

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA**

THIS WEDNESDAY, THE 23RD DAY OF JUNE, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

**SUIT NO FCT/HC/CV/1537/17
MOTION NO: M/1629/19**

BETWEEN:

ALJAZIRAH NEWSPAPERPLAINTIFF

AND

1. MR OLABISI O. JIMOH

**2. JOINT ADMISSIONS AND MATRICULATION
BOARD**

}DEFENDANTS

RULING

By a motion on notice dated 2nd December, 2019, the Claimant/Applicant prays for the following Reliefs:

- 1. An Order of this Honourable Court granting leave to the Claimant/Applicant to re-open its case and to recall the Claimant's 1st witness (PW1) (that is one ETUK BASSEY WILLIAMS) so as to tender in evidence three (3) documents, which are: i. Code of Ethics for Nigerian Journalist, ii. A Degree Certificate of Bachelor of Journalism issued to the Witness by the Atlantic International University and iii. A Membership Identification Card issued to the Witness by the Nigerian Union of Journalist all of which are duly pleaded in the Claimant/Applicant's pleadings in the captioned matter.**

- 2. An Order of this Honourable Court granting leave to the Claimant/Applicant to file an additional Witness Statement on Oath for the aforesaid Claimant's 1st Witness (PW1) (that is ETUK BASSEY WILLIAMS) through which he can tender the afore stated three (3) documents in evidence.**
- 3. An Order of this Honourable Court deeming the separately filed claimant's 1st witness (PW1) (that is ETUK BASSEY WILLIAMS)'s Additional Witness Statement on Oath as properly filed and served as the appropriate filing fees has been duly paid thereon.**
- 4. For such further and other orders as this Honourable Court will deem fit to make in the circumstance of this application and the captioned suit.**

The application is supported by a twenty (20) paragraphs affidavit with three (3) annexures marked as **Exhibits A-C**. A written address was filed in compliance with the Rules of Court in which one issue was raised as arising for determination to wit:

“Whether it is legally appropriate and in the very interest of justice for this Honourable Court to grant the prayer as stated on the face of the application.”

The submissions on the issue which forms part of the Record of court is simply to the effect that it would be in the interest of justice to grant the application and allow the plaintiff re-open its case to tender documents which counsel inadvertently did not tender during trial.

At the hearing, counsel to the Applicant relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in urging the court to grant the application.

The defendants/respondents both opposed the application. The 1st defendant/respondent filed a 15 paragraphs counter affidavit together with a written address in compliance with the Rules of Court.

In the address, one issue was raised as arising for determination thus:

“Whether the applicant is entitled to the relief sought having regards to the facts and circumstances of this case.”

The submissions on the above issue also forms part of the Record of court and is simply to the effect, that Applications of this nature are not granted as a matter of course but on the Applicant presenting cogent reasons as to why it should be allowed to re-open its case after parties have closed their case. That no such cogent reasons were disclosed here. That the documents seeking to be produced after the re-opening were all available to the Applicant and they did not tender the documents. That the attempt now being made to re-open the case to bring in these documents after Applicant has seen and read the final address of defendants and the submissions made is simply to have a second bite at the cherry and to repair the damage done to the claimants case and this will be prejudicial to the defendants.

At the hearing, counsel to the 1st defendant relied on the paragraphs of the counter-affidavit and adopted the submissions in the written address in urging the court to dismiss the application.

On the part of the 2nd defendant/respondent, they filed a 22 paragraphs counter affidavit together with a written address. The address equally raised one issue as arising for determination thus:

“Whether the claimant/applicant has fulfilled the contention precedent prior to the filing cum commencement of this application.”

The submission made on the issue which equally forms part of the Record of court is to the effect that the applicants have not fulfilled the legal requirements to allow for the re-opening of its case. That contrary to the Applicants assertions, the facts contained in plaintiffs pleadings in their statement of claim does not provide basis to bring in these documents and that they were not pleaded. Further that to allow this application will only further prolong the case as the defendants may then be compelled to file similar application to counter this new evidence Applicants wishes to bring into the case after parties have long closed their cases.

At the hearing, counsel to the 2nd defendant equally relied on the contents of the counter-affidavit and adopted the submissions in the written address in urging the court to dismiss the application.

I have carefully considered the processes filed on both sides of the aisle and the oral submissions of counsel. The narrow issue to be resolved as captured by parties on all sides is whether having regard to the facts and circumstances of this case, the application should be granted?

Now an application to re-open a case and recall a witness particularly here where all parties have closed their cases and the matter adjourned for adoption and indeed from the Records, the two defendants have already filed and served their final address certainly cannot be granted as a matter of course or on whimsical or no grounds at all. Special circumstances must on the materials be disclosed by the applicant putting the court in a commanding height to exercise its undoubted discretion in Applicants favour. This discretion it must be underscored, the court exercises with utmost circumspection, regard being had to the overall interest of justice and providing a fair and even template for parties to present their grievances. No side should be given an undue advantage in any situation.

