

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 5TH DAY OF APRIL 2022
BEFORE HIS LORDSHIP: HON JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/2025/2020
MOTION NO: FCT/HC/M/11296/2020

BETWEEN:

UDUM ABAREL & 25 OTHERS

(FOR THEMSELVES AND OTHER BENEFICIARIES OF THE AMNESTY PROGRAMME BEING SHORT PAID BY THE CHIEF TOM ATAKE CAMP, THOSE NOT PAID FOR 12 MONTHS AND STILL COUNTING IN DADDY KIN CAMP AND THOSE WHO HAVE RECEIVED THEIR STIPEND SINCE INCEPTION)

CLAIMANTS

AND

- 1) THE SPECIAL ADVISER TO THE PRESIDENT ON NIGER DELTA AMNESTY & CHAIRMAN COMMITTEE ON AMNESTY PROGRAMME**
- 2) THE AMNESTY OFFICE**

DEFENDANTS

**RE: APPLICATION OF:
MARK BLESSED GODDAY & 23 ORS**

**PARTIES
SEEKING TO BE
JOINED AS CO-
DEFENDANTS**

RULING

This Ruling is on a Motion on Notice for Joinder brought by the persons seeking

to be joined as Co-Defendants.

The Claimant has commenced this suit by way of Writ of Summons claiming against the Defendants the following reliefs:

- 1) ***AN ORDER of this Honorable Court directing the Defendants jointly and severally to with immediate effect commence the payment of the exact value of ₦65,000.00 (Sixty-Five Thousand Naira) only being the value of what the President of the Federal Republic of Nigeria approved for payment as stipends to all beneficiaries of the amnesty including the Claimants.***
- 2) ***AN ORDER of this Honorable Court directing the Defendants jointly and severally to immediately stop the illegal deductions of the value of ₦25,000.00 (Twenty-Five Thousand Naira) only from the approved stipends payable to all beneficiaries of the Federal Government Amnesty Programme irrespective of their camps of affiliation.***
- 3) ***AN ORDER of this Honorable Court directing the Defendants jointly and severally to with immediate effect pay all the arrears due to the Claimants of the High Chief Tom Ateke Camp of Rivers State from the commencement of the programme in 2007 to date being money owed to the Claimants jointly or severally by the Defendants illegally deducted from their approval stipends.***
- 4) ***AN ORDER of this Honorable Court directing the Defendants jointly and severally to commence the payment of the value of ₦65,000.00 (Sixty-Five Thousand Naira) only from 20th to the 26th Claimants who were captured by the biometrics but who have never been paid since inception of the programme in 2007 till date.***
- 5) ***AN ORDER of this Honorable Court directing the Defendants jointly and severally to take the 26th Claimant to a proper psychiatric hospital for proper evaluation of his mental health and how to assist***

him to recover from it.

- 6) ***AN AWARD of ₦50,000,000.00 (Fifty Million Naira) only jointly to all the Defendants as specific damages.***
- 7) ***AND ₦800,000.00 (Eight Hundred Thousand Naira) only being the cost of the suit.***

Responding to the suit of the Claimants, the Defendants filed their Statement of Defence and denied the Claimants' claims and then the Co-Defendants filed a motion on Notice with Motion No ***M/11296/2020*** for an Order of Court joining **Mr Mark Blessed Godday and 23 Others** as parties seeking to be joined as Co-Defendants. The reliefs sought in the application are as follows:

- 1) ***AN ORDER of the Honorable Court joining the applicant/parties seeking to be joined as co-defendants in this suit for the just and effective determination of the underling dispute as set out in the statement of claim.***
- 2) ***AN ORDER of this Honorable Court granting a period of 30days within which the Applicant/parties seeking to be joined shall file its joint statement of defence after filing and service of the Amended Writ of Summons reflecting the joinder of all proper parties as prayed above on the Applicant.***
- 3) ***AND for such further orders as this Honorable Court may deem fit to make in the circumstance.***

The ground upon which the application is based are set out as follows:

- 1) **From the material facts pleaded in the Claimants Statement of Claim, the proper parties are not before this Court.**
- 2) **That parties seeking to be joined are the proper parties before this Court for the just determination of this case.**

