IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 25TH JANUARY, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/1963/16
MOTION NO.:-FCT/HC/M/9897/2020

BETWEEN:

1) FRANCE-LEE NIG. LTD
2) MRS. FRANCES IBE :.....CLAIMANTS/RESPONDENTS

AND

1) ENGINEER M.O. GABRIEL
2) MOSES AGBO :..DEFENDANTS/RESPONDENTS

AND

1) 2DAYS VENTURES LIMITED:…APPLICANT/PARTY SEEKING TO BE JOINED AS 3RD DEFENDANT/COUNTER -CLAIMANT.

HyginusIbega with OlumideIgbayilola, Benson Dibia, Victory Emeny for 1st and 2nd Claimants.
KehindeDaramola for the Applicant.
Defendants not represented.

RULING.

The Applicant by this Motion on Notice seeksthe following reliefs from this Court:

1. An Order of this Honourable Court granting leave to the Applicant to be joined as the 3rd Defendant/Counter-Claimant in this suit.

2. And for such further or other order(s) as the honourable Court may deem fit to make in the circumstances of this case.

In the supporting affidavit deposed to by one IfiokobongUko, a legal practitioner in the law firm of the Applicant's counsel, the Applicant averred that it has an offer of Terms and a Right of Occupancy over Plot MF 1899 dated 16th August, 2006 as well as a building plan approval issued by the Abuja Metropolitan management Council dated 17th October, 2011. That the Applicant in October 2019 decided to commence development of the property, but on moving to the site, she discovered that some trespassers had started fencing a portion of the property. Consequently, she took steps to ward off the trespassers from the property.

He stated that the Applicant, on the 8th day of September, 2020, discovered an order of this Court that was pasted on the gate of the property, Plot MF 1899, SabonLugbe Extension Layout, Abuja, dated 29th day of June, 2020, which order is an order of an interlocutory injunction. That whereas the order relates to the Applicant's property,Plot MF 1899, the Applicant was not named in the order as a party to the suit.He stated that the Applicant instructed her Solicitors who approached the registry of this Court and obtained the CTC of the processes filed in the suit from which the Applicant noticed that the Claimants are claiming inter alia, for a declaration of title toPlot MF 1899, SabonLugbe Extension Layout, Abuja, which belongs to the Applicant, which therefore necessitated the filing of this application.

Learned counsel for the Applicant, KehindeDaramola, Esq, in his written submission in support of the application, raised two issues for determination, to wit;

a. Whether or not the Applicant has placed sufficient materials before this honourable Court to warrant the grant of this application?
b. Whether or not this honourable Court ought to exercise its discretionary and judicial powers in favour of the Applicant based on the circumstances of this case?

Proffering arguments on issue one, learned counsel posited that the issue that necessitated the bringing of this application was the interlocutory order of this Court that was pasted on the gate of the Applicant's property at Plot MF 1899, SabonLugbe East Extension Layout, Abuja. He argued that although the said Order of Interlocutory Injunction is against the parties currently named in this suit, the fact however, that same was pasted on the gate of the Applicant's property, coupled with the fact that the Claimants in this suit are praying this Court to declare them owners of Plot 1899 which appears to be the same as the Applicant's property, makes it that the Applicant cannot sit back and allow her interest to be prejudiced or jeopardized by the proceedings in this suit as equity aids the diligent and not the indolent.

He referred to **Carrena v. Akinlase (2008) All FWLR (Pt 444) 1403 at 421** on what an applicant for joinder of party in a cause or matter must show in order to be made a party. He argued that the Applicant has in her affidavit in support of this application disclosed that an order of this Court was pasted on the gate of a property over which she holds proprietary title and which she has been in possession of. That the Applicant has further disclosed that the Claimants herein are praying this Court to declare them the owners of the said property and that she has disclosed that this will affect her valid interest adversely, and that if she is not joined as a party in this suit, this Court would not have effectually and completely

adjudicated upon and settled all the questions involved in this case.

He relied on **Kasamu v. Ogundimu (2017) All FWLR 1126 at 1152** to urge the Court to hold that the Applicant, though a stranger in this suit, has disclosed sufficient reasons why she should be joined as a party in this suit.

He contended that the Applicant brought this application immediately she became aware of this suit on the 8th day of September, 2020 in order not to be caught by the doctrine of standing by and to allow another person to be declared the title holder over her property.

