

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I. BANJOKO-JUDGE
DELIVERED ON THE 28 OF MAY 2020**

**SUIT NO: FCT/CV/1005/18
M/3946/18**

BETWEEN:

- 1. MR. MSUGH GOJA**
- 2. MR. GABRIEL UKWACLAIMANTS/ APPLICANTS**

AND

- 1. NIZAMIYE HOSPITAL LTD.....DEFENDANT/RESPONDENT**

**C.S. ORPIN FOR THE APPLICANTS
S.O OKPANACHI FOR THE RESPONDENT**

RULING

By way of a Motion on Notice dated and filed the 16th day of March, 2018, the Claimants hereinafter referred to as the Applicants are praying the Court for the following Orders: -

1. Release of Toyota Hiace Pick Up Van with Registration No NASARAWA KRV 693 XB belonging to the 2nd Plaintiff/Applicant, together with the 120 Dispenser Water Bottles on board thereon, detained illegally by the Defendant's Security Guards on the Premises of the Defendant since 11/01/18.

2. And for such further or other Orders that the Honourable Court may deem it proper to make in the circumstances of this Case.

The Grounds upon which this Application is based are as follows: -

1. The said Vehicle was illegally seized on 11/01/18 from the Driver engaged by the 1st Plaintiff to supply water to the 1st Defendant and has since being detained by the 1st Defendant.
2. All efforts by the Plaintiff to amicably get the 1st defendant to release the Vehicle has failed.
3. On the 13/3/18, Counsel to the 1st Defendant in open Court, claimed that the Vehicle has been handed over to the Life Camp Division of the Nigeria Police, FCT Command.
4. The Vehicle belongs to the 2nd Plaintiff who leased it out to the 1st Plaintiff, for a fee, for the marketing of Bottled Dispenser Water.

In support of this Application is a Thirty- One (31) Paragraph Affidavit deposed to by the 1st Applicant Mr. Msugh Goja, which had attached a Written Address of Counsel dated and filed on the 16th day of May 2018.

In response, the Defendant hereinafter referred to as the Respondent, filed a Five (5) Paragraph Counter Affidavit deposed to by Chidima Eze, a Litigation Secretary in the Law firm of the 1st Respondent Counsel dated and filed on the 27th of January 2020. Also attached were Two Annexure marked as **Exhibits A1 and A2** and a Written Address.

The Applicant, in response, filed a 10 Paragraph Further and Better Affidavit in support of their Motion on Notice, deposed to by the 1st Applicant, which was dated and filed on the 11th of March 2020 as well as an Annexure marked as **Exhibit A**.

All Processes were duly served and Written Addresses were adopted before the Court.

The Applicants raised a Sole Issue for determinations in its Written Address, which is “***Whether the Application has merit and ought to be granted***”.

The Respondent on the other hand raised a Two Issues for determination, which are:-

- 1) “***Whether the Plaintiff Applicant has disclosed any valid or Reasonable Cause of Action against the Defendant/Respondent triable by the Honourable Court in this Suit, having regards to the fact that there was no business or contractual relationship whatsoever between the Plaintiffs/Applicants and the 2nd Defendant/Respondent and where the 2nd Defendant/Respondent is not in Custody of any Toyota Hiace Pick up van belonging to the Plaintiffs/Applicants.***”

- 2) ***Whether the Plaintiffs/Applicants Application as presently constituted, is competent in Law.***

All arguments of Learned Counsel to the Parties are all on Record.

After a careful consideration of all Submissions made by Learned Counsel, the issue before the Court is “**Whether this Application is Meritorious**”

It is the position of the 1st Applicant that he is a Businessman, Marketer of C-Way Nigeria Limited Products and a Lessee of a Toyota Hiace Pick-

up Van belonging to the 2nd Applicant, which he uses to supply Products to his numerous Customers.

According to him, he uses the services of one Mr. Patrick Peter, a driver, who operates as an Independent Contractor and who markets and supply the Products to end users.

He had been supplying water to the Defendant, who is one of his Oldest Customers through Mr. Patrick Peter, by replacing the empty Bottles with freshly filled Bottles, while the Bottles remained as his property.

He further stated that the driver after deducting his Commission pays the Applicant the balance.

During one of the Supplies, the Defendant forcefully took possession of the Toyota Vehicle together with 120 Bottles on board on the grounds that the Driver duped his Company in the course of the transaction to the tune of One Million, Seven Hundred and Fifty Thousand Naira only (N1, 750, 000.00) and stated that the Vehicle and Water Bottles would not be released until the 1st Applicant pays this Money or submits an Acceptable Proposal for Payment.

Subsequently, he pleaded with the Defendant to release the Van but they refused and instead, referred the Matter to the Life Camp Police Division for investigation. The Police subsequently charged the Driver and the Defendant's Stores Officer to Court.

