

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA.

BEFORE HON. JUSTICE J.E. OBANOR
ON THURSDAY THE 7TH DAY OF OCTOBER, 2021.

SUIT NO: FCT/HC/CV/1166/2021
MOTION NO: FCT /HC/CV/M/5542/2021

BETWEEN:

MR EZENADUBOM AUGUSTUS.....CLAIMANT/RESPONDENT/APPLICANT

AND

GLOBACOM NIGERIA LIMITED...DEFENDANT/APPLICANT/RESPONDENT

AND

VIXEN ENTERPRISES LTD.... PARTY SOUGHT TO BE JOINED

CONSOLIDATED RULING

By a Motion on Notice filed on 29th July 2021 and predicated on Order 43 Rule 1 of the Rules of Court 2018 and inherent jurisdiction of the Court, the Defendant/Applicant challenged the jurisdiction of this court to entertain this suit by seeking for the following orders:-

- “1. AN ORDER striking out Suit No: FCT/HC/CV/1166/2021 before this Honourable Court for want of Jurisdiction.
2. AND for such further order(s) as the Honourable Court may deem fit to make in the circumstances.”

The application is predicated on four grounds as set out in the motion paper. It is supported by a 5-paragraph affidavit deposed to by Isaac

Abel and Written Address of the learned Defendant/Applicant's Counsel.

In reaction to the application, the Claimant/Respondent on 6th September 2021 filed a 20-paragraph Counter Affidavit deposed to by Sadiq Isah Dagauda along with the Written Address of his Counsel as well as an application deeming same as properly filed and served. On 27th September 2021 the Defendant/Applicant filed a further affidavit along with a reply on point of law in reaction to the Claimant/Respondent's Counter affidavit and written address.

On 6th September 2021, the Claimant also filed a Motion seeking for the following orders:

1. An Order of this Honourable Court granting leave to join VIXEN ENTERPRISES LTD (party sought to be joined in this suit) as a Co- Defendant in this suit.
2. An Order of this Honourable Court to serve the Writ of Summons and other processes in this matter on VIXEN ENTERPRISES LTD as the 2nd Defendant in this suit.
3. And any other order or further orders as this Honourable Court may deem fit to make in the circumstance of this application.

The application is predicated on four grounds as set therein. It is supported by a 10-paragraph affidavit deposed to by Sadiq Isah Dagauda and Written Address of his learned Counsel.

The Claimant's motion was served on the Defendant on 20th September 2021 but the Defendant did not file a counter affidavit in opposition to same.

On 30th September 2021, the Court in order to save time and resources, in the exercise of its discretion made an Order for consolidated hearing of both applications.

At the hearing on 30th September 2021, Counsel for the parties adopted their Written Addresses as their oral submissions for and against the two applications. Consolidated Ruling was then reserved for today 7th September 2021.

For the reason that challenge to jurisdiction is a threshold issue which once raised the Court is under a duty to resolve same first, the Court shall proceed to consider the Defendant's Motion on Notice and thereafter if necessary, consider the Claimant's Motion on Notice.

In the affidavit in support of the Defendant/Applicant's Motion on Notice it was averred inter alia that the Claimant/Respondent (hereinafter referred to as "Respondent") took out a writ of summons against the applicant amongst others, complaint in trespass and claimed several monetary reliefs against the applicant. The respondent also wrote two letters to it thinking that it was the applicant that mounted its mast on the Respondent's land without proper inquiry. The land which the respondent purportedly owed to have been trespassed upon was not done by the applicant rather the site belongs to Vixen Enterprises Ltd that owned the alleged site which Vixen Enterprises Ltd acquired from one Mr Ibrahim Sheshimbwa. The said letter was received by the applicant and forwarded to the proper party to be sued as a Defendant ie Vixen Enterprises Ltd, the response of Vixen Enterprises Ltd was attached as Exhibit A. Exhibit A was copied to Counsel to the Respondent Barr. U.Y. Hassan Dukku yet the Respondent's Counsel preferred to file this suit against the applicant. The applicant is not a proper party in this case and this court lacks the jurisdiction to hear and determine this case.

