

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O.C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

**SUIT NO: FCT/HC/CV/0683/2018
MOTION NO: M/2249/2021**

BETWEEN:

JIGNA PROJECTS LTD

(For itself and as Attorney in Fact of JIGNA ECO RANCH LIMITED

.....**CLAIMANT/RESPONDENT**

Vs

1. HON. MINISTER OF THE FEDERAL CAPITAL TERRITORY

2. FEDERAL CAPITAL TERRITORY ADMINISTRATION

3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY

4. ABUJA GEOGRAPHIC INFORMATION SYSTEM

5. THE ATTORNEY GENERAL OF FEDERATION

.....**DEFENDANTS/RESPONDENTS**

AD'OBE OBE.....INTERVENER/APPLICANT

RULING

By a Motion on Notice with No. M/2249/2021 dated 17/11/2020, brought pursuant to Order 43 Rule 1 of the High Court of the FCT (Civil Procedure) Rules, Section 36 Constitution of the Federal Republic of Nigeria LNF 2004, Section 310, 311& 312 of the Companies & Allied Matters Act LNF 2004. And under the inherent jurisdiction of the Hon. Court, the intervener/Applicant seeks the court the following;

- (1) Leave of the Hon. Court to join Ad' Obe Obe as an Intervener in this Suit.
- (2) Any other order(s) as this Hon. Court may deem necessary in the circumstance.

The grounds for the application:

- (1) That the Intervener/Applicant is a major shareholder in the Claimant's companies and also the Chairman of the Board of Directors of the two Companies/ Claimants.
- (2) That this Suit was filed without the knowledge of the Board of Directors, hence the consent of Board of Directors of the Claimant Companies was never obtained before the suit was filed.
- (3) That this Suit was filed as a vehicle to commit fraud.
- (4) That the outcome or decision of this Hon. Court will greatly affect the Intervener/Applicant.
- (5) Deed of Partition which is the condition precedent before the registration of the Power of Attorney has not been registered.

In support of the Motion is an affidavit of 10 Paragraphs sworn to by the Intervener/Applicant. Also filed a Written Address dated 17/11/2020 and adopts the said Address as their oral submission. Also filed a Further/Better affidavit of 13 Paragraph sworn to by the

Intervener/Applicant with Exhibit "FBA1 – FBA6" annexed, relies on the said affidavit and additional Written Address accompanying same.

In opposition, Claimant/Respondent with leave of court filed a Counter-affidavit dated 20/12/2021, sworn to by Virginia Eleojo of 7 Paragraphs with Exhibit "S1" and "S2" attached. Also filed a Written Address, adopts the Address, in urging the court to dismiss the application.

The Defendants in their response filed a written response on points of law on 9/9/2021, with leave of court, adopts same as their argument.

In the written submission of Intervener/Applicant settled by I.E. Uzuegbu, three (3) issues were formulated for determination namely;

- (1) Whether or not the Applicant can be allowed to intervene in this case?
- (2) Whether or not this case purportedly instituted by the Claimants claiming against the Defendants issues that goes beyond the purported and an unregistered Power of Attorney?
- (3) Whether or not this Hon. Court can determine a matter before it that was fraudulently instituted?

He urged the court to grant the application.

In the Written Address of Claimant/Respondent settled by Pascal Ukah, two (2) issues were formulated for determination namely;

- (1) Whether or not the Intervener/Applicant can be allowed to intervene in this case and whether the Suit is competent having

been instituted without the necessary consent and authorization of the Board of Directors.

- (2) Whether this application is an abuse of process of court and ought to be dismissed with punitive costs.

He urged the court to dismiss this application by the Intervener/Applicant.

In the Written response on point of law filed on 1/11/2021 by the Defendant, Ezekiel O. Ituma of counsel formulated two (2) issues for determination namely:

- (1) Whether this present application is not caught by the doctrine of issue estoppel arising from the Ruling of this Court delivered in Motion No/6109/2018.
- (2) Whether this present application does not amount to abuse of court processes.

Having considered the submission of counsel, the depositions contained in the affidavit evidence as well as the authorities cited for and against the grant of this instant application, it is the finding of court that only one (1) issue calls for determination and that is;

“Whether or not the Intervener/Applicant has made out a case to warrant the grant of the reliefs sought in this instant application

The gravamen of this instant application by Intervener/Applicant is that he is a major shareholder and Director of the two Companies/Claimants and major shareholder in both Companies, that he was aware, consulted or

part of the decision of Claimant to institute this action. That this suit was surreptitiously instituted as a vehicle to commit fraud. That before a matter of this nature is instituted in court, the Board of Directors must convene and come out with a resolution given the Claimant a mandate, resolution or consent to institute the suit but in the instant case, no resolution was passed, no mandate or consent was obtained before this suit was instituted. Further that the claims of Claimant before court which is predicated in the purported Power of Attorney goes beyond the portion of lands in the alleged unregistered Power of Attorney and covers the other larger portions of the land that was not captured in the purported and unregistered Power of Attorney hence any decision of this Court will affect the larger portion of land that was never captured in the purported Power of Attorney. That this Suit is an abuse of court process because the Power of Attorney cannot be registered without first fulfilling the condition precedent of registered the deed of partition which has not been done. That the actions of persons behind the institution of this suit are to commit fraud. Further that his right as major shareholder in both Companies/Claimants and also Board of Chairman of both Companies will be prejudiced if the application is not granted.

