IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA

THIS MONDAY, THE 12th DAY OF OCTOBER, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO FCT/HC/CV/927/07
MOTION NO: M/9444/2020

BETWEEN:

SPRINGFIELD HOSPITAL & CLINIC LTD
(Suing by her Lawful Attorney
EKOCORP PLC under an irrevocable
Power of Attorney dated 21/5/1995 and
Registered in the land registry office, Aubja.) **.....PLAINTIFF/APPLICANT**

AND

1. **HON. MINISTER OF FEDERAL CAPITAL TERRITORY**
2. **FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
3. **SHELTARCH ASSOCIATES LIMITED**
4. **PAMO CLINIC & HOSPITAL LTD**
5. **NEWTON SPECIALIST HOSPITAL LIMITED**

.....DEFENDANTS/ RESPONDENTS

RULING

By a motion on notice dated 1st September, 2020, and filed same date in the court's Registry, the Plaintiff/Applicant seek for the following Reliefs:

1. **Leave of the Honourable Court to set aside the order made on 14th July, 2020 fixing this suit for Judgment.**

2. **Leave of the Honourable Court for the Plaintiff/Applicant to re-open her case, amend its further amended statement of claim, recall a witness and**

tender a document that was discovered after close of pleading, leaving(sic) and matter fixed for judgment.

3. **An order of this Honourable Court deeming the Plaintiff's/Applicant's further and better Amended Statement of Claim and witness statement on oath already filed and served on all the Defendants as properly filed and served having paid the assessed fees.**

4. **And for such further order(s) this Honourable Court may deem fit to make in the circumstances of this case.**

The grounds upon which the application is sought are as follows:

1. **That the new fact emerged/or newly discovered while the matter was fixed for judgment.**

2. **That the document, Certificate of Occupancy No.18cfw-430cz-7083r-3aou-20 is very relevant to the subject in dispute.**

3. **That it is imperative to bring the document to the attention of the Honourable Court in arriving at a just decision in this matter.**

4. **That the document has been in the custody of the 1st and 2nd Defendants who never made it available when same was requested for years ago.**

5. **Failure to bring the newly discovered document to the attention of the court is not out of disrespect to the Honourable Court, but due to reasons beyond its control.**

The application is supported by a four(4) paragraphs affidavit with four(4) annexures marked as **Exhibits A, B, C and D.** Pursuant to the Rules of Court, a written address was filed in which one issue was raised as arising for determination:

"Whether or not the court can exercise its discretionary powers in favour of the Applicant to grant this application when the matter has been adjourned for Judgment."

The address essentially dealt with the principles governing when a case can be reopened, recall of a witness and amendment which forms part of the record of

court. The case made out is that on the materials, the applicant has made out a case to be allowed to reopen its case, so that it can amend its pleadings, recall its witness and produce further evidence even though parties have adopted their final addresses and the matter is now for Judgment.

The Applicant filed a further affidavit of five(5) paragraphs with five(5) annexures marked as Exhibits FA-A to FA-G. A further written address was filed which sought to strengthen and accentuate the positions earlier advanced.

All the Defendants in this case strenuously opposed the application. I will streamline the processes filed by each party and then summarise the essence and or substance of the submissions made out which generally is in pari materia.

The 1st and 2nd Defendants/Respondents in opposition filed a 22 paragraphs counter-affidavit with three(3) annexures marked as **Exhibits 1, 2 and 3.** A written address was filed in which two issues were raised as arising for determination, to wit:

"1. **Whether this Honourable Court has the jurisdiction to set aside an order made by it in the course of proceedings or arrest its judgment set to be delivered.**

2. **Whether having regards to the circumstances of this case and having regards also to the principles of law, this Honourable Court can grant the Plaintiff/Applicant leave to amend its pleadings and at the same time re-open its case and call further witness at this stage of judgment."**

The submissions made on the above issues forms part of the Record of court to the effect that on the materials and principles of law made out by several judicial authorities, no valid case has been made out by Applicant for either the reopening, recall and amendments of its pleadings and that the application must thus fail.

