IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON THURSDAY, THE 09TH DAY OF JUNE, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/3303/2020
MOTION NO.: M/_ _ _ _ _/2022

BETWEEN:

MABON ESTATES LIMITED **CLAIMANT/RESPONDENT**

AND

1. **AONDOVER INVESTMENTS LIMITED**
2. **MRS ROSEMARY URUSULA NKU** **DEFENDANTS/APPLICANTS**

RULING

This Ruling is on an application to strike out the name of the 2nd Defendant as a party in this suit.

By a Motion on Notice dated and filed on the 17th day of February, 2022 the Defendants/Applicants brought this application seeking the following reliefs:-

1. *An Order of Court striking out Mrs Rosemary UrusulaNku as the 2nd Defendant in this suit.*
2. *An Order of Court directing that all processes in this suit be amended to reflect the striking out of Mrs Rosemary UrusulaNku as the 2nd Defendant in this suit*.

The grounds upon which the application is founded are:-

a. That the 2nd Defendant, Mrs Rosemary UrusulaNku is neither a proper nor necessary party in this suit and will not be affected by the outcome of this Honourable Court's decision.
b. That the proper parties in this suit, that is, the Claimant and the 1st Defendant are already before this Honourable Court.

The application was supported with a five-paragraph affidavit deposed to by one TajudeenAyeni, a litigation secretary in the law firm of J-K Gadzama LLP, Counsel to the Defendants/Applicants herein. The Applicants also filed a Written Address which encapsulates their legal arguments in support of the application.

In the affidavit in support of the application, the deponent averred that the case of the Claimant/Respondent related to recovery of its premises, supposed arrears of rent or mesne profits from the Defendants arising from a tenancy relationship between the Claimant and the 1st Defendant. Referring to paragraph 6 of the Claimant's Statement of Claim, the deponent stated that the 2nd Defendant was neither a party to the tenancy relationship nor a guarantor of the 1st Defendant in respect of the tenancy between the Claimant and the 1st Defendant. He added that the 1st Defendant was a limited liability company which acted through its officers as could be seen from the Letter of Offer of Lease pleaded in the Statement of Claim and that the 2nd Defendant had no personal interest in the suit.

In the Written Address, the Applicants formulated the following sole issue, namely: "*Whether the 2nd Defendant, Mrs Rosemary UrusulaNku is a necessary and/or proper party to the Claimant's instant suit for recovery of premises which basis is a*

tenancy agreement/relationship exclusively between the Claimant and the 1st Defendant in its name."

Arguing this sole issue, learned Counsel contended that the proper party which would aid the Court in determining the substantive suit was already before the Court and the joinder of the 2nd Defendant was superfluous. He invited this Court to peruse the processes of the Claimant and hold that there was no claim against the 2nd Defendant. He insisted that the 1st Defendant was a corporate entity which enjoys distinct personality from its members, directors and officers. He added that the fact that an officer or director of a company acted for a company was not enough to make the officer or director liable on behalf of the company. In support of his arguments, learned Counsel cited and relied on the following cases: ***Ezionwu v. Egbo (2006) 5 NWLR (Pt. 973) 316 at 327 paras C; Adefarasin v. Dayekh (2007) 11 NWLR (Pt. 1044) 89 at 121 para B; Aromire v. Awoyemi (1972) 2 SC 1; (1972) 1 All NLR (Pt. 1) p. 101; Salomon v. Salomon & Co. Ltd (1897) A.C. 22, H.L.; Offordom v. Easy Geo International Ltd (2019) LPELR-46822 (CA); Okolo& Anor v. U.B.N. Ltd (2004) LPELR-2465 (SC); Kofi & Anor v. Dolari (2017) LPELR-43186 (CA) PP. 27 – 30, para D-B***.

On the other hand, the Claimant/Respondent filed a seven-paragraph affidavit deposed to by one Musa Jariri, one of the property managers of the Claimant. It also filed a Written Address in support of the Counter-Affidavit.

