

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 5TH DAY OF OCTOBER, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.: -FCT/HC/CV/277/2021
MOTION NO.: -FCT/HC/M/3597/2021

BETWEEN:

SEPIRIBO CROMWELL PETERS ESQ.

*(Doing business under the name
and style of S.C. PETERS & Co.)*

}CLAIMANT/
RESPONDENT

AND

1. AK-AY ELEKTRIK NIGERIA LIMITED

2. MURSEL GULSEN

}DEFENDANTS/
APPLICANTS

Sunday Igboji with Vitis U. Okafor for the Defendants/Applicants.
Sepiribo Cromwell Peter appears for the Claimant/himself.

RULING.

By a Motion on Notice dated and filed the 18th day of June, 2021, the Defendants/Applicants brought this application praying the Court for the following reliefs:

1. An order of Court striking out the name of the 2nd Defendant from this suit for misjoinder of party.
2. And any other order or orders as this honourable court may deem fit to make in the circumstances of this case.

In the supporting affidavit deposed to by one Samuel Akpenpuun Esq., the Defendants/Applicants averred that the Claimant's suit is for unpaid professional fees for instituting a case on behalf of the 1st Defendant at the Federal High Court, Abuja. That the 1st Defendant is a company duly incorporated

with the Corporate Affairs Commission, consequent upon which it acquired a juristic personality that can sue and be sued.

He stated that the claims of the Claimant is not justiciable and that the Claimant has no cause of action against the 2nd Defendant. That the joining of the 2nd Defendant to this suit is an abuse of court process.

The Defendants/Applicants averred that the presence of the 2nd Defendant is not necessary at all for this honourable court to effectively and conclusively determine the suit of the Claimant before it.

Learned Defendants/Applicants' counsel, Godwin S. Ogboji, Esq., in his written submission in support of the Motion on Notice, raised a sole issue for determination, to wit;

“Whether the 2nd Defendant is entitled to the relief sought in the face of this Motion?”

Proffering arguments on the issue so raised, learned counsel relied on **Okwu v. Umeh (2016) All FWLR (Pt.825) 248**, to posit that in considering who a necessary party is, it cannot be said from the pleadings and claims of the Claimant before this court, that the presence of the 2nd Defendant is necessary for the determination of the claims of the Claimant.

He argued that it is an undisputed fact acknowledged by the Claimant that the 1st Defendant was duly incorporated with Corporate Affairs Commission and that the elementary consequence of this fact is that it automatically acquired juristic personality capable of suing and being sued to the exclusion of its directors, including the 2nd Defendant.

He submitted relying on the authority of **Solomon v. Solomon & Co. Ltd (1897) AC 22**, that the Claimant cannot have any

cause of action against the 2nd Defendant to warrant any claim against him in his suit which is primarily predicated on claiming a purported professional fee against the 1st Defendant.

Learned counsel further contended that the Claimant woefully failed to show anywhere in his pleadings how the presence of the 2nd Defendant is necessary in his claim against the 1st Defendant for his purported fee.

Relying inter alia, **B.B. Apugo & Sons Ltd v. O.H.M.B. (2006) All FWLR (322) 1588, Ajayi v. Jolayemi (2001) FWLR (Pt.55) 605-606**, he urged the court to answer the sole issue formulated for determination by the Defendants/Applicants in the affirmative, and to strike out the name of the 2nd Defendant from this suit for misjoinder.

In opposition to the Defendants/Applicants' application, the Claimant on 19th June, 2021, filed a 7 paragraphs counter affidavit deposed to by one Adindu Benard.

The Claimant/Respondent averred that the 2nd Defendant is one of the directors of AK-AY Elektrik Nigeria Limited and also the Managing Director of AK-AY Elektrik DIS TIC Knoll. STL, Turkey, an offshore company registered in Turkey and doing business in partnership with AK-AY Elektrik Nigeria Limited in Nigeria.

