

**IN THE COURT OF APPEAL**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**ON FRIDAY THE 4<sup>TH</sup> DAY OF JULY, 2008**

**BEFORE THEIR LORDSHIPS:**

**RABIU DANLADI MUHAMMAD (OFR) (PRESIDED)**  
**ABDU ABOKI**  
**AYOBODE O. LOKULO-SODIPE**

**JUSTICE, COURT OF APPEAL**  
**JUSTICE, COURT OF APPEAL**  
**JUSTICE, COURT OF APPEAL**

**APPEAL NO: CA/A/107/2006**

CORPORATE AFFAIRS COMMISSION

) DEFENDANT/  
) APPELLANT/  
) RESPONDENT

AND

THE REGISTERED TRUSTEES OF  
CELESTIAL CHURCH OF CHRIST  
(NIGERIA DIOCESE)

) PLAINTIFF/  
) RESPONDENT  
)

IN RE: SNR. EVANG. LAGUN ADESANYA ----- APPLICANT

**RULING**  
**DELIVERED BY AYOBODE O. LOKULO-SODIPE, JCA**

On the 25<sup>th</sup> day of October, 2007, the Applicant filed a motion on notice dated 24<sup>th</sup> day of October 2007 seeking for the following Orders -

- "1. An order for extension of time within which to seek for leave of this Honourable Court to appeal against the Judgment of the lower Court delivered by Justice S.A. Adah of Federal High Court, Abuja on 20<sup>th</sup> day of December, 2005, as an interested party to the subsisting appeal herein.



*pl inde kor*  
*no 2007170609*

*[Signature]*  
*C. R. Ighodan*  
*Cin Asset Reg II*  
*21-07-08*

**CERTIFICATE OF APPEAL**

2. An Order granting leave to the Applicant to appeal against the said Judgment of the lower Court delivered by Honourable Justice S.A. Adah of Federal High Court, Abuja on 20<sup>th</sup> day of December, 2005, as an interested party to the subsisting appeal herein.
3. An Order for enlargement of time within which to file and serve Notice and Grounds of Appeal in this matter.
4. An Order deeming the Notice of Appeal already filed and served as properly filed and served."

The Grounds of the application as set out in the motion paper read thus:

- a. That the rights and privileges of the Applicant has (sic) been affected by the Judgment of the lower Court and the (sic) need to appeal the said Judgment as an interested party.
- b. To ensure that the right of Appeal of the Applicant is not extinguished.
- c. To properly bring the Notice and Grounds of Appeal before this Honourable Court.
- d. To ensure that the Applicant is heard in accordance with Constitutional provisions."

The motion was entertained on 14/4/2008. W.A. Aminu of counsel for the Applicant in moving the motion relied on its supporting affidavit and also adopted the written submissions dated 18/12/2007 and filed on 21/12/2007 in respect of the said motion. He urged the Court to grant the Orders being sought by the Applicant.

B.J. Akomolafe, learned lead counsel for the Respondent opposed the motion. In doing this he relied on the counter affidavit filed in respect of the motion and also adopted the written address dated

26/2/2008 and filed on 27/2/2008. He urged the Court to refuse the Orders being sought by the Applicant and to dismiss the motion.

The facts of the matter as discernible from the Applicant's written submissions are that the Applicant is a prominent member of the Celestial Church of Christ Worldwide, and also the Chairman and Shepherd-in-Charge of Afonifoji Parish, Challenge, Mushin, Lagos. (The Celestial Church of Christ Worldwide will hereinafter simply be referred to as "CCC".) The Applicant is also the Chairman of International Committee of "CCC" – a Committee set up by the Pastor/Founder Rev. S.B.J. Oshoffa in his life time. The Applicant and other members of the Church briefed their solicitors, A.A. Olatunji & Co. to lodge a caveat with the Defendant/Appellant objecting to the registration of one Emmanuel Oshoffa as additional trustee of the Church when they learnt of the surreptitious moves by the Plaintiff/Respondent in that regard. The registration of Emmanuel Oshoffa as additional trustee was objected to on the grounds (i) that it is without the knowledge, consent and approval of the majority of the members of the Church; and (ii) that there are matters in various courts still challenging the validity of the appointment of the said Emmanuel Oshoffa as a pastor of the Church. This is because the purported amended Constitution of the "CCC" pursuant to which the said appointment was made is being challenged and the issue not yet settled.

