

**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/266/2017

BETWEEN:

MRS. CHRISTIANA FAVOUR IRELEN.....PETITIONER

VS

MR. MOSES EHIMENMEN IRELEN.....RESPONDENT

RULING

By a Motion on Notice filed on 13/2/2020 with Motion Number M/5285/2020, brought pursuant to Order VIII Rule 3 (2)(4)(5)(6) and (7) of the Matrimonial Causes Act Rules and under the inherent jurisdiction of this court, the Petitioner/Applicant seeks the following reliefs;

- (1) An Order granting leave to the Petitioner to amend its Notice of Petition pending before the court.
- (2) An Order deeming the amendment Notice of Petition already filed and served on the Respondent through its Counsel dated August 22, 2019 as properly filed and served.

The motion is supported by a 6 Paragraph affidavit deposed to by one Sunday Audu with 1 Exhibit attached. Also filed a Written Address and adopts same in urging the court to grant the application.

Responding, Respondent through his counsel filed a 7 Paragraph Counter – affidavit deposed to by Egwu Nkechi Christiana a Litigation Secretary in the Law Firm of Respondent’s Counsel. Also filed a Written Address and adopt same as oral argument in urging the court to refuse the application.

In their written address, Martin Odey Esq. of Counsel for the Petitioner/Applicant formulated a sole issue for determination that is;

“Whether this Honourable Court can exercise its discretion in granting leave to the Petitioner to amend its Notice of Petition already filed and served as properly filed and served”

Submits that all the Applicant need to fulfill is show good and substantial reason for the application, and not to overreach the other party but it is the discretion of court to grant, refer to Ben .E Chidoka & Anor Vs First City Finance Company Limited (2000) LPELR – 6793. Anakwe Vs Oladeji (2008) All FWLR (PT. 399) 571 @ 684 Paras B – C and Kekere – Ekun Vs Owolabi & Ors (2008) LPELR – 8410. Urge court to exercise its discretion in favour of the Applicant.

In the Respondent’s Written Address, John Abah Augustine Esq. for the Respondent formulated a sole issue for determination that is;

“Whether the Applicant has established sufficient grounds and facts as required by the Rules to invoke the Orders of this Honourable Court to amend the Notice of Petition”

Submits that, the Applicant has not establish any ground of fact known to law to warrant the ground of the relief sought, that the sole ground for this

Application as revealed by the Applicant's supporting affidavit is due to change of Petitioner's Counsel and this fact is unknown to law for amendment of Notice of Petition refer to Order III Rule 71 of the Matrimonial Causes Rules. In view of this Provision of the Matrimonial Causes Rules, amending the Petition occasioned by change of Counsel is not necessary for the purpose of determining the real question in controversy between the parties.

Submits further that the authorities relied on by the Applicant cannot avail the Applicant that the Petitioner failed to alter the Petition as required by Order VIII Rules 4(1) and 6(1) of the Matrimonial Causes Rules Therefore urge court to refuse the application.

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

“Whether the Applicant has 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 exercise must be done judiciously and judicially. The principles which guides the court on whether or not to grant an application for amendment were set out in the case of *Adekanye Vs Grand Service Ltd* (2007) All FWLR (PT. 387) 855 @ 857 Ratio 2. It includes;

- (a) The Court consider the 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.
- (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 to change the nature of the claims before the court.
- (e) The court will not grant an amendment where its creates a suit where none exist.
- (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.

In the instant application, the Applicant in seeking the leave of court to amend the Notice of Petition of the Petitioner relies on the facts contained in Paragraph 4,5 and 6 of the affidavit in support of the motion, which essentially is predicated on the change of Counsel effected on 22/8/19. On the other hand the contention of the Respondent counter affidavit is the only ground for the application is change of counsel and the affidavit does not disclose the amendment as only the notice of Petition is to be amended. In resolving these contending positions, I have taken a considered look at the proposed amendment vis-à-vis the principles which guides the court in the grant or otherwise of it stated in the authority cited above I am of the view that the amendment sought is not material enough to warrant the grant of the application. And would not add or subtract

anything to enable the court to decide the real matter in controversy. It is not the character of the court to refuse an application for amendment. However the court is of the firm view that the application failed to show cogent grounds for the application hence will refuse this application as it devoid of merit.

From all of these and having found the application lacking in merit this application is accordingly refused.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

7/12/2020

APPEARANCE:

M.D. ANYAM FOR THE PETITIONER/APPLICANT

G.A ENYAM FOR THE RESPONDENT.