

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE BWARI JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA**

SUIT NO:FCT/HC/BW/CV/120/2020

MOTION NO: M/7959/2020

BETWEEN:

IKENGA IMO UGOCHINYERE

APPLICANT

AND

1. HON. FEMI GBAJABIAMILA
2. THE HOUSE OF REPRESENTATIVES
3. THE CLERK OF THE NATIONAL
ASSEMBLY
4. HON. HENRY NWAUBA
5. INSPECTOR-GENERAL OF POLICE
6. DIRECTOR GENERAL OF THE STATE
SECURITY SERVICE

RESPONDENTS

RULING

DELIVERED ON THE 15TH FEBRUARY, 2021

The Applicant herein, by a motion on notice dated 24/6/20 and filed on 25/6/20. beseeched this Honourable Court seeking for the following orders:

"1. An Order of this Honourable Court granting leave for the Applicant to amend his Application for enforcement of his fundamental Rights by adding additional grounds and reliefs in the statements to the Application to wit:

New grounds:-

- a. That the arrest and detention of the Applicant from the 18th day of June, 2020 to 22nd June 2020 against a subsisting order of this Honourable Court on the instigation of the 1st to 4th Respondent is a breach of Applicant's fundamental right, illegal, unconstitutional and of no effect whatsoever.
- b. That the Applicant is entitle to damages and public apology in two national dailies for his unlawful and illegal arrest and detention against a subsisting order of this Honourable court on instigation of the 1st to 4th Respondents despite subsisting court order restraining them from taking any further action.

New Reliefs:

- i. An order of the Honourable Court declaring the arrest of the Applicant from the 18th day of June 2020 to 22nd day of June 2020 by the 5th Respondent against the explicit order of this Honourable Court made on the 3rd day of June, 2020 on the instigation of the 1st to 4th Respondent is a bread of the Applicant's fundamental right, illegal, unconstitutional and of no effect whatsoever.
 - ii. An order of the court directing the 1st to 5th Respondents to pay the Applicant the sum of N500,000,000:00 (Five Hundred Million Naira) damages and public apology in two national dailies for illegal and unlawful arrest and detention of the Applicant by the 5th Respondent against the subsisting order of this Honourable court on the instigation of the 1st to 4th Respondents.
2. An Order of the Honourable court granting leave to Applicant to file further affidavit in support of the proposed amended application for

enforcement of Applicant's fundamental right and amend the written address to accommodate the new grounds and reliefs.

3. An order of this Honourable Court deeming the separate copies of amended Application together with the supporting affidavit and written address already filed and served as properly filed and served the filling fees having been paid."

The motion is supported by a 13 Paragraph affidavit deposed to by the applicant, and thereafter annexed as Exhibit 'A' the proposed amended processes and equally a written address.

The 1st Respondent on his part filed a counter affidavit of 16 paragraphs together with a written address which he adopted in opposing the application and urged me to refuse the application. The 5th Respondent filed a counter affidavit of 10 paragraphs deposed by one Inspr Joshua Yohanna on 9th July, 2020.

I have thoroughly read the foregoing processes and carefully considered the arguments canvassed by the parties therein. The case of the Applicant in the instant application is that new facts have emerged upon his arrest and detention by the 5th Respondent on the instigation of the 1st to 4th Respondents and these facts were not available at the time of filling the Application for enforcement of his fundamental Human Rights; that there is need to amend the statement in support of the Application in order to accommodate these new facts and new reliefs arising from his arrest and detention.

It is also the contention of the Applicant that these additional facts were made available to counsel after the release of the Applicant from detention and the amendment sought is not intended to delay or put the other

parties in any adverse position; rather same will lead to a true determination of a 1 the issues in this suit. Relying on the case of IT A & ANOR V. DADZIE (1999) LPELR 10108. learned counsel further submitted that the new facts will not any way change the character or subject matter of this case and finally urged this court to grant the reliefs sought.

