

**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. 14**  
**CASE NUMBER : SUIT NO: CV/2309/2015**  
**DATE: : THURSDAY 2<sup>ND</sup> MAY, 2024**

**BETWEEN:**

**BASIC BLACK LIMITED ..... PLAINTIFF/APPLICANT**

**AND**

**1. EFAB PETROLEUM LIMITED** } **DEFENDANTS/**  
**2. ZAKHEEM CONSTRUCTION** } **NIG. LTD.**

**RESPONDENTS**

## **RULING**

This Ruling is at the instance of the Plaintiff/Applicant who approached this Honourable Court vide Motion on Notice dated 1<sup>st</sup> June, 2022 and filed 3<sup>rd</sup> June, 2022, praying the Court for the following reliefs;

1. An Order granting the Plaintiff/Applicant leave to amend its Statement of Claim in the manner formulated and underlined in RED in the Proposed Amended Statement of Claim attached to the affidavit in Support of this Motion as Exhibit "A".
2. An Order deeming the final and clean copy of the said Further Amended Statement of Claim which has been separately filed as properly filed and served the appropriate filing fees having been paid.
3. And for such further Order or other Orders as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the application is a 17 paragraph affidavit deposed to by Anthony Anyadike, managing Director and Chief Executive

Officer of the Plaintiff/Applicant. It is the deposition of the Plaintiff/Applicant, that in the course of trying to resolve the differences between the Plaintiff and the 1<sup>st</sup> Defendant certain resolution was reached. And that the said resolution was subsequently reduced into writing/agreement which Agreement was duly signed by the Agents of the Plaintiff represented by myself and our Secretary.

That late Engr. Marice Okoro also signed the said Agreement in their Lawyer's office in Benin and thereafter he took copies of the signed Agreement with him to Abuja to enable another Director to the 1<sup>st</sup> Defendant execute the said Agreement and return their copy to their Lawyer in Benin City, and that the said fully executed copy if the said Agreement did not get to their Lawyer as agreed.

That in his email message to 1<sup>st</sup> Defendant/Respondent dated the 13<sup>th</sup> day of June, 2015, which 1<sup>st</sup> Defendant downloaded on the 11<sup>th</sup> day of May, 2022; the said Engr. Marice Okoro explained why the fully executed copy of the said Agreement did not get to 1<sup>st</sup> Defendant/Respondent's Lawyer as planned. A photocopy of the said email is herein attached as Exhibit "AA".

That the fully executed Agreement and one of the copies of the said Agreement that was not fully signed by the 1<sup>st</sup> Defendant were tendered under cross-examination by the 1<sup>st</sup> Defendant/Respondent's Counsel as Exhibits "D2" and "D3" respectively, and that contrary to the contents of Exhibit "AA", the 1<sup>st</sup> Defendant/Respondent had labeled the fully executed Agreement as "doctored" in other words describing it as forged, and also that these additional facts sought to be introduced through Exhibit "AA" is to show that there was no forgery of any kind.

That there will be no additional evidence required to be led as both sides have led evidence relating to the issue of the authenticity of Exhibit "7", "D2" and "D3" in this proceedings, and that failure to tender Exhibit "AA" earlier is due to the inadvertence of the Plaintiff's counsel.

That this Court is also a fact finding Court and a Court of Equity, and that this amendment being sought to be made is meant to bring all material facts before this Honourable Court.

That the intended amendment is to enable this Honourable Court resolve all issues in controversy between the parties effectually and effectively, and that fresh evidence can even be raised at the Appellate Court.

That the Defendants/Respondents will not in any way be prejudiced by the grant of this application, and that the proposed Further Amendment Statement of Claim is herein attached as Exhibit "A". That it will be in the interest of justice to grant this application.

In line with procedure, written address was filed wherein sole issue was formulated for determination to-wit;

***"Whether in the general circumstances of this case, it is not just and equitable to grant the prayers being sought in this application?"***

It is the submission of learned counsel, that it is the right of a party to a case to amend its process as long as it does not occasion injustice to the opposing party. On this submission, counsel humbly rely on the cases of ***FALANA VS. OOLORO (2011) 34 WRN Page 170 Particularly at Page 184*** was cited.

Learned counsel further submits, that it is also trite law that an amendment can be granted at any time no matter how late if to refuse the application for amendment will cause injustice to the Applicant. On this submission, counsel relied on the case of ***PATRICK IZUAGBE OKOLO & ANOR VS. UNION BANK OF***

***NIG. LTD. (1999) LPELR – 2464 (SC) Page 22 Paragraphs C – D*** was cited.

Counsel concludes by urging this Honourable Court to answer the sole issue in the affirmative and grant this application in the interest of justice.

On their part, 1<sup>st</sup> Defendant/Respondent filed 19 paragraph Counter Affidavit deposed to by Edward Orisakwe, staff of the 1<sup>st</sup> Defendant. It is the deposition of the 1<sup>st</sup> Defendant/Respondent, that Plaintiff filed its Statement of Claim on the 2<sup>nd</sup> day of July, 2015, frontloaded the Agreement between the 1<sup>st</sup> Defendant and itself executed on the 5<sup>th</sup> day of May, 2015.