The Defendant/Appellant refused the registration of the said Emmanuel Oshoffa as a Trustee of the Church and the Plaintiff/Respondent being aggrieved with this, went before the Federal High Court seeking the following reliefs: -

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- "1. A declaration that the Defendant cannot statutorily countenance a caveat or objection filed to the Replacement and appointment of additional Trustees after 28 days of the last of the publications in the newspapers of the proposed change or replacement and appointment of additional Trustees.
2. A Declaration that the Defendant has no discretion under the Companies and Allied Matters Act not to assent to the application for replacement and appointment of additional Trustees upon the fulfillment of the Statutory requirement for such replacement and appointment of additional trustees.
3. A Declaration that the reliance of the Defendant on an objection filed after the expiration of 28 days of the last publication in the newspapers of the replacement and appointment of Reverend (Pastor) Emmanuel Friday Oschoffa as a Trustee is unknown to the Companies and Allied Matters Act.
4. An Order directing the Defendant to register Reverend (Pastor) Emmanuel Friday Oschoffa as a Trustee of the Plaintiff forthwith." (See page 4 of the Record).

The lower court per S.J. Adah, J; in the judgment delivered on 20/12/2005 apparently granted the four reliefs as set out above claimed by the Plaintiff/Respondent. The Defendant/Appellant being dissatisfied with the said judgment lodged an appeal against the same by a Notice of Appeal dated 15/3/2006 and filed on 16/3/2006. See pages 118-121 of the Record. It is the same decision against which the Defendant/Appellant has lodged an appeal that the Applicant also

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wishes to lodge an appeal against and for this purpose is seeking for the leave of this Court to appeal as 'an interested party' among others.

The sole issue formulated for determination in the motion before the Court in the Applicant's written submissions is: -

"Whether by the combined effect of the affidavit evidence before this Honourable Court, the Applicant herein should be granted leave to appeal as an interested person against the Judgment of the lower Court delivered by Honourable Justice S.A. Adah of the Federal High Court, Abuja on 20<sup>th</sup> December, 2005."

Like the Applicant, the Plaintiff/Respondent too, in its written address formulated a sole issue for determination in the motion before the Court.

The issue reads thus: -

"Whether or not this Honourable Court should exercise its discretion to grant the application in view of the materials placed before it and the circumstances of the case."

In my view, the primary question to be determined in this application would appear to be "whether or not the Applicant qualifies as 'a person having interest in the matter in the case now on appeal' in the light of the material placed before the Court and the nature of the case before the lower court?" It is if this question is resolved in the affirmative that the need to consider the prayers in the motion paper designed to give effect to the 'leave to appeal' being sought, would arise.

Applicant's counsel in arguing the issue formulated in the Applicant's written submissions started off by referring to Section 243 of the 1999 Constitution and further said that for a person that was not a party to a suit to be entitled to appeal to this Court from the decision of a High Court, such a person must have a legally recognisable interest in

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the proceedings in the High Court. The cases of Akande vs. General Electric Co. (1979) 3 LRN 187, 192 and Ikonne vs. COP & Anor (1986) 1 NWLR 473 at 497, 503 were cited in aid. Applicant's counsel submitted that the Applicant has a legally recognisable interest in the judgment of the lower court and which judgment was attached as Exhibit 'F' to the supporting affidavit of the motion. In this regard particular reference was made to paragraphs 3, 4 and 5 on page 6 as well as page 7 of the said Exhibit.

Applicant's counsel said that the case before the lower court was predicated on the caveat filed by members of the Church as considered by the said lower court in its judgment. The depositions in paragraphs 2 and 4 of the supporting affidavit it was also stated, disclosed the competence of the Applicant to bring the instant application. The competence of the Applicant is said to be predicated on his prominence in the "CCC". The prominence of the Applicant in is also hinged on his being the Chairman of International Committee of "CCC" a Committee set up by the Pastor/Founder of the "CCC" – Rev. S.B.J. Oshoffa in his life time and which is not disputed by the Plaintiff/Respondent. The membership of the Church and status of the Applicant as Chairman and Shepherd-in-Charge of Afonifoji Parish, Challenge, Mushin, Lagos which are also not contested, Applicant's counsel submitted should be held as making the Applicant to be among the members of the Church that filed the caveat. Applicant's counsel also said that the efforts of the Applicant as disclosed in paragraphs 5, 6, 8, 9 and 10 of the supporting affidavit as well as Exhibit 'A', proved that the Applicant cannot be severed from the caveat. Applicant's counsel said that the contention of the Plaintiff/Respondent that the caveat was not filed on behalf of the

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Applicant was untenable. This is because Exhibit 'A' showed that the firm of A.A. Olatunji & Co. was acting for and on behalf of all the members of the "CCC" and that this necessarily included the Applicant who is a member of the Church.

