

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 22

CASE NUMBER : MOTION NO: M/3016/2019

DATE: : TUESDAY 8TH DECEMBER, 2020

BETWEEN

**PETROLEUM AND NATURAL GAS SENIOR STAFF ASSOCIATION CREDITOR OF NIGERIA
AND** } **JUDGMENT /RESPONDENT**

NIGERIA MARITIME AND SAFETY ADMINISTRATOR (NIMASA) STAFF (APAPA) COOPERATIVE MULTIPURPOSE SOCIETY LTD. } **JUDGMENT DEBTOR/RESPONDENT**

AND

- 1. ACCESS BANK PLC.**
- 2. CITIBANK NIGERIA PLC.**
- 3. ECOBANK NIGERIA PLC.**
- 4. FIDELITY BANK PLC.**
- 5. FIRST BANK NIGERIA PLC.**

- 6. FIRST CITY MONUMENT BANK PLC.**
- 7. GLOBUS BANK PLC.**
- 8. GUARANTY TRUST BANK PLC.**
- 9. HERITAGE BANK COMPANY LTD.**
- 10. KEYSTONE BANK PLC.**
- 11. POLARIS BANK PLC.**
- 12. PROVIDUS BANK LTD**
- 13. STANBIC IBTC BANK LTD.**
- 14. STANDARD CHARTERED BANK LTD.**
- 15. STERLING BANK PLC.**
- 16. SUNTRUST BANK NIG. LTD**
- 17. TITAN TRUST BANK LTD.**
- 18. UNION BANK OF NIGERIA PLC.**
- 19. UNITED BANK FOR AFRICA PLC.**
- 20. UNITY BANK PLC.**
- 21. WEMA BANK PLC.**
- 22. ZENITH BANK PLC.**
- 23. JAIZ BANK PLC.**
- 24. ASO SAVINGS AND LOANS PLC.**
- 25. COOP SAVINGS AND LOANS LTD**
- 26. NIGERIA MARITIME AND SAFETY
ADMINISTRATION AGENCY**

GARNISHEES

AND

- 1. MACADEE INTEGRATED SERVICES LTD**
- 2. IKE GOD ENTERPRISE**
- 3. BADAWA ENGINEERING LTD.**
- 4. DEE & DEE UNIQUE LTD.**
- 5. SOLACE DEMOL LTD.**
- 6. SALBOD NIGERIA LTD.**
- 7. IFENOCOM NIGERIA LTD.**

- 8. HYJEX INVESTMENTS LTD.**
- 9. QUEEN FIDETIX NIGERIA LTD.**
- 10. KOFI ODWINES NIGERIA LTD.**
- 11. SAMUZ ELECT/GLOBAL**
- 12. ARCHITHRONE CONSULT**
- 13. DAVI – LONGI GLOBAL**
- 14. BOLTSOD NIGERIA LTD**
- 15. IFY – JOE VENTURE**
- 16. UNCLE TADDY**
- 17. SETH JAMES LTD.**
- 18. BATCH NETWORK.**
- 19. CAS – MBA NIGERIA LTD.**
- 20. TOWER DE REAL, BROWN
HENS NIGERIA LTD**
- 21. DEWS CONSTRUCTION LTD.**
- 22. OSARA OGECHI VENTURE**
- 23. KAYZ CONSORTIUM.**
- 24. JEN – DECAS ASSOCIATION.**
- 25. WOODMOORE INVESTMENT LTD.**
- 26. SULFAT NIGERIA LTD.**
- 27. DE – BRONZE WORTH LTD**
- 28. WORLD LINK MARINE**
- 29. D’LACS CONSULT LTD**

**PARTIES SEEKING
TO BE JOINED/
APPLICANTS**

RULING

The Applicants approached this court for the following;

1. An Order of this Court joining the Parties seeking to be joined/Applicants as Respondents in this suit.
2. And any further Order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the application is an affidavit of 7 paragraph deposed to by Ikechukwu A. Ogbonna, a legal practitioner in the law firm of the counsel to the Applicant.

It is the deposition of the Applicant that the
Judgment Debtor contracted

BrookmooreInternational Ltd on the 25th day of January, 2011 to oversee the construction of its estate at Kafe, FCT, Abuja. And that the Applicants had executed works worth over **N355,000,000.00 (Three Hundred and Fifty Five Million Naira)** only but were not yet paid for by Brookmoore International Ltd.

Applicants aver that by a letter of authority dated the 22nd day of October, 2017 Brookmoore International Ltd wrote to the Judgment Debtor to pay to the Applicants directly the contract sum vide Exhibit “A”.

That the Judgment Creditor instituted a Garnishee proceedings wherein the Judgment Debtor was the garnishee and the Applicant testified and tendered documents to the effect that the subject matter of the

Garnishee proceeding is actually their funds and not that of the Judgment Debtor or judgment Creditor. But the trial judge made it absolute vide Exhibit “B”.

