

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE AGENEBODE JUDICIAL DIVISION
HOLDEN AT AGENEBODE
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON MONDAY THE
3RD DAY OF APRIL, 2017.

BETWEEN:

APPEAL NO: HAG/2A/16

MR TIMOTHY ETIUZALE -----PLAINTIFF/APPELLANT

AND

JOSEPHINE AKADE }
GODWIN ETIUZALE }DEFENDANTS/RESPONDENTS

JUDGMENT

This is an interlocutory appeal against the Ruling of His Worship G. L. Wilson, Senior Magistrate Grade 1, sitting at the Agenebode Magistrate Court delivered on 15/10/2015.

The facts giving rise to the ruling leading to this Appeal is that on the 29th day of July, 2015 the Appellant filed a claim unto court claiming among other things, mesne profit, arrears of rent and possession.

On the 20th day of August, 2015, plea was taken and the Respondent Counsel filed a motion to join one Mr. Godwin Etiuzale as 2nd Defendant on the ground that the said Godwin Etiuzale has now assumed the status of the new Landlord and has collected rents from the 1st Defendant for the year 2015.

The Appellant was served with the Motion for joinder and he filed a counter affidavit.

The said motion was taken and in a subsequent Ruling delivered on the 15th of October, 2015, the court ordered that the said Godwin Etiuzale be joined as the 2nd Defendant in the suit.

Dissatisfied with the Ruling, the Appellant filed his Notice and Grounds of Appeal.

The Grounds of Appeal are as follows:

GROUND 1

The learned trial court erred in law when he granted the joinder of Mr. Godwin Etiuzale as the 2nd Defendant in the above suit.

PARTICULARS OF ERROR

1. When the Plaintiff/Appellant stated ***that he has no cause of action against Mr. Godwin Etiuzale and that he has no relief claimed against him.***
2. When the party seeking to join ***had introduced a new cause of action different from the cause of action of the Plaintiff/Appellant.***
3. When the motion is incompetent therefore the court lacks the jurisdiction to entertain same.

4. When the new cause of action being introduced will outstrip the learned trial court of its jurisdiction to entertain the suit.

GROUND TWO

The learned trial Magistrate erred in law when it concluded to wit: ***“it is clear that there is the question who is the actual landlord of the premises the subject matter in this claim and that applicant seeking to join is crucial to resolving the issue”*** which conclusion or inference cannot reasonably be drawn from the affidavit evidence.

PARTICULARS OF ERROR

- i. The conclusion drawn by the learned trial Magistrate is contrary to the claim of the Plaintiff and the affidavit evidence with the exhibits.
- ii. The claim of the plaintiff is tenancy matter for the recovery of possession of a store and arrears of rent and not who is the Landlord.
- iii. The conclusion is lopsided to the fact that the Plaintiff put the defendant in possession and she has been paying him rent which was not challenged or rebutted.
- iv. The conclusion lends undue credence to the deposition, in paragraph 6 of the Reply of the party seeking to be joined (the deponent) when he stated “the property in question had been shared to him as his father died intestate.

GROUND THREE

The learned trial Magistrate Court erred in law when it held to wit: ***“it is also trite that an applicant may be joined as a defendant in a suit against the wishes of the plaintiff if the justice of the case demands that the party has to be joined before the proper determination of the case can be achieved or when the plaintiff’s or defendant’s case in the existing action cannot be completely determined without the joinder”***

PARTICULAR OF ERROR

- (i) When no evidence has been led by the parties
- (ii) When the existing defendant did not file a counter claim.
- (iii) When the action in the existing claim is tenancy matter for the recovery of possession and arrears of rent.

Counsel for the parties filed and exchanged their respective briefs of argument in consonance with the rules of this Court.

In his Brief of Argument, the learned Counsel for the Appellant, A.M.Aleogho Esq., identified two Issues for Determination as follows:

- (1) Whether the lower court was right in LAW by granting the joinder of Mr. Godwin Etiuzale as the 2nd defendant in this suit. (Grounds 1 & 3)***
- (2) Whether the lower court was right when he held that “from the foregoing affidavit evidence and the exhibits attached, it is clear that there is the question who is the actual Landlord of the premises, the subject matter in this claim and that applicant seeking to join is crucial to resolving this issue.(Ground 2)***

On his part, learned counsel for the Respondents, A.Innih Esq., adopted Issue One of the Appellant as the sole Issue for Determination in this appeal.

