

**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: 4TH NOVEMBER, 2022

FCT/HC/CV/386/21

BETWEEN

**1. ZANPA ZHIMABE
2. LAWRENCE O. ARINZE** }

CLAIMANTS

AND

EDWIN AKWUEH-----

DEFENDANT

RULING

Parties have filed their final written address when the Claimant Counsel filed a motion to amend their statement of claim. Same was filed on 27th June, 2022. The Claimant /Applicant is praying for the following reliefs:-

1. An order of this Court granting leave to the Claimants/Applicants to amend their statement of claim in the manner set out in the proposed Claimants/Applicants amended statement of claim herein attached and marked Exhibit A
2. An order deeming the Claimants/Applicants amended statement of claim already filed and served as having been properly filed and served appropriate fees having been paid.
3. And for such further and other orders as the Court may deem fit to make in the circumstances the grand upon which the application is predicated as follows:-

- A) The case of the parties has been closed and the matter was adjourned for adoption of final address.
- B) While writing the Applicant final address the Applicants Counsel discover same mistake in the reliefs claimed by the Applicants in the suit.
- C) The Applicants intend to correct the said error by way of amendment before the final determination of this suit.
- D) The amendment sought is restated to the reliefs sought in this suit and does not affect the body of the pleadings and averments made therein.
- E) Leave of the Court is needed for the Claimants/Applicant to amend their statement of claim, hence this application.
- F) It will be in the interest of justice to grant this application.

In support of the application is a 5 paragraph affidavit deposed to by Mathias Francis the litigation secretary in the Law firm of Chidi Nwankwo & Co, Counsel relied on the same by way of response to the Defendants Respondent counter claim same filed a further affidavit of 4 paragraphs same was dated the 12th July, 2022. Counsel adopts same and urge the Court to grant the reliefs sought Counsel also referred the Court to order 25 rule 1 of the rules of this Court. He further asserted that this is their first amendment. In the further affidavit in response to the Defendants/Respondents counter claim affidavit dated 4th July, 2022. The Applicant substantially denied all the paragraph contained in the Defendants counter affidavit more especially paragraphs 3 of the further affidavit. The written address filed by the Applicant in support of the motion raised a sole issue for determination by the Court.

“Whether or not the claimant/Applicant have placed enough materials before the Court to enable the Court exercise its discretion in their favour.”

While emphasizing on the above issue Counsel relied on order 25 rule 1 of the rules of this Court to add weight to the Applicant position. Same relied in the case of ***OBIALOR VS UCHENDU (2014) 11 NWLR (Pt1419)***

Ratio 3 consequently upon the above authorities Counsel went ahead to cite some more judicial authorities all regarding the issues of the amendment which made same to bring this application. On a final note Applicant Counsel urged the Court to grant this application.

In opposing the application filed by the Applicant. They filed a counter affidavit deposed to by Praise Christopher a litigation secretary in the Law firm of the solicitor to the Defendant/Respondent in this suit. The said counter affidavit is a 14 paragraph same was dated the 4th July, 2022 Counsel adopt same. Attached to the counter affidavit is exhibit A,B and C which are the statement of claim and the propose amended statement of claim and the written address of the Defendant. In addition Defendant counsel filed a written address in support of the counter claim. According to him this amendment is over reaching the Claimant in their original pleading they pleaded a particular document dated 27th June, 1999. During trial the Defendant relied on the said document throughout the defence exhibit 1 was recorded as a document bearing the date 27th June, 1996. The nature of this case does not allow this particular amendment. In his reply Counsel to the Applicant said they never tendered any document dated 27th June, 1996. According to him the document they tendered is dated 29th June, 1998 the Defendant in his counter affidavit of 14th paragraph particularly paragraph 5.14 has factually stated the circumstances while the Defendant felt that this application need not to be granted. I need not to produce them here in this ruling this can clearly be seen from the counter affidavit of 14 paragraph filed by the Defendant/Respondent. In his written address dated 27th June, 2022 in opposition to the application filed by the Applicant. The Defendants raised two issues for determination.

2.01. Whether the Court can exercise its discretion in favour of the Claimant/Applicant given the fact that it did not comply with the rules of this Court.

2.02. Whether granting the Claimant/Applicant application by this Court will not warrant the Defendant/Respondent calling further additional witness and evidence and amend his pleadings consequently

ON ISSUE NUMBER ONE(1)