In the Counter-Affidavit, the deponent swore that the action of the Claimant was on recovery of premises from the 1st and 2nd Defendants which they are occupying

jointly and not on tenancy agreement since the 2nd Defendant refused to execute the tenancy agreement which the Claimant sent to her to execute. He added that the 2nd Defendant lived in the property together with her domestic staff and, therefore, had a special interest in the outcome of the case.

He averred that the 2nd Defendant left instructions with her gatemen not to let anybody into the premises – an instruction that also affected the Solicitor of the Claimant who was denied access to the property when he went to serve the Defendants with the Notice of Owner's Intention to Apply to Court to Recover Possession. He added that the 2nd Defendant was the alter-ego of the 1st Defendant, and that even when the 2nd Defendant made payments for the arrears of rent and mesne profit, she did so from the account of another company she owns. He concluded that the 2nd Defendant was a necessary and proper party to the suit and, hence, her joinder proper.

In the Written Address in support of the Counter-Affidavit, learned Counsel for the Claimant/Respondent formulated one issue for determination, to wit: "*Whether the 2nd Defendant is a necessary and proper party was properly joined as a party in this case*." Arguing this issue, learned Counsel submitted that where the question is whether a party was properly joined in a suit, the Court had a bounden duty to consider the pleadings filed in respect of the suit. Counsel proceeded to quote relevant paragraphs of the Statement of Claim and, after enumerating the criteria for the joinder of a party to an action, urged this Court to hold that the 2nd Defendant was properly joined in this suit.

Counsel further argued that the purpose of joinder is to ensure that a person is bound by the decision of the Court. Counsel also implored this Court to discountenance as misconceived the argument of the Applicants herein that the 2nd Defendant was the agent of a disclosed principal and, therefore was not liable for the acts of the disclosed principal. He insisted that the law was that the agent of a disclosed principal was a necessary and proper party to an action. Besides, he further submitted, the 1st and 2nd Defendants were joint occupants of the property. He submitted finally that since the Court is imbued with the power to *suo moto* join a person it considered a necessary and proper party to a suit, it has a duty not to strike out the name of a necessary party that had been joined properly in an action.

For all his arguments on the sole issue he formulated, learned Counsel cited and relied on the following cases: ***Umeanasu v. A.G. Anambra State (2008) 9 NWLR (Pt. 1091) 175 at 194 paras E-G; Bello v. INEC (2010) 8 NWLR (Pt. 1196) 345 at 365 Ratio 17; Ogbebo v. INEC (2005) 15 NWLR (Pt. 948) 376 at 385 Ratio 8; UBA Plc v. A.C.B. Ltd; Iweka v. A.G. Federation (1996) 4 NWLR (Pt. 442) 362; Osigwe v. PSPLS Mg Consortium Ltd (2009) 3 NWLR (Pt. 1128) 378 at 386 Ratio 8; Alale v. Olu (2001) 7 NWLR (Pt. 711) 119 at 131, paras C-E (CA); Sobamowo v. Federal Public Trustee (1970) LPELR-3078 (SC) and Chinweze v. Masi (1989) 1 NWLR (Pt. 97) 254 at 266***.

On the 3rd of March, 2022, the Applicants filed their Reply on Points of Law to the Respondent's Counter-Affidavit. In the said Reply on Points of Law, learned Counsel for the Applicants argued that contractual tenancy could be written or oral, adding

that the absence of a written tenancy would not nullify a tenancy relationship that had been validly created.He also contended that certain depositions in the Counter-Affidavit touched on the substantive suit. He therefore urged the Court to discountenance those depositions. Counsel relied on the cases of ***Olojede& Anor v. Olaleye& Anor (2012) LPELR-9845 (CA) pp. 35 para D, NPA v. Eyamba&Ors (2014) LPELR-22726 (CA) pp. 26 paras B-D; Gabee Investment Ltd v. Chinbell Industries Ltd & Anor (2017) LPELR-45259 (CA) and Idam v. NLPC Pension Fund Administrators & Anor (2021) LPELR-53400 (CA)***.

