

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

**THIS TUESDAY, THE 18<sup>TH</sup> OF FEBRUARY 2020.**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**SUIT NO: FCT/HC/CV/1543/16**

**MOTION NO: GWD/M/223/19**

**BETWEEN:**

**PLANET NEXT INTERMEDIUM LIMITED.....APPLICANT/DEFENDANT**

**AND**

- |  |   |                    |
|--|---|--------------------|
| <ul style="list-style-type: none"><li><b>1. DEPARTMENT OF DEVELOPMENT CONTROL</b></li><li><b>2. ABUJA METROPOLITAN MANAGEMENT COUNCIL</b></li><li><b>3. ABUJA MUNICIPAL AREA COUNCIL</b></li><li><b>4. MR. OLUFEMI OYENEYE</b></li></ul> | } | <b>RESPONDENTS</b> |
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**RULING**

By a motion on notice dated 14<sup>th</sup> November 2019 and filed on 15<sup>th</sup> November, 2019, the Defendant to the counter-claim seeks for the following reliefs:

- 1. An order of this Honourable Court granting the Applicant leave to amend their Statement of Defence to the Counter-Claim and Relief's in this case by reflecting the full facts of the Plaintiff/Defendant's case.**
  
- 2. An order of this Honourable Court granting the Applicant leave to amend the relief (sic) part of her defence to the Counter-claim.**

3. **An order of this Honourable Court granting the Plaintiff/Applicant leave to file a further and Better witness statement on oath in this case to reflect the full facts of the Plaintiff/Defendant's case where necessary.**
4. **An order of this Honourable Court deeming the Amending Defence to counter-claim and the said Further and Better Witness Statements on Oath and list of documents herein mentioned (of which extra copies have been produced, assessed, paid for and served along this application) as having been properly filed and served.**
5. **And for such further order(s) as this court may deem fit to make in the circumstances of this case.**

The application is supported by a 15 paragraphs affidavit with and two (2) annexures marked as **Exhibits A and B**, the Amended Defence to Counter-Claim and the further and better witness deposition with list of documents.

A very brief written address was filed in compliance with the Rules of Court in which one issue was raised as arising for determination to wit:

**“Whether considering the facts and circumstances of this case, this Honourable Court can grant this application for amendment?”**

The address which forms part of the Records of Court then referred to principles governing the grant of an amendment and it was contended that on the materials they have satisfied or fulfilled these principles and further that the evidence of their sole witness covers the contents of the amendments and that no new evidence is been introduced.

In opposition, the 4<sup>th</sup> Defendant/Counter-Claimant filed a 21 paragraphs counter-affidavit and a written address in which one issue was raised as arising for determination to wit:

**“Whether the application for amendment can be granted when the proposed amendment will alter or substitute the original cause of action or over reach or cause prejudice to the other party?”**

The address equally dealt with the settled principles governing the grant of amendment of pleadings and it was contended that in this case, the amendment sought seeks to alter or charge the character of the case presented by the Defendant to the counter-claimant and is thus prejudicial.

The Defendant to the counter-claim and Applicant then filed a reply on points of law which appear more detailed than the initial address. The reply however only sought to underscore the principles earlier made.

At the hearing, learned counsel for the Applicant and Respondent relied on their processes and each in turn urged the court to grant the application or dismiss same.

I have carefully read the processes filed by contestants on both sides of the aisle and the rather narrow issue is whether the court should grant the application to amend the pleadings of defendants to the counter-claim? It is a matter to be resolved on fairly settled principles. An amendment properly understood is therefore nothing but the correction of an error in any process pending before a court. The primary basis upon which the courts allow an amendment of pleadings is to ensure that a court determines the substance and or justice of the case or grievance that has been brought to court for judicial ventilation and adjudication. The courts have over time therefore always taken the positive and salutary stand or position that however negligent or careless the errors or blunders in the preparation of court processes and we must concede that these happen regularly, the proposed amendment ought to be allowed, if this can be done without injustice to the other side or the adversary.

