

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

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 22**  
**CASE NUMBER : SUIT NO: CV/542/14**  
**DATE: : WEDNESDAY 16<sup>TH</sup> SEPTEMBER, 2020**

**BETWEEN:**

**MARGARETEKENG ... PLAINTIFF/RESPONDENT**

**AND**

**ELIZABETHADEH ..... DEFENDANT/APPLICANT**

**RULING**

The Defendant/Applicant approached this Honourable Court vide a Motion on Notice for the following:-

1. An Order of this Honourable Court granting leave to the Defendant/Applicant to amend her further amended statement of defence/counter claim and the accompanying process in the manner set out and underlined in the proposed further amended statement of defence/counter claim.
2. An Order of this Honourable Court deeming the proposed further amended statement of defence/counter claim and the accompanying process(s) or document as properly filed and served appropriate filing fees having being paid.
3. And for such Order or Further Orders as this Honourable Court may deem fit to make in the circumstances.

In support of the application is a 5 paragraph affidavit duly deposed to by One Justus H. Tochukwu, a Legal Practitioner in the Law Firm of the Applicant's Counsel.

It is the deposition of the Applicant that this Suit was commenced sometime in November, 2014 and that statement of defence was filed, but while Counsel was studying the case file in company of the Defendant, the Defendant drew Counsel's attention to some fundamental omission of vital facts relevant to her case.

That the said facts were conveyed to Counsel by the Defendant when her brief was taken few years ago but were inadvertently omitted by Counsel in the course of conducting her pleading.

That Plaintiff is yet to be heard on her reply to Defendants statement of defence and counter claim and that the Plaintiff is yet to close her case.

Applicant avers further that this is the 1<sup>st</sup> time the Defendant is seeking to amend her pleadings under the new rules as the first amendment sought by the Defendant was granted on the 17<sup>th</sup> November, 2015.

That it will be in the interest of justice to grant this application.

In line with law and procedure, a written address was filed wherein a sole issue to wit, *whether this Honourable Court has the powers to grant the reliefs sought by the Defendant/Applicant having regards to the circumstances of this case has been formulated for determination.*

Arguing on the above, learned counsel submit that amendment of pleadings is regulated by Order 25, Rule 1 of the Rules of this Court.

And it is clearly that where an application is brought Pursuant to the above order, Court shall grant same

provided such indulgence has not previously been granted the Applicant twice under this Rule.

Learned Counsel submit that Applicant has neither been granted amendment twice since the hearing of this suit or under the new rules.

Counsel contended further that, amendment sought was due to inadvertence of counsel and that the sin of Counsel cannot be visited on the Litigant. *AKIN PELU VS ADEGBORE (2008) ALL FWLR (Pt. 429) 413 at P. 434 – 438 H – A.*

Finally counsel submit that amendment of a Writ or party's pleading is allowed if such an amendment can prevent injustice.

*JESSICA TRADING CO. LTD. VS BENDEL INSURANCE CO. LTD. (2003) LPELR – 1608 (SC) 21-22.*

Upon service, the Plaintiff filed a counter affidavit of 8 paragraph duly deposed to by Margaret Ekeng.

It is the deposition of the Plaintiff/Respondent that the Counsel is not fully abreast of the facts of this case as from August 1999 when the flat was allocated to both of them, she paid rent regularly until monetization program in 2004. And that the Plaintiff was the most Senior Staff being on level 13 as at 2003 and the house was sold in 2005 but both agreed to buy the property in Defendant's name.

That the Defendant filed a valid defence to the Plaintiff's statement of claim as there was no omission to warrant amendment and that this is the second time the Defendant will seek to amend her pleadings.

That it will be in the interest of justice to refuse this application.

In line with law a written address was filed wherein a sole issue was formulated to wit;

***Whether or not this amendment is not in violation of the Rules of Court being the 3<sup>rd</sup> time and the case law on amendment.***

Learned counsel while arguing on the above, submit that Order 25 provides as thus;

***“A party may amend his Originating Process and Pleadings at any time before the pretrial conference and not more than twice during the trial but before the close of the case”.***

Counsel submit that the Defendant has amended his pleading twice already. He is not allowed a third chance according to the rule.