The 1st Respondent on i s part contends that the application "introduced new, strange, and extraneous issues and facts that are to a great extent inconsistent with the earlier originating notice..." which made the pleadings radically different and prejudicial. The 1st Respondent also asserted that the new facts will overreach him and therefore such new facts or issues cannot be introduced by way of amendment as it contravenes the provisions of Order VI Rules 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009.

It was further contended by the 1st Respondent that the new facts are unrelated to the facts and the reliefs upon which the suit is based and these facts occurred after the institution of the suit. The 1st Respondent concluded by stating that the amendment is an abuse of the process of the court, brought mala fide and will occasion a miscarriage of justice. Reference was made to the cases of Adekeye & ors v. Akin-Olugbade (1987) LPELR - 104, Kalu & Ors v. kalu & Ors (2018) LPELR - 44266, Akaninwo & ors v. Nsirim & Ors (2008) LPELR-321 etc.

On its part, the 5th Respondent filed its counter affidavit of 10 paragraphs which was deposed by one Inspr Joshua Yohanna on 09/07/2020. By its counter affidavit, the 5th Respondent is contending in the main that it had filed a notice of preliminary objection challenging the suit on ihe grounds inter alia that the affidavit in support of the substantive suit was not

personally deposed to by the Applicant and that the Applicant had not responded to the said notice of preliminary objection. The 5th Respondent also asserted that the instant application is intended to cure the defects in the Applicant's originating motion on notice; which will overreach the 5th Respondent. That no new facts emerged and therefore this application was not brought in accordance with the extant Rules of the court.

Learned counsel further argued that the High Court of the Federal Capital Territory (Civil procedure) Rules, 2018 do not apply in the circumstances as Order VI of the FREP Rules fully provided for the procedure for an amendment; which has not been followed as, according to him, the application was not supported by a written address. Reliance was placed on the cases of Chief Sunday Eyo Okon Obong v. Patrick Leo Edet (2008) Legalpeadia CA 1105, Onyekwuluje v. BSG (2015) All FWLR (Part 809) 842, 855 and Uti v. FRSC (2001) 1 CHR.

The 5th Respondent further argued that an amendment will not be allowed which will enable a party to set up a new case different from the one already pending or one that will overreach the Respondent's defence and finally urged the court to dismiss the Application.

In response to the 5th Respondent's counter affidavit, the Applicant filed a further affidavit of 9 paragraphs deposed to by the Applicant himself on 14/07/2020 wherein it is averred that despite pending and subsisting orders of the court, the Applicant was arrested and detained and that it was these new facts that necessitated the present application for an amendment. It is also averred in this further affidavit that the Application was not intended to cure any defect in the case of the Applicant because, the Applicant had already filed and served his motion for amendment on

25/06/2020 before the 5th Respondent subsequently filed its Notice of Preliminary Objection one day later on 26/06/2020.

In his Reply on Points of Law filed alongside the said further affidavit on 14/07/2020, the Applicant submitted that he has complied with the law and that the amendment was predicated on new facts arising from the disobedience to the orders of the court by the Respondents. Furthermore, learned counsel submitted that the fact that the 5th Respondent had filed any Notice of Preliminary Objection does not stop the Applicant from taking steps to remedy any issue raised in such a preliminary objection. Reliance was placed on the cases of A. N. MOHAMMED PETROLEUM LIMITED & ANOR V. AFRIBANK NIGERIA PLC (2006) 17 NWLR (PART 1007) 131, 160-161H-C, SHANU & ANOR V. AFRIBANK PLC (2000) 13 NWLR (PART 684) 392, 404F AND NABORE PROPERTIES LTD V. PEACE-COVER NIG LTD & ORS (2014) LPELR - 22585; Finally, the Applicant urged the court to grant the application.

Before I conclude with the evaluation of the case of the respective parties, I must observe that the Applicant had relied on his Further Affidavit to the 5th Respondent as his response to the 1st Respondent.

