IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 10TH DAY OF NOVEMBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/3348/2020

BETWEEN:

FRAJEND INVESTMENT (NIG.) LIMITED	**CLAIMANT/RESPONDENT**
AND	
1. INSPECTOR-GENERAL OF POLICE **2. NIGERIA POLICE FORCE** **3. ATTORNEY-GENERAL OF THE FEDERATION**	**DEFENDANTS/RESPONDENTS**
4. ACCOUNTANT-GENERAL OF THE FEDERATION	**DEFENDANT/APPLICANT**

RULING

This Ruling is in respect of an application by the 4th Defendant/Applicant challenging his joinder in the suit of the Claimant.

By a Notice of Preliminary Objection filed on the 1st of February, 2021, the 4th Defendant/Applicant prayed this Honourable Court for the following orders:

1. *An Order of this Honourable Court striking out the name of the 4th Defendant from this suit for lack of reasonable cause of action.*
2. *Alternatively, an Order of this Honourable Court striking out the 4th Defendant's name for not been a necessary party to this suit.*

3. *Any other Order or further Orders as the Honourable Court may deem fit to make in the circumstances of the case.*

In support of the Notice of Preliminary Objection, the 4th Defendant/Applicant filed a 13-paragraph affidavit deposed to by one Alinko Modu, a Litigation Officer in the Office of the Accountant-General of the Federation. The 4th Defendant/Applicant also filed a written address which contained his legal arguments in support of the application. The 4th Defendant/Applicant relied on all the paragraphs of the affidavit and the legal authorities cited in the written address in support of his submissions in his argument to move the Court to remove the 4th Defendant/Applicant from the suit.

On the other hand, the Claimant filed a 6-paragraph Counter-Affidavit deposed to by Sarah Omogbemhe, a Legal Practitioner in the Law Firm of Tunde Ogunsakin & Co. Attached to the Counter-Affidavit were three exhibits, the memorandum of understanding between the Claimant and the 1st and 2nd Defendants marked as **Exhibit F1** and **Exhibit F2** which is the letter from the Claimant to the 1st and 2nd Defendants notifying them that the introduction of the Integrated Personal Payroll Information System (referred hereinafter as IPPIS) had affected the monthly deductions in payment for the motorcycles supplied. There is an unmarked exhibit which is a letter from the Department of Finance and Administration of the 1st and 2nd Defendants

addressed to the Manager, First Bank of Nigeria, Plc directing it to debit a certain account in favour of Frankbell Industries Limited.

Parties adopted their respective positions in respect of the application on the 28th of September, 2021 and thereafter the Court adjourned for Ruling. For the 4th Defendant/Applicant, two issues were formulated, to wit: "*(1) Whether this Honourable Court has the jurisdiction to entertain this suit against the 4th Defendant/Applicant;* and *(2) Whether having regards to the Claimant's claim, the Claimant has established any reasonable cause of action against the 4th Defendant/Applicant"*. In arguing these issues, it was contended on his behalf that he was neither aware of the transaction between the Claimant and the 1st and 2nd Defendants nor a privy to the contract and that the 1st and 2nd Defendants never directed the 4th Defendant/Applicant to enroll the Claimant in its IPPIS. For these reasons, the 4th Defendant/Applicant maintained that he was not legally liable to the Claimant and, as such, his name should be struck out of the suit.

On the other hand, though the Claimant did not file a written address in support of its Counter-Affidavit, it, however, responded orally and contended therein that the purpose of joining the 4th Defendant/Applicant in the suit was because his office was responsible for the monthly deductions for the payment of the motorcycles, following the introduction of the IPPIS. The

Claimant therefore urged the Court to discountenance the application of the 4th Defendant/Applicant.

In resolving this application, I have adopted the two issues the 4th Defendant/Applicant formulated and modify same thus: "***Whether from the circumstances of this case the Claimant has not made out a reasonable cause of action against the 4th Defendant/Applicant as to vest this Honourable Court with the jurisdiction to hear and determine the substantive suit***."

In resolving this issue, the logical *fons et origo* will be an understanding of what a cause of action is. In ***AG Lagos State v. Eko Hotels Ltd & Anor (2006) LPELR-3161 (SC)***, the Supreme Court per Onnoghen JSC (as he then was) held ***at p. 55 paras C*** that:

> "***The question as to what a cause of action is and when it is said to have accrued have long been settled by the Court and it has been held that a cause of action consists of every fact which it would be necessary to prove, if traversed in his claim for judgment and that the accrual of the cause of action is the event where a cause of action becomes complete so that the aggrieved party can begin and maintain his cause of action. It is very clear from a community reading of decisions of the***

courts on the issue that cause of action always deals with events in the immediate past, not in the future."

In ***AG Federation v. AG of Abia State & Others (2001) LPELR-24862 (SC) at pp 22 – 23 paras D***, the Supreme Court per Uwais CJN defined a cause of action "***… to mean the fact or facts which establishes or gives rise to a right of action and that it is the factual situation which gives a person the right to judicial relief (see* Egbe v. Adefarasin (1987) 1 NWLR (Pt. 47) 1*). It is sufficient for a Court to hold that a cause of action is reasonable once the statement of claim in a case discloses some cause of action or some questions fit to be decided by a Judge notwithstanding that the case is weak or not likely to succeed…***"

In ***Ajuwon & Ors v. Governor of Oyo State & Others (2021) LPELR-55339 (SC)***, the Supreme Court, citing with approval the cases of ***Thomas v. Olufosoye (1986) NWLR (Pt. 18) 669 at 682*** per Obaseki, JSC and ***Drummond-Jackson v. British Medical Associated (1970) 1 WLR 688; (1970) 1 All ER 1094 C4*** per Lord Pearson defined "***a reasonable cause of action as meaning a cause of action with some chance of success when only the allegations in the pleading are considered.***"

Two questions, therefore, beg for answer in view of the judicial authorities quoted above. They are: firstly, has the Claimant been able to establish that he has a cause of action, even if it is weak, against the 4th

Defendant/Applicant? Secondly, has the Claimant been able to show, even the tiniest of a nexus between the 4th Defendant/Applicant and the reliefs sought in the suit which flows from the accrual of the cause of action? To answer these questions must necessarily involve a voyage into the Writ of Summons to identify the grouse of the Claimant against the 4th Defendant/Applicant.

Against the 4th Defendant/Applicant, the Claimant is claiming a declaratory relief for his failure to synergise with the 1st and 2nd Defendants for the purpose of deducting the monthly payments for the supplied motorcycles and that this failure tantamount to a dereliction of his statutory duties. In its Counter-Affidavit to the affidavit in support of the application of the 4th Defendant/Applicant, the Claimant explicated on this train of thought when Sarah Omogbemhe, the deponent thereof, swore in paragraphs 3 and 4 thus:

Paragraph 3:

> "*That I know the 4th Defendant is under statutory obligation to workout (*sic*) modalities with the 1st and 2nd Defendants for the deduction of their financial obligation to the Claimant in respect of the agreement they entered into with the Claimant to supply 366,000 brand new Frajend Motorcycles in view of the Federal Government's implementation of the integrated personal (*sic*) payroll information system.*"

Paragraph 4:

> "*That the integrated personal (sic) payroll information system (IPPIS) Secretariat is a Department under the 4th Defendant as the said IPPIS is responsible for payment of salaries and wages directly to Federal Government employees and also helps the Government to plan and manage payroll budget by ensuring proper control of personnel cost.*"

Allied to the submissions on both sides of this divide is the issue of the parties before this Court in this suit. While the 4th Defendant/Applicant asserted that it was not a party to the contract between the Claimant and the 1st and 2nd Defendants and, therefore, should not be made a party in this suit, the Claimant contended in opposition that the statutory duties the 4th Defendant/Applicant is required to perform in relation to the salaries and emoluments of the employees of the Federal Government make the 4th Defendant/Applicant a necessary and proper party in this suit.

Who, then, is a proper party or a necessary party to an action and how can a proper party or necessary party be determined? In ***Green v. Green (1987) LPELR-1338 (SC)*** the Supreme Court per the erudite Oputa, JSC ***at pages 16 – 17, paras F*** draws a distinction between the different classes of parties thus:

"***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 Plaintiff's 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.***"

As to the question of determining who a proper party is, the Courts, again, always come to the rescue. In the case of ***Goodwill & Trust Investment Ltd & Anor v. Witt & Bush Ltd (2011) LPELR-1333 (SC),*** the Court per Adekeye, JSC held at ***page 37, paras B*** that,

"***It is trite law that for a Court to be competent and have jurisdiction over a matter, proper parties must be identified.***

Before an action can succeed, the parties to it must be shown to be the proper parties to whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the Court as it goes to the foundation of the suit in limine. Where proper parties are not before the Court, then the Court lacks jurisdiction to hear the suit…"

This trite law has been established in a plethora of cases such as ***Plateau State of Nigeria & Another v. AG Federation & Another (2006) LPELR-2921 (SC); Bello v. INEC & Others (2010) LPELR-767 (SC); Awoniyi & Others v. The Reg. Trustees of AMORC (Nig.) (2000) LPELR-655 (SC); Kirfi Local Government Area Council v. Mohammed & Ors (2017) LPELR-43435 (SC); U.O.O. (Nig.) Ltd v. Okafor & Others (2020) LPELR-49570 (SC); Cotecna Int'l Ltd v. Churchgate Nig. Ltd & Anor (2010) LPELR-897 (SC)*** among other authorities.

Considering the overall effect of a community reading of paragraphs 3 and 4 of the Counter-Affidavit of the Claimant in response to the Affidavit of the 4th Defendant/Applicant – averments that the 4th Defendant/Applicant did not traverse by way of a Further Affidavit – this Court is impelled to hold, and so hold, that the Claimant has established a nexus between the cause of action in this suit and the 4th Defendant/Applicant herein.

Having found that the substantive suit cannot be resolved without an understanding of the operation of the IPPIS, a unit under the direct control of the 4th Defendant/Applicant, it is the considered view of this Court, and I so hold, that the 4th Defendant/Applicant is a proper and necessary party to the just adjudication of this suit. In ***Akubo V. EFCC & Anor (2019) LPELR-47821(CA) pp. 37 – 39, paras C - C***, the Court of Appeal per Mohammed Baba Idris, JCA held that,

> "***It is trite law that a person who is a necessary party is one that is not only interested in the subject matter of the proceedings but also in whose absence the proceedings cannot be fairly dealt with. Additionally, such a person would be bound by the result of that matter. This was affirmed in*** **CHIEF EMMANUEL BELLO VS. INEC & ANOR (2010) 8 NWLR (PT. 1196) 342** ***where the Supreme Court held: "The person to be joined must be someone whose presence is necessary as a party and the only reason which makes him a necessary party to the action is that he should be bound by the result of the action which cannot be effectually and completely settled unless he is a party. The determining factors on the issue of joinder are: 1. Whether the issue that call for determination cannot be effectually and completely settled unless the party sought to be joined is made a party. 2. That his interest will be irreparably prejudiced if he is***

not made a party." The Court of Appeal reaffirmed this decision in F.H.A. VS. OLAYEMI & ORS (2017) LPELR 43376 (CA) when it held: "By all odds, the law is now well settled that for a person to be joined in an action, he must be someone whose presence is necessary as a party…'"

For these reasons set out above, the application of the 4th Defendant/Applicant is accordingly dismissed. I make no order as to costs.

This is the Ruling of this Court delivered today, the 10th day of November, 2021.

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HON. JUSTICE A. H. MUSA
JUDGE
10/11/2021