

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO ABUJA

ON THE 21ST DAY OF JANUARY 2020

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO. FCT/HC/CV/39/12

BETWEEN:

1. MOHAMMED ALIYU

(SUIING THROUGH HIS LAWFUL ATTORNEYS

MRS AISHA ABRAHAM

HAJIYA ZAINAB IBRAHIM)

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**CLAIMANTS/
RESPONDENTS**

AND

1. OLUFEMI SAMUEL AUDU

2. HON. MINISTER FCT

3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY

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.....
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DEFENDANTS

TALLE INVESTMENT LIMITED

..... APPLICANT/PARTY SEEKING

TO BE JOINED AS 4TH DEFENDANT

**V.A OJEIFO FOR THE PLAINTIFF. ALPHONSUS TOM HOLDING THE BRIEF OF
O.A. ADEGBOYE FOR THE DEFENDANT/APPLICANT SEEKING TO BE JOINED.**

RULING

By a motion on notice no 7263/19 filed in 18th June 2019, the Applicant, TALLE INVESTMENT LIMITED seeks;

- (1) Leave to be joined as the 4th Defendant; and
- (2) Order joining her as the 4th Defendant in this suit
- (3) An order deeming her already filed statement of defence as properly filed and served, necessary fees having been paid;
- (4) And further orders the court may deem fit to make.

The application relied on a 9 grounds stated on the motion paper and is supported by a 13 paragraph affidavit of Shehu Suleiman, Administrative Manager of the Applicant and counsel's written address.

On 25th June 2019, the Claimant filed a 14 paragraph counter/affidavit in response to the application accompanied by counsel's written address.

On 27th June 2019, the Applicant filed a 12 paragraph further affidavit deposed to by Sadiq Suleiman to which Exhibits D1 to D6 were attached and counsel's written address.

In their arguments, learned counsel adopted their respective written addresses.

For the Applicant, a sole issue for determination was raised thus;

"Considering the facts and circumstances of this case, whether the Applicant's application should be granted."

For the Claimant similar issue was raised thus;

"Whether given the peculiar facts and circumstances of this case, especially having regard to the motion paper and all the accompanying processes, this application ought to be granted"

Learned counsel for the Applicant submitted that Order 13 Rule 4 Rules of this court and S 36 (1) of the Constitution of the Federal republic of Nigeria 1999

enjoins the court to join a party whose interest will be effected by the outcome or decision in a case.

He further submitted that the reason for joining a party to an action is that he should be bound by the result of the action. The question to be determined on the action must be such that cannot be effectually and completely settled unless the person sought to be joined is made a party to the action, citing **IMEGWU V ASIBELUA (2012) 4 NWLR PART 1289 119 AT 131-132 PARAGRAPH F** per Galinge JCA.

It was submitted that the essence of joinder is to avoid a multiplicity of actions and to save litigation time in the judicial process, and to avoid abuse of court process. The court was urged to find that their affidavits in support of the application have demonstrated that the Applicant has sufficient legal interest in the subject matter of this suit; that it will likely be affected by the outcome of the case, and that it is a necessary party for effectual and complete adjudication of the dispute; that it will be just and convenient to join the Applicant as a party; and finally that, it would amount to a denial of fair hearing if the Applicant is not joined.

Reliance was placed on a plethora of authorities including **AKUBEZE V OBI & ORS (2016) LPELR – 41018 (CA) PP 18-20, PARAGRAPHS D- B**, Per Yakubu JCA; **OGOLO V FUBARA (2003) 11 NWLR (PT 831) 231 AT 161 PARAGRAPHS B-C**, Per TOBI JSC. The court was urged to exercise its discretion in the Applicant's favour.

The Claimants on the other hand vehemently attacked the application and urged that same be dismissed outrightly with substantive costs.

First, it was argued that the application bore no suit number and was therefore filed in a non-existing suit. Equally that same is not dated, that apart from the parties, there is no feature in it to warrant the inference it was filed in this suit; therefore the application should be dismissed with substantial costs.

Should the court hold otherwise, that there is nothing in the affidavit to suggest the Applicant has any interest in the subject matter of the suit. (Now, this argument has been overtaken by the further affidavit filed by the Applicant and Exhibits D1 to D6 attached).

Further, it was argued that the Applicant is not a necessary party to this suit as Exhibit D2 attached to the Applicant's further affidavit is in the name of the 1st Defendant who is already in court and Exhibits D3 & D4 show the 1st Defendant was given power of attorney over the subject matter and that the party seeking to be joined is agent of the 1st Defendant.

That an agent of a disclosed principal cannot act on his own except he is suing on behalf of his principal.

Therefore joining the Applicant as a co-defendant will amount to unnecessary superfluity. **EMECHEBE V CETO INTERNATIONAL NIG LTD (2018) 11 NWLR (PT 1631) 520 AT 538-535; MALAMI V OHIKHUARE; 2019, 7 NWLR PT 1670 AT 137 PP 156 – 137. MUSTAPHA V CAC 2019 10 NWLR PART 1680 PAGES 355 AT 359 AT PARAGRAPH 10.** He urged the court to dismiss the application with costs.

