

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT JABI, ABUJA**

THIS TUESDAY, THE 18TH DAY OF APRIL, 2023.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI -- JUDGE

**SUIT NO: CV/4832/2011
MOTION NO: M/416/2022**

BETWEEN:

SCOA NIGERIA PLC PLAINTIFF/RESPONDENT

AND

**1. THE MINISTER, FEDERAL CAPITAL
TERRITORY DEFENDANT/APPLICANT**

**2. NIGERIA SOCIAL INSURANCE TRUST FUND }
3. TRUSTFUND PENSIONS LIMITED } DEFENDANTS/
RESPONDENTS**

RULING

By a motion on notice dated 25th October, 2022 and filed same date at the Court's Registry, the 1st Defendant/Applicant prays for the following Reliefs:

- 1. An Order of this Honourable Court granting leave to the 1st Defendant/Applicant to further amend her Amended Statement of Defence as contained in the underlined paragraphs of the proposed Further Amended Statement of Defence exhibited to the Affidavit in Support of the Motion on Notice and marked as Exhibit A.**
- 2. An Order of this Honourable Court granting leave to the 1st Defendant/Applicant to recall his Witness, CHANUWA GAYUS HAMMAN.**
- 3. An Order of this Honourable Court granting leave to the 1st Defendant/Applicant to file additional Witness Statement on Oath of**

CHANUWA GAYUS HAMMAN with the Proposed Additional Witness Statement on Oath exhibited to the Affidavit and marked as Exhibit B.

- 4. An Order of this Honourable Court granting leave to the 1st Defendant/Applicant to substitute the Witness Statement on Oath of MRS. HAASTRUP MODUPE AYINKE filed on 25/6/2018 with the Proposed Witness Statement on Oath of MRS. ABDULSALAM OZIOHU MARYAM exhibited to the Affidavit in Support of this Motion on Notice and marked as Exhibit C.**
- 5. An Order of this Honourable Court deeming the separately filed and served Further Amended Statement of Defence and the Witnesses Statements on Oath of CHANUWA GAYUS HAMMAN and that of MRS. ABDULSALAM OZIOHU MARYAM as properly filed and served.**
- 6. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances of this case.**

In support of the motion is a 5 paragraphs affidavit with three annexures marked as **Exhibits A-B** and **C**, the proposed Further Amended Statement of Defence and the witness statement on oath of Chanuwa Gayus Hamman and Mrs. Abdulsalam Oziohu Maryam.

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 this is a proper case for the Court to exercise its discretion in granting leave to the 1st Defendant/Applicant to further amend the Amended Statement of Defence and file Witness Statements on Oath as contained in the Proposed Further Amended Statement of Defence and Proposed Witnesses Statements on Oath attached and marked as Exhibits A, B and C respectively.”

The submissions on the above issue forms part of the Record of Court. The Court was referred to the Rules of Court on Amendment and the principles governing same and the court was urged to exercise its discretion and grant the application.

The 1st defendant filed a Further Affidavit in response to the Counter-Affidavit of claimant with another brief written address in support which sought to simply accentuate the submissions earlier made and it was further contended that **paragraphs 6 (1), 6(i) and 6(m)** of the Claimant's Counter-affidavit contained extraneous matters contrary to **Section 115 (2) of the Evidence Act** and thus incompetent and liable to be struck out.

At the hearing, counsel to the 1st Defendant/Applicant relied on the contents of the affidavits and adopted the submissions in the written addresses in praying the court to grant the application.

In opposition, the claimant filed an eight (8) paragraphs Counter-affidavit with a written address in support. One issue was equally raised as arising for determination to wit:

“Whether given the facts and circumstances surrounding this suit, this application ought to be granted?”

Submissions on the above issue equally forms part of the Record of Court and it equally dealt with the settled principles governing grant of Amendment of pleadings and it was contended that the application did not define or state the nature of the Amendment sought which makes the application incompetent. It was further submitted that the Amendments made are simply a repetition of the facts already averred in the existing pleadings and that there is equally no need to recall **Chanuwa Gayus Hamman** to give further evidence and that to grant the application will further cause unnecessary delay in the determination of the case.

At the hearing, counsel to the claimant/respondent relied on the contents of the Counter-affidavit and adopted the submissions in the written address in urging that the application be refused.

I have carefully considered the processes filed by both sides of the divide and the narrow issue is whether the court should grant the Reliefs sought in the application. The first Relief has to do with the Further Amendments of the pleadings of 1st Defendant. The application for recall of Chanuwa Gayus Hamman, the DW1 and only witness so far called by 1st Defendant and for leave to file an additional deposition or her behalf is largely predicated on the success of the Amendments sought. The Relief to call a new witness to replace the

earlier witness said to have retired will appear not a point seriously challenged or contested.

I shall accordingly start with the prayer for amendment.

The question of grant of an Amendment to the pleadings generally is one to be decided on fairly settled principles. 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.

Now in all cases where it is desired to amend a writ or pleadings, leave of court obviously must be sought. The precise modalities for seeking leave is to file a motion supported by an affidavit as done here. To the affidavit must then be exhibited the **amendment** sought and **leave** to amend may be given **only** and to the extent that the proposed amendment has been properly and exactly formulated.

