

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 20TH DAY OF JUNE, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/849/19
MOTION NO.:-FCT/HC/M/868/22

BETWEEN:

1) MERETUS GLOBAL PROJECTS NIG. LTD
2) CHUKWUEMEKA MICHEAL **...CLAIMANTS/
APPLICANTS**

AND

HENRY ISREAL OJIEH:.....DEFENDANT/RESPONDENT

EmanabasiOffiong for the Claimants.

AbubakarSadiq for the Defendant with Suleiman Musa for the parties sought to be joined.

RULING.

By a Motion on Notice dated and filed the 28th day of January, 2022, theClaimants/Applicants brought this application praying the Court for the following:

1. An Order for leave to amend the originating processes; Writ of Summons, Statement of Claim in the manner set out in the proposed Amended Writ of Summons and Statement of Claim attached to this application.
2. An order for leave to strike out the name of Chukwuemeka Michael as a party (2nd Claimant) in this suit.
3. An Order for leave to join Salimco Investment Nigeria Limited as a party (2nd defendant) in this suit.

Andfor such furtheror other order(s) as the Honourable Court may deem it fit to make in the circumstances.

In the supporting affidavit deposed to by one ObayemiOlolade, the Applicants averred that they, beingseised of the original allocation documents of Plot 1875, SabonLugbe East Extension Layout, Abuja, filed a suit against the Defendant who trespassed into the said Plot. That upon further research and while going through the originating processes, they realized that there is need to add the name ofSalimco Investment Nigeria Limited, as a suit was filed by the said Salimco Investment Nigeria Limited with respect to the same subject matter in a different Court, in Suit No. CV/1769/2020.

The Applicants averred that following this realization, they applied to the Honourable Chief Judge to transfer the suit to where the instant suit was pending, following which they applied by Motion and had the suit transferred on 14/12/21.

They stated that Salimco Investment Nigeria Limited has also trespassed and invaded into the said Plot 1875, SabonLugbe East Layout, with trucks; crashed the Claimants' entrance gate and dropped a container on yet to be developed part of the plot, hence the need to reflect these facts as part of the Claimant's pleadings.

In his written address in support of the application, learned Claimants/Applicants' counsel, E.R. Opara, Esq, raised a lone issue for determination, namely;

“Whether the applicant is entitled to the reliefs sought on the face of the motion paper?”

Arguing the issue so raised, learned counsel referred to Order 25 Rules 1 and 2 and Order 43 Rules 1 and 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018 as providing for amendment of originating processes and pleadings before the Court.

He further referred to Order 13 Rules 4 of the Rules of this Court as making provision for the joinder of any person as a defendant.

He posited that the Court is enjoined to act judicially and judiciously in exercising its discretion to grant or refuse this application.

He urged the Court to allow the joinder and amendment of the originating processes as same is brought in good faith and is intended to bring out the real parties and issues between the parties before the Court.

The Applicants also filed a further affidavit in support of the motion on notice, wherein they averred that after filing the motion on notice, they were availed with a copy of the enrolled order transferring Suit No. FCT/HC/CV/1769/2020 between Salimco Investment Nigeria Limited v. Meretus Global Project Nig. Ltd & Anor. They averred that contrary to the deposition of the Respondent in his counter affidavit, that striking out the name of the 2nd Claimant will not change the character of this suit.

In opposition to the application, the Defendant/Respondent filed a 44 paragraphs counter affidavit wherein he averred that the Claimants/Applicants did not obtain an order from the Chief Judge of the High Court of the Federal Capital Territory before Suit No. FCT/HC/CV/1769/2020 was transferred to this Court.

He stated that it is only the Chief Judge of the Federal Capital Territory High Court that has the right to transfer a suit where actions are pending before different Judges.

