

**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/2775/18

BETWEEN:

JOSEPH ATA AJI.....CLAIMANT/APPLICANT

VS

1. KENNETH ANAYO

2. UGOCHUKWU NNAM.....DEFENDANT/RESPONDENT

RULING

By Motion on Notice with No. M/3218/19 dated 13/2/19 but filed on 14/2/19, brought pursuant to Order 13 Rule 19(1) & 20, 25 Rule 1 & 2, 42 Rule 1(1) & (3), 43 Rule 1 of FCT High Court (Civil Procedure) Rules 2018 and under the inherent powers of this Hon. Court, the Claimant/Applicant pray the court for the following reliefs;

1. Leave of Court to further amend the Claimants Writ of Summons by amending the reliefs sought against the Defendants, i.e. by adding additional reliefs and alternative reliefs.

2. Leave of Court to substitute the name of Mr. Joseph Ata Aji to Mr. Joseph Ata Aji (Suing as the lawful Agent of Mr. Ikechukwu Ogbe).
3. Leave of Court to add the name "Prince Will" to the name of the 2nd Defendant.
4. Leave of Court to amend all the processes filed by the Plaintiff to reflect the new name and particularly to amend the Plaintiff's Statement of Claim as per the Paragraph underlined in the Proposed Amended Statement of Claim attached to the affidavit in support of this application marked as Exhibit "A".
5. Leave of Court to deem the Amended Processes separately filed and served as having been properly filed and served, separate filing fees having been paid.

In support of the Motion is a 3 Paragraph affidavit with Exhibit "A" attached deposed to by the Claimant/Applicant. Also filed a Written Address in compliance with the Rules and adopts the said Address in urging the court to grant the application.

In response, Defendants/Respondents filed a 16 Paragraph counter-affidavit dated 21/2/19 with leave of court deposed to by one Francis Sylvester, a Legal Practitioner in the law firm of Respondents Counsel. Also filed a Written Address and adopts the said Address.

In the Written Address of Applicant Isyaku Balarabe Muhammad Esq. of Counsel did not raised any issue for determination but submits that the Order of Court sought is within the discretion of court to grant and refer

the court to Order 25 Rules 1 and 2 of Rules of Court and case of G.M Enterprise Ltd Vs C.R Investment Ltd (2011) 19 NWLR PT. 1226, 25. That the court, on the authority of the Rules cited above, may at any time allow an amendment provided it will assist the court in determining the issues in controversy. Commend the court to Ogidi Vs Egba (1999) 10 NWLR PT. 621, 42, Equity Bank Nig Ltd Vs Daura (1999) 10 NWLR PT. 621.

In their Written Address, Respondents Counsel Francis Sylvester Esq. formulated a lone issue for determination;

“Whether the amendment sought by the Claimant if allowed would not radically and fundamentally changed the nature of the case thereby overreaching to the Defendants”

And submit that a perusal of the capacity at which Claimant instituted this action differs as the Proposed Amendment sought to amend the capacity by substitution of Claimant with a new Claimant entirely different from the Originating Processes already filed. That substitution is not amendment and a party cannot under the guise of amendment substitute a party. Submit it is permissible to allow amendment to bring out the real issues in controversy but that an absolute substitution of all Claimant reliefs in the entire Originating Processes as Applicant seek to do is not only reprehensible but overreaching. Submit what is being sought by Applicant is not amendment but substitution of the whole claim. That this is a novel idea that is unacceptable because it is clearly aimed at overreaching Defendants and seek to completely change case of Plaintiff by advancing fresh facts different in character from what was originally pleaded. That

this application has violated all laid down factors that guided the court in granting an order of amendment. In all of the submission commend the court to Okolo Vs UBN (1998) SCNJ 193 at 213, Ajinla Vs Ajadi (2010) 18 WRN 135, Lagos Vs Toku (1992) 2 NWLR PT. 223, 278.

In his reply on points of law filed on 6/3/19, counsel for Applicant commend the Court to Order 25 Rules 1,2,3 of Rules of Court and case of Baroda Vs Iyalabani Co. Ltd (2002) LPELR – 743 (SC) and submits these authorities raised two issues in common; that amendment may or ought to be allowed at any stage of the proceedings and the purpose of amendment is to determine the real questions in controversy. That these two issues must co-exist before amendment is allowed. On concept of amendment, refer to Ita Vs Dazie (2000) 4 NWLR PT. 652 168 at 182 and submit amendment means alteration, addition, subtraction, substitution, deletion and according to Oputa JSC, is not exhaustive. On the case of Akaninwo Vs Nsirim relied on by Defendant Counsel submits he found the case very apt and that in that the court appreciates the fallibility of the human mind and that informed why the court said the object of courts is to decide the rights of the parties and not to punish them for the mistake they made or unintentional blunder in the conduct of their cases.

