

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 22
CASE NUMBER : SUIT NO: CV/3081/2017
DATE: : WEDNESDAY 16TH SEPTEMBER, 2020

BETWEEN

**INCORPORATED TRUSTEES OF UTAKO
SHOP OWNERS/TRADER ASSOCIATION** } **CLAIMANT/RESPONDENT**

AND

1. ENGR. AARON O. UCHEMBA
2. COL. TIMOTHY CHECHET
3. CELESTINE UDEWENA
4. ANI JOHN } **APPLICANTS/PARTY SEEKING TO BE
JOINED AS CO. CLAIMANTS**

AND

1. HON. MINISTER OF F. C. T
2. FEDERAL CAPITAL DEV. AUTHORITY
3. ABUJA MUNICIPAL AREA COUNCIL
4. M.N AJAJ CONSTRUCTION LTD } **DEFENDANTS/RESPONDENTS**

RULING

The Applicants/Parties seeking to be Joined as Co-Claimants approached this Honourable Court seeking for an Order of this Court joining the Applicants in this application as 2nd, 3rd, 4th and 5th Claimants in this suit as shop owners and traders at Utako Ultra – Modern Market, Utako, Abuja.

In support of the application, is an affidavit of 8 paragraph deposed to by one Engr. Aaron O. Uchemba a shop owner and trader in Utako Market was filed.

It is the deposition of the Applicant that they own, occupy and trade at shops Wh72, STb.67, STC.22 and DY. 100 Informal, Sector in Utako Market vide Exhibit “B1”, “B2”, “B3” and “B4” respectively.

That the Applicants are aware of the pendency of Suit no. FCT/HC/CV/3081/17 filed by the Board of trustees of the Claimants and that the interest of the Applicant as trader

and shop owners will not be adequately protected if the Applicant standby and watch other people fight for their interest.

In line with law, a written address was filed wherein learned counsel distilled an issue to wit; whether from the totality of the averments contained in the affidavit in support, including the Exhibits, the Applicants are not entitled to the grant of this application on the face of the facts and evidence before this court.

Arguing on above, learned counsel argued that the parties sought to be joined herein are both proper, desirable and necessary to the just determination of this suit ***CHIEF OF ARMY STAFF VS LAWAL (2012) 10 NWLR (Pt. 1307) page 62 at 70.***

Counsel contended further that the Claimant has a duty to include as parties, all persons who will be affected by the judgment of the court and that the parties sought to be

joined would be affected by the judgment of this court in the event that this action succeeds against 1st Defendant.

Court was urged to grant the application in the interest of justice.

Upon service, 4th Defendant filed counter affidavit of 18 paragraph deposed to by one Abraham Olajide a litigation secretary in the law Firm of the 4th Defendant's counsel.

It is the deposition of the 4th Defendant/Respondent that the suit before this court was instituted in the name of Incorporated Trustee of Utako Shop Owner/Trader Association as Claimant. And that the suit before this Honourable Court sought reliefs to protect the interest of all shop owner/traders in Utako Market.

That there is a similar pending Motion on Notice filed on 5th of March, 2019 by the Claimant's counsel for joinder of Applicants for themselves and representing shop

owners/traders in Utako Ultra – Modern Market – Abuja. Vide Exhibit “A”.

The 4th Respondent avers that, this suit can be determined without the joinder of the Applicants/party seeking to be joined. A copy of the writ was annexed as Exhibit “B”.

Written address was filed in line with procedure wherein learned counsel distilled a sole issue for determination to wit; whether with regard to the circumstances of this suit and the facts placed before this Honourable Court, the Applicants/Party seeking to be joined as Shop Owners and Traders at Utako Ultra – Modern Market, Utako, Abuja are entitled to grant of the reliefs sought.

Arguing on the above, learned counsel submit that it is settled principal of law for an application of this nature for joinder, the only reason for such joinder, is that the presence of a party before the court must be necessary to enable the court to adjudicate completely within the meaning of the rule. ***ECOBANK NIG. PLC.VS***

GATEWAY HOTELS LTD (1999) 11 NWLR (Pt. 627) page 397 at 411.

Counsel submit further that by the statement of claims, the Claimant in its clearly stated that members are lawful allottees and owners of their shops within Utako Ultra-Modern Market. And that this case can be effectively determined without the joinder of the Applicants/Party seeking to be joined. ***GU DA VS KITA (1992) 12 NWLR (Pt. 629) page 21 at paragraph 49.***

It is further the submission of the learned counsel that application for joinder is within the discretionary power of the court, but such discretion must be exercised judicially and judiciously. ***RE.MOGAJI (1996)1 NWLR (Pt. 19) page 789.***

Counsel maintained that Applicants by the reliefs sought to be joined as shop owners and traders in Utako – Ultra – Modern Market is in conflict with the status of the Claimant and where there is more than a single Claimant

in an action, they must always go together. ***FADAYOMI VS SADIPE (1986) 2 NWLR (Pt. 25) page 743.***

Court was urged to dismiss this application.

Upon service of the 4th Defendant counter affidavit, learned counsel for the Applicant filed a reply on point of law wherein he argued that every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria. Section 43 of 1999 Constitution. And that the Applicant seeking to be joined are shop owners and traders in their individual rights, not being members of the Claimant on record and also, they did not bring the application in a representative capacity.

Counsel argued that the law, is that where they stand by and watch the Claimant on record to litigate on their behalf, they are bound by the outcome of the case. ***SYNERGY TRUST & INVESTMENT LTD VS THE HON. MINISTER FCT (2007) 11 WRN.***

It is contention of learned counsel that Applicants seeking to be joined are not only necessary parties, but their interest is at stake in this proceeding. ***GREEN VS GREEN (2001) 45 INRN 90.***

Learned counsel finally urged the court to grant the reliefs sought in the interest of justice.

Court:..Having regard to the circumstances of this suit, it appears to me that the question to be determined is *whether the parties sought to be join are persons whose presence before the Court as Claimants will be necessary in order to enable the Court effectually and completely adjudicate upon and settle all the question involved in the cause or matter?*

The first point that must be made here is that the joinder of persons or parties in one action as Defendants is clearly permissible under the provisions of Order 13 Rule 3(1) of the High Court of the Federal Capital Territory Abuja (Civil Procedure Rules) 2018.

However, two conditions must be established by such person(s) to qualify for the joinder. i.e,

1. Is the cause or matter liable to be defeated by the non-joinder of the third party as a Claimant?
2. Is the third party a person who ought to have been joined as a Claimant so that he may be bound by the result of the trial or his presence before the court as a Defendant is necessary in order to enable the court effectually and completely adjudicates upon and settle all the questions involved in the cause or matter. See *AJAYI VS JOLAYEMI (2001) 10 NWLR (Pt.722) Page. 29-30, Paragraphs F-A* and *CROSS RIVER STATE NEWSPAPERS CORPORATION VS. ONI & ORS (1995) 1 NWLR (Pt. 371) Page 23 paragraphs G-C.*

The governing principle which is a cardinal rule for the administration of justice is that determination of litigation must be in the public interest. Hence where the issues

between the parties involve third parties whose interest are affected and the non-joining of the party will result in further litigation, such parties are a necessary parties. Therefore, those whose presence will be necessary for the effectual and complete adjudication of the matter before the Court, and their presence as parties is important, the Court with or without an Application, can joined them as parties.

Poser: are parties sought to be joined necessary parties in this suit so much that their absent will effects the adjudication of the matter before this Court?

It is the averment of Applicants that they are Owners of Shops and Traders in the subject matter of litigation.

Allocation letter and receipt of payment of ground rents were annexed as Exhibits “A” and “B” respectively.

It is instructive to state here that the Claimant by the suit before the court, as clearly stated in the statement of

claim, shows that the suit as instituted was on behalf of the Shop Owners/Traders of Utako Market.

Indeed, the Applicant cannot be representing themselves as well as shop owners/traders in Utako Ultra – Modern Market, Utako. This can be seen from relief 1 of the motion under consideration.

From above facts, it is obvious that joining the Applicant will lead to filing of separate statement of claims and others processes with different reliefs sought.

The interest of the parties sought to be joined is adequately taken care of by the case of the Claimants.

Clearly the claim of Claimants is in Realm and not personam.

This application is liable to be refused, on grounds of initiating multiplicity of unnecessary actions.

Same liable to be dismissed. It is so dismissed.

Justice Y. Halilu
Hon. Judge
16th September, 2020

APPEARANCE

Oliver Eya – for the Claimant/Parties seeking to be joined (1st set).

Kun Osemeha – for the 1st and 2nd Defendants.

R. Okotie – Eboh with B. Tarfa, O.Q Olaniyonu and AbduljabalKolo – for the 4th Defendant.

3rd Defendant not in court and not represented.

LilianEzebuihe – for the Applicants/Parties seeking to be joined in this suit.