IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS MONDAY, THE 27TH DAY OF MARCH, 2023

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/3524/13
MOTION NO:M/8231/2022

BETWEEN:

MRS. IVY ADI ELEKWA……..…….PLAINTIFF/APPLICANT

AND

DR. DANIEL ADEMU……DEFENDANT/RESPONDENT

RULING

By a motion on notice dated 21st June, 2021, the Plaintiff/Applicant prays for the following Reliefs:

1. **An order of this Honourable Court granting leave to the Plaintiff/Applicant to amend her writ of summons and statement of claim in the manner underlined in the proposed amended writ of summons and statement of claim herewith attached as Exhibit "A"**

2. **An order of this Honourable Court deeming the Plaintiff/Applicant's amended writ of summons and statement of claim filed separately and herewith attached as properly filed and served the appropriate fees having been paid and the separately filed copy having been served on the Defendant.**

3. **And for such further order(s) as this Honourable Court may deem fit to make in the circumstances of this suit.**

The grounds on which the application is sought are as follows:

1. **Some facts which were given in evidence were not specifically pleaded.**

2. **The amendment sought is to bring the pleadings (i.e the writ of summons and statement of claim) in line with the evidence already adduced in this case.**

The application is supported by a 13 paragraphs affidavit with one annexure marked as **Exhibit A-t**he proposed amended writ of summons and statement of claim. A very brief written address was filed in compliance with the Rules of Court in which one issue was raised as arising for determination to wit:

Whether the application is meritorious and whether this Honourable Court has the powers to grant the Reliefs sought.

Submissions were made on the above issue which forms part of the Record of Court to the effect essentially that the court has the powers to grant the extant application to amend as it seeks to bring the pleadings in line with the evidence already adduced in this case.

At the hearing, counsel to the Applicant relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in urging the court to grant the application.

Counsel to the Defendant/Respondent did not oppose the Application and therefore the application ordinarily ought to have been granted.

However in the context of the peculiar history of this case, where the court has dealt with several interlocutory applications and given Rulings which may impact the present application as even conceded in paragraphs 1.6 and 1.7 of the address in support of the extant application, it has become imperative to carefully evaluate and consider the merits of the application. I will here in extenso refer to some of these decisions in the circumstances, it has thus become necessary, even imperative to give close scrutiny to the application notwithstanding the lack of opposition by Defendant.

The principle to underscore is that it is not the lack of opposition that solely determines whether an application will be granted or not. Indeed, the fact that an

application is unopposed does not mean that it would be granted automatically. The facts and the law or the principles governing the grant of the application must be satisfied or fulfilled putting the court in a commanding height to grant the application. In short the application must have merit to be legally availing.

The principle must also be stated at the outset that this court is not a Court of Appeal and as such it has no jurisdiction to sit over its decisions or give decisions that may conflict with its earlier decision or take a position that diametrically conflicts with a clear position already taken. That duty or responsibility is for the law lords at the superior Court of Appeal.

Having made the above prefatory remarks, let me quickly say that I have carefully read all the processes filed by the Applicant and the narrow issue to be resolved is whether the court should grant the amendment sought by the Plaintiff/Applicant?

It is an application which necessarily must be resolved within the template of the settled principles governing the grant of an application to amend.

Now by the clear provisions of the rules of court, the court may at any stage of the proceeding allow either party to alter or amend his pleadings in such manner and on such terms as may be just for the purpose of determining the real question in controversy between the parties. See **Adekeye V. Akin-olugbade (1987)3 N.W.L.R (pt 60)214.**

The wide powers which the court may exercise in granting amendments cover amendments sought during, before and after trial of an action before judgment and even after judgment has been reserved. See **Okafor V. Ikeanyi (1979)3-4 SC 99 at 144.** Different considerations and principles determine how the court exercises or grants this indulgence at whatever point the application is brought.

An amendment is therefore nothing but the correction of an error committed in any process, pleading or proceeding which is done either as of course or by consent of parties or upon notice to the court in which the proceeding is pending. **Adekeye V. Akin-Olugbade (supra).**

The primary basis upon which the courts allow an amendment of pleadings is to ensure that a court determines the substance and or justice of the case or grievance that has being brought to court for judicial ventilation and adjudication. The courts have over time therefore always taken the positive and salutary stand or position

that however negligent or careless the errors or blunders in the preparation of court processes and we must concede that these happen regularly, the proposed amendment ought to be allowed, if this can be done without injustice to the other side or the adversary.

In **Laguro V. Toku (1992)2 NWLR (pt.223)278,** it was firmly established that in the exercise of its power to amend a pleading, the court is guided by the following principles namely:

a) **The consideration of the justice of the case and the rights of the parties before it.**

b) **The need to determine the real question or questions in controversy between the parties.**

c) **The duty of a judge to see that everything is done to facilitate the hearing of any action pending before him and wherever it is possible to cure and correct an honest and unintended blunder or mistake in the circumstances of the case and the amendment will help to expedite the hearing of the action without injustice to the other party.**

d) **If the court is an appellate court, the need to amend the record of the trial court, so as to comply with the facts before the trial court and decision given by it in order to prevent the occurrence of substantial injustice.**

e) **Amendments are more easily granted whenever the grant does not necessitate the calling of additional evidence or the changing of the character of the case and in that aspect no prejudice or injustice can be said to result from the amendment. See also Wiri V. Wuche (1980) 1-2 S.C. 12; Afolabi V. Adekunle (1993) 2 SCNLR 141; Akinkuowo V. Fafimoju (1965)NWLR 349.**

I have endeavoured to set out *in extenso* the above principles governing the grant of an amendment. The task before me is to apply the above principles to the facts of this case guided by the imperatives or dictates of justice and ensuring that parties have a fair platform to present their grievances.