He stated that the 2nd Defendant has always resisted his claims for his professional fees in his personal capacity, all in his bid to ensure that the 1st Defendant is held liable to pay taxes in respect of the revenue of the 2nd Defendant's company, AK-AY Elektrik DIS TIC Knoll. STL, Turkey made from Nigeria. That in paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 of the Statement of claim, the Claimant stated the details of the misdeeds that he

attributed against the 2nd Defendant. That there is a distinct and separate relief sought against the 2nd Defendant at paragraph 47(a) of the Statement of Claim, and that the joining of the 2nd Defendant to this suit is to enable the 2nd Defendant to be afforded the opportunity to defend himself against the many averments against him.

The Claimant/Respondent averred that the presence of the 2nd Defendant is necessary in this suit to enable the court to effectively determine all the issues involved in this case, and that it will be in the interest of justice to dismiss this application, same having been brought in bad faith.

In his written address in support of the counter affidavit, the Claimant/Respondent adopted the sole issue for determination as formulated by the Defendants, to wit;

“Whether the 2nd Defendant is entitled to the relief sought in the face of this motion?”

Placing reliance on **Protoye v. Makarfi (2018) 1 NWLR (Pt.1599) at 149-150**, the Claimant/Respondent posited that where in a suit there is any claim made against a person by a Claimant, the person against whom the claim is made must be made a party as his head must not be shaved in his absence.

He argued that a calm and careful examination of exhibits A and B, which are proposed exhibits to be tendered in the substantive hearing, along with the pleadings in this case, will clearly underscore the self-announcing conclusion that the 2nd Defendant had claims against his misdeeds. That in exhibit A, the 2nd Defendant was said to have been acting for a certain AK-AY Elektrik DIS TIC Knoll. STL.Turkey, an offshore company that he has subsisting interest in, against the interest of the 1st Defendant, and that the 2nd Defendant was strongly

suspected in exhibit A to be a culprit of tax evasion, in favour of his said offshore company.

The Claimant contended that this act of the 2nd Defendant tantamount to a deliberate or inadvertent support for illicit financial flow, which has the element of Base Erosion and Profit Shifting, whereby multinational companies shift tax burdens on local companies and evade taxation.

He further contended that paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 of the Statement of claim show that the 2nd Defendant is just hiding under the veil of the 1st Defendant, but really working for himself and AK-AY Elektrik DIS TIC Knoll. STL. Turkey.

That the 2nd Defendant cannot therefore be said to be innocent in the circumstances of this case if the case of the Claimant is believed. In addition to a distinct and separate relief sought against the 2nd Defendant in paragraph 47(a) of the Statement of Claim, makes the 2nd Defendant an unavoidable party to be heard from.

He referred to Order 13 Rule 4 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 and posited that a defendant does not have to be interested in relief sought in any cause of action in the suit. That once there is a relief against him he can be joined as a defendant to the suit.

He further argued to the effect that the relief sought against the 2nd Defendant should not be considered alone in determining whether or not the 2nd Defendant is a necessary party to the suit, but the entire averments in the Statement of Claim.

He referred to **Okochi v. Animkwoi (2003) 18 NWLR (Pt.851) 1** and posited that the totality of the averments in the Statement of Claim clearly underscored the principle of “lifting the veil of

incorporation” which the 2nd Defendant forgot in contending that there is no cause of action against him.

He urged the Court to dismiss this application for being frivolous and lacking in merit.

The Defendants/Applicants, in response to the Claimant/Respondent’s counter affidavit, filed a 15 paragraphs “Reply Affidavit”, with exhibits and written address on points of law.

The Defendants averred that the claim against the 2nd Defendant as contained in paragraph 47(a) of the Statement of Claim was only claimed in the Claimant’s attempt to unnecessarily join the 2nd Defendant to this suit as the said claim has no bearing whatsoever with the claim of the Claimant that he is being owed fee by the 1st Defendant. That the Claimant has no claim against AK-AY Elektrik DIS TIC Knoll. STL. Turkey for the status of the Defendant in the said company to be an issue for the determination of this court.

