

**IN THE HIGH COURT OF JUSTICE OF THE  
CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/CV/292/2019**

**BETWEEN:**

- 1. FIDELITY BANK PLC**
- 2. MR. AKPOFE EDWIN.....CLAIMANTS/APPLICANTS**

**VS**

- 1. ALPHA IFECO GLOBAL VENTURES**
- 2. MR. IFUNANYA EZEMA.....DEFENDANTS/RESPONDENTS**

**RULING**

By a Motion on Notice dated 30/3/2021 but filed on 17/6/2021, with Motion No. M/3519/2021, brought pursuant to Order 25 Rule (1) and Order 5 Rule (3) of the High Court of the Federal Capital Territory (Civil Procedure) Rule 2018 and under the inherent jurisdiction of the Honourable Court, the Claimant/Applicant prays the court the following reliefs;

- (1) An Order of Court granting leave to the Applicant to amend the Claimant's Writ of Summons herein attached to this application and marked as Exhibit "A".
- (2) An Order of Court granting leave to the Applicant to file its Proposed Amended Writ of Summons.

- (3) An Order of Court deeming the Amended Writ of Summons, with other accompanying documents attached to this application, filed as separate processes as properly filed and served, the necessary fees having been paid.
- (4) And the Omnibus relief.

This Motion is supported by a ten (10) Paragraphs Affidavit, with one (1) Exhibit attached, marked Exhibit "A", deposed to by one Habila Danladi a Litigation Secretary in the Law Firm of Claimants/Applicants Counsel. Also filed a Written Address and adopts same as oral submission in urging the court to grant the prayers.

The processes were served on the Defendants/Respondents by substituted means; to Wit: by pasting on the entrance door of 2<sup>nd</sup> Defendant (Alpha Ifeco Global Ventures) at shop 452, Block 42 Wuse market, vide Order of Court made on 13/10/2020. Despite service, the Defendant Respondents failed to react to the processes. The implication of this is that the application before the court stands unchallenged and uncontroverted. In *Gana Vs FRN* (2012) All FWLR (PT. 617) 793 @ 800 Paras D – E the court held thus;

"Where an affidavit does not attract a Counter-Affidavit, the facts deposed to therein have been admitted and must be taken as true"

See also the case of *CBN Vs Igwilo* (2007) 15 NWLR (PT. 1054) @ 406.

In the Written Address of Applicant, Clara L. Ogah Esq. formulated a sole issue for determination which is;

“Whether or not the Applicant can amend its Writ of Summons to correct an error found in the face of the Writ”

And submits that it is trite law that a party is entitled to amend his processes as a matter of course so as to enable the court decide the real issue or issues in controversy before the court. Refer to *Ajakaiye Vs Adeleke* (1990) 7 NWLR (PT. 161) 192 @ 205 *Izedonmwun & Anor Vs Egharevba & Anor* (2016) LPELR – 25689 (CA), *Copper Vs Smith* (1883) 26 Ch. D 700 @ 711 and Order 25 Rule 1 as well as Order 5 Rule 3 of the Rules of Court.

Submits further that the position of the court has always been that, even where a matter is before a court, the court does not have a time table to do justice. Refer to *Olagbegi Vs Ogunoye II* (1995) 5 NWLR (PT. 448) 332 @ 359. Submits that the case has not even started or moved hence still within the stage that cannot be said to be overreaching to the Respondent. Refer further to *Adekeye & Ors Vs Olugbade Dike Vs Okorie* (1990) 5 NWLR (PT. 151) 418 @ 431- 432, *University of Lagos Vs Algoro* (1985) 1 NWLR (PT. 1) 143 @ 148, *Unipetrol Nig Ltd Vs Musa* (1992) 7 NWLR (PT. 251) 388 @ 406, *Concord Press Ltd Vs Obijo* (1990) 7 NWLR (PT. 162) 303 @ 315.

Submits that there is no injustice to be caused to the Respondent, should the court exercise its discretion in favour of the Applicant and allow the application as same is in good faith and the Rules of court allows application for amendment to be made not more than two times before Judgment. Submits that Applicant’s affidavit shows that there is a

honest error made and the amendment will expedite the hearing of the suit. Urge court to grant the application.

Having carefully considered the affidavit evidence of the Applicant, the submission of Counsel as well as the judicial authorities cited, I find that only one (1) issue calls for determination that is;

“Whether or not the Applicant have placed sufficient fact to enable the court exercise its discretion in favour of Applicant”

The grant or otherwise of an application of this nature is at the discretion of the court and based on certain established principles set out overtime in Plethora of case law. In *Dike Vs the A G& Commissioner for Justice Imo State & Ors* (2012) LPELR – 15383 (CA) the court had this to say;

“The general principles on amendment of pleadings, is that an amendment should be allowed for this purpose of determining the real questions in controversy between the parties, unless such an amendment will entail injustice or surprise or embarrassment to the other party, or where the Applicant is shown to be acting malafide or that by his blunder he has caused or done some injury to the adversary which cannot be compensated by way of award of cost or otherwise. This is so because, the object of the court is to decide the right and obligation of the parties and not to punish them for mistakes which they may have made in the conduct of their case by deciding otherwise than in accordance with their right. Thus, the Rules governing the amendment of pleadings are flexible and therefore depend to a great extent on discretion of the judge. That

more so, when the decision whether or not to grant an amendment to the pleadings depends entirely at the discretion of the court”.

Taking a cue from this decision of the Court of Appeal above as a guide in the exercise of that power, the question to ask is, first what is the nature of the amendment sought in the application? In this application the Applicant is seeking leave to amend their Writ of Summons to correct a mistake as stated in the affidavit in support of the application.

Secondly, the next question is, what is the consequence of this proposed amendment? As stated by the Applicant, the record of court shows that although the Defendants have been served the Originating Processes, they are yet to take steps therefore the parties are yet to join issues in the suit and the suit is yet to proceed to trial, whilst it is true that, the court have constantly been urged not to ordinarily refuse an application for an amendment of pleadings, unless it is meant to delay the case, embarrass or prejudice the interest of the other side or make malafide and without the other side having the opportunity to react. See the case of UBN Vs Dafiaga (2001) 1 NWLR (PT. 64) 175 @ 177. Having carefully considered the facts and history of the case summed up above, the court finds the ground for the application that is; to correct a mistake as stated in the affidavit in support of the application, does not reveal any of the impediment stated in the above authority that could prevent the court not to exercise that discretion. It is therefore the firm view of the court that this amendment would not have negative consequence on the Defendants/Respondents as I find it not overreacting, embarrassing and

prejudicial and/or malafide. It is merely to bring to fore the issues for determination by the court.

In conclusion, after a careful consideration of the amendment sought in line with the guiding principles considered by the courts, on whether or not to exercise its powers to grant leave to amend, I hold that this application is not overreaching and it is not brought malafide and therefore should be allowed.

Accordingly, this application for amendment therefore succeeds. It is hereby ordered as follows;

- (1) Leave is hereby granted to the Applicant to amend the Claimant's Writ of Summons herein attached to this application and marked as Exhibit "A".
- (2) Leave is hereby granted to the Applicant to file its Proposed Amended Writ of Summons.
- (3) The Amended Writ of Summons with other accompanying documents attached to this application filed as separate processes, are deemed properly filed and served.

**Signed**  
**HON. JUSTICE C.O. AGBAZA**  
Presiding Judge  
22/09/2022

**APPEARANCE:**

FAITH IGBINOGWELE FOR THE CLAIMANTS/APPLICANTS

NO APPEARANCE FOR THE DEFENDANTS/RESPONDENTS