

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT JABI, ABUJA**

THIS TUESDAY, THE 21ST DAY OF FEBRUARY, 2023.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

**SUIT NO: FCT/HC/CV/019/2022
MOTION NO: M/5378/2022**

BETWEEN:

**BAKARE BOLAJI
(TRADING UNDER THE NAME AND STYLE OF
BAKARE BOLAJI & ASSOCIATES)** } **CLAIMANT/RESPONDENT**

AND

**1. HAJIA HAJARA ADEOLA
2. MIKASA LIMITED** } **.....DEFENDANTS/APPLICANTS**

RULING

By a motion on notice dated 11th May, 2022, and filed same date in the court's Registry, the Defendants/ Applicants pray for the following Reliefs:

1. An order of this Honourable Court striking off the name of the 1st Defendant in this suit.

The grounds upon which the application is made as streamlined on the motion paper are as follows:

1. Throughout the entire pleading no mention was made of any grievance against the 1st Defendant which entitles the Claimant to initiate this action against the 1st Defendant in her personal capacity and name.

2. An officer of a company cannot be sued alongside a company merely because she acted on behalf of the Company or because she is perceived to be the alter ego of the Company.

In support of the application is a 7 paragraphs affidavit with a written address filed in support. In the address, one issue was raised as arising for determination:

“Whether the 1st Defendant can be sued in this action merely because the 1st Defendant is perceived to be an officer in the 2nd Defendant’s company?”

The submissions on the above issue forms part of the Record of Court. I will briefly highlight the summary of the submissions made. The essence of the submissions made is that the 1st Defendant is not a necessary party in this case as the case can be effectually and completely determined without the 1st Defendant. It was contended that the fact that 1st Defendant is the Managing Director (M.D) of the 2nd Defendant does not without more make her a necessary party as the 2nd Defendant is a distinct and separate corporate personality from the M.D who cannot be sued personally for the acts of 2nd Defendant. It was further contended that in the entirety of the pleadings of claimant, no grievance is linked against 1st Defendant. The cases of **A.C.B Plc V. Nwaigwe (2001)1 N.W.L.R (pt.694)205; Salomon V. Salomon & Co (1897)AC 22 at 51; Marina Nominees Ltd V. F.B.I.R (1986)N.W.L.R (pt.20)48** were referred to among a host of other cases.

At the hearing, counsel to the Defendant relied on the contents of the supporting affidavit and adopted the submissions in the written address in praying that the court grant the application and strike out the name of 1st Defendant.

In opposition, the Claimant/Respondent filed a 5 paragraphs counter-affidavit with a very brief written address in which one issue was raised as arising for determination:

“Whether the 1st Defendant is a necessary party to this action?”

The brief submissions made is simply to the effect that the 1st Defendant is closely connected to this suit as the mind and *alter-ego* of the 2nd Defendant and thus a necessary party whose presence is material for the effectual and complete determination of the grievance of Claimant and who will also be bound by the decision of the court. The cases of **Azubuikwe V. P.D.P & Ors (2014)LPELR-22258(SC); Okonta V. Philips (2010)LPELR-1373(SC).**

At the hearing, counsel to the Claimant/Respondent equally relied on the paragraphs of the counter affidavit and adopted the submissions in the written address in praying the court to dismiss the application.

I have given an insightful consideration to the processes filed on both sides of the aisle and the oral adumbration made by respective learned counsel. The simple issue to be resolved is whether the 1st Defendant joined to this action is a necessary party without whose presence this case cannot be effectively and completely dealt with or determined?

It is an issue to be resolved in my opinion on settled principles. It is settled principle of general application that a necessary party to a proceedings is a party whose presence and participation in the proceedings is necessary or essential for the effective and complete determination of the claim before the court. See **In-Re Mogaji (1986) 1 N.W.L.R (pt.19) 579**.

As a logical corollary, a necessary party is a party who will be affected by the decision of a court. His right will be affected either positively or negatively by the outcome of the case. A court of law qua Justice will certainly not make an order or give a Judgment that will affect the interest or right of a party that is not before it. And the only reason which makes it necessary to make a person a party to an action is that he should be bound by the outcome of the matter. There must be a question in the action which cannot be effectually and completely settled unless he is a party. See **Green V Green (2001) 45 WRN 90; Tafida V Bafarawa&ors (1999) 4 N.W.L.R (pt.597) 70 at 83**.

Having provided the above legal template, let us now look at the claim of Plaintiff to determine whether the 1st Defendant is such a necessary party. I have here carefully read and scrutinised the 18 paragraph statement of claim. The case or grievance made out is that the Defendants appointed the Claimant as a commissioned agent to market and sell a plot of land situate at Plot 21 Cadastral Zone C17 Area 11, Abuja, a mandate he claimed he carried out which culminated in the Plot been sold but that the Defendants reneged from the agreement by refusing to pay him his agency fees as agreed.