Having considered the submission of both Counsel and the authorities cited, I find that the issue which calls for determination is;

“Whether the Applicant has made out grounds to be entitled to the reliefs sought”

The grant or otherwise of an application of this nature is at the discretion of the court and in the exercise of that discretion, the courts are enjoined to do so judicially and judiciously. See the case of *Ologunleko Vs Oguneyehun* (2008) 1 NWLR PT. 1068 397 @ 400. Overtime, the courts have laid down guidelines on whether or not to grant an application for amendment. In *Adekanye Vs Grand Service Ltd* (2007) All FWLR PT. 387 855 @ 857, they include;

- (a) The court must consider the materiality of the amendment sought and will not allow an inconsistent or useless amendment.
- (b) Where the amendment would enable the court to decide the real matter in controversy and without injustice.
- (c) Where the amendment relates to a mere misnomer, it will be granted almost as a matter of course.
- (d) The court will not grant an amendment where it will create a suit where non-existed.
- (e) The court will not grant an amendment to change the nature of the claims before the court.
- (f) Leave to amend will not be granted if the amendment would not cure the defect in the proceedings.
- (g) Amendment would be allowed if such an amendment will prevent injustice.

In this instant, the Applicant seek to amend the reliefs sought against the Defendants and pleadings filed by his erstwhile counsel when it was discovered in the course of the case appraisal that certain key information where inadvertently omitted in the Statement of Claim but which are imperative to be brought to the notice of court for proper adjudication of the matters between the parties.

Against this, the Respondents contend that this application has the character to change the nature of the case and has introduced new issues which were not in the original processes and sought to amend the capacity by substitution of the Claimant with a new Claimant in the Originating Processes already filed. That the case before court is entirely an issue of substitution and not amendment and is aimed at over-reaching the Defendants.

I have looked at the Proposed Amended Writ of Summons and Statement of Claim sought by Applicant and the processes filed in opposition by the Respondents. Granted the Proposed Amended Writ of Summons and Statement of Claim sought by Applicant contained new facts to the original processes earlier filed, they do not, in my view, change the character of the case and not create a new suit before the court as contended by the Respondents neither does the application tend to amend the capacity by substituting the Claimant with a new Claimant in the originating processes already filed.

In any event, it is law that amendment does allow for the introduction or inclusion of new facts provided it does not change the nature or character

of the case or create a new suit before the court, See *Ologunleko Vs Oguneyehun* (Supra) at 400 Ratio 2. Further it is settled law that the Court may allow either party to amend his endorsement or pleadings at any stage of the proceedings in such a manner and on such terms as may be just and such amendments shall be made as may be necessary for the purposed of determining the real questions in controversy between the parties. See the case of *Eke Vs Akpu* (2010) All FWLR PT 510 640 at 645. See also *Chijoke Vs Soetan* (2006) 11 NWLR PT 990 179 at 185 – 186.

It is, therefore, the view of court that the amendments sought by the Applicant are matters that would assist the court to determine the real issues in controversy between the parties. The Proposed Amendments sought does not, in my view, entail injustice or overreaching the Respondents as Respondents are also at liberty to also amend their processes moreso that the case has not gone into hearing and evidence not been led. I shall, therefore exercise discretion in favour of Applicant and grant the reliefs sought.

Accordingly, the reliefs sought by the Claimants/Applicant are hereby granted as prayed.

1. Leave of Court is hereby granted to Claimant/Applicant to amend his Writ of Summons by amending the reliefs sought against the Defendants, i.e. by adding additional reliefs and alternative reliefs as per the Exhibit "A" attached to the application.

2. Leave is hereby granted to substitute the name of Mr. Joseph Ata Aji (Suing as the lawful Agent of Mr. Ikechukwu Ogbe).
3. Leave is hereby granted to Applicant to add the name "Prince Will" to the name of the 2nd Defendant.
4. Leave of Court is also granted to amend all the processes filed by the Claimant to reflect the new name and particularly to amend the Plaintiff's Statement of Claim as per the Paragraphs underlined in the Proposed Amended Statement of Claim attached to the application and marked as Exhibit "A".
5. The already filed and served Amended Processes are hereby deemed as properly filed and served.
6. The Defendants/Respondents are at liberty to file their responses to the processes served on them with the time prescribed by the Rules.
7. I make no orders as to cost.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

19/11/2019

APPEARANCE:

ISYAKU BALARABE MUHAMMED ESQ - FOR THE CLAIMANT/APPLICANT

FRANCIS SYLVESTER ESQ – FOR THE DEFENDANTS/RESPONDENTS.