IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO – ABUJA

THIS MONDAY, THE 27TH DAY OF JANUARY, 2022.

BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

SUIT NO: FCT/HC/CV/1736/2021
MOTION NO: M/7214/2021

BETWEEN:

ENG. CHIBUIKE DANIEL ONYERI ----------CLAIMANT/RESPONDENT

AND

1. CHASEBOUND GLOBAL SERVICES LTD –DEFENDANT

2. BSTAN CONSTRUCTION LTD----------DEFENDANT/APPLICANT

RULING

This is a ruling in respect of the 2nd Defendant/Applicant's Motion on Notice M/7214/2021 dated 26th October, 2021 and filed on the same day. The application is brought pursuant to **Order 13 Rule 19(1) and Order 43 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018**, and Under the Inherent Jurisdiction of the Honourable Court.
The application prays for the following reliefs.

1. An Order of this Honourable Court Striking Out the name of the 2nd Defendant/Applicant from the substantive suit for misjoinder.
2. An Order of this Honourable Court Striking Out the Suit against the 2nd Defendant/Applicant for want of reasonable cause of action.
3. And for such further or other order(s) as this Honourable Court may deem fit to make in the circumstance of this case.

The application h as no affidavit in support as the application is solely relying on the pleadings in this suit vix: Statement of Claim. A Written Address of the Applicant's Counsel was attached to the Motion.

In opposition to the application, the Claimant/Respondent did not file a Counter Affidavit but through his Counsel on 2nd November 2021 filed a Written Address in response to the application.

At the hearing on 22nd day of November, 2021, Counsel for the contending parties respectively adopted their Written Addresses as their oral submissions for and against the application.

In the 2nd Defendant /Applicant Counsel's written address, he formulated a sole issue for the determination of this court:

> "**Whether, having regard to the facts and circumstance of the substantive suit; particularly with respect to its relationship with the 1st Defendant in the transactions leading to the substantive suit, 2nd Defendant/Applicant can be held to be a competent party capable of being joined as a defendant in the substantive suit?**

Arguing on the matter, the Counsel submitted that for a better resolution of this issue, the Court would first have to determine the status of the 2nd Defendant/Applicant vis-à-vis its role in the transaction that kindled the substantive suit. That the materials the Court would have to look at in determining this issue is no other than the Statement of claim. That the reason is that , as the law is trite, applications complaining of lack of jurisdiction on grounds of lack of capacity to be sued and lack of reasonable cause of action, the court must confine itself to the averments in the pleadings of the plaintiff and the reliefs claimed and no more. He cited the case of ***Etaluku Vs. NBC Plc (2005) All NWLR (Pt 1281) 260.***

It was the case of the 2nd Defendant/Applicant that he was disclosed as the agent of the 1st Defendant during the transaction leading to the suit. That a perusal of the Statement of Claim would reveal this fact. That in paragraph 1 of the Statement of Claim, the Claimant/Respondent averred that:

"*Claimant sometime in December, in 2014 purchased a plot of land described as Plot 115, Second Avenue, Chasebond Estate, Idu Sabo, Abuja from the 1st Defendant through her agent the 2nd Defendant*".

And also in paragraph 3 and 4 of the Statement of Claim, the Claimant/Respondent averred concerning the 2nd Defendant/Applicant that: -

> *"The 2nd Defendant was a lawful agent of the 1st Defendant held out to the general public by the 1st Defendant to market and sell plots of land to prospective subscribers at the time the Claimant purchased Plot 115, Second Avenue, Chasebond Estate, Idu Sabo, Abuja from the 1st Defendant".*
>
> *"Sometime in December, 2014 the 1st defendant through the 2nd Defendant her agent offered a residential plot known as Plot 115, Second Avenue, Chasebond Estate, Idu Sabo, Abuja to the Claimant for a total cost of Ten Million Ninety-Seven Thousand Naira (N10,097,000.00)".*

The Counsel submitted further that from the contents of the supplied paragraphs of the Statement of Claim, it is to be noted that the status of the 2nd Defendant/Applicant and its role in the transaction with the Claimant/Respondent is not lost in this suit. That the above averments clearly evince the 2nd Defendant/Applicant as the agent of the 1st Defendant. On who is an agent in law, the Counsel cited the following cases; ***Osigwe Vs. PSPLS management Consortium Ltd. (2009) % NWLR (Pt. 1128) 378; Reg. Trustees, Assemblies of God Mission Vs. Manuchim (2013) LPELR -20778 CA; Akanwa Vs. Ogbaga (2016) LPELR-41054 CA;*** and ***Ofordum Vs. Easy Geo. Int'l Ltd. (2019) LPELR-4682 CA***,

