

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/ CV/0025/2017

BETWEEN:

ALH. YUSUF ABDURRAHIM.....CLAIMANT/APPLICANT

VS

1. NAVY CAPTAIN ISAH AHMED

2. MAL. SULEIMAN IBRAHIM.....DEFENDANTS/RESPONDENTS

RULING

By a Motion on Notice dated 4/8/2020, but filed on 11/8/2020, with Motion No: M/9129/2020, brought pursuant to Order 43 Rule 1 and Order 25 Rule 1, 2 and 3 of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court, the Applicant is praying this court for the following reliefs;

- (1) An Order of this Honourable Court granting the Plaintiff/Applicant leave to amend the Writ of Summons, Statement of Claim and the Statement on Oath by adding fresh Paragraph 18, 19 and 20 and other Paragraph in terms of the highlighted words reflected in the proposed amended Statement of Claim herewith attached.

- (2) An order of this Honourable Court granting leave to the Plaintiff/Applicant to call additional witness and to file additional Statement on Oath.
- (3) An Order of this court deeming the Amended Writ of Summons, Statement of Claim, statement of the Plaintiff in Oath filed along with the Additional Statement on Oath separately filed as properly filed and served.
- (4) And the Omnibus reliefs.

In support of this application is an Eight (8) Paragraph affidavit with Exhibit attached deposed to by one C. O. Atabor Counsel in the Law Firm of Applicant's Counsel. In compliance with the Rules of Court, Applicant's Counsel filed a Written Address and adopts same, in urging the court to grant the application?

The processes were served on the Defendant/Respondent on 19/8/2020 through his Counsel, but Respondent's Counsel did not react to the motion. He informed the court at the hearing of the motion that they are not opposed to the Motion. The implication of this is that the application before the court stands unchallenged and uncontroverted and in the case of Gana Vs FRN (2012) All FWLR (PT. 617) 793 @ 800 Paras D – E the court held that;

“Where an affidavit does not attract a counter-affidavit the facts deposed therein have admitted and must be taken as true”

In the Written Address settled by P.A. Attabor Esq. Applicant Counsel formulated a sole issue for determination that is;

“Whether in the circumstances of this case, this Honourable Court can grant the Applicant leave to amend his Statement of Claim”

In summary, the submission of Applicant’s Counsel is that, the aim of amendment of pleading is usually to prevent the manifest justice of a cause from being defeated urge court to so hold. Refer to *Ehindimhen Vs Musa* (2000) 4 SC (PT. 11) 166 @ 187.

Submits that the court has unlimited power to permit amendment of pleadings refer to *Kalu Igwe Vs Okuwa Kalu* (2002) FWLR (PT. 671) @ 695.

Submits further that leave to amend will be allowed unless Applicant does so malafide or has done some injury to his opponent which cannot be compensated for. Refer to Paragraph 4 (a) to 1 and 5 (a) to g of the affidavit in support of the motion submit that the facts necessitating the amendment has been disclosed in those Paragraphs and amendment sought is necessary for the just determination of this suit Refer to the case of *Bank of Baroda Vs Iyanabani* (2002) 7 SCNJ 287 @ 307 – 308.

Submits that the Rules of Court particularly Order 43 Rule 1 and Order 25 Rule 1, 2 and 3 allows the filing of additional Statement on Oath and amend pleadings. That the grant of this application would be an act to promote fair hearing refer to *Trans America Corporation Vs Akande* (2014) All FWLR (PT. 959) 10 77 @ 1079 Ration 2.

Finally urge court to exercise its discretion in favour of the Applicant and grant all the reliefs sought.

Having carefully considered the affidavit evidence of the Applicant which is unchallenged and uncontroverted, the attached Exhibit the submission of Counsel as well as the judicial authorities cited, the court finds that there is only one (1) issue that calls for determination which is;

“Whether the Applicant has placed sufficient facts for the grant of the reliefs sought”

The grant or otherwise of an application of the nature is at the discretion of the court and in the exercise of that discretion, the court is enjoined to do so judicially and judiciously. See the case of *Ologunleko Vs Oguneyehun* (2008) 1 NWLR (PT. 1068) 397 @ 400. Over time the courts have laid down guidelines on whether not to grant an application for amendment. In *Adekanye Vs Grand Service Ltd* (2007) All FWLR (PT. 387) 855 @ 857 they include;

- (a) The court must consider the materiality of the amendment sought and will not allow an inconsistent or useless amendment.
- (b) Where the amendment would enable the court to decide the real matter in controversy and without prejudice.
- (c) Where the amendment relates to a mere misnomer, it will be granted almost as a matter of course.
- (d) The court will not grant an amendment where it will create a suit where none existed.

- (e) The court will not grant an amendment to change the nature of the claims before the court.
- (f) Leave to amend will not be granted if the amendment would not cure defect in the proceedings.
- (g) Amendment would not be allowed if such an amendment will prevent injustice.

In this instant application the Applicant is seeking to amend the originating processes, to correct a typographical error in the name of the 1st Defendant who was joined to this suit by order of this court and to call additional witness.

I have looked at the proposed further amendment Writ of Summons, Statement of Claim, Witness Statement on Oath and Claimant reply to the Defendant's Statement of Defence/Defence to Counter Claim. Granted that the proposed further amended Writ of Summons Statement of Claim and Witness Statement contained new facts as seen in Paragraphs 3, 4, 5, 7, 14, 15, 16 and 18 of the proposed further amended Statement of Claim they do not, in my view, change the character of the case and does not create a new suit before the court. The application also does not substitute a Defendant with a new Defendant in the amended processes already filed in court.

In any event, it is the law that amendment does not allow for the introduction or inclusion of new facts, provided it does not change the nature and character of the case or create a new suit before the court. Further, it is settled law that the court may allow either party to amend his

endorsement or pleadings at any stage of the proceedings in such a manner and on such terms as may be just and such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties see the case of Eke Vs Akpu (2010) All FWLR (PT. 510) 640 @ 645.

In all of these the Defendants/Respondents who were duly served with the process on 19/8/2010 did not react to the Motion. This court has deemed the facts contained in the affidavit in support of the motion as true and correct and will act on it. They stand unchallenged and uncontroverted it is trite law that the court should accept such unchallenged and uncontroverted facts as true and correct. See Nigeria Army Vs Warrant Officer Bunmi Yakubu (2013) LPELR 20085 where Fabiyi (JSC) stated;

“It is basic that unchallenged evidence stands. The court should accept same and act on it”

From all of these, it is the view of the court that the amendment sought by the Applicant are matters that would assist the court to determine the real issues in controversy between the parties and the Rules of Court permits the grant of the application for the Statement on Oath. All of these amendments, in my view, will not entail injustice or overreaching the Respondents as Respondents are also at liberty to also amend their processes I shall, therefore, exercise that discretion in favour of the Applicant, having placed sufficient facts for the grant of the application. Accordingly, the reliefs sought by Claimant/Applicant are hereby granted as prayed.

- (1) Leave of court is hereby granted to Claimant/Applicant to amend the Writ of Summons, Statement of Claim and the Statement on Oath by adding fresh Paragraphs 18, 19 and 20 and other Paragraph in terms of the highlighted words reflected in the proposed amendment Statement of Claim herewith attached.
- (2) Leave of court is hereby granted to the Claimant/Applicant to call additional witness and to file additional Statement on Oath.
- (3) The amendment Writ of Summons, Statement of Claim, Statement of the Claimant on Oath filed along with the additional Statement on Oath separately filed are deemed properly filed and served.
- (4) The Defendants/Respondents are at liberty to file their responses to the processes served on them within the time prescribed by the Rules.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

24/2/2022

APPEARANCE:

C. J. EBUTE FOR THE CLAIMANT/APPLICANT

ADEWALE NATHANIEL FOR THE DEFENDANT/RESPONDENT