IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT JABI - ABUJA

THIS WEDNESDAY, THE 4TH DAY OF MAY, 2022.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/162/2021
MOTION NO: M/332/2021

BETWEEN:

DR. VINCENT ENEMONA ABU …… PLAINTIFF/RESPONDENT

AND

DR. TAMUNOMICIBI THOMPSON WAKAMA ... DEFENDANT/APPLICANT

RULING

By a motion on notice dated 18th January, 2021 and filed same date at the court's Registry, the defendant/applicant seeks for the following Reliefs:

1. **LEAVE to amend paragraphs 15, 16, 17 and 38 (2) of the Statement of Defence in the manner set out and underlined in the annexed Proposed Amended Statement of Defence.**

2. **AN ORDER deeming the Amended Statement of Defence filed and served separately as duly filed and served, appropriate filing fees having been paid.**

3. **AND for such further Order or Orders as the Honourable Court may deem fit to make in the circumstances of this application.**

The Application is supported by a five(5) paragraphs affidavit with one annexure, the proposed Amended statement of defence. A written address was filed in compliance with the Rules of Court in which one issue was raised as arising for determination:

"Whether the grant of the Amendment at this stage will be prejudicial to the case of the plaintiff."

The address which forms part of the Record of court then referred to the settled principles governing the grant of amendment and it was contended that on the materials and settled principles, the Applicant has satisfied necessary legal requirements as the amendment sought seeks only to bring the pleadings in line with the evidence already adduced on the Record by defendant's witness and will not necessitate the calling of any further evidence and will also not occasion any prejudice or miscarriage of justice.

The applicant also filed a Reply on points of law which essentially sought to accentuate the points already made to the effect that the application was not brought mala fide and that no injustice will be occasioned by the grant of the application.

At the hearing, counsel to the applicant relied on the contents of the affidavit and adopted the submissions in the address filed in urging the court to grant the application.

In opposition, the claimant/respondent filed a 4 paragraphs counter-affidavit together with a written address in which one issue was raised as arising for determination:

"Whether the defendant/application is entitled to the order for Amendment of his pleadings?"

The address which forms part of the Record of Court equally dealt with the settled principles governing the grant of an amendment and it was contended that in this case the timing of the application after parties have closed their cases and final addresses ordered is aimed at altering or changing the character of the case after seeing the case of claimant and after the witness for the defendant had already given evidence contrary to that already pleaded and thus extremely prejudicial.

At the hearing, counsel to the claimant/respondent equally relied on the contents of the counter-affidavit and adopted the submissions in the written address in urging the court to refuse the application.

I have carefully considered the processes filed on both sides of the aisle and the narrow issue is whether the court should grant the extant application to amend

the statement of defence of Applicant. The question of amendment of pleadings is one to be settled on fairly settled principles.

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.

In situating the justice of this application, it may perhaps be pertinent to give some background facts of the matter. I will only give or state the facts as are relevant to situate the fairness and indeed justice of the application.

The plaintiff commenced this action by way of a Writ of Summons and statement of claim dated 13th January, 2021 seeking for N500 Million aggravated damages for libel and demand for an apology letter, amongst other reliefs.

The defendant filed an Amended defence dated 7th April, 2017 and also set up a counter-claim against plaintiff seeking for N100, 000, 000.00 damages for defamation and N100, 000, 000.00 damages for assault. The plaintiff filed a reply to the statement of defence and with the settlement of pleadings, hearing then commenced.

The plaintiff called 2 witnesses, tendered documents, they were duly cross-examined and closed his case. The defendant in his defence called 3 witnesses and tendered documentary evidence; they were equally cross-examined before closing his case. Learned counsel to the defendant however indicated that he intends to file an application to amend the defence to bring same in line with the

evidence led. The matter was however then adjourned for parties to file their final written addresses.

Having provided the above background facts, lets now determine the justice and fairness of the extant application in the context of the guiding principles governing grant of amendment earlier highlighted.

For purposes of clarity, I will repeat the proposed amendment sought vis-a-vis the existing processes and the evidence on Record and then ask this question: Is it a simple case of aligning the pleadings with the evidence led or there is more to the amendment?

