

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT HIGH COURT 28 GUDU – ABUJA**  
**DELIVERED ON TUESDAY THE 13<sup>TH</sup> DAY OF JULY, 2021**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE.R. OSHO-ADEBIYI**  
**SUIT NO. CV/1693/2020**  
**MOTION NO:M/654/2021**

**BETWEEN:**

**BARTHOLOMEW OKAFOR-ONYILO ----- CLAIMANT**

**AND**

- 1. THE SUN PUBLISHING LIMITED**
- 2. VANGUARD MEDIA LIMITED----- DEFENDANTS**
- 3. MR. EMEKA ONYEKA**

**RULING**

Learned Counsel for the 3<sup>rd</sup> Defendant filed a preliminary objection dated the 16<sup>th</sup> day of December, 2020 under the inherent jurisdiction of this Court seeking for;

1. AN ORDER of this Honourable Court striking out the name of the 3<sup>rd</sup> Defendant as a party herein for mis-joinder.
2. AN ORDER of this Court awarding the sum of N500, 000 (Five Hundred thousand naira) only as cost against the Claimant in favour of the 3<sup>rd</sup> Defendant being Punitive cost for misjoinder.

**GROUND FOR THE APPLICATION**

TAKE FURTHER NOTICE that the ground for this application is that the Defendant having being served with all relevant processes in this suit is an agent of Nigerian Bar Association (NBA) and at such is not the proper party to be joined.

3. AND FOR SUCH FURTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstance

In support of the application is a 20-paragraph affidavit, deposed to by Mr. Emeka Onyeaka the 3<sup>rd</sup> defendant, annexures and a written address. The deponent averred that the said NBA Disciplinary Committee has been in existence since 2014 with Chief Tawo E. Tawo SAN, as the Chairman and himself as the Secretary with other noble members. That he (3<sup>rd</sup> Defendant) is an agent of a known Principal Nigerian Bar Association (NBA), and have served three (3) dispensations of leaderships with good track records and accolades. That they act on her clear instructions. That on the 16<sup>th</sup> day of November 2020, his attention was drawn to some court processes pasted at the Nigerian Bar Association (NBA) Secretariat Abuja, vide an Ex parte Order of Court himself as the 3<sup>rd</sup> Defendant. That there is a petition before their Panel addressed as Samuel Udentia Esq Vs Bath Okafor onyilo & 2 Ors (PN/320/2019). That it is always the practice and custom of their committee from inception till date to invite Parties to appear before them by issuing bearing notices to them through reputable courier companies. That the Claimant in this suit and the Petitioner in the Petition were duly served with a hearing notice dated the 19<sup>th</sup> day of March 2020, same was routed through the office of the immediate past General Secretary of Nigerian Bar Association (NBA). That the Panel, in years have handled hundreds of petitions brought before it and has not

heard of such media frenzy and saga nor stories of illtreatment meted to any Party before it. That shortly before the hearing date by the Panel, he began to receive calls frantically and insistently from his Family, friends, colleagues and Clients about a certain publication in some online and print media about hearing notice he signed and issued to both the Petitioner and Respondent. That he demanded for copies of the said publication and they were forwarded to him via his WhatsApp number, of which he immediately complained of the media attack on the Committee to the Chairman transmitting copies of the same publications to him. That the hearing proper as contained in the hearing notice was rendered impossible due to the global lockdown caused by the outbreak of the covid-19 pandemic. That despite the above, the Committee sat in strict compliance with Nigerian Bar Association (NBA) set Rules regulating hearing of petitions before it and swiftly handled this media attack which would have been discussed with the Petitioner and Respondents but for their absence. That upon the conclusion of the committee's deliberation, the Panel condemned in very strong terms the issue of this media frenzy, which is aptly captured in the Panels' report, dated the 25<sup>th</sup> day of August 2020, particularly at pages 3-5 respectively. That neither the Nigerian Bar Association (NBA), the Panel nor himself is in complicity with this medias' act, but presumably a warfare orchestrated by the parties to the petition. That the 3<sup>rd</sup> Defendant ought not to be a party to this suit, seeing that he acted for a known Principal. That the Claimant will not be prejudiced in any way if this application is granted.

