

CHIEF REX KOLA OLAWOYE**V.**

- 1. ENGINEER RAPHAEL JIMOH**
(Vice Chairman, Ifelodun Local Government Council of Kwara State)
- 2. HON. ALHAJI LATEEF A. QUADRI**
- 3. FASEYI O. OLUYEMI**

SUPREME COURT OF NIGERIA

SC. 90/2005

MUHAMMAD SAIFULLAHI MUNTAKA-COOMASSIE, J.S.C. (*Presided*)
JOHN AFOLABI FABIYI, J.S.C.
NWALI SYLVESTER NGWUTA, J.S.C.
OLUKAYODE ARIWOOLA, J.S.C. (*Read the Leading Judgment*)
MUSA DATTIJO MUHAMMAD, J.S.C.

FRIDAY, 12TH APRIL 2013

ACTION - Joinder of parties - Necessary party - Non-joinder of a necessary party - Effect - Whether fatal.

ACTION - Joinder of parties - Non-joinder or misjoinder of a necessary party - How determined - Effect - Principles guiding.

ACTION - Parties to an action - Necessary party - Who is - Necessary parties - Who are.

ACTION - Parties to an action - Plaintiff - Right of to choose person or persons he wishes to sue.

ACTION - Parties to an action - Who are.

COURT - Order of court - Order against a person who was not a party to proceedings - Validity and patency of.

JUDGMENT AND ORDER - Order of court - Order against a person who was not a party to proceedings - Validity and potency of.

PRACTICE AND PROCEDURE - Parties to an action - Necessary party – Who is - Necessary parties - Who are.

PRACTICE AND PROCEDURE - Joinder of parties - Necessary party - Non-joinder of a necessary party - Effect - Whether fatal.

PRACTICE AND PROCEDURE - Joinder of parties - Non-joinder or misjoinder of a necessary party - How determined - Effect - Principles guiding.

WORDS AND PHRASES - “Necessary party” - “Necessary parties” - Meaning of.

WORDS AND PHRASES - “Parties to an action” - Who are.

Issue:

Whether the Court of Appeal was right in holding that the non-joinder of Ifelodun Local Government of Kwara State as a defendant was fatal to the appellant’s case.

Facts:

On 4th May 2001, before the High Court of Kwara State, the appellant with three others issued an originating summons against the respondents seeking determination of the following questions:

1. Whether the 2nd and 3rd defendants and/or the members of Ifelodun Local Government Legislative Council have the powers to suspend the 1st plaintiff from office as the Chairman of Ifelodun Local Government Area of Kwara State pursuant to section 26(4) of the Kwara State Local Government Law 1999 or any of its provisions thereof.

2. Whether the 2nd and 3rd defendants and/or members of the Ifelodun Legislative Council possess the powers to appoint 1st defendant as the “Acting Chairman” of Ifelodun Local Government Area of Kwara State under and by virtue of any of the provisions of the said Kwara State Local Government Law of 1999.
3. Whether the 2nd and 3rd defendants and/or members of Ifelodun Local Government Area Legislative Council have not violated the provisions of section 26(4) of the Kwara State Local Government Law of Kwara State by purporting to investigate the tenure of office of the 1st plaintiff without first giving him, the opportunity of being heard on the grave allegations of maladministration, gross misconduct and abuse of office made against him by the defendants.
4. Whether the 2nd and 3rd defendants and/or members of Ifelodun Local Government Legislative Council are not in breach of the provisions of the Constitution of the Federal Republic of Nigeria, 1999 by pronouncing the 1st plaintiff guilty even before investigating the said allegations.”

Upon the determination of the above questions, the appellant sought the following reliefs:

- “1. A declaration that the purported suspension of the 1st plaintiff as Chairman of Ifelodun Local Government Area of Kwara by the 2nd and 3rd defendants and/ or members of the Legislative Council of the said Local Government Area is wrongful, unlawful, illegal unconstitutional, *ultra vires*, null and void and of no effect whatsoever.
2. A declaration that the purported appointment of the 1st plaintiff (sic) as the “Acting Chairman” of Ifelodun Local Government Area of Kwara State is wrongful, unlawful, illegal, unconstitutional, *ultra vires*, null and void and of no effect whatsoever.
3. An order setting aside and quashing the purported suspension of the 1st plaintiff as Chairman of Ifelodun Local Government Council of Kwara State.
4. An order setting aside and nullifying the purported appointment of the 1st defendant as the

- Acting Chairman of Ifelodun Local Government Area of Kwara State.
5. An order of perpetual injunction restraining the defendants from disturbing or in any way preventing the 1st plaintiff from performing his duties as the Executive Chairman of Ifelodun Local Government Area.
 6. A declaration that the purported reference to the Chief Judge of Kwara State by the defendants of allegations of misconduct and maladministration made by them against the plaintiff is illegal, unlawful, wrongful, unconstitutional, *ultra vires*, null and void and of not effect whatsoever.
 7. A declaration that the 1st plaintiff is at all material times the Chairman of Ifelodun Local Government Area.
 8. An order directing and compelling the defendants to pay the plaintiff all his accumulated salaries, allowances and other entitlement from 24/4/2001 to the determination of this case and thenceforth.”

The appellant and the three other plaintiffs filed along with the originating summons a motion *ex parte* and one on notice on 4th May 2001.

The trial court heard the motion *ex parte* and granted interim order of injunction on 10th May 2001 against the respondents pending the hearing of the motion on notice which was adjourned to 30th May 2001. In the motion on notice, the appellant sought the following reliefs:

- “(a) An order of interlocutory injunction restraining the respondents, their servants, agents and privies from preventing, disturbing, interfering or and hindering the 1st plaintiff/applicant howsoever from performing the duties and functions of his office and position as the Executive Chairman of the Ifelodun Local Government Council of Kwara State.
- (b) An order of interlocutory injunction restraining the 1st respondent from performing or further performing the duties and functions of the Chairman of Ifelodun Local Government Council of Kwara State or parading, presenting, portraying, styling himself howsoever as Acting Chairman of Ifelodun Local Government Council of Kwara State.
- (c) An order of interlocutory injunction staying the purported investigation by the respondents

of allegations of maladministration, misconduct and abuse of office made against the 1st plaintiff which the respondents claimed to have referred to the Chief Judge of Kwara State.”

The respondents filed their memo of appearance on 11th May 2001 to the application. On the same day, the respondents prayed for an order varying and or discharging the *ex parte* order earlier granted. They also contemporaneously gave notice of preliminary objection challenging the jurisdiction of the trial court to entertain the suit on the following grounds:

1. The honourable court has no jurisdiction to entertain the suit by virtue of the provisions of the Kwara State Local Government Law, 1999 especially section 26 thereof.
2. The action is incompetent as the principal party(ies) Ifelodun Local Government or/and Ifelodun Local Government Legislative Council is (are) not a party (parties) to the action.
3. The action is in the nature of a suit against the Ifelodun Local Government and same is incompetent as the requisite statutory notice of an intention to sue the Local Government has not been given.
4. The action is not maintainable against the present defendants in its present constitution.”

The trial court heard the preliminary objection on 18th September 2001 and overruled same, and adjourned the originating summons to 9th October 2001 for hearing.

Dissatisfied with the ruling on the preliminary objection, the respondents appealed to the Court of Appeal. On 10th December 2002, the Court of Appeal allowed the appeal in part and struck out the case for being fundamentally defective for failure to join Ifelodun Local Government Council as a necessary party.

Dissatisfied, the appellant appealed to the Supreme Court.

Held (*Unanimously dismissing the appeal*):

1. *On Who are parties to an action -*
Generally, in legal proceedings, the parties are those persons, be they natural or artificial, whose names appear on the record of court as plaintiffs and defendants. (P. 383, para. B)
2. *On Right of plaintiff to choose person or persons he wishes to sue -*
A plaintiff who conceives that he has a cause of action against a particular defendant is entitled to pursue remedy against that defendant only, but should not be compelled by the court to proceed against any other person or persons whom he has no desire and no intention to sue. (P. 383, paras. B-C)
3. *On Rationale for making a person a party to an action—*
Ordinarily, the main reason for the necessity in making a person a party to an action in court is so that he should be bound by the result of the action in the judgment of the court. (P. 383, para. D)
4. *On Who are necessary parties in an action in court -*
Necessary parties in an action in court are those who are not only interested in the subject-matter of the proceedings but also who in their absence, the proceedings cannot be fairly dealt with. In other words, the question to be settled or determined in the action between the existing parties must be a question which cannot be properly settled unless they are parties to the action instituted by the plaintiff. [Green v. Green (1987) NWLR (Pt. 61) 480 referred to.] (P. 383, paras. D-F)
5. *On Who is a necessary party in an action in court -*
A necessary party is a party whose presence in an action is essential for the effectual and

complete determination of the claim before the court. It is the party in the absence of whom the claim cannot be effectually and completely determined. In the instant case, the questions formulated by the appellant for determination at the trial could only be answered or determined effectually with the presence of the Ifelodun Local Government Council. In other words, the reliefs sought by the appellant could not be effectually and completely determined in the absence of Local Government. Therefore, Ifelodun Local Government was a necessary party to the case. [*In Re: Mogaji* (1986) 1 NWLR (Pt. 19) 759; *Ige v. Farinde* (1994) NWLR (Pt. 354) 42 referred to.] (Pp. 383-384. paras. F-B)

Per FABIYI, J.S.C. at page 386, paras. C-H:

“It occurs to me that there is no way the questions raised by the appellant at the trial court can be effectually settled in the absence of the Local Government. The letter of suspension of the appellant was signed by the 2nd and 3rd defendants on behalf of the Local Government. Accumulated salaries and allowances claimed by the appellant are to be ‘eventually’ borne by the Local Government. In the face of all these facts, it is clear that the Local Government is not only a necessary party to be joined. It is a desirable party as well.

The Court of Appeal, per Onnoghen, JCA (as he then was) at page 227 of the record pronounced thus:

‘His reliefs are against that Government not the individuals who clearly acted on its behalf and it is my considered view that the non-joinder of Ifelodun Local Government is fatal to the case of the respondent. I am therefore of the view that the learned trial Judge erred in holding otherwise in view of the facts on record. Learned counsel for the respondent knows that what I have said is correct because that is what explains his inability to get the Ifelodun Local Government to obey the court order

granted in favour of his client in the case.’

I agree with the stand of the Court of Appeal as above depicted in a clear fashion. The Local Government, a necessary party was not joined to the action and same is, no doubt, fatal to the appellant’s case.”

Per NGWUTA, J.S.C. at pages 387-388, paras. F-D:

“It is conceded that the appellant did not make any claim against the Local Government itself nor did the Local Government complain about its non-joinder but the appellant sought a restoration of his position of the Executive Chairman of the Local Government. Though on the face of the originating summons, the 2nd and 3rd respondents appear to have been sued in their personal capacities, the 1st respondent was sued in his capacity as the Vice-Chairman of the Ifelodun Local Government Council of Kwara State.

The suspension of the appellant was effected by the Local Government through its functionaries and it is bound, and affected, by any decision in the matter. For instance, the claims for ‘accumulated salaries, allowances and other entitlements ...’ constitute a charge on the fund of the Local Government. In *Comfort Asaboro v. M.G.D. Aruwaji & Anor* (1974) 6 SC 31 at 40, the court held:

‘I am satisfied that whether an order for joinder is made ... the real test is whether the person to be joined will have his interest irreparably prejudiced if an order joining him as a party is not made.’

In *Amon v. Tuck & Sons Ltd.* (1956) 1 All ER 273 at 287, Delvin, J. held, *inter alia*:

‘The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action...’

The consequences of losing the case, including payment of accumulated salaries

and allowances, will be borne by the Local Government. It is therefore a necessary party to the originating summons and I agree with the Court of Appeal that its non-joinder is fatal to the appellant's case."

