Hurdles in Joinder: Case of Professor Enu, C.I.I. and Ndokwa West L.G.C., Delta State Nigeria

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Abstract:
Joinder of parties in litigation is one recurrent decimal in the administration of civil justice in Nigeria. It is because of its complexity that the theory of representative action developed so that parties who have similar interests in a subject matter in litigation can allow one of their own to institute an action in their behalf usually called class action. Representative actions are popular in family, associational and organizational settings. This study is a critical conversation around the circumstances that gave rise to a joinder application in NWACC/37/2019 Chief Mrs. Rita Enu v. Melody Ogwezzy and Community Integrity Initiative where the defendants in the suit tried to join Professor Emmanuel Ifeanyichukwu Enu, the spouse of the plaintiff and Ndokwa West Local Government Council in an action concerning the naming and allocation of Street numbers in Bishop Titus Enu Close, Kwale Delta State. The study which adopts doctrinal method surveyed the claims and counter-claims in the suit and the evidence in the case and interrogated the judicial authorities in the area of joinder of parties in civil litigation. It critically raises the primary facts which the plaintiff relied upon in suing the defendants and presented the evidence elicited from cross examination of the plaintiff that yielded the factual circumstances that the defendants capitalized upon to raise a Motion on Notice for joinder. Although the joinder was swiftly dismissed by the trial court, an appeal to the High Court of Justice, Kwale was subsequently transferred to the Delta State Customary Court of Appeal, Cabal Point, Asaba where the appeal succeeded in parts: while the Local Government Council was ordered to be joined, the joinder of Professor Enu was refused. The study finds that there are clearly laid down guiding principles that a court follows in the determination of every application touching on joinder the Locus classicus of which is laid down in Green v. Green. It was further found that although the grant or refusal of an application for joinder is an exercise within the discretion of the court, which ought to be exercised judicially and judiciously and the appellate courts do not form the habit of interfering often with the exercise of a lower court’s discretion, in this case under review, the court of appeal intervened essentially because the issue of fair hearing was invoked as the Delta State Customary Court of Appeal, Asaba determined that the defendants had sufficiently demonstrated an indictment of the Local Government Council in the performance of its constitutional responsibility and thus ordered that it should be joined to be confronted with the case and complaints of the defendants.

Keywords: Joinder, discretion, appeal, Enu, Council, kwale, Community Integrity Initiative.

Introduction
The procedural law on joinder in Nigeria civil procedure is frequently ignited and confronted in the determination of civil disputes. The legal literature and judicial pronouncements that have accumulated over the subject matter is quite copious in the country. In the case understudy, Bishop Titus Enu a reverend gentleman left a
property behind in the developing part of Umusadege Quarters Kwale Delta State for his son Professor Enu married to Chief Mrs. Rita Enu an Aboh woman. The family appeared to have been the first to settle there and had claimed first indigenous occupancy until the defendants came to join them as residents. In the process of living together certain issues concerning storage and damage of building materials, adjustment of boundaries and access to public electricity utility cropped up between them that were not amicably handled. However, it appeared that the Street issue had also been a sensitive and touchy subject matter in the area as the Enus had had to invite the Commissioner for lands and Survey to unsuccessfully wade into an attempt by a third party to build across the Bishop Titus Enu Street which eventually led it to becoming a Close. When therefore the defendants joined the Close, the question of appropriate numbering of the Street or Close was not apparent. It was only lurking in the corner until Community Integrity Initiative took up an apartment with the first defendant.

The Non-governmental Organization probably needed visibility and took the initiative to raise a sign post along the busy Asaba-Kwale-Ozoro Expressway. On the sign post the NGO inscribed ‘No. 1 Bishop Titus Enu Close.’ This drew the attention of the family of Chief Mrs. Rita Enu who are supposedly the owners of the Street and who regarded themselves as the founders and first occupants of the Street and who had done battle with a third party over the closure of the Street leading to its becoming a Close and had thus raised a smaller sign post by the Expressway indicating the name of the Close simply as ‘Bishop Titus Enu Close.’

Although the previous treatments that the first defendant had received from the founders of the Close had been benign though unpalatable with regards to loss and damage to building materials, electricity disconnection, when Chief Mrs. Rita Enu broached the defendants with the fact that she had been shortchanged or outwitted by the defendants having to pick and inscribe No. 1 on their NGO sign post, she was rudely treated and shocked by the responses of the first defendant urging her to approach a court of law if she had any misgiving; after all, the defendants are first compound before the plaintiff when coming from the Expressway into the Close. Standing on the wicket that the building of the defendants was first before the building of the plaintiff from the Expressway, the defendants dug in and were no longer ready to tolerate the ‘highhandedness and haughtiness’ of the plaintiff and her husband.

