



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA-ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



SUIT NO: FCT/HC/CV/3018/18

BETWEEN:

AMADU MUSA.....PLAINTIFF

AND

- 1. FEDERAL MINISTRY OF POWER, WORKS)
AND HOUSING)
- 2. THE HONOURABLE MINISTER, MINISTRY).....DEFENDANTS
OF POWERS , WORKS AND HOUSING)
- 3. DICKSON O. ONOJA).....DEFENDANT/APPLICANT

RULING

The Claimant/Respondent instituted this action against the Defendants jointly and severally seeking declaration of title and other incidental reliefs with respect to a 4-Bedroom Detached Duplex known as House/Flat No.10, Jos Road, Gwarinpa, Abuja. The Defendants filed a joint Memorandum of Appearance dated 13th February, 2019 accompanied by a 26-paragraphs joint Statement of Defence which attracted a Reply from the Claimant.

Meanwhile the 3rd Defendant/Applicant brought an application that his name be struck out on ground of misjoinder as he is not a necessary party to this action. One Kanabe Shaka Oghenoya, a Litigation Officer with the 1st Defendant deposed to an affidavit of 7-paragraphs with one annexure in support of the application. Learned Counsel also filed a written address in obedience to the Rules of this Court.

In opposing this application the learned Counsel to the Claimant filed a written address where legal arguments were canvassed in urging the Court to refuse the application. Learned Counsel to the 3rd Defendant/Applicant also filed a process christened as “Defendants reply to written address of the Claimant”.

I have carefully read and digested the pleadings of parties and the processes filed for and against the grant of this application and it would appear to me that what is in dispute between parties is the narrow issue of whether the 3rd Defendant/Applicant is a necessary party to this suit. It is now trite Law that the person to be joined to an action must be someone whose presence as a party is necessary for the Court to effectively and completely adjudicate upon and settle all questions brought before it. The rationale for the rule is to prevent multiplicity of action arising from the same transaction.

Thus in **KALU V. UZOR (2004) 12 NWLR (PT.886) 1 at 33** the Supreme Court re-echoed the Law on joinder of parties as follows:

"Necessary parties are those who are not only interested in the subject matter of the proceedings but also who in their absence, the proceedings could not be fairly dealt with. In other words, the question to be settled in the action between the existing parties must be a question which cannot be properly settled, unless they are parties to the action instituted by the Plaintiff."

Parties are agreed in their written submission on the trite position of the Law as above stated. What is left to be decided is whether the 3rd Defendant/Applicant is indeed a necessary party to this action. From the pleadings of the Claimants and the Defendants the 3rd Defendant/Applicant is a Director with the 1st Defendant (i.e. Federal Ministry of Power, Works & Housing). The lone exhibit attached to the instant application made it abundantly clear that the 3rd Defendant/Applicant is the Director and Head of Department of Buildings and Housing Development with the 1st Defendant. If that be the case the questions that would agitate the mind of the Court are as stated in the case of **AZUBUIKE VS PDP (2014) 7 NWLR (PT. 1406) 292 AT 313 - 314 PARAGRAPHS G - A** where factors to be considered in an application for joinder were set out thus;

- a. Is the cause or matter liable to be defeated by non joinder?
- b. Is it possible to adjudicate on the cause or matter unless the 3rd party is added as a Defendant?
- c. Is the 3rd party a person who should have been joined in the first instance and;
- d. Is the 3rd party a person whose presence before the Court to effectually and completely adjudicate or settle all the questions involved in the cause or matter?

Where the Court in its wisdom answered the above questions in the negative it would then mean that such a party is not a necessary party thereby leading to misjoinder of party if already made a party.

Turning to the application at hand the contention of the Claimant is that the 3rd Defendant/Applicant put some unknown people in the disputed property which was allegedly allocated to him sometimes in 2005 and in consequence denied the Claimant access to the property up till date. This allegation in my humble view even if established is not sufficient ground for making the 3rd Defendant/Applicant a party to this action in so far as the action of the 3rd Defendant/Applicant as rightly submitted by his Counsel was carried out in pursuance of his official duties as a servant of the 1st Defendant. The substantive case of the Claimant is simply that the

1st and 2nd Defendant who allegedly allocated the disputed property to him sometimes in 2001 re-allocated the same property to one AVM. Umaru M. Ndatsu (Rtd) sometimes in 2005. The primary dispute before the Court is the rightful owner of the property between the Claimant and the aforementioned AVM. Umaru M. Ndatsu (Rtd). If that be the case, I do not see how the presence of the 3rd Defendant/Applicant is required for the Court to effectively resolve this dispute. In essence I find no justification for making the 3rd Defendant/Applicant a party to this action.

This is a clear case of misjoinder of party which the Court would ordinarily treat as an irregularity. In **ANYANWOKO V. OKOYE (2010) 5 NWLR (PT.1188) 494 AT 515-516** the Supreme Court stated that non-joinder or misjoinder of a necessary party is only a procedural irregularity which can be corrected in the course of proceeding by recourse to the relevant rules. On this note I have read Order 13(18)(1) and (2) of the Rules of this Court which provides as follows:

ORDER 13(18)(1)

“No proceedings shall be defeated by reason of misjoinder or nonjoinder of parties, and the court may deal with the matter in controversy so far as

regards the rights and interest of the parties actually before him.”

ORDER 13(18)(2)

“The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the names of any parties improperly joined be struck out.”

I also take cognizance of the fact that the 3rd Defendant/Applicant brought this application timeously. This is very important because the apex Court stated in **AYANKOYA V. OLUKOYA (1996) 4 NWLR (PT.440) 1** that any Defendant who intends to raise the issue of misjoinder of parties has to do so without delay by making an application to the Court for available remedy. That undue delay may defeat the application.

In all, I hold the view that this application is meritorious and therefore granted. The name of the 3rd Defendant/Applicant who is not a necessary party to this action is accordingly struck out. This now leaves me with the 1st and 2nd Defendants. Parties shall amend their subsequent process to reflect this order.

SIGNED
HON.JUSTICE HUSSEINI B. YUSUF
(PRESIDING JUDGE)
25/06/2020