The Claimant/Respondent, on the other hand, contend that the decision to institute the suit was made pursuant to the irrevocable Power of Attorney dated 21/8/2015 granted Claimant/Respondent by Jigna Eco Ranch Ltd (JERL) of which the Intervene/Applicant is shareholder and Director. The Power of Attorney for all intents and purposes granted the Claimant/Respondent Powers and right to carry out any acts or actions in

respect of the subject matter of the Suit and power to do all such things as the Donor, prior to entering into the Power of Attorney, would have had the power to do in relation to the land. That the decision to institute the matter was that of both Claimant/Respondent in exercise of the power granted by the irrevocable Power of Attorney and the action was instituted to protect the vested interest of Claimant/Respondent and not as a vehicle to commit fraud. Further that there is no mandatory requirement in any Agreement between the parties that a meeting should be conveyed before an action can be instituted in respect of the subject matter. That the instruction to file the suit was issued by the MD/CEO of Claimant, Mr. Adeolu Ademola who is member and delegate of the Board of Director of Claimant/Respondent and who is authorized to take steps to protect the interest of Claimant/Respondent on a day to day basis. Further that the Intervener/Applicant had earlier brought similar application dated 15/5/2018 before the court in the name of JERL to which the court made a pronouncement on 11/3/2019. That this instant application by Intervener/Applicant is intended to overreach the earlier decision of court and a ploy to have the court sit on appeal over its previous decision.

The Defendants on their part contend that the Intervener/Applicant having admitted being a Director and Chairman Board of Directors of Claimant is bound by the Ruling of this court delivered on 11/3/2019 dismissing the application filed by Jigna Econ Ranch Ltd to be joined as an interested party in this Suit. That the same reason the Intervener/Applicant proffered in his affidavit is same reason Jigna Eco-Ranch Ltd gave in its application for joinder in this suit as an interested party in this Suit which was

dismissed by the court. That this application by the Intervener/Applicant amounts to abuse of court processes bearing in mind the earlier application dated 15/5/2018 which has already been determined by this court in respect of the same subject issue and against the sets of Defendants.

The position of the law as it relates to the joining of an Intervener to a pending Suit whether as Plaintiff or Defendant is clear. And that is whether he will directly be affected by the Judgment in the Suit by curtailing or interfering with the enjoyment of his legal rights in the subject matter of the Suit. This is because the only reason which makes it necessary to make a person a party to an action is so that he will be bound by the result of the action. See the case of Ajomagberin & Ors Vs Aregbe & Ors (2013) LPELR-22260 (CA). See also Ige & Ors Vs Farinde & Ors (1994) 7 NWLR PT 354, 42 at 60. And taking into cognizance this position of the law as it relates to the joining of an Intervener to a Suit vis-à-vis the facts as stated in the affidavit evidence, the court is of the view that this ordinarily should be an occasion where the Intervener/Applicant should be joined as an Intervener in this Suit. However, it is correct that this court on 11/3/2019 delivered a Ruling dismissing the application for joinder of an interested party Jigna Eco-Ranch Ltd – (JERL), a careful perusal of that Ruling and the instant application, the Applicant herein admitted being a Director/Shareholder. Query? Can a party who is a Director/Shareholder of a Company with power given to its Managing Director to carry out the day to day activities of the Company including dealing with any Power of Attorney, albeit subject to a dispute, turn around to contend against that

act of the Company. I think not. See Trocca Valessia Ltd & Ors Vs Sanyalou & Ors (2016) LPELR-40423 (CA).

On the issue by Claimant/Respondent that the Intervener/Applicant application amount to abuse of processes of court because he had earlier brought same application before the court which was dismissed by court in its Ruling on 11/3/2019. In the consideration of an application before the court, the court is entitled and indeed empowered to look at its records and make use of its contents. See the case of PDP & Ors Vs Ezeonuwoke & Anor (2017) LPELR – 42563 (CA). Indeed the court on 11/3/2019 gave a considered Ruling on an application that was in respect of this Suit. Granted that the earlier application of 11/3/2019 was brought by the Jigna Eco-Ranch Ltd (JERL) and the Intervener, this court has in course this Ruling held that the Intervener/Applicant having admitted to be a Director/Shareholder in Jigna Eco Ranch – (JERL) cannot be seen to turn round to this same application, the first having being refused and bound by it.

On the issue by the Defendants that the Intervener/Applicant application is caught up by the doctrine of issue estoppel. The application of the doctrine of issue estoppel is well established. For the doctrine to apply, the same question or issue was decided in the earlier proceedings, the judicial decision said to create the estoppel was final and the parties to the judicial decision or their privies were the same as the parties to the proceedings in which the estoppel is raised. See the case of Council of Yabatech Vs Awoniyi (2016) LPELR – 4139 (CA). This court have stated in its finding on the position of the Intervener/Applicant making this instant application on

the face of the earlier Ruling of 11/3/2019, as not capable to take out this application for reasons stated. Therefore, I am in agreement with the submission of the Defendant counsel on this point.

In conclusion, this application lacks merit and is hereby dismissed.

HON. JUSTICE O.C. AGBAZA

(Presiding Judge)

21/2/2022

Appearance

SAMUEL O. ZIBIRI (SAN) WITH CHINEDU E. IKE-OKAFOR – FOR THE INTERVENER/APPLICANT

ETIGWE UWA (SAN) WITH OLAJIDE I. – FOR THE CLAIMANT/RESPONDENT