

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA  
BEFORE: HON. JUSTICE O.C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/CV/2512/2020**

**MOTION NO:M/1935/2022**

**BETWEEN:**

**1. DATO AND DETO LIMITED  
2. THE INCORPORATED TRUSTEES OF DESTINY ESTATE  
KYAMI DISTRICT LANDLORDS ASSOCIATION.....APPLICANT**

**AND**

**1. FEDERAL CAPITAL DEVELOPMENT AUTHORITY  
2. HON. MINISTER, FEDERAL CAPITAL TERRITORY  
.....DEFENDANTS/RESPONDENTS**

**RULING**

By a Motion on Notice dated 21/2/2022 and filed same day with Motion Number M/1935/2022 brought pursuant to Order 13 Rules 7 and 19 (2) of the High Court of FCT (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the court, the Applicant prays the court the following reliefs:-

- (1) An Order of this Honourable Court joining the Incorporated Trustees of Destiny Estate Kyami District Landlords, Association as 2<sup>nd</sup> Claimant representing her members who are subscribers of the demolished Estate being necessary parties in this Suit.

- (2) An Order of this Honourable Court deeming the attached Statement of Claims as duly filed and served the appropriate filing fees having been paid
- (3) And the Omnibus relief.

The Motion is supported by a 17 Paragraphs affidavit, with 11 Exhibits attached and marked Exhibit "A", "B", "C", "D", "E", "1", "2", "3", "4", "5" sworn to by one Akpa Uchenna Akpa a Legal Practitioner in the law firm of Applicant's Counsel. Also filed a Written Address and adopts same as oral argument in urging the court to grant the prayers. And responding to the Counter-Affidavit of Applicant, Claimant, filed Applicant further their Affidavit on 1/3/2022 sworn to by Anayo A. Nnadi Counsel in the law firm Applicant Counsel.

The processes were served on the parties in the Suit, while 1<sup>st</sup>/2<sup>nd</sup> Defendant/Respondent not opposing, Claimant Respondent in opposing the application filed a 15 Paragraph Counter-Affidavit with Exhibits attached and Exhibits "A", "B" deposed to by Simeon Gbaa, a Counsel in the Law firm of Claimant/Respondent's Counsel. Also filed a Written Address and adopts same in urging the court to refuse the application.

In the Written Address of Applicant Chief David Umalu Esq of Counsel formulated a sole issue for determination, that is;

"Whether this court has power to grant this application"

And submits that Order 13 Rule 7 and 19 (2) of the Rules of Court empowers the court to join any person whose interest is likely to be

affected by the result of any matter before it to avoid a multiplicity of action over same matter. Therefore urge court to join the Applicant as prayed as it will guarantee final and conclusive resolution of the dispute. Refer to Ige Vs Faride (1994) 7 NWLR (PT. 354) 45. Further that Applicant has filed their Statement of Claim in compliance with Rules of Court and attached same as Exhibit "C". Submits further that this application has merit and should be granted in the interest of justice.

In the same vein, Claimant/Respondent formulated a sole issue for formulation in their Written Address, that is;

"Whether this court has power to grant this application"

And submits that, generally parties are all owned to join a Suit, a party seeking to be joined must place material facts to warrant the grant of application for joinder in the instant application, Party seeking to be joined has not placed any material fact before the court to show that he has statutory right of occupancy over the land which he seeks the court to restore or declare in its favour against the Defendant Claimant has the Statutory Right of Occupancy over the land and relies on it as evidence , further that the conduct of the party seeking to be joined has shown that they cannot conveniently work together. Refer to Ogolor Vs Fubara (2003) 11 NWLR (PT. 831) 261 – 262 Paras F – A. Submits that from the reasoning in this authority, the conduct of the party seeking to be joined has shown that its intention are not bonafide, but only trying to use the instrumentality of the joinder to context and muscle the Claimant's Statutory Right from it and evade its obligation as contained in the

Provisional Letter of Allocation. And if the party is joined they will refuse to abide by the Terms and conditions of the Provisional Allocation issued by the Claimant as they are yet to fulfill the whole Terms and conditions contained in the Provisional letter of allocation from the Claimant and no Deed of Assignment or Power of Attorney has been executed.

Finally urge court to refuse the application.

In their reply on points of law, Counsel for party seeking to be joined, submits that the court has absolute and discretionary powers to grant the application of this nature. Refer to Section 6 (6) of the Constitution of the Federal Republic of Nigeria 1999 as (As Amended).

Submits that the court can suo moto join any person whom the court deems as necessary party in this Suit. Refer to Okukuje Vs Akwido (2001) FWLR (PT 39) 1487 @ 1523 commend court to Paragraph 7 and 8 of their further affidavit which shows the admittance made by the Claimants/Respondent in their Writ and Statement of Claim that they have subscribers who have developed their properties and the Defendants demolished same and from these assertions, the Applicants are necessary party to this Suit, who ought to be joined for effective and conclusive adjudication of this Suit.

Submits that the contention of the Claimant/Respondent that the Applicant's claims are at a variance with that of the Claimant is speculative and court cannot act on speculations. And that by Order 14 Rule 4 of the Rules of court, the court has powers to join a party even when the claims of the Claimant seeking to be joined are at variance to the existing

Claimant. Refer to FGN Vs A.I.C Ltd(2005) 49 WRN 102 107; Bamaiyi Vs The State (2001) 16 WRN 1 @ 6 and 7 urge court to grant the application.

While adumbrating on their grounds for court to disregard paragraphs 8, 12, and 13 of Counter-Affidavit of the Claimant/Respondent, commend court to the cases of George Vs UBA Ltd (1972) 8 – 9 SC @ 4 Samisomgraph Ltd Vs Ogbeni (1976) 4 SC 85 @ 101.

