

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU - ABUJA**  
**ON THURSDAY THE 28TH DAY OF MAY, 2020.**  
**BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO -ADEBIYI**  
**SUIT NO. CV/407/2019**  
**MOTION NO. M/4920/2020**

**BETWEEN**

1. MULTIMEDIA TRAINING INSTITUTE LTD -----CLAIMANTS/  
2. MULTIMEDIA PROPERTIES LTD RESPONDENTS

**AND**

**ASO SAVINGS AND LOANS LTD----- DEFENDANT/APPLICANT**

**AND**

1. MTI BRISTOL SERVICES LIMITED  
2. MR. TAIWO OYEKOLA OYERINDE
- } PARTIES SOUGHT TO  
BE JOINED AS CO-  
DEFENDANTS TO  
COUNTERCLAIM

**RULING**

The Applicant filed a Motion on Notice dated and filed 3<sup>rd</sup> of February, 2020, praying for the following;

- i. An order striking out the name of the 1<sup>st</sup> Claimant/Respondent in this suit for lack of cause of action against the Defendant/Applicant.
- ii. AN ORDER directing the 2<sup>nd</sup> Claimant/Respondent to correct the name of the Defendant/Applicant to reflect “PLC” as against the incorrectly stated “LTD”

- iii. AN ORDER joining **MTI BRISTOL SERVICES LIMITED** and **MR. TAIWO OYEKOLA OYERINDE** as Co-Defendants to the Defendant/Applicant's counterclaim in this suit.
- iv. AN ORDER mandating the 2<sup>nd</sup> Claimant/Respondent to effect consequential amendments to its originating processes in this suit to reflect each of the orders above.
- v. AN ORDER mandating the 2<sup>nd</sup> Claimant/Respondent to effect service of its Amended originating processes on the Defendant/Applicant and the parties sought to be joined as Co-Defendants to the counterclaim.
- vi. AND such further order(s) as the Honourable Court may deem fit to make in the circumstances.

The Motion is supported by a 10 paragraph affidavit in support deposed to by Habilia Danladi the litigation secretary in the law firm of Oli and Partners, counsel to the Defendant/Applicant, 21 exhibits attached marked Exhibit A1 TO EXHIBIT M and a written address. Applicant also filed a 9 paragraph Defendant/Applicant's further affidavit in support of the motion on notice dated and filed 7/2/2020 and attached is a Reply on Points of Law.

The Respondent on its part filed a 6 paragraph counter affidavit in opposition to the Defendant/Applicant's motion on notice deposed to by Duhu Nnaemeka, counsel in the law firm of Jimmy and Jimmy associates counsel to the Claimants/Respondents, dated and filed 5/2/2020 and a written address.

The summary of the affidavits of the Defendant/Applicant is as follows; that the 1<sup>st</sup> Claimant/Respondent is unknown to the Defendant/Applicant and

there is no privity of contract whatsoever between the 1<sup>st</sup> Claimant/Respondent and the Defendant/Applicant as regards the subject matter of the suit. That the 1<sup>st</sup> Claimant/Respondent is not a necessary party in this suit and the issues between the parties both in the claim and in the proposed counterclaim can be fully determined without any recourse to the 1<sup>st</sup> Claimant/Respondent. That it is the 2<sup>nd</sup> Claimant/Respondent also referred to as MTI Properties Limited that has interest whatsoever in the subject matter of this suit. That correspondences in respect of this subject matter as seen from the statement of claim and as attached to this motion are either in the letter headed paper of the 2<sup>nd</sup> Claimant/Respondent or addressed to the 2<sup>nd</sup> Claimant/Respondent. The Defendant/Applicant also averred that the correct name for the Defendant is “Aso Savings and Loans Plc” and not “Aso Savings and Loans Ltd”. That the defect is not a mere irregularity and the Claimants/Respondents cannot simply amend or cure the defect without an order of this Honourable Court. The Defendant/Applicant averred that the 2<sup>nd</sup> Claimant/Respondent has a sister company called MTI BRISTOL SERVICES LIMITED which applied for an overdraft loan facility called Commercial Mortgage Equity Line of Credit (CMELC) in the sum of Twenty Million Naira (N20,000,000.00). That the said loan facility was for a period of six (6) months, which has long elapsed since September, 2017. That the subject matter of this suit amongst other properties was used as collateral/security to repay the said loan facility and that the 2<sup>nd</sup> Claimant/Respondent executed numerous documents e.g Application for Consent to Assign, Consent to Register and Letter of Authority and consent to sell, all in furtherance to protecting the interest in the subject matter of this suit. That Mr. Taiwo Oyekola Oyerinde who is the

