

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON WEDNESDAY THE 3RD DAY OF MAY, 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO: FCT/HC/CV/832/2020
MOTION NO: M/11800/2022
BETWEEN

1. HOUSES FOR AFRICA NIGERIA LIMITED ----- CLAIMANTS

2. JONAH CAPITAL NIGERIAL

AND

1. CONOIL PRODUCING LIMITED-----DEFENDANTS

2. PROLINE WEST AFRICA LIMITED

AND

1. HON. MINISTER FEDERAL CAPITAL TERRITORY

2. FEDERAL CAPITAL DEVELOPMENT --- PARTIES SOUGHT
AUTHORITY (FCDA) TO BE JOINED

RULING

By a Motion on Notice filed the 14/10/2022, the Applicant brought this application seeking the following orders:

1. AN ORDER joining HON. MINISTER, FEDERAL CAPITAL TERRITORY and FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA) as 3rd and 4th defendants respectively in this suit.

2. And for such further or other orders this honorable court may deem fit to make in the Circumstance.

In support is an 8 paragraph affidavit deposed by Apata Olabisi and a 5 paragraph reply affidavit deposed to by OgechiUkaogo. In both affidavit the deponents averred that the parties sought to be joined are the beneficial owners of the entire area known as River Park Estate measuring about 501 hectares which also covers the area in dispute in this suit. That the Development Lease agreement conveying the entire area known as River Park Estate measuring about 501 hectares to the 2nd Claimant, was entered into with the Federal Capital Development Authority (the party sought to be joined). That for the proper determination of this matter, the Parties Sought to be joined ought to be made parties to this suit as a matter of necessity as the joinder will enable the court to determine the issues in contention completely. That

while the Claimants claim that the parties sought to be joined put them in possession on the 27th day of May 2007 upon execution of the Development Lease Agreement, the Defendants are stating that they in fact carried out their development (acts which the Claimant are complaining of before this Court) based on the approval of the parties sought to be joined. That the Defendants further claimed that the parties sought to be joined had taken steps to regularize the Customary Allocation which is the basis of the Defendant entering into adverse possession against the Claimants. That the Claimants believe that they are entitled to reliefs against the parties sought to be joined considering the allegation of Defendants that contrary to the Development Lease Agreement, the parties sought to be joined have taken steps that is directly prejudicial to the Claimants as regard giving approvals for building on a land which the Development Lease Agreement relates. That the reliefs which the Claimant are seeking against the parties sought to be joined will only be set out once they are joined as parties.

Attached to the motion is a development lease agreement between “the Federal Capital Development Authority” and “Jonah Capital Nigeria Ltd”, dated 28/05/2007. Also attached to the affidavits are written address and reply on points of law. In the written address learned counsel raised a sole issue for determination, to wit;

“Is the Applicant entitled to the reliefs sought?”.

Summarily, learned counsel submitted that a court may, in the course of proceedings, either by application or *Suo moto* order a party it considers necessary to the proper and final adjudication of a suit to be joined as a party where the joinder will enable it determine all the issues in controversy. Citing **Order 13 Rules 4, & 18(3) of the High Court of the Federal Capital territory (Civil Procedure) Rules 2018**. Counsel further submitted that, considering the circumstance of this case, it will be necessary to join FEDERAL CAPITAL DEVELOPMENT AUTHORITY as a party to this suit as its non-joinder will occasion injustice. He relied on **GREEN. V. GREEN (1987) 8 NWLR (PT61) 480, UMBEL. V. CBCLL (2003) 4 MSC 40 Para E and AJAYI. V. OLAYEMI (2001) 22 WRN 102 @123**. That the non-joinder of the 3rd and 4th Defendants to this suit, will adversely affect the rights of the Claimants and occasion a miscarriage of justice in the final determination of this suit. Also, on the reply on points of law learned counsel submitted that the provision of **Order 13(4) and Order 18(4) of the High Court of the Federal Capital territory (Civil Procedure) Rules 2018** which the applicant is relying on in bringing this application does not require the

applicant to attach the proposed pleadings of the parties sought to be joined. He urged the Court to so hold and discountenance the argument that this application is incompetent because the proposed pleadings of the parties sought to be joined is not attached. Counsel submitted that from the totality of the pleadings of the party before this Court and based on the affidavit in support of this application, the parties sought to be joined are necessary parties as fundamental question regarding ownership, whether they put the Claimant in possession or not? Whether they approved the building of the Defendant amongst other question will be asked. That it is only the parties sought to be joined that can accurately answer these questions. He cited **JEGEDE & ANOR v. INEC & ORS (2021) LPELR-55481 (SC)**. In conclusion counsel submitted that the above makes the parties sought to be joined one whose absence will make it impossible to judiciously decide this matter and urged the court to grant this application and discountenance the objection of the Respondent.

