

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA-ABUJA

ON THE 23RD DAY OF FEBRUARY 2021

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO: FCT/HC/CV/156/11

MOTION NO: M/7398/18

BETWEEN:

CHIEF JERRY CYRIL AGBASI PLAINTIFF/RESPONDENT

AND

**MR. LINUS DUBAS AGBASI DEFENDANT/COUNTERCLAIMANT/
APPLICANT**

RULING

This is a ruling on a motion on notice No. M/7398/18 seeking an order granting leave to the Counterclaimant to further amend his counterclaim as per the attached proposed Further Amended Counterclaim and to file one additional witness statement on oath; and for further orders.

The motion was supported by a 12 paragraph affidavit of the Counterclaimant/Applicant to which was attached Exhibit A, the proposed Further Amended Statement of Defence/Counterclaim. It was deposed inter alia that the reason for the amendment sought was the email correspondences between the Counterclaimant, the Plaintiff and political allies of the Plaintiff which he was unable to access prior to the filing of this suit and the

application, which emails are germane to his counterclaim and for which he required leave of the court to amend his counterclaim to accommodate them.

The application was supported further by learned counsel's written address urging this court to exercise its discretion favourably towards the Counterclaimant/Applicant.

Mr Agwuama Ndubuisi, learned counsel to the Plaintiff/Respondent in opposition to the application filed an 18 paragraph counter affidavit deposed to by the Plaintiff/Respondent himself. Therein it was deposed inter alia that paragraph 39A of the proposed Further Amended Counterclaim and paragraph 12 of the statement on oath for the Counterclaimant/Applicant's PW3 are the Applicant's trick of importing into his pleadings the purported cost of schedule which the court earlier rejected in evidence. That other documents mentioned in paragraph 9 of the counter affidavit are not email correspondences but documents hurriedly prepared by the Applicant to cover up lapses in their cross examination. That the amendment sought is in bad faith.

In learned counsel's written address in opposition to the application, the court was urged to dismiss the application as the amendment is sought to bring in new issues, and to cover up lapses of the Applicant in his cross examination and to introduce new evidence earlier rejected by the court.

In response the Counterclaimant/Applicant filed a 4 paragraph further affidavit on 27th February 2020 to which Exhibits A and B are attached.

I have considered the affidavits, the written and oral addresses of learned counsel on both sides.

By Order 25 Rule 1 of the Rules of this court (2018):

“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)

By his counter affidavit the Plaintiff/Respondent had deposed that the Counterclaimant/Applicant had amended his counterclaim twice before in the course of these proceedings by motions dated 14th March 2014 and 10th June 2014 and had exhausted his amendments.

However I have searched my records and I see only one amendment so far sought by the Counterclaimant/Applicant which was granted on 3rd March 2014.

The Defendant/Counterclaimant however did not file his amended Statement of Defence/Counterclaim within 7 days as ordered by the court and by motion No. M/5254/14 filed on 10th June 2014 he sought leave to file his amended counterclaim and additional witness statement on oath out of time. The Defendant's motion No. M/2617/14 filed on 14th March 2014 was struck out on 15th May 2014.

The only Amended Statement of Defence/Counterclaim and witness statement on oath were filed on 10th June 2014. Thus the Counterclaimant/Applicant has not exhausted the number of amendments he may seek.

Regarding the present application, the reason given in the affidavit in support of the application for the amendment sought is that certain emails between the Counterclaimant, the Plaintiff and Plaintiff's political allies could not be obtained by the Counterclaimant as his email had crashed and it was only early in 2018, (the year the application was filed) that he could access his email box and print out the correspondences, which are germane to his case.

I have perused the proposed Further Amended Counterclaim and I find that it is only paragraph 39(D) that is relevant to the said emails referred to, the reason given by the Applicant for the amendment sought. I hereby grant the amendment to include paragraph 39(D) of the proposed Further Amended Counterclaim.

All other amendments sought are not covered by the affidavit in support of the application and are accordingly refused.

The Applicant may file an additional witness statement on oath to cover the amendment granted.

Applicant has 7 days from today within which to file and serve his Further Amended Statement of Defence/Counterclaim and witness statement on oath.

Matter adjourned to 12th July 2021 for continuation of hearing of the counterclaim.

Hon. Judge