

**IN THE HIGH COURT OF JUSTICE**  
**EDO STATE OF NIGERIA**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**

**BEFORE HIS LORDSHIP THE HONOURABLE JUSTICE J. I. ACHA,**  
**JUDGE, ON WEDNESDAY THE 3<sup>RD</sup> DAY OF FEBRUARY, 2021**

**B E T W E E N:**

**SUIT NO. B/188/2004:**

KETSON COMPLEX INTERNATIONAL LTD ... CLAIMANT/RESPONDENT

A N D

1. THE REGISTERED TRUSTEES OF )  
INTERNATIONAL SOCIETY FOR ) ... 1<sup>ST</sup> DEFENDANT/  
KRISHNA CONSCIOUSNESS ) RESPONDENT
2. IDEHEN FESTUS OHANMU ... 2<sup>ND</sup> DEFENDANT/RESPONDENT
3. PA. BENJAMIN OHANMU )  
Head of the Family and Trustee ) ... PARTY SEEKING TO BE  
Of the estate of Late Samuel ) JOINED AS 3<sup>RD</sup> DEFENDANT/  
I. Ohanmu, Deceased) ) APPLICANT

**RULING**

This is a Motion on Notice filed on the 18<sup>th</sup> day of June, 2020 by the Applicant as Party seeking to be joined as 3<sup>rd</sup> Defendant, praying the Court for:

“An Order joining PA BENJAMIN OHANMU (Head of the family and Trustee of the Estate of Late Samuel .I. Ohanmu Deceased) as the 3<sup>rd</sup> Defendant in this action, for himself and on behalf of the estate of the said late Samuel .I. Ohanmu, deceased being a necessary Party who have interest in the subject matter of this suit and will be affected by the result of the proceedings.”

The application is supported by a 28 paragraph affidavit deposed by the Applicant. Filed along is Counsel’s written address.

The 1<sup>st</sup> Defendant as Respondent via a Motion filed a 10 paragraph Counter Affidavit on the 9<sup>th</sup> day of July, 2020 and attached Exhibit 'A' together with Counsel's written address to oppose the application.

Similarly, the Claimant as Respondent by way of a Motion also filed an 8 paragraph Counter Affidavit on the 17<sup>th</sup> day of July 2020 and attached Exhibits 'KEM1' and 'KEM2 together with Counsel's written address in opposing the application.

The Applicant as a Party seeking to be joined as 3<sup>rd</sup> Defendant on the 24<sup>th</sup> and 25<sup>th</sup> days of August, 2020 filed Further and Better Affidavits and attached Exhibit 'PP' together with written address in support.

The Applicant further filed two additional Further and Better Affidavits on the 27<sup>th</sup> day of October 2020 and attached Exhibit 'PP' together with Counsel's written address.

The 1<sup>st</sup> Defendant in the main suit in a Motion on Notice filed on the 21<sup>st</sup> day of September 2020 prays the Court for the following order to wit:-

"An Order dismissing the Party seeking to be joined as 3<sup>rd</sup> Defendant, Pa Benjamin Ohanmu's application dated 10<sup>th</sup> day of May, 2020 and filed 18<sup>th</sup> day of June, 2020 his claim having become statute barred.

AND FOR SUCH FURTHER Order or Orders as this Honourable Court may deem fit to make in the circumstances.

GROUND UPON WHICH THE APPLICATION IS MADE

- (a) That Samuel .I. Ohanmu died intestate in 1993.
- (b) That the applicant alleged to have presided over the final burial of late Samuel .I. Ohanmu in 1994.
- (c) That this suit was filed in the year 2004.

- (d) That since the death of Samuel .I. Ohanmu in 1993, the Applicant never attempted to exercise any alleged right of trustee over the property in dispute.
- (e) That the claims of the party seeking to be joined as 3<sup>rd</sup> Defendant is statute barred.”

The Application of the 1<sup>st</sup> Defendant is supported by a four (4) paragraph affidavit together with a written address filed along.

On the 10<sup>th</sup> day of November 2020, the Party seeking to be joined as 3<sup>rd</sup> Defendant as Respondent to 1<sup>st</sup> Defendant’s Motion, filed an 11 paragraph Counter Affidavit together with Counsel’s written address in opposing the 1<sup>st</sup> Defendant’s Motion.

With the consent of Counsel to all the parties, the application filed by the Party seeking to be joined on the 18<sup>th</sup> day of June 2020 and the Application filed on behalf of the 1<sup>st</sup> Defendant on the 21<sup>st</sup> day of September 2020 were consolidated for hearing and determination.

In arguing the application, D. O. Unuareokpa, Esq. of Counsel for the Applicant as Party seeking to be joined as 3<sup>rd</sup> Defendant referred to the written address filed along with the Motion on the 18<sup>th</sup> day of June 2020 as well as two Further and Better Affidavits filed on the 24<sup>th</sup> and 25<sup>th</sup> of August 2020 in response to the Counter Affidavit filed by the 1<sup>st</sup> Defendant. Counsel also referred to the Further and Better Affidavit filed on the 27<sup>th</sup> day of October 2020 in response to the Counter Affidavit filed by Claimant. Counsel adopted these processes as his argument for joinder.

Counsel argued further that upon receipt of the Motion filed by the 1<sup>st</sup> Defendant on the 21<sup>st</sup> day of September 2020 to dismiss their

application for joinder, the Party seeking to be joined filed a Counter Affidavit to it with Counsel's written address on the 10<sup>th</sup> day of November 2020. Counsel urged on Court to dismiss the application filed by the 1<sup>st</sup> Defendant and grant the application for joinder.