The issue before this Court, as can be seen from the positions taken by the parties in their respective processes in support of and in opposition to the application to strike out the name of the 2nd Defendant as a party to the action of the Claimant is whether the 2nd Defendant has been properly joined as a party in this action. It is must be stated at the outset that primarily, the Claimant enjoys the prerogative of joining a person or persons as a Defendant or Defendants to his suit. Yet, it is the duty of the Court to sieve through the wheat to determine the liability, if any, of the persons made Defendants in an action. Order 13 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 makes provisions for joinder of parties either as Claimants or as Defendants. Specifically, Order 13 Rules 4 and 8provide that,

Rule 4:

> ***"Any 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."

Rule 8:

"***Where a claimant is in doubt as to the person from whom he is entitled to redress, he may, in accordance with this Rules, or as may be prescribed by any special order, join two or more defendants, so that the question as to which, if any, of the defendants is liable and to what extent, may be determined as between all parties***."

The Courts have distilled a number of principles guiding the joinder of parties. The first threshold is to understand the different categories of parties. In the *locus classicus* of***Green v. Green (1987) LPELR-1338 (SC)***where the Supreme Court per the erudite Oputa, JSC ***at pages 16 – 17, paras F***drew a distinction between the different classes of parties thus:

"***This now leads on to the consideration of the difference between 'proper parties', 'desirable parties', and 'necessary parties'. 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 concurring in the matters which gave the plaintiff the***

right to rescind. Desirable parties are those who 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 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."

The principle in ***Green v. Green (1987) supra*** has been applied in a number of cases such as ***Osunrinde v. Ajamogun (1992) 6 NWLR (Pt. 246) 156 SC; Bello v. INEC &Ors (2010) LPELR-767 (SC); Akpamgbo-Okadigbo v. Chidi (No. 1) (2015) 10 NWLR (Pt. 1466) 171 SC*** among others. Both parties in this application have adduced reasons to fortify their entrenched positions. I have given due consideration to the facts deposed to in the affidavits filed in respect of this application. I have also accorded due diligence to the reliefs sought in this application. While the Courts have been enjoined to refrain from pronouncing on the substantive matter at the interlocutory stage, it is my considered view, and I so hold, that expurgating the name of the 2nd Defendant as a party in this suit at this stage is premature.

Though it may be contended on her behalf that she is not a necessary party, I believe that she falls squarely within the contemplation of who a proper party is. In ***Carlen (Nig.) Ltd v. UniJos& Anor (1994) LPELR-832(SC) at pp. 50, paras D,*** **per Onu, JSC**, the apex Court succinctly put it thus: "***As to who is "proper party", the***

settled principle of law relating thereto has been re-stated in **Green v. Green (1987) 3 NWLR (Pt. 61) 480 at 493** ***following*** **Peenok v. Hotel Presidential (1983) 4 NCLR 122** ***that what determines it is the subject-matter of the action.***" Besides, in ***Portland Paints and Products (Nig.) Ltd v. Olaghere (2019) 2 NWLR (Pt. 1657) 541,*** the Court held **at p. 561 para H** that,"***The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action, which cannot be effectually and completely settled unless he is a party. [Babayelu v. Ashamu (1998) 9 NWLR (Pt. 567) 546 referred to.]***."

I must state, at this juncture, that what is in focus in this application is not the determination of the liability of the 2nd Defendant; that question can be determined atthe hearing of the substantive suit. The business of this Court at this point is to determine the propriety of the joinder of the 2nd Defendant in this suit.In view of the lucid decisions of the Courts as distilled above; and the facts as averred in the affidavits filed in respect of this application, it is my considered view, and I so hold, that the 2nd Defendant is a proper party to this action. The application to strike out the name of the 2nd Defendant as a party in this suit is accordingly dismissed.

This is the Ruling of this Honourable Court delivered today, the 09thof June, 2022.

HON. JUSTICE A. H. MUSA
JUDGE
09/06/2022