

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O.C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 10

SUIT NO: FCT/HC/CV/2079/2020

BETWEEN:

- 1. AGADA MICHAEL AGBO**
- 2. EGAHSON SHEHU SALIFU**
(Suing as the Representatives
of the Retired NNPCStaff).....CLAIMANTS/RESPONDENTS

AND

- 1. NNPC STAFF MULTIPURPOSE CO-OPERATIVE
SOCIETY, ABUJA**
- 2. INNOCENT .C. AJAEFOBI**
- 3. ABUABKAR SADIQ SULEIMAN**
- 4. DANBOYI JOEL**
- 5. AHOEMWEN AIBANGBEE**
- 6. ADEJOH MICHAEL**
- 7. OSONDU IBEJI**
- 8. SULEIMAN DANLADI ISIYAKA**
- 9. OGUNBAYO OLALEKAN**
- 10. GARBA SA'AD**
- 11. BASSEY UMO**
- 12. ISAH JIBRIN**
- 13. EMMANUEL ABENU**
- 14. FAROUK ACHIMUGU**
- 15. NASIR .M. IBRAHIM**
- 16. MURTALA UMAR**

17. EBENEZER .D. OYELEYE

18. ROSELINE .A. EKAMA.....DEFENDANTS

AND

**THE REGISTERED TRUSTEES OF NIGERIAN
NATIONAL PETROLEUM CO-OPERATION/
DEPARTMENT OF PETROLEUM RESOURCES
RETIRED STAFF ASSOCIATION NNPC/DPR RSA**

.....PARTY SEEKING TO BE JOINED/APPLICANT

RULING

By a Motion on Notice dated 16/7/2020 and filed same day, with Motion Number M/8674/2020, brought pursuant to Order 13 Rule 18 (3) & (8), Order 43 Rules 1 and 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018, Section 36 (1) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and under the inherent jurisdiction of the Honourable Court, the Applicant prays the court for the following reliefs;

- (1) An Order of this Hon. Court adding the Registered Trustees of Nigerian National Petroleum Corporation/Department of Petroleum Resources Retired Staff Association NNPC/DPR RSA as a necessary party in this Suit, whose presence before the court is necessary to effectually and completely adjudicate upon and settle the questions involved in the proceedings of this Suit, especially the allegation of the Claimants/Respondents and the commencement of this Suit on the ground that they are "The Representatives of the Retired NNPC Staff".

- (2) An Order of this Honourable Court directing that the Originating Processes and all other court processes in this Suit be served on The Registered Trustees of Nigeria National Petroleum Corporation/Department of Petroleum Resources Retired Staff Association NNPC to enable the necessary Party/Applicant take steps to defend the Suit as a necessary Party.
- (3) And the Omnibus Relief.

In support of the Motion is a 23 Paragraphs affidavit, with Exhibits 1 and 2 attached, deposed to by one Fredrick Ozoemena, the General Secretary of the Applicant. Also filed a Written Address and adopts same as oral argument. Upon receipt of the response of the Claimant/Respondent. Applicant filed a 26 Paragraph Reply affidavit dated 31/8/2020 as well as a Written Address on point of law dated 31/8/2020 and adopts same in support of the application in urging the court to grant the application.

Learned Silk, submits in opposition, filed a 6 Paragraph counter-affidavit deposed to by one Samson Musa dated 29/7/2020. Also filed a Written Address dated 29/7/2020 and adopts same as oral argument in opposing the Motion.

Defendants/Respondents Counsel informed the court that they did not file any process and leave it at the discretion of the court.

In their Written Address, Ani Remigius Esq of counsel, relying on the Order 13 Rule 18 (3) & (5) of the Rules of Court, submits that the court has unfettered discretion and powers to Order that the names of any Party

whose presence before the court is necessary to effectually and completely adjudicate upon and settle the questions involved in the proceedings, therefore the court can grant the prayer at the Applicant to be joined as a Party in this Suit in consideration of the depositions of the Applicant in Paragraphs 5 – 20 of their affidavit in support of the application. Urge court to grant the application.

In the Written Address of the Claimant/Respondent settled by Joseph Ameh, Esq of counsel, a sole issue was submitted for determination that is;

“Whether the Applicant is a necessary party to this proceeding and whose presence in this Suit is necessary for the effective and just determination of the case”.

Submits on the strength of Order 13 Rule 4 of the Rules of Court, and the cases of AbubakarDudu Motors &Anor Vs Abdulkadir Kachia (2016) LPELR-40228 (CA) that the Applicant will not in any way be bound by the result of this Suit and that the Suit can conveniently, effectively and completely be settled without the Applicant being joined as a Party.

Submits further that if Applicant is joined as a Party, the Claimant will be prejudiced. Refer to the cases of Febson Fitness Centre Vs Cappa H Ltd (2015) 6 NWLR (PT. 1455) IN RE: Yar’Adua (2011) 17 NWLR (PT.1277) 567.

Submits finally that it will be against the interest of justice to join the Applicant, where no complaint is made against them in this Suit since the Applicant as a corporate body is not a member of the 1st Defendant to

which the Claimants belong. Refer to the case of APCVs PDP (2015) 15 NWLR (PT.1455) 1 @ 62. Urge court to refuse the application.