Now on the pleadings and the documents frontloaded, and without going into any unnecessary details, this been only an interlocutory application, it is clear that the

appointment of Claimant as an agent for purposes of the sale was made by **2nd Defendant**, described by Claimant in paragraph 2 of the Statement of claim as a **“private limited liability company duly registered in accordance with the provisions of the Companies and Allied Matters Act.”**

It is clear from the other materials also attached by Claimant, that all the offers for the sale made by Claimant and actions he allegedly took were for and on behalf of **Mikasa Ltd**, the **2nd Defendant**.

I have perused the claim and documents and nowhere was any precise and streamlined allegation or grievance made against 1st Defendant. Even the letter of authority dated 26th May, 2016 appointing the Claimant as agent which forms the foundation of the case of Claimant as stated in paragraph 3 of his claim does not show the name of 1st Defendant on it. Again no where did her name appear in any of the other letters frontloaded with the originating process.

The 1st Defendant in paragraph 2 of the Statement of Claim is described as **“Managing Director and Chief Executive of the 2nd Defendant, a Private Limited Liability Company duly registered in accordance with the provisions of the Companies and Allied Matters Act.”**

The above averment by the Claimant recognizes that the 2nd Defendant is a limited liability company duly registered. If that is the position, and on that basis, it follows that the 2nd Defendant is a distinct entity different from the 1st Defendant.

It is settled principle of general application that once a company such as 2nd Defendant is incorporated, it becomes a separate person from the individuals who are its members. It has capacity to enjoy legal rights and is subjected to legal duties which do not coincide with that of its members. Such a company is said to have legal personality and is always referred to as an artificial person. Consequently, it can sue and be sued in its own name. It may own property in its own right, and its assets, liabilities, rights and obligations are distinct from that of its members. See **New Res’ Inc Ltd V. Oranusi (2011)2 N.W.L.R (pt.1230)102.**

In the circumstances, if all the **materials** situate the relationship was between Claimant and 2nd Defendant; the Claimant himself recognizes that 2nd Defendant is a registered limited liability company, then it is difficult to situate both the factual and legal basis for the joinder of 1st Defendant on the basis of only the fact

that she is the “**Managing Director and Chief Executive Officer**” and no more as pleaded in paragraph 2 of the claim. In law, the principle of corporate personality enures to the benefit of 1st Defendant and generally, she cannot be sued personally for the acts of 2nd Defendant. See **Marina Nominees Ltd V. F.B.I.R(supra)**.

As stated earlier and at the risk of sounding prolix, apart from this description of 1st Defendant as the Managing Director and CEO, no clear grievance was defined against her and indeed nothing was situated in the claim showing that if she is not made a party, the question to be settled cannot be effectually and completely determined. There is really no legal basis to simply join a party to an action involving a registered company on the simple basis that he is a director, shareholder or member of a company.

I note that in the address of Claimant/Respondent, the argument was made that the 1st Defendant is “**closely connected to this suit**” and that she is the “**mind and alter ego of 2nd Defendant**” and “**therefore a necessary party**” but no where was this indicated or stated in the statement of claim as already demonstrated. The submissions of counsel however beautifully articulated in an address is no substitute for the pleadings in this case and the court cannot go outside the confines of the facts averred in the pleadings in determining the question of whether a party is a necessary party. The pleadings obviously defines the facts and issues in dispute and the resolution of the issue presented by this objection must be predicated only on it and not any extraneous document or presentation.

The bottom line here is that no where in the statement of claim was any case streamlined that 1st Defendant is closely connected to the suit and is the mind and *alter-ego* of 2nd Defendant. As stated above, the case situates a relationship between Claimant and 2nd Defendant. The case also situates the assignment given by 2nd Defendant to Claimant and the terms. The case also situates the alleged wrongful act of 2nd Defendant and the damage caused by the alleged failure to meet to commitments of the agreement.

In the context of these precisely defined dispute as set out in the statement of claim, I am in no doubt that the 1st Defendant is certainly not a party whose presence is necessary for the effective and complete adjudication of the issues raised by the present enquiry. See **Anyanwoko V. Okoye (2010)5 N.W.L.R**

(pt.1188)497 at 519-520 H-B; Ajayi V. Jolayemi (2001)10 N.W.L.R (pt.722)516 and O.K Contact Point V. Progress Bank (1999)5 N.W.L.R (pt.604)631 at 634.

The company, 2nd Defendant that engaged the services of the Claimant should be the body or entity to be bound by the decision to be ultimately arrived at having fully heard the dispute or grievance presented on the merit.

On the whole, the facts clearly streamlined in the statement of claim does not denote that the 1st Defendant is a necessary party in this case. The question presented by the present grievance can, without any doubt, be completely and effectually determined without the presence of 1st Defendant.

The extant application to have the name of 1st Defendant struck out on the basis of the materials before court has considerable merit and is granted. The name of 1st Defendant is hereby accordingly struck out from this action.

The Claimant should amend the originating processes to reflect the proper parties.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. L.C. Ekene Okwunma, Esq., with Precious C. Idems for the Claimant/Respondent**
- 2. C.N. Ayo with Hajara Shehu for the Defendants/Applicants**