

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

THIS MONDAY, THE 1ST DAY OF NOVEMBER, 2021.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1040/2021

MOTION NO: M/6335/2021

BETWEEN:

MR. STEPHEN UDOCHI JOHN.....CLAIMANT/APPLICANT

AND

**1. GRAND AIR TRAVELS AGENCIES LIMITED } DEFENDANTS/
2. MR. KENNEDY } RESPONDENTS**

RULING

By a Motion on Notice dated 13th September, 2021 and filed on 29th September, 2021, the Claimant/Applicant seeks for the following reliefs:

- 1. An order of this Honourable Court renewing the Writ of Summons for a period of three(3) months from the date of such renewal or for such time as the Court may allow or deem fit in the circumstances.**
- 2. An order of Court amending the name of the 2nd Defendant on record before this Court to reflect his correct name being Kenneth Chinedu Igwe in the circumstance of this case.**
- 3. An order of Court granting leave to the Claimant/Applicant to amend the name of the 2nd Defendant/Respondent on all the processes before the Court(Originating Processes and Pleadings and all their accompanied processes and other processes) to reflect Kenneth Chinedu Igwe as against Kennedy.**

4. **An order of this Honourable Court that the Court processes in this suit meant for the 2nd Defendant/Respondent who is properly known as Kenneth Chinedu Igwe to wit: The amended Writ of Summons and all its accompanied documents and processes and subsequent processes be served on the 2nd Defendant/Respondent by substituted means through the bailiff of this Court or through a courier service or by such other Adult Person to wit: BY delivery of same to any adult at Grand Air Travels Agencies Limited, Plot 526 Obafemi Awolowo Way, Shop 16F/17F, Sabon Dale Shopping Complex, Abuja. Or by pasting same on the wall of the said premises and deeming such as sufficient and effective and good service.**
5. **And for such further or other order(s) as this Honourable Court may deem fit to make in the circumstances of this case.**

The grounds of the application are as streamlined on the motion paper.

The application is supported by an **18 paragraphs affidavit** with **2 annexures**, the proposed amended writ of summons and statement of claim. 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 the court has power to renew the writ of summons and amend the name of the 2nd Defendant and grant the Claimant/Applicant leave to amend all the processes of the Claimant/Applicant and serve same on the 2nd Defendant by substituted means in the circumstances of this case.”

Submissions which forms part of the Record of court were then made to the effect that sufficient materials has been disclosed by Applicant to allow for the grant of the application.

At the hearing, counsel in moving the application applied to withdraw **Relief 1** and also with respect to **Relief 4**, he wants it to be limited to service by pasting the Amended process at the last known abode or place of business of 2nd Defendant. **Relief 1** is accordingly thus struck out. He then relied on the paragraphs of supporting affidavit and adopted the submissions in the written address in urging the court to grant the application.

In opposition, the 1st Defendant filed a 7 paragraphs counter affidavit with one annexure, marked as **Exhibit A** together with a written address. One issue was raised as arising for determination, to wit: **Whether the applicant is entitled to the grant of this application.”**

The submissions which equally forms part of the Record of court is simply to the effect that sufficient facts have not been supplied by Applicant to warrant a grant of the application.

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

I have carefully read the court processes and the written addresses on both sides of the aisle and the narrow issue is whether the court should grant the application to amend the pleadings of 2nd Defendant to reflect his proper name. It is a matter to be resolved on fairly settled principles. The prayer for grant of an order of substituted service on the 2nd Defendant appear to me ancillary to the key question of amendment. I therefore start with the question of whether an amendment inures in the circumstances.

Now by the clear provisions of the rules of court, the court may at any stage of the proceeding allow either party to alter or amend his pleadings in such manner and on such terms as may be just for the purpose of determining the real question in controversy between the parties. See **Adekeye V. Akin-olugbade (1987)3 N.W.L.R (pt 60)214.**

The wide powers which the court may exercise in granting amendments cover amendments sought during, before and after trial of an action before judgment and even after judgment has been reserved. See **Okafor V. Ikeanyi (1979)3-4 SC 99 at 144.** Different considerations and principles determine how the court exercises or grants this indulgence at whatever point the application is brought.

