

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT:28

DATE: 14TH APRIL, 2022

FCT/HC/CV/2648/2021

BETWEEN:

1. PIROTTI PROJECT LIMITED
2. PIROTTI PROPERTIES LIMITED
3. ARC. ABDULLAHI SULAIMAN
4. BINTA SULAIMAN
5. OGE ELELE

APPLICANTS

AND

1. ATTORNEY GENERAL OF THE FEDERATION
2. EXECUTIVE CHAIRMAN, ECONOMIC
AND FINANCIAL CRIMES COMMISSION (EFCC)
3. ECONOMIC AND FINANCIAL CRIMES COMMISSION(EFCC)
4. AISHA ABUBAKAR, HEAD ECONOMIC GOVERNANCE SECTION-2
(EGS-2)EFCC, WUSE 2, FCT COMMAND, ABUJA.
5. CHALYA TANTUR , IPO (EGS-2),
EFCC, WUSE 2. FCT-COMMAND, ABUJA
6. PETER YAKURA
7. MISS. MERAI PHILIPS

RESPONDENTS

JUDGMENT

The Applicants filed this action under fundamental Rights (Enforcement procedure) Rules, 2009 wherein they jointly

challenged the action of the 2nd - 5th Respondents that the subject matter between the Applicants and the 6th Respondent is purely a civil action which the 2nd -5th Respondent have no power to intervene. Paragraphs 1- 55 of the 3rd Applicants affidavit which can be found at page 2840 of the application contained the detailed case of the case of the Applicants when read along with the exhibits attached. The brief history of the case is that the 6th Respondent bought three units of 3 bedroom apartments known as Houses No. 84, 85 and 87 at the palms 2 Estate situate at Plot 1081, Dawaki District, Abuja at a negotiated price of ₦15,000,000.00 each and thus issued with an offer letter dated 28th January, 2020 with a promise to deliver by the end of December, 2020. The 6th Respondent however paid the total sum of ₦45,000,000.00 only representing the purchase price of 3 three unit. Unfortunately, by the end of March, 2020, Corona Virus pandemic spread to the Country which led to the total lock down of the economy until October, 2020 when the Applicants resumed construction at the site. The Applicant had to re- adjust the delivery period to last quarter of the year 2021 to enable the Applicants source money to cover the differences in the cost of building materials which prices increased exponentially as a result of the pandemic. The 6th Respondent accepted the adjustment in the date of delivery and even visit the site to monitor the progress of his units. However, on the 29th day of June, 2021, the men and officers of the 2nd and 3rd Respondent went to the Applicants' construction site and marked some properties based on the complaint of the 6th Respondents that the Applicants failed to deliver as at when due. The 2nd – 5th Respondents filed a counter affidavit of 100 paragraphs seeking to justify their involvement in the matter. The counter affidavit was filed on the

10th December, 2021. They attached exhibit EFCC1 and EFCC 2. Exhibit EFCC2 contained the complaint upon which the 2nd -5th respondent complained against Applicants boarders on breach of time line delivery of the 3 units. The 6th Respondent never complain to the Applicants that he was not satisfy with the adjustment in the delivery date. Yet, the 2nd – 5th Respondents went ahead and intervened in the matter by marking the properties and detaining the 3rd, 4th and 5th Applicant. The Applicants prayed for the reliefs as contained at pages 2- 4 of the originating motion filed on the 13th October, 2021.

The 1st respondent did not file any process. While the 6th Respondent filed 3 set of counter affidavit all dated 10th December, 2021 disputing each of the affidavit of 3rd, 4th and 5th Applicants that it was not a civil matter. While the 7th Respondent filed her counter affidavit dated 6th November, 2021 validating and defending exhibit Pirotti 12.

The Applicants further filed a further and better affidavit on the 11th January,2022 affidavit against the 6th Respondent counter affidavit and also a further and better affidavit to the 7 the Respondent counter affidavit on the 25th November, 2020. The 6th Respondent filed what he termed "6" Respondent further and further counter affidavit in opposition to 3rd , 4th and 5th Applicant joint further and better affidavit" During the hearing of this matter, Applicants Counsel challenged the competence of the process and relied on the case. The Applicant equally filed APPLICANTS' FURTHER AND BETTER AFFIDAVIT TO THE 2ND, 3RD, 4TH AND 5TH RESPONDENTS' COUNTER AFFIDAVIT ON THE 11TH JANUARY, 2022.

However, the 7th Respondent filed a motion on notice dated and filed on the 16th November, 2021 urging the Court to strike her name on the grounds of misjoinder. Counsel for the Applicants responded by filing counter affidavit on the 25th November, 2021 and a written address. The Applicants' argument is that 7th Respondent filed a further and better affidavit on the 19th January, 2022.