The 3rd Defendant/Respondent on its part filed a five(5) paragraphs counter-affidavit in opposition. A very brief written address was filed in opposition with one(1) issue raised for determination:

"Whether the Applicant would be granted the indulgence of arresting the judgment of this Honourable Court (in this suit) on the basis of a plea to

introduce evidence which was available to the Plaintiff even before the commencement of this suit."

The point made here is simply that the extant application simply seeks to arrest the pending judgment of this court which is unknown to law and extremely prejudicial in view of the fact that the document now been sought to be tendered has been available since 2005 but that the Applicant did not obtain same until at this very late stage. The court was urged to dismiss the application.

On the part of the 4th Defendant/Respondent a four(4) paragraphs counter affidavit was filed in opposition together with a written address in which one issue was raised as arising for determination:

"Whether from the facts and circumstances of this case, the Plaintiff/Applicant is entitled to the reliefs sought."

The submissions made equally form part of the Record of Court is to the effect that on the facts and principles, governing the grant of applications of this nature that the Applicant has not made out a case allowing for the grant of the application to reopen the case; recall its witness and bring in fresh evidence and to amend its pleading. The application it was argued cannot be availing.

The 5th Defendant/Respondent similarly filed a counter-affidavit of five(5) paragraphs in opposition. A brief written address was filed in compliance with the Rules of Court in which one(1) issue was raised for determination thus:

"Whether or not the court can exercise its discretionary powers in favour of the Applicant to grant this application when the matter has been adjourned for judgment."

Submissions were similarly made on the above issue which also forms part of the Record of Court. The point was similarly made that no case has been made out on the materials supplied by Applicant and legal principles to allow for the grant of the application on terms as sought by Applicant.

At the hearing, counsel to the Plaintiff/Applicant relied on the paragraphs of the affidavit in support and the further affidavit and adopted the submissions in the written addresses in urging the court to grant the application.

On the other side of the aisle, all the Defendants each respectively relied on the contents of the counter-affidavit filed and adopted the submissions in their written addresses in urging the court to dismiss the application.

I have here carefully and insightfully read and considered all the processes filed on both sides of the aisle and the issue to be resolved is whether the court should grant the application, to (1) set aside the order made on 14th July, 2020 fixing the case for Judgment (2) reopen the case of Plaintiff and recall its witness and finally (3) Amendment of its pleadings.

These set of reliefs and the application obviously must be determined or resolved within the template of fairly settled principles governing the grant of the reliefs as highlighted by counsel on both sides of the aisle in their briefs or written submissions.

I will start with the Relief seeking to set aside the order made on 14th July, 2020 fixing the case for judgment. I will then treat the question of amendment before situating whether there is indeed factual or legal basis to allow for the reopening of the case and recall of a witness to lead fresh evidence predicated on the amendment.

Before dealing with these issues, let me state that this case has a fairly chequered history. I will not clutter this Ruling by unnecessarily recounting the interjections that has served to delay the proceedings and ultimately the conclusion of this for nearly a decade. In the judgment to be shortly delivered, I have giving in some detail the rather unfortunate trajectory and history of the case. The only point to state is that this is a 2009 matter filed over ownership of a plot of land. After several faltering steps, the matter was finally coming to an end when parties adopted their final written addresses on 14th July, 2020 and the matter was adjourned for judgment on 12th September, 2020. This application as can be seen was filed on 1st September, 2020 barely some days to the final judgment and conclusion of this matter in this court subject, of course to Appeal(s) before the Superior Courts in the event of dissatisfaction with the Judgment of Court.

This brief background facts provides a template to situate the basis and justice of the reliefs sought.

Now with respect to setting aside of the order made on **14th July, 2020** fixing the case for judgment, let me state the settled principle of general application that there are indeed grounds on which a court can properly set aside its decision or a decision of a court of coordinate jurisdiction. These grounds abound in a legion of authorities of our superior courts. It is however important to state that the exercise is not one lightly done and it is not based on flimsy and or whimsical grounds. This is so because generally when a court makes an order on a particular matter or issue, it ceases to exercise further power(s)in dealing with the same matter or issue. In legal parlance, the court is said to be functus officio in the case with respect to that matter or issue. Therefore, the steps to reverse or set aside the order(s) does not fall within the jurisdictional sphere of the same court but that of the Superior Court of Appeal.

