

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT: COURT 9 JABI – ABUJA
DATE: 10TH OF DECEMBER, 2020
BEFORE: HON. JUSTICE M.A. NASIR
SUIT NO: CV/1053/19
MOTION NO: M/8498/2019

BETWEEN

SHEHU MAKAMA -----
PLAINTIFF/RESPONDENT

AND

1. ELIZABETH BABAYO SHEHU 2. AISHA BABAYO SHEHU 3. MARYAM BABAYO SHEHU 4. USMAN BABAYO SHEHU 5. IBRAHIM BABAYO SHEHU 6. M. SALEH AND COMPANY LTD 7. GLOBAL NETWORK COMMUNICATIONS LIMITED -----	} -----	DEFENDANTS/APPLICANTS
DEFENDANT/RESPONDENT		

RULING

Before this Court is a motion on notice dated 29/08/2019 pursuant to the provisions of Order 43 Rules 1 and 2 and Order 13 Rule 5 of the Rules of Court. The application is filed by the 1st – 6th defendants seeking for an order striking out the name of the 6th defendant/applicant

wrongly joined as the 6th defendant in this suit. The grounds of the application are:

1. That there is no cause of action against the 6th defendant joined in this matter.
2. That the claimant has not exhibited any evidence against the 6th defendant wrongly joined.
3. That the 6th defendant has never had any dealings or whatsoever with the claimant/respondent.

In support is a 7 paragraphs affidavit and a written address duly adopted by **Martha Ibekwe Esq.**

In opposition, the plaintiff filed 11 paragraphs counter affidavit and a written address adopted by **N.L. Sumi Esq.**

The crux of the application is that the 6th defendant/applicant is only a tenant in the subject matter and no cause of action accrues against him and the judgment of the Court will in no way affect or bind the 6th defendant. Learned counsel for the applicants submitted that the 6th defendant wrongly joined can apply to Court to

strike out his name as there is no law that says that he must defend the action at all cost. He added that the grant of this application is at the discretion of the Court and urged the Court to grant the application.

On his part learned counsel to the claimant/respondent submitted that in an application of this nature, the Court is called upon to consider the claim of the claimant vis - a -vis the defendants defence to determine whether or not any of the claim against the defendant is correct or not. He added that the defendants/applicants in their statement of defence have not denied the fact that the 6th defendant is a tenant in the subject matter and striking out the 6th defendant will mean the rent paid or to be paid by the party cannot be accounted for by the 1st - 5th defendants. Counsel urged the Court to refuse the application.

The pertinent question to ask here is where the claimant has disclosed a cause of action against the 6th defendant to warrant his continued presence in this suit. A cause of action is a situation or state of facts that entitled a

party to maintain an action in Court. The state of facts may be:

- (1) A primary right of the claimant actually violated by the defendant, or
- (2) The threatened violation of such right, which violation the claimant is entitled to restrain or prevent, as in actions or suits for injunctions, or
- (3) It may be that there are doubts as to some duty or right or the right beclouded by some apparent adverse claim or right, which the claimant is entitled to have cleared up that he may safely perform his duty or enjoy his property.

A cause of action is thus defined as the entire set of facts or circumstances giving rise to an enforceable claim. See Savage vs. Uwaechia (1972) 3 SC 213, Ogoh vs. Enpee Industries Ltd (2004) 17 NWLR (part 903) 449, Adeshina vs. Ojo (2012) 10 NWLR (part 1309) 562

In law, for an action to subsist against a party, the action as constituted, must disclose a reasonable cause of action, and in deciding whether or not pleadings disclose a reasonable cause of action, what is important is only the averments in the plaintiffs pleadings which should be examined to see if they disclose some cause of action or raise some questions to be decided by a Judge. See Okoli & Ors vs. Onwugbufor (2018) LPELR – 46660 (CA).

The claimant has averred that the 6th defendant is a tenant in the subject matter and has been paying rent to the 1st – 5th defendants. The claimant has also prayed for an order compelling all the defendants to hand over the subject matter and for immediate ejection of all the defendants from the property.

The right to sue consists of the wrongful act of the defendant which gives the plaintiff the right to complain and the damage consequent to the wrongful act. See Egbue vs. Araka (1988) 7 SCNJ (part 1) page 190 at 201, Ademora vs. Nnanyehugu & ors (1988) 6 SCNJ page 18 at 30 – 31. The

trite position of the law is that the only reason which makes it necessary to make a person a party is so that he would be bound by the result of the action. See Ige vs. Farinde (1994) 7 NWLR (part 354) 42 at 64, Green vs. Green (1987) 3 NWLR (part 61) page 480.

The applicant's are alleging that there is no claim against the 6th defendant and the outcome of this suit will not bind him. I beg to differ on this averment of the applicants. Will a decision on possession of the property not affect the possessory right of the 6th defendant as a tenant on the property? Certainly for any decision of the Court regarding possession to bind the 6th defendant, the 6th defendant has to be a party in the suit.

In this instance, though the 6th defendant may not be a necessary party whose presence is absolutely needed for a just determination of the case, the 6th defendant is certainly a desirable party which the Supreme Court has defined to be those who have an interest or who may be affected by the result thereof. See Green vs. Green (1987) 3 NWLR (part 61)

480 at 493, Nweke & anor vs. Nweke (2014) LPELR – 23563

(CA).

In the circumstance, I hold that this application lacks merit and it is accordingly dismissed.

Signed
Honourable Judge

Appearances:

D.H. Samaila Esq – for the claimant/respondent

Akin Olagunju Esq with him Ibekwe Martha (Miss) – for the
1st – 6th defendants

J.O. Yakubu Esq – for the 7th defendant with him Kenneth
Udemba