

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON TUESDAY THE 19TH DAY OF JANUARY, 2021.

BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO -ADEBIYI

SUIT NO. CV/2761/2012

MOTION NO: M/11642/2020

MUDA SANI -----PLAINTIFF/RESPONDENT

(SUING THROUGH HIS LAWFUL ATTORNEY PROFESSOR FEMI OTUBANJO)

AND

- 1. THE HON. MINISTER FEDERAL CAPITAL TERRITORY**
- 2. ALH. MUNTARI IBRAHIM-----DEFENDANTS/RESPONDENT**

AND

- 1. DR. ABDULLAHI A KHALID**
- 2. ALH. TASI HARUNA LAU ----- PARTIES SOUGHT TO BE JOINED**

RULING

The 2nd Defendant/Applicant by a motion on notice dated 31/10/20 with Motion No. M/11642/16 prays the Court for the following;

- 1. An order of this Honourable Court joining DR. ABDULLAHI A. KHALID and ALH. TASI HARUNA LAU (parties sought to be joined in this suit) as Co-Defendants in this suit.**

2. An order of this Honourable Court directing the Plaintiff/Respondent to amend and serve all processes in this suit on DR. ABDULLAHI A KHALID and ALH. TASI HARUNA LAU (parties seeking to be rejoined) as Co-Defendants in this suit.

3. And any other order or further orders that the Honourable Court may deem fit to make in the circumstance of this application.

The grounds for the application as relied upon by the 2nd Defendant/Applicant's Counsel are that:

- a. The ownership of the subject matter, known as Plot No. 1292 Zone BO8 of about 997.02m² with beacons No: PB 3576, PB 3577, PB 3731 and PB 3732 at Jahi District FCT Abuja was passed unto the 4th Defendant by the 3rd Defendant (Alh. Tasiu Haruna Lau) in this suit who also obtained his ownership from the 2nd Defendant (Dr. Abdullahi A. Khalid).
- b. The parties seeking to be so joined were Co-Defendants in this suit before their names were struck out.
- c. It is necessary to Join Alh. Tasiu Haruna Lau and Dr. Abdullahi A Khalid (parties seeking to be joined) as Co-Defendants in this suit for a just determination thereof.

Learned Counsel to the 2nd Defendant/Applicant relied on the 8 paragraph Affidavit filed in support of the application. Learned counsel averred that the 2nd Defendant having been in possession of the res in this suit, approached the Abuja Geographical Information System (AGIS) around February, 2020 for the purpose of payment of ground

rent in respect of the said property. That sequel to the 2nd Defendant visit to AGIS, the party sought to be joint discovered that there is a subsisting suit instituted by the Claimant before FCT High Court Apo, over the said property described and known as Plot No. 1292, Zone BO8 of about 997.02m² with beacons No: PB 3576, PB 3577, PB 3731 and PB 3732 at Jahi District FCT Abuja. That the property was originally allotted to Dr. Abdullahi A. Khalid (party sought to be joined as a Co-Defendant) on the 14/05/1999 by AGIS and he later transferred the said property to Alh. Tasiu Haruna Lau (party sought to be joined as Co-Defendant). That Alh. Tasiu Haruna Lau then transferred the said property to Alh. Muntari Ibrahim vide a Deed of Assignment and a Power of Attorney establishing the said transfer, both of which were dated 16/02/2009. That this matter cannot be determined without the presence of the parties sought to be joined. That the parties are necessary parties and the outcome of the proceeding will affect them. That all parties in this suit will not be prejudiced if this application is granted.

Attached to this application are two (2) exhibit; Deed of Assignment marked Exhibit A and Power of Attorney marked Exhibit B. Annexed also is a written address wherein learned counsel raised a sole issue for determination to wit;

“whether this Honourable Court can grant the reliefs sought by the party sought to be joined/Applicant”.