That it also annexed the Agreement in its Counter Affidavit filed on the 21<sup>st</sup> of April, 2016 in opposition to the 2<sup>nd</sup> Defendants/ Respondents Motion to strike out its name for misjoinder, and that in the Agreement only Maurice Okoro signed it on behalf of the 1<sup>st</sup> Defendant, and the second signature column was not signed by any of 1<sup>st</sup> Defendant's Directors.

That the 1<sup>st</sup> Defendant's witness Engr. Morris Okoro deposed to these facts in his Witness Statement of Oath filed on the 16<sup>th</sup> March, 2016, particularly paragraph 11, and that the aforementioned processes were filed during the dependency of

the Suit before the Late Honourable Justice Valentine Ashi (Deceased) Court.

That the Plaintiff/Applicant on being served with the 1<sup>st</sup> Defendant's Statement of Defense wherein it averred that the Agreement was not binding on it because it was not duly executed and sealed by its Directors, and that the Plaintiff/Applicant subsequently tendered an Agreement in which the second column was signed for the 1<sup>st</sup> Defendant/Respondent as Exhibit "6" before Late Hon. Justice Ashi.

That PW1 under cross-examination admitted that it was only Maurice Okoro that signed the agreement for the 1<sup>st</sup> Defendant and same was tendered as Exhibit "9", and the Plaintiff/Applicant's PW1 had already tendered the Agreement copy in which only Maurice Okoro signed in this Court and it was marked as Exhibit "7". That Exhibit "A" attached to the Claimant's Motion is already before the Court.

That paragraphs 8, 9 and 10 of the Plaintiff/Applicant's Affidavit in support of the Motion are misleading and false. That Sir Ben Udom is not a Director nor a Secretary of the 1<sup>st</sup> Defendant and as such cannot execute the Agreement on its behalf.

That he never signed any Agreement between the Plaintiff/Applicant and the 1<sup>st</sup> Defendant/Respondent, and that paragraphs 15a and 15b of the proposed amendment would change the characteristics of the Plaintiff's suit as it introduces new facts and changes the dynamics of its pleadings.

That 1<sup>st</sup> Defendant/Respondent will be prejudiced if this application is granted as it will overreach the 1<sup>st</sup> Defendant as they have since filed their final written address dated 26<sup>th</sup> April, 2022 and same has been served on the Plaintiff/Applicant. It will be in the interest of justice to refuse this application.

In line with procedure, written address was filed wherein two (2) issues were formulated for determination to-wit;

- 1. Whether this Honourable Court should grant leave to the Plaintiff/Applicant to amend his Statement of Claim at this stage of the proceedings after the 1<sup>st</sup> Defendant/Respondent has filed and served its final written address.***
- 2. Whether the amendment sought to introduce new facts will not overreach the case of the 1<sup>st</sup> Defendant/ Respondent after the close of hearing and written address has been filed.***



It is the submission of learned counsel, that while the application to amend pleadings can be brought at any stage of the proceedings, even when a matter has been adjourned for Judgment, the Court in exercising its discretion in favour or otherwise does consider several factors. These factors were enunciated in the case of ***LAGURO VS. TOKU (1992)2 NWLR (Pt. 223) Page 278*** was cited.

Learned counsel argued, that in the instant case, the amendment sought by the Plaintiff/Applicant involves fresh facts, which will naturally trigger another round of fresh facts that will require the 1<sup>st</sup> Defendants/Respondents to rebut accordingly and necessitate recalling PW1 and further witness for the 1<sup>st</sup> Defendant. The move by the Plaintiff/Applicant at this stage of the proceeding is not intended to bring pleading in line with evidence already adduced but to forestall the Defendant's defence. The application for amendment is coming soon after the 1<sup>st</sup> Defendant/Respondent had filed and served its final written address.

Learned counsel also argued, that one needs not wonder why the Plaintiff/Applicant waited until hearing had been settled and final written address of the 1<sup>st</sup> Defendant/Respondent filed and served

before introducing new facts because no duly executed agreement exists. It is an obvious ploy to deceive this Honourable Court as the Plaintiff/Applicant had doctored the agreement and the evidence is before this Honourable Court tendered and marked as Exhibit "D1", "D2" and "D3".

Learned counsel contended, that this amendment is an ambush to the 1<sup>st</sup> Defendant/Respondents' case and the same is overreaching. The Exhibit "11" is before this Court and this Court can examine any documents before it. The Plaintiff chose to seek leave to amend his pleading at this stage; to cause great injustice and denial of the right of the 1<sup>st</sup> Defendant/Respondent. Thereby, putting him in a corner where he will be unable to recall PW1 to cross-examine him. Counsel submits, that this move is most unjust.

Learned Counsel submits, that the object of pleadings is to enable the adverse party and the Court to know the case before the date of hearing. While counsel concede that this Honourable Court has an unfettered right to grant or refuse an application for amendment of pleadings, counsel submits, that this right ought to be exercised judicially and judiciously.

The case of ***ASUEN & ANOR. VS OMOREGIE (2012) LPELR – 7916 (CA)*** was cited.

