

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 7TH DAY OF JULY, 2022.
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH
(PRESIDING JUDGE)

MOTION NO:M/4986/2022

BETWEEN

- | | | |
|------------------------------------------------------------------------------|---|----------------------|
| 1. KOREPH GLOBAL RESOURCES LTD
2. ALOLLADE INTERGRATED MULTI-SERVICES LTD | } | PLAINTIFF/RESPONDENT |
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AND

FIRST CONTINENTAL PROPERTIES LIMITED(CHURCHGATE)....DEFENDANT/APPLICANT

RULING

Before this court is a motion on notice filed on the 22nd April, 2022 and brought pursuant to section 6 (6) (B) of the 1999 constitution of the Federal Republic of Nigeria, Orders 25 rule 1 and 2, 43 rule 1 and Order 56 rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the Inherent jurisdiction of this honourable Court. The Applicant prays the following:

1. An order granting leave to the Defendant/Applicant to amend her statement of Defence in terms of the underlined portion of the proposed amended statement of Defence herewith delivered with the affidavit and marked as Exhibit A.
2. An order deeming as properly amended and served the said amended statement of Defence with the accompanying documents, already filed separately, filling fees having been paid

And for such order or further orders that this Honourable Court may deem fit to make in the circumstances.

The application is supported by an 8 paragraph affidavit, a further affidavit in response to counter affidavit attached exhibits and a written address.

I have considered the application before the court and I am of the view that the issue arising for determination is:

Whether the Defendant/Applicant is entitled to the grant of the instant application in the circumstance.

The Defendant/Applicant submitted that it will be in the interest of justice to grant this application as the plaintiff/respondents will not be prejudiced by grant of same and that the amendment sought by the defendant/applicant is not to overreach the plaintiffs in any manner whatsoever.

The plaintiff/ respondent on the other hand submitted that by the timing and nature of the application brought by the defendant, it is crystal clear that the defendant intends to overreach, surprise and frustrate the plaintiffs and also perpetrate injustice against them.

It is trite that the grant or refusal of an application for amendment of pleadings is an exercise of judicial discretion. The court in exercising this discretion however must do so judicially and judiciously by relying on the facts and circumstances presented to it from which a conclusion governed by law must be distilled. See

SUNDAY JAMES OLASEINDE & ORS v. THE FEDERAL HOUSING AUTHORITY & ORS (1999) LPELR-6135(CA) (Pg 3-4 paras D-C)

And

ALHAJI ALIKO DANGOTE v. AFRICAN PETROLEUM PLC & ORS (2012) LPELR-7980(CA) (Pp. 30-31 paras. D) where it was canvassed that:

"The exercise of discretion is a judicial act and is expected to be exercised judicially, namely in accordance with established principles. It is an essential requirement of the administration of justice that the exercise by a judge of his judicial discretion should not only be respected but invariably upheld. There can only be interference where the discretion has been exercised in bad faith, frivolously or vexatiously. The overriding principle in the exercise of discretion by a Court is to maintain a balance of justice between the claimant and the Defendant."

See also

THE OWNERS OF THE M. V. LUPEX v. NIGERIAN OVERSEAS CHARTERING AND SHIPPING LIMITED (2003) LPELR-3195(SC) (Pp. 18 paras. C)

"Judges and Courts exercise their discretion in accordance with rules of law and justice and not according to private opinion. An exercise of discretion is a liberty or privilege to decide and act in accordance with what is fair and equitable under the peculiar circumstances of the particular case, guided by the spirit and principles of law."

The general rules for granting amendments are very flexible and depend largely on the discretion of the court and the circumstances of the case – see **Anakwe v. Oladeji (2008) 2 NWLR Pt. 1072 P. 506 at P. 524 para. A and Ologunleko v. Ogunevahun (2008) 1 NWLR Pt. 1068 P. 397 at 420 paras. B.**

It is also trite that an amendment is simply the correction of an error committed in any process, pleadings or proceedings at law or in Equity. The main purposes of amending pleadings are to cure all discernible defects in the pleading. See

EMORI V. EKUKU (2012) LPELR-9797(CA) (Pp. 18-19 paras. E)

GENERAL ELECTRIC COMPANY V. AKANDE & ORS (2015) LPELR-24668(CA) (Pp. 18 paras. B)

See also **CHIEF OF DEFENCE STAFF V. ADHEKEGBA (2009) 13 NWLR P. 332 AT P. 363**

In ALIYU & ANOR V. GWADABE & ORS (2014) LPELR-23463(CA) (Pp. 12-13 paras. C) Per ABOKI ,J.C.A

"Amendment means to improve, to change for the better by removing defects or faults and in relation to Court proceedings, it is the correction of an error committed in any process, pleadings or proceedings at law or in equity and which is done either as of course, or by consent of the parties or upon notice to the Court in which the proceedings is pending. It includes "re-writing" the whole document and substituting the new for the old. See; U.B.N V. Lawal (2012) 6 NWLR pt. 1295 page 186 at 194.