Applicants aver further that they were granted leave to appeal by the court of Appeal vide Exhibit “C” and it was appealed vide Exhibit “D”.

That the funds sought to be attached are monies payable to the Applicants.

In lines with laws and Order, a written address was filed wherein a sole issue was formulated for determination to wit;

Whether the Applicant in this motion have Disclosed sufficient materials so as to be entitled to be joined as parties in this suit.

Arguing on the above, learned counsel submit that the Applicants have disclosed sufficient interest vide Exhibit “A”, “B”, “C” and “D” annexed to the application to warrant the court to exercise its discretion in its favour by granting this application.

Learned counsel submit that the only reason which makes it necessary to make a person a party to an action is so that he should be bound by the action and the question which cannot be effectively and completely settled unless he is a party. *NWAONU VS UZUCHUKWU (2007) ALL FWLR (Pt. 374) at page 313 at 334.*

Learned counsel finally urge the court to grant the application.

Upon service, Judgment Creditor/Respondent filed an affidavit of 6 paragraphs deposed to by one Smart

Maisamari, a litigation secretary in the law firm of the Respondent.

It is the deposition of the Respondent that the contract for the construction of the property was awarded to Brookmoore International limited by the Judgment Debtor/Respondent vide Exhibit “I”.

That while the Garnishee proceedings subsisted at the Lagos State High Court, the judgment Debtor/Respondent in the instant Garnishee proceedings sought to create a lien in favour of the parties seeking to be joined and the Court ordered the parties seeking to be joined to appear and 3rd Applicant herein appeared in court, their statement on oath were filed, adopted and were cross – examined by the Judgment Creditor/Respondent’s counsel.

That the legal claims of the parties seeking to be Joined/Applicant have already been heard, decided upon and dismissed vide Exhibit “III”.

The Respondent avers that the persons seeking to be Joined/Applicants i.e Brookmoore International Limited only wrote the purported letter to the Judgment Debtor/Respondent on the 22nd day of October, 2017 after the Honourable Court of Lagos State had made the Garnishee absolute.

A written address was filed wherein two issues were formulated for determination to wit;

1. Whether the Honourable Court is vested with the jurisdiction to entertain, consider and grant the person seeking to be Joined/Applicants’ case as presently submitted to the Honourable Court in view of the entertainment consideration and

dismissal of the same claims by the High Court of Lagos State which being enforced in these proceeding and

2. Whether from the evidence of the persons seeking to be Joined and the Judgment Creditor/Respondent, the Honourable Court has enough evidence to entitle it to the grant of the reliefs sought by the person seeking to be Joined in this application.

Learned counsel argued both issue one and two jointly. It is the argument of the counsel that every Judgment of the Honourable Court is binding until set aside.

***BABATUNDE & ORS VS OLATUNJI & ANOR
(2000) LPELR 697 (SC).***

Learned counsel submit that the High Court of the FCT is unlimited jurisdiction only subject to section 251 of the constitution and that the Court is vested with the jurisdiction to enforce its judgment by virtue of section 83(1) of the Sheriffs and Civil Processes Act 2014.

Learned counsel testified that by Exhibit “B” parties sought to be joined testified on oath and were heard before the Garnishee Order Nisi was made absolute. On the strength of this, court was urge to dismiss the application.

COURT:having regard to the circumstances of this suit, it appears to me that the question to be determined is *whether the parties seeking to be joined are persons whose presence before the Court as Defendants will be necessary in order to enable*

the Court effectually and completely adjudicate upon and settle all the question involved in the cause or matter?

The first point that must be made here is that the joinder of persons or parties in an action as Defendants is clearly permissible under the provisions of Order 13 of the Rules of this Court 2018.

However, two conditions must be established by such person(s) to qualify for the joinder. That is:

1. Is the cause or matter liable to be defeated by the non-joinder of the third party as a Defendant?
2. Is the third party a person who ought to have been joined as a Defendant so that he may be bound by the result of the trial or his presence before the court as a Defendant is necessary in

order to enable the court effectually and completely adjudicated upon and settle all the questions involved in the cause or matter. See ***AJAYI VS JOLAYEMI (2001) 10 NWLR (Pt.722) Page 29-30, Paragraphs F-A*** and ***CROSS RIVER STATE NEWSPAPERS CORPORATION VS ONI & ORS (1995) 1 NWLR (Pt. 371) Page 23 paragraphs G-C.***

The governing principle which is a cardinal rule for the administration of justice is that determination of litigation must be in the public interest. Hence where the issues between the parties involve third parties whose interest are affected and the non-joining of the party will result in further litigation, such parties are a necessary parties. Therefore, those whose presence will be necessary for the effectual and complete adjudication of the matter before the Court,

and their presence as parties is important, the Court with or without an Application, can joined them as parties.

Poser: Are the parties seeking to be joined necessary parties in this suit so much that their absence will affect the adjudication of the matter before this Court?