3.01. The Claimant did not avert their mind to the provision of the rules of this Court to wit order 25 Rule 1 Counsel referred the Court to the case of ***SYLVESTER VS OLIALEWI 92014)5 NWLR (PT 1401)P. 467 Q 485 RATIO 21.*** In the instant case as claimed by the Defendant reliefs 1 and 2 are all anchored on amending of the Claimant/Applicant pleading; and the application for amendment was not brought during pre-trial conference nor during trial but it was brought and filed after the close of the case of both parties therefore the Applicant is in breach of order 25 Rule 1 of the rules of the Court. See ***DANJUMA GIDEON & ORS VS STATE (2016) LPELR 40322, GMO NWORAH & SONS LTD VS AKPUTA (2010)9 NWLR (PT1200) PAGE 443 DR. JACOB OLUMAFEMI FASANYA VS PA ADAMU (2015) LPELR 25675 AND NONYE IWANZE VS FRD (2014) LPELR 22254 SC.*** Counsel maintained that relief 1 on the face of the motion is for an order of this Court granting leave to the Applicant to reopen his defence. This principle is basically at the discretion of the Court upon good reason shown in the affidavit evidence. The three reliefs in the Applicant proposed amendment are relatively different from the initial reliefs sought at trial. Relief 1 of the proposed amendment. The said relief though pleaded but was not tended in evidence.

Similarly on reliefs 2 and 3 of the proposed amendment was never pleaded and is relatively different from the entire reliefs in that the reliefs have no bearing on the fact and amendment in the statement of claim. For instance the claimant never mentioned that the 1st Claimant relinquished his rights and intent over the subject matter to the 2nd Claimant. Again the claim that customary title does not exist in FCT and

seeking this issue as a relief is also overreaching. This is because the Claimant only argued this issue in their final address and such argument no matter how beneficial would not take the place of evidence. Counsel urged the Court to discontinue the extent application and refuse same.

ON ISSUE TWO.

Counsel referred the Court to ***OJAL 2ORS VS OGBONI (1976) ALL NWLR 277 AT SC. DUKE & ORS VS IHENSON (1944) IWACA 10P 27. OGUNTCHI VS GUBEM(1964) 1 ALL NLR 176-179 . SEE EQWA VS EQWA (2007) 1 NWLR (PT 1014) P. 71 AT 79 RATIO 17. LINIPETRO (NIG) LTD VS MUSA (1992) 7 NWLR (PT255) P.63 at 80 RATIO 19.*** Consequently the application of the Applicant lacks merit and it is equally incompetent, hence it needs to be dismissed completely.

Reply on law to the Defendant's/Respondent address the Defendant/Respondent address will reveal that his opposition to the claimant application for amendment is predicated on the following:-

- a) Reliefs sought to be introduced by the amendment are now facts not covered by evidence on record. In other words, the amendment sought if granted will lead to opening of closed case and call of fresh evidence amendment of pleadings will not be allowed after the close of the trial. In this regard Counsel relied on order 25 Rule 1 of the rules of this Court same went ahead to cite the following cases in support of this application ***ITA VS DADZIE (2000) 4 NWLR (PT652)168 RATIO 1 UBA PLC VS DIFIAGS (2000) 1 NWLR (PT 640) 175 RATIO 5, OKOLO VS UNION BAN (1999)LPELR 2464 SC. ABDILLAHI VS MAIDAWALI (2014) LPELR 23451 (CA)***

Counsel went ahead to maintain that cases cited must be relevant with cases at hand. Counsel finally urge the Court to discontinue with the objection and grant the relief sought in the interest of justice cumulatively from the issues raised in the two written addresses filed by both Counsel in

this trial. I have substantially reproduced the position of both side above I have equally considered the issues raised for determination in the two respective written address filed. I am however of the view that looking at the relief sought particularly reliefs 1 of the receipt of payment to be amended which was not part of the relief earlier sought by the Applicant made this Court not to grant this application more importantly I strongly consider the applicability of the Rules of this Court particularly with much emphases on order 25 Rule 1 . A party may amend his original processes and pleadings at any time before the pretrial conference and not more than twice during the trial but before the close of the case. From the above rules the Claimant ought to have brought this application during the trial not while the matter is completely closed and a date was set down for adoption of final written address.

I have no doubt in my mind that issue of amendment can be raised at any stage. However rules of Court are meant to be obeyed by all Court as the guiding machinery including filing of processes in Court. The cases cited by the Defendant Counsel substantially can not apply in this case as rightly said by the Claimant's Counsel. They differ both in form and in substance with the case before me. However the Court of law are expected to apply the principle of substantial justice when deciding a matter there shall be an end to every litigation. The SC in ***OKOBIS VS AJANYA & ANOR (1988) 5 SCNJ as at 105 . TAIWO VS LAWAL (1975) 2 SC 25*** said :-

*"An amendment of pleadings sought at the time of address and which goes to a relief not originally claimed will be refused" also in **EGWA VS WGWA (2007) 1 NWLR (pt 1014) P. 71 at 79 ratio 17***

"During trial amendment of pleadings are not readily allowed. This is because the party seeking the amendment most times seeks to raise new issues which were not in contemplation of the parties at the time the suit was filed"

Finally based on the above judicial authorities particularly order 25 Rule 1 made me not to grant this application. Accordingly this application is hereby refused.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Chidi Nwankwo:- For the Claimant

Ezenwa Okoli:- For the Defendant/Count Claimant