He further urged the Court to hold that the Applicant has satisfied the provision of the rules of this Court, per Order 13 Rule 4, High Court of the Federal Capital Territory, Abuja Civil Procedure Rules, 2018.

Learned counsel further referred to **Green v. Green (2001) FWLR (Pt 76) 795 at 798;Oluwaniyi v. Bwala (2011) All FWLR (Pt.565) 336 at 348-349;Okwu v. Umeh (2016) All FWLR (Pt.825) 232 at 249,** and urged the Court to hold that the Applicant has an interest in the subject matter of this suit and that she would be affected by the proceedings of this suit if not joined as a necessary party in this suit.

On issue two, learned counsel posited that in consideringan application of this nature, the Court is called upon to exercise its discretionary powers judiciously and judicially. He referred to **Green v. Green (supra).** He contended that the Applicant having shown that she has a legal right and pecuniary interest over the subject matter of this suit, that Section 6(6) of the 1999 Constitution gives this Court judicial powers to give favourable consideration to this application.

He argued that the presence of the Applicant is necessary to determine the ownership of Plot MF 1899, SabonLugbe East Extension Layout, Abuja, and to settle all the questions arising therefrom.

He referred on **Panalpina World Transport (Nig) Ltd v. J.B. Olandeen International &Ors (2011) All FWLR 21 at 38** on the point that an application for joinder may be made at any time. He argued that the Applicant brought this application timeouslyhaving become aware of this suit on the 8th day of September, 2020 even though she has been in possession of the property since 2006.

While arguing further, that the Applicant's constitutional right to be heard as enshrined in Section 36 of the 1999 Constitution (as amended) ought to be safeguarded by the Court, learned counsel urged the Court to hold that it has the judicial and discretionary powers to grant this application, and to grant same.

In opposition to the application for joinder, the 1st and 2nd Claimants filed a 5 paragraphs counter affidavit deposed to by one BimpeOrekoya, a legal practitioner in the office of the Claimants' counsel, and a written address.

The 1st and 2nd Claimants in the counter affidavit maintained that the Plot 1899, SabonLugbe East Extension Layout belongs to them by virtue of a Right Occupancy issued to them by the Abuja Municipal Council on 18th August, 2006.

That they have been exercising rights of ownership over the Plot in issue through a farmer they put on the land to be farming on same since 2006 until early 2020 when the Applicants encroached into the land and started clearing same.

The Claimants averred that while proceedings in this case were approaching conclusion in this court, they discovered that some persons are encroaching into the land, and when they could not figure out who the trespassers were, they wrote a letter through their solicitors, to the Trademoore Divisional Police Station intimating them of the pending suit and demanding that the Police ward off the trespassers. That the DPO,Trademoore Police Station invited the Claimants and the Applicant's Director – Mr. Richard Olawale on the 27th day of May, 2020 to the station to clarify issues, and that at the Police Station, the Claimants expressly informed the Applicant's Director – Mr. Richard Olawale of the pendency of this suit, and the Applicant claimed that the Magistrate Court gave an order in their favour over the land in issue.

The Claimants/Respondents stated that they made an independent investigation and found out that the matter before the Magistrate Court, 11 in Wuse Zone 2, Abuja, was a frivolous application for criminal investigation against concocted trespassers who never showed up in Court.

Furthermore, the Claimants/Respondents averred that they conducted a search at the Corporate Affairs Commission and found that METL TOP NIG and 2 DAY VENTURES LTD were registered on 29thSeptember, 2019 and 10th March, 2010 respectively, which is several years after the purported original allottee, METL TOP NIG, allegedly acquired the land. They averred that the Applicant has no interest in this suit that could be jeopardized by the decision of this Court, and that this application is brought in utmost bad faith to frustrate the Claimants who have been in legal tussle over the property since 2016.

Learned Claimants/Respondents' counsel, H.M. Ibega, Esq, inhis written address in support of the counter affidavit, raised three issues for determination, namely;

1. Whether the way this matter is presently constituted, the Applicant is a necessary party to this suit?
2. Whether the instant application is not an abuse of Court process, brought in bad faith and therefore liable to be dismissed or struck out?
3. Whether this application does not amount to arrest of judgment which is unknown to our jurisprudence?