Also the Counsel for the 2nd -5th Respondents filed a notice of preliminary objection on the 24th January, 2022 arguing that the reliefs claimed in the originating summons are jointly by the Applicants who are a combination of human and non-human. The Applicants responded by way of counter affidavit filed on the 4th February, 2022 and a written address. The Applicants Counsel cited a recent case in the case of **CHEVRON (NIG) LTD NUPENG & ANOR (2021) LPELR 52569 (CA)**, that all the Applicants are competent entities before the Court and are right to claim the reliefs.

It is therefore important to first consider and determine the interlocutory motion on notice dated 16th November, 2021 and delivered the rulings before determining the substantive application which can be done all at the same time.

On the 7th Respondent motion on notice dated and filed on 16th November, 2021 seeking for the striking out of her name on ground of misjoinder, I have carefully perused the affidavit, written address and further affidavit of the 7th Respondent. I have also scrutinized the 14 Paragraphs Counter Affidavit deposed to by the 3rd Applicant and the written address both dated and filed on 25th November 2021. The agitation of the 7th Respondent is that she was not a party to the matter at the office of the 3rd

Respondent and was not a party to the purported terms of settlement between the Applicants and the 6th Respondent, and that she did not benefit in any way from the purported terms of settlement executed between the Applicants and the 3rd Respondent. She denied being in possession of the said exhibit Pirotti 12. Counsel to the 7th Respondent argues that she is not a necessary party to the Applicants suit and that the inclusion of her name is unwarranted.

Counsel to the Applicant however argues that the 7th Respondent is a proper party in this suit, as the outcome of this proceedings especially reliefs 4 and 7 will greatly affect her interest.

While I agree that the 7th Respondent was a party to the matter at the office of the 3rd Respondent, that alone is sufficient to maintain her name on the Applicant's Originating Motion, as there are relieves sought by the Applicants in their originating process which touches on the interest of the 7th Respondent in whose favor an offer letter was purportedly issued. See Paragraph 4 and 7 of the reliefs contained in the Applicants Originating Motion.

Order 14 Rule 4 of the Rules of this Honorable Court clearly states that any person who may be affected by the Order of the Court may be made a Defendant. In the often-cited case of ***GREEN VS. GREEN (1987) LPELR (1338) 1***, parties to an action were classified into three, namely, proper parties, desirable parties and necessary parties. In making the distinction between the different classifications of parties, Oputa, JSC (of blessed memory) stated at page 20 that "Proper parties are those who, though not interested in the plaintiffs claim, are made parties for some good reasons desirable (parties) are those who may 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 would not be fairly dealt with." It seems pretty obvious that the fact that a relief has been claimed against the 7th Respondent affords a good reason why she should be made a party to the action, even though she may not be interested in the claims of the Applicants as it relates to whether the 1st -6th Respondents had violated their fundamental rights.

On the Notice of Preliminary Objection filed by the 2nd -5th Respondent on 24th January,2022, as well as the Counter Affidavit and written address filed by the Applicants on 4th February,2022, I find the decision of the Court of Appeal in the recently decided case of **CHEVRON NIG. LTD V. NUPENG & ANOR (2021) LPELR-52569 (CA)** which was cited by the Applicants very instructive. In that case, the court held that a company by law has the right to exercise the fundamental right, available to a Nigerian citizen, as enshrined in Section 43 of the Constitution, as amended. The court further held that the importation of qualification of citizenship as a ground for denying a company from enjoying its fundamental right guaranteed under Section 43 of the Constitution, as amended, has no blessing of the law. See also **OKECHUKWU & ANOR V. EFCC & ORS (2014) LPELR-24079 (CA)**.

Furthermore, the 2009 Fundamental Rights Enforcement Procedure Rules does not prohibit joint action for enforcement for fundamental rights.

On the substantive suit, I shall start by considering the counter affidavits and written addresses of the 1st and 7th Respondents respectively. The 1st Respondent vide a counter affidavit and

written address filed on 26th November,2021, argued and I agree with them that the applicants has not disclosed any reasonable cause of action against the 1st Respondent sufficient enough to entitle it to the reliefs sought against the 1st Respondent. It is therefore my considered view that the 1st Respondent is not liable for any breach of the Applicant's fundamental right, and has no connection whatsoever in what transpired between the Applicants and the 2nd-6th Respondents. He is therefore not a necessary nor proper party in this suit, as this suit can be effectively determined without the 1st Respondent's presence.

The 7th Respondent in her affidavit and written address dated 16th November,2021 also sought for the removal of her name to this suit on grounds that the Applicants failed to establish any cause of action against her from the totality of the averments in the affidavit in support of their application. Like I said earlier while dismissing the 7th Respondent's Notice of Preliminary Objection, I agree that the 7th Respondent was a party to the matter at the office of the 3rd Respondent, but that alone is not sufficient to maintain her name on the Applicant's Originating Motion, as there are relieves sought by the Applicants in their originating process which touches on the interest of the 7th Respondent in whose favor an offer letter was purportedly issued. See Paragraph 4 and 7 of the reliefs contained in the Applicants Originating Motion. The 7th Respondent will be liable to any other reliefs sought by the Applicants in this matter other than the reliefs 4 and 7.

