

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 22

CASE NUMBER : SUIT NO: CV/1749/16

DATE: :TUESDAY 30TH MARCH, 2021

BETWEEN

1. ELDER BONIFACE OYEKWE } **CLAIMANTS/**
2. SULE SAHABI SHINDI } **APPLICANTS**

AND

1. MTN NIG. COMMUNICATION LTD } **DEFENDANTS/**
2. H.I.S NIGERIA LIMITED } **RESPONDENTS**
3. A.C AMEACHI }

RULING

The Applicant approached this Honourable Court vide a Motion on Notice praying for the following reliefs:-

1. Leave to amend the Claimant/Applicant amended statement of claim by adding a new sub, paragraph i.e 4(a) as underlined in the proposed amended statement of claim attached to the affidavit to wit;

“1st Claimant shall found on his purchase receipt issued to him by the 2nd Claimant and which he also signed and which receipt evidences the consideration for Power of Attorney which relates to the transaction between the 1st and the 2nd Claimants with

respect to Plot 297 Karmo subject of adjudication in this suit”.

2. To recall the PW1 for the purpose of tendering the said purchase receipt only and,
3. To call additional witnesses who shall be by subpoena.
4. To deem the amended statement of claim as properly filed and served.
5. And such further Orders as the Honourable Court may deem fit to make in the circumstances.

In support of the application is an affidavit of 5 paragraphs duly deposed to by One Evelyn Ihuarulam, a Litigation Clerk in the Law Office of the Applicant.

It is the deposition of the Applicant that in the process of settling the pleadings of the Claimant in this case, he omitted to plead the purchase receipt issued to the 1st Claimant by the 2nd Claimant in respect of the transaction between the Claimants with respect to the sale and purchase of Plot 297, Karmo, Abuja.

That it was after PW1 was discharged that the counsel discovered that the receipt was not tendered.

That he also noticed that he need to subpoenaed the Director of Survey, FCDA Land Department or his nominee as a witness for the purpose of explaining the relationship between Plot 272 Karmo and Plot 297 vis-à-vis the survey data and plan tendered as Exhibits in this Suit.

In line with law a written address was filed wherein the issue, *whether, having regards to all the circumstances of this case, the Applicant is entitled to favourable exercise of the Court's discretion with respect to granting all the prayers*” was formulated for determination.

Arguing on the above, learned counsel submit that the purpose for amending pleadings is to prevent the court from giving Judgment from ignorance of the fact that should be known before rights are finally decided. Counsel cited and relied on ***OFFORISHE VS NIGERIA GAS CO. LTD. (2017) LPELR 42766 (SC)***.

Learned counsel submit that whenever a party to an action has detected an error in the proceedings which, if uncorrected will adversely affect his

chances, and, has by application made effort to correct such error, he should not be denied. ***NALSA & TEAM ASS VS N.N.P.C (1991)8 NWLR (Pt. 212) 652 at 676*** was cited in support of this proposition.

Counsel contended that in considering application of this nature, the overriding factor in the consideration of the application is interest of justice.

ORISAKWE & SONS VS AFRI BANK (2012) LPELR CA/J/11/2005 was cited by counsel.

Court was finally urged to grant the application in the interest of justice and fairplay.

On their part, the 3rd Defendant/Respondent replied on point of law by stating that once a document is tendered and rejected, it cannot be re-tendered again.

In this case the Power of Attorney and Deed of

Assignment were tendered and rejected in evidence on the 17th March, 2020.

Both documents contained the receipts issued for the sale of this Plot by the 1st Plaintiff.

In view of this, the amendment that is sought seeks to bring part of a document that has been rejected. Counsel rely on ***ACB LTD. VS ALH. UMARU GWAGWADA (1994) 5 NWLR (Pt. 342) 25 at 31.***

The purchase receipt sought to be brought in was part of the receipt this court rejected in evidence when Power of Attorney and Deed of Assignment were tendered with receipt. Counsel urge the court to dismiss the application.

