

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON WEDNESDAY THE 25TH DAY OF JANUARY, 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO -ADEBIYI
SUIT NO. CV/2761/2022
MOTION NO: M/785/2022

ADMIRAL JUBRILA AYINLA (RTD) -----CLAIMANT/RESPONDENT

AND

1. RAVIP. ASWANI
2. ASWANI NETWORKS LIMITED -----DEFENDANTS/RESPONDENT

AND

1. CHAGUARAMAS BAY PROPERTIES----- PARTIES SOUGHT TO BE
NIG. LTD JOINED AS 3RD DEFENDANT
2. PUBLIC RESEARCH STRATEGIES LTD -- PARTIES SOUGHT TO BE
JOINED AS 4TH DEFENDANT

RULING

The Defendants/Applicants by a motion on notice dated 27/10/2022 with Motion No. M/785/2022 prays the Court for the following;

1. An order of this Honourable Court joining Chaguaramas Bay Properties Nig. Ltd and Public Research Strategies Ltd as 3rd and 4th defendants respectively.
2. And for such order or other orders as this Honourable Court may deem fit to make in the circumstance.

Learned Counsel to the Defendants/Applicants relied on the 8 paragraph Affidavit filed in support of the application, wherein the deponent averred that together with the exhibits attached to the joint statement of defence and counter claim filed by the defendants/Applicants, the names of Chaguaramas Bay Properties Nig. Ltd and Public Research Strategies Ltd two companies registered in Nigeria are mentioned clearly as playing important roles in the subject matter of this suit. That their witness statement on oath presents evidence of the said roleplayed by the two companies. That there are some issues in the substantive matter that can only be resolved if the said two companies are joined as defendants in this matter. That the Claimant/Respondent will not be prejudiced.

Attached to this application is a written address wherein learned counsel raised a sole issue for determination to wit;

“Whether the Defendants/Applicants should be granted the reliefs sought in this application”.

Counsel submitted that it is a fundamental principle of law that all parties who will be affected in one way or the other by the outcome of a suit must be made party to the suit. Counsel also submitted that it is very necessary to join Chaguaramas Bay Properties Nig. Ltd and Public Research Strategies Ltd as defendants because their legal rights will be affected by the determination of this action and the reliefs sought by the defendants in their counter claim. Counsel further submitted that judicial discretion is a sacred power of the court which the Court should employ judicially and judiciously in order to arrive at a just decision and urged the court to resolve the sole issue for determination in this application in favour of the Defendants/Applicants. Counsel relied on **Order 13 Rule 4 and Order 43 Rule 1 of the FCT High Court (Civil Procedure) Rules 2018; Azubuike v. PDP & Ors (2014) LPELR-22258 (SC) and Ajunwa v. S.P.D.C.N Ltd (2011) 18 NWLR (Pt. 1279) 797 SC** amongst others.

The Claimant filed a 13 paragraph counter affidavit deposed to by Assumpta Akabe, a legal practitioner in the law firm of Imuekemhe Adams & Co. counsel to the Claimant in opposition to the application for joinder. The deponent states that the Claimant agrees with the defendant that Public Research Strategies Ltd (party sought to be joined as 4th Defendant) be joined as a defendant in this suit. That the Claimant is the managing director, CEO/Chairman of Chaguaramas Bay Properties Nig. Ltd. That the party sought to be joined as 3rd defendant being the entity in whose name plot No. 1255 Barada Close, Ministers' Hill Abuja where house 8A and 8b are situated cannot be joined as a defendant in the Claimant's suit as the interest of the Claimant and Chaguaramas Bay Properties Nig. Ltd are the same. That the interest of the Claimant and the party sought to be joined as the 3rd defendant are coterminous and cannot be on different sides of this suit. That the justice of the matter will be better served by joining Chaguaramas Bay Properties Nig. Ltd as Claimant and not as defendant in this suit that the defendants will not be prejudiced.

Attached to the counter affidavit are three (3) exhibits and a written address where Learned counsel submitted that the discretion to order a joinder must be exercised judicially and judiciously. Counsel submitted

that joining the party that sought to be joined as 3rd defendant as a defendant in this suit will not only occasion injustice but will complicate the matter as the Claimant cannot bring an action against himself or his own company. That joining Chaguaramas Bay Properties Nig. Ltd as 3rd defendant in this suit will amount to asking the Claimant to defend himself against himself which is not practicable in law. Counsel cited **Abah v. Monday (2015) All NWLR (Pt. 795) 268 S.C.**; **Kanu v. Obeta (2015) ALL NWLR (Pt. 810) 1173**; **Re-Mogaji(1986) 1 NWLR (Pt 19) 759** and **Green v. Green (1987) 3 NWLR (Pt. 61) 480**.

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

“Whether the Applicant is entitled to the reliefs sought”

The reliefs claimed against the Defendants in the substantive Suit are:

1. The sum of \$199,996.24. (One Hundred and Ninety-Nine Thousand, Nine Hundred and Ninety-Six Dollar Twenty-Four cents) outstanding rent.
2. N2,000,000.00 (Two Million Naira) only as cost.
3. The sum of N5,000,000.00 (Five Million Naira) only as damages for breach of contract.
4. 10% interest on judgement sum until final liquidation.
5. Any other order(s) as the Honourable court may deem fit to make in the circumstance.

