

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 22

CASE NUMBER : SUIT NO: CV/1689/2020

DATE : THURSDAY 28TH JANUARY, 2021

BETWEEN

SENATOR SIMON SULE AJIBOLA } **PLAINTIFF/
APPLICANT**

AND

1. SHOLYMENT OLUSEGUN OLUSOLA
2. OPERA NEWS HUB (Publisher of Opera News Online Outfit)
3. MR. ISAAC OMOGBENLE ADEYEMI } **DEFENDANTS/
RESPONDENTS**

RULING

This Ruling is at the instance of Plaintiff/Applicant who approached this Honourable Court for an Order and/or Leave of this Honourable Court granting leave to the Plaintiff/Applicant to amend his writ of summons in the manner and form as reflected in the schedule of amendment mark as Exhibit “B” attached to the application to wit to now read as follows:

In the Abuja Judicial Division Holden at Abuja.

In support of the application is an affidavit of 17 paragraph duly deposed to by one Q.A Salaudeen Esq., a counsel in the Law Firm of the Plaintiff/Applicant.

It is the deposition of the Applicant that a writ of summons was filed in the Registry of this Honourable Court on the 1st June, 2020 vide Exhibit “C”.

That the writ of summon, statement of claim and other processes were properly prepared and carry the heading of this Honourable Court but in the process of reprinting the front page of the writ there was an error in the heading of the writ occurred and that what is to be corrected by this amendment is as contained in Exhibit “B” herein.

Applicant avers that the Honourable Court has ordered the issuance of the writ and service of same on the Defendants outside the jurisdiction of this Honourable Court.

That it will be in the interest of justice to grant this application.

A written address was filed wherein a sole issue was formulated for determination to wit;

Considering the facts and circumstances of this case, whether this Honourable Court should exercise its discretion in favour of the Plaintiff/Applicant by granting this application.

Arguing on the above, learned counsel submit that a court of law will grant an amendment to avert injustice that could manifest in a situation where amendment is necessary. ***ADEWUMI VS ATTORNEY GENERAL OF EKITI STATE (2002) FWLR (Pt. 92) 1835 at 1862 Paragraphs B – D.***

Learned counsel submit that the heading or title of a suit/document does not and cannot affect the merits

of a case or a document. ***GAABA VS LOBI BANK (NIG.) LTD (2003) FWLR (Pt. 173) 106.***

Counsel further refers the court to the case of ***AKPAN VS STATE (1999) 6 NWLR (Pt. 248) 451*** wherein the court held that; blunders must take place from time to time, and it is unjust to hold that because a blunder has been committed, the party blundering is to incur the penalty of Not having the dispute between him and his adversary determined upon the merit.

Court was urge to grant this application.

Upon service, the Defendants' filed a counter affidavit of 8 paragraphs.

It is the counter affidavit of the Defendant that the application for the amendment filed before this Honourable court is incompetent as the Applicant

has already joined issue with the 3rd Defendant's application dated and filed on the 23rd of July, 2020 vide counter affidavit and written address dated and filed on the 10th of August, 2020.

That this application is made malafide as the writ of summons as filed by the Plaintiff/Applicant is incurably bad or defective as same cannot be amended.

A written address was filed wherein a sole issue to wit;

Whether the Plaintiff/Applicant can amend his writ of summon as presently constituted vide his application before this Honourable Court for amendment dated and filed on the 10th of August, 2020.

Arguing on the above, learned counsel submit that where a writ of summons is incurably bad, it cannot be amended and that where the writ of summons or a statement of claim is incompetent, the court will lack the jurisdiction to entertain the matter. ***YUSUF VS MOBIL OIL NIG. PLC (2019) 5 MJSC (Pt. 2) 53 at Page 71 – 72.***

Learned counsel cited Order 2 (5) which provides as this;

“Except in the cases in which different forms are provided in these Rules, the writ of summons shall be as in Form 1 with such modifications or variations as circumstances may require as in forms 33”

Learned counsel submit that, this writ never complied with Order 2 (5) above and therefore incurably bad.

It is further the submission of learned counsel that you cannot build something on nothing as a whole edifice will collapse. ***OWWERS VS ADENIJI (1993) 2 NWLR (Pt. 274) page 188.***

Court was urge to dismiss this application in the interest of justice.

