

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

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: CV/2899/2018

BETWEEN:

DAUSAYI INVESTMENT LIMITED.....PLAINTIFF

AND

ABDULLAHI MOHAMMED TAKAI.....DEFENDANT

RULING

This motion on notice with No. M/4706/2020 was filed by the party seeking to be joined as the 2nd defendant in this suit filed the 28th day of January, 2020, and which was moved on the 15th day of February, 2022, and the applicant seeks for the following reliefs:

1. An order of this Honourable Court joining Abubakar Tsoho Musa as the 2nd defendant in this suit.
2. An order of this Honourable Court directing that all process so far filed and served on the person seeking to be joined as 2nd defendant/applicant, with necessary amendments reflecting the joinder and any other amendments as duely made.
3. An order directing an extension of time, allowing the person seeking to be joined as 2nd defendant to file his memorandum of appearance, the statement of defence together with the necessary accompanying processes to the statement of claim in this suit.

4. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which this application is filed are on page 2 of the motion papers.

It is supported by fourteen paragraphed affidavit, and attached to the affidavit are the proposed statement of defence and some documents. It is also accompanied by a written address of counsel which he adopts as his argument in support of the application.

The claimant filed its counter affidavit of five paragraphs on the 11th March, 2020 and is accompanied by a written address of counsel which the counsel adopts as his argument in opposition to the application.

The applicant filed a further and better affidavit and attached to it are some documents.

It is in the affidavit of the applicant that the transaction leading to this suit and facts and circumstances of are in respect of property located at No. 1, Jalingo Close, War College Gwarimpa, FCT, Abuja, by the Federal Ministry of Works and Housing, Abuja which the applicant acquired on the 24th July, 2017 for a consideration of N18,000,000.00 only from the defendant, and upon receipt of full consideration on the property from the applicant by the defendant, the defendant handed over the original certificate of company, and all other title documents including: Deed of Assignment, Memorandum of Understanding, Deed of Assignment, Power of Attorney, Authority to Register Power of Attorney, Authority to collect Certificate of Occupancy and application for stamping and registration of Deed of Assignment were executed in favour of and delivered to the person seeking to be joined as 2nd defendant by the defendant, and he has continued to maintain exclusive

custody and possession of the original copies of Certificate of Occupancy covering the property, together with all relevant title documents which were executed in favour and delivered by the defendant to the applicant.

It is deposed to the fact that the applicant's interest on the property and peaceful possession is being challenged by this suit, which he became aware of on the 16th December, 2018 when the applicant saw court processes in respect of this suit pasted on the property and he discovered that the claims bother on the determination of the interest in property he has acquired, and that his name was not mentioned as a defendant but only that of the defendant who already transferred his interest in the said property for value consideration.

It is stated that the document commenced this suit by a writ of summons and statement of claim against the defendant claiming reliefs by way of allocation, ownership, usage of property general and exemplary damages and the interest thereon, and that the reliefs which the claimant is seeking from this court in this suit are such that will seriously and inimically affect the interest of the person seeking to be joined as the 2nd defendant, and this he resolved to defend his interest as the current beneficial owner of the property, which is the subject matter of this suit, and that this application will not prejudice the interest of the claimant.

In his written address, the counsel to the applicant raised sole issue for determination in this application, to wit:

Whether it is in the interest of justice for this Honourable Court to exercise its discretion in allowing this application particularly in view of the facts and circumstances disclosed?

The counsel submitted that a party who seeks a discretionary relief from the court is amongst other things,

required to furnish the court with sufficient materials to enable it exercise its discretion favourably, and this must be exercised judicially and judiciously, and he cited the case of **Ogolo & Ors V. Fubara & Ors/Minimah & Ors (2003) 11 NWLR (pt 831) p. 231 at 261, paras. B – C.** to the effect that joinder of parties, either as plaintiffs or defendants is allowed in our procedural law, provided the application has merit, and this is to avoid multiplicity or duplicity of actions and to save litigation time in the judicial process.

He further argued that the determining factor on the exercise of the discretion is whether the person to be joined will in any way be affected by the outcome of the suit, and he cited the case of **A.G. Abia State & 35 Ors (2001) 11 NWLR (pt 725) 689** to the effect that a party that might be attached by the decision of the court in a suit ought to be joined. The counsel also cited the cases of **Peenok Investment Ltd V. Hotel Presidential Ltd (1983) 4 NCLR 112;** and **A.G., Bendel State V. A.G., Federation & 22 Ors,** to buttress his argument, and he further submitted that the decision of this court in this suit is such that the applicant cannot avoid the consequences thereof. The counsel referred to paragraph 4 of the affidavit in support that the facts, issues and reliefs of the claimant in the present suit, are such that will negatively affect the interest of the applicant, and by paragraph 5 of the same affidavit demonstrates that the applicant has interest in the property.