Applicant's counsel said that it was clear from the depositions in paragraphs 14, 15 and 29 of the supporting affidavit and Exhibits 'E' and 'I' respectively attached thereto, that the Plaintiff/Respondent was aware of the issues raised in the caveat as they related to the appointment of Emmanuel Oshoffa or any other person into the office of Pastor of the Celestial Church of Christ. Exhibit 'I' in particular is said to show clearly that the validity of the Constitution under which Emmanuel Oshoffa was appointed was being challenged in view of the decision of the Supreme Court in the case of Owodunni vs. Registered Trustees of CCC (2000) FWLR (Pt. 9) 1425-1594. The Applicant is said to be the 2<sup>nd</sup> plaintiff in the said case while the Plaintiff/Respondent and Defendant/Appellant are 12<sup>th</sup> and 13<sup>th</sup> defendants respectively. Applicant's counsel submitted that the Applicant has a genuine legal grievance given the circumstances of this case and that the decision of the lower court has prejudicially affected his interest. Reliance was placed on the case of Societe Generale Bank of Nigeria Limited vs. Litus Torungbenfade Afekoro (1999) 7 SC (Part III) 95 110 at 111 where the Supreme Court in dwelling on "person aggrieved" made reference to *Exparte Sidebotham, In Re Sidebotham* (1880) 14 Ch. D 450.

Applicant's counsel made reference to paragraph 22 of the supporting affidavit and Exhibit 'H' attached thereto, as showing that the Applicant together with some members of the Church initially made efforts to seek for leave to appeal as an interested party before the

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lower court. He submitted that the fact that other applicants in Exhibit 'H' compromised their interest to proceed to this Court in the further prosecution of the application did not affect the legal grievance of the Applicant in this matter as a person interested. Applicant's counsel submitted that the Applicant therefore remained a desirable party in this case and in this regard cited the case of Green vs. Green (1987) 3 NWLR (Pt. 61) where the Supreme Court according to him decided that the court has a discretion to order the addition of a third party as a party in an action where the determination of the action would directly affect the third party's legal right or pecuniary interest.

Applicant's counsel dwelled on the reason for seeking leave to appeal belatedly and referring to the deposition in paragraph 24 of the supporting affidavit, it was said that this was basically as a result of the Applicant's reliance on the briefing already given to A.A. Olatunji & Co. before he left the country abroad on health grounds. The Court was urged to exercise its discretion in the Applicant's favour by granting the instant application. In this regard, it was said that the Court given the nature of the instant application, must balance the exercise of its discretionary power to grant or refuse an application for extension of time to appeal with its duty of giving the Applicant the opportunity of obtaining substantial justice by allowing him to be joined in the matter in which he has an interest. The decision of this Court in the case of Attorney-General and Commissioner for Justice, Ekiti State & Ors vs. Prince James Lagunju Osho In Re: Oba Joseph Adeleye Orishagbemi (2001) FWLR 1116, 1125 was cited in aid. Applicant's counsel also submitting that Exhibit 'G' – Notice and Grounds of Appeal filed by the Applicant raised arguable and substantial grounds of appeal urged the

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Court to exercise its discretion in favour of the Applicant. The case of *Bicon Agrochemical Nigeria Limited & Ors vs. Kunu Holdings* (2000) 15 NWLR (Pt. 691) 493 at 509 and 513 was cited in aid.

The Plaintiff/Respondent as earlier stated opposed the motion of the Applicant. Respondent's counsel in arguing the sole issue formulated in the Respondent's written address did not dispute the position of the law to be that pursuant to section 243 of the 1999 Constitution a person not a party to a suit but who has an interest in the matter may with the leave of court appeal against the decision of the Federal High Court or High Court. Respondent's counsel however stressed that for an applicant "who has an interest in the matter" to succeed, he must show his interest in the decision in respect of which he is seeking for leave to appeal. The case of *Societe Generale Bank (Nig) Ltd vs. Afekoro* (1999) 11 NWLR (Pt. 628) 521 at 541 (which the Applicant equally relied upon) was cited in aid. The cases of *Ikonne vs. COP & Anor* (1986) 4 NWLR (Pt. 36) 473 (equally relied upon by the Applicant) and *Re: Reed Bowen & Co. Ex. p Official Receiver* (1887) 19 QBD at page 178; were also cited as to the meaning of the term "a person having interest in a matter". Given the meaning of the term, Respondent's counsel submitted that for the Applicant to succeed in the instant application, he must show that he is a person aggrieved in that he is not only a person interested but also that the order made prejudicially affects his interest. The cases of *In Re: Ijelu* (1992) 9 NWLR (Pt. 266) 414; *In Re: Williams (No. 1)* (2001) 9 NWLR (Pt. 718) 329 at 340; *In Re: Ojukwu* (1998) 5 NWLR (Pt. 551) 673 at 683; and *In Re: Mbamala* (2001) 18 NWLR (Pt. 744) 145; were cited in aid. Indeed what this Court said in the case of *In Re: Mbamalu* at page 158 was re-produced. It reads thus: -

