

**THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, COURT NO. 29, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE O. J ENOBIE
DATED THE 9TH DAY OF DECEMBER 2021
SUIT NO. FCT/HC/CV/2993/2019
MOTION NO. FCT/HC/M/6661/2021**

OLUFUNMI GIWA-AMU

.....CLAIMANT/APPLICANT

AND

H-MEDIX PHARMACY & SUPERMARKET.... DEFENDANT/RESPONDENT

**LEGAL OPINION
RULING**

On the 20th of January, 2021, the Claimant filed Suit No. FCT/HC/CV/139/2021 against the Defendant. The Defendant filed a memorandum of conditional appearance on 19th February, 2021, and later filed its Statement of Defence on 21st June, 2021. On the 25th of August, 2021, the Claimant filed a Motion on Notice No. FCT/HC/M/5334/2021 for amendment of its processes while the Defendant on his part, filed a Notice of Preliminary Objection with Motion No. FCT/HC/M/5496/2021.

Generally being of the same theme, arguments on all the above 2(2) applications were taken together and adjourned for the Ruling of this Court.

I will address each application in the instant case.

Motion on Notice dated 23rd August, 2021, and Filed on 25th August, 2021, by the Claimant

By this Motion on Notice dated 23rd of August, 2021 and filed on 25th August, 2021, the Claimant/Applicant seeks the following prayers:

1. An Order of Court granting leave to Claimant/Applicant to amend her Originating process together with the accompanying Statement of Claim, Witness Statement on Oath, List of Witnesses, already filed and served in this suit, to change the name of the Defendant from H- Medix Pharmacy & Supermarket to H-Medix Pharmacy Limited.
2. An Order of Court deeming the Claimant/Applicant's Amended Originating process together with the accompanying Statement of Claim, Witness Statement on Oath, List of Documents, List of Witnesses as already filed and served, the relevant fees having been paid.

And for such further Order as this Honourable Court may deem fit to make in the circumstance.

The Claimant/Applicant also filed an affidavit of 9 paragraphs with 1 exhibit, marked "A1" and a written address in support of her application.

In opposition to the application, the Defendant filed a 20-paragraph Counter Affidavit along with a written address in support. Further, the Claimant/Applicant filed a further Affidavit in support of the said Motion on Notice and also filed a Reply on point of Law to the Defendant/Respondent's Written Address in support of the Counter Affidavit.

By the Affidavit of the Applicant, the Applicant averred that there is need to amend the Claimant/Applicant's Originating Process together with the accompanying Statement of Claim, Witness Statement Oath, List of Documents and List of Witnesses in this case. She further averred that the proposed amendment is material to the case of the Claimant and that other parties will not be prejudiced by the grant of this application.

Applicant, in her argument, did not formulate any issue for determination. However, she argued that the Rules of Court provide that amendment may be made to pleadings by either party at any

time during trial but before Judgment and that such amendment is at the discretion of Court provided that such amendment would not establish any prejudice, unnecessary surprise, irreparable inconvenience to a Respondent or lack of good faith on the part of the Applicant. Applicant's Counsel referred the Court to the case of ***Mamman v Salaudeen (2005) 12 SC (pt 11) 65.***

Further, Applicant's Counsel contended that the only time when an amendment will not be allowed is when a case is closed and amendment embodies new fact which will require the calling of evidence to prove those facts. She buttressed further that unless parties can adduce evidence on the new fact introduced by such amendment, the Application for leave of Court will not be granted. She cited ***George & Ors v Domonion Flour Mills LTD (1963) 1 ALL NLR 71.***

Applicant submitted that the amendment they are seeking at this stage of the proceedings is material to the case of the Claimant and material facts have been disclosed in their Affidavit. She urged the Court to grant her Application.

The Respondent's Counsel on the other hand, filed a Counter affidavit of 5 paragraphs, and averred that the Defendant denied the juristic status arrogated to the Defendant by the Plaintiff in paragraph 2 of her Statement of Claim before the Court.

The Respondent, at paragraph 4(c)(i) further averred that the law does not permit an amendment to substitute/change a non-juristic person for a juristic person as sought by the Applicant's Motion and depositions in paragraphs 3 and 4 of the supporting affidavit.

Counsel for the Respondent in his argument before the Court, distilled a sole issue for determination as follows:

Whether a Plaintiff who did not sue a juristic entity originally at the point of initiating an action can bring an application to "change" or substitute that non-juristic entity for a juristic entity?

