

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU

ON FRIDAY 12th DAY OF NOVEMBER, 2021

SUIT NO: FCT/HC/CV/747/2021

MOTION NO: FCT/HC/M/5897/2021

BETWEEN:

BOLA AIDI ESQ

(Trading under the name and style

Of Bola Aidi & Co.) CLAIMANT/RESPONDENT.

AND

(1) RENAISSANCE TURNKEY

PROJECTS LTD DEFENDANT/RESPONDENT.

(2) CHIEF MRS ADUNNI UDU..... DEFENDANT/APPLICANT.

RULING

By a motion on Notice dated 1st September 2021 the 2nd Defendant/Applicant is praying this Court for the following orders:-

- (1) An Order of this Honourable Court striking out the name of the 2nd Defendant as a party in this suit being an agent of a disclosed principal and not a proper party to the suit.

- (2) And for such further or other orders as this Honourable Court may deem fit to make in the circumstance.

The 2nd Defendant/Applicant filed in support of the application a 6 paragraph affidavit deposed to by one Miss Bisola Sani.

A Written Address dated 1st September 2021 was also filed along with the supporting affidavit.

At the hearing of the application on the 4th of October 2021 the Learned Applicants Counsel relied on all the paragraphs of the affidavit and adopted the Written Address as their legal argument in support of the application.

In the Written Address, Learned Counsel raised a sole issue for the determination of the Court, to wit.

Whether or not the Claimant was right in making the 2nd Defendant a party in this suit and the Claimant not having any claim against her personally, and the 2nd Defendant being an agent of a disclosed principal.

Learned Counsel urged the Court to resolve the issue in favour of the 2nd Defendant/Applicant and struck out her name.

In opposition to the application of the 2nd Defendant, the Claimant filed a Counter Affidavit of 5 paragraphs deposed to by one Ayooluwa Akinleje. The Claimant also submitted Written Address dated 7/09/2012.

At the hearing Learned Counsel to the Claimant relied on all the averments in the affidavit and adopted the Written Address as their legal argument in opposition to the application of the 2nd Defendant.

In the Written Address Learned Counsel formulated a sole issue for the determination of the Court, to wit

Whether given the entire circumstance of this suit, the application of the 2nd Defendant/Applicant's motion is not liable to be dismissed

Learned Counsel urged the Court to resolve in their favour and dismiss the application.

The 1st Defendant did not file any process on this application.

I have carefully read and considered all the process filed by both the 2nd Defendant/Applicant and the Claimant/Respondent.

For the determination of the application, I shall adopt the issue raised by the Applicant in their address.

Is the 2nd Defendant an agent of a disclosed principal in relation to the claims of the Claimants?

To address this question I will like to refer to relevant averments on both affidavits.

In the Affidavit in support of the application of the 2nd Defendant/Applicant it was averred thus,

In paragraph 3

- (a) That the Claimant/Respondent filed this suit before this Court and made the 2nd Defendant/Applicant a party in the suit.
- (b) That the 2nd Defendant/Applicant in this suit at all material time in the transaction that led to this case acted as agent and representative of the 1st Defendant/Respondent.
- (c) That the 1st Defendant/Respondent is a legal power, who by law can enter into a valid contract, with a fixed address, still carrying on

its legal business till date, and it is not in the process of winding up.

- (d) That the 2nd Defendant/Applicant did not carry out any duty with respect to the cause of action in the suit in her personal capacity but as an agent or representative of a disclosed principal.
- (e) That all the documents exhibited before this Court, none was addressed to her personally or in her personal capacity.
- (f) That the claims of the Claimant in this suit are not against the 2nd Defendant/Applicant.

I also find the following averments in the Claimant's counter Affidavit relevant.

- 4(ii) That contrary to paragraphs 3 (b) (c) (f) thereof, from the time the 2nd Defendant contracted him for the preparation of the Legal documents for the Land purchase until the execution of the documents, the 2nd Defendant never. Informed him that she was acting as agent of the 1st Defendant.
- (iii) That the name of the 1st Defendant was written on the legal documents prepared by him on the instruction of the 2nd Defendant.
- (iv) That at all time material to the transactions leading up to this suit, he related and communicated with the 2nd Defendant in her personal capacity and she never at any time informed him that she was acting as an agent.

- (v) That he knows of a fact that the matter cannot be attractively and effectively determined in the absence of the 2nd Defendant.
- (vi) That the reliefs he is seeking in the suit is against both the 2nd and 1st Defendants jointly and severally.

It is the contention of the 2nd Defendant/Applicant that the 2nd Defendant/Applicant acted as agent of a principal within the scope of authority to act and so it is the principal that should be sued. The Learned Applicant's Counsel place reliance on the contract exhibit annexed) to the Claimant's Statement of Claim and the authority in **UWAH & ANOR V. AKPABIO & ANOR (2014) LPELR-22311 (SC)** and **EKEE & ORS V. IDOVIE & ORS (2020) LPELR-50764 (CA)**.

In response Learned Counsel for the Claimant submitted that the affidavit in support of the application is defective and cannot be relied upon for reason that it amounted to hearsay and it is argumentative thereby offending Section 115 of the Evidence Act. He urged the Court to strike out the offending paragraphs. Counsel relied in the authority in **NPDC LTD 7 ANOR V. OYIBOCHA (2018) LPELR-44825 (CA)** and **JOSSIEN HOLDING LTD V. LORNAMEAD (1995) 1 SCNJ 133 at 141**.

I have carefully looked at the alleged offending paragraphs and held the firm view that the Deponent has established how she comes about the information by virtue of her position as Litigation Secretary and from instruction received from the Counsel handling the matter this in my view suffice. I also find that facts contend in the affidavit cannot be ignored on the ground of mode of delivery. The averments are not liable to be struck out.

On the substance of the application Learned Counsel argued that although the 2nd Defendant asserted that at all times material to the transaction between her and the Claimant, she was acting as an agent to the 1st Defendant, there is no valid evidence before the Court in support of the contention.

It is the affidavit evidence of the Claimants that the name of the 1st Defendant was written on the legal documents prepared by him on the instruction of the 2nd Defendant and he related and communicated with the 2nd Defendant in her personal capacity and she never at any time informed him that she was acting as an agent. In other words, the 2nd Defendant was the client not the 1st Defendant until the instruction to write the 1st Defendant name on the document.

I have to agree with the Learned Counsel for the Claimant/Respondent that there is no evidence showing the existence of any agency relationship between the 1st and 2nd Defendant. To assume that such relationships exist only on the words of the 2nd Defendant would be to speculate and speculation cannot take the place of evidence. Also in line with the authority in **OSIGWE V. PSPLS MGT CONSORITUM (2009) 3 NWLR (Pt.1128) 378** at 404 and Order 13 Rule 4 of the Rules of this I find that from reading the Writ of Summon and the Statement of Claim the 2nd Defendant is a proper party in this suit. See: ~ **IBRAHIM V. MUSA (2019) LPELR 4775 (CA)**. The Claimant is right to add the name of the 2nd Defendant's name to this suit.

In all I find that the application lacks merit, and it is hereby accordingly dismissed.

SIGNED
HON. JUDGE
12/11/2021.

LEGAL REPRESENTATIVES

- (1) J. O. Akinlaje Esq with A. R. Apuabe Esq for the Claimant/Respondent.
- (2) Chima Ndugbu Esq for the 1st Defendant holding brief of the 2nd Defendant.