

SUPREME COURT OF NIGERIA
13TH DECEMBER, 2010. SC. 194/2010
CORAM:- D. MUSDAPHER, I. T. MUHAMMAD, C. M.
CHUKWUMA-ENEH, J. A. FABIYI, O. O. ADEKEYE, JJSC

HON. MARTIN OKONTA APPELLANT
AND
KINGSLEY NONYE PHILIPS & ORS. RESPONDENTS

ACTIONS - Proper parties - Necessity of - Where proper parties are not before the court - It does not assume jurisdiction - And can not make order affecting parties not so joined (H1)

ACTIONS - Parties - Nonjoinder - Effect of - Where appellant was not joined at the proceedings - Which adversely affected him - Breach of his fundamental rights to fair hearing was occasioned - That rendered the action incompetent (H2)

FACTS

The plaintiff/1st respondent at the Federal High Court Abuja instituted an action by originating summons claiming that he was the nominated candidate of Peoples Democratic Party, to contest as a representative for Ika South Constituency in Delta State House of Assembly. It was 1st respondent's case that he contested the primary election with the appellant and that appellant lost out but to his greatest surprise, he knew of his substitution with appellant, conveyed in a letter which he was not given a copy. By this time, appellant had already been sworn in as a member representing Ika South Constituency in Delta House of Assembly.

At the trial court, 1st respondent sought for declaratory reliefs and was granted same. The judgment of the court adversely affected the appellant who was not joined in the action at all, regardless of the fact that 1st respondent's originating summons referred to him in its several paragraphs. Appellant appealed to the Court of Appeal seeking to be joined as interested party to the suit. The application was initially granted by the Appeal Court but the case became different when 1st respondent cross appealed and it was allowed restoring him as candidate for the office. The Court of Appeal held that appel-

lant was not a necessary party in the matter before the Federal High Court. Appellant being aggrieved that he was not heard in the matter, has come on appeal to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the Appellant was not a necessary party to the proceedings at the Federal High Court.

HELD (Unanimously allowing the appeal per **ADEKEYE JSC**)

ACTIONS - Proper parties - Necessity of

1. It is trite law that it is only when proper parties are before the Court which makes a Court competent to adjudicate on the suit. The Issue of necessary parties being before the Court had been considered in various decisions of the Court. A Court has no Jurisdiction to make an order which affects the interest of a person who has not been joined as party. The fundamental reason which makes it necessary to make a person a party to an Action is to make him bound by the result of the Action. Therefore in determining who is a necessary party, what to consider is, whether the question in the Action cannot be effectually and completely settled unless the person is made a party. (p. 3098 H)

ACTIONS - Parties - Non joinder - Effect of

2. There are overwhelming facts before the Court to indicate that the Issue of substitution between the Appellant and the 1st Respondent could not have been effectually and completely settled without joining the Appellant. It clearly amounts to a breach of his Fundamental Rights to Fair Hearing by virtue of Section 36 (1) of the 1999 Constitution not to have joined him at every stage of the proceedings at the Federal High Court. The Action at the Federal High Court was incompetent and ought to be struck out. The decision of the lower Court in holding that he was not a necessary party was glaringly wrong and this Court shall not hesitate to set same aside - and we hereby set it aside. Consequently the decisions of the Federal High Court, Abuja and the Court of Appeal, Abuja were incompetent. The case of the Plaintiff/1st Respondent and the order made by the Federal High Court are struck out. The case before the lower Court is set aside. The Appellant's Appeal, is allowed. The Appellant is entitled to the costs of Appeal assessed as N50,000.00 before this Court and

N30,000.00 at the Court of Appeal. (p. 3099 C)

REPRESENTATION

L. O. Fagbemi, SAN., (with him, O. Dare, A. O. Popoola, B. A. Oyun, J. O. Nkwota and K. Omoruan), for the Appellant.

E. R. Emukoeruo, for the 2nd Respondent.

I. Idris, (with him, F. E. Iselewa), for the 1st Respondent.

Ahmed Raji, (with him, Hajara Baba Ajanah), for the 3rd Respondent.

CASES REFERRED TO

Green v. Green (1987) 3 NWLR (Pt. 61) 480

Awoniyi v. Registered Trustees of Rosicrucian Order Amorc (2000) 6 SC (Pt. I) 103; (2000) 10 NWLR (Pt. 676) 522 at 540

STATUTE REFERRED TO

Constitution of Federal Republic of Nigeria 1999, s. 36 (1)

LEAD JUDGMENT BY ADEKEYE JSC

This is an appeal against the Judgment of the Court of Appeal, Abuja, delivered on the 12th of May, 2010. By way of brief background of the facts - the matter was commenced at the Federal High Court Abuja by Originating Summons. The Plaintiff - before the Federal High Court - now the 1st Respondent in this Appeal - Kingsley Nonye Philips claimed that he was the nominated candidate of Peoples Democratic Party to contest as a representative for Ika South Constituency into the Delta State House of Assembly. The seat being contested by the 1st Respondent in Court was won by the Appellant - Hon. Martin Okonta, who was already sworn in as a member representing Ika South Constituency in the Delta House of Assembly. The Federal High Court did not deem it fit to join the Appellant in this case to that Action, regardless of the fact that there were relevant portions of the Originating Summons which made particular reference to the Appellant as follows:

Paragraph 4 (J)

“That the Plaintiff in the above mentioned struck out Action contested the primary election with the Plaintiff and in the Application lost to the Plaintiff. His name is Martin Okonta.”