It may be apposite here to give a resume of the relevant antecedent facts of this matter as it will necessarily provide a basis to resolve the issues subject of this application. An amendment which all agree is an important process in the

adjudicatory process is obviously not granted as a matter of course. There must therefore be proper factual and legal basis for it.

I shall here allow the pleadings and the applications filed and the Rulings delivered to speak to the justice of the present application. This is a matter filed as far back as 2013 in which the Plaintiff claimed as follows:

a. **A declaration that the Plaintiff is the beneficial owner of the property known and described as PLOT L101-Cadastral 07-05, KUBWA EXTENSION 111 (FCDA SCHEME), situated in Kubwa, Abuja.**

b. **An order of perpetual injunction restraining the Defendant, his privies heir, assigns or anybody claiming through or from him, from continued trespass on the property known and described as PLOT L101-Cadastral 07-05, KUBWA EXTENSION 111 (FCDA SCHEME).**

c. **A declaration that the Deed of Gift made by the Plaintiff to the Father's Church in respect of the property known and described as PLOT L101-Cadastral 07-05, KUBWA EXTENSION 111 (FCDA SCHEME), situated in Kubwa, Abuja confers equitable interests in the said property on the said church.**

d. **An order of this court mandating the Defendant to vacate and deliver possession of the said land with all appurtenances to the Plaintiff.**

e. **An order of this Honourable Court awarding the sum of Five Million Naira Only in favour of the Plaintiff as the cost incurred in the prosecution this case.**

f. **An order awarding the Plaintiff the sum of Twenty Million Naira in favour of the Plaintiff as general damages for trespass on the said land.**

g. **A declaration that every improvement made on the said property, remains property of the Plaintiffs.**

h. **And any further order or orders as this Honourable Court may deem fit to make in the circumstances.**

In paragraphs 3-19 of the claim, the Plaintiff averred as follows:

3. **The plaintiff is the beneficial owner of the property described as PLOT L101-Cadastral 07-05, KUBWA EXTENSION 111 (FCDA SCHEME), which is the property in dispute.**

4. **That the said property measures approximately 1485.51m with File No.AB 41734 and Right of Occupancy No:FCT/BZTP/LA/AB/2003/554 (and bounded by Beacons Nos pb8951, pb 8957, pb 8982) Kubwa Extensio 111 (FCDA SCHEME) Abuja.**

5. **The Plaintiff purchased the said property in the year 2002, by which time, the area where the land in question is located was under the management of the Bwari Area Council and immediately applied for and changed the ownership of the property to her name with Bwari Area Council.**

6. **In the year 2003, a Customary Right of Occupancy for 99 years in respect of the property was conveyed to the Plaintiff by the Bwari Area Council vide a letter of Conveyance of Provisional Approval dated 25th February, 2003 from the Land, Planning and Survey Department of Bwari Area Council Abuja. The said letter is hereby attached and marked as annexure "A".**

7. **That the survey plan of the property described as PLOT L101-Cadastral 07-05, KUBWA EXTENSION 111 (FCDA SCHEME) was issued to theh Plaintiff Mrs. Ivy Adi Elekwa on the 21st day of March, 2003. The said survey plan is hereby annexed and marked as annexure "B".**

8. **The Plaitniff paid all the necessary fees for the processing of title of the land document to Bwari Area Council before the issuance of the Customary Right of Occupancy mentioned in paragraph 7 above. The said receipts are hereby annexed and marked seriatim as annexure C1-3.**

9. **The Plaintiff states that after sometime, the then Minister for Federal Capital Territory Mallam Nasir El'rufai announced that Area Councils could no longer issue Customary Rights of Occupancy in respect of lands within the FCT and requested that the holders of such letters should revalidate their titles with the FCT administration.**

10. Following the said directive above, the Plaintiff applied for re-certification of her title to the said land in question with the FCDA. Upon which application, she was issued with a form of acknowledgment dated 4th April, 2007 by the Federal Capital Territory Administration showing that the Plaintiff had applied for recertification of her existing land title in respect of the said property. The said application and acknowledgment form is hereby annexed and marked as annexure 'D' and 'DD'.

11. The Federal Capital Territory Administration further created a department known as AACTRIS or Accelerated Area Council Title Reissuance Scheme for the purpose of speedy issuance of titles of land owners with previous titles from Area Councils in the FCT.

12. Following the creation of AACTRIS, the Plaintiff further applied to Accelerated Area Council Title Reissuance Scheme (AACTRIS)for the issuance of FCDA land title in respect to the said property in accordance with the new policy of the Federal Capital Territory Administration that all Area Council Land Title holders should apply for reissuance of title documents. The Plaintiff said pleads the deposit receipt of the sum of N100,000:00 application and Oceanic Bank (later Ecobank Plc) teller dated 12th March, 2012 and payment receipt issued to her by AACTRIS for the said payment is hereby annexed an marked as annexures 'E' and 'EE'.