In **Laguro V Toku (1992) 2 NWLR (pt.223) 278**, it was firmly established by the Apex Court that in the exercise of its powers to amend, the court is guided by the following principles namely:

- a) The consideration of the justice of the case and the rights of the parties before it.**
- b) The need to determine the real question or questions in controversy between the parties.**

- c) The duty of a judge to see that everything is done to facilitate the hearing of any action pending before him and wherever it is possible to cure and correct an honest and unintended blunder or mistake in the circumstances of the case and the amendment will help to expedite the hearing of the action without injustice to the other party.**
  
- d) If the court is an appellate court, the need to amend the record of the trial court, so as to comply with the facts before the trial court and decision given by it in order to prevent the occurrence of substantial injustice.**
  
- e) Amendments are more easily granted whenever the grant does not necessitate the calling of additional evidence or the changing of the character of the case and in that aspect no prejudice or injustice can be said to result from the amendment. See also *Wiri V. Wuche* (1980) 1-2 S.C. 12; *Afolabi V. Adekunle* (1993) 2 SCNLR 141; *Akinkuowo V. Fafimoju* (1965) NWLR 349.**

I have endeavoured to set out *in extenso* the above principles governing the grant of an amendment. The task before me is to apply the above principles to the facts of this case guided by the imperatives or dictates of justice and ensuring that parties have a fair platform to present their grievances.

In situating the justice of this application, it may perhaps be pertinent to give some background faces of the matter. Now this is a case initially filed by the Plaintiff now Defendant to the counter-claim in 2016 with respect to ownership of certain plots of land. The 4<sup>th</sup> Defendant filed its defence and set up a counter-claim against Plaintiff claiming ownership of the disputed plots and injunctive reliefs. The Plaintiff file its defence to the counter-claim and the 4<sup>th</sup> Defendant/Counter-Claimant filed a reply to the defence filed by Plaintiff to his counter-claim.

On 11<sup>th</sup> April, 2017, the Plaintiff withdrew its substantive claim and this was struck out but the 4<sup>th</sup> Defendant/counter-claim choose or elected to proceed with his counter-claim.

Hearing of the counter-claim commenced on 11<sup>th</sup> October, 2018. The 4<sup>th</sup> Defendant/Counter-Claimant called two (2) witnesses who were extensively cross-

examined by counsel to the Defendant to the counter-claim and concluded his case on 28<sup>th</sup> January, 2019. The matter was then adjourned to 5<sup>th</sup> March, 2019 when the Defendant to the Counter-Claim opened its defence and called its first witness. In the course of trial, the Defendant to the counter-claim sought to tender a Power of Attorney and Deed of Assignment in evidence. An objection was raised to the admissibility of these documents; Counsel then withdrew the documents and applied for an adjournment to put their **“house in order.”**

It was at the stage that the Defendant to the counter-claim now brought this extant application for amendment.

As stated earlier, I have provided the above background facts to situate the fairness and justice of the application.

Now the proposed amendment sought are as clearly delineated in paragraphs 4-15 and 32, 33, 36 and 40 of the proposed Plaintiff’s defence to 4<sup>th</sup> Defendants counter-claim.

In support of these amendments, the Defendant to the counter-claim in the supporting affidavit averred as follows:

- “4 That our attention have been drawn by one of our counsel, James C. Ude, Esq., to need to state the full facts of the Applicants’ case in the Defence to the Counter-Claim.**
  
- 5 That the said full facts of the Applicant’s case is as contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the Plaintiff/Defendant’s Statement of Claim in the original suit and as referred to under paragraph 4 of the Plaintiff/Defendants defendant to counter-claim.**
  
- 6 That Applicant now seeks the leave of court to reproduce the content of the whole paragraph’s as listed in paragraph 5 above.**

**7 That the Applicant also intends to remove the reliefs 1, 2, 4 and 5 which were inadvertently sought in the defence to the Counter-Claim now being amended.”**

Let us now situate these averments and contentions from the existing processes and the amendments now been sought. A comparison of the two processes would show whether the complaint of Respondent that the present application seeks to alter the character or complexion of the case of the Defendant to the Counter-Claim has legal and factual validity.

