

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI
THIS 18TH MAY, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA
SUIT NO: FCT/HC/CV/0259/2021

BETWEEN

- 1. BESTMARK INVESTMENT NIG LTD**
- 2. VICTOR AGOH (doing
Business under the name and
Style of JANE VICA VENTURES)**

CLAIMANT/RESPONDENTS

AND

- 1. MAJOR JAMES ONYEKE (RTD)-----DEFENDANTS/APPLICANTS**
- 2. MR PAYNE ONYEKE**

RULING

This ruling is predicated upon a motion on notice by the defendants/applicants dated 9th September 2012 and filed 10 September 2021, the motion is brought pursuant to section 6 (1-3) of the 1999 Constitution of the Federal Republic of Nigeria as amended, order 13 rule 18 (2) of the high court of FCT procedure rules 2018. The defendants/applicants herein are praying this court for the following relief:

1. An order of this honourable court striking out the name of Major James Onyeke (rtd) wrongly joined in this suit by the claimants/respondents as the 1st defendant in this suit.

2. An order of this honorable court directing the claimants/respondents to substitute Mr. Onyeke Emmanuel Onyeke with Mr. Payne Onyeke as the proper name of the 2nd defendant/applicant in this suit
3. An order of the honourable court adding the following persons: (i) Abuja Municipal Area Council; (ii) Federal Capital Development Authority; (iii) the honourable minister of the Federal Capital Territory as proper parties/necessary parties to this suit.
4. And for such further orders as this honourable court may deem fit to make in the circumstance.

Attached to the application is a 16 paragraph affidavit deposed to by Mr. Onyeke Emmanuel Onyeke, the person wrongly named Mr. Payne Onyeke the 2nd defendant in this suit. The applicant avers that the original letter of offer titled offer of the terms of grant/conveyance of approval was granted to Bestmark investment Nig Ltd, the 1st claimant/respondent in this suit by the ministry of Federal capital territory land planning and survey department (Abuja municipal area council) AMAC zonal planning office, Abuja over plot No. cp 120 in Kurudu layout within FCT. That the 1st claimant herein sold the said plot to Faideen Nig. Ltd and a new letter of offer titled offer of the terms and grant/conveyance of approval dated 16th august 2006 was granted to Faideen Nig. Ltd by the Abuja Municipal Area Council, AMAC zonal planning office, Abuja over plot No. cp 120 Kurudu commercial layout within FCT, Abuja. That Faideen Nig Ltd later sold the said land to Shazza Goro Nig ltd and they both executed the document showing the transaction. That I personally bought

the land plot No. cp 120 Kurudu commercial layout within FCT, Abuja from Shazza Goro Nig Ltd and the company and I executed documents showing the transaction. That when the claimant/respondents commenced this suit, they wrongly joined the 1st defendant/applicant as a party to this suit, who has nothing to do with the said land. That the Abuja Municipal Area Council, being the original body that issued exhibit A to the 1st claimant and exhibit B to Faideen Nig Ltd as the issuing authority is a necessary party in this suit. That the Federal capital development authority is the body responsible for the preparation of the master plan for the federal capital city and of land use with respect to town and country planning within the FCT, the provision of municipal services within the capital territory and it is a necessary party in this suit. That the honorable minister of the FCT being the person appointed by the president of the federal republic on Nigeria to administer all lands situate within the FCT is a necessary party in this suit. That the claimants/respondents deliberately omitted to join the Abuja Municipal Area Council, the federal capital development authority and the honourable minister of the FCT as parties in this suit. That without the presence of Abuja Municipal Area Council, the federal capital development authority and the honourable minister of the FCT as necessary/proper parties in this suit, the court will not be able to effectively and completely adjudicate upon and settle all the question of title to plot No. cp 120 Kurudu commercial layout within FCT, Abuja involved in this suit, and they will not be bound by the outcome of the judgment in this suit.

LIST OF EXHIBITS

1. Exhibit A is a letter of offer dated 22nd January 2002.
2. Exhibit B is a letter of offer dated 16th August 2006.
3. Exhibit C is a power of attorney.
4. Exhibit D is a sale agreement.
5. Exhibit E is an irrevocable power of attorney.
6. Exhibit F is a deed of assignment.