In determining the fairness and justice of this Application, it appears important to situate certain foundational facts. I will only highlight facts that are relevant in resolving the extant application. The plaintiff filed this action as far back as 27th April, 2017 claiming streamlined Reliefs as contained in the statement of claim. The defendants were served with the originating process and they all duly filed their defences. The 1st defendant set up a counter-claim against plaintiff and the plaintiff filed Replies to the processes filed by defendants and hearing then commenced.

The plaintiff opened its case and called its first witness, **Mr. Etuk Bassey Williams** who testified as PW1 on 15th October, 2018. He was duly cross-examined by defendants and with his evidence counsel prayed for an adjournment to call his other witness and this was granted and the matter was adjourned to 11th December, 2018 for continuation of hearing. On the said date, counsel to the plaintiff was not in court and the plaintiff was equally not represented and the matter adjourned to 14th February, 2019 when plaintiff called its second and third witnesses, PW2 and PW3; they were examined and then cross-examined by defendants and with the evidence of PW3, the plaintiff closed their case.

The matter was then adjourned for defence. The 1st defendant called its only witness on 25th September, 2019 who testified as DW1. Only the plaintiffs cross-

examine DW1 as the 2nd defendant chose not to cross-examine DW1 and with his evidence the 1st defendant close his case for his defence and counter-claim. The 2nd defendant then called its only witness who testified and was cross-examined by plaintiff as the 1st defendant here too, elected not to cross-examine DW2 and with his evidence the 2nd defendant closed its case.

Parties were then ordered to file their address in compliance with the Rules and with the agreement of all counsel, the matter was adjourned for adoption on 10th December, 2019. Indeed from the Record, as earlier alluded to, the defendants have since filed their addresses. The address of 1st defendant is dated 14th October, 2019 while that of 2nd defendant is dated 16th October, 2019. It was after the addresses were filed that the Applicant filed the extant application on 3rd December, 2019.

I have deliberately and at some length provided the above narrative to situate the fact that with the settlement of pleadings in this case which then streamlined precisely the facts and issues in dispute, parties had sufficient time to now lead evidence in proof of their pleadings. That right, parties were all accorded in this case and there was no complaint(s) of any kind throughout the proceedings. I must underscore the fact that the importance of parties pleadings need not be over-emphasised because the attention of court and the parties is focused on it as the pivot around which the case revolves and the case of parties can only be determined on the basis of facts pleaded. Anything outside the confines of the body of facts pleaded in the pleadings will be irrelevant and be discountenanced. In this case, parties had more than ample time to present their grievances as allowed by law which they exercised as stated earlier and this culminated in the matter been adjourned for adoption of final addresses.

Now to the crux of this application. It was the bounden duty of the Applicants to present cogent facts putting the court in a commanding height to grant the application. From the reliefs as streamlined above on the motion paper, the plaintiff/applicant wants the re-opening so that it can recall PW1 to tender the following documents:

1. Code of Ethics for Nigerian Journalist.

2. Degree Certificate of Bachelor of Journalism issued to the witness by Atlantic International University and
3. Membership Card issued to PW1 by Nigerian Union of Journalist (NUJ).

In paragraph 5 of the supporting affidavit, the applicants deposed to the following:

“That the said aforementioned three(3) documents and the facts that duly comprises them were duly and severally pleaded in the several pleadings of the Claimant/Applicant in the captioned suit. The said aforementioned three(3) documents and the facts which duly encompasses them were duly and severally pleaded in paragraphs 2, 3, 4, 5, 9, 10 and 24 of the Statement of Claim, paragraphs 2, 6, 11, 16, 21, 23 of the Claimant/Defendant’s Reply to the 1st Defendant/Counter Claimant’s Statement of Defence, paragraphs 4, 5, 7, 10, 14, 23 and 25, of the Claimant/Defendant’s Defence to the 1st Defendant/Counter Claimant’s Counter Claim and paragraphs 2, 5, 8, 9, 10, 11, 12, 13 of the Claimant/Defendant’s Reply to the 2nd Defendant/Counter Claimant’s Statement of Defence and also other paragraphs of the aforesaid pleadings.”

I have carefully gone through the paragraphs highlighted by the Applicant above in the processes filed and there is no where to situate where these **three (3) documents** were pleaded or the facts that would have provided basis to allow for their reception. The principle is settled that while the pleadings is not expected to plead evidence, the pleadings must however donate materials facts in issue and the adversary is not taken by surprise. There are clearly no materials facts pleaded by Applicant relating to any of the three (3) documents referred to above.

Most importantly, the case of the plaintiff as situated on the clear **Reliefs** sought are essentially for:

1. Special damages arising from lost contracts which were terminated as a result of defamation by 1st defendant of the “plaintiff corporate reputation and image” and
2. Damages for defamation, unlawful detention, battery and violence against staff of plaintiff.

