

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

BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI

COURT CLERKS: T. P. SALLAH & ORS

COURT NUMBER: HIGH COURT NO. 12

DATE: 7/10/2020

BETWEEN:-

**FCT/HC/CV/224/2019
FCT/HC/m/304/2020**

**HONOURABLE JUSTICE KUMAI BAYANG AKAHHS ...CLAIMANT/
RESPONDENT**

AND

**1. THE HON. MINISTER OF FEDERAL CAPITAL
TERRITORY ADMINISTRATION, ABUJA
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY,
ABUJA
3. PERSONS UNKNOWN**

**DEFENDANTS/
RESPONDENTS**

**4. NAGANDE SWATE
5. ROMBEC PROPERTIES NIG. LTD**

DEFENDANTS/APPLICANTS

RULING

The instant motion FCT/HC/M/304/2020 was filed by NzubeChukwu Erasmus, a party seeking to be joined in suit no FCT/HC/CV/224/2019 which the Claimant had opened and closed his case and matter adjourned for defence. The motion was filed on 1st June, 2020. Apart from the relief seeking to join the Applicant, the Applicant also prayed the Honourable Court for the following orders:-

- (a) An order of this Honourable Court deleting the name of a " person unknown" as a necessary party and insert the name Chukwu Erasmus Nzube
- (b) For such further or other orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application is predicated are set out and numbered as paragraphs (a) –(f) on the face of the motion papers.

In further support of the application is an affidavit of 10 paragraphs deposed to by one Chukwu Erasmus Nzube, an attorney of Nagande Swate, the 4th Defendant in this case. Attached to the affidavit in support are exhibits AA and AB respectively. The Applicant's Counsel also filed a written address in further support of the application and the said written address was adopted by the Applicant's Counsel as his oral arguments.

The Claimant/Respondent did not file any response in opposition of the grant of the instant application. The Counsel to the Defendants did not oppose the application as well.

Having said the above, in the written address of the Applicant's Counsel he formulated the sole issue for determination thus:-

"Whether the Applicant has not place sufficient material for the grant of the relief sought?"

In arguing the above issue, the Applicant's Counsel stated that the Court has a responsibility to ensure that necessary parties to this suit are joined and that Chukwu Erasmus Nzube is a necessary party to this proceedings for the complete determination of the Claimant's case. He relied on the case of **UGOJI V ONWU (1991) 3NWLR (Pt 178) page 177 and ALFA V ATANGA (1993) 5 NWLR (pt293) page 729.**

Applicant's Counsel submitted that by virtue of section 36 of the Constitution of Nigeria 1999(as amended) emphasizes that right to fair hearing does not stop with the parties being present in Court. According to Counsel it is a right to be heard at every material stage of the proceedings and he cited the case of **OMOKHODION V FRN (2006) 24 WRN page 139 at 140.**

Finally, Counsel contended that Chukwu Erasmus Nzube is entitled to be heard in the case as he was termed a person unknown coupled with the documents of plot MF22 of about 3,500 square meters, Kubwa Extension III(Federal Capital Development Scheme).

In conclusion, Counsel to the Applicant stated that the interest of the Applicant in this suit is a legal interest and not sentimental interest. He therefore urged me to grant the application.

To determine this application, I adopt the issue distilled for determination by the Applicant i.e the issue for determination by the Applicant i.e the party seeking to be joined in this suit.

Firstly, I will want to refer to the grounds upon which the present application is based. I have perused the entire grounds and in particular grounds (a) (e) and (f), the Applicant states as follows:-

“(a) The Applicant is the attorney of NagandeSwate in respect of the Plot MF22 of about 3500 square meters Kubwa extension III (Federal Capital Development Authority Scheme) contested by the Claimant/Respondent and the other Defendants/Respondents.

(e) That it will be in the interest of justice to delete the name “person unknown” to insert the name of Chukwu Erasmus Nzube.

(f) That all the necessary documents are attached in respect of the Plot MF22 of about 3500 square meters Kubwa Extension III (Federal Capital Development Scheme) to make the Applicant to be bound by the judgment of this Court.

Also, in the affidavit supporting the instant application, the Applicant deposes at paragraphs 2,3 and 7 to the effect that the Applicant is the Attorney of NagandeSwate and the conveyance of provisional approval and the power of attorney were attached as exhibits AA and AB respectively.