The Driver and Stores Officer denied the Defendant's allegation and had since been granted Bail. In fact the Action instituted by the Defendant has been struck out for want of diligent prosecution and the Driver Mr. Patrick Peter was discharged.

The Applicants submitted that the continued detention of the Van has caused serious damages to them and they urged the Court to release the property to them.

Finally, the 1st Applicant informed the Court that the Applicants do not have any Cause of Action against the 2nd Respondent in the Substantive Matter. On the 13th of March 2018, the Defendant's Counsel alleged in Open Court that the Vehicle had already been handed over to the Police at Life Camp and it is ONLY for this reason, that they joined the 2nd Respondent in this Motion.

In response to this statement, the 1st Applicant's Counsel submitted that so long the 2nd Respondent do not resist the Applicant's bid to recover the Van, the Applicants would have no reason to join them in the Substantive Suit.

The Respondent in their response had denied the allegations of the Applicants tagging them as misleading and untrue. According to them, they engaged the services of Mr. Patrick Peter to supply Dispenser Water to them sometime in 2014 and this relationship continued until January 2018 when Criminal Acts and Fraud perpetrated by Mr. Patrick was discovered.

According to the Respondent, Mr. Patrick Peter drove the truck on regular basis to supply Dispenser Water to their Hospital, and after supplying the Water, he would submit a 'Supply Receipt', and then be paid Cash.

Sometime in January 2017, the 1st Respondent discovered discrepancies in the number of Bottles Dispenser Water supplied and the actual number entered into the Receipt given by Mr. Patrick Peter, and the cash collected by him for the water quoted on the Receipts.

According to him, this act was confirmed when the Respondent looked through their books and noticed that Mr. Patrick Peter had been falsifying numbers in collusion with the Store Keeper to collect money for Bottles of water never supplied, and in fact claimed to have supplied Bottles of Dispenser Water beyond the capacity of the Truck.

Consequently, the Matter was reported to the Nigeria Police Force who investigated and arrested Mr. Patrick Peter in respect of his last supply of Dispenser water to the Respondent. The truck was then confiscated immediately by the Police and taken to the Police Station as an Exhibit.

It is their position that Mr. Patrick Peter has been charged to Court and is currently being prosecuted before the Magistrate Court for Financial Crimes.

Further, the Respondent denied knowing the Applicants, stating that they never met them during the course of their Business Transactions with Mr. Patrick Peter.

Finally, they stated that the 2nd Respondent in the Motion, that is the Commissioner of Police FCT, was not a Party in the Substantive Suit, and Leave, required to join them in this Action, must be initially sought and obtained before their joinder. He therefore urged the Court to dismiss the Motion.

After a careful consideration of the Processes and arguments raised in regard to the Prayers sought by the Applicants, the Court will set aside Two Issues for determination.

The First Issue is whether the Applicants had the Right to join a Party into the Action, without first obtaining Leave of Court and Secondly, whether the Application is Meritorious.

On the 1st Issue, it is noted that the Applicants, on their own accord and without the Leave of Court decided to join the Commissioner of Police FCT in this Application. They had argued that they did not have any Cause of Action against the Commissioner of Police in the Substantive Matter, but as the 1st Defendant's Counsel alleged in Open Court that the Vehicle has been handed over to the Police at Life Camp on the 13th of March 2018, that prompted them to join the 2nd Respondent as a Party in the Motion.

Now, the Law is trite that before a Party can join another Party to a Suit, he must initially seek the Leave of Court, and until the Court grants the Order, that Party cannot be joined.

The reason for seeking to join a particular person as a Party to an Action is that he should be bound by the result of the action. The question to be settled must be a question in the action that cannot be effectually and completely settled unless he is a Party **UKU VS OKUMAGBA (1974) 2 SC 35; ODUOLA VS COKER (1981) 5 SC 197; OSUNRINDE VS AJAMOGUN**. The Test is whether the person to be joined will have his interest irreparably prejudiced if an Order joining him as a Party is not made. **SEE ALSO ODUOLA VS COKER (1981) 5 SC PAGE 97 AT 227.**

The Party desirous of a Joinder **must initially** make a Formal Application to the Court supported by an Affidavit. Since there is a pending cause, all Existing Parties are entitled to be served with the Notice of the Proposed Joinder, and it is not necessary to give the Party to be joined any Notice of the Application. Reference is made to the Case of **UCHENDU VS OGBONI (1999) 5 NWLR PT 603 AT PAGE 337.**

When an Application for Joinder is granted, the Court will issue a Notice to the Persons joined, which will be served in the manner provided for Service of Summons or as the Court may direct. The Writ is then amended accordingly and the Claimant unless otherwise ordered by the

Court, files a Copy of the Amended Writ and serves it on the new Defendant. The Person newly served shall then be bound by all the Proceedings in the Cause.