With respect to the present application, we are faced with a rather herculean task of determining the extant terms of the amendment the 1st defendant seeks. In this case the entire 22 paragraphs proposed 1st defendant's Further Amended Statement of Defence attached as **Exhibit A** to the motion was **underlined** and one is at a loss as to the exact amendment(s) sought for.

Now in **paragraph 3(h) – (o)** of the affidavit in support, the Applicant deposed to the following facts:

“3. That Bamidele O.F. (Mrs.), the Counsel, handling the defence of the 1st Defendant in this matter informed me of the following facts in our office at about 10.00am on the 11th October, 2022 and I verily believe her to be true that: ...

(h) Upon going through the Plaintiff's Further Amended Statement of claim, the Counsel discovered new issues and facts raised by the Plaintiff in the said Further Amended Statement of Claim which would require the 1st Defendant's response;

(i) This application is made to enable the 1st defendant respond to the new issues and facts raised by the Plaintiff in its Further Amended Statement of Claim;

(j) The proposed 1st Defendant's Further Amended Statement of Defence has been underlined in the proposed 1st Defendant's Further Amended Statement of Defence. A copy of the said proposed 1st Defendant's Further Amended Statement of Defence shown to me is hereto attached and marked as Exhibit A;

(k) It has also become necessary for the 1st Defendant/Applicant to recall CHANUWA GAYUS HAMMAN to further give evidence on behalf of the 1st defendant;

(l) Leave of this Honourable Court is required to file the additional Witness Statement on oath of CHANUWA GAYUS HAMMAN;

(m) One of the Witnesses of the 1st Defendant, MRS. HAASTRUP MODUPE AYINKE, from the Department of Resettlement and Compensation, Federal Capital Development Authority (FCDA) has

retired from the services of the Federal Capital Territory Administration, hence the need to substitute her Witness Statement on Oath;

(n) Leave of this Honourable Court is required to substitute the Witness Statement on Oath of MRS HAASTRUP MODUPE AYINKE with that of MRS. ABDUSALAM OZIOHU MARYAM;

(o) It has therefore become necessary for the 1st Defendant/Applicant to file the Witnesses Statements on Oath of CHANUWA GAYUS HAMMAN and that of MRS. ABDUSALAM OZIOHU MARYAM to enable them give evidence on the said issues for just determination of this suit.”

Now in paragraphs **3(h)** and **(i)** above the applicant said that counsel discovered new issues and facts raised by plaintiff which necessitated the response and the amendment.

The question that logically follows is what are these “new issues and facts raised” and what is the “response” formulated in response to the new issues. This logically is what the proposed amendment(s) in the pleadings should project showing the amendments properly and exactly formulated.

In this case, the whole **proposed Further Statement of defence was underlined** and there is therefore nothing situating or defining the Amendment(s) and that is fatal. If the entire Statement of Defence is being amended, the Applicant did not say so and there is therefore no logical basis to consider the application from that prism. How is the court to really determine the justice and fairness of the application in such unclear and fluid manner? How does the court determine the nature of the amendments sought? It is difficult in this type of situation to even determine whether the settled principles governing amendment has been met. It is not the duty and responsibility of court to in chambers to begin a tenous and tedious exercise of determining the limit and extent of the amendment(s) sought. It was a job to be done by Applicants counsel and this they have failed to do in this situation.

I am afraid the court cannot exercise its discretion judicially and judiciously in the manner the present application was formulated. Indeed it is difficult to even determine the merit of the application in such convoluted situation and this is fatal.

In **Bendel Insurance Co. Plc V BCM Finance (1997) 8 NWLR (pt.518) 597** at 608-609, the Court of Appeal stated as follows:

“I have no reason to disagree with the lower Court’s refusal to exercise its discretion in favour of the Defendant’s application for amendment of its Statement of Defence, as the nature of the proposed amendment was neither indicated in the motion, the affidavit nor in the proposed amended Statement of Defence.”

On the whole, the application for Amendment clearly must fail. With the failure of the Relief for amendment, the application to recall DW1 and to file a new witness deposition to reflect the Amendment has no foundation to the lie on and is not availing.

The Relief seeking to file a fresh witness statement of one Mrs. Abdulsalam Oziohu Maryam in place of the witness statement of Mrs. Hastrup Modupe Ayinke dated 25th June, 2018 who is said to have retired from the services of the FCTA in the absence of any opposition should be availing in the circumstances. If an existing witness for whatever reason is unavailable, then justice and fairness allow for substitution. This Relief is granted. Her statement attached as Exhibit C is deemed properly filed and served.

In the final analysis except for the prayers relating to the deposition of Mrs. Abdulsalam Oziohu Maryam, the application in substance fails and it is dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. K.C Ikonne, Esq., with Bowie Attamah, Esq., and Michael Okejime, Esq for the Claimant/Respondent.***
- 2. M.S Ugwu, Esq with U.J Obido, Esq., and N.A Hassan Esq., for the 1st Defendant.***
- 3. C.N Nwankwo, Esq., for the 2nd Defendant/Applicant.***
- 4. S.T Sani, Esq., for the 3rd Defendant.***