

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 11**

**SUIT NO: FCT/HC/CV/2226/2014**

**BETWEEN:**

**FIRST CHOICE PROPERTY LTD.....CLAIMANT**

**VS**

**1. ECO BANK NIG PLC**

**2. AFAM OSIGWE**

(Carrying of Business of the Practice of Law under  
the name and style of " Law Forte").....**DEFENDANTS**

**RULING**

By a Motion on Notice with Motion No: M/7887/19 dated 6/7/2019 and filed on 8/7/19, brought pursuant to Order 43 Rule 1 of the FCT High Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court, the Applicant prays for the following reliefs;

- (1) Granting the Claimant/Applicant leave to amend the Claimant's reply to the Defendant's Statement of Defence and Defence to 2<sup>nd</sup> Defendant's counter-claim.
- (2) Deeming the Amended reply to the Defendant's Statement of Defence and Defence to 2<sup>nd</sup> Defendant's counter-claim already

filed and served as a separate process as duly filed and served all the fees having been paid.

In support of the application is 10 Paragraph affidavit deposed to by Chief Austin Arah. In line with the Rules, filed a Written Address, which is adopted, in urging the court to grant.

In response, the 1<sup>st</sup> Defendant/Respondent on receipt of the process, filed a 7 Paragraph counter – affidavit filed on 20/9/17 by Dominic Atsen, in line with the Rules, filed a Written Address in opposition.

The 2<sup>nd</sup> Defendant Counsel is not opposed to the application.

In the Written Address, settled by the Learned Silk, Oba Maduabuchi (SAN), no issues for determination was formulated, Learned Silk, submits that the need for this application, came up by the reason of the 1<sup>st</sup> Defendant raising fresh issues in their Amended Statement of Defence, that it is law that where fresh issues are raised, the Claimant is at liberty to respond by filing a reply. Referred to case of Afaid Vs Iliasu (2013) 6 NWLR (PT. 1351) @ 562 – 563. And urged the court to grant the application in the interest of justice.

By way of adumbration, Learned Silk urged the court to discountenance the submission of the 1<sup>st</sup> Defendant Counsel that it would be in the interest of justice to allow the application which is in line with the intendment of the Rules meant to cure errors. Further that the era of technical justice is gone and litigants should not be punished for the sins of Counsel.

In the Written Address of 1<sup>st</sup> Defendant Counsel, settled by O.O. Adeleye Esq. one (1) sole issue was formulated for determination, which is;

“Whether the Claimant/Applicant is entitled to the prayers sought in this application”

And submits that this application falls short of the requirement to be considered in the grant of an application of this nature, for been overreaching, and contrary to the tenents of fair hearing. That the grounds for the opposition has been stated in their counter-affidavit, and are in line with principles stated in the case of *Akanwo Vs Chief O.N. Nsirim & Ors* (2008) LPELR – 321 (SC). That in all the Applicant has failed to fulfill the conditions for the grant of an application that would warrant the court to exercise its discretion in favour of the Applicant. Referred to case of *Amaechi Vs Omehia* (2013) 16 NWLR (PT. 1381) Pg. 437 Para F – G.

Arguing on the alternative, that if the court is minded to grant the application, be asking for cost of ₦200,000 and refers to case *NNPC Pension Ltd Vs Vita Construction Ltd* (2016) LPELR – 41259, that cost follow events and also to the case of *Oyejobi Vs Okegbemi* (2013) LPELR – 20476 (CA).

Having carefully considered the submission of all counsel in this instant application and the judicial authorities for and against the grant of leave to amend. In determining this application, two (2) issues in my view call for determination, namely;

1. Whether or not this court has the power or jurisdiction to grant the relief.

2. Whether or not the applicant have placed sufficient fact to enable the court to exercise its discretion in their favour.

On issue 1, it is settled law that by case law and Rules of Court, that the court has the jurisdiction, power and indeed the discretionary power to grant leave to amend pleadings at any stage of the proceedings. See *Akaninwo Vs Nsirim* (2008) 9 NWLR (PT. 1093) @ 460 Para E – G, the court had this to say. “The law is indeed well settled that an amendment of pleadings should be allowed at any stage of the proceedings unless it will entail injustice to the other side responding to the application, the application should be granted unless the Applicant is acting malafide or by his blunder, the Applicant has done some injury to the Respondent which cannot be compensated in terms of cost or otherwise”.

Also the Provision of Order 25 Rule 1, 2 of the Rules of court, which provides.

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 cost or otherwise as may be just.