In preparation for a legal battle, the plaintiff approached the Council to frame up documents by getting the Council authorities to make a written allocation for Nos. 1 and 2 to her. With the receipt of allocation the Professor (husband of the plaintiff) took to self-help and inscribed Nos. 1, 2 and 3 on the plaintiff’s properties and deemed the defendants’ property as No. 4. It did not occur to the plaintiff what reasonable inference can be drawn from the sequence of events and what a reasonable man could do in the circumstances. Could the defendants have seen the plaintiff boldly inscribe Nos. 1, 2 and 3 on her properties and proceed to inscribe No. 1 on the sign post of Community Integrity Initiative? This research thinks not.

**Statement of the Problem**

The trial court in Chief Mrs. Rita Enu v. Dr Melody Ogwezzy & Anor was midstream in the hearing of the case over who should be allocated No. 1 Bishop Titus Enu Street (now Close) when the defendants (Dr Melody Ogwezzy and Community Integrity Initiative, an NGO-tenant) raised a Motion on Notice to join the Local Government Council and the Husband of the plaintiff (Professor Enu) in the action as third defendant and second plaintiff respectively. The problem that then arose was whether these two parties where desirable and necessary parties with sufficient interest in the effective and effectual determination of the claim before the trial court. Who are parties and under what condition is it necessary to raise an application to join a party in a case? The trial court queried, ‘under the relevant rules of court dealing with joinder of parties, has the court the jurisdiction to add as a defendant a person whom the plaintiff did not wish to sue?’ Must the facts of
each case govern and direct what is to be done or can request for joinder be just for the asking? Where there is evidence before the trial court that ‘the Council did not come to number the houses, I numbered them myself based on the allocation. The Council allocated Nos. 1 and 2 to me. Council did not allocate No. 3 to me. I allocated No. 3 to myself on assumption. I also arrogated No. 4 to the defendants. It was not Council that gave them No. 4’ is it not necessary to join the Council whose constitutional duty it is to carry out the responsibilities which the plaintiff had arrogated to herself in self-help (Umah, 2018)? Where a husband chooses to go incognito and arrogates the onerous function of prosecuting a law suit to a wife in a representative capacity would it not be curious to join him to elicit explanations from him for his conducts in self-help and claims in damages etc? What were the legal and factual circumstances that led the Delta State Customary Court of Appeal, Asaba to overrule the trial court?

Conceptual Framework

Who is a Party?

In litigation the issue of who should be a party is sometimes crucial and confusing. Identification of who can sue and can be sued is therefore of utmost importance determining in some cases the victor or the loser, the survival of the action or the termination of the action in limine. Wingrass (2013) has been able to identify in relevant details six types of parties to conventional actions before courts of law in Nigeria. These are: proper parties, desirable parties, necessary parties, statutory parties, nominal parties and parties by standing by. Of the six types, it is necessary to perfunctory state for the purpose of this study that a desirable party is the one who may be affected by the outcome of the litigation (AG Federation v. AG Abia & 35Ors (2002) 6 NWLR (Pt.763) 264. A necessary party is the one whose presence in the action is necessary in order to decide the matter (Baycju v. Ashamu (1998) 9 NWLR (Pt. 567) 546.

In Suit No. FHC/ABJ/CS/13/2014 Incorporated Trustees of Abuja Old Motor Spare Parts Dealers Association & 30Ors v. Mr. Arinze Akubue & 9Ors (2016) Hon. Justice A. R. Mohammed citing Bwacha v. Ikenya (2011) 13 NWLR (Pt1235) 610 p. 626 held that a necessary party is said to be a party who is not only interested in the subject matter of the suit but who, in his absence, the proceedings would not be fairly dealt with. In other words, the case cannot be fairly decided unless the party is made to join the suit of the plaintiff. In Nnorodim v. Ezeani (2001) 84 LRCN 560 at 566 Belgore, JSC captured it as follows, ‘in view of the provisions in all procedural rules of High Court in this country, if a party appears to be necessary as a third party so as to have a just decision in a suit, such (a) third party can be joined. This joinder of the third party can be at the instance of the parties to the suit or at the instance of the third party, and (or) at the instance of the court.

