

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

ON THURSDAY, 2ND DAY OF DECEMBER, 2021

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/2394/2018

MOTION NO. M/4572/2021

BETWEEN

- 1. SARAHA HOMES LIMITED**
- 2. PATENGINEERING [NIG.] LIMITED**
- 3. MAJOR GENERAL PATRICK AKPA [RTD.]**

**CLAIMANTS/
RESPONDENTS**

AND

- 1. ECONOMIC AND FINANCIAL CRIMES
COMMISSION**
- 2. GOOD HOMES ESTATES LIMITED**
- 3. ALHAJI [DR.] LATEEF JAKANDE**
- 4. MR. LATEEF OLUSEGUN JAKANDE**
- 5. FEDERAL CAPITAL DEVELOPMENT
AUTHORITY**
- 6. THE HON. MINISTER, FEDERAL CAPITAL
TERRITORY**

**DEFENDANTS/
RESPONDENTS**

APPLICANTS:

- 1. THE INCORPORATED TRUSTEES OF LANDLORDS & RESIDENTS
ASSOCIATION OF GOOD HOMES ESTATE, LOKOGOMA, ABUJA**
- 2. DR. FOLASADE AKIODE**

RULING

The claimants [also known as the plaintiffs] commenced this suit on 23/7/2018 vide writ of summons. From the averments in the statement of claim filed along with the writ of summons, the facts that gave rise to this suit arose from the Commercial Development Agreement between the 2nd defendant and the 1st claimant in 2008. The claimants' reliefs 1-4 are against Economic and Financial Crimes Commission [the 1st defendant]. The claimants' reliefs 5, 6 & 7 read:

5. A declaration that the 2nd-4th defendants jointly and severally committed fundamental breaches of the Commercial Development Agreement between them and plaintiffs, executed in the year 2008, in respect of Plot No. 18 Cadastral Zone C09, Lokogoma District, Abuja, FCT measuring approximately 10 hectares, by virtue of the Letter of Grant of Right of Occupancy issued on the 8th December, 2005.
6. An order of specific performance of the contract of Commercial Development Agreement between the plaintiffs and the 2nd-4th defendants executed in the year 2008, in respect of Plot No. 18 Cadastral Zone C09, Lokogoma District, Abuja, FCT measuring approximately 10 hectares, by virtue of the Letter of Grant of Right of Occupancy issued on the 8th December, 2005.
7. N1,500,000,000.00 damages in favour of the 3rd plaintiff for libel.

The claimants also have alternative reliefs, which include:

1. A declaration that the 1st plaintiff is entitled to the Statutory Right of Occupancy over all the landed property lying, being, situate at and known as Plot No. 18 Cadastral Zone C09, Lokogoma District, Abuja, Federal Capital Territory measuring approximately 10 Ha covered by the Right of Occupancy dated 8th December, 2005 being the person who actually paid all the relevant statutory fees in the name of the 1st defendant to the knowledge of the 2nd, 3rd and 4th defendants, for the purposes of realizing or actualizing the subject of the Commercial Developer Agreement between the parties.
2. A declaration that the 1st plaintiff has better rights and/or title in law and equity as against the 2nd defendant over all that property being, lying situate at and known as Plot No. 18 Cadastral Zone C09, Lokogoma District, Abuja, Federal Capital Territory measuring approximately 10 Ha covered by the Right of Occupancy dated 8th December, 2005 being the person who actually paid all the relevant statutory fees in the name of the 2nd defendant to the knowledge of the 2nd, 3rd and 4th defendants, for the purposes of realizing and/or actualizing the subject of the Commercial Developer Agreement between the parties.
3. Consequential order commanding the 5th and 6th defendants to rectify the Registry of Lands by removing the name of the 2nd defendant therefrom and replacing same with that of the 1st plaintiff.

The 2nd, 3rd& 4th defendants filed their statement of defence and counter claim on 4/3/2019; the process was deemed as properly filed and served by Order of the Court granted on 15/4/2019. The counter claims of the 2nd, 3rd& 4th defendants include: [i] a declaration that the Commercial Development Agreement between the 1st plaintiff and the 2nd defendant had lapsed; [ii] an order of the Court compelling the plaintiffs to hand over the Estate to the 2nd defendant; and [iii] refund of the sums of money stated in relief [iv] of the counter claim.