The Defendant/Respondent averred that the proposed amendment of the originating processes introduced fresh action which did not exist at the time of filing the original writ, and that

the proposed amendment would change the nature and character of the entire suit. That in the original Writ, the Claimants traced their root of title to one PopoolaSesan Peter whereas in the proposed amendment, the Claimants turned around and traced their root of title to Mope Foundation Ltd.

Learned counsel for the Defendant/Respondent, Ikenna C. Okolie, Esq, in his written address in support of the counter affidavit raised two issues for determination, namely;

1. Whether granting this application will constitute abuse of Court process?
2. Whether the proposed amendment introduced new and fresh cause of action?

Proffering arguments on issue one, learned counsel contended that the Claimants/Applicants instituted the same action simultaneously while the Defendant already instituted an action in respect of the same right and subject matter before the FCT High Court 11, Jabi, Abuja. He argued that the grant of the instant application in the circumstance will therefore, amount to an abuse of Court process.

He referred to **Central Bank of Nigeria v. Saidu H. Ahmed &Ors (2001) 5 SC (Pt.11)146** and **Edjerode v. Ikin (2001)12 SC (Pt.11)125** on what constitutes abuse of Court process.

On issue two, learned counsel contended that the proposed amendment by the Applicants introduced fresh cause of action which did not exist at the time of filing the original process. He argued that the amendment is intended to change the character or nature of the case before the Court. He referred to **World Gete Ltd v. Sen. Bargo (2000)4 NWLR Pg 654 at 669;Odadiyi v. Sunglass Co. Ltd (1994) 1 NWLR (Pt 321)433,** and urged the Court to refuse the application.

The Rules of Court allows parties to amend their pleadings in order to bring the real issues between the parties into focus. An application for amendment of pleadings is however, not granted as a matter of course.

Being an exercise of judicial discretion, an applicant for leave of Court to amend pleadings must satisfy the Court that he is entitled to the exercise of the Court's discretion in his favour. In **Ologunleko v. Ogunneyehun (2008)1 NLWR (Pt.1068)397 at 420**, the Court of Appeal, per Gumel, JCA, held that:

“...the nature and consequence of the particular amendment sought will determine the exercise of the Court's discretion whether or not to grant leave to amend.”

In this application, the Applicants are seeking the leave of this Court to amend their processes by striking out the 2nd Claimant and joining Salimco Investment Nigeria Limited as the 2nd Defendant. A Claimant can withdraw, retract, erase or refrain from continuing a suit. Relief 2 seeks to strike out the name of the 2nd Claimant and thus end the suit against the 2nd Defendant. Claimant has every right to so do. Therefore reliefs 1 and 2 are granted.

Regarding the party sought to be joined as the 2nd Defendant, the basis for which it is sought to be joined is that Suit No. FCT/HC/CV/1769/2020 in which the said Salimco Investment Nigeria Limited is the Claimant, was allegedly transferred to this Court and that since the subject matter of the said suit is the same as the instant suit, the Applicants thus desire to join the said party to the instant suit as the 2nd Defendant.

The greatest flaw bedevilling this application is that the suit allegedly transferred to this Court, on the basis of which this application was brought, is not before this Court. This Court is

not seised of the said Suit No. FCT/HC/CV/1769/2020 or any order of the Chief Judge of this Court transferring the purported suit to this Court.

The Claimants/Applicants in their further affidavit in support of this application exhibited a purported order of my lord Justice A.S. Adepoju, allegedly transferring the said suit to this Court pursuant to a Motion on Notice filed by the Applicants' counsel. The Respondent alleged that the purported order was fraudulently obtained.

Furthermore, the rules of High Court Federal Capital Territory only empowers the Honourable Chief Judge to transfer matters ordinarily and for consolidation to various Courts. A Judge of coordinate jurisdiction has no power to transfer a matter to another coordinate Court of the same jurisdiction. I would therefore, refuse to grant relief 3 until the necessary procedure for transfer is complied with.

Accordingly relief 1 and 2 are granted, relief 3 refused and struck out.

HON. JUSTICE A. O. OTALUKA
20/6/2022.