Cornell Law School citing the provisions of Federal Rules of Civil Procedure: Rule 19 states the provision that ‘a person who is subject to service of process and whose joinder will not deprive the court of subject matter jurisdiction must be joined as a party if in that person’s absence the court cannot accord complete relief among existing parties or that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may as a practical matter impair or impede the person’s ability to protect the interest or leave an existing party subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations because of the interest. Furthermore, a party by standing by is the one who is aware of the action but is content and confident to stand by while another fights his case.

In the case under study, Prof Emmanuel Enu who is the husband of Chief Mrs. Rita Enu and son of late Bishop Titus Enu and a member of the family is a party by standing by. He proposes to hide behind the Bishop Titus Enu family of Inam Abbi and uses his wife to fight the battle for himself and on behalf of the family. He is a Professor and lives far away from Kwale the locus of the litigation. He is also busy with other
meaningful engagements compared to the question of whether No. 1 is inscribed on a sign post along Kwale-Ozoro Expressway and whether his visitors are being misled or his mails are being diverted or whether his father was the first settler and founder of Bishop Titus Enu Close. Indeed the subject matter of litigation may be so infinitesimal or tenuous that it may not be worth his attention if not a tempest in a tea cup in his kitchen cabinet. However, when the full weight of the reply to counter affidavit of the first defendant is reflected upon: how a Professor of high standing in the society may have taken to self-help while the lis is pending to unilaterally number his property as Nos. 1, 2 and 3 and unilaterally give No. 4 to the defendants without the consent of the Local Government Council that has the responsibility of doing so for purpose of public orderliness: how he unilaterally changed the Street to a Close and fenced in a public transformer and cut off the members of the Street from tapping electricity from it etc: then the litigation may be more than meets the eye.

Representative action is what Professor and Chief Mrs. Rita Enu exploit to go about confronting the incursion and ‘rude conduct’ of the defendants on ‘the Street of which their father and father-in-law was the founder and first occupant.’ The desire to name the Street as Bishop Titus Enu Street is probably one of the intangible ways of immortalizing the Bishop. Though it is conspicuous that the facts reveal that coming from the Kwale-Ozoro Expressway where the sign post of Community Integrity Initiative is erected and inscribed with No. 1, the house of the defendants comes before the house of the Plaintiff, the Plaintiff appears to be so enamoured of the use of No.1, 2 and 3 that after the institution of the suit, she went ahead through her husband to unilaterally inscribed the numbers 1, 2 and 3 boldly on her property. It does not occur to her and her husband that an independent observer having an independent conversation with the facts of the case would not believe that the second defendant would have gone ahead to inscribe No. 1 on its sign post if the Plaintiff had earlier boldly written Nos. 1, 2 and 3 on her property before the suit.

Theoretical Framework

Theories in Procedure

In Nigeria it appears as though public institutions and agencies are not performing their constitutional roles; that private citizens are beginning to take into their hands through self-help, the performance of public duties. Due process and procedure are not followed in some fringe cases. Agencies are hardly brought to book and the courts find it difficult to rebuke or reprimand them. The standard procedure is that the Local Government Council under section 7 and the Fourth Schedule Item 1(g) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is donated with the constitutional function of creation of Streets, their naming and numbering and the inscription of such numbers on the various houses in a Street in an orderly manner and in a predetermined order (https://www.jurist.ng & Nigerian Constitution). It is not the duty of a private citizen to do so. When the procedure is not followed, problems are likely to ensue with the numbering of homes, renaming of Streets and even their creation abinitio. The theory of procedure therefore postulates that laid than procedure for the performance of the responsibility of administrative agencies should be followed and that private citizens should not heedlessly interfere with the agencies’ performance of such functions or should private citizens compromise them.

Literature Review

On 30th May, 2019 Chief Mrs. Rita Enu approached the Ndokwa West Area Customary Court, Kwale in NWACC/37/2019 Chief Mrs. Rita Enu (For herself and on behalf of Bishop Titus Enu family) v. Melo Ogwezzy and Community Integrity Initiative claiming ‘a declaration that the Plaintiff is the bonafide person registered and assigned the Street name of Titus Enu Street now known and called Titus Enu Close Umusadege Ogbe, Kwale by the Ndokwa West Local Government Council. A declaration that the Plaintiff is the bonafide person registered and assigned Nos. 1 and 2
Bishop Titus Enu Street now known and called Bishop Titus Enu Close Umusadege Ogbe, Kwale by the Ndokwa West Local Government Council, Delta State. An order of the court restraining the defendants and their agents and privies from further claiming, interfering and assigning the said Street No. 1 to themselves.

