

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 13<sup>TH</sup> FEBRUARY, 2023

BETWEEN

FCT/HC/CV/980/2021

OYAWOYE YUNUS OYEYEMI -----

PLAINTIFF

AND

IWUH GOZIE PRINCEWELL-----

DEFENDANT

### RULING

By a Motion on Notice filed on the 29<sup>th</sup> day of November, 2022, brought pursuant to Order 25 Rules 1 and 2 and Order 43 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 Claimant/Applicant to amend his Writ of Summons in this suit.
2. An Order of Court deeming the already filed and served Claimant's Amended Writ of Summons as being properly filed and served in this suit, appropriate fees having been paid.

3. An Order of this Honourable Court restraining the Defendants/Respondents by themselves, their directors, shareholders, agents, privies and/or tampering with the assets of the 2<sup>nd</sup> Defendant/Respondent pending the hearing and determination of this suit.
4. And for such order(s) as this Honourable Court may deem fit to make in the circumstances.

The Motion is supported by a 9 Paragraph affidavit deposed to by Oyawoye Yunus Oyeyemi, the Claimant himself, with 1 (one) Annexure marked "exhibit A". Counsel also filed a Written Address and adopts same as oral argument in support of the Motion.

In the Written Address of the Claimant/Applicant, 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 writ of summons. He urged the Court to exercise its discretion in favour of the Claimant/Applicant and grant the application.

Having carefully considered the affidavit evidence, submission and judicial authorities cited by the Claimant/Applicant, 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 an originating process at any stage of the proceedings. See **AKANIMO V**

**NSIRIM (2008) 9 NWLR (PT. 1093) @ 400 Para 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 the writ of summons to reflect the part payments made by the Defendants/Respondents to enable the Court effectively resolve the issues in controversy between the parties. The Claimant/Applicant also wants this Court to restrain the Defendants/Respondents from tampering with or transferring the assets of the 2<sup>nd</sup> Defendants to another entity, as he is afraid that such act will frustrate the Claimant and render this suit useless.

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 merely to reflect the part payments made by the Defendants/Respondent which will assist this Court do justice to the issue in controversy between the parties.

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.*** 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.

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

1. To amend his writ of summons in the manner contained in the proposed amended writ attached herein and marked exhibits "A".
2. An Order of Court deeming the amended writ as properly filed and served.

On the Applicant's application for the restraining of the Defendants from tampering and/or disposing the assets of the 2<sup>nd</sup> Defendant, I must state that the relief sought by the Applicant is quite similar to mareva injunction, and in fact, should be treated as an application for mareva injunction.

The Supreme Court in *SOTUMINU VS OCEAN STEAMSHIP (NIG) LTD (1992) 5 NWLR (Pt. 239) 1 at 25*, held that mareva injunctions are grantable to restrain a Defendant "from disposing of or dealing with any other assets within the jurisdiction of the Court or removing or disposing out of the jurisdiction monies standing to the credit of the Defendant even before a judgment against him."

It must be stated that mareva injunction will be granted not only in cases where the Defendant intends to remove his assets from the jurisdiction of the Court but also in cases where the granting of a mareva injunction will provide some of security to the Plaintiff and whenever it is just or convenient to do so. According to the Supreme Court in *A.I.C V NNPC (1988) 2 ALL ER 77*

*"the Court has jurisdiction to grant a mareva injunction in favor of a creditor who has a right to be paid the debt owing to him even before he has established his right by*

*getting judgment for it, if it appears that the debt is due and owing, and there is danger that the debtor may dispose of his assets so as defeat the debt before judgment..... a mareva injunction operates to stop a Defendant against whom a Plaintiff has a arguable claim from disposing of or dissipating his assets pending the determination of the case or pending payments to the Plaintiff. The injunction can also be granted against anybody who is in possession of the Defendant's assets."*

I consider it a harmless relief to restrain the Defendants from tampering with or disposing the assets of the 2<sup>nd</sup> Defendant pending the determination of this suit.

Consequently, an Order is hereby made restraining the Defendants/Respondents by themselves, their directors, shareholders, agents, privies from tampering with or disposing the assets of the 2<sup>nd</sup> Defendant/Respondent pending the hearing and determination of this suit.

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

Appearances

Yunusa Lukeman Bolaji:- For the Claimant.

Ayomide :- For the Defendant