It is important to emphasize this because, the 1st Respondent has put up a somewhat inconsistent appearance coupled with haphazard filing of processes thereby making it indeed difficult for any response. This is clear from the processes in the records of the court which shows amongst others that on 15/06/2020 Mrs. Basse E. J. Ntuk, Esq. filed a Memorandum of appearance on behalf of the 1st - 4th Respondents. This was also followed with a Counter Affidavit to the substantive Suit filed by the same counsel for the 1st - 4th Respondents on 23/06/2020. Subsequently, the law firm of Kayode Ajulo & Co also filed a Notice of Preliminary objection on

10/7/2020, this time for the 1st and 2nd Respondents only. This was followed with a counter affidavit to the substantive suit filed on 10/7/2020 also for the 1st and 2nd Respondents only.

Presently, in respect of this Application for an amendment, the same law firm of Kayode Ajulo & Co has now filed; a Counter Affidavit to the present motion on 14/7/2020 where it now represents the 1st Respondent ONLY. The said Counter Affidavit was regularised on by a motion for extension of time moved and granted on 12/11/2020. This inconsistent representation is, to say the least, extremely tardy.

Be that as it may, this court has painstakingly considered the submissions of parties and the underlying issues of controversy and is of the firm opinion that a sole issue as summarised hereunder is determinative of this application thus:

“Whether having regards to the facts and circumstances of this case, it will be in the interest of justice to grant this application”?

In resolving this issue, shall refrain from making any finding or in any other manner delving into the substantive issue, at this stage.

Indeed, parties are ad idem on the principle governing amendment of pleadings. The court has consistently settled this and in the case of JESSICA TRADING CO. LTD V. BENDEL INSURANCE CO. LTD (1993) 1 NWLR (PART 271) 538 AT 547 the Supreme Court held per Kutigi, JSC (as he then was of blessed memory) held as follows:

“So the crucial question at any given moment is - under what circumstances will leave to amend the writ and or pleadings be granted?”

The guiding principle of cardinal importance is that generally speaking all such amendments ought to be made for the purpose

of determining the real issue in controversy between the parties or correcting any defect or error in the proceedings. (See G.L. Baker Ltd v. Medway Building & Supplies Ltd (1958) 1 WLR 1216; A.U. Amadi v. Thomas Applin & Co Ltd (1972) 1 All NLR 409). The Court therefore must in the process consider the materiality of the amendment sought in deciding whether or not to grant it, and will not allow an inconsistent or useless amendment. ...So as soon it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is a matter of right on his part to have it corrected if it can be done without injustice. ”

Now, by the extant suit the Applicant is seeking for the enforcement of his fundamental rights based on the fact that his rights are being and/or likely to be infringed by the Respondents. To forestall the breach of these rights, the Applicant applied vide a Motion Ex parte whereupon tl is Court on 03/06/2020 made an interim order inter alia restraining the 5th and 6th Respondents from further “arresting or detaining” the Applicant pending the determination of the Motion on Notice.

By the supporting Affidavit to the application for amendment, the Applicant has stated that in the intervening period after this Court made the said interim order, new facts relating to this case arose; which new facts arose from the supposed arrest and detention of the Applicant from 18/06/2020 to 22/06/2020, despite the order of this Court made on 03/06/2020. Clearly, these intervening new facts of arrest and detention arose out of and in connection with the subject matter of this Suit in respect of which

the court had earlier made an interim order restraining the 5th and 6th Respondents.

Now by the amendment sought in this application, the Applicant has sought to raise these new set facts leading to his subsequent alleged arrest and detention as well as seek reliefs consequentially resulting therefrom. To my mind, this amendment is merely to include and bring to the fore the issues of the said arrest and detention of the Applicant in respect of the subject matter already before this court. The new facts arose out of the same subject matter and without it been brought to the attention of the court, by way of the present amendment, there is no way this court can effectively determine the issues in controversy between the parties.

