

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

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA  
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS  
COURT NUMBER: HIGH COURT TWO (2)  
CASE NUMBER: FCT/HC/M/9567/2019  
DATE: 24<sup>TH</sup> FEBRUARY, 2020**

**BETWEEN:**

<b>1. ALHAJI AMINU BUHARI 2. DR. CHARLES UDEGBUNAM</b>	}	<b>CLAIMANT/RESPONDENT (PERSON SEEKING TO BE JOINED AS CLAIMANT/APPLICANT)</b>
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**AND**

<b>1. ALHAJI BUKAR MOHAMMED Agent and Attorney to Administrators of the Estate of Dr. M.T.A Liman Next of Kin of The Deceased) 2. NASIRU M.T. LIMAN 3. MANSUR M.T. LIMAN 4. MUNTASIR M.T. LIMAN 5. IBRAHIM M.T. LIMAN (Administrator of the Estate of Dr. M.T.A. Liman Next of Kin of The Deceased) 6. PERE OWEI PROPERTY LIMITED OTUNBA ENIOLA TOPE</b>	}	<b>DEFENDANTS/RESPONDENTS</b>
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Parties absent.

Adetoun Akerele for the Claimant.

Sheik S. Mijubur Rahaman for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants.

P.E. Aisuebeogun for the 6<sup>th</sup> and 7<sup>th</sup> Defendants/Respondents.

Claimant's Counsel – The matter is for ruling and we are ready to take the ruling.

## **R U L I N G**

This ruling is predicated upon a Motion on Notice brought by Dr. Charles Udegbumam seeking for an order of this court joining him as a claimant in this suit.

The motion is supported by 8-paragraph affidavit deposed to by Kalu Okpi Clement, a Litigation Clerk in law firm of Benjamin Solicitors.

In support of the application is a four page written address wherein learned counsel formulated a sole issue for determination to wit:

***“Whether from the deposition in the affidavit of the applicant, the court can conveniently join the Applicant as a party in this suit”***

On this singular issue, it is the submission that in an application of this nature, the court has over time defined the criteria for joinder of persons to a suit; such person must be either necessary or desirable party for the court to honour such application. Learned counsel refers to the case of GREEN v GREEN (2001) FWLR Pg 798.

Submits that from the averments in the affidavit, the Applicant has demonstrated enough interest to be joined as a party to this suit. In the case of OLADELE v AKINTARO (2011) All FWLR 9Pt 590) Pg

1362, the Court of Appeal stated the conditions for the joinder of parties in a suit.

That for an application to earn the favour or consideration by a court, the following are to be considered:

- (a) "That a party must have same interest as the existing parties.
- (b) There should be the consideration as to whether the party seeking to be joined will be prejudiced if any order joining him as a party is not made.
- (c) There should also be the consideration that necessary parties to a suit are not only interested in the subject matter of the proceedings but also must be that in their absence, the proceedings could not be fairly dealt with.
- (d) That where the determination of an action between two parties would directly affect a third party, legal right or his pecuniary interest, the court has discretion to order the third person to be added as a party.
- (e) That one of the reasons of joining a necessary party to an action is the issue of estoppels because if the necessary party knows of the pendency of a suit and keeps quiet he will be bound by the result.
- (f) That a person is regarded as having an interest in the subject matter of a case, so as to be entitled to be joined as a party thereto if he is aggrieved or has been

wrongfully deprived of something or is likely to be affected or aggrieved by decision of court”

Submitted that the Applicant has satisfied all these grounds and has sufficient interest in the suit to be joined as a party; as certain facts made in the statement of defence and counter affidavit of 6<sup>th</sup> and 7<sup>th</sup> Defendant need to be explained. Also the Applicant has not entirely extinguished his title over the said property situate at Plot 438 Zungeru Close Area 3, Garki, Abuja and still has an interest in the said property thereby the pronouncement of this Honourable Court will affect him one way or the other, hence the need to be joined so as to be heard by this Honourable Court.

In conclusion, the Applicant urged this Honourable Court to hold in his favour and grant this application.

The 1<sup>st</sup> Defendant's counsel as well as the 2<sup>nd</sup> – 5<sup>th</sup> Defendant counsel did not oppose this application.

In opposition to this application, the 6<sup>th</sup> and 7<sup>th</sup> Defendant/Respondent counsel filed a 7-paragraph counter affidavit dated 13/11/2019.

The counter affidavit is also supported by a written address.

