



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



**SUIT NO: FCT/HC/CV/374/2007
MOTION NO: FCT/HC/CV/M/2131/17**

BETWEEN:

JAMEEL NIGERIA LIMITED.....PLAINTIFF/RESPONDENT

AND

- 1. MINISTER OF FEDERAL CAPITAL TERRITORY)
- 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY).....DEFENDANTS
- 3. O'NEAL VENTURES NIGERIA LIMITED)

IN RE:

- 1. D.A. SADAUKI INVESTMENT LIMITE)
- 2. DR. O.J. MBONU)..PLAINTIFFS/APPLICANTS

AND

- 1. MINISTER OF FEDERAL CAPITAL TERRITORY)
- 2. O'NEAL VENTURES NIGERIA LIMITED)
- 3. MR. OKPARA NELSON UGOCHUKWU).....DEFENDANTS

RULING

This Court by an Order made on 3rd May, 2016 consolidated the respective suits captured in this application. A consequential Order was also made transferring the case file in suit CV/374/2007 pending before this Court to my learned brother, Umar, J. (as he then was) to enable him

effectively take control of the two cases. The second set of Plaintiff is however not happy with this Consolidation Order and has in consequence filed a motion seeking the following reliefs:

1. An Order of the Honourable Court deconsolidating D.A SADAUKI INVESTMENT LTD & ANOR V. MINISTER OF THE FEDERAL CAPITAL TERRITORY (FCT) & 2 ORS SUIT NO: FCT/HC/CV/2785/2012 and JAMEEL NIGERIA LIMITED V. MINISTER OF THE FEDERAL CAPITAL TERRITORY & 2 ORS consolidated by an Order of Consolidation granted by Hon. Justice Baba of the High Court of the Federal Capital Territory (FCT).

Alternatively:

1. An Order of the Honourable Court setting aside the order of consolidation granted by **Hon. Justice Baba** of the High Court of the FCT which joined D.A. SADAUKI & ORS V. MINISTER OF THE FCT & 2 ORS with JAMEEL NIGERIA LIMITED V. MINISTER OF THE FCT & 2 ORS as consolidated.
2. And for such further Order or further Orders as the Honourable Court may deem fit to make in the circumstances.

Three grounds were listed in support of the application. The grounds are set out below for ease of understanding:

1. The Plaintiff in suit No. FCT/HC/CV/2785 were not served with the motion for consolidation.
2. The Plaintiffs never consented to the consolidation.
3. The Consolidated suits are at different stages and the Plaintiffs' case has been closed in Suit No. FCT/HC/CV/2785/2012 while trial is yet to commence in Suit No. FCT/HC/CV/374/2007.

There is an affidavit of 12-paragraphs in support deposed to by one Wole Abidakun Esq , a Legal Practitioner in the Firm of Ayodele, Olugbenga & Co. representing the second set of Plaintiffs/Applicants. Counsel also filed a written address in support.

The 1st set of Plaintiff/Respondent filed a counter affidavit of 14-paragraphs deposed to be one Chioma Nnana, a Counsel in the Firm of Mohammed Shuaib representing the said Plaintiff/Respondent. Learned Counsel also filed a written address in line with the Rule.

I have carefully read and digested the respective processes put forward by parties and it is my view that two questions called for determination in this application, viz:

1. Whether the order for consolidation made on 3rd May, 2016 by this Court is in the overall interest of justice; and
2. Whether the plaintiffs/applicants herein was served with the motion on notice for consolidation before the order for consolidation was made on 3rd May, 2016.

Now from the record of the Court it is not in doubt that the subject matter of the two suits then pending before this Court and my learned brother Umar, J., (as he then was) respectively is the property known as Plot 360, Cadastral Zone B04, Jabi, Abuja-FCT. It therefore stands to reason that two different Courts cannot effectively take charge of such matter without creating needless friction and confusion in the judicial process. The interest of justice in such circumstances dictates that the two suits be consolidated before a single Judge for effective management and control of the case. If that be the case, I hold as I should that the order for consolidation is no doubt in order as it perfectly accords with the interest of justice and fairness. This now takes me to the second issue of service.

In his counter affidavit the plaintiffs/respondents stated at paragraph 5 that they were not served with the motion leading to the order for consolidation. This point was not denied vide a further and better affidavit. The law is trite that unrefuted depositions in a counter affidavit are taken as admitted by the adverse party.

See **MANA V. PDP (2011) LPELR-19754 (CA)** where Bada, JCA has this to say,

“It is settled law that where a party deposed to a fact in a counter affidavit which the other party ought to rebut in a further affidavit but later fails to do so he is deemed to have admitted such facts in the counter affidavit.”

See also:

ASOL NIG. LTD V. ACCESS BANK NIG PLC (2009) 10 NWLR (PT.1149) 289 per Rhode-Vivour, JCA (as he then was) to the effect that:

“Where no reply affidavit is filed the facts in the counter-affidavit are deemed admitted and established to the satisfaction of the Court.

The inevitable conclusion I must reach here is that the motion for consolidation was not served on the second set of Plaintiffs/Applicants before the order for consolidation was made. If that be the case, the law is settled that the order so made is null and void and of no legal effect.

On this point of law see **SOCIETE GENERALE BANK NIGERIA V. ADEWUNMI (2003) 10 NWLR (PT.829) 526** where Katsina-Alu, JSC re-echoed the law as set down below:

“... it is now trite law that failure to serve process, where service of process is required, is a failure which goes to the root of the case. See *Craig v. Kanssen* (1943) KB 256 at 262. Service of process on a party to a proceeding is fundamental. It is service that confers competence and jurisdiction on the court seised of the matter. Clearly due service of process of court is a condition *sine qua non* to the hearing of any suit. Therefore if there is a failure to serve 'process where service of process is required, the person affected by the order but not served with the process is entitled *ex debito justitiae* to have the order set aside as a nullity.

See also:

MBADINUJU V. EZUKA (1994) 8 NWLR (PT. A 364) 535.

Having satisfied myself that the 1st set of Plaintiff/Respondent stole a show behind the second set of Plaintiff/Applicants herein in

obtaining the Order for consolidation having failed to serve the requisite Motion on Notice as required by law am left with no option except to declare the Order a nullity. Accordingly the Order for consolidation made on 3rd May, 2016 is hereby set aside for want of jurisdiction.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
03/06/2020