

**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: 10

**SUIT NO: FCT/HC/PET/76/12
MOTION NO: M/8527/2020**

BETWEEN:

MR IKECHUKWU BERNARD OSUJI.....PETITIONER/RESPONDENT

AND

MRS IHUOMA JULIET OSUJI.....RESPONDENT/APPLICANT

RULING

By a Motion on Notice dated 24th June 2020 but filed on 9/7/2020 with Motion number M/8527/2020, brought pursuant to Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and Order 25 Rules 1 and 2 of the High Court of the FCT (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Court the Respondent/Applicant seek the following prayers;

- (1) An Order granting leave to the Respondent/Applicant to amend his Answer to the Petition and other accompanying processes as per the annexure herewith attached.
- (2) And the Omnibus relief

The Motion is supported by a 13 Paragraph affidavit with one (1) Exhibit attached. Also filed a Written Address and adopt same in urging the court to grant the reliefs sought.

Responding, Petitioner /Respondent filed an 8 Paragraph counter-affidavit deposed to by one Kingsley Magaji a Litigation Clerk in the law firm of Petitioner/Respondent's counsel. Also filed a Written Address and adopt same in urging the court to dismiss the application.

In the Written Address of the Applicant, Applicant's counsel formulated a sole issue for determination that is;

“Whether the instant application by the Respondent/Applicant in this Suit ought to be granted”.

Relying on Order 25 Rule 1 and 2 of the Rules of Court and the cases of Adekeye Vs Akin-Olugbade (1987) 3 NWLR (PT.60) 214, Lambu Vs Isyaku (2012) ALL FWLR (PT. 640) 1295 and CBN Vs Dinneh (2005) LPELR 11349 (CA). submits that it is just and in the interest of justice to grant the instant application. Urge court to grant the application.

In the same vein Petitioner/Respondent's counsel formulated a sole issue for determination, that is;

“Whether the Applicant have satisfied the conditions necessary for the exercise of judicial discretion in their favour”.

Relying on a Plethora of cases submits that the proposed amendment seeks to bring in fresh facts, which the Petitioner/Respondent will not have the opportunity to rebut. Submits further that the parties having closed

their respective cases, this application for amendment is sought malafide urge the court to dismiss the application with cost.

Having carefully considered the affidavit evidence submission of counsel and judicial authorities cited. I find that the issue which calls for determination is;

“Whether the Respondent/Applicant have made out a ground so as to be entitled the relief sought”.

The grant or otherwise of an application of this nature falls within the discretion of court which court is enjoined to exercise judiciously and judicially. See NDIC Vs Globus Ent Ltd (2011) 3 NWLR (PT. 123) 74 @ 84. The principles which guides the court, whether or not to grant the prayers of the Applicant was set out in the case of Adekanye Vs Grand Services Ltd (2007) ALL FWLR (PT. 387) 855 @ 857 Ratio 1 and they are;

- (a) The court must consider materiality of the amendment sought and will not allow an inconsistent or useless amendment.
- (b) Where the amendment would enable the court to decide the real matter in controversy and without controversy
- (c) Where the amendment relates to a mere misnomer, it will be granted almost as a matter of course.
- (d) The court will not grant an amendment where it will create a suit where non-existed.
- (e) The court will not grant an amendment to change the nature of

the claims before the court.

- (f) Leave to amend will not be granted if the amendment would not cure the defect in the proceedings.
- (g) An amendment would be allowed if such an amendment will prevent injustice.

The Applicant states in paragraphs 6, 7 (a) – (c), 8, 9, and 10 of her supporting affidavit the grounds for this application, that is to enable her to reflect the current state of things and also file a Cross-Petition. The Petitioner/Respondent on the other hand states in paragraph 7 (a) of his counter-affidavit that having concluded their cases and the matter adjourned for Final Written Addresses; Applicant now seeks to introduce fresh evidence and change the nature and character of her case. That this application is intended to overreach the Petitioner and brought mala fide. I have taken a considered look at the competing claims of the parties viz a viz the principles which guide the court in the determination of an application for amendment of pleading as well as the proposed amendment attached as Exhibit "AS" to the affidavit in support of the application. I find that the amendment sought by the Respondent/Applicant because she now came to the knowledge that the Petitioner/Respondent was married to another woman within the period of his marriage to the Respondent/Applicant as stated in paragraph 6 of her affidavit, this in my opinion amounts to changing the claims of the Respondent before this court, which the principle guiding application for amendment does not allow. Again even though an application for amendment to pleadings can

be made at any stage of trial, before Judgment, the grant of the application is granted as a matter of course, rather not an Applicant must show that indeed he is deserving of the court's exercise of its discretion in his favour. In the instant case the Applicant claims the reason for the application as stated earlier but failed to show to the court material facts such as date of marriage, venue as well as Certificate of Marriage but merely told the court that it came to her attention that the Petitioner/Respondent was married to another woman within the period of his marriage to her without more considering the history and circumstances of this case and also the fact that the parties had closed their respective cases, considering also the materiality of the ground for this application this court is of the firm view that the Respondent/Applicant failed to substantiate the grant upon which the application is ought with cogent facts. I have earlier mentioned that the grant of an application of this nature is at the discretion of court which it must exercise judiciously and judicially. And in so doing the court must rely on facts and not its whims especially in the light of such weighty claims as put forward by the Applicant as grounds for the application.

From all of these, I am satisfied that this application for amendment lack merit and must fail as the Applicant failed to establish by sufficient evidence that she is deserving of the grant of the application. It is in therefore in the interest of justice to refuse this application and it is accordingly dismissed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge
15/10/2020

MOSES AWURU ESQ FOR THE PETITIONER/RESPONDENT

EMMANUEL O. UGWUJA HOLDINGS BRIEF OF LADY ROSE MBATA (KST) -
FOR THE RESPONDENT/APPLICANT