

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON THURSDAY THE 9TH DAY OF JULY, 2020.

BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO -ADEBIYI

SUIT NO. CV/967/2013

MOTION NO: M/6269/2020

1. FIRST BANK NIGERIA PLC-----PLAINTIFF/APPLICANT

AND

1. AMAGEN NIGERIA LTD

2. PRINCE EMMANUEL AMAEFULE ----- DEFENDANTS

3. MRS. GENEVIEVE AMAEFULE

RULING

The Plaintiff closed their case on the 25/02/2020 and case was adjourned to 24/03/2020 for defence of the 1st and 2nd Defendant. The plaintiff counsel has drawn the Court's attention to their motion on notice M/6269/2020 dated and filed on the 11th day of March, 2020. The motion was brought pursuant to Order 25 Rules 1, 2 & 5; Order 43 Rules 1(1) and 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018, Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and under the inherent jurisdiction of the Court. The Plaintiff/Applicant sought for the following orders:

1. An order of this Honourable Court granting leave to the Plaintiff/Applicant to amend her statement of claim to be in line with the evidence of the PW1 on record to wit Exhibit P10 admitted in evidence through the PW1 and in the manner disclosed in the proposed Amended Statement of Claim attached to the affidavit in support of this Motion on Notice as Exhibit A.
2. An order of this Honourable Court deeming the Plaintiff/Applicant's Amended Statement of Claim attached to the Affidavit in support of this Motion on Notice as Exhibit B as properly filed and served same having been paid for both as an exhibit and as a process.
3. An order of this Honourable Court granting leave to the Plaintiff/Applicant to recall the PW1 to adopt his witness on oath as consequentially re-sworn in line with the said Amended Statement of Claim and reflecting the said evidence on record to wit Exhibit P10.
4. And for such further order(s) as this Honourable Court may deem fit to make in the circumstance of this case.

The application is supported by a nineteen (19) paragraph affidavit deposed to by one Abdullahi Bulama, the Recovery Officer (North Axis) of the Plaintiff/Applicant and the PW1 in this case. The substance of the affidavit is in the following paragraphs which I reproduce below:

5. That on the 11th February 2020, during my cross-examination by the 3rd Defendant, the 1st Defendant's statement of account issued to the Defendants by the Plaintiff and covering the period 1st

January 2009 to 22nd August 2011 was tendered through me and admitted in evidence as Exhibit P10 on record.

6. That the said Exhibit P10 as tendered in evidence has necessitated the amendment of the Plaintiff's Statement of Claim to be in line with the content of the said Exhibits P10 on record.
8. That the Plaintiff/Applicant could not have applied for the amendment of the statement of claim until after the said 11th of February 2020 and 25th February 2020 because I was already in the middle of the cross-examination when Exhibit P10 was tendered, hence the application could not be made until the conclusion of the said cross-examination.
9. That there is an urgent need to amend the Plaintiff's statement of claim to be in line with the content of the said Exhibit P10 tendered through me.
10. That the urgent need to us to apply for the amendment of the said Plaintiff's Statement of claim is to enable the court determine the real issues in controversy between the parties.
11. That there is an urgent need for me to consequentially re-swear my witness statement on oath to be in line with the said amendment sought by this application.
12. That it is in the interest of justice to grant this application as the said Exhibit P10 has introduced new facts on record in this

suit concerning the indebtedness of the Defendants to the Plaintiff.

13. That the Defendants/Respondents will not be prejudiced by this application.

Attached to the application are the proposed amended Statement of Claim and a witness statement on oath. The learned Counsel for the Plaintiff Ani Remigius Esq. also adopted a written address dated 11th March, 2020 in support of the application.

In opposition to the application, the 1st and 2nd Defendants filed a 4 paragraph Counter affidavit deposed to by Stephen Ojodomo, a litigation officer in the law firm of Charles Uhegbu & Co., the law firm representing the 1st and 2nd Defendants. A written address dated 13th March, 2020 was also filed and adopted by Charles Uhegbu Esq. on behalf of the 1st and 2nd Defendants. The 3rd Defendant also opposed the application with a 19 paragraph affidavit deposed to by Mrs. Genevieve Amaefule, the 3rd Defendant. Ike Njoku Esq. counsel for the 3rd Defendant also filed and adopted a written address in opposition to the application.

