

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO – ABUJA

ON, 9TH FEBRUARY, 2021.

BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/1742/16

MOTION NO.:-FCT/HC/M/12472/2020

BETWEEN:

M.N.L. NIGERIA LIMITED:.....CLAIMANT/APPLICANT

AND

1) PASTOR EMMANUEL IBIWOYE

2) MICHAEL OKEDEJI

**3) INCORPORATED TRUSTEES OF LIVING :..DEFENDANTS/
FAITH CHURCH (A.K.A. WINNERS CHAPEL)**

RESPONDENTS

ChukwukaEwesi for the Claimant.

John Salawi for the Defendants.

RULING.

By a Motion on Notice dated and filed the 30th day of November, 2020, the Claimant/Applicant brought this application seeking the following reliefs:

1. An order of this Honourable Court granting leave to the Claimant/Applicant to further amend its Statement of Claim and other processes in this suit to plead a new paragraph 17 as follows:

“The Plaintiff states that the Nigerian Police have now concluded their investigation and have come up with their reports on the authenticity of the title documents in possession of parties in this suit. The Plaintiff is placing reliance on a Certified True Copy of the Police Reports dated 11th May,

2020 and 23rd July, 2020 as obtained from the Federal Capital Territory Administration.”

2. An Order of this Honourable Court granting leave to the Claimant/Applicant to reopen its case and recall Plaintiff Witness 1 (PW1) to tender a Certified True Copies of the Police Report, stating Police findings on their criminal investigation on the conflicting title documents in possession of the parties in this suit.
3. An Order of this Honourable Court granting leave to the Claimant/Applicant to file a further re-sworn witness statement on oath of Lawrence Monsodi to plead a new paragraph 18 as follows;

“That the Nigerian Police have now concluded their investigation and have come up with their reports on the authenticity of the title documents in possession of parties in this suit. I can identify copies of the Certified True Copy of the Police Reports dated 11th May, 2020 and 23rd July, 2020 as obtained from the Federal Capital Territory Administration.”

4. An Order of this Honourable Court deeming the further amended statement of claim and other processes in this suit filed simultaneously with this application and served on the Defendants as properly filed and served.
5. And for such further order(s) as this Honourable Court may deem fit to make in the circumstance.

In a 14 paragraphs affidavit deposed to by one Emmanuel Okaka, in support of the application, the Applicant averred that prior to the filing of this suit, the parties reported the matter to the Police and that the Police has been conducting criminal

investigation on the authenticity of the conflicting title documents in possession of both parties.

The Applicant stated that the Police has now concluded its investigation and has come up with its report on the authenticity of the title documents in the possession of the parties, hence the necessity for the amendment sought by the Applicant to enable her tender the said report in order to aid the Court in resolving the controversy in issue in this matter.

Learned counsel for the Claimant/Applicant, Odion Peter Odia, Esq, in his written submission in support of the application, raised a sole issue for determination, to wit;

“Whether this is a proper case for this Honourable Court to exercise its discretion in favour of the Plaintiff/Applicant and grant the prayers as contain(sic) on the face of the motion paper?”

Proffering arguments on the issue so raised, learned counsel posited that the reason for this application is to place before the Court all necessary facts and documents that would enable a just decision to be reached in this suit.

Relying on **Folorunsho v. WAEC (2011) ALL FWLR (Pt.556) 422 at 485**, he submitted that it is within the powers of this Court to grant amendment even if the amendment would add to the existing cause of action or substitute therefrom a new cause of action, provided the addition or the new cause of action arises out of or substantially the same facts as are contained in the original proceedings.

He contended that the amendments sought to be made by the Applicant are issues which arose from the same facts as in the original pleadings. Arguing further, learned counsel posited, with reliance on **Omoriegie v. Lawani (1980) 3-4 SC 100**

and **Ogbodo v. Odogha (1967) NMLR 221**, that a Court at any stage before judgment can allow a party to re-open its case and recall any witness to meet with the justice of the case or to do substantial justice, provided the opposing party is not prejudiced.

He further referred to **Willoughby v. International Merchant Bank of Nigeria Ltd (1987) 1 SC 137**; **Gen. Muhammadu Buhari v. INEC (2009) ALL FWLR (Pt.459) 419**, and urged the Court to exercise its discretion in favour of the Applicant and grant this application.

