

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 10TH NOVEMBER, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: CV/2799/2015
MOTION NO: M/12423/2020

BETWEEN:

1. VANESSA ONYINYE OGBONNA
2. VIOLA CHIOMA OGBONNA
3. NELLIE CHIZITARA OGBONNA
4. CHIOMA OSITADINMA EFOAGUI

(Suing as the guardian and next friend of:
NITA KOSISOCHUKWU OGBONNA
AURORA OKWUNNA OGBONNA)

PLAINTIFFS/RESPONDENTS

AND

HON. CHUKWUKAMA NWAUWA ----- DEFENDANT/RESPONDENT

IN RE:

MICHAEL CHARLES OGBONNA ----- PARTY SEEKING TO BE JOINED
AS 2ND DEFENDANT

RULING

Before this Court is a Motion on Notice dated the 26th November, 2020. The Applicant is praying this Court for the following reliefs:

- “1. An Order of this Honourable Court joining Michael Charles Ogbonna, as the 2nd Defendant in this suit. And upon the grant of prayer (1) above.*
- 2. An order of this Honourable Court directing the Claimants/Respondents to amend their originating processes and other subsequent processes issued in this suit in order to reflect the joinder of Michael Charles Ogbonna as the 2nd Defendant in this suit.*
- 3. An Order directing that all the originating processes and all other processes issued in this suit be served on Michael Charles Ogbonna in care of his within-named Counsel, as the 2nd Defendant in this suit.*
- 4. And for such orders or further orders as the Honourable Court may deem fit to make in the circumstances of this suit.”*

The application is supported by a 10 paragraphs affidavit deposed to by one Adeyemi Adeyeye a Legal practioner. Also attached is one annexure marked as

exhibit MC Counsel to the Applicant also filed a Written Address.

Upon service of the Motion on Notice, the Claimants/Respondents, on the 8th January, 2021 filed a 35 paragraphs Counter affidavit duly sworn to by one Chioma Ositadinma Efoagui, the mother, guardian and next friend to the Claimants/Respondents. Two documents were attached to the Counter affidavit marked as exhibit A and B respectively. Learned counsel to the claimants/respondent's also filed a Written Address.

On the 8th February, 2021, the Applicant filed a Further Affidavit of 8 paragraphs together with a Reply on Points of Law. In the Written Submission, U.I. Igweneme Esq for the Applicant raised a sole issue for determination as follows:

“Whether the party seeking to be joined as the 2nd Defendant has made out a case warranting his joinder?”

Learned counsel submitted that the essence of the joinder of a person as a party to a pending suit is so that such a person will be bound by the outcome of the suit. That a person is not joined as a party to a suit, either as a Plaintiff or Defendant, for the fun of it. Such a person must satisfy the Court that he has a connection to the subject matter of the suit and that his interest will be affected one way or another.

Counsel cited and referred this Court to the Provisions of Order 19 Rules 1 and 2, Rules of this Court, and submitted that the party sought to be joined as 2nd Defendant has satisfied the conditions stipulated by Order 19 Rules 1 and 2 for his joinder as 2nd defendant and therefore urged the Court to grant the reliefs sought by the Applicant. Learned counsel also urged the Court to further join suo moto, the adopted son of the deceased who has been maintained in the process.

In opposition, James O. Idih Esq, on behalf of the Claimants/Respondents also formulated a sole issue for determination in his Written Address as follows:

“Whether the party seeking to be joined has sufficiently established his paternity nexus with the Late Dr. Godfrey Chukwudi Ogbonna to warrant his being allowed to intervene in the matter of the Estate of the deceased?”

Counsel submitted that the law is trite that the issue of joinder of parties is at the discretion of the Court. That this exercise of discretion within the ambit of the Rules of Court can be exercised by the Court suo moto and at any stage of the proceeding even after final addresses and before judgment. He went on to submit that the Court in consideration for joinder of a party is to weigh the need for an effectual and final determination of the case. That where a person would be affected by the outcome of a case, such a person is a necessary party to that case. Counsel referred

to the cases of : Re – Lessey (1994)4 NWLR (Part 133)113 at 126; Ogana vs. Awulor (1997)9 NWLR (Part 522)668 at 685; Eimskip vs. Exquisite (1999)5 NWLR (Part 601) 46 at 51 – 52.

Learned Counsel then at the concluding paragraphs of his Written Address made some heavy assertions on the paternity of the Applicant which in my opinion is premature at this point. This is because the issue of the paternity of the Applicant is part of the pleadings before the Court and the Courts are enjoined not to delve into the substance of a case at interlocutory stage.