In the counter affidavit, it is deposed in paragraph 4 and 5 that it is not correct that this suit cannot be conveniently adjudicated upon without the Applicant being joined as a party.

It is also not correct that there are facts in the pleadings that requires the presence of the Applicant for the court to fully resolve

the issues in dispute between the existing parties and that the Applicant has interest in the subject matter of the dispute and the outcome of this suit will not in any way affect him.

In the written address in support of the counter affidavit, learned counsel to the 6<sup>th</sup> and 7<sup>th</sup> Defendant/respondents formulated a lone issue for determination to wit:

***“Whether the Applicant has made out a case so as to enable this Honourable Court to order his joinder as a claimant”***

On this singular issue, it is the submission that an application for joinder of a party whether as Plaintiff or Defendant is an invocation of the equitable jurisdiction of the court and for the court to exercise its discretion favourably; the applicant must satisfy the court that he is a person that is not only interested in the dispute but one that the matter cannot be decided fairly in his absence. Learned counsel refers to the case of GREEN v GREEN (Supra).

Submitted that the law is that where the determination of an action between the parties would not directly affect a third person, the courts has no business ordering joinder. See IGE v FARINDE (1994) LPELR – 1452 SC.

Submits that in order to determine whether a party is interested in the subject matter of dispute, the court will examine the claim before it with a view to determine whether as a matter of fact, the person seeking to be joined is actually interested and that if the subject matter of the dispute is on action in rem as in the instant

case, the party seeking to be joined as a claimant must satisfy the court that he can on his own institute an action as a claimant by establishing on balance of probability that he has a vested right in the subject matter. See ADESANOYE v ADEWOLE (2006) 14 NWLR (Pt 1000) SC 242.

It is also the contention of the 6<sup>th</sup> and 7<sup>th</sup> Defendants/Respondents that a close look at the Applicant's supporting affidavit shows that the deponent i.e. Kalu Okpi Clement is narrating the applicant's story on paragraph 5, merely relied on what the Applicant told one counsel Darlington Owhoji instead of what the Applicant told him as the deponent. The fact that the said counsel Darlington Owhoji who was informed by the Applicant was not the one that has made the present deposition before the court shows beyond any para-venture that the Applicant's deposition is nothing but hearsay. Learned counsel refer to the case of GARUBA v KWARA INVESTMENT CO. LTD (2005) 5 NWLR (Pt 917) 160, ANAEZE v ANYASO (1993) 5 SCNJ 151.

In conclusion, learned counsel to the 6<sup>th</sup> and 7<sup>th</sup> Defendant/Respondent urge the court to dismiss the application.

On the part of the court I have carefully considered the processes filed and the submissions of learned counsel on both sides, I am in one with the position of learned counsel to the 6<sup>th</sup> and 7<sup>th</sup> Defendants/Respondents that the deposition of the deponent of the affidavit in support of the motion is Kalu Okpi Clement is hearsay, however, the provision of Order 13 Rule 18(3) of the Rules

of this court 2018 empowers the court to add any party to a proceeding. The said order provides thus:

***“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”***

It is apparent even from a cursory perusal of the pleadings of the 6<sup>th</sup> and 7<sup>th</sup> Defendants/Respondents particularly paragraph 13 of the Joint Statement of Defence the party seeking to be joined was mentioned and the original Deed of Assignment was signed between the party seeking to be joined and Alhaji Mohammed Masur Abubakar.

In the circumstances I hold the view that the Applicant has shown certain degree of interest in this matter and a necessary party to this suit without whom it cannot be effectively determined. See *IGE & ORS v FARINDE & ORS (1994) (LPELR – 1452 (SC))*; more so the 6<sup>th</sup> and 7<sup>th</sup> Defendant/Respondent did not show how the grant of this application will prejudice them.

In the circumstance, the application is hereby granted as prayed. Dr. Charles Udegbumam is hereby joined in this suit as 2<sup>nd</sup> Claimant.

**(Sgd)  
JUSTICE SALISU GARBA  
(PRESIDING JUDGE)  
24/02/2020**

Claimant's Counsel – We are grateful for the well considered ruling.

We have a Motion Ex-parte before the court.

Court – I am not aware of the said application referred to by the Claimant's Counsel.

In the circumstance, I will hear same on the next adjourned date.

Meanwhile the suit is adjourned to 20<sup>th</sup> April, 2020 for continuation of hearing.

**(Sgd)**  
**JUSTICE SALISU GARBA**  
**(PRESIDING JUDGE)**  
**24/02/2020**