The counsel submitted that the court has power to allow an application of this nature, and he referred to Order 13 Rules 4, 6(1) & (2), 18 and 19(1) & (2) of the Rules of this court. He contends that the applicant has paid consideration of N18,000,000.00 and the interest is transferred on the property, and he purchased the property without any notice of any patent and latent defects and

circumstances, and he cited the case of **Ette V. Edoho & Anor (2009) 8 NWLR (pt 1144) 610** with respect to an abuse of court process.

The counsel cited sections 6(6) (a) and (b), and 36(1) of the constitution to the effect that it is the constitutional right of the applicant for him to be joined as a party, and fair hearing requires that he be allowed to present his case unfettered before this Honourable Court, and he cited the case of **Oyewole V. Akande & Anor. (2009) 15 NWLR (pt 1163) 119 at 148 paras. E-G**, and he urged the court to allow this application.

The claimant in its counter affidavit denied the depositions in paragraphs 6, 7, 8 and 9 of the affidavit in support and further stated that the plaintiff did not at any time hand over the title documents of the property to the defendant, and as such it did not transfer its title to the defendant or any other person, and that the fate of the applicant as regards to the rightful owner rest solely on the fate of the defendant from whom the applicant derived his title, and this implies that the applicant cannot have a better title but something worse, and if the defendant succeeds, he will share the victory with the applicant, and that it is in the interest of justice not to allow the application.

In his written address, the counsel to the claimant raised this issue for determination, to wit:

Whether it is necessary to join the party seeking to be joined as a defendant in this suit when the issues before the court can be effectually determined without the presence of the party seeking to be joined and there is no privity of contract between the claimant and the application?

The counsel submitted that the claimant is the owner of the property in dispute which it acquired on the 2nd of April, 1998, and it appointed Astute Property Limited to superintend over the property and equally executed a Power of Attorney in favour of Astute Property Limited, and this the claimant has remain in possession and even kept tenants in the property, and as soon as the last tenant moved out of the property the defendant invaded the property, demolished it and erected a new structure. This prompted the claimant to file this suit in 2018, and it took the plot several months before he entered appearance and months again before filing their defence. The counsel submitted that it is the case of the defendant that the claimant sold the property to him and they have all the documents to establish the sale before the court, and therefore, the issue of ownership is already before the court between the claimant and the defendant.

It is therefore an argument of the counsel to the claimant that the applicant cannot have a better title than the defendant who sold to him and he cannot by any chance have any document than what the defendant passed to him, and to him, the necessary party is the defendant who claimed to have bought the property from the claimant, and he cited the case of **Daar Communications (Nig.) Ltd & 1 Anor. V. Wasa Delmas Nig. Ltd (2012) 3 NWLR (pt 1287) 370 at 373** to the effect that in an application for joinder, it is only a necessary party, in whose absence as a party a question on the action cannot be effectively and completely settled that can be joined. He then submitted that the ground for joining a person as a party to a suit is that the suit cannot be effectively, effectually and completely settled in his absence, and the applicant has not fulfilled such condition as there is no any

document other than what the defendant passed to the applicant; and therefore, urged the court not to allow the application.

In the further and better affidavit (which is equivalent to the reply affidavit in accordance with the Rules of this court, 2018) of the applicant and more particularly in paragraph 4 that he deposed to such affidavit in view of the relevant facts not covered in his earlier depositions in support of his motion on notice. Also in paragraph 8 of the further and better affidavit the deponent stated that this further affidavit has become necessary to grant before this court, further facts not adequately captured in the depositions contained in his counter affidavit.

The applicant in paragraph 12 of the further and better affidavit deposed to the fact that paragraphs 4(f), 4(g) (h) (i) and (j) of the counter affidavit dated and filed 11th March, 2020 is a legal conclusion, personal opinions and offensive to the clear provisions of the Evidence Act and should be discountenanced by this court.

He made reference to paragraph 4(g) of the counter affidavit to the effect that **“the defendant or the parties seeking to be joined has defective title”**, and to him, when the court is yet to give any judgment or decision to the contrary.

He also made reference to paragraph 4(h) of the counter affidavit to which the claimant averred that **“it is of no relevance joining Abubakar Tsoho Musa as a party in this suit, as the counsel are aware that only the court can determine the relevance of joining any party to an action”**

The deponent stated that this applicant is an interested party.

The counsel to the applicant could not accompanied his further and better affidavit with a reply on points of law.