- 3) **The parties seeking to be joined are the authentic members and Commanders of the HRM KING ATEKE TOM'S Camp who subscribed to the Amnesty declaration by the late President Umaru Musa Yar'adua GCFR in the year 2009.**
- 4) **The dispute agitating in the said Statement of Claim borders on the propriety or otherwise of the entitlement to the Camp of HRM King Ateke Micheal Tom JP, the Amanayabo of Okochiri Kingdom, Okrika Clan in River State.**
- 5) **That the 1st and 2nd Defendants are not indebted to the camp of HRM King Ateke Michael Tom in the manner propagated by the Claimants.**
- 6) **That it is imperative that the facts are put in proper context by all the relevant stake holders and not by a limited person so as not to mislead the Court in the determination of a collective interest concerning the peace and stability of the Niger Delta Region.**
- 7) **It will be in the interest of Justice and fair hearing for the Applicants to be joined in order to respond to the grave allegation as it relates to the Camp of King Ateke Michael Tom JP who was deliberately not made a party.**
- 8) **That the non-joinder of proper parties especially King Ateke Tom and the authentic members of his camp is fatal to this action.**
- 9) **That the eventual decision of this Court without the proper parties will occasion a grave miscarriage of justice.**

In support of the application was a 20-paragraph affidavit deposed to by one Prince Ikechukwu Ajie, one of the parties seeking to be joined as Co-Defendants. In the affidavit, the deponent averred that he is a commander and the secretary of the Camp of his Royal Majesty, King Ateke Michael Tom, the Amayanabo of Okochiri Kingdom in Okrika Clan, Okrika Local Government Area, River State

and an authentic subscriber to the Amnesty Declaration made by Late President Umaru Musa Yar'adua GCFR in the year 2009 with UN Code: CO3/B14/01/19124, and that he, the deponent, has the permission of all the Applicants/parties seeking to be joined as well as all the authentic members of the camp of His Royal Majesty King Ateke Michael Tom JP who comprise of 5,000 (Five Thousand youths) to depose to this affidavit.

He described as false the facts deposed to by the Claimants in the Statement of Claim as well as in other processes. He insisted that the Claimants are not authentic members of the camp, but people co-opted during the Amnesty Programme owing to the magnanimity of his Royal Highness King Ateke Michael Tom, adding that the parties seeking to be joined are the true subscribers of the Amnesty deal who went through all the processes leading to the rehabilitation of the youth of Niger Delta. He swore that part from periodic delays in the gratuitous payment the Federal Government makes to respective camps in order to engage meaningfully the youth and maintain the peace in the region, the Federal Government is not indebted to the Camp of the HRM King Ateke Tom JP in the manner propounded by the claimants.

The deponent further stated that amongst the 5,000 youth that comprise their camp, only 2,803 were captured in the Amnesty Data Base as accredited members leaving a large majority uncaptured due to the limited period within which to surrender and register all of them. Owing to this inadequacy, the deponent further asserted, the leaders of the camp unanimously agreed to augment the limited resources coming to their camp to carry everyone along. The deponent further swore that HRM Ateke Michael Tom has no hand in the disbursement of any funds coming from the Federal Government of Nigeria to his camp from the inception of the program till date as the camp is managed by a

well-structured leadership in which the deponent is privileged to serve.

According to him, the parties seeking to be joined are the proper parties to this suit; hence the case cannot be determined effectually without them being joined as parties to the suit. He added that that the application was necessary so that those proper parties would be the facts in proper perspective. He maintained that refusing to grant this application would work havoc on the parties seeking to be joined as it will be a denial of fair hearing. He also stated that the claimants and the other Defendants would not be prejudiced by the grant of the motion. Finally, the deponent averred that this application is necessary for the Court to completely and effectively adjudicate on this matter.

In the Written Address in support of the application, Learned Counsel for the Co-Defendants formulated a sole issue for this Honorable Court to determine. This issue is: ***“Whether it will be in the interest of fair hearing and the overall interest of justice to join the Applicants as Co-Defendants for the just and effective determination of this suit?”***

In his argument on this sole issue, Learned Counsel stated that this is an innocuous application brought in the interest of fair hearing and transparency and that it is undisputed that the Court has the power and *vires* to join any person as Co-Defendants in any matter. Counsel relied on Order 13 Rule 4 of the Rules of this Honorable Court 2018 to support his argument. He further stated that the stated Rules are clear and unambiguous and that from the facts stated in the Claimants’ Statement of Claim, the proper parties are not before the Court for the just and effective determination of this matter. Counsel submitted that it is the Applicants’ contention that they are the proper parties in the matter and the suit cannot be effectively adjudicated without their joinder as stated in the affidavit in support.

