

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

SUIT NO: CV/1864/2013

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

AWAL BELLO.....PLAINTIFF/RESPONDENT

AND

**1. BARR. ERIC EGWURUBE }...DEFENDANTS/RESPONDENTS
2. OBIAGELI THERESA MBAMALU }**

**1. THE INCORPORATED TRUSTEES }
OF PRAISE PALACE }..PARTIES SEEKING TO BE JOINED
2. BISHOP EMMANUEL E. }
3. PASTOR SHADRACH UGWU }**

RULING

By the motion on notice with No. M/5191/2022, the applicant herein seeks for the following orders:

1. An order of the Honourable Court joining (a) The Incorporated Trustees of Praise Palace (b) Pastor Shadrach Ugwu and (c) Bishop Emmanuel E. as necessary parties in the substantive suit.
2. An order of the Honourable Court for consolidation of Suit No. CV/962/2021 and FCT/HC/CV/1864/2013 for just and timely resolution of the conflict, claims and interest of the parties in respect of the same subject matter.
3. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which this application is filed are contained in page 2 of the motion papers. The motion is

supported by an affidavit and attached to the affidavit is one document labeled as EXH. 'A'.

The 2nd defendant filed a counter affidavit of twenty-two paragraphs and is supported by a written address.

It is in the affidavit in support that the 2nd defendant/respondent knew the interest of the applicants herein in the subject matter of this suit and failed to join them in this suit, and rather chose to institute suit No. CV/962/2021 before another FCT High Court in respect of the same subject matter being adjudicated upon before this Honourable Court, and this was done deliberately to rubbish the integrity of the courts by exposing them into giving conflicting judgments and that the suit No. FCT/HC/CV/1864/2013 pre date the one with No. CV/962/2021, and that a letter was written to the Chief Judge for this matter to be transferred to this court, and it is in furtherance of the letter that the applicants seek that the two matters be considered.

In his written address, the counsel to the applicants formulated lone issue for determination, that is to say:

Whether in considerations of the succinct affidavit and documentary evidence placed by the applicants, the Honourable Court would not grant this application?

The counsel submitted that the court has the responsibility of ensuring that parties to a case are joined in order to effectively and effectually determine the claim, and he cited the case of **Ugoji V. Onwu (1991) 1 NWLR (pt 178) p. 177**. The counsel further submitted that in determining an application for joinder or misjoinder the court has to consider the following questions:

- (a) Is the cause or matter liable to be defeated by the non-joinder.

- (b) 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?
- (c) Is the 3rd party a person who ought to have been joined in the first instance?
- (d) Is the 3rd party a person whose presence before the court as a defendant will be necessary in order to enable the court to effectually and completely adjudicate on and settle all the questions involved in the cause or matter; and

The applicants answered the above questions in the affirmative. The counsel cited section 36 of the 1999 constitution (as amended) as to the right of fair hearing, and also cited the case of **Omokhodion V. F.R.N. (2006) 2 WRN p. 139 at 140**, and submitted that the applicants are entitled to be heard.

The counsel submitted that they are cautious so that they cannot be caught by the doctrine of laches and acquiescence as they might not to be sleeping or standing by, while the battle for their right is raging.

It is submitted that the interest of the applicants is a legal one, and not sentimental and more particularly in reference to the facts stated in the affidavit in support of the application and the exhibit attached, and that the consolidation of the suits is to avoid granting conflicting judgments affecting the subject matter, and urged the court to grant the application.

It is in the counter affidavit of the 2nd defendant that paragraph 4 of the supporting affidavit is not true as the present suit was filed in 2013 against the defendant but the 2nd defendant was by an order of the court joined in the suit, and therefore, filed his statement of defence and

counter claim, and upon doing that, the claimant, through his counsel filed a Notice of Discontinuance and withdrew the suit, and the matter was struck out and asked the 2nd defendant to prove his counter claim. Shortly thereafter, the judge left for Gambia and the trial started denovo, and therefore, it is the duty of the 2nd defendant to join anybody in this suit, or it is the duty of the plaintiff to do so, and that the 2nd defendant is only counter claiming against the plaintiff who sued for trespass and for title over the plot of land in issue and this is as a result of the plaintiff's original claim.

It is deposed to the fact that the applicants have not placed any facts before the court to show that they have even the remotest interest in the subject matter of the suit as they must show that they have interest to protect in the suit filed by the plaintiff and not in the 2nd defendant's counter claim.

It is also stated that the present suit is totally different from the suit with No. CV/962/2021 pending before Hon. Justice O.A. Adeniyi as the applicants seeking to be joined in this suit are defendants in the other case with No. CV/962/2021, and they have not even entered appearance in the suit.

It is stated that the applicants are only interested in frustrating this case.

The counsel in his written address formulated two issues for determination, to wit:

- 1. Whether the parties seeking to be joined are necessary parties to the effectual determination of suit No. FCT/HC/CV/1864/2013;**
- 2. Whether Suit No. FCT/CV/1864/2013 and suit No. FCT/HC/CV/962/2021 can be consolidated?**

The counsel defined what is necessary party, and submitted that the implication of this is that in the absence of the necessary party, a suit cannot be effectively determined.

The counsel submitted that it behooves upon the applicants to show that they have beneficial or legal interest in the subject matter of the suit in the affidavit supporting the application for joinder, and the affidavit is empty and bereft of facts.

He argued that the applicants have put anything before the court to indicate that they are necessary parties in this suit and that in the absence the suit cannot be effectually determined, and he cited the case of **Eco Bank (Nig.) Plc. V. Metu & Ors (2012) LPELR – 20846(CA)**. The counsel submitted that the applicants have nothing in this case, and they can only be necessary parties to this suit if they are adverse claimants of title over H293 Kubwa Extension III FCDA Scheme, and so far, to him, the applicants have not shown any interest of theirs that can be prejudiced if they are not joined to this suit, and he cited the case of **Peenok Investments Ltd V. Hotel Presidential (1982) LPELR – 2908 (SC)**.

