

**IN THE HIGH COURT OF THE FEDERAL**  
**CAPITAL TERRITORY, ABUJA**  
**HOLDEN AT ABUJA**

**ON TUESDAY, 6<sup>TH</sup> DAY OF JULY, 2021**

**BEFORE HON. JUSTICE SYLVANUS C. ORJI**

**SUIT NO. FCT/HC/CV/2311/2017**

**MOTION NO. M/1440/2021**

**BETWEEN**

**JOSHUA ELAIGWU MOSES**

*[Carrying on business under the style  
"Joshua Elaigwu Moses & Co.]*

} **PLAINTIFF/RESPONDENT**

**AND**

**GUARANTY TRUST BANK PLC.**

**--- DEFENDANT/APPLICANT**

**RULING**

This suit was instituted by the plaintiff [claimant] on 29/6/2017 vide writ of summons. The defendant filed its statement of defence on 21/2/2018. The plaintiff closed his case on 16/4/2019 after the evidence of PW2. The case was adjourned for defence. By *Motion No. M/7993/2019* filed on 16/7/2019, the defendant prayed the Court for leave to amend its statement of defence. The plaintiff opposed the motion. In a considered Ruling delivered on 15/7/2020, the Court granted the application. The defendant filed its amended statement of defence on 22/7/2020.

When the matter came up for defence on 29/9/2020, learned defence counsel prayed the Court for adjournment to enable the defendant's witness attend Court. The case was adjourned to 16/11/2020 for defence.

On 16/11/2020, the defence counsel informed the Court that the defendant's witness exhibited signs of COVID-19 infection and prayed for adjournment. Although the claimant opposed the application, the Court adjourned the matter to 4/2/2021 and 8/2/2021 for defence for the last time.

On 4/2/2021, the defence counsel wrote a letter for adjournment. The claimant opposed the application and urged the Court to foreclose the right of the defendant to defend the suit. The Court granted the adjournment in the interest of justice. The Court ordered that the right of the defendant to defend the suit shall be foreclosed if it did not open its defence on 8/2/2021.

The defendant/applicant filed motion on notice *No. M/1440/2021* on 5/2/2021. This Ruling is in respect of the said motion wherein the defendant prays the Court for the following orders:

1. An order of Court granting leave to the defendant/applicant to further amend its statement of defence in line with the highlighted and underlined paragraphs of the proposed Further Amended Statement of Defence attached herein as 'Exhibit 1' in paragraph 3[i] of the affidavit in support of this motion.

2. An order of Court granting leave to the defendant/applicant to file fresh witness Statement on Oath and List of documents to be relied upon by the defendant/applicant during the hearing of this suit.
3. And for such further order[s] as this Honourable Court may deem fit to make in the circumstances.

In support of the motion, Chukwuemeli Ofoma, a litigation secretary in the Law Firm of Oli & Partners, deposed to a 5-paragraph affidavit; attached to the affidavit is Exhibit 1. Reginald Nwali Esq. filed a written address with the motion. In opposition, Gloria Udeji, a litigation secretary in the claimant's Law Firm filed a 21-paragraph counter affidavit on 12/2/2021 along with the claimant's written address.

On 16/2/2021, Chukwuemeli Ofoma filed a further affidavit of 4 paragraphs. C. P. Oli Esq. filed a reply on points of law with the further affidavit. At the hearing of the application on 18/2/2021, learned counsel for the parties adopted their respective processes.

In the affidavit in support of the application, Mr. Ofoma stated that Charles Aniebonam Esq. informed him of these facts which he verily believed:

- i. The witness for the defendant was sick, having exhibited all the known symptoms of COVID-19. As a result of his ill health, the witness was not available for a long time as he went into self-isolation.

- ii. After the proceedings of 4/2/2021, frantic efforts were made to contact the witness. When the witness was contacted, he informed them that he was still sick. In a virtual pre-trial conference, certain facts emerged which necessitated the further amendment. The facts could be seen in the highlighted paragraphs of the proposed further amended statement of defence.
- iii. The essence of the further amendment is to present substantial evidence to aid the Court in determining the real questions in controversy or dispute between the parties. The amendment sought is material and necessary in the interest of justice.
- iv. The amendment is not overreaching to the claimant; and the claimant will not be prejudiced by the grant of the application.