On the alleged violation of the Applicants fundamental rights by the 2nd to 6th Respondents, I must state that by the provisions of Sections 6, 7, and 13 of the EFCC Act, the 2nd to 5th Respondents has the statutory power to investigate, arrest, interrogate, search

and detain any suspect: ***OBIEGUE vs. A-G FEDERATION (2014) 5NWLR (PT1399) 207. and ONAH VS. OKENWA [2010] 7 NWLR (Pt 1194) 512 at 536.*** This is undoubtedly so. The only qualification, and a very important one at that, is that the power must not be misused or abused. The power must be exercised in accordance with the law. It has to be noted that the right to personal liberty enshrined in Section 35 of the Constitution, which is one of the rights the Applicants sought to enforce is not an absolute right.

The Applicant has the burden to prove by cogent, convincing and credible evidence, the facts as alleged by him, as construing the breach or infringement of the Fundamental right as guaranteed him by sections 34, 35, & 46 of Constitution of the Federal Republic of Nigeria 1999 (as amended).

General and wide allegations of such breach or infringement will not suffice.

Apart from the serial invitations, the Affidavit in support of the Applicants Originating Motion did not disclose any act of breach. In my view, inviting and questioning a person and releasing him to go home does not amount to a breach of his fundamental rights. The Applicants were merely invited, upon receipt of allegations against them, so doing alone in my view cannot constitute sufficient breach or infraction on the fundamental rights of the Applicant.

This being so, I am not in any doubt whatsoever that the constitutional requirement was satisfied in this matter since the Applicants were released within the time prescribed by law.

The Applicants also alleged that they signed the purported terms of settlement dated August, 2021 and made payments of N50,000,000 to the 6th Respondent under duress and threats, but failed to substantiate these allegations with cogent, convincing and credible evidence.

It is important for me to pause and say here that the powers conferred on the 3rd Respondents, i.e. the EFCC to receive complaints and prevent and/or fight the commission of financial crimes in Nigeria pursuant to Section 6(b) of the EFCC Act does not extend to the investigation and/or resolution of disputes arising or resulting from simple contracts or civil transactions as in this case. The EFCC has an inherent duty to scrutinize all complaints that it receives carefully, no matter how carefully crafted by the complaining party, and be bold enough to counsel such complainants to seek appropriate/lawful means to resolve their disputes. Alas! the EFCC is not a debt recovery agency and should refrain from being used as such.

The Respondents, jointly and/or severally, are hereby restrained from disturbing, harassing and/or howsoever interfering with the personal liberty and property(s) of the Applicants through intimidation, threats of invitation for interrogation, arrest, detention or in any other way or manner.

I would like to add in this judgment that right to personally liberty as provided in section 35 (1) of the 1999 constitution is the most litigious of all human rights. This is because all government agencies of Government essentially accept that the only legally acceptable way to punish crime, and sometimes dissent is to deprive the accuse person of his right to personal liberty and incarcerate him for a stipulated term.; this world wide practice is

usually abused by dictators, fascist regimes and crude agencies of Government who deliberately abridge the right to personal liberty of citizen on trumped up charges and sometimes without charges at all. The right as provided by section 35 of the constitution is as follows:-

Every person shall be entitle to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with the procedure permitted by law.

Then follows six exemptions where the state is authorized to curtail the right of personal liberty of a citizen and they are:-

- A. In the execution of the Court sentence or order of Court in respect of a criminal offence of which he has been found guilty.
- b. By reason of his failure to comply with the order of a Court in respect of a criminal offender of which he has been found guilty.
- c. For the purpose of bring him before a Court in execution of the order of a Court or upon reasonable suspensions of him having committed a criminal offence or to such extent as may be reasonably necessary to prevent him committing a criminal offence.
- d. In the case of a person who has not attained the age of 18 years for the purpose of his education and welfare.
- e. In the case of person suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol for the purpose of their case or treatment or the protection of a country or for the purpose of preventing the unlawful entry of any person into Nigeria or of affecting the expulsion, extradition or other lawful removal from Nigeria of any person, or the taking of proceeding relating thereto. The

above listed circumstance are situation where the state is authorized to abridge the personal liberty of a person living in Nigeria for the above reasons the 3rd - 7th Respondent having done what they did made this Court to enter judgment as per the above reason I so hold.

Reliefs 1,2,3,4,5,6,7,9 is hereby granted in favour of the Applicants while reliefs 8 and 11 are hereby refused exemplary damages of N500,000.00 against the 2nd -7th Respondent in favour of the Applicants.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance