

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/927/2022

BETWEEN:

MS ASABE WAZIRI.....CLAIMANT

AND

- 1. ABEH SIGNATURE LIMITED**
- 2. MR. CECIL OSAKWE**
- 3. MR. VICTOR GIWA**
- 4. THE CHIEF REGISTRAR, FCT HIGH COURT**

}.....**DEFENDANTS**

RULING

The applicant herein filed this motion with no. M/4777/2022 and seeks for the following:

1. An order joining Mr. Adeyinka Barewa and Chief Innocent Ike, the applicants herein, as 5th and 6th defendants in the instant suit with No. CV/927/2022.
2. An order directing that the originating summons and all other processes filed in this suit be amended to reflect the joinder and be served on all the parties, including the applicants herein.
3. 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 sixteen paragraphed affidavit and attached to the affidavit are EXH. 'A' which is the contract of sale between Abeh Signature Ltd and Adeyinka Barewa dated the 24th day of

March, 2022, A Deed of Assignment between Abeh Signature Ltd and Chief Innocent Ike dated the 22nd day of March, 2022.

The application is accompanied by a written address of counsel.

The claimant filed a counter affidavit of six paragraphs and is accompanied by a written address of counsel.

It is in the affidavit of the applicants that the claimant/respondent filed before this court an originating motion and its accompanied processes against the defendants/respondents claiming among other reliefs that the 1st, 2nd and 3rd defendants unlawfully proceeded to execute the judgment of the trial court on the property known as apartment 3B and 3C located at Abeh Signature apartments No. 1, Mekong close, Maitama, Abuja and that the execution borders on the property legally acquired by the 1st applicant and the 2nd applicant on the 24th March, 2022 and 22nd March, 2022 respectively which is the subject matter brought before this court by the claimant.

It is deposed to the fact that the 1st and 2nd applicants are necessary parties to the suit in view of the fact that they are the new owners and occupants of the property which is the subject matter of this suit. that the decision given by the court in this suit will certainly affect the property which is the subject matter to this case and their collective interest, and that they are bonafide purchasers without notice or aware of any execution or pending appeal, and that they have paid the appropriate sum and executed a Deed of Assignment, and that it is important that they should be heard and allowed to place the facts before the court as the motion covers them and it is their strong believe that they have a valid defence to the claimant's case, and that this application is to enable the court to fully, completely

and effectually determine the rights of the parties to their suit and thereby prevent any possible future litigation arising there from, and that it will be in the interest of justice to grant this application.

In his written address the counsel to the applicants raised lone issue for determination, to wit:

Whether the applicants have made out a case deserving of them being joined as defendants in this case?

The counsel submitted that Order 13 Rule 4 of the Rules of this court gives this court power to join any person as a defendant against whom the right to any relief is alleged to exist, whether jointly or severally. To him, the subject matter of this suit is a dispute over execution of a judgment by the 1st defendant, which ejected the claimant/respondent from apartment 3B and 3C located at Abeh Signature Apartments, No. 1, Mekong close, Maitama, Abuja the property which is the res and subject matter of this suit and have been dissipated by selling same to bonafide buyer without notice, who are the persons seeking to be joined in this case.

It is stated that the claimant is not contesting the judgment in this suit but contested and questioned the mode of execution of the judgment by the 1st, 2nd and 3rd defendants, and by implication still claiming or arrogating ownership of the property which have been sold to other persons, and therefore submitted that the issue in conclusion in this case makes the applicants necessary parties, to the dispute, in fact, their non joinder in this suit is fatal to the just and genuine determination of this suit, and he cited the case of **Green V. Green (1987) 3 NWLR (pt 61) 480**, and submitted that proceeding without the applicants will amount to shaving their heads at their back.

It is submitted that the applicants do not want to stand aloof and watch the defendants fight their case alone, and they believe stating the facts will constitute a defence to this suit, and the applicants are not proactive they may be caught by the doctrine of standing by.

It is submitted that they have shown sufficient interest in this matter before this court, and they urged the court to exercise its discretion in their favour.

It is submitted that making them parties will not only make them to be bound by the decision of this court, it will also give them the opportunity to be heard before a decision is given.

To the counsel, the law is clear that the grant or refusal to grant an application for joinder of a party is a plaintiff or defendant is entirely the discretion of the court, there is however the rider that such discretion must be carried out judicially and judiciously, and he referred to the case of **Azubuikwe V. P.D.P. (2014) 7 NWLR (pt 1466) p. 301.**

According to the counsel, the purpose of joinder of parties is to ensure that an interested party is not caught by the principle of res judicata in the sense that he remained aloof to a suit in which his legal interest is at stake and also to avoid multiplicity of actions and he cited the case of **Iweka V. A.G. Fed. (1996) 4 NWLR (pt 442) 362 at 373.**

The counsel submitted that to refuse this application will amount to going against every mischief which the principle of joinder seeks to prevent.