6. *On Effect of failure to join a necessary- party to an action -*

A necessary party should be allowed to have his fate in his own hands. Judgment made with order against a person who was not joined as a necessary party to a suit cannot be allowed to stand as same is to no avail. In order to decide the effect of non-joinder or misjoinder of a party, the court should ask itself the following questions:

- a) is the case or matter liable to be defeated by non-joinder?
- b) is it possible to adjudicate on the cause or matter unless the third party is added as a defendant?
- c) is the third party a person who should have been joined in the first instance?
- d) is the third party a person whose presence before the court as a defendant will be necessary in order to enable the court to effectually and completely adjudicate or settle all the questions involved in the cause or matter?

[*Uku v. Okumagba* (1974) 1 All NLR 475; *Green v. Green* (1987) 3 NWLR (Pt. 61) 480 referred to.]
(Pp. 385-386, paras. H-C)

7. *On Principles guiding non-joinder or misjoinder of a party -*

Per NGWUTA, J.S.C. at page 387, paras. D-F:

"Whether or not a person should be joined as a party to a suit is a matter of distinction between what is desirable to do and what is necessary to do. This distinction was drawn by this court in *Peenok v. Hotel Presidential* (1983) 4 NCLR 122 wherein the court concluded that although it was desirable to join the Rivers State Government whose Edict Nos. 15 and 17 were under attack, it was not necessary to

join the Government of Rivers State before the court can decide on the claims of the parties before it.

In the above case, though it was desirable to join the Rivers State Government in a dispute as to the validity of the Edicts it promulgated its presence in the suit was not necessary for the proper determination of the dispute between the parties. The factual situation above is in sharp contrast with the facts of this case.”

Nigerian Cases Referred to in the Judgment:

Adigun v. Gov., Osun State (1995) 3 NWLR (Pt. 385) 513
African Newspapers of Nigeria v. F.R.N. (1985) 2 NWLR (Pt. 6) 137
Asaboro v. Aruwaji (1974) 6 SC 3 1
Awoniyi v. AMORC (2000) 10 NWLR (Pt. 676) 522
Dada v. Bankole (2008) 5 NWLR (Pt. 1079) 26
Eboade v. Atomesin (1997) 5 NWLR (Pt. 506) 590
Ekpene v. Aforije (1972) 1 ANLR 220
Green v. Green (1987) 3 NWLR (Pt. 61) 480
Ige v. Farinde (1994) 7 NWLR (Pt. 354) 42
In Re: Mogaji (1986) 1 NWLR (Pt. 19) 759
N.N.S.C. v. Sabana Co. Ltd. (1988) 2 NWLR (Pt. 74) 23
Obioha v. Duru (1994) 8 NWLR (Pt. 365) 631
Oghene Limited v. Amoruwa (1986) 3 NWLR (Pt. 32) 856
Okoye v. N.C. & F.C. Ltd. (1991) 6 NWLR (Pt. 199) 501
Oloriode v. Oyebi (1984) 1 SCNLR 390
Onwumalu v. Osademe (1971) 1 ANLR 14
Peenock Investments Ltd. v. Hotel Presidential Ltd. (1983) 4 NCLR 122
Uku v. Okumagba (1974) 1 All NLR 475
Union Beverages v. Pepsicola (1994) 3 NWLR (Pt. 330) 1
West African Portland Cement Plc v. Saka (2004) All FWLR (Pt.239) 1039

Foreign Cases Referred to in the Judgment:

Amon v. Rapheal Tuch & Sons Ltd. (1956) 1 QBD 357, (1956) 1 All ER 273
Dollfus Mieg et. Compagnie S.A. v. Bank of England (1950)

2 All E.R. 605

McCheane v. Gyles (No. 2) (1902) 1 Ch. D. 911

Nigerian Statute Referred to in the Judgment:

Kwara State Local Government Law, 1999, Ss. 26(4), 15 and 41(1)

Nigerian Rules of Court Referred to in the Judgment:

High Court of Kwara State (Civil Procedure) Rules, 1989, O. 6r. 4(1) (b)

Appeal:

This was an appeal against the decision of the Court of Appeal allowing in part the respondents' appeal against the ruling of the High Court which dismissed the respondents' preliminary objection. The Supreme Court, in a unanimous decision, dismissed the appeal.

Editor's Note:

The decision of the Court of Appeal herein affirmed by the Supreme Court is reported in **(2003) 10 NWLR (Pt. 828) 307**.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal: Muhammad Saifullahi Muntaka-Coomassie, J.S.C. (Presided); John Afolabi Fabiyi, J.S.C; Nwali Sylvester Ngwuta, J.S.C; Olukayode Ariwoola, J.S.C. (Read the Leading Judgment); Musa Dattijo Muhammad, J.S.C.

Appeal No.: SC.90/2005

Date of Judgment: Friday, 12th April 2013

Names of Counsel: Dr. Akin Onigbinde (with him, Richard Baiyeshea, Esq., Stewart David, Esq. and Deji Adeyemi, Esq.) - for the Appellant
Ola Olanipekun, Esq. (with him, Daniel Alumun, Esq.) -for the Respondents

Court of Appeal:

Division of the Court of Appeal from which the appeal was brought: Court of Appeal, Ilorin

Names of Justices that sat on the appeal: Muritala Aremu Okunola, J.C.A. (Presided);

Walter Samuel Nkanu Onnoghen, J.C.A. (*Read the Leading Judgment*); Ja' Afaru Mikailu, J.C.A. *Appeal No.:* CA/IL/59/2001
Date of Judgment: Monday, 10th December 2002
Names of Counsel: Y.O. Ali, SAN (*with him*, R.O. Balogun, Esq.) - *for the Appellant*
A.S. Oyinloye, Esq. (*with him*, Muazu Abdullahi, Esq.) -*for the Respondents*

High Court:

Name of the High Court: High Court of Kwara State, Omu-Aran
Suit No.: KWS/OM/11/2001
Date of Ruling: Tuesday, 18th September 2001

Counsel:

Dr. Akin Onigbinde (*with him*, Richard Baiyeshea, Esq., Stewart David, Esq. and Deji Adeyemi, Esq.) - *for the Appellant*

Ola Olanipekun, Esq. (*with him*, Daniel Alumun, Esq.) - *for the Respondents*

ARIWOOLA, J.S.C. (Delivering the Leading Judgment):

This is an appeal against the judgment of the Court of Appeal, Ilorin Division, hereinafter called the court below, delivered on 10th December 2002.

