

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON TUESDAY, THE 7TH DAY OF FEBRUARY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/0865/18

BETWEEN:

NIEZON INTEGRATED SERVICES LTD ----- PLAINTIFF

AND

FIRST CITY MONUMENT BANK ----- DEFENDANT

RULING

In this Suit filed on the 8th day of February, 2018 the Plaintiff claim the following from the Defendant:

- (1)An Order directing the Defendant First City Monument Bank Ltd (FCMB) to refund to the Plaintiff the sum of N9.9 million which no consideration passed.
- (2)21% Interest on the N9.9 million from the 20th day of February, 2017. Or in the Alternative, Interest rate on the prevailing Central Bank of Nigeria approved Interest rate from the 20th day of February, 2017 till date when the Judgment sum is liquidated.

(3)10% Interest on the Judgment sum from date of Judgment till the sum is liquidated.

The Defendant was served on the 1st day of March, 2018. The Plaintiff on the 6th day of February, 2019 filed a Motion on Notice for joinder of Thelma Chike Enendu as Defendant in this Suit.

They also applied for leave to amend the statement of claim and other processes to reflect the name of the party sought to be joined. Again they applied for leave to reply to the Statement of Defence filed and served out of time and deeming the said Reply as properly filed and served.

The Plaintiff supported the said Motion with Affidavit of 5 paragraphs deposed to by Oluchukwu Nwakor. They attached a copy of the said proposed Writ reflecting the name of the party sought to be joined as an Exhibit marked as EXH A.

In the Written Address the Plaintiff did not raise any Issue for determination per se. they submitted referring to **Ord 13 R 7 High Court Rules 2018** and submitted that the purpose of the application for joinder of party is to avoid multiplicity of action.

That from the Statement of claim the party sought to be joined – Thelma Chike Enendu is an officer appointed by the Defendant to act as account officer of the Plaintiff to liaise with Plaintiff on all matters involving Plaintiff and the Defendant. Such duty included the management of account of the Plaintiff with the Defendant. That from the Statement of claim the party sought to be joined was actively involved in the transaction that gave birth to this Suit. That the Defendant also confirmed that the said Thelma Chike Enendu was

actually involved in the said transaction, the Defendant twisted the fact by stating that her involvement was on a personal capacity despite being the account officer of the Plaintiff. This is also reflected in the Witness Statement on Oath of the party sought to be joined as attached to the Statement of Defence.

That party sought to be joined is a necessary party who have admitted in the said Oath to be at centre of the issues/transaction that led to this Suit. That the Court cannot fully and justly determine the issue in dispute without her. That the decision of the Court will definitely affect her in one way or the other. Hence the need to join her as party in this Suit. They referred to the case of:

**Okwu & Anor V. Umeh & 5 ors
(2016) 1 SC (PT.1) 60 @ 86**

That by **Ord 9 R 4 FCT High Court Rules 2018**, the Court is empowered to enlarge time within which any party can file its Processes. They urged Court to grant the application.

In a stiff opposition the Defendant filed a Counter Affidavit of 13 paragraphs challenging the Motion of Joinder.

In their Written Address the Defendant raised one Issue for determination which is:

“Whether the Court ought to grant the application”.

The Defendant Counsel submitted on behalf of the Defendant that the issue before the Court can be effectively and completely determined, settled and dealt with without granting the joinder of Thelma Enendu; that the same party sought to be joined is a Witness in this Suit. That questions will be put to her at the trial and that will help the Court to

effectively and completely determine the Issues in dispute. He referred to the case of:

**Atanyi V. Military Gov of Plateau State
(2002) All FWLR part 89 @ 1168 @ 1192 Para G.**

On amending the Writ to reflect the name of the party sought to be joined, the Counsel for Defendant submitted that such alteration can only be done with leave of the Court and not Suo Motu. He referred to **Ord 25 R 2 High Court Rule 2018**. He also referred to the case of:

**Eke V. Akpu
(2010) All FWLR (PT. 510) 640 @ 658**

**Yahaya V. Chukwura
(2002) FWLR (PT. 87) 732 @ 745 Para E – F**

where it was held that it is the Court that can allow amendment. That the Court and Applicant are bound by the prayers in the face of the Motion paper dated 6/2/19 and the extent of the amendment done exceeds the amendment sought or prayed for going by the decision in the case of:

**Multibras S/A Elelectronesticoz V. PZ Co PLC UK
(2006) All FWLR (PT. 326) 369 @ 373 para E – G**

That the proposed amendment was not exhibited as required by the Rules of Court for Court to know what is been amended in order to exercise its discretion judicially and judiciously. He referred to the case of:

Urunne V. Agboro

(2002) All FWLR (PT. 110) 1930 @ 1946

That amendment is not granted as a matter of course but on merit.

