

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA ON THE 8<sup>TH</sup> DAY OF NOVEMBER, 2021**

**BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE**

**SUIT NO.FCT/HC/CV/1949/17**

**COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.**

**BETWEEN:**

**1. CARLYX CRANE CONCEPT LTD  
2. EMEKA IBEABUCHI FRANK } .....CLAIMANTS**

**AND**

**1. JIFFYJO INTEGRATED SERVICES LTD  
2. HARRISON NDIKA .....DEFENDANTS**

**RULING**

The Applicant Counsel's application M/4026/21 dated and filed on 30<sup>th</sup> day of June 2021 for:

- (1) An Order granting the Claimant leave to change their Counsel on record in this matter from the law firm of IKE NWALI & CO to the law firm of DEJI SOREMI & CO.
- (2) And for such further order or other orders as this Court may deem fit to make in the circumstance.

Learned Counsel rely on the 7 paragraph Affidavit deposed to by Sakaldris Hassan of No. 12 Bissau Street, Wuse Zone 6, Abuja. He deposed essentially that Claimants/Applicants have exercised their right to choose a Counsel of their choice and by a letter of instruction dated 16/06/21 they engaged the services of the law firm of

DejiSoremi&Co to take over their legal representation. A copy of the letter is Exhibit A. That DejiSoremi& Co accepted the instruction. That parties will not be prejudiced.

The Claimant's Counsel on record filed a Counter Affidavit which he relied upon while opposing the application. It is of 22 paragraphs. He deposes, he was briefed in 2017. That his brief was not perfected on strong assurance that he would do so before the close of the case. That they diligently prosecuted the case to a point when the case was adjourned for Adoption of Final Written Address.

The Claimants stopped picking his calls. That he secretly vacated their last known address. He wrote a whatsapp letter to Claimant. The said letter of demand is Exhibit A. The Claimant replied debriefing them simply because they merely requested Claimant to perfect their brief. It is Exhibit B. They responded by a letter dated 19/06/21 attached as Exhibit C. That the Counsel seeking to take over did not reach out to him. That they will be greatly prejudiced if the application is granted. The Claimant filed a Further and Better Affidavit deposed to on 27/10/21. He deposed that he realised when proceeding started that he was seen only as a money machine. He was informed by Claimant's Counsel that application for joinder was a new matter and as such he should pay N3 Million. He failed therefore to respond to the interested parties application for joinder. He personally got a fresh hearing date which annoyed Mr.NwaliEsq. That he charged him N1.3 Million as professional fees. That he paid the said amount in full. The schedule of payment and bank statement is

Exhibit EF11 & EF12. That it will be in the interest of justice to grant the application.

I have also considered the Written Addresses of Counsel. By Order 55(2) of the High Court of the FCT (Civil Procedure) Rules 2018. An application for a change of legal practitioner or withdrawal such as this shall be served not less than 3 clear days before the date fixed for hearing. A party has a right to change his legal practitioner. The rules of Court enjoined that such application shall be done within 3 days to the date fixed for hearing. This application is dated and filed on 30/06/21 served on IkechukwuNwali on 12/07/21. It came up for hearing 01/11/21. This Court cannot force the Claimant to retain his former Counsel. The former Counsel has not placed before the Court the amount which he charged the Claimant. The bill of charges is not availed the Court. The Claimant however canvasses that he has liquidated the professional fees that the former Counsel charged him. Section 11 of the Legal Practitioner Act stipulates punishment for unprofessional conduct. If the new Counsel coming in falls foul of the said rules, the disciplinary committee is the appropriate place to ventilate the grievance. If the Counsel on record is owed professional fees, he knows the step to take. Imperfection of brief cannot be a reason to deny a litigant the right to freely choose or change a legal practitioner of his choice. In the circumstance of this case, the application succeeds. It is granted as prayed.

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**HON. JUSTICE U.P. KEKEMEKE**

**(HOH. JUDGE)**  
**08/11/21**

**Counsel seeking to be joined:** The Motion for joinder is dated 22/02/21 and filed on 23/02/21.

**Claimant's Counsel:** We were served. We are opposing.

**Defendants' Counsel:** We are not opposing.

**Claimant's Counsel:** It is brought Pursuant to Order 13 Rule 19 of the Rules of Court. It prays the Court to join the Applicant as 3<sup>rd</sup> Defendant.

And for such Order as the Court may deem fit to make.