It is the averment of Respondent that the parties sought to be joined were ordered by the Court to appear in the case to establish their claims by Lagos state High Court when the Judgment Debtor/Respondent in the instant garnishee proceeding sought to create a lien in favour of the parties seeking to be joined/Applicants and they were duly represented. The Ruling of the Court was annexed as Exhibit III. For avoidance of doubt, I

shall reproduce some of the holding of my learned brother Hon. Justice O.O. Ogungbesan of the Lagos State High Court.

“This Court on the 4th of October, 2016 in a bid to look into the claim of a lien raised by the Garnishee ordered that that Twenty Nine sub – contractors engaged by the Judgment Debtor appear in person or by designated representatives among them to state the nature and particulars of their claim upon the debt in issue before this court.

Three of the representatives of the sub – contractors who swore to affidavits appeared before this court adopted their sworn statements and were cross – examined by the Judgment Creditor.

The garnishee among other things filed a further and better affidavit in response to the Judgment Creditor's counter affidavit. Among other things the garnishee denied that the Judgment Debtor had substantially completed the Estate of Kafe district prior to termination of the contract with the garnishee and was being owed N1,857,705,255.49k.

The garnishee averred to the fact that the project development was divided into phases with payment strictly based on milestone and valuation reports and the Judgment Debtors as head contractor having only a certain percent of the total sum periodically disbursed.

The garnishee referred to Exhibit "BO7" as containing the last valuation report on the site

conducted in July, 2012. The report contains
sum disbursed and amount outstanding.

Paragraph 12 of the garnishees further and
better affidavit states as follows:-

That the garnishee is aware that the sum
outstanding does not belong to the Judgment
Debtor alone who has shown bad faith in the
handling of garnishee project at Kafe District,
Abuja – FCT.

Paragraph 17 of the further affidavit above –
mentioned asks the court to either dismiss the
Order Nisi against the garnishee or to work out
a frame work to attach only the sum
legitimately accruing to the Judgment Debtor
after the payment of the sub – contractors.

I have carefully examined all the affidavits and processes before me. It is trite law that agreement binds parties and not 3rd parties. Prima facie oral evidence is not admitted to vary writing.”

Similarly my learned brother further held as thus;

“From the facts presented in their proceedings, it is clear that the garnishee and the Judgment Debtor entered into a contract which was eventually terminated by the garnishee.

The sub – contractors could only have entered into a contract with the Judgment Debtor who apparently brought them on site.

For this court to accept that indeed there is a lien on any sum due to the Judgment Debtor from the garnishee there must be concrete

evidence to justify this court holding that there is a legitimate lien over the judgment debtors money with the garnishee. I listened to the representatives of the sub – contractors. It appears to me that the Judgment Debtor should be the appropriate party to address the grievances of the garnishee sad as it might sound.”

Indeed, the judgment of a court of competent jurisdiction subsists unless and until it is set aside even where the person affected by it believe it to be void or irregular.

It is instructive to observe that from the ruling of my learned brother, the claims contained on the face of the instant motion is an abuse of court process and raises issue of Estoppel as the persons seeking to be

joined/Applicants in the instant garnishee proceedings and the legal question whether the persons seeking to be joined/Applicant have an interest in the monies attached had been previously decided upon by the High Court of Lagos State.

An abuse of process always involves some bias, malice, some deliberateness, some desire to misuse or pervert the system. Multiplicity of suit against the same persons or parties in regards to some subject matter and on the same issues amounts to an abuse of court process. See *IMEH VS IWU (2008) 2 – 3 SC (Pt. 135)*.

I further wish to state that once an issue has been determined either by a Court or Tribunal, the person who loses in the decision is clearly legally estopped

per rem judicata from reopening the issue decided therein in any subsequent action.

Above is what is being referred to as Estoppel per rem judicata or issue Estoppel. See *ODONISI VS OYELEKE (2001) 2 SC 194*.

From the afore reproduced part of the decision of my brother of the Lagos High Court, it is undeniably clear that my brother Judge had dealt with the issue.

Therefore parties in the present application for joinder are clearly estopped from so been joined legally speaking. Their effort is clearly an abuse of judicial process in view of the fact that the same question was raised and determined by my learned brother of the Lagos High Court. Parties seeking to join have a right to appeal against the said ruling and

not to be running from pillar to post. They are indeed persona non –granta in this instance.

For embarking on this is very vexatious and annoying exercise, and having failed to defend their motion, the said application is liable to be thrown out by an Order of dismissal. Same is hereby dismissed.

Justice Y. Halilu
Hon. Judge
8th December, 2020

APPEARANCE

JUSTIN CHUWANG with HASSAN I. HASSAN
and VICTOR YATU – for the Judgment
Creditor/Respondent.

PIUS OFULUE holding the brief of BEN ODE – for
the Judgment Debtor.

AZUBUIKE OGBONNA – for the parties seeking to
be joined/Applicants.