

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT HIGH COURT MAITAMA –ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**

**COURT NUMBER: HIGH COURT NO. 32**

**CASE NUMBER: SUIT NO. FCT/HC/CV/2757/2012**

**DATE: 15<sup>TH</sup> JULY, 2021**

**BETWEEN:**

**MR. BENJAMIN ORAJIAKU .....CLAIMANT**

**AND**

**1. HON. MINISTER OF FEDERAL CAPITAL TERRITORY**

**2. FEDERAL CAPITAL DEVELOPEMNT AUTHORITY**

**3. ZACKSON LIMITED .....DEFENDANT**

APPEARANCE

Chinedu Udora Esq with Samuel Osayande Esq for the Claimant.

Julius Agu Esq for the Defendant.

**RULING**

By a Motion on Notice dated 9/2/2021, and filed same day, brought pursuant to Order 13 and 25 of the High Court of the F.C.T Civil Procedure Rules (2018) and under the inherent Jurisdiction of this Honourable Court; the Claimant/Applicant prayed this Honourable Court for the following reliefs:-

1. AN ORDER of the Court substituting the name of Mr. Benjamin Orajaku with Mrs. Justina Ugonwa.
2. An Order of the Court granting leave to the Claimant/Applicant to amend the Writ of Summons, statement of Claim, witness statement on Oath and all other originating processes in this suit in the manner as shown in the proposed amended statement of Claim and witness statement on Oath attached herein as Exhibits B1, B2, B3, B4, and B5.
3. AND FOR SUCH FURTHER ORDER as the Honourable Court may deem fit to make in the circumstance of this case.

The Application is supported by an Affidavit of 8 paragraphs deposed to by Samuel Oyasande, Esq a legal practitioner in the Law firm of Clemesis Associates, the law firm representing the Claimant/Applicant in this suit; annexures marked Exhibits A, B,1 B2, B3, B4 and B5, as well as a written address dated 9<sup>th</sup> day of February, 2021.

Meanwhile, in opposition to this Motion on Notice, the Defendants/Respondent filed a Counter Affidavit of 12 paragraphs deposed to Julius Agu Esq, the principal partner in the law firm of J. O. Agu & Associates representing the Defendants in this suit. Also in support is a written address dated 18<sup>th</sup> day of June 2021.

Meanwhile, in response to the Counter-Affidavit, the Claimant/Applicant filed a further and better Affidavit deposed to by Nasiru John, a Litigation Clerk in the law firm of Chinedu G. Udora & Co, the law firm representing the Claimant/Applicant in this suit. The said further and better Affidavit and reply on points of law are both dated 20/6/2021 and 21/6/2021 respectively.

In the written address in support of this Application, Learned Claimant/Applicant's Counsel formulated a lone issue for determination to Wit:-

***"Whether the Applicant is entitled to the grant of this Application?"***.

In arguing the issue, Learned Counsel relied on Order 13 Rule 2 of this Court's Rules 2018 to argue that the Court has power to make an Order for substitution of the name of the Claimant with another where an action has been commenced in the name of a wrong person. Leaned Counsel relied on the case of **UNA V ATENDA (2000) 1 NWLR (PT. 656) 244** and also referred the Court to paragraph 4 C and D of Applicant's Affidavit, as well as Exhibit A attached thereto.

On the second relief sought for, Learned Counsel referred to the provision of order 25 Rule 1 of the Rules of this Court 2018, on where the Court may allow a party to amend his Originating Process and pleadings at any time before pretrial-conference and not more than twice during the trial but before the close of the case.

Submitted that the law is trite that amendments can be made at any stage of a case even on appeal. Counsel cited the case of **OLOTU V ATTORNEY**

**GENERAL (1975) SSCNLR P 375; DIAMOND BANK LTD V UGOCHUKWU (2008)1 NWLR (PT. 1067) 1** at pp. 36-37, H-F, per Rhoder Vivour JCA as he then was; **AKININWO V NSIRIM 92008) 9 NWLR (PT. 1093) 439.**

Submitted that trial has not yet commenced in this matter hence the Defendants/Respondents will still have the opportunity to respond to the amended Originating Summons.