It is settled that Amendment enables the slips, blunders, errors and inadvertence of counsel to be corrected in the interest of justice, ensuring always that no injustice is occasioned to the other party. See; Kode v. Yussuf (2001) 4 NWLR (pt. 703) at 392."

It is well settled law that a court may at any stage of proceedings, either of its own volition or upon application of either party order amendments for the purpose of determining the real issues or questions in controversy between parties. However where such amendment will entail injustice or surprise or embarrass the other party or where the applicant acts malafide, the amendment ought not to be ordered. See

OKAFOR V. IKEANYI & ORS (1979) LPELR-2418(SC) pg 13-14 paras A-D per Bello J.S.C

And

EZE V. ENE & ANOR (2017) LPELR-41916(SC) Pg 6-7 para B-C- where the Supreme Court reiterated that an amendment would not granted where such grant would entail injustice or the other party is acting in bad faith.

In **ASUEN & ANOR V. OMOREGIE (2012)LPELR-7916(CA) pg 14-15 paras S-D per Omoleye JCA** the court held that amendment would be allowed provided the amendment is not intended to over-reach and the other party is not taken by surprise.

Suffice to say that my thinking is in tandem with the averments of Plaintiffs/Respondents in paragraphs 5 to 8 of their counter affidavit that this application for amendment is brought malafide.

A careful perusal of the applicant's further affidavit reveals no regrets nor justifiable cause for having to make this application at this stage of the proceedings. It does appear that they rest on their presumed legal right to apply for amendment at any stage of the proceedings. See particularly paragraphs 2 to 6 of the affidavit in support of the motion on notice. The statement of defence sought to be amended was filed in 2016 and this application for amendment filed on 22nd April, 2022. There is nothing on the face of the proposed amendment suggesting that it is done to bring the real issue(s) in controversy before the court for a just determination.

The applicant gave no explanation for the delay in bringing this application. The Court of Appeal in the case of **Khalifa V. Onotu & Anor (2016) LPELR-41163(CA) Pg. 50 paras. A-D** adumbrated the circumstance under which the court will not grant amendment of pleadings as follows:

“the primary consideration in granting an application for amendment of pleadings is whether the amendment sought is for the purpose of determining in the existing suit, the real question or questions in controversy between the parties. The Courts are enjoined to grant amendment of pleadings at any stage of the proceedings except where the Applicant does not merit it, or the grant will be prejudicial to the other party or, introduce fraud, or set up a new case. See OYENUGA v. UNIFE (1965) NWLR 9, KODE v. YUSSUF (2001) 5 NSCQR 376.”

Suffice to say in my humble view that the applicant does not merit a grant of the application, as grant of same in the circumstance will entail injustice and be prejudicial to the interest of the other party.

Further, I have gone through the proposed amendment, apparently the defendant intends to raise a jurisdictional issue in the paragraph 1 and 2 of the proposed amendment dated 22nd April, 2022

I wish to state that it is not necessary that a jurisdictional matter or issue must be pleaded before it can be raised. See

OLUODE & ANOR V. ABESUPINLE (2008) LPELR-4424(CA) (Pp. 11-12 paras. C) where Per AUGIE ,J.C.A (as he then was) reasoned that :

“.....It is much more fundamental than that and does not, entirely depend as such on what a Plaintiff may plead as facts to prove the relief he seeks. - - It does not always follow that he must plead first in order to raise the issue of jurisdiction.....”

See also

WHETTO & ORS V. AWODE & ORS (2011) LPELR -5100(CA) pp.15-16 paras. G

“At any rate, a jurisdictional matter or issue need not be pleaded. Once there is evidence in the record disclosing it any of the parties or even the Court may raise it- see NDIC v. CBN (2002) 18WRN 1 at 18 to 19 or (2002) 7 NWLR (Pt. 755) 272 at 296-297”

The defendant is at liberty to raise any jurisdictional issue at any stage of the proceedings without first dragging back the hands of the clock for no justifiable cause.

Flowing from the above, suffice to say that Defendant/Applicant has failed to show that the proposed amendment is necessary for bringing the real issues in controversy between parties before the court. This application therefore fails and is accordingly dismissed.

Signed

Honourable Judge

Representation

Peter Eriwode with Adachukwu Ezeofor Ms for Plaintiff/Respondent

Melvin Oputa Esq with Nwaorah Ojekwe Esq for Defendant/Applicant