

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON WEDNESDAY, THE 05<sup>TH</sup> DAY OF APRIL, 2023**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/281/2021**  
**MOTION NO.: M/8241/2022**

**BETWEEN:**

- 1) ASSETSPHERE LIMITED
  - 2) HAMMER ASSOCIATES LIMITED
  - 3) WESTPOINT PROPERTY DEVELOPMENT COMPANY LIMITED
  - 4) ARTHUR MONROE LIMITED
  - 5) PARK DAVIDS LIMITED
  - 6) THREE FIVE PROPERTIES LIMITED
  - 7) NG PROPERTIES LIMITED
- CLAIMANTS/RESPONDENTS**

**AND:**

**CROWN REALTIES PLC** **DEFENDANT/APPLICANT**

## **RULING**

By a Motion on Notice dated and filed on the 21<sup>st</sup> of June, 2022, the Defendant/Applicant filed this application seeking the following reliefs:-

1. *An Order of the Honourable Court permitting the Defendant/Applicant to amend its Statement of Defence and other processes in this suit by adding the letters, words and expressions thereto as is shown by the underlined portions on the proposed amended Statement of Defence.*
2. *An Order of the Honourable Court permitting the Defendant/Applicant to amend its Statement of Defence in this suit generally as per the content of the proposed Amended Statement of Defence attached as Exhibit A to this application.*

3. *An Order of this Honourable Court permitting the Defendant/Applicant to file its re-sworn Witness Statement on Oath capturing or reflecting the case of the Defendant/Applicant as is shown in the proposed Amended Statement of Defence.*
4. *And for such order or other orders as the Honourable Court may deem fit to make in the circumstances.*

The application was founded on three grounds chief of which was that the proposed amendment was intended to enable the Defendant present all the facts relevant to this case to the Court.

In the six-paragraph affidavit deposed to by one Nnenna Ogakwu who described herself as a Litigation Officer in the law firm representing the Defendant, the deponent swore that it was on the 6<sup>th</sup> of June, 2022 that the attention of Counsel handling the defence of the Defendant/Applicant was drawn to certain aspects of the already filed Statement of Defence which needed to be amended to bring the defence of the Defendants in consonance with the facts.

In the Written Address in support of the application, learned Counsel formulated a sole issue, to wit: *“Whether the Defendant/Applicant merits the grant of the prayers sought in this application.”* In his submissions on this sole issue learned Counsel referred this Court to Order 25 Rules 1 and 2 of the Rules of this Court as well as the case of ***C. G. D. G. (Nig) Ltd v. Idorenyin (2015) All FWLR (Pt. 804) 2013 at 2109, paras A, 2105, paras G – H*** to support his claim that the reliefs sought in the application were grantable. He asserted that the amendment sought was necessary because it would enable the Court to deal with the live issues between the parties, adding that the said application would not overreach the Claimants/Respondents. He therefore urged the Court to grant the reliefs sought therein.

The Claimants/Respondents, in answer to the application, filed a 13-paragraph Counter-Affidavit deposed to by one John Ifedi Okoye, the Property Manager of the Claimants/Respondents on the 30<sup>th</sup> of August, 2022. In the said Counter-Affidavit, the deponent averred that the application was an attempt by the Defendant to frustrate the progress of this suit, seeing that the alleged new facts had already been treated in the Notice of Preliminary Objection which it filed and in respect of which this Court had delivered a considered Ruling. The deponent also referred this Court to its finding in respect of the issue of authorization while also stating that no appeal has been filed challenging the Ruling of this Court.

In the Written Address in support of the Counter-Affidavit, learned Counsel adopted the sole issue formulated by Counsel for the Defendant/Applicant. Submitting on this sole issue, Counsel admitted that the Courts are vested with the powers to make orders of amendment of the processes before them. He however added that the power is discretionary which the Courts must exercise judiciously and judicially. He relied on the cases of ***Unity Bank v. LAFCOT (Nig.) Ltd & Others (2021) LPELR-55095 (CA) at 22 – 23, paras C – E; NJC v. Dakwang & Other (2019) LPELR-46927 (SC) at 23 – 24, paras E – E and Nwobodo v. Vincent (2021) LPELR-54158 (CA) at 9 – 10, paras C – A.*** While conceding that the principles of law enunciated in the case of ***C. G. D. G. (Nig) Ltd v. Idorenyin (2015) supra***, were valid, he insisted that the case was inapplicable to this application.

It was the argument of Counsel that the Defendant's application was an attempt to have a second bite at the cherry. Citing the case of ***Eze v. Ene & Anor (2017) LPELR-41916 (CS) at 19, paras B – E***, Counsel urged the Court not to grant the application, as granting same would undermine its Ruling on the Notice of Preliminary Objection.

The Defendant/Applicant further exercised its right of reply when it filed a Further Affidavit and a Reply on Points of Law on the 28<sup>th</sup> of November, 2022. In the Further Affidavit deposed to by one Onyinye Igboanuzue, a Litigation Officer in the law firm representing the Defendant/Applicant, the deponent swore that the issues sought to be introduced by virtue of the amendment had not been decided by the Court, adding that the amendment would enable the issues to be before the Court.

