

**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/2227/2016

BETWEEN:

- 1. HITS FURNITURE NIGERIA LIMITED**
- 2. MR. SAMI HAIDAR.....CLAIMANTS/APPLICANTS**

VS

- 1. CLINICAL PLASTICS LIMITED.....DEFENDANT/RESPONDENT**
- 2. ALHAJI AMIN BABA KUSA.....PERSON SOUGHT TO BE
JOINED/RESPONDENT**

RULING

By a Motion on Notice dated 30/11/2020 but filed on 1/12/2020 with Motion No: M/12503/2020, brought Pursuant to Order 13 Rule 7, 18 (3) of the Civil Procedure Rules of the High Court of the Federal Capital Territory Abuja 2018 and under the inherent jurisdiction of this court, the Claimants/Applicants prays the court the following reliefs;

- (1) An Order of this Honourable Court granting leave to the Claimants/Applicants to join as 2nd Defendant; Alhaji Amin Baba Kusa (being a party having a joint interest with the 1st Defendant

in the same subject matter of this suit) before this Honourable Court.

(2) And the Omnibus reliefs.

The application is supported by a 6 Paragraph affidavit with 1 Exhibit attached and marked Exhibit "BOVI", deposed to by one Fredrick T. Joseph a Litigation Clerk in the law firm of Applicant's Counsel. Also filed a Written Address and adopts same in urging the court to grant the reliefs.

The processes were served on the Defendant/Respondent. Respondent, in opposition filed a 24 Paragraph Counter-Affidavit with 5 Exhibits attached marked Exhibits "CPL1" "CPL2" "CPL3" CPL4" "CPL5" deposed to by one Mariam Gidado a Legal Practitioner in the Law Firm of the Defendant/Respondent's Counsel. Also filed a Written Address and adopts same in urging the court to refuse the application.

In the Written Address of the Applicant, Applicant's Counsel formulated a sole issue for determination; that is;

"Whether or not the court possesses, the inherent powers to grant the relief sought by the Applicants from the circumstances of this matter"

Commends court to authorities which guides the court in the grant of application for joinder and urge court to exercise its discretion in favour of Applicants by granting the application.

In the same vein Respondent's Counsel formulated a sole issue in their Written Address which is;

“Whether or not the Claimants/Applicants are entitled to the grant of their application to join the 2nd Respondent/Party sought to be joined as 2nd Defendant in this suit.

Relying on several authorities, Respondent’s Counsel urge court to refuse the application with an award of cost of ₦200,000.00 (Two Hundred Thousand Naira).

Having carefully considered the submission of Counsel and the authorities cited as well the depositions contained in their affidavit evidence, the court finds that the sole issue for determination is;

“Whether from the facts before the court, the Applicants has made out a case sufficient to warrant the grant of the reliefs sought”

In the determination of an application for joinder of a party in a suit, the guiding principles has been stated in a Plethora of cases; in Adefarasin Vs Dayekh (2007) 11 NWLR (PT. 1044) @ 117 Paragraph A–E, the court stated the principles thus;

- (a) Is the cause or matter liable to be defeated by the non-joinder?
- (b) Is it possible for the court to adjudicate the cause of action set up by the Plaintiff unless the party is added as a Defendant?
- (c) Is the third party a person who ought to have been joined as Defendant?
- (d) Is the third party a person 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 or matter?

These principles were restated in the case of *Oluwaniyi Vs Adewunmi* (2008) 13 NWLR (PT. 1104) 405 – 406 Paras G – B. In all of these, the test to join a party is whether the party seeking to be joined will have his interest irreparable prejudiced, if he is not joined in the action. See *Adefarasin Vs Dayekh* (Supra) 119 Para H.

In this instant application, Applicants main ground for the application for joinder as contained in Paragraph 4 (a) (b) (c) of their affidavit in support of the application is that from the Originating process before the court, the Claimants have stated that one Amin Baba Kusa (the party now sought to be joined) adopted a pseudo – name Mohammed Aminu in the course of transacting with the Claimants/Applicants for the purpose of registering the 1st Claimant. And the Alhaji Amin baba Kusa has been held to be the same person as Mohammed Amin and also the same person that have interest in the 1st Defendant, by a Chief District Court which fact is contained in the Exhibit "BOVI", therefore this suit does not reflect all the parties interested in this suit. The joinder of the party sought to be joined is germane to the just determination of all the issues in the suit. On the other hand, Respondent contends in Paragraph 6, 7, 8 of their Counter-Affidavit that the averment in Paragraph 4 (a) of Applicant affidavit is false as Alhaji Aminu Buba Kusa, Amin Buba Kusa, Mohammed Amin and Mohammed Aminu are four distinct and separate persons contrary to what is averred in Applicants Originating Processes dated 25/7/2016 and 27/11/2020 respectively. That it cannot be confirmed if one Aminu Baba Kusa (the

party now sought to be joined) adopted a pseudo name Mohammed Amin in the cause of transacting with the Claimants/Applicants for the purpose of registering the 1st Claimant.

I have taken a look at the competing claims of the parties vis-à-vis this 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 Applicant satisfy any of the Principles stated in that authority to warrant the grant of this application? Applicant's main ground for joining the party sought to be joined is that Amin Baba Kusa adopted a pseudo name Mohammed Aminu in the course of transacting with the Claimants/Applicants as stated in the Originating Process, which the Respondent vehemently denies. A perusal of the affidavit attached to the application seem to suggest a link between the party now sought to be joined as 2nd Defendant and one Mohammed Amin. Whether or not the Aminu Baba Kusa adopted a pseudo name Mohammed Aminu in the transaction with the Claimants/Applicants as denied by the Respondent is what the court cannot determine at this stage of trial. It will be therefore in the interest of justice to allow the application to enable the court determined effectively all the issues canvassed by the parties once and for all.

Before drawing the contain on this Ruling it must be stated that the Respondent by their Paragraph 10,14, 12, 13, 14, 18, 19, 20, 22 and 23 of their Counter-Affidavit flouted the Provisions of Section 115 (2) of the Evidence Act by containing extraneous matters by way of objection, prayer

of legal argument or conclusions, hence the court did not consider those Paragraphs in the determination of this Ruling.

From all of these and having found that it will be in the interest of justice to allow the application, for court to effectively determine all the facts and issues before the court this court hereby grant leave to the Claimants/Applicants to join as 2nd Defendant Alhaji Amin Baba Kusa (being a party having a joint interest with the 1st Defendant in the same subject matter of this suit) before this Honourable Court.

The name of the party now joined in this suit shall be reflected on all court processes.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

11/4/2022

APPEARANCE:

MARTIN LUTHER OKERE ESQ. FOR THE CLAIMANT/APPLICANT

MOHAMMED YINUSA ESQ. WITH C. ONURORAH ESQ, IBRAHIM ABDULSALAM FOR THE DEFENDANT/RESPONDENT.