***ONYENUGA VS UNIVERSITY OF IFE (1965) NWLR 9 at 12*** was cited and relied upon by the counsel.

Upon service, the Defendant/Applicant filed a reply affidavit wherein the Defendant/Applicant avers that he did not amend his pleadings on the 28<sup>th</sup> May, 2015 but first amendment was done on the 17<sup>th</sup> November, 2015 under the 2004 Rules. And that the amendment here is the 1<sup>st</sup> since trial began on the 31<sup>st</sup> January, 2017 as well as the first under the 2018 Rules.

In line with law, a written address was filed wherein Learned Counsel submit that the Rules 25 of this Honourable Court has drawn a distinction between pre-trial amendment and amendment during trial. And it is during trial that the Rules prohibit amendment more than twice.

Learned counsel submit that this is the 2<sup>nd</sup> time the Defendant is seeking amendment during trial in this case.

Court was urged to grant the application.



**Court:-** I have gone through the affidavit in support of the reliefs herein contained on the face of the application in view, on one hand, and the counter affidavit in opposition to the application on the other hand.

Our adjectival law leans heavily in favour of amendments and is generally against the refusal of amendments.

Although the pendulum tilts in favour of amendment, court of law are entitled to refuse amendment in deserving cases.

Trial courts must examine the application for amendment very carefully in the light of the affidavit evidence.

The peculiarity of each case shall be considered. See *AKANINWO VS NSIRIM (2008) 1 SC (Pt. 111) 151.*

It is established that every opportunity must be afforded parties to a dispute in court to put their case fully before the court.

In a case conducted on the basis of pleadings, it certainly cannot be said that a Defendant has been allowed to put his case before the court when the opportunity to amend his pleadings has been denied him.

Refusal to allow a party amend his pleading certainly translates into refusing him the liberty to call the evidence which would have been necessary had the amendment sought being granted.

The consequence is denial to fair hearing. See *AKANINWO VS NSIRIM (2008) WRN (Vol. 20) 99 at 106 – 107, page 128 – 129, lines 40-5 CS.*

I however must be quick to mention that all cases are not the same. There are circumstances upon which application for amendment can be refused, the following are factors to be considered in granting or refusing an application for amendment.

a. The attitude of parties.

- b. Nature of the amendment sought in relation to the suit
- c. The question in controversy
- d. The time application is made
- e. The stage at which it is made and
- f. All other relevant circumstances.

See ***ANAKWE VS OLADEJI (2008) 2 NWLR (Pt. 1072) 506 at page 550 – 521 paragraphs G-A.***

The granting or refusal of amendment involves an exercise of discretionary power and such discretion must be exercised judicially and judiciously.

See ***OJEBODE & ORS VS AKANO & ORS (2012) LPELR - 9696***

An Applicant therefore who seeks to be allowed to do an act which he omitted to do when he ought to have done it during the trial, has a duty to give reasons that are

adequate and reasonable to explain his omission and or failure to do the act at the appropriate time during the said trial.

It is not sufficient for the wrong party to merely ask for the order of court to that effect.

Above position was espoused in the case of ***OJIEGBE & ANOR VS UBANI & ANOR (1961) ALL NLR 277 at 280*** where the CJN (as he then was) Adetokunbo Ademola upheld the decision of the lower court when it refused to allow a party to amend his case that had been closed, same having been objected to, as in the case in view by the other side.

This is a 2014 matter. Hearing of the case is still on and Applicant now brought this application for an amendment.

I must observe here that, in law to amend any legal process affords a party whether a Plaintiff or Defendant

and even the appellant or respondent on appeal opportunity to correct an error in the legal document. Such correction can be made informally where the process is yet to be served. After service however correction of legal process may be effected, depending on the prevailing rules of court, either by consent of both parties or upon motion on notice, like the case in hand, such correction are commonplace. Amendment enables the blunders errors and inadvertence of counsel to be corrected, in the interest of justice, ensuring always that no injustice is occasioned to the other party. ***FIVE STAR INDUSTRIES LTD VS BOI LTD (2013) LPELR 22081 (CA).***

The essence of amendment is not to change the relief sought by the Plaintiff as done in this case.

From all I have seen based on the affidavits of both parties, I am of the firm view that what Defendant is seeking to do is to place everything before the court.

Moreso that from my record, this is the second time Applicant is seeking to amend his case.

I shall in the interest of justice grant this application. Accordingly same is hereby granted.

*Justice Y. Halilu*  
*Hon. Judge*  
*16<sup>th</sup> September, 2020*

**APPEARANCES**

Samuel Ameh – for the Plaintiff/Respondent.

Johnbull A. with Justus H. T. – for the Defendant/Applicant.