

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION**

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 23

CASE NUMBER: SUIT NO. FCT/HC/CV/1963/2019

DATE: 11th MARCH,2024

BETWEEN:

A & K CONSTRUCTION LIMITED.....CLAIMANT/RESPONDENT

AND

- | | | |
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| 1. MR. OKECHUKWU IGWEH | } | DEFENDANTS |
| 2. BOLINGO INDUSTRIES LIMITED
(FORMERLY JOESON INDUSTRIES LIMITED) | | |
| 3. BOLINGO HOLDINGS LIMITED | | |

APPEARANCE:

O. E. Okoye Esq for the Defendant.

Claimant unrepresented

RULING

This matter was initiated via a Motion on Notice with Motion No. M/482/2023 wherein Counsel for the Defendants/Applicants. Prayed the Court for the following:-

- 1) AN ORDER of this Honourable Court joining the Honourable Minister of the Federal Capital Territory as a Defendant in this suit.

- 2) AN ORDER of this Honourable Court and that the Claimant/Respondent should amend his processes to include the Honourable Minister of the Federal Capital Territory.
- 3) And for such further order or other orders as this Honourable Court may deem fit to make in the circumstance.

The Motion was supported by a 15 paragraph Affidavit deposed to by one Amos Bello- Legal Assistant at the law firm of EhiUwaifo Esq dated 11th November, 2023 and a written address filed in support.

In the said written address, Counsel to the Defendants/Applicants raised a sole issue for determination thus:-

"Whether considering the facts and circumstances of this case, it is just and proper for the Court to grant the joinder sought in this Application."

In arguing the issue, counsel began by submitting that the question of whether to grant an Application for joinder of a party calls for the exercise of the discretionary power of the Court which discretion the Court must exercise judicially and judiciously. Reliance was placed on the case of **IBIGBAMI VS MILITARY GOVERNOR EKITI STATE (2004)4 NWLR (PT. 863) 243 at 265 -266.**

Counsel stated that one of the basic reasons for making a person a party to an action is that he should be bound by the result of the action. Reference was made to the case of **GREEN V. GREEN (2001) FWLR (PT. 76) 795 At813 paragraph H.**

Counsel further submitted that where the determination of an action between two parties would directly affect a third persons legal rights or his pecuniary interest, the Court has a duty to order the third person to be joined as a party so that all matters in dispute would be effectively and completely determined.

He stated that where also the matter cannot be properly and effectually determined without joining the party sought to be joined the Court is enjoined to join such party. Counsel then placed reliance on the cases of **GREEN VS GREEN (Supra) UBA PLC V AKARABONG COMMUNITY**

BANK LTD. (2006) all FWLR (PT. 320) 1099 at 1126 – 1127 para F, G & A – B.

In another submission, Counsel stated that the Affidavit evidence in support of this Application discloses that a search report issued by the authority of the Ministry of the Federal Capital Territory revealed that the 2nd Defendant had title to the land with no encumbrances. He stated that the 2nd Defendant/Applicant's attention was drawn to the fact that its title to the property in question had been revoked by the Minister of FCT in compliance with the Court Judgment in suit No. FCT/HC/CV/433/2008 of which it had no knowledge of. He also stated that although the Minister of the FCT was aware of the pendency of the suit, the search report that was issued by his authority in 2009 after proceedings had commenced and were on going in the said suit did not indicate in the search report that there was a pending case in Court concerning the property, which misled the Claimants and Defendants/Applicants on the true status of the land. Counsel further stated that the minister of the FCT went ahead to issue a reinstatement letter dated 4th March, 2009 reinstating the allocation of the said property to the 2nd Defendant/Applicant notwithstanding the said suit. He stated that the Minister subsequently revoke the 2nd Defendant's title to the land in compliance with the Court order in suit No FCT/HC/CV/433/2008 and thus put the Defendants in an irreparable situation which cannot be effectually remedied without the joinder of the Hon. Minister.

Consequently, Counsel stated that the party sought to be joined played a vital role in the allocation, verification and subsequent revocation of the title to the land in dispute.

