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

THIS TUESDAY, THE 12TH DAY OF APRIL, 2022.

BEFORE: HON. JUSTICE A.I. KUTIGI -- JUDGE

SUIT NO: CV/4832/11
MOTION NO: GWD/M/125/21

BETWEEN:

SCOA NIGERIA PLC.....……..…..CLAIMANT/RESPONDENT

AND

1. **MINISTER, FEDERAL CAPITAL TERRITORY....1ST DEFENDNAT/RESPONDENT**
2. **NIGERIA SOCIAL INSURANCE TRUST FUND...2ND DEFENDANT/APPLICANT**
3. **TRUSTFUND PENSIONS LIMITED.....3RD DEFENDANT/RESPONDENT**

RULING

By a motion on notice dated 22nd March, 2021 and filed on 23rd March, 2021, the 2nd Defendant/Applicant seeks for the following reliefs:

1. **An Order of Court granting leave to the 2nd Defendant/Applicant to Amend its Statement of Defence dated and filed the 11th day of June, 2012 as delineated in paragraphs 5(b), 5(c) and 5(d) and to file a new written witness statement on oath for Mohammed Alhaji Mohammed.**

2. **An Order of Court deeming the separate copies of the 2nd Defendant/Applicant's Amended Statement of Defence and a New Written Witness Statement of Oath of Mohammed Alhaji Mohammed already filed and served as having been properly filed and served, the necessary filing fees having been duly paid.**

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

The application is supported by a 7 paragraphs affidavit with two annexures marked as **Exhibits 1** and the 2nd Defendants proposed Amended Statement of Defence and the new written statement of oath of Mohammed Alhaji Mohammed. A brief written address was filed in compliance with the Rules of Court in which one issue was raised as arising for determination:

"Whether the Defendant/Applicant has shown a good ground as to be entitled to the grant of the leave to amend its statement of Defence hereby sought before this Honourable Court."

The brief address which forms part of the Record of court then referred to the settled principles governing the grant of an amendment and it was contended that on the materials, they have satisfied or fulfilled these principles and that the amendment sought is intended to place relevant facts and documents before court for the purpose of determining the real issues in controversy in this suit.

The 2nd Defendant/Applicant also filed a further affidavit to the Claimant/Respondent Counter-Affidavit and a further address which sought to essentially accentuate the points earlier addressed.

In opposition, the claimant/respondent filed a counter-affidavit dated 22nd November, 2021 together with a written address in which one issue was equally raised as arising for determination as follows:

"Whether given the facts and circumstances surrounding this suit, this application ought to be granted."

The address which forms part of the Record of Court equally dealt with the settled principles governing the grant of an amendment of pleadings and it was contended that in this case, the amendments sought by 2nd Defendant/Applicant seeks to alter or change the character of the case pleaded and presented by the claimant in its statement of defence and thus extremely prejudicial.

The Claimant also filed a document titled a further counter-affidavit in opposition to the extant application which counsel to Applicant contends should be discountenanced as not allowed by the Rules of Court.

It is true that under the Rules of Court, there is no provision for filing of a further counter-affidavit in response to the applicant's further affidavit but parties must here not lose sight of the fact that the further counter-affidavit was filed by the Claimant to properly exhibit the documents identified as **Exhibits A, A1 and B** which were clearly mentioned in the first counter-affidavit but which were inadvertently not annexed.

I am not sure this is a matter to dissipate energy on precisely because those identified documents to wit: 1) the 2nd Defendant's statement of defence (Exhibit A) 2) the witness statement on oath (Exhibit B) and 3) the statement of defence of 3rd Defendant were all identified in the first counter-affidavit and most importantly they form part of the Record of Court. It is trite law that a court can even *suo motu* make reference to the case file before it and make use of any document and relevant evidence. See **Famudoh V. Aboro (1991)9 N.W.L.R (pt.214)210 at 229.** I cannot situate or locate any surprise, in convenience or miscarriage of justice in the circumstances where a party who inadvertently refers to a document but fails to annex same subsequently files a process in court to regularize or to as it were annex the documents not attached.

