

**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/747/2017
MOTION NO: M/13/2020
BETWEEN:**

OLAYINKA O. TOWOJU.....CLAIMANT/RESPONDENT

AND

- 1. DORBEN MICROFINANCE BANK LTD**
- 2. CHIEF DR. AKPAN BEN EKWERE.....DEFENDANT/APPLICANT**

RULING

By a Motion on Notice with Motion No.M/13/2020 dated 7/2/2019 but filed on 14/2/2019, brought pursuant to Order 43 Rule (1) of the FCT High Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court, the Defendants/Applicants pray the court the following reliefs;

- (1) An Order striking out the name of the 2nd Defendant/Applicant, Chief Dr. Akpan Ben Ekwere for misjoinder.
- (2) And the Omnibus relief.

The application is supported by an 11 Paragraphs affidavit deposed to by one Mr. Victor Abiang a Director of 1stDefendant/Respondent, attached to

the affidavit is one (1) Exhibit marked Exhibit "A". Also filed a Written Address and adopt same as oral submission in support of the application.

Responding, Claimant/Respondent filed 9 paragraph counter affidavit deposed to one Chioma Obioha a Litigation Secretary in the Law firm of Claimant/Respondent Counsel.

In the said Written Address of the Applicant, Applicant Counsel formulated a sole issue for determination that is; whether the Applicant is entitled to have his name struck out as a Defendant in this Suit .

Submit that Claimant has no claim against the 2nd Defendant, that Exhibit "A" is sufficient proof that 2nd Defendant was wrongly joined in the Suit.

Submits finally that the presence of 2nd Defendant is not necessary for the Court to adjudicate in all the issues and claims made by the Claimant. Refer to the case of African Reinsurance Coop Vs Jop Ltd (2003) 13 NSCQR 226 @ 230 Ratio 6 & 7 urge the court to grant the application.

Claimant/Respondent raised a sole issue for determination in their Written Address which is;

"Whether in view of the Writ of Summons and other accompanying documents filed in this Suit the 2nd Defendant is a necessary party to the Suit".

Submit that the 2nd Defendant is a necessary party to the Suit, refer to the Supreme Court decision in the case of Mbanefor Vs Molokwu (2014) 6 NWLR (PT. 1403) 377 @ 410 Paras G – H. That by virtue of being the Chairman of the 1st Defendant and because 2nd Defendant took certain

steps by instructing one Mr. Musa Usman the Chief Security Officer of the 1st Defendant to remove the tyres of the Claimant vehicle he becomes a party to the Suit, whose presence is necessary for the effective determination of the Suit.

Submits further that paragraphs 3 and 6 of the 2nd Defendant/Applicant's affidavit in support of the application offends the provisions of Section 115 (2) of the Evidence Act therefore urge court to strike out the said paragraphs of Applicant's affidavit for non-compliance with the Evidence Act.

Submits finally that joining 2nd Defendant in the Suit does not amount to abuse of court process. Refer to the case of Oyeyemi Vs Owoeye (2017) 12 NWLR (PT. 1580) 364 @ 397 Paras D – G. Urge court to refuse the 2nd Defendant/Applicant relief as the grant of same will prejudice the effective dispensation of this Suit.

Having considered the affidavit evidence the submission of both counsel as well as the judicial authorities cited, the court finds that there is only one (1) issue for determination;

“Whether the Applicant has made out a ground so as to be entitled to the reliefs sought”.

Parties to a Civil Suit constitutes one of the main preliminary factors that must be considered before commencement of proceeding. A court can only properly resolve dispute if the right parties are before the court to contest the claims. The issue of who should be a party to a suit has been

settled in the case of Green Vs Green (2001) ALL FWLR (PT. 76) 795 to include desirable party, proper party and necessary party.

The claim of the Applicant is that the presence of the 2nd Defendant is a party whose presence is necessary for the effective determination of the Suit. A necessary party to an action has been defined as a person made a 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 See Peenok Investments Ltd Vs Hotel Presidential Ltd (1982 12 SC 1. See also Adefarasin Vs Dayekh (2007) ALL FWLR (PT.348) ALL FWLR @ 933 Paras D – E. To determine whether or not the 2nd Defendant is a necessary party, the court must take a look at its record and this the court is empowered to do. See Agbare Vs Mimra (2008) ALL FWLR (PT.409) 559.

I have taken a look at the Statement of Claim filed on 30/1/17 by the Claimant/Applicant and I find that the Claimant complain of a joints act of the 1st and 2nd Defendants as revealed by paragraph 18, 19, 20, 21, 22, and 24 of the said Statement of Claim thus making 2nd Defendant a necessary party whose presence in the Suit is desired for the effective and complete determination of the case and therefore joining him in the suit cannot by any stretch of imagination be an abuse of the process of court. I so hold.

From all of these, this court having found the 2nd Defendant a necessary party to the Suit hereby holds that this application lacks merit and is hereby refused.

HON. JUSTICE O.C. AGBAZA

Judge

13/7/2020

C. IKE-ANTHONY FOR THE CLAIMANT/RESPONDENT

C.L. KERE FOR THE DEFENDANT/APPLICANT