Upon being served the originating processes, the defendants counter-claimed as follows, ‘a declaration that the defendants being the owners of and residents of the first house and compound on the Street, are entitled to the usage of No. 1 by custom and convention. A declaration that the Plaintiff was not duly assigned and registered as No. 1 and 2 Titus Enu Street now Titus Enu Close and or has violated the terms and conditions of the assignment. General damages of N500,000.00 and the cost of the unwarranted action.’

Plaintiff’s Case

In the course of stating her case before the trial Area court, the plaintiff deposed as follows: ‘I am Chief Mrs. Rita Enu of No. 1 and 2 Titus Enu Street, Umusadege Kwale. The Street is now a Close. The Street is between Ozoro Expressway and Umusadege Road. Somewhere in the middle of the Street, it was blocked in 2008 and it turned into a Close. I petitioned the Ministry of Lands and Survey, Kwale copying the Ministry at Asaba, Delta State about the structure being built across the Street that led to the closure of the Street but nothing happened. In 2010 the then Commissioner of Lands and Survey, Hon. Raymous Guanna came to visit me and saw the structure. I am originally from Aboh in Ndokwa East Local Government Area of Delta State and married to Dr Enu so I am now from Inam Abbi in Ndokwa West Local Government Area of Delta State. I am a retired Civil Servant and a Consultant.

‘I know Dr Melody Ogwezzy the first defendant. He is my neighbor since about 2016. He bought a plot in the Street and moved in. I know Community Integrity Initiative (a Non-governmental Organization in his building represented by Dr Shedrack Moluno but I do not know Dr Shedrack Moluno personally). However, the sign post, the erection of which is the cause of this action belongs to the second defendant according to Dr Melody Ogwezzy who also claimed to be a Director in the Organization.

‘My family in Abbi is called Bishop Titus Enu family. The family is aware of this dispute and I brought the suit on behalf of the family. When I saw the sign post of the second defendant and the No. 1 written and ascribed on the sign post indicating the building as No.1 Titus Enu Close, I tried to find out who owns and erected the sign post along the Ozoro Expressway. Somebody said I should ask from the Upstairs. I drove to the front of the building and asked the Security man about the first defendant. He told me he was not at home. I then called him on phone and asked him if he was the one who erected the sign post. He said yes. I then told him that there was a mistake in the numbering that he wrote No. 1 Bishop Enu Close instead of No. 4. He told me that as far as he was concerned that his house is the first on the Street and if I did not like it I can go to court and he was waiting for me there.

‘I informed Enu family and they met and instructed me to commence the law suit against the defendants. I brought the suit on behalf of myself and the entire Enu family. The Street came to be Titus Enu Street in 1991 when Enu House was built. My father-in-law lived there and was known as Bishop Titus Udeme Enu. Between 1999 and 2000 he applied and got approval for the naming of the Street. He applied to Ndokwa West Local Government Council and the Council gave him No. 1 and No. 2 Bishop Enu Street. I have a letter from the Council granting the request and naming the Street after him and giving him the numbers in March 2000. Bishop Titus Enu is late now. He died in May 2000. I came here seeking redress because Dr Melody Ogwezzy was rude to me on phone. My number (No. 1) is being used by the defendants. My mails are being diverted. I do not know where they go to. My visitors are confused. I get distress calls from visitors. The essence of getting the number allocated is why I am here.

‘When I tried to dialogue with Dr Melody Ogwezzy, his responses were not okay. He said there was nothing he could do meaning he
cannot change it and if I do not like it I should go to court forgetting that he moved into the Street a couple of years ago after the Street had been in existence. This is the letter I wrote to the Ministry (marked Exhibit A). At the time Exhibit A was written to the Ministry, the defendants had not found their feet on the Street. They came about eight years after. The Ministry replied Exhibit A (the reply is marked Exhibit B). The Local Government Council approved and issued a receipt for the Street naming (Id. 1 (marked as Exhibit D and Id. 2 (marked as Exhibit E). The Local Government Council has the original copy of my letter applying for the allocation of the numbers and a certified true copy is here (Exhibit C). I pray this honourable court to grant my prayers."