He added and that the parties seeking to be joined as proper parties are the authentic members of the camp who are privy to the workings of the amnesty programme from inception to date and the Claimants are a limited number of persons who were simply co-opted into the camp owing to the magnanimity of HRM King Ateke Tom. Counsel further argued that the allegations in this suit are directly against the Applicants and the relief sought will impugn them one way or the other. Counsel further submitted that this matter cannot be effectively determined without the presence of the applicants. He relied on the case of **Green v. Green (1987) 3 NWLR (PT 61) p. 480**, to support his argument on who a proper party and necessary party is in a matter. Counsel also relied on the case of **Union Beverages Ltd v. Pepsi Cola Int Ltd (1994) 3 NWLR (Pt 330) 1 at 17**.

Relaying on Section 36 of the Constitution of the Federal Republic of Nigeria, Learned Counsel argued that by allowing this application will give the incoming co-defendants ample opportunity to face and prepare for the questions in controversy which is in tandem with the Rules of Natural Justice equity and good consciousness, which also demands that fair hearing should be given to any party that would be affected by the outcome of the judgement of the court. Counsel cited these cases to support his argument: **S.C.E.N v Nwosu (2008) ALL FWLR (part 413) 1339@ 1421 paras E-F (CA)**, **Asakitikpi v The State (1993) LPELR 572 (SC) (P 8 paraG)**, and the case of **Atano v AG Bendel State (1998) 2 NWLR (part 75) 132**.

Finally, it was submitted by the Counsel that this Court cannot effectively proceed with the matter without joining the parties seeking to be joined because they are proper parties to the suit. Counsel urged the Court to exercise its discretion judicially and judiciously in granting this application.

In opposition to the Co-Defendants' application, Learned Counsel to the Claimants filed a 15-paragraph Counter-Affidavit deposed to by one Ndukwe Emmanuel who is a Litigation Clerk in the law firm of General Solicitors being the law firm handling the case of the Claimants. Basically, the facts deposed to in the Counter-Affidavit in opposition are denials of the averments of the Defendants affidavit in support of the motion for the joinder of the parties seeking to be joined.

In support of the application was a written address, in which Learned Counsel adopted the formulated issue of the Counsel to the Co-Defendants, for this Honorable Court to determine. This issue is:

“Whether it will be in the interest of justice to join the applicants as co-defendants for the just and effective determination of this suit?”

In his argument on the issue formulated, Learned Counsel argued that the application is grossly misconceived by the Applicants who erroneously clothed themselves in the false robe of being the spokespersons for the 1st and 2nd Defendants sued in this action. He contended that they have failed to show any evidence of such appointment by the Defendants and so qualify on all fours as meddlesome interlopers. Counsel further stated that the issue of *locus standi* of the parties seeking to be joined in this action is very material, adding that it is an established fact that *locus standi* is what gives a party in any suit the life it deserves. He maintained that the applicants herein have not declared how the Judgment of this suit will affect them either individually or collectively. Counsel relied on the case of ***Dodore v. Mai (2015) 22 WRN p 74 CA; Daniel v. INEC & Ors (2015) LPELR-24566 (SC)*** and the case of ***Thomas v. Olufosoye (1998) 1 NWLR (Pt 18) p 669.***

Arguing further, Counsel opined that the Claimants brought the action *ab initio* under a representative capacity and did state in their Statement of Claim including the amendment thereto what the cause of action is. Counsel further submitted that, the issue for determination as formulated by the Applicants is whether it will be in the interest of justice to join the Applicants as Co-Defendants for the just and effective determination of the suit. This question the learned Counsel for the Claimants answered in the negative. He also wondered what value a supposed beneficiary would be bringing before the Court as a Co-Defendant when they should ordinarily be behind the Claimants as Co-Claimants and rightly so since their interests are joint and several.