In the Reply on Point of Law, Counsel urged the Court to distinguish the case of ***Eze v. Ene & Anor (2017) supra*** from this present case. He cited a number of cases such as ***Odunukwe v. Ofomata & Anor (2010) LPELR-2250 (SC)***, ***Agbaje v. INEC (2016) 4 NWLR (Pt. 1501) 151 SC at 163, paras B – C*** and ***Warri Ref. & Pet. Co. Ltd. GECMEP (Nig) Ltd (2020) 10 NWLR (Pt. 1731) 36 SC*** among others. The overall purport of the cases in view of the argument of the Defendant's Counsel is that the determination of the Notice of Preliminary Objection does not in any way prejudice the right of the Defendant to bring an application for amendment of its pleading. He therefore urged this Court to discountenance the submissions of Counsel for the Claimants/Respondents and grant the application as same was not brought *malafide*, nor does it overreach or prejudice the Claimants/Respondents.

In determining this application, this Court will adopt and modify the sole issue formulated by Counsel for the Defendant/Applicant and adopted by Counsel for the Claimants/Respondents as follows: ***“Whether the Defendant/Applicant has not placed sufficient material particulars before this Honourable Court to be entitled to the exercise of this Court's discretionary powers in its favour in respect of this application?”***

In resolving this issue, Order 25 of the Rules of this Court is relevant. The Order deals specifically with amendment. I will consider the provisions of Order

25 Rules 1 and 2 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018. The said Rules provide thus:-

- (1) A party may amend his originating process and pleadings at any time before the pre-trial conference and not more than twice during the trial but before the close of the case.***
- (2) Application to amend supported by an affidavit exhibiting the proposed amendment may be made to the court and may be allowed upon such terms as to costs or otherwise as may be just.***

By virtue of the afore-cited provisions, an application for amendment of an originating process and pleadings may be brought at any time before the close of the case of a party. It is for the Court when making an order for amendment to make such order subject to terms it may decide to impose on the party bringing the application.

The Courts have pronounced on the importance and necessity of amendment as an integral part of our legal process in a plethora of decided cases.

I have reflected on the processes the parties before me have filed in respect of this application. The application appears innocuous on the face of the process. Counsel for the Claimants has however urged this Court not to be taken in by the apparently innocuous nature of the application. He maintained that the application was a ploy by the Defendant/Applicant to waste the time of the Court. He also drew the attention of the Court to the fact that the sections sought to be introduced in the amended Statement of Defence were subjects of the Notice of Preliminary Objection which this Court overruled. It was his argument that having disposed of the Notice of Preliminary Objection against the Defendant, it has sought to reintroduce the issues by way of amendment of the Statement of Defence. To this argument, as I have reproduced above, the

Defendant contended that the interlocutory decisions of the Court do not operate as estoppel. Authorities were cited on both sides of the divide.

I have reviewed the authorities cited by both Counsel in their written submissions. I agree with Counsel for the Claimant/Respondent that applications of this nature are granted at the discretion of the Court. When the Court is invited to exercise its discretionary powers in any case or application before it, it is beholden to exercise same judiciously and judicially.

In the exercise of my discretionary powers, I have adverted my mind to the circumstances of this case. This is a matter that was filed since 2021 but which has yet to go to hearing. It must be stated that even if the suit has gone to hearing, the Rules of this Court allows a party to amend their pleadings at least two times before the close of their case. This is consistent with the provisions of Order 25 of the Rules of this Court.

I am not unaware of my reasoning in my Ruling on the Notice of Preliminary Objection. I agree with Counsel for the Claimants/Respondents that the sections sought to be introduced into the amended Statement of Defence constituted the gravamen of the Notice of Preliminary Objection which this Court disposed of on the 25<sup>th</sup> of January, 2022. This notwithstanding, this Court agrees with Counsel for the Defendant/Applicant that the decision of this Court in its Ruling does not constitute issue estoppel. The decisions of the Courts cited by learned Counsel for the Defendant/Applicant in this regard are most apposite.

Though I empathize with the Counsel for the Claimants who would love to see the suit go to trial, the doctrine of fair hearing operates to ensure that a party who seeks to ventilate his grievances properly via the medium of amendment of their process should be allowed to do so if that will enable the Court to

determine conclusively and once and for all the issues between the parties. As I have stated earlier, it is through the medium of amendment that all the issues relating to the dispute, including all the possible causes of actions relating to the suit, are effectively resolved for all times. Though the Claimant would want this Court to determine the suit expeditiously, this Court believes that the ends of justice will be better served through the application of the English axiom, more speed, less haste. In other words, justice hurried, as they say, is justice buried.

In view of the foregoing, therefore, this Court will grant the application sought by the Defendant/Applicant. The application hereby succeeds. All the reliefs sought in the Motion on Notice with Motion Number FCT/HC/M/8241/2022 dated and filed on the 21<sup>st</sup> of June, 2022 are hereby granted as prayed. The Defendant/Applicant is hereby ordered to file the amended Statement of Defence within seven (7) days from the date of this Order. Further to this, the amended Statement of Defence shall contain the endorsement required under Order 25 Rule 6 of the Rules of this Court. The Claimants/Respondents may file their Reply in answer to the amended Statement of Defence within the time allowed for same under Order 15 Rule 1(3) of the Rules of this Court if they find it necessary.

This is the Ruling of this Court delivered today, the 05<sup>th</sup> of April, 2023.

**HON. JUSTICE A. H. MUSA**  
**JUDGE**  
**05/04/2023**