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"An applicant seeking leave to appeal against a decision as an interested party must first show the following:

- (a) that a right of appeal has enured to him
- (b) such an Applicant, not being a party to the decision against which leave to appeal is sought must show that the decision has caused him grief, loss, disadvantage or affected his title or position
- (c) where he alternatively shows that his interest or title is likely to be affected or that the decision is likely to cause him grief, his application for leave would be positively considered."

Respondent's counsel submitted that the Applicant has not shown that he has an interest in the matter or that he has suffered any legal grievance or may suffer the same if he is not granted leave to appeal. In this regard Respondent's counsel submitted that the disclosure that the Applicant is a prominent member of the Church is not sufficient. The Applicant according to Respondent's counsel must show sufficient standing (*locus standi*) and disclose what right he has as such a member which has been infringed. Nothing short of special interest and which has been adversely affected by the act or omission which is being sought to be challenged, Respondent's counsel submitted can confer *locus standi* on a person seeking for the leave of court to appeal. He further submitted that an interest that is vague or intangible, supposed or speculative or shared with others cannot be special interest. The cases of *In Re: Ijelu (supra)* and *Adesanya vs. President* (1981) 2 NCLR 358 were cited in aid. It was also submitted by Respondent's counsel that a person who has no legal function to perform or who only has a

general interest in seeing that justice is done to a party is not a party interested as envisaged by the Constitution and the cases of *Owena Bank (Nig) Plc vs. NSE Ltd* (1997) 8 NWLR (Pt. 515) 1 at 11-12; and *In Re: Ojukwu* (supra) at 682-683 were cited in aid.

Dwelling on the affidavit evidence before the Court, Respondent's counsel said it was clear therefrom that the Applicant at the best is an ordinary floor member of the CCC (Nigeria Diocese) which has over 7,000 members and that his claim to prominence had been debunked by the depositions in paragraphs 6 and 13 of the counter affidavit. Respondent's counsel also said there was no evidence whatsoever before the Court showing that the Applicant is a member of the Pastor-in-Council which by section 111(iii)(a) of the Constitution of the Church is a notable decision making body of the Church. Respondent's counsel equally said that the Applicant failed to show how his interest as a "business executive" is being affected or likely to be affected by the judgment of the lower court. Still on the issue of interest, Respondent's counsel not only submitted that the contention that caveat filed before the Defendant/Appellant clothed the Applicant with sufficient interest to sue as a person interested was misconceived and baseless, but also that the Applicant has not shown any nexus between himself and caveat filed to warrant the Court's discretion. The caveat was said to have been filed 174 days after the date of the publication of additional trustee in the newspapers. The case of *A-G Akwa Ibom State vs. Essien* (2004) 7 NWLR (Pt. 872) 288 at 321-322 was cited on the need for a plaintiff to show that he has locus standi in a suit, especially one commenced by originating summons by disclosing his special interest or the threat of injury he will suffer from the infringement complained of. Furthermore,

Respondent's counsel submitted that the grounds of appeal filed by the Applicant did not arise from the judgment of the lower court and that the Applicant was not a person interested as required by law.

Respondent's counsel again submitted that the Applicant has not disclosed any cause of action. This is because he has not disclosed any interest or grievance that he has against the Defendant/Appellant. The point was made that the affidavit in support of the motion before the Court which is analogous to a statement of claim shows no right or obligation which the Applicant wishes to protect having regard to the judgment of the lower court and which is what is relevant in deciding as to whether or not to grant the type of application before the Court. The case of *Thomas & Ors vs. Olufosoye* (1986) 1 NWLR (Pt. 18) 669 at pages 681 and 683 was not only cited in aid but the Court was also urged to strike out the instant application on the ground that the Applicant has not disclosed a reasonable cause of action.