Though learned Counsel agreed that section 36 of the Constitution of the Federal Republic of Nigeria guarantees the right to fair hearing he contended that the Applicants have failed to show how their not being joined as Co-Defendants in this suit will affect their right to fair hearing. He added that the Applicants are not in any manner responsible for the payments of the stipends complained of by the Claimants and neither are they responsible to the Claimants in any manner whatsoever. Accordingly, he maintained, the Applicants do not have the requisite *locus standi* to defend this action. Consequently, he added, the Court has no jurisdiction to entertain this matter. Counsel cited the case of ***Madukolu v Nkemdilim (1962) 1 ALL NLR 587.***

Concluding, Counsel finally submitted that the application for joinder by the Applicants is misconceived, ill-thought-out, frivolous and highly vexatious and that it should be dismissed with punitive cost as it amounts to deliberate waste of the precious time of the Honorable Court and a deviation from the real business of the day.

Both parties filed Further Affidavits in support of their Affidavit and Counter-

Affidavit respectively. Summarily the facts contained in the Co-Defendants' Further Affidavit are that the facts deposed to by the Claimants in their Counter-Affidavit are false and that the Federal Government is not indebted to the camp of HRM King Ateke Michael Tom. The deponent further added that as an authentic member of the camp the auspices upon which the Federal Government contracted in the grant of the presidential pardon via the amnesty program which the Claimants' claim to be members of, the Co-Defendants have sufficient interest in the subject matter and indeed a duty to assist the Court in the just determination of the underlining dispute so that the Court will not be misled.

He averred that the false assertions of the Claimants are capable of creating unnecessary unrest in the Niger-Delta if not addressed truthfully and frontally, and that the Federal Government is not mismanaging any funds meant for the camp of His Royal Majesty King Ateke Michael Tom. The UN Code that was issued as authentic subscribers of the Amnesty Program was provided for by the Co-Defendants in the further affidavit. He added that the parties seeking to be joined to the suit have demonstrated that the suit is to tarnish the image of their leader King Ateke Michael Tom who has no complaint against any form of alleged mismanagement of the stipends gratuitously provided by the Federal Government to the repentant militants. Finally, the deponent swore that the Claimants cannot be suing on behalf of the members of the camp of Ateke Tom without the authority of the camp especially when the facts upon which the claims are premised are not correct.

On his reply on points of law to the Claimants' response to the motion on notice, Learned Counsel submitted that the Claimants misconceived the effect of an application for joinder and by way of succinct reply, submitted that the law is trite that once a party has demonstrated sufficient interest in a matter whilst also establishing that they will be bound by the outcome as the decision of the Court

directly affects him, it is the duty of the Court to accept an application for joinder. Counsel relied on the case of ***The Regd. Trust Of National Association Of Community Health Practitioners Of Nigeria & Ors v. Medical And Health Workers Union Of Nigeria & Ors (2008) 2 NWLR (Pt 1072) 575*** and the case of ***Carrena & Ors v. Arowolo & Ors (2008) 14 NWLR (Pt 1107) 2262***.

Counsel also relied on the case of ***Bello v. INEC (2010) 8 NWLR (Pt 1196) 342*** for his submission on the fact that the Claimants' claim against the existing Defendants affects the Applicants as stated in the affidavit, that is, that the Federal Government through the existing Defendants have always remitted the gratuitous payment to respective camps of His Royal Majesty and as such the Applicants contend that the Federal Government is not indebted to the camp of HRM King Ateke. He maintained that contending otherwise will affect the reputation of HRM King Ateke and prejudice the Applicants' relationship with the Government. He insisted that the interest of the Applicants will be prejudiced if the application is not granted as anything that touches on safety and the peaceful coexistence of Niger Delta affects them. As such, he submitted, the parties seeking to be joined will be seriously prejudiced and their image tarnished if they are not joined to enable them put the facts in order.

Relying on the case of ***Nworike v. Ononeze-Madu (2019) 7 NWLR (Pt 1672) 422*** Counsel submitted that contrary to the Claimants' argument, that it is the Claimants that lacks the requisite *locus standi* to institute this action having failed to establish sufficient interest. He submitted that the Claimants were misconceiving the issue of *locus standi* which is the threshold matter. Counsel cited the case of ***Ilori v. Benson & Ors (2000) 9 NWLR (Pt 673) 570***.

Finally, it was submitted by the Learned Counsel that the suit cannot be effectively determined without the presence of the parties seeking to be joined

and the parties seeking to be joined will be greatly prejudiced if the application is not granted.

I have taken the time to review the facts and arguments of the parties in this matter so as to situate this Ruling within its appropriate context. The issues which the parties have formulated for resolution of this dispute are similar. I shall, therefore, adopt same so as to resolve the dispute herein. The issue is this:

Whether it will be in the interest of justice to join the applicants as co-defendants for the just and effective determination of this suit?"