In his counter affidavit, Gloria Udejistated that the claimant informed her of the following facts which she verily believed:

- i. The said defendant's witness is not sick and has not developed any symptoms of COVID-19.
- ii. The real purpose for this further amendment is to wittingly change the reason why the defendant dishonoured the plaintiff's cheque from *"inactive account of the claimant to credit transaction of N18,000,000 in the claimant's account which the defendant referred to as suspicious transaction thereby changing the real issue in controversy."*

- iii. By its pleadings, defendant stated the truth of the matter that “*inactive account of the claimant was the reason for dishouring the claimant’s cheque.*” If the amendment sought is granted, it will completely change the real issues in controversy.
- iv. The amendment sought is brought *mala fide*; and if granted, it will overreach the claimant and radically change the entire case of the defendant.

In his further affidavit, Mr. Chukwuemelie Ofoma stated that the further amendment is sought in good faith and will not change the real issues in controversy between the parties.

From the prayers sought by the defendant and the submissions on both sides of the divide, the issue for determination is whether the defendant/applicant is entitled to a favourable exercise of the Court’s discretion to further amend its statement of defence.

Learned counsel for the defendant/applicant posited that a party is entitled to amend his pleadings as a matter of course to enable the trial court decide the real issues in controversy before the court. The application for amendment should be granted unless the applicant is acting *mala fide*. He relied on Order 25 rules [1], [2] & [3] of the Rules of Court, 2018; and the cases of Ajakaiye v. Adeleke [1990] 7 NWLR [Pt. 161] 192, Ita v. Dazie [2013] 9 NWLR [Pt. 1359] 248, Oforishe v. Nigerian Gas Company Ltd. [2017] LPELR-42766 [SC] and

others on the principles guiding the grant or refusal of an application for amendment of pleadings. Reginald Nwali Esq. argued that the amendment sought will not overreach the claimant and no injustice will be suffered by the claimant. The amendment sought is to enable the defendant comprehensively and fully present its own side of the story for the just determination of the suit by the Court.

For his part, the learned plaintiff/respondent's counsel cited several cases including Concord Press Ltd. v. Abijo [1990] 7 NWLR [Pt. 162] 203, Adeniyi v. Oyeleye [2014] All FWLR [Pt. 726] 538 and Ita v. Dazie [supra] to support the principle that an application for amendment will be granted where: [i] it would not lead to injustice; [ii] where it would not prejudice or overreach the respondent; [iii] where it is not brought *malafide*; or [iii] it will not throw a different complexion to the case originally filed. He submitted that the amendment, if granted, will lead to injustice to him because "*the real purpose of this amendment is not to determine the real issues in controversy as stated by the defendant but rather to completely change the real issues in controversy.*"

Joshua Elaigwu Moses Esq. also submitted that the amendment sought "*seeks to radically change the entire case of the defendant before this Honourable Court and throw a different complexion to their amended statement of defence. The law is trite that parties are bound by their pleadings.*" He referred to Daramola v. A. G. Ondo State [2000] FWLR [Pt. 6] 997 and A. G. Lagos State v. Purification Tech. Nig. Ltd. [2003] 16 NWLR [Pt. 845] 1. The claimant also contended that

the time of bringing the application attests to the fact that it was brought *malafide*. This is because *“immediately this Court ruled on 4<sup>th</sup> February, 2021 that the defendant would be foreclosed if they fail to open their case on 8<sup>th</sup> February, 2021, the defendant quickly filed this application on 5<sup>th</sup> February, 2021 in order to buy more time.”*He also pointed out that the application seeks to amend all the paragraphs of the defendant’s extant pleading.

Finally, the claimant argued that the amendment sought will overreach him. He cited the case of **N.I.W.A. v. S.P.D.C.N. Ltd. [2008] 13 NWLR [Pt. 1103] 48**for the meaning of *“overreach”*. It was submitted that in the context of pleadings, overreaching connotes or conveys a situation where a party fully aware of the case of the adverse party, applies to amend his pleadings with trick and craftiness to put the respondent in a state of helplessness.

In the defendant’s reply on points of law, C. P. OliEsq. maintained that the amendment sought is not overreaching and will not affect the claimant’s case in any way. The claimant can re-open his case and file a reply to the amended pleading if the amendment will necessitate the filing of a reply. The claimant still has the chance to cross examine the defendant’s witness. It was further submitted that the cases of **Daramola v. A. G. Ondo State [supra]** and **A. G. Lagos State v. Purification Tech. Nig. Ltd. [supra]**relied on by the claimant are not applicable to this case as they dealt with admission/admitted facts and not with amendment of pleadings.

