

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

THIS WEDNESDAY, THE 26TH DAY OF APRIL, 2023.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

**SUIT NO: CV/43/2017
MOTION NO: M/904/2022**

BETWEEN:

**MR. DANIEL MARKUS APMATOZON
(Suing for himself and on Behalf of
Kalawa Jankaro family)**

}PLAINTIFF/APPLICANT

AND

JUST UNIQUE BOUTIQUE LIMITED.....DEFENDANT/RESPONDENT

AND

KENNETH AIGBONGUN.....Party sought to be joined as 2nd Defendant

RULING

By a motion on notice dated 2nd November, 2022, the Plaintiff/Applicants seek for the following reliefs:

- 1. AN ORDER of this Honourable Court granting leave to the Plaintiff/Applicant to amend their Writ of Summons, Statement of Claim, Witness Statement on Oath and all other court processes in this suit in terms of the underline in the schedule to the Amendment being sought and attached hereto.**

2. **AN ORDER of this Honourable Court joining Kenenth Aigbogun as 2nd Defendant in this suit.**
3. **If prayer 2 succeeds as being urged, AN ORDER of this Honourable Court re-arranging the Defendants in this case by adding the name of KENNETH AIGBOGUN as 2nd Defendant.**
4. **AN ORDER of this Honourable Court granting leave to the Plaintiff/Applicant to frontload additional documents as contained in the list of documents to be relied upon at the trial of this suit herein attached.**
5. **AND FOR SUCH FURTHER or other orders as the court may deem fit to make in the circumstances.**

The grounds of the application are as follows:

1. **There are additional acts arising in the circumstance of this suit.**
2. **The party sought to be joined as 2nd Defendant is a necessary party in this suit.**
3. **It is expedient to join as Defendant the party sought to be joined as 2nd Defendant**
4. **It is expedient to bring this application for joinder of the party sought to be joined as 2nd Defendant in this suit.**
5. **The Judgment of the Honourable Court in this suit will touch on or affect the interest of the party sought to be joined as Defendant and Plaintiffs respectively in this suit.**

The Application is supported by a 29 paragraphs affidavit with four annexures marked as **Exhibits A1-A4**. A brief written address was filed in compliance with the Rules of Court in which one issue was raised as arising for determination:

“Whether the Applicant has placed sufficient materials before the Honourable Court to warrant the grant of this application?”

Submissions were then made on the above issue which forms part of the Record of Court. The simple point made is that the Applicant has furnished sufficient

materials to allow for the grant of the application for amendment and joinder sought.

At the hearing, counsel for the Applicant relied on the contents of the supporting affidavit and adopted the submissions in the written address in urging the court to grant the application.

In opposition, the Defendant/Respondent filed a counter-affidavit of 21 paragraphs with 4 annexures marked as **Exhibits 1A-1D**. A Brief written address was filed in which one issue was raised as arising for determination:

“Whether the party sought to be joined is a necessary party to this suit.”

Submissions were made on the above issue which forms part of the Record of Court to the effect that the party sought to be joined is not a party whose presence is necessary for the effectual and complete determination of the issues in dispute in this case.

At the hearing, counsel to the Respondent equally relied on the contents of the Counter-affidavit and adopted the submissions in the written address in urging the court to refuse the application.

I have carefully considered the processes filed on both sides of the aisle together with the oral submissions made by counsel. Two principal issues arise:

1. Whether the application seeking to join a party as Defendant should be granted and ;

2. Whether the application for Amendment should equally be granted.

The two issues are matters to be resolved on fairly settled principles. It is clear however that the success of the application for joinder will largely determine or impact the application for amendment as it can be observed that the proposed amendments sought cover essentially matters relating to the joinder.

I start with the application for joinder of one **Kenneth Aigbogun** as **2nd Defendant** to this action.

Now joinder of parties either as plaintiffs or defendants is allowed in our procedural laws. Parties on both sides have referred to several authorities on the point on the record. The principles are thus fairly settled. In **Adefarasin V Dayekh (2007) 11 NWLR (pt.1044) 89** the Court of Appeal enunciated the principles guiding the joinder of parties as follows:

1. is the cause or matter liable to be defeated by non-joinder.
2. is it possible for the court to adjudicate on the cause of action set up by the plaintiff unless the third party is added as a defendant.
3. is the third party a person who ought to have been joined as a defendant.
4. is the third party a person whose presence before the court as defendant will be necessary in order to enable the court effectively and completely adjudicate upon and settle all the questions involved in the cause or matter.

See **Green V Green (1987) 3 NWLR (pt.61) 480, Uka V Kumagba (1974) 1 All NLR (pt.1) 475; and Ugorji V Onwu (1991) 3 NWLR (pt.178) 177.**

Application for joinder is therefore a normal application which the court grant when it has merit.

Now the classification of parties is well established in our civil jurisprudence as follows:

- i. Proper parties
- ii. Desirable parties, and
- iii. Necessary parties.