Let me formulate this issue for determination, to wit:

Whether the applicant is entitled to the relief sought?

Thus, the applicant in his further and better affidavit averred and in an underlined sentence that he made this further affidavit in view of relevant facts not covered in his earlier depositions in support of his motion on notice, and this he repeated in paragraph 8 of the further and better affidavit that this further affidavit has become necessary to bring before this court, further facts not adequately captured in the depositions contained in his earlier affidavit. By these, I have to consider the affidavit in support along with the further and better affidavit in arriving at a decision in this application. See the case of **Afolayan V. Abdullahi (2020) All FWLR (pt 1050) p. 610 at 631; paras. A-B** where the Court of Appeal, Ilorin Division held that a further affidavit provides additional information not available in the main affidavit earlier filed, as well as providing a reply to the counter affidavit. The affidavit in support and the further affidavit must be construed together as the latter affidavit was sworn in furtherance of the earlier affidavit filed.

The applicant also challenged, in his further affidavit, that paragraphs 4(f), (g) (h) (i) and (j) of the counter affidavit of the claimant are extraneous and therefore offends the provisions of the Evidence Act.

Thus, section 115(2) of the Evidence Act provides:

“An affidavit shall not contain extraneous matter, by way of objection, prayer or legal argument or conclusion.”

See the case of **Stanbic IBTC Bank Plc V. L.G. Capital Plc** where the Supreme Court held that prayers, objections and legal arguments are matters that may be pressed by counsel in court and are not fit for a witness either in oral

testimony or in affidavit evidence while conclusions should not be drawn by witness but left for the court to reach. In the instant case, the applicant pressed and argued that those paragraphs mentioned above offends the provisions of the Evidence Act, and therefore, it behooves upon the applicant to explain how the paragraphs of the counter affidavit are inconsistent with the section of the Evidence Act. See the case of **Stanbic IBTC Bank Plc V. L.G. Capital Ltd (supra)**.

The applicant in paragraph 12.4 of his further affidavit made reference to paragraph 4(g) of the counter affidavit of the claimant to the effect that the claimant said that **“the defendant or the parties seeking to be joined has defective title”** and to him, this is a conclusion which this court did not draw or even any other court.

Paragraph 4(g) of the counter affidavit reads:

“That if the defendant from whom the party seeking to be joined derived his title has a defective; it implies that the party seeking to be joined cannot have a better title but something worse.”

The applicant argued that the above deposition is argumentative and a conclusion. By the above paragraph, it can be inferred that it is a supposition and not an argument which introduced a condition or that is to say in the event the statement is true, and therefore, it is not a conclusion being drawn by the deponent.

Paragraph 4(h) reads:

“That it is of no relevance joining Abubakar Tsoho Musa as a party in this suit”.

By the above paragraph it can be inferred that it is an argument and certainly this offends section 115(2) of the Evidence Act and is hereby expunged.

However, paragraph 4(g) of the counter affidavit is sustained.

The applicant could not explain how paragraph 4(f) (i) and (j) are inconsistent with section 115(2) of the Evidence Act, and therefore the assertion of the applicant on that is of no moment, and to this, I so hold.

Now, coming back to the application before the court I agree with the counsel to the applicant that it behooves upon the applicant to place materials before the court to merit the grant of the application, and this court has to exercise its discretion judicially and judiciously. See the case of **Eneh V. N.D.I.C. (2019) All FWLR (pt 982) p. 1055 at 1069; paras. G-H** where the Supreme Court held that a party who seeks to invoke the discretionary powers of court has the duty of providing the necessary material on which basis the discretion is to be exercised in his favour. In the instant application, the applicant has averred in paragraphs 5, 6, 7, 8, 9 of the affidavit in support and by paragraphs 9 and 10 of the further affidavit of the applicant, it is averred that the applicant has purchased the property being the subject matter of this case from the defendant on the 24th day of July, 2017 for a consideration of N18,000,000.00, and he has continued to maintain exclusive custody and possession of the original copies of Certificate of Occupancy covering the property and other relevant documents, and that the claim before the court bothers on the interest in the land which he has acquired from the defendant, and that he has since taken step to register his interest as the beneficial owner with the Federal Land Registry of the Federal Ministry of Land and he has since been issued with the original copies of the registered Deed of Assignment covering the property after he has validly acquired for valuable consideration and has remain in continuous possession. That

the reliefs which the claimant is seeking from this Honourable Court in this suit are such that will seriously affect his interest in the property, and that he has expended enormous resources to taking an estimated sum of N70,000,000.00 on improving the structural and physical condition of the property.