Counsel submitted that it is trite position of law that any party whose right to any relief is alleged to exist or who's joinder is necessary for the

just determination of a subsisting matter, may be joined as a party to a suit. Counsel submitted that this is the type of circumstance whereof the Honourable Court can make an order suo motu for the parties sought to be joined in this motion to be joined as a Co-Defendant in this suit. He further submitted that the grant of the Application is at the discretion of the Honourable Court. He submitted that the Respondent will not be prejudiced in anyway whatsoever if this application is granted as the case will be fairly determined by the Court on merit and with all facts of the matter laid before it. He urged this Honourable Court to grant the application. Counsel relied on **Order 13 Rule 4 of the F.C.T.High Court (Civil Procedure) Rules 2018** and a number of cases like **Bello v. INEC (2010) 8 NWLR pt. 119 pg.417, para D-H; Chief of Army Staff v. Lawal (2012) 10 NWLR pt. 1307 pg 74; Green v. Green (1987) NWLR Pt. 61, 481 and Odutola v. Kayode (1994) 2 NWLR Pt. 324 @ 16 Para F**. Learned Counsel also filed a reply on points of law to the Claimants counter affidavit and raises two (2) issues for determination to wit;

1. Whether given to the circumstances of this case, the 2nd Defendant can so join any other party in the same manner as he was joined by this Honourable Court.
2. Whether this Honourable Court can grant the application for re-joinder by the 2nd Defendant in this case on merit.

Summarily without reproducing their previous submissions, counsel argued that the parties sought to be joined were parties at some time in this very matter before their names were struck out for lack of address

for service upon the application of the Claimant in this suit hence he submitted that the said application for joinder is harmless, not capable of jeopardizing the Respondent/ all the parties in this suit and absolutely within the discretionary powers of this Honourable Court to so grant in the interest of justice. He further submitted that it is the right of the 2nd Defendant as a joint party in this suit to further join any other person as a third party as it is rightly established that he rests his defence on the acts of the parties sought to be joined therein respectively. He relied on both statutory and case law authorities.

The Claimant filed a six (6) paragraph counter affidavit deposed to by Salome Sunday, a litigation secretary in the law firm of N. J Kalu & Co. solicitors to the Claimant in opposition to the application for rejoinder. The deponent states that the parties seeking to be rejoined were Co-Defendants in this suit before their names were struck out. That before their names were struck out both the Claimant and the 1st Defendant had made all tremendous efforts to enable the said parties sought to be joined to appear before this Honourable Court but they refused and neglected all the necessary processes and hearing notices served on them. That the court having waited for over a period of seven (7) years upon the application of the Claimant, their names were struck out. That they did not appeal to the ruling striking out their names. That the 2nd Defendant was joined by an order of court on the 23rd of September, 2020 upon presenting documents and facts that he is the attorney representing the parties seeking to be joined. That the 2nd Defendant having been duly joined as the attorney and agent of the parties sought to be rejoined, thus the parties sought to be rejoined can no longer be

joined having relinquished their right to their attorney/agent (the 2nd Defendant). That this application for rejoinder was made by a party order than the parties whose names were struck out. That this application be refused and dismissed for the interest of justice with substantial cost for being a ploy to delay this suit.

Attached to the counter affidavit is a written address where counsel raised a sole issue for determination to wit;

“whether the Court can grant the application as constituted, having joined the 2nd Defendant in this case on the pretext of being the Attorney/agent to the parties sought to be joined”.

Learned counsel submitted that the relationship between a Donor and the Donee of power of attorney is such that where a Donee of a power of attorney sues on behalf of the Donor, that makes him (the Donee) an agent of the Donor. He further submitted that what calls for answer is; whether after the 2nd Defendant has been joined as the attorney and representative, there will still be a need to have his Donors joined as parties? He answers in the negative because to him the parties sought to be re-joined have by way of appointing the 2nd Defendant to represent them relinquish their right to perform same act upon which the said appointment was made, he cited **MELWANI V. FIVE STAR IND. LTD (2002) 3 NWLR pt 753 pg 217 at 224 SC**. Counsel also submitted that it is trite law that a party in a suit cannot assume the position of another. He urged the court to exercise its discretion in favour of the Claimant/Respondent by refusing this application in the interest of justice.

Having carefully considered the affidavit evidence and the submission of Counsel and the judicial authorities cited, the court finds that there is only one (1) issue that calls for determination, which is:

“Whether the Applicant is entitled to the reliefs sought”

The reliefs claimed against the Defendant in the substantive Suit are:

1. A declaration that the allocation of Plot 1292 within Jahi District to 2nd Defendant was unlawful, illegal, void and of no effect.
2. A declaration that the allocation made to the Plaintiff supersede the one subsequently allocated to the 2nd Defendant by the 1st Defendant.
3. An order directing the 1st Defendant to reinstate the Plaintiff to Plot 1292 within Jahi District of the Federal Capital Territory forthwith.
4. An order of injunction restraining the DEFENDANTS or their agents, privies, or assign from dealing with any person or persons in respect of the land i.e, Plot 1292 within Jahi District FCT Abuja except persons authorized by the Plaintiff.

By Order 13 Rule 4 of the High Court of the FCT (Civil Procedure) Rules, 2018, more than one person may be joined as Defendants against whom the right to any relief is alleged to exist, whether jointly or severally. The Suit against the Defendant is declaration of title. The question to be determined in this application is “whether the parties sought to be joined are persons who could have been joined in this matter”. For a person to be joined as a party in an action, it must be

shown that the person is entitled to some share/interest in the subject matter or by claim to such share/interest or is likely to be affected by the result of the actions or is a necessary party and or it is just and convenient to join him, as provided in **MAINASARA V. LAWAL & ANOR (2013) LPELR-22328 (CA)**.

The purpose of joiner of parties in an action is to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the cause or matter. The overriding considerations as laid down in **SHENSHUI CONSTRUCTION CO. (NIG) LTD & ANOR V. INTERCONTINENTAL BANK PLC & ORS (2015) LPELR-40893(CA)** are:

1. Whether the issues that call for determination cannot be effectually and completely settled unless the party sought to be joined is made a party.
2. That his interest will be irreparably prejudiced if he is not made a party.

The Supreme Court in **AKPAMGBO-OKADIGBO & ORS V. CHIDI & ORS (2015) LPELR-24561 (SC)** laid down the following considerations in granting joinder of parties;

"It is settled law that a court may, on application, or suo motu order the joinder of a party where:

(i) The party is aggrieved or likely to be aggrieved by the result of the litigation to the extent that he will be directly, legally or financially affected by the result of the litigation.

(ii) To avoid multiplicity of suits arising from the same subject matter or res.

(iii) To enable the court fully, completely and effectually deal with the Suit in order to frustrate or stop a possible future litigation on the subject matter;

(iv) To ensure that the principles of fair hearing under section 36 of the 1999 Constitution as amended and the rules of natural justice particularly the rules of audi alteram partem (hear both sides) are not breached

(v) To avoid loss of jurisdiction by the fact of non-joinder.

I had earlier stated that this matter is a case of declaration of title. A party claiming or seeking for a declaration or interest in land must adduce evidence to support such declaration. In this instant, the court is invited to exercise its discretion, which must be exercised judicially and judiciously. This exercise of discretion is not according to the whims of court, but based on material facts. Thus, it is the duty of the Applicant seeking the exercise of the court's discretion to place before the court facts, supported by credible evidence so as to be entitled to the reliefs sought, **OSUJI VS EKEOCHA (2009) LPELR-2816 (SC)** where it was held thus;

"It must also be borne in mind that for a judicial discretion to be exercised judicially and judiciously it is not exercisable on a mere figment of the person doing so but upon facts and circumstances necessary for the proper exercise of that discretion. Where a Court grants a relief in the exercise of its inherent powers, it can only grant a relief which in the circumstance of the case that party is entitled to".