Before the trial High Court of Kwara State in the Omu-Aran Judicial Division holden at Omu-Aran, the appellant herein with three others had commenced an action as plaintiffs against the respondents as defendants by way of originating summons. They had filed a motion *ex parte* with one on notice on the 4th of May 2001, along with the originating summons.

The application *ex parte* was taken by the trial court and an interim order of injunction was granted on 10th May 2001 against the respondents pending the hearing of the motion on notice which was then adjourned to 30th May 2001.

In the said notice of motion, the plaintiffs/applicants had, pending the hearing and determination of the originating summons contemporaneously filed with the motion sought, the following reliefs:

- (a) An order of interlocutory injunction restraining the respondents, their servants, agents and

privies from preventing, disturbing, interfering or and hindering the 1st plaintiff/applicant howsoever from performing the duties and functions of his office and position as the Executive Chairman of the Ifelodun Local Government Council of Kwara State.

- (b) An order of interlocutory injunction restraining the 1st respondent from performing or further performing the duties and functions of the Chairman of Ifelodun Local Government Council of Kwara State or parading, presenting, portraying, styling himself howsoever as Acting Chairman of Ifelodun Local Government Council of Kwara State.
- (c) An order of interlocutory injunction staying the purported investigation by the respondents of allegations of maladministration, misconduct and abuse of office made against the 1st plaintiff which the respondents claimed to have referred to the Chief Judge of Kwara State.

In support of the application was an affidavit of 27 paragraphs to which various documents were attached and marked exhibits A, B, C, C1, C2 and D respectively.

On the 11th of May 2001, the respondents herein filed their memorandum of appearance to the appellant's application and gave a notice of motion seeking the following relief, *inter alia*;

“An order of the honourable court varying or discharging the *ex parte* orders of injunction made in this suit on the 10th day of May 2001.”

On the same date, the respondents also gave a notice of preliminary objection challenging the jurisdiction of the trial court in entertaining the suit in the following terms:

1. The honourable court has no jurisdiction to entertain the suit by virtue of the provisions of the Kwara State Local Government Law, 1999 especially section 26 thereof.
2. The action is incompetent as the principal party(ies) Ifelodun Local Government or/and Ifelodun Local Government Legislative Council is (are) not a party (parties) to the action.

3. The action is in the nature of a suit against the Ifelodun Local Government and same is incompetent as the requisite statutory notice of an intention to sue the Local Government has not been given.
4. The action is not maintainable against the present defendants in its present constitution.

The trial court took arguments of counsel on the preliminary objection and on 18th September 2001 overruled the objection and by consent of both counsel adjourned the hearing of the originating summons of the instant respondents to 9th October 2001.

Consequently, on 24th October 2001, the appellants filed their notice of appeal against the said ruling of the trial court. In its judgment subject of the instant appeal, the court below allowed the appeal in part for being fundamentally defective for failure to join the Ifelodun Local Government as a necessary party. The case before the trial court was then accordingly struck out leading to the instant appeal to this court predicated on three grounds of appeal filed on 3rd of March 2003 before the court below against the decision of 10th December 2002.

Parties filed and exchanged briefs of argument and the appeal was argued on 5th February 2013. The learned appellant's counsel adopted his brief of argument filed on 13th June 2005 and relied on same to urge the court to allow the appeal and set aside the decision of the court below in its entirety. On their side, the respondents adopted their brief of argument filed on 8th September 2005 and relied on same to urge the court to dismiss the appeal and uphold the decision of the court below.

In the appellant's brief of argument, the following three issues are distilled for determination of the appeal.

Issues for Determination

- (1) Whether the Court of Appeal was right in holding that the non-joinder of Ifelodun Local Government of Kwara State as a defendant was fatal to the plaintiff's case. (Ground 1).
- (2) Whether the trial court decided the substantive matter in its ruling on interlocutory matter. (Ground 2)
- (3) Whether the Court of Appeal decided the main issue pending at the trial court in its judgment on the interlocutory appeal. (Ground 3)

It is noteworthy that the respondents had earlier raised in their brief of argument, a preliminary objection, but when the matter came up for hearing, learned counsel to the respondents sought to abandon the said preliminary objection, and same was there and then accordingly struck out. They later sought to adopt the three issues formulated by the appellant for determination of the appeal but noted that the germane issue in the appeal is the No. 1 issue thereof.

There is no doubt that the resolution of issue No. 1 above may dispose of the appeal requiring no further consideration of the argument on the other remaining issues.

In arguing issue No. 1, learned counsel submitted that the Court of Appeal was wrong in striking out the plaintiff's case on the basis that the Ifelodun Local Government was not joined in the suit. He contended that it is trite that a litigant would only join a party from whom reliefs are claimed. He said that the appellant herein had no grievance against the Local Government at all. That his grouse was against the 1st respondent who usurped his position as Chairman of the Local Government and also against the Legislative Council represented by the 2nd respondent who claimed to be the speaker of that council. It was further contended that it was the said Legislative Council that masterminded the purported suspension of the appellant from office as Chairman of the Local Government. He stated that the 3rd respondent acted as the Clerk of the said Legislative Council and signed the letter of suspension written to the appellant by the Legislative Council. He submitted that the case as constituted in the originating summons and affidavit in support could easily and in the interest of justice be determined as far as the rights and interest of the parties that are actually before the court are concerned. He relied on *Okoye & Ors. v. Nigerian Construction & Furniture Company Limited* (1991) 6 NWLR (Pt. 199) 501; *Union Beverages v. Pepsicola* (1994) 2 SCNJ 157 at 173, (1994) 3 NWLR (Pt. 330) 1.

