

**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/1772/2019
DATE: 17TH MARCH, 2020**

BETWEEN:

MR. VICTOR NSORO & 1 OR - PLAINTIFF

AND

MR. A. NWUBANI & 5 OTHERS - DEFENDANTS

Parties absent.

Peter Uche for the Claimant/Respondent.

A.E. Adeniyi Adeyemi for the 1st Defendant/Applicant.

Claimant's Counsel – The matter is for ruling in respect of the 1st Defendant's application. We are ready to take same.

R U L I N G

This is an application on notice dated 5/12/2019 brought pursuant to Order 25 Rule 1 & 2 of the Rules of this Honourable Court 2018 and under its inherent jurisdiction.

The application is seeking for the following reliefs:

1. An Order granting leave to the 1st Defendant/Applicant to amend his statement of defence and counter claim in this suit in the manner shown in the Proposed Amended Statement of Defence and Counter Claim.

2. An Order deeming as properly filed and served the Amended Statement of Defence and Counter Claim as well as other accompanying processes separately filed by the 1st Defendant/Applicant.
3. And for such further and other orders as this Honourable Court may deem fit to make in the circumstances.

In support of this application is 16-paragraph affidavit dated 6/12/2019 deposed to by Joseph Chinedu Nwa-uwa, a legal practitioner with Rhema Law Partners. Attached thereto is a document marked as Exhibit A the Proposed Amended Statement of Defence and Counter Claim. Reliance is placed on all the paragraphs of the affidavit and the exhibits.

Learned counsel to the Applicant also filed a 3-page written address dated 5/12/2019 and went on to adopt same as his oral argument wherein counsel formulated an issue for determination to wit:

“Whether the Defendant/Applicant is entitled to the reliefs sought in this application”.

On this singular issue, it is the submission that the grant or refusal of an application to amend pleadings is at the discretion of the trial court which discretion ought to be exercised judicially and judiciously, taking into consideration the facts and circumstances of the case.

Submits that it is trite law that an amendment will be granted at any stage of the trial before judgment, unless it is shown that the

amendment is useless or will be overreaching or prejudicial to the other party. The essence of the amendment is to enable the parties bring all the issues in controversy before the court for adjudication; an amendment will also be granted to enable a party adduce additional facts or bring the pleadings in line with the evidence. See UNION BANK OF NIGERIA LIMITED v CHUKWUELO C. OGBOH (1995) 2 NWLR (Pt 380) 647.

Submitted that in the affidavit in support of the application, the reason for this amendment is attributed to the mistake of the previous counsel engaged by the 1st Defendant to defend him in this suit and the law is trite that the sins and mistakes of counsel, as in the instant case are not visited on the litigants.

Further submits that the amendment sought is material and intended to bring before this court relevant facts which will assist the Defendant in establishing their case.

Learned counsel refer to the case of N.N.B. v DENCLAG LTD & ANOR 2005 NWLR (Pt 916) 558.

In conclusion, learned counsel urged this Honourable Court to grant this application.

In opposition to this application, the Claimant/Respondent filed a 25-paragraph counter affidavit dated 16/12/2019 deposed to by Victor Nsoro the 1st Claimant in this suit.

Learned counsel filed 6-page written address dated 16/12/2019 wherein counsel adopted the sole issue as formulated by the 1st Defendant/Applicant as issue for determination to wit:

“Whether the Defendant/Applicant is entitled to the relief sought in this application”

On this sole issue, it is the submission that the 1st Defendant/Applicant has not shown any potent or cogent reason to move this Honourable Court in exercising its discretionary powers in his favour.

It is the submission that by virtue of Order 25(1) of the Rules of this Court (2018) a party can only be allowed to amend twice during the trial; but in the instant case, the Claimants have closed their case so any amendment must be made in such a manner and in such terms as may be just for the purpose of determining the real questions in controversy between the parties. Learned counsel refer to the case of ADEKEYE v AKIN-OLUGBADE (1987) 3 NWLR (Pt 60) 124.

Submits that by virtue of paragraph 10, 11, 12, 13 and 14 of the Proposed Amendment the amendment sought will not only change the nature of the case but will consequently result to injustice against the Claimants/Respondents. See GEORGE v DOMINION FLOUR MILLS (1963) 1 All NLR R 71.

Further submitted that the amendment should be refused because if granted it would be in direct conflict with the evidence which had already been given. This is so because the amendment entails to recall of witness or calling further evidence in rebuttal of the brand new cause of action proposed by the

application or even starting the case de novo. See OYEGOKE v HAMIMAN (1990) 4 NWLR (Pt 143) 197.

Submitted that all these new facts introduced in this proposed amendment have radically changed the case of the Claimants/Respondents and in that respect will cause great injustice to the Claimant.

In conclusion, learned counsel submits that if the 1st Defendant is desirous in amending his statement of defence he must do that in line with the statement of defence before the court and will not go outside what he has deposed in his former statement of defence in order not to ambush or overreach the Claimants.

Learned counsel urge the court to refuse this application with punitive cost of N500,000.00 (Five Hundred Thousand Naira) only.

