

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE ABAKALIKI JUDICIAL DIVISION  
HOLDEN AT ABAKALIKI  
ON TUESDAY THE 25<sup>TH</sup> DAY OF OCTOBER, 2016  
BEFORE HIS LORDSHIP  
HONOURABLE JUSTICE AKINTAYO ALUKO

SUIT NO. FHC/A1/CS/49/2015

BETWEEN:

EMMA-ISIAGU INTERNATIONAL } PLAINTIFF/RESPONDENT  
LIMITED }

AND

1. FIDELITY BANK PLC } DEFENDANTS/APPLICANTS  
2. CHUKWU INYA AGHA }

AND

1. AKANU IBIAM FEDERAL POLY. UNWANA }  
2. FRANCIS OTUNTA } 3<sup>RD</sup> PARTIES  
3. MARCELINUS ANOSIKE AZUBUIKE } SOUGHT TO  
4. ABANI PRINCE OGBONNAYA } BE JOINED  
5. IZUNOBI EMMANUEL }

RULING

By their Motion on Notice dated the 5<sup>th</sup> day of May 2016.  
filed the same date, the Defendants/Applicants pray for the  
following reliefs:



(a) An order granting leave to the Defendants/Applicants to  
join – Akanu Ibiam Federal Polytechnic Unwana, Francis

• *Otunta, Marcelinus Anosike Azubuike, Abani Prince Ogbonnaya and Izunobi Emmanuel as third parties in this action.*

*(b) An order granting leave to issue and serve a third party Notice on the named third parties sought to be joined in this action.*

*(c) And for such other order(s) as this honourable Court may deem fit to make in the circumstances.*

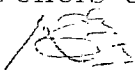
This Motion was moved and argued on the 19<sup>th</sup> day of October 2016 when parties adopted their respective addresses. The Motion was brought pursuant to the provision of order 9 Rule 17(1)(2) of the Rules of this Court 2009.

At the hearing of the application, both Counsel to the Plaintiff and parties sought to be joined as 3<sup>rd</sup> parties raised a preliminary point of law bothering on the incompetence of the application.

Both Counsel argued that the application offends the provision of order 9 Rule 17(2) which provides that the application should be made *ex parte*. Counsel also hinged their objection on the provision of order 9 Rule 18(1) of the Rules of

this Court by submitting that it is only forms 12 and 13 which are the products of the application referred to in order 9 Rule 17(1)(2) that are to be served on the Plaintiff.

Counsel then made reference and alluded to the proceedings of this Court on 20<sup>th</sup> day of April 2016 that it was the Court that directed the exparte application dated 11/3/16 filed by the Defendants to be made on Notice. Since Counsel has made issue out of the proceedings of this Court of the 20<sup>th</sup> day of April 2016, it then becomes imperative atleast to put the record straight by making a recap of what went on in this Court in this case on the said date.

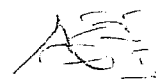
On the said date, one Barrister R. O. Nwabueze who appeared for the Defendants signified his intention to move the exparte application dated 11/3/16 asking for same reliefs as the present application. 

Learned Counsel for the Plaintiff, I. E. Anyim then retorted by way of objection as follows and I quote him

"I am objecting to the mode of application of the Defendants which was made *ex parte* for joinder".

Counsel went further by submitting that the provision of Order 9 rule 15 does not permit in any way a party to bring application for joinder *ex parte*. He argued that the said application was intended to deny the Plaintiffs and Parties sought to be joined fair hearing and finally submitted that the application was incompetent, improper and should be dismissed.

Without dissipating needless energy in repeating the response of R. O. Nwabueze, Learned Counsel who appeared for the Defendants on the said date. I shall now state briefly the decision of this Court on the said date.



On the 20<sup>th</sup> April 2016, whilst considering the objection of the Plaintiff's Counsel, this Court critically observed the reliefs contained in the said application which was made *ex parte*.

The Court was of the view that the application in effect was seeking for joinder even the Parties sought to be joined were sought to be joined as third parties and notwithstanding the fact that the Defendants asked for leave for the issuance and service of third party notice. The Court also noticed that the exparte application and the application dated 5/11/2015 seeking for joinder which the Defendants earlier withdrew have some semblance in their reliefs even though the issue of third party notice was added to the former.



In effect the Court was of the view that the provision of Order 9 Rule 17(1)(2) under which the Defendants brought the exparte application of 11/3/16 for joinder only provides for issuance of third party notice. It was in the face of the obvious defect in the exparte application that the Court with the assistance of the provision of Order 9 Rule 17(2) directed that, that type of application should be made on notice and that the Plaintiff be put on notice in the interest of fair hearing and fair play. The records of the Court is there for all concerned to see.

The law is clear, and it is that both parties and the Court are bound by the records of the Court. Therefore the position of the Plaintiff's Counsel that it was the Court who suo-mutu directed that the application be made on notice offends and runs contrary to what transpired in Court on the 20<sup>th</sup> April 2016.

Consequently, the argument of the Defendants' counsel that bringing this application by way of Motion on Notice is surplausage is misplaced because the present application is not just asking for the issuance and service of third party notice, it is in effect praying for joinder of the persons named therein, the mention of third party notice notwithstanding. Application for joinder cannot be made ex parte.