In his counter affidavit it was averred by the deponent on behalf of the Respondent that it is a fact that the telecommunication mast on the trespassed land belonging to the Claimant is operated by Globacom Nigeria Limited. The Defendant/Applicant is a Nigerian Multinational telecommunications company founded in 2003 by one Mike Adenuga. VIXEN ENTERPRISES LTD is a registered telecommunication company which forms part of Globacom Nigeria Ltd(the Defendant)

having its head office at Lagos with Mike Adenuga also as its key principal. The Defendant and VIXEN ENTERPRISES LTD are managed by same set of persons and carry out their activities hand in hand having the same goals and purposes therefore they are inseparable. The said installed mast on the Claimants' plot of land is operated by Globacom (the Defendant) though it was installed and is been maintained by VIXEN ENTERPRISES LTD for and on behalf of the Defendant. The judgment of this Honourable Court will directly affect the services and operations of the Globacom (the Defendant) hence making the Defendant a party in this suit. The Claimant/Respondent has never at any point received any letter from Globacom Nigeria Limited (the Defendant) or Vixen Enterprises Limited as purported by the Defendant/Applicant. Without mixing any words, Vixen Enterprises Limited is second to the Defendant (Globacom Nigeria Ltd). The Claimant/Respondent has forthwith filed an application joining the said VIXEN ENTERPRISES LTD as Co-Defendant in this suit for just determination thereof. This Honourable Court has jurisdiction to determine this suit and ought to discountenance the application in the interest of justice as same has no merit.

In the Applicant's further affidavit it was avered inter alia that Vixen Enterprises Ltd is not the same and one as Globacom Nigeria Ltd is incorporated under the laws of the Federation 1990. The Vixen Head Office is at No 18A Oko Awo Close, Victoria Island Lagos, whereas the Applicant head office is at No 1 Mike Adenuga Close Victoria Island Lagos. The management of Globacom Nigeria Ltd are not same and one, they are separate bodies. Management of the mast is by Vixen Enterprises Ltd and same Vixen acquires land without knowing by the applicant. The applicant did not trespass into the alleged land purportedly owned by the Respondent that may warrant suing the applicant. It is a fact that Exhibit A was copied to the Respondent's counsel. Vixen Enterprises Ltd is different from the applicant. The applicant is not aware of any process joining Vixen and cannot join Vixen at this stage having concluded evidence against the applicant but can withdraw the suit.

As aforesaid, Counsel for the parties filed and exchanged Written Addresses in support of their respective contentions. The Court has given due consideration to the averments in the affidavits of the parties and their respective submissions. The cardinal issue that calls for determination is whether or not the Defendant/Applicant has made out a case to justify a grant of an order of this court striking out this suit for want of jurisdiction.

The **Supreme Court Per OPUTA ,J.S.C** took time to consider what is meant by “ *parties to an action and distinction between proper parties, desirable parties and necessary parties*”, thus **in GREEN V. GREEN (1987) 3NWLR (PT 61) ; (1987) LPELR-1338(SC) as follows;**

"This now leads on to the consideration of the difference between 'proper parties', 'desirable parties' and 'necessary parties'. Proper parties are those who, though not interested in the Plaintiffs claim, are made parties for some good reasons e.g. where an action is brought to rescind a contract, any person is a proper party to it who was active or concurring in the matters which gave the plaintiff the right to rescind. Desirable parties are those who have an interest or who may be affected by the result. 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 plaintiff."

The Court went further to explained that, a plaintiff who conceives that he has a cause of action against a particular defendant is entitled to pursue his remedy against that defendant only and should not be compelled to proceed against other persons whom he has no desire and no intention to sue.

Being properly guided by the foregoing guidelines, the crucial question is whether or not the Defendant/Applicant in this matter is a party whose presence is needed in this matter or who may be affected in one way or the other by the result or outcome of this case.

In line with the foregoing, I have examined and considered the parties affidavits especially the Claimant/Respondent's depositions in his counter affidavit wherein he stated "that the judgment of this court will directly affect the services and operations of the Globacom (Defendant) hence making the Defendant a party in this suit." I have also examined the Defendant/Applicant's affidavit and further affidavit to determine if there is any deposition contrary to this in point of substance but I found none. The implication of the above is that the Applicant at least is a desirable party to this suit as it may likely be affected by the judgment of this court. It ought to be present in the proceedings so as to be bound by the outcome See: - GREEN V. GREEN supra. However if at the end of trial and the court finds there is no case against the Defendant/Applicant, the case will be dismissed and cost awarded in its favour against the Claimant/Respondent but at least let all the parties be before the court for this matter to be effectually and completely adjudicated upon so as to settle all the questions involved in the matter and justice will be seen to have been done.

