

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL  
TERRITORY  
HOLDEN AT MAITAMA ABUJA  
ON THE 25<sup>th</sup> DAY OF OCTOBER, 2022.  
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH  
(PRESIDING JUDGE)**

**SUIT NO:CV2273/2014**

**MOTION NO:M/5737/2022**

**BETWEEN**

**SILAS ANI ..... PLAINTIFF/APPLICANT**

**AND**

**1. HASSAN HUSAINI } ...DEFENDANTS/RESPONDENTS**  
**2. PERSONS UNKNOWN }  
3. SIMON H. CHAMA**

**RULING**

Before the Court is a Motion on Notice filed on the 18<sup>th</sup> of May, 2022 and brought under the inherent Jurisdiction of this Honorable Court.

The Claimant\Applicant prays for the following Orders:

- 1. An order of the Honorable Court granting the Applicant leave to amend the writ of summons, statement of claim and other court processes of the Claimant \ Applicant.*
- 2. An order of the Honorable Court granting the Claimant\Applicant leave to amend the statement of claim as*

*reflected in the proposed statement of claim and all other Court processes hitherto filed by the Claimant \ Applicant.*

*3. An order deeming the proposed amended writ of summons, statement of claim and other court processes sought to be amended as properly filed and served the requisite fees having been paid.*

*4. And for such further order or other orders as this Honorable Court may deem fit to make in the circumstances of this case.*

In support of the Application is an Affidavit of 8 paragraphs deposed to by Omos J. Ativie, a written address and the proposed amended writ of summons marked as Exhibit A

In response to the Application, the 1<sup>st</sup> and 3<sup>rd</sup> Respondent's Counsel filed a 6 paragraph Counter Affidavit deposed to by Helen Apeilu and a Written Address dated the 22<sup>nd</sup> of May, 2022 .

The Claimant\Applicant's Motion is praying the Court for leave to amend the Writ of Summons, Statement of Claim and other Court processes. He has given reasons in his Affidavit for the Amendment and made arguments in his Written Address, urging the Court to grant his prayers. In response, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents in their Counter Affidavit argued that, no substantial Amendment was done and that the Claimant\Applicant has not paid the correct filing fees for the Amended Writ of Summons which the Applicant filed and therefore, this Court cannot deem same as properly filed. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents further prayed that, in the event that this Application is granted they are seeking for N700, 000 as cost and in the event of its refusal, N200, 000 as cost.

I have considered the application of the Plaintiff/Applicant before the Court, the Affidavit in support, the Counter Affidavit, and the written submissions of both counsel.

The Issues arising for determination herein are:

1. “Whether the Plaintiff /Applicant is entitled to make an amendment in the circumstance of the case?”
2. Whether the Plaintiff/Applicant is entitled to the prayers sought.

It is settled law that Amendment of court processes can be done at any stage of the proceeding before judgment is given, but this is at the discretion of the Court and based on the circumstances of each case. Reasons must be adduced by Applicants as to why an Amendment is sought. See the case of **SPECOMILL STAFF CO-OPERATIVE THRIFT AND CREDIT SOCIETY LTD V. OGUNTOYINBO & ORS (2017) LPELR-43416 (CA) PP-23 (PARA A-D)** where the court of Appeal held that:

*“While it is true that an amendment may be made at any stage of the proceedings, in determining whether or not to grant an amendment, the Court will consider;*

- (a) The attitude of the applicant;*
- (b) The reason and nature of the amendment sought;*
- (c) The time factor in relation to the suit;*
- (d) The stage at which the amendment is sought; and*
- (e) All other relevant circumstances.*

*This is in view of the fact that the decision whether or not to grant an amendment is at the discretion of the Court, and is usually exercised based on the circumstances of each case. See **Alsthom v. Saraki (2000) 14 NWLR (pt.687) 415 and Nze Nathaniel Dike v. The A.G. & Commissioner for Justice, Imo State & Ors (2012) LPELR - 15383 (CA).**”*

It is important to note that the Court will always exercise its discretion only on the basis of the material facts placed before it and on no extraneous consideration. See the case of **KAKULU V. KAKULU (2016) LPELR-41552 (CA) PP 63-64 PARA F**

The question here is: what is the reason for the amendment sought by the Applicant in this case? The reason for the Amendment is encapsulated in paragraph 5 of the affidavit in support of the instant application for amendment. In the said paragraph, the Applicant averred that this Court observed some irregularities and made an order directing him to amend his Writ of Summons.

This Court is bound by its records. I have therefore, looked at the record of proceedings of 10<sup>th</sup> May 2022 and there is no where therein, that this Court ordered an amendment to be made. For avoidance of doubt, what this Court ordered on the 10<sup>th</sup> of May 2022 was that, parties should file their certificate of pre-action counseling in respect of this suit as per form 6 of the **High Court of the Federal Capital Territory Abuja (Civil Procedural) Rules 2018**.

