

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA, COURT 4, F.C.T., ABUJA.**

**BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK**

**SUIT NO. FCT/HC/CV/1205/2017**

**B E T W E E N:**

- |                               |   |                       |
|-------------------------------|---|-----------------------|
| 1. GANDU PROPERTIES NIG. LTD. | } | PLAINTIFFS/APPLICANTS |
| 2. ALH. MOHAMMED BELLO SAIDU  |   |                       |

**AND**

- |                                                             |   |            |
|-------------------------------------------------------------|---|------------|
| 1. MIYOSAM VENTURES LIMITED                                 | } | DEFENDANTS |
| 2. YOHANA Y.D. MARGIF<br>(a.k.a Yohanna Mutform)            |   |            |
| 3. HOME SECURITIES LIMITED                                  |   |            |
| 4. ASSOCIATION OF NIGERIA AUTHORS                           |   |            |
| 5. REGISTERED TRUSTEES OF ASSOCIATION<br>OF NIGERIA AUTHORS |   |            |
| 6. KMVL PROPERTIES LIMITED                                  |   |            |
| 7. FEDERAL CAPITAL DEVELOPMENT<br>AUTHORITY                 |   |            |
| 8. THE NIGERIAN POLICE FORCE                                |   |            |
| 9. THE INSPECTOR GENERAL OF POLICE                          |   |            |
| 10. THE COMMISSIONER OF POLICE,<br>FCT COMMISSION           |   |            |
| 11. ECONOMIC AND FINANCIAL CRIMES<br>COMMISSION             |   |            |
| 12. THE EXECUTIVE CHAIRMAN, EFCC                            |   |            |

## **R U L I N G**

The Defendants/Respondents are by a Notice of Preliminary Objection dated the 17<sup>th</sup> July, 2018 challenging the jurisdiction of this Court in entertaining this suit against the 11<sup>th</sup> and 12<sup>th</sup> Defendants/Respondents.

The objection is predicated on two grounds, they are that:

1. The 11<sup>th</sup> and 12<sup>th</sup> Respondents are not necessary parties in this suit
2. No cause of action has been disclosed against the 11<sup>th</sup> and 12<sup>th</sup> Respondents.

It is on account of the foregoing grounds that the 11/12 Defendants/Respondents are praying this Court for an order to strike out as a party in this suit.

In support of the application, Yusuf Musa, a litigation secretary with the 11<sup>th</sup> and 12<sup>th</sup> Respondents, the Economic and Financial Crimes Commission filed a 10 paragraph affidavit in support dated the 1st July, 2018.

The facts disclosed therein are that the Plaintiff have instituted this suit on acts which touch directly on the powers of the 11<sup>th</sup> and 12<sup>th</sup> Respondents to receive reports of petitions, investigate and prosecute economic and financial crimes.

It is also disclosed that the 11<sup>th</sup> and 12<sup>th</sup> Respondents carries out statutory duties within the scope of their administrative discretions and not to investigate cases according to the dictates, whims and caprice of any party.

In sum, the 11<sup>th</sup> and 12<sup>th</sup> Defendants contends that Plaintiffs/Respondents have not disclosed a reasonable cause of action against them.

The Plaintiffs/Respondents did not file any process to this preliminary objection, its Counsel, Adeniran Esq. opted to address this Court orally on point of law.

In her written address, Ashibi Amedu Mrs. formulated a lone issue for determination, that is, whether the Applicants' Motion on Notice discloses a cause of action against the 11<sup>th</sup> and 12<sup>th</sup> Respondents making her a necessary party in the claims of the

Applicant's Motion on Notice to warrant this Honourable Court to entertain the same.

Learned Counsel for the Applicants contend that this suit does not disclose of a cause of action against the 11<sup>th</sup> and 12<sup>th</sup> Respondents, accordingly, the Plaintiff's claim must fail. Mrs. Amedu commended this Court to the decision in **NDUKA v. OGBONNA (2011) 1 N.W.L.R. (PART 122) page 169 paras. A – H** where the court held thus:

*“A cause of action means the cause of complaint or a right or obligation or dispute when a Court of law would use its adjudicatory or jurisdictional power to determinate and resolve, it also consists of or includes all material facts when a Plaintiff is saddled with the responsibility of proving is transverse an order to obtain Judgment in his favour. A cause of action is the entire set of circumstance giving rise to an enforceable claim. It is in effect the facts or combination of facts which give rise to sue and it consists of two elements;*

- a) The wrongful act of the Defendants which gives the Plaintiff his cause or complaint; and
- b) The consequent of damage”

