Dispute Resolution
10th March 2025



David Andy Essien

FAILURE TO ACCOMPANY A MOTION FOR JOINDER WITH NECESSARY SUPPORTING DOCUMENTATION: FATAL OR PARDONABLE?[1]

1. Introduction

By way of prefatory remarks, a Motion for Joinder of a party is a conduit that allows necessary parties to participate and ventilate their dissatisfactions in a case.[2] It is an application that is made to a Court to join a person to a suit, who was not originally a party to the action, either as a Claimant or a Defendant.[3] As a procedural vehicle, it drives the notion of Fair Hearing from theory to practice and this explains why courts in Nigeria have elevated the issue of joinder of necessary parties to the lofty status of fundamental right of persons with sufficient interest in a matter, to be heard.[4]

---

1 **David Andy Essien, Associate, Cross-Departmental, S. P. A. Ajibade & Co., Abuja, Nigeria.**

2 See, David Andy Essien, '*Motion For Joinder of a Party Versus Motion Challenging the Jurisdiction of a Court: The Order of Precedence*' (SabiLaw, 7 July 2023) <https://sabilaw.org/motion-for-joinder-of-a-party-versus-motion-challenging-the-jurisdiction-of-a-court-the-order-of-precedence/> accessed 25th January 2025.

3 See the views of Honourable Justice Otisi, JCA, in Abu & Anor. v. Kura & Ors. (2017) LPELR - 42489 (CA) at pp. 9 - 11, paras. E - E.

4 See, pages 6 - 7 of the Unreported Ruling on the Motion on Notice for Joinder of "Pa Benjamin Ohanmu" as "3rd Defendant" in the case of Ketson Complex International Limited v. The Registered Trustees of International Society for Krishna Consciousness & Anor. ("**Ketson's Case**"), Suit No. B/188/2004, delivered by Honourable Justice J. I. Acha, J. of the High Court of Edo State, Benin City Judicial Division on 3rd February 2021. This can be accessed via this link: <https://edojudiciary.gov.ng/wp-content/uploads/2021/07/KETSON-COMPLEX-VS-KRISHNA.pdf> accessed 25 January 2025.
In the case of Vivian Clems Akpamgbo-Okadigbo & Ors. v. Egbe Theo Chidi & Ors. (2015) LPELR – 24564 (SC) at p. 39, paras. E – F, Honourable Justice Onnoghen, JSC (as he then was), concretized this position, 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.*" See also, the following cases: Poroye & Ors. v. Makarfi & Ors. (2017) LPELR – 42738 (SC) at pp. 79 – 81, paras. C – C; and Vinylon Footwear Insutry Limited v. Dabi (2021) LPELR – 56142 (CA) at pp. 43 – 47, paras. C – C.

Rules of Court in various courts in Nigeria have made provision for the joinder of parties and the requisite procedural accompaniments for such a legal exercise. These Rules of Court are unanimous on the fact that any application to add the name of a Claimant or Defendant may be made to a Judge by Motion on Notice and shall be accompanied by the Statement of Claim or Defence[5] as the case may be, all the exhibits intended to be used and the depositions of all the witnesses ("**Procedural Accompaniments**").[6] This paper will consider the different judicial approaches to the interpretation of the provisions of various Rules of Court dealing with the Procedural Accompaniments for joinder of a party and will invariably provide an answer to the question whether the failure to accompany a Motion for Joinder of a party with a Statement of Claim or Defence, Exhibits and Witness Depositions is fatal or pardonable. In doing this, the paper will review relevant cases; reflect on their relevance and shortcomings; and make necessary recommendations for the betterment of the justice sector.

2. The Hard-line or Strict Constructionist Approach

This judicial Approach to interpretation pays great attention to the letters of the Rules of Court and justifies its reasoning and interpretation by exerting immense legal energy on keywords or phrases used by the draftsman.[7] It is known in different jurisdictions by various names and some of them include formalism, textualism, and/or legal conservatism. It is the position of this author that the case discussed below is a round peg in the round hole of strict constructionism.

2.1 Mr. Charles Okon Ekpo & 6 Ors. v. Attorney-General of Akwa Ibom State & 6 Ors. ("Ekpo's Case")[8]

---

5 In practice, the prefix, "Proposed", is usually added to the description of a Statement of Claim or Defence that accompanies a Motion for Joinder of a party. This is because it is more of a tentative copy that is neither signed by Counsel nor filed as a distinct court process. It is the view of this author that this practice is legally and logically sound since a valid or competent Statement of Claim or Defence can only be filed by a party to the Suit.