On the authorities, there are however few identified situations where the court can under its inherent powers set aside its order(s) or judgment as follows:

(a) When judgment or order is obtained by fraud or deceit. Such judgment can be impeached or set aside by means of an action which may be brought without leave.

(b) When the judgment or order is a nullity and the person affected by the order is entitled ex *debito justitiae* to have it set aside.

(c) When it is obvious that the court was misled into given judgment under a mistaken belief that the parties consented to it.

(d) Where the judgment or order was given in the absence of jurisdiction.

(e) Where the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication.

See **Abana V Obi (2005) 6 NWLR (pt.920) 183 at 203; Ojiako V Ogueze (1962) 1 SCNLR 112; (1962) 1 All NLR 58; Craig V Kanseen (1943) KB 256; Agunbiade V Okunoga (1961) All NLR 110; Edem V Akampka Local Government (2000) 4 NWLR (Pt.651) 70; Igwe V Kalu (2002) 14 NWLR (Pt.787) 435.**

The key question here is whether the Applicant disclosed any of the above streamlined points to allow the Court set aside the decision of 14th July, 2020? From the entirety of the extant affidavits filed by the Applicant, none of the above scenario or circumstances allowing for the setting aside of the order of 14th July, 2020 was identified or indeed used as a pivot to predicate the application to set aside the order made on 14th July, 2020 fixing the case for judgment. If none of the above situations has been identified by Plaintiff on the materials to situate the legal validity of the setting aside order, the implication is that the relief is compromised *ab initio.* Where there are no facts in an affidavit to support or justify the grant of a particular relief, or where the facts are weak, feeble and or tenous, that would amount to a failure of proof. See **A.G. Anambra State V. A.G. Fed (2005)AII FWLR (pt.268)1557 at 1611; 1607G-H.**

When the fact of the age of this matter is added to the admitted facts of this case particularly the fact that the Plaintiff has been given every opportunity to present its grievance in what is certainly a particularly very long drawn out proceedings; the fact that the document now sought to be produced if the case is reopened is a document purportedly issued in 2005 well before the case was filed in 2009 but now sought to be used 15 years later when judgment is just about to be delivered all points irresistibly to the complete absence of bona fides in the conception of the application which desecrates clear and settled norms and principles of fair hearing and justice. The bottom line is that nothing was furnished putting the court in a commanding height to grant **Relief 1.**

I note that all Defendants made extensive submissions on the fact that the import of **Relief 1** on the application is to arrest the judgment of the court. For me, I am not enthused by these submissions and I am not prepared to expand the remit of the application beyond the reliefs as captured on the motion paper. There is no prayer or relief therein seeking to arrest the judgment of this court and I therefore will not engage in any idle exercise of speculation with respect to the correct import of the Relief.

I think the issue of the availability of any motion seeking to Arrest judgment of a court has now been settled in our jurisprudence. On the authorities, it is a process unknown to our Rules of Court and at all times incompetent. See **Newswatch Comm. Ltd V. Attah (2006)12 N.W.L.R (pt.993)144 at 179 F-G; Ukachukwu V. P.D.P (2013)LPELR-21894(SC).** We must therefore not suffer ourselves to be

detained by the proposition of arrest of judgment. Our jurisprudence on hearing of applications has certain fixed dynamics; one of which is that all applications filed, and whatever its merits must be heard and determined. This application as filed falls or rises based on the strength of the quality of facts supplied and the principles governing the grant of same. I leave it at that

This now leads to the consideration of the question of Amendment. As stated earlier, the issue will be determined first before the issues of reopening of the case and recall are considered as the success of the relief of amendment has significant bearing on the latter reliefs because it is only if the amendment is allowed to bring in the document that a window of opportunity then arises to reopen the case and allow the recalled witness tender this new document now being sought to be put in evidence.

