

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/1018/2016

BETWEEN:

ABDUMALIK ORA EGBUNIKE.....CLAIMANT
(Trading Under the Name and Syle Of Ora Egbunike & Associates)

VS

1. PROFUND PROPERTIES LTD
2. TRUST FUND PENSIONS PLC.....DEFENDANTS

RULING

By a Motion on Notice with Motion N0. M/3862/19, dated 25/1/2019 but filed on 6/3/19 brought pursuant to Order 1 Rule 1, Order 13 Rules 5, 6 (2) 18 (2) 19 (1), Order 43 Rule 1 and Order 49 Rule 4 of the High Court of the Federal Capital Territory Abuja (Civil Procedure Rules) 2018 and under the inherent jurisdiction of the court, the Applicant prays the court the following reliefs;

- (1) An Order of the Honourable Court striking out from this suit the names of the 1st and 2nd Defendants for misjoinder.
- (2) An Order of the Honourable Court dismissing the Plaintiff's suit against the 1st and 2nd Defendants.

- (3) An Order of the Honourable Court extending time within which to file the Defence of the Defendants.
- (4) And the Omnibus relief.

Filed in support of the Motion is a 12 Paragraph affidavit deposed to by one Dare Olaoba Legal Practitioner and staff of the 2nd Defendant. Also filed is a Written Address and adopts same as oral submission in support of the application.

Responding, Claimant/Respondent filed an 8 Paragraph Counter – affidavit deposed to by Cyprain Okonkwo and a Written Address in urging court to dismiss the application.

In their Written Address Applicant's Counsel formulated Six (6) issues for court to determine which are;

- (1) Whether the Plaintiff can proceed against the Defendants herein, who in the knowledge of the Plaintiff are agents/subsidiaries of NSITF.
- (2) Whether the Plaintiff can proceed against the Defendants in this suit in the absence of privity of contract between the parties.
- (3) Whether the inclusion of the names of the 1st and 2nd Defendants was not done in error of the law.
- (4) Whether this suit is not liable to be struck off and dismissed being an abuse of the process of the Honourable Court.

- (5) Whether in consideration of the frivolity of the suit, the Defendants are not entitled to substantial cost.
- (6) Whether time cannot be extended for the Defendants to file and serve their defence to the suit.

And replying on the facts contained in their affidavit in support of the Motion, urge court to grant the prayers of the Applicants.

In the Written Address of the Plaintiff/Respondent, Respondent's Counsel formulated a sole issue for determination that is;

"Whether by a serene appreciation of the Plaintiff's Writ of Summons and Statement of Claim, the Defendants are proper parties in this suit and whether this application as presently constituted is grantable in the circumstance of this case"

He urge court to refuse the prayer of the Applicant and dismiss the application in it's entirety.

Having carefully considered the affidavit evidence of the parties, the submission of Counsel as well as the judicial authorities cited for and against the grant of the application, I find that the issue which calls for determination is;

"Whether the Applicants has made out grounds so as to be entitled to the reliefs sought"

Parties to a civil suit constitute one of the main preliminary factor that must be considered, before commencement of proceedings. A court can only properly resolve disputes if the right parties are before the court to contest

the Claims. The issue of who should be a party to a suit has been settled in the case of Green Vs Green (2001) All FWLR (PT.76) 795 to include desirable party, proper party and necessary party.

In the instant application, the claim of the 1st/2nd Defendants/Applicants is brief is that there is no privity of contract between the parties. And being agents of a disclosed principal as stated in Paragraph 2,3,4,5,7 and 11 of the Amended Statement of Claim of the Claimant/Respondent, Claimant has no cause of action against Applicants. On the other hand, Claimant/Respondent contends that it is the 2nd Defendant/Applicant who should be the principal in the circumstance, of the case, being in charge of the asset, the subject matter of this suit same having been handed over to 2nd Defendant by The Nigerian Social Insurance Trust Fund (NSITF) pursuant to the Pension Reform Act 2004. That the Defendant contracted with the Claimant in their own name and thus are contractual bound by their contract with the Claimant. Claimant/Respondent adopts the Motion on Notice and Statement of Defence filed by Nigerian Social Insurance Trust Fund (NSITF) which are in the record of court, wherein it was stated that the property subject matter of the suit has now devolve to the 2nd Defendant as Exhibits "A" and "B" Respectively.

I have taken a considered look at the record of court and this the court is empowered to do. See the case of Agbareh Vs Mimra (2008) All FWLR (PT. 409) 559, and in the suit document adopted by Claimant/Respondent as Exhibits, the Nigerian Social Insurance Trust Fund (NSITF) indeed canvassed forcefully that she had transferred as an asset the property subject matter of the suit to the 2nd Defendant. This evidence was not

rebutted by the Defendants/Applicants therefore is unchallenged and it is trite law that unchallenged evidence is deemed admitted and the court can rely on it. See the case of CBN Vs Igwilo (2007) 14 NWLR (PT. 1054) 393 @ 406. Thus having admitted that the property subject matter of the suit has been transferred to them as asset by the Nigerian Social Insurance Trust Fund (NSITF) Defendants/Applicants cannot claim to be agents of a disclosed principal over same property who cannot be sued. I so hold. And as the documents attached to the Amended Statement of Claim contained in the record of court, the 1st and 2nd Defendants/Applicants are indeed desirable and necessary parties to the case. Therefore the relief for striking out and or dismissal of the suit against them lacks merit and should fail.

On the alternative relief for extension of time within which to file their Defence. It is settled under the Rules of Court and judicial authorities that the court has the power or jurisdiction and indeed the discretion to grant leave for extension of time within which a party is required or authorized by the Provisions of the Rules of Court. See T.M Ltd Vs Engineering Ltd (2008) 6 NWLR (PT. 1136) 1 @ 4. However an application for extension of time for the doing of anything is not granted as a matter of course, but such request for extension of time must be supported with good and substantial reason why such act was not done within the prescribed period. See T.M Ltd Vs Engineering Ltd (Supra) @ 4 Ratio 2, the Applicants in Paragraph 10(1) of their affidavit in support of the Motion informed court that time elapsed within which they ought to have filed and served their Statement of Defence and that leave of court is not required to enable them file their Statement of Defence out of time, without stating any

reason why they could not comply with the Rules of Court as regards time within which to file their Statement of Defence. However since the Claimant/Respondent did not challenge the reliefs of the Applicants in its counter-affidavit, this court in the interest of justice and to accord the Defendants/Applicants the constitutionally guaranteed right to fair hearing shall accede to their prayers and grant them the opportunity to defend the suit as indicated in their willingness to so do.

In conclusion, Applicant's prayers for an order of court striking out the suit and dismissing same fails and are hereby refuse for lacking in merit. Applicant's relief for leave of court for extension of time within which to file their Statement of Defence, out of time, is hereby granted as prayed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

20/1/2020

APPEARANCE:

JULIUS MBA WITH HIM A.A. OTOR, B.COKEKE FOR THE
CLAIMANT/RESPONDENT

A.K. IRONA FOR 1ST/2ND DEFENDANTS/APPLICANTS