

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 : SUIT NO: CV/224/18
DATE: : MONDAY 15TH FEBRUARY, 2021

BETWEEN:

COLVI LIMITED.....PLAINTIFF/RESPONDENT

AND

1.ECOBANK NIG. LTD.1ST DEFENDANT/APPLICANT

2.ADEYEMI PITAN ESQ....2ND DEFENDANT/RESPONDENT

RULING

This Ruling is at the instance of the 1st Defendant/Applicant who approached this Honourable Court for the following Orders:-

1. An Order of this Honourable Court granting leave to the Counter Claimant to join Devyani International (Nig.) Limited, a Franchisee of the (Kentucky Fried Chicken in Nigeria) as 2nd Defendant to the Counter claim.
2. An Order of this Honourable Court granting leave to the 1st Defendant/Counter Claimant/Applicant to amend her Counter Claim in terms of the proposed amended Counter Claim attached to this application as Exhibit 'KFC3'.

3. And for such further or other Orders as this Honourable Court may deem fit to make in the circumstances.

In support of the application is an affidavit of 16 paragraphs deposed to by One MirianOsene a Legal Practitioner in the Law Office of the Applicant.

The gist of the application as distilled from the affidavit in support is that the property in dispute was rented by the Plaintiff since 2012 to serve the building that will house all its business operation in Abuja instead of using the property for the purpose specified, the Plaintiff rented the property to Devyani International (Nig.) Ltd, party sought to be joined in brazen violation of the agreement of parties.

That the property subject matter of this suit known and described as Plot 112, Aminu Kano Crescent Wuse 2, Abuja and all the appurtenance currently houses the outlets of party sought to be joined.

It is the averment of the Applicant that Notice to Quit and Notice of Owner's Intention to recover possession were served on the Plaintiff/Respondent and on the party sought to be joined.

That it will be in the interest of justice to grant this application.

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

1. Whether Devyani International (Nig.) Ltd. Should be joined as 2nd Defendant to the Counter Claim.

2. Whether or not in the circumstances of this case the Honourable Court has the powers or vires to grant amendment of the Counter Claim.

On issue one, *whether Devyani International (Nig.) Ltd. Should be joined as 2nd Defendant to the Counter Claim.*

It is the submission of the Learned Counsel that party sought to be joined is a necessary parties and who is interested in matter and that failure to join them will definitely defeat the essence of justice.

Learned Counsel submit further that the affidavit in support of this application clearly revealed that party sought to be joined is in occupation of the subject matter of litigation and therefore necessary party in

this suit. ***CARENA VS AKINSALE (2008) 14 NWLR (Pt. 1107) 262.***

On issue two, ***whether or not in the circumstances of this case, the Honourable Court has the powers or vires to grant amendment of the Counter Claim.***

Learned counsel submit that Order 13(1) of the Rules of this Honourable Court empowers the Court to exercise its discretion on whether to grant or refuse application of this nature.

And the Court pursuant to its Rules has the inherent power to Order for amendment of process before it. ***BOUWE VS ERIJO (No. 1) (2005)12 WRN 59 CA.***

Court was finally urged to grant this application in the overriding interest of justice.

Upon service, the Plaintiff/Respondent filed a reply on point of law wherein two issues were formulated for determination to wit;

- 1. Whether the evidence before the court in respect of this application is not hearsay evidence and inadmissible in law.*
- 2. Whether the court can rely on the evidence before it to grant this application.*

Learned Counsel argued both issues 1 and 2 together and contended that Section 38 of the Evidence Act 2011 made Hearsay Evidence inadmissible except as provided in the part or by or under any other provision of Evidence Act or any other Act.

Counsel maintained that the affidavit in support of the application under consideration was deposed to by a Counsel in the law firm of the Applicant and

the Deponent deposed to facts that happened before the commencement of this case and therefore Hearsay. ***MUSA UMARY KASA VS THE STATE (1994) LPELR 1671 (SC).***

Learned Counsel further stated the fact that there was no affidavit before the Court that would warrant the grant of this application as the affidavit is self-defeating. ***CHIEF STEPHEN NWANKWO OKONKWO VS DR. PATRICK I. OKOLO (2016) LPELR 40931 (CA).***

Court was urged to dismiss the application in the interest of justice.

Court:-I have gone through the affidavit in support of the reliefs herein contained on the face of the application in view, on one hand, and the counter

affidavit in opposition to the application on the other hand.

Having regard to the circumstances of this suit, it appears to me that the question to be determined is *whether the parties sought 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 joinder of persons or parties in one action as Defendants is clearly permissible under the provisions of Order 13 Rule 3(1) of the High Court of the Federal Capital Territory Abuja (Civil Procedure Rules) 2018.

There are however two conditions that must be met for such joinder to be made, to wit:-

- i. Is the cause or matter liable to be defeated by the non-joinder of the third party as a Defendant?
- ii. 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 adjudicate upon and settle all the questions involved in the cause or matter. See ***AJAYI V. JOLAYEMI (2001) 10 NWLR (Pt.722) (PP. 29-30, PARAS. F-A)*** and ***CROSS RIVER STATE NEWSPAPERS CORPORATION VS ONI & ORS (1995) 1 NWLR (Pt. 371) (P. 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-joinder 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: is Devyani International (Nig.) Limited necessary parties in this suit so much that its absent will effects the adjudication of the matter before this Court?

It is the averment of Applicants that the property subject matter of litigation was rented by the Plaintiff to the party sought to be joined since 2012. In view of that, learned counsel for the Applicants submitted that the said Devyani International (Nig.) Limited ought to be joined as parties since the outcome of this suit will definitely affect its proprietary interest in the said subject matter. See paragraphs 4, 5, 6, 7, 8 of Applicants' affidavit in support of motion on notice for joinder.

In their opposition, Respondent delved on the affidavit in support of the Motion as hearsay and therefore same be struck-out.

It is instructive to state here that, hearsay statement means oral or written made otherwise than by a witness in a proceeding; or contained or recorded in

a book, document or any record whatever, proof of which is not admissible under any provision of this Act, which is tendered in evidence for the purpose of proving the truth of the matter stated in it.

Hearsay evidence is all evidence which does not derive its value from the credit given to the witness himself, but which rests also in part, on the veracity and competence of some other person. A piece of evidence is hearsay if it is evidence of the contents of a statement made by a witness who himself not called to testify.

***JUDICIAL SERVICE COMMITTEE VS OMO
(1990) 6 NWLR (Pt. 157) 407.***

Quitnotice and Notice of owner's intention to apply to court to recover possession were both served on the party sought to be joined by the

Plaintiff/Respondent, thereby underscoring the fact that the said party i.e. Devyani International (Nig.) Ltd is a necessary party.

The only reason which makes it necessary to make a person a party to an action, is that he should be bound by the result of the action and the questions to be settled. If the subject matter was actually rented to the parties to be joined, I think these parties are necessary parties in the determination of this suit.

Consequently, application of learned counsel for the Applicant seeking to join Devyani International (Nig.) Limited as 2nd Defendant in this suit is hereby and accordingly granted.

Having granted Relief 1, Relief 2 is naturally grantable. It is hereby granted.

Consequently, an Order of this Honourable Court granting leave to the 1st Defendant/Counter Claimant/Applicant to amend her Counter Claim in terms of the proposed amended Counter Claim attached to this application as Exhibit ‘KFC3’ is **hereby granted.**

Justice Y. Halilu
Hon. Judge
15th February, 2021

APPEARANCES

Oloruntoba Elisha – for the Claimant.

AfamOsigwe, SAN. with S. Abbas for the 1st Defendant.

2nd Defendant not in court and not represented.