13. The plaintiff had also by Deed of Gift, given under her hand made gift of the said land to her church, the Father's Church in appreciation to God for all her successes in life. The said Deed of Gift dated the 4th of March 2011 is hereby pleaded and marked as Exhibit 'F'.

14. The Plaintiff was taken back when she was informed and subsequently discovered that the land in question has been fenced and security gate installed with a security man living in the security house.

15. The Plaintiff retained the Law Firm of Anthony Oka & Associates to investigate the said trespass on the said property wherefore it was discovered that the trespasser is the Defendant.

16. The Defendant has continued to illegally, and unlawfully trespass on the said land despite warnings. The Plaintiff hereby pleads a letter dated 15th March, 2003 from the Law Firm of Anthony Oka & Associates asking the Defendant to desist from further trespass to the said land. The said letter is hereby annexed and marked annexure G.

17. Furthermore, on the said Law Firm Anthony Oka & Associates wrote a letter to AACTRIS seeking to know the status of the revalidation process and informing the AACTRIS of the trespass of the Defendant on the said land. Copy of the said land is hereby annexed and marked annexure H.

18. The Plaintiff states that the Defendant has no title to the said land but is only a land grabber whose sole pre-occupation is to forcefully, deceitfully and deftly, snatch the Plaintiff's land.

19. The Defendant has failed to stop trespassing on the property despite various warnings from the Plaintiff's counsel."

The case made out by the **Plaintiff** above is simple, clear and straight forward. **The trajectory of how she acquired the disputed land is equally clear**. The above claim contains in summary the material facts on which Plaintiff relies for her claims or reliefs. The point to add here is that the Plaintiff has since adopted her witness deposition covering these assertions.

In response the **Defendant** joined issues with Plaintiff and the following paragraphs are relevant:

"3. The Defendant denies paragraph 3 of the statement of claim as same is totally false and therefore puts the plaintiff to the strictest proof thereof.

4. The defendant denies paragraph 4 of the statement of claim and states that the correct position is that Plot No. L101 in Kubwa Extension III (FCDA Scheme) within Cadastral Zone 07-05 is delineated by beacons Nos. PB8957, PB8958, PB8981 & PB8982 and same is allocated to Sir. Andrew M. Enegbuma with File No. ED 42502.

5. **The defendant denies paragraph 5 of the statement of claim and puts the plaintiff to the strictest proof thereof.**

6. **The defendant denies paragraph 6 of the statement of claim and states that the documents being paraded by the plaintiff are fake and must have been forged.**

   PARTICULARS OF FRAUD

   The defendant had cause in 2010 to apply to the Bwari Area Council for a search in respect of the plot in issue as some persons were circulating the plaintiff's paper only to be informed at Bwari Area Council that they don't have record of the Plaintiff's purported title documents

   The defendant hereby pleads the receipt evidencing payment of N5, 000 for the said search and shall rely on same at the hearing of this suit.

7. **The defendant denies paragraphs 7 and 8 of the statement of claim and repeats that the documents being paraded and front-loaded by the plaintiff did not emanate from the sources claimed and the plaintiff is put to the strictest proof of her claims in the said paragraphs.**

8. **The defendant is not in a position to confirm or deny paragraphs 9 and 10 of the statement of claim and, therefore, puts the plaintiff to the proof thereof. In any case, the defendant states that all documents submitted to AGIS for recertification as directed by the then Minister of the FCG, Mallam Nasir El-Rufai were not verified to determine their authenticity at the point of collection and issuance of acknowledgment letters, so several genuine and fake documents were submitted on payment of the mandatory requisite fee and acknowledgment letters were issued. The process of determining the authenticity of documents submitted and issuance of Certificates of Occupancy is still ongoing especially as regards Area Councils.**
9. **The defendant is not in a position to confirm or deny paragraphs 11-14 of the statement of claim and therefore puts the Plaintiff to the strictest proof thereof.**

10. The defendant denies paragraphs 15-19 of the statement of claim and puts the plaintiff to the strictest proof of the paragraphs, the defendant states as follows:

(a) That he is not a trespasser but someone who has been put in possession of Plot No. L101 in Kubwa Extension III (FCDA Scheme) within Cadastral Zone 07-05 as a manager by the allotee, Sir Andrew M. Enegbuma and has been in possession for several years now.

(b) That the said Sir Andrew M. Enegbuma (the allotee of the plot) executed a Power of Attorney and issued a letter of authority to him to manage the plot and also to take and defend any action against trespassers or any third party. The said Power of Attorney and the authority letter are hereby pleaded.

(c) That the said Sir Andrew M. Enegbuma was first allotted and granted a Customary Right of Occupancy over the said plot (Plot No. L101 in Kubwa Extension III(FCDA Scheme) within Cadastral Zone 07- 05) in 1999 whereupon a Conveyance of Provisional Approval dated 15th April, 1999 was issued to him. The said letter f allocation/conveyance of provisional approval is hereby pleaded and the defendant shall find and rely on same at the hearing of this suit.

(d) That sometime in 2006, Sir Andrew M. Enegbuma discovered that he original conveyance letter dated 1999 was missing and after all search for it could not yield any result, applied to the Bwari Area Council for re-issuance.

(e) That another offer letter over the same plot of land was re-issued in 2005 conveying the Hon. Minister's approval of a Statutory Right of Occupancy to Sir Andrew M. Enegbuma to replace the missing one. The said re-issued offer of the terms of grant/conveyance of approval dated 15th March, 2005 is hereby pleaded.