The imperatives of the dictates of justice determines whether the court will allow or grant leave for the use of such a process. In the present scenario, no injustice will be occasioned to allow for the use of the process. The objection is thus not availing and is discountenanced.

Now at the hearing, counsel for the Applicant and the Plaintiff/Respondent relied on the processes of court and each in turn urged the court to grant the application on one hand and on the other side that the application be dismissed.

I have carefully read the processes filed by contestants on both sides of the aisle and the narrow issue is whether the court should grant the amendment sought by the 2nd Defenant. The relief relating to filing of the additional deposition of Mohammed Alhaji Mohammed is clearly to reflect the amendment to the pleadings if granted. The grant of this relief is therefore clearly predicated on the success of the Relief on Amendment. I will therefore start with a consideration of that point.
The question of grant of an Amendment to the pleadings generally is one to be decided 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 faces of the matter. I will only give or state the facts as are relevant to place the fairness and indeed justice of the application.

This is a matter with a fairly chequered history and filed as far back as 2011 against only 1st and 2nd Defendants to essentially invalidate the revocation of statutory right of occupancy by 1st Defendant over a certain Plot 258 and the reallocation to 2nd Defendant as null and void. There are other monetary and injunctive reliefs which I need not state here.

Pleadings were duly exchanged. The 1st Defendant filed its Amended Defence on 15th May, 2013. The 2nd Defendant filed its statement of defence on 11th June, 2014. I shall return to the pleadings later on but it is important to state that these pleadings filed by parties delineated or streamlined the issues and facts in dispute between the parties.

It is also important to state at the onset 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**

With the settlement of pleadings, hearing then commenced. The Plaintiff led evidence and closed its case. The 1st Defendant has called two out of their three witnesses and were about rounding up their case when 3rd Defendant applied to join the extant action and was joined on 15th February, 2021 and they then filed their statement of defence on 9th March, 2021.

It is interesting to note that in its defence, the 3rd Defendant now averred that it bought the subject matter in dispute from 2nd Defendant in 2010 before commencement of this suit and has perfected the sale with 1st Defendant and exercising various acts of ownership.

The 2nd Defendant on Record never made mention of this assignment of this interest in the subject matter at any time in the years the case had lasted in court. It may equally be interesting to note that the 1st Defendant did not equally mention this assignment or more precisely the perfection of this sale or assignment between 2nd and 3rd Defendants said to have been effected at their offices. I shall agin return to these points again.

Having provided the above background facts in some detail, lets now determine the justice and fairness of the extent application for amendment in the light of the clear legal parameters earlier highlighted.

For purposes of clarity, I will respeat the amendment sought as contained on the proposed 2nd Defendants proposed amended defence vis-à-vis the existing processes and evidence on Record.

Now the proposed Amendment sought via this application dated 23rd March, 2021 are in respect of paragraphs **5(b), (c) and (d)** as contained in **Exhibit 1** are as follows:

"**b. Following the 2nd Defendant's application to the 1st Defendant for participation in the "Accelerated Development Programme of the Federal Capital Territory", the 1st Defendant approved the grant of Plot Number 258 in Cadastral Zone A00 of Central Area District measuring approximately 1.86**

Hectare to the 2nd Defendant vide a letter captioned "ACCELERATED DEVELOPMENT PROGRAMME WITHIN THE FEDERAL CAPITAL TERRITORY" dated 9th December, 2005. The said letter now in possession of the 3rd Defendant was handed over to the 3rd Defendant at the time 2nd Defendant assigned her interest in the property to the 3rd Defendant in 2010 via a Deed of Assignment.