Mr. Yatu for the party seeking to be joined was granted 14 days to respond to the authority cited by Mr. Imokhe in open court. I am not aware that he filed a response.

The issue before this court is whether in the circumstance of this case, the Applicant's application can be granted.

Before I proceed, I shall quickly address the preliminary issue raised by Mr. Imokhe on the competence of this application. The issue being that the application is lacking a suit number and is not dated.

I observed that indeed the Applicant's motion bears no suit number and is not dated. It however bears the names of the parties to this suit and was properly filed in court with a motion number on 18th June 2019, and bears counsel's seal. I do not think that the omission to state the suit No and to date the motion would be fatal to the proceedings, especially as the Claimant was not misled by the omission.

Order 5 Rule 1 (1) & (2) of the Rules of this court permit this court to treat any failure to meet with the requirement of the rules as an irregularity which will not vitiate the proceedings.

The court will therefore presume that the motion was filed in this suit no CV/39/12 and that same was dated 18th June 2019, the same day it was filed.

The motion is therefore competent and will be entertained by the court.

To the main issue now.

Order 13 Rule 4 of the Rules of this court provides:

"Any person may be joined as a defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. Judgment

may be given against any or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment”.

Order 13 Rule 18 (3) provides:

“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”

And

Sub Rule (5) provides:

“Every party whose name is added as defendant shall be served with the originating processes or notices in the manner prescribed in the Rules or in such manner as may be prescribed by the court and the proceeding against such person shall be deemed to have begun on the service of such originating process or notice”.

Rule 19 (1) & (2) provides:

“Any application to add or strike out or substitute or vary the name of a claimant or Defendant may be made to a court by motion.

(2) Where the application is to add a claimant or a defendant, the application shall be accompanied by the statement of claim or defence as the case may be ...”

And Rule 20 provides:

“Where a defendant is added or substituted the originating process shall be amended accordingly and the claimant shall unless otherwise ordered by the court file an amended originating process and cause the new defendant to be served in the same manner as the original defendant”.

The above provisions make it clear that a party may be joined as Defendant in a suit and there appears to be no time restriction when such an application may be made.

A party seeking to be joined to a suit seeks the indulgence of the court. Therefore he is bound to provide sufficient credible materials which the court can rely on to exercise its discretion in his favour. See **I.C.A.N V UNEGBU (2012) 2 NWLR PART 1284) PAGE 231 PARAGRAPH C** per Okoro JCA.

The Applicant in its further affidavit exhibited Exhibits D2 – D6 being copies of Right of Occupancy, Power of Attorney, Deed of Assignment, Authority to Register power of Attorney, Authority to collect original Copy of the certificate of occupancy, respectively.

In paragraph 10 of the further affidavit it was deposed, “That the real interest of this suit has passed to the Applicant seeking to be joined as the 4th Defendant (Talle Investment Ltd) because title of the land has transferred from the 1st Defendant to the Applicant seeking to be joined as the 4th Defendant”.

Now, it is the duty of the court to ensure that parties that are likely to be affected by the result of the action are joined accordingly. It is also proper that a necessary party should be allowed to have his fate in his own hands and not be shut out to watch through the window as judgment made with an order

against a person who is not a party to a suit cannot stand. See **IBEGWURA ORDU AZUBUIKE V PEOPLES DEMOCRATIC PARTY & ORS (2014) LPELR – 22258 (SC) AT 17 PARAGRAPHS A TO C** per John Afolabi Fabiyi JSC.

Having reviewed the Exhibits D2 – D6 attached to the Applicant's further affidavit, I am of the view that the Applicant is a necessary party to these proceedings.

His interest will definitely be affected by the outcome of the proceedings as he claims to be the new owner of the property in question. To refuse to join him will be tantamount to denying him fair hearing, especially as it was deposed in paragraph 8 of the affidavit in support of the application that the 1st Defendant has since relocated to Canada and cannot be reached.

The question now is in what capacity the Applicant will be joined. Mr.Imokhe learned counsel to the Claimant has argued that the Applicant is at best a donee of a power of attorney and cannot be joined in his own name but in the donor's name only.

I agree with Mr Imokhe as that is the law, See **VULCAN GASES, LTD V GESSELLSCHAFT FUR INDUSTRIES GASVERWERTUNG (G.I.V.) 2001 LPELR – 3465 (SC)**.

This court is a court of substantial justice, and the court has inherent power to order that names of parties whose presence is necessary for the effectual and complete adjudication of the case be added.

Accordingly, I grant leave for the joinder of Talle Investment Limited not as the 4th Defendant but as the lawful attorney of the 1st Defendant.

An order for Talle investment Ltd to defend this suit as lawful attorney of the 1st Defendant.

And order that the name of the 1st Defendant be and is hereby amended in the originating processes to read “Olufemi Samuel Audu defending through his lawful Attorney Talle Investment Limited”.

There shall be no deeming order for the statement of defence already filed.

The Claimant shall file his amended originating processes and serve the defendants within 7 days from today and the defendant shall have 7 days to file their statement of defence. Matter adjourned to 31st March 2020 for defence.

Hon. Judge