

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON MONDAY THE 28TH DAY OF OCTOBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/2024/2015

BETWEEN:

ETHEL PROPERTIES DEVELOPMENT COMPANY LIMITED -- PLAINTIFF

AND

ENGR. YUSUF ALIYU BABA

--- DEFENDANT

RULING

In this application chequered Suit filed since 2015, the Plaintiff – Ethel Properties Development Company Limited claims the following against the Defendant – Engr. Yusuf Aliyu Baba:

- (1) A Declaration that the Defendant having failed to fulfill the terms of the offer, the withdrawal/revocation are valid in law.**
- (2) An Order directing the Defendant to forthwith desist from trespassing unto the Palm View Estate.**

- (3) An Order directing the Defendant to stop all the transactions to any land/property in the said Estate.**
- (4) A Declaration that all the transactions by the Defendant on the land is invalid, null and void and of no effect, as they were done in bad faith and due to misrepresentation of facts.**
- (5) The payment of Two Hundred and Fifty Million Naira (₦250, 000,000.00) only being the estimated cost of Ten (10) units lost due to the professional negligence of the Defendant.**
- (6) Cost of this Suit.**

On the 31st of October, 2016 the Plaintiff opened its case and called the PW1. On the 6th of March, 2017 the PW2 testified. The Defendant Counsel could not come to Court after seeking several adjournments – 5 times sparing over 1 year plus to Cross-examine the PW2. So the Court foreclosed them.

On the 17th of May, 2018 the Plaintiff moved an application to call additional Witness since it has not closed its case, by filing additional Witness Statement on Oath. The Defendant was served with the Motion since 14th of March, 2017 more than one year before the Motion was moved but he did not challenge same. The Court granted same.

On the 14th of January, 2019 the Plaintiff Counsel called the PW3 to testify and he did. The Defendant never came to

Cross-examine the PW3 just as he did in the case of PW2. The Court granted the application of Plaintiff to foreclose the Defendant from Cross-examining the PW3 since he did not do so. That Order was made on the 27th March, 2019 about two months and two weeks after the PW3 testified in chief. Court adjourned the matter to 30th of May, 2019 and subsequently to 5th October, 2020 for the Defendant to open its Defence. The long adjournment is because of the Annual Vacation in 2019 and Covid-19 in 2020.

The Court vacated the Foreclosure Order since the Defendant became blind – lost his sight.

On the 21st January, 2021 the PW3 was recalled for Cross-examination following the vacation of the Foreclosure Order.

The Defendant Counsel opened the case of the Defence that same day. He called DW1 who testified in chief. Matter was adjourned for Cross-examination of the DW1. Matter was further adjourned because of the absence of the Defendant Counsel and Covid-19 pandemic.

On the 1st of December, 2021 the matter was scheduled for Cross-examination of the DW1. But the Court and Plaintiff Counsel were served with an application for Joinder by party seeking to be joined – Segun Samuel Johnson Fashola. He wants to be joined as a necessary party in this Suit that was instituted over Seven (7) years ago. He had filed both the Statement of Defence and Witness deposition. He attached documents in support of the Statement of Defence. He also applied for recall of all the Witnesses already called for the purpose of their Cross-examination. According to him, the subject matter of Revocation in this case affected the offer letters Reference No.:

PVE/CEL/EPDL/20/09 which affects his interest and as such he is, according to him, a necessary and interested party in the Suit. To him, joining him as a Defendant will help the Court to effectively determine the ownership rights in the main Suit and also make him to put up his Defence. He supported the Motion with an Affidavit of 23 paragraphs and attached 5 documents marked as **EXH 1 - 5** which include Payment for Application Form – Twenty Thousand Naira (₦20, 000.00), Non-refundable Fee of Thirty Thousand Naira (₦30, 000.00) marked as EXH 1 (a) & (b). He paid Seven Million Naira (₦7, 000,000.00) as cost of the Plot and Eighteen Million Naira (₦18, 000,000.00) as cost of construction of the 4 Bedroom Detached Duplex.

That the payment was made through the Defendant who acted as the agent of the Claimant. He attaché photocopy of the Zenith Bank Cheque 18th February, 2009 for Three Million, Six Hundred and Fifty Thousand Naira (₦3, 650,000.00). The document is marked as **EXH 2 (A)**.