They averred that at all times leading to the suit of the Claimant before this court, the 2nd Defendant acted on behalf of the 1st Defendant as its managing Director and representative of the majority shareholders. That the 2nd Defendant in his individual capacity is not a necessary party in this suit.

In his written address on point of law, learned Defendants/Applicants’ counsel submitted that a company is distinct from its members, and that although a company acts through its human officials, such acts of the officials are not acts of the particular officials as the 2nd Defendant in this case, but that of the company, who by law takes complete responsibility for such acts/actions. He referred to O.I.

&Finance Co. Ltd v. Vaswani (2015) All FWLR (Pt.806) 402
and **Armah v. Horsfall (2017) All FWLR (Pt.912)722.**

He submitted that in the face of the decision in the case of **Armah v. Horsfall (supra)**, no matter how many paragraphs of pleadings the Claimant has against the 2nd Defendant, he cannot successfully have any claim against the 2nd Defendant for acting or speaking for the 1st Defendant.

He urged the Court in conclusion, to completely discountenance the counter affidavit of the Claimant as it is of no moment.

In consideration of the sole issue raised by both counsel, the instant application before this Court is for an order striking out the name of the 2nd Defendant from the suit for misjoinder of party. An application such as the instant, calls for the ascertainment of who is a necessary party to a suit.

In **Kalu v. Uzor (2004) 12 NWLR (Pt.886) 1 at 23,** the Supreme Court explained who a necessary party is, when it held thus:

“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. 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 they are parties to the action instituted by the Plaintiffs.”

The suit instituted by the Claimant herein is for the recovery of his alleged professional fees for legal services rendered to the 1st Defendant. The questions that will come to mind at the determination of this suit will be whether the 1st Defendant

engaged the services of the Claimant; whether the Claimant rendered the services to the 1st Defendant; whether there was any agreed fees for the services; and whether the 1st Defendant fulfilled her obligation to the Claimant by paying the agreed professional fees to the Claimant.

The 1st Defendant is a corporate legal entity and could be represented in the suit by any of its officers who may not necessarily be a party to the suit.

From the pleadings, the business transaction is between Claimant and the 1st Defendant. That it is the 1st Defendant, who is indebted to the Claimant. It is the averment of the Claimant that the 2nd Defendant is a director of the 1st Defendant from whom he is seeking the payment of his legal fees. It is immaterial who is allegedly “standing in the way” of the payment of the Claimant’s professional fees. All that is required from the Claimant is to prove the indebtedness of the 1st Defendant.

Noteworthy that a director can be made liable as an officer in default for a contravention of the Company’s Act where such director is designated to some responsibility towards the company. Authorities in law have held severally that directors are held responsible for negotiations and agreement signing on behalf of their companies, while the companies are legally held liable or deemed to be liable for acts of the company. Sequel to the above, directors to companies are held to be agents of the companies. By virtues of Section 65 of Company Allied Matters Act 1990, a director while carrying out the usual business of the company shall be treated as an agent of the company – **Oriebosi v. Andy Sam Invest. Coy Ltd (2014) LPELR 23607 (CA)**. Tobi, JSC held that;

“...a director of a company in the eyes of the law is an agent of that company for which he acts and the general principle of law of principal and agent applies. See Patrick Okolo&anor v. UBN Ltd (2004) LPELR 2465(SC).Therefore, the director is not a necessary party to a suit whereby the company he acted for is sued.”

There is no doubt in my mind that the above questions can be properly settled without the presence of the 2nd Defendant as a party in this suit.

In all, I agree with the learned defence counsel that the 2nd Defendant is not a necessary party to this suit.

The duty of the Claimant is to establish that he is entitled to his alleged professional fees from the 1st Defendant, and it will not matter to the order of Court, who is standing in the way.

Accordingly, this application succeeds, and an order striking out the name of the 2nd Defendant from this suit is granted for the interest of justice.

Consequential amendments to the parties' pleadings reflecting this order is hereby ordered.

**HON. JUSTICE A. O. OTALUKA
5/10/2021.**