

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT NO. 4, MAITAMA ON THE**  
**20<sup>TH</sup> DAY OF FEBRUARY, 2023**

**BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE**

**SUIT NO. FCT/HC/CV/0319/2017**  
**MOTION NO. M/2084/2022**

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

**BETWEEN:**

1. KELLY UGOCHUKWU ONWUKWE 2. ENGR. GODFREY IKPE 3. DR. (MRS.) UCHEOMA IKPE	}	CLAIMANTS/RESPONDENTS
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AND

ASP IJEOMA OKPELIBIE ..... DEFENDANT/APPLICANT

**RULING**

This is an application brought pursuant to Order 25 (1) & (2) of the Rules of Court, praying this Court for:

- (1) An Order granting leave to the Defendant/Applicant to amend her Counterclaim and Witness Statement on Oath filed on 23/12/2021 in accordance with the underlined provisions of the said processes.

(2) An Order deeming the proposed amended processes as properly filed and served.

Learned Counsel relies on the 14-paragraph Affidavit. The reasons for the application for amendment is in paragraph 4 of the Affidavit.

That he inadvertently omitted to mention or incorporate in the Counterclaim and Witness Statement, a Power of Attorney, which is vital.

That there are also some substantial mistakes/errors in some paragraphs of the defence. That it is necessary to amend the aforesaid processes to address the omission and correct the errors.

That the said omission and errors have been corrected by the amended processes.

The Claimants opposed the application with an 8-paragraph Counter Affidavit deposed to by Counsel

himself. He said the application is brought in bad faith. That it is filed to delay trial.

Order 25 (1) of the Rules of Court states that a party may amend his Originating Process and pleadings at any time before pre-trial conference and not more than twice during trial but before the close of the case.

The grant or refusal of an application for amendment is a discretionary power to be exercised judicially and judiciously.

The law is that an amendment must be granted if it is for the purpose of eliminating all statements which may lead to prejudice, embarrassment or delay the trial of the suit and for the purpose of determining in the existing suit, the real question in controversy between the parties.

The law is 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.

The application should also 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 by cost.

The Defendant/Applicant's paragraph 4 is to the effect that the amendment is sought to determine the real issue in controversy.

There is nothing in Claimants' Counter Affidavit to suggest that the application has caused him some injury.

The Applicant in my view is not acting *malafide*. The Defendant's application for amendment is the first application.

No injustice will be occasioned to the Claimants. It is for the purpose of determining the real issues in controversy. This application rather than delay trial will eliminate all delays.

The Counter Affidavit of the Claimants is sworn to by Counsel. It is unethical to swear to an Affidavit in a case he is conducting.

In totality, the application succeeds and it is granted as prayed.

The Claimants shall file a Reply to Statement of Defence and Defence to Counterclaim within fourteen (14) days from now.

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**HON. JUSTICE U. P. KEKEMEKE**  
(HON. JUDGE)  
20/02/2023

Parties absent.

Simon Onuzurike, Esq. for the Claimants/Respondents.

Ernest Nwoyi, Esq. for the Defendant/Applicant.

**COURT:** Ruling delivered.

(Signed)  
**HON. JUDGE**  
20/02/2023