To amend, simply means to make right, correct or rectify, to change the wordings of, to alter formally by adding or deleting a Provision or by modifying the wordings. See Pg. 80 Black Law Dictionary 8<sup>th</sup> Editions.

From all of these, therefore, this court has the jurisdiction, power and indeed can exercise the discretion to grant the leave sought. Having answered issue 1, in the affirmative, the real task is issue 2.

In this instant application, the Applicant is seeking to amend the Claimant reply to Defendant's Statement of Defence and Defence to 2<sup>nd</sup> Defendant's counter-claim.

In this application, the 1<sup>st</sup> Respondent main grounds of objection, is that this application is overreacting and does not comply with the law down conditions for the grant of this application, to warrant the exercise of the court's discretion in their favour.

The grant or otherwise of an affidavit of this nature is at the discretion of the court and based on certain established guiding principles set over time in Plethora of case law. See *Dike Vs The A.G. & Commissioner for Justice, Imo – State & Ors* (2012) LPELR-15383 (CA) the court had this to say;

“The general principles on amendment of pleadings, is that an amendment should be allowed for the purpose of determining the real questions in controversy between the parties, unless such an amendment will entail injustice or surprise or embarrassment to the other party, or where the Applicant is shown to be acting malafide or that by his blunder he has cause or done some injury to the adversary which cannot be compensated by way of award of cost or otherwise. This is so because, the object of the court is to decide the right and obligation of the parties and not to punish them for mistakes which they may have made in the conduct of their case by

deciding otherwise then in accordance with their right. Thus, the Rules governing the amendment of pleadings are flexible, and therefore depend to a great extent on the discretion of the judge. That more so, when the decision whether or not to grant an amendment to the pleadings depends entirely at the discretion of the court”.

Taking a cue from this decision of the Court of Appeal above as a guide in the exercise of that power, the question to ask is, first what is the nature of the amendment sought in this application. In this application, the Applicant is seeking leave to amend their reply to the Defendant’s Statement of Defence and Defence to 2<sup>nd</sup> Defendant counter-claim, as claimed arising from the new issues raised. I have read the facts stated in the supporting affidavit and the Proposed Amendment and find that the amendment is intended to answer to the issues raise in the Defendants Statement of Defence and a Defence to 2<sup>nd</sup> Defendant counter-claim.

Secondly, the next question is what is the consequence of this proposed amendment. It is the 1<sup>st</sup> Defendant/Respondent contention that the grant of this application would be overreaching and breach the 1<sup>st</sup> Defendant right to fair hearing. Whilst, it is true that, the court have constantly been urged not to ordinarily refuse an application for an amendment of pleadings, unless it is meant to delay the case, embarrass or prejudice the interest of the other side or make malafide and without the other side having the opportunity to react. See the case of U.B.N Vs Dafiaga (2000) 1 NWLR (PT. 640) 175 @ 177. Having carefully considered the facts and the history of this case, the court finds the grounds of this objection to this

instant application by 1<sup>st</sup> Defendant, does not reveal any of these that would prevent the court not to exercise that discretion. The Claimant has not closed their case, the Defendants will be at liberty to do needful as the case demands. It is therefore the courts view that this amendment would not have any negative consequence on the 1<sup>st</sup> Defendant/Respondent, as I find it not to be overreacting, embarrassing, and prejudicial and made malafide. It is merely to bring to fore the issues for determination by the court.

In conclusion, after a careful consideration of the amendment sought in line with the guiding principles considered by the courts, on whether or not to exercise its powers to grant leave to amend, I hold that this application by the Applicant is not overreaching and it is not brought malafide and therefore should be allowed.

Accordingly, this application for amendment therefore succeeds. On the issue of cost, granted that cost follow events, the court finds that this is not an occasion that cost should follow, accordingly, the application for cost is hereby refused. It is hereby ordered as follows;

1. Leave is hereby granted to the Applicant to amend the Claimant reply to the Defendant Statement of Defence to 2<sup>nd</sup> Defendant's Counter-Claim.
2. The already filed and served amended reply to the Defendant's Statement and Defence, to 2<sup>nd</sup> Defendant's counter-claim deemed properly filed and served.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

4/11/2019

OBA MADUABUCHI (SAN) WITH HIM CHIJOKE DIKE, IKECHUCHWU UZOH  
- FOR THE CLAIMANT

CHIMAMAKA OBIADI WITH HIM BIBIAN ORUM - FOR THE 1<sup>ST</sup>  
DEFENDANT.

AFAM OSIGWE FOR HIMSELF