Learned counsel to the defendants/applicant in his written Address dated 9th September 2021 formulated a lone issue for determination to wit:

Whether this court has the discretionary power to grant the reliefs sought?

On the lone issue above, learned counsel argued that by virtue of order 13 rule 18 (2) (3) of the rules of this honourable court and the case of **ADEFARASIN V DAYEKH (2007) 11NWLR (PART 1044)** and **OGBEBO V INEC (2005) 15 NWLR (PART 984)**, this honourable court has the discretionary powers to strike out the name of the 1st defendant/applicant wrongly joined in this suit, to direct the claimants/respondents to substitute the name of Mr. Onyeke Emmanuel Onyeke with name of the 2nd defendant on record, and join Abuja Municipal Area Council, the federal capital development authority and the honourable minister of the FCT as parties in this suit.

In response to the motion on notice, the claimants/respondents filed a 6 paragraph counter affidavit dated and filed on 21st September 2021, deposed to by one Mr. Henry Abba a litigation officer in the law firm of the claimants/respondents counsel. The claimant avers that the 1st defendant is necessary in this suit and

was rightly made a party; the claimants have a cause of action against him. That the claimants have no cause of action against Abuja Municipal Area Council, the federal capital development authority and the honourable minister of the FCT sought to be added by the defendants as parties in this suit. That the Abuja Municipal Area Council is a statutory body that cannot be sued in court without a pre-action notice. That the claimants claim will be effectively and effectually determined without adding Abuja Municipal Area Council, the federal capital development authority and the honourable minister of the FCT as co-defendants in this suit. That the defendant's application seeking to force the claimants to sue a party that did not commit any wrong against was bought mala fides and constitute an abuse of judicial process. That the defendants are at liberty to call any or all the parties sought to be added or any other person as their witness during trial. That the 2nd defendant represented himself as Mr. Payne Onyeke during their wrongful invasion and destruction of the claimants property; and ought to exhibit his national ID or driving license to show that his true names are Onyeke Emmanuel Onyeke.

Learned counsel in his written address contended that the party sought to be joined as co-defendants are not necessary or desirable parties to this suit. That the applicant did not show any part of the claimants claim that affects the party sought to be added could warrant adding them as co-defendants in this action.

Learned counsel argued that the position of the law as it relates to joinder of parties was effectively articulated by the supreme court in **OBA JOSEPH ADEYEMI & 7 ORS V OBA JOSEPH**

ABALARI JOLAYI (2001) 10NWLR (PT 722) 576. That the claimants writ of summons and statement of claim sufficiently established prima facie case against the 1st defendant. That the 1st defendant cannot be allowed to escape liability through the back door at the interlocutory stage, such escape from justice will tantamount to depriving the claimants of their constitutional right to fair hearing, he cited the case of **C.K & W.M.C LTD V AKINGBADE (2016) 14 NWLR (PT 1533) 487.**

In response to the counter affidavit, the defendants/applicant filed a 23 paragraph reply affidavit dated and filed on 12th October 2021 deposed to by one Mr. Onyeke Emmanuel Onyeke the person wrongly named Mr. Payne Onyeke the 2nd defendant in this suit. The defendant avers that paragraphs 2, 3, 4(a-k), 5 and 6 of the counter affidavit are false, that the 1st defendant is not a necessary party and has no interest or title in the subject matter of this suit. That by paragraphs 1, 3, 5, 7, 10, 11, 15, and 17(1) (2) (4) of the statement of claim, the names, actions, steps taken and the roles played by the parties sought to be joined to this suit as co-defendants were eloquently and loudly mentioned and referred to by the claimants/respondents themselves. That the purported title documents already pleaded, frontloaded and presented to this honourable court by the 1st and 2nd claimants/respondents either bears the names of the parties sought to be joined as parties/co-defendants or are alleged to have been issued by them. That the 2nd defendant neither invaded or destroyed the claimants property, that he never met or saw the 2nd claimant anytime until 6th July 2021 in this court

LIST OF EXHIBITS

1. Exhibit RA1 is a national identity number slip.

Learned counsel to the defendant in his reply on point of law contended that the claimant/respondent had 7 days to respond under order 43 rule 1 (3) of the rules of this court filed their counter affidavit dated 21st September 2021 and written address date 17th September 2021 but deliberately and intentionally delayed service of same on the 1st and 2nd defendants counsel till on 6th October 2021 after the court sat and adjourned hearing in this suit to the 12th October 2021.