Proper parties are those who, though not interested in the plaintiffs claim are made parties for some reasons, and desirable parties are those who have an interest or who may be affected by the result. See **Green V Green (1989) 3 NWLR (pt.61) 480; Dapialong V Lalong (2007) 5 NWLR (pt.1026) 199.**

A necessary party to a suit is a party who is not only interested in the subject matter of the proceedings but also a party in whose absence, the proceedings could not be fairly dealt with. In such a situation it becomes almost impossible for the court to effectively and conclusively decide upon and settle all questions arising in the suit in the absence of such a party. See **Biyu V Ibrahim (2006) 8 NWLR (pt.981) 1; BON Ltd V Saleh (1999) 9 NWLR (pt.618) 231**. It follows therefore that a necessary party to an action is one whose presence is necessary for the effectual and conclusive adjudication of the questions involved in the cause of matter.

It follows that any of the above mentioned parties may be joined to an action dependent on the facts and justice of the case. A primary motivating factor, which is usually lost sight of is the pressing need to avoid multiplicity of actions and to save litigation time in the process. It is also one way to avoid the abuse of court process. See **Ogolo V Fubura (2003) 11 NWLR (pt.831) 231**.

Let us situate from the materials whether there is really any basis for the joinder sought. The Court here is at liberty to make reference to the case file before it and make use of any document and relevant evidence. See **Famadoh V. Aboro (1991)9 NWLR (pt.214)210 at 22G-E**

In this case, the Plaintiff commenced this action against the Defendant claiming declaration of title over a certain plot of land known as Plot 1849 Cadastral Zone C12; injunctive reliefs, trespass and damages for trespass among other Reliefs. In Relief 2, the Plaintiff specifically sought for a declaration **“that the encroachment onto the Plaintiff’s land by the Defendant, a private entity for their private purpose to build shopping mall/plaza is not acquisition for purposes of overriding public interest or public purpose under the law as such unlawful, illegal, unjustifiable and unconstitutional therefore null and void.”**

In paragraphs 2, 3 and 4 of the Claim the Plaintiff pleaded as follows:

2 The Plaintiff is suing for himself and on behalf of the entire members of Kalawa Jankaro family.

- 3 **The Defendant claimed to be a Corporate private organization registered with the Corporate Affairs Commission in Nigeria who claimed to have been allocated plot of land that falls on the Plaintiff's farmland.**
- 4 **The Defendant based her claim on an Offer of Statutory Right of Occupancy dated 20th February, 2010 with File No: MISC 103408 for commercial purpose to build Shopping Mall/Plaza on the Plaintiff's farmland redesigned and known as Plot No 1849, Cadastral Zone C12 of Kabusa District. The said letter of offer is hereby pleaded.**

The above averments are clear. The Plaintiff here states that the Defendant, a limited company registered with Corporate Affairs Commission claims that the **"disputed land"** which Plaintiff claims is their **"farmland"** was allocated to them by an offer of statutory right of occupancy dated 20th February, 2010 with file No: MISC 103408. The said offer of statutory right of occupancy to Plot 1849 to Defendant was attached as **Exhibit 1A** to the counter-affidavit of Defendant.

The central issue on the pleadings which has defined or streamlined the facts in dispute clearly has to do with ownership of this disputed plot 1849 as between **Plaintiff and Defendant**. No more.

It is clear that the Plaintiff recognize that the party it has a claim or grievance against is the **Defendant company** which lay claim to the disputed plot 1849 and which it pleaded was registered at the Corporate Affairs Commission.

If that is the position, and on that basis, it follows that Defendant is obviously and clearly a distinct body different from the party seeking to be joined who the Plaintiff described in paragraph 6 of the affidavit in support of this application as a **"principal officer who has been acting for and on behalf of Defendant and is interested in the land."**

The Defendant is obviously a **registered company**, recognized by Plaintiff as such, therefore being a legal juristic person can only act through its staff, agent or servant as the party seeking to be joined has done ostensibly in this case on behalf of Defendant but doing so does not alter his status as a servant or staff or elevate him to become the company itself.

It is settled principle of general application that once a company such as 1st 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.**

At the risk of sounding prolix, the fact therefore that the party sought to be joined by Plaintiff acted for Defendant as contended does not make him a necessary party in the context of the clear legal parameters situating joinder.

The contention by Plaintiff that the party they seek to join is interested in the disputed land or Plot No: 1849 clearly will not fly because their case at all times is against Defendant who on the materials was allegedly granted statutory right of occupancy. The case of Plaintiff is essentially that the allocation to Defendant was not in accordance with the law. It appears to me a grave contradiction in terms in the light of this clear grievance and the allocation to Defendant to talk about another interest of a third party on the disputed land which cannot be situated or located in the pleadings which streamlines the issues/facts in dispute.