Learned Counsel to the 3<sup>rd</sup> Defendant adopted the said Written Address. He raised one issue for determination which is;

“whether the 3<sup>rd</sup> Defendant is a proper party in this suit”.

Summarily learned counsel submitted that where proper parties are not before the Court, the Court will be lacking in competence and the case is liable to be struck out. He cited **Black’s law Dictionary 6<sup>th</sup> Edition, @ page 1216** and **OYEYEMI V. OWOEYE (2017) 12 NWLR Pt. 1580, pg 364 @ 416 para C-D**. Counsel submitted that his inclusion in this suit is improper as he is merely an agent of a known Principal Nigerian Bar Association (NBA). Counsel submitted that it is trite law that where an agent acts for a disclosed or a known Principal; in the event that a breach or a civil wrong occurs while in the scope of the agents authorized duty, it is the Principal who will be answerable in litigation. He cited **AJAYI V JOLAYEMI (2001)10 NWLR, part 722, page 516 SC @ 537-538, para G-H. PAR OGUNDARE JSC; AKINDELE V ABIODUN (2009) 11 NWLR PT (1152) 356 CA and SAVANNAH BANK (NIG) LTD V S.I.O. CORP (2001)1 NWLR (PT 693)194**. In conclusion, counsel submitted that he is not a proper party in this suit but his Principal and therefore prays this Honourable Court to discountenance the Claimants claim against the 3<sup>rd</sup> Defendant and strike out his name as a defendant in this suit.

The 3<sup>rd</sup> Defendant also filed a reply on points of law to the counter affidavit in opposition. Learned Counsel submitted that it is unimaginably awkward for a legal practitioner to act as both a counsel and a witness in the same matter. He referred the court to the case of **Boniface Anyika and Co.(Nig.) Ltd v. Uzor (2006) 15 N WLR Pt.1003** and prayed the Court to strike out the Counter-affidavit for being wholly and entirely incompetent. Counsel submitted that the law is as clear as day on the fact that

although a non-joinder or a misjoinder is not necessarily fatal to judicial proceedings, where a party has no business being in a suit, the court will not hesitate to strike out the name of such a party. Counsel submitted that it is not enough for a Claimant to name parties whose names have been obtained by casting the net of litigation far and wide. Counsel submitted that the 3<sup>rd</sup> Defendant having only acted for the Nigerian Bar Association has no business in this suit. He cited **Danjuma v. S.C.C. (Nig.) Ltd** 120181 All FWLR (.924) 58 C.A.; **Bamgboye v University of Ilorin** (1999) 10 NWLR (Pt. 022) 290; **N.I.D.B. v. Olalomi Ind. Lid** (2002) 5 NWLR (Pt.761) 532; **Isah v saje** 120121 All FWLR (PT. 644) 66 C.A and **Olaghere v. P.P. & P. (Nig.) Ltd** ALL FWLR I PT.66111593 C.A.

In opposition to the application is a 14-paragraph counter affidavit, deposed to by Smalt Ikechukwu Nwachinemere, counsel in Claimant's solicitors office, annexure and a written address. The deponent averred that paragraphs 5,10,11,12,15, 18 and 19 are not true. That both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in this Suit have severally pleaded in their respective pleadings before the Court that they obtained the information from the Nigerian Bar Association and/ or the 3<sup>rd</sup> Defendant. That the 2<sup>nd</sup> Defendant on page 8 of the libelous publication of Saturday Vanguard, April 4, 2020 wrote as follows "Mr. Emeka Onyeaka Esq. wrote against the three lawyers on behalf Of the Ukpo Community". That the 3<sup>rd</sup> Defendant as the secretary of the disciplinary panel is the spokesperson of the panel and is the person in charge of all communications emanating from the panel. That contrary to the claim that the 3<sup>rd</sup> Defendant is an agent of the NBA; the NBA does not authorize the communication of proceedings before it to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant or other members of the press. That the

Claimant sued the 3<sup>rd</sup> Defendant personally for unofficially giving out the information regarding the proceedings before the NBA to the 1st and 2nd Defendants to the injury of the Claimant. The hearing notice which was sneakily leaked to the 1st and 2nd Defendants was signed by the 3<sup>rd</sup> Defendant in his official capacity. That NBA does not officially give out information regarding the proceedings before it to the media. That the 3<sup>rd</sup> Defendant has filed his statement of defence wherein he joined issues with the claimant.

