

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT GUDU - ABUJA**

**ON TUESDAY THE 26<sup>TH</sup> DAY OF JANUARY, 2021.**

**BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO -ADEBIYI**

**SUIT NO. CV/2541/2016**

**MOTION NO: M/10306/2020**

**ECHEIPU ODOH OKLOBIA-----CLAIMANT/RESPONDENT**

**AND**

**THE INCORPORATED TRUSTEES OF AMERICAN**

**INT'L SCHOOL OF ABUJA-----DEFENDANT/APPLICANT**

**RULING**

The Defendant/Applicant filed a motion on notice brought pursuant to Order 43 Rule 1(1) & 2 and Order 15 Rule 19(1) and (2) of the FCT High Court Civil Procedure Rules 2018 and under the inherent jurisdiction of this court praying the Court for the following;

1. An Order of the Court granting leave to the Defendant/Applicant to file and serve further Defence with accompanying documents in this suit
2. An Order of the Court granting leave to the Defendant/Applicant to file and serve further witness statement on oath in support of the Defendant's further Defence in this suit.
3. An Order of the Court deeming the Defendant/Applicant's Further defence and further witness statement on oath and

other accompanying documents already filed and served separately in this suit as properly filed and served, appropriate fees having been paid.

4. And for such further order or orders as this Court may deem fit to make in the circumstances of this case.

Attached to the application is an affidavit of 4 paragraphs deposed to by one Bolanle Oladoyin. Also attached is a document as Exhibit A1 and a written address as argument, wherein Counsel urged the Court to grant the application as the filing of a further Defence necessitated from the new issues raised in the Claimant's reply to their statement of Defence and it will be in the interest of fair hearing for this application to be granted.

In opposition to the Defendant's application, the Claimant/Respondent filed a counter affidavit of 10 paragraphs, deposed to by Mrs. Florence OmodachiOkobia and a written address. Counsel relied on all the paragraphs of the counter affidavit and states that there are no new issues raised in the Claimant's reply to warrant the Defendant filing a further defence and the rules of this Court does not permit the filing of a further defence and urged this Court to refuse the Defendant's application.

I have read the Defendants application as well as the counter affidavit of the Claimant in this case. Order 15 (4) of the FCT Civil Procedure Rules 2018 gives the Court the discretion to grant applications of this nature. The said order 15(4) provides;

*“An application for a further and better statement of the nature of the claim or defence, or further and*

*better particulars of any matter stated in any pleading requiring particulars shall be made to the Court at the first pretrial conference. The Court may grant such application upon such terms as it thinks fit.”*

Going by the provision of the order stated above this Court has the discretion whether or not to grant this application. The Claimant in this case has opposed to the grant of this application on the ground that the facts as stated in the Defendant’s application is prejudicial and overreaching to the Claimant and would offend the rules of this Court. The Claimant has not stated how the Defendant’s application would be prejudicial to his case.

In the case of SHELL BP PETROLEUM DEV. CO. LTD. VS. JAMMAL ENGINEERING NIGERIA LIMITED (1974) 4 S.C. 24, the Supreme Court per Coker JSC held as follows:

*“The rules for granting amendments of pleadings or proceedings are very flexible and a great deal depends on the discretion of the judge or tribunal. Where there has been no breach of any relevant rule of law in that respect a party opposing the grant of leave to amend such pleadings or proceedings has a rather uneasy task and unless he can establish prejudice, unnecessary expense, irreparable inconvenience or lack of good faith, the hands of the court are free.”*

To uphold the Claimant's stance will be to trample on a party's right to fair hearing as guaranteed under Section 36(1) of the 1999 Constitution. The primary duty of the court is to provide an equal opportunity and level playing ground for parties to present their cases unfettered by technical objections of the extreme type as exemplified by this objection of the Claimant. Moreover, while the Courts have a duty to follow their rules, this cannot or should not be the case where grave injustice will be done to parties. Hence, where the Defendant is willing and ready to defend the action, it is clearly inequitable to shut him out by technical rules relating to the form in which the defence has been brought. The rules of Court are designed to assist parties in putting forward their cases before the Court. They are not intended to asphyxiate or deny parties the opportunity of presenting their case. See FANFA OIL LTD V. A/G FEDERATION (2003) 18 NWLR (PT.852) 453 @ 468 Para A-B per Belgore JSC (as he then was) held that procedural irregularity should not vitiate the proceedings. Procedure is to guide orderly and systematic presentation of a case. It is to help the substantive law and not to enslave it. It is true the Constitution allows the rules of procedure to be made, but it does not make procedure to be the master of the law. Hence, it is the duty of the Court to decide the rights of parties and not to punish them for errors, if any, in the conduct of their case by deciding otherwise than in accordance with their rights. The Claimant in my view has failed to establish how he would be overreached and what injustice he would suffer by a grant of this application. Having considered the nature of this application, it is my considered view that it would be in the interest of justice to grant

this application. In the circumstances, the Defendant's application is granted and I order as follows:-

1. That leave is hereby granted to the Defendant/Applicant to file and serve the further Defence with accompanying documents in this suit.
2. That the Defendant/Applicant shall file and serve further witness statement on oath in support of the Defendant's further Defence in this suit.
3. That the Defendant/Applicant's Further defence and further witness statement on oath and other accompanying documents are deemed to be already filed and served.

**Parties:**Parties absent.

**Appearances:**Michael Omosewa, Esq., for the Claimant.  
OluwagbemiBanke, Esq., for the Defendant.

**JUSTICE MODUPE R. OSHO-ADEBIYI**

**JUDGE**

**26<sup>TH</sup> JANUARY 2021**