Adumbrating on the issue raised, Learned Silk refer court to the cases of Azubuike Vs PDP (2014) 7 NWLR (PT. 1406) 292 @ 313 Para G – A and submits further that Applicant have not shown to the court how they are necessary Party. Also submits that Exhibit 2 does not help the Applicant as it have not shown any direct interest of the Applicant. Refer to Bala Vs Dikko (2013) 4 NWLR (PT. 1343) 52 @ 63 –m64 Para H – A.

Responding, Applicant Counsel submits that the cases referred to by the Learned Silk have no place in the Suit that the case of the Applicant is whether the Claimant are entitled to bring the Suit in a Representative action, therefore the authorities cited are distinguishable, urge court to discountenance the two authorities in the interest of justice.

Having given an insightful consideration to the submission of both counsel and the authorities cited as well as the depositions contained in the affidavit before the court, I find that there is only one (1) issue call for determination in this application, that is;

“Whether or not from the facts before the court, the Applicant has made out a case sufficient to warrant the joinder of the Party seeking to be joined in this Suit”.

In the determination of an application of this nature, that is joinder of a party in a suit, the guiding principles have been set on how a court may arrive at the conclusion whether or not to grant an application for joinder.

In *Adefarasin Vs Dayekh* (2007) 11 NWLR (PT. 1044) 117 Paragraph A – E the Court has this to say;

In determining or not to order the joinder of a Party to a Suit, the court will consider the following questions;

- (a) Is the cause or matter liable to be defeated by the non-joinder?
- (b) Is it possible for the court to adjudicate the cause of action set up by the Plaintiff, unless the party is added as a Defendant?
- (c) Is the third Party a person who ought to have been joined as a Defendant?
- (d) Is the third Party a person whose presence before the court as a Defendant will be necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter.

These principles were restated in the case of *Olwaniyi Vs Adewumi* (2008) 13 NWLR (PT. 1104) 405 406 Para G – B and *Ononye Vs Odita* (2008) 10 NWLR (PT.1095) 494 Para A – H. In all of these, the test to join a party is whether the party seeking to be joined will have his interest irreparably prejudiced if he is not joined in the action. See *Adefarasin Vs Dayekh* (Supra) @ 119 Paragraph H. It is also important to state, that despite these Rules on joinder, a Claimant cannot be compelled to proceed against a Defendant that he has no wish to sue. See *Lajumoke Vs Doherty* (1969) 1 NMLR 245.

In this instant application, Applicant stated that the Claimants/Respondents instituted this Suit as the Representatives of the Retired NNPC Staff as the umbrella body of persons who are the Retired NNPC Staff they therefore request to be heard in the substantive Suit. On the other hand, Claimants/Respondents contends that the Applicant is not a necessary Party whose presence is necessary for the just and effective determination of the suit and cannot be bound by the outcome of the Suit. Contends further that the Claimants are not members of the Registered Trustees of the Nigeria National Petroleum Co-operation/Department of Petroleum Resources Retired Staff Association. The pertinent question is, have the Applicant shown sufficient interest in the subject matter of this Suit to warrant the grant of the application for joinder?

The Plaintiffs commenced this action as representative of the Retired Staff of NNPC, I am of the firm view that granted that a Claimant cannot be compelled to proceed against a Defendant, this case is one where the court will allow the Applicant to join as a Defendant in the Suit, this is in order to give them the opportunity to be heard even though the Claimant may have no claim against them. I am even more convinced of this position on the authority of *Ejoh Vs Wilcox* (Supra) cited by the Applicant. Based on this ground the Applicants prayer for joinder is permissible to allow them protect their interest as also Retired Staff of NNPC. I so hold.

From all of these, the court finds that having demonstrated sufficient interest in the Suit albeit by their name upon which this court draws inference of the nature of interest in the substantive Suit, this court therefore in the interest of justice exercising its discretion judiciously and

Judicially, I find this application has merit and should succeed. This conclusion takes into consideration the Provision of Order 18 Rule (1) of the Rules of Court which guarantees that a proceeding is not defeated by misjoinder. Accordingly, the court hereby granted as follows:-

- (1) An Order joining the Registered Trustees of Nigerian National Petroleum Corporation/Department of Petroleum Resources Retired Staff Association NNPC/DPR RSA as a necessary party in this Suit.
- (2) An Order of directing that the Originating Processes and all other court processes in this Suit be served on The Registered Trustees of Nigerian National Petroleum Corporation/Department of Petroleum Resources Retired Staff Association NNPC/DPR RSA. To enable them defend the Suit as a necessary Party.

HONOURABLE JUSTICE O.C. AGBAZA

(Presiding Judge)

30/9/2020

ANIREMIGIUSESQ FOR THE APPLICANT PARTY SEEKING TO BE JOINED

STEVE ADEH (SAN) WITH HIM MARTINS EKPAH, IBRAHIM IDIRS FOR THE DEFENDANTS, EXCEPT 2ND, 12TH AND 13 DEFENDANTS.