This Ruling is on the applicants' motion on notice *No. M/4572/2021* filed on 14/7/2021 [referred to as Interpleader Application] seeking the following orders:

- i. An order joining The Incorporated Trustees of Good Homes Estate Residents Association as representatives of its members and Dr.FolasadeAkiode as the 1st and 2nd Interpleaders respectively [and/or as separate defendants] in this action.
- ii. An order restraining the parties in this action from intimidating, harassing, exercising any act of ownership and/or disturbing the peaceful possession of the Interpleaders of properties which they purchased in this disputed Estate subject matter of this action, without an order of this Honourable Court, until the final judgment of this Honourable Court in this matter.

- iii. Any other incidental and proper order or orders as this Honourable Court may deem fit to make in the circumstances of this case.

DonatusNneliObukweli, a legal practitioner in the chambers of AyoolaBabatundeOke& Co., filed a 9-paragraph affidavit in support of the motion; attached therewith are 4 exhibits. Ayoola B. OkeEsq. filed a written address with the application.

In opposition, Esther Michael, the litigation secretary in the law firm of Profile Partners [Josiah Daniel-Ebune Chambers], filed a 4-paragraph counter affidavit on 23/7/2021; attached therewith are 9 exhibits. Josiah Daniel-EbuneEsq.field a written address with the counter affidavit.

On 29/10/2021, Abdul-Hafeez Al-Kadriyar, the secretary of the 1st applicant and the owner of House D26 in Good Homes Estate, filed a further and better affidavit of 11 paragraphs; attached therewith are 2 exhibits.

At the hearing of the application on 1/11/2021, Ayoola B. OkeEsq.adopted the applicants' processes. Josiah Daniel-EbuneEsq. adopted theprocesses of the claimants/respondents.

Preliminary Issues:

The first preliminary issue is in respect of claimants' deposition in paragraph 2[c] of the counter affidavit that the 1st applicant is not a juristic person and did not authorize this application. On the other hand, in paragraph 4 of the

further and better affidavit, the deponent stated that the 1st applicant is incorporated; the Certificate of Incorporation is Exhibit 2. In paragraph 3 thereof, it is deposed that at the meeting of the 1st applicant held on 16/5/2021, which was attended by Mr. Ayoola B. Oke [the applicants' counsel], the chambers of the applicants' counsel was briefed to file this application. A copy of the Minutes of the Meeting is Exhibit 1.

From the depositions in the further and better affidavit supported by Exhibits 1 & 2 attached thereto, the Court is satisfied that the 1st applicant is a juristic person and that the 1st applicant authorized the filing of this application.

The second preliminary issue relates to the deposition in paragraph 4 of the affidavit in support of the motion that the applicants bought their properties in Good Homes Estate from the 1st claimant but were aware that the 2nd defendant was [and still is] the allottee of the property granted by the 5th & 6th defendants. The documents attached to the affidavit as Exhibit 1 are to show that the 2nd applicant [Dr. Folasade Akiode] is the owner of Plot B11 in Good Homes Estate. In the further and better affidavit, the deponent stated that the 2nd applicant is the owner of the said Plot B11.

In the counter affidavit, the claimants disputed the fact that the 2nd applicant is the owner of Plot B11, Good Homes Estate. The deponent stated that Plot B11 was withdrawn from the 2nd applicant because she refused to sign the Sub-Development Contract between the 2nd claimant and herself, which was

ready in 2010 and she refused to make necessary payments. The letter of withdrawal of Plot B11 dated 12/6/2013 is Exhibit E; while the letter of revocation of the said Plot B11 dated 22/5/2014 is Exhibit F.

The purpose of the above depositions in the counter affidavits is to show that the 2nd applicant is not competent to present this application for joinder as she no longer has any plot or interest in Good Homes Estate. It is my respectful opinion that the question whether or not 2nd applicant is the owner of Plot B11, Good Homes Estate cannot be determined in this application for joinder. I hold that on the basis of the facts stated in the affidavit in support of the motion and in the further and better affidavit, the 2nd applicant can bring this application for joinder along with the 1st applicant.

Merits of the Application:

From the processes filed by the applicants and the claimants, the Court is of the opinion that the issue for determination is whether the applicants are entitled to the orders sought.