Proffering arguments on issue one, learned counsel distinguished the case of **Green v. Green (supra),** whereon the Applicant relied to assert that she is a necessary party to this suit. He posited that the case of**Green v. Green**was decided on the principle of necessary party, which is a party in whose absence the question before the Court cannot be effectively determined.

He argued that the Applicant is not a necessary party to this suit as the questions in this suit can be efficiently adjudicated upon without the presence of the Applicant. He referred to **Panalpina World Transport Ltd v. J.B. Olandeen International &Ors (2010)LPELR-2902 (SC).**

He contended that all the authorities cited by the Applicant in line of **Green v. Green (supra)** are all inapplicable to this case. He posited that it is an established principle of law that a judgment is an authority for what it actually decides and nothing more. He referred to **International Tobacco Company PLC v. British American Tobacco Nig. Ltd &Anor (2013) LPELR-20494 (CA).**

Learned counsel contended on issue two that the Applicant brought this application in utmost bad faith as the facts deposed to by the Claimants in their counter affidavit attest to the fact that the Applicant's director was aware of this suit as at 27th May, 2020, but the Applicant did nothing until when the matter was adjourned for judgment.

He contended that this application, being an appeal to the equitable exercise of the Court's discretion, cannot be sustained as it is trite that equity only aids the vigilant and not the indolent.

Relying on **Newswatch Communications Ltd v. AlhajiAliyu Ibrahim Attah (2006) LPELR-1986 (SC),** he posited that fair hearing is not a right that inures in favour of a party who had the time and opportunity to take necessary legal steps and kept mum until the matter is late. He argued that there is proven laziness, weakness and legal slumber on the part of the Applicant in this case.

Learned counsel further contended that the instant application is an abuse of Court process as same is geared towards annoying and irritating the Claimants who are just concluding a four years legal tussle. He posited that abuse of process of Court involves circumstances and situations of infinite variety, and therefore, is open-ended in nature.

On issue three – ***"Whether this application does not amount to arrest of judgment which is unknown to our jurisprudence",*** learned counsel argued that the instant application which the Applicant waited until the case was adjourned for judgment before filing same,amounts to arrest of judgment. He contended that as demonstrated by the Claimants/Respondents in their counter affidavit, the Applicant was aware of the pending suit since May, 2020 but waited

untilSeptember, 2020 when the case had been adjourned for judgment before filing the application. He posited that the principle of arrest of judgment is alien to our jurisprudence and consequently, has no place in our judicial system. He referred to **Ukachukwu v. PDP &Ors (2013) LPELR-21894 (SC).**

Learned counsel contended that this application is incompetent in law and fact, and deserve no discretion or sympathy from this Court as same has no other effect other than to arrest the judgment of this Court slated for delivery on 5th October, 2020, notwithstanding that same was couched as a motion for joinder. He urged the Court to hold that since the discretion sought herein flies in the face of the well-entrenched position of the law that arrest of judgment, no matter the guise, is unknown to law, the application of the Applicant in this case must fail.

Learned counsel further argued that the judgement of this Court, whichever way it goes, does not prevent the Applicant from seeking legal redress against the Claimants or any party in this suit in a Court of competent jurisdiction in the event that they have a genuine cause of action as the judgment in this matter is not judgment in rem that can bind the Applicant.

He referred to **Noekor v. Executive Governor of Plateau State &Ors (2018) LPELR-44350 (SC).**

He posited that the Applicant stands to lose nothing if this application is refused as the judgment of this Court in this matter only determines the rights of the Claimants and the Defendants in the instant suit and does not in any legal way impede on the rights of the Applicant for legal redress.

He urged the Court in conclusion, to dismiss the application for being an abuse of Court process, same being vexatious, strange and unfounded in law, and for amounting to arrest of

judgment which has no basis whatsoever in our civil jurisprudence.

In response to the Claimants/Respondents' counter affidavit, the Applicant filed a ***"Further and Better Affidavit"*** and Reply on points of law dated 12th October, 2020. The Applicant averred that she commenced development on her property since October, 2019 and the Claimants knowing that the Applicant has been exercising de facto possession of the said property, failed or neglected to apply to join her in this suit. That it was the Applicant that reported the Defendants and the Claimants' agents and privies to the Divisional Police Station, Trademoore Estate, Lugbe on the 16th of May, 2020, when they mobilized hoodlums to disrupt the Applicant's development work on the Plot, and that at no time was the Applicant informed about the pendency of this suit nor was the Applicant aware of any letter titled: NOTIFICATION OF LAND MATTER IN SUIT NO. FCT/HC/CV/1963/2016 dated 19th May, 2020.

