IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 10TH DAY OF MARCH, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/3237/17
MOTION NO.:-FCT/HC/M/8532/20

BETWEEN:

EDMONTON CONSULTS LTD:.....CLAIMANT/APPLICANT

AND

ATISALAT GLOBAL RESOURCES LTD:.DEFENDANT/RESPONDENT

Onyechi A. Ezeagwuh for the Claimant.
AtagubaAboje with OnemeIkwen and Samuel Unogwu for the Defendant.

RULING.

By this Motion of Notice dated and filed the 10th day of July, 2020, the Claimant/Applicant seeks the following reliefs from this Court:

1. An Order of this Honourable Court joining PatriValethi as a Defendant, and Davino Concepts Ltd as Co-Claimant in this suit.
2. An Order of this Honourable Court granting leave to the Claimant/Applicant to amend its Writ of Summons, Statement of Claim and all Other Originating processes filed in this matter.
3. And for such further Order(s) as the Honourable Court may deem fit to make in the circumstance.

Stating the grounds for the application for joinder, the Claimant/Applicant averred in its supporting affidavit, that it

purchased Plot MF 2068, SabonLugbe East Extension Layout, Abuja, the subject matter of this suit, from Davino Concepts Ltd (party it seeks to join as Co-Claimant) in 2012.

Regarding the party it seeks to join as Defendant, the Applicant averred that under cross examination, the DW1, in answer to a question by the Claimant's counsel, asserted that it is one PatriValethi that owns the said plot of land, and that as such, it thus becomes necessary to join the said PatriValethi as Defendant to the suit.

Learned Claimant/Applicant's counsel, Nicholas N.Elechi, Esq, in his written submission in support of the application, raised two issues for determination namely;

1. Whether the parties sought to be joined have an interest in this suit or are persons likely to be affected by the outcome of the proceedings?
2. Whether the Claimant/Applicant is entitled to the leave of this Honourable Court to enable him(sic) amend his(sic) Originating processes in terms of the proposed amended Writ of Summons, Statement of Claim and all Other Originating processes.

Proffering arguments on issue one, learned counsel contended that the averments in paragraphs 2, 3, 4, 5, 6 and 7 of the supporting affidavit together with attached Exhibit 'A' ('Land Sale Agreement'), constitute sufficient proof of interest of the parties sought to be joined in the subject matter of this suit.

He argued that the presence of the parties sought to be joined will enable the Court to adjudicate on all the issues and claims made by different individuals without the need to have another litigation springing up either during the pendency of the present suit or after judgment has been delivered. He referred to

Iwekav. A.G. Federation (1996) 4 NWLR (Pt.362); Ajayi&Ors v. Jolayemi (2001) 6 NSCQR 633 at 636.

On issue two, learned counsel posited that a Claimant is entitled by the Rules of this Court to have his Originating processes and pleadings amended where the amendment would enable all issues in dispute and important point of law to be pursued and exhausted. He referred to Order 25 Rules (1) & (2) of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules, 2018.

Relying on **Okafor v. Ifeanyi (1979) 3-4 SC 99,** he submitted that the Applicant has satisfied this Court as to be entitled to the reliefs sought, and urged the Court to grant all the reliefs on the face of the application.

In opposition to the application, the Defendant filed a 3 paragraphs counter affidavit deposed to by one Friday Okpetu, a litigation Clerk in the law firm of counsel to the Defendant/Respondent.

TheDefendant/Respondent averred in the said counter affidavit that paragraph 3 of the Applicant's affidavit in support of the application, is not a new fact as this is already stated in several paragraphs of the Statement of Claim. That paragraph 4 of Applicant's supporting affidavit and Exhibit 'A' attached thereto, as well as paragraph 7 of Exhibit B, the proposed amended Statement of Claim, are an ingenious attempt to relitigate, repair and re-plead an old fact already contained in paragraph 5 of the Applicant's subsisting amended Statement of Claim and to re-tender in evidence, Sales Agreement dated 20th June, 2012 already tendered but rejected by this Court.

The Defendant/Respondent further averred that paragraphs 7 and 8 of the Applicant's supporting affidavit are not sufficient grounds to join any party at the closing stage of this matter.