In opposition to this application, the defendants filed a written address in opposition wherein counsel to the Respondents adopt issue distilled by the Applicant to wit;

“Is the Applicant entitled to the reliefs sought?”

Learned counsel submitted that the Respondents concedes that this honourable Court is empowered to order joinder. However, the order is not such that is made as a matter of course. That it is for this reason that **Order 13 Rule 19 of the High Court of the Federal Capital territory (Civil Procedure) Rules 2018** sets out what should accompany such application. That the Applicants totally disregarded the solemn provisions of **Order 13 Rule 19(2) of the Rules** which is fatal to their Application. That in the absence of the accompanying processes and documents, this Court is deprived of relevant materials with which it would have considered in arriving at the decision on whether or not to grant the Application. That the Respondents implore this honourable Court to strike out this Application in limine as Parties Sought to be Joined are not necessary parties and cannot be Defendants. Counsel further submitted that the reliefs sought in the Application cannot be legally and lawfully granted by this Court. That it is abundantly clear from the Statement of Claim in this suit that the Claimants do not have title to the land allegedly trespassed by the Defendants. That title to the aforesaid land is allegedly in the name of the Party Sought to be joined as 3rd Defendant. It suffices that the instant action is on the authority of the Parties sought to be joined. That the propriety of joining the principal, that is, the Parties sought to be joined as

Defendants in an action commenced by their agent is doubtful. That the Parties sought to be joined could at best be joined as co-Claimants not as defendants. Relied on **Ige v. Farinde [1994] 7 NWLR (Pt. 354) 42 at 65 para A-B**. In conclusion, counsel submitted that there are no reliefs against any of the Parties sought to be joined. There is no allegations of trespass against the Parties sought to be joined and urged this Court to refuse the relief sought and dismiss the Application in its entirety.

I have given an insightful consideration to the processes filed on both sides by respective learned counsel. The simple issue to be resolved is;

“Whether the parties sought to be joined are necessary parties within the contemplation of the Rules”.

It is settled principle that a necessary party to a proceeding 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. Per **KEKERE-EKUN, J.S.C in FBN PLC V. OZOKWERE (2013) LPELR-21897(SC)** stated the relevant considerations in determining who is a necessary party in a suit to wit;

- a. Whether the Court can successfully adjudicate in the cause of action set up by the plaintiff without the party being added as a defendant.
- b. Whether the party would be bound by the outcome of the proceedings.

That is to say there must be a question which cannot be effectually and completely settled unless he is a party and that 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. Therefore, can we say that **HON. MINISTER, FEDERAL CAPITAL TERRITORY and FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA)** are necessary parties? Can we say the claim or issues or prayers of the claimants cannot be determined effectively without the presence of the parties sought to be joined – “**HON. MINISTER, FEDERAL CAPITAL TERRITORY and FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA)**?”.

Having provided the above legal template, I will look at the claims of the Claimants to determine whether the parties sought to be joined are one likely to be bound by the outcome of the proceedings. In this regard a careful perusal of the statement of claim is required. I have carefully read the statement of claim and the reliefs sought. In so far as can be evinced from the pleadings and reliefs sought, the case is specifically against the defendants on record for declaration of trespass over a

portion of land within plot 4, Cadastral Zone E30, Lugbe West, Airport Road, Abuja, general damages and injunction. The determination of these issues can however only be made against the persons the Claimants has made claims against that is the subsisting defendants. On the pleadings, there is clearly no defined dispute between Claimants and parties they seek to join. Joinder is not granted as a matter of course or routine or on whimsical grounds or no grounds at all. The alleged wrongful acts of trespass made against the defendants and the damages Claimants suffered have clearly been set out in the statement of claim and within the context of those pleaded facts, the parties sought to be joined are certainly not parties that will be affected by the outcome one way or the other. The fact that the party sought to be joined as the 4th Defendant may have relevant evidence to give on the contested assertions does not make them necessary parties. Also, the mere fact that the party sought to be joined as the 4th Defendant was mentioned in the statement of claim for executing a development lease agreement with the 2nd Claimant over the said plot of land does not automatically make them necessary parties. However, the parties sought to be joined by the Claimants can be subpoenaed to give evidence in the course of proceeding.

Where no case or complaint is however made against a party, it really has no business in such a case. That is the situation in this case. In effect therefore, I hold that this application is devoid of all merit. Consequently, this application is hereby struck out.

Parties: Absent

Respondent: P. A. Okwechime appearing for the Claimants. Godswill N. Iwuajaku appearing for the Defendants.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
3RD MAY, 2023**