In opposition to the application, the Defendants/Respondents filed a 7 paragraphs counter affidavit deposed to by one Godwin Ogogo, a litigation clerk in the law firm of counsel to the Defendants/Respondents. The Defendants/Respondents averred that the matter reported at the Police Station in Kubwa was in 2016 and that this matter was filed same year by the parties, thereby abandoning the case at Kubwa Police Station.

They averred that it was only in June 2020 that the resident pastor of the Defendants was invited by the Police to appear at the Force Headquarters on the 18th June, 2020 by an invitation letter dated 11/06/2020 on a fresh criminal allegation reported by the Claimant during the pendency of this suit. They stated that the two documents dated 11th May, 2020 and 23rd July, 2020 which the Claimant now wants to rely on were prepared during the pendency of this case.

The Defendants/Respondents further averred that the documents in respect of which this motion is brought has been tendered before this Court as exhibit, which was the search report of the Claimant dated 11/1/2016.

Learned Defendants/Respondents counsel, J.O. Salawu, Esq, in his written address in support of the counter affidavit raised two issues for determination, namely;

1. Whether having regard to the principle laid down by the Supreme Court in **Ojiegbe v. Ubani (1961) 1 ALL NLR 277 at 280**, the Honourable Court can still grant the application without the consent of the Defendants/Respondents?
2. If the answer to the above is in affirmative; whether having regard to the circumstances of this case and the depositions before the Honourable Court, the application ought to be granted as prayed?

The learned counsel argued the two issues he raised jointly. He argued that an application to recall a witness to testify is almost always preemptorily refused; hence the inability of the Claimant/Applicant's counsel to cite a single suit in his address where an application to recall a witness was granted. Relying on **Ojiegbe v. Ubani (1961) 1 ALL NLR 277 at 280**, he posited that once parties have closed their respective cases, an application to recall a witness to testify can only be granted if the adversary does not oppose.

He contended that this Court cannot recall PW1 in this case to testify without the consent of the Defendants/Respondents, which consent, the Defendants/Respondents are withholding. He further referred to **Okoli&Anor v. Adol-Odiokpu&Ors (2016) LPELR-42106 (CA)**.

Learned counsel further argued that whereas the Evidence Act, 2011 contains provisions for calling of witnesses by the parties in litigation, no provision is contained in the Act for recalling of witnesses by any party after they have testified. He referred to **Okoli&Anor v. Adol-Odiokpu&Ors (supra)**.

On the principles applicable in relation to the calling or recalling of witnesses either by a judge or a party, he referred to **Israel v. Oruruo&Ors (2017) LPELR-42484 (CA)**.

He urged the Court in conclusion, to dismiss the application with substantial cost.

Replying on points of law to the Defendants/Respondents' counter affidavit, learned Claimant/Applicant's counsel relied on **Okpata v. Obo (1960) SC NLR 103 at 105** to reiterate that the reason for the Applicant's application is to place before the Court all the necessary facts that would enable a just decision to be reached in the matter.

Placing further reliance on **Omoriegie v. Lawani (supra)** he submitted that a Court can at any stage before judgment allow a party to re-open its case and recall any witness so long as it is to meet with the justice of the case or to do substantial justice.

Learned counsel posited that the era of technicality is gone and justice demands that matters before the Court be treated in such manner as to arrive at substantial justice, provided all parties are treated fairly.

This application to amend her statement of claim was filed by the Claimant/Applicant after she had closed her case on the 21st of January, 2020 and the case was adjourned for the Defendants to open their defence.

According to the Defendant/Applicant, the reason for this application is to plead and tender a Police report which will help the Court to resolve the controversy in issue in this matter.

The law is trite that an application for amendment of pleadings can be granted at any time in the proceedings before judgment

if it is in the interest of justice to do so. See **melifonwu v. Egbunike&Ors (2000) LPELR-6828 (CA)**.

The Supreme Court has also held that amendment to pleadings may be granted at any stage of the proceedings for the purpose of determining the real issues in controversy between the parties. Thus in **Mamman v. Salaudeen (2005) LPELR-1833 (SC)**, the Supreme Court, per Onnoghen, JSC, held that:

“Generally speaking, the law is that amendment to pleadings for the purpose of determining the real issues in controversy between the parties ought to be allowed at any stage of the proceedings, including on appeal, unless such amendment will result in injustice or surprise or embarrassment to the other party, or the applicant is acting malafide, or by his blunder, the applicant has done some injury to the respondent which cannot be compensated by way of costs or otherwise...”