While, it is the contention of the claimant that it did not transfer its title to the defendant or any other person, and that if the defendant succeeds, the applicant shared the victory with him, and that if the defendant losses, the applicant shared the loss with him; and that joining the applicant will not affect or change the decision of the court within suit in any way whatsoever.

Thus, the Irrevocable Power of Attorney and Memorandum of Understanding annexed to the affidavit in support show that there was a transaction between the applicant and the defendant, and by the approval or consent the Deed of Assignment between the applicant and the defendant dated the 6th day of May, 2020 signed by the Minister of Works and Housing show that the Deed of Assignment was registered, and to these, I hold the view that the applicant has an interest in the property to protect.

Now the question that arose is:

Whether the applicant is an interested party in this suit?

It is settled that when there is a failure to hear all the necessary parties to the dispute before a decision is reached, which affects those not joined and heard, there is a breach of section 36(1) of the 1999 Constitution which has the effect of automatically rendering the proceedings in the motion the judgment or ruling resulting there from a nullity and void, without any legal effect, and where one has not been heard or given opportunity to be heard, the decision

is a complete nullity and cannot be enforced against the party, having not been heard. See the case of **A.P.C. V. Uduji (2020) All FWLR (pt 1065) p. 5 at 19; paras. A-C.**

Thus, an interested party is a person affected or likely to be affected or aggrieved or likely to be aggrieved by the proceedings. See the case of **Ikeli V. Agber (2015) All FWLR (pt 785) p. 303 at 323, para. D.**

It is in evidence that the applicant derived his title from the defendant, however, the claimant contends that there is no privity of contract between the applicant and the claimant in the transaction between the defendant and the claimant. The applicant has not been able to establish any link with the document with respect to the property being the subject matter of the dispute, in essence he did not establish how he will be affected by the outcome of the decision in this suit in the dispute between the claimant and the defendant, that is to say, what interest is the applicant willing to protect from the document? See the case of **Yar'adua V. Bindawa (2018) All FWLR (pt 953) p. 263 at pp. 283-284, paras. H – C** where the Court of Appeal, Kaduna Division held that the test as to whether there should be joinder of a party in a suit is based on the need to have before the court such parties as would enable it to effectually and completely adjudicate upon and settle all the questions in the suit. the main reason or purpose for joinder of a party or parties in a suit is to make that person bound by the result of the suit, and the question to be settled therefore must be a question in the section which cannot be effectually and completely settled unless he is made a party, where it is apparent by the pleadings and/or evidence before the court that a person who is not a party to the suit may eventually be affected or be liable, such a person is to be joined by either of the parties or the court su

motu joins him as a party for the effectual and complete adjudication of the dispute.

It is on the above premise, I have to look at the statement of claim filed by the claimant against the defendant with a view to see whether it is pleaded against the applicant, and I have painstakingly gone through the statement of claim and I have not seen where the applicant is involved in the case, and more so, the applicant has not shown to the court in his affidavit as to how he will be affected by the outcome or rather how his interest will be protected by the decision of this court, and to this, I therefore so hold that it is apparent that this case can be effectually and completely dealt with in the absence of the applicant.

In considering the provision of Order 13 Rule 4 of the Rules of this court as referred to by the counsel to the applicant, where provides thus:

“A 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 area of concern in the above quoted rule is the expression “against whom the right to any relief is alleged to exist”. It is on the premise of the above quoted expression that I took into consideration the statement of claim and I found that the applicant is not one against whom the right to any relief alleged to exist but the defendant. More so, looking at the statement of defence which is proposed by the applicant, it can be seen that what is between the claimant and the defendant has no nexus with the

applicant, and what is between the applicant and the defendant has no nexus with the claimant, and hence the provision of Order 13 Rule 6 (1) & (2) of the Rules of this court is inapplicable in the circumstances of this case. I also do not consider the provisions of Order 13 Rule 18 of the Rules of this court as quoted by the counsel to the applicant as relevant, and it is on the premise of Order 13 Rule 19 of the Rules of this Court his application was filed.

It is the law that a court of law does not compel a plaintiff to proceed against a party he does not intend to sue. See the case of **Usman V. Yusuf (2018) All FWLR (pt. 950) p. 1720 at 1942; paras. F-G.**

On the whole, and in the circumstances of this application, I answer the question for determination in the negative, and the application to join Abubakar Tsoho Musa is hereby refused.

Hon. Judge
Signed
12/5/2022

Appearances:

T.P. Pam Esq appearing with D.A. Onyiacha Esq for the plaintiff.

T.P. Tochukwu Esq appeared for the defendant.

CT: The ruling is delivered, and the matter is adjourned to 22nd day of September, 2022 for hearing.

Hon. Judge
Signed
12/5/2022