In his reply on point of law, learned Applicant's counsel first made an incoherent argument about the competence of theClaimants/Respondents' counter affidavit. He argued that the Claimants/Respondents were served with the Applicant's Motion for Joinder on 22nd October, 2020 and the Claimants/Respondents filed their counter affidavit on 2nd October, 2020, purportedly in excess of 7 days permitted by Order 18 Rule 1 of the High Court of the Federal Capital Territory Civil Procedure Rules, 2018. He thus urged the Court to hold that the Claimants/Respondents' counter affidavit is incompetent and to discountenance same.

He however contended that assuming, without conceding that the Claimants/Respondents' counter affidavit and written address are competent; that what the Applicant in the

application for joinder needs to demonstrate to the Court is that there is a common question to be settled in the suit in which she seeks to be joined and that she is to be bound by the result of the action and the question to be settled. He referred to **Green v. Green (2001) FWLR (Pt.76) 795 at 817.**

He argued that it is clear that the question to be settled in this suit is the ownership of Plot 1899, SabonLugbe East Extension, Abuja for which the Applicant via Exhibits J(3), J(3)(a), J(3)(b) and J(4) attached to her affidavit in support of the application, has disclosed that she has interest in, and that the question of the ownership of the said Plot 1899, SabonLugbe East Extension, Abuja cannot be eventually and completely settled unless the Applicant is made a party.

Learned counsel urged the Court to discountenance the submission of theClaimants/Respondents' counsel on the point that the case of **Green v. Green (supra)**does not apply to this case, as the Supreme Court's decision in the said case is on the issue of joinder of parties, which is the subject of this application.

He further submitted that the case of **Newswatch Communications Ltd v. AlhajiAliyu Ibrahim Attah**cited by learned Claimants/Respondents' counsel, is not applicable to this application as the issue decided therein does not relate to joinder of parties but based on an application made by the Defendant on record who merely brought an application to open his defence at the time the case had been adjourned for judgment after he had repeatedly failed to utilize the opportunity given to him to open his defence. He posited that an applicant who is not a party to a suit and has brought an application to be joined in a suit cannot in law be said to be arresting the judgment of Court when he has not been heard or given an

opportunity to be heard. He urged the Court to hold that the case of **Ukachukwu v. PDP & 3 Ors (supra)** is not applicable to this case. That the practice of arrest of judgment which the Supreme Court has frowned at is such that only the parties who has been opportune to ventilate their claims but deliberately opted not to, and now suddenly decided to file an application at the time when trial has been concluded and the parties have been opportune to address the Court, to hoodwink the Court in delivering its decision.

Learned counsel further posited that the case of **Neokor v. Executive Governor of Plateau State** cited by Claimants/Respondents' counsel supports the case of the Applicant. That one of the reasons for joinder of parties is to avoid multiplicity of suits when a particular action can resolve the common question which is the subject matter of the suit. He referred to **Kasamu v. Ogundimu (2017) ALL FWLR 1126 at 1152-1153.**

He urged the Court to discountenance the submission of counsel to the Claimants/Respondents and grant the reliefs sought by the Applicant in this Application.

The 2nd Defendant/Respondent also filed a counter affidavit of four paragraphs deposed to by one TundeAfolayan and a written address in opposition to the Applicant's application for joinder. The 2nd Defendant averred that the order of interlocutory injunction granted by this Court on 29th June, 2020 was in respect of Plot No. 1899, SabonLugbe East Extension Layout, Abuja and that the Defendants do not have any counter claim against the Claimants in respect of Plot MF No. 1899, SabonLugbe East Extension Layout, Abuja. That Plot 1899, SabonLugbe East Extension Layout, Abujahad been fenced since 2012 and not in 2019 as stated by the Applicant, and that

the Applicant his not commenced any development on Plot 1899 save the replacement of the fence she pulled down when she trespassed into the Plot.

The 2nd Defendant further averred that following his report to the Trademoore Divisional Police Station, Lugbe, Abuja in May, 2020, the investigating Police Officer informed the Applicant of the pendency of this case and that the Applicant was immediately served with a copy of the order of this Court immediately same was granted, but the Applicant decided to wait until two weeks before the judgment of this Court in order to deter this Court from delivering judgment in this case. Furthermore, that the Applicantdid not attach copy of Court process to be filed if this application is granted.