It is submitted that the applicants should have attached the writ of summons and the statement of claim in suit No. FCT/HC/CV/962/2021 to the application in proof of their claim that the issues in suit No. HC/CV/962/2021 and those in this suit are the same, and this they have not done. He argued that currently the plaintiff has no claim before the court, and the question is:

What are the applicants planning to be joined?

To him, there being no claims by the plaintiff, the applicants cannot be joined.

On the issue No. 2, the counsel submitted that the suits are not consolidated as a matter of course, and that on consolidating suits, both suits retain their distinct nature and are heard separately and judgment to be delivered separately in each suit, and he relied on the case of **Dana Airlines Ltd V. Olumodeji & Anor. V. Nyako & Ors (2011) LPELR-4314 (CA)**. It is submitted that the condition for consolidation of suit is that parties are the same and the issues are the same, and in the suit with No. CV/1864/2013, the parties are **Awal Bello V. Eric Egwurube & Theresa Obiageli Mabamalu**, while in suit with No. CV/962/2021 the parties are **Theresa Mabamalu V. The Incorporated Trustees of Praise Palace, Bishop Emmanuel E. & Pastor Shadrach Ugwu**, and that there is no relationship between the two suits that would necessitate their consolidation, and he urged the court to refuse this application.

I adopt the following issues for determination in this application, thus:

- 1. Whether the parties seeking to be joined are necessary parties to the effectual determination of this suit?**
- 2. Whether suit No. FCT/HC/CV/1864/2013 AND Suit No. FCT/HC/CV/962/2021 can be consolidated?**

On issue No. 1, it is the law that a necessary party in an action is a person who is not only interested in the subject matter of the proceedings but also who in his absence, the proceedings could not be fairly dealt with. In other words, the questions to be settled in the action between the existing parties must be a question which cannot be properly and fairly settled unless he is a party to the action instituted by the plaintiff. See the case of **APGA V. Oye (2019) All FWLR (pt 1011) p. 608 at 650, paras. C-E**. See also

the case of **Adeniran V. Ibrahim (2019) All FWLR (pt 971) p. 146 at pp. 169-170; paras. G-B** where the Supreme Court held that the following are the guiding principles in the determination of a necessary party to a suit:

- i. That the presence of such party is necessary for the effectual adjudication of the matter in dispute;**
- ii. That the plaintiff claim against the existing defendant also affects the party sought to be joined,**
- and iii. That his interest is the same or identical with that of the existing defendants.**

In the instant case, and by paragraph 4(a) and (b) of the affidavit in support, it is deposed to the fact that the 2nd defendant/respondent who knows interest of the applicants herein in the subject matter of this suit failed, refused and/or neglected to join them in this substantive suit, and that the 2nd defendant/respondent choose to institute suit No. CV/962/2021 before another court of the FCT in respect of the same subject matter being adjudicated upon before this court.

Thus, going by the affidavit above, it can be seen that the applicants could not show to this court that their presence in this case is necessary for the effectual adjudication of the matter in dispute. It is not mentioned in the affidavit that what the 2nd defendant/respondent is counter claiming against the claimant affects them, and that they did not mention the interest they have in the suit and whether the interest is identical with that of the existing defendants, that is the claimant, and therefore by these, the applicants have failed to place every material before this court to convince to be satisfied that they are entitled to the relief sought. See the case of **Ejorkele V. Nwafor**

(2008) All FWLR (pt 431) p. 1014 at 1026, paras. B-C where the Court of Appeal, Port Harcourt Division held that an applicant invoking the discretionary powers of the court must place before the court all the facts and materials necessary to enable the court exercise its discretion judicially and judiciously. In the instant case, the applicants failed to place every material fact to entitle them to the relief sought. See also the case of **Sifax Nig. Ltd. V. Migfo Nig. Ltd. (2019) All FWLR (pt 1019) p. 956 at 1030, paras. B-C** where the Supreme Court held that a claimant is entitled to pursue his remedy against only the defendant he conceives he has a cause of action against and a plaintiff is not to be compelled to proceed against persons it has no desire or intention to sue.

On issue No. 2, the law is that consolidation of suits is granted if a trial judge is satisfied that the issues in the suits can be resolved in one suit proceedings rather than in separate proceedings, and the judge must be satisfied that:

- (a) Same common questions of law or fact arise on both or all the causes or matters;**
- (b) The rights to relief are claimed in respect of or arise out of the same transaction or series of transactions; or**
- (c) For some other reason, it is desirable to make an order under its rule.**

See the case of **Okwuagbala V. Ikwueme (2011) All FWLR (pt 563) p. 1881 at 1891, paras. C-E**. In the instant case, what the applicants deposed in the affidavit in support of this application is that it will be in the interest of justice to consolidate the suits, and no any other explanation from the applicants as to whether any question of law or fact arose in both suits or any one of them, or they have the right of claim arose as a result of the transaction or series of

transactions. The applicants have not stated any reason rather that it will be in the interest of justice to consolidate the two suits. The applicants have failed to place material facts before this court to entitle them to the relief sought. See the case of **Ejorkele V. Nwafor (supra)**.

In the circumstances, the application lacks merit and it is hereby dismissed.

Hon. Judge
Signed
8/11/2023

Appearances:

Ikechukwu Opara Esq appeared with Nnaemeka Agbo Esq for the 2nd defendant/counter claimant.

2nd DC-CT: The 2nd defendant/counter claimant is in court.

Hon. Judge
Signed
8/11/2023