

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT GWAGWALADA-ABUJA  
ON TUESDAY THE 31<sup>ST</sup> OCTOBER, 2023**

**SUIT NO: FCT/HC/CV/1310/2021  
MOTION NO: FCT/HC/GWD/M/419/23**

**BEFORE HER LORDSHIP: HON. JUSTICE A.I. AKOBI**

**BETWEEN**

**1. JOHN OCHAPA OGEBE }  
2. PATRICK OKEWU } .....CLAIMANTS/APPLICANTS**

**AND**

**1. ALHAJI R. ADENIYI }  
2. PASTOR ISAAC OLADOKUN } ..DEFENDANTS/RESPONDENTS  
3. MRS. ISAAC OLADOKUN }  
4. MRS. ADEYI MERCY ABIMBOLA }**

**R U L I N G**

This matter came up on the 03/10/2023 for cross examination of claimant's first witness (PW1); but was stalled due to an application filed by the claimants. The claimants filed a motion on notice duly served on the defendants. The motion is dated 28/08/23 and filed the next day being the 29/08/23. The motion is brought pursuant to sections 6(6)(a)(b), 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Order 13 rule 4, Order 25 rule 8 of the High Court of the Federal Capital Territory Civil Procedure Rules 2018 and under the inherent jurisdiction of the Honourable Court. Reliefs sought are:

1. **An Order** of the Honourable Court granting the Applicant leave to amend the Writ of Summons, Statement of Claim and other court processes of the Claimant/Applicant.
2. **An Order** of the Honourable Court granting the Claimant/Applicant leave to amend the Writ of Summons, Statement of Claim and other court processes as reflected in the Proposed Statement of Claim and all other courts processes hitherto filed by the claimant/applicant.
3. **And** for further order or other orders as the Honourable Court may deem fit to make in the circumstance of this case.

In support of the application is 7 paragraph of affidavit deposed to by the 1<sup>st</sup> claimant and it is based on three grounds as contained on the face of the motion paper. They are relying on all the paragraphs of the affidavit particularly paragraphs 4 – 7. Attached thereto is the proposed copy of the amended writ of summons. They also filed a written address and adopt same as their oral submission in urging the court to grant the application.

On receipt of a counter affidavit from the respondents in opposition to the application, the applicant in reaction to the counter affidavit filed a further and better affidavit of 9 paragraphs deposed to by the 1<sup>st</sup> claimant/applicant. The motion was heard on the 03/10/2023 after granting the defendant's application for extension of time to file and serve the counter affidavit with written address in opposition to the application for amendment.

On whether the Claimant/Applicant is entitled to make an amendment in the circumstance of the case, the court is referred to the case of **Ikyernum v. Iorkumbur (2002)11 NWLR (PT.777) 71-72**, where they reproduced the holding of the court thus:

“The aim of amending pleadings is to enable the court decide the rights of the parties and not to punish them for mistakes they made in the conduct of their case by deciding otherwise than in accordance with their rights”. The learned counsel to the applicant, E. I. Egwurube Esq reiterates the position of law relying on order 25 rule 8 of the rules of this court which provide thus:

“Subject to the provision of Rule 1 of this order, the court may at any time and on such terms as to cost or otherwise as may be just, amend any defect or error in any proceedings”. The applicant based on the above rule of court, canvassed that amendment can be made at any stage of the proceedings to bring to light the real issue in controversy between parties. Cited **Ita v. Dadzie (2002)4 NWLR (PT.652) 124**, wherein the court held as follows: "There is no doubt that an amendment of pleading can be made at any stage of the proceedings before judgment. The various High Court Rules provide for this. See: **Chief Ojah & 2 Ors v. Chief Eyo Ogboni & Ors (1976) 4 SC 69 at 76-77; Chief S. O. Okafor v. D.O., Ikeanyi (1979) 3-4 SC 99 at 106**. The only restriction is that the amendment should not be fraudulent or intended to over-reach or to embarrass or surprise but is necessary and material in the interest of justice. To Support the

application for amendment the applicant averred in his affidavit in support paragraphs 4(c) & (d) and 5 thus:

**Para 4(c):** that after he studied the case of the claimant, he saw the need to amend the Claimant's Writ of Summons, Statement of Claim and other Court process to bring to light the real issue in contention between parties which was omitted as a result of error by the former counsel in this case.

**(d):** that as such, he has prepared the amendment sought to be made and attached a proposed copy of the amended writ of summons as Exhibit 'A'.