However despite its obvious defect of asking for joinder and at the same time asking for leave to issue third party notice, the application will now be considered on its own merit while shunning any apparent defect noticeable on its face

I have gone through the respective affidavit evidence of parties with respect to this present application, I have also gone through the pleadings of both the Plaintiff and Defendants.

By the provisions of Order 9 Rule 17(1)(2) of the Rules of this Court, before third party notice can be issued, the Defendant applying for same must show that he has a claim against the 3<sup>rd</sup> party to the effect that;

- (1) He is entitled to contribution or indemnity; or*
- (2) He is entitled to any relief or remedy relating to, or connected with the original subject matter of the action and substantially the same as one relief or remedy claimed by the Plaintiff; or*
- (3) Any question or issue relating to or connected with the said subject matter is substantially the same as some question or issue arising between the Plaintiff and the Defendant and should properly be determined not only as between the Plaintiff and the Defendant but also as between the Plaintiff and the Defendant and the 3<sup>rd</sup> party or between any or either of them.*

Therefore the relevant question here is - can it be said that the present application meet any of the above stipulated conditions?

A cursory look at the statement of defence of the Defendants including all the correspondence so far exchanged between the Plaintiff and the Defendants which were duly pleaded, the Defendants did not indicate at anywhere that they have claims against any of the parties sought to be issued with third party notice. Throughout the length and breath of their statement of defence, the Defendants stoutly defended their action which the Plaintiff complained of and demonstrated their resolve to defend the reliefs claimed against them by the Plaintiff.



They did not at any where claim entitlement to any contribution or indemnity against the persons they are seeking leave to issue third party notice.

Since there is no claim by the Defendants whatsoever against the parties sought to be issued with third party notice,



there cannot be any issue or question between the Defendants and the 3<sup>rd</sup> parties relating to or connected with any subject matter which can be said to be substantially the same as some question or issue arising between the Plaintiff and the Defendants which should properly be determined between the trio of the Plaintiff, the Defendants and the 3<sup>rd</sup> parties. Neither did the Defendants indicate any claim where they claim entitlement to any relief or remedy relating to or connected with the original subject matter of the Plaintiff's action.

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The summary of it is that the Defendants have shown or exhibited no claims against the said parties described as parties sought to be joined. All the depositions of the Defendants in paragraph 6 of the main affidavit in support of the application and paragraphs 7(c)(d)(e)(f)(g)(h) of the Defendants' further affidavit are mere speculations and assertions while the depositions in paragraphs 6(a)-(d) of the said further affidavit only amount to the defence of the Defendants against the reliefs of the Plaintiff. They cannot by

any stretch of imagination be described as Defendants' claims against the parties sought to be served with third party notice.

Application for issuance of third party Notice in the circumstance of this case is grossly inappropriate as granting same will not serve any useful purpose or the interest of justice. It will only engender delay and constitute a clog in the wheel of progress thereby preventing an expeditious hearing of the case. What is more, in third party proceedings which the Defendants are praying for, Plaintiff cannot obtain judgment against a 3<sup>rd</sup> party and neither can a 3<sup>rd</sup> party defend the claim of the Plaintiff. It is only a venture between the Defendant and the 3<sup>rd</sup> party.



The 3<sup>rd</sup> party needs the leave of the Court to defend the Plaintiff's claims even after he has been brought into the case. This will eventually create an unwarranted bottleneck in the hearing of the case. See the case of NNPC vs. ZARIA & ANOR (2014) LPELR - 22362 (CA) at page 75, paragraphs E - G:

OKAFOR vs. AFRICAN CONTINENTAL BANK LTD (1975) 5 SC

89 at 103.

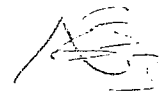
The Defendants did not show both in their statement of defence and affidavit in support of the application that there is any obligation on the part of the parties sought to be brought in by the issuance of third party notice both in law and in equity to indemnify the Defendants. The law is well settled that where it is not shown that there is an obligation on the part of the person sought to be brought in as a 3<sup>rd</sup> party in law or in equity to indemnify the Defendant, leave will not be granted and the order will not be made. see Bank of Ireland vs. UBN Ltd & Anor (1998) LPELR - 744 (SC) at p. 15 paragraphs B - C

Let me make it clear that 3<sup>rd</sup> party proceedings has a life of its own to the extent that even when and where the main or principal action between the Plaintiff and the Defendant is concluded or settled, 3<sup>rd</sup> party proceedings already kick started may nevertheless proceed on. parties in the present case do not need this type of avoidable bottleneck in the present

circumstance; see Bank of Ireland vs UBN Ltd & Anor (Supra)  
p. 16, paragraphs C - D.

Having said that, the matter will not and cannot possibly end there, the interest of justice must be served while taking the interests of all parties concerned into consideration.

