IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 31ST DAY OF JANUARY, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/2152/2022

MOTION NO.: FCT/HC/M/223/2022

BETWEEN:

MICHAEL UCHE UKPONU, ESQ. — **CLAIMANT/RESPONDENT**

AND

1. **AUTO CLINIC CENTRE LIMITED**
2. **OKWESIRI NATHANIEL**
3. **WALE MESE ISAAC**

— **DEFENDANTS/APPLICANTS**

RULING

This Ruling is on the application of the Defendants/Applicants praying this Court to strike out the name of the 2nd and 3rd Defendants/Applicants from this suit.

By a Motion on Notice with Motion Number FCT/HC/M/223/2022 dated and filed on the 17th of October, 2022, the Defendants/Applicants brought this application seeking the following reliefs:-

1. *An Order striking out the names of the 2nd and 3rd Defendants from this suit.*

2. *And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances of this case.*

The Motion on Notice is supported by a 7-paragraph affidavit deposed to by one Wale Mese Isaac, who described himself therein as the Manager of the 1st Defendant/Applicant. He is also the 3rd Defendant/Applicant in this suit. A Written Address also accompanies the Motion on Notice, pursuant to the provisions of the Rules of this Court.

In the affidavit, the deponent averred that the contract for repair of the Claimant/Respondent's vehicle was entered into by the Claimant/Respondent and the 1st Defendant/Applicant, which is body corporate distinct from its shareholders, directors or officers. The deponent added that including the 2nd and the 3rd Defendants/Applicants to the suit was superfluous.

In the Written Address, learned Counsel for the Defendants/Applicants formulated two issues for determination. These Issues are: "*(1) Whether the 2nd and 3rd Defendants can be sued as an agent of a known principal; and (2) Whether this suit can be determined without the 2nd and 3rd Defendants' names as parties*."

In his submissions on the first issue, learned Counsel for the Defendants/Applicants referred this Court to paragraphs 2, 3, 4, 5, 6 and 7 and insisted that the Claimant/Respondent intended to deal with the 1st Defendant/Applicant, and no other, in respect of his car. Citing the case of ***Uwa v. Akpabio (2016) 12 WRN 59 at 72 paras 40 – 45 Ratio 5***, learned Counsel iterated that the agent of a known principal cannot be sued for acts done in their capacity as such. He urged the Court to resolve this issue in favour of the Defendants/Applicants by holding that the Claimant does not have a cause of action against the 2nd and 3rd Defendants/Applicants.

In his arguments on the second issue, learned Counsel for the Defendants/Applicants contended that the 2nd and 3rd Defendants/Applicants were not necessary parties to the suit to justify their joinder to the suit of the Claimant/Respondent. He added that the 2nd and 3rd Defendants/Applicants were mere servants of the 1st Defendant/Applicant which is a legal entity distinct from its directors, shareholders and servants and, therefore, ought not to have been joined as parties to the suit. He cited ***Oshe v. Foreign Finance Corporation (1991) 4 NWLR (Pt. 184) 188*** in this regard. In conclusion, he urged the Court to strike out the names of the 2nd and 3rd Defendants as parties to this suit.

The Claimant/Respondent, on the 4th of November, 2022, filed a response to the application of the Defendants/Applicants. In the 11-paragraph Counter-Affidavit deposed to by one Lawrenta Iboi, Esq., the deponent deposed on behalf of the Claimant/Respondent that the 2nd Defendant/Applicant was the Managing Director of the 1st Defendant/Applicant and, therefore, its alter-ego, which fact made him a necessary party to the suit. She further stated that it was the acts and omissions of the 2nd and 3rd Defendants/Applicants that culminated in the events that led to this suit. She added that the 2nd and 3rd Defendants/Applicants executed the Agreement between the Claimant/Respondent and the 1st Defendant/Applicant. She averred that these facts made the 2nd and 3rd Defendants necessary parties to this suit.

In the Written Address which accompanies the Counter-Affidavit, learned Counsel for the Claimant/Respondent generated a sole issue for determination, to wit: "*Whether the Defendants/Applicants are entitled to the reliefs sought in their affidavit*." Arguing this sole issue, learned Counsel maintained that an agent, or servant, can be held jointly liable with a known principal where the facts revolve round tortious liability. Relying heavily on the case of ***Access Bank Plc v. Mann (2021) 13 NWLR (Pt. 1792) 117, para G***, learned Counsel for the Claimant/Respondent distilled the requirements to include the

negligence of the servant, the fact that he was the servant of the master and the fact that he acted in the course of his duty. Insisting that these elements are present in the facts of the suit of the Claimant/Respondent, learned Counsel for the Claimant/Respondent urged this Court to discountenance the application and dismiss same for lacking in merit.