It would therefore appear that the Applicant has manufactured facts upon which he is relying on, as reasons for his proposed Amendment.

The only reason this Court is minded to favorably consider this Application is because there is no endorsement of Claim in the Statement of Claim filed with Originating Writ of Summons on 3<sup>rd</sup> of September 2014.

A perusal of both copies of the Originating process in the case file is reflective of the absence of any heads or particulars of claims or reliefs sought by the claimant in the Statement of Claim.

A cursory glance at the Attached **Exhibit A** to the Affidavit in support of this Motion shows clearly that the proposed Amended Statement of Claim indicates the reliefs sought by the Claimant against the Defendant which are numbered A, B, C, D, E, F&G

These proposed Claims are similar to the particulars of Claim endorsed in the initial writ of summons of 3<sup>rd</sup> September 2014.

Thus it is clear that this Motion seeks to bring before the Court the purported reliefs Claimed by the Plaintiffs in the matter.

In the case of **OFORISHE V. NIGERIAN GAS CO. LTD (2017) LPELR 42766 (SC) PP 16 – 17 (PARA F -G) the Supreme Court held that:**

‘The purpose of amending pleadings is to prevent the Court from giving judgment in ignorance of facts that should be known before rights are finally decided. Put in another way amendments to pleadings are ultimately to enable the Court decide the real issues in controversy between the parties.’

See also the case of **ADESONYA V. ADEWALE (2004) 11 NWLR PT 884(PP 50) (PARA D)**

The Court in allowing this Motion will afford the Plaintiff the opportunity to bring his Claim properly before the Court.

Therefore, the Application for Amendment would be granted on terms.

The second relief is for an order deeming the proposed Amended Writ of Summons, Statement of Claim and other Court processes sought to be Amended as properly filed and served. The Defendants have objected to the Jurisdiction of this Court entertaining the Amended Writ of Summons and Statement of Claim on grounds that adequate filing fees were not paid by the Applicant for same.

In this regard of payment of filing fees, I refer to the case of **GREEN FINGERS LTD V. MUSAWA & ANOR (2015) LPELR 26012 (CA) PARA A-D, PP. 31** where the Court of Appeal held that:

*“it is important to reiterate the well established principle of Law which has become trite that payment of filing fees is a condition precedent to the Court's assumption of jurisdiction and where not paid, a Court of law would have no jurisdiction to entertain the matter before it and would be entitled to discountenance the process. This is so because the Rules of each Court makes the payment of filing fees mandatory. See Okolo vs. Union Bank of Nig. Ltd. (2004) 1 SC (Pt. 1) 1, Onwugbufor vs. Okoye (1996) 1 NWLR (Pt 424) 252 .However, in a case of non-payment in full of the prescribed fees; that is, where inadequate filing fees has been paid, the law views such an inadequate payment of fees as a mere irregularity which would not vitiate the proceedings.” See also the case of OBATUGA & ANOR V. OYEBOKUN & ORS (2014) LPELR 22344 (CA) PP 120 PARA A.*

Suffice to say that , while total failure to pay filing fees is a Jurisdictional issue, non-payment of adequate filing fee is a mere irregularity that does not affect the Jurisdiction of the Court.

The Defendants/Respondents submitted that, from the face of the Motion paper, the Claimant paid the sum of N2300 instead of N12000, which he is meant to pay for a Declaration of possession of land and Declaration for Right of Occupancy as contained in the 1<sup>st</sup> Schedule of the **High Court of the Federal Capital Territory (Civil Procedural) Rules 2018**. This lapse in my view does not deprive the Court of Jurisdiction over the Amended Writ of Summons and Statement of Claim, as the Applicant can be ordered to pay the shortfall of the filing fees.

Suffice to say, in the light of the foregoing that the instant Application of the Claimant succeeds on terms.

Consequently, Order is hereby made granting leave to the Claimant\Applicant to Amend the Writ of Summons, Statement of Claim and other relevant Court processes filed by the Applicant.

Order is accordingly made granting the Claimant\Applicant leave to Amend the Statement of Claim as reflected in the proposed Statement of Claim and all other Court processes hitherto filed by the Claimant.

And order is also hereby made that, the Amended Writ of Summons, Amended Statement of Claim and other relevant Court processes sought to be Amended, shall after payment of requisite filing fees, be deemed as having been properly filed and served.

The sum of N100,000 is awarded to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants\Respondents as cost to be paid by the Claimant before further hearing of Claimant's Claim.

Signed

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Honorable justice M.E. Anenih

APPEARANCES;

Farida Akinlade Abiola (Ms) with J. E Abutu Esq for the Claimant/Applicant.

Julius Angbashim Esq for the 1<sup>st</sup> and 3<sup>rd</sup> Defendants/Respondents.

2<sup>nd</sup> Defendant/Respondent unrepresented.