IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI
ON MONDAY THE 6TH DAY OF MARCH, 2017

BEFORE HIS LORDSHIP

HON JUSTICE M. L. ABUBAKAR

JUDGE

SUIT NO. FHC/AI/CS/29/2013

BETWEEN:

1. **ANTHONY ALINTAH**
2. **MR. SIMON NDUBUISI** — **PLAINTIFFS**

A N D

1. **TRADE AFRIK LIMITED**
2. **MRS. MILLICENT DUVAL ALINTAH**
3. **MISS. NKIRUKA ALINTAH**
4. **MR. UBADIWE ALINTAH**
5. **MRS. O.E. NWAGWU**
6. **MRS. WALTER OZIOKO**
7. **MISS UDOCHI IHEANACHO**
8. **FELIX OKECHUKWU ALINTAH**
9. **MR. AZUKA ALINTAH**

} **DEFENDANTS/RESPONDENTS**

APPEARANCE

Emeka Nnosu, with Brief of Cyril Anichukwueze Esq. - Plaintiff
Uchenna Emeh with E. Awoke Esq. - 1st Defendant
F. S. Nweke (Miss) - 2nd – 4th Defendants
A. J. Onah - 5th – 7th Defendants
C. U. Abuju - 8th and 9th Defendant

JUDGE
FEDERAL HIGH COURT
ABAKALIKI

RULING ON APPLICATION ON NOTICE

This ruling relates to an application filed by the counsel to the 5th to 7th Respondents on 26/10/2015 pursuant to order 9 Rules 15 of the Rules of this court seeking for an order striking out the names of the 5th, 6th and 7th Defendants/Applicants. The grounds for the application are as follows:-

1. The 5th, 6th and 7th Defendants/Applicants are not proper or necessary parties to this suit.

2. The 5th, 6th and 7 Defendant/Applicants are not Directors of the 1st Defendant and are not registered any **Form CAC 7** (Particulars of Directors) of the 1st Defendant Company at the Corporate Affairs Commission or in any other register of Directors of the 1st Defendant as either Directors or Alternate Directors of the 1st Defendant.

3. The Court cannot make an order rectifying the register of Directors of the 1st Defendant by removing the name of the 5th, 6th and 7th Defendants/Applicant when their names are not on any register of Directors of the 1st Defendant.

4. The Position of Alternate Director in any Company is dependent on and tied to the subsistence of the position of the substantive Director to which he she is alternate.

5. Once the substantive director is removed as a director the alternate director would also be automatically removed and as a result an alternate director is not a necessary or proper party to an action for the removal of the director for which he is alternate.

6. The 5th, 6th and 7th Defendants have no interests in or claims as to Directorship or otherwise in the 1st Defendant Company.

7. The 5th, 6th and 7th Defendants have never attended any Board meetings of the 1st Defendant Company in the stead of any of the 2nd, 3rd or 4th Defendants or carried out any other of their duties on their behalf.

8. The Writ of Summons and Statement of Claim discloses no cause of action against the 5th, 6th and 7th Defendants.

In support is a 4 paragraphs Affidavit and attached are Exhibits DA1 and DA2 respectively which are Forms CAC 7 and a Certified True Copies of Memorandum and Article of Association of the 1st Defendant. There is also a written address where a sole issue was raised for determination. Upon receipt of the counter-Affidavit of the Plaintiff the counsel filed a further Affidavit on 13/ 12/15 and a reply on point of law. The counsel referred to Article 18 of the Articles of Association of the 1st Defendant and the case of NGIGE v. OBI (2006) 14 NWLR (Pt.949) pg 178 and submitted that the 5th to 7th Defendants are not proper and necessary parties to this suit unlike the other Defendants who are the main Directors. The Plaintiffs prayer for the removal of the 5th to 7th Defendant as alternate Directors in this suit is vain and cannot be made by the court because they are not alternative
Directors in the 1st Defendant Company. He cited Exhibit DA 1 to buttress his point.