Learned counsel to the appellant submitted that since the claims/reliefs in the originating summons were not in any way directed at or against the Local Government, it was wrong for the Court of Appeal to strike out the plaintiff's case for non-joinder of Ifelodun Local Government of Kwara State.

It was contended that, the Local Government itself did not complain about not being joined in the suit and

that the respondent had no authority to complain on behalf of the said Local Government. He relied on *NNSC v. Sabana Company Limited & Ors.* (1988) 3 SCNJ 38 at 158 - 159, (1988) 2 NWLR (Pt. 74) 23; *Eboade v. Atomesin* (1997) 5 SCNJ 13 at 22, (1997) 5 NWLR (Pt. 506) 590. Reference was made to page 226 of the record of appeal and learned counsel submitted that the Court of Appeal is not correct in its judgment when it held that the 2nd and 3rd defendants were sued in their personal capacities or that their official capacities were not stated. He referred to paragraph 5 of the affidavit in support of the originating summons where the official status is stated. In the same vein, reference was made to paragraph 6 of the same affidavit which makes reference to exhibit A - the letter of suspension of the appellant from office, which was signed by both the 2nd and 3rd defendants as Speaker and Clerk respectively of the Legislative Council of the Local Government.

Learned counsel submitted that there is ample affidavit evidence to show that the 2nd and 3rd defendants were not sued in their personal or private capacities. He urged the court to hold that the court below was wrong in striking out the appellant's case for non-joinder of the Ifelodun Local Government. Hence urged the court to resolve the issue in the negative and uphold or restore the ruling of the trial court which held that the non-joinder of the Local Government was not fatal to the appellant's case.

On this issue 1, learned counsel to the respondents submitted that the decision of the Court of Appeal on the fatal consequence of the non-joinder of the Local Government in this case is unimpeachable and impeccable.

Learned counsel conceded that it is a legal truism that a litigant only has to join a party from whom reliefs are claimed, but contended that the reliefs in the instant case were essentially directed against the Local Government in the matter. He referred to the originating summons at pages 139 to 144 of the record of proceedings to show that the intendment of the action was to have the appellant, who was placed on suspension by the legislative arm of the Local Government, reinstated into office as the Chairman of the Local Government.

Learned counsel referred to the submission of the appellant that his grievance was not against the Local

Government but against the Legislative Council of the Local Government that masterminded his purported suspension from the office as Chairman of the Local Government. He submitted that there is no difference between the Local Government and its Legislative Council. He referred to sections 15 and 41(1) of the Kwara State Local Government Law, 1999. He submitted further that the Legislative Council of the Local Government being an arm created by law for the dispensation of the functions of the Local Government, whatever is done by the Legislative Council is done on behalf of the Local Government.

Learned counsel to the respondents contended that it is clear from the records that, even assuming without conceding that the Legislative Council can be divorced from the Local Government, the appellant did not sue the Legislative Council. He contended further that the respondents were not sued in representative capacities.

Learned counsel referred to the submission of the appellant on the decision of the court below that the 2nd and 3rd respondents were sued in their personal capacities and contended that it is too late to argue against that point now not having appealed against it. He submitted that it is tantamount to an admission of that fact. He cited; *Adigun v. Governor of Osun State* (1995) 3 SCNJ 1 at 18, (1995) 3 NWLR (Pt. 385) 513; *Obioha v. Duru* (1994) 10 SCNJ 48 at 64, (1994) 8 NWLR (Pt. 365) 631.

On the reference to paragraph 5 of the affidavit in support of the summons on the capacity of the 2nd and 3rd defendants by the appellant, learned counsel to the respondents referred to Order 6 rule 4(1)(b) of the Kwara State High Court (Civil Procedure) Rules, 1989 which strengthens the position of the Court of Appeal that the 2nd and 3rd respondents were only sued in their private and personal capacity but not in their official capacity.

Learned counsel to the respondents contended that at whatever event, the 2nd and 3rd respondents with the other members of the Legislative Council took the decision to suspend the appellant from office as officials or members of the Legislative Council and by extension the Local Government itself. This, he said, is made clear from exhibit A attached to the originating summons of the appellant. He submitted that with the above position, the appellant ought to have sued the Local Government but not the respondents or other members of the

Legislative Council whose action was that of the Local Government in this regard.

Learned counsel referred to the cases cited by the appellant in the brief of argument and distinguished them from the instant case and came to the conclusion that none is applicable.

Learned counsel submitted that this is a matter that touches on the jurisdiction of the court of first instance. He contended that the argument of the appellant that the Local Government did not complain about not being joined in the suit is of no moment. He submitted that parties cannot by consent confer jurisdiction on a court of law where it has none. He relied on *African Newspapers of Nigeria v. Federal Republic of Nigeria* (1985) 2 NWLR (Pt. 6) 137; *West African Portland Cement Plc v. Alhaji Busari Saka & Ors.* (2004) All FWLR (Pt. 239) 1039 at 1053. He submitted further that

it was perfectly legitimate for the respondent to have raised this issue of jurisdiction to forestall the trial court from embarking on a futile judicial expedition.

On the importance of joining all necessary parties in a case and the fatal consequence of a breach of this legal imperative, the respondents relied on the following cases - *Oloriode v. Oyebi* (1984) 5 SC 1 at 5, (1984) 1 SCNLR 390; *Awoniyi v. AMORC* (2000) 6 SCNJ 141 at 148 - 149, (2000) 10 NWLR (Pt. 676) 522; *Onwumalu v. Osademe* (1971) 1 ANLR 14; *Ekpene v. Aforije* (1972) 1 ANLR 220; *Oghene Limited v. Amoruwa* (1986) 3 NWLR (Pt. 32) 856 at 862; *Green v. Green* (1987) 2 NSCC 1115, (1987) 3 NWLR (Pt. 61) 480. He finally urged the court to answer issue No. 1 in the affirmative.