The 2nd Defendant/Applicant Counsel further submitted that The agency status of the 2ndDefendant/Applicant having been established by the pleadings of the Claimant/Respondent in his Statement of Claim, suffice to submit that the Claimant/Respondent cannot sue the 2nd Defendant/Applicant in its capacity as the agent of the 1st Defendant. That it is trite principle of our law that an agent of a disclosed principal does not incur liability of a civil suit for acts done in the exercise of his agency. In other words, an agent of a disclosed principal can neither sue nor be sued. The Counsel relied on the following cases; ***Okafor Vs. Ezenwa (2002) 13 NWLR (Pt. 784) 319; Allied Trading Co. Ltd. Vs. GBN, Line (1985) 2 NWLR (Pt.5) 74 at 81***; ***Niger Progress Ltd. Vs. NEL Corp. (1989) 3 NWLR (Pt. 107) 68 at 92; Pwol Vs. Union Bank Plc, (1999)1 NWLR (Pt 588) 631 at 636 and P.K. Ojo Vs. Felix Ogbe (2007) 9 NWLR (Pt 1040) 14***, where the Court held that: ***"When the principal of an agent is known and disclosed, the correct party to sue (or be sued) for anything done by the agent is the principal".***

The Counsel finally therefore, submitted that having been evinced to be the agent of the 1st Defendant known to the Claimant/Respondent, 2nd Defendant/Applicant cannot in the circumstance of its status and the facts surrounding the suit be sued as a defendant. It was the Counsel's conclusion that where an agent of a known principal has been sued, the suit becomes manifestly incompetent particularly against such agent and the proper order the court seized of such suit is to decline jurisdiction to hear and entertain such suit against such agent and strike his name out. He relied on the case of ***Uba Vs. Ogundokan (2009) 31 W.R.N. 21*** and urged the Court to grant the Order sought.

In a way of opposition, the Claimant/Respondent Counsel's written address also formulated a sole issue for the determination of this Court to wit: "***Whether the 2nd Defendant/Applicant is a necessary party before this Court for the just determination of this suit***"

It was the Counsel's argument that the 2nd Defendant/Applicant is a proper party whom a cause of action has been disclosed against, a necessary party for the just determination of the Claimant's suit and who ought to be bound by the decision or the outcome of this suit. He cited the case of **GREEN v. GREEN (1987) 3 NWLR (Pt. 61) 480 and NWOLE v. IWUAGWU (2004) ALL NWLR (Pt.220) 1618 para.F. CA** wherein the court held thus:

"***Where pleadings contain allegations against particular persons or group of persons, such person are necessary parties and must be joined in the action or else the suit cannot be effectually determined***."

The Counsel also relied on the case of **BILWADAMS CONSTRUCTION CO. (NIG.) LTD v. DRAGOMIR (2002) FWLR (Pt.109) 1645 para.G.**

It was the case of the Claimant/Respondent that in its pleadings before this Court including documents frontloaded has shown that there is a serious controversy between the parties, and an allegation of fraud against the 2nd Defendant/Applicant. That the facts before this court shows the confusion between a principal and an agent wherein the Principal alleges the agent is personally liable for not remitting funds paid to the agent and the denial of liability by the defendants to the detriment of the Claimant who has ran to court to seek judicial remedy.

The Counsel further submitted that the law holds any party on whom there is an allegation against in a suit as a necessary party. That the Claimant/Respondent has in its pleadings and documents shown promise by the 2nd Defendant/Applicant that the refund of its money will not be a problem and thereafter, the same 2nd Defendant/Applicant is refusing to sort out the refund issue which is the subject of this suit. That the fact that the 2nd Defendant/Applicant is an agent of a disclosed principal does not in some circumstances avail the agent. Submitting further the Counsel said that in the face of alleged default in remitting the monies paid by the Claimant/Respondent to the 1st Defendant, the 2nd Defendant is needed in this suit to explain that and by its defence help the court to resolve the issue. The Counsel relied on the case of **ASAFA FOODS FACTORY LIMITTED v. ALRAINE NIG. LTD (2002) FWLR (Pt. 125) 770,para.B-D SC; RUSHOLME ETC LTD v. S.G READ & CO. (LONDON) LTD (1955) 1 ALL ER 180,** and urged the Court to hold that the 2nd Defendant is a proper party to this suit, and dismiss the application with cost for lacking in merit.