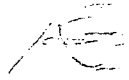
As gleaned from the pleadings of the Plaintiff particularly, its statement of claim; the complaints of the Plaintiff mainly, is that the Defendants were grossly negligent without following the CBN directives for opening accounts when the Defendants without due care opened the **AIFPU BUILDING COMPLETION COMMITTEE/EMMA-ISIAGU INTERNATIONAL LTD A/C 4110018208.**



The Plaintiff complained that the account was opened to siphon the sum of ₦81, 000, 000.00 being the sum due to the Plaintiff. The Plaintiff in its relief C is claiming a refund of the said sum. In paragraph 20(i) of the Defendants' statement of defence, the Defendants maintained that the said sum of ₦81,

000, 000. 00 were withdrawn by persons nominated by the Plaintiff as its representatives.

Some of the said Plaintiff's representatives are among the persons sought to be joined as 3<sup>rd</sup> parties. In paragraph 12 of the said statement of defence, it was pleaded that the account from where the sum of N81 Million was withdrawn was opened based on the documents authorized by the Plaintiff and the Akanu Ibiam Federal Polytechnic Unwana. It is of note that the institution is one of the parties sought to be joined as 3<sup>rd</sup> parties. Particular documents were pleaded in paragraph 12 of the statement of defence which the Defendants used to open the said account. They are;

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- (i) *Memorandum of understanding dated 30/1/2012;*
  - (ii) *(ii) Nomination letter dated 30/1/2012;*
  - (iii) *Mandate letter dated 30/1/2012;*
  - (iv) *Authority letter to open an account dated 17/2/2012.*

It is of interest that most of the persons sought to be joined as 3<sup>rd</sup> parties are mentioned in the said documents.

Furthermore, as gleaned from paragraphs 6 and 7 of the Defendants' further affidavit in support of their Motion, it was stated that the said sum of N81 Million which the Plaintiff is seeking an order of Court for a refund were accessed or withdrawn by the parties sought to be joined as 3<sup>rd</sup> parties and that the account from where the sum was withdrawn was opened by the said individuals.

Having stated the above, the pertinent question begging for an answer is that – can the issues raised by the pleadings of parties with respect to the alleged act of negligence of the Defendants leading to the Plaintiff's loss of N81 Million to the persons sought to be joined as third parties be effectively, effectually and completely adjudicated upon and consequently determined without the individuals and persons named as 3<sup>rd</sup> parties?

My eager and frank answer is an emphatic No! I think and I am of the considered view that they are necessary parties in this suit. Even without an application from any of the

parties, the interest of justice and the provisions of the Rules of this Court enjoin this Court to suo-motu direct or order that their names be added and joined into the suit. See the provision of Order 9 Rule 14(3) of the Rules of this Court.

In the circumstance of this case, while am of the view that issuance of third party notice is not appropriate for the obvious reasons given (supra), I am however convinced that the interest of justice will best be served if such persons mentioned as parties sought to be joined as 3<sup>rd</sup> parties are joined as co-defendants in this case for the effectual and complete determination of all the issues incontrovertibly in this case. It will serve the interest of justice without any prejudice to the interest of any of the parties. It will prevent an eventual multiplicity of actions; It is economical as it would save cost for the parties; It will also save time; It will avoid likely and avoidable loss of jurisdiction by the fact of non-joinder; It will resolve and settle for once the likely grievance of all persons

who may be affected either directly, legally and financially by the outcome of the case.

The above are in agreement with the position taken and endorsed by the Apex Court in the case of AKPAMGBO - OKADIGBO & ORS vs CHIDI & ORS (2015) LPELR - 24564 (SC) at page 35 paragraphs D - A.

The Defendants' Counsel in his address has enjoined the Court to bind itself with the decision of the Apex Court in the above mentioned case. Counsel is right, the court have no choice, the interest of justice demands that I bind myself and follow the said decision.

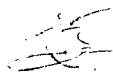
I must say that the decision in the case is not an authority on the issuance of 3<sup>rd</sup> party notice. but certainly the issue of joinder of necessary party which the Apex Court said can be embarked upon suo-motu by Court was well taken. This is in accordance with the provision of Section 36(1) of the 1999 Constitution.



In conclusion, I make the following orders:

- (i) *Akanu Ibiam Federal Polytechnic Unwana; Francis Otunta; Marcelinus Anosike Azubuike and Izunobi Emmanuel are hereby ordered to be joined as co-defendants in this case.*
- (ii) *All the originating processes including the writ of summons, statement of claim, statement of defence and other accompanying processes must be served on the persons newly joined not later than 14 days from the date of this order.*
- (iii) *The parties newly joined shall file and serve their defence and accompanying processes on the other parties not later than 14 days after the service of the originating processes on them.*
- (iv) *Expeditious hearing of this case is hereby ordered.*
- (v) *Leave to issue third party notice is hereby refused.*

The above shall be without prejudice to any consequential processes any of the parties may be entitled to file under the Rules.

  
**AKINTAYO ALUKO**  
**PRESIDING JUDGE**

25 - 10 - 2016

**ENDORSEMENT**

- (i) I. E. Anyim Esq.  
(for the Plaintiff/Respondent)
- (ii) J. C. Ozoeze Esq with ACN Agugbue Esq.
- (iii) (for the Defendants/Applicants)
- (iv) E. A. Ewa Esq.  
(for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup>  
parties sought to be joined)