The test to determine whether an interested party can be granted leave to appeal according to Respondent's counsel is whether such a person in the first place could have been joined as a party in the suit. The cases of *In Re: Ndayako* (2003) 4 NWLR (Pt. 809) 42; and *Re: Madaki* (1990) 4 NWLR (Pt. 143) 266 were cited in aid. Respondent's counsel submitted that the Applicant could not be allowed to foist himself on the Respondent since the gravamen of the case of the Plaintiff/Respondent lies against the Defendant/Appellant. The cases of *B.O.N. Ltd vs. Saleh* (1999) 9 NWLR (Pt. 618) 331 at 350; *Dantsoho vs. Mohammed* (2003) 6 NWLR (Pt. 817) 457 and *Iyimoga vs. Gov., Plateau State* (1994) 8 NWLR (Pt. 360) 73 were cited in aid. Given the facts of this case, Respondent's counsel submitted that the case of *Societe*

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Generale Bank (Nig) Ltd vs. Afekoro (supra) was not helpful to the Applicant but on the contrary was favourable to the Respondent.

Respondent's counsel submitted that this Court will not exercise an equitable relief in favour of a party who has acted in bad faith and slept on his right. In this regard the Applicant action was said not to be deserving of sympathy and that the instant application was brought in bad faith because the Applicant had earlier brought an application seeking for leave to appeal in the lower court but failed to prosecute the same. It was further submitted by Respondent's counsel that it is trite law that when a decision had been regularly taken on behalf of a corporate entity (such as the Plaintiff/Respondent is) it is futile for an individual member (such as the Applicant) to take a legal action to oppose it since the will of the majority of the members must prevail. The cases of *Foss vs. Harbottle* (1843) 2 Hare 461; *Adenuga vs. Odumeru* (2002) 8 NWLR (Pt. 821) 163; and Section 299 of the Companies and Allied Matters Act were cited in aid. The Applicant was equally said to have failed to show how his action in bringing the instant application falls under any of the exceptions provided for in Section 300 of the Companies and Allied Matters Act.

The law is no doubt settled that the right of appeal to the Court of Appeal from the decision of the Federal High Court, or a High Court conferred by the 1999 Constitution if not exercised by either of the parties to an action, can only be exercised by any person who has an interest in the matter; and that this must be with the leave of the Federal High Court, or High Court, or Court of Appeal. In this regard see the cases of **A.C.B. INTERNATIONAL BANK LTD V. EKANEM EKPO OTU [2008] All FWLR (Pt. 406) 1817 at 1834;** and **LAWRENCE**

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**CHUKWUMA O. WILLIAMS V. GREGORY MOKWE & ANOR [2005]**

**All FWLR (Pt. 280) 1453** where the provision of Section 222(a) of the 1979 Constitution which is in pari materia with that of Section 243(a) of the 1999 Constitution was applied.

The Applicant definitely does not claim to be a party in the suit in which the judgment he seeks to lodge an appeal against was delivered. He wants to appeal against the said judgment as 'an interested party' and he is seeking for the leave of this Court for that purpose. The question then is: what are the determinants of "person having interest in the matter" as used in Section 243(a) of the Constitution? In the case of **ENYIBROS FOODS PROCESSING COMPANY LIMITED & ANOR V. NIGERIA DEPOSIT INSURANCE CORPORATION & ANOR [2007] All FWLR (Pt. 367) 793**, the Supreme Court held to the effect that the test to determine 'a party or person interested' as envisaged under section 243(a) is – whether the person or party could have been joined as a party to the suit. And that 'a person interested' includes a person affected or likely to be affected or aggrieved or likely to be aggrieved by the proceedings. The meaning of 'person having interest in a matter' has in many decisions of this Court (and in this regard applying decisions of the Supreme Court on the issue) equally been stated to be synonymous with 'person aggrieved' which in turn means 'a person who has suffered a legal grievance, a person against whom a decision has been given which has deprived him of something or refused him something or affected his right or title to something'. See in this regard the cases of **DR. CHRIS NWACHI NGIGE V. MR. PETER OBI [2006] All FWLR (Pt. 330) 1041**; **FIRST BANK OF NIGERIA PLC V. AKPARABONG COMMUNITY BANK LTD & ANOR [2006] All**

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**FWLR (Pt. 319) 927; OTUNBA ADEKUNLE OJORA V. AGIP NIGERIA PLC & ANOR [2005] All FWLR (Pt. 267) 1433 and HRH ALHAJI IBRAHIM S. GAMBARI V. ALHAJI SULYMAN OBA TUKUR [2004] All FWLR (Pt. 239) 923** among others.