Learned counsel submitted that the said counter affidavit dated 21st September 2021, there are several lines of lies on attempt to mislead the court particular reference was made to paragraphs 1, 3, 5, 7, 10, 11, 15, and 17(1) (2) (4) of the statement of claim, where the names, actions, steps taken and the roles played by the parties sought to be joined were eloquently and loudly mentioned and referred to by the claimants/respondents themselves. Counsel argued that purported title documents already pleaded frontloaded and presented to this honourable court by the 1st and 2nd claimants in this suit either bears the names of the party sought to be joined as parties or have been issued by them. Counsel contended that these documents are already before the court, and they are the documents pleaded and frontloaded by the claimants in this suit. It is the contention of learned counsel to the defendants/applicants that the reliefs/claims endorsed on the writ of summons dated 22nd February 2021 are clearly seeking for as declaration of title land, a declaration of allocation and subsequent allocation or grant of the res to the defendants or any other person or persons as

unlawful, illegal, null and void and of no legal effect. Counsel submitted that in respect to these claims, the Abuja Municipal Area Council, the federal capital development authority and the honourable minister of the FCT who allocate the subject matter in this suit to Faideen Nigeria Ltd in 2006 have had their actions challenged by the claimant and as such he urged this honourable court to give them the opportunity to be heard before a determination is made against their actions. Counsel contended that by section 36 (1) 1999 constitution of the federal republic of Nigeria the parties sought to be added to this suit are entitled to fair hearing.

It is the submission of counsel that the court have the power to add or join a party to a suit against the wishes of the plaintiff or claimant when the interest of justice so demands. He cited the case of **MINISTRY OF SCIENCE TECHNOLOGY & ANOR V FEDERAL MINISTRY OF HOUSING & ANOR (2009) 17 NWLR (PART 1171) PAGE 510 AT 523-524** and **LAJIBAM AUTO AND AGROC CONCERNS LTD & ANOR V UNITED BANK FOR AFRICA PLC & 2 ORS (2013) LCN/5977 (CA)**.

Learned counsel while citing the case of **LAJIBAM AUTO AND AGROC CONCERNS LTD & ANOR V UNITED BANK FOR AFRICA PLC & 2 ORS** (supra) that a court of law cannot make an order binding the person who is not a person to a proceeding before it. Counsel submitted that the 2nd defendant/applicant neither invaded nor destroyed the claimants property, never saw or met the 2nd claimant until the 6th July 2021 in this court.

I have very carefully considered the Motion on notice as filed by the defendants/Applicants, I have equally in the same vein perused the Counter-Affidavit of the Claimants/Respondents herein and the defendants/Applicants further affidavit and reply on points of law. It is my considered legal opinion that the instant suit raises a lone issue for determination to wit:

Whether the Defendants/Applicants has placed sufficient evidence before this honourable court to be entitled to the reliefs sought?

In answering the above legal issue, I would make reference to the submission of counsel on both sides in this suit. It is the contention of learned counsel to the defendants/Applicants in the main that the 1ST defendant/Applicant was wrongly joined in this suit since he did not buy the land the subject matter of this suit. Learned counsel equally argued that the Claimants/Respondents sued the 2nd defendant/applicant in the wrong name of MR PAYNE ONYEKE instead of in the name of MR ONYEKE EMMANUEL ONYEKE the proper name of the 2nd Defendant/Applicant learned counsel cited the case of **ADEFARASIN VS DAYEKH** (supra) amongst others in arguing that the court have discretionary powers to strike out names of parties wrongly joined in a suit. On his part, learned counsel to the Claimants/Respondent submitted relying on the case of **OBA JOSEPH ADEYEMI 7 ors Vs OBA JOSEPH ABOLARI JOLAYI (supra)** amongst others that the purpose is to allow a plaintiff to proceed in the same action against all defendants against whom he alleges to be entitled to any relief whether his claim is brought against the defendants jointly, severally, or in the alternative.

