IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/2339/2020

DATE: : TUESDAY 10TH MAY, 2022

BETWEEN:

NASINTAL GLOBAL SERVICES LTD. } **CLAIMANT/APPLICANT**

AND

1. NEW FRONTIER DEVELOPMENTS LIMITED
2. UTAKO MOTOR PARK LIMITED
3. HASSAN MUSA USMAN } **DEFENDANTS**

RULING

This is a ruling at the instance of the Claimant/Applicant seeking for the following:-

1. An Order of the Honourable Court granting leave to the Claimant/Applicant to amend its writ including to replace the word "Undefended List" with the word "SUMMARY JUDGMENT" and in other area as underlined, and its pleadings and processes and filed fresh Witness Statement on Oath as highlighted, underlined and contained in Exhibit "'"A" attached hereto, to assist the Court to arrive at the justice of this case.

2. An Order of the Honourable Court deeming the Claimant/Applicant's said Writ, pleadings

and/or processes attached hereto as Exhibit "A" as duly and properly amended.

3. An Order of the Honourable Court deeming the Claimant/Applicant's Amended Writ (clean copy) and its accompanying processes already filed and served as properly filed and served, appropriate fees having been paid.

4. And for such further Order(s) as the Honourable Court may deem fit to make in the circumstances of this case.

The motion is supported by an affidavit of 10 paragraphs deposed to by one AlhajiNasiruAdamu Managing Director of the Claimant/Applicant.

It is the Applicant's deposition that there were a few typographical errors he noticed in our Writ,

Witness Statement on Oath in his Originating Process which needed to be corrected.

That instead of writing "SUMMARY JUDGMENT – ORDER 11" in the Originating Process, he mistakenly typed "Undefended List – Order 11".

That there were other typographical and grammatical errors that needed to be corrected to remove ambiguity and that by the Rules of this Court, he needed to file a Motion for Amendment to correct the typographical error.

That the said mistake or typographical error was as a result of his inadvertence.

That from his pleadings and processes and the documents attached hereto, and all the documents

frontloaded, were in conformity with Order 11 procedure and not for Undefended List.

That the said amendment will assist the Court in arriving at the justice of the case.

That the said amendment will not jeopardize the interest of the Defendants as they still have a right to defend.

That the Defendants have not yet filed their defence to this case.

In line with the law, a written address was filed wherein a sole issue was raised for determination to wit:-

"***Whether the Honourable Court has power to grant the application sought."***

Counsel submits that it is trite law that by Order 23 Rules 1, 2 and 3 of the Rules of this Court, any 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. That court may at any time permit a party to amend any defect or error in his/her Originating Process and pleadings on such terms as the justice of case may deserve.

Learned counsel submits that, it will be in the interest of justice and fair hearing to straighten the record or remove any ambiguity as might have arisen as a result of the mistake or typographical errors and to enable the court to arrive at the justice of the case and for a complete and effectual

determination of the issues in controversy between the parties once and for all, and counsel urged the court to so hold and grant their application.

On their part, Defendants/Respondents filed counter – affidavit in opposition to the motion for Amendment deposed to by one Victor Anorondu Secretary in the law firm of Legal Trust LP.

In the 4 paragraph affidavit is the deposition that the affidavit tells a lie against itself vis – a- vis the scope of the proposed amended amendment sought by the Claimant/Applicant.

That the proposed amendment is far beyond and is in excess of what the affidavit states to be the scope of the amendment sought.

That paragraphs 21 – 25 of the proposed amended statement of claim represent a surreptitious attempt by the Claimant to amend the Statement of Claim beyond what is contained in the affidavit.

That on the 5th of February, 2021, the 3rd Defendant/Respondent filed an application to strike out his name from this suit on the ground that being a director of the 1st and 2nd Defendants, he is an agent of two disclosed principals and therefore not a necessary party in the suit. A copy of the said motion is in the court's filed.

That the Defendants also filed another objection to the suit on the ground that it was not properly placed under the Undefended List Procedure, because it was filed under the Summary Judgment

Procedure. A copy of same is also in the court's file.

That on the 13th of October, 2021, the Defendants moved the said Motion to strike out the suit on the grounds contained paragraphs e and f, above.

That after the motion was moved and the court read the grounds of the objection, the court confirmed that it was improper that the suit was being heard under the "Undefended List" Procedure whereas a motion for judgment under the 'summary judgment' procedure was also filed along with the Writ of Summons.

That this Honourable Court attributed the impropriety to the fact that the Claimant's counsel marked the original writ of summons

"Undefended" and yet filed a motion for judgment under the summary judgment procedure.

That the Defendants are not opposed to the grant of the application to replace "Undefended List" with "Summary Judgment", which is what, was stated in the affidavit in support of the motion for amendment.

That the Defendants are vehemently opposed to the grant of the amendment in the new paragraphs 21 – 25 of the attached proposed Amended Statement of Claim.

That the said new paragraphs 21 – 25 have nothing to do with "Undefended List" Procedure or "Summary Judgment" Procedure.

That the said new paragraphs 21 – 25 introduce a new cause of action, bothering on criminality against the 3rd Defendant and is brought in bad faith.

That the said new Paragraphs 21 – 25 were inserted because of the objection that the Defendants/Respondents raised on the ground that the 3rd Defendant is not a necessary party to the suit.

That the Claimant is acting malafide by seeking to surreptitiously add the amendment in paragraphs 21 – 25 without disclosing same in its affidavit.