In the affidavit in support of the motion, the deponent stated as follows:

- i. The 1st Interpleader is a trustee of persons who purchased parcels of land [plots] and properties from the parties to this action. It is the plots, properties at Plot 18 [Parcel A] Zone C09 Lokogoma District and proceeds of sale that are the subject matter of this suit. The

- applicants bought their properties from the 1st plaintiff but were aware that the 2nd defendant was [and still is] the allottee of the property granted by the 5th& 6th defendants.
- ii. The parties are supposed to provide certain common infrastructure and roads within the Estate for the benefit of the applicants. In some cases, there are outstanding payments due to the parties and others due to some of the applicants. Due to this suit, the applicants do not know which of the parties to credit outstanding obligations or to demand claims against.
 - iii. 3rd defendant has been visiting Good Homes Estate making claims, demands and interfering with the possession of the applicants in a way to suggest ownership of the Estate; thus resulting in petition to the Nigerian Police at Apo [Resettlement] Police station. The copies of the petition and responses are Exhibits 1, 2 & 3.
 - iv. The 3rd defendant had written to the applicants that the parties are to *maintain status quo* in this matter; the letter is Exhibit 4. Applicants feel intimidated, threatened and harassed by the 3rd plaintiff who is a retired Major General.

In the counter affidavit, it is deposed that: [i] this case can be fully and effectually determined without the 1st applicant being a party; and [ii] the applicants are not parties to the contractual document, which is subject of interpretation before the Court.

Submissions of the Applicants' Counsel:

Ayoola B. Oke Esq., learned counsel for the applicants, submitted that the applicants have both liabilities/obligations and beneficial interests in the subject matter of this action. The applicants bought their properties from the 1st claimant but were aware that the 2nd defendant was [and still is] the allottee of the property granted by the 5th & 6th defendants. By virtue of their purchases, the applicants have claims and obligations with whoever this Court determines to be the owner of the Estate. Therefore, the applicants have interests, rights and obligations relative to the *res*.

Mr. Ayoola B. Oke stated that the applicants cannot at this point be legally certain from which of the parties to make demands or fulfil their obligations. He then submitted that in the circumstances, *"it is better for them to wait for the outcome of this suit to know with whom they should relate."*

The applicants' counsel further submitted that it is in the interest of justice to grant the orders sought to protect the applicants from future litigation from whoever is determined to be the proper party that owns the land and the person to whom the benefit of their obligations should go and the person against whom to make future claims based on their contracts of purchase. Mr. Oke posited that the circumstances of this case are covered by Order 48 rules 1 and 4 of the Rules of the Court, 2018. He concluded that the applicants are proper parties to this suit and urged the Court to grant the application.

Submissions of the Claimants' Counsel:

The submissions of Josiah Daniel-Ebune Esq., learned counsel for claimants, is that the nature or object of an interpleader proceeding is to enable a court determine from the evidence presented by both claimants and disputants the ownership of an item or property. This is a fall out of an execution arising from the judgment of a court. He referred to **Maigoro v. Bashir [2000] 11 NWLR [Pt. 679] 453** and **Okwoche v. Dibia [1994] 2 NWLR [Pt. 325] 195.**

The claimants' counsel further stated that the test as to whether there should be joinder of a party in a suit is based on the need to have before the court such parties as would enable it to effectively and completely adjudicate upon and settle all the questions in the suit. He referred to **Peenok Investment Ltd. v. Hotel Presidential Ltd. [1982] 12 SC 1.** It was submitted that the applicants are not necessary parties in this suit as the suit can be effectually and completely determined without joining them as parties. It is the duty of the claimant to bring to court any person whose presence is crucial to the resolution of his case. Therefore, a claimant cannot be forced to proceed against a defendant that has nothing to do with the reliefs sought in his suit. He cited the case of **Olawoye v. Jimoh [2013] 13 NWLR [Pt. 1371] 362.**

Decision of the Court:

In prayer 1, applicants seek an order of the Court to be joined as interpleaders or defendants to this suit. With respect to the prayer to join the applicants to

the suit as interpleaders, Order 48 rule 1 of the Rules of the Court, 2018 relied upon by the learned applicants' counsel provides:

“Relief by way of Interpleader may be granted where the person seeking relief “the applicant” is under liability for any debt, money, goods, or chattels, for or on which he is, or expects to be sued by two or more parties “the claimants” making adverse claims. ...”

