

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT KUBWA, ABUJA**  
**ON FRIDAY, THE 11<sup>TH</sup> DAY OF MARCH, 2022**  
**BEFORE HIS LORDSHIP:HON. JUSTICE K. N.OGBONNAYA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/747/19**

**MOTION NO:M/9394/20**

**BETWEEN:**

- 1. THE REGISTERED TRUSTEES OF AMEN  
CHRIST HOLY COVENANT CHURCH**
- 2. AMADEN MOTORS LIMITED-----CLAIMANTS**
- 3. CONSQUARE NOMINEES LIMITED**
- 4. THE REGISTERED TRUSTEES OF ASSOCIATION  
FOR REPRODUCTIVE AND FAMILY HEALTH**

**AND**

**HOUSES FOR AFRICA NIGERIA  
LIMITED.....DEFENDANT**  
**JONAH CAPITAL NIGERIA  
LIMITED.....PARTY SOUGHT TO BE JOINED**

**RULING**

In this case the Plaintiff the Registered Trustees of Amen Christ Holy Covenant Church and 4 Others, are claiming the ownership of Plot 2856 within Lugbe 1 Ext. Lugbe District Abuja measuring about 2585.23 sqm square in that 2<sup>nd</sup>,3<sup>rd</sup> and 4<sup>th</sup> Defendants have equitable rights and interest in the said land, that the Defendant entering into the

land and erecting fence to cover and block its view from the express road is an act of Trespass and therefore illegal. That Court should grant her perpetual Injunction against the Defendant, N500 million as damages and N2,500,000.00 (Two Million Five Hundred Thousand Naira) as cost of the suit.

They Plaintiff have opened its case. The Defendant had equally filed their statement of Defence. The Plaintiffs closed their case on 23/1/20. The matter was reserved for Defence to open its case. Rather than do so, the Defendant filed a motion for change of Counsel and on the 27/8/2, 7 months after the Plaintiff closed its case, the Defendant filed a motion for joinder of Jona Capital Nigeria Limited as 2<sup>nd</sup> Defendant in this Suit. They supported the motion with an Affidavit of 4 paragraphs and a written address.

In the Affidavit the Applicant averred that the Applicant is a subsidiary of the party sought to be joined who entered into an Agreement with the FCDA. That this matter cannot be determined without the party sought to be joined. That the said party ought to have been joined as a defendant ab initio.

In the written it submitted that by virtue of the provision of Order 13 Rule 19 (1) that application

to add or strike or substitute or vary the name of a Claimant or Defendant may be made by a motion. They referred to the case of:

**SOYODE & ORS VS. DADA & ORS (IN RE SAJA ALUFOHA & CO) (1999) LPELR-6728 (CA)**

That the party sought to be joined is so vital that the Court cannot determine fully the issue in dispute without it. That it has fulfilled the condition set out in the case cited above. That Exhibit A & B attached in the Affidavit show so. They urged the Court to grant the application by joining the Jonah Capital Nigeria Ltd.

Upon receipt of the motion the Plaintiffs filed a Counter Affidavit of 12 paragraphs vehemently challenging the Application. In the written Address they raised an issue for determination which is:

***“ Whether given the facts and circumstance of this case especially having regard to the subject matter the deposition in the Affidavit and the parties in this suit, the applicant is entitled to the Relief sought in this application”.***

They submitted that given all the facts and circumstances of the case the applicant is not entitled to the Reliefs. That before any application for joinder is granted that the applicant must show

sufficiently that the matter cannot justly be determine without the joining of the party sought to be joined. They referred to the case of:

**AZUBIKE VS. PDP (2014) 7 NWLR (PT 1406) 212**

That in this case there are no materials before this Court to show that the party sought to be joined is a necessary party. There is no connection between the party sought to be joined and the Res in this Suit. That the subject matter in this Suit is Plot 2856 CAD E07 within Lugbe 1 Extension, lugbe, Abuja measuring approximately 2585.23 meter square. While the land the party sought to be joined is laying claim to is Plot 4 cluster 1 A CAD Zone E30 Lugbe west, Abuja comprising of 501 Hectares.

That the cause of action in this suit is not liable to be affected by non-joinder of the party sought to be joined. That the said party seeking to be joined is not necessary in order to enable the Court to effectively and completely adjudicate or settle all issues and questions arising in this case, his presence can therefore effectively be dispensed with as it is not necessary at all to join it as a party in this Suit. They referred Court to look at all the documents frontloaded by the applicant in support of this case. That the application is unmeritorious, frivolous, vexatious, gold-digging

and an afterthought to smuggle through the back door irrelevant documents and irrelevant parties to create confusion in the proceeding in this suit. They urged Court to dismiss the application.