There is also attached, a handwritten acknowledgment by the Defendant for the Three Million, Six Hundred and Fifty Thousand Naira (₦3, 650,000.00) he received. It is marked as **EXH 2 (B)**. He attached Offer Letter issued to him after he paid the Seven Million Naira (₦7, 000,000.00) on the 30th of June, 2009 – **Reference No.: PVE/CEL/EPDL/20/09** which relates to the House No. 20. The document was handed over to him by Ethel Odumegwu, the CEO of the Plaintiff. The document is attached and marked as **EXH 3**. He constructed the building to specification.

The Agreement signed is attached and marked as **EXH 4**. He committed Fifteen Million Naira (₦15, 000,000.00) to the

construction going by **EXH 2 (a) and (b); 3 and 4** in the Palm View Estate Plot 23 CAD C09 Lokogoma, Abuja. That the Building is already roofed and yet to be fully completed. That when he wanted to sell the house, he was shocked to hear from the Estate Management that the said House 20 was among the Plots subject to litigation. That its allocation has been revoked and he no longer has a right over the property.

That the Offer Letter was issued directly to him in his own name. That no one ever communicated to him that the allocation was revoked at any time for any reason whatsoever. That all rights in the land are vested on him directly and not on the Defendant or anyone else. Hence, he seek this application that he can be heard given his interest in the land.

That his presence is very vital in that it will enable the Court to effectively and completely adjudicate on the subject matter of the Suit.

In the Written Address he raised an Issue for determination which is:

“Whether given the Applicant’s interest in Offer letter with Reference No. PVE/CEL/EPDL/20/09 which relating to House No. 20 which is amongst the Offer Letters that are subject of dispute in this matter, it is expedient for the Applicant to be joined as a party to defend his interest.”

He submitted that it will be proper for the Court to join him as a party in the Suit. That law gives him right to be joined

as a party since his interest is involved. He has right to apply to Court as he did. He relied on the case of:

Afolabi V. Ola
(2016) LPELR – 40186 (CA)

He also referred to the provision of **Order 13 Rule 18 (3) FCT High Court Rules.**

That by joining him as a party, the Court will effectively determine the issues in dispute. He referred to the case of:

Chief of Army Staff V. Lawal
(2012) 10 NWLR (PT. 130) 1070

That his Plot is among the Plots in dispute as it is on his name and not in the name of the Defendant. That any adjudication on the said Plot without him will amount to denying him his right to be heard.

That by the available evidence, he is a necessary and interested party and therefore ought to be joined as a party in this Suit. He referred to the case of:

Re: Yesufu Faleke Mogaji V. Oyedeji Akanbi Mogaji & Sons
(1986) LPELR – 1891 (SC)

He urged Court to grant his application as sought to afford him opportunity to defend his interest.

Upon receipt of the Motion, the Plaintiff filed a Counter Affidavit of 15 paragraphs. The Defendant did not file any Counter and did not oppose the application for Joinder.

The Plaintiff contended that the Applicant failed to fulfill the condition of the allocation. That aside from the Twenty

Thousand Naira (₦20, 000.00) for Form and Thirty Thousand Naira (₦30, 000.00) for Non-refundable fee, the Applicant never paid any other money out of the Thirty Five Million Naira (₦35, 000,000.00) price of the Allocation Fee. That he was duly notified about the revocation as he was served a document in writing to that effect. That joining the Applicant will obfuscate and delay the proceeding of the Suit.

In the Written Address the Plaintiff raised an Issue for determination which is:

“Whether the Applicant has placed sufficient material before the Court to justify the grant of his application.”

Plaintiff Counsel submitted that he has not placed sufficient material to merit the grant of the application for Joinder. That it is the Plaintiff’s claims that determines whether the Applicant is a party or not. He referred to the cases of:

**Ejigbo Local Government Area V. Adepegba & Ors
(2019) LPELR – 48060 (CA)**

**Ige & Anor V. Geo-Resources Limited & Ors
(2020) LCN/14842 (CA)**

That the Joinder is based on personal allocation given to the Applicant exclusively and not to the Defendant or the Plaintiff. That Claimant’s claim is not for Declaration of title to land because Claimant never entered into sale of land with the Defendant or the Applicant. But that it entered into an Agreement for construction of One (1) Unit 4 Bedroom Detached Duplex. That by the Letter of Offer, it states that the Offer is personal and not transferrable. That the Letter

of Offer and Construction Agreement empowered the Claimant with right to revoke or withdraw the Offer if the party fails to fulfill the condition or terms of the Agreement.