The counsel further submitted that in determining whether to join a person as a party to an action, the test is whether the person to be joined in an action has any interest or will be irreparably prejudiced if not joined in the action. He cited the case of ***OGBEGO v. INEC (2005) 15 NWLR (Pt 948) 376 and YAMMEDI v. ZAREWA (2010) 11 NWLR 1204 P.90***. He urged the court to grant his application.

In reaction, the counsels to the 2nd, 3rd, 4th 8th and 9th Defendants did not opposed the application but the counsel to the Plaintiff challenged it and filed a 13 paragraphs counter Affidavit deposed to by the plaintiff himself. Attached are Exhibit A1 and A2 respectively and there is a written address where the counsel submitted that paragraph 18 their statement of claim shows the presence of the Applicants as Defendants is necessary to enable the court to effectually and completely adjudicate or settle all the questions involved in this matter. He added that the Applicants are the proper and necessary parties as sued in this case. He cited the case of ***AZUBUIKE v. PDP (2014) 7NWLR (Pt 1406) 292 at 313 paragraph 'D'***

He further added that the said paragraph 18 unequivocally discloses that the Applicants have a case to answer and the cause would be liable to be defeated by the absence of the Applicants as Defendants in this case. They must remain parties so that the decision of this court made herein will be binding on them. This is more so as they have been meddling with the business of the 1st Defendant Company of which the plaintiffs are the sole Directors and shareholders. He urged the court to refuse the application as the applicants are proper and necessary parties to this suit.

These are the submissions of counsel to both parties. The issue for determination is whether the applicant is entitled to the relief sought.
There is plethora of Supreme Court authorities which states that the reason for making a person a party to an action is that he should be bound by the result of the action. Consequently the question to be settled in the action must be one which cannot be effectually and completely settled unless he is a party. See the case of ***PANALPINA LTD V. OLANDEEN INT. (2010) 44 N.S.C.Q.L.R. PER B. RHODES – VIVOUR JSC AT PG 639.***

Secondly, it is the duty of the courts to ensure that parties that are likely to be affected by the result of an action are joined accordingly. It should be noted that a necessary party should be allowed to have his fate in his own hands. He should not be shut out to watch through the window. Judgment made with an order against a person who was not a party to a suit is to no avail. It cannot be allowed to stand. See the case of ***AZUBUIKE v. PDP (2014) 57 N.S.C.Q.L.R PER J.A FABIYI, JSC AT Page 845.***

I have carefully considered the Application and all the other process filed especially the statement of the claim of the Plaintiffs and found that the Applicants are proper and necessary parties in this case. In view of the alleged roles they played, it will not be safe to strike out their names at this stage but at the end of this trial, if there is nothing against them, they are bound to be free of any liability. This application is hereby refused. This is my decision.

JUDGE
FEDERAL HIGH COURT
ABAKALIKI

M. L ABUBAKAR
JUDGE
6/3/2017

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI
ON TUESDAY THE 7TH DAY OF MARCH, 2017

BEFORE HIS LORDSHIP

HON JUSTICE M. L. ABUBAKAR

JUDGE

SUIT NO. FHC/AI/CS/23/2016

BETWEEN:

INYA UWAKWE — **APPLICANT /RESPONDENT**
A N D

1. **FEDERAL TEACHING HOSPITAL ABAKALIKI**
2. **DR. ONWE OGAH**
3. **DR. ONOH ROBINSON**
4. **DR. EZE ANOSIKE**

} **RESPONDENTS/APPLICANTS**

Applicant/Respondent present and Respondents/Applicant absent
C. N. Ugadu - Applicant/Respondent

RULING ON STAY OF EXECUTION

This Ruling is with respect to an application for stay of execution filed by the Respondent/Applicants counsel on 6/12/2016 seeking to stay the Judgment/Ruling of this court delivered on 1/12/2016. In support is a 9 paragraphs Affidavit deposed to by one Elom Solomon and attached is a Notice of Appeal and payments for compilation of the records of proceedings. There is a written address where the counsel submitted that granting applications of this nature is always at the discretion of the court and urged the court to exercise this discretion in favour of the Respondent/Applicants.

