

**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/13443/2019

MOTION NO: M/6069/2021

BETWEEN:

**MS OZIM IFEOMA OBASI.....CLAIMANT/RESPONDENT
VS**

**MS IFEOMA MALO.....DEFENDANT/RESPONDENT
VS**

1. MRS. CATHERINE CHINWE MALO

2. MRS. NNEKA NINA AFANI...APPLICANTS/PARTIES SEEKING TO BE JOINED

RULING

This is a Ruling on a Motion on Notice dated 22/9/2021 and filed same day with Motion No. M/6069/2021 brought, pursuant to Section 6 and 36 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Order 13 Rule 4 and Order 43 Rule 1 of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of court. The Motion is supported by 7 Paragraph affidavit with 1 Exhibit attached, deposed to by one Afolabi Abimbola a Litigation Secretary in the law firm of Applicant Party seeking to be joined. Counsel also filed is a

Written Address and adopts same, in urging the court to grant the application. The Applicants seeks the following reliefs;

1. An Order of this Honourable Court joining the Applicants - Mrs. Catherine Chinwe Malo and Mrs. Nneka Afani as 2nd and 3rd Defendants to this Suit as necessary parties for the effective and comprehensive determination of this Suit once and for all.
2. An Order of this Honourable Court directing that all processes filed should reflect the name of the Applicants upon joinder as the 2nd and 3rd Defendants and all the processes be served on the 2nd and 3rd Defendants
3. And the Omnibus reliefs.

Responding, Claimant/Respondent filed an eight (8) Paragraph counter-affidavit deposed to byone Ndentuoked Essang a Legal Practitioner in the Law Firm of Claimant's Counsel.

The case of the Applicants, in brief, is that the events leading to the suit of the Claimant occurred while they along with the Defendant took abode in Claimant's short let property. That by this suit the Claimant seeks to transform the wounded victims into assailants, hence this application to be joined in this suit in order not to file a distinct suit against the Claimant.

In their Written Address Applicant's Counsel submits a sole issue for determination that is;

“Whether this Honourable Court can exercise its discretion to join the Applicants in view of the affidavit deposition and all the circumstances of this case?

Submits that the essence of joinder of a necessary party is that he or she would be bound by the decision of court as well as to avoid multiplicity of actions. Refer to O.K. Contact – Point Ltd Vs Progress Bank Plc (1999) 5 NWLR (PT. 604) and Osurinde Vs Ajamogun (1992) 6 NWLR (PT. 240) 156 @ 170 – 171 Paras B – E. Submits that Applicants have shown in their affidavit copious facts for court to grant their prayers, especially as parties who have a common interest in a matter subject of litigation ought to apply to be joined, refer to Exhibit attached to the Motion and cases of Arairume Vs Ubah (2021) 8 NWLR (PT. 1779) 511 @ 535 Paras C – G, Oluwaniyi Vs Adewunmi (2008) 13 NWLR (PT. 1104), Hassan Vs Ajanyi (2002) 8 NWLR (PT. 770) 611 – 612, Okeke Vs Medukam (2011) 2 NWLR (PT. 1230).

Submits finally that the effect of non-joinder of a necessary party is that an order of retrial may be made if it is discovered that the party not joined ought to have been joined, urge court to resolve the sole issue in favour of the Applicant. Refer to Oghere Ltd Vs Amoruwa (1986) 3 NWLR (PT. 32) 856 @ 861 – 862 and Eyitayo Olayinka Jegede & Anor Vs INEC & 3 Ors.

On the other hand, the case of the Claimant/Respondent, in brief, is that she denies any wrong doing against the Applicants and she only instituted the suit against the Defendant who published the defamatory material. Her claim bothers on defamation and has not sought any relief against the Applicant.

Claimant/Respondent formulated a sole issue for determination that is;

“Whether the Applicants have made out a case for the Honourable Court to exercise its discretion in their favour”.

Submits that proper or necessary parties in a matter are determined by the subject matter of the suit. That a careful perusal of the claim of Claimant will reveal that the Applicant will not be bound, therefore the argument of the Applicant is unfounded. Refer to Carlen (Nig) Limited Vs University of Jos & Anor (1994) LPELR – 832 (SC) P. 50 Paras E – 8.