That joining the Applicant would cause delay and confusion and obfuscate the claim in this Suit. That the Applicant has not shown how the matter cannot be effectively determined without joining him. That since the claim of the Claimant is not centered on ownership of land and the land upon which the application is predicated is on ownership of land, there exists no reasonable cause of action against the Applicant in the pending Suit. That the Applicant is therefore not a necessary party in the present Suit. They referred to the case of:

Hassan V. Atanji
(2002) 8 NWLR (PT. 770) 582

He urged Court to so hold and dismiss the application.

The Applicant filed a Reply to the Counter Affidavit of the Plaintiff. In it, he submitted that in paragraph 4 the Plaintiff admitted revoking the Letter of Offer granted to the Applicant. That as such it should be given a chance to be heard.

It is imperative to note that the allocation to the Applicant is personal as the Plaintiff had noted.

COURT

In any application for Joinder, it is incumbent on the Applicant to show, by placing before the Court, material evidence that the facts will not be determined effectively without his presence and that his interest will be affected if

he is not given chance to be heard. In that case, once the Court is convinced based on such fact, it will join the party. But where there is no material evidence to show that and it is clear to the Court that the dispute can be settled without the party, the Court will not grant the application for Joinder.

In such application, the Court looks at the claim of the Plaintiff to know whether there is any cause of action against the Applicant going by the facts it has presented before the Court. Once there is a cause of action, the Court will allow the Applicant into the matter as a Plaintiff or a Defendant as the circumstance warrants.

In this case, this Court has summarized in great details the stands of the Plaintiff and the Applicant. The question is, has the Applicant presented before this Court enough facts and materials that this Court should join him as a necessary and interested party bearing in mind that, according to him, his allocation was personal and in his own name and that he had a totally different allocation from that given to the Defendant?

It is the humble view of this Court that since the Applicant has a different allocation from that of the Defendant there is no point joining him as a party in this Suit. Besides, he has not presented enough facts and material evidence to warrant joining him as a Defendant in this Suit. Most importantly, this Court can effectively determine the issue in dispute without joining the Applicant. And the issue of ownership which the Applicant is claiming is not the issue before this Court in the substantive Suit. So based on that, the application is NOT granted and it is therefore dismissed.

The above is based on the following reasons:

A look at the claims of the Plaintiff shows that the cause of action is as it concerns the present Defendant. There is nothing in the Statement of Claim that shows that the ownership of the Plot is in issue. What is in issue is the failure of the Defendant to fulfill his obligation in the Contract Agreement as per the payment for the Infrastructure Fees. By paragraph 10 of the Statement, the Plaintiff gave the Letters to the Defendant which included the allocation to the Applicant and not to the Applicant directly.

There is therefore no direct link between the Applicant and the Plaintiff though the letter was addressed to the Applicant personally.

Again, this is confirmed by the payment made by the Applicant to the Defendant directly – Three Million, Six Hundred and Fifty Thousand Naira (₦3, 650,000.00). The Applicant talked about the ownership of the Plot, the Defendant is in violation of Allocation because of failure to fulfill the Contract Agreement. These are two (2) different issues. Besides, this Court, from all indication, can determine the issue of the said Revocation based on the failure or breach of the condition of the Agreement without the presence of the Applicant. So this Court holds. The Revocation is on House 28.

Again, the Agreement attached is between Core Earth Limited and the Applicant. See EXH 4 attached by the Applicant. There is no Agreement between the Plaintiff – Ethel Properties Development Company Limited and the

Applicant/Party seeking to be joined – Segun Samuel Johnson Fashola.

There is therefore no privity of contract as such directly between the Plaintiff and the Applicant/Party seeking to be joined per se as far as the cause of action and claim of the Plaintiff in this Suit is concerned. Therefore there is no point joining the Applicant as a party. If the Applicant feels he has a cause of action against the Plaintiff, his Counsel should advise him on the way to go about it.

All in all, the application is lacks merit and the Joinder application/action fails and the said application is hereby DISMISSED.

Parties remain as they are. Court to go on with the Hearing.

This is the Ruling of this Court.

Delivered today the ___ day of _____ 2022 by me.

K.N. OGBONNAYA
HON. JUDGE