By the provisions of Order VI Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, this court may allow a statement in a fundamental rights action to be amended simpliciter. Furthermore, it is settled law that whether an amendment ought to be granted is a matter within the discretion of the court, taking into account factors such as whether the amendment sought is not mala fide; whether it will change the character of the case etc.

Now, does this new set of facts arising from the same subject matter, which the Applicant had earlier anticipated and approached the court for interim protection, constitute extraneous facts or even radically change the nature and character of the case? I think not. As rightly done, the Applicant was well within his legal rights to amend his pleadings and raise these facts. The materiality of the amendment is not in doubt as the subsequent alleged act of arrest or detention arose out of the same subject matter as the substantive originating motion on notice.

It must also be emphasised that the application for amendment was also brought timeously, before the hearing of the substantive suit.

From the facts before this court, these said new facts are neither inconsistent with the pleadings or the case of the Applicant nor do they change the character or nature of the case brought before this Court by the Applicant. I so hold.

On the issue of pendency of the Notice of Preliminary Objection of the 5th Respondent, as submitted by learned counsel for the Applicant, the point has been judicially settled along the line of the cases of A. N. MOHAMMED PETROLEUM LIMITED & ANOR V. AFRIBANK NIGERIA PLC (2006) 17 NWLR (PART 1007) 131, 160-161H-C, SHANU & ANOR V. AFRIBANK PLC (2000) 13 NWLR (PART 684) 392, 404F AND NABORE PROPER! IES LTD V. PEACE-COVER NIG LTD & ORS (2014) LPELR - 22585 to the effect that the fact that an objection has been made does not preclude a party from remedying any perceived defect in his process or recommencing on a more competent footing.

The decision of the apex Court in SHANU & ANOR V. AFRIBANK PLC (2000) 13 NWLR (PART 684) 392, 404F per Ayoola, JSC is instructive and settled this point in the following regard:

“The contents n that this application should not be granted because a preliminary objection has been raised showing the errors in the process of the applicant’s appeal, is without substance. The applicant is not foreclosed by the preliminary objection from correcting those errors or stating the process afresh on a more appropriate footing.”

Also see the decision of the apex Court in the case of TSOKWA OIL MARKETING CO. V B.O.N. LTD (1002) NWLR (Pt. 777) Pp. 185-186 where

the Supreme Court held that the fact that a preliminary objection was filed showing errors in the process of an appeal did not prevent the appellant from correcting such errors or starting the process on a more appropriate footing.

This position of the Law has remained unassailable, particularly in this case where the proposed amendment was not brought mala fide or intended to overreach but predicated upon genuine new facts arising from the subject matter of the suit. I so hold.

On the 5th Respondent's contention that the instant application was not supported by a written address, I note that a written address dated 24/06/2020 was filed alongside the application. I therefore find the objection on this point to be without any iota of merit.

Consequently, I find merit in this application. I therefore order as follows:

1. Leave is hereby granted to the Applicant to amend his Application for enforcement of his fundamental Rights by adding additional grounds and reliefs in the statements to the Application as contained in the motion paper.
2. Leave is also granted to the Applicant to file further affidavit in support of the proposed amended application for enforcement of Applicant's fundamental right and amend the written address to accommodate the new grounds and reliefs.
3. The Applicant's amended Application together with the supporting affidavit and written address already filed and served is hereby deemed as properly filed and served the appropriate filing fees having been paid.

The Respondents shall be at liberty to respond to the amended Application for the enforcement of the Applicant's fundamental right in the light of this amendment.

I make no order as to cost.

This matter is set down to 14th April, 2021 for hearing of the substantive suit.

APPEARANCE

Oluwole Adaja Esq. for the 1st defendant.

The applicant not in court.

2nd to 6th respondent are absent.

Sign
Hon. Judge
15/02/2021