

**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/2872/2018

BETWEEN:

1. 99 SERVICES SOLUTION LIMITED

2. SABASH INTEGRATED SERVICES NIG LTD.....CLAIMANTS/APPLICANTS

VS

1. LAMSTAR LIMITED

2. ADESANMI ADELAKUN.....(1ST ADMIN OF THE ESTATE OF OTUNBA ADE DELAKUN)

3. ADEWALE ADELAKUN.....(2ND ADMIN OF THE ESTATE OF OTUNBA ADE ADELAKUN)

4. ADETOKUNBO ADELAKUN.....(3RD ADMIN OF THE ESTATE OF OTUNBA ADELAKUN)

5. ADEBOLA ADELAKUN.....(4TH ADMIN OF THE ESTATE OF OTUNBA ADE ADELAKUN)

6. FOLAHAN ADELAKUN.....(5TH ADMIN OF THE ESTATE OF OTUNBA ADELAKUN)

.....DEFENDANTS/RESPONDENTS

RULING

By a Motion on Notice dated 8/7/2020 but filed on 9/7/2020 with Motion No. M/8441/2020, brought pursuant to Order 43 Rule 1&2 of the High Court of the FCT (Civil Procedure) Rule 2018 and under the inherent jurisdiction of this Honourable Court, the Claimants/Applicants seeks the following prayers;

1. An Order of court granting leave of this Honourable Court to the 1st Claimant/Applicant joining Adesanmi Adelokun (1st Administrator of the Estate of Otunba Ade Adelokun), Adewale Adelokun

(2nd Administrator of the Estate of Otunba Ade Adelakun) Adetokunbo Adelakun (3rd Administrator of the Estate of Otunba Ade Adelakun) Adebola Adelakun (4th Administrator of the Estate of Otunba Ade Adelakun) and Folahan Adelakun (5th Administrator of the Estate of Otunba Ade Adelakun) all of NO. 81 Nelson Mandela Street Asokoro Abuja as 2nd, 3rd, 4th, 5th, and 6th Defendants respectively in this suit.

2. An Order of court granting leave on the 1st Claimant/Applicant to amend the originating process to reflect the names of the 2nd, 3rd, 4th, 5th and 6th Defendants as parties in this suit and serve same on them.
3. And the Omnibus reliefs.

The Motion is supported by a 5 Paragraph affidavit with Exhibit "A" "B" "C" and "D" attached, deposed to by one A.B. Dodo Esq. a Legal Practitioner in the Law Firm of 1st Claimant/Applicant's Counsel. Also filed a Written Address and adopts same as oral argument.

On the other hand, Defendants/Respondents filed a 12 Paragraph Counter affidavit deposed to by one Ibrahim N. Ale staff of Defendant/Respondent. And a Written Address on 16/7/2020 and adopts the said address as their oral argument in opposition to the Motion on Notice.

In their Written Address Claimants/Applicants Counsel formulated a sole issue for determination that is;

“Whether from the facts and circumstances of this suit and the facts in support of the application and the exhibits attached the parties sought to be joined are necessary and indispensable parties in this suit.

Replying on the authorities of *Onibodo Vs Abodulay* (1991) 2 NWLR (PT. 172) 230 @ 251, *Ige Vs Farinde* (1994) 7 – 8 SCNJ (PT. 11) 287 @ 301 A and RE: *Arowolo* (1993) 2 NWLR (PT. 275) 371 @ 331 submits that the parties can be joined in a Suit as persons whose presence is necessary to enable court effectually and completely adjudicate upon and settle all questions in the suit. That the parties now sought to be joined are necessary parties in the suit, having sufficient interest in the suit hence ought to have been joined in the instance therefore urge court to grant this application.

While adumbrating on the application, submits that Para 6,7, 8 and 9 of the counter-affidavit of the Defendant/Respondent are facts which are irrelevant to the suit and constitutes legal argument and conclusion in contravention of Section 115 of the Evidence Act. That the argument of the Defendants/Respondent is premature of this stage which will become relevant only when the parties have been joined. Further refer court to *Akpaibong Community Bank Nig Ltd Vs UBA PLC* (2020) 8 NWLR (PT 1726) 201.

