

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT APO-ABUJA**

**17<sup>TH</sup> DAY OF JULY 2020**

**BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI**

**PRESIDING JUDGE**

**SUIT NO: FCT/HC/CV/356/16**

**BETWEEN:**

1. MR. VINCE ONYEJELI  
2. MRS. STELLA OJEKWE -ONYEJELI } ..... PLAINTIFFS/APPLICANTS

**AND**

1. GODAB NIGERIA LIMITED  
2. ENGR. GODWIN ABAYOMI } ..... DEFENDANTS/RESPONDENTS

***PARTIES ABSENT***

***CHIMA OKEREKE ESQ. FOR THE PLAINTIFFS/APPLICANTS***

***O.S. OWEAZIM ESQ. WITH T.A. SALAMI ESQ. FOR THE  
DEFENDANTS/RESPONDENTS.***

**RULING**

By a motion on notice no. M/7706/19 filed on 28<sup>th</sup> June 2019, the Plaintiffs/Applicants seek:

“1. AN ORDER granting leave to the Plaintiffs/Applicants to amend their statement of claim dated 30<sup>th</sup> November 2016 in the manner underlined in the Proposed Amended Statement of Claim attached to the Affidavit in support of this motion and marked Exhibit KA.2

2. AN ORDER of this Honourable Court granting leave to the Plaintiffs/Applicants to file Additional Witness Statement on Oath of Mr. Vince Onyejeli (the sole witness for the Plaintiffs in this matter) and Additional List of Documents to be relied upon.

3. AN ORDER of this Honourable Court permitting the Plaintiffs/Applicants to file their Amended Statement of Claim in compliance with the Rules of this Honourable Court within such time as may be prescribed by this Honourable Court.

4. AND FOR SUCH FURTHER order or other orders as this Honourable Court may deem fit to make in the circumstance''

The application was predicated on 8 grounds and supported by a 17 paragraph affidavit of Ezekiel Ameh, legal practitioner in the law firm of Kola Awodein & Co, counsel to the Plaintiffs/Applicants, to which bundle of documents - Exhibits KA1 and KA2 - Proposed Amended Statement of Claim are attached.

Also filed was learned counsel's written address wherein the sole issue: "Whether the Plaintiffs/Applicants are entitled to the reliefs sought in this application" was raised.

It was submitted that Order 25 Rule 1 of the Rules of this court allows a party to amend his pleadings in a matter at any time before pre-trial conference and not more than twice during the trial but before the close of the case.

It was further submitted that the amendment sought is necessary for the purpose of enabling the court to determine the real questions in controversy between the parties and to do justice accordingly.

That the Plaintiffs seek to bring in evidence of renewal of and payment of house rent by the Plaintiffs through bank transfers from the bank accounts of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs variously into the bank account of Aribisala & Co; agent

of the landlord of the property the Plaintiffs were occupying during the pendency of their agreement and after the unlawful termination of the said agreement.

That the quantum of damage suffered by the Plaintiffs cannot be justly ascertained without the amendment sought. Thus the court was urged to exercise its discretion in favour of the Plaintiffs.

Reliance was placed on several authorities including **LAGURO V TOKU (1992) 2 NWLR (PT 223) 278, RIMI V INEC (2004) 15 NWLR (PT 895) 121; IGWE V KALU (2002) 5 NWLR (PT 761) 678 AT 725-726 PARAGRAPH H**

Opposing the application the Defendants on 5<sup>th</sup> July 2019 filed a 5 paragraph counter affidavit deposed to by Goodness Nkeiruka Marcus, litigation secretary in the law office of Inedia Owezim and company, counsel to the Defendants.

Accompanying same was counsel's written address which raised the issue: "Whether this Honourable Court will grant an amendment to pleadings made in bad faith, and which is designed to create a suit that was not in existence ab initio?"

It was submitted that amendment of court processes are not granted as a matter of right but subject to the discretion of the court which must be exercised judicially and judiciously.

That the Plaintiffs' application seeks to -

- (i) Bring in documents purportedly showing the monies said to have been paid to a third party (who is not a party to this case) after the suit had long been filed. See Exhibit KA1 annexed to the application).
- (ii) To enhance the award of special damages. (see paragraphs d, e, f of the underlined portions of the proposed amended statement of claim).

It was submitted that courts are to refuse an amendment which intends to create a fresh suit that was not in existence at the time the cause of action

arose and subsequent to filing of the suit. See **DR. M.G.O. IWEKA V S.C.O.A NIGERIA LTD (2000) 76 LRCN 572 AT 590 E-F** per Onu JSC (as he then was)

That is so, because an amendment of pleadings made at any stage of the proceedings before judgment, or even made on appeal, dates back to the date when the pleadings were originally filed.