The Writ of Summons and the Statement of Claim must be Amended pursuant to the Order of Joinder, and served. It becomes the Original Commencement of the Action. See the Cases of **ODADHE VS OKUJENI (1973) 11 SC 343 AND UCHENDU VS OGBONI**.

As can be rightly deduced from the above Principles, the Commissioner of Police must be served with the Amended Writ.

Accordingly, the Applicants do not have the Power to unilaterally join a Party Su Motu and the Court holds that the Applicants were wrong to have joined the Commissioner of Police as the 2nd Respondent.

The ONLY Respondent before the Court presently, is NIZAMIYE HOSPITAL LIMITED and therefore, No Order can be made to a Party not before the Court.

As regards the Second Issue, the Respondent had argued that the Applicants failed to disclose any Cause of Action against the Respondent and in fact did not have any Business or Contractual Relationship with the Applicant upon which they could ground any claim, and more particularly, to invoke the Jurisdiction of this Court.

The Applicants Counsel had contended that the 1st Applicant is a Businessman, Marketer of C-Way Nigeria Limited Products and a Lessee of a Toyota Haice Pick-up Van belonging to the 2nd Applicant which was detained when the Driver Mr. Patrick Peter supplied Water to the Respondent.

Now, in determining whether there is a Cause of Action, the Courts have sufficiently laid down the Principle that in determining whether or not a Claimant has a Cause of Action, the Court will confine itself to the

Claim entered in the Writ of Summons and the facts in the Statement of Claim without recourse to the Statement of Defence or any Defence by way of an Affidavit in support of an Application to Strike out or dismiss the Suit for failure to disclose a Reasonable Cause of Action. See **U.B.N. PLC VS UMEODUAGU (2004) 13 NWLR (PT 890) 352 AT 365 (C-G) MOBIL PROD NIG UNLTD VS LASEPA & ORS (2002) 18 NWLR (PT 798),AT 1 and LABODE VS OTUBU (2001) 7 NWLR (PT 712) 256.**

This is so, because where a Party approaches the Court by way of an Application to strike out an Action or a Suit on the ground that no Cause of Action or reasonable Cause of Action has been disclosed, he is deemed to have admitted the facts and the allegations contained in the Statement of Claim. See **DANTATA VS MOHAMMED YUSUF & ORS VS AKINDIPO & ORS. (2000) LPELR - 3532 (SC) and EMEKA VS CHUBA- IKPEAZU AND ORS 2017 LPELR 41920 (SC).**

It is also worthy to state that the Court is not concern with whether the Claimants Case with succeed but whether he has a Cause of Action against the Defendant(s).

Therefore based on the above cited Authorities and also the Statement of Claim particularly **Paragraphs 1, 2, 4, 6, 7, 12, 13,14, 15,16, 21 and 27** the Court is satisfied that the Claimants indeed have a Cause of Action against the Defendant.

The Applicants further stated that the issue before the Court in this Application is the release of the Van with Registration no **NASARAWA KRV693XB**. Reference is made to **Paragraph 4 of the Further and Better Affidavit** and they informed the Court in their **Paragraph 27 of their Affidavit** in support of their Motion, that the Respondent had stated in Open Court on the 13th day of March 2018, that the Van had been handed over to the Police at Life-Camp Abuja, this fact was also

admitted by the Respondent. See **Paragraph 4(K) of the Respondent's Counter Affidavit.**

It has been held in plethora of Cases that for there to be Effectual and complete determination of a claim before the Court, the Necessary Party (ies) must be before the Court. See the Cases of **RE ABACHA (2000) 5 NWLR (PT. 655) 50 AT 72, 73 (CA); IGE VS FARINDE (1994) 7 NWLR (PT.354) 42; UKU VS OKUMAGBA (1974) 1 ALL NLR (PT. 1) 475; ANABARONYE VS NWAKAIHE (1997) 1 NWLR (PT. 482) 374 AT 381; AWANI VS EREJUWA (1976) 11 SC 307 and YAKUBU V. GOVERNOR KOGI STATE (1995) 8 NWLR (PT. 414) 386 AT 402.**

The only reason, which makes it necessary to make a Person a Party to an Action, is that such a person should be bound by the result of the Action and the question to be settled.

Therefore the Court holds that for there to be an effective determination of this Suit, it will be expedient to make the Police who detained the Van, as a Party to this Suit in order for consideration to be given to any explanation they may make, if any, and to be bound by the decision of the Court.

Therefore, the Applicant's Prayers as they stand in the Motion Papers are prematurely sought without the Joinder of the Commissioner of Police.

To this end, this Motion is struck out.

**HON. JUSTICE A.A.I. BANJOKO
JUDGE**

