

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA ON THE 11TH DAY OF NOVEMBER, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE

SUIT NO.FCT/HC/CV/2468/2020

COURT CLERKS: JOSEPH ISHAKU BALAMI & OTHERS.

BETWEEN:

KELVIN OBIPLAINTIFF

AND

CHRISTIAN CHUKWUDI OBI.....DEFENDANT

RULING

The Claimant/Applicant's Motion dated 16/09/21 is for an Order granting leave to the Claimant to amend his Writ of Summons, Statement of Claim and Witness Statement on Oath as per the underlined portions of the proposed Amended Writ of Summons and Statement of Claim.

(2) And deeming the said processes as duly filed and served having been separately filed.

In his Affidavit, he deposed that before filing the suit, he made several efforts to trace a sales agreement dated 11/08/14 executed between him and the Defendant which he intends to rely upon but all efforts proved abortive. That Claimant has now located the said sales agreement dated 11/08/04 hence the need for the amendment. That the suit will be effectively determined with the said amendment. That Defendant/Respondent will not be prejudiced.

The Defendant's Counter Affidavit essentially denies sales agreement stating emphatically that it is fake and was not signed by the Defendant. That the said agreement dated 11th of August 2014 while he lost his mother on 09/08/14 and he was busy running around for the burial. That the amendment is not necessary.

Order 25(1) of the Rules of Court states that a party may amend his Originating Process and pleadings at any time before the pre trial conference and not more than twice during trial but before the close of the case.

An amendment is at the discretion of the Court to be exercised judicially and judiciously. An amendment must be granted if it is for the purpose of eliminating all statements which may tend to prejudice, embarrass or delay the suit and for the purpose of determining on the existing suit the real questions in controversy between the parties. The law is indeed settled that an amendment of pleadings should be allowed at any stage of the proceedings unless it will entail injustice to the other side responding to the application. The application should also be granted unless the Applicant is acting malafide or by his blunder the Applicant has done some injury to the Respondent which cannot be compensated by cost.

See *AKANINWO & 4 ORS VS. CHIEF O.N. NSIRIM (2008) 1 SC PT. 111 PAGE 151.*

In my humble view, the amendment sought to be made is for the purpose of determining the real issue in controversy. The Defendant has not shown that the Claimant is acting malafide or that he will be prejudiced. The fact that the document is not signed by the Defendant cannot be a reason why an application for amendment should be refused.

In my humble view, the Claimant has made out a case to enable the Court grant the amendment sought. Prayer 3 is not grantable. The cart cannot be put before the horse. An amendment precedes an application for amendment. It is therefore refused:

- (1) Leave is hereby granted to the Claimant to amend his Originating process as outlined in the proposed amended processes.

(2) The Claimant shall file the said amended processes within days from now.

(3) The Defendant shall if necessary file an amended Statement of Defence within 14 days.

Suit is adjourned to 14/02/22 for Mention.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
11/11/2021