

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/2525/2020

DATE: : FRIDAY 29TH APRIL, 2022

BETWEEN:

PASTOR FRANCIS OSEYEMON IRABOR } CLAIMANT

AND

1. EMEKA IHEANACHO } DEFENDANTS
2. BLUEBEAIN CAPITAL LTD. }
3. ZAINAB IBRAHIM OKOKOBILI }

RULING

This ruling is hinged on motion on notice with motion No. M/679/2021 dated the 26th day of January, 2021 and filed on the 27th day of January, 2021 brought pursuant to Order 43 Rule 1 and 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018 wherein 3rd Defendant/Applicant approached this court for the following:-

- a. An Order of this Honourable Court striking out the name of the 3rd Defendant from this suit for non – disclosure of any reasonable cause of action against the 3rd Defendant by the Claimant.

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

In support of the Motion no Notice is 7 paragraphs affidavit duly deposed to by Francis Okwara a litigation secretary in the law firm of Chief Gordy Uche (SAN)& Co.

It is the deposition of the 3rd Defendant that the suit arose from a foreign exchange transaction between the Claimant and the 1st and 2nd Defendant for the purchase of real estate property in favour of the Claimant.

That the 3rd Defendant is a Bank Officer with First Bank Plc.

That the 3rd Defendant is the relationship manager/account officer of the Claimant and at all material times acted on the express instruction of the Claimant to First Bank Plc.

That the Claimant and the 2nd Defendant met in 2014 and have since been doing business without going through the 3rd Defendant.

That the 3rd Defendant is not privy to the foreign exchange transaction between the Claimant and the 1st and 2nd Defendants which forms the basis of this suit.

That the 3rd Defendant is neither an agent of the Claimant nor an agent of the 1st and 2nd Defendants.

That the agreement to procure foreign currency for the purchase of a real estate property in the united kingdom in favour of the Claimant was entirely between the Claimant and the 1st Defendant, the transaction which forms the basis of the suit.

That the Claimant had reported this case against the 3rd Defendant at the Interpol Department of the office of the Commissioner of Police Lagos State.

That the Interpol department of the office of the commissioner of police Lagos State Cleared the Defendant of any liability arising from the transaction between the Claimant and 1st and 2nd Defendants, the transaction which form the basis of the suit.

That the Claimant further reported the case against 1st, 2nd and 3rd Defendants. At the office of the Economic and Financial Crimes Commission (EFCC).

That the Economic and Financial Crimes Commission (EFCC) cleared the 3rd Defendant of any liability arising from the transaction between Claimant and 1st and 2nd Defendants, the transaction that gave rise to this action.

In line with the law, 3rd Defendant/Applicant filed a written address wherein two (2) issues were raised for determination to wit:-

1. **Whether this suit as presently constituted discloses any reasonable cause of action against the 3rd Defendant.**

2. *Whether an action can be brought against a party who is not privy to the agreement which forms the basis of the suit.*

On Issue 1

Learned counsel submits that a cause of action ripens or arises on a date when a breach of duty or act occurs which warrants the person aggrieved or injured by such breach of duty or action to institute a legal action to assert or protect his legal right which has been breached or violated. *WOHEREN VS. EMERUWA (2004) 13 NWLR (Pt. 890) Page 398.*

Counsel further submits that the Claimant never engaged the services of 3rd Defendant to procure any foreign currency for him and that the duty of

the 3rd Defendant was to carry out the express instruction to First Bank Plc. to transfer the funds of the Claimant as his account officer which the 3rd Defendant did without delay and in accordance with the banking rules and regulations.

On bringing an action against a party who is not privy to the agreement which forms the basis of the suit, learned counsel submits that privity of contract is an important tenet of contract law which determines those entitled to institute legal proceedings to enforce a legal right obtainable under any contract. The doctrine of privity of contract provides that a contract cannot confer or impose obligation arising under it on any person except the parties to it. Therefore, only the parties to a contract can sue or be sued on the contract.