Now by the clear provisions of the Rules of Courts, the court may at any stage of the proceeding allow either party to alter or amend its pleadings in such manner and on such terms as may be just for the purpose of determining the real question in controversy between the parties. See **Adekeye V. Akin-olugbade (1987)3 N.W.L.R (pt 60)214.**

The wide powers which the court may exercise in granting amendments cover amendments sought during, before and after trial of an action before judgment and even after judgment has been reserved. See **Okafor V. Ikeanyi (1979)3-4 SC 99 at 144.** Different considerations and principles determine how the court exercises or grants this indulgence at whatever point the application is brought.

An amendment is therefore nothing but the correction of an error committed in any process, pleading or proceeding which is done either as of course or by consent of parties or upon notice to the court in which the proceeding is pending. **Adekeye V. Akin-Olugbade (supra).**

The primary basis upon which the courts allow an amendment of pleadings is to ensure that a court determines the substance and or justice of the case or grievance that has being brought to court for judicial ventilation and adjudication. The courts have over time therefore always taken the positive and salutary stand or position that however negligent or careless the errors or blunders in the preparation of court processes and we must concede that these happen regularly, the proposed

amendment ought to be allowed, if this can be done without injustice to the other side or the adversary.

Judicial authorities are settled on the point that the inherent power of the court to amend pleadings is not mechanically applied. Each case must be considered on its merit. The court must consider the attitude of the parties, the nature of the amendment sought in relation to the main suit, the questions in controversy, the time factor, the stage at which the proceedings had reached and indeed, all the circumstances surrounding the case. See **Nigerian Dynamic Ltd V. Emmanuel Dumbai (2002)15 N.W.L.R (pt.789)139 at 154.** Let me also call in aid the case of **Laguro V. Toku (1992)2 NWLR (pt.223)278,** where it was held that in the exercise of its power to amend a pleading, the court is guided by the following principles namely:

a) **The consideration of the justice of the case and the rights of the parties before it.**

b) **The need to determine the real question or questions in controversy between the parties.**

c) **The duty of a judge to see that everything is done to facilitate the hearing of any action pending before him and wherever it is possible to cure and correct an honest and unintended blunder or mistake in the circumstances of the case and the amendment will help to expedite the hearing of the action without injustice to the other party.**

d) **If the court is an appellate court, the need to amend the record of the trial court, so as to comply with the facts before the trial court and decision given by it in order to prevent the occurrence of substantial injustice.**

e) **Amendments are more easily granted whenever the grant does not necessitate the calling of additional evidence or the changing of the character of the case and in that aspect no prejudice or injustice can be said to result from the amendment. See also Wiri V. Wuche (1980) 1-2 S.C. 12; Afolabi V. Adekunle (1993) 2 SCNLR 141; Akinkuowo V. Fafimoju (1965)NWLR 349.**

I have deliberately and *in extenso* set out the above principles governing the grant of an amendment of pleadings. The task before me is to apply the above principles

to the facts of this case guided by the imperatives or dictates of justice and ensuring that parties have a fair platform to present their grievances. The fundamental underpinning philosophy behind amendments, for me, is the avoidance of injustice and prejudice. I had earlier given some relevant resume of the facts of this case. I will not repeat myself but they equally have resonance in the consideration of this Relief for amendment. I shall here take my bearing from the affidavit of applicant.

By **paragraphs 3(a) and (b**), the Applicant captured the crux of the grievance submitted for resolution in the extant case. The case bordered on the legality of the revocation of the plot granted to Plaintiff vide **Exhibit A** (certificate of occupancy over plot 1318 with 1.78ha); the validity of the subdivision of plot 1318 and allocation to some Defendants and to Plaintiff vide **Exhibit B** (certificate of occupancy over plot 3198 with 5.223.77m^2 dated 25th November, 2005). These exhibits and many others were all duly tendered by Plaintiff and all parties had every opportunity to present their side of the grievance with respect to the above contested assertions in the nearly eleven(11) years the case lasted up to this point where judgment has been set down for delivery.