Also adumbrating on the same paragraphs 8, 12 and 13 of their Counter-Affidavit, Claimant/Respondent submits that the Provisional Letter of Allocation exhibited by the party seeking to be joined reveals that there are conditions and failed to show that those conditions have been fulfilled. Refer to Ogolo Vs Fubara (Supra) urge court to refuse the application.

Having carefully considered the submission of both Counsel for and against the grant of this application, the judicial authorities cited as well as the affidavit evidence of the parties, I find that two issues calls for determination which is;

- (1) Whether the paragraphs 8, 12, and 13 of the Counter-Affidavit of the Respondent are in compliance with the Rules or Evidence.
- (2) Whether the Applicant has made out a ground so as to be entitled to the reliefs sought.

On Issue 1, the contention of the Applicant's is that the paragraphs 8, 12 and 13 of Claimant/Respondent's counter-Affidavit are speculations and conclusions respectively and therefore contrary to the Rules of evidence.

On the other hand, Claimant/Respondent contend that the said paragraphs of their Counter-Affidavit are well in order the contentions of the parties on this ground appears to be whether the paragraphs of the Counter-Affidavit of the Claimant/Respondent are in line with the Provisions of Section 115 (1) (2) of the Evidence Act which reads;

- (1) Every affidavit used in the court shall contain only a Statement of Facts and circumstance to which the witness deposes either of his own information which he believes to be true.
- (2) An affidavit shall not contain extraneous matter, by way of objection, prayer or legal argument or conclusion.

In the determination of the various contention of the parties, I have taken a look at the Counter-Affidavit of the Claimant/Respondent and I find that the said Paragraphs are not in contravention of the provision of Section 115 (1) (2) of the Evidence to warrant the court to discountenance them as prayed by the Applicants and the prayer is hereby dismissed.

On the second issue that is;

“Whether the Applicant has made out a ground so as to be entitled to the relief sought;

The grant or otherwise of an application of this nature is at the discretion of court, which the court must exercise judiciously and judicially. And for the Applicant to persuade the court to exercise its discretion in his favour, that Applicant must place before the court cogent facts upon which the court will consider the application. The principles which may guide the court in

the determination of an application for joinder of a party have been stated in a Plethoral cases. In Adefarasin Vs Dayekh (2007) ALL FWLR (PT. 348) 911 @ 933 Paras E – G, the court stated the principles as;

- (a) Is the cause or matter liable to be defeated by the joinder?
- (b) Is it possible for the court to adjudicate on the cause of action set up by the Plaintiff unless the third party is added as a Defendant?
- (c) Is the third party a person who ought to have been joined as a Defendant?
- (d) Is the third party a person whose presence before the court as Defendant will be necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause of ort matter?

See also Green Vs Green (2001) ALL FWLR (PT. 76) 795 @ 820 Para F – B.

The ground upon which Applicant seek to be joined in the Suit as stated in their affidavit isthat this court cannot conclusively adjudicate upon their matter without joining the Applicants representing the subscribers to the Estate, subject matter ofthis Suit. On the other hand Claimant/ Respondent contends that the title document ofthe property is in their name and not all subscribers were issued Letter of Approval as claimed by the Applicant, also not all ofthe subscribershave fully paid the subscription fees and joining them will cause confusion and disharmony in the conduct ofthis case. It is also in the Further and Better Affidavit of Applicant that

the subscribers of the Estate whose properties were demolished by the Defendant will be affected by the outcome of the Suit. The resolution of these contending positions can only be received, upon a consideration of the Statement of Claim of the Claimant/Respondent as well as the Exhibit "6" of attached to the affidavit in support of the application – 2<sup>nd</sup> Claimants' Statement of Claim. And this the court is empowered to do. See *Agbareh Vs Mimra* (2008) ALL FWLR (PT. 409).

I have taken a considered look at the above mentioned record of court and I find that the claim of the Claimant/Respondent and the claims as stated in the exhibit 6 of the Applicant and I find that they have certain similarities, yet differ in some aspects. Granted that the facts which gave rise to action resulted in the alleged act of the Defendant, and joinder may be granted to prevented the filing of a multiplicity of Suits, the interest of the Claimant/Respondent and the Applicant are divergent, thus may give rise to conflict of interest; if both are co-Plaintiffs in this Suit. Again the claims set up by both parties can be pursued in separate actions, without joining as necessary parties as the issues that arose from the alleged act of the Defendant in this Suit can be adjudicated upon without the presence of either party see the case of *Fadayomi Vs Sodipe* (1986) 2 NWLR (PT. 25) 736 @ 737, *Ogolu Vs Fubara* (2003) 11 NWLR (PT. 831) 231 @ 261 – 262 Para F – A. The Applicant therefore is of a necessary party to be present for the court to determine the matter before it.

From all of these, I find that the application of the party seeking to be joined as lacking in merit as the ground upon which they seek joinder is not cogent to warrant the grant of the application. The court having found



that the Applicant and Claimant/Respondent have different interest to be pursued.

The application for joinder is hereby refused and is accordingly dismissed.

Signed

**HONOURABLE JUSTICE O.C. AGBAZA**

(Presiding Judge)

21/9/2022

**APPEARANCE**

ANTHONY BIOSE ESQ WITH S.T. GBAA ESQ - FOR THE CLAIMANT/RESPONDENT

AUSTIN CHUKWUDI UZENDU ESQ - FOR THE 2<sup>ND</sup> DEFENDANT

CHIEF DAVID M. UMAHI ESQ WITH HIM ANAYO NNADI ESQ FOR THE APPLICANT/PARTY SOUGHT TO BE JOINED.