

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT GWAGWALADA**

**THIS WEDNESDAY, THE 14<sup>TH</sup> DAY OF APRIL, 2021**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**SUIT NO: CV/1582/2020  
MOTION NO: M/11957/2020**

**BETWEEN:**

**1. MRS. MABEL NDIFE  
2. MR. ULOKO SIMON AGBESI** } **.... CLAIMANTS/RESPONDENTS**

**AND**

**MR. ALOZIE EXCEL CHIEDOZIE ..... DEFENDANT/APPLICANT**

**AND**

**1. MRS. LORETTA JOHNSON  
2. JOKA SURVEYS NIGERIA LTD  
3. FEDERAL CAPITAL DEVELOPMENT  
AUTHORITY (FCDA)** } **.... PARTIES SOUGHT  
TO BE JOINED**

**RULING**

By a motion on notice dated 16<sup>th</sup> November, 2020 and filed same date in the Court's Registry, the Defendant/Applicant is seeking for the following Reliefs:

- 1. Leave of this Honourable Court joining MRS. LORETTA JOHNSON, JOKA SURVEYS NIGERIA LTD AND FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA) as Defendants in this case.**
- 2. AN ORDER of this Honourable Court joining MRS LORETTA JOHNSON, JOKA SURVEYS NIGERIA LTD AND FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA) defendants in this case.**
- 3. And for such further orders as this Honourable Court may deem fit to make in the circumstance.**

The grounds upon which this application is brought as contained in this application are as follows:

- 1. The claimant in paragraphs 25, 32, 36, 37, 38 and 39 of his statement of claim made several mention of the names of the persons sought to be joined.**
- 2. The persons sought to be joined are necessary parties whose presence in the suit will bring to fur the true facts with which the court will arrive at the just determination of this case.**
- 3. There is need for the three parties sought to be joined to explain to this court their various roles in the award of title of the subject matter of dispute in the claim.**
- 4. The presence of parties sought to be joined will properly lay to rest the salient issue of title of the subject matter of dispute (the res before this court).**

The application is supported by a 4 paragraphs affidavit with a written address wherein one sole issue was raised as arising for determination thus:

**“Whether having regards to the surrounding circumstances the defendant/applicant is entitled to the reliefs set out on the motion paper.”**

Learned counsel to the Applicant submitted that any person may be joined as defendant against whom the right to any relief is alleged to exist whether jointly, severally or in the alternative. The provision of **Order 13 Rules 4, 7, 19 and 21 of the Rules of Court** was referred to. He submitted further that the court has a duty under our laws to first consider whether the party sought to be joined is a necessary party. He relied on the case of **Yakubu V Government of Kogi state (1995) 8 NWLR (pt.414) pg. 386 at 402**. He submitted also that the parties sought to be joined, **Loretta Johnson, Joka Surveys Nig. Ltd and Federal Capital Development Authority (FCDA)** are necessary parties that ought to be joined before this court can decide the claims of the claimant. He submitted further that the court can at any stage of the proceedings order that such person be made a party in the suit. He referred to the case of **Jadesimi V Okotie-Eboh. In Re-Lessy (1989) 4 NWLR (pt.113) 113 at 125**.

Applicant finally submitted that the three parties sought to be joined definitely require attendance to answer to the claim as the outcome will greatly affect all of them in the long run. He referred to the case of **Abubakar Dudu Motors & Anor V. Kachia (2016) LPELR 40218 CA**.

At the hearing, **Okwudili Abanum** of counsel for the Applicant, relied on all the paragraphs of the supporting affidavit. He adopted the submissions contained in the written address and urged the court to grant the application.

In opposition, the plaintiffs/respondents filed a written address in which one issue was raised as arising for determination thus:

**i. Whether an order for joinder as Defendant(s) can be made against person(s) whom there is no claim.**

The Respondents submitted that no valid order can be made for joinder as Defendant(s) against a person(s) whom there is no claim. The case of **Chief Emmanuel Bello V Independent Electoral Commission & 2 ors (2010) LPELR – SC** was cited.

It was submitted further that it is the prerogative of the claimant to determine the defendant to a suit and all the court need to do is to examine the claim of the claimant before the court. See **Chief Emmanuel Bello V Independent Electoral Commission (supra)**.

The Respondents further submitted also that the defendant/applicant has not placed any material before court to allow for the grant of the application. That on the facts, the claimants found the defendant trespassing on the subject matter of litigation and they have exercised their right to sue him. That it does not lie with the defendant/applicant to choose who the claimants should sue. The right to choose who to sue clearly and solidly rest on the claimants and they have so exercised same. The case of **A.G. Rivers State V Akwa Ibom State (2011) 3 MUSC 1** was referred to.

At the hearing, **O. Ogundiran** of counsel for the claimants/respondents adopted the submissions in the written address in urging the court to dismiss the application with substantial cost.

I have given an insightful consideration to the processes filed on both sides of the aisle and the oral adumbration made by respective learned counsel. The simple issue to be resolved is whether the parties sought to be joined are necessary parties within the contemplation of the Rules. It is an issue to be resolved on a settled legal template.

It is settled principle of general application that a necessary party to a proceedings is a party whose presence and participation in the proceedings is necessary or essential for the effective and complete determination of the claim before the court. See **In-Re Mogaji (1986) 1 N.W.L.R (pt.19) 579**.

As a logical corollary, a necessary party is a party who will be affected by the decision of a court. His right will be affected either positively or negatively by the outcome of the case. A court of law qua Justice will certainly not make an order or give a Judgment that will affect the interest or right of a party that is not before it. And the only reason which makes it necessary to make a person a party to an action is that he should be bound by the outcome of the matter. There must be a question in the action which cannot be effectually and completely settled unless he is a party. See **Green V Green (2001) 45 WRN 90; Tafida V Bafarawa&ors (1999) 4 N.W.L.R (pt.597) 70 at 83**.

Having provided the above legal template, let us look at the claims of plaintiffs to determine whether the party seeking to be joined is one likely to be affected by the extant proceedings. I prefer to take my bearing from the statement of claim.

I have carefully read and scrutinized the 45 paragraphs statement of claim and most importantly the reliefs sought. In so far as can be evinced from the pleadings and reliefs sought, the case is specifically against the **defendant** on record for declaration of title over a plot of land situate at Kuje, FCT, trespass, injunction, special and general damages, interest and cost of action. These are precisely streamlined or defined issues to be determined on fairly settled principles. The determination of these issues can however only be made against the person the plaintiff has made claims against. The defendant is in no legal position to seek to expand the remit of the grievance of plaintiff to include anyone, plaintiff has no claims against or to seek to force plaintiff to proceed against anybody especially those they have not made any claims against.

On the pleadings, there is clearly no defined dispute between plaintiff and parties defendants seeks to join or bring into this case and the plaintiff has not made any claims against them providing any basis, legal or factual to join them to this action. Joinder is not granted as a matter of course or routine or on whimsical grounds or no grounds at all. It is not also granted on the mere say so of a defendant particularly in the absence of materials to situate the joinder as in this case.

The point must be made that a party is at liberty to proceed against whomever he wishes within and or as guided by the applicable Rules. He cannot be compelled to do otherwise. It is therefore his claim and claim alone that denotes the cause of action.

In law, a cause of action is defined as the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements:

- a. The wrongful act of the Defendant which gave the plaintiff his cause of complaint, and
- b. The consequent damage. See **Akibu V Oduntan (2000) 13 N.W.L.R (pt.685) 446 and 463.**

As already alluded to, the fact or combination of facts on which the plaintiffs have premised their right to sue defendant was clearly defined. The alleged wrongful acts of trespass made against defendant and the damages plaintiffs suffered have

clearly been set out in the statement of claim and within the context of those pleaded facts, the parties sought to be joined are certainly not parties that will be affected by the outcome one way or the other, neither are they parties whose presence is necessary for the effective and complete adjudication of the key issues raised by the present enquiry.

It is really difficult to situate any factual and or legal template to join the parties to this action as contended by defendant. The fact that the parties mentioned may have relevant evidence to give on the contested assertions does not make them necessary parties. Also, the mere fact that they were mentioned in the statement of claim does not automatically make them necessary parties.

I therefore consider it apposite to call attention to the following instructive decision of the Supreme Court on the precise parameters for joinder. In **Peenok Investments Ltd V Hotel Presidential Ltd (1982) 12 SC (Reprint) 1**, the Apex Court adopted the observations of Devlin .J. in **Amon V Raphael Truck & Sons Ltd (1956) 1 All ER 273** which I find relevant as follows:

**“... What makes a person necessary party? It is not, of course, merely that he has a relevant evidence to give on some of the questions involved; that would make him a necessary witness. It is not merely that he has an interest in the correct solutions of some questions involved and has thought of some relevant arguments to advance and is afraid that the existing parties may not advance them adequately. That would mean that on the consideration of a clause in a common form contract, many parties would claim to be heard and if there were power to admit any, there is no principle of discretion by which some would be admitted and others refused. The court might often think it convenient or desirable that some of such persons should be heard so that the court should be sure that it had found a complete answer, but no one would suggest that it is necessary to hear them for that purpose. 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 and the question to be settled therefore must be a question in the action which cannot be effectually and completely settled unless he is a party.”**

The above observations are very pertinent in this case.

As stated earlier and borne out clearly by the decision of the Apex Court above, one of the fundamental reasons for joinder or what makes it necessary to join a party to an action is that he should be bound by the result and the question to be settled in the action must be such that cannot be effectually and completely resolved unless he is made a party. For him to be so bound, he must be aware of the case against him and given every reasonable opportunity to react. Where no case or complaint is however made against a party, it really has no business in such a case.

That is the situation in this case. The parties defendant therefore seeks to join in this case are clearly not necessary parties. I call on parties to now act post haste to see that this fairly straightforward matter is resolved without any further delay. The Application however completely lacks merit and it is accordingly dismissed.

.....  
**Hon. Justice A. I. Kutigi**

**Appearances:**

- 1. O. Ogundiran Esq., for the Plaintiffs/Respondents.**
- 2. Okwudili Abanum Esq., for the Defendant/Applicant.**