

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUJE, ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 24th FEBRUARY, 2022

FCT/HC/CV/2731/20

BETWEEN

UNION BANK OF NIGERIA PLC-----

CLAIMANT/APPLICANT

AND

1. DEFENCE INTELLIGENCE AGENCY

2. ATTORNEY GENERAL OF THE FEDERATION

RESPONDENTS/Respondents

RULING

The Claimant/Applicant in this motion on notice No. M/7080/2021 dated the 21st October, 2021 and filed on the 22nd October, 2021 prays the Court:-

1. An order of this Honourable Court for leave to amend the statement of claim as per the proposed amended statement of claim marked as exhibit 1 and attached to the affidavit in support of this motion.
2. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances of this case.

In support of this application, the Claimant/Applicant filed a 7 paragraph affidavit dated the 22nd October, 2021 and a written address dated the 21st October, 2021.

The affidavit relied upon by the Claimant/Applicant was deposed to by one Confidence Ordu and contain among others the following facts:-

1. That the deponent is a litigation secretary in the chambers of A. Danjuma Tyoden & Co Counsel to the Claimant/Applicant hence is familiar with the facts deposed herein.
2. That Joseph Tobi, Counsel to the Claimant had informed her that while reviewing the case file he discovered that there is a need to amended the statement of claim with regards to a valid subsisting judgment of this Court in suit No.CV/1777/2015 between the Claimant and the Honourable Minister of FCT And 3 others over the ownership of the property in dispute which was delivered on 9th February, 2021 affirming the Claimant' ownership of the plot among others.
3. That the said Joseph Tobi Further informed the deponent that in order to bring all issues in controversy in this suit for effectual determination before the Honourable Court, there is a need to amend the statement of claim and plead the fact that the judgment of this Court in suit No CV/1777/2015 delivered on 9th February, 2021 has affirmed the ownership of the Claimant's right to plot no. 1152 against the custodians of the FCT land.
4. That the proposed amended statement of claim is attached and marked exhibit I.
5. That the Defendants/Respondents will not in any way be prejudiced if the Application is granted.

In the written address, a sole issue for determination was raised, which is whether the Claimant/Applicant is entitled to amend its statement of claim under the rules of this Honourable Court.

The Claimants/Applicants rely on the cases of **ADEKEYE V AKIN – OLUGBADE (1989) 3 NWLR (pt.60) 214 AND BOGBAN V DIWHRE (2005) 16 NWLR (pt951) 274 and 303.**

Order 25 of the Federal Capital Territory High Court Civil Procedure Rules) 2018 provides for amendments of originating processes and pleadings.

Order 25(1) provides that 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?

Furthermore; subsection (7) provides that whenever any endorsement or pleading is amended, it shall be marked in the following manner;

Amended--- day of --- pursuant to order of (name of judge) dated the --- day of ---- thus, the FCT High Court rules provide for and allow for amendments, but also stipulate how the amended should be marked once the prayer is granted.

However, in the case of **BANK OF BRAODA V IYALABANI CO. LTD (2002)LPELR – 743 (SC)**, Ejiwunmi JSC stated thus:-

"If by an amendment, the statement of claim will disclose a cause of action, the Court will grant an amendment as sought, but the suit will be dismissed if an amendment however, ingenious, cannot make the statement of claim disclose, a cause of action."

Also, in **CHIEF EDMUND I .AKANINWO & ORS VS CHIEF O.N NSIRIM & ORS (2008) LCN/3636 (SC)**. It was stated that:-

"An amendment of any proceeding will be granted if it is for the purpose of eliminating all statements

which may tend to prejudice, embarrass, or delay the trial of the suit, and for the purpose of determining in the existing suit the real questions or question in controversy between the parties the law is indeed well settled that an amendment of pleadings should be allowed at any stage of the proceedings unless it will entail injustice to the other side of responding to the application. The application should also be granted unless the Applicant is acting mala fida or by his blunder, the Applicant has done some injury to the Respondent which cannot be compensated in terms of costs or otherwise”

See also the case ***TILDESLEY V HARPER (1878) 10 CH.D 393 At 396 CROPPER VS SMITH (1884) 26 CH-D 700 at 710, AMADI VS THOMAS APLIN & CO. LTD (1970) 1 ALL NLR 409.***

On the otherhand the 1st Defendant filed a counter affidavit of 8 paragraph deposed to Ibukunoluwakitan Oyeyipo, a legal practitioner in the law firm of Abdullahi Ibrahim & Company, Counsel to the 1st Defendant Counsel relied on all the paragraph of the counter affidavit and also accompany paragraph with written address. The Defendant/Respondent relied on the same. I have guess through the process filed by the 1st Defendant particularly paragraph 4 of the Defendant/Respondent, that on the 29th November, 2021 at about 3 :pm in our office I was informed by C.B Abod--- - Esq Head of legal services of the 1st Defendant of the of the following Facts which I rarely believed.

- a. The 1st Defendant was not aware of the suit No. CV/1777/2015 cited in the application .

- b. That the 1st Defendant was not a party to the suit and does not know the parties in the suit.
- c. The 1st Defendant does not know of the reliefs sought in the suit.

And was not aware of the judgment allegedly delivered on the 9th February, or its terms. Also paragraph 5 contained contrary to paragraph 3 of the affidavit in support the amendment sought by the Claimant seeks to introduce new principles of law which was not an issue before this Court, thereby changing the nature of this claim.

Paragraph 6 the amendment sought by the Claimant if granted would prejudice the 1st Defendant and would amount to overreaching. The 1st Defendant. Though occasioning a miscarriage of justice or the 1st Defendant from all the facts contained in the affidavit attached to the motion on notice and the counter affidavit filed by the 1st Defendant Counsel in respect of the Claimant's application. It becomes imperative for this Court to look at the case of *ITA & ANOR VS IKPONYANG & ANOR 2000 LPELR 5614 CA* held. The following principle governing amendment of pleading has been crystallized from decided case to the effect that a Court ought to refuse an application for amendment.

- a. If it is made malafide
- b. If it would cause unnecessary delay
- c. It will in any way ----- the opponent party. Also in ***C.G.G NIG LTD VS IDOROYIN 92015 13 NWLR (PT.1475) 149 at 172-173 SC*** held per Ogunbiyi JSC.

An amendment that gives an impression of an act in bad faith is not to be entertained and allowed. What is paramount in the mind of a Court always is to ensure that justice is served to all parties who should not be allowed to

take advantage of the ----- see also ***AINA VS JIUADA (1992) 4 NWLR (Pt.91) 105 paragraph G-N.***

The Claimant should noted that their failure to place all the material would enable this Court exercise its discretion in its favour is fatal to the ground of the motion to amend. See ***FBN PLC VS TSA KADUNA LTD (2015) 15 NWLR (Pt 1216) 247.***

In view of the judicial authorities cited above I deem it just not to grant this application. Accordingly this application is hereby dismiss reason being that if is application is granted shall likely accession miscarriage of justice to the 1st Defendant and I so hold.

HON. JUSTICE M.S IDRIS
(Presiding Judge)
24/2/2022