c. The 1st Defendant on 12th day of October, 2009 issued the Certificate of Occupancy in respect of the said Plot Number 258 in Cadastral Zone A00 of Central Area District measuring approximately 1.86 Hectares (now renumbered and resized as Plot number 1363 and measuring 1.67 Hectares respectively) to the 2nd Defendant. The 2nd Defendant shall rely on the said Certificate of Occupancy vide File No: MISC 103738 now in possession of the 3rd Defendant by virtue of the said Deed of Assignment from the 2nd Defendant to the 3rd Defendant.

d. The 2nd Defendant was in possession of Plot 258 (now Plot 1363, Cadastral Zone A00 at Central Area District, Abuja measuring approximately 1.67 Hectares from the time the property was allocated to her by the 1st Defendant until sometime in 2010 when the 2nd Defendant assigned her interest in the property to 3rd Defendant. The 3rd Defendant has since commenced development of the property."

At the risk of cluttering this Ruling but for purposes of ease of understanding, let me reproduce the contents of the **existing defence of 2nd Defendant** filed nearly 8 years ago on 11th June, 2014 and on the basis of which the case was contested all along before the joining of 3rd Defendant. The relevant paragraphs are 5, (b), (c), (d):

" **b. Following the 2nd Defendant's application to the 1st Defendant for participation in the "Accelerated Development Programme of the Federal Capital Territory," the 1st Defendant approved the grant of Plot Number 258 in Cadastral Zone A00 of Central Area District measuring approximately 1.86 Hectares to the 2nd Defendant vide a letter captioned "ACCELERTED DEVELOPMENT PROGRAMME WITHIN THE FEDERAL CAPITAL TERRITORY" dated 9th December, 2005. The 2nd Defendant shall rely upon the said letter at the trial of this suit**

c. **The 1st Defendant on 12th day of October, 2009 issued the certificate of occupancy in respect of the said Plot Number 258 in Cadastral Zone A00 of Central Area District measuring approximately 1.86 Hectares (now renumbered and resized as Plot Number 1363 and measuring 1.67 Hectares respectively) to the 2nd Defendant. The 2nd Defendant hereby pleads, and shall at the hearing, tender and rely upon the said Certificate of Occupancy vide File No: MISC 103738.**

d. **The 2nd Defendant is and has been in possession of Plot 258 (now Plot 1363), Cadastral Zone A00 of Central Area District, Abuja measuring approximately 1.67 Hectares since the said allocation by the 1st Defendant. The 2nd Defendant has long engaged the services of a private developer to secure the necessary approvals and commence its building project on the said plot."**

Paragraph 5b of the proposed amendment except for the underlined portion is essentially a reharsh of the existing **paragraph 5b.** The addition or proposed amendment to this paragraph seeks to alter fundamentally the narrative to the existing contention of 2nd Defendant that it has always exercised acts of possession since it was allocated the disputed Plot in 2005 as clearly adumbrated in paragraph 5d of the existing defence above. No allusion was made to any sale or assignment to a third party in 2010. It is difficult to believe or accept that the 2nd Defendant would have assigned its interest in the subject of dispute well before the filing of this action and yet it made no mention or reference to it and still went ahead to aver that **"it has long engaged the services of a private developer to secure the necessary approvals and commence tis building project on the said plot."**

At the risk of sounding prolix, this averment in **paragraph 5d** highlighted above in the original defence filed by 2nd Defendant was made in **2014** nearly 4 years after this alleged sale or assignment in 2010 to a third party and no mention or allusion was made of the sale as stated above. The amendment sought now to reflect this narrative strikes at the basis of the case 2nd Defendant has presented in this proceedings.

The same observations affects the proposed amendment in **paragraph 5c** above and even more. The **proposed amended in paragraph 5c** is equally the same with the existing paragraph 5c except for the additions now sought to be made. In the existing

paragraph 5c and consistent with the case it has always presented, the 2nd Defendant indicated that it will be relying on the certificate of occupancy property issued to it by 1st Defendant which it will tender at the hearing. There is no confusion or ambiguity in the tenor of the paragraph to the effect that reliance was been placed on the certificate of occupancy to situate the ownership of the disputed plot. There is no allusion, directly or indirectly that the Certificate of Occupancy is with a third party. To now suddenly seek to alter the trajectory of the narrative of the defence after 8 years of a case been in court to rely on an event that occurred even before the commencement of the action beggars belief.