As earlier stated, the issue No. 1 for determination of this

appeal as couched by the appellant goes thus:

“Whether the Court of Appeal was right in holding that, the non joinder of Ifelodun Local Government of Kwara State as a defendant was fatal to the plaintiff’s case.”

It is clear from the records that, the action that culminated into this appeal was initiated by an originating summons by the appellant. He had instituted the action in his capacity as the Chairman, Ifelodun Local Government Council of Kwara State. The action was against the respondents as defendants where the 1st defendant was described as Vice Chairman, Ifelodun Local Government Council Kwara State and the other 2nd and 3rd defendants sued simply by their names.

In the said action, the following questions were formulated for determination by the trial court:

- “1. Whether the 2nd and 3rd defendants and/or the members of Ifelodun Local Government Legislative Council have the powers to suspend the 1st plaintiff from office as the Chairman of Ifelodun Local Government Area of Kwara State pursuant to section 26(4) of the Kwara State Local Government Law 1999 or any of its provisions thereof.
2. Whether the 2nd and 3rd defendants and/or members of the Ifelodun Legislative Council possess the powers to appoint 1st defendant as the “Acting Chairman” of Ifelodun Local Government Area of Kwara State under and by virtue of any of the provisions of the said Kwara State Local Government Law of 1999.
3. Whether the 2nd and 3rd defendants and/or members of Ifelodun Local Government Area Legislative Council have not violated the provisions of section 26(4) of the Kwara State Local Government Law of Kwara State by purporting to investigate the tenure of office of the 1st plaintiff without first giving him, the opportunity of being heard on the grave allegations of maladministration, gross misconduct and abuse of officer made against him by the defendants.
4. Whether the 2nd and 3rd defendants and/or members of Ifelodun Local Government Legislative Council are not in breach of the provisions of the Constitution of the Federal Republic of Nigeria, 1999 by pronouncing the 1st plaintiff guilty even before investigating the said allegations.”

It is pertinent to state that the following reliefs were being sought by the plaintiff from the trial court upon determination of the above questions.

1. A declaration that the purported suspension of the 1st plaintiff as Chairman of Ifelodun Local Government Area of Kwara by the 2nd and 3rd defendants and/ or members of the Legislative Council of the said Local Government Area is wrongful, unlawful, illegal unconstitutional, *ultra vires*, null and void and of no effect whatsoever.

2. A declaration that the purported appointment of the 1st plaintiff (sic) as the “Acting Chairman” of Ifelodun Local Government Area of Kwara State is wrongful, unlawful, illegal, unconstitutional, *ultra vires*, null and void and of no effect whatsoever.
3. An order setting aside and quashing the purported suspension of the 1st plaintiff as Chairman of Ifelodun Local Government Council of Kwara State.
4. An order setting aside and nullifying the purported appointment of the 1st defendant as the Acting Chairman of Ifelodun Local Government Area of Kwara State.
5. An order of perpetual injunction restraining the defendants from disturbing or in any way preventing the 1st plaintiff from performing his duties as the Executive Chairman of Ifelodun Local Government Area.
6. A declaration that the purported reference to the Chief Judge of Kwara State by the defendants of allegations of misconduct and maladministration made by them against the plaintiff is illegal, unlawful, wrongful, unconstitutional, *ultra vires*, null and void and of not effect whatsoever.
7. A declaration that the 1st plaintiff is at all material times the Chairman of Ifelodun Local Government Area.
8. An order directing and compelling the defendants to pay the plaintiff all his accumulated salaries, allowances and other entitlement from 24/4/2001 to the determination of this case and thenceforth.

In support of the said originating summons, is an affidavit evidence of 26 paragraphs to which various documents were attached and marked as exhibits A, B, C, C1, C2 and D respectively.

There is no doubt, what is being contested and which has led both parties to this court is whether or not the Ifelodun Local Government Council of Kwara State, as an entity, was a necessary and desirable party in the determination of the questions raised in the originating summons and the reliefs sought thereof.

At present, the defendants as shown on the summons are:

1. Engineer Raphael Jimoh
(Vice Chairman, Ifelodun Local Government Council of Kwara State)
2. Hon. Alhaji Lateef A. Quadri
3. Faseyi O. Oluyemi

As clearly shown on all the processes filed by the appellant before the trial court in support of the originating summons, what was being challenged by the appellant was his purported suspension from office as Chairman of Ifelodun Local Government Council of Kwara State. And amongst the reliefs being sought were, that he remains in office as Chairman of the said Council at all material times and an order directing and compelling payment of all his accumulated salaries, allowances and other entitlement from 24/4/2001 till the determination of the case.

It is noteworthy that the court below had found as follows in its judgment being appealed.

“Apart from the 1st defendant who is described as the Vice Chairman, the 2nd and 3rd defendants are not described. In short, even though they signed exhibit A in a designated capacity, that was not reflected on the summons. So it is clear that the defendants were sued in their personal capacities. This is also reflected in the affidavit in support of the originating summons. In fact, the respondent has not pretended to have sued them as representing either the council or members of that council or the Local Government itself... in view of the facts of this case, Ifelodun Local Government ought to have been joined in the proceedings as a necessary and desirable party particularly as the 2nd and 3rd appellants did not act in their personal capacities when they signed exhibit A but on behalf of an arm of the Local Government. In fact the Ifelodun Local Government is the main party to the action. It does not matter that the respondent still considered himself to be the Chairman of that Local Government despite exhibit A but that does not change the legal position introduced by exhibit A. His reliefs are against that government not the individuals who clearly acted on its behalf... the non-joinder of Ifelodun Local Government is fatal to the case of the respondent.”

Without considering the success or otherwise of the appellant's case as presented before the trial court, it is apposite to know who the necessary parties are, to enable the court decide the appellant's case judiciously and do substantial justice to the case.