He stated that the Minister of the FCT is the authority that allocates, revokes and approves all land and land transactions in the Federal Capital Territory. Counsel submitted that the crux of this matter was the revocation of title to land by the Minister, therefore, joining the Minister as a Defendant in this suit will bring all the necessary facts before the Court. Relying on the cases of **NABARUMA V OFFODILE (2006) ALL FWLR (PT. 294) 505 At 520 paras G – H; OGOLO & ORS V. FUBARA & ORS (2003) LPELR – 2310 SC; KALU UZOR (2004) 12 NWLR (PT. 886) 1**, Counsel submitted that joining the Minister of FCT as a party to this suit

would afford the Court all the material facts to enable it to do justice to the case and avoid duplicity of actions and to ensure that it is bound by the decision of the Court.

In his final submission, counsel stated that in the absence of the Minister of the FCT as a party to this suit, the proceedings cannot be fairly dealt with. He stated that the question to be settled cannot be properly settled unless the Minister of the FCT is a party to this suit, that joining the Minister as a party would give the Court the effectual and complete facts for the determination of this suit. He stated that the Minister of the FCT would be bound by the decision of this Honourable Court and urged this Honourable Court to grant this Application.

Opposing the Application for joinder the Claimant/Respondent filed a 20 paragraph Affidavit deposed to by one Jude Otakpor Esq legal practitioner at Messrs Fred-Young & Evans LP counsel to the Respondent dated 24th November 2023 and filed same day. It was supported by a written address equally dated and filed on the 24th of November, 2023.

In the said written address, counsel to the Claimant/Respondent raised two issues for determination thus:-

- "(a) Whether the non-joinder of the Honourable Minister of the Federal Capital Territory as a Defendant in this suit would affect the hearing and determination of the suit?"***
- "(b) Whether the Applicants may commence third party proceedings against the Honourable Minister of the Federal Capital Territory in the circumstances."***

In arguing the first issue Counsel began by stating that the reason for making a person a party to an action is for him to be bound by the decision of the Court in the action. He stated that consequently, the question to be settled in the action must be one which cannot be effectually and completely settled unless he is a party. Counsel then placed reliance on the cases of **OKOBIEMEN V U. B. N PLC Legal Pedia Electronic citation: (2018) legal pedia CA/YL/10/2017, GREEN V GREEN 3 PLR/1988/35 (SC), (1987) 3 NWLR (PT. 61) PG 480; POROYE V MAKARFI (2018) 1 NWLR (PT. 1999) 1 – 182; MAKAMI V UMARU**

(2013) LPELR – 20799; TECHNIP V AIC LIMITED & ORS (2016) 2 NWLR (PT. 1497) PG 421 AND CHUBA IKPEAZU V AFRICA CONTINENTAL BANK (1965) NMLR.

Consequently, Counsel stated that in the instant case, as endorsed on the Respondent's Writ of Summons and statement of Claim dated 25th June 2020 and paragraph 13 of the Counter Affidavit, the Respondent's Claims are against the Applicants alone. He stated that the Minister was not privy to the contract of sale of the property neither did he partake in enjoying the purchase price in which the Respondent paid the applicants for the property.

Counsel stated that this suit does not fall under any of the exception to the doctrine of privity of contracts. He stated that the Applicants cannot legally urge this Honourable Court to join the Minister in this suit because the Respondent does not claim any contractual obligations against the Minister in this suit.

Moreso, he stated that the Minister is neither an agent nor a privy of the Applicants in the circumstance of this suit. He stated that as stated in paragraph 14 of the Counter Affidavit, the Minister only executed the order of Court per Hon. Justice F. A. Ojo to revoke the purported allocation to the 2nd Applicant, hence there is no legal justification whatsoever for dragging the Minister into this suit. Reference was made to order 13 Rule 7 of the Rules of this Honourable Court.

In another submission, Counsel stated that from the Respondent's Writ of Summons and statement of Claim, the Respondent has no grouse or cause of action against the Minister. He stated that the Applicants cannot determine for the Respondent who it ought to sue as a party in its suit to recover the consideration it furnished them for purchase of the property which they sold to the Respondent without a valid legal title.

In a further submission, counsel stated that the Rules of this Court grants the Respondent the option to join persons as it deems fit as Defendants in its suit. He stated that the Applicants cannot direct the Respondent to go after the Minister when they collected the purchase price of the property from the Respondent themselves without transferring a valid legal title on the property to the Respondents. He further stated that the Rules of this

Court stipulates that the parties to a suit must be served with all the processes in this suit and as such there is no way the hearing was carried out and judgment delivered without the Applicant's knowledge.