By Order 13 Rule 4 of the High Court of the FCT (Civil Procedure) Rules, 2018, more than one person may be joined as Defendants against whom the right to any relief is alleged to exist, whether jointly or severally. It is trite Law that the person to be joined to an action must be someone whose presence as a party is necessary for the Court to effectively and completely adjudicate upon and settle all questions brought before it. The rationale for the rule is to prevent multiplicity of action arising from the same transaction. Thus, in **KALU V. UZOR (2004) 12 NWLR (PT.886) 1 at 33** the Supreme Court re-echoed the Law on joinder of parties as follows:

“Necessary parties are those who are not only interested in the subject matter of the proceedings but also who in their absence, the proceedings could not be fairly dealt with. In other words, the question to be settled in the action between the existing parties must be a question which cannot be properly settled, unless they are parties to the action instituted by the Plaintiff.”

Parties are in agreement in their witness depositions to join the party sought to be joined as the 4th defendant. However, the Claimant is objecting to the joinder of the party sought to be joined as the 3rd defendant on the grounds that the interest of the Claimant and that of the party sought to be joined as the 3rd defendant (Chaguaramas Bay Properties Nig. Ltd) are the same in that the Claimant is the Managing Director, CEO/Chairman of the said party. Claimant then sought that party sought to be joined as the 3rd defendant (Chaguaramas Bay Properties Nig. Ltd) be joined as 2nd Claimant because the interest of the party sought to be joined as 3rd defendant and that of the Claimant are coterminous and cannot be on different side of this suit. These averments by the Claimant were not denied by the Defendants/Applicant. The Defendants/Applicant did not file a further affidavit or reply on points of law countering the Claimant's averments. Hence it amounts to admission to the facts stated in the counter affidavit. The exhibits (certificate of incorporation of Chaguaramas Bay Properties Nig. Ltd and particulars of directors of Chaguaramas Bay Properties Nig. Ltd) attached to the counter affidavit made it abundantly clear that the Claimant is a director with the party sought to be joined as the 3rd Defendant. Thereby leading evidence in proof of his averments.

For a person to be joined as a party in an action, it must be shown that the person is entitled to some share/interest in the subject matter or by claim to such share/interest or is likely to be affected by the result of the actions or is a necessary party and or it is just and convenient to join him, as provided in **MAINASARA V. LAWAL & ANOR (2013) LPELR-22328 (CA)**. The purpose of joinder of parties in an action is to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the cause or matter. The overriding considerations as laid down in **SHENSHUI CONSTRUCTION CO. (NIG) LTD & ANOR V. INTERCONTINENTAL BANK PLC & ORS (2015) LPELR-40893(CA)** are:

- 1. Whether the issues that call for determination cannot be effectually and completely settled unless the party sought to be joined is made a party.*
- 2. That his interest will be irreparably prejudiced if he is not made a party.*

The Supreme Court in **AKPAMGBO-OKADIGBO & ORS V. CHIDI & ORS (2015) LPELR-24561 (SC)** laid down the following considerations in granting joinder of parties;

"It is settled law that a court may, on application, or suo motu order the joinder of a party where:

(i) The party is aggrieved or likely to be aggrieved by the result of the litigation to the extent that he will be directly, legally or financially affected by the result of the litigation.

(ii) To avoid multiplicity of suits arising from the same subject matter or res.

(iii) To enable the court fully, completely and effectually deal with the Suit in order to frustrate or stop a possible future litigation on the subject matter;

(iv) To ensure that the principles of fair hearing under section 36 of the 1999 Constitution as amended and the rules of natural justice particularly the rules of audi alteram partem (hear both sides) are not breached

(v) To avoid loss of jurisdiction by the fact of non-joinder.

The Defendants/Applicants has by their affidavit in support of the application in Paragraph 5 (a – e), stated facts they rely on that should assuage this court to grant the application, summarily, that from their joint statement of defence and counterclaim filed the names of Chaguaramas Bay Properties Nig. Ltd and Public Research Strategies Ltd are mentioned as playing important roles in the subject matter of the Claimant/Respondent's action and there are some issues in the pending matter that can only be resolved if the said parties sought to be joined are joined in this matter. Meanwhile Claimant by their counter affidavit have attached exhibits mainly the documents of incorporation of Chaguaramas Bay Properties Nig. Ltd to prove that Claimant is the MD & CEO of the said company which defendant seeks to join as co-defendant. This piece of evidence is uncontroverted and unchallenged. Claimant further stated in their counter affidavit that the said company be rather joined as co-claimant.

I have carefully perused the said affidavit along with the counter affidavit and find that it is sufficient to cause this court to exercise that discretion in joining the parties sought to be joined as 2nd Claimant and 3rd defendant. It is worthy of note, that, it is trite law that party may be joined, if found necessary to be bound by the outcome of the court's

decision, as held in **Green Vs Green (2001) ALL FWLR (PT. 79) 817 Para E –G.**

The Supreme Court in **B. B. APUGO & SONS LTD V. OHMB (2016) LPELR-40598 (SC)** held that;

"It is settled law that a necessary party to a suit is one who is not only interested in the dispute but one whose presence is essential for the effective and complete determination of the claim before the Court".

The parties sought to be joined in my view are necessary parties for the just determination of this suit and the Claimant has not objected to their being joined rather that the party sought to be joined as the 3rd defendant should be joined as co-claimant. From all of these, the court finds sufficient reasons to warrant the exercise of its discretion and join the parties. Accordingly, it is hereby ordered as follows:-

- (1) Chaguaramas Bay Properties Nig. Ltd is hereby joined as 2nd Claimant while Public Research Strategies Ltd is joined as 3rd Defendant.
- (2) All Parties are hereby directed to file fresh processes to reflect the joinder and serve all processes accordingly.

Parties: Absent

Appearances: Adams O. Imuekemhe appearing with Clare Alikah for the Claimant. No appearance for the defendants.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
25TH JANUARY, 2023**