

IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA

ON TUESDAY, 16TH DAY OF FEBRUARY, 2021

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/285/2016

MOTION NO. M/8485/2020

BETWEEN

OI. NOTHING PASS GOD GLOBAL
INTEGRATED LIMITED

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PLAINTIFF

AND

1. HON. JOSHUA CHINEDU OBIKA
[Chairman AMAC Motor Parks &
Transport Task Force]
2. THE CHAIRMAN, ABUJA MUNICIPAL
AREA COUNCIL

}

DEFENDANTS

AND

ABUJA MUNICIPAL AREA COUNCIL PARTY SEEKING TO BE
[AMAC]

}

JOINED/APPLICANT

RULING

On 19/2/2020, Abuja Municipal Area Council [AMAC] filed *Motion No. M/5476/2020* for an order of the Court joining it as the 3rd defendant in this suit. The motion was filed by Umaru Yunusa Esq., who is also the counsel for the 2nd defendant i.e. Chairman of Abuja Municipal Area Council. When the motion came up for hearing on 6/7/2020, the applicant and its

counsel were absent without any reason. On the application of Faith Nkennor Esq. of counsel, who appeared for the 1st defendant, the motion was struck out.

This Ruling is on *Motion No. M/8485/2020* filed on 9/7/2020 by Abuja Municipal Area Council [AMAC] seeking the following orders:

1. An order of this Honourable Court:

a) Setting aside the entire proceedings of this Honourable Court of 6th day of July, 2020 for breach of 2nd defendant's right to fair hearing and restoring *Motion No. M/5476/2020*;

Alternatively:

b) Joining Abuja Municipal Area Council/Applicant in *Suit No. FCT/HC/CV/285/2016* as the 3rd defendant in the suit in view of the nature and circumstances of the case and directing that all processes in this suit shall be served on the Applicant and shall henceforth reflect the name of the Applicant as the 3rd defendant in this case.

2. An order of this Honourable Court dismissing or striking out *Suit No. FCT/HC/CV/285/2016* for being academic.

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

The grounds upon which the application is brought are:

1. The 2nd defendant was not aware that this case was fixed for 6th July, 2020 but proceedings of Court were held and *Motion No. M/5476/2020* was struck out.
2. The 2nd defendant's right to fair hearing was breached.
3. The reliefs sought by the plaintiff in this suit are against the 1st defendant as the chairman of the AMAC Motor Parks and Transport Task Force.
4. The AMAC Motor Parks and Transport Task Force was disbanded in 2016; it ceased to exist and the 1st defendant ceased to be chairman of any task force in AMAC.
5. There is need to join ABUJA MUNICIPAL AREA COUNCIL as a defendant in this suit as being the body that is at the centre, and that will be directly affected one way or the other with the decision of this Honourable Court regarding the revenue/tax involved in this suit.
6. The presence of ABUJA MUNICIPAL AREA COUNCIL is necessary for effectual and complete determination of the subject matter before the Court.
7. The Rules of this Honourable Court require that the Applicant obtains the leave of Court to join ABUJA MUNICIPAL AREA COUNCIL as a party and to file its statement of claim [*sic*]before taking further steps in the matter.

M. D. Ayodele, a counsel in the law firm of Yunusa, Umaru & Co., filed a 6-paragraph affidavit in support of the application. UmaruYunusaEsq. filed a

written address. In opposition, Mr. Ugochukwu Ikedimma, the transport manager of the plaintiff, filed a 15-paragraph counter affidavit on 10/11/2020 along with the written address of B. O. Aghaegbuna Esq. On 7/12/2020, counsel for the parties adopted their respective processes.

The applicant's first prayer is for an order to set aside the proceedings of the Court on 6/7/2020 when its motion for joinder filed on 19/2/2020 was struck out; and to restore the said motion. To my mind, it is unnecessary to consider this prayer in view of the alternative prayer for the applicant to be joined as the 3rd defendant in the suit. Since the alternative prayer for joinder will be determined by the Court, the first prayer has become academic and no longer has any utilitarian value.