In his adopted written address, learned Counsel to the Plaintiff/Applicant, Ani Remigius Esq. did not raise any issue for determination but proceeded to proffer legal arguments in support of the application. Learned Counsel for the Plaintiff/Applicant, contended that this Honourable Court has the powers to grant this application in line with the amendment as prayed on the motion paper relying on Order 25

Rules 1 & 5 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018. Learned counsel submitted that the amendment sought is to bring the Plaintiff/Applicant's Statement of Claim in line with her evidence on record to wit Exhibit P10. That the amendment as sought will expedite the determination of the real issues in controversy between the parties and ensure that the hearing of this suit is without any justice to the parties and ensure that the hearing of this suit is without any injustice to the parties particularly the Plaintiff/Applicant. Counsel further submitted that the necessity for the amendment of the Plaintiff/Applicant's Statement of Claim in this suit is not fraudulent or intended to overreach the Defendants/Respondents and that the grant of this application will not in any way whatsoever cause injustice to the Defendants/Respondents. In support he cited **Chief Emmanuel Eyo Ita & Anor vs. Elder Chief Okon H. A. Dadzie (2000) 4 NWLR pt 652 pg. 168 at pg. 191-192; Asaru Taiwo v. Ademo Akinwumi (1975) 4 SC 143 at 169; Boluwaji Falana & 4ors v. Samuel Omodele Oloro & 3 ors (2013) All FWLR pt. 666 pg. 569 at pg. 580-581 paragraph H-A and Soley v. Sonibare (2002) FWLR Pt. 95 pg. 234-234 paragraph H-B**. With respect to the re-call of PW1 counsel submitted that the Plaintiff/Applicant has amply complied with the condition for the recall of a witness as to be entitled to the grant of this application. Counsel referred the court to paragraph 16 of the affidavit in support where the Plaintiff/Applicant clearly stated what she intends to put to the PW1 when recalled.

Learned Counsel finally urged this court to grant the application as same will not prejudice the Defendants/Respondents in any way whatsoever

but will enable this Honourable Court determine the real issues in controversy between the parties.

On his part, the learned Counsel for the 1st and 2nd Defendants/Respondents, Charles Uhegbu Esq., raised a sole issue for determination to wit;

“Whether the Plaintiff’s application is not grossly incompetent before the Honourable Court?”

Counsel submitted that the Plaintiff/Applicant is not entitle to amend its statement of claim because Plaintiff/Applicant closed its case on the 25th of February, 2020, they are acting mala fide, are causing injury and injustice to the Defendants which cannot be compensated for by cost or otherwise, the Defendants will be prejudiced and overreached and the case will become ridiculous, clumsy and cumbersome. In support counsel cited the cases of **CHIEF EMMANUEL EYO ITA & ANOR V. ELDER CHIEF OKON H. A. DAZIE (2013) ALL FWLR (PT 683) Pg 1880 at Pg 1893 paragraphs A-D; THE SHELL PETROLUM DEVELOPMENT COMPANY OF NIGERIA LIMITED V. KWAMEH AMBAH (1999) 2 NWLR (Pt 539) pg 1 at pg 10 paragraphs G-H; M. T. MAMMAN V. A. A. SALAUDEEN (2005) 18 NWLR (Pt 958) 478.** Counsel submitted that the Applicant has not by its affidavit adduced cogent reasons enough to warrant the grant of this application for amendment. Counsel further submitted that if this amendment is allowed, it would give room to a consequential amendment by the Defendants then there would be no end to litigation as the Plaintiff can decide to amend again. Counsel also

submitted that the Plaintiff did not bring an application for leave to re-open its case which was closed on the 25th February, 2020 without which no other relief can be brought before the court. Counsel urged the court to resolve the sole issue in favour of the Defendants and dismiss the application with substantial cost.

Learned Counsel for the 3rd Defendant, Ike Njoku Esq, on his part contended that the governing principles for an application to amend at close of a party's case are that in order for an application to amend pleadings at close of trial/evidence to succeed, the applicant must point at any piece of evidence on record which is capable of supporting the proposed amendment and cited **ADEGBO V. YUSUF (1990) 6 NWLR (pt. 158) 588 at 591**. Counsel submitted that the relevant evidence on record here is what the PW1 said about Exhibit P10 when he was confronted with it not the content of Exhibit P10 as interpreted by counsel for the Plaintiff. Counsel submitted that for the Court to go beyond what the witness said from the witness box and to attempt to go into the contents will amount to the court investigating the document which this court has no power to do. That what the court can do with Exhibit P10 is dependent on what was said about the document by a witness whether called by the Plaintiff or the Defendant, not its content as suggested by Plaintiff Counsel. He relied on the case of **LADOJA V. AJIMOBİ (2016) 10 NWLR (Pt. 1519) 87 SC**. Finally counsel urged the Court to hold that the application is incompetent and same be dismissed with substantial cost.