That the actual amendment on the proposed Writ of Summons – EXH A exceeds the extent of the amendment sought under prayer No.2 in the Motion of 6/2/19. He referred Court to **page 2 paragraphs 3, 6, 9, 11, 12**. He submitted that Applicant’s failure to make clear what is being amended means he has not discharged that responsibility placed on him by the Rules of Court in that regard.

That it is not for Court to fish out the amendment. That what the Applicant has done is a substitution and not an amendment. He urged the Court to so hold and to refuse to grant the prayer 2 in the Motion.

He also submitted that prayer on leave to file the Claimant’s Reply (dated 6/2/19) to Defendant’s Statement of Defence out of time and the Deeming Order out of time cannot be granted, for it contravene the Rules of Court.

That the Plaintiff failed to comply with the Rules of Court as regard the Two Hundred Naira (N200.00) per day penalty as provided for in **Ord 49 R 5 & Ord 56 R 1 (1) & (2)**. He urged Court to dismiss the Motion.

COURT

To start with the Defendant attached the proposed Writ of amendment as EXH A.

It is the right of a party to apply for leave to join another person as a party to the Suit. The Court also has a right to order that a person be

joined Suo Motu once it is judicial and judicious to do so and once Court feel that such person is a necessary party. All these the Court does in order to get to the justice of the case at the end of the day.

It is important to note that not paying the penalty fee as required by the Rules of this Court **Order 49 Rule 5 and Order 56 Rule (1) & (2)** cannot viate the process just like failure of a Counsel to stick NBA Stamp. What the Court does in that situate is to Order that the party in default pays the said penalty and return the evidence of payment to the Court. Such over sight are not so fundamental that a Court will strike out a Suit pending in Court because penalty fees were not paid.

Also parties are allowed to apply for extension of time to respond to or file a Process out of time. It is for Court to decide whether to grant or refuse to grant such application. Once the granting of the application cannot jeopardize the case of the party on the other side of the aisle the Court will grant it, provided that doing so is judicial and judicious in the interest of justice of the case at that stage.

In this application for joinder, the Plaintiff want to join as a Defendant – Thelma Chike Enendu who the Defendant has intention of calling as a Witness in Defence of this Suit. The Defendant Counsel has vehemently opposed that.

A closer look at Statement of Oath of Thelma Chike Enendu shows that she stated severally that she had transaction with the agent of the Plaintiff personally on several foreign currency sourcing and purchasing transaction outside the purview of the Defendant. She had confirmed what the Plaintiff stated in paragraph 7 that she will help the Plaintiff source the foreign currency from outside source whenever there is scarcity of foreign currency.

From all indication going by the averment in the Statement of Oath of the party sought to be joined, it is very evident that joining her as a party in this Suit will greatly help the Court to get to the justice of the Suit at the end of the day. It is also evident that her presence is very necessary in this case. Notwithstanding that she is the key Witness of the Defendant, the Defendant may decide not to field her as a Witness at the end of the day.

Since she is already a key Witness there is nothing wrong in making her a party in the Suit. Her presence will help the Court to fully and detailedly determine the issues in dispute.

Retaining her as a Witness will not be enough. Having her as a party will be of great value to the Court. This Court cannot obviously determine the issues in dispute without her presence. More so when she had stated severally that she acted in all the transaction in this Suit on her personal capacity. That is why the Court holds and Orders that she should be joined as a party in this Suit.

This application is very meritorious. This Court therefore grants same and Orders that:

- (1)Thelma Chike Enendu be joined as the 2nd Defendant in this Suit.
- (2)Parties are to amend their Process to reflect the name of the party joined.
- (3)The Applicant is hereby ordered to pay the penalty fees as required by the Order 49 Rule 5 and Order 56 Rule (1) & (2) for filing the Reply to Statement of Defence out of time.

The application for leave to amend and the deeming Order are granted too.

Matter adjourned to the 7th day of April, 2020 for Hearing.

This is the Ruling of this Court.

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

K.N. OGBONNAYA
HON. JUDGE