The applicant's second prayer is for an order dismissing or striking out the suit for being academic. As rightly posited by learned counsel for the applicant, a suit is considered to be academic where it is merely theoretical or hypothetical; or where there is no live matter to be adjudicated upon; or where it is of no practical utilitarian value to the plaintiff even if the judgment in the suit is given in his favour. See the case of **Ardo v. INEC [2017] LPELR-41919 [SC]**. The position of the law is that courts do not adjudicate in suits that have become academic.

In the instant case, it is my view that it is absurd and strange for a person who is not a party to the suit - such as the applicant seeking to be joined to the suit - to pray the Court to dismiss or to strike out the suit. However, I am of the considered opinion that from the averments in the statement of

claim, plaintiff's suit, which complains of arbitrary fees or levies demanded by the 1st defendant [who is described as the agent of the 2nd defendant in respect of Motor Park Operation Permit] is not academic.

In the light of the foregoing, the issue for determination arising from the applicant's prayer for joinder is whether Abuja Municipal Area Council [the applicant] is a necessary party to be joined as a defendant in this suit.

In the affidavit in support of the motion, M. D. Ayodele stated that:

- i. The plaintiff's reliefs in this suit directly affect or concern the motor park revenue or tax of the applicant pursuant to its mandate as enshrined in the Fourth Schedule to the 1999 Constitution [as amended].
- ii. The applicant is the sole beneficiary of the tax and revenue in issue before the Court. The applicant as a body corporate has power to sue and be sued and is different from the 1st& 2nd defendants.
- iii. The applicant, being the person that ought to be the source of authority of the 1st& 2nd defendants, is likely to be directly, legally and financially affected by the decision of the Court in this matter.
- iv. The applicant's presence in this suit will afford the Court the opportunity to completely and effectually deal with the issues.

In the counter affidavit on the other hand, Ugochukwu Ikedimma stated that: [i] the 2nd defendant is aware that this suit is against him as a person and his employee [the 1st defendant]; [ii] the suit has nothing to do with

Abuja Municipal Area Council; and [iii] the application is “a ploy to nullify and render nugatory” the plaintiff’s suit and also to continue to waste the precious time of the Court.

Learned counsel for the applicant relied on Order 13 rule 18 sub-rules [3] & [5] of the Rules of the Court, 2018 which provide:

[3]. *The court may order that the names of any party who ought to have been joined or whose presence before the court is necessary to effectually and completely adjudicate upon and settle the questions involved in the proceedings be added.*

[5]. *Every party whose name is added as defendant shall be served with the originating processes or notice in the manner prescribed in this Rules or in such manner as may be prescribed by the court and the proceedings against such person shall be deemed to have begun on the service of such originating processes or notice.*

The applicant’s counsel also referred to the case of **Akpamgbo-Okadigbo&Ors. v. Chidi&Ors. [2015] LPELR-24564 [SC]** on the principles guiding the grant of an application for joinder of parties to a suit, which include that a court may order the joinder of a party to a suit: [i]where the party is 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; and [ii] where it is 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. Umaru Yunusa Esq. then submitted that the

revenue or tax which is the subject matter in this case directly affects or concerns the applicant; and the applicant will be affected by the result of the litigation. He concluded that the applicant is a necessary party in this matter.

The viewpoint of learned counsel for the plaintiff is that the power of the Court to join a party to a suit as provided under Order 13 rule 18[3] of the Rules of the Court, 2018 is discretionary. The power can only be exercised if the Court is satisfied that the presence of the party is necessary to effectually and effectively adjudicate on a matter before it. Learned counsel for the plaintiff also pointed out that the 2nd defendant has failed to comply with the order of the Court made in its ruling delivered on 20/1/2020 to file his statement of defence. He stressed that orders of a court must be obeyed. B. O. Aghaegbuna Esq. concluded that since the 2nd defendant has failed to comply with the order of the Court, the application of the 2nd defendant and the applicant should not be granted.

Now, arising from the submission of the plaintiff's counsel, the point must be made that the 2nd defendant is not the applicant for joinder; the 2nd defendant is different from the applicant even though both are represented by the same counsel. Therefore, the fact that the 2nd defendant has not filed his statement of defence will not affect the applicant's motion for joinder.

