

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

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS**

**COURT: 28**

**DATE: 23<sup>rd</sup> MAY, 2022**

**FCT/ HC/CV/22/2021**

**FCT/HC/M/142/22**

**BETWEEN**

**CHIEF DOMINIC ANIGBO**

**..... CLAIMANT/APPLICANT**

**AND**

**RABIU HASSAN IBRAHIM**

**..... DEFENDANT/APPLICANT**

**RULING**

By a Motion on Notice filed on 11<sup>th</sup> April, 2022, brought pursuant to Order 43 Rule 1; Order 15 R 18 (1)C, Order 25 R 1, 2 & 8 of the High Court of the Federal Capital (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Court, the Claimant/Applicant seeks the following prayers:-

1. An Order of Court granting leave to the Applicant to amend his statement of claim and witness statement on oath.
2. An Order of Court deeming the amended statement of claim and statement on oath as properly filed and served as separate processes.
3. And for such further Order or Orders as the Court might deem fit to make in the circumstances.

The Motion is supported by a 10 Paragraph affidavit deposed to by one Okoroafor James, with 2 (two) Annexures marked exhibits "A" and "B". Counsel also filed a Written Address and adopts same as oral argument in support of the Motion.

Counsel to the Claimant/Applicant also filed a reply on points of law on 29<sup>th</sup> April, 2022 upon receipt of Defendant/Respondent's counter affidavit.

Responding, the Defendant/Respondent through his Counsel filed a 12 Paragraph counter affidavit with one (1) Annexure marked Exhibit "A", deposed to by one Emmanuel Bayero. Counsel also filed a Written Address and adopts same as oral argument in opposition to the Claimant/Applicant's application.

In the Written Address of the Claimant/Applicant, his Counsel did not raise any issue for determination but proceeded to proffer arguments in support of the application.

Counsel to the Claimant/Applicant submits on a Plethora of cases that the application is in tandem with the reasons upon which the Court can grant an application for amendment of pleadings. He urged the Court to exercise its discretion in favour of the Claimant/Applicant and grant the application.

Arguing per contra, Counsel to the Defendant/Respondent formulated a sole issue for determination in the Written Address filed to wit:-

*"Whether from the circumstances of this Application, the Claimant/Applicant's Application was brought in bad faith and should same be refused".*

Counsel submitted relying on a Plethora of authorities that the Court should not exercise its discretion in favour of the Applicants and that the Respondent would have been prejudiced and overreached especially when

no serious reason was given in his affidavit to grant such an important amendment. Therefore, urging the Court to refuse the Application of the Applicant.

Having carefully considered the affidavit evidence, submission and judicial authorities cited for and against the grant of this application, the Court finds that only one (1) issue calls for determination, that is:-

*"Whether the Claimant/Applicant has made out sufficient grounds so as to be entitled to the reliefs sought"?*

It is settled by case law and Rules of Court that the Court has the jurisdiction, power and indeed the discretion to *grant leave to amend pleadings at any stage of the proceedings*. See **AKANIMO V NSIRIM (2008) 9 NWLR (PT. 1093) @ 400 Paragraphs E- G**, the Court had this to say;

*"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 responding to the application. The application should be granted unless the Applicant is acting malafide or by his blunder, the Applicant has done some injury to the Respondent which cannot be compensated in terms of cost or otherwise".*

To amend, simply means to make right, correct or rectify, to change the wording or to alter formally by adding or deleting a Provision or by modifying the wording. See **Black's Law Dictionary 8<sup>th</sup> Edition**.

In the instant application, the Applicant is seeking to amend their Statement of Claim and Witness Statement on oath to plead certain facts

to enable the Court effectively resolve the issues in controversy between the parties as stated in Paragraph 5 of the Affidavit in Support of the Application. The Respondent's main ground in opposition is that the Claimant by changing the date on the document, the Respondent would have been prejudiced and overreached especially when no serious reason was given to grant such amendment. The Respondent also contends that the Claimant/Applicant has made an amendment to the extent of making unsubstantiated criminal allegations against the Defendant, urging the Court to refuse the application.

The exercise of the Court's discretion on whether or not to grant leave to amend is based on certain established guiding principles set out over time in a Plethora of cases, See **ANGEKWE V OLADEJI (2008) 2 NWLR (Pt. 1072) 529-521 Para G-A** the Court of Appeal said;

*"Amendments are more readily granted where same does not necessitate the calling of additional evidence or changing of the character of the case once the calling of evidence has been concluded... any amendment of the pleadings or claim can be justified or allowed only on the premise that evidence in support of it, it is already on the record. And it is necessary and in the interest of justice to allow the amendment in order to make the pleadings or claim accord with the evidence already on record. The rationale is that such an amendment should be allowed to enable Court to use the evidence already on record to settle the real issue in controversy between the parties".*

Taking a cue from this decision of the Court of Appeal as a guide in exercise of Court's power to grant an application of this nature, the

question to ask is first what is the nature of the amendment sought in this application? The Court has read the facts stated in the supporting affidavit and find that the amendment is to correct an assertion which will assist this Court do justice to the issue in controversy between the parties. Another question now to consider is what is the consequence of his proposed amendment? It is the contention of the Respondent that the grant of the amendment will overreach him and that same is brought in bad faith.

While it is true that the Courts have been consistently urged to ordinarily not refuse an application for an amendment of pleadings, unless it is meant to delay the case or prejudice the interest of the other side or malafide and without the other side having the opportunity to react. See **UBA V DAFIAGA (2000) 1 NWLR (PT.640) 775 @ 177 RATIO 2**. The ground of objection in my view does not reveal any of these that would prevent the Court not to exercise that discretion as it would not preclude the Court from making any consequential orders to permit them to do what is necessary for effectual determination of the matter before it.

It is therefore my view that this amendment would not have any negative consequence on the Defendant/Respondent as I find it not overreaching or prejudicial to the Defendant/Respondent considering the stage of the proceedings.

In the case of **OJA & ORS V OGBONU & ORS (1976) ANLR 277 @ 282**, the Supreme Court said:-

*“Court do not exist for sake of discipline, but for the sake of deciding matter in controversy as soon as it appear that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much as a matter of right on his part to have it corrected, if it can be done without*

*injustice as anything else in the case is a matter of right”*

One of the cardinal rules of pleadings is that parties are bound by their pleadings. The common adage is that evidence as to facts not pleaded goes to no issue. This means in effect that a party is not allowed to give evidence of a fact not pleaded and if such evidence is given, the Court ought to discountenance it. Therefore if a Counsel discovers that there are error or omissions in the pleadings already filed it will be necessary to correct them for instance it may be that certain material facts have inadvertently been omitted from the pleadings while some irrelevant facts may have been pleaded. It may also be that some material facts only came to light after the pleadings have already been filed. Again in the cause of examination of the witness evidence may be exhibited in respect of certain facts which are not referred in the pleadings. In these circumstances, an amendment of pleadings is necessary in order to capture all material facts in the pleadings so that evidence could be led in Court in respect of those facts. On the otherhand, if evidence has already been led in respect of fact not pleaded, an amendment will enable those facts to be captured in the pleadings so that the Court will be entitled to act on the evidence led. **In ADEKEYE VS OLUGBACHE (1987) 3 NWLR (pt 600) 214 Q 223** the Court stated as follows:-

*"An amendment is nothing but the correction of an error committed in any process, pleadings or proceedings at law or in equity and which is done either of cause or by the consent of the parties or upon notice to the Court in which the proceedings is pending. The object of the Court is to decide the*

*rights of the parties and not to punish them for the mistakes they make in the conduct of their cases. There is no kind of mistake or error which if not fraudulent or intended to overreach, the Court cannot correct if this can be done without injustice to the order party”*

In line with this reasoning, in ***NELSA AND TEAM ASSOCIATES VS NNPC (1991)8 NWLR (pt 212) 652-676***, The Court stated as follows:-

Where party to an action detects error in proceedings which if uncorrected will adversely affect his chances, and has by application made effort to correct such, justice demands that he be not denied the opportunity to do so, it will be preposterous to concede to the contention that the error defected shall remain uncorrected to that the adversary can take advantage of it from the above judicial authorities cited above what the Defendant’s Counsel did by filing their counter affidavit was nothing but to confirm the application sought to be granted this can be seen from paragraph 10 and 11 particularly paragraphs 11 .” there is a document filed alongside by the Claimant/Applicant titled conveyance of provisional approval dated 25<sup>th</sup> April, 1993 and the said document is hereby attached and marked as exhibit A’ from the above it seems to me that what the Defendant substantially can be regarded as counter to the application filed by the Claimant/Applicant the counter affidavit can not in any prevent the Court from granting the Claimant/Applicant in the interest of justice.

Accordingly, this application for amendment therefore succeeds. The Applicant is hereby granted leave as follows:-

1. To amend his statement of claim and witness statement on oath in the manner contained in the proposed amended statement of claim and statement on oath attached herein and marked exhibits "A" and "B".
2. An Order of Court deeming the amended statement of claim and statement on oath as properly filed and served as separate processes

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**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**

**APPEARANCE**

Patrick Otsima:- for the Defendant/Respondent

Claimant: - In Court