***MAKWE VS NWUKOR & ANOR (2001) 14
NWLR (Pt. 733) 356;***

***ALLIED PRODUCTS LTD. VS. KOFO
TRADING CO. LTD (1996) 3 NWLR (Pt. 436)
Page 244; and***

***IDUFUEKO VS. PFIZER PRODUCTS LTD. &
ANOR (2014) LPELR – 22999 (SC) were cited.***

Counsel submits further that the 3rd Defendant was neither an agent of the Claimant nor the 1st and 2nd Defendants and was never in the know of whatever agreement the parties reached in execution of the agreement, her only role was to carry out the instruction sent to First Bank Plc. via electronic mail by the Claimant to credit the 2nd Defendant.

The 3rd Defendant only became aware of the actual amount involved in the transaction after the 2nd Defendant defaulted. No funds passed through the 3rd Defendant's personal account and she never received and found for her personal gain or use.

Counsel urged the court to grant the application as prayed and hold that the 3rd Defendant was not privy to the agreement which formed the basis of the act and that the Claimant has not established any reasonable cause of action against the 3rd Defendant to enable it maintain this action against the 3rd Defendant.

On their part, Claimant/Respondent filed counter affidavit in opposition to 3rd Defendant/Applicant motion deposed to by one Emmanuel

Okemehlegal practitioner in the law firm of Eli Ogbeide & Associates.

In his 17 paragraph affidavit, the Claimant/Respondent deposed that the 3rd Defendant expressly informed the Claimant that the 1st and 2nd Defendant s are his Business partners who she has been doing business with for a long time and persuaded the Claimant on the sincerity and trust for the Claimant to rely on her.

That at all material times, the 3rd Defendant's action exceeded just a mere agent doing an official transaction but also as a necessary party haven instrumentally set the transaction in motion between the Claimant and the 1st and 2nd Defendants hence, activated, orchestrated and

implemented the transaction which transpired in this business.

That the presence of the 3rd Defendant is necessary and important for the just determination of this case.

That the suit was not filed against the 3rd Defendant to embarrass or intimidate her in any way but filed in the interest of justice.

In line with the law, a written address was filed in support of the counter wherein a sole issue was raised for determination to wit;-

Whether considering the facts and circumstances of the application, the 3rd Defendant/Applicant is entitled to the Order sought?

Learned counsel submits that the facts and the circumstances of this suit are such that the court can rightly justify the joining of Zainab Ibrahim Okokobili as Co – Defendant in this suit as events that led to the filing of this suit was jointly and severally carried out by the 1st, 2nd and 3rd Defendant and the justice of this matter cannot be fully arrived at without joining the 3rd Defendant as a necessary party. The court is empowered under the Rules to so exercise such powers if the court deems it fit. Order 13 Rule 4 of the High Court of the Federal Capital Territory Civil Procedure Rules, 2018 was cited.

Counsel submits that from the foregoing the 3rd Defendant/Applicant is a necessary party to this suit and the suit as presently constituted discloses

a reasonable cause of action against her being a necessary party and the business partner of the 1st and 2nd Defendant. ***GREEN VS GREEN (1987) 2 NWLR (Pt. 61) 480;***

COTECNA INT’L LTD. VS. CHURCH GATE (2010)18 NWLR (Pt. 1225) page 346 at page 393 were cited.

Counsel urged the court to dismiss the application of the 3rd Defendant as she is a necessary party for the issues in this case to be justly dealt with.

COURT:-

Let me state here that, anyone whose presence is crucial and fundamental to the resolution of a matter before the court must be made a party to the proceedings. See the case of ***RICO***

CONSTRUCTION CO. LTD. VS VEEPEE IND. LTD. & ANOR (2005) 3 – 4 SC 1.

The principles guiding joinder of parties have been succinctly elucidated in the case of ***ADEFARASIN VS DAYEKH (2007) ALL FWLR (Pt. 348) 911 at 933 paragraphs E – G, as follows:-***

- a. Is the cause or matter liable to be Defeated by the joinder,
- b. Is it possible for the court to adjudicate on the cause of action set up by the Plaintiff unless the third party is added as a Defendant?
- c. Is the third party a person who ought to have been joined as a Defendant?
- d. Is the third party a person whose presence before the court as Defendant will be

necessary in order to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the cause or matter?

