

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA ABUJA**

**ON THE 4<sup>TH</sup> DAY OF MARCH, 2021**

**BEFORE HIS LORDSHIP HON JUSTICE CHIZOBA N. OJI**  
**PRESIDING JUDGE**

**SUIT NO: FCT\HC\CV\1244\07**

**MOTION NO: M/9866/2020**

**BETWEEN:**

**AQUA OIL NIG. LTD                    ..... PLAINTIFF/RESPONDENT**

**AND**

**1. LM ERICSSON NIG. LTD                    ..... DEFENDANT/APPLICANT**

**2. NIGERIAN TELECOMMUNICATIONS LTD ..... DEFENDANT/RESPONDENT**

**RULING**

This is a ruling on a motion on notice No. M/9866/2020 filed on 18<sup>th</sup> September 2020 seeking to amend the 1<sup>st</sup> Defendant's statement of defence, and leave to file an additional witness statement on oath.

In the 11 paragraph affidavit of John Kogi, filed in support of the application, it was deposed inter alia that the proposed amendments sought to be filed are being made to bring all the relevant facts before this Honourable court.

A copy of the proposed amended statement of defence and additional witness deposition of Bimbola Igandan were attached as Exhibits JK1 and JK2 respectively.

The application was supported by a written address wherein the court was urged to grant the application pursuant to Order 25 Rule 1 of the Rules of this court.

In opposition to the application, the Claimant's counsel filed a 6 paragraph counter affidavit of Habu Irimiya Haruna wherein it was deposed inter alia that this matter had suffered undue delay on account of the 1<sup>st</sup> Defendant, and that the amendments sought will not serve any useful purpose as many of them are sought to plead evidence or embellish on allegations of facts already pleaded, and will prejudice the Claimant who has already closed its case.

In the written address in support of the application, the court was urged to refuse the application. In response to the counter affidavit, the 1<sup>st</sup> Defendant/Applicant filed a further affidavit of 5 paragraphs deposed to by John Kogi on 29<sup>th</sup> September 2020.

Mr. Yuzona for the 2<sup>nd</sup> Defendant did not file a counter affidavit. He however aligned himself with counsel to the 1<sup>st</sup> Defendant in urging the court to dismiss the application.

I have considered the affidavits before me and the written and oral submissions of learned counsel on both sides.

Order 25 Rule 1 of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018 provides that:

“A party may amend his originating process and pleadings at any time before the pre-trial conference and not more than twice during the trial but before the close of the case”. (Emphasis mine)

An amendment will not be allowed where it is brought malafide to bring in a new issue to prejudice the adverse party. It will also not be allowed where the award of damages will not be sufficient to assuage for the inconveniences caused the adverse party.

See **EMEKA IZEJIABI V EVARISTUS O. EGBEBU (2016) LPELR-40507 (CA) PG 56 paragraph C-F** per Oho JCA.

In **H.I. IYAMABOR V MRS. MAVIS OMORUYI (2010) LPELR-4225 (CA)** the Court of Appeal reiterated the dictum of the apex court in **AKANINWO V NSIRIM (2008) 9 NWLR (Pt 1093) 439** on the need to grant an amendment of pleadings provided it will not entail injustice to the other party and the party can be assuaged with costs.

In this instant case, the 1<sup>st</sup> Defendant seeks to amend its statement of defence for the first time and before the close of the case.

It is quite correct that on 22<sup>nd</sup> March 2019 when the court granted the Claimant's application to amend her statement of claim that the court granted the Defendants 14 days to effect any consequential amendments and the matter was adjourned to 15<sup>th</sup> and 16<sup>th</sup> May 2019 for definite continuation of hearing.

The 1<sup>st</sup> Defendant did not amend its processes then. However, that is not sufficient reason to refuse the application particularly as a different counsel is now handling the case of the 1<sup>st</sup> Defendant, even if from the same chambers. The inconvenience to parties can always be assuaged with costs.

I have considered the amendments sought. I do not think they will overreach other parties.

I therefore overrule the objection and grant the application of the 1<sup>st</sup> Defendant as prayed, upon award of costs to the Claimant.

Adeyele: We ask for costs of ~~₦~~100,000 for the delay occasioned by this application.

Court: I award costs of ~~₦~~20,000 in favour of the Claimant against the 1<sup>st</sup> Defendant to be paid by the next adjourned date. 1<sup>st</sup> Defendant has 7 days

from today to file and serve the amended statement of defence and additional witness statement on oath.

Matter adjourned to 1<sup>st</sup> June 2021 for definite defence.

Other parties may amend their processes and serve within 7 days from service of the 1<sup>st</sup> Defendant's amended statement of defence, if need be.

Hearing notice to 2<sup>nd</sup> Defendant.

**Hon. Judge**