

**IN THE HIGH COURT OF JUSTICE OF THE
CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/2991/2020

BETWEEN:

OBI CHIEDOZIE NWAKOR ESQ.....CLAIMANT/APPLICANT

VS

FIDELITY BANK PLC.....DEFENDANT/RESPONDENT

RULING

By a Motion on Notice dated 30/8/2021 but filed on 30/8/21, with Motion No: M/5390/2021, brought pursuant to Order 25 Rule (1) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court. The Claimant/Applicant prays the court the following relief;

- (1) An Order of this Honourable Court granting leave to the Claimant to amend his Statement of Claim particularly Paragraphs 12 and 18 as highlighted in the Proposed Amended Statement of Claim.
- (2) And the Omnibus relief.

The Motion is supported by a Ten (10) Paragraphs affidavit with one Exhibit attached and marked Exhibit "A", deposed to by one Ruth Gideon a Litigation Secretary in the Law Firm of Claimant/Applicant's Counsel. Also filed a Written Address and adopts same in urging the court to grant the reliefs.

Opposing the application, Defendant/Respondent filed on 17/9/2021 an Eleven (11) Paragraph Counter-Affidavit deposed to by one Aneke Vivian a Process Secretary in the Law Firm of Defendant/Respondent's Counsel. Also filed a Written Address and adopts same as oral argument in urging the court to refuse the application.

In the Written Address of Applicant, Applicant's Counsel submits that the court has the unfettered power to grant an application for amendment at any stage of the trial even before Judgment, once it is in the interest of Justice. Submits that the Applicant seeks amendment in line with the principle of amendment which aims at making it possible for the court to determine the issue between the parties. Refer to Order 25 Rule 1 of the Rules of Court. *Eyo Eta & Anor Vs Dazie* (2013) 2 – 3 SC (PT. 111) 115 @ 137 and *Akaniwo & Ors Vs Nsirim & 3 Ors* (2008) 1 SC (PT. 111) 151.

Submit finally that it will be in the best interest of justice for the court to grant this application given the part of the pleadings sought to be amended and the nature to the amendment and the Respondent will not be prejudiced in any way.

In the Written Address of Defendant/Respondent Counsel for the Respondent formulated a sole issue for determination that is;

“Whether the Claimant complied with the conditions for the grant of amendment”.

Relying on the case of *Tildesley Vs Harper* (1878) 10 Ch.D 393 stated the principles for the grant or refusal of amendment of pleadings that is; an application to amend can be refused if the purpose of the proposed amendment is to eliminate Statements which may tend to prejudice embarrass, or delay the trial of the suit and not for the purpose of determining the real question or questions in controversy between the parties in the suit.

Submits that the intent of this application is to present documents through the back door as the Statement of account is at the verge of rejection, and the Paragraph 18 of the further amendment will change the narrative of this suit.

Submits further that the parties having exchanged pleadings, it will amount to an infringement or injustice to allow amendment of pleadings since the Claimant has closed his case. Refer to Order 15 Rule 19 of the Rules of Court.

Submits that this application should be refused as Applicant acts malafide. Refer to *Amadi Vs Thomas Aplin & Co. Ltd* (1970) INLR 409 *Tildesley Vs Harper* (1878)10 Ch.D 393. *Chief Adedapo A. & Anor Vs Chief O.B Akin Olugba* (1987) 6 SC 268 @ 280 – 281.

Submits finally that the ground for amendment does not form the nature that will aid this court in the determination of the issues in contention, the

application is brought in bad faith therefore urge court to refuse the application.

While adumbrating in opposition to the application, Respondent's Counsel submits that the affidavit of the Applicant is incompetent as same is not in compliance with Section 13 of the Oath Act. Refer to *Nasiru Vs INEC* (2020) 16 NWLR (PT. 1751) 1416 @ 441 Para E – G urge court to strike out the Motion.

Replying on points of law, Claimant/Applicant's Counsel submits that the omission of the word "Solemn" does not make the affidavit defective refers to Section 113 of the Evidence Act. Submits further that Paragraphs 5 (a) – (d) of the Counter-Affidavit of the Respondent contravenes the Provisions of Section 115 (2) of the Evidence Act as they are all arguments and conclusion. Refer to the case of *Bamiye Vs State*.

Responding on point of law Respondent's Counsel urge court to discountenance the submission on law by Claimant's Counsel that their Counter-Affidavit is in compliance with Section 115 (2) of the Evidence Act. Refer to *Abiodun Vs C. J. Kwara State* (2007) 18 NWLR (PT. 1065) 109.