In their Written Address, Defendants/Respondents Counsel formulated a sole issue for determination that is;

“Whether this application for joinder can be granted in this case?”

Submits that, the court cannot grant an application for joinder of person in an action especially where the Applicants has failed to disclose the grounds,

cogent and compellable reasons warranting such application. That the Applicant has not shown with credible evidence that the parties sought to be joined are liable on the alleged transactions Memorandum of Understanding or Business Agreement between the Claimant and the 1st Respondent CEO, late Otunba Ade Adelakun, thus the Provision of Order 13 Rule 7 of the Rules of Court is in applicable.

Submits further that the court has the discretion whether to grant or refuse the application and that discretion must be exercised judicially and judiciously. Relying on the case of NDP Vs INEC (2012) 52 (PT. 1) NSCQR @ 697 and LSBPC Vs Purification Tech Ltd (2012) 52 (PT.1) NSCQR 274 @ 305. Submits that parties sought to be joined are not necessary parties. Urge court to look at the facts contained in the Applicants affidavit and observe that the Applicant failed to disclose cogent and compellable reasons for the grant of the application. Therefore urge court to refuse and dismiss the application.

In response to the submission of Claimant/Applicant Counsel on the Paragraphs referred, submits that the Defendants in the Suit is a Limited Liability Company and not Otunba Ade Adelakun who is now late but only applying that the parties sought to be joined being Administrators of the Estate of Otunba Ade Adelakun be joined in the Suit. Submits that the case does not affect the late Otunba Adelakun directly. And that the Paragraphs of the affidavit complained of are not conclusion but are facts given pursuant to investigation by the representative of the Respondents. Urge court to examine the facts contained in their affidavit vis-a-vis the subject matter and

the parties. Therefore urge court to discountenance the application and dismiss same.

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 which calls 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 parties sought to be joined in the suit”

In the determination of an application of this nature, that is joinder of a party in a suit, the guideline 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 Paras A – E the court has this to say;

In determining whether or not to order the joinder of a party to a suit, the court will consider the following questions;

- (a) Is this 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 Oluwaniyi Vs Adewunmi (2008) 13 NWLR (PT. 1104) 405 @ 406 Paras G – B and Ononye Vs Odifa (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.

In the instant application, Applicant stated in their supporting affidavit that the 1st Defendant admitted in Paragraph 3,7,13 and 14 of their Statement of Defence filed on 16/2/2019 of the demise of their Chief Executive Officer in person of Otunba Ade Adhlakun, that the parties now sought to be joined are the Administrators of the Estate of Otunba Ade Adhlakun the deceased Chief Executive Officer of the 1st Defendant. Stated further that the parties sought to be joined are parties who ought to have been joined at the inception of the Suit. On the other hand Respondents stated that the parties sought to be joined are unaware of the loan transaction, subject matter of the suit and are not the Administrator of the Estate of the deceased Chief Executive Officer of the Defendant.

I have considered the paragraph of the Respondent's Counter-affidavit referred to by the Applicant's Counsel as conclusion and I find that they do not offend the Provision of Section 115 of the Evidence Act and this court will rely on the said Paragraphs of the Counter-affidavit a close look at the affidavit in support of the application reveal that the Applicant failed to disclose sufficient interest, which could make the parties sought to be joined

in the suit, either necessary or desirable parties whose presence is required for the court to effectively and completely adjudicate upon and settled all the questions involved in the suit. I hold this view because the Applicant by her affidavit failed to establish any nexus between the loan subject matter of the suit entered into with the Defendant company. Applicant also failed to establish lead whether the parties sought to be joined are Administrators of the Estate of the deceased Executive Officer of the Defendants Company. I so hold.

From all of these this court finds that having failed to establish sufficient interest of the parties sought to be joined in the suit and having also failed to establish any nexus between the subject matter of the suit and the parties now sought to be joined in the suit, this application lacks merit and should fail accordingly this application for joinder is hereby refused.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

30/11/2020

APPEARANCE:

A. B. DODO FOR THE CLAIMANTS/APPLICANTS

J. C. UDE FOR THE DEFENDANTS/RESPONDENTS