The allusion now to the existence of the certificate of occupancy with a third party and that reliance will be placed on what is with this third party again conflicts with the case 2nd Defendant has streamlined on the pleadings for nearly 8 years and on which parties (except 3rd Defendant who was joined later) joined issues and led evidence on.

Paragraph 5d in the proposed amended defence is a completely new case or at best it is an attempt by 2nd Defendant to frame a new case or to alter the face of the case on which issues have since been joined by parties. On the existing pleadings, the case of 2nd Defendant has always been that it has been in possession and **"has long engaged the services of a private developer to secure the necessary approvals and commence its building project on the said plot."** The amendment sought now that the 2nd Defendant assigned its interest in **"2010"** and that the **"3rd Defendant has since commenced development of the property"** clearly creates a scenario which directly conflicts with the existing pleadings of 2nd Defendant and evidence led by parties on record and prior to the joinder of 3rd Defendant. The 3rd Defendant may have alluded to the assignment but it is a matter for proof at trial. It is not an opportunity or a conduit for the 2nd Defendant to present a new case or to change the character of its case.

A party on settled principles must be consistent in the case it presents. A party cannot as it were blow hot and cold as done by 2nd Defendant here. The trial process whatever its imperfections must be contested on the basis of each party stating clearly its case without ambiguity so that the opponent will know precisely the issues he is facing. See **Balogun V. Adejobi (1995)2 N.W.L.R (pt.376)131 at 158.** Litigation is not a game of hide and seek.

The amendments sought here as demonstrated are clearly prejudicial as attempts are now been made by 2nd Defendant to actively charge or alter the nature of its case to the detriment of parties especially Plaintiff. It is difficult if not impossible for the extant application to escape or avoid the label and or allegation that it was brought or made *male fide* to achieve a basically self serving purpose. See **Chief Adedope 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.** To grant this extant application is to violate the consecrated principles governing the grant of an Amendment.

The court recognizes that perfection in human affairs is an impossible expectation and errors do occur from time to time in the filing of processes and the mechanism of amendment provides an avenue or conduit to correct such errors. The grant of such amendment is however not automatic or granted as a matter of course. Where the amendment as clearly demonstrated here would if granted, occasion prejudice, injury or will be overreaching, to the adversary or indeed where it has been brought *male fide* for the purpose of undermining the case of the opponent, then such on amendment will not have been brought in the interest of justice and would not have met the legal parameters for amendment. See **Biya & Ors V. Bonet & Ors (2020)LPELR - 52144(CA); CGDG Nig V. Idorenyin (2015)AII FWLR (pt.804)2093, 2103**

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 the application to amend the statement of defence of 2nd Defendants fails. On the same premise, the application to file a new witness statement on oath to reflect the amendments equally fails. You cannot put something on nothing and expect it to stand is a well known legal axiom.

Before I round up, I once again call on counsel in this matter to act post haste and ensure that this matter is now concluded without any further delay. It is a sad commentary that a fairly simple case to be settled on fairly settled principles has dragged this long. It is difficult to see how confidence will be engendered in the administration of justice if cases of this nature drags on interminably without end. I say no more.

On the whole, the application however fails and it is dismissed.

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. **K.C Ikonne, Esq., with Bowie Attamah, Esq., and Michael Okejime, Esq for the Claimant/Respondent**

2. **M.S Ugwu, Esq with U.J Obido, Esq., and N.A Hassan Esq., for the 1st Defendant**

3. **C.N Nwankwo, Esq., for the 2nd Defendant/Applicant**

4. **S.T Sani, Esq., for the 3rd Defendant**