In his written address in support of the counter affidavit, learned counsel for the 2nd Defendant/Respondent, Oluwamayowa A. Ajayi, Esq, raised two issues for determination, namely;

i. Whether or not the Applicant has placed sufficient materials before this Honourable Court to warrant the grant of this application?
ii. Whether or not this Honourable Court ought to exercise its discretionary and judicial powers in favour of the Applicant based on the circumstances of this case?

Proffering arguments on issue one, learned counsel contended that although it is trite that an Applicant can apply to be joined as a party in a suit at any stage of the suit, that such a party must however, sufficiently convince the Court on why it is necessary to make him a party. He argued that it is not enough that a party will be bound by the decision of the Court, but that the party must show that there is a question that cannot be answered without the presence of the party seeking to be

joined. He referred to **Okelue v. Medukam (2011) 2 NWLR (Pt.1230) 176 at 200.**

He contended that in the instant case, the 2nd Defendant is not counter-claiming against the Claimants and there is no issue that cannot be resolved without the presence of the party seeking to be joined.

Learned counsel further contended that contrary to the requirements of Order 13 Rule 19(2) of the High Court of the Federal Capital Territory, Abuja, Civil Procedure Rules, 2018, the Applicant failed to exhibit the Statement of defence/counter claim in the application for joinder to show if there is a particular claim against the Defendants who are not counter claimants in this suit. He posited that the proposed statement of defence and counter claim have roles in determining whether there is a question to be answered by the Defendants or whetherthere is a claim or question that cannot be answered without the presence of the Applicant.

He referred to **RincoConst Co. v. Veepee Ind. Ltd (2005) 9 NWLR (Pt.929) 85 at 100** and **Ajaye v. Jolayemi (2001) 10 NWLR (Pt.722) 516 at 537,** and contended that the Applicant has not placed sufficient material before this Court toshow that the case cannot be determined without joining her as a party to warrant the Court granting this application. He urged the Court to resolve this issue in favour of the 2nd Defendant and against the Applicant.

On issue two, learned counsel referred to **Bello v. INEC (2010) 8 NWLR (Pt.1196) 342 at 418** on the questions to be answered before a Court can exercise discretion in favour of an applicant for joinder, to wit;

a. Is it possible for the Court to adjudicate upon the action set up by the Claimant unless the person is added as a defendant?
b. Is the person someone who ought to have been joined as a defendant in the first instance? and
c. Is the cause or matter liable to be defeated for non-joinder?

He contended that the claims of the Claimants against the Defendants in the instant case, can be determined without the Applicant. That the Applicant was not in possession of the Plot in 2016 when the case was filed against the Defendants and that the cause of the Claimant will not be defeated if the Applicant is not joined.

Placing further reliance on **Waziri v. Gumel (2012) 9 NWLR (Pt.1304) 185 at 209,** learned counsel argued that even though it is the principle of law that a necessary party can be joined at any time before judgment, to give room for fair hearing, but that the discretion of the Court in granting such joinder must be based on facts and circumstances presented to the Court.

He urged the Court in conclusion to refuse this application by drawing conclusion from law, justice and common sense as the delivery of judgment in this case will not prejudice the Applicant in filing an action claiming the Plot since she is not a party to this suit.

Also is response to the 2nd Defendant/Respondent's counter affidavit, the Applicant filed a 7 paragraphs "Further and Better Affidavit" and a Reply on Points of Law. That Applicant reiterated that it was she that reported the Defendants and the Claimants' agents and privies to the Divisional Police Station,Trademoore Estate, Lugbe on the 16th of May, 2020 when they mobilized hoodlums to disrupt the Applicant's

development work onPlot MF 1899, SabonLugbe East Extension Layout, Lugbe, Abuja, and that she was at no time informed of the pendency of this suit until 8th September, 2020 when she became aware of same.

In his reply on points of law, learned Applicant's counsel posited that it is trite law that the fact that the 2nd Defendant does not have any counter-claim against the Claimants in this suit, does not prejudice the Applicant's right to be joined as a party. He referred to **Hyson (Nigeria) Ltd v. Ijeoma&Ors (2008) LPELR-5159 (CA)** on what the Court should look out for in granting this application.