Learned Counsel further referred the Court to the Case of **OJAH & ORS V OGBONI & ORS (1976) NWLR, 95.**

Submitted, that this action was commenced in the name of a wrong party and that the reliefs sought in this action needs to be amended to bring the real issues for determination in this suit. Counsel placed reliance on the case of the **REGISTERED TRUSTEES OF THE AIRLINE OPERATORS OF NIGERIA VS NAMA (2014) LPELR-22372 CCA.**

Finally, Learned Counsel urged the Court to grant the Application as prayed.

Meanwhile, in the written address of the Defendants/Applicants a sole issue for determination was also formulated to wit:

***"Whether giving the facts and circumstances of this case vis-à-vis the weighty defence filed by the Defendants in their joint statement of defence, the grant of this Application is not brought in bad faith to occasion injustice to the Defendants?"***

In arguing the issue, Learned Respondent's Counsel submitted that although orders 13 and 25 of this Court's Rules allows such amendments

sought for by the Applicant, the grant of this Application has conditions attached to it, as pronounced by our appellate Courts.

That in the instant case, the Applicant chose to file this Application only after the Defendants had filed their statement of defence whereof weighty denials were made of not knowing the person of the Claimant. Reference was made to paragraphs 3 and 4 of the Respondent's Counter Affidavit.

Submitted that this Application is brought in bad faith which will occasion injustice to the Defendants if granted. Reliance was placed on the case of **EGWA V EGWA (2007) 1 NWLR (PT. 1014) 81, Ratio 22; OJAH V OGBONI (1976) 1 NWLR 95, at 96, C-D.**

Submitted moreso that the Claimant in his blunder brought the wrong Claimant to Court which the Defendants pointed out in their joint statement of defence after the close of pleadings. That the only option left to the Claimant is to file a reply and not to bring an Application to cure the ills of his blunder. Reference was made to paragraphs 5, 6, 8, 9, 10 and 11 of their Counter Affidavit.

That this matter commenced since 2012 and this Application will if granted occasion injustice to the Defendants since there must be an end to Litigation.

That the Claimant is at liberty to file a new Writ of Summons in the name of a new Claimant against any of the Defendants if he so wishes.

The Court is urged to exercise its discretion judicially based on the peculiar facts of the case that the exercise of discretion by one Court is not a precedent for a subsequent case. Reference was made to the case of **BANKOLE VS DADA (2003) 11 NWLR (PT. 830)** at page 184 Ratio 11.

Submitted moreso, that the exercise of this discretion weights in favour of the Defendants who were brought to Court by a wrong Claimant.

In conclusion, Learned Counsel urged this Court to dismiss this Application and the entire Suit.

Now, I've carefully considered this Application, the reliefs sought, the supporting Affidavit and the Exhibits attached therewith as well as the written address in support.

likewise, I've given due consideration to the Counter Affidavit of the Respondent and the written address in support of same.

In the same vein, I've also considered Applicant's further and Better Affidavit and the reply on points of law.

Therefore, in a bid to determine this Application, I shall adopt the sole issue formulated by the Applicant for the consideration of this Honourable Court.

The Applicant in the supporting Affidavit has clearly laid out facts grounding reasons for this Application particularly in paragraph 4 thereof.

Among the grounds highlighted is that the substitution sought for is that Mr. Benjamin Orajiaku is not the proprietor of Nasen Ventures and the suit was wrongly commenced in his name. That the proprietor of Nasen Ventures is one Mrs. Justina Ugonwa, as shown in the CAC form 2 of the Nasen Ventures attached as Exhibit A, hence the need for the said substitution sought for by the Applicant in this suit, as well as to amend the reliefs sought in this suit in order to bring to fore, the real issues for determination before this Honourable Court. Applicant has also attached

the proposed amended Originating processes i.e Exhibits B1, B2, B3, B4 and B5 respectively.

In addition it is averred that Defendants/Respondents will not be prejudiced by the grant of this Application.

Meanwhile, in the Counter-Affidavit of the respondents, it is averred that Claimant had earlier on 13/10/2020 sought and obtained leave of this Honourable Court to make an amendment after this suit commenced Denovo on the same date. That same was met with no objection from the Defendants. That it was only when Claimant realized his blunder through the joint statement of defence of the Defendants that he seeks to make the amendments and that Defendants will be highly prejudiced, if this Application is granted. Please see paragraphs 6, 8 and 10 of the Counter Affidavit.