The position of the law is that the court has the discretionary power to grant an application for amendment of pleadings to enable it decide the real issues in controversy between the parties. However, an amendment of pleadings will not be granted where: [i] it is intended to overreach or prejudice the respondent; or [ii] it will cause or entail injustice to the respondent; or [iii] the applicant is acting *mala fide*; or [iv] the amendment will cause injury to the respondent that cannot be compensated by costs or otherwise. See the cases of Ita v. Dazie [supra] and Nigerian Dynamic Ltd. v. Emmanuel S. Dumbai [2002] 15 NWLR [Pt. 789] 139.

In the case of Akinsanya v. Ajeri & Ors. [1997] LPELR-6327 [CA], His Lordship, Pats-Acholonu, JCA [as he then was, now of blessed memory] held:

*“... I know of no kind of error or mistake which if not fraudulent or intended to over reach, the Court ought not to correct, if it can be done without injustice to the other party. ... It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice ...”*

Also in Khalifa v. Onotu & Anor. [2016] LPELR-41163 [CA], it was held that the essence of amendment of court processes is to enable the parties to a dispute to fully and comprehensively present their grievances towards the just and fair determination of the dispute by the court. Therefore, where it is desirable, the parties should not be deprived of the right to present their case



simply because a mistake or a blunder has been committed in the process of filing documents. The essence of granting an amendment is therefore to correct inadvertence or even blunders, so that justice can be done in the adjudication process.

From the depositions in the counter affidavit, it seems to me that the major ground for opposing the grant of the application is that the real purpose for the further amendment is for the defendant to wittingly change the reason why it dishonoured the plaintiff's cheque from "*inactive account of the claimant to credit transaction of N18,000,000 in the claimant's account which the defendant referred to as suspicious transaction thereby changing the real issue in controversy*". It was on the basis of this deposition that the claimant contended that if the amendment is granted, it will completely change the case of the defendant as well as prejudice and overreach him.

I hold the considered opinion that this change of averment complained of by the claimant is within the ambit/purview of amendment of pleadings. After all, amendment means to improve or to change for the better by removing defects or faults. See **New Nigerian Bank Plc. v. Denclag Ltd. & Anor. [2004] LPELR-5942 [CA]** and **U.B.N. Plc. v. Lawal [2011] LPELR-8879 [CA]**. In **Owodunni v. Registered Trustees of CCC [2000] LPELR-2852 [SC]**, it was held that the word amendment includes "*re-writing*" the whole document and "*substituting the new for the old*".

Also, I do not agree with the claimant that the grant of this application will prejudice or overreach him. This is because - as rightly argued in the reply on points of law -the claimant is entitled to file a reply to the further amended statement of defence and adduce additional evidence if he so desires. The claimant is also entitled to cross examine the defendant's witness to establish the reason why the defendant dishonoured his cheque. I agree with the defence counsel that the amendment will enable the defendant to fully and comprehensively state its side of the dispute in order for the Court to decide the real issues in controversy between the parties.

I have read the cases of Daramola v. A. G. Ondo State [supra], A. G. Lagos State v. Purification Tech. [Nig.] Ltd. [supra] and Akaninwo v. Nsirim [2008] All FWLR [Pt. 410] 610 relied upon by the claimant to support his submissions that: [i] a defendant who has admitted some averments in a claimant's statement of claim will not be allowed to abandon such admission; and [ii] the courts will not allow an amendment which seeks to radically change the entire case of a defendant. The cases of Daramola v. A. G. Ondo State and A. G. Lagos State v. Purification Tech. [Nig.] Ltd. did not deal with amendment of pleadings; they are not useful to the issue under focus.

In my Ruling delivered on 15/7/2020, I referred to the decision in Akaninwo v. Nsirim [supra]; also reported in [2008] 9 NWLR [Pt. 1093] 439. I will also refer to the decision to show that it does not support the submissions of the claimant. In that case, the defendants/appellants applied for leave of the trial

court to amend their statement of defence after the second witness for the plaintiffs/respondents had testified. The trial court refused the application. Defendants/appellants' appeal to the Court of Appeal was unsuccessful; the Court of Appeal affirmed the decision of the trial court. The further appeal to the Supreme Court was allowed. *His Lordship, Mahmud Mohammed, JSC [as he then was]*, who read the Leading Judgment held at **pages 462-463, C-A**:

*"Some of the reasons given by the learned trial Judge and endorsed by the court below for refusing the defendants/appellants' application to amend their statement of defence include that the amendments which affected 10 out of the 23 paragraphs of the statement of defence, amounted to a complete substitution of a new statement of defence. Not only that, the learned trial Judge also found that the amendments would have the effect of allowing the defendants/appellants to withdraw or abandon paragraphs in which part of the claim of the plaintiffs/respondents have been admitted, thereby forcing the plaintiffs/respondents to have to file a reply to the new statement of defence with the necessity of having to recall the two witnesses who had already testified. The question is, are these reasons given for refusing the application for amendment justified, most especially taking into consideration of the clear finding of the learned trial Judge at page 160 of the record of this appeal? This was what the learned trial Judge said:*

*"The statement of defence has 23 paragraphs out of which ten [10] are affected by the proposed amendment. It is interesting to note that the ten*

*paragraphs being amended constitute the main defence of the defendants' case."*

*Indeed if the amendments being sought by the defendants/appellants in their application constitute their main defence to the case against them by the plaintiffs/respondents, that finding alone was enough to have put the trial court on guard on the need to adhere to the guiding principles in granting or refusing amendments of pleadings. With this finding, both the trial court and the court below ought in my opinion, to have found that the amendment being sought was necessary for the purpose of determining the real questions in controversy between the parties and therefore should have been granted in order to prevent manifest injustice to the defendants/appellants by allowing them to plead their main defence to the case against them. ..."*

His Lordship further held at **page 465, C-E** that:

*"... the fact that the defendants' application was made after the cross examination of the second witness to the plaintiff was not enough reason to refuse the application because such application by a defendant may be granted even after the close of the case of the plaintiffs. ..."*

His Lordship allowed the appeal and granted the defendants/appellants' application to amend their statement of defence. The case was remitted to the trial court for hearing by another Judge on the pleadings of the parties as amended. My Lords, *Oguntade, JSC, Tabai, JSC and Aderemi, JSC* adopted the

decision in the Leading Judgment. However, *His Lordship, Tobi, JSC* gave a dissenting opinion. At *page 479, G-H*, His Lordship said:

*“A litigant should not be allowed to speak at the same time or the same moment from the two sides of his mouth. ... He cannot make a case in his pleadings and suddenly change or reverse position to make a different case. A party cannot by his complete state of mind make an admission and later decide to change it by amendment. While a party can do so in very clear instance of mistake or fraudulent misrepresentation by the adverse party, that is not the situation here.”*

It is evident that the claimant relied on the reasoning and dissenting opinion of *His Lordship, Tobi, JSC*. The position of the law is that this Court is bound to follow the Leading Judgment and not the dissenting opinion. I reiterate my view that in as much as the claimant has the opportunity to file a reply and adduce evidence in response to the amendments sought, he will not be prejudiced or overreached by the grant of the application and he will not suffer any injustice as a result of the grant of the application.

Finally, let me remark that the claimant is correct that the defendant brought this motion on 5/2/2021 “*immediately this Court ruled on 4<sup>th</sup> February, 2021 that the defendant would be foreclosed if they [sic] fail to open their [sic] case on 8<sup>th</sup> February, 2021*”. However, I hold the view that this fact will not be a valid or justifiable reason to refuse the application. Also, the Court will not refuse to

exercise its discretion in favour of the defendant merely because the proposed amendment affects many paragraphs of its extant pleading.

For the reasons I have given, I grant the application and order as follows:

1. Leave is granted to the defendant/applicant to further amend its statement of defence in line with the highlighted and underlined paragraphs of the Proposed Further Amended Statement of Defence attached to the affidavit in support of the motion as Exhibit 1.
2. An order of Court granting leave to the defendant/applicant to file fresh Witness Statement on Oath and List of Documents to be relied upon during the hearing of this suit.
3. The defendant shall file and serve it amended statement of defence, fresh Witness Statement on Oath and List of Documents to be relied upon during the hearing of this suit within 7 days from today.
4. The plaintiff is at liberty to make consequential amendment to his statement of claim within 7 days from the date of service of the defendant's Further Amended Statement of Defence and to adduce further evidence in support thereof, if he so desires.
5. No order as to costs.

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HON. JUSTICE S. C. ORJI  
[JUDGE]

*Appearance of counsel:*

1. The claimant/respondent appears in person.
2. Clara L. OgahEsq.for the defendant/applicant.