The Plaintiff/Applicant filed a Reply affidavit of 8 paragraphs deposed to by Q. A Salaudeen Esq.

It is the reply of the Applicant that filing of an objection against the competence of the writ of summons does not bar the Plaintiff from applying to amend the writ of summons.

COURT:-I have gone through the affidavit in support of the reliefs herein contained on the face of the application in view, on one hand, and the counter affidavit in opposition to the application on the other hand.

Our adjectival law leans heavily in favour of amendments and is generally against the refusal of amendments.

Even where the pendulum tilts in favour of amendment, court of law are entitled to refuse amendment in deserving cases.

Trial courts must examine the application for amendment very carefully in the light of the affidavit evidence.

The peculiarity of each case shall be considered. See *AKANINWO VS NSIRIM (2008) 1 SC (Pt. 111) 151.*

It is established position of law that every opportunity must be afforded parties to a dispute in court to put their case fully before the court.

In a case conducted on the basis of pleadings, it certainly cannot be said that a Defendant has been allowed to put his case before the court when the opportunity to amend his pleadings has been denied him.

Refusal to allow a party amend his pleading certainly translates into refusing him the liberty to call the evidence which would have been necessary had the amendment sought being granted.

The consequence is denial to fair hearing. See *AKANINWO VS NSIRIM (2008) WRN (Vol. 20) 99 at 106 – 107, page 128 – 129, lines 40-5 CS.*

I however must be quick to mention that all cases are not the same. There are circumstances upon which application for amendment can be refused. The following are factors to be considered in granting or refusing an application for amendment.

- a. The attitude of parties.
- b. Nature of the amendment sought in relation to the suit
- c. The question in controversy
- d. The time application is made
- e. The stage at which it is made and
- f. All other relevant circumstances.

See ANAKWE VS OLADEJI (2008) 2 NWLR (Pt. 1072) 506 at page 550 – 521 paragraphs G-A.

The granting or refusal of amendment involves an exercise of discretionary power and such discretion must be exercised judicially and judiciously.

See OJEBODE & ORS VS AKANO & ORS (2012) LPELR - 9696

An Applicant therefore who seeks to be allowed to do an act which he omitted to do when he ought to have done it during the trial, has a duty to give reasons that are adequate and reasonable to explain his omission and or failure to do the act at the appropriate time during the said trial.

It is not sufficient for the wrong party to merely ask for the order of court to that effect.

Above position was espoused in the case of ***OJIEGBE & ANOR VS UBANI & ANOR (1961)*** ***ALL NLR 277 at 280.***

I must observe here that, in law to amend any legal process affords a party whether a Plaintiff or Defendant and even the Appellant or Respondent on appeal opportunity to correct an error in the legal document. Such correction can be made informally where the process is yet to be served. After service however correction of legal process may be effected, depending on the prevailing rules of court, either by consent of both parties or upon motion on notice, like the case in hand, such correction are commonplace. Amendment enables the blunders errors and inadvertence of counsel to be corrected, in the interest of justice, ensuring always that no injustice is occasioned to the other party. ***FIVE***

***STAR INDUSTRIES LTD VS BOI LTD (2013)
LPELR 22081 (CA).***

From the affidavit before the court, the Plaintiff/Applicant had filed this suit before this Honourable Court on a wrong heading. i.e in the High Court of Justice of Kwara State, in Ilorin Judicial Division, Holden at Ilorin.

I however must observe that the body of the writ itself was rightly captured to have been issued in the FCT High Court to be served in Ilorin, Kwara State, also the stamp of the Registrar of this Honourable Court and FCT seal were duly affixed on the said writ and other processes.

Similarly the statement of claims, witnesses statement on oath were all captured in the High Court of FCT.

This is a misnomer that this court can remedy.

My discretion as a judge is in favour of granting this application. Accordingly, same is hereby granted.

Justice Y. Halilu
Hon. Judge
28th January, 2021

APPEARANCES

Wahab Ismail – for the Plaintiff.

S.A Gene, I hold the brief of A.O Abubakar – for the
1st and 3rd Defendants.

2nd Defendant not in court and not represented.