He contended that the case of **Okelue v. Medukam**cited by the 2nd Defendant/Respondent supports the position of the Applicant as the common question which this Court is being called upon to determine in this suit relates to the ownership of Plot MF 1899, SabonLugbe East Extension Layout, Lugbe, Abuja. He further referred to **Green v. Green (supra).**

On the issue of non-compliance with Order 13 Rule 19(2) of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules, 2018, learned counsel contended that the said provision of the Rules of this Court does not apply where a 3rd party is seeking to be joined in the suit. That same is only applicable where a Claimant/Defendant named in a cause of action seeks to add or substitute a party in a suit, which is not the case in this application.

He referred to **Ayito&ANor v. Calabar Municipal Government &Ors (2016) LPELR-41221 (CA)** on the proper exercise of judicial powers in the consideration of an application for joinder.

Arguing that this application was brought immediately the Applicant became aware of the threat to her interest, he posited that the principle of joinder of 3rd party in a cause of action does not limit the time when such an application should be brought before the Court. He referred to **Oriare v. Government of Western Nigeria &Ors (1971) LPELR-2760 (SC).**

He urged the Court in conclusion, to discountenance the submission of 2ndDefendant and hold that the Applicant has shown that a prima facie case for joinder has been established and thus join the Applicant in this suit.

This case first came up for hearing on the 19th day of July, 2016. After several delays by the parties and their counsel, trial eventually commenced on the 4th day of October, 2017 and proceeded all through to 2nd day of March, 2020 when the 2nd Defendant withdrew his counter claim and rested his case on that of the Claimants, and the case was then adjourned to 29th April, 2020 for the adoption of final written addresses. As the parties were wont to do, they delayed the filing of their processes until the 7th day of July, 2020 when they eventually adopted their respective Final Written Addresses and the case was adjourned to 5th October, 2020 for judgment.

On the said 5th October, 2020 when this Court sat to deliver judgment in the case after the protracted trial, learned counsel for the Applicant herein appeared beforethe Court and informed the Court that he filed the instant application seeking the leave of the Court to join the Applicant as 3rd Defendant, without more. This Court was thus compelled to put its judgment in abeyance to hear and dispose of the said application pending before it. It is not in doubt that joinder of a party to a suit is at the discretion of the Court. Plethora of cases have settled that to grant or refuse such application for joinder, the Court must

be convinced that the presence of such joinder is fundamental to the resolution of the dispute.

The Applicant alleged that she only became aware of the pendency of the substantive suit on the 8th day of September, 2020 when the order of interlocutory injunction made by this Court in the case was allegedly pasted on the gate of her property known as Plot MF 1899, SabonLugbeEast Extension Layout, Abuja, and that she thus immediately took steps to file this application.

The law is trite that an application for joinder can be made at any time, but such application is not granted as a matter of course. The essence of joinder of parties is to ensure that proper parties are before the Court for determining the questions in issue before the Court. Thus in **Panalpina World Transport Ltd v. J.B. Olandeen International &Ors (2010) LPELR-2902 (SC),** the Supreme Court, per Rhodes-Vivor, JSC, held that:

> ***"Joinder is necessary, to ensure that proper parties are before the Court for determining the point in issue. Application for joinder may be made at any time."***

Application for joinder is not made for the fun of it. Considering the stage at which this application was made (on the day of delivery of judgment), and the relief sought in the application; which is joinder simpliciter; this Court is left to conjecture as to the reason(s) for which the Applicant seeks to be joined to this suit, and at this stage. It is however, not the duty of the Courtto engage in conjecture or embark on a voyage of discovery.

Be that as it may, the appellate Courts have in a plethora of cases, set out the rules governing joinder of parties. In stating the rules governing joinder of additional parties, the Supreme

Court, per UdoUdoma, JSC, in **Chief A.O. Uku&Ors v. D.E. Okumagba&Ors (1974) LPELR-3350 (CA),** formulated the following questions as the determinants of whether an application for joinder ought to be granted:

> ***"First, is the cause or matter liable to be defeated by the non-joinder of the third parties as defendants? This, I think means in effect: is it possible for the Court to adjudicate upon the cause of action set up by the Plaintiffs, unless the third parties be added as defendants? Secondly, are the third parties persons who ought to have been joined as defendants in the first instance? Thirdly, and alternatively, are the third parties persons whose presence before the Court as defendants will be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the cause or matter?"***

Applying the above questions to the instant application, I have no difficulty in answering all the questions in the negative. The cause or matter before this Court in this case is not liable to be defeated by the non-joinder of the Applicant. There is also nothing before this Court to suggest that the Applicant is a person who ought to have been joined as a defendant in the first instance. Finally, from the claims set up before this Court in this case, there is nothing that requires the presence of the Applicant as a defendant for the effectual and complete determination of all the questions involved in this matter.

Learned counsel for the 2nd Defendant has also raised a very important point in his written address in support of the 2nd Defendant's counter affidavit, which point the Claimants' counsel lent his support in adumbrating upon his own written

address in support of the Claimants/Respondents' counter affidavit.It is the point that this instant application is incompetent for failing to comply with the mandatory requirement as enshrined in Order 13 Rule 19(2) of the Rules of this Court. The Instant application is an application to add or join the Applicant as 3rd Defendant to this suit, and Order 13 Rule 19 of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules, 2018 specifically deals with application to add or strike out a party. The said Order 13 Rule 19 provides in its sub-rule (2) that an application to add a Claimant or a defendant'SHALL' be accompanied by the statement of claim or defence as the case may be, and all exhibits to be used as well as depositions of witnesses.

It is an elementary rule that the use of the word "shall" in statutes imports a mandatory obligation. The Applicant herein, however failed to comply with this mandatory obligation as she did not accompany her application with the afore-mentioned documents.

The essence of filing a statement of claim and statement of defence depending on who is being joined is to enable the Court peruse the pleadings intended by the co-claimant or Defendant to make sure there is no conflict of interest or any division of opinion between the original Claimant or Defendant and the joinder party.

Therefore the non-compliance with the filing of the statement of claim by the applicant is a fundamental error that has rocked the foundation of this application.

The law is trite that when a statute or law has specified the mode of doing an act or following a step in a proceeding, that mode must be followed. See **MalamAbubakarAbubakar&Ors v. SaiduUsmanNasamu&Ors (2011) LPELR-1831 (SC).**

Rules are not made for the fun of it. They are meant to be followed or obeyed in order to accomplish the end for which they were made. The Applicant's statement of defence could have afforded the Court the opportunity to determine whether the Applicant's interest is the same as or identical with that of the existing Defendants as stipulated by the Supreme Court in the case of **Carrena v. Akinlase (supra)** cited by learned Applicant's counsel. The Applicant has however, not afforded the Court of this opportunity to exercise its discretion by reason of her failure to comply with the provisions of the Rules of Court.

By this token therefore, I agree with the Respondents that this application is incompetent, and incurably so.

But assuming, without conceding that this application is competent, the pertinentquestion to be asked, given the stageat which the application was brought, is; what will be the effect of the grant of this application on the judgment set to be delivered on the day the Applicant suddenly appeared to move the application?

Clearly, the grant of this application will have the effect of keeping the judgment of this Court in abeyance. It follows therefore that this application is by implication, an application for the arrest of the judgment of this Court in the instant case. Such an application has been held to be offensive as it connotes brigandage and lawlessness. Thus in**Nwakudu v. Ibeto (2010) LPELR-4391 (CA),**Ogunwumiju, J.C.A, stated;

> ***"I have always held the view with great humility and the greatest respect to those who came up with the expression "arrest of judgment" that it is a very offensive expression which connotes brigandage and lawlessness- all things anathema to the rule of law.***

The Supreme Court had settled this issue once and for all in NEWSWATCH COMMUNICATIONS V. ATTA supra to the effect that an application to arrest judgment is an improper application and is unknown to our adjectival law and indeed our jurisprudence."

If the Courts find the mere expression "arrest of judgment" to be so offensive; how much more an application that actually has the effect of arresting the judgment of Court?

The instant application, for all intents and purposes, is aimed at arresting the judgment of this Court, notwithstanding the apparel in which it is clothed. It is therefore repugnant to every sense of justice, particularly, given the fact that this case has gone through a protracted four (4) year legal battle and just on the day judgment was finally to be delivered, the Applicant sprung up with this application. The application is therefore, not worthy of the exercise of the discretion of this Court.

The Claimant would not only be prejudiced or embarrassed but also overreached upon an order granting the said application.

From the totality of the foregoing, this application is grossly lacking in merit. The same is accordingly dismissed.

HON. JUSTICE A. O. OTALUKA
25/1/2021.