He stated that the Applicants deliberately refused to enter Appearance in the suit and concealed the superior interest of home makers Nig. Ltd and the pendency of the suit from the Claimants. He stated that this was done in a bid to hoodwink the Respondent into purchase of the property.

Counsel in addition, submitted that the fact that the Applicants failed and neglected to file an Application to set aside the Judgment in the earlier suit or appeal against same means they were convinced of the decision of the Court that the allocation to the 2nd Applicant was null and void. He stated that notwithstanding the contents of the search report which was not exhibited and held no probative value, the judgment of Hon. Justice F. A. Ojo declared the allocation of the property to the 2nd Applicant as null and void, hence the purported unexhibited search report which the Applicants are referring to and relying upon is inconsequential because the Judgment discredits any legal interests which may have been stated in favour of the 2nd Respondent in the report.

Consequently, Counsel stated that a verdict which renders the 2nd Applicant's allocation null and void purports that the 2nd Applicant never had any title on the property in the first place, hence the Applicants are to answer to the Respondent's claim as endorsed in its Writ of Summons and statement of Claim and refund the consideration which the Respondent furnished them for the said property.

In his final submission, Counsel stated that the Minister has no business in this suit and that the joinder of the Minister is not necessary as the Applicants are the proper and necessary persons who can effectually and completely settle any questions arising from this suit. He stated that the Respondent has not desire whatsoever to join the Minister as a party to this suit and urged this Honourable Court to hold that the non-joinder of the Minister of the FCT as a Defendant to this suit is unnecessary with no justifiable reason to do so.

In arguing the second issue, Counsel began by submitting that the rules of this Honourable Court empowers the Applicants to commence a third party

proceeding against the Minister if they believe he may bear eventual liability either in whole or in part in the suit. Counsel relied on Order 13 Rule 21 (1) of the Rules of this Court and the case of **P.P & P (NIG) LTD V OLAGHERE (2019) 2 NWLR (PT. 1657) PG 549.**

Counsel stated that the summary of this proceeding is that the Defendant is answerable to the suit of the Plaintiff while the third party is answerable to the claims of the Defendant, hence even where the main suit has been determined, the third party proceedings can continue. Counsel relied on the cases of **TOTAL NIGERIA PLC V DELMAR PET. CO. LTD (2003) 7 NWLR (PT. 819) 314; OKAFOR V ACB LTD (1975) LPELR (2419) 1 at 13; OKONKWO V. MODE LTD (2002)14 NWLR (PT. 788) 588 AT PG 564 PARA C – D** and the definition of third party proceedings by FIDELIS NWADIOLO in his book "Civil Procedure in Nigeria" second Edition University of Lagos press, pg 195.

Consequently, Counsel stated that in the instant case, the Applicants are not contesting the Respondent's Claim that it paid consideration for purchase of the property and later discovered that the 2nd Applicants had no valid legal title on that property. With this Counsel made reference to paragraph 11 of the Applicants Affidavit in support of their Application.

Counsel then submitted that the deposition in the said paragraph shows that the Applicants have a grouse and grievance against Minister for obeying the Court's order in the judgment. He stated that in order to ventilate their grouse and cause of action against the Minister the Applicants may apply to this Honourable Court to commence third party proceedings against the Minister for obeying the Court order to revoke the 2nd Applicants purported Allocation on the property.

In his final submission, Counsel reiterated the fact that the Respondent has no grouse or cause of action against the Minister and that this suit is simply for the Respondent to recover his consideration from the Applicants and urged this Honourable Court to dismiss the Application.

In his further response to the Counter Affidavit of the Claimant/Respondent, the Defendants/Applicants filed a 6 paragraph further Affidavit in support of the Motion for joinder deposed to by one Amos Bello, legal Assistant at EhiUwaifo & Co dated 4th December, 2023

and attached the search report dated 6th November, 2009 as part of the evidence in support of their Motion.

I have carefully considered the Motion on Notice of the Defendant/Applicants for joinder of the Minister of FCT and the written address in support.

I have equally considered the Counter Affidavit of the Claimant/Respondent's written address in support as well as annexures attached therewith.

I have also perused the further Affidavit of the Defendants/Applicant and the annexure attached in support.

Therefore it is my humble view that the issue for determination in this matter is,

"Whether the Defendants/Applicants have satisfied this Honourable Court to be entitled the grant of this Application."