The 2nd Defendant through his Counsel on the 17th day of November, 2021, filled a Reply on Points of Law to the Claimant's Written Address. The Counsel submitted that the Claimant/Respondent has sorely misconceived the real issue that calls for this Honourable Court's determination of the 2ndDefendant/Applicant's Application. Aside the gross misconception of the real issue for determination, the 2ndDefendant/Applicant has as well misconstrued the position of the law on agency relationship, particularly on the propriety of the liability of an agent of disclosed principal in a civil suit. He submitted that whilst all necessary and proper parties can be sued, it is not all persons who have a stake in a transaction that led to a suit can be joined as a party. That in the instant case before Your Lordship, the statement of Claim disclosed that the 2ndDefendant/Applicant was during the transaction that gave rise to the suit an agent of the 1st Defendant, that 2nd Defendant/Applicant's agency was not unknown to the Claimant/Respondent who averred in his Statement of Claim that he is aware that the 2nd Defendant/Applicant is the agent of the 1st Defendant. Apparently, Claimant/Respondent misconceived the alleged dispute between 2ndDefendant/Applicant and the 1stDefendant as a cause of action fit for this Honourable Court's determination. He submitted that this cannot stand. That the 1st Defendant's allegation against the 2nd Defendant/Applicant cannot be fit for this Court's determination where the 1st

Defendant is the Claimant and not where the Claimant/Respondent is the Claimant as in this suit. That, all that is been said is that it is only the 1st Defendant that can maintain an action against the 2nd Defendant/Applicant for any fraud in non-remission of moneys received by customers but not the Claimant/Respondent. It was his further submission that so far as the 2nd Defendant/Applicant acted within the scope of his agency as is evinced in the Statement of Claim, liability for any act done or omitted to be done can only be borne by the 1st Defendant and not by the 2ndDefendant/Applicant. That the only instance(s) where agent of a disclosed principal can be jointly or solely liable, and therefore must be made a party to a suit is where there is allegation of tort or quasi-crime against such agent, He cited that case of ***R.O. Iyere Vs. Bende Feed & Flour Mills Ltd. (2008) 7-12 SC 151 at 1681-169; management Ent. Ltd.(2002)14 NWLR (Pt.787) 242; Universal Vulcanising Nig. Co.Ltd Vs. Otusanaya (1984) 4 SC 367 at 395)*** or where the agent acted without authorization or outside the scope of his agency; ***UBN (Nig) Plc Vs. Ofagbe Nig. Co. Ltd. Vs. Ijesha United Trading & Transport Co. Ltd (1992) 9 NWLR (Pt. 266) 388; Oyegun Vs. Igbinedion (1992) 2 NWLR (Pt. 226) 747; Febson Fitness Centre Vs. Cappa H. Ltd. (2015) 6 NWLR (Pt. 1455) 263)***.
The learned Counsel further submitted that the facts disclosed in the present suit do not point to the existence of any or all the forgoing instances. Therefore, in the absence of disclosure of authorization from the 1st Defendant to collect the monies received from the Claimant/Respondent, and in the absence of existence of any tort or fraud alleged to be committed or authorized to be committed by the 2nd Defendant/Applicant, the 2nd Defendant/Applicant therefore becomes incapable of being sued for acts done within the scope of its agency. He cited the case **of Ministry of Health &Ors. Vs. Mobile Links Tech. Ltd. (Supra)**; ***Niger Progress Ltd. Vs. North-East Line Corp. (1989) 3 NWLR (Pt 107) 68; Akalonu Vs. Omokaro (2003) All FWLR (Pt 175) 493; Allied Trading Co. Ltd. Vs. GBN Line (1985) 2 NWLR (Pt 5) 74; Qua Steel Products Vs. Bassey (1992) 5 NWLR (Pt. 239) 67,*** and finally prayed the Court to strike out the substantive suit against the 2nd Defendant/Applicant or in the alternative strike out the name of the 2nd Defendant /Applicant from the substantive suit.

I have carefully considered the grounds and legal submissions of the learned Counsel on both sides. The cardinal issue that calls for determination is;

"**Whether or not the Applicant has made out a case to justify a grant of the application**."

It is worthy of note that the **High Court of the Federal Capital Territory (Civil Procedure) Rules 2018** has made out some new and different provisions from the previous Rules of Court with regard to joinder of parties to a suit.