O. J. Aboje Esq., Respondent's Counsel, submitted that a suit commenced in the name of a non-juristic person at the point of initiating the suit is void and as such a Plaintiff such as the one before the Court cannot "change" or substitute a named non-juristic person for a named juristic person. Counsel referred to the case of ***Yusuf v Mobil Oil (Nig) Plc (pt 1710) 1 at 15 paras C-F; 16 paras D-F SC.***

Counsel further submitted that the Claimant did not sue a proper and competent Defendant capable of being sued. See the case of ***U.U.U.V. USUOFIA V U.V. Union (2011)6 (NWLR) (Pt. 1243) p. 394 pp at 414 paras D-F.***

At the end, the Respondent's Counsel urged the Court to strike out the suit with a cost of N100,000.00 (One Hundred Thousand Naira) as the Defendant has filed a defence to the action, Motion regularising same, a Counter Affidavit to the Plaintiff/Respondent's Motion seeking change of party and a Written Address.

Hannatu Bahago Esq., Applicant's Counsel, filed a reply on point of law dated 14/9/2021 and filed on 15/9/2021 and formulated a sole issue for determination as follows:

Is the relief Sought in this application such that the Court has jurisdiction to grant?

She relied on the authority cited by the Respondent and maintained that there exist a distinction between suing a supposed Defendant in the wrong name and suing an entirely different entity that is not a juristic person and the Apex court has affirmed that an amendment could be allowed in respect of the former.

Appellant asserted that the facts of the instant case fall within the purview of suing a registered Defendant in a wrong name. She contended further that the Appellant has already deposed to the further Affidavit that the Defendant even though registered as "H-Medix Pharmacy Ltd, uses a sign post in its various business premises that reads "H-Medix Pharmacy & Supermarkets" and was sued inadvertently by the said name.

Applicant in furtherance to its submission, argued that this Honourable Court has the power to grant this application for amendment and referred the Court to Order 25 Rule 1 of the Rules of this Court. She also cited the case of **APGA V UBAH & ORS (2019 LPELR-48132 SC)**.

The issues formulated by both Counsel in this application are similar but I shall adopt the issue formulated by the Applicant in her reply on points of law which is reproduced as follows:

"Is the relief Sought in this application such that the Court has jurisdiction to grant?"

I have looked at the prayers sought in the instant application, the facts alleged both in support and against, as well as arguments adduced for and against same. The instant application is for an Order of Court granting leave to Claimant/Applicant to amend her Originating process and other accompanying processes already filed and served in this suit, to change the name of the Defendant from "**H- Medix Pharmacy & Supermarket**" to "**H-Medix Pharmacy Limited.**"

By the provision of Order 25, Rules of this Court, a party in a civil proceedings can approach the Court for an amendment of his pleadings before the close of case. Thus, the said order provides:

"A party may amend his originating process and pleadings at any time before the pre-trial conference and not more than twice during the trial but before the close of the case."

In this regard, I agree with the Appellant that the Rules of this Court provides that amendment can be made to pleadings by either party at any time during trial but before Judgment. I also concur with the submission of the Appellant that such amendment is at the discretion of the Court provided that such amendment would not establish any prejudice, unnecessary surprise, irreparable inconvenience to a Respondent or lack of good faith on the part of the Applicant. See **Mamman v Salaudeen (supra)**.

However, Respondent's Counsel complained that a suit commenced in the name of a non-juristic person at the point of initiating a suit is void and as such a Claimant such as the one before the Court, cannot change or substitute a name of a non-juristic person for a juristic person. He added that on the authority of the case of **U.U.U.V ISUOFIA V U.V. UNION (supra)**, naming a non-Juristic person as a party is not a misnomer and amending same to substitute a juristic person is out of it.

In response to the assertion of the Respondent, the Appellant standing on the authority cited by the Respondent and the case of **Maersk Line & Anor V. Addie Investments Ltd & Anor (supra)**, argued that there exist a distinction between suing a supposed Defendant in wrong name and suing an entirely different entity that is not a juristic person and that amendment could be allowed in respect of the former.

Having evaluated the argument of both Counsel, I agree with the submission of Counsel for the Respondent that naming a non-juristic person as a party is not a misnomer and amending same to substitute a juristic person is not the position of the law and I so hold.

The amendment the Applicant is seeking, if granted, will amount to substituting the name of the Defendant (a non-juristic Person) to a Juristic person which is not within the ambit of the law and I so hold.