See **ARCH BISHOP PETER ARIYOK JATAU V ALI MANSUR AHMED & 4 ORS (2003) 105, LRCN 527 AT 536 JJ & 537 A.**

It was contended that the present amendment sought is in bad faith, to ambush the Defendants and bring in through the back door, pieces of evidence that were created and self inflicted by the Plaintiffs on themselves, to prejudice the Defendants. That the tenancy agreement was tendered and rejected by the court.

It was further urged that there must be an end to litigation. That the case instituted in 2016 has suffered at least seven adjournments at the instance of the Plaintiffs in leading a single witness.

The court was urged to order the Plaintiffs to close their case pursuant to Order 39 Rule 12 of the Rules of this court.

Finally, it was argued that the amendment, even if granted will be an exercise in vain as the documents sought to be brought in are caught by S. 83 (3) of the Evidence Act having been made during the pendency of the case.

Reliance was placed on **NBCI V INTERNATIONAL GAS LTD (2005) 125 LRCN 614; DR M.G.O IWEKA V SCOA NIG. LTD (supra)**

The court was urged to dismiss the application with substantial costs.

The Plaintiffs on 25<sup>th</sup> October 2019 filed an 18 paragraph further affidavit in reply to the counter affidavit. Same was deposed to by Ezekiel Ameh.

Also filed was a reply on points of law wherein it was submitted that Iweka's case is not applicable to this application as judgment has not been delivered in this suit.

That documents they seek to tender relate to facts already contained in Plaintiffs' pleadings to prove the continuous loss and damages suffered by Plaintiffs .

That NBCI'S case also does not support the contention of the Defendants. That there is no ambush neither is S. 83 (3) Evidence Act applicable. That the documents in question are bank statements and bank receipts made by the bank which is not an interest party in the suit. That the tenancy agreement was tendered and admitted without objection from the Defendants.

I have considered the affidavits of the parties and oral and written submissions of learned counsel on both sides.

The singular issue before the court is whether the amendment sought is one which this court can grant.

The law is that an amendment can be granted at any stage of proceedings provided it will not occasion a miscarriage of justice to the other side to the application. See **AKANINWO V NSIRIM (2008) 9 NWLR PT (1093), 439 AT 1660 PARAGRAPHS F-G** Per Mohammed JSC.

The application should also be granted unless the applicant is acting mala fide or by his blunder, the applicant has done some injury to the respondent which cannot be compensated in terms of costs or otherwise.

See **TILSDESLEY V HARPER (1878) 10 CHD 393 AT 396, CROPPER V SMITH (1884) 26 CHD 700 AT 710**

The grouse of the Defendants is that the Plaintiffs by this application seek to introduce a new claim, were acting malafide, with intention to delay this matter.

I have perused the original statement of claim of the Plaintiffs. In paragraph 55 thereof it was pleaded inter alia that by reason of the Defendants' refusal to meet with the Plaintiffs to arrive at suitable additional costs and subsequent termination of the agreement, that the Plaintiffs have incurred and are still incurring additional rent at their rented apartment in the sum of N4, 630, 000 only for every additional six months the Plaintiffs stayed at the rented apartment.

The amendment now sought is to bring in the documents to support the Plaintiffs' claim. I do not think therefore that it is a new claim having been pleaded earlier. IWEKA'S case is therefore distinguishable from the present case.

I do not think the application was brought malafide either.

The documents earlier tendered by the Plaintiffs and which were rejected are not the same documents sought to be introduced now. They are documents made by a bank and not the Plaintiffs. And I think the best time to contest their admissibility is when they are sought to be tendered.

I agree that there has been some delay in concluding the testimony of PW1 since 19<sup>th</sup> April 2018 when he opened his case before this court, but the Defendants can be assuaged with costs.

By Order 25 Rule 1 of the Rules of this court Plaintiffs are still within time to seek an amendment of their pleadings since they have not yet closed their case. Therefore the Defendants have ample opportunity to amend their own pleadings if they deem it necessary. Therefore they cannot be over reached.

Order 25 Rule 2 permits this court to allow an amendment upon such terms as to costs or otherwise as may be just.

The aim of the court is to do substantial justice to all the parties before it. To refuse the adjournment would entail that the Plaintiffs have not been allowed to ventilate all their grievances before the court against the Defendants.

In the exercise of my discretion, I therefore allow the application on terms  
The Plaintiffs' application is granted as prayed .

I award costs of N5000 to be paid by the Plaintiffs to the Defendants by the next adjourned date for the delay by the Plaintiffs in this matter.

Plaintiffs have 14 days to file and serve the amended statement of claim.  
Defendants have 14 days to file and serve any consequential amendment to their pleadings.

Court: Case adjourned to 5<sup>th</sup> November 2020 for definite continuation of hearing.

**Hon. Judge**