Paragraph 4 (K)

*“That the Plaintiff was surprised to hear from the Asaba of-
fice of the 2nd Defendant about a letter of substitution written by the
1st Defendant to the 2nd Defendant substituting his name for the
said Martin Okonta on the 5th of February, 2007. The Plaintiff were
B only allowed to read the letter but refused a copy of same as the
office had only a few fax copy which could be read with some diffi-
culty.”*

Paragraph 5 (a)

*“That the 1st Defendant’s Application as contained in the letter
C dated 5th of February, 2007 does not meet the requirement of the
law for substitution of the Plaintiff to contest the April, 2007 Elections
under the Platform of the 1st Defendant in Delta State.”*

Paragraphs 5 (b)

*“That except the Defendants are constrained they will pro-
ceed to act pursuant to the Application of the 1st Defendant to sub-
stitute the Plaintiff with Martin Okonta as the 1st Defendant’s candi-
date for the Ika South Constituency slot of the Delta State House of
Assembly thereby precluding the Plaintiff from contesting in the afore-
D mentioned constituency.”*
E

As the Judgment of the Federal High Court in granting the
declaratory reliefs of the Plaintiff/1st Respondent adversely affected
the Appellant, he applied to the Court of Appeal to be joined as an
interested party. The Application was initially granted. The 1st Re-
F spondent Cross-Appealed. The lower Court allowed the Cross-App-
peal and restored the Plaintiff/Cross-Appellant as the Appellant/ Cross-
Respondent’s candidate for the election into the Delta State House
of Assembly representing Ika Constituency.

G The lower Court-however inter alia raised the issue that the Appel-
lant was not a necessary party to the proceedings at the Federal High
Court and also made orders which placed the 1st Respondent in the
office being occupied by the Appellant without hearing him on the
Issue. This formed the germane and core Issue for Determination in
H this Appeal.

***It is trite law that it is only when proper parties are
before the Court which makes a Court competent to adjudi-
cate on the suit. “The Issue of necessary parties being before
the Court had been considered in various decisions of the***

Court. A Court has no Jurisdiction to make an order which affects the interest of a person who has not been joined as party. The fundamental reason which makes it necessary to make a person a party to an Action is to make him bound by the result of the Action. Therefore in determining who is a necessary party, what to consider is, whether the question in the Action cannot be effectually and completely settled unless the person is made a party. B

Green v. Green (1987) 3 NWLR (Pt. 61) 480; Awoniyi v. Registered Trustees of Rosicrucian Order Amorc (2000) 6 S.C. (Pt. I) 103; (2000) 10 NWLR (Pt. 676) 522 at 540. C

There are overwhelming facts before the Court to indicate that the Issue of substitution between the Appellant and the 1st Respondent could not have been effectually and completely settled without joining the Appellant. It clearly amounts to a breach of his Fundamental Rights to Fair Hearing by virtue of Section 36(1) of the 1999 Constitution not to have joined him at every stage of the proceedings at the Federal High Court. The Action at the Federal High Court was incompetent and ought to be struck out. The decision of the lower Court in holding that he was not a necessary party was glaringly wrong and this Court shall not hesitate to set same aside - and we hereby set it aside. Consequently the decisions of the Federal High Court, Abuja and the Court of Appeal, Abuja were incompetent. The case of the Plaintiff/1st Respondent and the order made by the Federal High Court are struck out. The case before the lower Court is set aside. The Appellant's Appeal, is allowed. The Appellant is entitled to the costs of Appeal assessed as N50,000.00 before this Court and N30,000.00 at the Court of Appeal. D E F G

MUSDAPHER JSC

The Leading Judgment of Court is read by Adekeye, JSC., and agreed to by Musdapher, Muhammad, Chukwuma-Eneh and Fabiyi, JJSC. H

Appeal is allowed. The Judgment of the Court of Appeal is set aside, and the decision of the Trial Court is also set aside and in its

place, the 1st Respondent's suit is struck out as it was incompetent. The Appellant is entitled to costs at both the Court of Appeal and this Court assessed at N30,000.00 and N50,000.00 respectively.

B **MUHAMMAD JSC**

I agree with the Leading Judgment of my Learned Brother, Adekeye, JSC., that the Appeal is full of merit and it is hereby allowed by me. Consequently, the Action before the Trial Court is hereby struck out and the decision of the Court below is hereby set aside. Costs of N30,000.00 and N50,000.00 costs at the two Courts below respectively.

D **CHUKWUMA-ENEH JSC**

The Leading Judgment prepared by Adekeye, JSC., during the interval of standing down the case is delivered. I agree with him entirely that there is merit in the Appeal. It is allowed. The Judgment of the Court of Appeal is hereby set aside. The case in the Trial Court is hereby struck out as the necessary parties are not before the Court. I abide by orders contained in the Leading Judgment.

F **FABIYI JSC**

I agree with the Judgment just delivered by my Learned Brother, Adekeye, JSC. The Appellant was a necessary party who was not joined at the Trial Court. Such was in breach of Section 36(1), 1999 Constitution.

G The Action at the Trial Court was incompetent. Same is hereby struck out. The decision of the Court of Appeal (Court below) is hereby set aside.

I abide by all Consequential Orders contained in the Leading Judgment; that relating to costs inclusive.

H Appearances: