

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/5189/2011

DATE: : TUESDAY 14TH DECEMBER, 2021

BETWEEN:

**BARR. OBASI NWABUEZE KELVIN } PLAINTIFF
} RESPONDENT**

AND

**TEILE EXPRESS MOTORS NIGERIA } DEFENDANT
LIMITED } APPLICANT**

RULING

This Ruling is at the instance of the Defendant/Applicant who approached this Honourable Court vide a Motion on Notice dated 18th of March, 2020 and filed on same day praying this Honourable Court for the following:-

1. An Order of this Honourable Court granting leave for the Defendant/Applicant to amend her statement of Defence to comply with the new rules of this Honourable Court, and to include new paragraphs 7,12,15,a,b,c,d,e,f & h and paragraphs 16,19,20 & 21.
2. An Order of this Honourable granting leave for the Defendant/Applicant to file additional witness statement on oath and a further and better affidavit on oath by the DW1.

3. An Order of this Honourable Court deeming the said amended statement of defence, additional witness statement on oath, and further and better affidavit on oath of the DW1, as properly filed and served, the necessary fees having been paid.
4. And for such further Order or Orders as this Honourable Court may deem proper to make in the circumstance.

In support of the Motion is a 7 paragraph affidavit deposed to by Victor IkennaOhia, Manager of the Defendant/Applicant.

It is the affidavit of the Manager of the Defendant/Applicant that there are some material facts relevant to the Defendant's Defence brought to his knowledge by One Vincent ObejiEsq who is the Defendant's Counsel, that should warrant the

Defendant to amend her statement of Defence, file additional witness statement on oath and a further and better affidavit on oath by the DW1 in this matter.

That the said amendment has become necessary in Order to accommodate all the issues necessary for the proper determination of this suit.

That the Prosecuting counsel confirmed that the Defendant's DW1 (Dan Ajaero) inadvertently omitted his name in his affidavit on oath filed before this Court in respect of this matter.

That the Amended Statement of Defence, the Additional Witness Statement on oath and the DW1's further and Better Affidavit on oath are hereby attached and marked as "Exhibit A". That this is the first application filed by the Defendant

seeking to amend her statement of Defence in this suit.

That the Defendant/Applicant proposed amendment is to include new paragraphs as follows; paragraphs 7,12,15,a,b,c,d,e,f&h and paragraphs 16,19,20&21 respectively. That the interest of the Respondent will not be prejudiced if this application is granted, and it will serve the interest of justice to grant this application.

In compliance with law and procedure, a written address was filed wherein learned counsel made the submission most humbly, that this Honourable Court has the discretion to grant the prayers in this application and most respectfully urge this Honourable Court to exercise his discretion in favour of the Applicant and grant the application as

prayed. Order 26 Rule 2 of High Court of the Federal Capital Territory, Abuja (Civil Procedure Rules) 2018 was cited.

OGUNEYEHUN (2018) 1 NWLR (Pt. 1068) 397
and ***IYAUABOR VS. OMONIYI (2011) 26 WRN 78***
were cited.

Learned counsel further submits that granting the application of the Applicant to amend her statement of defence, filed additional statement on oath and to as well filed a further and better statement on oath by the DW1, will not in any way prejudice the interest of the Respondent, but will rather place this Honourable Court in a position to properly determine this case on its merit in line with the principles of fair hearing as enshrined in Section 36(1) of the 1999 Constitution.

Learned counsel concludes by urging this Honourable Court to exercise its discretion in this application in favour of the Applicant by granting the reliefs contained in the Motion paper.

The Plaintiff/Respondent upon service, filed a 23 paragraph counter affidavit in opposition as deposed to by NwabuezeObasi-Obi, the Claimant in this Suit.

It is the deposition of the Claimant, that on the 22nd of February, 2012, the Defendant/Applicant filed a Motion on Notice for extension of time to file its statement of defence out of time and the motion was subsequently withdrawn and struck-out.

That on the 12th of March, 2012, the Defendant/Applicant filed another Motion on Notice for extension of time to file its Defence and same was granted. Some of the facts contained in the

Statement of Defence attached to the Motion which was withdrawn and struck-out, was changed in the Statement of Defence, attached to the Motion which was moved and granted.

That in the first defence filed on 22nd of February, 2012, the Defendant/Applicant did not state that the Driver who drove the bus had purportedly passed on, but only did so in the subsequent defence filed on 12th of March, 2012. That the Defendant/Applicant has introduced facts which were not contained in the Defence filed on 12th of March, 2012 and the facts intend to over reach the Plaintiff/Respondent.

Learned counsel also states that the Defendant in the proposed amendment stated that it was including new paragraphs 7,12,15a,b,c,d,e,f,h,16,19,20 and 21. That the Defendant altered its paragraphs

1,2,4,5,6,8,13 and 17 of the proposed statement of defence without reference to same. That the Defendant removed the entire paragraphs 9,11,15,16,17,18,22 and 23 of the Statement of Defence and introduced a new paragraphs 5,14,18 and 22 without any reference to same.

That the amendment is not intended to include the name of the Defendant's Abuja Branch Manager (DW1) to the statement on oath already filed before this Court. That the Defendant/Applicant only mentioned some paragraphs it intended to include at paragraph 6 of the affidavit in support.

That the Defendant/Applicant extended its amendments beyond the paragraphs referred to. That the amendments proposed by the Defendant/Applicant will prejudice him. That the

Defendant has not filed a clean copy of the proposed amended statement of defence.

A written address was equally filed wherein a sole issue was formulated for determination to wit; *whether considering the facts and circumstances of this case, this Honourable Court can grant the reliefs sought by the Defendant/Applicant and in view of the defects in the application.*

Learned counsel submits, that the amendments are not granted as a matter of course, the court would refuse an application for amendment as stated in the case cited by the Defendant/Applicant, which is the case of ***BOLOGUNKEKO VS. OGUNEYHUM (Supra)***. It is giving, that this Suit was commenced on the 15th of February, 2011 and that the Defendant was in Court and did not cross examine the Claimant

on the 24th September, 2019 after the Claimant led evidence and closed his case. The Defendant/Applicant who has been using one firm since the commencement of this matter, did not deem it fit to amend its processes before the Claimant/Respondent testified but waited for the Claimant/Respondent to adopt his statements (both in support of the reply to the statement of defence) to bring an application for amendment. Such an application would over-reach the Claimant/Respondent who has closed his case and not only that, the Claimant/Respondent would definitely respond to the proposal amendments and would also require to re-open his case and re-file an additional statement after having closed his case.

Learned counsel argues, that it is also intended to delay trial and justice delayed is justice denied. This

Honourable Court is invited to refuse such an application for amendment of the pleadings at this stage, when the Claimant/Respondent had already filed its reply to same and additional statement in support. The Defendant/Applicant has also cross-examined the Claimant/Respondent on those pleadings and facts. Therefore, the amendments are intended to overreach the Claimant/Respondent and to respond to the answers given by the Claimant/Respondent in court of the cross examination when there is no law giving room for such. *UBA PLC. VS. ABDULLAHI (2003) 3 NWLR (Pt. 807) 359 at 379* was cited.

Learned counsel further argues, that Defendant/Applicant is by its proposed amendments in paragraphs 7,5,e,f,g,h,16 and 21 of its proposed statement of defence, further and better affidavit of

DW1, responding to some of the answers given by the Claimant in course of the cross examination which is unheard of.

GARBA & ANOR VS. BANNA (2014) LPELR 24308 (CA) 16, A – G. was cited. The Defendant/Applicant did not also need an application for amendment to file additional statements, what the law requires of the Defendant/Applicant is an application for leave to file additional statements in line with its pleadings. The Defendant/Applicant is changing the defence of the Defendant as presented before this Court and which the law frowns at, by way of an amendment. ***BOLOGUNKEKO VS. OGUNEYHUM (Supra)*** was cited.

Learned counsel reiterates the incompetence of the proposed amendments that the Defendant/Applicant failed to state all the nature of the amendments to enable the Court and the Claimant/Respondent identify the portions of the pleadings which the Defendant/Applicant is seeking this Honourable Court's discretion to amend, such a failure is cancerous and has no remedy. ***BENDEL INS. CO. PLC. VS. B.C.M FIN (1997) 8 NWLR (Part 518 at 608, Paras F – G*** was cited.

Learned counsel urge the Court to dismiss/strike out the Motion or in the alternative, Reliefs 1 and 3 of the Motion on the strength of the above submissions for being incompetent and with punitive cost of N200,000.00 (Two Hundred Thousand Naira).

The Defendant/Applicant on their part, filed a reply on point of law dated 23rd of March and filed on same day.

On point of law, counsel states that it is trite law that once an amendment of the court process has been ordered, the effect is that what stood before amendment is no longer a material before the Court and no longer defines the issue in contention. ***AGBABIKA VS. SHAIBU (1998) 10 NWLR (Pt. 571) 534 at P. 548 “E – F” Ratio 3.OSUJI VS. EKEOCHA (2009) 39 NSCQR 532 at Pp. 590 – 594*** were cited.

Learned counsel further states, that what the Defendant/Applicant has done is to correct clerical mistakes/grammatical blunder which has not in any way altered or changed the face of the case as to

prejudice the Claimant/Respondent and he has not placed before this court, evidence as to how the said corrections will prejudice him or warrant him calling of any witness. Order 25 Rule 7 of the Rules of this Honourable Court.

Learned counsel argues, that it is also settled law, that the right to fair hearing is a fundamental constitutional right guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and a breach of same particularly in trials vitiates such proceedings thereby rendering same null and void. Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) was cited. A hearing cannot be said to be fair if any party is refused hearing or denied the opportunity to be heard, present his case or call witnesses of his choice.

KOTOYE VS. CBN (1989) 1 NWLR (Pt. 98) 419 and SALEH VS. MONGUNO (2003) 1 NWLR (Pt. 801) 221 was cited.

Learned counsel submits further, that it is trite law that the courts are enjoined to dwell/strive to do a substantive justice on a matter placed before it, rather than dwell on a mere legal technicalities and therefore the argument that the Defendant/Applicant didn't specifically state in his proposed amended statement of defence the material facts they intend to add, does not equally hold any water. ***BELLO VS. A.G OYO STATE (1995) 5 NWLR*** was cited.

Learned counsel is urging this Honourable Court to discountenance the objections raised by the Respondent for lacking in merit and grant all the reliefs sought by the Defendant/Applicant.

COURT:-

I have perused and assimilated the affidavit in support of the reliefs herein contained on the fact of the application in view, on one hand, and the counter affidavit in opposition to the application on the other hand.

Our adjectival law leans heavily in favour of amendments and is generally against the refusal of amendments.

It is pertinent to note that there are circumstances upon which application for amendment can be refused, the following are factors to be considered in granting or refusing an application for amendment:

a. The attitude of parties

- b. Nature of amendment sought in relation to the suit
- c. The question is controversy
- d. The time the application is made
- e. The stage at which it is made
- f. All other relevant circumstances

See *ANAKWE VS. OLADEJI (2008) 2 NWLR (Pt.10, 72) 506 at Pages 550 – 521 Paragraphs G – A.*

An Applicant therefore seeking to be allowed to do an act which he omitted to do when he ought to have done it during the trial, has a duty to give reasons that are adequate and reasonable to explain his omission and or failure to do the act at the appropriate time during the said trial.

It is evident that the Defendant/Applicant who has been using one firm since the commencement of this suit, did not deem it fit to amend its processes before the Claimant/Respondent testified but waited for the Claimant/Respondent to adopt his statements (both in support of the reply to the statement of defence) to bring an application for amendment. Application for amendment of pleadings when the Claimant/Respondent had already filed its reply to same and additional statement in support is simply an effort on the Defendant/Applicant's part to stall or delay justice. The Defendant/Applicant has also cross-examined the Claimant/Respondent on those pleadings and facts.

It is my observation that the Defendant/Applicant is changing the defence of the Defendant as presented before this Court and which the law frowns upon; by

way of an amendment. It is trite that the Defendant/Applicant is supposed to bring forth this Court, an application for leave to file additional statements in-line with its pleadings.

It is established that every opportunity must be afforded to parties to a dispute in Court to put their case fully before the court.

From all that I have seen based on the affidavits of both parties, it is my firm view that what the Defendant/Applicant is seeking to do is merely an afterthought.

It is not sufficient for the wrong party to ask for the Order of Court to that effect.

OJIEGBE & ANOR VS. UBANI & ANOR (1961)
ALL NLR 277 at 280.

Indeed, I am swayed by the arguments of learned counsel for the Plaintiff/Respondent.

Thus, for reasons advanced on the body of this ruling, and in the interest of justice, I shall refuse and dismiss this application for being most overreaching.

The said relief herein contained on the said Motion paper aforementioned and dated 18th day of March, 2020 are hereby refused and accordingly dismissed.

Justice Y. Halilu
Hon. Judge
14th December, 2021

APPEARANCES

Faisal Abubakar, Esq.– for the Claimant.

C.I Mbam-Okeh, Esq. – for the Defendant.