That the said new paragraphs 21 – 25 represent as afterthought and an attempt to over – reach the defence put forward by the

Defendants/Respondents that it is not a necessary party to the suit.

A written address was filed along with the counter wherein a sole issue was raised for determination to wit:-

"***Whether from a combined consideration of the principles guiding the grant of an application of this nature and the content of the respective affidavits filed by the parties on the application to amend, the Claimant has established its entitlement to the wholesale grant of all the amendments that it seeks to effect."***

It is the submission of learned counsel to the Defendants/Respondents that they are not opposed to the grant of the other parts of the amendments

sought by the Claimant, the grant of the amendments contained in the proposed paragraphs 21 – 25 of the statement of claim must be refused for being in flagrant breach of the principles guiding the grant of an amendment. ***C.G.G (NGERIA) LIMITED VS. IDORENYIN (2015) 13 NWLR (Pt. 1475) at page 149, particularly at page 165 was cited.***

On the whole, counsel urged the court to refuse the portions of the proposed amendment (paragraphs 21 – 25) to which they have raised objection in the interest of justice.

On its part, Claimant/Applicant reply on points of law to the Defendants/Respondents' counter – affidavit wherein counsel submits that in the case of ***AKANIWON VS. NSIRIM (2008) ALL FWLR***

(Pt. 410) 610 at 656 paragraphs 8 -0, it was stated that in determining whether or not to grant amendment;

"a. The attitude of the parties in relation to the amendment;

b. The nature of the amendment sought in relation to the suit;

c. The question in controversy;

d. The time when the amendment is sought."

In a similar vein, Supreme Court cited certain circumstances when application for amendment cannot be granted in the case of ***AKANIWON VS NSIRIM (2008) Supra as follows:-***

"i. If it will entail injustice to the Respondent.

ii. If the Applicant is acting mala fide;

iii. If the application is designed to overreach the Respondent.

iv. If the blunder of the Applicant has done some injury to the Respondent which cannot be compensated by cost."

Counsel concludes by urging this court to dismiss and discountenance the Defendants/Respondents' submission in the interest of justice and grant the application for amendment sought by the Claimant/Applicant.

COURT:-

I have gone through the affidavits in support of the reliefs herein contained on the face of the application in view, on one hand, the counter

affidavit in opposition to the application on the other hand, and the reply on point of law by the Claimant/Applicant.

Our adjectival law leans heavily in favour of amendments and is generally against the refusal of amendments.

Although the pendulum tilts in favour of amendment, courts of law are entitled to refuse amendment in deserving cases.

Trial courts must examine the application for amendment very carefully in the light of the affidavit evidence.

The peculiarity of each case shall be considered. ***AKANINWO VS NSIRIM (2008) 1 SC (Pt. 111) 151.***

It is established that every opportunity must be afforded parties to a dispute in court to put their case fully before the court.

In case conducted on the basis of pleadings, it certainly cannot be said that a Defendant has been allowed to put his case before the court when the opportunity to amend his pleadings has been denied him.

Refusal to allow a party amend his pleading certainly translates into refusing him the liberty to call the evidence which would have been necessary had the amendment sought being granted. The consequence is denial to fair hearing. See ***AKANINWO (Supra).***

I however must be quick to mention that all cases are not the same. There are instances upon which application for amendment can be refused. The following are factors to be considered in granting or refusing an application for amendment as mentioned in the presiding part of this ruling.

a. The attitude of parties

b. Nature of amendment sought in relation to the suit.

c. The question in controversy

d. The time application is made

e. The stage at which it is made and

f. All other relevant circumstances. ***ANAKWE VS OLADEJI (2008) 2 NWLR (Pt. 1072) 506 at page 550 – 521***

The granting or refusal of amendment involve an exercise of discretionary power and such discretion must be exercised judicially and judiciously. ***OJEBODE & ORS VS AKANO & ORS (2012) LPELR 9696.***

An Applicant therefore who seeks to be allowed to do an act which he omitted to do when he ought to have done it during the trial, has a duty to give reasons that are adequate and reasonable to explain his omission and or failure to do the act at the appropriate time during the said trial.

It is not sufficient for the wrong party to merely ask for the order of court to that effect.

Above position was espoused in the case of ***OJIEGBE & ANOR VS. UBANI& ANOR (1961) ALL NLR 277 at 280.***

I must observe here that, in law to amend any legal process affords a party whether as Plaintiff or Defendant and even the Appellant or Respondent on appeal opportunity to correct an error in the legal document. Such correction can be made informally where the process is yet to be served.

After service however, correction of legal process may be effected, depending on the prevailing rules of court, either by consent of both parties or upon

motion on notice, like the case in hand.Amendment enables the blunders, errors and of inadvertence of counsel to be corrected, in the interest of justice, ensuring always that no injustice is occasioned to the other party. ***FIVE STAR INDUSTRIES LTD. VS. BOI LTD. (2013) LPELR 22081 (CA).***

The court would to not unduly allow technicalities to deter it from making vital pronouncement. For some time now, the courts have moved away from the regime or domain of doing technical justice to the regime or domain of doing substantial justice. This is in keeping with the jurisdiction of the wider world and its legal system. ***ONUEGBU & ORS VS ATTORNEY GENERAL OF IMO STATE & ORS (2012) LPELR 19691 (CA).***

From the above, therefore, I am of the firm belief that this application ought to be meritoriously granted. It is hereby granted.

Justice Y. Halilu
Hon. Judge
10th May, 2022