By the above provision, an interpleader proceeding may be initiated by a person who is under liability or has an obligation to pay debt or money but there is a dispute or uncertainty as to which of two or more claimants is entitled to the money. The applicant in an interpleader proceeding may seek, among other reliefs, an order to pay the money into court pending the resolution of the dispute between the two or more rival claimants. The purpose of such interpleader proceeding is to prevent the institution of a suit by any of the claimants against the applicant for the debt or money.

In the instant case, if the case of the applicants is that they are under liability or they have an obligation to pay sums of money in respect of their respective houses in Good Homes Estate but they are not sure whether to pay to the claimants or to the 2nd-4th defendants, they may present an application as interpleaders to seek an order of the Court to pay the outstanding sums of money into Court pending the determination of the dispute between the claimants and the 2nd-4th defendants or as the Court may direct.

The applicants are not seeking an order or direction of the Court in respect of any debt or money which they owe. The applicants seek to be joined in this suit for the purpose of protecting their interests in the subject matter of the suit. The essence of this application is evident from paragraph 10 of the further and better affidavit where the deponent stated that the applicants request to be joined to this suit *“by whatever means or technical name either as interpleaders or as defendants as we have very cogent interest on the subject matter of this suit and do not want to bring a separate action thus multiplying suits with respect to the same subject matter and substantially the same parties.”* The decision of the Court is that this is not an appropriate case to join the applicants as interpleaders in this suit.

Are the applicants necessary parties to be joined as defendants in this suit? It is trite law that the Court has the discretionary power to grant an order for joinder of a necessary party to a suit at any stage of the proceedings. The discretion of the court must be exercised judicially and judiciously depending on the facts of each case. In exercise of that discretion, the courts are usually guided by the following questions in line with the decision of the Supreme Court in **Green v. Green [1987] 3 NWLR [Pt. 61] 480:**

- i. Is the cause of action or matter liable to be defeated by non-joinder?
- ii. Is it possible for the court to adjudicate on the cause of action set up by the plaintiff in the absence of the third party?

- iii. Is the third party a person who ought to have been joined in the suit as a defendant?
- iv. Is the third party a person whose presence before the court as defendant will be necessary in order to enable the court effectually and completely adjudicate on and settle all the questions involved in the cause or matter?

In **Mbanefo v. Molokwu&Ors. [2014] LPELR-2225 [SC]**, it was restated that a necessary party to a proceeding is a party whose presence is essential for the effectual and complete determination of the claim before the court. It is a party in whose absence the claim cannot be effectually determined.

As I said earlier, the facts that led to this suit arose from the Commercial Development Agreement between the 2nd defendant and the 1st claimant in 2008. From the averments in the statement of claim, the statement of defence of the 2nd, 3rd & 4th defendants, the claimants' reliefs and the counter claims of the 2nd, 3rd & 4th defendants, it is clear to me that it is possible for the Court to adjudicate on the cause of action set up by the claimants and the 2nd, 3rd & 4th defendants' counter claim in the absence of the applicants. The applicants are not persons who ought to have been joined in the suit as defendants and their presence is not essential for the effectual and complete determination of the claims and counter claims before the Court. Therefore, the applicants are not necessary parties to be joined as defendants in this suit.

The Court has considered the applicants' deposition that they bought plots and properties in Good Homes Estate. My humble view is that the right or interest which the applicants may have acquired in Good Homes Estate is not an issue for adjudication in this action. I agree with the view of Ayoola B. OkeEsq., learned counsel for the applicants, that in the circumstances of this case, it is better for the applicants "to wait for the outcome of this suit to know with whom they should relate."

In prayer 2, applicants seek an order to restrain the parties from intimidating, harassing or disturbing their peaceful possession of the properties which they purchased in the Estate. It seems to me that the applicants, who are not parties to this suit, are not entitled to a restraining order against the parties to this suit. I need to add that on 15/4/2019, the Court made an order for the claimant and the 2nd-6th defendants to maintain the *status quo* in respect of Plot No. 18, Cadastral Zone C09, Lokogoma District, FCT, Abuja pending the determination of the substantive suit. The Court has not been informed by any of the parties that the said order has been violated. Prayer 2 is refused.

From all that I have said, the applicants' application for joinder lacks merit and is dismissed.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of counsel:

1. Arome Joseph Esq. for the Claimants/Respondents.
2. SegunAdeotiEsq. for the 2nd, 3rd& 4th Defendants/Respondents.
3. A. A. Umar Esq. for the 5th& 6th Defendants/Respondents.
4. Justice MbawuikeEsq. for the Applicants for Joinder.