**Para 5:** that the defendants will not be prejudiced in any way at the grant of this application.

As mentioned above the applicant also filed further and better affidavit on receipt of a counter affidavit in opposition to the application. The applicant's case why amendment is being sought is that there was error in the processes filed by the former lawyer to the Claimant/Applicant; and that the defendants did not disclose the injustice the amendment sought would occasion to them. It is also averred in paragraph 4 of the further affidavit the reason the amendment is necessary; which is that all the documents they presented to this court do not emanate from Abuja Municipal Area Council as reflected in the processes sought to be amended.

The applicant canvassed in their reply on point of law which represents the position of law that parties are bound by their pleadings and cannot lead evidence of any fact not alleged in the pleadings. It is however submitted in favour of the applicant that in drawing the pleadings, parties are not immune from errors. It is in such circumstances of committing error of omission or otherwise in drawing pleadings that court is empowered to grant a party leave to amend his pleadings.

It is further submitted by the applicant that the purpose of amendment is to determine the real question in controversy between the parties. He added that amendment should be allowed unless: (i) it will entail injustice to the respondent. The court is urged to grant the application.

The Counter Affidavit of the defendants/respondent is dated and filed the 22/09/2023, deposed to by one Sunday Ameh, a litigation officer in the employment of Messers Aluko & Oyebode. Issue formulated by the defendants/respondents in their written address of the counter affidavit is: **Whether this Honourable Court should allow an amendment of the originating process in the circumstances of this case.** On application for amendment, the respondents emphasized on the discretionary power of the court to grant or to refuse to grant same; that is to say application for amendment is not given as matter of course. **Cited Chidoka v. First City Finance Co. Ltd (2021)2 NWLR (PT.697) 216; Celtel (Nig) Ltd v. Econet (Wireless Limited (2011)3**

**NWLR (PT. 1233)156.** It is alleged that the applicant did not provide basis for the amendment, rather, that it is brought in bad faith. It is claimed that the amendment sought is meant to overreach and perpetuate injustice to the respondents over facts that parties have joined issues. Cited **Adekeye v. Akin Olugbade (1987)3 NWLR (PT.60)214.** The Court is urged to dismiss the application with substantial costs.

Before I adopt and resolve issues raised by the parties, I considered it pertinent to state that in the course of adopting the processes and adumbrating, Olujoke Aliu Esq who appears with C.J. Caleb, informed the court of the processes they filed in opposition to the Claimant/applicant's motion for amendment and that the claimant in their further and better affidavit addressed some issues they raised in their counter affidavit, particularly, the now underlined area of amendment which makes it easy for the court and the defendants to see the amendment sought. For that reason, that their opposition to the application is only in part; they are not oppose to the amendment to the writ of summons and statement of claim but their objection is for the proposed amendment to the **Witness Statement on Oath** of a witness who had already adopted same. It is the submission of the learned counsel to the defendants that the law only allows amendment to pleadings to align it with evidence on record. Hence, that evidence given under oath cannot be amended. In support of the argument the defense counsel sent across to the court additional authorities and re emphasized therein

their stance that they are not oppose to the amendment of writ of summons and statement of claim but on witness statement on oath. He commended the court to the case of **Majekodunmi v. Ogunseye (2017 LPELR-CA/AB/140/2017)**; wherein they reproduced the holding of the Court of Appeal as follows: the learned trial judge was clearly on target when he held that evidence in chief cannot be amended as pleadings at page 114 of the record of appeal; “ **I agree with the defendants’ counsel that a statement on oath once adopted by the maker becomes his evidence in chief and no more a court process and therefore order 24 Rules 1 and 2 which deals with amendment of pleading and process does not apply**”. On the same principle he further cited **Idris v. ANPP (2008)8 NWLR (PT.1088)1 at 97; Obed Orlando Ibe & anor v. Nkiru Ugochukwu & 41 ors (2010) All FWLR 1591 and Chikwelu Chris Obumneke v. Okeke Sylvester & Ors (2010)All FWLR 1945.**

The defendants/respondents having conceded to the amendment of the writ of summons and the statement of claim of the applicants made it easy for me. Since there is no dispute on the grant of amendment in respect of writ of summons and statement of claim, I hereby make an order granting the claimant/applicant leave to amend the Writ of Summons and Statement of claim as reflected in the Proposed Statement of Claim and the Writ of Summons.

As for the witness statement on oath, I agree entirely with the submission of the learned counsel of the defendant/respondent that

when a witness statement of oath has been adopted as in the instant case, it becomes evidence in chief of the witness in written form. If a witness statement on oath is not adopted, I hold the strong view that it can be amended at that point, but as soon as it is adopted it becomes evidence, and there cannot be amendment to it. In the light of the above, the application to amend the witness statement on oath already adopted is refused.

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**HON. JUSTICE. A. I. AKOBI**  
**31/10/2023**