chairman and managing director of both the 2<sup>nd</sup> Claimant/Respondent and MTI BRISTOL SERVICES LIMITED entered into a personal guarantee in respect of the said CMELC facility (Commercial Mortgage Equity Line of Credit) and that the Defendant/Applicant has counterclaim against the 2<sup>nd</sup> Claimant/Respondent as well as MTI BRISTOL SERVICES LIMITED and Mr. Taiwo Oyekola Oyerinde in respect of the subject matter of this suit.

In response the Claimants/Respondents averred in their counter affidavit that the 1<sup>st</sup> Claimant/Respondent has an interest in the subject matter. That paragraphs 12, 16 and 17 of the statement of claim shows that all payments made to the Defendant/Applicant were made from the account of the first Claimant. That 1<sup>st</sup> Claimant is as a result a necessary party to this suit and ought to be held so for a just determination of the issues before this Honourable Court. That prayer 2 is a mere irregularity which is curable and shall be cured by the Claimants/Respondents.

The Defendant/Applicant raised a sole issue for determination in their written address, which is;

“Whether this Honourable Court can exercise discretion and grant this application in the circumstances of this matter”.

In summary, learned counsel submitted that a sum total of the facts Claimants/Respondents’ pleadings in their statement of Claim coupled with the documents annexed to this application, it will be crystal clear that there is no cause of action between the 1<sup>st</sup> Claimant/Respondent and the Defendant/Applicant as regards the subject matter in this suit. Counsel prays the Honourable Court to exercise discretion in favour of the

Defendant/Applicant and grant reliefs 1, 2 and 3 then consequently in reliance on Order 13 Rule 20 of the Rules of Court prayers 4 and 5 will be complied with by the Claimants/Respondents. He urged the court to grant this application. He cited the following cases;

- i. **OCHAGA V. MILITARY ADMINISTRATION OF BENUE STATE & ANOR (2000) LPELR-5765 (CA) P. 16**
- ii. **ORDER 13 RULE 18 (2) OF THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA (CIVIL PROCEDURES) RULES 2018.**
- iii. **ECO BANK NIGERIA PLC V. METU & ORS (2012) LPELR-20846 (CA) Pp. 30-31 Paras. G-C**
- iv. **OGOLO & ORS V. FUBURA & ORS (2003) LPELR-2310 (SC) Pp. 32-33 Paras. G-A.**

At the hearing, learned counsel to the Claimants/Respondents Chijioke Okeke, Esq., relied on the paragraphs of the Counter affidavit filed and adopted the submissions contained in the written addresses. Learned Counsel informed the court that they admit that prayers 3, 4 and 5 of the motion on notice is not in contention, that the only ground they are opposing is prayer one (1) on the motion paper. The Claimants/Respondents in their written address raised a sole issue for determination to wit: “Whether the 1<sup>st</sup> Claimant does not have a cause of action against the Defendant/Applicant and should be struck out from the suit”.