Court:-

I have gone through the affidavit in support of the reliefs herein contained on the face of the application in view, on one hand, and the reply on point of law the other hand.

Our adjectival law leans heavily in favour of amendments and is generally against the refusal of amendments.

Although the pendulum tilts in favour of amendment, courts of law are entitled to refuse amendment in deserving cases.

Trial courts must examine the application for amendment very carefully in the light of the affidavit evidence.

The peculiarity of each case shall be considered. See *AKANINWO VS NSIRIM (2008) 1 SC (Pt. 111) 151.*

It is established that every opportunity must be afforded parties to a dispute in court to put their case fully before the court.

In a case conducted on the basis of pleadings, it certainly cannot be said that a Defendant has been allowed to put his case before the court when the opportunity to amend his pleadings has been denied him.

Refusal to allow a party amend his pleading certainly translates into refusing him the liberty to call the evidence which would have been necessary had the amendment sought being granted.

The consequence is denial to fair hearing. See *AKANINWO VS NSIRIM (2008) WRN (Vol. 20) 99 at 106 – 107, page 128 – 129, lines 40-5 CS.*

I however must be quick to mention that all cases are not the same. There are circumstances upon which application for amendment can be refused. The following are factors to be considered in granting or refusing an application for amendment.

- a. The attitude of parties.
- b. Nature of the amendment sought in relation to the suit
- c. The question in controversy
- d. The time application is made
- e. The stage at which it is made and
- f. All other relevant circumstances.

See ANAKWE VS OLADEJI (2008) 2 NWLR (Pt. 1072) 506 at page 550 – 521 paragraphs G-A.

The granting or refusal of amendment involves an exercise of discretionary power and such discretion must be exercised judicially and judiciously.

See OJEBODE & ORS VS AKANO & ORS (2012) LPELR - 9696

An Applicant therefore who seeks to be allowed to do an act which he omitted to do when he ought to have done it during the trial, has a duty to give reasons that are adequate and reasonable to explain his omission and or failure to do the act at the appropriate time during the said trial.

It is not sufficient for the wrong party to merely ask for the order of court to that effect.

Above position was espoused in the case of ***OJIEGBE & ANOR VS UBANI & ANOR (1961)*** ***ALL NLR 277 at 280*** where the CJN (as he then was) Adetokunbo Ademola upheld the decision of the lower court when it refused to allow a party to amend his case that had been closed, same having been objected to, as in the case in view by the other side.

This is a 2016 matter. Hearing has since commenced. PW1 has testified and documents tendered. In a bid to tendering power of Attorney and Deed of Assignment, objection was raised and same were rejected in evidence.

The said Power of Attorney and Deed of Assignment had receipts sought to be brought in here by way of amendment therein.

I must observe here that, in law to amend any legal process affords a party whether a Plaintiff or Defendant and even the appellant or respondent on appeal opportunity to correct an error in the legal document. Such correction can be made informally where the process is yet to be served. After service however correction of legal process may be effected, depending on the prevailing rules of court, either by consent of both parties or upon motion on notice, like the case in hand, such correction are commonplace. Amendment enables the blunders or errors and inadvertence of counsel to be corrected, in the interest of justice, ensuring always that no injustice is occasioned to the other party. ***FIVE STAR INDUSTRIES LTD VS BOI LTD (2013) LPELR 22081 (CA).***

From all I have seen based on the affidavit of Applicant, I am of the firm view that what Applicant is seeking to do is an afterthought after failing to utilize the opportunity afforded him.

Indeed the appeal to the discretionary power of this court must not be granted out of pity, but on the basis of sound reasons and reasoning. My conscience as court, from the totality of Plaintiff's affidavit in support, has not been appealed.

What more.? Defendant/Respondent having given good reasons why this application to amend should be refused, said application shall be refused. Same is hereby refused.

On the whole, application seeking the said Order therein is accordingly dismissed.

Justice Y. Halilu
Hon. Judge
30th March, 2021

APPEARANCES

Oliver E. for Claimant.

N.Y. Zachariya for the 3rd Defendant.

Other Defendants not in Court and not represented.