JUDGE
FEDERAL HIGH COURT
ABAKALIKI

In reaction, the Applicants/Respondents counsel submitted that they have filed a 16 paragraphs Counter-Affidavit on 12/12/16 and there is a written address where the counsel argued that this court should refused this application as to do otherwise would mean taking away with the left hand what was given with the right hand. Moreover the judgment creditor is in dire need of medical attention and necessary documents are still in possession of the judgment debtors. He added orally that the Respondent/Applicants counsel who signed the purported Notice of Appeal did not affix his stamp and seal on it and did not attached any document evidencing that he has paid for the said stamp and seal. He urged the court to hold that the said Notice of appeal is incompetent.

The counsel further submitted that the Respondents/Applicants did not satisfied the conditions for the grant of this application. He cited the case of ***KWARA POLY v OYEBANIGI (2008) 3 NWLR Pt 1075 page 459 at 462 R.2***. He added that the only way this court can grant this application is where the Respondents/Applicants deposed the judgment sum to the Registrar of this court. He cited order 32 Rule 2 of the Rules of this court and the case of DENTON WEST v. NUOMA (2008) 2 NWLR Pt 1083 pg 418 at pg 424 R. 6 and 7. He urged the court to discountenance this application or in the alternative the court should order that the judgment sum be deposited with the Registrar of this court.

These are the submissions of counsels to both parties. The issue for determination is whether the application has merit or not.
An application for stay of execution like other interim order pending appeal is granted or refused at the discretion of the Court. Therefore the Court takes into consideration the competing interest of the rights of both the applicant and the Respondents. The Applicant must show substantial reasons warranting depriving the successful party of the fruits of his judgment. Thus a Court has power to grant stay of Execution of a judgment is only exercisable if it is satisfied that there are exceptional and special or substantial reasons or circumstances to warrant a deprivation of the successful party of the fruits of his judgment. ***SEE COMEX LTD V. NAB (1977) 3 NWLR PT 496 PAGE 642.***

The Court does not make it a practice of robbing a litigant of the fruits of success unless to refuse stay will lead to the destruction of the res or foist upon the Court of Appeal a situation of complete helplessness or render nugatory any judgment given by the Court of Appeal or provide a situation in which whatever happens to the case, in particular even if the Appellant succeeds there would be no return to the status quo. ***SEE VASWANI TRADING CO v. SAVALAKH (1972) 12 SC 77, DEDUWA v. OKORODUDU (1976\) 1 NWLR 236, BADEJO V. FED. MINSTER OF EDUCATION (1996) 8 NWLR PT 464 PG 15. I***

One of the primary things considered by the Court in granting or refusing stay is whether prima facie there is merit in the grounds of appeal whether the grounds of appeal raise vital and substantial issue of law to be decided on appeal or where the law is to some extent recondite, such that either side may have a decision his favour such should warrant a stay of execution being granted. ***See MARTINS v NICANNAR FOOD CO LTD (1988) 2 NWLR pt 74 pg 83.***

Based on the above authorities, after careful consideration of the Affidavits and various submissions of the counsels to both parties. I am convinced that the application has merit and ought to be granted but on condition that within two (2) weeks from today the Respondents/Applicants should pay into the Registry of this court the Sum of N30, 000,000.00 (Thirty Million Naira) and the cost of N2, 000,000.00 (two Million Naira) that was made against them in favour of the Respondent/Applicant by the Court on 1st December 2016. This is my decision.

JUDGE
FEDERAL HIGH COURT
ABAKALIKI

M. L. ABUBAKAR
JUDGE
7/3/17