For reason of the foregoing, the Court resolves the sole issue raised above against the Defendant/Applicant in favour of the Claimant/Respondent.

In consequence, this application fails and is hereby dismissed.

With regards to the Claimant/Applicant's application for leave to join VIXEN ENTERPRISES LTD as a Defendant in this suit, I have carefully considered the averments in the Claimant/Applicant's affidavit in support of this application and submission of his learned counsel. The crucial issue for determination is whether or not the Claimant/Applicant has made out a case to justify a grant of this application.

As aforesaid, this application was served on the Defendant/Respondent but it did not file any Counter Affidavit in opposition to same. The settled position of the law is that averments in an affidavit not controverted by the adversary despite the opportunity he had are deemed admitted by the Court and in the circumstances, is under a duty to act on them unless it does not believe them. See: **OBUMSELI & ANOR V. UWAKWE (2019) LPELR-46937 (SC); NB PLC V. AKPERASHI & ANOR(2019) LPELR-47267 (CA); CONT. LTD V UAC N.P.D.C. PLC (2003) 13 NWLR (PT. 838) P. 594; ADAMU V AKUKALIA (2005) 11 NWLR (PT. 936) P. 263 and MALGIT V DACHEN (1998) 5 NWLR (PT. 550) P. 384.**

Order 13 Rule 4 of the Rules of Court 2018 provides that “ Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative....”

Order 13 Rule 8 of the Rules of Court 2018 provides that “where a Claimant is in doubt as to the person from whom he is entitled to redress, he may in accordance with this Rules, or as may be prescribed by any special order, join two or more defendants, so that the question as to which if any of the Defendants is liable and to what extent, may be determined as between all parties.”

Furthermore, the Supreme Court **Per OPUTA ,J.S.C in GREEN V GREEN (Supra)** laid down factors to be considered by a Court in determining whether a party should be joined to a suit when it held thus:

“The Court should ask itself the following questions:

1. Is the cause or matter liable to be defeated by the non-joinder?
2. Is it possible for the Court to adjudicate on the cause of action set up by the plaintiff unless the third party is added as defendant?
3. Is the third party a person who ought to have been joined as a defendant?

4. Is the third party a person whose presence before the Court as defendant will be necessary in order to enable the Court effectually and completely adjudicate on and settle all the questions involved in the cause or matter?."

In this matter, an examination of the Claimant/Applicant's affidavit which remain unchallenged shows he averred therein that the party sought to be joined is responsible for the illegal installation and maintenance of the telecommunication mast on the Claimant's plot of land known and described as Plot No DMF 34 lying situate and being at Kilankwa Layout, Kwali Area Council Abuja which mast the Defendant (Globacom Nig. Ltd) operates without seeking first and obtaining the express consent of the Claimant. The party sought to be joined works hand in hand with the Defendant in this suit and is a necessary party and will be directly affected by the outcome of this case as its joinder will allow a judicious determination of all issues with all parties connected to the subject matter of the suit.

I have carefully read and considered the Claimant/Applicant's affidavit in support of this application.

As earlier mentioned, the Supreme Court in GREEN V GREEN (Supra) did state that a party will be joined where its presence before the Court as defendant will be necessary in order to enable the Court effectually and completely adjudicate on and settle all the questions involved in the cause or matter. In this case, the Court cannot effectually and completely adjudicate on and settle all question involved in this suit without having the presence of VIXEN ENTERPRISES LTD joined as a party in this case. At least let the Court have before it all parties and all facts relating to all issues in controversy between the parties for just determination in the interest of doing substantial justice.

For the reason of the foregoing, the Court resolves the sole issue raised above in favour of the Claimant/Applicant against the Defendant/Respondent. In consequence, this application is granted.

Leave is granted to the Claimant/Applicant to join VIXEN ENTERPRISES LTD as a 2nd Defendant in this suit.

The Claimant/Applicant is directed to amend the originating processes to reflect this joinder and serve same on Defendants (the newly joined party inclusive) within 7 days from today.

I make no order as to cost.

SIGNED
HON.JUDGE
7/10/2021.

LEGAL REPRESENTATIONS:

1. UY Hassan Dukku Esq for the Claimant/Respondent/Applicant.
2. Benjamin A. Adokwu Esq for the Defendant/Applicant/Respondent.