

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/5899/11

DATE: : TUESDAY 30TH MARCH, 2021

BETWEEN:

**HON. CHIEF EMMANUEL BELLO } PLAINTIFF/
} RESPONDENT**

AND

**1.CITEC INTERNATIONAL ESTATES } DEFENDANTS/
LIMITED } APPLICANTS**

2.FEDERAL CAPITAL DEV. AUTH. }

RULING

The Defendants/Applicants approached this action vide Motion on Notice filed on the 12th November, 2020 for the following:-

1. An Order of this court granting leave to the 2nd Defendant/Applicant to amend her statement of defence as per the amendments endorsed in the proposed amended statement of defence which is Exhibit 'A' to the supporting affidavit by adding to her defence viz;

The 1st Defendant has no right over any undeveloped area of the 225.355 hectares she claims ownership of in Nbora District FCT and the Federal High Court had held that she has breached all the provisions of the Development Lease Agreement and Construction Agreements

(from which she claim) relating to time to build and the number of house she is obligated to build (Para 2 E) Suit No. **FHC/ABJ/M/519/07**.

- ii An Order of this Court granting leave to the 2nd Defendant/Applicant to amend her reply to the 1st Defendant's statement of defence as per the proposed amended reply in response to the averments of the 1st Defendants in her statement of defence which affects the 2nd Defendants by adding viz; The 1st Defendant has no right over any undeveloped area of the 225.355 hectares they claim ownership of in Nbora District FCT and the Federal High Court had held that she has breached all the provisions of the Development Lease Agreement and Construction Agreements (from which they claim) relating to time to build and the number of houses they are obligated and

build Suit No. **FHC/ABJ/M/519/07** delivered on 23rd March, 2011. And whatever contract the 2nd Defendant had with the 1st Defendant was rescinded.

- iii. An Order of the Court granting leave to the 2nd Defendant/Applicant to file fresh statement of defence/fresh reply to the 1st Defendant's defence and witness' statement on oath in line with the proposed amendments.
- iv. And for such further or other Orders as the court may deem fit to make in the circumstances of this Court.

In support of the Motion is a 7 paragraph affidavit deposed to by One SaiduAbdulkadir of Legal Services Secretariat, FCTA, Area 11, Garki, Abuja.

It is the deposition of the Defendants/Applicants that at the time of filing the defence and the said reply, the fact of the Judgment of the Federal High Court in Suit No. FHC/ABJ/M/519/07 delivered on 23rd March, 2011 was unknown and same is crucial to the first determination of this Suit.

That the proposed amended statement of defence and reply were shown to me by counsel which I have read and understood.

That it is in the interest of justice to grant this application as same will not prejudice any party herein but will rather enhance the proper determination of the Suit before this court.

In support of the statement on oath as required by law, a written address was filed along the document

upon which a sole issue was raised for determination to wit;

“Whether the 2nd Defendant is entitled to the relief sought”

Learned counsel submit that by the Rules of Court, this Honourable Court has the discretion to grant an application of this nature to enable the 2nd Defendants affect the amendment sought. That the 2nd Defendant has gotten further facts document and evidence necessary and needed for the fair determination of the issues before the Court. ***EZE VS ENE (2007) 11 WRN 106 at lines 30 – 45; & CHIEF OJAH & ORS VS. CHIEF EJO OGBONI & ORS 1976(4) SC.; 69 and MAMMAN VS. SALANDEEN (2006)9 WRN 1 at P. 27 lines 15 – 25*** were cited.

Learned counsel further argue that the amendment sought by the 2nd Defendant/Applicant in this suit will not result in injustice and will not surprise or embarrass any party to the proceedings. Also, no injury will be done to the Plaintiff as the amendment has not changed the nature of the claim or defence before this Court. That in Order for the Court to be assisted in determining the real issues before it, the pleadings of the 2nd Defendant ought to be amended to bring the facts and issues in dispute before the Court as already stated in their affidavit evidence. ***KODE VS. YUSUF (2001) 14 WRN P. 153 Pp. at 175 to 176 line 40 – 45; CHIEF ADEDAPO ADEKEYE VS. CHIEF O.B. AKIN OLUGBADE 1987 3 NWLR Pt. 60; 214 and GOWON VS. IKECHUKWU (2003) 6 NWLR Pt. 815, 38*** were cited.

Learned counsel submit and urge the court to grant their application.

1st Defendant upon service filed a counter-affidavit in opposition to the 2nd Defendant's Motion on Notice filed on the 12th November, 2020.

It is the deposition of the 1st Defendant that he had seen and read the 2nd Defendant's Motion on Notice filed on 12th, November, 2020 together with the affidavit in support of SaiduAbdulkadir and the Exhibits attached in support thereof.

That the said Motion on Notice seeks to raise new/fresh issues and facts which were not contained in the original pleadings and evidence of the 2nd Defendant and it will require the 1st Defendant to re-open its case to counter the new/fresh issues and facts.

It is further the deposition of the 1st Defendant that Judgment in Suit No. FHC/ABJ/M/519/07 which the 2nd Defendant intends to bring to the attention of the Court was not front loaded by the 2nd Defendant in its proposed Amended Statement of Defence and proposed reply to the 1st Defendant's statement of claim.