Having carefully considered the affidavit evidence, the submission of both Counsel for and against the grant of the reliefs sought by the Applicant as well as the judicial authorities cited the court finds that two (2) issues calls for determination that is;

- (1) Whether the affidavit in support of the application is competent.

- (2) Whether the Applicant has made out ground so as to be entitled to the relief sought.

On the issue one above, that is whether the affidavit in support of the application is competent. Respondent's Counsel raised the issues competency of the Applicant affidavit to support of the application contending that it failed to comply with Section 13 of the Oath Act which requires that every voluntary declaration conforms with the form set out in first schedule of the Oath Act.

I have taken a look at the form of affidavit prescribed in the first schedule of the Oath Act vis-à-vis the affidavit in support of this application. I find that the defect observed by the Respondent's Counsel is in the form and not the substance of the affidavit. In any case, the court has been admonished severally to look at the substance and not to rely on the form in doing justice otherwise it would be tantamount to dwelling on technicality. Again Section 113 of the Evidence Act empowered the court to accept it as proper notwithstanding that it is defective in form when the court is satisfied that it has been sworn before a person duly authorized. It is the firm view of the court that although the affidavit in support of the application did not conform to the form of Oath, prescribed by the First Schedule by the First Schedule of the Oath Act pursuant to Section 13 of the Act, the affidavit having been sworn before a Commissioner of Oath of this court is therefore allowed to be used in conformity with Section 113 of the Evidence Act. Therefore the objection as to its competency is hereby dismissed.

On the Second issue that is, whether the Applicant has made out a ground so as to be entitled to the relief sought, first it is observed that, Paragraphs 5 (a), (b) (c) (e) (f) 10 of the Counter-Affidavit of the Respondent contains conclusion, legal argument and conclusion contrary to the Provisions of Section 115 (2) of the Evidence Act and are hereby strike out. The court will therefore not place reliance on the said Paragraphs of the Counter – Affidavit in reaching its decision.

The grant or otherwise of an application of this nature falls within the discretion of court, which the court is enjoined to exercise judicially and judiciously. See NDIC Vs Globus Ent. Ltd (2011) 3 NWLR (PT. 123) 74 @ 84. The principles which guides the court whether or not to grant the prayers of the Applicant was set out in the case of Adekanye Vs Grand Services Ltd (2007) All FWLR (PT. 387) 855 @ 857 Ratio 1 and they are;

- (a) The court must consider the materiality of the amendment sought and will not allow an inconsistent or useless amendment.
- (b) Where the amendment would enable the court to decide the real matter in controversy and without controversy.
- (c) Where the amendment relates to a mere misnomer, it will be granted almost as of course.
- (d) The court will not grant an amendment where it will create a suite where none existed.
- (e) The court will not grant an amendment to change the nature of the claims before the court.

- (f) Leave to amend will not be granted if the amendment would not cure the defect in the proceedings.
- (g) An amendment would be allowed if such an amendment will prevent injustice.

The Applicant in this instant case states in Paragraph 4,5,6,7 of the affidavit in support of the application, that it is to ensure that the real issues in controversy between the parties are brought before the court. On the other hand, respondent contends that the grant of this application can entail injustice. I have taken a considered look at the competing claims of the parties, this amendment sought in my view is in line with the guideline stated above, more so when the Respondent failed to state facts to sway the court that the grant of the application will occasion injustice. Moreover, Order 25 Rule 1 of the Rules of Court permits a party to amend pleadings not more than twice during trial but before the close of the case. Applicant is seeking leave for the first time during trial and is yet to close his case thus is entitled to amend his pleadings. Respondent's reliance on Order 15 Rule 19 cannot avail her as closing of case and joining issues upon exchange of pleadings are separate matters and not applicable in this application for amendment.

From all of these and having found that the Applicant is within the prescribed limits for amendment of pleadings and having satisfied the guiding principles for the grant of amendment this court is satisfied that this application for amendment should succeed as the court find it not overreaching or capable of occasioning injustice on the

Defendant/Respondent as she has liberty to react to the amendment. Accordingly the application is allowed as prayed. It is hereby ordered as follows;

- (a) Leave is hereby granted to the Claimant to amend his Statement of Claim particularly Paragraph 12 and 18 as highlighted in the Proposed Amended Statement of Claim.
- (b) The Defendant is at liberty to react to the Amended Statement of Claim served on her within time permitted by the Rules of Court.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

26/4/2022

APPEARANCE:

OBI .C. NWAKOR APPEAS FOR HIMSELF

SIMEON C. JOHN WITH .T.T ADEDIBA FOR THE DEFENDANT