Claimant’s Counsel stated the conditions which Applicant must satisfy to ground an application for joinder and commend court to the case of Bello Vs INEC& Ors (2010) LPELR – 767 SC, Ajayi & Ors Vs Jolayemi (2001) LPELR 292 (SC) and Ige & Ors Vs Farinde & Ors (1994) LPELR 1452 (SC).

Submits further that the presence of the Applicant is not necessary for the effective and complete determination of the suit which is premised on the Defendant’s defamatory posts. Submits finally that a Claimant will not be forced to proceed against a Defendant whom he has no intention or desire to sue. Refer to the case of Green Vs Green (1987) 3 NWLR (PT. 61) 480. Urge court to dismiss the application.

Having carefully considered the affidavit evidence of the parties, the submission of Counsel as well as judicial authorities cited, I find that the issue which calls for determination is;

“Whether the Applicant party seeking to be joined has made out grounds for the grant of the relief sought”

The principles which guide the joinder of parties have been stated in a plethora of authorities, they are;

1. Is the cause or matter liable to be defeated by the;
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 a 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 effectively and completely adjudicate upon and settle all the questions involved in the cause or matter.

See the case of Adefarasin Vs Dayekh (2007) All FWLR (PT. 346) 911 @ 914 Ratio 6, see also Oluwaniyi Vs Adewumu (2008) 13 NWLR (PT. 1104) 405-406 Para G – B.

In this instant case, Applicant states that they along with the Defendant where together in the Claimant's short let apartment in Lagos when the issues culminating in this suit occurred and by this suit Claimant seeks to transform the wounded victims into assailants thus necessitating the application for joinder to avoid a multiplicity of action. On the other hand, Claimant/Respondent's contention is that the claim bothers on defamation for which the presence of the parties seeking to be joined is not necessary for the effectual determination of the suit. And also has no claim against the Applicants.

I have taken a look at the case of both parties in the suit and the Exhibit attached to the affidavit in support of the application as well as the counter-affidavit vis-a-vis the principles upon which application for joinder could be determined as stated in the case of Adefarasin Vs Dayekh (Supra) and the question which arise is; have the Applicants satisfied any of the principles stated in that authority to warrant the grant of their application? For court to determine this question the court must take a look at its record to determine first whether there is a nexus between the case set up by the Claimant and that contained in the Exhibit attached to the affidavit in support of the application and this the court is empowered to do. See the case of Agbareh Vs Mimrah (2009) All FWLR (PT. 409) 559.

A careful perusal of the Claimant's Statement of Claim and the affidavit in support of the application for joinder reveals the similarity of facts which culminated in this case and the Proposed Joint Statement of Defence attached as Exhibit to the said Exhibit which also contains a Proposed Counter-Claim. Granted that a counter-claim is an independent action which may be pursued by a party in a separate action, I find that it will be in the interest of justice to allow the parties join issues in this suit to avoid a multiplicity of action since the parties appears to be relying on the disagreement which arose from the short let apartment owned by the Claimant which she let to the Defendant. Therefore the court is of the firm view that the presence of the party seeking to be joined is necessary in order for the court to effectually and completely adjudicate upon and settle all the questions involved in this matter. Thus the Applicant have satisfied the condition for joinder.

From all of these, I have no difficulty in granting the application for joinder since the Applicant have shown that they are persons who were in the short let apartment owned by the Claimant/Respondent where the cause of action arose and having also shown their desire to maintain a cross action resulting from the perceived acts of the Claimant. The application succeeds and the orders sought is granted as prayed.

- (1) Order of this court is hereby granted to join the Applicants Mrs. Catherine Chinwe Malo and Mrs. Nneka Nina Afani as the 2nd and 3rd Defendants to this suit as necessary parties for the effective and comprehensive determination of this suit once and for all.
- (2) The court hereby directs that all processes filed should reflect the name of the Applicant as 2nd and 3rd Defendants and all the processes be served on the 2nd and 3rd Defendants.
- (3) The party joined shall be at liberty to take necessary steps in the matter.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

31/1/2022

APPEARANCE:

REBECCA EBOKPO FOR THE CLAIMANT/RESPONDENT

T.P. TOCHUKWU FOR THE DEFENDANT/PARTY SEEKING TO BE JOINED.