

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT:28

DATE: 16th MAY, 2022

FCT/HC/CV/1700/2021

BETWEEN:

BLIZ INTERIOR SERVICES LIMITED

(Suing through its lawful attorney

Chief Ebubechukwu Lota Etudo doing business

Under the name and style of Etudo and Company) -----

PLAINTIFF

AND

- 1. FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
- 2. ABUJA METROPOLITAN MANAGEMENT COUNCIL**
- 3. MALLAM ABDUL KOPASAURI**
- 4. HALL 7 REAL ESTATE LIMITED**

DEFENDANTS

RULING

This ruling is in respect of an application brought by way of a Motion on Notice filed on behalf of the 3rd Defendant on 13th December, 2021 praying this Honourable Court for an Order striking out the name of the 3rd Defendant in this instant suit for being misjoined as a party in the suit. The second prayer is the omnibus prayer. The Motion is supported by a 10 paragraphed Affidavit and a Written Address.

In response to the application of the 3rd Defendant, the Claimant filed a 7 paragraphed Counter-affidavit with one exhibit and a Written Address on

January 24, 2022. The 3rd Defendant further took the liberty to file a Reply on points of law on February 2, 2022.

The crux of the 3rd Defendants application is that the Claimants claim discloses no cause of action against him and particularly in paragraph 4 of the 3rd Defendants Affidavit in support of the Motion, it was stated therein that the 3rd defendant knows as a fact that this case relates to an adjoining fence located in a plot of land being developed by the 4th Defendant. The Claimant on the other hand in his Counter-affidavit, particularly in paragraph 6 stated that the 3rd Defendant is the equitable owner of the Property that is the subject matter of this Suit and supplied as proof for the assertion Extracts of Minutes of a meeting held in the Office of the Claimant on May 14th, 2021.

In order to determine whether there is a cause of Action against the 3rd Defendant, a look at the originating processes filed by the Claimant is inevitable. In looking at the originating processes, the Court is construed to ask whether the 3rd Defendant is a proper and or necessary party in view of the facts before the Court and whose presence is indispensable for the just determination of this Suit. In the case of ***Green V. Green (1987) 2 N.S.C.C. 1115*** the supreme Court per Oputa JSC held thus:-

"Proper parties are those who though not interested in the Plaintiff's claim, are made parties for some good reasons e.g. where an action is brought to rescind a contract any person is a proper party to it who was active or concurred in the matters which gave the plaintiff the right to rescind ... Necessary parties are those who are not only interested in the subject matter of the proceedings but also who in their absence, 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 they are parties to the action instituted by the Plaintiff."

In the view of this Honourable Court, this suit can be determined justly and on its merit devoid of the presence of the 3rd Defendant. This is predicated on the fact that the Claimant in its Counter-affidavit has not placed sufficient evidence before this Honourable Court to establish that the 3rd Defendant is the equitable owner of the Property in question in this Suit. The exhibit relied upon by the Claimant is an extract of minutes of a meeting held at the Claimants Office on May 14th, 2021 and to my mind, that is insufficient to prove the facts alleged by the Claimant. It is now elementary law that a party who alleges has the obligation to prove and where sufficient and credible evidence is not before the Court in proof of a fact alleged, the Court cannot speculate.

I therefore hold that the Claimant has failed in his obligation to back his assertions with credible evidence. Accordingly, Prayer 1 of the 3rd Defendants Motion filed on December 13, 2021 is granted as prayed. I order that consequential amendments be effected by all parties to the suit.

This, as earlier explained in this ruling arises where a person who ought not to have been a party to an action is joined in it either as a Plaintiff or Defendant the presence of such a person is not necessary for the Courts adjudication. The natural remedy for such a mistake is an application to the Court for the name of a person wrongly joined in an action to be struck out as done in this ruling for the various High Courts. They provide the Court may at any stage of this proceeding, on such terms as appear to the Court to be just and either upon or without the application of either party order that the name or names of any party or parties, whether as Plaintiffs or Defendants improperly joined, be struck out. It is on this ground I deem it just to grant the application filed by the 3rd Defendant. Consequently the name of the 3rd Defendant is hereby struck out reason can be seen from the entire ruling.

HON. JUSTICE M.S IDRIS
(Presiding Judge)
16/5/ 2022

Appearance

Peace Bassey:- Appearing with me is Pius Otudo for the Claimant.

Gloria David:- For the 3rd and 4th Defendant.

Court:- Ruling read in the open Court. This matter is adjourned to the 8th June, 2022 for hearing.

Sign
Judge
16/5/2022