IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON TUESDAY, THE 18TH DAY OF SEPTEMBER, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/3261/17

BETWEEN:

BHAKOR CONSULT LIMITED } ----- PLAINTIFF

AND

UNITED BANK FOR AFRICA PLC }------ DEFENDANT

RULING ON PRELIMINARY OBJECTION

In the Preliminary Objection filed on the 3rd of March, 2020 the Defendant United Bank for Africa PLC urged the Court to strike out the case of the Plaintiff for want of jurisdiction. The Preliminary Objection is based on the following grounds:

That the necessary parties are not before the Court. That it is not possible for the Court to adjudicate on the cause of action set up by the Plaintiff. Also tat 3rd parties not joined are parties who ought to be joined in the first

place/instance. And that the Court cannot effectively and completely adjudicate or settle all the questions involved in this case as it is presently constituted.

The Defendant supported the Preliminary Objection with an Affidavit of 5 paragraphs deposed to by Pokyes Kasin.

In the Written Address they raised an Issue for determination which is:

"Whether in the absence of necessary parties i.e. Integra Renewable Energy Services Limited and Keystone Bank Limited, this Court has the jurisdiction to hear this case?"

The Defendant Counsel submitted on behalf of the Defendant that for the Court to entertain this Suit, there should be no feature which prevents the Court from exercising its jurisdiction. He referred to the Supreme Court case of:

Ukata V. Ndinaeze
(1997) 4 NWLR (PT. 499) 251 @ 255

That the Court cannot entertain this Suit since the necessary parties are not joined as a party. That from the totality of evidence and facts contained in the Statement of Claim and paragraph 4 of the Affidavit in support of this Preliminary Objection that it is obvious that Keystone Bank Limited and Integra are parties whose absence will make it difficult for the Court to fairly deal with the proceedings. That without their being parties to the Suit it will make it possible for the Court to effectively and completely adjudicate upon and settle all Issues and questions raised in this Suit. That it could have been

proper for the Plaintiff to have joined Integra in the first instance as there was privy contract between Plaintiff and Integra as shown by **EXH 1 & 2** which are already before this Court.

That Keystone Bank being the banker of the Integra ought to have been joined in the first instance as a Defendant. That Plaintiff has a duty to bring Integra and Keystone Bank Limited before the Court as their presence is crucial to the resolution of the Issue before the Court in this case. He referred and cited the decision of the Court in the Supreme Court case of:

Adisa V.Oyinwola
(2000) 6 SC (PT.11) 47

A.D.C V.Bello
(2017) 1 NWLR (PT. 1545) 112

That persons upon which complaints are made in an action must be made parties to the Suit. He referred to the case of:

Mobil Oil PLC V. D.E.N.R Limited
(2004) 1 NWLR (PT. 853) 142

That by doctrine of Stare Decisis the Court is bound by the decision of Supreme Court in **ADC V. Bello Supra** to the effect that where necessary parties are not joined the Court or tribunal lacks jurisdiction to entertain the case.

He urged Court to strike out the case for want of jurisdiction since Plaintiff failed to join the 2 companies – Integra and Keystone Bank PLC, who are necessary parties in the Suit.

In response to the Preliminary Objection the Plaintiff Counsel filed a Written Address on the 9th of March, 2020.

In the said Written Address the Plaintiff raised an Issue for determination which is:

"Whether this action is properly constituted as regards the parties before the Court viz – a – viz the Plaintiff's case before the Court and inconsequence whether this Court has jurisdiction to entertain this Suit."

1. The Plaintiff Counsel submitted that the Defendant's Preliminary Objection is gross misconception and non-appreciation of the fine point of law as regards who parties to an action ought to or ought not to be. He submitted that it is the Plaintiff's claim that has o be studied to ascertain who are the proper or necessary parties to the Suit. That what the Court looks at once there is issue of who should be the proper or necessary party is that the Court looks at and considers the cause of action of the Plaintiff as endorsed in the Writ of Summons. He referred to the case of:

Bakare & ors V. Ajose Adeogun & ors
(2014) LPELR – 22013 SC

That it is the claim of the Plaintiff that determines who necessary or proper parties are as the Plaintiff's claim contains the complaint, grievances, claims, reliefs and prayers sought against the other party. That where it is not so, there will be issue of misjoinder. So where the claim does not reveal any complaint or claims against such persons even if they were mentioned in the narrative of facts in the case and are not made parties to

the Suit, their joinder will be unnecessary, and non-joinder as in this case will not raise issue of misjoinder. He referred to **Order 13 Rule 1 High Court Rules 2018.** That the claims of the Plaintiff did not reveal any claims, complaints, grievances, reliefs against the Integra and Keystone Bank Limited who the Defendant has in this Preliminary Objection claimed as necessary parties who ought to be joined as parties – Defendants.