Upon a careful examination of the two Issues formulated by the learned counsel for the Appellant, I agree with the learned counsel for the Respondent that Issue one is sufficient to determine this appeal.

Consequently, I adopt Issue One as the sole issue for determination in this appeal. I will however consider the arguments of the appellant's counsel under his Issue two along with his arguments under Issue one.

Opening his arguments, the learned counsel for the appellant submitted that the law has laid down very clearly the conditions to be met before an intervener can be joined as a party in a suit. He posited that Mr. Godwin Etiuzale not being a party in the suit is an intervener.

He referred the Court to the case of: **THE REGISTERED TRUSTEES OF THE CHRIST APOSTOLIC CHURCH OF NIGERIA & ANOR V ALHAJI SAKIKU & ANOR (2002) FWLR (pt 95) 238** where the court identified the following conditions for granting a joinder of an intervener:

- (a) That the intervener ought to have been joined in the first instance as a party;***
- (b) That the joinder of the intervener as a party is necessary to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter;***
- (c) An intervener must satisfy that his presence is necessary for the effectual adjudication of the matter; and***
- (d) That the Plaintiff must have a claim against him and desire to pursue it and that his interest must be identified with that of the existing defendants.***

He submitted that the lower court failed to consider these conditions before granting the joinder of Mr. Godwin Etiuzale as a 2nd defendant in this suit.

He submitted that the claim before the lower court is for the payment of arrears of rent and delivery of possession to the Appellant which does not require the presence of the 2nd Respondent as a party.

Counsel referred the Court to some salient paragraphs of the Appellant's Counter affidavit as follows: paragraph 5 of the where he stated "**that he does not have any claim against the party sought to joined**"; paragraph 6 where he stated that the claim before the lower court is on tenancy and the party seeking to join is not a tenant in any of the commercial stores for which he is applying for possession and payment of outstanding rent by the 1st defendant/respondent; and paragraph 7 where he stated that he put the 1st defendant in possession and she has been paying him rent until she stopped paying rent. He pointed out that these facts were not denied by the Respondents. He maintained that facts not denied nor challenged are deemed admitted.

Arguing further, he submitted that the party seeking to join did not state how the reliefs sought by the Claimant affects him. He informed the Court that the reason proffered by the 2nd defendant for applying to join is contained in paragraph 6 & 7 of his affidavit in reply to the counter affidavit of the plaintiff where he stated that the store has been shared to him. He maintained that this is a bare assertion not substantiated by any documentary evidence.

Counsel submitted that a statement becomes a bare assertion when other evidence in proof of the fact can be adduced but was not adduced in support of the statement. He relied on the case of: **EGESIM B V ONWUZURUIKE**

(2003) 13 WRN 78 @ 108 lines 18-21.

He further submitted that the reason for the 2nd defendant seeking to join has introduced a new cause of action before the lower court which will rob the Court of the jurisdiction to entertain the suit if granted. He maintained that since the Appellant has no cause of action against the 2nd Respondent, the option opened to him is to seek redress (if any) in an appropriate court.

He submitted that the jurisdiction of a validly constituted Court connotes the limits imposed upon its power to hear and determine, issues between persons seeking to avail them of its process *inter alia* by reference to.

- (a) The subject matter of the issue; or
- (b) The persons between whom the issue is joined; or
- (c) The kind of relief sought.

He submitted that where a joinder of a party will rob a court of its jurisdiction the joinder ought not to be granted.

He further contended that the lower court grossly over looked the provisions of Order 5 of the Magistrates Courts Rules before granting the joinder. He quoted part of the rules as follows:

1. ***(i) All persons may be joined as Plaintiffs in whom the right to any relief claimed is alleged to exist whether jointly, severally or in the alternative.***
2. ***(i) All persons may be joined as defendants against whom the right to any relief claimed is alleged to exist whether jointly, severally or in the alternative.***

He further faulted the joinder on the ground that the affidavit in support of the motion for joinder and the affidavit in reply to the counter affidavit of the Appellant (Plaintiff) were deposed to by Mr. Godwin Etiuzale who he claimed was neither a party to the suit nor an applicant in the motion. He argued that the learned senior Magistrate ought not to have looked at the affidavits at all or rely on its contents in arriving at his decision as both the affidavits and the application are incompetent. For this view he referred the Court to the case of: **PRINCE JAMES LAGUNJU OSHO V A.G & COMMISSIONER FOR JUSTICE EKITI STATE & 8 ORS (2001) 46 WRN 22 AT 38** where **ONNOGHEN JCA** (as he then was) stated as follows:

“In the present case, the 9th respondent who deposed to the affidavit in issue was not a party to the action at the stage he deposed to the affidavit. That being the case the proper and acceptable legal way of bringing the contents of that affidavit to the attention of the trial judge is by exhibiting that

affidavit to an affidavit of a deponent who is a party to the action or application or proceeding. This, the 3rd-8th respondents failed to do. That being the case, it is my view that the affidavit under the circumstance was not legally before the trial Court and that Court was not competent to look at it, let alone to rely on its contents.”

He said that the trial Magistrate relied heavily on the said affidavit in arriving at his decision when he held thus:

“I find that paragraphs two to ten of the applicant’s supporting affidavit and paragraphs six to eleven of his reply to the respondents counter affidavit and Exhibit A2 sworn along with same pose serious challenge to the respondent as they have raised prima facie the question of who actually is the landlord of the premises between the applicant and respondent”

He submitted that the 2nd Respondent joined by the order of Court has no direct interest in the claim of the plaintiff. That for a party wishing to be joined in an existing action, he must have a legal interest in order to take advantage of the requirement of the law. He maintained that it is not enough for such a party to show that he has an indirect interest in the pending case as in this case before the Court. He referred to the case of: **Hon. Abubakar Bala V Mr. Musa Dikko & 3ors (2013) 218 LRCN (pt 2) 258 at 270FK**

Arguing further, Counsel submitted that the learned trial court misconstrued the claim of the plaintiff when he held that the issue of who is the landlord is the subject matter of plaintiff’s claim before him.

Furthermore he submitted that Exhibit A3 the rent receipt which the 2nd respondent claimed to have issued to the 1st respondent bears the name of Ali Akade, a complete stranger to the suit. Yet he said the court went ahead to state thus:

“I find that paragraphs two to ten of the applicant’s supporting affidavit and paragraph six - eleven of his reply to the respondent’s counter affidavit and exhibit A3 sworn along with same pose serious challenge to the Respondent

as they have raised prima facie the question on who is actually the landlord of the premises between the applicant and respondent.

He posited that that the issue of being a landlord of the premises was not substantiated by the 2nd respondent either by documentary evidence of sharing or by Exhibit A3. Furthermore, that Exhibit A3 has no nexus with the claim.

He said that based on the misconception of the claim of the plaintiff, the court went ahead to grant the application for joinder. He maintained that the ruling did not take into consideration the totality of the plaintiff's claim and his counter affidavit vis-a-vis the affidavits of the applicant.

Counsel pointed out that the 1st Defendant/Respondent did not file a counter claim and no oral evidence was led by the parties to enable the court to so hold.

He submitted that the claim or relief sought by plaintiff in the lower Court was for the recovery of the store he rented to the 1st defendant and the payment of arrears of rent and not to determine who the landlord of the store is. He concluded that the claim can be adjudicated by the lower Court between the plaintiff and 1st Respondent without the joinder of the 2nd Respondent as the claim has no bearing with the 2nd Respondent.

He finally urged the Court to allow the appeal and set aside the order of the lower Court.

In his Brief of Argument, the learned counsel for the Respondents, A.Innih Esq. submitted that the learned trial Magistrate considered both the applicable principles of law relating to joinder and the various affidavits filed.

He referred to the decision of the learned trial Magistrate at page 23 of the record of proceedings where he held thus:

"I have seen the Applicant's motion on notice for joinder as second Defendant in this suit, and read through both his supporting Affidavit and

Affidavit in reply to Respondent's counter – Affidavit as well as the Exhibit sworn along with the same and listened carefully to his counsel's oral submission before the court.....I have also considered carefully the counter – Affidavit of the Respondent and the Exhibit sworn along with same and listened carefully to his counsel's submissions before this court and also considered carefully the legal authorities cited by counsel.

