

**\IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA**

THIS WEDNESDAY, THE 15TH DAY OF DECEMBER, 2021.

BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

SUIT NO: FCT/HC/CV/054/2021

BETWEEN:

**BITSTAKE GLOBAL LIMITED (Doing business in the
Name and style of Nairaex) } CLAIMANT/RESPONDENT**

AND

**1. MR. OKUNOLA KOMOLAFE }
2. MR. DAVID AJALA } DEFENDANT/APPLICANT**

RULING

This is a ruling in respect of the defendant/Applicant's Motion on Notice M/5583/2021 dated 8th September, and filed the same day. The application is brought pursuant to Section 36 of the 1999 constitution, as amended, order 43 Rule 1, 3 Order 13 Rule 4 and 7 and Order 25 Rule 1 and 2 of the Rules of this court and under the inherent jurisdiction of this court.

The application prays for the following reliefs.

1. An order of this Honourable Court granting leave to defendant/applicant to join Mr. David Ajala in the suit No: CV/054/2021 between Bistake Global Limited (Doing business in the name and style of Nairaex) V. Mr. Okunola Komolafe as 2nd Defendant to the Defendant/Applicant's Counterclaim.

2. An order of this Honourable Court granting leave to the Defendant/Applicant to amend his pleading to wit Statement of Defence, Counterclaim, Written Statement on oath, and List of documents to also reflect the name of the party sought to be joined.
3. And for such further or other order(s) as this Honourable Court may deem fit to make in the circumstance of this case.

The grounds upon which this application is brought is as follows: -

1. The Claimant/Respondent commenced this suit by way of writ of summons dated 22nd day of December, 2020 and filed on the 14th day of January, 2021.
2. The Defendant/Applicant has conducted a comprehensive review his position in this suit and found the need to join Mr. David Ajala as 2nd Defendant to his Counterclaim.
3. This application is brought in the interest of fair hearing and justice.
4. The party sought to be joined is a Desirable party to the claim of the Defendant/Applicant in this suit and needs to be joined in this suit to be bound by the outcome of this suit.
5. It is necessary to effect consequential amendment of the Defendant/Applicant's pleadings to assist the court to arrive at just determination of the suit before this Honourable Court.

The application is supported by an 11- paragraph affidavit deposed to by **Mr. Chuka henry Ezeh**, a legal practitioner at castor partners, the law firm representing the Defendant/Applicant in this suit the content of the supporting affidavit is to the effect that the Defendant/Applicant has conducted a comprehensive review of his position in this suit and found out the need to join Mr. David Ajala as 2nd defendant to his counter-claim the deponent further

averred that the party sought to be joined is the executive chairman of Naira Excom which is an online platform through which the defendant lost his \$7,000.00 (Seven Thousand U.S Dollars). He added that the party sought to be joined directs the activities of NairaEx.com leading to the cause of action in this suit. The deponent further averred that the party sought to be joined is a describable party to the counterclaim of the Defendant/Applicant and therefore needs to be joined to be bound by the outcome of this suit.

Attached to the supporting affidavit are proposed amended statement of defence and counter-claim and a written address.

In opposition, the Claimant/Respondent filed a 16- paragraph counter-affidavit deposed to by **Bakare AishatAderoju**, the Chief operation Officer of Bistake Global Limited the Claimant/Respondent. The content of the counter-affidavit is to the effect that paragraphs 4, 5, 6, 7, 8, 9 10, and 11 of the supporting affidavits are not true. The deponent also averred that the transaction that gave rise to this suit was between the claimant and the defendant and not between Mr. David Ajala and the defendant. He added that Mr. David Ajala as the managing Director of the Claimant/Respondent company did not act in any personal capacity in the transaction between the Claimant/Respondent and the Defendant/Applicant. She further averred that all transactions, complaints and responses that happened in the course of the suit were between the claimant and the defendant. She added that Exhibit A attached to the Defendant's/Applicant's motion as the document being relied upon for this joinder contains comments and responses between the defendant and Mr. Ajala on personal conversation. The deponent insisted that Mr. David Ajala is not a person whose presence as a party is essential for

complete determination of the claim before the court and that Mr. David Ajala is not presently in Nigeria and that his attendance will be with a huge cost.

The deponent finally averred that the grant of the defendant's application will prejudice the Claimant/Respondent in this matter and that the interest of Justice will be better served if this application is refused. In his own adopted written address, learned counsel to the Defendant/Applicant Chuka Henry Ezeh, Esq formulated a lone issue for determination i.e. ***whether the defendant/applicant is entitled to reliefs sought before this Honourable Court?***

Arguing the lone issue, learned counsel submitted that the defendant/applicant is entitled to the reliefs sought before this court. He cited order 13 Rules 4 and 7 of the Rules of this court, which empowers this court to grant the order sought by the defendant/applicant. Counsel added that the Rules of this court allows any person to be joined as defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. Counsel added that the Rules also allows the claimant to at his option join as parties to the same action, all or any persons severally or jointly learned counsel referred to paragraph 5 of the affidavit in support of this application and submitted that it shows sufficient link between the part sought to be joined and the cause of action giving rise to this suit, learned counsel further submitted that the exercise of power of joinder by the court is discretionary power which must be exercised judicially and judiciously based on settled principles and the facts supplied by the Applicant.