The Applicant has by their grounds of application and Paragraph 4 (a – i), of their affidavit in support stated facts they rely on that should

assuage this court to grant the application, like that they derived title from Alh. Tasiu Haruna, who in turn derived his title from Dr. Abdullahi A. Khalid (both parties sought to be joined) and not from the 1st Defendant directly as stated by the Claimant in their statement of claim. I have carefully perused the said affidavit along with the stated guidelines to court in consideration of an application as stated in the case of **OkadigboVsChidi (Supra)** and find that it is sufficient to cause this court to exercise that discretion in favour of the Applicant. It is worthy of note, that, it is trite law that party may be joined, if found necessary to be bound by the outcome of the court's decision, as in **Green Vs Green (2001) ALL FWLR (PT. 79) 817 Para E –G.**

The fact that the parties sought to be joined were initially struck out on the application of the Claimant is immaterial. Although the reason furnished by both the Claimant and the 2nd Defendant as to the reason why the parties sought to be joined were initially struck out are different, none of them bothered to attach the record of court to support their assertions to that effect. Respondent submission that because there is a Power of Attorney the 2nd Defendant cannot apply for the Donor to be joined as a party as he is an attorney/agent of the Donor are issues to be decided by the court in the substantive suit. Presently it is the right of all parties concerned to be heard by the court; it is equally the duty of the court to hear all parties and sift through evidence in order to ascertain which evidence would be applicable and which one the court would discard as irrelevant and improbable. It is trite law that both Plaintiff and Defendant in a suit can apply for a party to be

joined either as a Plaintiff or Defendant. The Supreme Court in **B. B. APUGO & SONS LTD V. OHMB (2016) LPELR-40598 (SC)** held that;

"It is settled law that a necessary party to a suit is one who is not only interested in the dispute but one whose presence is essential for the effective and complete determination of the claim before the Court".

Moreover, a judge must at all times prevent undue adherence to technicalities and do substantial justice- see **FIDELITY BANK PLC V. MONYE (2012) ALL FWLR Pt. 631 Pg 1412 @ 1442 paras A-C per Rhodes-Vivour**. Technicalities are a blot upon the administration of the law and the courts have moved away from it. In evidence, it is a well established principle that the duty of the court is to decide the rights of parties and not to punish them for errors, if any, in the conduct of their case than deciding otherwise than in accordance with their rights. Hence where the defendant as in this case believes he has a good defence and has insisted defence can only be perfected by calling certain parties which he feels is essential to the just determination of its case; it will be clearly inequitable for this court to shut him out by technical rules relating to the form in which the defence has been brought. **See SAVANNAH BANK OF NIG PLC V. JATAU KYENTU (1998) 2 NWLR (Pt. 536) @ 59 para B-C** where Edozie JCA (as he then was) held that it will be wrong for the courts to punish parties for their errors occasioned in the conduct of their case, hence where the defendant has a good defence and is willing and ready to defend the action, it will be unjust and inequitable to shut him out by technical rules.

It is my view that shutting out the 2nd Defendant due to the manner and type of witnesses they intend to field would be a grave injustice to the Defendant. The parties sought to be joined in my view are necessary parties for the just determination of this suit and the Claimant has not been able to prove that he will be prejudiced by them being joining as Co-Defendants in this suit and I so hold. From all of these, the court finds that the Applicant has disclosed sufficient reasons to warrant the exercise of that discretion in their favour, accordingly, It is hereby ordered as follows:-

(1) Dr. Abdullahi A. Khalid is hereby joined as 3rd Defendant while Alh. Tasi Haruna Lau is joined as 4th Defendant.

(2) All Parties are hereby directed to file fresh processes to reflect the joinder and serve all processes in this suit on Dr. Abdullahi A. Khalid and Alh. Tasi Haruna Lau respectively.

Parties: Absent

Appearances: P. H. Malum Esq. for the 2nd Defendant. All other parties not represented.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI

JUDGE

19TH JANUARY, 2021