

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/M/4326/2020
DATE: 11TH MARCH, 2020**

BETWEEN:

ABUNI MINING CO-OPERATIVE SOCIETY LTD - PLAINTIFFS

AND

**1. MALLAM ISA YUGUDA
2. NADABO LEAD AND ZING MINING
COMPANY LIMITED** } **DEFENDANTS**

Parties absent.

Ezenwa Okoli appearing with Sandra Uzoma for the Claimant.

Firdausi Umar for the Defendants appearing with Alhassan Sani Dauda and Zara Isa Modibbo Esq.

Claimant's Counsel – The matter is for ruling and we are ready to take same.

R U L I N G

This is an application on notice dated 17/1/2020 brought pursuant to Order 25 Rule 1 of the Rules of this Court and under the inherent jurisdiction of this court.

In the application, the Defendant/Applicant seeks for the following:

1. An Order of this Honourable Court granting leave to the Defendants/Applicants to amend the Applicant's Notice of Intention to Defend the instant suit filed on 13th November, 2019.
2. And Order and such further order(s) as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application is brought are:

- (a) That the Defendants/Applicants filed a Notice of Intention to Defend on the 13th November, 2019.
- (b) That there is a need to amend the Notice of Intention to Defend to incorporate material facts necessary for the just determination of this case.
- (c) Order 25 of the Rules of this Honourable Court allows the Defendant to amend their Notice of Intention to Defend.
- (d) That the amendment is not overreaching and will not be prejudicial to the Plaintiff/Respondent in any way.

In support of this application is a 7-point supporting affidavit dated 4/1/2020 deposed to by Muhammed Bala Yusha'u, a Litigation Secretary in the law firm of Liman, Liman and Co. Attached thereto is the Proposed Amended Notice of Intention to Defend marked Exhibit I. Reliance is placed on all the points of the said affidavit.

Learned counsel to the Defendant/Applicant filed a written address dated 17/1/2020 wherein counsel submitted an issue for determination, thus:

“Whether having regards to the circumstances of the Applicant, the Applicant has made out a case for the grant of this application”

On this sole issue, it is the submission that the Rules of this court empowers the court to grant this application. Court is referred to Order 25 Rule 1 of its Rules.

It is submitted that the purports of amendment are intended to make more effective the functions of the court to determine the substantive suit on the merit. See C.G.G. NIG LTD v IDORENYIN (2015) 13 NWLR (Pt 1475) 149 at 172 Paras D – H.

It is further submitted that the amendment of pleadings can be done at any stage during the trial as long as it will not be prejudicial to the opponent. Court is urged to grant the application.

In opposition to this application, the Claimant/Respondent did not file any counter affidavit but however, counsel to the Claimant/Respondent elected to reply on point of law.

In his reply, he submitted that procedure under the Un defended List has no express or implied provision for an amendment of the Notice of Intention to Defend. That the only thing the court is to do is to look at the processes filed by the parties and see if the defence is on merit filed by the Defendant.

It is further submitted that an affidavit cannot be amended but a party can file a further affidavit. Court is urged to dismiss this application.

I have carefully considered the processes filed and the submission of learned counsel on both sides, it is without doubt that by the provision of Order 25 Rule 1 of the Rules of this court, a party may amend his originating process and pleadings at any time before pre-trial conference.

In the instant case, I am of the firm view that the Defendants/Applicants' Notice of Intention to Defend constitutes an originating process of the Defendant and as such can be amended; more so trial have not commenced in this case.

It must also be stated that the Claimant/Respondent have not be able to make known to this court how this application will prejudice them, if granted.

It must be pertinent to state here that this court is enjoined to do substantial justice to all parties before it and not technical justice.

In the light of the above, I am of the considered view that the Defendant/Applicant have proffer cogent and sufficient material to warrant the grant of this application.

Accordingly this application is granted as prayed in the interest of justice.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
11/03/2020

Defendant's Counsel – We thank the court for the ruling.

Claimant's Counsel – The Claimant filed a writ of summons under the Undefended list dated the 14/10/2019 but filed on 15/10/2019.

The writ is supported by a 25-paragraph affidavit. We adopt all the averment in the said affidavit and the exhibits attached thereto (Exhibits A – D.)

We have also filed a written address and seek to adopt same as our oral argument.

We are in receipt of Notice of Intention to Defend filed by the Defendant and we urge the court to discountenance the averment therein and the exhibits attached as they didn't disclose any defence on the merit.

We pray the court to enter judgment for the Claimant.

Defendant's Counsel – Alhassan Sani Dauda Esq. will take over the case.

Alhassan Sani Dauda Esq. – We have a Notice of Intention to Defend dated the 12/11/2019 and it is supported by an affidavit.

We placed reliance on the content of the said affidavit.

We also filed a written address in support of our Notice of Intention to Defend. We seek to adopt same as oral submission.

We urge the court to discountenance the submission of the Claimant and transfer this suit to the general cause list for trial.

Court – Suit adjourned to 30/4/2020 for ruling.

(Sgd)
Justice Salisu Garba
(Presiding Judge)
11/3/2020