N. L. Omorodion, Esq. of Counsel for the 1<sup>st</sup> Defendant in opposing the application for joinder referred to the Counter Affidavit filed on behalf of the 1<sup>st</sup> Defendant on the 9<sup>th</sup> day of July 2020 attached to the Motion which was granted on the 23<sup>rd</sup> day of September 2020 with a written address.

Counsel also referred to his Motion for dismissal of the Application seeking to be joined, which he filed on the 21<sup>st</sup> day of September 2020 with a written address. Counsel adopted all these processes to oppose the application for joinder.

On his part E. Aghomon, Esq. of Counsel for the Claimant referred to his Counter Affidavit filed on the 17<sup>th</sup> day of July 2020 but deemed filed on the 23<sup>rd</sup> day of September 2020 along with his written address to oppose the Application for joinder. Counsel adopted all the processes and urged on Court to refuse the Application for Joinder.

All the processes filed as argument in support of the two Applications and to oppose were adopted as Counsel's submissions in these two applications.

The facts relied upon for the first application are set out in the various affidavits filed by Applicant in respect of his application. Applicant deposed that the buildings known as 108A and B, Uselu-Lagos

Road, Benin City, the subject matter of this action form part of the estate of late Smauel .I. Ohanmu which have not been partitioned or distributed. And that he is the head of the family. Therefore, he is a necessary party to protect the interest of the family. Claimant and 1<sup>st</sup> Defendant vehemently opposed the application.

In opposing the application, Claimant relied heavily on Exhibit 'KEM1' - an Enrolled Order of the Customary Court in Suit No. OR/ACC/1563/94 and Exhibit 'KEM2' - a Judgment of the Court of Appeal in Appeal No. CA/B/102/97.

1<sup>st</sup> Defendant did not only file a Counter Affidavit to which he attached a copy of the Court of Appeal Judgment in Appeal No. CA/B/102/97, he proceeded on 21<sup>st</sup> day of September, 2020 to file an application praying this Court to dismiss Applicant's application for reason that claim of Applicant herein is statute barred.

The attitude of the Courts to applications for joinder by an intervening Defendant in general terms has been stated by the apex Court in **Oyedeji Akanbi (Mogaji) & Anor. V. Okunlola Ishola Fabunmi & Anor. In Re: Yesufu Faleke (Mogagji) (1986) 2 S.C. 431** when Nnamani JSC in the lead judgment of the Court stated at **Page 450 of the report** thus:-

“It has also been settled that the Courts will not compel a Plaintiff to proceed against a party he has no desire to sue.”

In **Uku & Ors. V. Okumagba & Ors. (1974) 3 S.C. 35** Udoma JSC stated that:

“The beginning and end of the matter is that the Court has jurisdiction to join a person whose presence is necessary for the prescribed purpose and has no jurisdiction under the rule

to join a person whose presence is not necessary for that purpose.”

In the case of **Re Faleke Mogaji (supra)**, the apex Court stated at **Page 479 of the report** thus:

“There is no doubt that where the applicant seeking to be joined establishes that he has an interest in the result of the action, the application for joinder may be granted.”

Even though the Applicant herein deposed to the fact that he is the head of Ohanmu Family and the property in dispute between the parties on record forms part of the estate which has not been partitioned, 1<sup>st</sup> Defendant/Respondent in paragraphs 5 and 6 of its Counter Affidavit and Claimant/Respondent in paragraph 5 of its Counter Affidavit both contended that one Nosakhare Innocent Ohanmu is the eldest surviving son of late Samuel .I. Ohanmu who was granted Letters of Administration to administer the property. This assertion was not only denied by Applicant, the said Nosakhare Innocent Ohanmu deposed to affidavits on the 24<sup>th</sup> day of August 2020 and 27<sup>th</sup> day of October 2020 and stoutly denied the fact that he was ever granted Letters of Administration in respect of the property, reaffirming instead, the authority of Applicant to superintend over the property of late Samuel .I. Ohanmu.

On the face of all these, it is my respectful view that Applicant has provided sufficient facts to the satisfaction of the Court that he is a necessary party to be joined as a Defendant in these proceedings.

What is more, the issue of joinder of a necessary party has been elevated to the status of Fundamental Right of persons which the Courts are enjoined to protect. In **Akpangbo-Okadigbo & Ors V. E. T. Chidi &**

Ors. (2015) Vol. 247 LRCN 45 the apex Court per Onnoghen JSC (as he then was) and Galadima JSC stated at pages 87 and 95 respectively of the report thus:-

Where there is a failure to hear all the necessary parties to the dispute before a decision is reached, there is a breach of Section 36(1) of the 1999 Constitution as amended which has the effect of automatically rendering the proceedings in the action and the judgment or ruling resulting therefrom a nullity and void without any legal effect.”

And

“A party who has shown sufficient interest or right in a case should not be denied hearing before a decision is reached, that is to avoid breach of Section 36(1) of the Constitution.”

From the facts placed before Court, I find and I hold that there is merit in the application for joinder filed by Applicant. Consequently, application is granted as prayed.

It is hereby ordered that Pa Benjamin Ohanmu be joined as 3<sup>rd</sup> Defendant in this suit.

I make no order as to costs.

**J. I. Acha**  
(Judge)  
3<sup>RD</sup> FEBRUARY, 2021

COUNSEL:

APPLICANT ... .. D. O. Unuareokpa, Esq.

CLAIMANT/RESPONDENT ... .. E. Aghomon, Esq.

1<sup>ST</sup> DEFENDANT/RESPONDENT ... .. N. L. Omorodion, Esq.

2<sup>ND</sup> DEFENDANT/RESPONDENT ... .. G. I. Okogele, Esq.