Learned Counsel to the Claimant adopted his Written Address wherein he raised a sole issue for determination to wit; “whether the 3<sup>rd</sup> Defendant is entitled to the grant of his prayer for striking out his name on the ground of misjoinder”. He submitted that the legal principle that an agent of a disclosed principal is not liable is not an absolute principle. It relates to action of the agent within the ostensive powers from his principal. If he goes outside his mandate, he cannot be heard to raise it except where his principal ratifies the act. This is a general principle in contractual relations. On the face value, there is nothing before the Court as to show the extent of the 3<sup>rd</sup> Defendant's ostensive power within the alleged agency. Where an agent acts without authority or exceeds his authority, his acts do not bind the principal and to the third party, the agent is personally liable. He cited **FIRST BANK OF NIGERIA PLC v. EXCEL PLASTIC INDUSTRY LIMITED (2002) LPELR-10280(CA) Per EDOZIE, J.C.A. (Pp. 54-55, Paras. B-E)**. Counsel further submitted that in claims anchored on tort as in the extant case, one need to first establish the liability of the agent before his principal can become vicariously liable. That the 3<sup>rd</sup> Defendant herein was sued as a tortfeasor in the libelous publications against the Claimant. That the fact that the said tort was

committed in the Course of duty can at best make his principal vicariously liable but not to absolve the 3<sup>rd</sup> Defendant. Counsel submitted that the 3<sup>rd</sup> Defendant misunderstood the principle of joinder as he is a necessary party in this Suit. He cited **Ecobank Nig plc v Gateway Hotels (Nig) Ltd. (1999) II NWLR (PT 627) 397,411-412 paras. H-B.** Counsel also submitted that one of the reasons for joining a party to a suit is that there must be a question in the action which cannot be effectually and completely settled unless he is a party. See **OLAWUYI V. ADEYEMI (1990) 4 NWLR (Pt. 147) @ 772 paras A-B.** Finally, Counsel submitted that the issue of the liability of the 3<sup>rd</sup> Defendant on the subject matter of this suit vis a vis whether the 3<sup>rd</sup> Defendant acted within the express authority of his scope of duty is such that can only be determined in a full trial. He cited **Elebanjo v Dawodu (2006) 15 NWLR (pt. 1001) 76 at 137 paras E-F** on this point and urged the Court to dismiss this application *in toto* when parties have joined issues.

I have read processes filed by parties and the case before the court is a case of defamation through libellous publication. It is trite that defamation of character could majorly be by way of libel or slander. Claimant in this case has sued the 3<sup>rd</sup> Defendant for libellous publication which has caused great embarrassment to the claimant in both his professional and personal capacity. The Defendant has filed this motion seeking for an order of court striking out his name for mis joinder on the grounds that 3<sup>rd</sup> Defendant is an agent of the NBA (Nigerian Bar Association) as 3<sup>rd</sup> Defendant was merely the secretary of the disciplinary panel of the NBA set up to investigate the Claimant. For there to be defamation, it must be established that the defamatory statement was published and the

publication has reached a third party besides the Claimant. In this case, Claimant grouse is that the said defamatory publication was published online by the 1<sup>st</sup> Defendant in its newspaper and also by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant on page 8 of 2<sup>nd</sup> Defendant's newspaper of 4/4/2020 titled "Three lawyer face NBA disciplinary panel for alleged professional misconduct".