By paragraphs (1) and (2) of the statement of claim, the legal status of plaintiff was identified as follows:

- “1. The plaintiff is a Limited Liability Company duly incorporated under Companies and Allied Matters Act (CAMA) with the Corporate Affairs Commission (CAC) and was duly issued with a Certificate of Incorporation upon its registration with the CAC. A copy of the Plaintiff’s Certificate of Incorporation is hereby pleaded and shall be relied upon and tendered in evidence during the hearing of this suit.**
- 2. The Plaintiff is a Limited Liability Company duly registered for the purpose of carrying on the business of and is fully engaged in the business of general media operations such as news dissemination, news productions, news-paper production, magazine productions, advertisements, online media operations, e.t.c, both through the internet and the print media.”**

Now as already stated above, the primary function of pleadings is to define and delimit with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases. See **Kyari V Alkali (2001) 11 NWLR (pt.742) 412 at 433 – 434.**

The essential aim of pleadings is to give notice of the case to be met; which enable either party to prepare his evidence and documents upon the issues raised in the pleadings and saves either side being taken by surprise. The parties must then confine their evidence to those issues; the cardinal point is the avoidance of surprise. See **Bunge V Governor of Rivers State (2006) 12 NWLR (pt.995) 573 SC at 598 – 599 H-B.**

Now in the light of the pleadings in this case which has defined the issues the court will adjudicate and on which evidence has already been led, it is difficult to situate the relevance of the three documents and indeed their materiality. The dispute or case of plaintiff as demonstrated centers around infractions against a limited liability company and some of its unnamed staff. The counter claim of 1st defendant is for damages for libel and injunction against plaintiff as defendant to the counter-claim. The point to underscore is that the plaintiff and defendant to the

counter-claim is a corporate body as distinct from PW1 who owns the university certificate and the NUJ membership card.

All parties are bound by these pleadings and cannot go outside it to lead evidence or rely on facts which are extraneous to those pleaded. See **Kyari V Alkali (supra)**. The remit of the grievance cannot be expanded at this point. At the risk of sounding prolix, let me again reiterate that in every trial, pleadings and evidence adduced determine the outcome of the trial, for parties are bound by the case they put up before the court. The main reason for the insistence of filing of pleadings in all cases is to ascertain with as much certainty as possible the issues in controversy between the parties and to create a situation where none of the parties is caught by surprise. See **Agbu V C.S.C, Nasarawa State (2011) 1 NWLR (pt.1229) 544 at 556 D-G**.

In the circumstances, it is difficult to situate how the code of ethics; degree certificate and NUJ membership card of PW1 which were all not pleaded have any factual or legal traction in the circumstances and in respect of the case or grievance of a limited liability company. Indeed even if the documents were pleaded or facts to allow for their reception pleaded, it is still difficult to situate their relevance in the context of the dynamics of the interplay of issues joined on the pleadings.

In addition, the conduit or the legal process allowing for re-opening of a case is not an opportunity for a party to alter the character of the case already presented or to have as it is said in popular parlance a second bite at the cherry or an opportunity to patch up lapses in the initial conduct of a case. If the documents sought to be tendered at this late hour were material, then they ought to have been pleaded or a case relating to the documents precisely streamlined on the pleadings and frontloaded as required by the Rules of Court so that no one is taken by surprise. This was not done here at all. The contention that the error here was that of counsel and that the innocent litigant should not be punished in the circumstances has no application here precisely because, this case is not about PW1 who is only a witness but the plaintiff, a limited liability company which is a distinct entity from its members. The code of ethics of journalist, degree certificate of PW1 or his membership of NUJ has nothing to do with the critical and fundamental questions posed by the extant dispute to which the plaintiff has fully given vent to its grievance in line with its constitutional right to fair hearing.

On the whole and as demonstrated above, the Applicant has not satisfied the court that there are substantial and cogent reasons to re-open the case and to recall PW1. Justice is not only for one of the party in a case but for all parties. Any undue advantage granted to one party at the expense of the other party or adversary will amount to an injudicious exercise of discretion particularly in the absence of clear and sufficient materials as in this case to support the exercise of discretion.

The only point to perhaps underscore as I round up is that in the exercise of the court's discretion, it is now trite principle that the court must act judicially and judiciously. This means that some material of value must be placed before the court which will enable it decide whether the circumstances of the application justify the exercise of the court's equitable jurisdiction in the applicants favour. Where such materials are absent, the application is inevitably compromised. See **Akpoku V Ilombu (1998) 8 NWLR (pt.561) 283 at 291 F-G.**

On the whole, the application fails and it is dismissed. I call on counsel to plaintiff to act post haste and file its final address so that this matter can be finally determined without any further delay.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. David C. Maduka, Esq., for the Plaintiff/Applicant.**
- 2. P.I. Oyewole, Esq., for the 1st Defendant/Respondent.**
- 3. Charles O. Audu, Esq., for the 2nd Defendant/Respondent.**