He said that after considering all the submissions of Counsel, the Court ruled as follows:-

“Paragraphs 2 – 10 of the supporting Affidavit of the Applicant's motion as well as paragraphs 6 – 11 of his reply to the counter – Affidavit of the Respondent and Exhibit A3 which was paid through her husband called Ali Akande sworn along with same raises prima facie the question of who is the landlord of the premises in question. The deposition by the Applicant in paragraph 7 of his reply to the Respondent's counter – Affidavit that he is the landlord of the premises as against the Plaintiff / Respondent poses a serious challenge to the Respondent.....”

He submitted that all the conditions necessary for joinder of a party were met in this application. He maintained that the Respondent in this appeal exhibited a document known as Exhibit **A3** which was paid through her husband called Ali Akande. He maintained that this document was never countered. According to him, the Respondent in this appeal posited that he is enjoying the same status as the landlord and that he has collected rents from the 1st

Defendant. He said that from this scenario, it will be difficult to actually adjudicate on the matter before the court if the joinder is not made.

He submitted that all the authorities cited by the appellant's counsel and his arguments are not applicable and he urged the court to discountenance same and allow the joinder in its entirety.

He also submitted that the Plaintiff filed this action against the 1st Respondent on the ground that he is the landlord. He argued that the Respondent by virtue of paragraphs 3 and 4 of the Affidavit in support and paragraphs 7, 9 and 11 of the reply to counter – claim has shown vividly his locus in this action. He referred the Court to the following decisions on the point:-

- i) **Yar'dua V Lado (2012) All FWLR SC 199 (Part 605) at page 203 – 204;**
- ii) **Peenok Int. Ltd. V Hotel Presidential Ltd (2011) All FWLR SC 1428 (Part 571) at page 1498 – 1499; and**
- iii) **Pan – Africa World Transport Nig Ltd. V JBO Int. I (2011) All FWLR SC 21 (Part 564) at page 21 – 22.**

Counsel submitted that even if the claim before the lower court is about rent not paid by the 1st Defendant to the Plaintiff and the 2nd Defendant came with facts of receipt that he had collected rent from the 1st Defendant, the lower court was right to join the 2nd Defendant in the suit to explain why he collected rent from the 1st Defendant.

He submitted that the question of: Who is the actual landlord? Is now an issue. Hence the decision of the lower court to join the 2nd Respondent.

He therefore urged the Court to affirm the decision of the lower court in the interest of justice and dismiss this appeal with punitive costs.

I have carefully considered all the processes filed in this appeal, together with the arguments of the learned counsel for the parties.

The starting point is the enabling provision on joinder of defendants under the Magistrates Courts Rules.

Order 5 Rule 2(1) of the Magistrates Courts Rules of Bendel State, now applicable to Edo State of Nigeria provides as follows:

“2(1) All persons may be joined as defendants against whom the right to any relief claimed is alleged to exist, whether jointly, severally or in the alternative.”

The above provision is the standard provision on joinder of defendants in most rules of court and has been given explicit judicial interpretation in several cases. The object of the rule is to allow the plaintiff to proceed in the same action against all defendants against whom he is entitled to any relief whether jointly or severally or in the alternative. See: ***R vs. Thomas and others ex parte Edukugho (1962) WNLR 330.***

The simple test for determining whether the order for joinder was proper is: Whether the 3rd party whose presence as a Defendant will be necessary in order to completely adjudicate or settle all the questions involved in the matter? See: ***Anyanwoko vs. Okoye (2010) 5 NWLR (Pt.1188) 497 at 519- 520.***

Thus, an order of joinder will be made to enable the court effectually and completely adjudicate upon and settle all the questions involved in the matter. See: ***J.F.Oladeinde and Another vs. I.O.Oduwole (1962) WNLR 41 at 44.***

It is to be noted that an application for a joinder is rarely refused as a refusal may lead to a multiplicity of suits which the courts must prevent if possible. See: ***Raymond Ogolo & Ors. vs. Paul Fubur & Ors. (1994) NWLR 404.***

It is the duty of the Court to ensure that all parties who are likely to be affected by the result of the action are joined in the action. See: ***Okukuje vs. Akwido (2001) FWLR (Pt.39) 1487 at 1523.***

Any party that may be affected by the order of the court in a suit ought to be joined. The test to be applied is whether the person to be joined will have his interest irreparably prejudiced if an order is not made. The Court should order a joinder, whether as Claimant or Defendant, any party whose presence before the court is necessary to enable the court effectually and completely adjudicate and settle all questions involved in the matter. See: *A.G. of the Federation vs. A.G. Abia (2001) 11 NWLR (Pt. 725) 689 at 745 -746.*

Applying the foregoing principles, the basic question we must answer is whether the presence of the 2nd Respondent is necessary to enable the lower court effectually and completely adjudicate to settle all questions involved in the matter.