With regard to joinder of Defendants to a suit, a cardinal provision of the Rule is made in Order 13 Rule 8 & 4. It provides thus: -

> *"Where a Claimant is in doubt as to the person from whom he is entitled to redress, he may, in accordance with the Rules, or as may be prescribed by any special order, join two or more Defendants so that the question as to whom, if any, of the Defendants is liable and to what extent, may be determined between all parties".*

By this provision alone, it is apparent that even where a Claimant is not certain as to which party he is entitled to redress, he may join the party as a Defendant to the claim so that the extent to which the person is liable to him may be determined in the proceedings.

In Order 13 Rule 18(1) the Rules also provides that: -

> *"No proceeding shall be defeated by reason of misjoinder or non joinder of parties and the Court may deal with the matter in controversy so far as regards the rights and interest of the parties actually before him".*

Order 13 Rule 18(2) on the other hand, however provides thus: -

> *"The Court may at any stage of the proceeding, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the names of any parties improperly joined be struck out".*

Order 13 Rule (4) on the other hand, however provides thus: -

"Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. Judgment may be given against one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment."

The above provision more especially Rule (4) is very germane to this application on which the Applicant contends that he was improperly joined to the suit and for that reason his name should be struck out from it. Or in the alternative strike out the suit entirely.

The issue of whether or not and when a party maybe joined as a Defendant to a suit has engaged the attention of the Court in a number of cases. Dealing with the issue, the Supreme Court in ***OYEDEJI AKANBI MOGAJI & ORS V FABUNMI & ANOR (1986) 2 SC P. 43,*** held that the relevant question to be determined on whether a person should be joined as a Defendant or not are:-

(a). Is it possible for the Court to adjudicate upon the cause of action set up by the Plaintiff unless the person is added as a Defendant?

(b). Is the person someone who ought to have been joined as a Defendant in the first instance? and

(c). Alternatively is the person someone whose presence before the court as a Defendant will be necessary in order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the cause?

The Court went further to hold that these questions must be answered affirmatively for the joinder to be justifiable. In this regard, the Court in ***AROMIRE & ORS V AWOYEMI (1972) 1 ALL NLR (PT. 1) P. 101*** held that it is improper to join as co-defendants under the rules for joinder of parties, persons against whom the Plaintiff has no cause of action and made no claim against.

To determine these issues, there is no gainsaying that the Court needs to examine the averments in the Claimants' Statement of Claim to find out if he is a person in whose absence the Court cannot effectively and effectually determine all issues in

controversy, closely related to this is whether or not the claim discloses a cause of action against the Applicant who seeks to have his name struck out from the case. The Supreme Court in ***DANTATA V MUHAMMED (2000) 7 NWLR (PT. 664) P. 176*** took time to explain the meaning and how to determine whether or not a suit discloses a reasonable cause of action. It explained thus: -

> *"The phrase cause of action" means simply a factual situation the existence of which entitles one person to obtain a remedy against another person. It is a fact or combination of facts which when proved would entitle a Plaintiff to a remedy against a Defendant. It consists of every fact which would be necessary for the Plaintiff to prove. If traversed, in order to support his right to judgment of the Court. That is, the fact or combination of facts which give's rise to a right to sue. It is a cause for an action in the Court to determine a disputed matter".*

With regard to the necessary factors to be considered in determining whether the suit discloses a reasonable cause of action, it held thus: -

> *"In order to determine whether the Statement of Claim has disclosed a reasonable cause of action, what the Court should consider are the contents of the Statement of Claim. Having considered the contents of the Statement of Claim deemed to have been admitted, the question is whether the cause of action has some chance of success notwithstanding that it may be weak or not likely to succeed. Thus, it is irrelevant to consider the weakness of the Plaintiff's claim. What is important is to examine the averments in the Statement of Claim and see if they disclose some cause of action or raise some questions fit to be decided by the Court".*

In simple terms, the duty of the Court while examining the Statement of Claim is to find out whether or not it discloses some questions between the parties fit to be adjudicated upon by the Court.

In this case, I have carefully examined the averments in the Claimant's Statement of Claim as they relate to the 2nd Defendant/Applicant.

In paragraph 6 of the Statement of Claim, the Claimant averred that he accepted the offer and in furtherance of the purchase of the said plot made payment arrangement with the 2nd Defendant/Applicant, which led to the different payments made by the Claimants totaling Five Million Nine Hundred and Twenty Five Thousand Naira only (#5,925,000.00) to the 1st Defendant through the account provided by the 2nd Defendant/Applicant from December, 2014 to July, 2015.