Summarily, learned counsel submitted that the only document that this Honourable court is enjoined to look at in determining whether or not the 1<sup>st</sup> Claimant has a cause of action against the Defendant/Applicant is the

statement of claim of the Claimants and that it has been amply shown that the 1<sup>st</sup> Claimant has a cogent and undisputed claim against the Defendant/Applicant. Counsel urged the court to discountenance prayer one (1) of the Defendant/Applicant's motion on Notice as same is in bad faith and will deny this Honourable Court the opportunity to arrive at the justice of this case. Counsel relied on the following authorities;

1. **Seagul Oil Ltd & 3 Ors v. Moni Pulo Ltd & 3 Ors (2011) 15 NWLR (Pt. 1271) 529 (CA)**
2. **Egbe v. Adefarasin (No. 2) (1987) 1 NWLR (Pt. 47) 548**

I have carefully read and digested all processes filed. First and foremost learned counsel to the Defendant/Applicant Chijioke Okeke, Esq., as earlier stated informed the Court at hearing that prayers 3, 4 and 5 of the motion on notice is not in contention hence are unchallenged. These prayers are reproduced below;

- iii. AN ORDER joining **MTI BRISTOL SERVICES LIMITED** and **MR. TAIWO OYEKOLA OYERINDE** as Co-Defendants to the Defendant/Applicant's counterclaim in this suit.
- iv. AN ORDER mandating the 2<sup>nd</sup> Claimant/Respondent to effect consequential amendments to its originating processes in this suit to reflect each of the orders above.
- v. AN ORDER mandating the 2<sup>nd</sup> Claimant/Respondent to effect service of its Amended originating processes on the Defendant/Applicant and the parties sought to be joined as Co-Defendants to the counterclaim.

Joinder of parties is provided for in **Order 10 of the FCT Rules of Court 2018**. The court can permit the joinder of any parties at any stage for proper determination of the issues in controversy. It goes without saying that consequential amendment as to parties become inevitably necessary where parties are joined. By and large, this court is interested in the just determination of the merit of this suit. Thus Prayers 3, 4 and 5 on the motion paper not being challenged are hereby granted as prayed.

Also the Claimants/Respondents are not contesting prayer 2 on the motion paper which to effect is the correction on the name of the Defendant/Applicant to exclude “LTD” and include “PLC”, prayer 2 is hereby granted as prayed.

Finally, on prayer 1, which is;

1. An order striking out the name of the 1<sup>st</sup> Claimant/Respondent in this suit for lack of cause of action against the Defendant/Applicant.

As aforesaid, the Defendant/Applicant filed a Further Affidavit along with a Reply Address. I have carefully read and digested both processes. The cardinal issue that calls for determination in this matter is “whether cause of action has been established against the 1<sup>st</sup> Claimant”. The crux of the Defendant/Applicant’s objection against the 1<sup>st</sup> Claimant/Respondent is that it discloses no reasonable cause of action and for this reason it is incompetent and should be struck out. The Supreme Court took time to consider what is meant by “cause of action”, “reasonable cause of action” and factors to consider in determining whether or not a suit discloses same in **DANTATA V. MOHAMMED (2000) 7 NWLR (Pt.664) p.176**. It defined a phrase “cause of action” in these words:-

*“The phrase “cause of action” means simply a factual situation the existence of which entitles one person to obtain a remedy against another person. It is a fact or combination of facts which when proved would entitle a Plaintiff to a remedy against a Defendant. It consists of every fact which would be necessary for the Plaintiff to prove, if traversed, in order to support his right to judgment of the Court. That is, the fact of combination of facts which gave rise to a right to sue. It is a cause for an action in the Courts to determine a disputed matter.”*

The Court also explained that, it is the averment or averments in the Plaintiff’s statement of Claim that discloses his right to institute an action for a wrongful act alleged. With respect to the phrase “reasonable cause of action,” the Court explained it thus:-

“A reasonable cause of action” is a cause of action which, when only the allegations in the Statement of Claim are considered, has some chance of success.”

