

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/736/2004

: MOTION NO. M/8447/2020

DATE: : WEDNESDAY 13TH APRIL, 2022

BETWEEN

**1. CHIEF JOHN OGWU } JUDGMENT DEBTORS
2. HON. JUSTICE MWADA } /RESPONDENTS
BALAMI }**

AND

**1. ENGR. GOODNEWS GOODMAN } JUDGMENT
AGBI } CREDITORS
2. MR. PIUS ACHILIKE } RESPONDENTS**

AND

**1. BEDE EJIEKWU } PARTIES SOUGHT TO BE
2. UGONNA OKENEISI } JOINED**

RULING

By a Motion on Notice dated the 6th day of July, 2020, the Applicants pray for the following reliefs:-

1. An Order of this Honourable Court adding:-
 - a. Bede Ejiekwu
 - b. UgonnaOkeneisi

As 3rd and 4th Respondents respectively, to the Motion on Notice no M/7378/2019 filed by the Judgment Debtors/Respondents.

2. An Order of this Honourable Court, consequent upon the grant of prayer 1, directing the Judgment Debtors/Respondents to serve the parties joined and the parties with

the amended originating processes in this application.

3. And for such further or other Orders as the Honourable Court may deem fit to make in the circumstance of this suit.

In support of the application is 7 paragraph affidavit deposed to by Chukwunweike Henrietta a legal practitioner in the law firm of Mildred & Patriarch Attorneys.

It is the deposition of the Applicants that they rented the property, described as plot E27, Gwagwalada, from Mr. Pius Achilike who at the time of taking the property informed them that he took possession of the property by virtue of an execution of a court judgment.

That they have rented the property and have taken possession of same for a few months.

That sometime in the last week of June, the 2nd Judgment Creditor/Respondent told them about Motion No. **M/7378/19**, wherein the Judgment Debtor/Respondent is seeking an Order of the Court to set aside the execution of the court's judgment.

That the decision of the court in this case will affect Mr. Bede Ejiekwu's tenancy, he is therefore seeking to be joined as a party in this case, rather than standby while his interest is being deliberated upon.

That to the best of their knowledge, the Judgment, execution of which is sought to be set aside has

not been appealed against and there is no stay of execution thereto.

In line with the law, a written address was filed by the Applicants wherein a sole issue was formulated for determination to wit;

Whether the court can/should grant the Applicants' reliefs as prayed.

It is the submission of learned counsel that the Applicants are necessary parties. A necessary party to a case is one whose interest will be affected by the decision of a court in the matter at hand, his rights or interests will be affected either positively or negatively by the outcome of the case. ***ATLANTIC NETWORKS LTD & ANOR***

***VS. ABAWA NIGERIA LTD. & ANOR (2016)
LPELR – 40368 (CA);***

***GREEN VS GREEN (1987) 3 NWLR (Pt. 61)
480 at 493 were cited.***

Counsel urged the court to grant his reliefs as prayed.

On their part, 2nd Judgment Debtor/Respondent replied on points of law to the Motion No. **M/8447/2020.**

Counsel to the 2nd Judgment Debtor/Respondent raised the issue to be decided as to whether the pending application of the Judgment Debtors can be resolved without the involvement of the present parties.

Counsel submits that there is nothing in the entire affidavit and the written address to show that the Applicants are proper or necessary parties whose presence are indispensable in determining the main application challenging the irregularities surrounding the obtainment of the writ of possession. The Applicant; the tenants who do not even know the location of property cannot impede this proceedings as there must be an end to litigation. ***OKOLI VS MORACABLE FINANCE NIG. LTD. (2007) AFWLR (Pt. 369) 1164 at 1181, Paragraphs A – B;***

NUHU VS OGELE (2004) MJSC 70 were cited.

Counsel argued that the application is without basis in law, as the Applicants have not shown any tenancy agreement to indicate in fact that they

both are on the property. So no interest which is defensible has been demonstrated. ***I.B.N. LTD. VS A.G RIVER STATE (2008) ALL FWLR (Pt.417) 1 at 36; paragraphs B Page 37 was cited.***

Counsel submits that in circumstances of this case and in the face of woeful inability of the Applicants to show their interest, this application is liable to be dismissed with cost as the main application can be determined without their involvement they being neither proper nor necessary parties. Counsel urged the court to so hold and asked for cost of N100,000.00 (One Hundred Thousand Naira) only.

COURT:-

Having regard to the circumstances of this suit, it appears to me that the question to be determined is *whether the parties sought to be joined are persons whose presence before the Court as 3rd and 4th Respondents 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?*

The first point that must be made here is that the joinder of persons or parties in one action as Defendants is clearly permissible under the provisions of Order 13 Rule 3(1) of the High Court of the Federal Capital Territory Abuja (Civil Procedure Rules) 2018.

However, two conditions must be established by such person(s) to qualify for the joinder. i.e,

1. Is the cause or matter liable to be defeated by the non-joinder of the third parties as Defendants?
2. Is the third party a person who ought to have been joined as Defendants so that they may be bound by the result of the trial or their presence before the court as Defendants is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter. See *AJAYI VS JOLAYEMI (2001) 10 NWLR (Pt.722) Page. 29-30, Paragraphs F-A* and *CROSS RIVER STATE NEWSPAPERS CORPORATION VS. ONI*

***& ORS (1995) 1 NWLR (Pt. 371) Page 23
paragraphs G-C.***

The governing principle which is a cardinal rule for the administration of justice is that determination of litigation must be in the public interest. Hence where the issues between the parties involve third parties whose interest are affected and the non-joining of the party will result in further litigation, such parties are necessary parties. Therefore, those who's presence will be necessary for the effectual and complete adjudication of the matter before the Court, and their presence as parties is important, the Court with or without an Application, can joined them as parties.

Poser: are parties seeking to be joined necessary parties in this suit so much that their absent will effects the adjudication of the matter before this Court?

It is the averment of Applicants that they are tenants to one Mr. Pius Achilike One of the Judgment Creditors.

I must state that the reason for joinder of party is a trite area of our jurisprudence that is settled.

It is very fundamental principle of our law that where it is apparent to a court that any person not being a party in a case may eventually be affected, either in whole or in part, it may be necessary to allow such person to be joined as a party to the suit.

The essence is to make such a party to be bound by the outcome or result of the action ***LAWAL VS FED. MINISTRY OF ENVIRONMENT & URBAN DEV. & ORS (2011) LPELR – 9595.***

Similarly where there is no claim against a person, he certainly should not be joined as a Defendant ***ADEFARASIN VS DAYEKH (2007) 11 NWLR (Pt. 1044) page 89.***

Although it is the duty of Plaintiff to carefully from the reliefs sought on the writ and statement of claim choose who to make a Defendant, the court however has a duty to also join whomsoever it deems fit that is likely to either be bound by the outcome of the decision on a subject matter or must necessary to effectually and effectively determine the cause or matter.

It is my firm view that the parties sought to be joined are not necessary parties at this point in time in view of the fact that they are tenants to a party in the suit.

On the whole therefore, I refuse the application for joinder.

Consequently Motion No. **M/8447/2020** is hereby and accordingly dismissed.

Justice Y. Halilu
Hon. Judge
13th April, 2022

APPEARANCE

F. T Yusuf, Esq. – for parties sought to be joined/Applicant.

Other parties and or counsel not in court.