The case of Applicant in the affidavit in support vide **paragraphs 3c-k, n and o** is that recently, they came across, **another** Certificate of Occupancy **dated 25th November, 2005** over plot 1318 with 1.82ha which was annexed as **Exhibit C.**

The 1st and 2nd Defendants have in their affidavit stated that this later Certificate of Occupancy (C/O) **Exhibit C** was fraudulently obtained by the Plaintiff as it was never issued to them. Even without going into the merits of the allegation of whether fraud was proved or not, the Applicant in paragraphs 3(n) and (o) stated as follows:

"**n): That Exhibit C, has been in the custody of 1st and 2nd Defendant and was not disclosed, made known or available to the Plaintiff/Applicant.**

o): That Exhibit C, was just discovered after the matter was adjourned for judgment and its existence was never made available to us by those in authority."

The above averments are clear. The Applicant even on **Ground 4** upon which the application is predicated on the motion paper unequivocally accentuated this

position in the following terms: **"That the document has been in the custody of the 1st and 2nd Defendants who never made it available when same was requested for years ago."** If the 1st and 2nd Defendants **"never made this C/O available"** to Plaintiff and the document was only **"discovered after the matter was adjourned for judgment"** then it is difficult to situate the relevance and materialty of the C/O in the context of the clear dispute streamlined in paragraph 3a & b of the affidavit. **Relief 1** of Plaintiff's Reliefs and alluded to in paragraph 3a is specific to the effect that the revocation of C/O of Plot 1318 with 1.78ha to Springfield Hospital and Clinic was illegal, null and void.

The presence or absence of this allegedly newly discovered C/O or **Exhibit C** over Plot 1318 with **1.82h.a** which is far beyond the 1.78 hectares covered by **Exhibit A** and which it must be stressed was never issued to Applicant has absolutely no utility value in the resolution of the question of the validity of the revocation of the **C/O over Plot 1318 with 1.78ha**. The extant **Exhibit C** clearly covers a far wider expanse of land than the land subject of **Relief 1** and indeed has no bearing with **Relief 1** of Plaintiff's claim or any of the Reliefs sought by Plaintiff which all border or has root in plot 1318 with 1.78ha.

Now with respect to the redesignation and issuance of part of the plot to Plaintiff vide **Exhibit B** with new plot **No.3198** with a size of **5,223,77m^2**, this plot allocation is dated 25th November, 2005 just like the newly discovered **Exhibit 'C'** but as the Applicant admitted, the **C/O** of the redesigned plot **(Exhibit B)** was what was given to them and not **Exhibit C** by the issuing authorities, the 1st and 2nd Defendants. The duty or obligation to issue or grant any title document where an Applicant has fulfilled all legal requirements to be issued or granted same is exclusively that of 1st Defendant. It is therefore really difficult to situate the legal or factual basis of the attempt to now expand and completely alter the remit of Plaintiffs grievance to factor a document that was not issued or given to them and which has no nexus with the crux of the dispute streamlined on the pleadings.

Most importantly, the Applicant has again in **paragraphs 3(k)-(m)** streamlined in great details the **similarities** and **differences** between the two documents indicating that they are completely **different allocations** thereby subtly conceding to the obvious truth that to allow this new document in now will completely change or alter the character of the case**.**

Again, in the context of the precisely streamlined dispute, it is difficult to situate the role or place of the newly discovered **Exhibit 'C'** in the context of the validity of the redesignation carried out by 1st and 2nd defendants after the revocation of **Exhibit A.** This then undermines completely the amendments sought vide paragraph 3(s) of the affidavit of Applicant as follows:

"That the paragraphs to be included in the pleading will come immediately after paragraph 40 and 41(g) of the Plaintiff's further Amended Statement of Claim filed on 3rd February, 2017, to read thus:

After paragraph 40:
The 1st and 2nd Defendants after regularization exercise had earlier issued a certificate of occupancy in favour of the Plaintiff. The said Certificate No. 18cfw-430cz-7083r-3aou-20, file No.MISC51804 issued in the name of Ekocorp Plc dated 25th day of November, 2005, earlier than the one initially released to the Plaintiff is hereby pleaded and shall be relied upon at the trial. The 1st and 2nd Defendants are put on notice to produce the original at the trial and

After paragraph 41(g):
An order of the Honourable Court directing the 1st and 2nd Defendants to release the original Certificate of Occupancy No.18cfw-430cz-7083r-3aou-20, file No. MISC 51804 issued in the name of Ekocorp Plc dated 25th day of November, 2005 to the Plaintiff; same having been prepared, signed and ready for dispatch and made earlier than the one initially released to the Plaintiff."