The Applicant further avers that he is still scouting of the buyer of the above mentioned plot MF22 of about 3500 square meter Kubwa Extension III.

The above are the grounds and affidavit evidence in which the Applicant wants to be joined in this suit as a party. In fact, in the written address of the Applicant’s Counsel, he submitted at paragraph 4.6 that the interest of Chukwu Erasmus Nzube in this suit is a legal interest and not just sentimental interest.

Now the 4th Defendant is NagandeSwate whom the Applicant purports to be his Attorney by virtue of exhibit AB. The 4th Defendant, NagandeSwate has filed a joint statement of defence together with the 5th Defendant. At paragraphs 2,4,5,6,8,12,15,21,29,30,31 and 32 of the further amended joint statement of defence of the 4th and 5th Defendants, they aver facts completely contrary to the grounds and affidavit evidence of the Applicant. At the said paragraphs, the 4th and 5th Defendants aver that the plot MF22 of about 3500 square meters was first allocated to the 4th Defendant who

took possession, fenced, built security house and commenced development. The 4th and 5th Defendants aver further that the plot MF22 of about 3500 square meters Kubwa Extension III was sold to one Romanus Eze and the 4th Defendant entered into land sale agreement, Irrevocable Power of Attorney and Deed of Assignment and the transaction price paid to the 4th Defendant by Romanus Eze was N800,000.00. The 4th and 5th Defendant aver further that they have existing interest on the land in dispute.

Now from the position of the 4th Defendant whom the Applicant purports to be his attorney, the said 4th Defendant has disposed of the subject matter i.e plot MF22, Kubwa Extension III and sale documents including sale agreement, Irrevocable Power of Attorney and Deed of Assignment executed. And by the processes filed by the 4th and 5th Defendant's the purported buyer of the 4th Defendant's property states at paragraph (1) of his witness statement on oath thus:-

"That I am the purchaser of the 4th Defendant Plot MF22 of about 3500 square meter Kubwa Extension III (Federal Capital Development Scheme) from Nagande Swate the original allottee of Plot MF22 of about 3500 Square meter Kubwa Extension III (Federal Capital Development Scheme) which plot No MF22 of about 3500 square meter Kubwa was conveyed to its predecessor in title the 4th Defendant through the conveyance of provisional approval in the year 1999 which conveyance of provisional approval is pleaded."

Thus, by the processes filed by the 4th and 5th Defendants it is crystal clear that the 4th Defendant, Nagande Swate has never recognized or made reference to the Applicant as its attorney in respect of plot MF22 Kubwa Extension III Measuring about 3500 square meters. I have further perused exhibit AB, the purported Power of Attorney said to have been donated to the Applicant.

Assuming but not conceding that a Power of Attorney was donated to the Applicant by the 4th Defendant over plot MF22 Kubwa Extension III measuring about 3500 square meters, from the processes filed by the 4th and 5th Defendants, whether exhibit AB is of any consequential legal effect?. In the case of **UCHENNA**

ATUANYA & ANOR V SIR JONATHAN ATUCHUKWU AND ANOR (2013) LPELR 22566, the Court of Appeal held:-

"It is trite law that the right the donee is to exercise on behalf of the donor under a Power of Attorney, must be a right that belongs to the Donor."

In the case of **MR. KENECHUKWU JOSEPH NWACHUKWU V AWKA MICROFINANCE BANK LTD (2016) LPELR 41055**, the Court of Appeal held:-

"Now, what is the effect of a Power of Attorney in the first place? The law is well settled in the effect that a Power of Attorney is merely a warranty to the donee to exercise certain powers on behalf of the donor thereof. It does not transfer interest in the land and alienates the land in favour of the donee automatically."

Also in the case of **CHIME & ORS V CHIME & ORS (2001) LPELR 24858**, the Supreme Court held that "so long as the donee has not exercised the power comprised in the power of attorney, it is clearly open to the donor to exercise the same power.

I will in a short moment consider once again the power of attorney attached to the affidavit as exhibit AB. However, it must be pointed out that from the processes filed by the 4th and 5th Defendants, the 4th Defendant has exercised his power as the allottee of plot MF22 Kubwa Extension III measuring about 3500 square meters by purporting to have sold the land to one Romanus Eze and documents of title executed thereof. And the averment of the Applicant at paragraph 3 of his supporting affidavit which reads:-

"That I am still scouting of the buyer of the above mentioned plot MF22 of about 3500 square meters Kubwa Extension III (Federal Capital Development Scheme) as the Power of Attorney that was given to me is still in existence and the donor did not revoke it."