The bottom line is that there is absolutely no defined grievance or claim against the party seeking to be joined showing that if he is not made a party, the question to be settled in this case cannot be effectually and completely determined. The question of determination of title under the land tenure legal regime in the FCT is fairly settled. The Plaintiff should simply come and prove its case within settled legal threshold against the Defendant, which claims ownership of the disputed plot. No more. There is however no legal or factual basis to seek to join a party to an action simply because he allegedly represented the **Defendant**, a registered limited liability company in meetings or negotiations towards reaching amicable settlement of the case as alleged.

In the context of the dispute set out in the statement of claim, I am in no doubt that the party sought to be joined as 2nd 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.**

Issue 1 is thus resolved against Plaintiff. The question presented by the present grievance, can without any doubt, be completely and effectually determined without the presence of the party seeking to be joined.

This then leads me to the second question of **Amendment**. As stated earlier, the order made with respect to joinder would impact the relief on Amendment.

Now the question of Amendment to the pleadings is generally one to be decided on fairly settled principles. By the clear provisions of the Rules of Court, the court may at any stage of the proceeding allow either party to alter or amend his pleadings in such manner and on such terms as may be just for the purpose of determining the real question in controversy between the parties. See **Adekeye V. Akin-olugbade (1987)3 N.W.L.R (pt 60)214.**

The wide powers which the court may exercise in granting amendments cover amendments sought during, before and after trial of an action before judgment and even after judgment has been reserved. See **Okafor V. Ikeanyi (1979)3-4 SC 99 at 144.** Different considerations and principles determine how the court exercises or grants this indulgence at whatever point the application is brought.

An amendment is therefore nothing but the correction of an error committed in any process, pleading or proceeding which is done either as of course or by consent of parties or upon notice to the court in which the proceeding is pending. **Adekeye V. Akin-Olugbade (supra).**

The primary basis upon which the courts allow an amendment of pleadings is to ensure that a court determines the substance and or justice of the case or grievance that has being brought to court for judicial ventilation and adjudication. The courts have over time therefore always taken the positive and salutary stand or position that however negligent or careless the errors or blunders in the preparation of court processes and we must concede that these happen regularly, the proposed amendment ought to be allowed, if this can be done without injustice to the other side or the adversary.

Now by the schedule of the amendment attached as **Exhibit A3**, it is clear that the failure of the relief on **joinder** impacts in significant ways on the amendments sought. The amendments covered by **paragraphs 1 and 2** in the Statement of Claim, with the refusal of the order of joinder, have now been overtaken by events and not material in the context of the dispute streamlined on the pleadings. Similarly the addition of a new **paragraph 4** of the particulars of claim is equally of no material significance to the question of who has title to the disputed land. The question of title and the declaration of title sought is not determined by admissions but by the quality of credible admissible evidence led in proof of title.

In any event and with respect to this new paragraph 4, the Plaintiff cannot predicate or raise a new claim on a matter already determined by **a court of competent jurisdiction**. The Judgment vide **Exhibit ID** attached to the counter affidavit of Defendant shows a pronouncement by a court of competent jurisdiction situating that the sum of **₦2 Million subject of that Judgment** has been ordered to be refunded by **Plaintiff's lawyer** in this case to the extant Defendant. There is nothing to indicate that the judgment has been challenged or there is an appeal against it and that it has been set aside. It is thus still binding. The Claimant cannot really be talking here of any deposit or payment which is a subject of a **court order of Refund**.

The additional new **paragraphs 34-46** also relate to facts of **alleged settlement** which are immaterial to the critical question of **proof of title of the disputed plot**. Some of the paragraphs again allude to the question of payment of **₦2,000,000** which as stated already is a subject of a judgment of a court of coordinate jurisdiction and cannot be subject of review under any guise in this court.

It is therefore quite clear that the amendments sought here are quite irrelevant and indeed useless in the context of the clear defined issue of title streamlined on the pleadings.

It is settled law that in deciding whether or not to grant an amendment, that the court must consider the materiality of the amendment(s) sought. The court will definitely not allow an inconsistent or useless amendment. See **Chief A. Adekeye V. Chief OB Akin-Olugbade (1987)3 NWLR (pt.60)214**; **Ewa Henshaw V. Admin General V Cross-Rivers State (1993)7 NWLR (pt306)458 at 467 F-H**

In all civil litigations, it is the duty of the court to aim at and to do substantial justice and allow formal amendments as are necessary for the ultimate achievement of justice and for the purpose of determining the real question or questions in controversy between the parties. While recognizing that Rules of Court should be observed and followed, it should also be emphasised that justice is not a fencing game in which parties engage each other in a whirling of technicalities. See **Adewumi V. A.I.G Ekiti State (2002)2 NWLR (pt.751)474 at 507 F-H**

I have here carefully above considered the entire circumstances of this case and in particular the nature of the amendment(s) sought in relation to the main suit and it clear asdemonstrated that the amendments are clearly not sought for the purpose of determining the real question(s) in controversy between the parties. The relief on amendment equally fails.

On the whole, the application fails and it is dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. P.I. Ukoh, Esq, for the Claimant/Applicant**
- 2. Iorker Daniel, Esq, for the Defendant/Respondent**