Generally, in legal proceedings the parties are those persons, be they natural or artificial, whose names appear on the record of court as plaintiffs and defendants. Therefore, it has been held that a plaintiff who conceives that he has a cause of action against a particular defendant is entitled to pursue remedy against that defendant only but should not be compelled by the court to proceed against any other person or persons whom he has no desire and no intention to sue. See; *Mc Cheane v. Gyles (No.2)* (1902) 1 Ch. D. 911 at 917, *Dollfus Mieg et Compagnie S. A. v. Bank of England* (1950) 2 All ER 605 at 608.

Ordinarily, the main reason for the necessity in making a person a party to an action in court is so that he should be bound by the result of the action in the judgment of the court: See; *Amon v. Raphael Tuck & Sons Limited* (1956) 1 QB D 357 at 380.

Necessary parties in an action in court have been held to be those who are not only interested in the subject matter of the proceedings but also who in their absence, the proceedings could not be fairly dealt with. In other words, the question to be settled or determined in the action between the existing parties must be a question which cannot be properly settled unless they are parties to the action instituted by the plaintiff. See; *Chief Abusi David Green v. Chief (Dr) E. T. Dublin Green* (1987) 3 NWLR (Pt. 61) 480, (1987) LPELR 1338; *Amon v. Raphael Tuck & Sons* (1956) 1 QBD 357.

In the same vein, a necessary party has been held to be a party whose presence in an action is essential for the effectual and complete determination of the claim before the court. It is the party in the absence of whom the claim cannot be effectually and completely determined. See; *Oyedeji Akanbi (Mogaji) v. Fabunmi & Anor.*; *In Re: Yesufu Faleki (Mogaji)* (1986) 2 SC 431 at 449; (1986) 1 NWLR (Pt. 19) 759; *Ige & Ors v. Farinde & Ors* (1994) 7 NWLR (Pt. 354) 42, (1994) 7-8 SCNJ 284.

There is no doubt that the questions formulated by the appellant for determination at the trial court can only be answered or determined effectually with the presence

of the Ifelodun Local Government Council, in other words, there is no way the reliefs sought by the appellant will be effectually and completely determined in the absence of the Local Government. For instance, all the actions that led to the alleged suspension of the appellant and the letter of suspension signed by the 2nd and 3rd defendants were carried out for the Local Government as officials of the Council.

I am therefore, without any further ado, of the view that the necessary party was not made a party to the appellant's case at the trial court. In other words, Ifelodun Local Government Council is a necessary party to this case. Issue No. 1 is accordingly resolved against the appellant. The court below was right in holding that non-joinder of Ifelodun Local Government of Kwara State as a defendant was fatal to the appellant's case.

Having resolved issue 1 against the appellant, I do not consider it necessary to proceed in considering other issues formulated by the appellant.

In the final analysis, this appeal is found unmeritorious and lacking in substance. Accordingly, it is dismissed.

As costs necessarily follow events, there shall be costs of N100, 000.00 against the appellant but in favour of the respondents.

MUNTAKA-COOMASSIE, JSC: The appellant with three others commenced an action as plaintiffs, against the defendants by way of originating summons. They followed it with applications *ex-parte* and on notice. The application was heard and the trial court granted an interim order of injunction on 10/5/2001 pending the hearing of the motion on notice which was adjourned to 30/5/2001. This plaintiffs/applicants herein sought for reliefs and orders.

On 11/5/2001, the defendants, now respondents, filed their memorandum of appearance and gave a notice of motion seeking an order varying or discharging the *ex-parte* orders of injunction made in this suit on the 10/5/2001.

The defendants/respondents gave a notice of preliminary objection challenging the jurisdiction of the trial court to entertain the suit.

The trial court patiently took arguments of the learned counsel on the preliminary objection which was over-ruled and further adjourned the hearing of the originating summons to 9/10/2001.

On 24/10/2001, the appellants herein filed their notice of appeal against the said ruling of the trial court.

In its judgment, subject of the appeal at hand, the lower court allowed the appeal in part for being fundamentally defective for failure to join the Ifelodun Local Government as a necessary party. The case for this reason, before the trial court was then accordingly struck out. This action of the trial court necessitated the present appeal to this court.

On 5/2/2013, learned counsel for the parties filed and exchanged their respective briefs of argument and adopted them on that day. The appellant distilled 3 issues which were adopted by the respondents. On the day fixed for hearing, the respondents' counsel sought humbly to abandon the preliminary objection filed by the respondents, same was therefore struck out.

I was opportuned to have read the lead judgment of my learned lord Ariwoola, JSC before today. His Lordship has painstakingly treated the issues filed before us and has correctly, in my view, arrived at a just decision. For this modest contribution and the fuller reasons by my Lord Ariwoola, JSC, I too dismiss the appeal as lacking in merit.

I agree as a fact that costs follow the events, N100, 000.00 costs is awarded to the respondents. Appeal is dismissed.

FABIYI, J.S.C.: I have had a preview of the judgment just delivered by my learned brother, - Ariwoola, JSC. I agree with the reasons therein advanced to arrive at the final conclusion that the appeal lacks merit and should be dismissed.

The facts of the matter culminating in this appeal have been well set out in the lead judgment. The crux of the matter relates to the non-joinder of Ifelodun Local Government of Kwara State as a defendant to the suit. It is issue 1 which reads as follows:

“(1) Whether the Court of Appeal was right in holding that the non-joinder of Ifelodun Local Government of Kwara State as a defendant was fatal to the plaintiff's case.”

In order to decide the effect of non-joinder or mis-joinder of a party, this court in the case of *Chief Abusi David Green v. Dr. E. T. Dublin Green* (1987) 3 NWLR (Pt. 61) 480 per Oputa, JSC maintained that the court should ask itself the following questions:

- (a) Is the case or matter liable to be defeated by non-joinder?
- (b) Is it possible to adjudicate on the cause or matter unless the third party is added as a defendant'?
- (c) Is the 3rd party a person who should have been joined in the first instance?
- (d) Is the 3rd party a person whose presence before the court as a defendant will be necessary in order to enable the court to effectually and completely adjudicate or settle all the questions involved in the cause or matter?

