

**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: 7<sup>TH</sup> APRIL, 2022**

**FCT/HC/CV/135/21**

**BETWEEN:**

**MR SAMUEL IDOWU .....**

**PLAINTIFF**

**AND**

**1. MOHAMMED ADAMU**

**DEFENDANTS**

**2. DEPUTY SHERRIF FCT HIGH COURT OF JUSTICE**

**RULING**

The 2<sup>nd</sup> Defendant/Applicant brought this notice of Preliminary objection pursuant to Order 15 of the High Court of FCT Civil Procedure Rules, 2018 and under the inherent jurisdiction of this Honourable Court. The application was dated 7<sup>th</sup> October, 2021 and filed on the same date. The Applicant prays for the following reliefs:-

1. An order Striking out this action brought against the 2<sup>nd</sup> Defendant or
2. Striking out the name of the 2<sup>nd</sup> Defendant as Party in the suit.

In his written address dated and filed on 7<sup>th</sup> October 2021 in support of the notice of preliminary objection, the 2<sup>nd</sup> defendant/Applicant's counsel argued that the endorsements on the writ of summons filed by the Plaintiff and the averments in the statement of facts do not disclose any wrongful act of the 2<sup>nd</sup> Defendant giving the plaintiff a cause of action against him, and that the plaintiff is unable to establish any recognizable right or obligation that has been breached by the 2<sup>nd</sup> party, warranting an order of perpetual injunction against it. Counsel urged the court to strike out this action brought against the 2<sup>nd</sup> Defendant or strike out the name of the 2<sup>nd</sup> Defendant as Party in the suit.

In response to the 2<sup>nd</sup> Defendants Notice of Preliminary Objection, the Plaintiff filed a Reply on Points of Law, dated 10<sup>th</sup> December, 2021, and filed on 28<sup>th</sup> January, 2022, wherein the Plaintiff's counsel argued that a cursory evaluation of the case of the Plaintiff/ Respondent shows that this is a proper case where the presence of the 2<sup>nd</sup> Defendant is required. He referred the court to the Plaintiff's statement of claim other interlocutory applications filed by the Plaintiff, which discloses enough reasonable cause of action against the 2<sup>nd</sup> Defendant. Counsel urged the court to discountenance and dismiss the application of the 2<sup>nd</sup> Defendant/Applicant.

It is a settled principle of law that in determining whether an action discloses a cause of action or reasonable cause of action in any given circumstance, recourse would be made to the pleadings filed by the plaintiff or claimant. See ***ADEYEMI VS OPEYORI (1976) 9-10 SC 31, TUKUR VS GOVT OF TARABA STATE (1997) 6 NWLR (PT 510) 549 and OKOROMA VS UBA (1999) 1 NWLR (PT 587) 359.***

A critical examination of the Plaintiff's statement of claim clearly reveals that there is a reasonable cause of action against the 2<sup>nd</sup> Defendant. Apart from the fact that the Plaintiff made repeated reference to the Senior Registrar of the Senior District Court, Gwagwalada, Abuja, and Hon. Justice A.Y. Ibrahim, who are agents of the 2<sup>nd</sup> Defendants, the Plaintiff further averred in paragraph 24 of the statement of claim as follows:

*"The Plaintiff/Claimant avers that both the said Hon. A.Y. Ibrahim as well as the Registrar of his Court-Hannatu Simon Esq. both threatened the Plaintiff/Claimant that they had sent the case file to the 2<sup>nd</sup> Defendant to issue writ of execution and levy execution on the said premises and thereby*

*throw the Plaintiff/Claimant, his family and possession to the street."*

It is because of the alleged threat that the Plaintiff seeks for an order of "perpetual injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their agent(s), privies, servant(s), representative(s) and/or assign(s) or in whatever name whatsoever being called from levying any execution against the Plaintiff/Claimant..."

It is instructive to note that a litigant can seek for an order of perpetual injunction not only where there is an actual infringement of his right, but also where there is an alleged threatened infringement of it.

The Plaintiff in his statement need not establish actual infringement by the 2<sup>nd</sup> Defendant to be able to generate a reasonable cause of action against it.

In any event in the often-cited case of ***GREEN vs. GREEN (1987) LPELR (1338) 1***, parties to an action were classified into three, namely, proper parties, desirable parties and necessary parties. In making the distinction between the different classifications of parties, Oputa, JSC (of blessed memory) stated at page 20 that "Proper parties are those who, though not interested in the plaintiffs claim, are made parties for some good

reasons. Desirable (parties) are those who may have an interest or who may be affected by the result. Necessary parties are those who are not only interested in the subject matter of the proceedings but also who in their absence, the proceedings would not be fairly dealt with." It seems pretty obvious that the fact that a relief has been claimed against the 2<sup>nd</sup> Defendant affords a good reason why the 2<sup>nd</sup> Defendant should be made a party to the action, even though it may not be interested in the claims of the Plaintiff as it relates to his tenancy relationship with the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant is therefore clearly a proper party and was rightly sued as the 2<sup>nd</sup> Defendant before this Honourable Court.

I would like to add in this ruling what black's law dictionary defines property as

One who has an interest in the subject matter of the litigation which may be conveniently settle therein. One without whom a substantial decree may be made, but not a decree which shall completely settle all the question which may be involved in the contrary and conclude the rights of all the person who have any interest in the subject of litigation. A proper party is one who may be joined in an action but whose joinder will not result in

dismissal those without whom cause might proceed but whose presence will allow judgment more clearly to settle controversy among all parties.

In ***MOBIL PRODUCING LTD VS LASEPPA (2002) 12 SCNJ 1 Q 25***. It was held that a proper party is one whose interest will be affected directly if a relief claimed in the action were granted. But in **GREEN VS GREEN** the Supreme Court held that a proper party is one, who though is not interested in the Plaintiff's claim is however made a party 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 concurring in the matters which gave the Plaintiff the right to rescind. Eferwerhan D principles of civil procedure in Nigeria 2<sup>nd</sup> Edition Snapp Press Limited Enugu 2013 page 102 has pointed out and we agree with him that it may not be appropriate to classify a person who has no interest at all in plaintiff's claim as a proper party. Such a person in our view could qualify as a witness and not a party. We align ourselves with the definition of proper party by the apex Court in ***MOBIL PRODUCING LTD (supra)*** and also with the definition in Black's law Dictionary earlier reproduced because to our mind, a person whose interest will be directly affected if a reliefs

claimed in an action were granted will certainly have interest in the Plaintiff's case.

From the above judicial authorities it becomes imperative to grant the application. Accordingly application made by the Claimant is hereby granted.

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**HON. JUSTICE M.S IDRIS**  
**(PRESIDING JUDGE)**

**7/4/2022**