

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT GWAGWALADA**

**THIS THURSDAY, THE 11<sup>TH</sup> DAY OF FEBRUARY, 2021**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**SUIT NO: CV/82/2019**

**BETWEEN:**

- 1. THE REGISTERED TRUSTEES OF THE  
NATIONAL ASSOCIATION OF  
COMMUNITY HEALTH PRACTITIONERS  
OF NIGERIA**
- 2. COMRADE JUDE AKOH**  
(The President, National Association of Community Health  
Practitioners of Nigeria)
- 3. COMRADE LAWRENCE EWDRUJAKPO, ESQ**  
(The General Secretary, National Association of  
Community Health Practitioners of Nigeria)

**.... CLAIMANTS/  
APPLICANTS**

**AND**

- 1. ALHAJI MUSA KONTO**
- 2. IRABOR VICTOR O.**
- 3. JAFAR ABDULLAHI**
- 4. MUH'D YAHAYA**
- 5. ELIJAH ZAKWOYI**
- 6. BALA SALE**
- 7. ENOCH EMMANUEL**
- 8. YAKUBU A. ZAKSHI**
- 9. IBAMA ASITON A.S.**

**..... DEFENDANTS/  
RESPONDENTS**

## RULING

By a motion on notice dated 6<sup>th</sup> July, 2020 and filed on 7<sup>th</sup> July, 2020, the Claimants/Applicants seek for the following Reliefs:

- 1. An Order of court granting leave to the Applicant to amend the name of the 1<sup>st</sup> claimant on the originating summons filed on the 21<sup>st</sup> day of October, 2019 by removing the phrase “The Registered” and replacing it with the word “Incorporated” immediately preceding the word Trustee with the correct nomenclature as “INCORPORATED TRUSTEE OF NATIONAL ASSOCIATION OF COMMUNITY HEALTH PRACTITIONERS OF NIGERIA”.**
  
- 2. And for such further order or other orders as this Honourable Court may deem fit to make in the circumstances.**

The Application is supported by a 5 paragraphs affidavit with one annexure marked as **Exhibit 1**. A written address was filed in compliance with the Rules of Court in which one issue was raised as arising for determination:

**Whether the claimants have made out a case for the grant of an order amending their originating summons.**

The brief address then dealt with the settled principles governing grant of an order of Amendment and it was contended that the error in not properly identifying the names of 1<sup>st</sup> claimant was that of counsel and therefore the amendment sought here to situate the exact name of 1<sup>st</sup> Applicant should be granted in the interest of justice as the defendants will not suffer any prejudice and further that the law is settled that the mistake of counsel should not be visited on the litigant.

At the hearing, counsel to the Applicants relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in urging the court to grant the application.

In opposition, the Respondents filed a 6 paragraphs counter-affidavit together with a written address in which the issue raised by Applicants was wholly adopted.

It was contended that an Amendment in law is not granted as a matter of course and that where it is made with the intention to overreach, as in the present case, it will not be granted.

It is the case of Respondents that there is nothing to amend as the issue now sought to be rectified is a matter on which issues have been joined on the processes. That in the substantive action, the question of locus standi of 1<sup>st</sup> claimant to maintain an action against the respondents was raised as the 1<sup>st</sup> claimant is not a name known to law to the defendants as it related to the Association. That in the circumstances, there is nothing to amend as the originating process filed by applicant was fundamentally defective, incompetent and cannot be amended.

At the hearing, counsel to the respondents relied on the paragraphs of the counter-affidavit and adopted the submissions in his written address in urging the court to grant the Application.

I have carefully considered the processes on both sides of the aisle together with the oral adumbration by counsel and the narrow issue is whether the court should grant the amendment to the name of 1<sup>st</sup> claimant to reflect the “correct” name. The name of 1<sup>st</sup> claimant used on the existing process is “The Registered Trustees of the National Association of Community Health Practitioners of Nigeria” while the new name now being sought to substitute the earlier name used is “The Incorporated Trustees of the National Association of Community Health Practitioners of Nigeria”. The amendment sought is specific and relates to the use of the word “Registered” instead of “Incorporated.”

The question of Amendment is one to be settled or resolved on fairly settled principles. An Amendment properly understood is therefore nothing but the correction of an error in any process pending before a court. The primary basis upon which the courts allow an amendment of pleadings or processes 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.

In **Laguro V Toku (1992) 2 NWLR (pt.223) 278**, it was firmly established by the Apex Court that in the exercise of its powers to amend, 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 endeavoured to set out *in extenso* the above principles governing the grant of an amendment. 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.

In situating the justice of the case, I have carefully evaluated the opposition of Respondents particularly the complaint that they have raised questions in the substantive action on the locus standi of the 1<sup>st</sup> claimant as it is unknown to law and that on that basis the application should not be granted.

The critical question(s) for me is how will the respondents be prejudiced if the name of the 1<sup>st</sup> claimant is amended particularly in the context of the dispute and questions raised on the originating summons? Will the character of the issues raised be altered in a disadvantageous manner to the detriment of respondents? I have carefully evaluated the ten(10) questions raised and the Eleven (11) Reliefs sought and there is no doubt that the issues raised border essentially on the interpretation and application of salient provisions of the Constitution of the **National Association of Community Health Practitioners of Nigeria** and the propriety or otherwise of actions allegedly taken by some members in the light of the Constitution of the Association.