To him, this court will not determine the issues in this case without joining the applicants and to do this, will offend the principle of fair hearing as enshrined in section 36 of the 1999 constitution, and he referred to the case of **NEC V. Izogu (1993) NWLR (pt 275) p. 295.**

The counsel also submitted that the applicants are desirable parties because the decision of this court will be binding on them, and the court cannot effectually and completely adjudicate on the issues before the court without joining them.

The counsel then urged the court to grant all the prayers.

It is in the counter affidavit of the claimant/respondent that the depositions in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the affidavit in support of this application are misleading and that contrary to paragraph 4 of the affidavit in support the claimant filed this suit challenging the unlawful and illegal execution of the judgment by the defendants who resorted to self-help and threw the claimant out of her property without the enforcement unit of the FCT High Court while her appeal and motion for stay are pending before the Court of Appeal.

It is deposed to the fact that contrary to paragraph 5 of the affidavit in support, the execution has nothing to do with the legality or otherwise of the purportedly acquired by the applicants over the disputed property which the matter is Lis pendes before the Court of Appeal and that contrary to paragraph 6 of the affidavit in support, the applicants are not necessary parties to this instant suit because the cause of action before the Honourable Court is not for declaration of title to property rather is for unlawful and illegal execution of judgment on 18th March, 2022 while appeal is pending before the Court of Appeal, and the applicants herein are not parties to unlawful execution of the judgment and so their presence is not needed in the instant suit.

It is stated that contrary to paragraph 7 of the affidavit in support the applicants will not be affected by any

decision of the Honourable Court in respect of unlawful and illegal execution of judgment by the 1st, 2nd and 3rd defendants, and contrary to paragraph 8 of the affidavit in support, it is stated that it is irrelevant and immaterial to the cause of action in this suit whether the applicants are bonafide purchasers without notice of any execution or pending appeal.

In response to paragraphs 9, 10 and 11 of the affidavit in support, the deponent stated that the applicants did not acquire any legal title over the disputed property which is the subject of appeal with Appeal No. CA/A/246/2022, and the applicants' Deed of Assignment is not registered and cannot be used to move title and there is no part of payment of purchase price by the applicants. That the applicants have no part to play in the instant suit as they did not participate in the unlawful and illegal execution of the judgment by the 1st, 2nd and 3rd defendants, and therefore the applicants have no interest to protect.

That contrary to paragraph 12 of the applicants' affidavit, the applicants who bought the disputed property *Lis pendes* can only seek to protect their interest in the subject matter at the Court of Appeal, and contrary to paragraph 13 of the applicants' affidavit the joinder of the applicants in this suit will have no effect whatsoever in this suit as the claimants' cause of action is not a declaration of the title rather unlawful and illegal execution of judgment pending appeal. That it will be in the interest of justice to refuse this application with a cost of N100.000.00.

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

Whether the applicants are entitled to the order for joinder sought in this application?

The counsel submitted that this Honourable Court is not the proper fora for the applicants to appear and ventilate any issue regarding their acquisition of the disputed property, as the appropriate fora is the Court of Appeal where they can apply to join as interested parties to the appeal, and to him, the applicants have no interest to defend in this suit because the cause of action in this instant suit is for unlawful and illegal execution of judgment, not declaration of title to property.

To him, the applicants do not participate in the unlawful execution of the judgment and so they are not necessary parties and their presence is not needed, and he cited the case of **UBA Plc V. Gbadeyan (2018) LPELR-44859 (CA)** to the effect that a necessary party is not just any person but must be one against whom a link relating to a cause of action must be sustained, and that a necessary party is a person who which the plaintiff must make a party in order to show cause of action and establish a nexus between him, the complainant and the act complained of. The counsel cited the case of **Ejigbo Local Government V. Adepegba 92019) LPELR-48060 CA** to the effect that it is the claim of the plaintiff and not the defence of the defendant that determines whether a defendant is a necessary or unavoidable party whose absence would render the action impotent or ineffectual.

The counsel submitted that in the instant case the claimant did not make a complaint against the applicants, and there is therefore no need of their presence in this case, and we urged this court to discountenance the arguments of the counsel to the applicants and to refuse the application.

Now, let me adopt the issue formulated by the counsel to the applicants for determination, to wit:

Whether the applicants have made out a case deserving of them to be joined as defendants in this case?