Accordingly, the distinction drawn by Applicant is misconceived and is hereby discountenanced. Having identified the implication of the amendment sought by the Appellant, the position of my lord, Per Musa Dattijo Muhammad, JCA (as he then was), in the case of **NJOKU V. UAC FOODS (1999) LPELR-13014(CA) PP 11 PARAS A**, becomes instructive where he said:

"An amendment for the substitution of a non juristic person by a juristic person is not at all feasible and must be refused. There was nothing to substitute. See Gani Fawehinmi v. NBA (2) (1989) 2 NWLR 105 - 558; Hiflow Farm Industry v. Unibadan (1993) 4 NWLR (pt.290) 719. The dominant judicial view is that when a Court is

approached with a prayer for the amendment sought by the Appellant and it refused same, it proceeds not only to strike out the name of his non-existing party but also the suit in its entirety. See Okechukwu v. B.S.A. Ndah (1967) NMLR 368. See also the case of ***Yusuf v Mobil Oil (Nig)(supra)***

The amendment sought by the Applicant's Counsel having failed, the averments made by Applicant in its Affidavits and further Affidavit will not avail the Applicant and I so hold. The deposition of Applicant at Paragraph 5 and 6 cannot sustain the Applicant's Application. The averment provides as follows:

***"5. The name description in the different business premises of the Defendant is H-Medix & Supermarket and is quite different from the name used for its registration
6. I recently discovered that the registered name of the Defendant is H-Medix Pharmacy Ltd hence the need for the amendment to reflect their true name before the Court."***

It is the duty of Counsel to conduct his case with due diligence. The client who engages the services of a legal practitioner expects that such legal practitioner will conduct his case with due diligence and within the ambit of our law. It is the duty of Counsel to know that name description displayed by the purported Defendant/Respondent is not enough to ascertain the name or juristic nature of the Respondent. It is therefore wrong for Appellant's Counsel to refer to the Defendant /Respondent (a non juristic person) as a registered Company, as contained in paragraph 2 of its Statement of Claim, without due diligence. Thus, Per MOHAMMED LADAN TSAMIYA, JCA, posited as follows in the case of ***MAINA BUBA & ANOR v. TELA MUSA & ANOR (2006) LPELR-7675(CA) pp 2-3 para F-G:***

"I should like to remind counsel that, in all cases, criminal or civil, they should realise the enormous responsibility that they undertake when asked to shoulder the heavy burden of prosecuting or defending

his client's case. The ethics of the profession require and dictate that counsel should devote himself completely to this task, so that he may watch meticulously and constantly the interest of his duties in every case. This is one reason why our profession is called honourable. But every Barrister is expected to know his various, onerous, difficult and dedicated duties to his client. The counsel must conduct his client's case to the end provided he is paid a proper fee. If counsel can take his position, element of expectation in the conduct and preparation of cases would be injected. But the great pity is that, from experience, some counsel do abandon this responsibility. This may lead the appeal or the case to be lost due to want of prosecution and himself (counsel) rendered liable for negligence to his client."

Having refused this application, I am of the humble view that it is now clear that proper parties are not before the Court to grant the Court the competence and jurisdiction to entertain this case and I so hold. See the case of ***ATOYEBI V. FED POLY KADUNA & ANOR (2015) LPELR-40391(CA) per ABDU ABOKI ,JCA (Pp. 17-18, paras. B-A)***.

The Court of Appeal, in the case of ***ATOYEBI V. FED. POLY KADUNA (SUPRA)*** further held that:

".... In the instant case there cannot be valid amendment of the name of the Respondents being non-juristic persons. The only option open to the lower Court in such circumstance would be to strike out the name of the non-juristic person(s). See; AGBOMAGBE BANK LTD VS GENERAL MANAGER G.B OLLIVANT LTD AND ORS. (1961) ANLR 125." Per ABDU ABOKI ,JCA (Pp. 17-18, paras. B-A)

Flowing from the above, this case is hereby struck out in its entirety and I so hold.

This suit having been struck out in its entirety, the **preliminary objection with Motion NO. M/5496/2021** has been denied of its legs to stand. So you cannot put something on nothing and expect it to stand. see the case of **BUKAR MODU AJI V. CHAD BASIN DEVELOPMENT AUTHORITY & ANOR (2015) LPELR-24562 (SC) Pg.27 Paras. F-G**, where his lordship **Iyang Okoro, J.S.C** said:

"... You cannot put something on nothing and expect it to stand. It will certainly collapse like a pack of cards..."

Accordingly, the preliminary objection is now otiose and accordingly, struck out.

**SIGNED
HON. JUSTICE J.ENOBIE OBANOR
(PRESIDING JUDGE)**