

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. 15

CASE NUMBER : SUIT NO: CV/542/14

DATE: :WEDNESDAY 15TH SEPTEMBER, 2021

BETWEEN:

MARGARET EKENG PLAINTIFF/APPLICANT

AND

ELIZABETH ADEH DEFENDANT/RESPONDENT

RULING

The Applicant approached this Honourable Court for the following reliefs:-

1. Leave to amend the further amended statement of claim as in the underlined terms attached herewith as Exhibit 'A'.
2. An Order of Court deeming the clear copy of the further further amended statement of claim as properly filed and served, the appropriate filing fees having been paid.
3. And such Order or other Orders as this Honourable Court may deem fit to make in the circumstances.

In support of the application is an affidavit of 4 paragraph duly deposed to by One Stephen Ojodomo, a Litigation Secretary in the Law Firm of the Applicant.

It is the deposition of the Applicant that the counsel who prepared the statement of claim made errors in the mathematical calculation of figures document admitted in evidence.

That it is necessary and expedient to plead the correct mathematical figures. The proposed further further amended statement of claim are attached as Exhibit 'A'.

A written address was filed wherein learned counsel argued that Order 43 Rule 1 and Order 25 Rules 1 and 2 of the Rules of this Honourable Court permit the Court to amend the processes at any point before Judgment to enable parties present before the Court to real issues in dispute between them.

Counsel maintained that the aim of an amendment is usually to prevent the manifest justice of the cause

from being defeated or delayed by formal slips which arise from the inadvertence of counsel.

CHIEF ADEDAPO ADEKEYE & ANOR VS CHIEF O.B AKIN-OLUGBADE (1987) 3 NWLR (Pt. 214 at 223 – 224).

Upon service, a counter affidavit of 15 paragraph was filed duly deposed to by One Gideon Nnaji, a Legal Practitioner in the Law Firm of the Respondent.

It is the deposition of the Respondent that the amendment sought is an afterthought and not meant to bring evidence in line with pleadings, as PW1 did not give the figure sought to smuggled into the pleading.

That the Plaintiff had previously amended her statement of claims on two occasions to wit; 30th April, 2015 and 31st January, 2017.

That both parties have closed their respective cases and the Defendant had filed and served the Plaintiff with her final written address.

That it will be in the interest of justice to refuse this application.

A written address was filed wherein the learned Counsel submit that a party may amend his Originating Process and pleadings at any time before pre-trial conference and not more than twice during the trial but before close of the case. Order 25 Rule 1 of the Rules of this Court.

Counsel maintained that amendment is scarcely allowed because it would certainly overreach the

Defendant who has filed and served the Plaintiff with her argument in this case. *ADETUTU VS.ADERONHUNMU (1984)1 SCNLR, 515.*

It is submission of counsel that where an amendment of pleadings is sought after the close of case and before Judgment, the court should be reluctant to grant same unless substantial reasons is given. *W.A.E.C (2011) ALL FWLR (Pt. 556) 422 at 485 – 486 H – B.*

Court was finally urged 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 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 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 2014 matter, both Plaintiff and Defendant had closed their respective cases and matter adjourned for the filing and adoption of final written addresses and the Defendant has filed and served the Plaintiff its final address before 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).***

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.

I have seen the evidence before the court. There is neither evidence of any sum of N306,970,00 (Three Hundred and Six Thousand, Nine Hundred and Seventy Naira), nor the sum of N3,035,970.00 (Three Million Thirty Five Thousand, Nine Hundred

and Seventy Naira) in the evidence of PW1 on record.

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 Applicant's affidavit in support, has not been appealed.

What more? 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
15th September, 2021

APPEARANCES

I.G Abah – for the Plaintiff.

Johnbull A. – for the Defendant.