Putting the above proposed amendments vis-a-vis the original pleadings and evidence led and indeed the entire circumstances of this case, I do not see how these amendments can escape accusation that they were designed to cause prejudice or injustice to the Defendants by seeking to alter in a significant manner the tenor and character of the case of Plaintiff built up in the last 10 years and then seek to reopen the case, call additional evidence and introduce these new facts as adumbrated above. These new facts never existed and evidence of these facts never given on Record to legally form the fulcrum of any amendment.

Let me perhaps underscore in some detail the point that this document even projects a completely inconsistent position to that underscored in the pleadings. By **Relief (F)** of the substantive claim, the Applicant seek for an order of court mandating the 1st and 2nd Defendants to issue to them a new C/O over the revoked **plot 1318 with 1.78ha**. This prayer is clear and specific.

The proposed new C/O sought to be brought in now, covers a wider expanse of land than even the revoked plot and this then begs the question as to what will now be the precise identifiable plot Plaintiff lays claim to if this new document is added to the existing dynamic. Will it then mean that they will jettison Relief F and seek a new pronouncement on the new C/O with a wider expanse of land beyond that revoked which is the crux of this dispute. If that is what they want as borne out by the proposed amendment vide paragraph 41(g) (supra), the conundrum then is that there is no dispute or issue joined before me with respect to the revocation of any **plot with 1.82ha**. This then explicitly show that this is indeed a new cause of action which completely upturns or changes in the fundamental respects the entire complexion of the case of Plaintiff and undermines *ab-initio*, the prayer for amendment. As earlier alluded to, it is settled that an amendment that is designed to create a suit that was not in existence is not permissible. See **Ehidimhen V. Musa (2000)8 N.W.L.R (pt.669)540 at 567E**

The point must be made clear again as alluded to earlier, that amendments can be granted even on appeal but different legal considerations apply at whatever stage the application is brought. An application for amendment brought before the hearing of a case is a stage where it is even possible to effect nearly any manner of amendment. It seems to me however that as a case progresses in court, the likelihood of prejudice increases and the standards for grant of amendment is significantly heightened and the court scrupulously considers applications at such late stage with great circumspection to avoid granting an undue and unfair advantage to the applicant. In this case, the application is clearly brought after judgment has been reserved. In **Concord Press Ltd & 2 Ors V. Obijo (1990)7 N.W.L.R (pt.102)303 at 305 and 316,** the Court of Appeal instructively stated as follows:

"An application for amendment of pleadings could be brought at any time before judgment is delivered but where the application is brought very late in the proceedings, such as after the close of Plaintiff's case or at the end of the

case of the Defendant, the court is entitled to consider <u>whether evidence had been led at the trial which goes to support the proposed amendment</u>. Where such evidence has been led, an amendment to the pleadings ought to be granted to avoid injustice being caused to the application." (underlining supplied).

At this point as streamlined above, the court looks more at the state of the evidence than anything else. Where an amendment has become imperative by reason of variance between the statement of claim and the evidence adduced at the trial by the Claimant, the court has always granted it even after the completion of trial and Judgment reserved. See **Shell Petroleum (Nig) Ltd V. Ambah (1999)3 N.W.L.R (pt.593)1 at 10G-H.** In this case, it is obvious there is no evidence already in which the proposed Amendments can be based. This clearly then explains the filing of a new "**proposed further and better amended statement of claim"** vide **Exhibit D** and **"proposed Plaintiff's additional witness statement on oath"** vide **Exhibit E** by the Plaintiff/Applicant.

