IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 20TH DAY OF OCTOBER, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/081/2021
MOTION NO.:-FCT/HC/M/3019/2021

BETWEEN:

1) DAMIKISH MEGA LIMITED
2) MR. OLAMIDE POPOOLA :…..CLAIMANTS/RESPONDENTS

AND

1) ACCESS BANK PLC:……..DEFENDANT/RESPONDENT
2) CENTRAL BANK OF NIGERIA:.....DEFENDANT/APPLICANT

Raphael Oyewole for the Claimants/Respondents.
Karina Williams for the Defendant/Respondent.
Teslim Adigun for the Defendant/Applicant.

RULING.

By a Motion on Notice dated the 9th day of March, 2021 and filed the 24th day of March, 2021, brought pursuant to Section 35 of the Constitution of the Federal Republic of Nigeria, 1999, Order 43 of the High Court of Federal Capital Territory, (Civil Procedure) Rules, 2018 and under the inherent jurisdiction of this Court, the Applicant brought this application praying this Court for the following:

1. An order of this honourable court striking out the name of the 2nd Defendant/Applicant as a party in this suit for misjoinder of parties.

2. An order of this honourable court striking out the Claimants' suit for want of jurisdiction.

And for such further order(s) as this honourable court may deem fit to make in the circumstances of the case.

In the supporting affidavit deposed to by one Teslim Adigun, the Applicant averred that there is no claim/relief whatsoever by the Claimants against the 2nd Defendant/Applicant, and that the claimants' suit as constituted does not disclose a cause of action against the 2nd Defendant/Applicant.

Furthermore, the Applicant averred that by the facts contained in the Statement of Claim, the claimants have not averred that the alleged freezing of their account was carried out by the 2nd Defendant. That the 2nd Defendant/Applicant is not a party to the banker/customer relationship between the 1st Claimant and the 1st Defendant that was purportedly breached by the 1st Defendant, and that the presence of the 2nd Defendant/Applicant is not considered necessary for the final determination of this case as the Applicant has no case to answer in the suit.

It was further averred by the Applicant that she is neither a necessary party, proper party nor a nominal party to the instant suit, and that her joinder in this suit is an abuse of court process.

The learned 2ndDefendant/Applicant's counsel, KazeemAdedeji, Esq., in his written address in support of the motion, raised two issues for determination, namely;

i) Having regard to the facts and circumstances of this case, as well as the grounds upon which this application is premised or predicated, whether the

name of the 2nd Defendant/Applicant ought not be struck out as a party in this suit?

ii) Whether the Claimants'action is not caught by the provisions of Section 251 (1)(p),(q),(r), of the 1999 Constitution (as amended) or whether this High Court of the FCT has jurisdiction to hear and determine this suit in view of the provisions of Section 251 (1)(p),(q),(r), of the 1999 Constitution (as amended)?

Proffering arguments on issue one, learned counsel posited that for a person to be made a party to an action, there must be factual basis for such joinder. He argued that a person is not made a party on the basis of mere speculation; that there must be specific pleading to show what the purported co-defendant has done, which had occasioned a wrong to the Claimant, as to justify his presence as a defendant/party in the suit, otherwise such a party cannot be said to have been properly joined in the suit as a defendant. He referred to **Nwaogwugwu v. President, F.R.N. (2007) 6 NWLR (Pt.1030) 237 at 273; Abubakar v. A.G. Federation (2007) 6 NWLR (Pt.1031)626.**

Placing reliance on **Adefarasin v. Dayek (2007)11 NWLR (Pt.1044) 96 at 121,** learned counsel submitted that where there is a misjoinder of a party, the Court is empowered, at any stage of the proceedings, and on such terms as appear to the Court to be just in the circumstance, to order that the name or names of any party or parties, whether as Claimant or defendant improperly joined, be struck out.He furtherreferred to **B.B. Apugo& Sons Ltd v. O.H.M.B. (2005) 17 NWLR (pt.954) 305 at 340-341, Negbenebor v. Negbenebor (1971) 1 All NLR 210 at 218,** and Order 13 Rule 18(2) of the High Court of the Federal Capital Territory (Civil Procedure Rules) 2018.

It was further posited by the learned Applicant's counsel, that it is the writ of summons and statement of claim that determines whether there is a factual basis for the joinder of a defendant in a suit. That it is the pleaded facts that the Court looks at in order to determine whether or not they disclose a cause of action against a particular defendant or raise some questions fit enough to be decided by the judge. He referred to **Bello v. A.G. Oyo State (1986) 5 NWLR (Pt.45) 828 at 876,Dada v. Ogunsanya (1992) 3 NWLR (Pt.232) 754.**

He argued that a cursory look at the Writ of Summons and the Statement of Claim in this case, will reveal that there is no valid basis for the joinder of the 2nd Defendant/Applicant as a party to the suit. That there is no wrongful act allegedly committed by the 2nd Defendant/Applicant against the Claimant.

He contended that the main allegation of wrongful act asserted by the Claimant is against the 1st Defendant, which is to the effect that the 1st Defendant froze the 1st Claimant's account and that the 1stDefendant breached the banker/customer relationship between her and the Claimants. That the 2nd Defendant cannot therefore, be answerable for same.