It should be further stressed that a necessary party should be allowed to have his fate in his own hands. Judgment made with order against a person who was not joined as a necessary party to a pending suit cannot be allowed to stand as same is to no avail. See: *Uku v. Okumagba* (1974) 1 All NLR 475.

It occurs to me that there is no way the questions raised by the appellant at the trial court can be effectually settled in the absence of the Local Government. The letter of suspension of the appellant was signed by the 2nd and 3rd defendants on behalf of the Local Government. Accumulated salaries and allowances claimed by the appellant are to be 'eventually' borne by the Local Government. In the face of all these facts, it is clear that the Local Government is not only a necessary party to be joined. It is a desirable party as well.

The Court of Appeal, per Onnoghen, JCA (as he then was) at page 227 of the record pronounced thus:-

"His reliefs are against that Government not the individuals who clearly acted on its behalf and it is my considered view that the non-joinder of Ifelodun Local Government is fatal to the case of the respondent. I am therefore of the view that the learned trial Judge erred in holding otherwise in view of the facts on record. Learned counsel for the respondent knows that what I have said is correct because that is what explains his inability to get the Ifelodun Local Government to obey the

court order granted in favour of his client in the case.”

I agree with the stand of the Court of Appeal as above depicted in a clear fashion. The Local Government, a necessary party was not joined to the action and same is, no doubt, fatal to the appellant’s case.

For the above reasons and those carefully adumbrated in the judgment of my learned brother, I too, feel that the appeal is devoid of merit and deserves an order of dismissal. I order accordingly and hereby endorse all consequential orders therein contained; that relating to costs inclusive.

NGWUTA, JSC: I had the privilege of reading before now the lead judgment just delivered by my learned brother, Ariwoola, JSC. I am in complete agreement with the reasoning and conclusion therein. I would however chip in a-few words by way of contribution.

Once issue 1 on non-joinder of Ifelodun Local Government of Kwara State as a defendant in the trial court was resolved against the appellant, as was rightly done in this appeal, the other two issues became merely academic and no longer live issues in the appeal.

Whether or not a person should be joined as a party to a suit is a matter of distinction between what is desirable to do and what is necessary to do. This distinction was drawn by this court in *Peenock Investments Ltd. v. Hotel Presidential Ltd.* (1983) 4 NCLR 122 wherein the court concluded that although it was desirable to join the Rivers State Government whose Edict Nos. 15 and 17 were under attack, it was not necessary to join the Government of Rivers State before the court can decide on the claims of the parties before it.

In the above case, though it was desirable to join the Rivers State Government in a dispute as to the validity of the edicts it promulgated, its presence in the suit was not necessary for the proper determination of the dispute between the parties. The factual situation above is in sharp contrast with the facts of this case.

It is conceded that the appellant did not make any claim against the Local Government itself nor did the Local Government complain about its non-joinder but the appellant sought a restoration of his position of the Executive Chairman of the Local Government. Though

on the face of the originating summons, the 2nd and 3rd respondents appear to have been sued in their personal capacities, the 1st respondent was sued in his capacity as the Vice-Chairman of the Ifelodun Local Government Council of Kwara State.

The suspension of the appellant was effected by the Local Government through its functionaries and it is bound, and affected, by any decision in the matter. For instance, the claim for “accumulated salaries, allowances and other entitlements...” constitute a charge on the fund of the Local Government. In *Caroforth Asaboro v. MGD Aruwaji & Anor* (1974) 6 SC 31 at 40, the court held:

“I am satisfied that whether an order for joinder is made ... the real test is whether the person to be joined will have his interest irreparably prejudiced if an order joining him as a party is not made.”

In *Amon v. Tuck & Sons Ltd.* (1956) 1 All ER 273 at 287, Delvin, J. held, *inter alia*:

“The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action ...”

The consequences of losing the case, including payment of accumulated salaries and allowances, will be borne by the Local Government. It is therefore a necessary party to the originating summons and I agree with the Court of Appeal that its non-joinder is fatal to the appellant’s case.

For the above and the fuller reasons in the lead judgment, I also dismiss the appeal as lacking in merit. I endorse the order for costs made in the lead judgment.

M. D. MUHAMMAD, J.S.C.: I had the privilege of reading in draft the lead judgment of my learned brother, Ariwoola, JSC, with whose reasoning’s and conclusion that the appeal is unmeritorious. I entirely agree.

His Lordship has completely stated the facts of the case that brought about the appeal. Restating them here serves no purpose at all.

I am only to emphasize that learned respondents’ counsel is right in his contention that non-joinder of a party against whom reliefs are sought is fatal and that in the instant case, where the appellant failed to join the Ifelodun Local

Government Council, being such a party, the court below's decision striking out his action cannot be faulted in law.

Appellant's originating summons at pages 139 - 144 of the record of appeal with all its supporting processes appositely bears out learned respondents' counsel that by his action, the appellant seeks reinstatement to the office of the Chairman of the Local Government he omitted as a party to his action following his alleged suspension from office by the Legislative Council of the Local Government. The Local Government Council is undoubtedly a necessary party without which appellant's action cannot be effectually determined. See *Green v. Green* (1987) 2 NSCC 1115, (1987) 3 NWLR (Pt. 61) 480. In *Amodu Tijani Dada & 3 Others v. B Jacob Bankole & 2 others* (2008) 5 NWLR (Pt. 1076) 26 this court has restated the principle that it is a necessity for the plaintiff to join in a suit, a party without whom the matter in controversy cannot be completely determined and extinguished. See also *Ige & Others v. Farinde & Ors* (1994) 7-8 SCNJ 284, (1994) 7 NWLR (Pt. 354) 42.

For the foregoing and more so the detailed reasons marshalled out in the lead judgment, I resolve the crucial issue in the appeal against the appellant. Appellant's action is not competent having failed to join a necessary party. His appeal against the lower court's decision that so holds is bereft of merit. I also dismiss same and abide by the consequential orders reflected in the lead judgment.

Appeal dismissed.