

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT KUBWA, ABUJA**

**ON TUESDAY, THE 21<sup>ST</sup> DAY OF FEBRUARY, 2020**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**

**JUDGE**

**SUIT NO.: FCT/HC/CV/18/17**

**MOTION NO.: M/4037/19**

**BETWEEN:**

**COLONIEL A. OWADIA**

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**APPLICANT**

**AND**

- 1. YUNISA IBRAHIM A.**
- 2. COMMISSIONER OF POLICE  
FCT COMMAND**
- 3. DIVISIONAL POLICE OFFICER  
KUBWA POLICE DIVISION  
FCT ABUJA**
- 4. COMFORT JAGAH**
- 5. AMINA ALI AMEH**

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**DEFENDANTS**

## **RULING**

In the amended Writ of Summons the Plaintiff claim against the Defendants the following Reliefs:

- (1)An Order directing Defendants to remove the block wall fence which they use in denying him access and easement to the Given Area. A service at Layout Kubwa Abuja FCT.
- (2)An Order that he is the beneficial owner in possession of the Given Area.
- (3)Perpetual Injunction restraining the Defendants, their privies, agents and assign from trespass in the said Res.
- (4)Fifty Million Naira (N50, 000,000.00) only as General damages/compensation for the act of trespass on the Plaintiff's right of possession on the Given Area.
- (5)One Million Naira (N1, 000,000.00) only as cost of litigation.

The 1<sup>st</sup> & 5<sup>th</sup> Defendants filed their Statement of Defence and Motion to recall the PW1 who have testified, thereby making the Plaintiff to re-open its case.

The Defendant also want the Court to vacate the foreclosure Order made on the 23<sup>rd</sup> day of May, 2018 against the 1<sup>st</sup> Defendant from cross-examining the PW1 and they also want to join Mr. Muoh Peter Obinna and Mr. Haruna as Defendants in the Defendant's Counter Claim.

The application was supported by Affidavit of 12 paragraphs and a Written Address they attached.

He raised an Issue for determination which is:

**“Whether the Court can grant this application”**

He said the Court can grant same by ordering that the Plaintiff re-open its case so that the Defendant can cross-examine the PW1. He referred to:

**Nebo V. FCDA  
(1998) 11 NWLR (PT. 574) 480 @ 491**

That a case can be re-opened at any time but granting leave to do so is at the Courts discretion. He cited:

**Zenith Bank V. Ekereuwem  
(2012) 4 NWLR (PT. 1290) 20**

That the application is for Defendant to test the solidity of the evidence of the PW1 through the furnace of Cross-examination. That the application is made in the interest of justice and fair-hearing.

He referred to the case of:

**Osoro V. 7up Bottling Co. Ltd  
(2016) 13 NWLR (PT.1528) 1.**

**PDP V. PSIEC  
(2005) 15 NWLR (PT. 948) 230.**

That by **Oder 17 Rule 7 & 8** the Defendant is entitled to file Counter Claim instead of bringing fresh and separate action against the Plaintiff.

They are also allowed to join more than one person as Defendant by virtue of **Oder 13 Rule 4 FCT High Court Rules.**

That those sought to be joined are necessary parties in that the determination of the Counter Claim will affect their interest. He referred to:

**Sasanya V. Onadeko  
(2002) 11 NWLR (PT. 677) 34**

That the application is apt because the parties sought to be joined are the persons who trespassed on the Res. He also referred to:

**Green V. Green  
(1987) 3 NWLR (PT. 61) 480.**

That if the Muoh Peter Obinna is not made a party to the Counter Claim, there will be no Counter Claim and no such claim can be maintained. He cited:

**UBA V. Samba Petro Co. Ltd  
(2002) 16 NWLR (PT.793) 360 @ 390.**

He urged Court to grant the application.

In the 6 paragraphs Counter Affidavit the Plaintiff averred that 1<sup>st</sup> & 5<sup>th</sup> Defendant have not filed any Statement of Defence in this Suit. They have not disclosed why Haruna should be joined. Again that Plaintiff is yet to close its case. That this application was brought in bad faith.

In the Written Address the Plaintiff submitted that Defendant is seeking an application unknown to law.

The Plaintiff submitted that the application is an abuse of Court processes and calculated to frustrate the course of justice. That a Plaintiff is not by our jurisprudence to be joined as a Defendant in the same Suit. He referred to the case of:

**Abubaka V. Bebeji  
(2007) 147 LRCN 1091 @ 1134.**

**Ukachukwu V. PDP  
(2014) 10 WRN 1 @ 17 – 18.**

That Defendant is asking Court to grant an Order already granted and to re-open the case of Plaintiff which has not been closed.

He urged Court to dismiss the application.

## COURT

From all indication this application is frivolous and gross abuse of Court processes. It is brought in bad faith to waste the time of the Court and frustrate the Suit. This Court cannot allow that.

The records of this Court in the proceedings are open to all parties including the public. The Plaintiff is yet to close its case so the Court finds it difficult to understand the reason of lifting the foreclosure Order which this Court had made since the 14<sup>th</sup> day of April, 2019.

It is known that in any Counter Claim parties swap role in that Plaintiff becomes Defendant and Defendant becomes the Plaintiff. The Court need not make any special Order to that effect. So asking the Court to make the Order is unknown to law. This Court cannot set that bad precedence.

This application lacks merit. It is therefore DIMISSED.

**This is the Ruling of this Court.**

**Delivered today the ----- day of ----- 2020.**

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**K.N. OGBONNAYA**  
HON. JUDGE