

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT COURT 8, NYANYA ON THE 6TH DAY OF FEBRUARY 2020
BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE

FCT/HC/CR/956/15

M/6569/19

BETWEEN:

1. MUKHTAR ABUBAKAR TAFAWA BALEWA

2. SADDIK ABUBAKAR TAFAWA BALEWA

3. UMAR ABUBAKAR TAFAWA BALEWA PLAINTIFFS

(For themselves and on behalf of the Surviving

Wife and 13 children of Sir Alhaji Abubakar Tafawa Balewa, K.B.E. of Blessed Memory

AND

ABDULJALIL TAFAWA BALEWA.....DEFENDANT

RULING

The Defendant's application dated 22/05/19 brought pursuant to Order 25(1) and (2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Court prays for:

1. An Order of Court granting leave to the Defendant/Applicant to amend his Statement of Defence in the manner shown in the Proposed Defendant's Amended Statement of Defence with a fresh Written Statement on Oath.

Learned Counsel relies on the 9 paragraph Affidavit sworn to by Oluwatosin Bayesheu described as a Litigation Executive in Defendant's law office.

Succinctly, the facts in the Affidavit are:

1. The Defendant debriefed his former Counsel handling the case and has handed over the case to the present Counsel.
2. That the Defendant informed them that there was need to bring in all the facts and documents in this case.
3. That it is to correct some certain inadvertent errors.
4. That it is necessary for the Defendant to amend so that they will not be prejudiced.

The Proposed Amended Statement of Defence is Exhibit A.

That Claimant will not be prejudiced.

The Claimant opposed the application. Learned Senior Counsel rely on the Counter Affidavit deposed to by Pikiyes Kasin their Litigation Secretary.

Essentially, it states that the case is for defence.

That sub paragraph 3(a)-(b) are false.

That Claimants have closed their case.

That Claimants will be prejudiced.

That it is in the interest of justice to refuse the application.

The Defendant's Counsel filed a Further and Better Affidavit on 6/02/20 with a reply on point of law.

By Order 43 (2), every application shall be accompanied by a Written Address.

(3) Where the other party intends to oppose the application, he shall within 7 days of service on him of such application file his Written Address and may accompany same with a Counter Affidavit.

The Applicant may within 7 days of being served with the Written Address of the opposing party file and serve an address in reply on point of law with a reply Affidavit.

The Defendant was served with Claimant's Counter Affidavit and Written Address on 24/01/20. The Defendant/Applicant filed and served its reply on point of law with a reply Affidavit which he titled 'Further and Better Affidavit on the 6/02/20 well after the 7 days prescribed by law.

The Defendant/Applicant failed to regularise the said process as being incompetent.

I have read and considered the various addresses of Counsel.

The new paragraph sought to be introduced could be found in paragraphs 33, 34, 39, 41 and 42 of the Proposed Amended Statement of Defence.

Paragraphs 33 and 34 talk about a picture as having been produced from the Camera and that the said Camera is regularly supplied with information.

Paragraph 39 is to the effect that his Clinics in the USA rendered free services to indigent Nigerians.

Paragraphs 41 and 42 are about how Defendant was turbaned as Sarduanan Kudu. By Order 25(1) of the rules of Court, a party may amend his originating process and pleadings at any time before the Pre-trial Conference and not more than twice during trial but before the close of the case.

The Claimant has closed their case. The defence has opened. There is no evidence that the Defendant has applied for amendment more than twice.

The law is that an amendment must be granted if it is for the purpose of eliminating all statements which may tend to prejudice, embarrass or delay the trial of the Suit and for the purpose of determining in the existing suit the real questions in controversy between the parties.

The law is indeed settled that an amendment of pleadings should be allowed at any stage of the proceeding unless it will entail injustice to the other side responding to it.

It should also be granted unless the Applicant is acting malafide or by his blunder the Applicant has done some injury to the Claimant which cannot be compensated by cost.

See ***OGUNTIMHIM VS GUBERE AND ORS. (1964) 1 ANLR 176 at 180.***

OLOGUNLEKO VS. OGUNNEYEHUN (2008) 1 NWLR (PT.1068) 394.

This case is still on. The proceedings has not ended. I have read the paragraphs sought to be amended. In my humble view and with respect to Claimant's Senior counsel, I find nothing to show that the Claimant will be prejudiced.

Whatever injury the Claimant may suffer by way of delay can be compensated by cost.

The Defendant present Counsel is new.

The Defendant is not acting malafide.

The application succeeds on terms.

1. Leave is hereby granted to the Defendant/Applicant to amend its Statement of Defence in the manner shown in the proposed Amended Defendant's Statement of Defence with fresh Witness Statement on Oath.
2. The said Amended Statement of Defence shall be filed and served within 7 days from now.

The Claimant may file an Amended reply to statement of Defence and Defence to Counterclaim within 14 days from now.

Cost of N50,000 is awarded in favour of the Claimants against the Defendant while suit is adjourned to 30/04/20 for continuation of hearing.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

6/02/20.