

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY THE 15th DAY OF MAY, 2020

BEFORE HIS LORDSHIP: HON.JUSTICE K.N.OGBONNAYA

COURT 26.

SUIT NO.:FCT/HC/CV/0913/18

BETWEEN

- 1. MAIKUDI RAFIA**
- 2. DR. MORRIS EROMOSELE-----PLAINTIFFS**
- 3. DR (MRS) JULIANA EROMONSELE**

SUING FOR THEMSELVES AND FOR MAIKUDI FARIA

AND

- 1. NAVY CAPTAIN K.D.SHITU**
- 2. CHIEF OF NAVAL STAFF-----DEFENDANTS**
- 3. NAGERIA NAVY**

RULING

On the 13/2/18 Maikudi Rafia, Dr Morris and Dr. (Mrs) Jliana Eromosele, attorneys to Maikudi Rafia, instituted this action against Navy Captain K.D Shittu, Chief of Naval Staff and Nigerian Navy. In the Suit the Plaintiffs are claiming the following:

A declaration of legal interest on Plot 79 CAD 07-05 Kubwa Extension II Relocation. Equitable and beneficial interest in the said Res-Plot 79 zone. Declaration that 1st Defendant cannot substitute the Res Plot 79 with Plot 77 CAD 07-05 as belonging to him. That the act of the Defendants is gross and malicious abuse of power, trespass, conversion and detinue. They also seek for perpetual Injunction restraining 1-3 Defendants through their agents, privies and successors in title for trespassing and further trespass, on the said Plot 79, hereinafter called the Res. N500,000,000.00 (Five Hundred Million Naira) as exemplary Damages. N350, 000.00 (Three Hundred and Fifty thousand Naira) as Special Damages for the gate allegedly damaged by the Defendants. Post-Judgment interest, as well as Cost of action.

The Defendants were served upon receipt of the Originating Processes the 1st defendant filed an application to strike out the name of the 2 & 3 defendants from the Suit On the 5/11/18. They based the application on the ground that the dispute is predicated on land transaction entered into by the 1st Defendant in his personal capacity as a private citizen and not as the Staff of 3rd Defendant, the Nigeria Navy. That the gate of the Res was dismantled by laborers engaged by the 1st defendant without authorization or knowledge of 2nd and 3rd Defendants. That the presence of the 2nd & 3rd Defendant will not aid

Court to determine the issue in this case as all facts relating to the Suit is within 1st Defendants knowledge who is the only necessary party. There is no cause of action against the 2nd & 3rd Defendants and that they are also not necessary party. Again that the Court lacks Jurisdiction against the 2nd & 3rd Defendant.

In the written address they raised one issue for determination which is:

“whether the court will not be justified in striking out the name of the 2nd & 3rd defendant from this Suit for Misjoinder”

They submitted that the 2nd & 3rd Defendants are not proper parties and no reasonable action is disclosed against them as the Suit borders on a dispute arising from a dispute over ownership of the Res. That there is nothing in the Suit that concerns or interest the 2nd & 3rd Defendants. That the 2nd & 3rd Plaintiffs only Claimed that Staff of 2nd & 3rd defendant dismantled the gate of the 2nd and 3rd Plaintiff in the Res. But in actuality it was some laborers hired by the 1st Defendant that did so in Order to enable the 1st Defendant gain access into the Res. That there is no disclosed cause of action against the 2-3 Defendants. That since there is no cause of action against the 2-3 defendants the action of the Plaintiff is bound to fail against the duo as they are not necessary parties in the substantive Suit. And that facts of the case does not relate to them.

That it is trite that where no cause of action is disclosed against a party the Court is bond to strike out the case. That the 2-3 Defendants were misjoined as parties in this case. That Plaintiff's Suit cannot succeed against them. That there is nothing to connect the 2-3 Defendants to the issue in dispute except the unsubstantiated allegation that the men of the 2nd & 3rd destroyed the gate of the

Plaintiffs. That Court has power to strike out the name of the parties improperly joined in a Suit. They urge Court to do so in this case. They supported this with the case of:

ADEFARASIN Vs DAYEK (2007) 11 NWLR (PT.1044) 89

AZUBIKE Vs P.D.P (2014) 7 NWLR (PT.1406) 313@316

ORD. 13 R 19(1) FCT High Court Rules 2018.

Upon receipt of the motion, the Plaintiff's filed a Counter Affidavit of 19 paragraphs challenging the motion. They submitted that the case in the main is not just on the private land ownership but also on malicious embarrassment humiliation of innocent taxpayers from whose lot the Defendants wages are paid. That Plaintiffs used non-commissioned Officers of the 2-3 Defendants to cow and molest innocent persons. That officers of the 2-3 Defendants swooped on the Res on the 24/6/14 at 2pm. That the men of the 2-3 Defendant cannot leave their Office without authorization of their Superiors. That 2-3 Defendants are therefore necessary parties since they authorized the defendants non commissioned Officers. They urge Court to hold that 2-3 Defendants are necessary parties. They attached letter of complaint written to the 2nd Defendant on 4/8/14 on the illegal destruction of property by 1st Defendant. In their Written Address the Plaintiffs raised 2 issues for determination which are:

1. Whether or not there is reasonable cause of action against 2nd – 3rd Defendants in this Suit?
2. Whether 2nd -3rd Defendants are proper and necessary parties given the facts of this case?