Parties argued their respective positions in relation to the Motion on Notice on the 17th of November, 2022, and, thereupon, this Court adjourned this suit for Ruling on the application.

In resolving this dispute, this Court, after due consideration of the facts and legal arguments on the opposite bars of the spectrum of this application, believes that this dispute can be resolved upon the determination of this sole issue: "***Whether the joinder of the 2nd and 3rd Defendants to this suit is not proper in view of the facts and circumstances of this case?***"

The *terminus a quo* in the determination of this issue is a necessary excursion into the realm of jurisprudential hermeneutics *vis-à-vis* the concept of parties to a suit. In the *locus classicus* of ***Green v. Green (1987) LPELR-1338 (SC) at pages 16 – 17, para F,*** the Supreme Court, speaking through the mouth of the

erudite Oputa, JSC (God bless his soul) explained the different types of parties in the following manner:-

> "***This now leads on to the consideration of the difference between 'proper parties', 'desirable parties', and 'necessary parties'. Proper parties are those who, though not interested in the Plaintiff's claim, are made parties for some good reasons, e.g. where an action is brought to rescind a contract, any person is a proper party to it who was active or concurring in the matters which gave the plaintiff the right to rescind. Desirable parties are those who have an interest or who may be affected by the result. 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.***"

This timeless dictum has been applied in a long line of subsequent cases such as ***Iyimoga v. Gov. Plateau State (1994) 8 NWLR (Pt. 360) 73 C.A. at 95, para F; Ehidimhen v. Musa (2000) 8 NWLR (Pt. 669) 540; Bob v. Akpan***

(2009) 7 NWLR (Pt. 1087) 449; Chief of Army Staff v. Lawal (2012) 10 NWLR (Pt. 1307) 62 C.A. at 74, paras C – D; N.B.A. v. Kehinde (2017) 11 NWLR (Pt. 1576) 225 C.A. at 243, paras C – F; P. P. (Nig.) Ltd. v. Olaghere (2019) 2 NWLR (Pt. 1657) 541 C.A. at 561, paras E – G; Adesina v. Air France (2022) 8 NWLR (Pt. 1833) 523 S.C. at 552, paras F – G; and P.D.P. v. Edede (2022) 11 NWLR (Pt. 1840) 55 C.A. at 97, para A among others.

In view of this judicial elucidations, therefore, the question therefore is whether the 2nd and 3rd Defendants should have been joined in this suit as parties. The Defendants/Applicants have argued strenuously that the 2nd and 3rd Defendants should not have been joined as parties because of the reasons they adduced in their supporting Affidavit and Written Address. These reasons are the doctrine of liability of a disclosed principal and the doctrine of corporate personality. On the other hand, the Claimant/Respondent has contended most vigorously that the 2nd and 3rd Defendants are made parties for good reasons, as, according to him, they played integral roles in the events that led to this suit; and, in any case, the servants of a disclosed principal may still be held liable along with the disclosed principal in certain circumstances.

I have considered these arguments in their entirety. The Defendants/Applicants have invited the Court to examine paragraphs 2, 3, 4, 5, 6 and 7 of the

Claimant/Respondent's Statement of Claim in order to arrive at a conclusion that the Claimant/Respondent had always wanted to deal with the 1st Defendant/Applicant. This Court, indeed, under its inherent jurisdiction, has the powers to consider all the processes present in the case file in order to arrive at a jurisprudentially sound outcome. It is in pursuit of this inherent powers that I examine the records of this Court, particularly, the Writ of Summons and find that the Claimant/Respondent seeks declaratory reliefs that border on the tort of negligence. It is my considered view, and I so hold, that the Defendants/Applicants stated the general principle of the law. The Claimant has argued that the tortious liability, especially, the tort of negligence is one of the exceptions to the general rule that the agent of a disclosed principal cannot be held liable for. I have reflected on the arguments of Counsel and I believe that discussing the issue of liability of the 2nd and 3rd Defendants and determining whether the 2nd and 3rd Defendants acted as agents of the 1st Defendants or as servants or officers of the 1st Defendant are matters that most suitable to be determined at the substantive stage. In view of the foregoing, therefore, I strongly believe, and do hold, that it will be premature at this stage to strike out the names of the 2nd and 3rd Defendants from this suit.

