

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ABUJA
ON 20TH DAY OF OCTOBER, 2021
BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI
PRESIDING JUDGE

SUIT NO: FCT/HC/CV/1987/2014
MOTION NO: M/681/2019

BETWEEN:

**NATIONAL BUSINESS AND TECHNICAL
EXAMINATIONS BOARD**

..... **PLAINTIFF/RESPONDENT**

AND

1. MINISTER OF FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
IN RE: SERVICES AND GENERAL PROCUREMENT LIMITED - APPLICANT

} **DEFENDANTS/
RESPONDENTS**

APPEARANCE:

PARTIES ABSENT

C.P. ANINWONYA ESQ FOR THE PLAINTIFF

C. UDO-KALU ESQ FOR THE APPLICANT

1ST AND 2ND DEFENDANTS UNREPRESENTED

RULING

By a motion on notice filed on 1st November 2019, the Applicant seeks the following orders:-

***“1) AN ORDER of this Honourable Court joining the Applicant as
a Defendant in this suit.***

2) (withdrawn and struck out)

3) AN ORDER deeming the Applicant's Statement of Defence already filed and served on all the respective parties as having been properly filed and served.

4) AN ORDER recalling the two witnesses for the Plaintiff and the 1st and 2nd Defendants who have already testified for the benefit of the Applicant.

5) AND for such further or other order(s) as this Honourable Court may deem fit to make in the circumstances."

The application was supported by a 17 paragraph affidavit of MohammaduDantsohoSaeed, the Managing Director and Chief Executive Officer of Services and General Procurement Limited, to which are annexed several documents marked Exhibits A to F.

In the written address of Ibrahim GamdehAdamu Esq, Applicant's learned counsel, a sole issue was raised thus:

"Whether the Applicant has placed sufficient materials before this Honourable Court to warrant the grant of this application."

Learned counsel respectfully submitted that the Applicant's affidavit, statement of defence and counterclaim filed along with the application have shown that the Applicant has overwhelming interest in the subject matter of the substantive suit and is also a necessary party for the just and effectual determination of this suit. See **ASSOCIATED DISCOUNT HOUSE LTD V THE HON. MINISTER FCT & ANOR (2013) LPELR - 20088 (SC) @ PP 19-20 PARA B-A, per Akaahs JSC.**

In vehement opposition to the application, the Plaintiff/Respondent filed a lengthy 6 paragraph counter affidavit deposed to by Tony Moses, Litigation Secretary in the law office of FerdOrbih (SAN) & Co., solicitors to the Plaintiff.

In his written address in support of the counter affidavit, C.P. Aninwonya Esq raised this sole issue for determination:-

“Whether having regards to the conduct of the Applicant and the circumstances of this application, the court ought to refuse the application.”

It was submitted that it is within the discretion of the court to grant the application, which discretion must be exercised judicially and judiciously.

That the Applicant failed to bring her application timeously having waited 5 years while the matter was pending in court before seeking to be joined.

That the Applicant is not a necessary party as its purported rights to the property in question are dependent on the success of the Defendant’s right to transfer the property.

That the real and radical question before the court for which the Plaintiff seeks declaratory reliefs in its favour is whether the Defendants are entitled to sell the subject property which question can be effectively and completely determined without joining the Applicant. Further, no claim was made against the Applicant by the Plaintiff. Therefore the court should not compel the Plaintiff to proceed against the party it has no desire to prosecute.

It was further submitted that the case of **ASSOCIATED DISCOUNT HOUSE LTD V THE HON. MINISTER FCT & ANOR (2013) LPELR – 20088 (SC)** cited and relied on by the Applicant does not support the joinder as she is not a necessary party to this suit.

Further reliance was placed on other authorities including **GREEN V GREEN (1987) LPELR-1338 (SC); IGE V FARINDE (1994) NWLR (PT 354) 42; AROMIRE V AWOYEMI (1972) 1 ALL NLR (PART 1) 101 AT 108.**

The Applicant filed a 13 paragraph Applicant’s Reply to Plaintiff’s/Respondent’s Counter Affidavit on 7th February 2020 with counsel’s written address.

Therein the court was urged to expunge paragraphs 4 (a),(b), (c), (d), (k), (l), (m), (n), (o), (p), (q), (r), (s), (v), (w), (x), (y), (z) as they offend Section 115 (2) and (3) Evidence Act 2011.

Thereafter, it was urged that there is nothing remaining in the counter affidavit to stop the court from granting the application.

The Plaintiff/Respondent filed a reply address. They are not entitled to a further reply to the Applicant save on the issue of their counter affidavit which they submitted does not offend Section 115(1)-(3) Evidence Act and should the court hold otherwise and expunge the offending paragraphs, that the remnant of the counter affidavit is still potent enough to sustain their opposition to the application.

I have considered all the affidavits before me and the written and oral submissions of Ibrahim G. Adamu Esq, counsel for the Applicant and C.P. AninwonyaEsq. for the Plaintiff/Respondent.

