

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ABUJA**

**BEFORE HIS LORDSHIP: THE HON. JUSTICE ELEJO ENENCHE**

**MONDAY, FEBRUARY 15, 2023**

**MOTION NO. M/1992/2022**

**BETWEEN:**

**BOSAN YAKUSAK**

...

**CLAIMANT/RESPONDENT**

**AND**

**MTN NIGERIA LTD**

...

**DEFENDANT/APPLICANT**

**R U L I N G**

**THE APPLICANT** herein, *MTN Nigeria Ltd* has approached this court for the amendment of its statement defence by a motion on notice dated 28/11/22 brought pursuant to Order 43 Rule 1 and 2, Order 25 Rules 1 and 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018, Section 6 (6) of the Constitution of The Federal Republic of Nigeria, 1999 (as amended) and under the inherent jurisdiction of this Honourable Court. The Applicant prayed for the following reliefs:

- "i. An Order of this Honourable Court granting leave to the Defendant/Applicant to amend its Originating Processes to wit: Consequential Amended Statement of Defence and accompanying Processes as contained in the Proposed Amended Statement of

Defence and accompanying Processes annexed and marked as Exhibit I in the Affidavit in Support.

- ii. An Order of this Honourable Court deeming the already filed and served Amended Statement of Defence and accompanying Processes as properly filed and served, the appropriate filing fees having been duly paid.
- iii. And For Such Further Or Other Order(s) as this Honourable Court may deem fit to make in the circumstance of this Case.”

The grounds upon which the application is predicated are:

- “1. The Defendant/Applicant filed his Consequential Amended Statement of Defence on the 26th of September, 2022.
2. In the course of the consequential amendment, the Defendant/Applicant discovered that there are documents relevant to the justice of this case and ought to be pleaded.
3. There is need to amend the originating process of the Defendant/Applicant.
4. This Honourable Court has the power to grant this amendment sought.
5. The leave of Court is required to amend the Defendant/Applicant’s Consequential Amended Statement of Defence and accompanying Processes.
6. The amendment sought will neither change the character/facts of the case of the Claimant/Respondent nor overreach the Claimant/Respondent in any way.
7. It is in the interest of justice that this Application be granted.

The Application is supported by a 12-paragraphed affidavit deposed to by Dauda Alpha Sakika Esq (a Legal Practitioner in the Chambers of Emeka Etiaba SAN, Etiaba & Co., Etiaba Chambers, Counsel for the Defendant/Applicant) who averred that the Defendant/Applicant caused to be filed on its behalf, a Consequential Amended Statement of Defence on 26<sup>th</sup> September 2022 but discovered that there are documents relevant to the justice of this case that is ought to be pleaded and therefore, seeks the leave of this court to amend the Consequential Statement of Defence and the accompanying processes. He claimed that the amendments sought will neither change the character/facts of the case of the Claimant/Respondent nor overreach the Claimant/Respondent in any way and the amended statement has been filed and served, with a copy annexed as Exhibit I.

In the written address in support of the motion on notice, Learned Counsel for the Applicant formulated one issue for determination, to wit:

*“Whether the Defendant/Applicant’s Application has merit?”*

He argued in the affirmative stating that the Rules of this Honourable Court allows a party in a suit to apply for amendment of his processes and the Rules have further empowered this Honourable Court to exercise its discretion in considering the Application. He relied on **Order 25 Rules 1, 2 and 7 of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules, 2018** and cited the case of **Registered Trustees A.O.N vs. NAMA (2014) 8 NWLR (Pt. 1408) P. 30 paras A-B**. On principles guiding amendment of Pleadings, Counsel relied on the cases of **Alsthom v. Saraki (1999) 14 NWLR (Pt 687) 415 @ 427, paras A-B** and **NBC Plc vs. Ubani (2014) 4 NWLR (Pt. 1398) 421 SC @ 457 para E-G**. On condition precedent that will militate

against the grant of the amendment, Counsel relied on the Supreme Court case of **C.C.G (Nig) Ltd v Idoreyin (2015) 13 NWLR (Pt 1475) S.C 149 pp@ pg 165 paras E-G** while submitting that the amendment sought to be made will not occasion any of the conditions mentioned in the above case, rather it would assist in clarifying the issues in contention between the parties and determine the real issues thereby reaching a just and equitable determination of the suit. He further submitted that the application was brought at the right time and urged this court to grant the reliefs sought. He relied on the following cases: **Adeniji v Adeniji (2013) 15 NWLR (pt. 1376) pg. 108. Pp 120-121 @paras G-A; Bank of Baroda v. Iyalabani Co. Ltd (2002)13 NWLR (Pt 785) 551 @ 579-580, Paras F-A, 594, Paras A-B; Akinlawo v. Orotusin (2004)15 NWLR (Pt. 1431) 435 @ 450, Paras. C-E; The Owners of M. V. Lupex v. Nigerian Overseas Chartering & Shipping Ltd (2003) 9 MJSC 156 at 168 and Olumegbon v. Kareem (2002) 34 WRN 1 at 8.**