K.O. Duruzo Esq of Counsel for the Defendant submitted that it is otiose to oppose the Applicant’s Motion on Notice and urged the Court to grant same.

From the affidavit evidence of the respective parties filed before this Court and written submission of Learned Counsel across the divide, the only issue for determination is:

“Whether the Applicant discloses any interest in the subject matter to warrant his joinder as 2nd Defendant in this suit?”

A party seeking to be joined to a suit seeks the indulgence of the Court. Therefore he is bound to provide sufficient credible material which the Court can rely on to exercise its discretion in his favour. See I.C.A.N vs. Unegbu (2012) 2 NWLR (part 1284) page 231.

In the instant case, the Applicant’s contention is that he is also a biological son of the Late Dr. Godfrey Chukwudi Ogbonna having been born to the deceased on the 16th November, 1987. That the Claimants/Respondents are not the only surviving children of the Late Dr. Godfrey Chukwudi Ogbonna who are entitled to the right of inheritance of the deceased estate. It is based on this that the Applicant is seeking to be joined as 2nd Defendant in this suit.

The law is well settled in plethora of judicial decisions that the Court *suo motu*, or on the application of any of the parties to an action or on the application of any person who has demonstrated his sufficient legal interest, in the same action, can be joined as a party to the action, if the Court is satisfied that the Applicant is a necessary party. See: **Akubuze vs. Obi & Ors. (2016) LPELR – 41018 (CA).**

It is correct as submitted by Learned Respondent's Counsel that the grant or refusal of this nature of application for joinder is at the discretion of the Court which discretion should be exercised judicially and judiciously. See: **Akujobi & Ors. vs. Akujobi (2017) LPELR – 41685 (CA);**

The purpose of joinder of party to a suit is to enable the Court effectually and completely adjudicate upon and settle all questions. The aim is to put an end to litigation and not have two – parallel proceedings in which same issues will be raised, leading to different and inconsistent

results. One other objective of joining a necessary party is for him to be bound by the result of the litigation. See: Akujobi & Ors. vs. Akujobi (supra); Re: Yesufu Faleke (Mogaji) (1986)2 SC. 431 at 449; Awani vs. Erejuwa II (1976)11 SC. 307.

Thus, the Courts in plethora decisions classified parties into three categories viz:

1. Proper parties
2. Desirable parties
3. Necessary parties

Proper parties are those who though not interested in the Plaintiff's claim, are made parties for some good reason. Desirable parties are those who have an interest or who may be affected by the result. Whereas, necessary parties are those who are not only interested in the subject matter of the proceedings, but also who, in their absence, the proceedings could not be fairly dealt with. See: Nweke & Anor. vs. Nweke (2014) LPELR - 23563 (CA), RE. Mogaji

(1986) NWLR (Part 19)759, Green vs. Green (1987) 3 NWLR (part 61) 480 and Bello vs. INEC & ors (2010) LPELR - 767 (SC).

Deducing from the above therefore, any of the above category of parties may be joined to an action based on the facts and circumstances of the case.

Having reviewed the depositions in the applicants affidavit, I am of the view that the applicant is a necessary party to these proceedings. His interest will definitely be affected by the outcome of the proceedings. To refuse to join him will be tantamount to denying him fair hearing.

Accordingly, I find merit in the application and grant all the reliefs as prayed.

As observed earlier, the Court can *suo motu*, or on the application of any of the parties to an action or on the application of any person who has shown interest, in the

same action, can be joined as a party to the action. See: **Akubuze vs. Obi & Ors. (supra).**

Order 13 Rule 18(3) provides:

“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.”

The above provisions make it clear that a party may be joined as defendant in a suit and there appears to be no time restriction when such an application may be made.

Thus, this Court after considering submissions of all the Counsel in this suit and the pleadings filed and exchanged, it is observed that apart from the applicant just joined in this suit, one, Chijioke Nnadi alleged adopted son of Late Dr. Godfrey Chukwudi Ogbonna seem to also have

interest in the subject matter and ought to be a party in the suit.

Thus, Chijioke Nnadi is hereby joined as 3rd Defendant in the interest of justice and parties should make necessary amendment to reflect his joinder.

Signed

Honourable Judge

Appearances:

James Idih Esq – for the claimant

K.O. Duruzo Esq – for the defendant

U.I. Igweneme Esq – for the party seeking to be joined

Ayodele Adewusi Esq – for the party seeking for directive.