I have here carefully compared the averments in the two processes and it would appear that there is validity to the contention of the present Applicant that the case now been made has always formed part of the original cause of action which admittedly they withdrew but which the counter-claimant had always been aware of and has indeed since responded to. Averments in paragraphs 4-15 of the **proposed amendment** are indeed the same with paragraphs 3-15 of the original statement of claim.

As stated earlier, the counter-claimant has always been aware of these facts and has adequately responded to the averments. Indeed in paragraphs 3 of the 4<sup>th</sup> Defendant’s statement of defence, the 4<sup>th</sup> Defendant avers as follows:

**“The 4<sup>th</sup> Defendant denies paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the Plaintiff Statement of Claim and put the Plaintiff to the strictest proof thereof.”**

In paragraphs 14-22, the 4<sup>th</sup> Defendant/Counter-Claimant then added flesh to the case it made in rebuttal to the averments on the claim of their Plaintiff. Indeed in his counter-claim, the 4<sup>th</sup> Defendant equally relied on the entire contents of paragraphs 1-22 of the Statement of Defence as a basis to sustain his counter-claim.

The point I have sought to make here is that the facts sought to be now incorporated by the Defendant to the counter-claim in the amendment have already been fully addressed by the counter-claimant. The counter-claimant again underscored his positions in the reply filed to the Plaintiff’s defence to the counter-claim. It cannot therefore be correct that these amendments are new or novel or

are such that changes the character of the case of the Defendant to the counter-claim. At the risk of sounding prolix, the nature of the amendment sought in relation to the main suit, the questions in controversy are in substance still the same.

I cannot situate in the circumstances as demonstrated above any conduct aimed at overreaching or designed to circumvent the case of the Counter-Claimant by changing the complexion or character of the case different from the one originally filed. If there is at all any injury occasioned by this application, it is one that can be fully compensated by costs.

The counter-claimant has always been in the know or aware of the case and position of the Defendant to the counter-claimant right from the very beginning and they have fully put up a case in rebuttal with further extant opportunities to cross-examine all the witnesses of the Defendant to the Counter-Claimant and to take further steps within the multitude of steps as allowed by the Rules.

I fully endorse the point that while an amendment is not granted as a matter of course, where it does not however occasion prejudice or injustice or it is shown that the Applicant as acting malafide, then the application will be granted in the overall interest of justice. See **First Bank of Nig. V. M.O. Kawn & 5 Ors Co. Ltd (1999)9 N.W.L.R (pt.619)484 at 487.**

As much as I have sought to be persuaded, I am not persuaded that on the peculiar facts of this case that the amendment sought will occasion injustice to the counter-claimant. The exercise of discretion here appear to me such that would aid rather than hamper the course of justice. See **Oguntunde & Ors V. Chief Owolabi & Ors (2006)All FWLR (pt.326)350 at 362.** The object of Courts is to as much as possible create an even and fair template for parties to present their grievances unfettered, subject of course to the prevailing and applicable rules of practice and invaluable guidance and insight of judicial authorities.

In the final analysis, the Applicant has made out a favourable case for the exercise of the Court's discretion. The issue thus raised by the court is answered in the affirmative. For the avoidance of doubt, it is accordingly ordered as follows:

1. Leave is hereby granted the Applicant/Defendant to the counter-claim to amend their statement of defence to the counter-claim on terms as contained in the proposed amendment statement of defence attached as Exhibit A.
2. Leave is granted to the Applicant/Defendant to the counter-claim to file a further and better witness statement on oath reflecting the amendment as contained in the proposed further and better witness deposition annexed as Exhibit B.
3. The deeming prayer is refused.
4. The Applicant/Defendant to the Counter-Claim shall file and serve the amended processes covered by Relief 1 and 2 above together with all pleaded materials within 7 days from today.
5. The counter-claimant is at liberty to file a consequential amended reply to the amended statement of defence of the Defendant to the counter-claim in compliance with the Rules of Court.
6. I award cost assessed in the sum of N20,000 payable by the Applicant to the Respondent/Counter-claimant.

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Hon. Justice A.I. Kutigi

**Appearances:**

1. J.G. Itodo, Esq., for the Applicant.
2. Lawrence Alabi, Esq., for the Respondent.