**COURT:**

In any matter where there is an application for joinder of a party as Plaintiff or Defendant the applicant must show through its Affidavit and Exhibit, where necessary, that the Court cannot determine the issues in dispute without the presence of the party sought to be joined. Before the Court can determine whether or not to grant an application for joinder, it must be establish that matter in the cause will be defeated if the party is not joined. That it cannot adjudicate on the matter effectively if the party is not joined. That the presence of that party is so necessary that the Court cannot get to the Justice of the case without the presence of such party sought to be joined as a party in the suit. That it cannot effectively and effectually determine the issues in the case without such party. That is the decision of the Court in the case of:

**AZUBIKE VS. PDP SUPRA @ PG 313-314 PARA G-H**

It is at the discretion of the Court to determine whether or not to grant or refuse to grant an

application for joinder. Like in all cases where Court decides to exercise its discretionary power, it must do so judicially and judiciously in the interest of justice and fair hearing. In Order to do so the Court must be able to resolve that if it is possible to adjudicate upon the cause of action set up by the Plaintiff if the party is not added as a party in the suit. Whether such party sought to be joined ought to have been joined as a party ab initio and whether the party's presence is very necessary in order to determine the issue in dispute in the case. That is what the Court decided in the case of:

**SOYODE & ORS VS. DADA & ORS**

**IN RE: SAJA ALUFOHAI & COY (1999) LPELR-6728 (CA)**

See also the following case of:

**GREEN VS. GREEN (1987) 3 NWLR (PT.61) 480@498**

**PEEDE INVESTMENT LTD VS. HOTEL PRESIDENTIAL LTD (1983) NCLR 122.** See also the Supreme Court case:

**UKU & ORS VS. OKUMAGBA & ORS (1974) 3 SC 35.**

It is incumbent on the applicant to present cogent fact and Exhibit to show that the presence of the party sought to be joined is so necessary that the matter cannot be determined in that party's absence failure to do so will be fatal to the application.

Again the Court can suo motu order that a 3<sup>rd</sup> party be joined either as a Plaintiff or as a Defendant once the Court feels so, after a look at the statement of the present parties in the suit. Whoever makes the application it must be such that the issue in dispute cannot be decided without the presence of that party.

Having summarized the submission for and against and having looked at the claim of the Plaintiff and the Counter claim can it be said that this Court will not be able to determine the issues in dispute without joining Jonah Capital Nigeria Ltd as a 2<sup>nd</sup> Respondent in the present suit.

It is the considered view of this Court that given the subject matter of this Suit and the claims and reliefs sought by the Plaintiff that this suit can be effectually and effectually be determined by this Court without the presence of Jonah Capital Nigeria Ltd as a 2<sup>nd</sup> Defendant. The presence of Jonah Capital Nigeria Ltd is not necessary. The Company is not a necessary party. The issues in

dispute can be determined without the company. The claim of the Plaintiff does not in anyway just like the res, concern the Jonah Capital Nigeria Ltd.

The cause of action in this Suit will not be defeated if the company is not joined. The Court can adjudicate on the cause of action set up without presence of the Company as a defendant in the sought. From the fact before this Court the Company ought not be added as a Defendant in this Suit ab initio.

This Court can settle all the matters or issues in dispute without the presence of the company as a Defendant in this Suit. See the case of:

**GREEN VS. GREEN SUPRA**

Basically the Claim of the Plaintiffs is over Plot 2856 measuring approximately 2585.23 metre square without Lugbe Extension 1 Lugbe Abuja. They also are claiming that Defendant has trespassed by erecting a wall which has covered and blocked the view of the Plaintiff from the express road. That Court should order to demolish the wall erected in the front of the Plaintiff's land and grant perpetual Injunction.

A look at the agreement and Addendum attached to this Application shows that the plot which Jonah Capital Nigeria Ltd entered into Agreement



to develop is on Plot No.4 CAD E30 located at Lugbe going by the schedule to the agreement and as described in the Agreement itself. Again going by the Conveyance of Building plan Approvals attached to this application, it shows that document covers Plot No.4 CAD E30, Lugbe west. None of those Conveyance of Building Plan Approval has anything to do with the Res in issue in this case. To that extent there is no need to join Jonah Capital as a Defendant in this suit. Besides, a look at the Agreement itself shows that where any of the parties thereto breaches the terms and condition set in the agreement and where there is any dispute between the parties as regard the agreement, the aggrieved party has a right to explore amicable settlement first. Where that fails such aggrieved party shall go to Arbitration to settle such dispute. This is as contained in **paragraph 17(1) of the Development Agreement Lease between FCDA and Jonah Capital.**

Jonah Capital Nig. Ltd has nothing to do with the present Res and the claim of Trespass by the Plaintiff in this Suit. This Court can comfortably consider and determine the issue in dispute without the presence of the party sought to be joined as a 2<sup>nd</sup> Defendant. Jonah Capital Nigeria Ltd is not a necessary party in this case; so this Court so holds.

The cause of action in this Suit cannot be defeated if Jonah Capital Nigeria Ltd is not joined. Jonah Capital ought not to be joined as a party in the first place. So also this Court hold.

This present application is an abuse of Court process, a ploy to delay the suit. It is equally frivolous and vexatious and forum shopping.

**This application therefore is hereby Dismissed.**

**This is the Ruling of this Court delivered today the .....day of .....2021 by me.**

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**K.N.OGBONNAYA**

**HON.JUDGE**