IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 26TH DAY OF FEBRUARY, 2020.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO: FCT/HC/CV/1450/16
MOTION NO: FCT/HC/M/839/19

BETWEEN:

OBIKE INDUSTRIES NIGERIA LIMITED:...CLAIMANT/RESPONDENT

AND

1. HELEN MATAWAL
2. OPEYEMI ALABI
3. ADESINA ABIOYE
4. HON. MINISTER OF THE FCT :...DEFENDANTS/APPLICANTS

Lucky Akharame for the Claimant.
HabibaKobi for the Defendants.

RULING.

By a Motion on Notice dated and filed the 6th day of November, 2019, and brought pursuant to Order 25 Rules 1 of the FCT High Court (Civil Procedure) Rules, 2018, and under the inherent jurisdiction of this Court, the Defendants/Applicants brought this application praying the Court as follows;

> ***"An order granting leave to the Defendants/Applicants to amend their Statement of Defence and Witness Statement on Oath.***
>
> ***And for such further order or orders as this Honourable Court may deem fit and just to make in the circumstances."***

The ground for the application, as per the affidavit in support of the motionon notice, is that the law firm representing the Defendants, having been assigned the case file by the Legal Services Secretariat, Federal Capital Territory Administration, and having gone through the processes, saw the need to amend the Defendants' Statement of Defence and Witness Statement on oath.

In his written submission in support of the application, learned counsel for the Defendants/Applicants, A.I. Abbas, Esq., raised a sole issue for determination, namely;

> ***Whether the Applicants are entitled to the grant of their application?"***

For this, he relied on Order 25 Rule 1 of the Rules of this Court to contend that the Defendants are entitled to the grant of this application. He urged the Court to grant same in the interest of justice.

In opposition to the application, the Claimant/Respondent filed an 18 paragraphs counter affidavit deposed to by Onyekalkenta, a Director of the Claimant.

He averred that the Defendants' counsel, Hope Attorneys, were briefed on or before the 1st day of June, 2019, as stated in paragraph 5 of their affidavit in support of the application, and that they filed an application for change of counsel on 24thJune, 2019, which same was moved and granted on 25thJune, 2019, and the case was adjourned for definite hearing to 10th October, 2019.

The Claimant/Respondent stated that the Defendants have been glaringly indolent in defending their case, and seek to waste the time of the Court. That the grant of this application will prejudice the Claimant who has since closed its case and

may not have the opportunity to react to or address the issues the Defendants may raise in the amendment sought.

In his written address in support of the counter affidavit, learned Claimant's counsel, Collins Shaka-Momodu, Esq., raised the following two issues for determination:

1. Whether in the circumstances of this case, the Defendants/Applicants are entitled to the grant of this application?
2. Whether this application is competent for non-compliance with the Rules of this Court?

Proffering arguments on issue one, learned counsel contended that stemming from the Defendants' indolence in defending the suit, and the fact that the Claimant has closed its case, the Defendants are not entitled to the grant of the reliefs sought.

He argued that it would be unjust to grant this application as the Claimant would be heavily prejudiced by the grant of same.

He referred to **Onagoruwa v. IGP (1991) 5 NWLR (Pt 193) 593 at 634.**

On issue two, learned counsel relied on Order 25 Rule 3 of the High Court of FCT (Civil Procedure) Rules, 2018 to contend to the effect that the failure of the Defendants to annex their proposed witness statement(s) on oath, list of witnesses and copies of documents to be relied upon, to this application, is fatal to the entire application. He argued that the said failure amounts to non-compliance with Order 25 Rule 3 of the Rules of this Court, and that same renders the application incompetent.

He referred to **F.A.B.S. Ltd v. Ibiyeye (2008) 34 WRN 102 C.A.** on the import of the word "shall" as used in Order 25 Rule 3.

He urged the Court to discountenance the application and to dismiss same with the cost of N50,000.00.

It is trite that amendment of pleadings can be made at any stage of the proceedings before judgment, or even on appeal, so as to attain substantial justice.

See **Omaye&Anor v. Omagu&Ors (2007) LPELR-3558 (CA).**

When the Rules in Order 25 Rule 1 of the High Court of FCT (Civil Procedure) Rules, 2018 provided that a party may amend his pleadings at any time before the close of the case, it simply means before the close of trial or before judgment, and not that when one party, (the Claimant for instance, as in this case), has closed his case, the defendant who is yet to open his defence, can no longer amend his pleadings. The argument of learned Claimant's counsel in this regard is therefore, misconceived.

In so far as the Claimant is entitled to a consequential amendment to his reply to the statement of defence where necessary, the fact that the Claimant has closed his case, will not amount to an amendment to the statement of defence being prejudicial to the Claimant as he can still re-open his case to reply appropriately to the amended statement of defence.

What is important in an application for amendment of pleadings, is that the amendment sought should be aimed at bringing the real issues between the parties into focus for proper adjudication and attainment of substantial justice. See **Ologunleko v. Oguneyehun (2008) 1 NWLR (Pt 1068) 397 at 420.**

Having stated the foregoing, it is pertinent to point out that the rules of Court are not made for the sheer fun of it.In any proceedings before the Court, the rules guiding or regulating that proceeding must be adhered to. Thus in **Executive**

Governor of Osun State v. Folorunsho (2014) LPELR-23088 (CA), the Court of Appeal, per Denton-West, JCA, held that,

> ***"… it must be noted that the Court does not operate invacuum. It operates within the ambit of the enabling laws and rules….***
>
> ***'Rules of Court are meant to be obeyed. They are not made for the fun of them qua subsidiary legislation…'***
>
> ***'When a rule of Court makes a mandatory provision, it is incumbent on a litigant to ensure that such provision is complied with, for it is made to be obeyed and not brushed aside even if inadvertently…'".***

The learned Claimant/Respondent's counsel contended, and rightly so, that by virtue of Order 25 Rule 3 of the Rules of this Court, the Defendants/Applicants were obligated to annex their witness statement on oath and copies of documents to be relied upon, to this application. By the wordings of the said rule, this requirement is a mandatory requirement which does not admit Court's discretion.

The Defendants/Applicants failed to comply with this requirement, and I cannot therefore, but agree with the Claimant/Respondent that this application is incompetent.

It is therefore my considered view, and I so hold, that this application is incompetent for failing to comply with Order 25 Rules 3 of the High Court of FCT (Civil Procedure) Rules, 2018.

The application therefore fails, and is accordingly struck out with a cost of N50,000.00.

HON. JUSTICE A. O. OTALUKA
26/2/2020.