

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

ON THE 13<sup>TH</sup> DAY OF SEPTEMBER 2021 SUIT NO. FCT/HC/CV/620/2021

BEFORE HIS LORDSHIP:

HONOURABLE JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

**RULING**

**BETWEEN:**

DAISY MARGRET IDAHOSA -----CLAIMANT/RESPONDENT

AND

ALAIN ZOGHZOGHY-----DEFENDANT/APPLICANT

By a motion on Notice dated 28<sup>th</sup> June, 2021 and filed the same date, with motion No: M/3951/2021, brought pursuant to Order 13 Rule 19 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018, and Under the Inherent Jurisdiction of this court.

The applicant prays for the following orders:

1. An Order of the Honourable Court joining Sterling Bank Plc herein as 2<sup>nd</sup> Claimant in this suit.
2. And for such further or other orders as the Honorable Court may deem fit to make in the circumstances.

The application is supported by a 43 paragraphs affidavit deposed to by one Rowland Udemezue a counsel in the law firm of M/S Goalcast Legal Services, counsel to the Defendant/Applicant.

The deponent averred that the Defendant had business relationship with the First Respondent (sic) with regards to the purchase of a car which she made part payment of the sum of #11,000,000.00(Eleven Million Naira) only to the Defendant for a car of 65,000,000.00(Sixty-Five Million Naira). That the First Respondent(sic) made part payments of #5,000,000.00,#3,000,000.00 and #3,000,000.00 making it up to the sum of #11,000,000.00 for the purchase of a car of sixty-five million naira. That the Defendant never pleaded with the Claimant to lend him money. That after the Claimant made the payments totaling #11,000,000.00, pleaded with the Defendant that she wants to sell her Toyota Sequoia 2003 model so as to enable her to pay up for the car of her choice. That the Defendant examined the Claimant's car and notified her that the car cannot fetch her enough money if she sells it in that present condition. That the car needs overhauling like change of engine and servicing before she can sell it for a good price which the Claimant accepted. That the Defendant carried out repairs of the Claimant's car as they agreed at the cost of #1,500,000.00(one million five hundred thousand naira) only that the cost of these repairs was not an issue for the Claimant. That the Defendant on three different occasions brought cars for the Claimant to choose from when it became glaring to the Defendant that the Claimant cannot afford a car of #65,000,000.00.

The Defendant further avers that as at the time the Defendant procured the Land Cruiser, 2017 Model of #20,000,000.00(twenty million naira) that will be acceptable to the Claimant due to paucity of fund to balance the purchase price of the car was invited by the Economic and Financial Crimes Commission(EFCC) wherein he was kept and or restricted for couple of hours at the instigation of the

Claimant before he was granted bail. That the Defendant was made to raise a draft of #2,000,000.00(two million naira) by the EFCC to secure his freedom as well as show of good faith towards refunding the Claimant the sum of #11,000,000.00 (eleven million naira).

That the Defendant procured before his detention by the EFCC a Land Cruiser, 2017 Model for the Claimant and the Defendant is ready to hand over the car to the Claimant on her payment of the outstanding balance of the purchase price.

That the Claimant never at any time authorize the Defendant to sell the Land Cruiser, but was busy instigating the incessant arrest and detention of the Defendant by the Nigerian Police as well as the EFCC. That the Defendant would have paid the Claimant the outstanding balance of her part payment save the sum of #1,500,000.00 (one million five hundred thousand naira) representing the cost of repairs of the Claimant's money had it been he was able to sell Toyota Sequoia.

That the Claimant is hell bent on humiliating the Defendant with her boastful connections with the Nigerian Law Enforcement Agencies. That the Defendant has on several occasions demanded for the Claimant's authorization to sell the Land Cruiser so as to make refunds but the Claimant failed to do so. That the Defendant was left with no other option on receiving the Claimant's suit against him than to hand over the Land Cruiser to a customer that promised to pay on a future date. That the transaction was purely civil.

The Defendant further averred that the Defendant was dismayed when he found out that his account has been blocked and post no debit (PND) placed on same by Sterling Bank Plc without any prior notification and or court order authorizing restriction on his account nor was he informed of such restriction. That the Defendant seriously believes that his Steeling Bank Account with the following accopunt details; Alain Zoghzghy- Account Number-0069432047 and Mechatronic Auto Tech Services Center Limited –Account Number- 0069432047 were frozen

at the instigation of the Claimant. That Sterling Bank Plc at the prompting of the Claimant and the Nigerian Police unlawfully blocked the Defendant's account without obtaining court order nor informed the Defendant of the reason for denying him access to his account. That the refusal to grant the Defendant access to his account since 13<sup>th</sup> November 2019 has caused great loss of business deal due (sic) the Respondents (sic) refusal to allow him access to his account without just cause.

That the actions of the Plaintiff and Sterling Bank Plc has seriously affected the business of the Defendant considering the fact that he cannot operate his account since the 13<sup>th</sup> November 2019 and or be able to open a fresh account due to restriction placed on his account. That the Defendant on several occasions through his retained Solicitor written to the Sterling Bank Plc to unfreeze his account as can be seen from his Solicitor's letters dated 11/12/2019, 02/12/2020 and 04/12/2020. Copies of these letters are attached. That the Defendant cannot longer move freely due to the constant threat of arrest by the Claimant as well as being in constant fear that his freedom will be taken away if the court does not intervene and this prompted the Defendant to institute an action to enforce his fundamental human right which is pending before Justice Nasiru of FCT High Court in Suit No. FCT/HC/CV/152/19. This was also attached as exhibit. The Defendant further deposed that he is very much aware that upon reporting the matter to the Economic and Financial Crimes Commission (EFCC) and the Nigerian Police of which the Claimant has severally threatened to instigate his arrest and detention; that they will first and foremost arrest him and dump him in detention without first investigating the veracity of the allegations in the said petition which is their usual practice. That the Claimant know very well that the transaction was a commercial transaction devoid of any criminal intention which the EFCC and the Nigerian Police Force do not have the requisite jurisdiction to inquire into as the said

commercial transaction is purely civil in nature and devoid of any criminal elements. That there is need to join Sterling Bank in the action as a necessary party to the suit as the matter cannot effectually be determined without her as a party to the suit considering the fact that the Defendant's accounts were frozen as a result of the Claimant's complaint to the Nigerian Police Force. That the Defendant has a defence to this suit and intends to counter-claim against the Claimant and Sterling Bank. There is need to join Sterling Bank in this action as a necessary party to the suit as the matter cannot effectually be determined without him as a party to the suit. That it will be in the best interest of justice to join Sterling Bank Plc as a necessary party to the suit. That in joining Sterling Bank to this, it will further enable the Honorable court to determine all issues raised in this suit. That Sterling Bank Plc is a party who will be affected by the outcome of this suit. And urged the court to grant this application.

In response to the Defendant/Applicant's application for joinder, the Claimant/Respondent on the 5<sup>th</sup> day of July, 2021 filed a 17 paragraphs counter-affidavit dated 5<sup>th</sup> day of July, 2021, deposed to by one Ali Mohamed a legal practitioner in the Law Firm of Compass Chambers at Central Business District Abuja, Solicitors to the Claimant/Respondent in this suit. The deponent averred that there is no fact before this Hon. Court disclosing that Sterling Bank Plc, which the Defendant/applicant is requesting this Hon. Court to join as a 'Claimant' shares similar interest or any interest at all with the existing sole Claimant/Respondent. That the cause of action as reflected in the Claimant/Respondent's amended Writ of Summons and confirmed by the Defendant/Applicant's Statement of Defence (sic), and affidavit in support of the Defendant/Applicant's motion on notice to join Sterling Bank, is for the Defendant/Applicant to refund the sum of #9,000,000.00 (nine million naira) only to the Claimant/Respondent, being the balance outstanding sum from the sum of #11,000,000.00 (eleven million naira) only

collected from the Claimant/Respondent by the Defendant/Applicant. That the cause of action in the substantive suit before this Honourable Court has nothing to do with Sterling Bank Plc. That paragraph 26 of the affidavit in support of the Defendant/Applicant's application, 'that applicant clearly admitted that this application is founded on his belief, which belief is not backed with facts'.

The Claimant/Respondent further averred that no document nor factual depositions in the affidavit in support, discloses any common interest between the Claimant and the party sought to be joined, Sterling Bank Plc. That the present application is neither made by Sterling Bank Plc nor by their consent. That he knows as a fact that a Defendant/Applicant cannot make an application to join a Claimant in a suit. That he was informed by the Claimant/Respondent in their office that she had no dealings whatsoever with Sterling Bank Plc and never authorized nor instructed the Bank to put any restrictions on the accounts of the Defendant/Applicant. That the Claimant/Respondent was not aware of the pendency of any suit against her till she saw the copy attached to this application as Exhibit B. That it will not be in the interest of justice to grant the Defendant/Applicant's application. That granting the application will prejudice the interest of the Claimant/Respondent.

Both parties filed and adopted their written addresses in support of their argument as required by the Rules of this Honourable Court.

Claimant/Respondent formulated 1 (One) issue for determination in his written address;

**Whether, having regard to the state of pleadings before the court, the Rules of this Honourable court, and decided cases, the Defendant/Applicant is entitled to the reliefs sought?**

Relying on the authorities of **FADAYOMI V. SADIPE AND OTHERS (1986) LPELR-1223 (SC) 1 at page 8 paragraph A, OBASANJO & OTHERS V. YUSUF & ANOTHER (2004) LPELR-2151 (SC) 1 at page 20-21, paragraph**

**And Order 13 Rule 19 of the FCT Civil Procedure Rules** under which the Defendant/Applicant brought his application. Submits that the relief sought by the Defendant/Applicant in his motion on notice filed on the 28<sup>th</sup> day of June, 2021, is grossly defective, absurd, and inconsistent with the rules of this Honourable Court (**Order 13 Rule 19**) on which the Defendant/Applicant premised his application. This is because a person cannot be joined as a Claimant without his consent. Also, there is no proof of common interest between the existing Claimant and Sterling Bank Plc which the Defendant/Applicant sought to join as a 2<sup>nd</sup> Claimant in this suit.

Having considered the affidavit evidence of both parties as well as the submissions and authorities cited by them, the court finds that there is only 1 (one) issue which calls for determination;

**Whether the Applicant is entitled to the relief sought?**

The grant or otherwise of an application such as this is at the discretion of the court and in exercising its discretion the court must do so judicially and judiciously, hence an Applicant who seek the discretion of court must place cogent facts before the court to enable the court exercise its discretion in the manner mentioned above. The Supreme Court stated the principle which will guide the court in exercising its discretion to grant an Order for joinder. See the case of **GREEN V. GREEN (2001) ALL FWLR (PT. 76\_ Pg 795 @ 799 Ratio 5** per Oputa JSC.

**...The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled. There must be a question in the action which can not be effectually and completely settled unless he is a party.**

In this instant case, the Defendant/Applicant merely claim that the party – sought to be joined as 2<sup>nd</sup> Claimant in this suit is a necessary party and that the matter cannot be effectually determined without her as a party, see paragraph 36 of the

Affidavit in support of this application, but failed to show the question of law or even fact which cannot be effectually and completely settled unless Sterling Bank Plc is made a party to this suit. The exercise of court's discretion is not based on the figment or whims of the court but upon reliable and reasonable facts placed before the court by the Applicant who seek the discretion of the court.

The Defendant/Applicant averred in paragraphs 25 of the Affidavit in support that "the Defendant was dismayed when he found out that his account has been blocked and post no debit (PND) placed on same by Sterling Bank Plc without any prior notification and or court order authorizing restriction on his account nor was he informed of such restriction." This is completely a distinct cause of action which has no connection with the cause of action in this suit. The claim before this court is for an order compelling the Defendant to refund the sum #9,000,000 (nine million naira) only to the Claimant being the outstanding sum from the sum of #11,000,000 (eleven million naira) only collected from the Claimant by the Defendant. I have gone through all the averments and pleadings in the court's record there is no place the Claimant mentioned or have any Claim against Sterling Bank Plc the party sought to be joined as 2<sup>nd</sup> Claimant. It could be understandable if the Defendant/Applicant is seeking to join Sterling Bank Plc as a Co-Defendant in this suit than as 2<sup>nd</sup> Claimant. If the Defendant/Applicant has any claim against Sterling Bank Plc the party sought to be joined as 2<sup>nd</sup> Claimant he has and will always have unhindered access to court. From paragraphs 25 to 39 of the Affidavit in support of this application are all distinct claims, issues and cause of action against Sterling Bank Plc (the party sought to be joined as 2<sup>nd</sup> Claimant) by the Defendant/Applicant.

However from all of the averments and pleadings before this court, the court finds that there is neither a document nor factual depositions in the Affidavit in support disclosing any common interest between the Claimant and Sterling Bank Plc the



party sought to be joined. This is one occasion where the court will not compel a Claimant to proceed against a party that she has no wish to sue. The grant of this application will cause an unnecessary delay in the trial and prejudice the interest of the Claimant/Respondent in this suit. See **AJAYI v. JOLAYEMI (2001) 10 NWLR (PT. 722) @ 537 – 538 Paras H – A**

Therefore with the cumulative authorities of **FADAYOMI V. SADIPE AND OTHERS (1986) LPELR-1223 (SC) 1 at page 8 paragraph A, OBASANJO & OTHERS V. YUSUF & ANOTHER (2004) LPELR-2151 (SC) 1 at page 20-21, paragraph F and Order 13 Rule 19 of the FCT Civil Procedure Rules**, the Court finds that this application lacks merit and I so hold.

In conclusion the reliefs sought by the Defendant/Application are hereby refused, and this application of the Defendant/Applicant fails and hence dismissed accordingly.

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**Hon. Justice Jude O. Onwuegbuzie**

APPEARANCES :