

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. 14
CASE NUMBER : SUIT NO: CV/2/2014
DATE: : WEDNESDAY 15TH DECEMBER, 2021

BETWEEN:

**CHINENYE GERALD ONWUACHU } CLAIMANT/
APPLICANT**

AND

**NIGERIAN BREWERIES PLC. } DEFENDANT/
RESPONDENT**

RULING

The Claimant/Applicant approached this Honourable Court vide its Motion on Notice dated 11th February, 2021 praying the court for the following:-

- i. An Order granting leave to the Claimant/Applicant to re-open his case.
- ii. An Order granting leave to the Claimant to call an additional witness by way of subpoena in this suit.
- iii. And for such further Orders as this Honourable may deem fit to make in the circumstances of this case.

In support of the Motion is an affidavit of 11 paragraphs duly deposed to by One Arinze Oni – Obiora, a counsel in the law firm of the Applicant.

It is the deposition of the Applicant that on the 2nd day of December, 2020 the matter came up for hearing and the Claimant was examined in chief and five documents were tendered in evidence to wit: Exhibits “1”, “2”, “3”, “4” and “5” respectively.

That on the 1st of February, 2021, the matter came up for continuation of hearing and the Claimant was cross – examined by the Defendant’s counsel and the Claimant closed his case. The matter was subsequently adjourned to 22nd March, 2021 for defence.

That the Claimant has applied for subpoena Ad Testificandum directed to the Medical Director Maitama, District Hospital Abuja or any other officer in the Hospital to give evidence on behalf of the Claimant.

That he knows as a fact that there is a need to call the witness from Maitama District Hospital to explain to the Court the lab test results for better understanding.

That the Defendant has not opened its case and the justice of the case demands that this application be granted as it is in the interest of justice to grant same.

In line with law a written address was filed wherein the following issue was formulated for determination.

“Whether the Applicant is entitled to the relief sought in the application.”

Learned counsel contended that the court can exercise its discretion by making a decision on what

is just and proper in a particular case ***GADI VS MALE (2010) 7 NWLR (Pt. 1195) 225*** was cited.

Counsel further argued that the court's discretion transcends all legal and equitable, and enables the court to make Orders as it deems fit. This means that the court is entitled to make such order as may be fair and just, according to the circumstance of each case.

OLUSOLA VS TRUST PROPERTIES LTD (2010) 8 NWLR (Pt. 1195) Page 30 -31, Paragraphs E-C was cited.

Counsel also argued that the Defendant/Respondent will not be prejudiced if the application is granted as it is in the interest of justice to grant same. Counsel urged the court to grant the application.

Upon service, the Defendant/Respondent filed a counter affidavit of 11 paragraphs deposed to by one GbengaAdesina, a senior Associate in the Law Firm of AdeboyeBadejo& Co.

It is the deposition of the Respondent that the affidavit in support of the Claimant/Applicant's application did not disclose any reasonable or tangible ground upon which to re-open the already closed case.

That the Claimant as his own witness had already tendered the reference laboratory result which are now exhibits before the court.

That the Claimant's application is over reaching, ambushing the Defendant and an attempt to adduce additional evidence to strengthen his case.

Defendant/Respondent further deposed to as a fact that it is not in the interest of justice to grant the Claimant's application because is cunning, overreaching, prejudicial and an embarrassment to the Defendant.

A written address was filed wherein a sole issue was raised for determination to wit;

“Whether it is the contention of the learned counsel for fair and just hearing in the circumstances to grant leave to the Claimant to re-open his case having regards to the fact that Order to open defence has been made by the court and after the Claimant (as his own witness) has tendered the pleaded exhibits, cross – examined on same and no re-examination by the learned counsel.”

Learned counsel in his submission stated that the learned counsel through the cross – examination of the Claimant who was his own witness saw the holes in their case and now cunningly, and supersingly seeks the nod of the court to fill the holes. Learned counsel insists that such a move will be prejudicial, over reaching, injurious to the Defendant.

See ***NATIONAL INLAND WATERWAYS AUTHORITY VS SHELL PETROLEUM CO. NIG. LTD (2008) 13 NWLR (Pt. 1103) 48 was cited.***

Learned counsel further argued that the Claimant's counsel ought to have applied for a subpoena on the purported hospital before closing his case, but failed to so do and now seeks to take undue advantage through the back door in order to fortify and

strengthen the flaws in the Claimant's evidence. For all purposes the attempt is prejudicial to the Defendant.

BASSEY VS EKANEM (2001) 1 NWLR (Pt. 694) 376; OJIEGBE VS UBAM (1961) 1 ALL NLR 277 at 280;

Counsel submits that learned counsel's affidavit did not disclose any cogent, strong and convincing reasons to enable the court exercise its discretion in the favour of the Claimant. The word "clarify" in paragraph 6 of the Counsel's affidavit is wide, loose and unspecific.

See MUSA VS DALWA (2010) LPELR – CA/242/2001;

Counsel respectively submit that the interest of justice demands that the application be refused as same will force the court to do injustice.

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.

The peculiarity of each case shall be considered.

See *AKANINWO VS NSIRIN (2008) 1 SC (Pt. 111) 151.*

It is established that every opportunity must be afforded parties to a dispute in court to put their respective cases fully before the court.

I however must be quick to mention that all cases are not the same.

It would appear that a party seeking to re-open his case after the case on either side had been closed would require to have the consent of the other party to the action.

In the absence of such consent, the party seeking to have his case re-opened in such a circumstance would then have to depend on the exercise of the discretionary power of the court to do so.

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) *perADETOKUNBO ADEMOLA (blessed memory)* upheld the decision of the lower court when it refused to allow a case closed, re-opened upon a similar objection and similar reason.

It is instructive to note that on the 1st of February, 2021, PW1 was cross – examined by the Defendant’s counsel and claimant’s counsel did not re – examine the Claimant. The Claimant closed its case on 1st of February, 2021 and matter was adjourned for defence.

The said laboratory results which the Claimant/Applicant seeks to call an additional witness by way of subpoena had been tendered and marked Exhibit “2”.

I wonder what is more clearer than the Exhibits before the court already that the Claimant/Applicant seeks to clarify by way of subpoena Ad testificandum.

In view of the fact that Defendant can always raise issues touching on law once the evidence so desired to be further led by Plaintiff is repairing, I shall allow the application to fly.

On the whole, application No.**M/1289/2021** moved is hereby granted.

Justice Y. Halilu
Hon. Judge
15th December, 2021

APPEARANCES

Sunday G.O, Esq., holding the brief of **AdeboyeBadejo, Esq.** - for the Defendant.

Claimant not in court and not represented.