An amendment is therefore nothing but the correction of an error committed in any process, pleading or proceeding which is done either as of course or by consent of parties or upon notice to the court in which the proceeding is pending. **Adekeye V. Akin-Olugbade (supra).**

The primary basis upon which the courts allow an amendment of pleadings is to ensure that a court determines the substance and or justice of the case or grievance that has being brought to court for judicial ventilation and adjudication. The courts have over time therefore always taken the positive and salutary stand or position that however negligent or careless the errors or blunders in the preparation of court processes and we must concede that these happen regularly, the proposed amendment ought to be allowed, if this can be done without injustice to the other side or the adversary.

In *Laguro V Toku* (1992) 2 NWLR (pt.223) 278, it was firmly established by the Apex Court that in the exercise of its powers to amend, the court is guided by the following principles namely:

- a) **The consideration of the justice of the case and the rights of the parties before it.**
- b) **The need to determine the real question or questions in controversy between the parties.**
- c) **The duty of a judge to see that everything is done to facilitate the hearing of any action pending before him and wherever it is possible to cure and correct an honest and unintended blunder or mistake in the circumstances of the case and the amendment will help to expedite the hearing of the action without injustice to the other party.**
- d) **If the court is an appellate court, the need to amend the record of the trial court, so as to comply with the facts before the trial court and decision given by it in order to prevent the occurrence of substantial injustice.**
- e) **Amendments are more easily granted whenever the grant does not necessitate the calling of additional evidence or the changing of the character of the case and in that aspect no prejudice or injustice can be said to result from the amendment. See also *Wiri V. Wuche* (1980) 1-2 S.C. 12; *Afolabi V. Adekunle* (1993) 2 SCNLR 141; *Akinkuowo V. Fafimoju* (1965) NWLR 349.**

I have endeavoured to set out *in extenso* the above principles governing the grant of an amendment. The task before me is to apply the above principles to the facts of this case guided by the imperatives or dictates of justice and ensuring that parties have a fair platform to present their grievances.

Now what is the nature of the Amendment sought here. It must be stated that this is a fairly new case filed as recently as 31st March, 2021. The Plaintiff sued one **Mr Kennedy** as the 2nd Defendant. The amendment sought is simply to reflect his correct or proper names to read **Kenneth Chinedu Igwe**. In the affidavit in

support, the Plaintiff who dealt with 2nd Defendant acknowledged his genuine error in using the wrong name of the 2nd Defendant on the Record.

For me, at the stage the extant application is brought well before parties have fully settled pleadings and before trial is a stage at which any kind of amendment can be brought because the possibility of causing injustice to the adversary is very minimal if any at all. This is so because since hearing has not even started, the adversary has all the opportunity to put up a case in rebuttal.

I note that the 1st Defendant in its counter-affidavit have contended that neither the said Mr. Kennedy or Kenneth Chinedu Igwe is in their employment and that they don't have any staff with those names. If that is the case, what then is the legal or factual basis for the objection to the Amendment. The 1st Defendant is not the 2nd Defendant and indeed counsel for the Defendant represent the 2nd Defendant in this case. It is not for 1st Defendant to determine or decide who Plaintiff sues or how he conducts his case. Whether he will ultimately succeed against the 2nd Defendant is a different matter which has nothing really to do with whether his proper name should be reflected. The contention that the source from where Plaintiff secured the proper name of 2nd Defendant is the **social media** riddled with suspect news and information is for me mere speculations of the extreme kind and completely irrelevant to the question of Amendment. Again, it is for the Plaintiff to determine who to sue and to prove his case at the trial against such person within the threshold as allowed by law. The 1st Defendant cannot hold brief for either Plaintiff or 2nd Defendant.