(f) That when the then Minister of the FCT came out with a policy that all land owners in Abuja should submit their title documents for recertification, Sir Andrew M. Enegbuma submitted his title documents over Plot No. L101 in Kubwa Extension III (FCDA Scheme) and was issued with an acknowledgment letter. The said acknowledgment dated 04/16/07 is hereby pleaded.

(g) That Sir Andrew M. Enegbuma also made the necessary payments preparatory to the preparation of a Title Data Plan (TDP) and Certificate of Occupancy over the said plot. The Receipt dated 14/08/06 evidencing payment of the sum of N10, 000 for Certificate of Occupancy is hereby pleaded.

(h) That after making the required payments, Sir Andrew M. Enegbuma was issued with a TDP showing his Right of Occupancy No. FCT/BZTP/LA/ED.362 dated 4th October, 2011 and same is hereby pleaded.

(i) That the relevant page of the final survey data in respect of Kubwa Extension III Layout showing the coordinates, beacon numbers and other survey details of the said plot was obtained from the relevant government office and same is hereby pleaded.

11. The defendant states that when in 2010, some persons came to the plot in issue to ask about its availability for sale, he duly informed them that the plot was not for sale but was shocked when the people showed copies of offer letter bearing the plaintiff's (Mrs Ivy Elekwa's) name whereupon he instructed his solicitors, Refuge Chambers to write a complaint letter to Bwari Area Council and followed up with a search which confirmed that the plaintiff's purported title document was not in the record of the council. The said Solicitor's letter to Bwari Area Council is hereby pleaded.

12. The defendant further states that when the unfounded claims and circulation of fake documents in respect of the land under his care persisted in 2013, he wrote and applied to the Abuja Geographic

Information Systems (AGIS) for a caveat to be placed on the land and also requested and paid for another search at the Bwari Area Council and this time specifically demanded for a written reply but the officials said they prepared the report and awaiting signature. The receipt dated 11th September, 2013 issued by the Bwari Area Council evidencing payment for the search, and a copy of the letter to the Director of lands, AGIS are hereby pleaded.

13. The defendant states that the plaintiff is not the owner of the plot in issue and she knows very well that she does not own the plot but just embarking on an exercise to see whether the owner or occupier has better documents than the fake ones she carries about."

The above defence is equally clear.

The pleadings above precisely streamlined the facts and or issues in dispute. Indeed it was on the basis of these pleadings that Plaintiff opened her case as far back as 24th February, 2014 and adopted her witness deposition in support of the facts averred to in the statement of claim above and also tendered documentary evidence in support.

Indeed on the record, it was only due to difficulty with respect to the admissibility of a certain document from AACTRIS that the Plaintiff sought for an adjournment on the said date. The case then suffered significant disruptions which I need not recount here. What is however **relevant** here is that after the case resumed, the Plaintiff filed an application dated 29th November, 2016 seeking for the following Reliefs:

"

1. **An order granting leave to the applicant to amend the statement of claim dated 11th June, 2013 in terms of the Proposed Amended Statement of defence attached to the affidavit and in particular in the manner set out thus:**

   a. **Paragraph 4 of the statement of claim to now read: "The said property measures approximately 1495.51m^2 with file No: AB/41734 and Right of Occupancy No: FCT/BZTP/AB/2003/554 and bounded by survey beacons Nos: PB8981; PB8957; PB8958 and PB8982" (by the addition of the underlined words).**

b. A new paragraph 4A to read thus:

"4A: The said land in dispute was originally allocated to one Sir, Andrew M. Enegbuma who later transferred his title to one Ezekiel M. Jatau. The cancelled original title document of Sir, Andrew M. Enegbuma is hereby pleaded and will be founded upon at the trial.

c. Paragraph 5 of the statement of claim to now read (by the addition of the underlined words) thus:

"5. The claimant purchased the said property <u>from Ezekiel M. Jatau vide Power of Attorney dated 21st February, 2003</u> by which time the area where the land in question is located was under the management of the Bwari Area Council and <u>the claimant</u> immediately applied for and changed the ownership of the property to her name. <u>The said Power of Attorney, the cancelled copy of the original title of Ezekeil M. Jatau and the new conveyance of approval of Customary Right of Occupancy issued to the Claimant by Bwari Area Council are hereby pleaded and will be founded upon at the Trial</u>."

d. A new paragraph 12A be inserted immediately after paragraph 12 of the statement of claim thus:

"12A(i): In the course of the trial, the claimant by her counsel applied to the AACTRIS (Accelerated Area Council Title Reissuance Scheme) by letter dated 19th May, 2016 to confirm the root of the Claimants Title. The said letter dated 19th May, 2016 is hereby pleaded and shall be founded upon at the trial.

(ii): The said AACTRIS (Accelerated Area Council Title Re-issuance Scheme) by letter dated June 1st, 2016 directed the claimant to channel her request to the Director of Lands, FCT. The said letter dated 1st June, 2016 is hereby pleaded and will be founded upon at the trial.

(iii): By letter dated 1st June, 2016 the claimant though her solicitors made the same request to the Director of Lands, FCT as was made to

AACTRIS (Accelerated Area Council Title Re-issuance Scheme). The said letter dated 1th June, 2016 is hereby pleaded and shall be founded upon at the trial.