There are questions which a court is required to consider in an application to join a person as a defendant in a suit. These questions, which are set out

in the cases of Green v. Green [1987] 3 NWLR [Pt. 61] 480 and Bello v. INEC & Ors. [2010] LPELR-767 [SC], are:

- i. Is it possible for the court to adjudicate upon the cause of action set up by the plaintiff unless the person is added as a defendant?
- ii. Is the person someone who ought to have been joined as a defendant in the first instance?
- iii. Is the cause or matter liable to be defeated for non-joinder?
- iv. Is the third party a person whose presence before the court as a defendant is necessary in order to enable the court effectually and completely adjudicate or settle all the questions involved in the cause or matter?

In order to determine whether the applicant is a necessary party in this action in the light of the above questions, it is necessary to refer to the plaintiff's averments in the statement of claim. In paragraphs 3-11 thereof, it is averred that:

- i. The plaintiff is the rightful owner of the corner shops located at No. 75 Hospital Road, Nyanya, Abuja where it is using as its booking/loading points. Plaintiff has been there for over 8 years without interference/disturbance by anybody. The plaintiff has been paying its levies like operation permit, ground rent, tenement rate, sign post, shop rate, etc. to AMAC.

- ii. On 31/10/2016, the plaintiff received a letter dated 20/10/2016 titled: *“Motor Park Operational Permit Notice”* signed by the 1st defendant as the chairman of AMAC Motor and Transport Taskforce.
- iii. The letter requested the plaintiff to obtain an Application Form for Operation Permit at AMAC Secretariat Annex located at Plot 1765, Apo District, Abuja.
- iv. Plaintiff’s staff [Mr.UgochukwuIkedimma] met the 1st defendant who told him that the Application Form is for the sum of N200,000 non-refundable deposit payable to AMAC account No. 0023076643 at Guaranty Trust Bank. The 1st defendant also told the plaintiff’s said staff that after processing the Application Form, the plaintiff might be required to pay an amount of about N2 million upward for operational permit.
- v. The plaintiff became suspicious of the payments, more so since officers of AMAC have been collecting N100,000 yearly as payment for operational permit from it.

From these averments, I agree with UmaruYunusaEsq. that the payment forAMAC operational permit, which is the subject matter of this suit directly affects or concerns the applicant. Mr.UmaruYunusa is right that the functions of a Local Government Council [like the applicant] in the Fourth Schedule to the 1999 Constitution [as amended] include: “[e] *establishment, maintenance and regulation of ... motor parks ...*” Also, Part III of the Schedule to the Taxes and Levies [Approved List for Collection] Act, Cap. T2, Laws of the Federation of Nigeria, 2004 provides for taxes and

levies to be collected by local governments. Item 9 thereof is “*Motor park levies.*” Thus, the subject matter of this suit affects/concerns the applicant and the decision of the Court in the suit will affect the applicant.

Flowing from the foregoing, I hold that the answer to the first question enunciated in **Green v. Green [supra]** and **Bello v. INEC &Ors. [supra]** is in the negative; while the answers to the other three questions are in the affirmative. For emphasis, I hold that: [i] it is not possible for the Court to adjudicate upon the plaintiff’s cause of action in the absence of AMAC; [ii] AMAC is a person who ought to be joined as a defendant in the first instance; [iii] the plaintiff’s cause of action is liable to be defeated for non-joinder of AMAC; and [iv] the presence of AMAC is necessary for the effectual and complete determination of all the issues and questions in this action.

In conclusion, the application for joinder has merit and is granted. The decision of the Court is that Abuja Municipal Area Council [AMAC] is a necessary party to be joined as a defendant in this suit. It is ordered as follows:

1. The applicant be and is hereby joined as the 3rd defendant in this suit.
2. The plaintiff is directed to amend its processes to reflect the joinder of Abuja Municipal Area Council [AMAC] as the 3rd defendant in the suit. The amended processes shall be filed and served on all the defendants within 14 days from today.

3. The 1st& 2nd defendants are directed to file and serve their amended processes within 14 days from the date of service of the plaintiff's amended processes.
4. The 3rd defendant is directed to file its processes within 14 days from the date of service of the plaintiff's amended processes.

HON. JUSTICE S. C. ORJI
(JUDGE)

Appearance of Counsel:

1. B. O. Aghaegbuna Esq. for the plaintiff/respondent.
2. A. R. Ajibade Esq. for the 2nd defendant; and for the parties seeking to be joined/applicant.