See ***GREEN VS. GREEN (1987) 2 NSCC VOL. 18 (Pt. 11) 1115 at 1127;***

UGORJI VS.ONWU (1991) 3 NWLR (Pt. 177).

Similarly, on who is a necessary party, see ***IGE & ORS VS. FANDE & ORS (1994) NWLR (Pt. 354)*** where it was stated that, a necessary party to a proceeding has been said to be a party whose presence is essential for the effectual and complete determination of the claim before the court.

It is the party in the absence of whom the claim cannot be effectually and completely determined.

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 a necessary parties.

It is the duty of the Claimant to join all necessary parties whose presence would be crucial to the resolution of the suit. Even where not necessary, a legally interested person whose legal rights may be curtailed by the result of the action must be joined.

It is most proper to join a necessary party in order to have a just decision. Such joinder may be made at the instance of any of the existing parties.

See *AGBEKONI VS. KAREEM (2008) ALL FWLR (Pt. 406) 1970 at 1987 – 1988 Paragraphs G – A.*;

YAKUBU VS.GOV. KOGI STATE (1995) 9 SCNJ 122.

Also of importance is the fact that for there to be joinder, either as Plaintiff or Defendant, there are two conditions that must be met,

- a. The right to relief must in each case be in respect of or arise out of the same transaction or series of transaction and

b. There must be some common question of law and facts.

Above was laid down by Supreme Court in the case of ***REGISTERED TRUSTEES OF NATIONAL ASSOCIATION OF COMMUNITY HEALTH PRACTITIONERS OF NIGERIA & ORS VS. MEDICAL AND HEALTH WORKERS UNION OF NIGERIA & ORS (2008) ALL FWLR (Pt. 412) 1013 at 1027 page 1073 paragraphs G – H;***

IBIGBAMI VS. MILITARY GOVERNOR, EKITI STATE (2004) 4 NWLR (Pt. 863) 243.

A joinder would be refused when the court is satisfied that the case could be effectually and completely determined without the joinder.

See *PEENOK INVESTMENT LTD. VS. HOTEL PRESIDENTIAL LTD. (1982) 12 S C 1;*
LAJUMOKE VS DOHERTY (1969)1 NWLR 281.

The 3rd Defendant is a necessary party if this suit must be determined fairly..should this court strike out the name of 3rd Defendant an application for joinder canalways be made by counsel or suo – motu joined by the court.

The 3rd Defendant in her averment stated that she is not privy to the transaction between the Claimant and the 1st and 2nd Defendants which forms the basis of this suit and the claimant has not established any reasonable cause of action

against the 3rd Defendant to enable it maintain this action against the 3rd Defendant.

I have also no difficulty in assimilating the averment of the Claimant that the 3rd Defendant expressly informed the Claimant that the 1st and 2nd Defendant are his business partners who she has been doing business with for a long time and persuaded the Claimant on the sincerity and trust for the Claimant to rely on her.

3rd Defendant being a staff of First Bank Plc., was neither recognised as the agent of the Claimant nor that of the 1st and 2nd Defendants.

Joinder of a party or parties will be necessary, if (a) the cause or matter is liable to be defeated by the non – joinder of third party as a Defendant, (b)

if the 3rd party ought to have been joined as a Defendant so that he may be bound by the outcome of the action.

See the case of ***OMONYE VS. ODITA (2008)***
ALL FWLR (Pt. 409) 539 at 542 page 548;

AJAYI VS. JOLAYEMI (2007) FWLR (Pt. 55)
586.

From the pleadings before me, 3rd Defendant/
Applicant is not a necessary party... consequently,
her name listed as 3rd Defendant is hereby struck-
out.

Justice Y. Halilu
Hon. Judge
29th April, 2022

APPEARANCES

Catherine Kpanya, Esq. – for Claimant.

Isaac Nwakulu, Esq., with ZhokwoZhokwo Jnr.,
Esq. – for the 3rd Defendant.