6 See the following provisions in the various Rules of Court: Order 9 Rule 15(1) & (2) of the Federal High Court (Civil Procedure) Rules, 2019; Order 13 Rule 15(1) & (2) of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Order 13 Rule 19(1) & (2) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018; Order 13 Rule 17(1) & (2) of the Akwa Ibom State High Court (Civil Procedure) Rules, 2009; Order 13 Rule 19(1) & (2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025 which will come into force on 3rd March, 2025; and Order 15 Rule 17(1) & (2) of the High Court of Lagos State (Civil Procedure) Rules, 2019.

7 On Strict Constructionism and the contending arguments, see the insightful views of P. E. Oshio at pp. 11 - 13 of his work, '*Towards a Purposive Approach to the Interpretation of the 1999 Constitution*', accessible via <https://nigerianlawguru.com/wp-content/uploads/2024/09/TOWARDS-A-PURPOSIVE-APPROACH-TO-THE-INTERPRETATION-OF-THE-1999-CONSTITUTION.pdf> accessed 31 January 2025.

8 Unreported Ruling on the Motion on Notice for Joinder of "Road Transport Employers Association of Nigeria (RTEAN)" as "Co-Defendant" in Suit No. HU/422/2022 delivered by Honourable Justice

Ekpo's Case is a classic example of the Hard-line or Strict Constructionist Approach to the interpretation of the provisions of the Rules of Court addressed in this paper. In this case, the High Court of Akwa Ibom State, sitting in Uyo, narrowly interpreted the provisions of Order 13 Rule 17(2) of the Akwa Ibom State High Court (Civil Procedure) Rules, 2009. The Party Seeking to be joined filed a Motion for Joinder as a "Co-defendant" and this was vehemently opposed by the Claimants on the footing, *inter alia*, that the party seeking to be Joined failed to comply with the provisions of the Rules by exhibiting the procedural accompaniments. The Claimants extensively argued that the word, "shall", used in the said provision admits of no discretion on the part of the party seeking to be Joined and that failure to religiously comply with the said provision meant that the Motion for Joinder was inchoate and bereft of requisite materials to activate the judicial and judicious consideration of the Court.

The party seeking to be Joined responded by arguing that the omission of the procedural accompaniments did not automatically nullify the entire application and that such an omission can be treated as an "irregularity"; which is curable. Reliance was placed on Order 5 Rule 1 of the Akwa Ibom State High Court (Civil Procedure) Rules, 2009. The Court was urged to treat the omission as an irregularity to afford the party seeking to be Joined an opportunity to be heard in the interest of substantial justice.

In its considered ruling, the Court held, *inter alia*, that the failure of the party seeking to be Joined to comply with the provisions of Order 13 Rule 17(2) of the Akwa Ibom State High Court (Civil Procedure) Rules, 2009 requiring Procedural Accompaniments is "fatal" because such compliance is "mandatory". Consequently, the Court upheld the position of the Claimants to the effect that the Motion for Joinder violated the mandatory and non-negotiable provision of the Rules of the Court. Furthermore, the Court held that the procedural accompaniments are the materials a Court would appraise to decide whether or not to join a party.

3. <u>The Purposive or Proactive Approach</u>

Unlike the Hard-line Approach, the Purposive or Proactive Approach to interpretation eases off and takes a progressive posture to accommodate the merits of a Motion for Joinder of a party. This approach is not a basis or license for a court of law to embark on a wild goose chase.[9] Rather, it is a clarion call for an assessment of the language

---

Uwem Freedom Ibritam, J. of the High Court of Akwa Ibom State, Uyo Judicial Division on 5th July 2023.

9 This caveat on the Purposive Approach was crafted by Lord Denning in the case of Seaford Court Estates Limited v. Asher (1949) 2 KB 481 at p. 489, when he admonished that "*a Judge must not alter the material of which it [a statute] is woven, but he can and should iron out the creases*". (Words in brackets added for clarity).

of the provision; the context in which the language is used; and the purpose of the statutory scheme in which the language is found.[10] Liberal purposivism advocates that a statute or subsidiary legislation should be given a broad, holistic and liberal construction to promote its purpose and any narrow construction that would defeat its purpose should be avoided.[11]

Renowned for its fluidity and adaptability,[12] the Purposive Approach to interpretation, when appraised within the context of the issue addressed in this paper, presents two intriguing subsets: the Irregularity and Waiver sub-approach and the No-room-for-arid-technicality sub-approach. These sub-approaches are apparent in the cases reviewed below.

