

**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/2115/18

BETWEEN:

DIAMOND CITY AND APARTMENT LTD.....PLAINTIFF

VS

PEDRA PROPERTIES LTD.....DEFENDANT

RULING

By Motion on Notice dated 4/11/19 and filed same day with No. M/721/19, brought pursuant to Order 13 Rules 4 and 7 of FCT High Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court, the Applicant seek the court for the following orders;

1. Leave of the Hon. Court to join Mutual Alliance Property Development Company Ltd and T & G Partners Nig Ltd as 2nd and 3rd Defendants to this suit.
2. An Order of this Hon. Court directing the parties joined to file their Statement of Defence to this suit.

3. And the Omnibus relief.

In support of the Motion is an affidavit of 4 Paragraph deposed to by Simeon Gbaa, the Counsel representing Applicant in this suit. Also filed a Written Address and adopt the Address in urging the court to grant the application.

Upon being served the Motion and in response, party sought to be joined filed reply on point of law dated 15/11/19 in opposition.

The Defendant did not file any process to this Motion.

In the Written Address of Applicant, Anthony Biose of Counsel raised a sole issue for determination and that is;

“Whether the Plaintiff/Applicant has made out a case to be entitled to the reliefs sought”

And submit that in an application of this nature, the Applicant has to satisfy court that the conditions precedent to granting an order for joinder has been fulfilled, that if the application is not granted the whole essence of the suit will be defeated. Further that no decision could lawfully be arrived at without joining party seeking to be joined. That parties sought to be joined are persons claiming interest in the land. Commend the court to the following judicial authorities in his submission;

Okafor Vs Uche (2002) Vol. 25 WRN at 140.

C.M.E Trading Service Ltd Vs Yuring (1998) 11 NWLR PT. 573 284 @ 350.

Tafida Vs Bafarawa (1999) 4 NWLR PT. 597, 70.

In the Written Address of party seeking to be joined settled by Anthony Agbonlahor only one (1) issue was also submitted for determination;

“Whether the Plaintiff/Applicant’s application is competent in the light of its failure to meet conditions precedent”

And submit that failure of Applicant to annex the Exhibit referred to in Para 3 (C) of the affidavit as Exhibit “A” deprives the court of the discretion in ascertaining whether prima facie, the Exhibit shows any connection of the party sought to be joined to qualify as necessary party to the suit. That court cannot speculate as to whether there exist a nexus between the non-existent Exhibit “A” and the actions or purported activities. That court does not have the liberty of acting instinct in the absence of documentary evidence referred to in Para 3 (C) of the affidavit. Refer to Katto Vs CBN (1991) 12 SCNJ @ 15, Onagoruwa Vs IGP (1991) 5 NWLR PT. 193, 593.

Submits further that the application is incompetent as no stamp/seal was affixed by the deponent, that its law that NBA seal/stamp must be affixed to any document signed by a Legal Practitioner, refer to Rule 10(1)(2)(3) of Rules of Professional Conduct and case of Yaki Vs Bagudu (2005) All FWLR PT. 810 1026 @ 1085.

Having considered the submission of both counsel and the judicial authorities cited, I find that only one (1) issue calls for determination and that is;

“Whether the Claimant/Applicant has made out a ground to be entitled to the reliefs sought”

The grant or otherwise of an application of this nature is at the discretion of court which the court must exercise judicially and judiciously. And for Applicant to persuade the court to exercise its discretion in his favour, the Applicant must place before court cogent facts upon which the court will consider the application. Overtime, the court have stated the principles guiding the joinder of parties in Plethoral of cases. In Adefarasin Vs Dayekh (2007) 11 NWLR PT. 1044 89 @ 94, the court stated the principles as;

- a. Is the cause or matter liable to be defeated by the non-joinder?
- b. Is it possible for the court to adjudicate the cause of action set up by the Plaintiff unless the 3rd party is added as a Defendant?
- c. Is the 3rd party a person who ought to have been joined as a Defendant?
- d. Is the 3rd party a person whose presence before the court as Defendant will be necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter?

See also Green Vs Green (2001) All FWLR PT. 76 795 @ 820 Paras F – B.

In this instant, Claimant/Applicant seek leave of court to join 2nd/3rd Defendants to this suit on the ground that they are proxies and cronies of the Defendant and Defendant masquerades itself in the name of Mutual Alliance Property Development Company Ltd to trespass into Plaintiff's

property. She further claimed 1st/2nd Defendants sought to be joined came into the property on 29/10/19 with a stop work/quit notice to serve on Plaintiff and by the content of the letter, the parties to be joined has made their intention known by stating they will cause embarrassment on Plaintiff. See Para 3 (a)(b)(c)(d) of Claimant/Applicant's affidavit evidence.

I have carefully perused the Statement of Claim of Claimant/Applicant and applying the principles which guides the court in an application for joinder as stated above, I find that the Claimant/Applicant has no claim against the 2nd/3rd Defendants sought to be joined in this suit and as such their presence is not necessary for the court to adjudicate on the matter as 2nd/3rd Defendants sought to be joined cannot be bound by the outcome of the case. On the alleged role of the parties sought to be joined as stated in Para 3 (C) of Claimant/Applicant affidavit and the reference to Exhibit "A" which she claim is annexed to the affidavit to prove her case, unfortunately, the said Exhibit "A" is not before the court and the court cannot speculate on the existence of the said Exhibit "A" as court has overtime being enjoined to refrain from speculation. See the case of Etisi Vs State (2018) All FWLR PT. 920, 33 (SC).

On the contention of parties sought to be joined that the application of Claimant/Applicant is incompetent as no seal was affixed by the deponent who is Legal Practitioner. I have looked at the said application and finds that indeed it does not bear the seal of Counsel as prescribed by Order 2 Rule 9 of Rules of this Court and Rules of Professional Conduct. However, the failure to affix the stamp or seal does not invalidate or render the application in competent as canvassed by Counsel as the failure may be

treated as irregularity. In any event the Supreme Court has made the position clear that failure to affix NBA stamp does not render processes filed in court invalid. See the case of Gen. Bello Sarkin Yaki (Rtd) & Anor Vs Senator Atiku Abubakar Badugu, APC & Anor (Unreported) delivered by the Supreme Court on 27th day of October, 2015 in suit No. SC: 722/15.

From all of these, I find the application of the Claimant/Applicant as lacking in merit and it is hereby refused and accordingly dismissed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

13/2/2020

APPEARANCE:

S.T GBAA – FOR THE CLAIMANT/APPLICANT

C. SHAKA – MOMODU – FOR THE RESPONDENT/1ST PARTY SOUGHT TO BE JOINED

NO APPEARANCE FOR THE DEFENDANT