuriously alleged that it applied the fund for paying back money acclaimed by EFCC's agents as government money.

The claimant further averred that the defendant's conduct/action amounts to a breach of the said contract. Claimant rescinded the contract by demanding the refund of the said sum from the defendant through its solicitors' letter dated 28/4/2017. The defendant has failed to refund the said sum in spite of repeated demands. The claimant therefore claims the sum of 2,262,000 US Dollars; interests on the said sum; general damages of N50 million; and cost of the action.

Now, the claimant's case is predicated on the allegation of breach of contract. The sum claimed by the claimant is 2,262,000 US Dollars. The basis for the application to join EFCC as a defendant is that EFCC sought and obtained an order of interim forfeiture of 500,000 US Dollars from the Federal High Court being part of the money paid to the defendant by the claimant. The Federal High Court further directed *"the publication of a notice in any national daily newspaper inviting any person[s] or body who may have interest in the subject funds to, within 14 days of the publication of the Order, show cause why an Order of final forfeiture to the Federal Government of Nigeria of the said funds should not be made."*In line with the said order, the claimant filed an affidavit on 7/9/2017 to show cause [Exhibit Gosh B] why an order of final forfeiture of the said sum of 500,000 US Dollars should not be made.

In its Ruling delivered on 17/11/2017, the Federal High Court declined to make the forfeiture order absolute; it set aside the interim order of forfeiture. EFCC appealed against the decision.

In my respectful opinion, the involvement of EFCC in the matter is with respect to the sum of 500,000 US Dollars, which is part of the sum of 2,262,000 US Dollars allegedly paid by the claimant to the defendant for the project. The EFCC has nothing to do with the subject matter of this suit, which is the claimant's allegation of breach of contract made against the defendant and claim for refund of money. The implication of the foregoing facts is that if the appeal filed by EFCC fails, the sum of 500,000 US Dollars will revert to the defendant. In that situation, EFCC will have no role to play in the effectualdetermination of the issues or questions in this case.

On the other hand, if the appeal filed by EFCCsucceeds, the effect will be that the sum of 500,000 US Dollars will be forfeited to the Federal Government of Nigeria. In that situation, the defendant will rely on the forfeiture order as part of its defence as averred in its statement of defence filed on 25/1/2019 and the EFCC will have no role to play in the effectualdetermination of the issues or questions in this action. If the need arises, the defendant may call an official of EFCC as a witness in this proceeding to establish the fact that the sum of 500,000 US Dollars, which is part of the said sum of 2,262,000 US Dollars was forfeited to the Federal Government of Nigeria by order of Court.

It is trite law that a person does not become a necessary party in a suit merely because he has a material or useful evidence to give in the matter. See the cases of Bello v. INEC [2010] 8 NWLR [Pt. 1196] 342; and F. H. A. v Olayemi&Ors. [2017] LPELR-43376 [CA]. Thus, EFCC will not become a necessary party in this matter merely because it may have a useful or material evidence to give on behalf of the defendant with respect to the 500,000 US Dollars.

Finally, I have applied the tests or questions enunciated in Green v. Green [supra] and Bello v. INEC &Ors. [supra] to the instant application. I take the respectful view that the answer to the first question is in the affirmative; while the answers to the other three questions are in the negative. I hold that:[i] it is possible for the Court to adjudicate upon the claimant's cause of action in the absence of the EFCC;[ii] EFCC is not a person who ought to be joined as a defendant in the first instance since the claimant has no claim against it; [iii] the claimant's cause of action is not liable to be defeated for non-joinder of EFCC; and [iv] the presence of EFCC is not necessary for the effectual and complete determination of all the issues and questions in this action.

From all that I have said and in conclusion, the application lacks merit. It is dismissed. I award cost of N30,000.00 to the claimant/respondent payable by the defendant/applicant.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of counsel:

1. K. C. OparaEsq. for the claimant/respondent; with Cynthia C. OgbuliEsq.
2. Ochai J. OtokpaEsq. for the defendant/applicant.