The second limb of the Defendants/Applicants' arguments relates to the doctrine of corporate personality. I agree with them that a company is an entity quite distinct from its shareholders, directors, members and officials. As a juristic person, however, it acts through human agents. See the cases of ***MTN Nigeria Communications Ltd. v. Mr. Akinyemi Aluko & Anor (2013) LPELR-20473(CA) at 33 – 34, paras F – B; Bulet International Nigeria Limited & Anor v. Dr. Mrs. Omonike Olaniyi & Anor (2017) LPELR-42475(SC) at 28 – 29, paras F – D; Adeyemi v. Lan & Baker (Nig.) Ltd. (2000) 7 NWLR (Pt. 663) 33 C.A. P.51, paras. A – B; Ekene Peter Okoye v. The State (2019) LPELR-48860 (CA) at pp. 7-18, paras. E-A*** and ***Eastern Metals Limited v. Federal Republic Of Nigeria (2019) LPELR-50840(CA) at 35-36, paras. A-C*** among other cases to the same effect. See also the provisions of sections 87, 88, 89 and 90 of the Companies and Allied Matters Act, 2020.

Fixing liability at this stage, however, whether on the company alone based on the principle of corporate personality or pursuant to the doctrine of vicarious liability is premature. This is because the question of whether the 2nd and 3rd Defendants acted outside the scope of their authority to exempt the 1st Defendant from liability and the problem of determining the liability of the 2nd and 3rd Defendants in order to fix the 1st Defendant with vicarious liability are

matters that require this Court to take evidence and evaluate same. They cannot, therefore, be determined at this interlocutory stage.

It is important to note the provisions of Order 13 Rule 4 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018. The said Rule provides thus:-

> "***Any person may be joined as a Defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. Judgment may be give against one or more of the Defendants as may be found to be liable, according to their respective liabilities, without any amendment.***"

In ***Green v. Green (1987), supra***, the Court defines proper parties as "***those who, though not interested in the Plaintiff's claim, are made parties for some good reasons***". This definition was followed in ***Chief of Army Staff v. Lawal (2012), supra***, where the Court held that "***All persons who may be affected by an order of court in respect of any matter before it, should be made parties in a suit whether as proper parties, desirable parties or necessary parties***". Because the issue of proper parties is intrinsically connected with the subject matter of any action and, by extension, the

jurisdiction of the Court. It is for this reason the Courts take a dim view of suits where the proper parties are not before it. See **Adesina v. Air France (2022), supra** where the Court held that "***Only proper parties can invoke the jurisdiction of the court. So, for an action to succeed, the parties to it must be shown to be the proper parties to whom rights and obligations arising from the cause of action attach. In other words, it is only a proper party that can sue and be sued, and it is only that party that can be bound by the outcome of the proceedings. It is the facts of the case that determines the proper parties to the suit.***" Similarly, the Court succinctly held in ***P.D.P. v. Edede (2022), supra*** that "***Issues of cause of action, locus standi and proper parties to an action are interrelated to each other***."

It is for the foregoing reasons, therefore, that I find it inevitable arriving at the inexorable conclusion that it will be premature to strike out the names of the 2nd and 3rd Defendants from this suit. They are proper parties and are joined for some good reasons. The 2nd Defendant/Applicant is the Chief Executive Officer of the 1st Defendant and hence, its alter-ego. The 3rd Defendant/Applicant is the Manager of the 1st Defendant. I do not consider their joinder as a misjoinder; it is not a misjoinder. I so hold. I have stated severally in the course of this Ruling, and do hereby state it for the umpteenth time that it will be premature to strike

out the names of the 2nd and 3rd Defendants/Applicants as parties in this suit. The sole issue I have formulated in this Ruling is thus resolved in favour of the Claimant/Respondent. This application hereby fails and is accordingly dismissed.

This is the Ruling of this Honorable Court delivered today, the 31st of January, 2023.

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HON. JUSTICE A. H. MUSA
JUDGE
31/01/2023