(iv): By a reply dated 7th November, 2016, the Director of Lands FCT did confirm the root of title of the claimant. The said letter dated 7th November, 2016 is herby pleaded and will be founded upon at the trial.

e. **A new paragraph 13A be inserted immediately after paragraph 13 of the statement of claim thus:**
"13A: In the course of the trial the Father's Church by letter dated 17th July, 1014 addressed to the claimant returned the land in dispute to the claimant and ceased to have any beneficial or property interest in the said land so that the land now reverted to the beneficial ownership of the claimant. The said letter dated 17th July, 2014 is hereby pleaded and will be founded upon at the trial.

f. **To delete paragraph (c) of the prayers or claims of the claimant.**

2. **An order permitting the applicant or any other witness to file further witness statement on oath as a consequence of the above amendment.**

And for such further order or orders as tot his Honourable Court may seem just and expedient to make in the circumstances.

As stated earlier, the defendant opposed the application contending that the amendment is brought in bad faith and designed to over reach the Defendant and to change the cause of action already made by the Plaintiff in evidence. That the amendment does not in any manner comply with the principles and spirit of amendment and should be refused.

In my ruling dated 13th February, 2017 refusing the application, I held as follows:

"…I have carefully gone through the processes filed on both sides of the aisle, the proposed amendments vis-à-vis the original pleadings and most importantly the evidence already led at plenary hearing, and I do not see how the present amendment sought can escape accusation that it was designed to overreach the case of Defendant by completely seeking to alter in a significant

manner the tenor and character of the evidence and case of Plaintiff. Paragraphs 4, 4a and 5 of the proposed amended statement of claim clearly seeks to introduce fresh facts different in character, form and context from that originally pleaded and on which evidence was led. I had earlier given a summary of the case and evidence led by the Plaintiff herself. I have similarly and comprehensively referred to the pleadings of Defendant. The new proposed amendment seeks to alter or change her narrative and the case made out on which issues have since been joined. For example the Plaintiff has led evidence with respect to the size of her disputed plot with certain precise dimensions. The proposed amendment in paragraph 4 seeks to alter in a significant manner this narrative. The proposed amendments in paragraphs 4a and 5 appears to me a belated attempt to change the character of Plaintiff's case and it is a direct response to the averments in the Defendants' defence who traced his root of title to one Andrew M. Enegwuma and their contention that the documents been paraded by Plaintiff are fake. I find it serious that nearly four years after the case was filed, the Plaintiff suddenly is tracing her root of title to the same Andrew M. Enegwuma.

The proposed amendment in paragraph 5 is clearly not material in the light of the existing pleadings. The case of the Plaintiff has always been that she "purchased" the disputed plot in 2002 (see paragraphs 5 of the original claim). The manner of how she bought it can now only be a matter of evidence. The proposed paragraph 5 of the amendment seeks to plead evidence. A pleading is expected to only plead material facts and not evidence to sustain or support the pleading. Similarly the proposed amendments in paragraphs 12a(i), (ii), (iii) and (iv) all relate to steps taken as early as 2016 and nearly 4 years after the inception of this case and during the pendency of these proceedings. These amendments clearly conflict with paragraph 17 of the original pleading. In the said paragraph 17, it is pleaded therein that the law firm of "Anthony Oka & Associates wrote a letter to AACTRIS seeking to know the status or the revalidation process and informing the AACTRIS of the trespass of the Defendant on the said plot." This pleading was filed in June, 2013 so any letter to AACTRIS referred to in paragraph 17 must certainly have predated June, 2013. The documents and or process now been referred to started in May, 2016 long after hearing has commenced. The proposed amendments here clearly also alters completely the narrative on the existing pleadings and on which evidence has already been led by Plaintiff.

The proposed amendment in paragraph 13A and the deletion of paragraph c of the reliefs sought is clearly inconsequential to the clear extent that the main relief of Plaintiff is that she be declared the beneficial owner of the disputed plot. There is no law compelling a party to pursue a relief if it is no longer interested in claiming same. It can be withdrawn at any time and it will be struck out or the party may elect not to even lead evidence to prove that leg of the relief. An amendment is therefore not necessary in such circumstance. A party such as Plaintiff who conceives she has a cause of action, files her pleadings and after leading evidence suddenly now seeks to alter or change her narrative clearly tantamounts to what in popular parlance is referred to as shifting the goal post and this negates the spirit and principles of amendment. The rationale for this amendment appears to me highly suspect and I cannot locate any factual or legal basis to countenance same. The court may be very liberal when it considers applications for amendments but that liberality cannot be extended to cover situations like the extant one camouflaged as errors to overreach or cause injustice to the adversary.

I am in no doubt that the nature of the wholesale or case changing nature of the amendments is without doubt overreaching and would if granted unfairly prejudice the opposite party. Most important too is the fact that amendments by its very nature relates to the pleadings and not to evidence already led. Where therefore the amendment to pleadings seeks to align the pleadings with the evidence on record, such amendment is in order and will be allowed. This is not the situation here. What we have here is that evidence has already been led and a position advanced. The position so advanced remains a part of the entirety of the case to be evaluated at the appropriate time. There is therefore no legal template to seek to alter a case through the instrument of amendment and through that same process alter or change the evidence already on record. This been an interlocutory application, I leave it at that for now.

In the circumstances, the principle that the error of counsel should not be visited on the client clearly has no application here. The fact that the extant amendment is overreaching and overtly prejudicial cannot be validated on the altar of an alleged mistake by counsel. The condition precedent for the validity of the grant of any application for amendment is the justice of the exercise. Justice is not for only the Plaintiff but for the Defendant on record too. A counsel clearly has full authority for the conduct of his case and where he exercises his professional duties to the best of his ability, a client cannot be

seen to bring a new counsel to plead fresh facts with respect to the same case. There will be no end to the trial process if excuses of this nature and in the context of the present circumstances are accepted.

I only need point out out or emphasise at the risk of sounding prolix that the essence of pleadings in our jurisprudence is to streamline with certainty the issues for determination and to, as much as possible, to ensure or enable the adversary know the case he is to meet in court. It is therefore important that counsel take great care in the preparation of their processes. While the court appreciate that perfection in human affairs is unrealisable and blunders indeed do occur from time to time, recourse to amendments while an important remedy in such situations, it is to be borne in mind always that it will only be availing where it is innocuous and causes no injustice or prejudice to the adversary. I will at this point refer to the instructive decision of the Court of Appeal in H.I. Iyamabor V. Mr. Mavis Omoruyi (2011)26 WRN 87 where it was stated as follows:

"Justice demands that in order to determine the real matter in controversy, pleadings may be amended at any stage of the proceedings, even in the Court of Appeal or this court (Supreme Court) to bring them in line with the evidence already adduced; provided the amendment is not intended to overreach and the other party is not taken by surprise and the claim or defence of the said other party would not have been different, had the amendment been averred when the pleadings were first filed. Per Akpata, JSC in Laguro V. Toku (1992)2 NWLR (pt.223)278; (1991)2 SCNJ 201.

A court of equity should never allow a cunning or crafty application to lord over an amendment sought mala fide, at the detriment of the adverse party. In order to ensure that justice is done to the parties, the court should open its eyes wide and with a meticulous and searching mind comb through the entire application. Per Niki Tobi, JCA (as he then was) in Aina V. Jinadu (1992)4 NWLR (pt.233)91. A refusal will be inevitable, especially if it is designed to overreach or outmanoeuvre the adverse party with the aim of wining the victory at all cost."

The extant relief or prayer on amendment is clearly not one that will enable the court to determine the real live issues in controversy. Consequently the prayer to file further or a fresh witness statement on oath clearly has no factual and or legal basis."

The above is clear. This Ruling was not challenged on appeal so it remains binding.

Again after the above Ruling, the Claimant filed another application dated 30th April, 2018 praying for the following Reliefs:

1. **An order of this Honourable Court further extending the time within which the Plaintiff/Applicant will file and serve her Reply to the Defendant's statement of defence out of time and a witness statement on oath in support thereof the time granted by this Court to file and serve same having expired.**

2. **An order of this Honourable Court deeming the Plaintiff's reply to Defendant's statement of defence, the witness statement on oath and other processes herewith attached as properly filed and serve the requisite fees having been paid.**

3. **And for such further order or consequential order(s) as this Honourable Court may deem fit to make in the circumstance.**

The Grounds upon which the reliefs is sought are as follows:

1. **The court had on the 19th of March, 2018 granted the Applicant leave to file and serve on the Defendant her reply to the Defendant's statement of defence.**

2. **The court also granted the Applicant (sic) to file and serve the said reply within 7 days from that 19th March, 2018.**

3. **The Applicant was unable to file and serve her reply within the 7 days that was granted by the court. The applicant requires the leave of this court to file and serve the reply on the Defendant the 7 days having lapse.**

In my Ruling of **12th February, 2019**, I again referred to the pleadings of parties as defining and streamlining the issues in dispute and also the Reply sought to be filed and **I held** as follows:

"I have here carefully considered these averments in the context of the initial existing pleadings of parties and the applicable principles. The complaint

here is limited to paragraphs 5 and 8, so I will confine myself specifically to these paragraphs.

Now with respect to the contents of paragraph 5 (d-r) above, it was said to have been made in respect to the fresh facts relating to allegation of forgery. The case made by Defendant is simply that the documents of title pleaded by Plaintiff to wit: customary right of occupancy and survey plan over the disputed plot are fake. No more.

Now the allegation of forgery is a criminal allegation which must be proved beyond reasonable doubt by the Defendant. See Section 135 of the Evidence Act. The response by Plaintiff covering paragraph 5d-r, cannot be said to be within the ambit of a Reply properly called in law. What the Plaintiff has done here is to simply construct or make out a new case with respect to how she acquired the disputed land contrary to that earlier made out and on which she has already given evidence.

Paragraph 8 on the other also clearly seeks to introduce new elements of alleged robbery complaint against plaintiff by defendant; the alleged attempts by defendant with a police woman to arrest plaintiff at her office; the alleged report to the police station at different occasions by plaintiff and her husband which were never raised at any time. These are clearly fresh allegations which the defendant will not have any opportunity of responding to and will thus be prejudicial and or unfair.

As much as I have sought to be persuaded here, I am not so persuaded that these offensive paragraphs are not a clear attempt using the conduit of a reply to depart from the case set out in the statement of claim and on which evidence has been led by the Plaintiff herself. The Plaintiff is no doubt allowed to add some facts in her reply but she cannot thereby set up a different case with fresh or new document(s) as is been done now through the instrument of a Reply. I have perused again and again the narrative of Plaintiff and the trajectory of the story with respect to the root of title in her original statement of claim in relation to what is now contained in the Reply. I am in no doubt that the Reply completely seeks to alter dramatically the narrative in the statement of claim to the obvious disadvantage of the

Defendant who has no further template in law to join issues with the Plaintiff over the new and extensive allegations now been made.

The Reply here appears to be a "remake" of the substantive statement of claim disguised now as a Reply. Indeed the Reply here can even be mistaken to be the substantive statement of claim. This approach appear to me disingenuous and one of doubtful validity. The course open to Plaintiff on the authorities was to amend her pleadings. Indeed an application was filed and it was strenuously opposed.

I prefer here once again to refer to portions of the application and the decision of the court which in my opinion goes to show the prejudice to be occasioned to defendant if the Reply in its present format is wholly countenanced."

I have at length above Referred to the above Rulings to show or situate clearly that the **extant application** is simply another attempt to undercut the Rulings given. Indeed in the said second Ruling, I specifically ordered as follows:

"(2)Paragraphs 5a-r, 8a-c of the Reply to the Statement of Defence dated 30th April, 2018 are incompetent and hereby struck out. (3) the Reply to the Statement of Defence dated 30th April, 2018 without the expunged or struck out paragraphs is deemed properly filed and served".

Let me perhaps for purposes of ease of understanding repeat the struck out paragraph 5a-r of the Reply as follows:

5 The plaintiff specifically denies the fresh facts/allegation of forgery averred to in paragraphs 6, 7, 10 (d), (e), (g), (h), (i), 11, 12 and 13 of the statement of defence and in response the plaintiff avers as follows:

(a) That contrary to the averments in paragraph 6 of the statement of defence, that both the land registry in Bwari Area Council and the Abuja Geographic Information Systems have the records of the plaintiff's land title documents.

(b) That the plaintiff "Mrs. Ivy Adi Elekwa" was not the name on the 1st letter of offer of the said plot No. L101 Cadastral Zone 07 – 05. That the land registry in line with t heir practice effected changes on the name on the letter of allocation twice. It was the second time that the name of the

plaintiff reflected as the allotee. It was based on the above fact that the plaintiff had to sue in her name as against the first name or the subsequent name on the offer letter of the said Plot L101 the subject matter in this suit.

(c) That it is a practice at the land Registry both in Bwari Area Council and AGIS that if an original allotter transfers his interest in land to another person, that the land registry can with the agreement of both parties cancel the letter of offer that has the name of the first allotee and re-issue the offer letter over the same land with the same information but with name of the second party who recently acquired interest over the land.

(d) The plaintiff shall at trial contend that in the instant case, the first allotee whose name was contained on the letter of offer of plot No. L101 was sir Andrew M. Enegbuma and the said letter of conveyance of provisional approval dated 15th April, 1999.

(e) That the said Sir Andrew M. Enegbuma transferred his interest over the said plot L101 (subject matter of this suit) to one Mr. Ezekiel M. Jatau and the Bwari Area Council issued Mr. Ezekiel M. Jatau an offer letter of conveyance of approval directly in his name.

(f) The plaintiff avers that before Mr. Ezekiel M. Jatau acquired interest in the Land, that he conducted search at Bwari Area Council and found out that the name of the allotee on the letter of offer of conveyance was Sir. Andrew M. Enegbuma.

(g) The plaintiff avers that when Mr. Ezekiel Jatau acquired interest over the Land, that Mr. Ezekiel Jatau and the said Sir. Andrew Enegbuma executed transfer of title document and it was with the consent of Sir. Andrew M. Enegbuma that Bwari Area Council collected the Original letter of offer from Sir Andrew M. Enegbuma cancelled it and issued to him a fresh copy of letter of "Conveyance of Provisional Approval" in his name with the same plot number and features on the original letter of offer earlier issued to Sir. Andrew M. Enegbuma.

(h) That the Bwari Area Council in line with their practice cancelled the letter of offer of conveyance of provisional approval that was issued in the name of Sir Andrew M. Enegbuma and thereafter issued a new letter of conveyance of provisional approval in the name of Mr. Ezkieal M. Jatau over the same plot L101. A copy of the letter of conveyance of provisional approval that was issued in the name Sir Andrew M. Enegbuma that was subsequently cancelled is hereby pleaded.

(i) That though the Bwari Area Council issued the letter of conveyance of provisional approval in the name of Mr. Ezekiel M. Jatau, that the land still retained its plot number and other features.

(j) That when Mr. Ezekiel M. Jatau acquired interest over the land, that he physically took possession of the land. The said Mr. Ezekiel M. Jatau in 2003 transferred his interest over the land to the plaintiff in this case who thereafter started farming on the land and she planted cassava. That at the time she acquired her interest over the land in 2003, that her neighbors at the 3 (three) sides i.e. left and right sides and behind had already fenced their side leaving the front view open.

(k) That in 2003 when the plaintiff acquired her interest over the said property, the said Mr. Ezekiel M. Jatau executed a power of attorney and Deed of Assignment in favour of the plaintiff for valuable consideration. Copies of the said power of attorney and deed of assignment are hereby pleaded. The Deed of Assignment shall be relied upon at trial for purpose to prove receipt of money by the said Mr. Ezekiel M. Jatau.

