

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

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 24
CASE NUMBER : SUIT NO: CV/361/18
DATE: : THURSDAY 7TH MAY, 2020

BETWEEN

**MR. ONYEJIAKA FAVOUR EKENE } PLAINTIFF/
APPLICANT**

AND

1. HON. MINISTER OF THE FCT
2. THE MINISTRY OF FCT
3. DIRECTOR, ABUJA GEOGRAPHIC INFORMATION SYSTEM (AGIS)
4. MRS. HAUWA JUMAI AKILU ISA
5. FATIMA AKILU
(The Administrative of the Estate of
Late Astajam Akilu)

**DEFENDANTS/
RESPONDENTS**

AND

**MR. TANKO MADUGU... } PARTY SOUGHT TO
BE JOINTED**

RULING

The Applicant/Party Sought to be joined approached this Honourable Court for the following:-

1. An Order of this Honourable Court joining Mr. Tanko Madugu as the 6th Defendant in this suit.
2. And for such further Order or Orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application was brought are:-

- a. That the party sought to be joined is a necessary party to this suit.
- b. That it is necessary that the party be joined for proper and effective determination of the controversy in this suit in the interest of justice.

In support of the application is a 7 paragraph affidavit duly deposed to by One Amuzie Celine A. (Mrs.) a

Litigation Secretary with Zenith Chambers, Solicitors to the Plaintiff/Applicant.

It is the deposition of the Applicant that the matter before this Court bothers on the declaration of ownership of Plot Number 661 in Cadastral Zone A09, Guzape Measuring approximately 2000m².

That Mr. Tanko Madugu is a Staff of AGIS who seized the original Right of Occupancy of Plaintiff/Applicant upon presentation to collect the certificate of Occupancy of the land.

That Mr. Tanko Madugu is a necessary Party to this Suit since 1st and 2nd Defendants are claiming that they did not seize the original Right of Occupancy, and that it will be in the interest of justice to Join Mr. Tanko Madugu to enable him participate in the trial of this suit.

In line with law, a written address was filed wherein a sole issue to wit; ***whether this Honourable Court can grant this application was formulated for determination.***

Arguing on the above, learned counsel submit that in an application for joinder of a party, the court considers whether the presence of the party sought to be joined is necessary to enable it effectually and completely adjudicate upon and settle all the question in controversy between the parties.

BIOCON AGROCHEMICAL LTD. & 3 ORS VS KUDU HOLDING & ANOR (2001) FWLR Part 33 Page 254 at 277 Paragraph A – B.

Learned Counsel contended that they have presented all the facts before the court to show that party sought to be joined is a necessary party and therefore court should grant the said application.

Upon service, 1st – 3rd Defendants Counsel filed an affidavit of 13 paragraphs deposed to by One Badamasi Abdulkadir Sa'id.

It is the deposition of the deponent that Mr. Tanko Madugu is not a necessary party for the successful adjudication of this suit but can appear as a witness for the 1st to 3rd Defendants.

That Mr. Tanko Madugu, the party sought to be joined, is a staff of the 1st – 3rd Defendants and he performed his duties in official capacity as a staff and cannot be held responsible for any reason whatsoever outside of the 1st to 3rd Defendants.

That the party sought to be joined would be of no effect to this suit as the cause of action is not liable to be defeated by a non joinder.

A written address was filed wherein a sole issue to wit; *whether the party sought to be joined is a necessary*

party for the effective determination of this suit was formulated.

Arguing on the above, learned counsel contended that the main purpose of joinder is to avoid multiplicity of actions and join a party or parties that are entitled to share same interest in the subject matter in sense that non joinder might necessitate the institution of another action by the party that ought to be joined.

Court was urged to refuse the application.

Court:- The joinder of parties, whether as Plaintiffs or Defendants, is subject to two conditions, namely, (i) the right to relief must in each case be in respect of or arise out of the same transaction or series of transactions.

(ii) There must be some common question of law or facts.

PER OGBNAGU JSC, in *THE REGISTERED TRUSTEES OF NATIONAL ASSOCIATION OF COMMUNITY HEALTH PRACTITIONERS OF*

NIGERIA & ORS VS MEDICAL & HEALTH WORKERS UNION OF NIGERIA & ORS (2008) 1 SC (Pt. 111) 1.

Similarly, a court of law shall not delve into the merits of a case in the course of determining an application for joinder.

On the duty of court faced with an application for joinder, See the case of ***IGE & ORS VS FAUNDE & ORS (1994) NWLR (PT. 354)*** where it was advised thus;

“The point I desire to make is that it is sufficient, on the question of the evidential burden of proof, that the trial court hearing such an application for joinder of parties should only confine itself to whether there is a prima facie case for joinder but should not be invited at that stage of the proceedings with the merits of the substantive case.”

Similarly, on who is a necessary party, see the authority of *IGE & ORS VS FAUNDE & ORS (SUPRA)* where it was stated that, a necessary party to a proceeding has been said to be a party whose presence is essential for the effectual and complete determination of the claim before the court.

It is the party in the absence of whom the claim cannot be effectually and completely determined.

A perusal of the statement of claim, motion for joinder and the opposing counter affidavit will clearly show whether the said Madugu is a necessary parties to the suit.

The Plaintiff has clearly stated in his paragraphs 4 (d) of his affidavit in support of the application that the party sought to be join is the officer of 1st – 3rd Defendant and was the one that sized the original paper of the land under contention.

It is worthy of note at this stage and I must re-emphasize, that my duty at this stage, is to find out whether a prema facie case for joinder from the available facts averred in both affidavits has been made out without necessarily delving into the merits of the case.

After a very careful perusal of both affidavits for and against the said application on the part of the Plaintiff/Applicant and 1st – 3rd Defendants/Respondents, and on the strength of the authorities cited, I am of the considered view that where all the facts before the court are sufficient for the effectual or complete determination of the claim between the parties before the court, the applicant cannot be a necessary party and his application for joinder, not being necessary for the effectual and complete determination of the claim will be refused. See *EGONU VS EGONU (1973) 3 ECSR (Pt. 2)664*.

It is instructive to state here that the role played by the party sought to be joined was done in his official capacity.

What's more.. the party sought to be joined is staff of the 1st and 2nd Defendants and even if he is made a party, he cannot be bound by the outcome personally but his employers.

I am fortified by above reason and further submission of learned counsel for the Defendants to refuse the said application for joinder.

On the whole therefore, application dated the 31st October, 2019 lacken in merit and reasoning is refused and accordingly dismissed.

The authority of ***JAMBO VS GOVERNOR OF RIVERS STATE (2007) 17 NWLR (Pt. 1062) 198 at 228 is instructive.***

***Justice Y. Halilu
Hon. Judge
7th May, 2020***

APPEARANCES

AKIN OLAGUNJU – for the Applicant.

R.O. MOHAMMED – for the 5th & 6th Defendants.

Other Defendants not in court.