In resolving this issue, the Court must highlight the facts and evidences placed before it, and in highlighting these evidences I must ask myself these questions:

- 1) Is the cause of action liable to be defeated by non-joinder?
- 2) Is it possible for the Court to adjudicate on the cause of action set up by the Claimants' claims Only?
- 3) Are the parties seeking to be joined ought to be joined as co-defendants in this suit?
- 4) Are the parties seeking to be joined people whose presence before this Court is necessary in order to enable the Court effectually and completely adjudicate on and settle all the questions involved in the matter?

My answers to these questions are in the affirmative. From the evidence and arguments before this Court I must say the parties seeking to be joined are necessary parties. Who is a necessary party? A necessary party is a party without whom the Court will be unable to determine the matter completely and effectually. These are persons who are not only interested in the subject matter of the action but in their absence the matter cannot be fairly dealt with by the Court. See the Supreme Court case of ***UNION BEVERAGES LTD v. PEPSI***

COLA INT LTD (1994) 2 SCNJ 157 where the Court held that if a complaint is made against a person and the questions or issues involved in the complaint cannot be effectually and completely determined or settled in the absence of the person such a person is a necessary party and ought to be joined in the action.

In **Green v. Green (1987) LPELR-1338 (SC)** the Supreme Court per the erudite Oputa, JSC **at pages 16 – 17, paras F** draws 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.”

As to the question of determining who a proper party is, the Courts, again, always come to the rescue. In the case of **Goodwill & Trust Investment Ltd & Anor v. Witt & Bush Ltd (2011) LPELR-1333 (SC)**, the Court per Adekeye, JSC held at **page 37, paras B** that,

“It is trite law that for a Court to be competent and have jurisdiction over a matter, proper parties must be identified. Before an action can succeed, the

parties to it must be shown to be the proper parties to whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the Court as it goes to the foundation of the suit in limine. Where proper parties are not before the Court, then the Court lacks jurisdiction to hear the suit...

This trite law has been established in a plethora of cases such as ***Plateau State of Nigeria & Another v. AG Federation & Another (2006) LPELR-2921 (SC); Bello v. INEC & Others (2010) LPELR-767 (SC); Awoniyi & Others v. The Reg. Trustees of AMORC (Nig.) (2000) LPELR-655 (SC); Kirfi Local Government Area Council v. Mohammed & Ors (2017) LPELR-43435 (SC); U.O.O. (Nig.) Ltd v. Okafor & Others (2020) LPELR-49570 (SC); Cotecna Int'l Ltd v. Churchgate Nig. Ltd & Anor (2010) LPELR-897 (SC)*** among other authorities.

It is trite law that the court has the discretionary powers to grant an order for joinder of a necessary party at any stage of the proceedings before judgment and this discretion must be exercised judiciously and judicially depending on the facts of the case.

From the depositions in the affidavit in support of the motion, the basis for the applicant's application for joinder is that the Claimants are not the authentic members of the camp of HRM Ateke Michael Tom but people who were co-opted during the amnesty programme owing to the magnanimity of his Royal Highness King Ateke Michael Tom. These parties seeking to be joined insist that the authentic members of the camp. These are grave statement of facts which are worthy of judicial attention. It is my considered view, and I so hold, that the Court would have labored in vain if, at the end of its proceedings, it finds that the

Applicants ought to have been joined so as to make the orders of the Court binding on them.

For the above reasons, therefore, I find the application for joinder meritorious. Accordingly, the reliefs sought by the Applicants are hereby granted as follows:-

1. **THAT an Order of this Honourable Court is hereby made joining the Applicants/Parties seeking to be joined as Co-Defendants in this suit.**
2. **THAT an Order is hereby made mandating all the parties herein to amend their respective processes and file same in this Honourable Court.**
3. **That the Applicants/Parties seeking to be joined, having been so joined, are hereby ordered to file their Joint Statement of Defence after the filing and service of the Amended Writ of Summons reflecting the joinder as ordered by this Honourable Court within the period allowed by the Rules of this Honourable Court 2018 for filing of Statement of Defence.**

This is the Ruling of this Honourable Court delivered today, the 5th day of April, 2022.

HON. JUSTICE A. H. MUSA
JUDGE
05/04/2022