Counsel further submitted that the courts have over time set out the following principles as the ones to be considered by the court in exercising its discretion to order joinder of a person to an action "a-e".

- a. Whether it is just and convenient to order the joinder of a person?
- b. Whether the presence of the sought to be joined would enable the court to effectually and completely adjudicate upon and settle all the question involved in the cause or matter?
- c. Whether the cause or matter is liable to be defeated by joinder?
- d. Whether it is possible for the court to adjudicate on the cause of action set up by the plaintiff unless there is joinder.
- e. Whether person sought to be joined ought to be joined?

He cited ***Ogele Vs. Saleu&Ors. (2006) All FWLR Pt. 328 at 796.*** Counsel further submitted that a court before which civil proceeding is he has a duty to ensure that all parties likely to be affected by the outcome or result of an action are joined in the action. He cited ***Okukye Vs. Akwido (2001) All FWLR (Pt. 39) 1487 at 1523 SC.*** Counsel added that the party sought to be joined is a necessary party and the Applicant has made out case for the joining of the 2nd defendant to the counter-claim in this suit. Counsel referred to Order 25 Rule 1 and 2 of the Rules of this court and section 36 (1) of the constitution of the Federal Republic of Nigeria, 1999, as amended and urge this court to so hold.

Learned counsel finally submitted that it is in the interest of justice and fair hearing that the Defendant/Applicant is given an opportunity to be heard in a matter he is being sued.

Conversely, learned counsel to the Claimant/Respondent, ***Atuegwu C. Okafor, Esq*** in his own adopted written address also formulated a lone issue for determination i.e. ***whether having regard to the materials and affidavit evidence placed before the honourable court, the Defendant/Applicant is entitled to the discretionary orders of this court sought by them.***

Arguing the lone issue, learned counsel submitted that the grant or otherwise of an application for joinder as highlighted in the case of ***Alfa Vs. Atanda (1993) 5 NWLR (Pt 296) 729*** is predicated on the following questions “a-d”.

- a. Is the cause or matter liable to be defeated by non-joinder?
- b. 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 a defendant?
- c. Is the third party a person who ought to have been joined in the first instance?
- d. Is the third party a person whose presence before the court as a defendant will be necessary in order to enable the court to effectually and completely adjudicate on and settle all the questions involved in the cause or matter?

Learned counsel further submitted that it is trite law that what the court should consider is whether the person sought to be joined is one whose presence is essential for the complete determination of the claim before the court and if he is a person whom the court has a responsibility to ensure that he is joined as a necessary party to the suit. He cited ***Ogolo Vs. Afubara (1994) 1NWLR (Pt. 321) 404***. Learned counsel insisted that the party sought to be joined is not necessary for effectual determination of this case, as the transaction that gave rise to this suit was between the claimant and the defendant. He added that the party sought to be joined is neither a proper, necessary nor a desirable party in this suit learned counsel further submitted that the court is always reluctant to allow a joinder where the joinder is not being sought by an intervener nor by the plaintiff in the action. He cited Re: ***Magaji (1986) NWLR (Pt. 19) 759***. He added that the true test of joinder of a party to an action is whether the person to be joined will have interest or will

be irreparably prejudiced if he is not joined in the action. He cited ***Usman Danfodio University Sokoto Vs. Balogun 92006) 9 NWLR (Pt 984) 124.***

Learned counsel finally submitted that there is no basis for the application seeking to join Mr. David Ajala as a defendant to counter-claim, as the conditions that would warrant for the joinder do not exist.

I have carefully examined the facts of this application and the legal submission of counsel on both sides and I am of the considered view that the only issue that call for determination in this application is whether the Defendant/Applicant is entitled to the relief he seeks?

The law is settled that joinder of parties is a discretionary power of the court and that such discretion must be exercised judicially and judiciously. However, there are settled principles of law that guides the joinder of parties. In the instant case, it must be noted that it is the Defendant/Applicant that seeks to join Mr. David Ajala as the 2nd defendant to his counter-claim and not Mr. David Ajala that on his own seeks to join in this suit. However, in opposing the Defendant's/Applicant's application, the Claimant/Respondent are argued strenuously that Mr. David Ajala sought to be join in this suit as the 2nd defendant had at all material acted as an agent of a disclosed principal and therefore neither s a necessary party nor a desirable party whose presence is required for the complete and effective determination of this suit.

The law is settled that an agent of a disclosed principal cannot sue or be sued.

Hon. Justice Jude O. Onwuegbuzie