That the 2nd Defendant have failed to demonstrate before this court the relevancy of the Judgment in Suit No. FHC/ABJ/M/519/07 to its defence in this suit and whether the issues in the said suit are the same with the issues before the court.

The 1st Defendant has since closed its case and it will be difficult and unjust for him to be called to re-open its case to answer to the new/fresh issues and facts raised by the 2nd Defendant in its proposed

Amended Statement of claim and proposed reply to the 1st Defendant's Statement of Defence.

That the 1st Defendant being dissatisfied with the decision in the said Judgment in the Suit No. FHC/ABJ/M/519/2007 had lodged an Appeal against the said Judgment at the Court of Appeal in Appeal No. **CA/A/513/2011**.

1st Defendant further deposed that the proposed Amendment sought by the 2nd Defendant in this application if granted shall over reach the 1st Defendant and occasion injustice to it as it will not have the opportunity to respond to the new/fresh issues and facts since the 1st Defendant had opened and closed its case.

That the granting of the application shall also embarrass and occasion hardship on the 1st Defendant

which cannot be redeemed by mere award of costs and further delay this case which had commenced since 2011.

That the application is made mala Fide and it shall be in the interest of justice for this court to refuse the application.

Written address was filed by the 1st Defendant in support of the counter-affidavit and a sole issue was raised for determination to wit;

“Whether it is in the interest of justice to refuse and dismiss the 2nd Defendant’s Motion on Notice filed on 12th November, 2020.”

Learned counsel submit that the law is clear that an amendment which is sought by the 2nd Defendant in this case after the 1st Defendant had closed its case and which introduces matters that the 1st Defendant

can no longer reply should normally not be allowed. ***EVBUOMWAN VS. BENDEL INSURANCE CO. PLC. (2000) LCN/0813 (CA) and ALSTHOM & ANOR VS SARAHI (2000) 14 NWLR (Pt. 687) 415, 428*** were cited.

Learned counsel further argue that it is true that amendment can be made at any stage, but in this instant case, the 1st Defendant had closed its case thus amendment may bring or introduce new/fresh issues and fact, therefore, leave to amend would normally not be granted. ***EGWA VS. EGWA (2007) 1 NWLR (Part 1014) 71, 95 D – F.***

Counsel further submit that the 2nd Defendant has failed to demonstrate before the Court the relevancy of the said Judgment in Suit No. FHC/ABJ/M/519/07 to its defence in this Suit by its

failure to front-load and present the said Judgment in Suit No. **FHC/ABJ/M/519/07** before this Court. Therefore no material before this court to determine the relevancy of the said Judgment to the instant case and whether the issues in the Judgment in the said Suit No. **FHC/ABJ/M/519/07** are not the same with the issues before this Court.

Learned Counsel argued that the 1st Defendant had demonstrated vide Exhibit 'A1' that being dissatisfied with the decision in the Judgment in the Suit No. **FHC/ABJ/M/519/2007** it had lodged an appeal against the said Judgment at the Court of Appeal in Appeal No. **CA/A/513/2011** and that the said Appeal No **CA/A/513/2011** is still pending before the Court of Appeal.

***NIGERIA DEPOSIT INSURANCE CORPORATION
& ANOR VS. SAVANNAH BANK OF NIGERIA
PLC. (2003) 1 NWLR (PART 801) 311, 358 D E*** was
cited.

Learned Counsel urge the Court to resolve the sole issue in its favour and dismiss the 2nd Defendant's Motion on Notice filed on 12th November, 2020 for being frivolous and lacking in merit.

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 counter affidavit in opposition to the application on 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, court 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 exercise 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) AdetokunboAdemola 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 2011 matter, both Plaintiff and 1st Defendant has closed their respective cases and matter adjourned for the 2nd Defendant to enter its defence, the 2nd Defendant/Applicant now brought this application.

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).***

The essence of amendment is not to change the relief sought by the Plaintiff as done in this case.

An amendment which intends to overreach the adverse party or alter the nature of the case or that may warrant the calling of fresh witness shall not readily be allowed. The Judgment in Suit No. **FHC/ABJ/M/519/07** was delivered since 23rd March, 2011 and the 2nd Defendant was a party to that Suit. The 2nd Defendant being a party to the said Suit was aware of this Judgment all this while but

refused to bring same to the attention of this Honourable Court before now. The 1st Defendant opened its Defence on 8th May, 2018 and closed its Defence on 16th March, 2020 which is a very long time from 23rd March, 2011 when the said Judgment in Suit No. FHC/ABJ/M/519/2007 was delivered. The 2nd Defendant had a reasonable long time and opportunity to have brought the said Judgment before this Honourable Court before the 1st Defendant opened and closed its Defence. To allow the 2nd Defendant to amend its defence to introduce new/fresh issues after the 1st Defendant had opened and closed its case, would certainly overreach and cause injustice to the 1st Defendant, moreso that the judgment is on appeal.

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 2nd Defendant's affidavit in support, has not been appealed.

What more? 1st Defendant/Respondent having given good reasons why this application to amend should be refused, said application shall be refused.

Consequently, the said application is hereby refused and dismissed.

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

APPEARANCES

James Odiba with Abduljaleel Musa – for the Claimant.

OlawaleOyebode with AyodejiOlanipekun – for the 1st Defendant/Applicant.

2nd Defendant not in Court and not represented.