

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/1146/2007

MOTION: M/8749/19

BETWEEN:

- 1. THE HON MINISTER, FEDERAL CAPITAL TERRITORY**
- 2. THE FEDERAL GOVERNMENT OF NIGERIA**
- 3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY**

.....**CLAIMANTS/APPLICANTS**

VS

DR FRANK FASHINA.....DEFENDANT/RESPONDENT

RULING

By a Motion on Notice with Motion No. M/8749/19 dated 12/9/2019 but filed on 13/9/19, brought pursuant to Order 43 Rule 1; Order 25 Rule 1 and 2 of the High Court of the Federal Capital (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the court, the Claimants/Applicants seeks the court the following prayers;

- (1) An order of the Honourable Court granting leave to the Claimants/Applicants to further amend their Amended Statement of Claim in the manner contained in the proposed

further Amended Statement of Claim attached herein and marked as Exhibit "A".

- (2) An Order deeming the Claimants/Applicants further Amended Statement of Claim, as properly filed and served, the necessary fees having been paid.

The Motion is supported by a 9 Paragraph affidavit with one (1) Exhibit attached deposed to by one Ruben Noah Harboonson a Litigation Clerk in the law firm of Claimants/Applicants Counsel also filed is a Written Address and adopts same as oral argument in support of the Motion.

Claimants/Applicants filed a further affidavit and Reply on Point of law on 29/11/19 upon receipt of Defendant/Respondent's counter affidavit.

Responding, Defendant/Respondent through his counsel filed a 4 Paragraph counter affidavit with one (1) exhibits attached deposed to by one Ratimi Adebisi a litigation Secretary in the law firm of Defendant/Respondent counsel. Also filed a Written Address and adopts same as oral argument.

In the Written Address of the Claimants/Applicants, their counsel formulated a sole issue for determination that is;

"Whether this Honourable Court can exercise its discretion in favour of the Claimants/Applicants and grant this instant application".

Submits on a Plethora of cases that the application is in tandem with the reasons upon which the court can grant an application for amendment of

pleadings. He urge court to exercise its discretion in favour of the Claimants/Applicants and grant the application.

In the same view, Defendant/Respondent Counsel formulated a sole issue for determination in the Written Address filed for the Respondent that is;

“Whether given the facts and circumstances of this case this application can be granted”

Submits relying on a Plethora of authorities that the court have the discretion to grant the application but should not exercise it in favour of the Applicants. And that the application fall short of the criteria for the grant of an application for amendment of pleadings as it will change the entire nature of the case before the court. He urge court to refuse the application.

Having carefully considered the affidavit evidence, submission and judicial authorities cited for and against the grant of this application, the court finds that only One (1) issue calls for determination, that is;

“Whether the Claimants/applicants has made out sufficient ground so as to be entitled to the reliefs sought”?

It is settled by case law and Rules of court that the court has the jurisdiction, power and indeed the discretion to grant leave to amend pleadings at any stage of the proceedings. See *Akanimo Vs Nsirim* (2008) 9 NWLR (PT. 1093) @ 400 Para E – G, the Court had this to say;

“The law is indeed well settled that an amendment of pleadings should be allowed at any stage of the proceedings, unless it will

entail injustice to the other side responding to the application. The application should be granted unless the Applicant is acting malafide or by his blunder, the Applicant has done some injury to the Respondent which cannot be compensated in terms of cost or otherwise”.

To amend, simply means to make right, correct or rectify, the change the wording or to alter formally by adding or deleting a Provision or by modifying the wording. See Black’s Law Dictionary 8th Edition.

In the instant application, the Applicant is seeking to further amend their Amended Statement of Claim to plead certain facts to enable the court effectively resolve the issues in controversy between the parties as stated in paragraph 4 (c) of their affidavit in support of the Motion and paragraph 4 (c) of their further affidavit. The Respondent’s main ground in opposition is that the Claimants/Applicants by this application seek to introduce new facts bothering on illegality and service by pasting. These facts contained in paragraph 8, 10, 11, 12, 13 and 14 of the Proposed Amended Statement of Claim will overreach the Defendant/Respondent change the nature of the case and is brought malafide.

The exercise of court’s discretion on whether or not to grant leave to amend is based on certain established guiding principles set out over time in a Plethora cases, See *Angekwe Vs Oladeji* (2008) 2 NWLR (PT. 1072) 529 – 521 Para G – A the Court of Appeal said;

“Amendments are more readily granted where same does not necessitate the calling of additional evidence or changing of the

character of the case once the calling of evidence has been concluded any amendment of the pleadings or claim can be justified or allowed only on the premise that evidence in support of it, it is already on the record. And it is necessary and in the interest of justice to allow the amendment in order to make the pleadings or claim accord with the evidence already on record. The rationale is that such an amendment should be allowed to enable court to use the evidence already on record to settle the real issue in controversy between the parties”.

Taking a cue from this decision of the Court of Appeal as a guide in the exercise of court’s power to grant an application of this nature the question to ask is first what is the nature of the amendment sought in this application? The court has read the facts stated in the supporting affidavit and find the further amendment is intended to bring to the fore the real issues in controversy between the parties. The question now to consider is what is the consequence of his Proposed Amendment? It is the contention of the Respondent that the grant of the further amendment will overreach them and brought malafide while it is true that the courts have consistently been urged not to ordinarily refuse an application for an amendment of pleadings, unless it is meant to delay the case embarrass or prejudice the interest of the other side or made malafide and without the other side having the opportunity to react; Se UBA Vs Dafiaga (20000 1 NWLR (PT.640) 775 @ 177 Ratio 2. The ground of objection in my view does not reveal any of these that would prevent the court not to exercise that discretion as it would not preclude the court from making any

consequential orders to permit them to do what is necessary for effectual determination of the matter before it.

It is therefore my view that this amendment would not have any negative consequence on the Defendant/Respondent as I find it not to overreaching or prejudicial or made malafide. It is merely to bring to fore the issue for determination by this court.

In the case of Oja & Ors Vs Ogbonu & Ors (1976) ANLR 277 @ 282, the Supreme Court said;

“Court do not exist for sake of discipline, but for the sake of deciding matter in controversy as soon as it appear that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much as a matter of right on his part to have it corrected, if it can be done without injustice as anything else in the case is a matter of right”

Accordingly, this application for amendment therefore succeeds. The Applicants are hereby granted leave;

- (1) To further amend their Amended Statement of Claim in the manner contained in the proposed further Amended Statement of Claim attached herein and marked as Exhibit “A”.
- (2) The further Amended Statement of Claim for which leave is hereby granted is deemed properly filed and served.

HON JUSTICE O.C. AGBAZA

Judge

22/5/2020

FESTUS JUMBO WITH HIM BENNY KANIYIP ESQ FOR THE
CLAIMANTS/APPLICANTS

A.U.COGBOI WITH HIM JOHN ODIBA.

C.O. SABOALFA (MRS), M.B. RICHARD FOR THE DEFENDANT/
RESPONDENT.