(l) That the plaintiff again submitted her documents of transfer to the Bwari Area Council and requested Bwari Area Council to issue a letter of conveyance of provisional approval over the said plot in her name i.e to change the name on the letter of offer from the name of Mr. Ezekiel M. Jatau to her name.

(m) That the Bwari Area Council again cancelled the letter of conveyance of provisional approval dated 6th December, 2000 that had the name of Mr.

Ezekiel M. Jatau and issued a new letter of conveyance of provisional approval to the plaintiff with the same plot no and other features on the letter of allocation. A copy of the said letter of conveyance of provisional approval in the name of Mr. Ezekiel M. Jatau that was cancelled by Bwari Area Council is hereby pleaded.

(n) That it was after the Bwari Area Council had cancelled the letter of conveyance that was issued in the name of Mr. Ezekiel M. Jatau, that it issued a new letter of conveyance of provisional approval in the name of the plaintiff dated 25th February, 2003.

(o) The plaintiff avers that after she acquired her interest from Mr. Ezekiel M. Jatau, that she possessed and occupied the land with the fence built by Mr. Ezekiel M. Jatau still on the land.

(p) That when the defendant kept insisting that the plaintiff's documents were fake, that the plaintiff through her solicitor Barrister Anthony Oka applied to AACTRIS (being the section of the Federal Capital Territory land registry that treat issues relating to land situate in Area Council) for authentication of the plaintiff's root of title of the said plot. Subsequently, the plaintiff's solicitor from Emeka Wogu & Co. vide her letter dated June 1, 2006 wrote a reminder to the earlier letter written by Barrister Anthony Oka.

(q) That that AACTRIS replied and directed the plaintiff's solicitor to address their request to the Director of Land Federal Capital Development Authority which the plaintiff did.

(r) That the department of land Administration Federal Capital Territory Administration replied t he plaintiff's letter. The reply from Federal Capital Territory Administration is dated 7th November, 2016 and was signed by Y.A. Bolagi Esq. The letter is hereby pleaded and the plaintiff shall rely on same at trial. The said letter confirmed the averment of the plaintiff.

I had earlier referred to the clear reasons as to why aspects of Plaintiff Reply was refused on terms as claimed.

In the circumstances, as already alluded to, the present application is simply another attempt to bring in what has been clearly refused under the dubious guise that it is simply an amendment to bring evidence in time with the pleadings. Let us be specific. **Relief (b)** in the proposed amended writ seeking a declaration that Plaintiff is in possession is a complete opposite of the case Plaintiff has already made and led evidence situating that she is a beneficial owner and was not in possession and indeed in the original existing **Relief (m),** she specifically prayed for an order compelling the Defendant to vacate and deliver possession of "**my said land to me"**

Reliefs (c) and (d) in the proposed amended writ all on trespass are clearly of no value to the clear extent that **Reliefs j, m and o** on the existing writ of summons are all reliefs for trespass and damages for trespass which completely takes care of any issues of or relating to unlawful interference with the disputed plot. All that remains now is a question of proof on settled legal threshold. All the proposed amendments sought in paragraphs 3, 4, 5, 6-10 of the proposed amended statement of claim are all issues on which the court has already made definitive pronouncements on as already demonstrated. The court cannot under any guise sit as an appellate court to overturn the pronouncements made affecting material averments on which parties have joined issues and evidence led.

The Plaintiff clearly realized this enormous challenge and this explains why in paragraphs 1.6 and 1.7 of the address, it was stated as follows:

1.6: The Plaintiff is however not unmindful of the ruling of this Court that was delivered on the 13th day of February, 2017 wherein the court dismissed the Plaintiff's application mainly because the facts were strange and had not been given in evidence.

1.7 We submit that the grounds and circumstances in the application of 2017 when the application was dismissed is not the same in the present application. As at 2017, evidence had not been adduced and the facts now sought to be added had not been put in evidence before this court. We submit that the present circumstance and the grounds for this application allows my Lord to exercise his discretion in granting the application because the amendment sought is to bring the pleadings in line with the evidence already adduced.

The Claimant here appear to misconstrue the import of that decision and how it affects the present application. I have however demonstrated how it impacts the present application.

The Claimant, did not however advert her mind to the ruling of **13th February, 2019** where it again sought to surreptitiously use the conduit of the Reply to bring in the same facts now sought to be brought in through the present amendment.

If the attempts all failed, it is difficult to situate the rather misplaced enthusiasm for the success of the present application all predicated on the same similar flawed basis used for the failed applications.

It is therefore not a case of amending the pleadings to reflect evidence led as projected by Claimant. The present application is much more than that unfortunately. The application is one of trying to lead **evidence** on materials or **averments** that have been wholly rejected as incompetent. You cannot lead evidence to support nonexistent facts or averments. Such evidence must collapse in the absence of both factual and legal foundation.

On the whole, for reasons advanced and demonstrated at lenght, this application must fail. The present application is clearly wholly designed to overreach and outmaneuver the adversary and the court at all cost. No clear case has been made out on the facts and settled legal principles to enable the court favourably exercise its discretion in Applicant's favour. The application accordingly fails and it is hereby dismissed.

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Hon. Justice A. I. Kutigi

Appearances:

1. **Lawrence Erewele, Esq., for the Plaintiff/Applicant.**

2. **Adewale Aderele, Esq., for the Defendant/Respondent.**