That Exhibit 'B', the proposedamended Statement of Claim, contains no factual basis to join Davino Concept Ltd as a Co-Claimant and PatriValethi as a Co-Defendant and neither was any misdeed or wrong attributed to the party sought to be joined as Co-Defendant.

It stated that the Applicant's motion was brought in bad faith in the bid to overreach the Defendant's issue 1 raised in its final written address dated 23rd June, 2020 which was served on the Applicant, wherein the Defendant raised the issue of locus standi of the Applicant to institute this suit.

TheDefendant/Respondent stated further, that both the Applicant and the Respondent have since closed their respective cases and that an amendment under the rules of this Court cannot be allowed after close of the case as the Applicant is attempting to do.

In his written submission in support of the counter affidavit, learned Defendant/Respondent's counsel, Ataguba S. Aboje, Esq, raised a sole issue for determination, to wit;

> ***"Whether it is equitable and by the Rules of this Court, to allow the Applicant to amend its processes after the close of evidence?"***

Proffering arguments on the issue so raised, learned counsel placed reliance on Order 25 Rule 1 of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules, 2018 and the case of**Eze v. Ene&Anor (2017) LPELR-41916 (SC),** to submit to the effect that an application for amendment of pleadings cannot be allowed after close of evidence, save for the purposes of bringing the pleadings in line with evidence already on record of the Court.

He argued that the document which the Applicant is seeking to tender through the amendment is a document already tendered but rejected by the Court, and that the additional witness the Applicant seeks to call, even without the leave of Court to reopen its case, is a witness the Applicant willingly abandoned in the course of trail. He contended that the Applicant'sdecision to abandon its own witness cannot be used as a reason to move the Court to grant this application, as the injury is self-inflicted and deserves no compassion of the Court.

Learned counsel further contended that the Applicant cannot by its motion, urge this Court to join a 3rdpartyas Co-Claimant. He submitted, relying on **Ige&Ors v. Farinde&Ors (1994) LPELR-1452 (SC),** that an application for joinder as a Claimant must be made by the interested party himself and not by a 3rd party.

Furthermore, he argued that the Applicant's motions is incompetent and cannot be granted for the reasons that:-

a. The Applicant failed to seek the Order of this Court to reopen its case which it applied to this Court to close.
b. The Applicant did not apply to recall PW1 and or to call a fresh witness as it seeks to do through the proposed amended Statement of Claim and its accompanying processes, and;
c. The Applicant has not sought an order to set aside the Order of this Court made on 25/02/20 directing parties to file their final written addresses.

He argued that a grant of this application will lead to confusion and a state of conflicting orders of this Court.

He urged the Court in conclusion, to dismiss the Applicant's motion with substantial cost.

The Claimant/Applicant filed the substantive suit on the 19th day of October, 2017 and after same was assigned to this Court, the case first came up for hearing on the 17th day of January, 2018. The case went through a protracted period of trial with the Claimant who eventually closed its case on the 22nd day of January, 2020, and on 25th February, 2020, the Defendant gave evidence in defence of the suit and closed its case on same date. The case was thereafter adjourned for the adoption of the parties' final written addresses.

After the Defendant had filed and exchanged final written addresses, the Claimant/Applicant filed the instant application for joinder and for leave to amend its Writ of Summons and other processes on the 10th day of July, 2020.

The fundamental principle for joinder of parties is to ensure that the issues involved in the matter before the Court are effectively and effectually adjudicated upon. Thus in **Eco Bank Nigeria PLC v. Metu&Ors (2012) LPELR-20846 (CA),** the Court of Appeal, per Tsammani, JCA held that;

> ***"The purpose of joinder of parties to an action is to enable the Court to effectively and effectually adjudicate upon the issues involved in the matter. That being so, the overriding consideration in determining an application for joinder are whether the issues that call for determination cannot be effectually and completely settled unless the party sought to be joined is made a party and that his interest may be irreparably prejudiced if he is not made a party."***

The Claimant/Applicant has made clear, its reasons for seeking to join the parties, Davino Concept Ltd as Co-Claimant and PatriValethi as 2nd Defendant. According to the Applicant, the sole reason for seeking to join Davino Concept Ltd as Co-

Claimantis because the Applicant bought the land in issue from the said Davino Concept Ltd, and the reason for seeking to join PatriValethi as 2nd Defendant is because under cross examination, the DW1 asserted that the said PatriValethi is the owner of the land in issue. Therecords of the Court show that the DW1 under cross examination admits he is Managing Director of the Defendant who owns the property and in another breath he said one PatriValethi is the owner of the land. DW1 said there is no document to establish that PatriValethi owns the property.