Thus, where a necessary party who ought to be joined is not joined in an action, any judgment obtained against such a party is not a nullity, but shall be to no avail. In other words, non-joinder of a necessary party as a suit is an irregularity that does not affect the competence of jurisdiction of the court to adjudicate on the matter before it, however, an order made against a person who was not a party to the action before court, though not a nullity, is to no avail. It cannot show the test of time and is not binding on such a non-party to the action. See the case **Garuba V. Akande (2020) All FWLR (pt 1046) p. 982 at pp. 1015 – 1016; paras. H-B**. See also the case of **Onemu V. Commissioner for Agriculture, Asaba (2019) All FWLR (pt 1009) p. 9 at 28; paras G – H**. In the instant case where the applicants are not joined as defendants, the judgment is not a nullity, rather it cannot stand against them.

The applicants made heavy weather in their affidavit in support to their application that they have an interest to protect on the ground that both of them bought the apartment in issue on the 24th and 22nd of March, 2022, and that there are contract of sale and Deed of Assignment executed between Abeh Signature Ltd and the applicants and therefore, that made them to be necessary parties.

Let me observe further that the ground upon which they are seeking to be joined boils down to the reason that they bought the apartments in dispute and that was on the 24th and 22nd of March, 2022 respectively, and that they are bonafide purchasers without notice of any execution or any appeal, and therefore, they are necessary parties as defendants and they ought to be joined as such, while it is

the contention of the claimant/respondent that the suit before the court is not a declaration of title to property, rather it is a suit filed challenging the execution of the judgment carried out unlawfully and illegally against the defendants which is resorted to through self-help and threw the claimant/respondent out of her property without the enforcement unit of the FCT High Court which handed down the judgment, and while there is an appeal pending and application for stay at the Court of Appeal, and therefore, the applicants have not participated in the unlawful execution of the judgment that had taken place on the 18th March, 2022, and therefore, to the claimant/respondent, the applicants will not be altered by the decision of the court in this suit, and it is immaterial if the applicants are bonafide purchasers without notice of any execution of pending appeal.

The court in the case of **Garuba V. Akande (supra)** defined a proper party is that who though not interested in the plaintiff's claim is made as a party for some good reasons, while necessary party is that who is not only interested in the subject matter of the proceedings but also who in his absence of the proceedings could not be fairly dealt with.

In other words, the question to be settled in the action between the existing parties must be a question which cannot be properly settled unless he is a party to the action instituted by the plaintiff.

Again 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 may su motu join him as a party for the effectual and complete adjudication of the dispute. See the case of

Yar'Adua V. Bindawa (2018) All FWLR (pt 953) p. 263 at 284; para. C. It is on the above premise that I have to look at the pleadings, otherwise in this instant suit, the reliefs and the affidavit evidence of the applicant with a view to see whether the questions formulated by the applicant in the originating summons are those that cannot be effectually and completely adjudicated upon in the absence of the applicants.

The question formulated by the claimant/applicant in this court is:

Whether having regard to the pendency of the claimant's appeal already entered at the Court of Appeal on 11th day of March 2022 and motion for stay of execution at the Court of Appeal duly filed on the 14th day of March, 2022 and served on the defendants on the 15th day of March, 2018, the 1st, 2nd and 3rd defendants can unlawfully proceed to execute the judgment of the FCT High Court on the 18th day of March, 2022 against the subject matter of appeal through self-help without the Enforcement Department of the FCT High Court?

The crux of the matter which prompted the claimant to file this suit and by the affidavit in support of the application, there was a dispute between her and the defendant over the apartment 3B and 3C, which she claimed to have bought from the defendants, and she made payments even though not complete, and the High Court of the FCT gave judgment against her on the 17th February 2022, and dissatisfied with the judgment she appealed against it to the Court of Appeal and she even filed a motion for stay on the 17th February, 2022, and these were served on the 1st and 2nd defendants, and on the 19th of February, 2022 despite being fully aware of the notice of appeal and motion for

stay of execution, the 3rd defendant in company of about seven hefty thugs and an electrician entered into the apartment and threw her out and she has to take refuge into a hotel. The reliefs sought by the claimant in the main application are that the court should declare that the 1st, 2nd and 3rd defendants cannot unlawfully proceed to execute the judgment of the FCT High Court on the 18th March, 2022 against the subject matter of appeal through self-help without Enforcement Department of the FCT High Court, and also to declare that the execution carried out by the 1st, 2nd and 3rd defendants while there is a pending appeal is wrong, illegal, null and void and of no effect, and to set aside the purported execution and to restore the claimant to status quo pending the determination of the court. The applicant also seeks for a restraining order against the 1st, 2nd and 3rd defendants pending the determination of the motion for stay filed at the Court of Appeal.