Order 13 Rule 4 of the Rules of this Honourable Court states thus:-

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

Furthermore, order 13 Rule 19(1) & (2) of the same Rules states thus:-

"(1) Any Application to add or strike out or substitute or vary the name of a Claimant or Defendant may be made to the Court by Motion.

(2) Where the Application is to add a Claimant or Defendant, the Application shall be accompanied by the statement of claim or defence as the case may be, all the Exhibits intended to be used and the depositions of all the witnesses;

Except where the Application is to substitute a deceased party with another person in which case the Application may not be accompanied by such documents specified above."

The Rules of this Honourable Court as reproduced above has prescribed the procedure to be followed where there is an Application for joinder of a party. It has been held in a plethora of cases that for a party to be joined as a co-claimant/Plaintiff or a Co-Defendant, such party sought to be joined must be a necessary party. As held in the case of **L. S. B. P. C V PURIFICATION TECH (NIG) LTD (2013) 7 NWLR (PT. 1352) PG. 82.**

"...A necessary party is someone whose presence is essential for the effectual and complete determination of the issues before the Court. He is a party in the absence of whom the whole Claim cannot be effectually and completely determined".

Also, in the case of **BABYEJU V ASHAMU (1998)NWLR PG 567 and 555** the Supreme Court held thus:-

"Necessary party is someone whose presence is necessary as a party the only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled therefore must be a question in the action which cannot be effectually and completely settled unless he is a party."

See also the cases of **OJO V OGBE (2007) 9 NWLR (PT. 1040)542 At 558 – 559 and UNION BEVERAGES LTD V PEPSI COLA INT.L LTD. (1994) 3 NWLR (PT. 330) 1 AT 17.**

In line with the above, the Applicants deposed in paragraphs 12 – 14 of the Affidavit in support of their Motion as follows:-

Paragraph 12 reads thus:-

"That this case cannot be properly and effectually determined without joining the Minister of FCT as a party to

this suit.As it was his officers who misled both the Claimant and the Defendants.”

Paragraph 13 reads thus:-

“That joining the Minister of FCT as a party in this case will enable all the necessary parties and facts to be brought and placed before the Court.”

Paragraph 14 reads thus:

“That the Claimant/Respondent will not be prejudiced by the grant of this Application.”

Furthermore, in paragraph 4.0 of their written address in support of the motion for joinder, Counsel to the Applicants stated:-

“We submit that joining the Minister of FCT as a party to this suit would afford the Court all the material facts to enable it to do justice to the case and avoid duplicity of actions. And to ensure that it is bound by the decision of the Court.”

The Claimant/Respondent on the other hand, in opposition to this application deposed paragraph 12 – 16 of his Counter Affidavit thus:-

“12) There is no privity of Contract between the Respondent and the Minister of the Federal Capital Territory (“The Minister”).

13) The Contract for sale of the property was between the Applicants and the Respondent only. The Applicants failed to deliver a valid title without encumbrances and third party interests to the Respondent after it received the agreed consideration for the property from the Respondent.

14) The Minister through the Deed Registrar only carried out the order of the Court in the Judgment. The Minister is not a proper or necessary party to the determination of this suit.

- 15) The facts in this suit have been adequately placed before the Court by the parties: there is no further facts that the Minister can place before this Court to enable it to effectively determine the issue in dispute between the parties.**
- 16) It is the prerogative of the respondent to determine the persons it has a Claim against. The Respondent has no grouse or cause of action against the Minister. The Applicants cannot also determine for the Respondent who it ought to sue as a party in its suit to recover its consideration for purchase of the property which the Applicants sold to it without legal title."**

Furthermore, the Claimant/Respondent in his Counter Affidavit stated in paragraph 4.14 thus:-

"We reiterate that the Respondent has no grouse or cause of action against the Minister. This suit is simply for the Respondent to recover its consideration from the Applicants upon a failed sale of the property to the Respondent without a valid legal title. Thus, the Applicants should not drag the Respondent into any fisticuffs with the Minister. We urged this Honourable Court to so hold."

From the above, it can be seen that the Defendant/Applicants believe that this matter cannot be effectually and completely adjudicated upon without joining the Minister of the FCT as a necessary party in this suit. This is based on the premise that the Hon. Minister was aware of a pending suit on the said land, but during the same period of time a search report was produced from his office disclosing no encumbrances, hence misleading both the claimant and the defendant as to the true status of the said land. The Claimant/Respondent who instituted this suit in the first place, have on the other hand stated that they have no grouse against the Minister of the FCT as all they seek from instituting this matter is to recover the consideration supplied to the Claimants in exchange of a valid title to a land which the Defendants have failed to fulfill. They stated that if the applicants so wish to join the Minister, then they should do so via a third

party proceedings instead, so as not to delay the matter further in a bid to join the Hon. Minister of the FCT.