Now the proposed amendment sought via the extant application are as contained in paragraphs 15, 16 and 17 of the proposed defence and 38 (2) of the proposed counter/claim as follows:

"15. <u>The Plaintiff's request for the review or remarking of his examination script was refused by the college on the ground that the Plaintiff made his request after the expiration of the period provided in the Regulations of the College for the making of a request for remarking.</u>

16. <u>The Plaintiff's examination scrip, the MCQ paper could not be remarked owing to the reason stated in paragraph 15 above but the Plaintiff re-sitted for the examination after the Defendant had ceased to be the Secretary of the Faculty and an examiner.</u>

17. <u>The Plaintiff, after his subsequent resits at a time the Defendant had ceased to be the Secretary of the faculty and was not an examiner, secured lower scores and failed the MCQ Paper.</u>

38. Whereupon the Defendant Counter-Claims against the Plaintiff as follow:

(2) N100.000.000.00 as damage for assault <u>and/or intimidation</u>

At the risk of cluttering this judgment but for purposes of ease of understanding, let me reproduce the contents of the existing statement of defence and counter-claim and the relevant paragraphs as follows:

"15. The Plaintiff's request for the review or remarking of his examination script was initially refused on the ground that the Plaintiff made his request after the expiration of the period provided in the Regulations

of the College, but the refusal was later reviewed by the Board of the College in order to protect the image of the college.

16. The Plaintiff's examination script, the MCQ paper was later remarked by independent examiners and at a time when the Defendant had ceased to be the Secretary of the faculty which was meant to remove any likelihood of bias against the Plaintiff.

17. The Plaintiff, after the remarking of his script by the independent examiners and at a time when the Defendant had ceased to be the Secretary of the Faculty (his term of office having expired), secured a lower score than that awarded to him initially.

COUNTER CLAIM

38. Whereupon the Defendant Counter-Claims against the Plaintiff as follows:

(1) N100,000,000.00 as damages for defamation of character

(2) N100, 000, 000. 00 as damage for assault

(3) Total claim: N200,000,000.00

It is also important to underscore the point that the claimant in his reply vide paragraphs 11-13 joined issues with defendant on the above averments in paragraphs 15-17 as follows:

"11. In reply to paragraph 15 of the Statement of Defence, the Plaintiff vehemently deny the averment in this paragraph and put the Plaintiff to the strictest prove of the allegation thereof, the plaintiff will rather show at the trial that the defendant lied in paragraph 15 of his Statement of Defence as show in the letter written by the National Postgraduate Medical College, shall be relied upon at the trial, a copy of the letter is hereby attached and marked Exhibit ABU1. Moreso, photocopy of Dr. T.T. WAKAMA's letter to the Nigeria Chief of Army Staff which also include series of letters attached shall also be relied upon as the Original is with the Chief of Army Staff, the photocopy is hereby attached and marked Exhibit ABU2 to show that the Plaintiffs MCQ was never marked, more evidence will also be use in other Court proceeding to show that the plaintiffs MCQ Exams was never remarked.

12. The Plaintiff in further answer to paragraph 16 of the Statement of Defence, vehemently deny the averment in paragraph 16 of the Statement of Defence and put the Defendant to the strictest prove of the allegation thereof, the Plaintiff will further bring evidence before the Court to show that his exams were NEVER remarked at any point in time, the Postgraduate Medical College NEVER at any point in time consider his application rather they gave excuses to show their bias towards the Plaintiff and took the words of Dr. T.T. Wakama, their Chief Examiner as golden. The College also stated clearly in their letter to the Plaintiff that they will not consider the Plaintiff Application. The plaintiff also approach the Federal High Court to compel the college to remark his papers.

13. In answer to paragraph 17 of the Statement of Defence of the Defendant, the plaintiff vehemently deny all the allegation contain therein in paragraph 17 and put the Defendant to the strictest prove of the allegation thereof. The plaintiff will show at the trial through evidence by Dr. T.T. Wakama that the College NEVER remarked his paper rather they took side with Dr. T.T. Wakama to aid and abet him in the continuous intimidation and molestation of the plaintiff in his quest for knowledge. The plaintiff avers that the college never remarked his papers at all and paragraph 17 of the statement of defence were not true as photocopy of the proceedings to compel the college to remark his paper are pleaded that the plaintiff rely upon the series of letter to the Chief of Army Staff which was forwarded by Dr. T.T. Wakama, photocopy of the letter are hereby pleaded."

The averments above may not have been elegantly drafted, but it was on the basis of these extant pleadings that parties led evidence on both sides of the aisle.

It is important to underscore the point that these pleadings filed by parties delineated and or streamlined the issues and facts in dispute between the parties.