ON ISSUE NO.1

They submitted that there is a cause of action against the 2-3 Defendants as there are facts entitling Plaintiffs to legal remedy against them going by their pleadings and claims. That as 1st Defendant embarked on the act of trespass in consonance with the Officers of the 3rd Defendant.

ON ISSUE NO.2

They submitted that the 2nd Defendant is vicariously liable for the action of his Officers and that when this matter was reported to him he ratified and failed to do anything. That 1st -3rd defendants are Public servants who are saddled with responsibility of securing the Country.

PLEASE NOTE that the 3rd Defendant Nigerian Navy is not a Public Servant as the Plaintiffs erroneously claims.

They cited the English case of:

IMPERIAL CHEMICAL INDUSTRIES Vs SHAT WELL (1965) AC 685

Plaintiff noted that some of the submissions of the Defendant were done before the Defendant filed a Statement of Defence. They urged Court to dismiss this application with Cost of N500,000.00 (Five Hundred Thousand Naira).

COURT: Once a party will be affected by the outcome of a Suit, it is said to be Necessary party. Also once the Court cannot determine the issue in a dispute without the presence of a party, such party is said to be a necessary party. Again, once there is no cause of action against a party going by the claims of the Plaintiff, it is said that there is no cause of action against such party. It is especially so where the totality of the

facts that give rise to the legality of the claim of the Plaintiff cannot affect or do not concern such person. Once the party is not directly concerned and will not be directly affected positively or negatively by the outcome of the case it is said there is no cause of action against such person.

In this Case the issue is on the claim of ownership of land between the Plaintiffs and the 1st Defendant who claims to have bought the land from another person. The 1st Defendant acquired the land without the knowledge of the 2nd & 3rd Defendants. He had claimed that when the Plaintiffs Counsel wrote to the 2-3 Defendants about the trespass by the 1st Defendant, the Plaintiffs and 1st Defendant where asked to go and settle the matter as such matter does not concern the 2-3 Defendants. The Plaintiffs did not deny this fact. They only stated that the 2nd Defendant warned them never to come to their office for the complaint as it does not concern them.

At this stage the Court is not to determine issues in the dispute but is to determine whether the 2-3 Defendants are proper parties in this Suit.

It is important to point out that in all documents attached by the parties for and against this Suit there is no where were the names of the 2-3 Defendants were stated and there is no role they played in the course of 1st Defendant acquiring the Res. The 2-3 have not also acted as witnesses to the transaction. Again the allegation that the 1st Defendant brought non-commissioned Officers of the 2nd -3rd Defendants to destroy the gate is unsubstantiated. There is no mention of the name of the people who destroyed the gate. Again there is no picture showing that the destruction of the gate was done by members

of staff of the 3rd Defendant. Again there is no how the 2nd Defendant would have descended into the arena of ordering its non-commissioned Officers to help his subordinate a Navy Captain to dismantle the gate in the Res, where his subordinate has land tussle with civilians.

From all indication the 2-3 Defendants have no interest in the Res. They have no knowledge of the existence of the Res and/or the tussle of ownership of the Res. They have nothing officially concerning them with the Res and the ownership tussle thereto. The outcome of this dispute will never concern or affect them. They are not even qualified to be called as witnesses in this case. It is not within the line of their responsibility to be connected to the Res. The only bearing they have with the Res is that the 1st Defendant is a staff of the 3rd Defendant and that the 2nd Defendant is the boss of the 1st defendant. The question of vicarious liability cannot stand in this case because the 1st Defendant is not an agent of the 2-3 defendants as far as the Res is concerned and as far as the issue in dispute in this case is concerned. The 1st Defendant did not buy the land for or on behalf of the 2nd & 3rd Defendants. He was never their agent and they were not his Principal. Joining the 2nd -3rd Defendants in this Suit is a gross misjoinder and referring to them as parties is equally bad. They can never be affected by the outcome of this case. The Court will be able to determine the issues in dispute in this case without the 2nd -3rd Defendants. 2nd -3rd Defendants are not and can never be necessary parties in this Suit. Their presence does not matter and continuing to retain them as parties is not necessary.

The issue of the humiliation as raised by the Plaintiff, cannot stand because there is no claim of the Plaintiff on the issue of humiliation. Again such cannot even be maintained in this kind of action. From all

indication this application by 2nd -3rd Defendants is very meritorious. It is therefore granted and the names of 2nd & 3rd Defendants are hereby struck out from this Suit. This means that the only Defendant in this Suit is Navy Captain K.D.Shittu.

This is the Ruling of this Court delivered on theday of2020 by me.

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K.N.OGBONNAYA

HON.JUDGE