In support of the application for joinder, the 2nd Respondent deposed to an affidavit of 10 paragraphs to convince the court that the joinder is in the interest of justice.

Incidentally, in this appeal, the appellant has challenged the competence of the supporting affidavit. In his objection, the learned counsel for the appellant submitted that the affidavit was deposed to by Mr. Godwin Etiuzale who he alleged was neither a party to the suit nor an applicant in the motion. He relied on the dictum of Onnoghen JCA (as he then was) in the case of: **PRINCE JAMES LAGUNJU OSHO V A.G & COMMISSIONER FOR JUSTICE EKITI STATE & 8 ORS (2001) 46 WRN 22 AT 38.**

The objection of the learned counsel appears quite unfounded because Mr. Godwin Etiuzale (2nd Defendant/Respondent) was actually the **applicant** in the motion for joinder. He was severally identified as such in the proceedings. In paragraph 1 of the affidavit in support of the application, he categorically stated that: ***"I am the Applicant sought to be joined as 2nd Defendant in this suit before this Court"***. Again in paragraph 1 of the Reply to Counter Affidavit, he reiterated

that: ***"I am the Applicant sought to be joined as 2nd Defendant in this suit before this Court"***.

Furthermore, the court in its Ruling held thus: ***"For this reason, this Motion on Notice seeking the joinder of the Applicant as second defendant is hereby granted, the Applicant, Mr. Godwin Etuzale is hereby joined as the second defendant in this suit."***

Consequently, the objection to the said affidavit is hereby overruled.

The subject matter of the suit is on possession, the payment of arrears of rent etc., etc. The appellant originally sued the 1st respondent. The 2nd respondent who was joined, deposed to facts showing that he (2nd respondent) collected the said rent from the 1st respondent and that he is the lawful person to collect the rent being the landlord of the premises. There is a serious dispute on this point

Upon a careful study of the facts, it is evident that the presence of the 2nd respondent as a Defendant will be necessary in order to completely adjudicate or settle all the questions involved in the matter. In a quite similar case: ***Ntiashago vs. Emmanuel Amodu & Anor. (1959) WRNLR 404***, the Plaintiff sued the first defendant for recovery of possession of the house which originally belonged to the first defendant but was bought by the Plaintiff at a sale by the sheriff. The second defendant alleged that she later bought the house from the Plaintiff and applied to be joined. The Court held that she could be properly joined.

In the same vein, where the 2nd respondent is alleging that he is the landlord of the house, it will be very proper to allow him to be joined as a defendant so that his interest can be protected. I agree with the learned counsel

for the respondents that the lower court was right to join the 2nd Defendant in the suit in order to explain why he collected rent from the 1st Defendant.

It is settled law that any person, who contemplates that the outcome of the litigation will place him in a position of disadvantage by standing-by when others fight his case for him, can apply to be joined in the suit. See: **Chief Akinyemi vs. Governor of Oyo State (2003) FWLR (Pt.140) 1821 at 1839.**

It will not be proper for the 2nd Defendant to stand aloof and watch while the Plaintiff and the 1st Defendant are litigating over a property which he claims to be the landlord. More so, when he admitted collecting the rent which is the subject matter of the litigation. The maxim is: ***vigilantibus et non dormientibus, jura subveniunt*** (the law aids the vigilant, it does not those who sleep).

In the case of: ***S.P.D.C Ltd. vs. Ajuwa (2015) 14 NWLR (Pt.1480) 403 at 483, Nwodo JCA*** observed that:

“...there are circumstances when a party may insist that he be joined to protect himself against the ill effect of the relief sought by a plaintiff”.

This appears to be the motive for the application for joinder by the 2nd Defendant/Respondent.

Finally, in the case of: ***Akpambo-Okadigbo vs. Chidi (2015) 10 NWLR (Pt.1466) 124 at 184-185,*** the Supreme Court admonished that:

“Courts have the duty to prevent the multiplicity of suits by joinder to ensure the wholesome and effectual determination of the matter in a single suit. Thus, where the determination of one of the plaintiff’s claims