2. Plaintiff also submitted that the Plaintiff's case/claim is not for the enforcement of interpretation or claim for breach of the contract between Plaintiff and her employer Integra. That Plaintiff never made any complaint about a breach of contract which is what the Defendant is raising hell and anchoring of its application to strike out the Suit of the Plaintiff. Meanwhile that Plaintiff has no claims against Integra in this case in respect of the said contract.

The Defendant is equally not a party to the contract of supply between the Plaintiff and Integra for which the payments were made to Plaintiff and the same contract which the Plaintiff have laboured to claim was breach. Meanwhile Integra had never claimed or raised any issue of breach of the said contract. Plaintiff never claimed for breach either and has not complained about the conduct of Integra in the contract. That Defendant only acted as Surety to Integra covenanting to pay Integra a certain amount of money based on the APG terms and condition stated thereon. That it does not lie on the Defendant to foist a claim of breach of contract between Plaintiff and Integra on the Plaintiff when such case has not been in

the Writ of Summons or Statement of Claims in this case before this Court.

3. The Plaintiff also submitted that it has made no complaints or claims against Keystone Bank Limited neither has it sought any relief against the Keystone Bank Limited too. He submitted that it is the action of the Defendant in refusing to grant Plaintiff access to her money that led to the institution of this Suit and not the claim of the Defendant that it received a letter from the Keystone Bank calling in the APC and demanding the return of the monies paid to the Plaintiff by Integra which was already in the account of Plaintiff domiciled in the Defendant – United Bank for Africa PLC.

That Plaintiff has no business with Keystone Bank and has not made any claim against Keystone either by way of any contract or breach thereof. And not even on basis of Banker – Customer relationship. That it has no account with Keystone Bank. That Plaintiff only has account with the Defendant who are the ones holding her money and refusing her access to her fund.

Again that Keystone did not write to Plaintiff to claim any breach of contract as there was no contract between them and Plaintiff. That it is the Defendant who decided to honour a mandate/instruction from a 3rd party to deny the Plaintiff, her customer access to her fund. It is therefore not proper and not Plaintiff's business to join the Keystone Bank as a party who she has no business or privity of contract with. That the Plaintiff only has Banker – Customer relationship with the Defendant and no other bank. That it is for the Defendant to justify why it refused to grant Plaintiff access to her money and not

to compel Court to join a party which she has no business with and who he claims no relief.

4. The Plaintiff Counsel also submitted that this Suit is squarely based on banker-customer relationship between Plaintiff and Defendant on the refusal of Defendant to grant access to Plaintiff to access its fund in the said bank.

That as a customer the Plaintiff has shown that the Bank – Defendant breached the banker-customer contract without justification. That it is only for the Bank to show justification for denying Plaintiff access to its money or reason for the breach.

That Plaintiff rightly instituted this action seeking the reliefs against the Defendant because there is no justification to sustain the Defendant's breach of its fiduciary duties to the Plaintiff. That the Suit is between the Plaintiff and the Defendant. That the Court is only invited to consider whether from the totality of the evidence of the Suit the Defendant's reason for refusing Plaintiff access to her fund is sustainable viz – a viz the documents and evidence before the Court.

5. That the APG and its interpretation which is before this Court does not need the presence of either Integra or Keystone Bank for its terms, scope, tenure and applicability to be determined by the Court in resolving the germane question in controversy between the parties before the Court which is whether the APG which the Defendant relied on operates in the circumstances to justify the Defendant's refusal to grant her customer,

Plaintiff, access to her fund domiciled with the Defendant.

That Defendant's submission on who called in the APG and that the APG was called are issues that Integra and Keystone Bank will resolve and as such they are not necessary parties in this case as the Court can resolve the issue of breach of fiduciary duty by the Defendant is what the Court can resolve without the duo companies. The Plaintiff Counsel referred to the case of:

Chukwudi Nwanna V. A-G Federation & anor (2010) LPELR – 9047 (CA).

That the Court can interpret the content of the APG without the 2 parties – Integra & Keystone Bank.

That Court can effectively and effectually and completely resolve the issues in dispute between Plaintiff and Defendant without them. Thus the said Integra and Keystone are not necessary parties in this case as defined in the case of **Green V Green** which the Defendant cited and anchored his submission on.

That Defendant Counsel has not shown how the two (2) companies are necessary parties or how they should be made necessary parties.

That the submission of Defendant Counsel that the money in issue was in custody of the Defendant is not true and it is fallacious as the money is never in the Defendant's custody but was paid into the account of the Plaintiff.

That the submission of the Defendant in this case is futility, null and unsubstantiated and is bound to fail. They urge Court to so hold.

6. That it is the Defendant who relies on the action of third party as justification for her breach that ought to take the 3rd party notice and 3rd party proceeding against the said 3rd party if it so desires and not to make the 3rd parties co-responsible and not to seek for Plaintiff to sue parties that she has no business, complaint or claim against. That it is for Defendant to join any party they so wish not to foist that on Plaintiff. But the Defendant failed to do so when they had all the opportunity to do so. The Plaintiff referred to:

Total Nigeria PLC V. Delmar Pet Co. Limited
(2003) 7 NWLR (PT. 819) 314

Crown Floor Mills V. Olokun
(2008) 4 NWLR (PT. 1077) 254

That since Defendant decided to defend the action alone it cannot complain that Plaintiff did not join those parties which it has no claims against.

7. That it is not every party mentioned in a Suit that must be made a party and in any case, non-joinder or misjoinder of a party/parties cannot render an action incompetent.

That mentioning a name of a party in an action does not make the person a necessary party in that Suit. That the determinant factor for joinder is whether there is a claim or relief against the person or not. He referred to the case of:

Ports and Cargo Handling Services Company Limited & ors V. Migfo Nigeria Limited & Anor
(2008) LPELR – 4862 (CA)

That the non-joinder of the two (2) companies cannot render this action incompetent. He referred to **Order 13 Rule 18 (1) FCT High Court Rules.** He also referred ti the Supreme Court cases of:

Baba Yeju V. Ashamu
(1998) 8 NWLR (PT. 567) 546 @ 557

Dapialong V. Lalong
(2007) 5 NWLR (PT. 1026) 199 @ 212

That non-joinder of a necessary party in a Suit cannot render the action incompetent or the Court be deprived of its jurisdiction to entertain the Suit as erroneously contended by the Defendant Counsel. That in such a situation the Court is enjoined to proceed to determine the issues and question as far as they relate to and affect the right and interest of the parties actually before the Court which in this case is Bhakor and United Bank for African (UBA) PLC as non-joinder cannot make an action incompetent. He referred to the case of:

Port & Cargoes V. Migfo (Supra)

He urged the Court to so hold, as proper parties are before the Court, the Suit is properly constituted, the Court has and should retain its jurisdiction to adjudicate and resolve all the question in controversy as they relate only to the parties who are before the Court.

They urged Court to dismiss the Preliminary Objection as it is baseless without merit, made malafide and is vexation and a waste of time of the Court and the parties.

COURT

I have summarized the submission of the Defendant/Applicant on this Preliminary Objection challenging the Suit of the Plaintiff in that necessary parties are not before this Court in this Suit. I have equally summarized the submission of the Plaintiff/Respondent challenging the Preliminary Objection and stating that the necessary party is before the Court and that the Court should dismiss the Preliminary Objection with cost.

It is imperative to state that no matter the stage at which a matter is once there is a Preliminary Objection raised by either party, the Court must halt to hear the Preliminary Objection, make its decision going on with the case.

In this case the parties had filed their Final Addresses and exchanged same. But before their adoptions the Defendant Counsel filed this Preliminary Objection urging Court to strike out the Suit for want of jurisdiction.

It is elementary to state that the claim of the Plaintiff cloths the Court with its jurisdiction to entertain the Suit. The Court has the right to first cloth itself with jurisdiction to determine whether or not it has jurisdiction to entertain a Suit. That is what this Court is doing in this case.

After the summary of the case for and against the Preliminary Objection the question is can it be said that the necessary parties are not before this Court in this case and as such the Court should STRIKE OUT the Suit for want of jurisdiction as the Applicant are saying? OR should the Court hold that it has jurisdiction and that the necessary parties are before the Court and as such dismiss the Preliminary Objection? Has the Defendant been able to establish the facts that necessary parties are not in this case so the Court should strike out the case?

It is my humble view that the necessary party is in the case in that Court can determine the issues in dispute completely without presence of any other party aside from the present parties in this Suit.

There is no need to strike out the Suit. This means that the Defendant has not been able to establish that there is need to strike out the Suit and that the necessary parties are not in the Suit. This is what the Court holds.

To start with, the issue before this Court in the main is whether the Defendant has any good justification to breach the Banker-Customer relationship it has between it and the Plaintiff by refusing the Plaintiff access to her fund domiciled with it. The case is not on enforcement or interpretation or claim on breach of contract between Plaintiff and her employer Integra, going by the claims of the Plaintiff. And that the Defendant has no reason to refuse Plaintiff access to the said fund of Seventy Eight Million, Six Hundred and Fifty Thousand Naira (₦78, 650,000.00) paid in into the Plaintiff's Account No. 1017523168 by the employer. The Plaintiff has no problem with the employer on the payment of the money

into her account at the Defendant Bank. It has no claim against the Integra, its employer and therefore has no need or necessity to include it in the case as a party. It is not in doubt and it is not contested that that money was paid into Plaintiff's account at United Bank for Africa (UBA) PLC. Even the Defendant acknowledged that fact in their submissions severally in this case.

The grouse of the Plaintiff is that the Defendant refused it access to the money despite requests and demands from her. The action of the Defendant according to the Plaintiff constitutes a gross flagrant breach of duty which the Defendant owes the Plaintiff as its Bank in the Banker-Customer relationship.

Going by the claims of the Plaintiff it is certain that it is the Bank, the Defendant who failed to allow the Plaintiff access to its fund domiciled there that is the necessary party in the Suit. The employer, Integra which the Defendant are clamouring to be made a party has no hand in making the Defendant to refuse the Plaintiff access to the said money. There is therefore no need to add Integra as a party in the Suit. Integra is not a necessary party in the Suit so this Court holds. The Plaintiff is right not to add them as a party because it is not necessary to do so; more so the Court can comfortably determine the issue of Banker-Customer relationship without having Integra as a party. So this Court holds. The same faith befalls the Keystone Bank. They have played no part in making the Defendant to refuse the Plaintiff access to their fund in the Defendant Bank, so their presence is not necessary. They are not necessary party as the Defendant is trying to portray in

this Preliminary Objection. Keystone Bank is not a necessary party. The Plaintiff not having Keystone Bank as a party in this Suit does not make the Suit incompetent and prone to be struck out. Like Integra the decision of the Court on the issue of breach of Banker-Customer relationship will not affect them.

The Court can also determine the issues in dispute without having them as parties. So this Court holds. Their presence is not necessary. Not making them parties is no reason for Court to strike out the Suit.

If the Defendant had felt their presence were necessary it should have taken a 3rd party summon to get them into the case as parties as co-Defendants. The Defendant's failure to do so means that they do not believe that their presence was necessary deep down in the Defendant's heart.

In reaching the above decision the Court has taken closer look at the Plaintiff's cause of action. It has been held on plethora of cases that it is the cause of action as set out in the Writ that determines the proper and necessary party to the Suit. That is what the Supreme Court held in the case of:

Bakare & ors V. Ajose Adeogun & ors
(2014) LPELR – 22013 (SC)

It is in the claims that the issues in dispute are set out. That is what this Court had done in this case.

From the totality of the claims of the Plaintiff there is no iota of grievance or any actionable cause of action against the Integra or the Keystone Bank.

Again the contract between the Plaintiff and employer is not in issue before this Court in this Suit after all Integra fulfilled its obligation by ensuring that the money was paid into the Plaintiff's account as agreed. So also as stated earlier is the issue with Keystone Bank. The Court of Appeal had defined who a necessary party is in the case of:

Chukwudi Nwanna V. A-G Federation & 1 or
(2010) LPELR – 9047 (CA)

This Court can decide this case.
The necessary parties which the Defendants are clamouring for are not interested in the Banker-Customer relationship between Plaintiff and Defendant. The Court can also determine that issue fully without their presence. See also case of **Green V. Green (Supra).**

The Defendant has ample time to join the so called necessary party as required by law. But the slept on their right and did not do so. See the provision of **Order 13 Rule 21 FCT High Court Rules 2018.** See also the case of:

Total Nigeria PLC V. Delmar Pet. Co. Limited
(2003) 7 NWLR (PT. 819) 314

Crown Floor Limited V. Olokun
(2008) 4 NWLR (PT. 1077) 254

Not every party that its name is mentioned in a case that must be name as necessary party. That is the decision of the Court in the case of:

Ports and Cargo Handling Services Company Limited & ors V. Migfo Nigeria Limited & Anor

(2008) LPELR – 4862 (CA)

It is only a party that Plaintiff has cause of action against that it can sue and add as a party in his Suit. That is what the Plaintiff did in this case and they are right to do so.

From the totality of the findings and reasoning of the Court, this Court reiterates that the proper parties are before the Court and that the Preliminary Objection filed by the Defendant lacks merit and it is only a ploy to distract the Court, waste time and cause undue delay in the dispensation of justice of this case. It is therefore DISMISSED with cost of Twenty Thousand Naira (₦20, 000.00) against the Defendant.

This is the Ruling of this Court.

Delivered today the ___ day of _____ 2020 by me.

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K.N. OGBONNAYA
HON. JUDGE