Learned counsel for 1st and 2nd Defendants was absent on the day the motion was argued and therefore did not participate in the proceedings for that day.

The question before this court is whether the Applicant has made a successful case for her joinder as a Defendant and necessary party in these proceedings.

Before I proceed, let me state that I agree with Mr Adamu that paragraphs 4 (c), (k), (l), (n), (o), (q), (r), (u), (v), (w), (x), (y) of the counter affidavit offend Section 115 of the Evidence Act 2011. They are legal arguments and conclusions and are hereby expunged.

In **AZUBUIKE V PDP & ORS (2014) LPELR-22258 (SC)** Fabiyi JSC at PP 15-16 paragraph G on who is a necessary party, had this to say:-

“A necessary party is one who, being closely connected to a law suit, should be included in the case if feasible, but whose absence will not require dismissal of the proceedings (Black’s Law Dictionary,

9th Edition at Page 1232) in GREEN V GREEN (2001) FWLR (PT 76) 795 AT 814, this court held that:

“A necessary party is one who is not only interested in the subject matter of the proceedings but whom in his absence, the proceedings cannot be fairly and judiciously decided. In other words, the question to be settled in the action between the existing parties must be a question which cannot be properly settled unless the necessary party to the particular claim is joined in the action.”

The court also pointed out that it is the duty of the courts to ensure that parties that are likely to be affected by the result of an action are joined accordingly and that a necessary party should be allowed to have his fate in his own hands. He should not be shut out to watch through the window as a judgment made with an order against a person who was not a party to a suit is to no avail. See page 17 paragraphs B-D.

As rightly argued by both learned counsel, the grant of an application of this nature is at the discretion of the court which must be exercised judicially and judiciously.

The onus is on the Applicant to supply the necessary facts to enable the court exercise its discretion in her favour.

In the Applicant’s affidavit it was deposed that she was offered the property subject matter of this suit on 24th October 2013 and that the Applicant upon acceptance of the offer paid the purchase price of the property on December 23rd 2018(?) (2013) and was issued a receipt. See Exhibit C and D attached to the affidavit in support of the application.

That the Plaintiff/Respondent was aware of the sale of the property subject matter of this suit but deliberately omitted to join the Applicant in this suit.

Now the grouse of the Plaintiff/Respondent is that the Applicant was aware of this suit since its inception and stood by for 5 years only to seek to be joined now, which act is done in bad faith and that the Applicant is not a necessary party to the proceedings.

The Applicant in her reply affidavit deposed that she had purchased the property in question before the institution of this suit on 7th July 2014. That the Applicant made attempts to possess the property prior to being aware of this suit because the Plaintiff refused to join her as a party notwithstanding that the Plaintiff knew she was the purchaser and now owner of the property and would be affected by its outcome.

There is no doubt that the Applicant has an interest in the property in question by virtue of Exhibits B,C,D attached to her affidavit in support of the application.

By virtue of Exhibit E dated 22nd April, 2014 also attached to their affidavit, the Plaintiff was informed that the property in question “has been sold under the provisions of the monetization policy”. This was prior to Plaintiff filing this suit.

I have perused the reliefs sought by the Plaintiff in the statement of claim. It is therefore imperative that the voice of the Applicant who claims to be the “new owner of the property” must be heard as her interest will definitely be affected by the decision of the court.

The Applicant has indicated that she only became aware of this case in their conversation with counsel to the 1st and 2nd Defendants on 19th September 2019. There is nothing to substantiate the allegation that the Applicant was aware of this suit since 2014 and stood by for 5 years.

The application for joinder which was filed on 1st November 2019 is therefore not belated. I find merit in the application. The Applicant is a necessary party without whom the matter cannot be effectively and effectually determined.

The application is therefore granted as follows:-

- 1) The Applicant is hereby joined as the **3rd Defendant** in this suit.
- 2) The originating processes shall be amended accordingly to reflect the joinder of the 3rd Defendant. The Claimant shall within 14 days from today file the amended originating processes and serve on all the Defendants.
- 3) The 3rd Defendant's statement of defence/counterclaim which it prays to be deemed properly filed and served bears the Attorney General as 3rd Defendant and herself as 4th Defendant. The court cannot therefore deem the process as properly filed and served. The 3rd Defendant shall within 14 days from the date of service of the Claimant's originating processes file and serve a clean copy of her statement of defence and counterclaim with accompanying processes on the Claimant and the 1st and 2nd Defendants.
- 4) The Claimant shall within 7 days of the service of the 3rd Defendant's statement of defence/counterclaim file and serve her reply to the statement of defence/defence to counterclaim on the Defendants.
- 5) The two witnesses for the Claimant and 1st and 2nd Defendants who have already testified are hereby recalled for cross examination by the 3rd Defendant.
- 6) In view of the joinder of the 3rd Defendant, the Claimant is at liberty to reopen her case in defence to the counterclaim.

Matter adjourned to 16th February 2022 for continuation of hearing.

Hon. Judge