Under cross examination, the Plaintiff stated, ‘My husband is Professor Emmanuel Enu. I did not look at Dr Melody Ogwezzy’s two-storey building to know whether he inscribed No. 1 on the building. There is a newly erected sign post on the Ozoro Expressway bearing No. 1 Bishop Titus Enu Close. There are three houses on Dr Melody’s plot at the time I stopped at his house to ask after him…I told him there is an error in his numbering…that his house ought to have been No. 4 not No. 1 because his house is on the odd side of the road. My house had already been No. 1 and in existence. It is the duty of the Local Government Council to number houses on the Street. I do not know whether Council goes to number Street houses physically. My house was the only house on the Street in 2000. The Council did not come to number the houses. I numbered them myself based on the allocation. The Council allocated Nos. 1 and 2 to me. Council did not allocate No. 3 to me. I allocated No. 3 to myself on assumption. I also arrogated No. 4 to the defendants. It was not Council that gave them No. 4. The defendants’ and my properties are the only properties on the Close. There is a Petrol Filling Station called Steadfast Filling Station on the Street.

‘I don’t know whether there is a building belonging to Late Epochi on the Street. I maintain that it used to be a Street before it turned to a Close. The Close starts from my house and ends on the Ozoro Expressway. The Late Epochi’s house is not on my Street and it does not have a number. If you enter the Close from the Ozoro Expressway where the sign post is erected you meet the defendants’ properties before mine. I do not know whether there is a Street that connects Nzebo Street from the Close but there is a road that connects Nzebo Street from the Close. I do not know that the name of a Street can be changed. I do not know that the numbering of houses on a Street can be changed. The defendants saw my Nos. 1, 2 and 3 before they wrote their No. 1 on the sign post on the Expressway. It is not true that they had inscribed the No. 1 on their sign post before I inscribed my Nos. 1, 2 and 3.’

Application for Joinder

On 17th June, 2019 the Solicitors to the defendants approached the trial court with a curious application praying for two orders: joining Titus Enu (the husband of the Plaintiff) as the second Plaintiff; and joining the Ndokwa West Local Government Council as the third defendant in the case. The application was made by Community Integrity Initiative which was represented by Dr Shedrack Moluno. No factual circumstances were adduced for the reason for the joinder in the affidavit in support of the application. However, the application received a stiff opposition from the Plaintiff who argued that she brought the action for herself and on behalf of her family Bishop Titus Enu family of Inam Abbi in Ndokwa West Local Government Area of Delta State. Plaintiff argued secondly that a family meeting held at her residence (No. 1 Titus Enu Close, Umusadege Ogbe) on the 26th of May, 2019 resolved that she should prosecute the claim and depose to the affidavit in opposition to the joinder. In specific reply to the application for joinder, the Plaintiff argued that Titus Enu was late and was not her husband and thus not a necessary party to the suit and as the suit was brought in a representative capacity her presence was sufficient for her family in that the grievance, common interest and the outcome of the suit would be beneficial to the Bishop Titus Enu family in its entirety.

Like a wounded lion upon receiving the counter affidavit, the first defendant joined the fray and
deposed to the following reply to the Plaintiff’s counter affidavit, ‘I am not supposed to be a party to this suit but for the unwarranted animosities, misgivings and ill-will that the said Titus Enu (husband of the Plaintiff) has against me as a person since 2013 when I bought the land now called No. 1 Bishop Titus Enu Close. He, Titus Enu, has continuously harassed me since 2013 on activities in or on the Street disputing and claiming ownership and first occupancy of the Close without any provocation from me. In 2013 Titus Enu (husband of the Plaintiff) asked his security guards to throw and cast away hundreds of bags of my cement into the rains and waters after he granted me permission when I was about to commence my building. In the process, 25 bags became damaged in the rains and waters.

‘The husband of the Plaintiff in 2013 caused to be terminated the construction work on the fence demarcating our boundary after an agreed mutual plan by both of us to adjust the boundaries. In the process, I lost hundreds of thousands of naira worth of materials including iron rods, sand, concrete stones and granite, water, cement, labour etc. He has continually disturbed my security guard and my children from maintaining the road without instructions from him in 2019. He has continued to harass the Organization in my compound (the second defendant) to uproot the sign post erected on the public right of way along the Kwale-Ozoro Expressway without provocation in 2019. In 2016 the husband of the Plaintiff had disconnected the power line to my compound claiming ownership of the BEDC (Benin Electricity Distribution Company) facilities. He has fenced the public transformer in the area into his compound and has disconnected all the Street members from tapping electricity from the line. He has single handedly and in company of his armed security officers numbered his compound as No. 1, 2 and 3 after the commencement of this suit thereby granting himself the relief he is seeking from this court. Thereby, resorting to self-help and tampering with the res in this dispute. The photograph of the three numberings are herein attached as Exhibits A, B and C.’