It is equally important to state that the underlying basis or aim of pleadings is to give the adversary notice of the case to be met, which enables either party to prepare his evidence and documents upon the issues raised in the pleadings, and saves either side from being taken by surprise. It makes for economy. The parties must indeed confine their evidence to those issues; the cardinal point is

the avoidance of surprise. See **Bunge V. Governor of River State (2006)12 N.W.L.R (pt.995)573 at 598-599H-B**

Now in evidence, the defendant adopted his witness deposition in court on 13th December, 2018. This witness deposition the defendant adopted clearly gave flesh to the averments contained in the above existing paragraphs 15-17 in the following paragraphs 20-23 of his deposition as follows:

"20. That in reaction to the petition of the Plaintiff, I wrote the College and supported the Plaintiff's request for the remarking of the Plaintiff's script, particularly the MCQ paper.

21. That the Plaintiff's request for the review or remarking of his examination script was initially refused on the ground that the plaintiff made his request after the expiration of the period provided in the Regulations of the College, but the refusal was later reviewed by the Board of the College in order to protect the image of the college.

22. That the Plaintiff's examination script, the MCQ paper was later remarked by independent examiners and at a time when I had ceased to be the Secretary of the Faculty which was meant to remove the likelihood of bias against the Plaintiff.

23. That the Plaintiff, after the remarking of his script by the independent examiners and at a time when I had ceased to be the Secretary of the Faculty (my term of office having expired), secured a lower score than that awarded to him initially."

The effect of this **adoption is** that the defendant has effectively now led clear evidence in support of the existing pleadings and on which parties as explained stated have joined issues. The defendant has thus taken a clear position on this issue by the adoption of his deposition which he signed on oath affirming for the validity of the positions advanced in his deposition.

Now it is true or correct that on the records and during his cross-examination, the defendant stated that contrary to the position already taken that by the adoption of his witness deposition, that paragraphs 22 and 23 of his deposition were typographical errors as the paper in contention was never remarked. This evidence clearly altered the trajectory of his existing narrative on record which he had already adopted. The evidence of DW3 equally supported the narrative that the MCQ script of plaintiff was not remarked because the application to remark came late after the 6 months time threshold for remarking in their

regulations had lapsed. But the question that this evidence poses is thus: Does this then not amount to evidence led contrary to the pleadings? I say no more on this.

The court here is not and infact cannot engage in any exercise of evaluating the evidence led now and the relative probative weight of what was said and the impact if any of the cross-examination and the answers elicited from the defendant that has propelled the present amendment. That, God willing, shall be done at the appropriate time. What however is clear is that the defendant has adopted his deposition which projected a clear position on a defined issue and during his cross-examination and the evidence of DW3, the narrative projected something different. I am not sure the process of amendment can properly be utilised to correct this type of error or apparent contradiction to the obvious disadvantage of the adversary whose cross-examination elicited this contradictory evidence in the first place.

As stated severally, the claimant had from the very beginning taken the position that his paper was never remarked contrary to the case defendant made out. That position is not novel or new. The Defendant/Applicant clearly was **fully** appraised of this position and never effected any corrections prior to when defendant adopted his deposition which was challenged under cross-examination and which then led to the confirmation of the fact that the paper was indeed never remarked by Defendant. The contention and or submissions of counsel to the defendant that the proposed amendment vide paragraphs 15-17 of the proposed amended defence is simply to align the pleading with the evidence led clearly has no support within the clear context of the deposition the defendant adopted in court. It is not as straightforward as demonstrated above.

The contention therefore that the present amendments seeks to project a different case contrary to one already made out on the existing defence and supported by the evidence of defendant and in essence having a second bite at the cherry and to recalibrate or remake the case as a result of the cross-examination clearly have some validity and considerable merit.

In the light of the above, let us give further scrutiny to the amendments. **Paragraph 15** of the proposed amended defence clearly in the circumstances seeks to alter the existing narrative from one recognising that there was a review or remarking to one of a complete denial.

Paragraph 16 of the proposed amendment again completely alters the narrative from one agreeing that the "MCQ was later remarked by independent examiners

at a time defendant has ceased to be secretary of the faculty" to one now that the paper was not remarked at all.

Paragraph 17 of the proposed amendment like paragraph 16 similarly changed the narrative which recognise there was a remarking by independent examiners to now posit that the Plaintiff re-sat the exam after Defendant had ceased to be secretary of the faculty and an examiner but that the plaintiff still got low scores and failed the MCQ paper.

I have at some length demonstrated above that the proposed amendments vide paragraphs 15, 16 and 17 attempts to create a scenario which directly conflicts with the position established on the existing pleadings and on which evidence was led by defendant himself and therefore without doubt prejudicial.

The defendant for reasons that are not clear by these amendments appears to seek to alter or change the nature character and structure of its defence before the court which clearly will be inconsistent with even the evidence of the defendant on record.

On the whole, it is difficult for the extant application to amend in particular paragraphs 15 – 17 of the defence to avoid the label that it was brought mala fide to undermine the case of claimant. See **Chief Adedapo Adekoye V Chief O.B. Akin-Olugbade (supra) 214; Celtel (Nig.) Ltd V Econet Wireless Ltd (2011) 3 NWLR (pt.1233) 156 at 167-168 and Okolo V UBN (supra) 429.**

Now with respect to the amendment sought in paragraph 38 (2) of the counter-claim, the addition or amendment sought is simply to add **"intimidation"** to the claim for damages for assault.

On this aspect of the amendment, a perusal of the existing pleadings and the evidence led on record situates the case of intimidation. Indeed in paragraph 19 of the existing defence, the defendant pleaded or made a case of being "persistently harassed and intimidated." In paragraph 40 of his adopted deposition, the defendant equally alluded to "deadly threats and intimidating actions" of plaintiff.

In this situation, I really do not see how this particular amendment of paragraph 38 (2) of the counter claim can be said to be prejudicial or over reaching bearing in mind the trajectory of the case of defendant as adumbrated above on the counter claim.

The critical and settled point is that as soon as it appears that the way a party has framed his case will not lead to a decision on the real question or matter in controversy, he is usually allowed to correct it as long as it causes no prejudice or injustice.

It is therefore not enough to make general statements that an amendment is prejudicial or overreaching without showing how the amendment will affect or create a disadvantage to the Claimant or how it changes the nature of the claim before the court.

The tenor and substance of defendants counter-claim remains essentially the same even with the proposed amendment to Relief 38 (2). The claimant has also on the record already put up a case in rebuttal. The prayer to amend Relief 38 (2) of the counter-claim has merit as I cannot situate any injustice to the claimant.

On the whole, except for the leave to amend **paragraph 38 (2)** it will not be fair to accede to the request to amend the other **paragraphs 15-17**. To grant this particular amendment will violate the consecrated principles governing the grant of an Amendment.

As I round up, let me call in aid the instructive decision of the Court of Appeal in **H.I. Iyamabor V. Mr. Mavis Omoruyi (2011)26 WRN 87** where it was stated as follows:

"Justice demands that in order to determine the real matter in controversy, pleadings may be amended at any stage of the proceedings, even in the Court of Appeal or this court (Supreme Court) to bring them in line with the evidence already adduced; provided the amendment is not intended to overreach and the other party is not taken by surprise and the claim or defence of the said other party would not have been different, had the amendment been averred when the pleadings were first filed. Per Akpata, JSC in Laguro V. Toku (1992)2 NWLR (pt.223)278; (1991)2 SCNJ 201.

A court of equity should never allow a cunning or crafty application to lord over an amendment sought mala fide, at the detriment of the adverse party. In order to ensure that justice is done to the parties, the court should open its eyes wide and with a meticulous and searching mind comb through the entire application. Per Niki Tobi, JCA (as he then was) in Aina V. Jinadu (1992)4 NWLR (pt.233)91. A refusal will be inevitable, especially if it is

designed to overreach or outmanoeuvre the adverse party with the aim of wining the victory at all cost."

In the final analysis and for the avoidable of doubt, I hereby make the following orders:

1. **Leave to amend paragraphs 15, 16 and 17 of the statement of defence in the manner set out and underlined in the proposed Amended statement of defence is refused.**

2. **Leave is granted to defendant/applicant to amend paragraph 38 (2) of the counter-claim in the manner set out and underlined in the proposed Amended statement of Defence.**

3. **The deeming order is refused. The defendant/applicant is granted 14 days from today to file and serve the Amended Statement of Defence reflecting the amendment to paragraph 38 (2) of the Counter-Claim.**

4. **The matter will be adjourn to 6th July, 2022 for Adoption of final written addresses.**

5. **No Order as to cost.**

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. ***Kelechi Uzoho (Miss) for the Claimant/Respondent.***

2. ***S.M. Nwosu, Esq., (jnr.) for the Defendant/Applicant.***