Learned counsel further submits, that the Courts have long held that an application for amendment brought at a late stage of proceedings and which will entail the calling of additional evidence or affect the character of the case will require a higher quality of evidence to sustain than an amendment proposed before the commencement of trial. The cases of ***LAGURO VS. TOKU (1992)2 NWLR (Pt. 223) 278; ITA VS. DADZIE (2000)4 NWLR (Pt.652) 168.***

Learned counsel also submit furthermore, that Order 25 Rule 1 High Court of the Federal Capital Territory, Abuja, Civil Procedure Rules, 2018 states thus;

***"A Party may amend his originating process and pleadings at any time before the pretrial conference and not more than twice during the trial but before the close of the case"***

The key phrase here is **"but before the close of the case."** Parties have settled pleadings and the matter adjourned for Adoption of Final Written Address. The rules of the Honourable

Court do not permit amendment at this stage, as it would greatly prejudice the Defendants.

Learned counsel concludes by urging this Honourable Court to dismiss the application of the Plaintiff/Applicant as it is solely aimed at protracting, frustrating and overreaching the 1<sup>st</sup> Defendant/ Respondent and will occasion a miscarriage of justice.

**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 on the other hand.

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

Although the pendulum tilts in favour of amendment, courts 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 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*** where the

CJN (as he then was) Adetokunbo Ademola, upheld the decision of the lower court when it refused to allow a party to amend his case that had been closed, same having been objected to, as in the case in view by the other side.

The Plaintiff filed its Statement of Claim on the 2<sup>nd</sup> day of July, 2015 and frontloaded the Agreement between the 1<sup>st</sup> Defendant and itself executed on the 5<sup>th</sup> of May, 2015.

Plaintiff/Applicant averred, that the fully executed Agreement and one of the copies of the said Agreement that was not fully signed by the 1<sup>st</sup> Defendant were tendered under cross examination by the 1<sup>st</sup> Defendant/Respondent's counsel as exhibit D2 and D3 respectively. That contrary to the contents of Exhibit AA, the 1<sup>st</sup> Defendant/Respondent has labeled the fully executed Agreement as "doctored" in other words describing it as forged. Thus, the additional facts sought to be introduced through Exhibit AA is to show that there was no forgery of any kind.

Defendant/Respondent contends however, that Sir Ben Udom (mentioned in Exhibit AA) is neither a director nor a secretary of the 1<sup>st</sup> Defendant and as such, cannot execute the Agreement and that the said Sir Ben Udom has informed the Defendant/

Respondent that he never signed any Agreement between the Plaintiff/Applicant and the 1<sup>st</sup> Defendant/Respondent.

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. However, after service of process, 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 or 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 all that I have seen based on the affidavit of Applicant, I am of the firm view that what Applicant is seeking to do is an afterthought after failing to utilize the opportunity afforded him.

Issues have already been joined with respect to the status of the said Agreement... allowing Plaintiff/Applicant's application for amendment, as it were, will amount to affording Plaintiff another



opportunity to overreach the 1<sup>st</sup> Defendant and that is clearly not the function of amendment.

Certainly speaking, the amendment sought by the Plaintiff/Applicant involves fresh facts i.e paragraphs 15a and 15b of the further amended statement of claim which I shall reproduce below

***"15a. The Plaintiff avers that after the Plaintiff's agent and Engr. Maurice Okoro had signed the Agreement, Engr. Maurice Okoro took the Agreement to Abuja to enable the other Director of the 1<sup>st</sup> Defendant sign its part of the said Agreement and further avers that after the said Agreement was duly executed by the 1<sup>st</sup> Defendant's said agents, Engr. Maurice Okoro could not return the said Agreement to the Claimant's counsel as agreed due to the reason Engr. Maurice Okoro communicated to Mr. Anthony Anyadike, the Managing Director of the Claimant via Email message dated the 13<sup>th</sup> day of June, 2015."***

***"15b. That the said Agreement of the 5<sup>th</sup> day of May, 2015 was not doctored as falsely alleged by the 1<sup>st</sup> Defendant but duly executed by the 1<sup>st</sup> Defendant's***

***accredited agents as clearly and unambiguously stated in the Email message. The said Email message shall be founded and relied upon at the trial of this suit."***

Issues have been joined by parties on the issue of whether the said Agreement was duly signed by the parties.

Exhibits "7" and "9" are both the same Agreement in issue.

Allowing this application shall overreach the 1<sup>st</sup> Defendant.

What more.? 1<sup>st</sup> Defendant/Respondent having given good reasons why this application to amend should be refused, said application shall be refused. Same is hereby refused.

On the whole, application seeking the said Order therein is accordingly dismissed.

***Justice Y. Halilu  
Hon. Judge  
2<sup>nd</sup> May, 2024***

**APPEARANCES**

C.F. Ekeocha, Esq. – for the Claimant/Applicant, holding the brief of S.O. Aywinege, Esq.

Chidozie A., Esq. – for 1<sup>st</sup> Defendant.

Kacholom G. Peter, Esq. – for the 2<sup>nd</sup> Defendant.