Heedfully on 26th August, 2019 the Plaintiff went back to the Registry of the Court to file a further and better counter affidavit wherein she deposed as follows, ‘I brought this action in a representative capacity and I state further that Titus Enu is not my husband. The first defendant told me that he does not see any reason why his house should not be No. 1 on the Close and if I am not satisfied, I can proceed to any court and he will meet me there. However, the property which is the subject matter in issue belongs to the first defendant and he is a director with the second defendant. The first defendant is a necessary party who would be affected either way by the judgment of the court. My husband and I have never had any misgivings or animosities against the first defendant ever since he came to our Close in 2013 rather he came and met us as first occupants and we have always accorded him assistance from the first day he started erecting the building which is the subject matter of this suit. My husband has never personally engaged the first defendant in any discussion or did he ever harass him with any security guard. His depositions are extraneous and calculated to divert attention from the cause of action.

‘My husband and I never met with the first defendant anytime in 2013 nor did my husband ever cause the loss of monies and the destruction of any bag of cement and anything at anytime. He never obstructed any kind of development in the Close. First defendant’s depositions are not true and are radically different from the suit before the court. The numbering of the Close is not a recent thing or done during the pendency of this suit. The numbering was receipted for on 2nd March, 2000 and was officially approved on 22nd March, 2000.

**Legal Arguments**

It was the contention of the defendants that the simple issue that had arisen for determination in the application to join the husband of the Plaintiff and Ndokwa West Local Government Council was whether the applicants had made out a case to enable the trial court exercise its discretion to join the two parties sought to be joined. It was submitted that the primary
The purpose of joinder was to avoid multiplicity of action. Applicants had shown that the parties sought to be joined had sufficient interest in the suit and their presence was needed for the final determination of the issues in dispute. The Close in question was allegedly named after the first party sought to be joined by the second party sought to be joined. The court was referred to the self-help conduct of the first party sought to be joined by unilaterally numbering and renumbering the houses in the Street and closing same or changing the same to a Close. The defendants further argued that the denial of the respondent that Titus Enu is dead and is not her husband is not an answer. It is evasive and vague and did not go on to disclose another name for the husband.

The Council bears the constitutional responsibility of naming and allocating numbers to houses in a Close as the one in dispute (Sarumi; and Ugwu & Ugwuja, 2016 Pp. 69 – 73). It ought to have been joined ab initio (Green v. Green (1975) 3 NWLR (Pt. 61) 480). In Akpangbo-Okadigbo & Ors v. Chidi & Ors (2015) 247 LRCN 45 a court can suo motu or on an application join a party where (1) the party is aggrieved (2) there will be multiplicity of action (3) it is necessary to effectively and effectually adjudicate on the matter once and for all (4) the principles of fair hearing is called into question (Fubara & Ors v. Minimah & Ors (2003) 112 LRCN 2182). The trial court in the case under study was forth-right when it stated that the following are relevant factors to be considered in joinder: ‘is the cause or matter liable to be defeated by the non-joinder of the third party or parties?; is it possible for the court to adjudicate upon the cause of action set up by the plaintiff unless the third party be added?; are the third parties persons who ought to have been joined in the first instance?; are the third parties persons whose presence before the court will be necessary in order to effectually and completely adjudicate upon and settle all questions involved in the cause or matter? (Mobil Oil (Nig) Ltd v. Nabsons Ltd (1995) 7 NWLR (Pt. 407) 254 p. 263).’

The trial court continued, ‘we are of the view that the purpose of joinder of parties to an action is to avoid multiplicity of actions. In other words, a party or parties that are entitled to share some interest in the subject matter of an action are joined in a suit because non joinder of such party or parties might necessitate the institution of another action by the party or parties that ought to have been joined in the first place (Adefarasin v. Dayekh (2007) 11 NWLR (Pt. 1044) 89 p. 120). In Awoniyi v. Reg. Trustees of More (2000) 10 NWLR (Pt. 676) 522 p. 540 the Supreme Court held that the purpose of joinder is to enable the court effectually and completely adjudicate upon and settle all questions involved in the cause or matter since a judgment in personam is only binding on the parties to the lis. Therefore all parties who may be affected by the result of the litigation may be joined either as plaintiffs or defendants. It must be borne in mind that the grant or refusal of an application for joinder is exercised at the discretion of the court but such judicial discretion must be done judicially and judiciously (Azubike v. P.D.P (2014) 7 NWLR (Pt. 1406) 292 p. 314).’