It is trite law that anyone whose presence is crucial and fundamental to the resolution of a matter before the court must be made as a party to the proceeding. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled therefore must be a question in the action which cannot be effectively and completely settled unless he is a party. See **OKEKLUE V MEDUKAM (2011) 2 NWLR (pt 1230) p 176**. Reading through the processes filed by the claimant paragraphs 13 & 14 of the statement raises a cause of action against the 1st defendant. I hereby reproduce the said para 14.

“The Claimants further avers that when the 2nd Claimant later met the 2nd defendant on the land after the evasion; the 2nd defendant boldly admitted the invasion and threatened the 2nd Claimant to stay away from the land claiming that the 1st defendant bought the land from an Army General; and further threatened the 2nd Claimant that the Army will “deal ruthlessly” with him and his workers if found on the said Plot CP-120 kurudu again. The destruction on the claimants land by the defendants was captured on camera and will be relied upon at trial.”

In determining whether a cause of action exist, the court is to confine itself to the writ of summons and statement See **HOLEX PROJECTS NIG LTD V DAFESON INTERNATIONAL LTD (1999) 6 NWLR (pt 607). 490 at 500**. I reiterate that para 14 as reproduced above raises cause of action against the 1st defendant and makes the 1st defendant a necessary party to this action who would be bound by the results of this action as this suit cannot be effectually settled without joining the 1st

defendant, see the case of **AJAYI V JOLAYEMI (2000) 10 NWLR PT 722 pg 516 Sc at pg 531** per Ogundare JSC. It is my considered view that the Claimant/Respondent have placed sufficient evidence before this honourable to make the 1st defendant/applicant a necessary party in the instant suit, I so Hold.

It is my considered legal opinion that wrong spelling or misspelling of a party's name is a misnomer. A misnomer occurs when the correct person is brought to court under a wrong name. See the case of **EMESPO J CONTINENTAL LTD Vs CORONA M.V CONCORDIA (2006) NWLR (PT.991)** It is trite law that an amendment of a misnomer will be allowed where the other party is not misled or prejudiced and the guilty party shows reasonable grounds for the misnomer. See the case of **IBRAHIM V CHAIRMAN KACHIA LG (1998) 4 NWLR** In the instant case, the 2nd defendant/applicant has not complained that he was in any way prejudiced or misled. I so Hold.

Now on joinder of parties to this suit, it is the contention of learned counsel to the defendants/applicants that the following should be joined to this suit i.e Abuja Municipal Area Council; Federal Capital Development Authority; The Honourable Minister of the Federal Capital Territory as proper parties to this suit.

The defendants/applicants contended that the claim of the Claimants/Respondent lies in declaration of title to land which makes the aforementioned parties necessary in the suit, On his part learned counsel to the Claimant/Respondent contended that the gravamen of the claimants action against the defendants is

claims of damages for unlawful trespass and injunction over the claimant's real property which the parties sought to be added have no direct involvement.

It is trite law that joinder of parties to an action is an act of uniting to the action all persons who have the same rights or against whom rights are claimed as either co-plaintiffs or co-defendants. The reason for joining a party to an action is that he should be bound by the result of the action. The question to be determined in the action must be such that cannot be effectively and completely settled unless the person sought to be joined is made a party to the action. The test is whether the person to be joined will have his interest irreparably prejudiced if an order joining him is not made. See **IMEGWU V ASIBELUA (2001) 4 NWLR P.119 CA**. See also **UKU V OKUMAGBA (1974) 35; UNION BEVERAGES LTD. V PEPSI COLA INT. LTD. (1994) 3 NWLR (PT. 330) 1; ONYEKWELI V INEC (2008) 14 NWLR (PT 1107) 317**.

The main question for determining this application for joinder is whether or not the party sought to be joined is a necessary party, and that the court would order the joinder once the presence of the person is necessary to enable the court effectually and completely adjudicate upon and settle all the question in the cause or matter.

Both parties have alluded in their pleadings that they derived their title from the FCT Minister and other relevant agencies dealing with land administration in the FCT. In this regard, it is my considered view that Abuja Municipal Area Council; Federal

Capital Development Authority; The Honourable Minister of the Federal Capital Territory are necessary parties to be joined. I so Hold.

Appearances:

Parties absent

Chuka Egbo for the Claimants/Respondents

Y.D Bognet. J.C Adeniran for the defendant/Applicants

Ruling read in open court.

Signed
Presiding Hon Judge
18th May 2022