

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT 21 GUDU – ABUJA

DELIVERED ON TUESDAY THE 6TH DAY OF JULY, 2021

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE.R. OSHO-ADEBIYI

SUIT NO. CV/1263/2019

MOTION NO:M/11026/2020

BETWEEN:

MRS.MARY MAMUNETU EROMOBOR----- CLAIMANT/APPLICANT

AND

- 1. KYC INTER-PROJECT LTD ----- DEFENDANTS/RESPONDENTS**
- 2. HON. MINISTER, FEDERAL CAPITAL
TERRITORY**

RULING

Learned Counsel for the Claimant filed a motion on notice dated the 29th day of May, 2020 and filed 1st day of June, 2020 pursuant to Order 25 Rule (2), Order 34 Rule (16) and Order 43 Rule (1) and under the inherent jurisdiction of this Court seeking for:

1. An order of this Honourable Court granting leave to the Claimant/Applicant to reopen her case.
2. An Order of this Honourable Court granting leave to the Claimant/Applicant to call additional witness, to wit, Mr. David Okoloise, who was the Carpenter and site supervisor for the said land in dispute.
3. An Order of this Honourable Court to issue subpoena i.e subpoena ad testificandum to officials of the Development Control Department of the Abuja Metropolitan management Council and

the Director of Lands administration, Federal Capital Territory Administration.

4. An Order of this Honourable Court granting leave to the Claimant/Applicant to further amend her pleadings (i.e. statement of claim, list of witnesses and list of documents).
5. An Order deeming the further amended statement of claim, list of witnesses and witness statement on oath of David Okoloise as properly filed and served, prescribed fees having been paid.
6. And for such further order or orders as this Honourable court may deem fit to make in the circumstances.

In support of the objection is a 14 paragraph affidavit, deposed to by Ameh Bernard Inalegwu a litigation secretary of the law firm representing the Claimant/Applicant, a written address and three annexed exhibits titled – further amended statement of claim, amended list of witnesses and amended list of documents. The deponent averred that the Claimant lost contact with the witness sought to be called Mr. David Okoloise and only reconnected with the witness in May, 2020. That the testimony of the witness is very relevant and important as he had direct dealing about the land in dispute. That the said witness had direct dealing about the land in dispute and there is need for him to state his own side of the events that unfolded on the plot before this Honourable Court. That there is the need to subpoena officials of the Development Control Department of the Abuja Metropolitan Management Council to state the role their office played as a regulator agency when the Claimant lodged a complaint of encroachment to their organization/office. That there is also the need to subpoena the Director of Lands Administration, Federal Capital Territory Administration to state the role their office played and steps they took when the Claimant lodged a complaint of encroachment by the 1st Defendant to them. That there is the need to seek and obtain the leave of

this Honourable court to reopen the Claimant's case by calling the aforementioned additional witnesses. That there is the need to also seek the leave of this court and obtain an order to further amend the Claimant's statement of claim and to reflect the additional witness and documents on the list of witnesses and list of documents respectively. That it is in the interest of justice to grant this application and the respondents will not be prejudiced by the grant of this application. Learned Counsel to the Applicant adopted the said Written Address. He raised one issue for determination which is;

"Whether or not the Claimant/Applicant is entitled to an order granting the reliefs sought in order for the court to do substantial justice in the determination of the issues canvassed by the parties. "

Summarily learned counsel submitted that an application of this nature calls for the exercise of the discretion of this Honourable Court which must be exercised judicially and judiciously and that this Honourable Court has the jurisdiction to grant all the reliefs sought on the face of the motion paper. He referred the Court to the case of **OKPATA V. OBO 1960) SCNLR 103 at 105** and urged the Court to exercise discretion and grant this application as justice in this case demands that the Claimant/Applicant re-opens her case as the Defendants/Respondents would equally have ample opportunity to react to the facts raised. Counsel further submitted that it is trite for a Court at any stage before judgement to allow a party to re-open her case and call additional witnesses to meet with the justice of the case or in the recent parlance to do substantial justice. He cited **OMORIEGIE V.**

LAWANI (1980) 3-4 SC 100 and OGBODO V. ODOGHA (1967) NMLR

221. Learned Counsel urged the Court to find merit in their application and grant the reliefs sought as it is in the interest of justice.

In reaction to the application, the 1st Defendant/Respondent filed a 5 paragraph counter affidavit deposed to by Jacob Maurice a litigation secretary in the law firm of A.A Muhammad & Co. He averred that the Plaintiff is trying through the back door to have a second bite at a case she opened and successfully closed. That it will amount to an ambush and a grave injustice on the 1st Defendant/Respondent if this application is granted. That the 1st Defendant will be prejudiced if this application is granted. Learned Counsel to the 1st Defendant adopted his Written Address wherein he raised a sole issue for determination to wit;

“Whether it is proper for this Honourable Court to grant the application considering the circumstances of this suit”.