**Hurdles in Joinder**

The trial court in ruling against the defendants declining to join Titus Enu (the husband of the plaintiff) and Ndokwa West Local Government Council took recourse to the subject matter of the litigation as held in Re: Maduike (2019) 7 NWLR (Pt. 1671) 255 p. 278. It held that the subject matter of the claim was a declaration that Chief Mrs. Rita Enu is the bonafide person registered and assigned to the Street name Titus Enu Street now known and called Titus Close. ‘This relief … appears not to be in issue based on the counter claim of the defendants as same is not counter claimed. Hence ipso facto joining the said Titus Enu as the second plaintiff or the Ndokwa West Local Government Council as the third defendant is not necessary with respect to this relief sought.’

‘The second relief sought by the claim is apparently the main issue in contention between the parties in this case because it is contended in the counter claim’ that the defendants being the owners and residents of the first house and compound on the Street, are entitled to usage of No. 1 by custom and convention and that the
plaintiff was not duly assigned and registered as No. 1 and 2 Titus Enu Street now Titus Enu Close and or has violated the terms and conditions of the assignment. The trial court proceeded to raise the question with which the ratio of the verdict was constructed as follows: 'under the relevant rules of court dealing with joinder of parties, has the court the jurisdiction to add as a defendant a person whom the plaintiff did not wish to sue? (Yakubu v. Governor of Kogi State (1995) 8 NWLR (Pt. 414) 386 p. 402) Their Honours then decided, it is our view that the party which the defendants/applicants seek to be joined as the third defendant (that is Ndokwa West Local Government Council) must not only have interest in the litigation but such interest must be sufficient because the court is exposed to two competing interests (a) the interest of the plaintiff to be allowed to pursue her claim against the person who she claims has wronged her in law and (b) the interest of the applicants who claim they will suffer hardship and injustice if another person (in this the Council) is not joined in the litigation.

A court of law will take into serious consideration the fact that a plaintiff knows or should know the person who has wronged her and to bear in mind that it will be an abuse of the judicial process to allow into a litigation a person which was not sued as a defendant by the plaintiff. At the same time a court will take into serious consideration the possible human conduct of the plaintiff trying to play a fast one by trying to be smart in the litigation by intentionally avoiding the party sought to be joined by the application which she knows may have all the defences to drown her action. Certainly the principles of equity will not allow a plaintiff to be clever by instituting an action which in the interest of justice ought to be adjudicated upon once and for all (Ezeagu Local Government v. Ufuanya (1996) 7 NWLR (Pt. 459) 226). We are of the view that the party sought to be joined as the third defendant does not have sufficient interest to warrant its being joined in the suit as the third defendant as an issue of joinder goes beyond simply demanding for same (ISBPC v. Purification Tech. (Nig.) Ltd (2013) 7 NWLR (Pt. 1352) 82 p. 113 – 114).

We do not see what injustice the Ndokwa West Local Government Council will suffer by the declaration of which building will bear No. 1 or No. 2 Titus Enu Street now known and called Titus Enu Close or any number whatsoever for them to be joined as a party with sufficient interest in this suit. A party against which there is no cause of action cannot be made a defendant. The applicants have failed to show what cause of action there is against the Local Government Council to justify their contention that the Local Government Council ought to have been joined as a party to this suit (A.G. Benue State v. Umar (2009) 13 NWLR (Pt. 1068) 311 p. 350). Courts have always been reluctant to allow the joinder of parties in the class of cases where the joinder is sought by the defendant against the wish of the plaintiff and without the consent of the party sought to be joined. This obtains where the joinder is not being sought by the intervener or by the plaintiff in an action as in the present one (Hassan v. Atanyi (2002) 6 NWLR (Pt. 770) 581 p. 612). This is because third parties joined in a suit on the application of the defendants are not at the instance of the defendant in the main action, but are defendants at the instance of the defendants who sought the joinder. The rights of the plaintiff and the defendants are determined without reference to the defendant’s claim against the third party (FBN Plc v. Yerima (2020) 8 NWLR (Pt. 1725) 63 p. 80 and Okafor v. ACB Ltd (1975) 5 SC p. 80).

Community Integrity Initiative Appeals

Being completely dissatisfied with the ruling of the Ndokwa West Area Customary delivered on 26th July, 2021 the defendants appealed to the High Court of Justice, Kwale in HCK/1A/2021 Melody Ogwezzy & Anor v. Chief Mrs. Rita Enu contending in the amended Notice of Appeal filed on 7th March, 2022 that the learned trial court erred in law in refusing to join Professor Emmanuel Ifeanyichukwu Enu and the Ndokwa West Local Government Council, Kwale as the second plaintiff and the third defendant respectively. The appellants went on to seek an order granting them leave to adduce additional
evidence on appeal to the effect that the name of the husband of the plaintiff is Professor Emmanuel Ifanyichukwu Enu instead of Titus Enu. The appellants contended further that the additional evidence which is material and weighty could have influenced the judgment of the trial court in their favour had the evidence been available at the trial court and that it was elicited during cross examination after the appeal had been entered at the High Court of Justice, Kwale.

