

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

**BEFORE HIS LORDSHIP: HON. JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/M/6858/2020
DATE: 6TH JULY, 2020**

BETWEEN:

- 1. OLAGUNJU A. ROBERT**
- 2. MUSTAPHA DANMALLAM**



APPLICANTS

AND

- 1. THE INSPECTOR GENERAL OF POLICE**
- 2. THE COMM. OF POLICE FCT ABUJA**
- 3. DCP SULEIMAN LAFIA A.**
- 4. INSPECTOR ABRAHAM**
- 5. CSP GERGORY OMINI**
- 6. LIU XIXIANG**
- 7. ZHANG MINGZE**



RESPONDENTS

Parties absent.

F.A. Obateru for the Applicant.

Applicant's Counsel – It seems the Respondent's counsel is not in court.

The Respondent's Counsel was in court on the last adjourned date (27/5/2020) when this matter was adjourned today for ruling on our motion. I refer to the record of proceedings of 27/5/2020.

Court – From the record of proceeding of 27/5/2020 the Respondent's counsel was in court when this matter was adjourned to today for ruling and continuation of hearing.

R U L I N G

This is an application on notice dated 11/5/2020 filed on 12/5/2020 brought pursuant to Order VI Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Section 46 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and African Charter on Human and Peoples Rights (Ratification and Enforcement Act) and under the inherent jurisdiction of this court.

On the face of the motion paper, the Applicant seeks for the following:

1. An Order granting leave to the Applicants to amend their originating motion with supporting processes and file further affidavit as contained in the proposed amended originating motion, further affidavit and supporting processes all marked as Exhibit A.
2. An Order deeming the Amended Originating Motion, Further Affidavit and supporting processes as properly filed and served, requisite filing fees having been duly paid.
3. And for such order or other orders that the Honourable Court may deem fit to make in the circumstances.

In support of this application is a 7-paragraph affidavit dated 12/5/2020 deposed to by Akogwu Egene, a Legal practitioner in the law firm of Olayinka Abimbola Balogun & Co. Attached thereto is a document marked as Exhibit A. Reliance is placed on all the paragraphs of the affidavits particularly paragraphs 4 A – F.

In compliance with the Rules of this Honourable Court, learned counsel to the Applicant filed 5-page written address dated 11/5/2020 wherein counsel submits that the crux of the affidavit is that the originating motion in this suit was filed on the 23/1/2020 at the time of filing certain facts were mistakenly omitted, this application is to correct/add some of the facts that were inadvertently omitted. The amendment sought is to enable the court determine the real issues in controversy between the parties.

Submits that by the rules and the decision of the Court of Appeal in OGBULI v OGBULI (2008) All FWLR (Pt 401) 954 at 966 – 967 where it was held that an amendment of pleadings may be allowed anytime before judgment to enable the trial court determine the real issue or question in controversy between the parties.

Further submits that the relevant statutory provision upon which this application is brought is Order VI Rules 2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009.

In conclusion, learned counsel to the Applicant urge this Honourable Court to grant this application in the interest of justice.

In reaction to this application, learned counsel to the Respondent opposed this application on two grounds:

1. The law upon which the motion is brought never allowed this application i.e. Order 4 Rule 1 of FREPR.
2. Issues have been joined, the Applicant cannot come back and seek for an amendment.

Learned counsel for the Respondents urge the court to dismiss the application.

In reply, learned counsel to the Applicant submits that the application is brought under Order 6 Rule 1 (vi) and Order 4 of the FREPR.

I have carefully considered the processes filed and submission of learned counsel on both sides, I have also considered the provision of Order VI Rule 2 & 3 of the Fundamental Right (Enforcement Procedure) Rules 2009 which provides as follows:

Order VI Rule 2:

“The court may on the hearing of the application allow the Statement to be amended and may allow further affidavit to be used if they deal with new matters arising from the counter affidavit of any of the party to the application”

Order VI Rule 3:

“The application for amendment shall be supported by an exhibit of the proposed application to be amended and may be allowed by the court upon such terms or otherwise as may be just”

See also the decision in OGBULI v OGBULI (2008) All FWLR Pt 401 953 at 966 – 967 where it was held thus:

“An amendment of pleadings may be allowed any time before judgment to enable the trial court determine the real issue or question in controversy between the parties”

In the light of the above, I hold the considered view that the prayers on the face of the motion paper are grantable and are hereby granted as follows:

1. Leave is hereby granted to the Applicants to amend their originating motion with supporting processes and file further affidavit as contained in the proposed Amended Originating Motion, Further Affidavit and supporting processes.
2. The Amended originating motion, further affidavit and supporting processes are deemed as properly filed and served, requisite fees having been duly paid.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
06/07/2020

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

The matter is also adjourned for continuation of hearing but in view of the absence of the Respondent, we shall be asking for another date. We shall serve the Respondent with hearing notice.

Court – Suit adjourned to 16/9/2020 for continuation of hearing. I order that hearing notice be served on Respondent.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
06/07/2020