The Plaintiff/Applicant filed a further affidavit in response to the 1st and 2nd Defendants/Respondents dated and filed 23rd March, 2020 annexed are 2 exhibits and a reply on point of law. Likewise a further affidavit in response to the 3rd Defendant/Respondent dated and filed 23rd March, 2020 and a reply on points of law, counsel adopted both responses in evidence.

The general principle for amendment of pleadings is that amendment can be done any time before judgment; hence an amendment of pleadings for the purpose of determining the real question in controversy between parties ought to be allowed at any stage of the proceeding. The law is settled that the inherent power of the court to amend pleadings is not mechanically applied rather each case must be considered on its own merits. Before the court proceeds to grant an amendment the court would consider the following factors: - the attitude of the parties, the nature of the amendment sought in relation to the main suit, the question in controversy, the time factor, the stage at which the proceedings had reached and generally all the circumstances surrounding the case. See **NIGERIAN DYNAMIC LTD VS EMMANUEL DUMBAI (2002) 15 NWLR (Pt. 789) 139 @ 154 Paragraph c-f per Obadina J.CA** in applying the above principles to the case at hand during examination by learned counsel to the 3rd Defendant, PWI admitted that the late Prince Emma Amefule had on different dates paid to the Plaintiff's (in installment) monies totaling N5m and this was corroborated by Exhibit P10, which the court admitted as exhibit. Applicant has now filed an amendment to his

pleadings allegedly in line with the said Exhibit P10 and stated the sum of N11, 373, 076.28 in Applicants amended statement of claim. The question thrown at PWI was to the effect that the deceased had paid some monies totaling N5m which ought to have reduced his indebtedness and that the bank did not acknowledge the receipt of that money on any of the processes filed before this court. PWI in response had said "I am not aware" to this extent learned counsel to the 3rd Defendant had tendered Exhibit P10.

The attention of the court to exhibit P10 was to the effect that N5m was paid and definitely not a balance of N11, 373, 076.82 as stated by the Applicant in paragraphs 27 of his proposed amendment statement of claim as the testimony of the witness did not pronounce on the sum of N11,373,076.28.

The question that comes to play at this junction is whether considering the circumstances the court ought to grant or refuse this amendment.

The locus classical case of **chief Adedapo Adekeye vs Chief O.B Akinolagbade (1987) 3 NWLR (Pt. 60) 214** where the Supreme Court determined grounds upon which a court may refuse an application for amendment. The Supreme Court in this case recommended (5) five grounds upon which an amendment maybe refused:- (a) where the amendment being sought is made mala fide (b) where the amendment would cause unnecessary delay (c) where the amendment would in any way prejudice the opposite party (d) where the amendment is irrelevant and useless (e) where the amendment would merely raise technical issues. I am of the view that the application for amendment being made after eliciting the evidence under examination from PW1 would

prejudice the other party. The essence of cross examination is to obliterate a witness examination-in-chief and force contradictions from the witness and generally test the veracity and accuracy of a witness examination in chief. Hence relying on a piece of evidence used by an opposing party to test the veracity of a witness testimony via cross-examination as basis to amend pleadings is not only brought in bad faith (mala fide) but would definitely prejudice the other party.

See **VULCAN GASES LTD VS G.F. IND. G.A.G. (2001) 9 (NWLR) (Pt.719) 610 @ 653, para F-G** where **Wali J.SC** held that an irregularity can be cured by an amendment if it will not cause any injustice to a party, taking into consideration the stage of the proceeding at the time of the amendment and its nature.

Moreover granting the amendment sought will throw a different complexion to the case originally filed as nowhere in the original processes before the court was the sum of N11, 373, 076.28 mentioned nor is this sum an issue in the processes filed before this court. Hence filing a fresh witness statement on oath and proposed amendment statement of claim bringing the said sum for the first time is completely alien to this case and totally unacceptable. See **FASUAN VS AWOYEMI (2006) AF WLR (Pt. 334) 1906 @ 1922 para D-F 2006 13 NWLR Pt. 996 86** where the court held that application for amendment of pleadings will not be granted once the amendment sought will throw a different complexion to the case originally filed.

In view of the above I therefore hold that the application for amendment is not only brought mala fide but will entail injustice to the

other parties and ultimately prejudice the opposite party. Application for amendment is consequently refused.

Parties: Plaintiff is represented. Defendants are absent.

Appearances: Remigius Ani Esq. for the Plaintiff/Applicant. Charles Uhegbu Esq. for the 1st and 2nd Defendants. Ike Njoku Esq. for the 3rd Defendant.

HON. JUSTICE M. OSHO-ADEBIYI

JUDGE

9TH JULY, 2020