The Plaintiff/Respondent initiated the case in which the judgment which the Applicant seeks for leave to appeal as 'an interested person' against the Defendant/Appellant by way of Originating Summons. The questions posed for the determination of the lower court in the Originating Summons are as follows: -

- "(1) Whether the Defendant can statutorily countenance a caveat or objection filed to the Replacement and appointment of additional Trustees after 28 days of the last of the publications in the newspapers of the proposed change or replacement and appointment of additional Trustees.
- (2) Whether the Defendant has any discretion not to assent to the application for Replacement and appointment of additional Trustees upon the fulfillment of the statutory requirements for such Replacement and appointment of additional Trustees.
- (3) Whether or not in the circumstances of this case, the Defendant ought to have relied on an objection filed after the expiration of 28 days of the last publications in the newspapers of the proposed replacement and appointment of additional Trustees to refuse the Registration of Reverend (Pastor) Emmanuel Friday Oschoffa as a Trustee of the Plaintiff." (See pages 3-4 of the Record).

The reliefs which the Plaintiff/Respondent seeks in the action have

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earlier been re-produced in this Ruling. They are again set out for ease of reference; and they read thus: -

- "1. A Declaration that the Defendant cannot statutorily countenance a caveat or objection filed to the Replacement and appointment of additional Trustee after 28 days of the last of the publications in the newspapers of the proposed change or replacement and appointment of additional Trustees.
2. A Declaration that the Defendant has no discretion under the Companies and Allied Matters Act not to assent to the application for replacement and appointment of additional Trustees upon the fulfillment of the Statutory requirement for such replacement and appointment of additional trustees.
3. A Declaration that the reliance of the Defendant on an objection filed after the expiration of 28 days of the last publication in the newspapers of the replacement and appointment of Reverend (Pastor) Emmanuel Friday Oschoffa as a Trustee is unknown to the Companies and Allied Matters Act.
4. An Order directing the Defendant to register Reverend (Pastor) Emmanuel Friday Oschoffa as a Trustee of the Plaintiff forthwith." (See page 4 of the Record).

The lower court in its judgment gave the following answers to the questions posed for its determination; -

- " For Question 1, the answer is simply that the Defendant cannot countenance a caveat or an objection filed to the replacement and appointment of additional trustees after

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28 days of the last publication in the Newspaper of the proposed change or replacement and addition of additional Trustees.

For Question 2, the answer is that the Defendant has no legitimate discretion to refuse assent to the application for replacement and appointment of additional Trustees upon the fulfillment of the statutory requirements for such a change.

For Question 3, the answer is from the circumstances of this case the Defendant ought not to have relied on an objection filed well after the expiration of 28 days of the last publication in the Newspapers of the proposed replacement and registration of Reverend (Pastor) Emmanuel Friday Oschoffa as a Trustee of the Plaintiff." (See page 111 of the Record).

Given its answers to the questions posed for its determination as set out above, the lower court came to the conclusion that the Plaintiff/Respondent had proved its case as required by law and consequently entered judgment for the said Plaintiff/Respondent. (See page 111 of the Record).

As earlier stated the Supreme Court in the case of **ENYIBROS FOODS PROCESSING COMPANY LIMITED & ANOR V. NIGERIA DEPOSIT INSURANCE CORPORATION & ANOR (supra)** held to the effect that the test to determine 'a party or person interested' as envisaged under section 243(a) of the 1999 Constitution, is whether the person or party could have been joined as a party to the suit. The question then is: what are the parameters of joinder of party or parties to an action? The law reports are replete with decisions of the Supreme Court and indeed of this Court on this. In the case of **RINCO**

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**CONSTRUCTION CO. LTD V. VEEPEE INDUSTRIES LTD & ANOR**

**[2005] All FWLR (Pt. 264) 816 at pages 825-826** Kalgo, JSC;

dwelling on the issue of joinder of parties said thus: -

"Let me take briefly the issue of joinder. Anyone whose presence is crucial and fundamental to the resolution of a matter before the court must be made a party to the proceedings. See D.O. Ogbene and Sons Ltd vs. Amoruwa (1986) 3 NWLR (Pt. 32) 856. 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 and the question to be settled therefore must be a question in the action which cannot be effectively and completely settled unless he is a party. See Expso Limited vs. Pafab Enterprises Limited (1999) 1 NWLR (Pt. 591) 449."

