

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ON THE 8TH DAY OF MARCH, 2022
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/NY/CV/22/21

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

1. ALUSHIE OIL NIGERIA LIMITED
2. F & B VENTURES }CLAIMANTS

AND

1. FILNAN NIGERIA LIMITED
2. SILVERRAY RESOURCES LIMITED
3. HON. MINISTER FEDERAL CAPITAL.....DEFENDANTS
TERRITORY (FCT)
4. FEDERAL CAPITAL DEVELOPMENT
AUTHORITY (FCDA) }

RULING

The 2nd Defendant/Applicant's application is dated 17th day of March 2021 but filed on the 18th of March 2021.

It prays the Court for an Order striking out the Suit FCT/HC/NY/22/21 filed on 22/02/2021 for being incompetent on the ground that the Court lacks jurisdiction to entertain same. The grounds for the application as found on the face of the Motion Paper is that the 2nd Defendant/Applicant is not a juristic person capable of suing and or being sued hence the Writ and the accompanying processes are incompetent.

The 2nd Defendant/Applicant's Counsel relies on the 13 paragraph Affidavit attached herein with Exhibit A, the Certificate of Incorporation of Silverray Resources Ltd. His deposition is that 2nd Defendant/Applicant's name as it appears on the Originating Processes is different from its real name. The Silverray Resources Ltd as appeared on the Writ is a non juristic person.

The Claimant also filed an application dated 20/03/21 but filed on 22/03/21 praying for an order essentially granting leave to the Claimant to amend their Writ of Summons, Statement of Claim and Witness Statement on Oath.

In the Claimant's Affidavit in support of the application he attributed the reason necessitating the application for Amendment on a typographic error in the name of the 2nd Defendant. The 1st Motion by the 2nd Defendant/Applicant seeks to kill the main suit without doing justice to it. The 2nd Motion by the Claimant seeks to cure the error, which is termed 'typographic' to enable the Court adjudicate upon the substantive matter. I shall therefore consider the 2nd Motion.

I have read the Motion and Affidavit. I have also read the Counter Affidavit of the 2nd Defendant and considered all Written Addresses of Counsel. Parties to an action has the right under Order 25 of the Rules of Court to amend their processes at any time before judgment. Such opportunities are pegged at two things. The purpose and purport of an amendment is to enable the Court effectively and completely settle all matters in controversy between the parties.

The reason why an amendment is being sought is as a result of a typographic error in the name of the 2nd Defendant. The proposed amended Writ of Summons and all other Originating Processes are attached as Exhibit FB1.

A deeming order cannot be granted as it will not be in consonance with Order 254 (5) & (6) of the High Court of the FCT (Civil Procedure) Rules 2018. It envisages an order for amendment to be made before the amended processes.

In my humble view, the application succeeds:

- (1) Leave is granted to the Claimant/Applicant to amend his Originating Processes as contained in the proposed amended Writ of Summons, Statement of Claim and all other process.
- (2) The said amended processes shall be filed and served within 7 days.
- (3) The Defendant shall file and serve their Statement of Defence if any within 14 days.

In the circumstance of this case, it is unnecessary to consider to 2nd Defendant/Applicant's application. The wind has been taken out of its sail. It is grounded. It is already resting in the bosom of the Lord. It is accordingly dismissed.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
08/03/22