3.1 The Registered Trustees of The Word of Power Global Ministries International v. DN Tyre and Rubber PLC ("DN Tyre's Case")[13]

DN Tyre's Case is a solid representation of the "Irregularity and Waiver sub-approach". Order 13 Rule 17 of the High Court of Lagos State (Civil Procedure) Rules, 2012 came up for interpretation in this case. Here, the Respondent filed a Motion for Joinder but failed to accompany it with a Statement of Claim. The Appellant filed a Counter Affidavit and Written Address in opposition to the application and contended therein that the Motion for Joinder was incompetent for failing to keep up with the procedural expectations of the law.

In deciding whether the Motion for Joinder was rendered incompetent due to its omission of the procedural accompaniments, the Court of Appeal held that the default by the Respondent was an issue that bordered on manner and form and thus, a mere irregularity. The Court further held that the filing of a Counter Affidavit and Written Address by the Appellant after becoming aware of this irregularity amounted to "taking a corrective step" and implied a waiver of the right to complain about such an irregularity.[14] For the importance of this decision, the relevant reasoning is set out below:

---

10 See the scintillating views of Honourable Justice Ogunwumiju, JSC, in the case of State v. Egigia (2024) 11 NWLR (Pt. 1949) 203 (SC) at pp. 223 – 224, paras. H – B.

11 See, Crestar Integrated Natural Resources Limited v. S.P.D.C.N. Limited & Ors. (2021) 16 NWLR (Pt. 1800) 453 (SC) at p. 473, paras. E – G, per Honourable Justice Eko, JSC; and FBN PLC v. Maiwada (2013) 6 NWLR (Pt. 1348) 444 (SC) at p. 483, para. B.

12 See, P. E. Oshio (n 11) at pp. 16 - 21 for a chronological statement of the growth, development and judicial policy thrust of Purposivism.

13 (2016) LPELR - 42255 (CA).

14 Ibid., at page 21 of DN Tyre's Case, Honourable Justice Abimbola Osarugue Obaseki-Adejumo, JCA, pointedly observed: "*In the instant appeal, not only did the Appellant file a Counter Affidavit in opposition to the motion filed by the Respondent at the lower Court, the Appellant's objection is predicated upon non-compliance of Respondent with Order 13 Rule 17 (1) and (2) of the High Court*

It is clear from the above provision that an application for joinder of parties carries with it a Statement of Claim or Defence, Exhibits to be relied upon and depositions of Witnesses. **There is nothing to show from the record that the Respondent filed a statement of claim but only filed Affidavit in Support of the Motion for joinder detailing out the reasons why the proposed parties be joined (seen at pages 259-262 of the Record). This is obviously a non-compliance and irregularity which ordinarily can affect the outcome of the trial Court's decision**. But again, the law is trite that an irregularity should not be a sole factor justifying setting aside of a verdict unless it is established that there has been a miscarriage of justice by the Court's decision. The Supreme Court in the case of G.M.O. & S CO. LTD v. AKPUTA (2010) 9 NWLR (Pt. 1200) 443 SC observed:

"It is now firmly settled that **Rules of Court must be followed strictly, unless the Court is given discretion under them**."

Is there any window of discretion available for the trial Court in the Rules or is the trial Court's decision contained in pages 296-304 of the Record totally unjustifiable in law. To this end, Order 5 Rule 1(2) of High Court of Lagos State (Civil Procedure) Rules 2012 provides:

"Where at any stage in the course of or in connection with any proceedings there has by reason of anything done or left undone been a failure to comply with the requirements as to time, place, manner or form, the failure shall not (sic) be treated as an irregularity and may not nullify such step taken in the proceedings. The Judge may give any direction as he thinks fit to regularise such steps."

This provision confers unmistakable discretion on the trial Court to not necessarily strike out an application for non-compliance but issue directive in regularization of such failure to comply with the Rules. Consequently, on the part of the trial Court, it was not out of place for the trial Court to have made pronouncement in favour of the Respondent in the face of the non-compliance especially when such is not likely to occasion miscarriage of justice.

In any case, the Appellant's counsel filed a Counter Affidavit in Opposition to Claimant's Motion on Notice for joinder sighted at pages 267-268 as well as a Written Address Accompany (sic) Counter-Affidavit dated 16th September, 2013 sighted at pages 274-277 of the Record. **This is a wrong step to take in law for a party who alleged that the motion to which he opposes should be struck out by reason of non-compliance with laid down Rules of Court. Counsel should have straight away proceeded to raise a preliminary objection challenging the competence of the motion. Having taken steps in the proceedings, the Appellant cannot be heard to complain of the irregularity because a person will not be heard to complain against an irregularity which he voluntarily submitted himself to**. See: AMAECHI v. I.N.E.C. (2008) 5 NWLR (Pt. 1080) 227 SC; ARIORI & ORS v. ELEMO & ORS (1983) 1 SC 13.