In opposition, the Claimant/Respondent filed a 5-paragraphed counter affidavit dated 6/12/2022, deposed to by Hussaini Musa (Litigation Secretary in the law office of Xhukba, Ben Sheik Partners). Deponent deposed that the Defendant/Applicant waited until the Claimant had closed his case before filing an application for amendment knowing fully well, the document it intended to rely on but failed to plead it. He averred that the amendment sought by the Applicant is not to correct defects or errors, but rather to introduce new issues and documents after the claimant had closed his case. He stated that the amendment would prevent the Claimant/Respondent from reacting to the new issues introduced by the Applicant as the Claimant has already closed his case and the amendment sought would necessitate recalling of witnesses and reopening the Claimant's case, which would be detrimental to

the Claimant. He finally asserted that the application is an attempt to prejudice the Claimant and same should be considered to be brought in bad faith.

In his written address in support of the counter affidavit, Learned Counsel for the Claimant/Respondent raised one issue for determination, to wit:

*“Whether having in view of the circumstances and the stage of this case the applicant is entitled to the grant of its application?”*

In his argument, Counsel submitted that the right of a party to amend is not absolute, as the courts have over the years, formulated guiding principles for courts to follow in granting or refusing an application for amendment. He relied on the case of **MAMMAN VS. SALAUDEEN (2005) LPELR 1833 (SC) PAGE 41, PARAGRAPH F-A**. He further submitted that what the law recognizes as an amendment is the correction of an error committed in any process, pleading or proceeding at law and cited **ADEKEYE & ORS VS. AKIN-OLUGBADE (1987) LPELR- 104 (SC)**. He concluded by urging the court not to grant this application.

Responding to the counter affidavit, Defendant/Applicant caused to be filed on its behalf a further and better affidavit dated 14/12/2022, deposed to by Alpha Dauda Sakika (Legal Practitioner in the Chambers of Emeka Etiaba SAN & Co, Counsel to the Defendant/Applicant) who reiterated that it was in the course of consequentially amending the Defendant/Applicant's Statement of Defence that the need to plead these documents was discovered and the documents are the photocopy of a Starter Pack information Sheet and Terms and Conditions of a Prepaid Subscriber, which were not deliberately kept until later in trial as the Applicant has earlier sought to subpoena MTN to

produce the said documents. The deponent further averred that the Applicant is entitled to amend their pleadings at any time before the judgment and the amendment is necessary for a just and equitable determination of the case as the documents did not introduce any new issues but only affirmed the existence of a contractual relationship between the parties, which was already confirmed. He swore that the amendment was not brought in bad faith and will not prejudice the claimant.

In his reply on points of law to the Claimant/Respondent's arguments in support of their counter affidavit to the motion for amendment, Learned Counsel for the Applicant stated that the Claimant/Respondent pleaded in paragraph 2 of the Amended Statement of Claim that he is a customer of the Defendant with the following particulars: Name: Bosan Yakusak; Mobile Number: 07038133702 and therefore, parties are bound by their pleadings while relying on **Kalgo JSC in Mamman v Salaudeen (supra) (Pp. 43-44 paras. F)**. He further submitted that the introduction of the two documents does not harm or cancel the legal rights or privileges of the Claimant/Respondent, but rather affirm their right to institute the suit and their contractual relationship with the Defendant/Applicant.

Having carefully considered the Applicant's affidavit with exhibit I, written address, further and better affidavit with exhibit A and B, reply on point of law and the Respondent's counter affidavit and written address, the court is saddled with the sole responsibility of determining to wit:

*Whether the Applicant is entitled to the grant of this application?*

Amendment of a process in court, particularly pleading, can entail a complete change of the process, even by way of substitution. It can be a simple

correction of some line(s) or paragraph(s) of a document by adding or deleting letter(s) or word(s) intended, to bring out the real issue(s) in controversy in the case for proper adjudication. In the case of **FBN PLC vs. TOSKWA (2000) 13 NWLR (Pt.685) 521, at 530**, the court, per Chukwuma Eneh JCA (as he then was) held (relying on Oputa JSC in *Awote vs. Owodunni* (1986) 5 NWLR (Pt.46) 941) that:

"...amendment connotes "an alteration, an addition or subtraction! Without being exhaustive, it has been held to embrace substitution."