Applying the foregoing considerations to the case against the 11<sup>th</sup> and 12<sup>th</sup> Defendants, the 11<sup>th</sup> and 12<sup>th</sup> Defendants’ Counsel contends that a cause of action does not lie against them. She went on to submit that a cause of action entitles a party to an action, the right to seek redress from Court. A cause of action, according to her is a factual situation, the existence of which entitles one person to obtain from Court a remedy against another person. See **EGBE v. ADEFARASIN (1985) 5 SC at 57 and ALESE v. ALADETUYI (1995) 7 S.C.N.J. pages 40 at 50.**

Adeniran Esq., Counsel for the Plaintiffs has argued otherwise by contending that the cause of action against the 11<sup>th</sup> and 12<sup>th</sup> Defendants are pleaded in paragraph 29 of the Plaintiffs’ statement of claim and the relief sought against them are noted in the fifth relief of the Plaintiffs’ Claim.

A cursory look at paragraph 29 reflects that the Plaintiff asserts that the transaction between the Plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> Defendant is purely civil hence it does not warrant the use of the Police and Economic and Financial Crimes Commission, EFCC to harass and intimidate them from peaceable possession and right to develop the land.

The Plaintiff in relief 'e' is claiming a perpetual injunction to restrain the Defendants more particularly "the men, officers agents and privies from arresting, harassing, detaining and/or interrogation or intimidating and disturbing the Plaintiff and their agent, privies, assigns from entering the land under the guise of securing the land for the 4<sup>th</sup> Defendant association, pending the final determination of this suit.

I have considered indepth the averments of the Plaintiffs against the 11<sup>th</sup> and 12<sup>th</sup> Defendants and I am unable to decipher any material fact(s) calling for the adjudicatory powers of the Court for determination, the claim before the Court as I see it is for possession and entitlement to the land in dispute, whatever

role allegedly played by the 11<sup>th</sup> and 12<sup>th</sup> Defendants is of no moment in proving the right or otherwise to the land in dispute.

The resolution of the right to possession as in case sees it can be determined by this Court in the absence of the 11<sup>th</sup> and 12<sup>th</sup> Defendants. Plaintiffs' claim or allegation against the 11<sup>th</sup> and 12<sup>th</sup> Defendants relating to harassment and or intimidation can be maintained by an independent cause of action against the 11<sup>th</sup> and 12<sup>th</sup> Defendants, for instance by an action for the enforcement of Plaintiffs' fundamental human right.

The cause of action in this suit which is for trespass and possessory right over the land in dispute does not and cannot incorporate the redress sought against the Defendants. I am thus unable to see how a cause of action has arisen against the 11<sup>th</sup> and 12<sup>th</sup> Defendants to warrant their inclusion in this suit. Without the inclusion of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Still on the competent of the 11<sup>th</sup> and 12<sup>th</sup> Defendants as parties in this suit, Mrs. Ashibi Amedu has submitted that the 11<sup>th</sup> and 12<sup>th</sup> Defendants are not necessary parties to this suit. She

predicated her reasoning in this regard on the decision in **ADEFARASIN v. DAYEKH (2007) 11 N.W.L.R. (PART 1044) page 89 CA pages 116 – 117 paras. H – A** there, the Court held that:

*“A person is a necessary party to an action where it is desirable that he should be bound by the result and where the question in controversy cannot be effectually and completely settled unless he is a party”*

Again, I have applied the foregoing ratio to the instant case and I am not left in doubt that the real question in controversy in this suit can be resolved without the inclusion of the 11<sup>th</sup> and 12<sup>th</sup> Defendants, this being the case they are unnecessary parties in this action.

Here again, the case of **AROMIRE & ORS v. AWOYEMI (1972) 1 ALL N.L.R. (PART 1) pages 101** cited by the Defendants’ Counsel is quite apt and worthy of application to the suit it was held inter alia that:



*“It is improper to join as co Defendants under the rules for joinder of parties, persons against whom the Plaintiffs have no cause of action”*

Flowing from the foregoing considerations, I am of the view and will so hold that this Preliminary Objection is meritorious accordingly the objection is sustained.

The 11<sup>th</sup> and 12<sup>th</sup> Defendants are hereby struck out as parties in this action.

**O. O. Goodluck  
Hon. Judge  
18<sup>th</sup> June, 2020**

**Appearances**

**1<sup>st</sup> Plaintiff/Applicant representative is in Court**

**Tamuno Tonye Ekudayo Mrs.: For the Claimant I hold the brief of S.A.**

**Adeniran Esq.**

**Defendants are absent.**