The issue before the Court in this suit is the ownership of Plot MF 2068, SabonLugbe East Extension Layout, Abuja, which the Claimant/Applicant is claiming, while asserting that the Defendant/Respondent trespassed into same;even though the Defendant/Respondent did not file any counter claim, she however, maintains ownership of the said plot and asserts that the Claimant/Applicant is not the owner of the plot.

It follows therefore, that the dispute is simply, and very clearly, between the Claimant/Applicant and the Defendant/Respondent, and no other.What is very manifest in the Applicant's proposed amended Statement of Claim is that the dispute is between the Claimant/Applicant and the Defendant/Respondentwhereby the proposed joinder of the 2nd Claimant made no claim whatsoever,against the Defendant, neither was there any interest of the intended co-defendant sought to be joined disclosed which the Applicant is seeking to attack.

Therefore, regarding PatriValethi, (party sought to be joined) the alleged mentioning of the name under cross examination is not sufficient to constitute her as a party in this suit.The Claimant's claim has not shown in the application cogent reasons to make PatriValethi a necessary party to this

application whose presence is essential for the effectual and complete determination of this suit. Further a necessary party is one in the absence of whom the whole claim cannot be effectually and completely determined. –**National Democratic Party v. INEC (2012) LPELR – 19722 (SC).**

I agree with the Defendant's counsel relying on paragraph 2(e) of the counter affidavit,whereby the Defendant stated that the application to amend the statement of claim was raised in bad faith.The Defence counsel submitted that the Claimant lacked the locus standi to raise this application. Indeed it would be over reaching on the part of the Defendant if this application is granted. It is my opinion that if this amendment is allowed it would amount to a relitigation and the alteration of the character of this case.

Therefore, there is no issue before this Court which cannot be effectively and effectually determined without the presence of the parties sought to be joined by the Claimant/Applicant; I so hold.

My primary consideration now is whether the amendment sought by the Applicant is for the purpose of determining the real questions in controversy. An amendment as settled in law should not be granted if it entails injustice or to jeopardise the interest of the Respondent. Amendment is aimed at doing substantial justice and not substantial injustice as in the present case. It is settled law that the aim of amendment is usually to prevent manifest injustice. In paragraph 2(f) of the counter affidavit the Respondent further stated that the application marked Exh 'B' attached to affidavit by the Claimant/Applicant soughtthe leave of Court to invite fresh witness which the Claimant had earlier on abandoned its witness statement onoath before the conclusion of his case.Indeed from the records of the Court, it clearly showed that the said witness statementon oath was abandoned for reasons best known to the Applicant.Therefore

by allowing such application,it would surely amount to springing up surprises at the Defendant/Respondent. The entire gamut of the Applicant's application if allowed will definitelycause injury that no cost would assuage which will amount toan unfair prejudice in the interest of the adverse party.

More so, a person cannot be made a co-claimant without his consent. There is no evidence that the party sought to be joined as co-claimant has given his consent.

I consider this amendment mala fide and unjust because it will surely entail calling further and fresh evidence.– **CompagnieGenerale De Geographysique (Nig) Ltd v. Idoreyin (2015) 13 NWLR (Pt 1475) 149.**

On the whole and simply put, I hold that this application for amendment and joinder of parties is incompetent. It therefore, is refused on the following grounds;

1) It will entail injustice.
2) It will entail surprise and embarrassment to the other party.
3) It gives impression of bad faith because the Defendant has filed his final written address which the Claimant/Applicant took advantage of.
4) The Respondent cannot be compensated with cost if the application is granted.

Therefore, I hold that the totality of this application is grossly incompetent and lacking in merit. It is dismissed with a cost of N20,000.00.

Court orders that parties to proceed, by filing and serving their final written address.

HON. JUSTICE A. O. OTALUKA
10/3/2021.