In response to the counter affidavit, learned counsel to the 1st Defendant/Applicant filed a further affidavit of 21-paragraph dated 13/1/2020 deposed to by Joseph Chinedu Nwa-uwa Esq., a legal practitioner in the employment of Rhema Law Partners.

Also filed is 10-page reply on points of law dated 10/1/2020.

However, learned counsel to the Claimant/Respondent submits that the further affidavit is in violation of Order 43 Rule (4) of the Rules of this court which empowered the 1st Defendant/Applicant to file further affidavit within 7 days of the service of counter affidavit on them.

In response, learned counsel to the 1st Defendant/Applicant submits that they did not contravene the order as the Claimant/Respondent only responded to their motion on 16/12/19 to 6/1/2020 and it is trite that while counting, you don't count the vacation period; by that his time begins to run from 7/1/2020 as such he is within time.

I have carefully considered the submission of learned counsel on both sides. As regard to the computation of time during vacation, a combined reading of Order 49 and 52 of the rules of this Court 2018 which provides for computation of time and annual vacation. Order 52 Rule 4(e) provides thus: **“During the annual vacation effective from the last week of July and ending on a date not more than 6 weeks. Later as the Chief Judge may declare by notification in the gazette or any other means he deems appropriate”**.

In this regard, I hold the view that the further affidavit filed by the 1st Defendant/Applicant is filed out of time and having not seek the leave of court to file same is in contravention of Order 43 Rule 4 and I so hold.

In the circumstance the said further affidavit filed by the 1st Defendant/Applicant dated 13/1/2020 is hereby struck out.

Turning to the application under consideration, after a careful consideration of all the processes filed and the submission of learned counsel on both sides, it is trite law that an amendment is

granted to put the proposed amendment in line with evidence already adduced and to settle the real issues in controversy between parties in a suit in order to do substantial justice between the parties. See *ALSTHOM S.A. v SARAHI* (2000) 10 – 11 SC 48.

In the instant case going by the supporting affidavit to this application, this amendment is been sought due to the mistake and inadvertence of the former lawyer.

It is the deposition in paragraph 4 of the supporting affidavit that the 1st Defendant/Applicant being dissatisfied with the performance of his erstwhile counsel debriefed them and instructed the present counsel to take over his representation in this matter. It flows here that the main crux of this application was due to the inadvertence of the former counsel.

With regard to the averment in paragraph 8 of the counter affidavit that the 1st Defendant now has three (3) statements of defence inclusive of this present statement of defence. This court is of the view that there is only one valid statement of defence filed before this court prior to the filing of this application.

It is the also the deposition in paragraph 12 of the counter affidavit that the application under consideration i.e. Motion No. M/1722/19 is an abuse of court process until the 1st Defendant/Applicant's Motion dated 20/9/19 and filed on the 23/9/2019 is heard and determined.

I have perused through the said motion dated 20/9/19 and filed on 23/9/2019 and come to the conclusion that the present Motion

No. M/1772/19 does not constitute an abuse of court process, as it seeks for amendment of the 1st Defendant's statement of defence while the Motion dated 20/9/2019 and filed on the 23/9/2019 seeks for the recall of the Claimant's witnesses for cross-examination, I so hold.

In conclusion, I am of the considered view that granting this application will in no way prejudice the Claimants/Respondents since they are entitled to file a reply to the amended statement of defence and to address any perceived new issues or facts raised therein.

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

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
17/03/2020

(2ND RULING)

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R U L I N G

When this matter came up on the 23/1/2020 for hearing of the 1st Defendant's pending motion, learned counsel to the Claimant informed the court that the business of the day is for the hearing of the 2 pending motions from the 1st Defendant.

Learned counsel to the 1st Defendant moved Motion No. M/1772/19 dated 5/12/19 and filed on 6/12/19 and seek to withdraw Motion dated 20/9/2019 and filed on 23/9/2019.

However, learned counsel to the Claimant/Respondent objected to the withdrawal of the said motion on the ground that they have joined issues.

In response to the objection, learned counsel to the 1st Defendant submits that it is his application as such he can withdraw it at any time.

On the part of the court after listening carefully to the submissions of learned counsel on both sides, this court is of the considered view that the court cannot compel a party on how to conduct his case; more so the main prayer on the motion paper is for the recall of the Claimant's witness to be cross-examined. If the 1st Defendant/Applicant is no more interested in cross-examining the witness the court cannot order him to do so.

In the circumstance, the motion dated 20/9/2019 and filed on the 23/9/2019 is hereby struck out.

I award the sum of N5,000.00 as cost against the 1st Defendant/Applicant in favour of the Claimant/Respondent.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
17/03/2020

Claimant's Counsel – We are grateful. We ask for a date for continuation of hearing.

1st Defendant's Counsel – We are grateful. We have no objection but the matter should be adjourned for defence.

Court – Application for adjournment granted.

Suit adjourned 30/4/2020 for defence. I order that 2nd – 6th Defendants be served with hearing notices.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
17/03/2020