Such averment is otiose and it exists only in the figment imagination of the Applicant and his Counsel.

In the same case of **CHIME & ORS V CHIME & ORS (supra)**, the Supreme Court further held that where the donee

has in fact exercised the power under the Power of Attorney, the donor's power in this regard expires.

In the instant case, the Applicant has not exercised the power under the power of attorney and his averment at paragraph 3 of the affidavit clearly establishes this fact. Further, by paragraph (c) of the ground upon which the Applicant based its application and paragraph 7 of the affidavit in support to the effect that the unknown person is now known being the Applicant is also of no moment as the 4th and 5th Defendants aver at paragraph 9 of their further amended joint statement of defence that they are not unknown persons to encroach on their land known as plot no. MF22 of about 3500 Square meters Kubwa Extension III (Federal Capital Development Scheme) FCT Abuja.

Thus, by the processes filed by the 4th and 5th Defendants, the power donated to the Applicant, especially by the 4th Defendant, if it ever exist, by the 4th Defendant joining this suit and filing processes including a defence, the power granted to the Applicant as donee no longer exist as far as the instant case is concerned. In other words, the Applicant having failed to exercise the power under the Power of Attorney and the donor has exercised same, the power expires.

Now coming back to the power of attorney the attached as exhibit AB is undated and unsigned. The names and authorized signatories to the power of attorney, exhibit AB is completely blank and not disclosed. In the province of the law, an unsigned and undated document commands no judicial value of validity. See the cases of **GEORGE IKEJI & ANOR V TERUNGWA AGBER, (2014) LPPELR 22653 (CA), OMEGA BANK V O.B.C, (2005) 1 SCNJ 150, JINADU V ESUROMBI-ARO, (2009) 9 NWLR (pt1145) page 55.**

In the instant case, exhibit AB, the Power of Attorney has no judicial value of validity and I hold the view that this Court will not rely on same and I so hold.

Having said the above, is the Applicant a necessary or proper party to be joined in this suit and whether good reason or ground exist to join him?

The law is that a person will be a proper and necessary party when his or her joinder as a party to the action will enable the

Court to effectually and completely adjudicate upon and settle all the questions involved in the action. Thus, the interest of the party seeking to be joined is of utmost importance. See the cases of **RT HON. CHIBUIKE ROTIMI AMAECHI V GOV. OF RIVERS STATE & ORS (2017) LPELR 43065 (CA) GREEN V GREEN (1987)NSCC page 115 AND CARRENA V AKINLASE, (2008)14 NWLR (pt1107) page 262.**

In the instant case the Applicant has not shown through his affidavit the interest he has in the subject matter nor did the Applicant avers facts in his affidavit how the action could not be effectually determined by the Court in his absence. In short, the affidavit of the Applicant is devoid of any reason that would propel this Honourable Court to grant the present application joining him as a party. In fact from the affidavit evidence of the Applicant and his Counsel, they fully know that their presence in the action is completely unnecessary. However, the Applicant and his Counsel being meddlesome interlopers or busy bodies, their sole aim is to frustrate, truncate and set the wheel of progress in this case backwards for selfish interest. It is with great dismay, that a Counsel, probably worth of being called a Counsel, can accept this type of brief in order to truncate proceedings. This kind of behaviour of Counsel, i.e Emmanuel R. Sadiq Esq cannot be allowed to go unpunished. There is a need to sanitize the system and even if the bad eggs cannot be weeded out completely they must be punished and sanitize the system.

Thus, therefore, the application for joinder is hereby refused and the application dismissed. Further, the Counsel that filed the application in order to frustrate and truncate this proceedings, the sum of ₦2,000,000.00 is hereby awarded to the Claimant/Respondent against the Counsel, Emmanuel R. Sadiq Esq,
That is the position of this Court.

HON. JUSTICE D. Z. SENCHI
(Presiding Judge)
7/10/2020

Parties:- Claimant absent.

Defendants:- Absent

Ruben Kinya :-With is Daniel Idah for the Claimant.

Defendants Counsel absent.

Sign
Judge
7/10/2020