Still on the parameters governing the joinder of parties, are the cases of

**BENSON AKINTOLA SUNMOLA IGE V. BABAJIDE AKINWUNMI**

**FARINDE [1994] 7-8 SCNJ (PART I) 284** and **ALHAJI BUBA**

**MANU MUTUM BIYU V. ALHAJI ABDULAZIZ IBRAHIM & ORS**

**(2005) All FWLR (Pt. 274) 261 at 287.** These cases equally make it

clear that the interest of the party being sought to be joined in a case,

or the interest the said party is said to have in the case alone; and/or

the desire solely, that the said party being sought to be joined should be

bound by the decision in the case; are no valid basis for ordering or

permitting a joinder. For an order of joinder to be made, on the basis of

the interest of the party being sought to be joined in a case and/or for

the purpose of having the said party bound by the outcome of the case,

there must be a question in the action between the existing parties

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which cannot be effectually and completely settled unless the said party is made a party. (Underlining supplied by me for emphasis).

I have painstakingly scrutinized the questions posed for the determination of the lower court in the Originating Summons by which this case was commenced; the reliefs sought, (and which have earlier been re-produced in this Ruling). I have equally also painstakingly perused the supporting affidavit of the Originating Summons and the counter affidavit filed by the Defendant/Appellant in response thereto. I must say that I find nothing in the questions posed for the determination of the lower court in the Originating Summons and the reliefs sought that required the presence of the Applicant as a party for lower court to effectually and completely resolve the questions. The lower court having regard to the questions posed for determination in the Originating Summons and the depositions in the supporting affidavit was not called upon to determine the validity or otherwise of the content of the caveat. The questions posed for the determination of the lower court in the Originating Summons basically revolved around the propriety or otherwise of the Defendant/Appellant in countenancing and acting on the caveat lodged outside the statutory period of 28 days against the proposed replacement or addition of a Trustees for the "CCC" after the last of the publications in relation thereto in the Newspapers. Equally none of the reliefs sought by the Plaintiff/Respondent remotely invited the lower court to pronounce on the validity of the content of the caveat and the lower court never made any pronouncement on the validity of the content of the caveat in any case. Even if the lower court had been invited to pronounce on the validity of the content of the caveat, I do not think that the persons who

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filed the said caveat or any one of them by virtue of that fact alone, has to be a party before the lower court can completely pronounce on the matter. The persons who filed the caveat or any of them may be vital and necessary witness(es) for the Defendant/Appellant but surely not a necessary party in that event.

From all that has been said above, I therefore hold that the Applicant does not qualify as 'a person interested in the matter on appeal' when the test as to whether or not he could have been joined as a party to the suit in the lower court is applied. The Applicant therefore cannot procure the leave to appeal that he seeks on the ground that he is a party who ought to have been joined in the action as he qualifies as a party whose presence was necessary to have enabled the lower court deal with the case before it effectually and completely.

As already stated in this Ruling, the expression 'person having interest' has also been held to be synonymous with 'person aggrieved'. And a 'person aggrieved' has been described as a person who has suffered a legal grievance, a person against whom a decision has been given which has deprived him of something or refused him of something or affected his right or title to something.

Applicant's counsel has submitted that the competence of the Applicant to bring the instant application is grounded on his prominence in the "CCC". The prominence of the Applicant in turn is predicated on his being the Chairman of the International Committee of "CCC" (a Committee set up by Pastor/Founder Rev. Oshaffa in his life time) and Chairman and Shepherd-in-Charge Afonifoji Parish, Challenge, Mushin, Lagos. I must however say that it has not been shown by the Applicant how the judgment of the lower court in respect of which he seeks for

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leave to appeal has deprived him of his prominence in the "CCC" or has affected the posts or positions upon which his prominence is predicated or anchored. What is deducible from the facts of this case, is that the Applicant as a prominent member of the "CCC" is aggrieved with the judgment of the lower court against which the Defendant/Appellant who was the only defendant in the case at the lower court has already lodged an appeal. 'Grievance' per se or simpliciter is not what qualifies a person as having interest in a matter in respect of which he seeks for the leave of court to appeal. What qualifies a person as 'a person having interest' is legal grievance. The lower court made no pronouncement that remotely affected the prominence of the Applicant and/or likely to affect his prominence.