Thus, and to my mind, above is the cause of action of the main application before the court, and if that is the correct position, the question that arose is:

What is the interest the applicants want to protect?

It is in their affidavit that they bought the property on the 22nd and 24th of March, 2022 from the 1st defendant, while the execution by the affidavit of the claimant in the main application the execution was carried out on the 18th of May, 2022, and non of the applicants participated in the process of the execution which the applicant seeks this court to set aside, and it is not in the affidavit of the applicants that they have participated in the process of the execution which is alleged to have been wrongfully and unlawfully carried out. It is also not in the affidavit that the matter between the claimant and the defendants is that of

declaration of title let alone for the applicants to allege that they have bought the property, which is the subject of the execution, from the 1st defendant without notice. The question formulated for determination in the suit before this court does not seem to deal with an issue of declaration of title rather it is questioning the legality or otherwise of the execution carried out by the defendants against the subject matter which is the property. It is also not in the affidavit of the claimant in the main application that the applicants are listed as those who have participated in the execution which the claimant seeks the court to set aside. See the case of **Ogbabor V. INEC (2019) All FWLR (pt 1004) p. 310 at 333; paras. D-G** the Supreme Court on the principles granting cause of action and party to join in an action held that a dispute must arise between parties before a court is called upon to adjudicate; there must be proper parties linked to the cause of action before a court can assume jurisdiction in the matter, and it is improper to join, as a co-defendant, to an action a person against whom the plaintiff has made out no cause of action and against whom he has no claim. In every suit in the court of law there must be a plaintiff, who has a legal capacity to bring the action, and a defendant with the legal capacity to defend the action. There must also be a claim against the defendant for him to defend. In other words, there must exist a dispute between the plaintiff and the defendant for the action to be properly constituted.

The court went further and held that it is improper to join as co-defendants to an action, persons whom the plaintiff has no cause of action and against whom he has not made any claim.

In the instant case, and as I have said earlier that in the main application, the names of the applicants have not

been mentioned as the claimant having a claim against, as it is only between the plaintiff and the defendants, and even in their affidavit, the applicants did not establish any link with the claim of the claimant to which they can be made as necessary parties, that is to say no nexus is established that there is a dispute between the applicants and the claimant. See the case of **Onemu V. Commissioner For Agriculture Asaba (supra)** where the Court held that where the nature of the evidence before the court is such that the case of the parties before it can be determined in the absence of those not joined, it can proceed to do so. In the instant case, it can be infer that even in the absence of the applicant, this suit before this court can be effectually and completely adjudicated upon, and to this I so hold.

Looking at the transaction between the 1st defendant and the applicants for the purchase of the property subject matter of this suit before this court, it can be seen that it does not involve the claimant.

The claimant is entitled to pursue his remedy against only the defendant he conceives he has a cause of action against and the claimant is not to be compelled to proceed against persons he has no desire or intention to sue. See the case of **Sifax Nig. Ltd. V. Migfo Nig. Ltd (2019) All FWLR (pt. 1019) p. 956 at 1030; paras. B-C**. See also the case of **Usman V. Yusuf (2018) All FWLR (pt. 950) p. 1720 at 1742; paras. F-G** where the Court of Appeal, Kaduna Division held that a plaintiff is at liberty to discontinue or withdraw the action against all or some of the defendants, and proceed against the remaining defendants. A court of law does not compel a plaintiff to proceed against a party he does not intend to sue.

In the circumstances of this application, the applicants have not made out a case thereby deserving to be joined

as defendants in this suit, and the application is hereby refused accordingly.

Hon. Judge
Signed
15/6/2022

Appearances:

C.J. Abengowe Esq appeared for the claimant.

Ekele Atadoga Esq appeared for the 1st defendant

Christian Oti Esq appeared for the 2nd defendant.

Ahmad Eleburuikie Esq appearing with Muheeb Ohidaji Esq for the parties seeking to be joined.

CC-CT: There are still pending applications before the court and we therefore ask for a date to take all the processes together.

2nd and 3rd defendants – CT: We have filed a motion for contempt we ask for date to take all the applications.

DC-CT: We are of the opinion that the court should take the application for preliminary objection and to deal with it before going into the matter, as the Rules of this court does not provide the room for that.

CC-CT: We are subject to the direction of this court.

CT: The matter is adjourned to 4th day of October, 2022 for the hearing of all the applications pending before the court including the main application, where the preliminary objection succeeds, then the court will stop at that, and where the preliminary objection is not successful, the court can proceed to determine the main application, and to this, I so direct.

Hon. Judge
Signed
15/6/2022