In the further and Better Affidavit, Claimant avers in paragraph 4 (b) (v) and (vii) thereof that Claimant is within his right to bring this Application rather than to file a reply and that Respondents will not be prejudiced if the Application is granted as they will still have the opportunity to respond to the new amended statement of Claim.

Now order 13 Rule 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 provides.

***"Where an action has commenced in the name of the wrong person as Claimant or where it is doubtful whether it has been commenced in the name of the right Claimant, the Court may order the substitution or addition of any other person as Claimant on such terms as may be just".***

Likewise, order 25 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 provides:-

***"A party may amend his originating process and pleadings at anytime before the pre-trial conference and not more than twice during the trial but before the close of the case".***

This matter commenced DENOVO on the 13<sup>th</sup> of October 2020 and from the records of the Court, trial is yet to commence.

It is therefore worthy of note that the amendment sought by the Applicant is no doubt allowed under the Rules of this Honourable Court earlier reproduced.

However, the Court has to consider whether in allowing the amendment, the Defendants will be prejudiced in any way.

On this premise, please see the case of **ASHCO NIG. LIMITED V WARD AND GREED (2010) 3 NWLR (PT. 1181) 302, 32, B.**

Therefore, amendment of pleadings can only be refused if it will overreach the other party and thereby occasion injustice to the other party as held in the case of **EGWA V EGWA (2007) 1 NWLR (pt. 1014) 71, 96, C-D.**

In any event, it is trite law that purpose of amendment is to enable the Court to determine the real question or issue in controversy between the parties.

In the case of **MOBIL OIL V NABSON & CO. (1995) 7 NWLR (PT. 407) 236**, the Court held as follows:-

***"In the exercise of its discretion as to whether or not to grant an amendment of pleadings, what should guide the Court is that an amendment of pleadings for the purpose of***

***determining the real questions in controversy between the parties, ought to be allowed unless such amendment will entail injustice or surprise or cause embarrassment to the other party or where the Applicant is acting malafide or where it will cause injury to the Respondent which cannot be compensated by cost is to decide the rights of the parties, and not to punish them for mistakes which they make in the conduct of their rights.....”***

Likewise, in the case of **RAYMOND EZE V BETRAM ENE & NOR (2017) LPELR- 41916 (SC)** page 19-21, Ogunbiyi JSC held at paras F.A inter alia:-

***“.....Relevant to this appeal is to determine the nature of the amendment sought of all parties. It follows therefore that an amendment which will serve the interest of the Justice of the case is beneficial to all parties and should be allowed and granted.....”***

Now, upon careful consideration of the facts in this case vis-à-vis grounds predicating this Application, it is my considered opinion that Applicant ought to be allowed to substitute name of the Claimant. I do not believe that Respondents will be prejudiced in any way if the Application is granted since trial is yet to commence and all the proposed amended processes have been laid bare for the Defendants to peruse before filing their own process i.e statement of Defence.

However, it must be born in mind that the Defendants through no fault of theirs will be made to incur more expences should the Court rule in favour

of the Applicant. The Defendants will have to file their own consequential amendments all due to the blunders of the Plaintiff.

Therefore, the Rules of this Court provide for a remedy where an amendment is sought by one party to cover for any inconveniences the other party might suffer.

On this premise, I refer to order 25 Rule 2 of the Rules of this Court 2018 which provides thus:-

***"Application to amend supported by an Affidavit Exhibiting the proposed amendment. May be made to the Court and may be allowed upon such terms as to costs or otherwise as may be just".***

Consequently therefore, having considered this Application, I am satisfied that the Claimant/Applicant has made out a case to be entitled to the reliefs sought. The sole issue is resolved in favour of the Claimant/Applicant.

However, in the interest of Justice I award the sum of ₦20, 000 Cost as just terms in favour of the Defendants/Respondents in accordance with Order 25 Rule 2 of the Rules of this Court 2018.

Signed

***HON. JUSTICE SAMIRAH UMAR  
BATURE.***

15/07/2021.