In short, a consideration of an application for leave to amend pleadings involves the exercise of discretion by the Court, and it is the law that in exercising that discretion, the Court must not only act judicially, but also judiciously. The discretion is therefore to be exercised so as to do what justice and fair play may require, having regards to the facts and circumstances of the particular case.”

Evidently, even though an application to amend pleadings may be granted at any stage of the proceedings, such exercise of the Court’s discretion is not done as a matter of course. Apart from ensuring that the amendment sought is for the purposes of determining the real issues in controversy between the parties, there are other vital factors which the Court must take into

consideration when considering an application to amend pleadings. The holden of the Court of Appeal on this is reproduced here. Thus in **Aworokin&Ors v. Adeniran (2011) LPELR-8595 (CA)**, the Court of Appeal, per Tsammani, J.C.A. held that;

“The primary consideration should always be whether the amendment sought is for the purpose of determining in the existing suit, the real question or questions in controversy between the parties. It is now settled that however negligent or careless the slip may have been, it should be allowed, so long as it can be done without injustice to the other side and the other party can be assuaged by that panacea which heals every sore in litigation, namely, costs. An amendment should also be granted unless it will entail injustice to the Respondent, or the Applicant is acting mala fide. Conversely, an amendment will not be granted where it is immaterial or if it is to introduce fraud or defence of justification for the first time, or to set up a claim that is statute barred or will result in a new cause of action which did not exist on the date of the issue of the Writ....

Thus in considering an application for amendment, the Court will take into consideration the following factors:-

- a) The attitude of the applicant;***
- b) The reason and nature of the application;***
- c) The time factor in relation to the suit;***
- d) The stage at which the amendment is sought;***
- e) All other surrounding circumstances.”***

As stated above in this ruling, the reason for the amendment sought by this application is to enable the Applicant plead and tender an alleged Police report. The Applicant averred that she had pleaded in paragraph 16 of her amended statement of claim that she reported the unlawful demolition of her development on the land in issue to the Nigeria Police Force and that investigation was then ongoing. That the said investigation has now been concluded and the Police issued its report, hence the need to tender same in evidence before this Court. The purported Police reports were exhibited on this application by the Applicant.

In considering the reason and nature of the amendment sought in this application, as well as other surrounding circumstances of this case, this Court cannot escape the following observations:

- i. Although the Claimant/Applicant pleaded facts in paragraph 16 of her amended statement of claim to the effect that she reported the alleged unlawful demolition of her fence to the Police Station at Kubwa, the question of Police report was never an issue between the parties in the case before this Court.
- ii. Considering the fact that the Claimant/Applicant had closed her case at this stage, it is notable that the issue of Police report was neither pleaded by the Claimant, nor same elicited from the cross examination of the PW1 or any of the Claimant's witnesses.
- iii. The alleged Police reports sought to be pleaded and tendered by the Claimant/Applicant are in fact not Police reports. They neither emanated from the Police, and being correspondence from the legal services secretariat of the Federal Capital Territory Administration, they were not addressed to the

KubwaPolice Station where the Claimant/Applicant incidented the matter before the commencement of this suit. The said correspondences cannot by any stretch of imagination, be described as or assumed to be Police reports in relation to an allegation of a demolition of fence.

Again, since the documents attached to this application as the reason for seeking the amendment of the Claimant/Applicant's statement of claim is radically different from the documents described in the application and the proposed amended statement of claim, this Court considers the amendment sought by the Applicant as immaterial as the said documents, given the state of the proposed amendment, would be inadmissible in evidence. A grant of this application will therefore, serve no purpose other than to waste the precious judicial time of this Court.

No amendment in any form would be allowed if the outcome will entail surprise and cause embarrassment to the other party. That is exactly the outcome of this application. What is paramount in my mind now is to ensure that justice is meted to all the parties. I would not allow the Applicant to take advantage of the Respondent.

The proposed amendment willnot have the effect of correcting any slip or error in the Claimant/Applicant's pleadings, neither will it aid the Court in determining the real issues in controversy between the parties. The said application is therefore refused and same is accordingly dismissed.

HON. JUSTICE A. O. OTALUKA
9/2/2021.