It is important to note that the rationale behind joinder of parties is to ensure that an interested party is not caught by the principle of resjudicata in the sense that he remained unconcerned about a suit in which he had a legal interest only to institute it again later, and to avoid multiplicity of actions arising from the same subject matter. See the cases of **UKU V OKUMAGBA (1974) 3 PG 38 AND OLADEINDE V OLUWOLE (1962) WNLR PG 41**. Joinder of parties is done where the interest of such party will be irreparably prejudiced should he not be joined as a party.

The conditions/principles for a joinder was enunciated in the case of IGWE I. R. E IWEKA & ORS V AGF& ORS (1996) 4 NWLR (PT. 442) 1 PG 362 as follows:-

- (a) There should be a joinder of a party where it will prevent multiplicity of actions arising from the same series of transactions and would this enable the Court to effectually and completely adjudicate upon and settle all the question involved in the case or matter.
- (b) There should be joinder of a party if his presence before the Court is necessary to enable the Court properly determine once and for all, the issues for adjudication before the Court. Thus, a party should be joined if he will have his interest irreparably prejudiced should he not be joined as a party.
- (c) There should be joinder of a party if he will be bound or is likely to be affected by the result of the decision of the Court.
- (d) There should be joinder of a party as Defendant if the case or matter will be defeated or if it will not be possible without doing injustice to the Defendant to adjudicate on the cause of action set up by the Claimant.

This was also the position in the cases of **ADEDIRAN V INTERLAND TRANSPORT LTD (1993) 9 NWLR (PT. 214) PG. 155; IGBOKWE V IGBOKWE (1993) 2 NWLR (PT. 273)**.

In order to determine if the above conditions apply to the instant case, we need to truly understand the crux of this matter. Counsel to the Applicant stated in paragraph 3.5 of his written address that the crux of this matter was the revocation of title to land by the Minister. However upon a cursory look at the reliefs sought by the claimant, it can be seen that the claimant merely wishes to air his grievances for the failed land transaction between himself and the Defendants and for his loss to be adequately compensated. In the instant case, the Claimant had purchased a land, subject of a pending suit from the Defendants of which the Defendants had failed to disclose to the Claimant, only for the purported title transferred to the Claimant by the Defendants to be revoked by the Minister of the FCT in compliance with the Judgment of the Court in the said suit. During the course of the transaction, a search was conducted on the property at AGIS of which the result of the search showed no encumbrances. The Defendants Claim to not have been aware of the pending suit before selling the said land to the Claimant. However, the existence of a re-instatement letter from the Minister of the FCT to the 2nd Defendant proves otherwise. A re-instatement letter can only be issued when title to a property had previously been revoked. As the name implies, to reinstate simply means to return to a previous position or statu quo, it can only happen where something or someone is removed from a particular position.

Moreso, I must agree with the arguments canvassed by the respondents as in truth, a matter cannot proceed in a Court of law in Nigeria if service (of whichever form) is not effected. The parties to the previous suit were Home Makers Nig. Ltd (as the Plaintiff) and the Hon. Minister of the FCT & Joeson industries limited (now Bolingo Industries Ltd) as the Defendants. How then were the Defendants not aware of the pending suit? Let us assume the Defendants were truly not aware of the pending suit, how about when their title to the said property was revoked? And as rightly argued by the Claimant/respondent, there is no proof to show that after the Judgment was passed, the Defendants went on appeal or made attempts to have the Judgment set aside. This singular inaction of the Defendant speaks volumes. They left the Claimant to wallow in his misfortune with no attempt at mitigating it or compensating him.

It is therefore the humble opinion of this Honourable Court that, after a careful study of the facts of this case, It is clear that the respondents do not have any grievance against the said party proposed to be joined. The joinder of the Minister of the FCT is not necessary. The interest of the parties will also not be prejudiced by the non-joinder, neither will the cause of action be defeated. I so hold.

Consequently and without further ado, I hereby resolve the issue for determination in favour the Claimant/Respondent. This Application is hereby dismissed accordingly.

Signed:

Hon. Justice S. U. Bature
23/02/2024.