The grounds are on the face of the Motion paper. The application is supported by a 13 paragraph Affidavit deposed to by Azeezat. We rely on the Exhibits. We filed a Written Address. We adopt same as our legal argument. We urge the Court to grant the application as prayed.

**Claimant's Counsel:** We filed a Counter Affidavit of 15 paragraph. We rely on same. In addition, we filed a Further and Better counter Affidavit of 10 paragraphs and an Exhibits. We rely on all depositions. We filed a Written Address dated 7/07/21. We adopt same. We pray that the application be dismissed. The Applicant has not satisfied the requirement for joinder.

**Counsel to party seeking to be joined:** In response to the Counter Affidavit, we filed a reply on point of law dated 8/07/21. We rely on all our argument.

## **RULING**

This Motion brought by the Interested Party/Applicant under order 13 rule 19 of the rules of Court is for:

- (1) An order joining the Applicant as the 3<sup>rd</sup> Defendant in this suit.

The grounds for the application which Learned Counsel to the Applicant relied upon are:

- (1) The Applicant has a vested interest in the subject matter.
- (2) That vide the Deed of Assignment dated 02/04/19, the beneficial owner Mohammed Kudu Haruna through his attorney Harrison UchennaNdika assigned all that land lying and situate at No. 818 Cadastral Zone B10 to the Applicant.

In the Affidavit in support, the Applicant deposed that:

- (1) The Original Certificate of Occupancy of the plot in issue,
- (2) Irrevocable Power of Attorney between Mohammed Kudu and 2<sup>nd</sup> Defendant,
- (3) Consent Letter in favour of the Applicant,

- (4) An Affidavit of the 2<sup>nd</sup> Defendant stating that the original Right of Occupancy has been misplaced are handed over to it.

That Claimants are praying for an order of specific performance compelling 1<sup>st</sup> Defendant to deliver title documents and deliver up the right wing of plot No. 818 Cadastral Zone B10 Dakibiyu District. That 1<sup>st</sup> Defendant do not possess legal ownership.

The Claimant on the other hand deposed in their Counter Affidavit that the suit is strictly between Claimants and Defendants. That the Applicant is not a party to the contract. That Applicant acquired the purported interest after the contract. That the position of the Applicant is based on interest. That this suit has reached final address. That joinder will cause further delay. That the Claimant will be prejudiced.

I have also read and considered the Written Addresses of Counsel. The issue for determination is whether the Interested Party/Applicant has made out a case to entitle this Court grant the relief sought. By Order 13(4) of the rules of Court, 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, Judgment may be given against one or more of the Defendants as may be found to be liable.

It is now trite that a necessary party to a suit is a party who is not only interested in the subject matter of the proceedings but also a party in whose absence the proceedings could not be fairly dealt with. Consequently without his being a party to the suit, the Court may not be able to effectually and effectively adjudicate upon and settle all questions involved in the suit.

***OJO VS. OGBE (2007) 9NWLR (PT. 1040) 542.***

The test to determine whether a party is a person having an interest in a matter is whether the person could have been joined as a party to the suit. An interested party includes a person affected or likely to be affected or aggrieved or likely to be aggrieved by the proceedings. The Claim of the Claimants in its Originating Process is for an order of specific performance compelling 1<sup>st</sup> Defendant to deliver the title documents to the six bedroom semi detached duplex right wing at No. 818 Cadastral Zone 810 Dakibiyu Abuja FCT. The Claimants also claim specific performance compelling the 1<sup>st</sup> Defendant to deliver possession of the subject matter.

The deposition of the Applicant is that it has an equitable interest in the property the subject matter of this suit. That all the originating title documents have been handed over to it by the 1<sup>st</sup> Defendant. The Interested Party/Applicant has shown that it is entitled to someshare/interest in the subject matter and is laying claim to such share or interest and that it is likely to be affected by the result of this action.

In the instant case although the case has reached an advance stage, the justice of this case demands that the interested Party/Applicant should be joined.

Orders are therefore granted as prayed. The Interested Party/Applicant is hereby joined as 3<sup>rd</sup> Defendant in this case.

The Claimant shall accordingly amend and serve their Writ of Summons to reflect the joinder. The Defendant shall within 14 days file and serve their Defence. The Claimant may file a reply to Statement of Defence if necessary while suit is adjourned to 24/01/22 for Mention.

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**HON. JUSTICE U.P. KEKEMEKE**  
**(HOH. JUDGE)**  
**08/11/21**