

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 20, GUDU - ABUJA
ON TUESDAY THE 12TH DAY OF APRIL 2022.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI
SUIT NO. FCT/HC/CV/1485/2019

BETWEEN:

1. BANMAH OLIVER=====CLAIMANTS
2. OSASUMWEN BANMAH

AND
ABUJA ELECTRICITY DISTRIBUTION COMPANY PLC=====DEFENDANT

RULING

The Claimants filed a Motion on the 15th day of November 2021 praying for leave to amend their statement of Claim and Reply to statement of Defence to bring their Pleadings in line with the evidence already before the Court and to correct a minor typographical error as the amendment form part of the real issues in dispute as well as to aid the Court effectively determine the suit.

Attached to the application is a 10-paragraph affidavit deposed to by the 1st Claimant. Also filed is a written address wherein Claimants Counsel raised a sole issue; thus, “Whether the Court should grant the amendment sought? Arguing the sole issue, Counsel submitted that the Claimants’ application has satisfied all the requirements for the Court to grant this application and grant same as it would not in any way prejudice the Defendant. Counsel relied on the following authorities:

- 1. Eyo & Ors v. Okpaal Anor (2009) LPELR – 11 903 (CN)**
- 2. CCA (NIG) LTD & Anor VS. Idorenyin (2015) LPELR – 24685 (SC).**

3. Nteogwvile V. Otuo (2001) 6SC 200

4. Balogun V. Adjobi (1995) SCNJ 242.

In response, the Defendant filed a counter affidavit of 16 paragraphs deposed to by Joy Onipe, a Secretary in the Law Firm representing the Defendant. Also filed is a written address wherein Counsel to the Defendant raised a sole issue for determination thus;

“Whether the Claimant’s application is not lacking in merit.”

Counsel submitted that the Applicant is not permitted to bring this application at this stage as it falls outside the time prescribed by the Rules of Court. Submitted that granting the application will occasion injustice on the Defendant and urged the Court to dismiss the application for lack of jurisdiction to entertain same and for lacking in merit.

Respondent’s Counsel relied on the cases of;

1. Nwafomso VS. Tabiu (1992) NWLR (pt. 219) 629.

2. NIG Society OF ENG. VS. D. Katchy (2017) 7 NWLR (pt. 1064) 278

3. Adekeye VS. Akin Olugbade (1987) 3 NWLR (pt 6214)

4. Ita VS. Ekeyon (2000) LPELR 5614.

The Claimant applicant filed a reply affidavit of 15 paragraphs and a reply on point of law which this Court has considered.

I have gone through the affidavit in support of the application as well as the counter affidavit of the Respondent. Although the law lies heavily in favour of amendment however, the Courts are entitled to refuse such amendment in deserving cases as the grant or refusal of an amendment is a discretionary power and such discretion must be exercised judicially and judiciously –See **BANK OF BARODA VS. IYALABANI (2002) 13 NWLR pt. 785 pg. 551 @ 593 para. B – D.**

The Applicant in paragraph 6 of this supporting affidavit stated that the amendment is necessary to bring the pleadings in line with the evidence and accentuate real issues between the parties. The Respondent on the other hand is contending that the amendment sought by the Claimant is for the purpose of changing the case presented by the Claimants after cross-examination of Claimant's witness had been concluded and will prejudice the Defendant. I have looked at the competing claims of the parties in this application, and it is my view that the amendment sought by the Applicant is in line with the guidelines as stated in the case of **ADEKENYE VS. GRAND SERVICES ITO (2007) ALL FWLR (pt. 387) 855 @ 857** which include;

1. The Court must consider the materiality of the amendment sought and will not allow an inconsistent or useless amendment.
2. Where the amendment would enable the Court to decide the real issues in controversy.
3. Where the amendment relates to a mere misnomer, it will be granted almost as a matter of course.
4. The Court will not grant an amendment where it will create a suit where none existed.
5. The Court will not grant an amendment to change the nature of the claims before the Court.
6. Leave to amend will not be granted if the amendment would not cure the defect in the proceedings.
7. An amendment would be allowed if such an amendment will prevent injustice.

The Respondent in this instant application has not in any way stated facts in the counter affidavit to sway the Court that the grant of this application will be

overreaching or occasion injustice or how they would be prejudiced if this amendment is granted. Parties should be given opportunity to put their case fully before the Court.

Application is hereby granted. The Defendant is at liberty to file consequential processes.

Parties: Plaintiff present in person.

Appearances: O. Banmah appearing in person. C. Ojiabo appearing with Ebunoluwa C. Igili appearing for the Defendant.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI

JUDGE

12/04/2022