In paragraphs 8,9,10,11,12, 14,15,18,19,20,21 and 22 of the Statement of Claim, the Claimant/Respondent made out serious allegations against the 2nd Defendant/Applicant.

In Paragraph 9 of the Statement of Claim, the Claimant states that sometime in December, 2015, the Claimant and other subscribers in the estate were orally informed by the 1st Defendant not to have any dealings with the 2nd Defendant/Applicant anymore as the 2nd Defendant/Applicant moving forward was no longer the 1st Defendant's agent.

Paragraph 15 of the Statement of Claim, the Claimant further avers that the 2nd Defendant/Applicant kept on posting him and telling him the 2nd Defendant/Applicant was working out the process of his refund and reconciling accounts with the 1st Defendant.

Also in paragraph 18 of the Statement of Claim, the Claimant further avers that the total sum made to the 1st and 2nd Defendants for the purchase of Plot 115, Second Avenue, Chasebond Estate Idu Sabo, Abuja is a total sum of Thirteen Million Five Hundred and Ninety Seven Thousand Naira only (#13,597,000.00) as against the total cost for the purchase of Plot 115, Second Avenue, Chasebond Estate Idu Sabo, Abuja which was offered to him for Ten Million Ninety Seven Thousand Naira only (#10,097,000.00) leaving him with an excess payment to the Defendants to the tune of Three Million Five Hundred Thousand Naira (#3,500,000.00) only.

At paragraph 19 of the Statement of Claim, the Claimant states that at a point all efforts made to get his refund from the 2nd Defendant/Applicant and also get the 1st

Defendant to acknowledge payments made to the 1st Defendant through the 2nd Defendant/Applicant failed.

The Claimant in paragraph 22 of his Statement of Claim stated that in response to his lawyer's letter dated 19th day of April, 2021, the Defendants responded, each denying liability to make the refund and alleging that the other has the liability to make the refund.

From the foregoing averments **Order 13, Rule 4 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018** becomes so apt in the circumstance, which this Court ordinarily expects the 2nd Defendant/Applicant's Counsel to know as an experienced senior Counsel.

The 2nd Defendant/Applicant's Counsel submitted in paragraph 3.5 line 7 of his Reply on Points of Law that:

> "*the only instance(s) where agent of a disclosed principal can be jointly or solely liable, and therefore must be made a party to a suit is where there is allegation of tort or quasi-crime against such agent*, ***or where the agent acted without authorization or outside the scope of his agency***"

For this Court to determine whether or not the 2nd Defendant/Applicant (the agent) acted without authorization or outside the scope of his agency would be at the final determination of the substantive case, which suffices to say, it will not be proper to strike out this suit or strike out the name of the 2nd Defendant/Applicant at this stage.
This Court from the above averments in the Statement of Claim needs to determine at the end of the proceedings of the substantive case whether the 1st or 2nd Defendants is liable to the Claimants allegations as it is as clear as daylight that the 2nd Defendant/Applicant is a necessary party to this suit.

The above allegations are matters which call for adjudication by this Court. They raise issues fit for determination by this Court. As directed by the Supreme Court in the ***DANTATA V MUHAMMED*** **case supra**, it is irrelevant at this stage whether or not the Claimant's case is weak or strong. They may fail or succeed at

the end of the day. The important thing is that the allegations raise some issues fit for this Court to determine. Whether or not the 2nd Defendant/Applicant was or is an agent of the disclosed Principal as contended by the 2nd Defendant/Applicant's Counsel.

The fact that these allegations raise issues fit for the Court to determine in relation to the 2nd Defendant/Applicant, in the view of the Court, makes the 2nd Defendant/Applicant (indeed the Defendants) in whose absence the Court cannot effectively and effectually determine all issues in controversy. It is for this reason that the 2nd Defendant/Applicant is a necessary party who ought to be a Defendant in this case *ab initio.*

In the light of the foregoing, the Court resolves the sole issue raised above against the 2nd Defendant/Applicant in favour of the Claimant.

Accordingly the Court holds this application is misconceived and lacking in merit. It is accordingly dismissed with cost of N20, 000.00 against the 2nd Defendant/Applicant in favour of the Claimant.

Hon. Justice Jude. O. Onwuegbuzie

APPEARANCES:

1. Ndubuisi Uzoanya Esq., For the Claimant.
2. C.E.C. Njuku Esq., For the 2nd Defendant/Applicant.