

**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& ORS.

COURT NO: 6

SUIT NO: FCT/HC/CV/2127/2020

MOTION: NO. M/7190/2021

BETWEEN:

- 1. IKEGBUNE RACHAEL**
- 2. OVIawe EYOTO CHRISTOPHER**
- 3. BELLO ABDULHAMID RASSEDAT**
- 4. ODU MERCY**
- 5. OLUBIYI ADEBANKE OLAYEMI...CLAIMANTS/JUDGMENT CREDITORS**

VS

**VISCOUNT MULTIPURPOSE COOPERATIVE SOCIETY LIMITED
.....DEFENDANT /JUDGMENT DEBTOR**

VS

**PILLAR WORLD SECURITAS SOLUTION LTD
.....APPLICANT/PARTY SEEKING TO BE JOINED**

RULING

By a Motion dated 26/10/2021 and filed same day, with Motion Number M/7190/2021, brought pursuant to Order 12 Rule 4, 5, 6 and 18. And Order 43 Rule 1 of the FCT High Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Honourable Court, the Applicant seek the following relief;

- (1) An Order of this Honourable Court joining the Applicant/Party seeking to be joined as the 2nd Defendant to this suit having been affected by the Ruling of the Honourable Court in this Suit delivered on the 24th February, 2021 in Motion No. M/384/2021, attaching for sale her immoveable property situation at Shops Ext. E57 and E62, Efab Mall Extension, Area 11, Garki FCT Abuja to satisfy the Judgment debt of the Defendant/Judgment Debtor.
- (2) And the Omnibus Relief.

In support of the Motion is an 11 Paragraph affidavit deposed to by one Mr. Lasisi Sanni Managing Director/Chief Executive Officer of the Applicant/Party Seeking to be Joined, with 9 (Nine) Exhibits attached and marked Exhibits "A", "B", "C", "C1", (D), "E", "F", "G. Also filed a Written Address and adopts same as oral submission in urging the court to grant the application.

Responding, Claimant/Judgment Creditor/Respondent filed a 14 paragraph Counter-Affidavit with 5 Exhibits attached and marked as Exhibits "A", "B", "C", "D", "E", and "F", deposed to by Olaniyi Oyinloye, Respondent Counsel.

In the Written Address of the Applicant Hyginus Ibega Esq of counsel formulated 3 (three) issues for determination namely;

- (1) Whether the 1st Defendant/Judgment Debtor has established by any credible evidence that the property of the 2nd Defendant /Applicant situate at Shop Ext E 57 and E62 Efab Mall Extension, Area 11, Garki FCT Abuja was lawfully transferred or assigned to her to warrant an order of attachment and sale of the property to satisfy the debt of the 1st Defendant/Judgment Debtor.

- (2) Whether in view of the fraudulent suppression of facts and lying on Oath by the Claimant /Judgment Creditor in their bid to procure the Order of the court for attachment and sale of the 2nd Defendant/Applicant property, the said Order dated 24th February, 2021 may be set aside or vacated by the Honourable Court.
- (3) Whether upon the denial of right to fair hearing, the order of the Honourable court dated 24th February, 2021 attaching for sale the immovable property of the 2nd Defendant/Applicant for the satisfaction of Judgment debt of the 1st Defendant/Judgment Debtor may be set aside or vacated by the Honourable Court.

On Issue One above, submits that the property subject to the application belongs to the Applicant, and what is in doubt is the claim of the 1st Defendant/Judgment Debtor's claim to the property and this raises an evidential burden on the Claimant/Judgment Creditor to discharge in view of the depositions in the affidavit of the Claimant Judgment Creditors affidavit in support of their Motion No. M/384/2021 particularly Paragraph 4 (i) (ii). Having asserted those facts, it become incumbent on the Claimant/Judgment Creditor to prove. Refer to Section 131 (1), 132 and 133 (1) of the Evidence Act and the cases of Inyang Vs CCEC (2020) LPELR 49694 (CA), Onogwu & Ors Vs Benue State Civil Service Commission & Ors (2012) LPELR (CA), Nigeria Maritime Services Ltd Vs Afolabi (1978) 2 SC 79 of 84, Ikuma Vs Civil Service Commission Benue State & Ors (2012)LPELR – 8621 (CA). Submits further that Claimant/Judgment Creditor claimed the property was

transferred to the 1st Defendant/Judgment Debtor by the Applicant, but it is worrisome and suspicious that the Claimant/Judgment Creditor failed to attach the Exhibit "B" in their affidavit in support of the said Motion after same had been marked. Submits that the Claimant/Judgment Creditor have not shown any document of title indicating or proving that the property subject matter of the suit now belongs to the 1st Defendant Judgment Debtor.

Submits that in the absence of any evidence to show that the 2nd Defendant/Applicant indeed obtained a loan facility from the 1st Defendant/Judgment Debtor and defaulted in repayment of same and also a lawful legal document executed by the 2nd Defendant/Applicant transferring her property situate at Shops Ext E57 and E62 Efab mall Extension Area 11, Garki 11, Garki FCT Abuja to the 1st Defendant/Judgment Debtor, the claim by the Claimant/Judgment Creditors which culminated to the order of attachment and sale of the 2nd Defendant/Applicant property would ultimately fail urge court to so hold.

Submits that even if the 1st Defendant/Judgment Debtor deceived the Claimant/Judgment Creditors of the ownership of the property, the Claimant/Judgment Creditors have the duty to investigate the alleged title document before applying to court for same to be attached in satisfaction of the Judgment Debt. The action and inaction of the Judgment Creditor has occasioned injury, humiliation and embarrassment by being thrown out of her property and her business has been stalled till date. Urge the court to award exemplary and general damages against the Claimant/Judgment Creditors.