He posited that his forgoing contention is corroborated by the fact that there is no relief sought against the 2nd Defendant/Applicant.

He argued that there is nothing in the entire claim of the Claimants as endorsed on their Writ of Summons or their Statement of Claim, Witness Statement on Oath and exhibits attached thereto, that justifies or forms a valid basis for the joinder of the 2nd Defendant in the suit.

Relying on **Tabiowo v. Disu (2008) 7 NWLR (Pt.1087) 533 @ 545-546,** he submitted that the law is settled that where a party

fails to disclose a cause of action in a suit against a party as against the 2nd Defendant in the instant case; no further evidence shall be required to determine the action against such party.

He posited that this is therefore, the proper stage to strike out the name of the 2nd Defendant from the action, in the absence of any disclosed cause of action against the 2nd Defendant.

On issue two, learned counsel submitted that by the provisions of Section 251 (1)(p),(q),(r), of the 1999 Constitution (as amended), this suit as presently constituted, falls within the exclusive jurisdiction of the Federal High Court.

While contending that jurisdiction is the combination of parties and subject matter, he argued to the effect that the 2nd Defendant herein, is an agency of Federal Government, by which token, any grievance against her must be ventilated at the Federal High Court. Also, that regarding the subject matter of the suit, that the grouse of the Claimants in the suit is the alleged non-response of the 2nd Defendant to the letter written by the Claimants' lawyer to the 2ndDefendant. He argued that the said grouse relates to a civil matter arising from administrative or executive act of the 2nd Defendant which is an agency of the Federal Government, and as such, can only be ventilated at the Federal High Court as it affects the 2nd Defendant/Applicant.

He urged the Court, in the circumstances of this case, to decline jurisdiction with respect to the Claimant's complaint against the 2nd Defendant/Applicant and to strike out the name of the 2nd Defendant from this suit for misjoinder.

In opposition to the 2nd Defendant's application, the Claimants/Respondents filed a 16 paragraphs counter affidavit

deposed to by the 2nd Claimant, wherein he averred that when the 1st Defendantfroze his account without an order of Court, he wrote a letter of complaint to the 1st Defendant and copied the 2nd Defendant/Applicant, being the regulatory body for all financial institutions in Nigeria.

That when the 1st Defendant refused to acknowledge or reply his letter, he again instructed his solicitors to write to the Consumer Protection Department of the Applicant, but the Applicant still failed, refused and/or neglected to acknowledge or reply the said letter.

He averred that the inaction of the 2nd Defendant/Applicant to take responsibility as the regulatory body and call the 1st Defendant to order, made the 1st Defendant to continue to freeze his account.

He stated that he has not complained about the administration or the management and control of the 2nd Defendant, but the ineptitude andineffectiveness of a few unknown persons in the Consumer Protection Department within the 2nd Defendant which is expected to protect his interest with the 1st Defendant.

The 2nd Claimant in his counter affidavit further averred that he followed the directive of the 2nd Defendant as contained in its policy on Consumer Protection, to escalate his complaint to the 2nd Defendant/Applicant, by which he incurred unnecessary legal cost, and the 2nd Defendant/Applicant still failed to carry out its responsibility of protecting his interest.

Furthermore, he averred that the 2nd Defendant/Applicant is a nominal party in this matter. That he received an email from the 2nd Defendant/Applicant after the instant suit had been filed, wherein the 2nd Defendant stated that the freezing of the

Claimant's account was done on the instruction of the Nigeria Police.

In his written address in support of the counter affidavit, learned Claimants/Respondents' counsel, RaphaelOyewole, Esq., raised a lone issue for determination, to wit;

> ***"Whether the 2nd Defendant/Applicant is entitled to his (sic) prayers as prayed before this honourable Court?"***

He argued that the Claimants' suit before this Court is a banker/customer dispute principally against the 1st Defendant, but that the 2nd Defendant happened to be involved consequent on her failure to perform her responsibilities and her lackadaisical attitude towards resolving the complaint which she concedes to remedy on behalf of consumers of banking services.

He contended that even though the Claimants have no particular claims against the 2nd Defendant, the Claimants, or indeed anyone, cannot pre-empt what the consequential order of this court might be.

He relied on **Chief of Army Staff v. Lawal (2021) 10 NWLR (Pt.1307)74** to argue that the 2nd Defendant has been joined in this case as a nominal party, being an agency of government saddled with the responsibility of regulating the 1st Defendant.

He referred to **Padawa v. Jafau (2003) 5 NWLR (Pt.813)275,** where the Court held that:

> ***"A nominal party is a person who though having an interest in the subject matter of a suit before a court, will not be affected by any judgment of the court but is***

nonetheless joined in the suit to avoid procedural defects."

The learned counsel in conclusion contended that assuming this court finds that the 2nd Defendant/Applicant has been joined wrongly to the suit, that the proper order to make in such circumstance is an order striking out its name from the suit. on this point he referred to **O.U. Davidson Group Construction Nig. Ltd v. Bees Electrical Company Ltd (2001) 9 NWLR (Pt.719) 516** and **F.M.C, Ado-Ekiti v. Alabi (2012)2 NWLR (pt.1285) 453.**

He urged the Court to discountenance the prayers of the 2nd Defendant/Applicant and dismiss her preliminary objection.