With regard to the factors to consider in determining whether a suit discloses reasonable cause of action, the Court directed thus:-

“In order to determine whether the Statement of Claim has disclosed a reasonable cause of action, what the Court should consider are the contents of the Statement of Claim and not the extent to which one relief can co-exist with another. Having considered the contents of the Statement of Claim, deemed to have been admitted, the question is whether the cause of action has some chance of success, notwithstanding that it may be weak or not likely to succeed. Thus, it is irrelevant to consider the weakness of the Plaintiff’s claim. What is important is to examine the averments in the Statement of Claim and



see if they disclose some cause of action or raise some questions fit to be decided by the Court ...”

Being properly guided by the foregoing guidelines, the crucial question is whether or not the averments in the Claimants/Respondents Statement of Claim herein raises some question fit for adjudication or determination by the Court. It is not part of the duties of the Court in this exercise to determine the weakness or strength of the respondent’s case.

In line with the foregoing, I have examined the averments in the Claimants/Respondents Statement of Claim along with the documents frontloaded, the gravamen of their case is that the Defendant advertised for the sale of houses in two different estates to be built and developed by them. That satisfied with the information the 1<sup>st</sup> Claimant opted for an outright purchase of 6 units of 4 bedrooms semi terrace duplex at Carter’s court from the Defendant at the rate of N32,890,000 (Thirty Two Million, Eight Hundred and Ninety Thousand Naira) including VAT and finder’s fee. That the Claimants were furnished with the account details of the Defendant and the 1<sup>st</sup> Claimant made a total transfer of the sum of N118,400,000 (One Hundred and Eighteen Million, Four Hundred Thousand Naira) directly to the Defendant account. That the Claimants also introduced their sister company, Accesscorp Securities Ltd to invest which also deposited the sum of N118, 400,000 (One Hundred and Eighteen Million, Four Hundred Thousand Naira) with the Defendant for the same number and type of houses in the same estate. That at the expiration of six months as agreed for the completion of the houses, the Claimants were nonplussed to observe that the Defendant had not commenced the project apart from clearing the site. On enquiry the Defendant informed the Claimants that she was having

issues with the Department of Development Control of Abuja Metropolitan Management Agency and that the issue was about to be resolved. By March 2016 when the Claimants Chairman/Chief Executive Officer visited the site there were skeletal works going on thereby giving the impression that the issue had been resolved. That the sister company Accesscorp Securities Ltd visited the project and was dumbfounded to discover that nothing tangible was being done by the Defendant. The sister Company exchanged correspondences with the Defendant expressing disappointment and losses suffered as a result of the delay. The 2<sup>nd</sup> Claimant also wrote to express its grief. That following the clumsy manner in which the Defendant was handling the building project, the Claimants decided to reduce the number from 6 to 4 units to minimize their loses. That the 1<sup>st</sup> Claimant on the 18/2/2019 raised an additional sum of N10, 000,000 (Ten Million Naira) through Zenith Bank Draft No. 00009961 in favour of the Sticks and Stones with the Knowledge of the Defendant. After the payment the Claimant realized that some of the facilities viz Tennis Court, Park and standby Generator would not be put in place contrary to the advertisement done by the Defendant hence the Claimants withheld the balance of N15, 120,00 (Fifteen Million, One Hundred and Twenty Thousand Naira). That the Claimants wrote to the Defendant demanding payment of the sum of N150,000,000 (One Hundred and Fifty Million Naira) as damages for deceit and breach of contract. The Defendant in her letter of September, 6<sup>th</sup> 2019 informed the solicitor to the 2<sup>nd</sup> Claimant that the matter has been referred to the legal department for necessary action. That from that date to the date of filling this suit, the Claimants have not heard from the Defendant. The Claimants avers that they are entitled to a refund of their principal sum of