From the processes filed on both sides, there appears to me no confusion as to the fundamental issues involved in this case which God willing, the court will address at the appropriate time. The wrong designation of 1<sup>st</sup> claimant as sought to be rectified now clearly in my opinion will not occasion any prejudice to the respondents. It would appear to be simply a wrong use of name or a misnomer in the circumstances. It usually arises when an incorrect name is given to a person in a writ; it occurs when a mistake as to the name of a person who sued or was sued or when an action is brought by or against the wrong name or person. The correct person, in other words is brought to court under a wrong name. See **Njoku V UAC Foods (1999) 12 NWLR (pt.632) 557 at 564; A.B. Manu. & Co. Nig. Ltd V Costain (WA) Ltd (1994) 8 NWLR (pt.360) 112 at 119-120.**

In law, it is settled principle that an amendment of misnomer will be allowed where the other party is not misled or prejudiced and the guilty party shows a reasonable ground for the misnomer. See **Ibrahim V Chairman Kachia L.G. (1998) 4 NWLR (pt.546) 47 at 475 B-C.**

The use of the word “Registered” instead of “Incorporated” and in the context of the issues submitted for resolution is in my opinion a misnomer and the respondents are clearly not misled and an amendment can cure the error to the clear extent that it not overreaching or fraudulent.

The Supreme Court in **Vulcan Gases Ltd V G.F Ind. (2001) 9 NWLR (pt.719) 610 at 653 G-H** per Wali JSC (of blessed memory) stated clearly that the court possesses the discretionary power to grant an amendment to correct the name of a

party even if doing so will have the effect of a substituting a new party, provided the court becomes satisfied that the mistake to be corrected is a genuine one and not misleading.

Also in **Emespo J. Continental Ltd V C.S.R. (2006) 11 NWLR (pt.991) 365 at 377**, the Supreme Court per Muktar JSC (as she then was) stated that where a party has been sued under a wrong name, the writ could be amended by joining that party in his correct name.

It is true that the respondent may have raised the question of the locus of 1<sup>st</sup> claimant as not a proper name in law but the law is settled, and this is fundamental, that an Amendment may be granted even if it is in consequence of an objection raised by the adverse party. See **Ita V Dadzie (2000) 4 NWLR (pt.652) 168 at 182**. A suit commenced by or against a correct person in a wrong name can on application, be amended to substitute or add a proper name provided the court is satisfied that the application is made bona fide and the amendment is necessary for the determination of the real question(s) in controversy and that it will not result in injustice to the adverse party. See **Nwabueze V NIPOST (2006) 8 NWLR (pt.983) 480 at 592**.

The bottom line here as I have sought to demonstrate is that the error sought to be cured by Applicants will not cause any injustice to respondents taking into consideration the stage of the proceedings at the time of the amendment and its nature. The nature of the error is also not such that has occasioned some injury to the respondents that cannot be compensated by costs or otherwise. See **Ojah & ors V Ogboni & ors (1976) 1 NMLR 95**.

As already alluded to, the aim of an amendment is to prevent the manifest justice of the case from being defeated or delayed by formal slips which arise from inadvertence of counsel. See **Celtel (Nig.) Ltd V. Econet Wireless Ltd (2011) 3 NWLR (pt.1233) 136 at 168 B-C**.

I fully endorse the point that while an amendment is not granted as a matter of course, where it does not however occasion prejudice or injustice or it is shown that the Applicant is acting malafide, then the application will be granted in the

overall interest of justice. See **First Bank of Nig. V. M.O. Kawn & 5 Ors Co. Ltd (1999)9 N.W.L.R (pt.619)484 at 487.**

As much as I have sought to be persuaded, I am not persuaded that on the peculiar facts of this case that the amendment sought will occasion injustice to the Respondents. The exercise of discretion here appear to me such that would aid rather than hamper the course of justice. See **Oguntunde & Ors V. Chief Owolabi & Ors (2006)AII FWLR (pt.326)350 at 362.** At the risk of sounding prolix, the object of Courts is to as much as possible create an even and fair template for parties to present their grievances unfettered, subject of course to the prevailing and applicable principles, rules of practice and invaluable guidance and insight of judicial authorities.

In the final analysis, the Applicants have made out a favourable case for the exercise of the Court’s discretion. The issue thus raised by the court is answered in the affirmative. For the avoidance of doubt, it is accordingly ordered as follows:

- 1. Leave is granted to the Applicants to amend the name of 1<sup>st</sup> claimant on the originating summons filed on 21<sup>st</sup> Day of October, 2019 by removing the phrase “The Registered” and replacing it with the word “Incorporated” immediately preceding the word Trustee with the correct nomenclature as “INCORPORATED TRUSTEE OF NATIONAL ASSOCIATION OF COMMUNITY HEALTH PRACTITIONERS OF NIGERIA”.**
- 2. The Applicants are granted 14 days from today to file and serve the Amended originating summons.**
- 3. I award cost assessed in the sum of N25, 000 payable by Applicants to the Respondents.**

.....  
**Hon. Justice A.I. Kutigi**

**Appearances:**

- 1. R.O. Adakole, Esq., for the Claimants/Applicants.**
- 2. I.A. Adejemi, Esq., for the Defendants/Respondents.**