In considering this application, this Court will adopt the first issue for determination as raised by the learned 2nd Defendant/Applicant's counsel in his written submission in support of the motion on notice, to wit;

"Having regard to the facts and circumstances of this case as well as the grounds upon which this application is premised or predicated, whether the name of the 2nd Defendant/Applicant ought not be struck out as a party in this suit?"

The 2nd Defendant/Applicantis praying this Court to strike its name out of this suit for being a misjoinder, on the grounds that the Claimants have disclosed no cause of action against it, having alleged no wrong doing on its part in respect of the freezing of their account by the 1st Defendant, and also for having claimed no reliefs against it in this suit.

The law is settled that only parties whose presence are necessary for the effectual and complete adjudication of the matter before the Court may be made parties to the suit.

The principle or rule regulating joinder of parties was well enunciated by the Supreme Court in the case of **Mogaji v. Mogaji&Ors (1986) LPER 1891 (SC),** where the Court, per Karibi-Whyte, J.S.C, held thus;

> ***"This rule deals essentially with joinder of parties to an action. Such joinder can be made by the Court suomotu or on application by a person or persons who can satisfy the requirement that his joinder is necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter. The governingprinciple which is a cardinal rule for the administration of justice is that principle conveniently expressed in Latin interest reipublicaeut sit finis litium. The termination of litigation is in the public interest. Hence, where the issues between the parties involve third parties whose interest are affected and the omission of which was bound to result in further litigation, such parties are those whose presence will be necessary for the effectual and complete adjudication of the matter before the Court, and their presence as parties is a sine qua non for the purpose."***

It follows therefore, that where the presence of a party is not required for the effectual and complete determination of the matter before the Court, the presence of such a party is not necessary in the suit.

In **Peenok Investments Ltd v. Hotel Presidential Ltd (1982) LPELR-2908(SC)** the Supreme Court, per Idigbe, JSC, made it clear that:

> ***"The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result and the question to be settled therefore must be a question in the action which cannot be effectually and completely settled unless he is a party."***

Where therefore, a person whose presence in an action has no bearing to the effectual determination of the suit, is joined as a party, his presence is considered a misjoinder, and: ***"The Court may at any stage of the proceedings,either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the names of any parties improperly joined be struck out."***

See Order 13: Rule 18(2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018.

Even though Order 13 Rule 6(1) of the Rules of this Court, which the learned Claimants'/Respondents' counsel relied upon in the course of the adoption of his written submission in support of his counter affidavit provides that:

> ***"6.(1) It shall not be necessary for every defendant to be interested in the relief sought in every cause of action included in any proceedingagainst him."***

The same Order 13 Rule 6 provides in its sub rule (2) thus:

> ***"The Court upon considering the defence filed by any defendant, may on application by that defendant make such Order as may appear just, to prevent him from being embarrassed, put to expense, attend or defend any proceedings in which he may have no interest."***

In the instant case, a careful perusal of the reliefs sought by the Claimants, as endorsed on their Writ of Summons and Statement of Claim, shows that the Claimants have not claimed any relief against the 2nd Defendant/Applicant. Also, the Claimants'Statement of Claimhas not disclosed any reasonable cause of action against the 2nd Defendant/Applicant.

Accordingly, I agree with the submission of learnedcounsel for 2nd Defendant/Applicant that the presence of the 2nd Defendant/Applicant in this suit constitutes misjoinder.

It is however, not the law that the issue of misjoinder is one that goes to the jurisdiction of the Court. Thus in **Akpan&Ors v. Julius Berger Nigeria PLC (2002) LPELR-1154(CA),** the Court of Appeal, perOduyemi, J.C.A. held that;

> ***"The question arises – is issue of misjoinder or non-joinder of parties one of jurisdiction?***
>
> ***It is clear that even if there is a misjoinder of parties, that is not an issue of jurisdiction and can be sorted out in the course of the substantive trial proceedings under, order VII rule 3(1) and (8). It is not one which attracts a dismissal of the action…"***

Also, the law is well settled that no cause or matter shall be defeated for non-joinder or misjoinder of parties. Thus in **Bello v. INEC &Anor (2010) LPELR-767(SC),** the Supreme Court, per Mohammed, JSC, held that;

> ***"The position of the law is well settled that no cause or matter shall be defeated by reason of mis-joinder or non-joinder of parties and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it."***

Therefore, in the light of the foregoing, and placing reliance on order 13 Rules 6(2) and 18(2), of the Rules of this Court, I hold that relief (1) of this application succeeds.

Accordingly, this Court makes an order striking out the name of the 2nd Defendant/Applicant as a party in this suit for misjoinder.

Consequential amendment is hereby ordered.

By the success of relief (1) of this application, relief (2) becomes otiose, and ditto, the arguments canvassed in that regard. The same is therefore discountenanced.

HON. JUSTICE A. O. OTALUKA
20/10/2021.