In my view, the issue for determination is: -

“whether 3<sup>rd</sup> Defendant is a proper party to be joined in this suit”

Third Defendant has filed this application seeking for an order to strike out its name on the grounds of misjoinder and that he was acting in his capacity as the secretary of the NBA thus making him an agent of a disclosed principal. That he had caused a hearing notice to be issued and served on the Claimant on the instruction of the NBA. Claimant on the other hand submitted that both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have severally pleaded in their pleadings that they obtained their information from the NBA and/or the 3<sup>rd</sup> Defendant. That 3<sup>rd</sup> Defendant as the secretary of the disciplinary panel is the spoke person of the panel and is the person in charge of all communication emanating from the panel. That contrary to the claim that the 3<sup>rd</sup> defendant is an agent of the NBA; the NBA does not authorize the communication of proceeding before it to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant or other members of the press and that the claimant sued the 3<sup>rd</sup> Defendant personally for unofficially giving out the information regarding the proceeding before the NBA to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant more particularly as the hearing notices sneaked to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant were signed by the 3<sup>rd</sup> Defendant. The only reason which makes a party a necessary party is that he would be bound by the result which question cannot be effectually settled without him. In determining whether joinder should be granted, the court must ask itself the following questions: -



1. Will the libel case be defended by non-joinder of the 3<sup>rd</sup> Defendant?
2. Is it possible to adjudicate on the cause or matter unless the 3<sup>rd</sup> party is joined as a Defendant?
3. Is the party a person whose presence before the court as a defendant will be necessary in order to enable the court to effectually and completely adjudicate or settle all questions involved in the matter?  
See **ANYANWOKO V. OKOYE (2010) 5 NWLR (Pt. 1188) Pg. 497 SC @Pg. 519-520 paras H-B per FabiyiJSC .**
4. Would the party be affected by the order of the court?

First and foremost, Claimant has submitted in his evidence that the NBA disciplinary committee does not authorize communication of proceedings before it to the media as in this case the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. This is giving evidence on behalf of the disciplinary committee. Whether or not the disciplinary committee is in a habit of authorizing a press release of proceedings before it is a question majorly for the members of the disciplinary committee of the NBA to answer and not for the Claimant to make such statement as a fact without prove before the Court. This court will therefore discountenance this submission of the Claimant. From the processes before me, the claim is against the 3<sup>rd</sup> Defendant for causing the publication of libelous statement against the Claimant. Paragraph 20 of claimant's statement of claim states "3<sup>rd</sup> Defendant was copiously quoted in the publication in his capacity as the secretary of the Nigerian Bar Association (NBA) Disciplinary committee". From the above paragraph 20, it can be deduced that plaintiff is of the view that Defendant is an agent of the NBA. Nowhere in the processes before me was it alleged that 3<sup>rd</sup> Defendant published in the Newspapers or online publication libelous articles against the Claimant. For a claim of libelous publication there

must have been a publication authorized by the 3<sup>rd</sup> Defendant. The only print before this court signed by 3<sup>rd</sup> Defendant were all signed by 3<sup>rd</sup> Defendant in his capacity as the secretary to the NBA Disciplinary committee. Paragraphs 20, 22, 23, 24, 25, 26 and 27 of Claimants statement of claim all points to the libelous publication published by the 1<sup>st</sup> and 2<sup>nd</sup> Defendant. The fact that it was reported by the 2<sup>nd</sup> Defendant in its publication that the 3<sup>rd</sup> Defendant “wrote against the three lawyers on behalf of Ukpo community (paragraph 26 of statement of claim) does not make Defendant a necessary party to this libel suit simply because it was published by the 2<sup>nd</sup> Defendant without proof of the said document before the Court. 3<sup>rd</sup> Defendant on its own part tendered as exhibits various documents and hearing notices written on the letter head of NBA duly signed by 3<sup>rd</sup> Defendant in his capacity as an elected official of the NBA.

From the above claimant has failed to prove that 3<sup>rd</sup> Defendant is a necessary party to be singled out of the NBA disciplinary committee and joined as a co-defendant to this suit and it is on this premise that I uphold 3<sup>rd</sup> Defendant’s application and grant his prayers.

Consequently, it is hereby ordered as follows: -

1. That 3<sup>rd</sup> Defendants name be struck out of this suit for mis-joinder.
2. Punitive cost in the sum of ₦50, 000 is hereby awarded in favour of the 3<sup>rd</sup> Defendant.

**Parties:** Absent

**Appearances:** No legal representation for either party.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI**

**JUDGE**

**13<sup>TH</sup> JULY, 2021**