At the risk of sounding prolix, the facts in these above mentioned processes are therefore completely new facts raised and targeted at expanding the frontiers of the dispute beyond that streamlined on the pleadings and on which evidence has already been led at trial. The emphasis here at this very late stage of judgment is on **granting amendments to meet evidence already led.** To do otherwise will be to unfairly prejudice the adversaries. Indeed to grant this application at this very late stage is to further elongate the proceedings that has been in court for over a decade and truncate the delivery of the judgment. There will be no end to the trial and adjudicatory process if applications for Amendment of this nature are allowed. See **Celtel Nig (Nig) Ltd V. Econet Wireless Ltd (2011)3 N.W.L.R (pt.1233)156 at 167-168 H-B.**

As a logical corollary, an amendment as demonstrated in this case which will not materially assist the Applicant in view of the evidence adduced will be an unnecessary and useless exercise. See **Adetutu & Ors V. Aderohunmu (1984)SCNLR (vol.1)515.** The proposed amendments here are completely redundant with no bearing to the issues already streamlined on the pleadings and on which evidence has been led on both sides of the aisle.

As I round up, let me call in aid the following decisions of the Supreme Court. In **Adekeye V. Akin-Olugbade (supra),** the Apex Court identified five(5) grounds upon which an amendment to the pleadings may be refused. These are (i) where the amendment being sought is being made mala fide (ii) where the Amendment would cause unnecessary delay (iii) where the amendment would in any way prejudice the opposite party (iv) where the amendment is quite irrelevant and useless and (v) where the amendment would merely raise technical issues. See also the case of **Celtel (Nig) Ltd V. Econet Wireless Ltd (supra).**

In **H.I. Iyamabo V. Mr Mavis Omoruyi (2011)26 WRN 87,** the Apex Court instructively stated thus:

"Justice demands that in order to determine the real matter in controversy, pleadings may be amended at any stage of the proceedings, even in the Court of Appeal or this court (Supreme Court) to bring them in line with the evidence already adduced; provided the amendment is not intended to overreach and the other party is not taken by surprise and the claim or defence of the said other party would not have been different, had the amendment been averred when the pleadings were first filed. Per Akpata, JSC in Laguro V. Toku (1992)2 NWLR (pt.223)278; (1991)2 SCNJ 201.

A court of equity should never allow a cunning or crafty application to lord over an amendment sought mala fide, at the detriment of the adverse party. In order to ensure that justice is done to the parties, the court should open its eyes wide and with a meticulous and searching mind comb through the entire application. Per Niki Tobi, JCA (as he then was) in Aina V. Jinadu (1992)4 NWLR (pt.233)91. A refusal will be inevitable, especially if it is designed to overreach or outmanoeuvre the adverse party with the aim of wining the victory at all cost."

The extant relief or prayer on amendment is mortally affected by the strictures in the above decisions. Issues and facts in dispute have been precisely streamlined on the existing pleadings and evidence led on all sides. This process it must be underscored took nearly a decade. The amendment sought here at this very late stage is clearly overreaching and is not availing.

With the failure of the Relief on Amendment, it goes without saying that the relief seeking to **reopen Applicant's case** to recall their witness and to tender the newly discovered document predicated on the Amendment must necessarily fail. Without the Amendment, there is no factual or legal basis to situate the reopening and recall of their witness to tender the allegedly newly discovered document. Similarly the prayer deeming these aforementioned processes as properly filed and served must also as a consequence of the failure of the Relief on amendment equally fail.

In the final analysis, the Plaintiff/Applicant has not made out a case for the grant of the extant application and the Reliefs sought. The Application accordingly fails and it is hereby dismissed.

……..
Hon. Justice A.I. Kutigi

Appearances:

1. **Ademola Adewoye, Esq., with Samuel Nwokere Esq., for the Plaintiff/Applicant.**

2. **P.T. Akan, Esq., with K.J Omang, Esq., for the 1st and 2nd Defendants/Respondents.**

3. **O.M. Uwaifor, Esq., for the 3rd Defendant/Respondent**

4. **Audu Anuga, Esq., with Ginika Ezuike (Miss) and Ochanyi Ochigbo, Esq., for the 4th Defendant/Respondent.**

5. **A.C. Ozioko, Esq., for the 5th Defendant/Respondent.**