On issue two submits that the Claimant/Judgment Creditors, along with the 1st Defendant/Judgment Debtor fraudulently colluded, suppressed and concealed some true and material facts of the case also hed under Oath that the 1st Defendant/Judgment Debtor owned the property. Refer to the prayers in Claimant/Judgment Creditor's Motion on Notice M/384/2020 dated 30/12/2020 and paragraph 4 (i) (ii) of the affidavit in support of the Motion. Submits that the true facts would have enabled the court to refuse the application. And were an Order of court is obtained on suppression or concealment of facts or misrepresentation, such order is discharged or vacated. Refer to Mabon Ltd & Ors Vs Access Bank (2021) LPELR – 5326 (CA) and Mohammed & Anors Vs Gurarzo & Ors (2017) LPELR 43190 (CA). Therefore urge court to vacate and discharge its order in Motion No. M/384/2021 made on 24/2/2021.

On the issue three, submits that the entire proceedings in Motion on Notice M/384/2021 filed on 18/1/2021 was held in breach of the right of the Applicant to fair hearing therefore the entire proceeding is null and void and should be quashed and set aside. Refer to Section 36 (1) (2) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and the cases of Ovunwo & Anor Vs Woko & Ors (2011) LPELR 2841 (SC), S & D Construction Co Ltd Vs Ayoku & Anors (2011) LPELR – 2965 (SC) Arije Vs Arije & Ors (2018) LPELR -44193 (SC). Andong & Ors Vs Asuqwo & Ors (2020) LPELR 50072 (CA), Rida National Plastic Ltd Vs Artee (Ind) Ltd (2017) LPELR – 43132 (CA) and Emmanuel Vs Nigeria Customs Service Board (2018) LPELR – 44105 (CA).

In the Written Address of the Claimant/Judgment Creditor, Olaniyi Oyinloye Esq of Counsel, did not formulate any issue for determination, but submits that in considering this application the court should consider the affidavit of the Applicant and if the reasons adduced therein are cogent for the grant of the application.

Submits that the Judgment Creditor has no claim against the party seeking to be joined and could not have sued her, but only become aware of the Applicant, during the execution of the Consent Judgment of this Honourable Court. Also submits that the party seeking to be joined is neither a necessary or proper party as regards the claim of the Judgment Creditors. Refer to Mobil Oil Nigeria Limited Vs Nabsons limited (1996) 7 NWLR (PT. 407) 254 LCN/2619 (SC). Submits further that not only that the Applicant is not a necessary party to the Judgment Creditor but the suit has been decided by the court and the court has become functus officio. Refer to Duke Vs Administrator General Republic trustee & Ors (2018) LPELR, Diagyadi Vs INEC (2011) LPELR – 150 (SC) and Ajagbe vs Belel (2019) LPELR 47408 (CA).

Submits further that the property been contested belongs to the Judgment Debtor who has a right to dispose of same to recover the loan that was given to the party seeking to be joined. Refer to Paragraph 6, 7 and 8 of their Counter-affidavit.

Submits finally that the party seeking to be joined is not privy to the contractual Agreement between the Judgment Creditor and Judgment Debtor therefore cannot make a claim on such a contract. Refer to Rebold

Industries Ltd Vs Magreola & Ors (2015) LPELR 24612 (SC). Urge court to dismiss the application with a cost of ₦50,000.00 in favour of the Judgment Creditor.

Having carefully considered the submission of counsel, the Judicial authorities cited as well as the affidavit evidence of the parties, I find that only one (1) issue calls for determination that is;

“Whether the party seeking to be joined in the suit 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 be exercised judiciously and judicially. And for an 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 guiding the joinder of parties have been stated in a Plethoral of 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 or matter?

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

The ground upon which the Applicant seek to be joined in Motion No.7180/2021 is that the properties which the Judgment Debtor provided in satisfaction of the Judgment actually belongs to the Applicant and not the judgment Debtor, Applicant seeking to be joined had never transferred ownership of the properties to the Judgment Debtor and it is now expedient that she be joined as a committal order is being sought against her, so that the whole issues in this suit would be wholly and effectively determined. On the other hand Claimant/Judgment Creditor contends that they do not have a cause of action against the Applicant, has no need to sue her and is neither a necessary or proper party to the claim of the the Judgment Creditor. And the court is functus officio on the Suit.

I have taken a look at the contending claims of the parties and applying the principle which guides the court in an application for joinder stated above, I find that the presence of the party seeking to join the suit isnot a necessary party to be present for the court to hear and determine the matter brought before it. I am more convinced of this view because the Claimant has no claim against the party sought to be joined in the suit especially as the Exhibits attached to the Claimant/Judgment Creditor's Counter-Affidavit reveals that the party seeking to join the suit had indeed transferred title

of the properties subject matter of the Motion No.7180/2021 to the 1st Judgment Debtor who subsequently presented them in satisfaction of Judgment Debt in favour of the Judgment Creditor. It must also be emphasized that the court having being functus officio on this matter, cannot proceed to grant the application for joinder, and Applicant cannot in same application for joinder ask court to set aside its Ruling in her Written Address.

From all of these I find this application is lacking in substance, the grounds upon which Applicant seek joinder not cogent to warrant the grant of the application. This application for joinder is hereby refused and is accordingly dismissed. Cost of ₦50,000.00 is awarded in favour of the Claimant/Judgment Creditor.

Signed

HON. JUSTICE. O.C. AGBAZA

Presiding Judge

7/10/2022

APPEARANCE:

OLANIYI OYINLOYE ESQ FOR THE JUDGMENT CREDITOR/RESPONDENT.

H.N. IBEGA ESQ FOR THE PARTY SEEKING TO JOIN.

NO REPRESENTATION FOR THE JUDGMENT DEBTOR.