Learned counsel submitted that at no point did the Applicant mention the name David Okoloise neither in her statement of claim presently before the court nor in her oral testimony however. That the Applicant has failed woefully to advance any cogent reason to warrant the grant of this application. Counsel further submitted that from the face of the purported amended fresh witness statement on oath, the Applicant is seeking to amend the testimony of P.W1 through the back door. Counsel also submitted that the Plaintiff/Applicant is only trying to have a second bite at presenting her case and it will amount to injustice being meted out on the 1st Defendants/Respondent. Counsel submitted that it is trite law that an application of this nature can only be granted with the consent of both parties and that the 1st Defendant/Respondent vehemently opposed to the

granting of this application and urged this Honorable Court to refuse the Applicant's application and dismiss same as lacking in merit with substantial cost and in the interest of Justice, order the 1st Defendant/Respondent to open its defense in the substantive suit. Learned counsel placed reliance on the cases of **Ezebilo v. Chinwuba (1997) 7 NWLR (Pt. 511)108 at 109 Para B** and **Torri v. National Park Services of Nig. (2011) 5-7 (Pt. 1) MJSC 153**.

I have considered the arguments of learned counsel on both sides. The issue before this court is:-

“whether this Honourable court can grant the Plaintiff/Applicant leave to reopen her case, call additional witnesses and further amend her pleadings”.

While the Plaintiff/Applicant argues that this Honourable Court has the jurisdiction to grant all the reliefs sought on the face of the motion paper, the 1st Defendant/Respondent submits that it will amount to an ambush and a grave injustice if this application is granted. The crux of the objection is that if the application is granted it would amount to an ambush and the Defendant would be prejudiced.

It is trite that an amendment of pleadings may be made at any stage of the proceedings. The court has the inherent powers to amend pleadings at any stage of proceedings but such powers is not automatic rather the court must consider the attitude of the parties, the nature of the amendment sought in relation to the main suit, the time factor, the questions in controversy and all circumstances surrounding the case. In other words, the court discretion ought to be exercised judiciously. **See BANK OF BARODA VS IYALABANI (2002) 13 NWLR (Pt. 785) 551 @ 593 paragraphs B-D per Ogundare JSC** where the learned Jurist held that an amendment of pleading for the purpose of determining the real question in

controversy between the parties ought to be allowed at any stage of the proceedings unless such amendment will entail injustice or surprise or embarrassment to the other party or the application is brought mala fide. It is settled law that in deciding whether or not to grant an amendment, the court must consider the materiality of the amendment sought as the court will not allow an inconsistent or meaningless amendment. **See CHIEF ADEDAPO ADEKEYE VS CHIEF O.B AKIN-OLUGBADE (1987) 3 NWLR (Pt.60) 214** where the Supreme Court recommended five (5) grounds upon which an amendment to pleadings may be refused: -

- (1) Where the amendment sought to be made is mala fide.
- (2) Where the amendment would in any way prejudice the opposite party.
- (3) Where the amendment would cause unnecessary delay.
- (4) Where the amendment is quite irrelevant and useless.
- (5) Where the amendment would merely raise technical issues.

The following principles are to guide the court in discerning the circumstances where a party may be allowed to amend his pleadings: -

- (a) Amendment will not be granted if it will change the nature of the claims before the court.
- (b) Where it will create a suit where none existed.
- (c) If the amendment will not cure the defect in the proceedings.
- (d) If such amendment is introduced at such a stage that the other side no longer has the opportunity of adducing its own answer to the point which the amendment has enabled the applicant to introduce.
- (e) An amendment will not be granted on appeal where it would be inconsistent with the testimonies of witness on which both parties fought the case at the trial.

I have examined the application before me viz-a-viz the claim before the court and also taken into consideration the evidence of the Claimant. The Claimant in her statement of claim pleaded that she is the rightful owner of the subject matter plot of land having been granted same by the Hon. Minister, FCT and that the department of development control which is an agency of the Hon. Minister had confirmed that claimant is the rightful title holder of the property; that the Honourable Minister had also confirmed the authenticity of claimants title over the land and that defendant had invaded Claimants land with thugs thereby chasing away all claimants workers on the land. Claimant by way of amendment had sought to re-open her case by calling Mr. David Okoloise, a carpenter who was one of the workers on the subject matter plot. Claimant also sought to re-open her case by serving a subpoena on officials of the development control and the director of lands administration, FCTA as witness. The grant or refusal of an application to re-open a case to lead additional evidence is entirely at the discretion of the trial judge.

From the above claimant has not in any way introduced fresh facts nor has claimant made out a new case rather I am of the opinion and I so hold that the amendment and re-opening of Plaintiffs case will assist the court in resolving the issues in controversy between parties moreover the amendment and re-opening of Plaintiff's case has not in any way embarrassed the defendant nor overreached the Defendant in any way.

Consequently, it is hereby ordered as follows: -

- (1) Claimant is hereby granted leave to further amend her pleadings.
- (2) Consequent to amending her pleadings, claimant is hereby ordered to re-open her case and leave is hereby granted to the claimant to call Mr. David Okoloise, the carpenter site supervisor of the subject matter land

- (3) It is hereby ordered that a subpoena ad testificandum be issued and served on the one single official (as contained in paragraph 8 and 9 of affidavit in support of the motion) of the Development Control Department of the Abuja Metropolitan Management Council and the Director of Land Administration, FCTA.
- (4) The statement of claim, list of witnesses and witness statement on oath of David Okoloise is hereby deemed as properly filed and served, prescribed fees having been paid.

Parties: Absent

Appearances: Victoria Aworinde appearing with Martins Emokaire for the Claimant. A. A. Hassan for the Defendant.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI

JUDGE

6THJULY, 2021