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

CLERK: CHARITY ONUZULIKE
COURT NO. 15

SUIT NO: FCT/HC/CV/1122/10
M/3238/18
DATE: 16/02/2021

BETWEEN:

ARINZE AKABUA……PLAINTIFF

AND

JULIUS BERGER NIG. PLC……DEFENDANT

RULING
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The Plaintiff/Applicant vide a Motion on Notice Number M/3238/18 dated 12th day of February, 2018 but filed on 15th February, 2018. It seeks for the following reliefs:

(1) An Order of this Honourable Court granting leave to the Plaintiff/Applicant to amend his statement of claim in term formulated and underlined in the proposed Amended Statement of Claim herein annexed and marked Exhibit 'A' to the affidavit in support of this motion.

(2) An Order of this Honourable Court deeming the amended Statement of Claim already filed and served on the defendant as properly filed and served.

(3) Such further or other orders as the Honourable Court may deem fit to make in the circumstance.

It is predicated on two grounds to wit:

(a) The Plaintiff/Applicant has need to amend his statement of claim in order to bring out to the fore facts which have already form part of the evidence but not in the pleading.

(b) That Plaintiff/Applicant needs the leave of the Court to conveniently amend his said statement of claim.

It is brought pursuant to Order 24 Rules 1, 2 and 3 of the Rules of Court.

While moving the application in Court, the Applicant's learned Counsel submitted that the Motion is supported by a 7-paragraphed affidavit and a written address. Ditto further affidavit and reply on points of law. He relied on all the processes and urged the Court to grant the application.

In opposition to the grant of this application, the Defendant/Respondent's learned Counsel said that they have filed a 7-paragraphed counter-affidavit. It is dated 8/3/18 and a written address.

He adopted his written address as his argument in opposing this application and he finally urged me to refuse this application.

He adumbrated further that after adjournment for final address, the defendant served the plaintiff their address, it is upon seeing their address, that the plaintiff/applicant brought this application to Court. He argued further that this

application would over-reach them and bring the case back to square one.

In a swift reply, the applicant's Counsel said, it would not over-reach the Respondent because, there are no new facts being brought. The evidence is already before the Court and they are not bringing in any new facts.

The applicant is his written address formulated one issue for determination to wit:

> *"Whether in the light of fair hearing and in view of the express provision of Order 24 Rules 1, 2 and 3 of the High Court (Civil Procedure) Rules, this Honourable Court can grant this application"*

On his part, the Respondent's Counsel put his own simply thus;

> *"Whether the amendment prayed for can be granted"*

Two of them are saying the same thing in different dimension.

I therefore adopt the issue as formulated by the Defendant/Respondent as the only issue that calls for consideration in an attempt to determine whether prayers sought by this application are meritorious or not.

I have considered the submission of both learned Counsel both for and against the grant of this application.

It is the submission of the Applicant's learned Counsel that the power to grant this application is within the discretion of the

Court which must be exercised judicially and judiciously. He referred the Court to the case of **A. G. RIVERS STATE VS UDE (2006) 17 NWLR (PT. 1008) 436**where **PER KATSINA-ALU JSC** held thus:

> *"……But that discretion must at all times are exercised not only judicially but also judiciously no one can be authority for another, and the Court cannot be bound by the previous decision to exercise its discretion in a particular way because that would be as if we are putting an end to the discretion."*

He submitted further that Rules of the Court are made for due administration of justice and also for effective and efficient administration of justice and shall be relied upon by the Court to do substantial justice. See **AMOO VS. ALABI (2003) 46 WRN 106.**

On the part of the Defendant/Respondent's learned Counsel however, while agreeing with the first submission of the applicant's Counsel on discretionary power of the Court to grant an amendment, he argued that in considering the application, the Court needs to take into consideration the principles enunciated in the case of **ALSTHOM S. A. VS. SARAKI (2000) 14 NWLR (PT. 687) 415 as follows:**

(a) The attitude of the parties;
(b) The nature of the amendment sought in relation to the suit;
(c) The question in controversy and
(d) The time when the amendment was being sought.

Furthermore, he argued that the stage/time at which the amendment is being sought is worrisome. He referred the Court to the case of **IMONKHE VS. A.G. BENDEL STATE (1992) 7 SCNJ 197** and urged me to hold that leave is not grantable at this stage particularly that the Plaintiff/Applicant failed to highlight the said evidence already before the Court.

Now, what should the Court do in this circumstance? Should I grant the leave to amend or not?

I think in my humble view that this application can be granted. This is because the Supreme Court in reference to the case of **IMONKHE (Supra)** cited by the Respondent's Counsel in the case of **EZE VS. ENE & ANOR (2017) LPELR – 41916 (SC)**as held by **PER NNAEMEKA AGU JSC:**

> *"The general principle of law is well settled that an amendment of pleadings can be made at any time before judgment. However, and notwithstanding the wide latitude, the intention is not to leave the consideration open-ended and without proper control so as to create a flood gate of an abuse of discretion……*
> *……...*
> *Before the close of the evidence, such amendments are allowed to make such evidence as may be called admissible, as evidence on an issue which was not pleaded or a claim not on the record is strictly inadmissible. But once the calling of evidence has been concluded any*

amendment of the pleading or claim can be justified or allowed only in the premise that evidence in support of it is already on record so that it is necessary and in the interest of justice to allow the amendment in order to make the pleadings or the claim accord with evidence already on record. The rationale of it is that such amendment should be allowed to enable the Court to use the evidence already on record to settle the real issue in controversy between the parties."

It is for the above reasons, that I grant prayers of the applicant and direct the applicant to proceed and file his final written address since according to his further affidavit paragraphs 5 and 6, there is no need to call any further witness or re-open this case. Since the evidence to support the amendment already before the Court and the fact that head of tort in this suit remain the same.

…….
S. B. Belgore
(Judge) 16-2-21.