When the Rules in **Order 25 Rule 1 of the High Court of FCT (Civil Procedure) Rules, 2018** provided that a party may amend his pleadings at any time before the close of the case, it simply means before the close of trial or before judgment, and not that when one party, (the Claimant for instance, as in this case), has closed his case. It cannot possibly be the law that the Defendant who is yet to open his defence, can no longer amend his pleadings. The argument of learned Claimant's counsel in this regard is therefore, misconceived. In so far as the Claimant is entitled to a consequential amendment to his reply to the statement of defence where necessary, the fact that the Claimant has closed his case, will not amount to an amendment to the statement of defence being prejudicial to the Claimant as he can still re-open his case to reply appropriately to the amended statement of defence.

The position of the law is trite, that amendment of pleading can be done at any stage of the proceedings, once that is necessitated by the need to bring out the real issues in controversy before the Court, to enable the case to be effectively and effectually determined, in the interest of justice. Authorities are replete on this. See **Akinniwo and Ors vs. Nsirim (2008) 9 NWLR (Pt.1093)**

**439; Abahys. Jabuso (2008) 3 NWLR (Pt.1065) 526; Kode vs. Yusuf (2001) 14 WRN 153; LAGURO vs. Toku (1992) 2 NWLR (Pt.223).**

In the case of **World Gate Ltd vs. Senbanjo (2000) 4 NWLR (Pt.654) 669** the limit placed on amendment of pleading was, where it would introduce fresh cause of action, which did not exist at the time of filing the writ. In that case, this court held:

"An amendment mainly for the purpose of determining the real issue(s) in controversy between the parties ought to be permitted at any stage of the proceedings even where the action had been reserved for judgment or appeal, provided:

- a. the applicant is not acting mala fide or trying to over-reach the other party;
- b. the amendment will not entail injustice or embarrassment or surprise to the other party;
- c. by his blunder, the applicant has done injury to the other party which cannot be ameliorated by costs or otherwise assuaged.

An amendment which is intended by a party to change the nature of the case before the Court will generally be refused, because it is not made bona fide but mala fide and intended to overreach the other party. (Odaditi vs. Sunglas Co. Ltd (1994) 1 NWLR (Pt.321) 433 referred to)"

The Applicant, in its further and better affidavit, have meticulously addressed all the issues relating to limits in granting application for amendment as was raised in the Respondent's counter affidavit and I concur with the Applicant. What is important in an application for amendment of pleadings, is that the amendment sought should be aimed at bringing the real issues between the



parties into focus for proper adjudication and attainment of substantial justice. See **Ologunleko v. Oguneyehun (2008) 1 NWLR (Pt 1068) 397 at 420.**

In the case **Alhaji Folorunsholyanda Kanubi & Anor v Chief Sunday Olagunju & Anor (IL 41 of 2011) [2012] NGCA 4 (07 November 2012)** the court stated that:

“It is difficult to figure out how the amendment, proposed by a defendant, can change the nature of the Claim before the Court, to justify denying a defendant the right to amend his process. It is the claimant (Plaintiff) that initiates a suit and holds the swing on what constitutes the cause of action in the case. The Defendant's duty is to react to the claim of the Claimant by either admitting: or denying the claim (in full or in part). I cannot therefore imagine a situation, where, the defence filed by the defendant, or an amendment proposed by him to his defence, can have the effect of changing the nature of the claim of the plaintiff before the Court. Of course, where that is contemplated, it would mean that the claim of the Plaintiff is not denied by the defendant!”

A court always has the discretion to grant leave for amendment of pleadings where such amendment is meant to elicit the issues in controversy between the parties and would remove possible injustice, see **New Nigerian Bank Plc v. Denclag Limited & Anor. [2004] LPELR-5942[CA] at page 64.** I am of the firm view that allowing the amendment in the circumstances of this case will secure substantial justice to the parties and ensure that this case is heard on the merits. The Applicants' right to present their case before this Court is a fundamental right guaranteed in section 36[1] of the Constitution of the Federal Republic of Nigeria 1999 as amended and cannot be derogated from. See **Chief Adedapo Adekeye & 3 Ors. v. Chief O. B. Akin-Olugbade [1987] 6 SC 182 at 191.**

On the whole, this application succeeds. Leave is hereby granted to the Defendant/Applicant to amend its Originating Processes to wit: Consequential Amended Statement of Defence and accompanying Processes as contained in the Proposed Amended Statement of Defence and accompanying Processes annexed and marked as Exhibit I in the Affidavit in Support and it is hereby ordered that the already filed and served Amended Statement of Defence and accompanying Processes is deemed as properly filed and served, the appropriate filing fees having been duly paid.

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Eleojo Enenche  
15/02/23  
Judge