In the main appeal, the defendants/appellants reopened the arguments that the numbering of Street is the statutory function of the Local Government Council (Omotesho, 2023 and Oluseye). It gives approvals for the naming of Streets and numbers them accordingly. They maintained that the allegation that Professor Enu unilaterally in self-help numbered and renumbered the Close when the dispute had already commenced required the presence of the Professor and Ndokwa West Local Government Council. They hinted that as between the appellants and the respondent who was entitled to No. 1 or 2 or 3 or 4 on the Close can only be resolved by the Local Council submitting that in their counter claim filed on 17/6/2019 they asked for a declaration that they being the owners and residents of the first house and compound on the Close, they are entitled to the usage of No. 1 by custom and convention and that the plaintiff/respondent was not duly assigned and registered as No. 1 and 2 Bishop Titus Enu Close and or had violated the terms and condition of the assignment.

Conclusion

The refusal of the joinder of Ndokwa West Local Government Council in the case under review by the trial court appears to be a wrong exercise of discretion. It was not done judiciously and judicially and the appellate court rightly intervened. It was even mulled at the trial court by independent observers of the case that the Council could at best be called or summoned as a witness by any of the parties who felt that the evidence of the Council or the role played by the Council could affect the decision in the case one way or the other. However, given the nature of the counter-claim which the appellants raised alleging that there was lack of due process in the allocation of No.1 and 2 to the respondent and that the respondent had violated the terms and conditions of the assignment and that they were entitled as against the respondent to the use of No.1 by virtue of the custom and convention of being the first house on the Close, the holding of the trial court that ‘The applicants have failed to show what cause of action there is against the Local Government Council to justify their contention that the Local Government Council ought to have been joined as a party to this suit’ could not meet the threshold of the Delta State Customary Court of Appeal, Cable Point, Asaba.

In litigation in Africa and Nigeria in particular, a number of extraneous considerations are brought into play. The argument that Professor Enu should be joined in the suit was one hitched on or actuated by the desire of the defendants to call in their main contender to the ring. It was an exercise in egoism. If the Professor could afford to send out his better-half to a warlike mission (which litigation is considered to be in Africa) the defendants were also out on a trip to demonstrate that the warrior sent out to the battle field was a fry and that the ‘commander-in-chief’ should really come to the ring. Indeed, the case under review was one that was capable of indicating the level of misgivings which can crop up when agencies of government are lackadaisical in the performance of their statutory functions. Elaborate attempt was made in this study to demonstrate with legal authorities the entrenched role of the Council under section 7 and the Fourth Schedule of the 1999 Constitution of the Federation (as amended) with respect to Streets. Checks that were made by the researcher at the Local Council Office in charge of the Schedule on Streets indicated that the Office had been compromised yet it was unable to stem the violation of the Street by a third party which led to the conversion of the Street into a Close even at the visitation of Hon. Raymos Guanna, the Hon. Commissioner for Lands and Survey.

The checks of the researcher on the other members of the Street did not also yield a clean
The relationship between the plaintiff and all other members of the Street was sour. The third party who built across the Street, for instance, vowed that he was not ready to yield any grounds for the plaintiff who is ‘too well to do to recognize neighbours’ to name a Street after given the ego and highhandedness of the plaintiff. This was evidenced vividly by the act of the plaintiff, walling-in the public electricity transformer into her property and denying the third party access to it. The plaintiff’s denial of Epochi’s compound as not being a member of the Street was another clear indication that the plaintiff was not of good cheer to other inhabitants of the area. The further reluctant acknowledgement of the existence of Steadfast Petrol Filling Station on the Street was another indication of how the tenacious claim of the plaintiff to Nos. 1 and 2 was informed by ego. Her unilateral allocation of No. 3 and No. 4 to herself and the defendants respectively was merely an indication of the tip of the iceberg of ego.

**Recommendation**

- Parties to the case should all sheath their swords and allow the Council to carry out its statutory functions according to laid down procedure and best practices.
- If it is found that the defendants made out the claims of exclusion and damages to building materials, the plaintiff should make amends.
- Parties should understand that living together in a community requires understanding, care, give and take as no one is an island.

**References**


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