The bottom line is that I do not see how the extant amendment to the name of **2nd Defendant** can be said to be prejudicial or overreaching. Indeed, the 1st Defendant has not streamlined or identified how the Amendment will affect them in any manner. It is not enough to make general statements or wide allegations bereft of evidence to counter the application for amendment as done by 1st Defendant in this case. I cannot therefore see any legal or factual basis to refuse the extant amendment especially here where parties are yet to even fully settle pleadings as stated earlier and hearing is yet to start. A party cannot be prevented from presenting fully his grievance caused by genuine mistake and which is not misleading.

The authorities are clear that the court **possesses the discretionary power(s) to grant an amendment to correct the name of a party even if doing so will have the effect of substituting a new party, provided the court becomes satisfied that the mistake sought to be corrected is a genuine one and not misleading.**

See **Vulcan Gases Ltd V. G. F Ind(2001)9 N.W.L.R (pt.719)610 at 633 G-H** per Wali J.S.C (of blessed memory).

Indeed, where a party has been sued under a wrong name, the writ could be amended by joining that party in his correct name. See **Emespo J. Continental Ltd V. Corona S.R (2006)11 N.W.L.R (pt.991)365 at 377 E-F** per Muktar J.S.C (As she then was).

I will round up by referring to the instructive decision of the Court of Appeal in **First Bank of Nigeria V. M.O. Kawu & Sons Co Ltd (1999)9 N.W.L.R (pt.619)484 at 487** where it was stated as follows:

“The object of Courts is to decide the rights of parties and not to punish them for the mistake which they make in the conduct of their cases by deciding otherwise than in accordance with their rights. Thus there is no kind of error or mistake which if not intended to overreach, the court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline but for the sake of deciding matters in controversy. Such amendment is not a matter of grace or favour. As soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much as matter of right on his part to have it corrected, if it can be done without injustice.”

The Prayer for leave to amend has considerable merit.

On the issue of substituted service, the provision of **Order 7 Rule 11(2)(d) of the Rules of Court** allows for substituted service of originating court processes at the **“usual or last known place of abode or of business of the person to be served.”** From the affidavit in support, the last known place of abode or business of 2nd Defendant is at Shop 16F/17F, Sabon Dale Shopping Complex, Abuja. The 1st Defendant may have joined issues or denied that such person with the name of 2nd Defendant was their staff but the Plaintiff states that he dealt with 2nd Defendant in the said premises.

In the circumstances, it seems to me fair and reasonable that service be effected through this same address which was where the then 2nd Defendant was served earlier and prior to the amendment.

In the final analysis, and as stated earlier, nothing has been put forward by the 1st Defendant either in law or facts to prevent the court from granting the indulgence sought by Applicant in the overall interest of justice and to enable the court determine the real lives issues in dispute. Rather than chase shadow, the courts are

actively encouraged to face the substance of the justice of the case and the amendment to reflect the name of the real party sued as 2nd Defendant will surely help in such exercise. See **Adekeye V. Akin-Olugbade (1987)3 N.W.L.R (pt.60)214.**

The applicant having made out a case for the favourable exercise of the courts discretion with respect to some of the reliefs, and for the avoidance of doubt, I accordingly make the following orders:

- 1. Leave is granted to the Claimant/Applicant to amend the name of 2nd Defendant on all court processes from Mr. Kennedy to Kenneth Chinedu Igwe.**
- 2. The Amended processes should be filed and served forthwith on all parties within 14 days from today.**
- 3. Leave is granted claimant to serve the originating processes and all court processes on 2nd Defendant by substituted means to wit: by pasting at Plot 520, Obafemi Awolowo Way Shop 16F/17F Sabon Dale Shopping Complex Abuja being the last known place of abode or business of 2nd Defendant.**
- 4. The Defendants are at liberty on being served with the Amended processes to file consequential replies in compliance with the Rules of Court.**
- 5. Cost assessed in the sum of ₦5000 is awarded in favour of 1st Defendant and payable by Claimant.**

Hon. Justice A.I. Kutigi

Appearances:

- 1. O.P Asimegbe, Esq., for the Claimant/Applicant**
- 2. G.A Enyam, Esq., for the 1st Defendant/Respondent**