

**IN THE HIGH COURT OF JUSTICE OF THE
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/1897/2020
MOTION NO: M/5600/2022**

BETWEEN:

SANI ERIC ACHILE

(Trading under the Name & Style of Fulgor Solicitors)

.....**CLAIMANT/RESPONDENT**

VS

1. ANTHONY ATTAI VICTOR

2. AUGUSTINE OBIORA OKOLI.....DEFENDANT/APPLICANT

RULING

By a Motion on Notice dated 16/5/2022 and filed same day with Motion No. M/5600/2022 brought pursuant to Order 43 Rule 1, Order 13 Rule 5 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court, the 2nd Defendant/Applicant prays the following reliefs;

- (1) An Order of this Honourable Court striking out this suit for misjoinder of parties or in the alternative.
- (2) And Order of this Honourable Court striking out the name of Anthony Attai Victor (1st Defendant) as a party to this suit with the Statement of Defence dated 14th October 2022.

(3) And the Omnibus reliefs.

The Motion is supported by an 8 Paragraph affidavit deposed to by one Caroline Okafor, a Legal Practitioner in the Law Firm of Applicant's Counsel. Also filed a Written Address and adopts same as oral submission in urging the court to grant the reliefs.

Responding, Claimant filed a 9 Paragraph Counter-Affidavit dated 20/5/2022 challenging the application. Also filed a Written Address and adopts same in urging the court to refuse the application.

In Applicant's Written Address, Chukwuike Okafor Esq. of Counsel formulated a sole issue for determination that is;

“Whether the joinder of Anthony Attai Victor as the 1st Defendant in this suit is not a misjoinder of parties considering the facts and circumstances of this case”

And this submission in brief is that Order 13 Rule 5 of the Rules of Court supports the grant of this application as the inclusion of the name of the 1st Defendant constitute a mis-joinder and the suit and all processes filed by him ought to be struck out.

Submits further that the 1st Defendant having admitted in Paragraph 5 and 11 of the 1st Defendant's Statement of Defence to have forged or inserted figures in the blank cheque leaf issued to him by the 2nd Defendant, the issue of forgery has been raised and there is need for the 2nd Defendant to confront the 1st Defendant with this allegation and prove same in court; 2nd Defendant cannot prove the issue of forgery the way and manner this suit is constituted,

therefore joining Anthony Attai Victor in this suit has made it impossible for the 2nd Defendant to deny or answer to the allegations made against him.

Submits that both Claimant and 1st Defendant have a common interest in the suit and should have jointly approached the court in view of their pleadings. Refer court to Paragraph 4 (iv) and (v) of their affidavit in support of the Motion. Also refer to the cases of Aromire & Ors Vs Awoyemi (1972) NSCF Vol. 7 (1971 – 1972) 113 @ 118 Paras 10 – 20 and Carreng Vs Akinlase (2008) 14 NWLR (PT. 1007) 262.

Submits finally that where there is a misjoinder of parties in as suit, the proper order the court should make is to strike out the suit. Refer to Ogungwa & Ors Vs Williams& Anor (2019) LPELR 47536 (CA). Urge court to grant the relief.

In the same vein, E.O. Agboola Esq. of Counsel formulated a sole issue for determination in Claimant/Respondent's Written Address that is;

“Whether the 2nd Defendant/Applicant is entitled to the relief sought in the Motion dated 16/5/2022”

The summary of the submission is that Claimant is entitled to proceed only against persons he conceived he has cause of action against and by the cause of action, 1st Defendant is a necessary party for the effectual and complete determination of the claim between the parties before the court. Refer to Sifax (Nig) Ltd Vs Migfo (Nig) Ltd (2018) 9 NWLR (PT. 1623) 138 @ 194 – 195 Paras G – H, P.P. & P (Nig) Ltd Vs Olaghere (2019) 2 NWLR (PT. 1657) 541 @ 561 Paras C – B; Poroye Vs Makarfi (2018) 1 NWLR (PT. 1599) 91 @ 142 Paras G, Bwacha Vs Ikenya (2011) All FWLR (PT. 572) Ratio 2 page 1076

Imo Vs Wombo (2011) All FWLR (PT. 591) Ratio 10 1520 and ADC Vs Bello (2017) 1 NWLR (PT. 1545) 112 @ 145 – 140 Paras G – C.

Submits that the 1st Defendant is entitled to defend the claim made against him by the Claimant and the allegation of forgery by the 2nd Defendant to which he has responded by his Statement of Defence, is not in contradiction of any known Rule or principle relating to pleadings. Refer to Order 15 of the Rules of Court.

Submits finally that the issue of forgery cannot be determined at this interlocutory stage of proceedings. Refer to Iweka Vs. S.C.O.A (Nig) Ltd (2000) 7 NWLR (PT. 664) 325 and Haladu Vs Access Bank (2021) 13 NWLR (PT. 1794) 434. Urge court to refuse this application with exemplary cost of ₦100,000.00 (One Hundred Thousand Naira) 1st Defendant/Respondent aligned with Claimant.

Having considered the affidavit evidence, the submission of Counsel and the judicial authorities cited, the court finds that there is only 1 (one) issue for determination which is;

“Whether the Applicant has made out a ground so as to be entitled to the reliefs sought”

Parties to a civil suit constitute one of the main Preliminary Objection that must be considered before commencement of proceeding. A court can only properly resolve dispute if the right parties are before the court to contest the claims. The issue of who should be a party to a suit has been settled in the case of Green Vs Green (2001) All FWLR (PT. 76) 795 to include desirable party, proper party and necessary party.

The Applicant seek the relief in this contention that the joining of the 1st Defendant has made it impossible for the 2nd Defendant to deny or answer to the allegations made against him by the Claimant while also raising issues for forgery as ground for court to grant his relief on the other hand, Claimant/Respondent contends that the presence of the Applicant is required for the determination of the suit especially as the Applicant has responded to the allegation of forgery in this Statement of Defence.

The question which arises is; will the case be properly settled if the 1st Defendant is not joined in the suit. A resolution of the contending issue will necessitate a consideration of the record of court and this the court is empowered to do. See Agbare Vs Mimra (2008) All FWLR (PT. 409) 559. I have taken a look at the record of court and I find that the Claimant/Respondent, claims against the 1st and 2nd Defendants jointly and severally, that it was the 1st Defendant who approached him for a loan sum to fund a contract for 2nd Defendant in his Statement of Claim filed on 21/9/2021, which 1st Defendant admitted in Paragraph 3 of his Statement of Defence filed on 15/10/2021. He also admitted securing other sums for the 2nd Defendant while 2nd Defendant/Applicant joined issues with the Claimant/Respondent and 1st Defendant/Respondent by denying being indebted to the Claimant/Respondent also raising allegation of forgery in Paragraph 5 (a) against the 1st Defendant.

Flowing from these findings the court is of the firm view that from the effective determination of the suit, it is imperative that the 1st Defendant/Applicant remain as a party to this suit as a necessary party.

Consequently, this application lacks merit and is hereby refused.

Signed

HON. JUSTICE C.O. AGBAZA

Presiding Judge

3/11/2022

P.O. OGHAGBON ESQ FOR CLAIMANT/RESPONDENT

DAMIAN TOR ESQ FOR THE 1ST DEFENDANT/RESPONDENT

CHUKWUIKE OKAFOR ESQ FOR 2ND DEFENDANT/APPLICANT