N128,400,000 (One Hundred and Twenty Eight Million, Four Hundred Thousand Naira) as well as interest at the Central Bank of Nigeria (CBN) Regulated rate for the period the Defendant Traded with their money. That with the help of a firm of chartered Accountants the interest accruable to the Claimants from the deposit of N118,400,000 TO BE THE SUM OF N162,713,453.75 while the interest on the N10,000,000 is the sum of N1,375,916.67. Hence the total sum owed from both the principal sum and the interest is N282,489,370.42 (Two Hundred and Eighty-Two Million, Four Hundred and Eighty-Nine Thousand, Three Hundred and Seventy Naira, Forty-Two Kobo). In consequence of these, the Respondents seek for declarative reliefs, payment of the principal sum and interest and for damages.

1<sup>st</sup> Claimant by their statement of claim stated that it paid some monies into the account of the Defendant for the purchase of houses which Defendant failed to deliver to the Claimants thereby alleging a breach of contract. Although Defendant by this motion is insisting that evidence attached to the claim of the Claimants only points to the fact that it is the 2<sup>nd</sup> Claimant/Respondent that had dealings with the Defendant and not the 1<sup>st</sup> Claimant. 1<sup>st</sup> Claimant by their statement of claim has however established a cause of action against Defendant by alleging breach of contract by Defendant's failure to deliver houses earlier paid for by the 1<sup>st</sup> Claimant. Defendant's insistence that evidence/exhibits attached to the claim does not corroborate this fact is premature and akin to the court evaluating evidence and prejudging this matter at this stage. The fact that 1<sup>st</sup> Claimant has established a cause of action via its statement of claim is enough and satisfactory to set matter down for hearing. Defendant's

assertion that exhibits attached does not corroborate claim of the 1<sup>st</sup> Claimant is a matter for evidence of which parties should be given the opportunity to give oral evidence. As earlier stated in **Thomas vs. Olufasoye (1986) 1 NWLR Pt. 18 Pg. 669 @ Pg. 682 paras G-H per Obaseki JSC**, a cause of action is reasonable once statement of claim in a case discloses same or some questions fit to be decided by a judge, notwithstanding that the case is weak or not likely to succeed. Hence the fact that Defendant feels cause of action is unlikely to succeed is not a reason to grant Defendant's prayers.

There is no gainsaying the fact that by the above averments, the Claimants/Respondents have disclosed issues for adjudication by the Court. These issues constitute not just accesses of action but reasonable causes of action which the Court ought to adjudicate upon and determining between the Claimants/Respondents and the Defendant/Applicant. Whether or not the case is strong or weak is a matter that will be determined at the substantive stage of the case after evidence has been led. For the foregoing reasons, the Court holds that the Claimants/Respondents Statement of Claim disclose reasonable cause of action in connection with the 1<sup>st</sup> Claimant sufficient for the Court to adjudicate upon. In the light of the above, the Court holds that the 1<sup>st</sup> Claimant is a necessary party in this suit.

Accordingly, it is hereby ordered as follows;

1. The Claimants/Respondents are hereby ordered to effect correction on the name of the Defendant/Applicant to read **"ASO SAVINGS AND LOANS PLC"**.

2. **MTI BRISTOL SERVICES LIMITED** and **MR. TAIWO OYEKOLA OYERINDE** are hereby joined as Co-Defendants to the Defendant/Applicant's counterclaim in this suit.
3. The Claimants/Respondents shall effect consequential amendment to its Originating Processes in this suit to reflect the above order of court.
4. The Claimants/Respondents shall effect service of its Amended Originating processes on the Defendant/Applicant and to the parties joined as co-defendants to the counterclaim.
5. The Defendant shall file and serve its statement of defence and accompanying processes on all parties within 7 days from the date of receipt of the amended Originating Processes from the Claimants/Respondents.

**Parties: Absent**

**Appearances: A. M. Aliyu for the Defendant/Applicant.  
Claimant/Respondent not represented.**

**HON. JUSTICE M. OSHO-ADEBIYI  
JUDGE  
28TH MAY, 2020**