

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 11TH DAY OF MARCH, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
COURT 26.

SUIT NO: FCT/HC/BW/CV/83/17

BETWEEN:

1. DANLAMI AYUBA
2. UCHENNA NWANKWO ----- } **PLAINTIFFS**

AND

ZEBERCED LIMITED ----- } **DEFENDANT**

BENCH RULING

There is no Court that can start the hearing of any matter before the parties have fully exchanged their pleadings and issue fully joined.

In this case the Defendant had fully responded to the issues raised by the Plaintiff in the Statement of Claim by filing their Statement of Defence to it.

The Court allowed the Plaintiff to open their case and call their Witnesses. The Plaintiff closed its case on the 15th day of May, 2019 about nine (9) months ago. The Defendant were to open their defence on the 14th day of January, 2020.

The matter came up, Defendant was not in Court. In the interest of justice and fair-hearing the Court adjourned the case for today the

11th day of March, 2020 to enable the Defendant who ordinarily is supposed to be in Court to open their Defence to be in Court to do the needful.

Instead of opening their case on the 24th day of February, 2020 the same Defendant filed this Motion seeking to bring “fresh” facts to Court by filing a Motion to amend their Statement of Defence and change their Witness and substitute the one already filed with the old one.

The Plaintiff had in a Counter Affidavit of the 6th day of March, 2020 countered the Motion pointed out in paragraph 5 (e) & (f) of the Counter Affidavit that the Defendant Counsel raised new issue in the proposed amendment particularly in paragraphs 6, 7, 8, 11, 14, 15, 16, 17 & 18 of the said amendment. He had lamented that if granted the Plaintiff will not have opportunity to reply to the facts as the Plaintiff have closed their case since the 15th day of May, 2019.

Meanwhile, there is no further Affidavit to respond to that averment in the paragraph 5 (e) & (f) of the Plaintiff Counsel Counter Affidavit.

The Defendant Counsel had submitted on what he called points of law that the issues raised are not fresh issues but fresh facts.

Amicus Curiae had told Court that there is no difference between fresh issues and fresh facts.

The Defendant Counsel had referred to the case he claimed that the Court can allow any party to amend at any time.

The Plaintiff Counsel had hammered on the fact that the Defendant had ample time to amend but only did so now in order to ambush the Plaintiff knowing that Plaintiff will not have any other opportunity to respond.

The question is, is the right of a party to amend so open ended that it can be done at any time?

Again, can amendment that contain new or fresh issue/facts be allowed at a time when the Plaintiff had laid bare its case and nakedness before the Court, the Defendant and the public before the Defendant will be allowed to file an application for proposed amendment? Will allowing the amendment be in the interest and quick dispensation of justice?

To start with, amendments that can be allowed as envisaged by the decision of the Court in that regard are amendments where no new issues are raised. It is not the intendment of the Court that amendment that included fresh facts can be made by Defendant at a time when the Plaintiff had opened and closed its case.

The right to amend Processes and right to fair-hearing are not blank cheques which can be cashed at any bank in the world in any currency of the person's choice and for any amount the person had fixed. If it is allowed it will breed judicial anarchy and the right to amend will loose its efficacy and taste. It will obviously clog and even pull off the timing chain off the wheel of justice.

It is very evident that the facts as contained in the proposed amendment have very fresh and new issues which are totally different and fundamentally adverse from what was in the original Statement of Defence filed since 2018.

Again, one wonders why it took the Defendant more than 8 months to amend their Statement of Defence after the Court had reserved the matter for them to open their Defence. Whatever the reason, it is best known to them.

The Court had earlier gone through the documents for and against this application. It is abundantly clear that this application if granted will ambush the Plaintiff and change the coloration, the drum beat and dynamics of this case. It should have been a different thing if there was a Counter Claim and the change sought is on the Counter Claim.

From all indication, the application is froth with mischief and is set to ambush the Plaintiff. This Court ***CANNOT*** and hereby ***REFUSES*** to grant same because it will not be in the interest of justice to do so.

APPLICATION NOT GRANTED. IT IS DISMISSED.

The application to substitute the Witness granted as prayed.

This is the Ruling of this Court.

Delivered today the ----- day of ----- 2020.

K.N. OGBONNAYA
HON. JUDGE