Applicant's counsel in the Applicant's written submissions made reference to the case *Owodunni vs. Registered Trustees of CCC* (supra) to buttress his argument that the Plaintiff/Respondent was aware of the issues raised in the caveat lodged against the appointment of Emmanuel Oshoffa or any other person into the office of Pastor of the "CCC" and particularly that the Constitution under which Emmanuel Oshoffa was appointed was still being challenged. I cannot but say again that the lower court was not called upon in any of the questions posed for its determination to pronounce on the validity of the content of the caveat lodged against the appointment of Emmanuel Oshoffa and indeed no portion of the judgment where the lower court engaged itself in this exercise and made a pronouncement thereon, has not been shown by the Applicant. I also do not see how the decision of the Supreme Court in **JOSHIAH KAYODE OWODUNNI V. REGISTERED TRUSTEES OF CCC & ORS [2000] 6 SCNJ 399** is helpful to the Applicant in the

instant application. The case makes it clear that in the realm of private law, the issues of locus standi and cause of action are merged and that for a person to have locus standi he must disclose his interest in the matter at hand. The 1<sup>st</sup> Respondent in the case under reference was found to have locus standi as it was shown in the pleading that he is a member of the Church; that he has an interest in the appointment of the Pastor; that the late S.B.J. Oshoffa – the erstwhile Pastor/Founder, in his life had made it known by words and actions that the 1<sup>st</sup> respondent was his successor; and given the contention that he was the rightful person to be named and proclaimed successor to the office of the erstwhile Pastor. The Applicant in the instant application has not shown that by virtue of his prominence he is qualified to be a Trustee or that he is indeed interested in the post or position of Trustee. Given the totality of what has been highlighted above, the Applicant in my view definitely cannot be said to have any 'legal grievance' against the said judgment to qualify him as 'a person interested in the matter' the judgment of the lower court is about.

From the foregoing, the conclusion I have reached is that the Applicant equally does not qualify as a person that has suffered any legal grievance having regard to the judgment in respect of which he seeks for leave to appeal.

The instant application must necessarily fail as I have earlier found the Applicant not to qualify as 'a person interested in the matter on appeal' when the test as to whether or not he could have been joined as a party to the suit in the lower court is applied and also that he does not qualify as a person that has suffered any legal grievance having regard to the judgment in respect of which he seeks for leave to appeal.

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Furthermore as the Applicant has not been found to be deserving of being granted leave to appeal as an interested person, I consider it unnecessary to dwell on the other prayers sought in the instant application which are designed to give effect to the order seeking for leave to appeal, had it succeeded.

The Applicant's motion dated 24<sup>th</sup> October, 2007 and filed on 25<sup>th</sup> October, 2007 having failed is accordingly dismissed. Costs of N10,000.00 is awarded in favour of the Plaintiff/Respondent.



**AYOBODE O. LOKULO-SODIPE**  
**JUSTICE, COURT OF APPEAL.**

**APPEARANCES:**

**W.A. Aminu appears for the Applicant.**

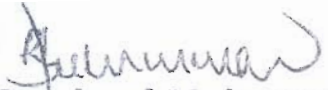
**B.J. Akomolafe appears for the Plaintiff/Respondent (with him is Akinyemi Aremu).**

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RABIU DANLAMI MUHAMMAD

I agree.

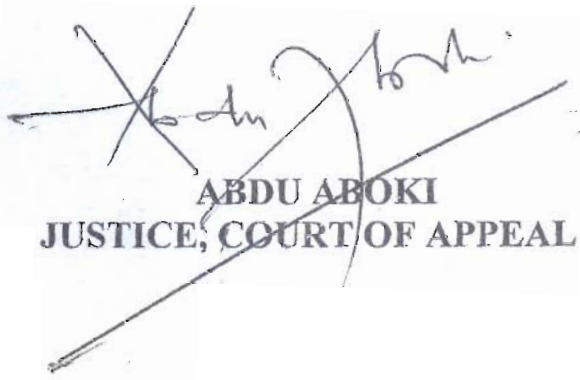
  
Rabiu Danlami Muhammad  
Justice, Court of Appeal

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ABDU ABOKI, J.C.A.

I have read in advance the Ruling of my learned brother Lokulo-Sodipe, J.C.A. I entirely agree with his reasonings and conclusion. I too dismiss the Applicant's application for lack of merit. I abide by the order as to costs.

  
ABDU ABOKI  
JUSTICE, COURT OF APPEAL

  
P. Richard  
Snr. Assist Reg  
21-07-08  
NIGERIA

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