---

of Lagos State (Civil Procedure) Rules, 2012 which is deemed an irregularity. An irregularity is not a factor justifying the setting aside of a verdict or decision unless it is established that there has been a miscarriage of justice by the Court's decision. See EMEDO v. STATE [2002] 15 NWLR (Pt. 789) 196."

> **Drawing inspiration from the above therefore, I am convinced though there was a non-compliance with Order 13 Rule 17 (2) of the High Court of Lagos State (Civil Procedure) Rules 2012, but the non-compliance did not occasion any miscarriage of justice** as the trial Court acted within the bounds of cognizable law.[15] (Emphasis mine)

3.2 Mrs. Chidindu Ugonma Charles-Beke v. A.G., Rivers State & Ors. ("Charles-Beke's Case")[16]

The "No-room-for-arid-technicality sub-approach" was applied in **Charles-Beke's Case** which involved the interpretation of Order 13 Rule 17 (2) of the Rivers State High Court (Civil Procedure) Rules. In rejecting the contention of the Appellant that the Motion for Joinder of a Defendant was incompetent due to its failure to parade the Procedural Accompaniments, the Court of Appeal captioned such an objection as a "technical objection" and evangelized the need for justice to be done, even if it means locating it between the lines of the affidavit of an applicant. The Court asseverated thus:

> By the provisions of the adjectival law, where it is sought to join a party to an action, the application is made by motion supported by an affidavit and accompanying documents as stipulated in Order 13 Rule 17 (2) of the Rules. It is the said processes that the Court considers in order to arrive at a determination of whether the materials furnished disclosed the existence of the right to any relief so that its discretion could be exercised in favour of granting the application.
>
> In the instant case, **the party seeking to be joined had stated in his affidavit depositions filed in support of the application, that the Rivers State Government has ownership of the land in dispute, the subject matter of this appeal**. The position of the law on joinder of parties is in contradistinction to the position where a Court has to decide whether a reasonable cause of action is disclosed against a party. In such an instance, it is settled law, that it is the pleadings only that recourse is had to in order to determine the issue. The application before the lower Court was not for the Court to determine whether a reasonable cause of action was disclosed. The prayer before the lower Court was for an order joining the 1st Respondent as a co-defendant in the Suit (See page 211 of the Records). Accordingly, **the lower Court was right in referring to and relying on the affidavits and accompanying processes in deciding the application for joinder**. **To accede to the technical objection raised by the Appellant will needlessly occasioned (sic) a delay in the determination of the instant suit on its merit**, and I may just add, that where it turned out that the 1st Respondent had no business in being made a party in the proceedings, the Appellant will be entitled to be compensated by way of costs and in my view, that is better than the 1st Respondent being excluded only for the lower Court to come to a determination that its decision will likely affect the interest of the 1st Respondent who had not

[15] At pp. 8 - 11 of DN Tyre's Case (n17), per Honourable Justice Jamilu Yammama Tukur, JCA.
[16] (2022) LPELR – 58566 (CA).

been made a party to the proceedings, and this is an instance whereas (sic) against the objection raised by the Appellant, it is better to make "haste slowly" so that the rights of all parties can be determined in one single proceeding.[17] (Emphasis mine).

4. Commentary

It is the view of this author that the 2023 decision handed down by the High Court of Akwa Ibom State in **Ekpo's Case**, with the greatest respect, was reached *per incuriam* in the light of the prior, extant and binding decisions of the Court of Appeal in **DN Tyre** and **Charles-Beke's Cases**. Hence, the decision in **Ekpo's Case** is not good law and should not be followed in subsequent cases.

Furthermore, the Court in **Ekpo's Case** interpreted the relevant provisions of the Rules of Court with stultifying narrowness. It is a regnant principle of law that words used in a statute or subsidiary legislation are not supposed to be read with stultifying narrowness.[18] The legal asphyxiation of the Motion for Joinder in **Ekpo's Case** would have been avoided if the said Court had applied the Holistic Endeavour Principle of statutory interpretation[19] which instructs that in order to discover the real intention of the lawmaker in enacting a statute or subsidiary legislation, all the relevant provisions to the issue in controversy or, better still, the entire provisions of the statute or subsidiary legislation must be read together.[20] It is an elementary principle, and fundamental to the construction of the provisions of any statute, to read the sections of a statute or subsidiary legislation as a whole to enable the interpreter to gather the collective sense of the provisions.[21] Consequently, if the Court in **Ekpo's Case** had dispassionately considered the "Irregularity Provisions" in Order 5 Rule 1 of the Akwa Ibom State High Court (Civil Procedure) Rules, 2009, which was cited in the course of legal argument, it would have come to the realization that the lethality of the word, "shall", in Order 13 Rule 17(2) of the said Rules was effectively watered down and demobilized.

---

17 Ibid., at pp. 22 - 24, paras. D – C, per Honourable Justice Gabriel Omoniyi Kolawole, JCA.

18 See, Attorney-General of Lagos State v. Attorney-General of the Federation & Ors. (2003) 2 NWLR (Pt. 833) 1 (SC) at p. 117, paras. G - H; p. 159, paras. C - E; and Attorney-General of Ondo State v. Attorney-General of the Federation & Ors. (2002) 9 NWLR (Pt. 772) 222 (SC) at pp. 305 - 306, paras. H - B; pp. 382 - 383, paras. H - B; p. 460, para. G; p. 461, paras. G - H.

19 This is represented by the Latin maxim, *Nemo enim aliquam partem recte intelligere possit antequam totum iterum atque iterum perlegit* which literally means: "for no one can rightly, understand any part without perusing the whole again and again". See the case of NDIC v. FMB (1997) 2 NWLR (Pt. 490) 735 (CA) at p. 753, paras. F - H.

20 See, Nwobike v. FRN (2022) 6 NWLR (Pt. 1826) 293 (SC) at pp. 369 – 370, paras. H – H, per Honourable Justice Aboki, JSC; and Abiodun v. Chief Judge, Kwara State (2007) 18 NWLR (Pt. 1065) 109 (CA) at pp. 148 - 149, paras. H - A; and pp. 167 - 168, paras. H - E.

21 See, Mobil Oil (Nig.) PLC v. IAL 36 Incorporated (2000) 6 NWLR (Pt. 659) 146 (SC) at p. 168; and Thirwell v. Oyewumi (1990) 4 NWLR (Pt. 144) 384 (CA) at p. 399, para. E.

Again, it is commonplace in law that the use of the word, "shall", in a statute does not automatically infer peremptoriness. The context in which it is used is everything.[22] It may be interpreted as, "may", where a harmonious reading of the subsidiary legislation is embarked upon.[23] In this wise, the Holistic Endeavour Principle of considering the Irregularity Provisions of the Rules would have lifted the veil and revealed two things: the first is that the draftsman did not intend the word, "shall", to be mandatory; and the second is that the draftsman did not intend the provisions requiring Procedural Accompaniments to be strict and unforgiving. This position is in tandem with the Equity Principle of interpretation which enjoins a court to always lean towards an equitable construction or a broad interpretation of a statute, where the justice of the case demands, unless there is something in the context or the rest of the statute to indicate that a narrow interpretation will best carry out its object or purpose.[24]

Concerning **DN Tyre's Case**, three points are worthy of mention. The first point is that **DN Tyre's Case** deflates the argument of "incompetence" of such an application but concedes that the absence of the Procedural Accompaniments amounts to an "irregularity". The Second point is that **DN Tyre's Case** urges Lawyers, in such a situation, to file a Notice of Preliminary Objection and challenge such irregularity instead of taking steps to join issues on the merit by filing a Counter Affidavit and Written Address. This projects the idea that any omission of the Procedural Accompaniments in an application for joinder of a party can be successfully challenged if the aggrieved party promptly files a Notice of Preliminary Objection and refrains from taking any step on the merits of the Motion for Joinder. The third point is that **DN Tyre's Case** propagates the healthy gospel that the provisions in the Rules of Court for

---

22 It was Lord Steyn who said in R v. Secretary of State for The Home Department, Ex parte Daly (2001) 3 All ER 433; (2001) 1 AC 532, that "*in law, context is everything*".

23 This position was made certain in the case of Kato v. C. B. N. (1991) 9 NWLR (Pt. 214) 126 (SC) at p. 147, where Honourable Justice Akpata, JSC, held as follows: "*Generally, the term 'shall' is a word of command and denotes obligation and gives no room to discretion. It imposes a duty. The term is however sometimes construed as merely permissive or directory to carry out the legislative intention particularly in cases where its so being construed in mandatory sense will bestow no right or benefit to anyone. When construed as being permissive or directory it carries the same meaning as the word 'may'. .... **As mandatory rules of courts are not as sacrosanct as mandatory statutory provisions, courts of justice are more inclined to regard as directory or permissive any provision in Rules of Court which appears mandatory if it is implicit in the provision in question or if combination of other provision with the provision in question so dictates, or if the ends of Justice demands that it be so construed**."* (Emphasis mine). See also, the case of Alhaji Salmanu Maiwada v. FBN Plc & Ors. (1997) 4 NWLR (Pt. 500) 497 (CA) at pp. 507 – 508, paras. H – A, per Honourable Justice Edozie, JCA.

24 See the following cases: Nafiu Rabiu v. The State (1981) NCLR 293 (SC) at p. 326; Egbe v. Alhaji (1990) 1 NWLR (Pt. 128) 546 (SC) at p. 600, para. B; and PDP v. INEC (2012) 7 NWLR (Pt. 1300) 538 (SC) at p. 567, paras. B - E.

Irregularity and Waiver[25] confer discretion on a Court to issue a directive to regularize or cure such an omission or default instead of striking out the application for joinder for "non-compliance".

However, the Court of Appeal in **DN Tyre's Case**, in its advocacy for the use of "Notice of Preliminary Objection" to challenge the irregularity of omitting the Procedural Accompaniments, overlooked the settled position of the law that a party cannot be allowed to raise a Preliminary Objection to the hearing of a Motion on Notice.[26] At best, the Court of Appeal should have promoted and endorsed the need for a party to file a "Motion on Notice" to set aside the irregularity in accordance with Order 5 Rule 2(2) of the High Court of Lagos State (Civil Procedure) Rules, 2012.[27] It is abecedarian law that a process, situation, procedure or cause of action permitted by law or specifically provided for in a statute cannot amount to an abuse of court process.[28] Consequently, it is the deferential view of this author that this approach or procedure of filing a "Motion on Notice" cannot amount to an abuse of court process since the Rules of Court specifically provides for it.

---

25 See, for example, Order 51 Rule 1(2) of the Federal High Court (Civil Procedure) Rules, 2019; Order 5 Rules 1 & 3 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Order 5 Rule 1(2) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018; Order 5 Rule 1(1) of the Akwa Ibom State High Court (Civil Procedure) Rules, 2009; and Order 7 Rule 1(2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025 which will come into force on 3rd March, 2025; and Order 7 Rule 4 of the Lagos State High Court (Civil Procedure) Rules, 2019.

26 See the following cases: Atiku & Anor. v. INEC & Ors. (2023) LPELR – 61556 (SC) at pp. 97 – 99, paras. F – B; UBN v. Petro Union Oil & Gas Co. Limited & Ors. (2020) LPELR – 56671 (SC) at p. 66, para. E; Zenith Bank PLC v. John & Ors. (2015) LPELR – 24315 (SC); SPDC v. Amadi (2011) 14 NWLR (Pt. 1266) 157 at p. 192; Eyitayo v. Kazeem (2020) LPELR – 50360 (CA) at pp. 7 – 10, paras. B – B; Onyegirigwam & Ors. v. Uzokwe & Ors. (2019) LPELR – 46608 (CA) at pp. 8 – 14, paras. C – C; Dowell Schlumberger (Nig.) Limited & Ors. v. Aniekan & Anor. (2018) LPELR – 44811 (CA) at pp. 7 – 11, paras. C – C.

27 See also, Order 7 Rule 2(2) of the High Court of Lagos State (Civil Procedure) Rules, 2019. Interestingly, the Rules of Court in other courts contain similar provisions for "Motion on Notice" but additionally state that such an application can be made by "Summons". See, Order 51 Rule 2(2) of the Federal High Court (Civil Procedure) Rules, 2019; Order 5 Rule 2(2) of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Order 5 Rule 2(2) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018; Order 5 Rule 2(2) of the Akwa Ibom State High Court (Civil Procedure) Rules, 2009; and Order 7 Rule 2(2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025 which will come into force on 3rd March, 2025.

28 See the case of Associated Quantity Surveyors v. Maritime Academy of Nigeria, Oron (2005) 4 CLRN 138 (Federal High Court) at p. 148, lines 22 – 27, where Honourable Justice G. K. Olotu, J. held: "***Section 4(2) of the Arbitration and Conciliation Act more or less permits an action*** *which is subject matter of an arbitration agreement and arbitral proceedings commenced before or after the action in court to run along side by side.* ***What this means is that the process which ordinarily would have constituted an abuse of court process under the inherent jurisdiction of the court would be excused under the specific provisions of section 4(2) of the Act***." (Emphasis mine)
See also, the decision of the Court of Appeal on this point in Maritime Academy of Nigeria v. Associated Quantity Surveyors (2008) All FWLR (Pt. 406) 1872 (CA); (2007) JELR 51917 (CA).

Moving forward, **Charles-Beke's Case**, the most recent decision of the Court of Appeal on this issue, marks a watershed in the jurisprudence of the subject matter under discussion. By refusing to welcome any form of challenge to such an application, **Charles-Beke's Case** takes a step further than **DN Tyre's Case** and adopts a different reasoning to reach its conclusion. It advocates that if the affidavit and accompanying processes provide sufficient materials for a Court to exercise its discretion, same should be done not minding the fact the Statement of Claim or Defence has not been placed before the Court. Importantly, the Court declared that pleadings are only a *sine qua non* for determining the issue of "reasonable cause of action" and not "joinder of parties". The necessary inference drawn from this free-flowing statement of the law is that attaching a Statement of Claim or Defence to a Motion for Joinder of a party is not a do-or-die affair in so far as material facts have been placed before the Court by way of affidavit and documentary evidence.

In addition to the giant strides recorded in **DN Tyre** and **Charles-Beke's Cases**, it will not be out of place for a Court to invoke the spirit and letters of the constitutionally guaranteed right to Fair Hearing as a sword to water down and burrow the arid provisions of the various Rules of Court requiring Procedural Accompaniments once the nature of the interest of an Applicant in the subject matter of the suit is sufficiently disclosed. This proactive stride is consistent with the contemporary or neoteric judicial attitude in Nigeria where the issue of joinder of a person who has shown sufficient interest or right has been elevated to the status of a fundamental right to be heard of which Courts are enjoined to protect.[29] The Supreme Court confirmed and endorsed this position in the case of **Vivian Clems Akpamgbo-Okadigbo & Ors. v. Egbe Theo Chidi & Ors.**,[30] when it articulated that "*a party who has shown sufficient interest or right in a case should not be denied hearing before a decision is reached, this is to avoid breach of Section 36(1) of the Constitution.*"[31]

Above all, the liberal and progressive stance taken by the Court in **DN Tyre** and **Charles-Beke's Cases** makes more sense when placed side by side with the fact that a Court has the *vires* to *suo motu* join a party to an action once it is satisfied that the joinder is necessary to enable it effectually and completely settle all questions involved in the matter.[32] In this wise, it is the view of this author that since a Court of law is not

---

29 See pp. 6 - 7 of the Unreported Ruling in Ketson's Case (n4).

30 (2015) LPELR – 24564 (SC).

31 Ibid., at pp. 51 – 52, paras. G – A, per Honourable Justice Galadima, JSC.

32 See, for example, Order 13 Rule 18(3) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure Rules), 2018. See also, the following cases: Attorney-General of the Federation v. Attorney-General of Abia State & Ors. (2001) LPELR - 631 (SC) at p. 75 - 76, paras. E - A; Oladeinde & Ors. v. Oduwole (1962) WNLR 41 at p. 44; Attorney-General of Bendel State v.

shackled by the chains of procedural accompaniments when exercising its power to *suo motu* join a party, an omission of the procedural accompaniments in a Motion for Joinder by a party seeking to be Joined should not be interpreted in any way that renders such an application "incompetent".

5. Conclusion

An irregularity or a curable defect in procedure is not the same thing as a defect in competence.[33] Thus, in the context in which **DN Tyre** and **Charles-Beke's Cases** were decided, it would be legally tone-deaf for a party to unrepentantly hold on to the outmoded view that failure to accompany a Motion for Joinder of a party with a Statement of Claim or Defence, Exhibits and Witness Depositions is fatal. The good news is that such an omission or default is pardonable; all thanks to the prevailing judicial attitude to do substantial justice by deprioritizing such an omission or default.

However, this commendable legal posture does not automatically result in the success of the merits of a Motion for Joinder of a party. Pragmatically, the omission of the procedural accompaniments may scuttle an applicant's opportunity to place sufficient materials before the court especially where the affidavit evidence in support of his application fails to sufficiently disclose an interest in the subject matter. On this note, great care should be taken by an applicant to ensure that sufficient materials are placed before the Court in a Motion for Joinder of a party.

6. Recommendations

This author recommends that if a court is faced with two contending applications: the first being an application challenging the competence of a Motion for Joinder of a party for its failure to exhibit the procedural accompaniments; and the second, being an application, oral or via Motion on Notice, to correct the omission or error[34] complained about by supplying the procedural accompaniments,[35] a court should first hear and

---

Attorney-General of the Federation & 22 Ors. (1981) 10 SC 1; and Mogaji v. Mogaji & Ors. (1986) LPELR - 1891 (SC).

33 See, Heritage Bank Limited v. Bentworth Finance (Nig.) Limited (2018) 9 NWLR (Pt. 1625) 420 (SC) at p. 434, para. A; and Alhaji Dahiru Saude v. Alhaji Halliru Abdullahi (1989) 4 NWLR (Pt. 116) 387 (SC) at p. 424, paras. E – F; p. 425, para. A.

34 See the case of Etubom (Dr.) Anthony Asuquo Ani & 4 Ors. v. Etubom Essien Ekpenyong Effiok & 4 Ors. (2017) 8 NWLR (Pt. 1567) 281 (SC) at p. 304, paras. E - H, where Honourable Justice Augie, JSC, remarked: "***The fact that the applicants brought this application after they filed the objection challenging the competency of the earlier application, will not hinder the applicants from correcting any errors that will put them on the appropriate footing*** *- see Shanu v. Afribank (2000)13 NWLR (Pt. 684) 392 at 404 para. F."* (Emphasis mine). See also, the case of South Atlantic Petroleum Ltd. v. The Minister of Petroleum Resources (2014) 4 NWLR (Pt. 1396) 24 (SC) at pp. 41 - 42, paras. D - C, per Honourable Justice M. D. Muhammad, JSC.

35 A party can reframe his case, as a matter of right, provided that such an exercise will lead to the resolution of the main issues in contention without causing any form of miscarriage of justice. This

determine the latter application. This is because of the timeless principle that where there are competing applications, the Court should take, as a priority, the application that would promote substantial justice by breathing life into an incompetent process.[36]

Secondly, where a party is confronted with any technical argument touching on non-compliance with the provision of the Rules of Court on what should accompany a Motion for Joinder, such a party can promptly file a Further and Better Affidavit and attach the omitted procedural accompaniments as "Exhibits". This is an acceptable practice because a Further and Better Affidavit can be used to provide additional information not available in the first or main affidavit[37] or to correct any perceived omission, deficiency, discrepancy, defect or error in an initial affidavit.[38]

For further information on this article and area of law,
Please contact **David Andy Essien** at:
S. P. A. Ajibade & Co., Lagos by
Telephone (+234 1 472 9890), Fax (+234 1 4605092)
Mobile (+234 902 247 0375, +234 818 024 7252)
Email: dessien@spaajibade.com
www.spaajibade.com

was better captured by the Supreme Court in the case of Ojasi & Ors. v. Ogboni & Ors. (1976) All NLR 277 (SC) at p. 282, as follows: "***Courts do not exist for sake of discipline**, but for the sake of deciding matters in controversy **as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy it is as much as a matter of right on his part to have it corrected**, if it can be done without injustice **as anything else in the case is a matter of right**.*" (Emphasis mine). See also, Mrs. Christiana N. Nwabueze v. Nigerian Postal Service & 2 Ors. (2006) 8 NWLR (Pt. 983) 480 (CA) at p. 528, paras. G - H, per Honourable Justice Nzeako, JCA.

36 See the following cases: Mutual Commitment Company Limited v. Clear Cut Oil & Gas Nigeria Limited (2021) LCN/14926 (CA); Nalsa & Team Associates v. NNPC (1991) LPELR - 1935 (SC); and Olumesan v. Ayodele Ogundepo (1996) LPELR - 2625 (SC).

37 See the following cases: Sentinel Assurance Co. Limited v. Societe Generate Bank (Nig.) Limited (1992) 2 NWLR (Pt. 224) 495 (CA) at p. 503, para. B; Maraya Plastics Industries Limited & Anor. v. Inland Bank of Nigeria PLC (2002) 7 NWLR (Pt. 765) 109 (CA) at p. 117, paras. D – E.

38 See the case of Hon. Abraham Adeolu Adeleke & Anor. v. Oyo State House of Assembly (2006) 10 NWLR (Pt. 987) 50 (CA) at p. 68, paras. A – C and paras. G – H, where Honourable Justice Augie, JCA (as he then was), counselled: "*It is also well established that there are three ways in which the deponent can proffer the needed explanation - ... (iii) T**he third and most effective way is by deposing to and filing a better and further affidavit, which affords counsel the opportunity of bringing in his facts properly, and correcting any perceived error, defect, omission**, etc. .... It is enough to say that this objection is of no moment. **The law allows the applicant to file a further affidavit to correct the error in question, which he did and the amendment is therefore in order and quite acceptable to this court**.*" (Emphasis mine)