

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON THURSDAY, THE 16TH DAY OF JANUARY, 2025
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/244/2023
MOTION NO.: M/19214/2024

BETWEEN:

1. ANNGOOD GLOBAL INVESTMENT LIMITED	
2. FOUNTAIN OF KNOWLEDGE INT'L ACADEMY	APPLICANTS
AND	
POLARIS BANK PLC	RESPONDENT

RULING

This Ruling is on the application for leave to amend certain paragraphs of the Counter-Affidavit of the Respondent in an action of the Applicants for the enforcement of their fundamental right guaranteed under section 44 of the Constitution of the Federal Republic of Nigeria, 1999.

By a Motion on Notice with Motion Number FCT/HC/M/19214/2024 dated the 11th of July, 2024 and filed on the same day, the Respondent brought this application seeking the following reliefs:-

- i. An Order of this Honourable Court granting leave to the Respondent/Applicant to amend paragraphs 6 and 9 of its Counter-Affidavit together with Exhibit P1 dated the 21st day of May, 2024;*

- ii. An Order of this Honourable Court granting leave to the Respondent/Applicant to withdraw **Exhibit P1** attached to the Counter-Affidavit dated the 21st day of May, 2024.*
- iii. An Order of this Honourable Court granting leave to the Respondent/Applicant to file “amended **Exhibit P1**” as attachment to the amended Counter-Affidavit;*
- iv. An Order of this Honourable Court deeming the amendment Counter-Affidavit and Exhibit as duly amended and filed.*
- v. And any other Order(s) as this Honourable Court may deem necessary in the circumstances.*

In support of the application is a 13-paragraph affidavit, an exhibit and a Written Address in support of the application.

In answer to the application the Respondents/Applicants filed an 11-paragraph Counter-Affidavit on the 19th day July, 2024. Responding to the Counter-Affidavit, the Applicant/Respondent filed a Further Affidavit in support of its application for amendment on the 29th day of July, 2024.

On the 26th of November, 2024, the parties adopted their processes for and against the application for amendment. Briefly, the Applicant/Respondent seeks the reliefs contained on the face of the Motion paper because **Exhibit P1**, which is the order of the Chief Magistrate Court sitting in

MararabaGurku, Nasarawa State, being a public document, was not certified at the time the Applicant/Respondent filed its Counter-Affidavit in answer to the originating Motion on Notice for the enforcement of the fundamental right of the Respondents/Applicants. It explained that it attached the uncertified document because it was running out of the time stipulated by the Fundamental Rights (Enforcement Procedure) Rules, 2009 for the filing of a counter-affidavit. Having certified the document, the Applicant/Respondent through the Motion, sought to withdraw the uncertified document and to attach the certified document. By this Motion, too, the Applicant/Respondent seek to amend the figure stated in paragraph 9 of its Counter-Affidavit from ₦16,500,000.00 (Sixteen Million, Five Hundred Thousand Naira) to ₦16,500,000,000.00 (Sixteen Billion, Five Hundred Million Naira).

I note that no Written Address was filed in support of the Motion on Notice for amendment.

In the Further Affidavit filed in response to the Respondents/Applicants' Counter-Affidavit, the deponent, Benedicta Ako, denied certain paragraphs of the Respondents/Applicants' Counter-Affidavit and insisted that the only time the Applicant/Respondent received a hearing notice was on the 17th of May, 2024 against the hearing date of 11th of July, 2024. The deponent averred that the Respondents/Applicants ought to have joined the Nigerian

Police Force in the application for the enforcement of their fundamental rights.

In its Reply on Point of Law, the Applicants/Respondents formulated a sole issue for determination, that is: “*Whether it will be in the interest of justice for this Honourable Court to grant leave to the Respondent/Applicant to amend and re-swear its affidavit and accompanying documents.*” In his submissions on this sole issue, learned Counsel adverted the mind of the Court to the provisions of Order 25 Rules 1 and 2 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018, Order VI Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 as well as the case of ***Union Homes Savings & Loan Plc v. Akintan (2020) LPELR-51201(CA) at 38-40, paras A-F*** in support of its argument that the Court has the powers to grant the reliefs sought in the application, adding that the purpose of an amendment is to cure the defects contained in a court process.

It was the submission of learned Counsel that contrary to the contention of the Respondents/Applicants, the application was not meant to overreach the Respondents/Applicants, adding that the facts disclosed in the affidavit in support of the application made the application a necessity. Citing the cases of ***Khalifa v. Onotu & Anor (2016) LPELR-41163 (CA) at 41-42, paras B-C, Nwankwoala v. Okoroh & Others (2022) LPELR-59375 (CA)***

at 42-45, paras B-D among other cases, the Applicant/Respondent through its Counsel urged the Court to grant the reliefs sought.

I have carefully considered the application for amendment brought by the Applicant/Respondent. The sole issue that arises for determination is this: ***“Whether the circumstances of this application is such that the Court can exercise its discretion in favour of the Applicant/Respondent.”***

In resolving this issue, Order 25 of the Rules of this Court is relevant. The Order deals specifically with amendment. I will consider the provisions of Order 25 Rules 1 and 2 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018. The said Rules provide thus:-

(1)A party may amend his originating process and pleadings at any time before the pre-trial conference and not more than twice during the trial but before the close of the case.

(2)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.

By virtue of the afore-cited provisions, an application for amendment of an originating process and pleadings may be brought at any time before the close of the case of a party. It is for the Court when making an order for

amendment to make such order subject to terms it may decide to impose on the party bringing the application. This principle also applies where the process sought to be amended is a process other than an originating process.

Similarly, Order VI Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 allows for the amendment of any process that has been filed in a proceeding for the enforcement of fundamental rights. The rule provides that ***“The Court may, on the hearing of the application allow the statement to be amended and may allow further affidavits to be used if they deal with new matter arising from the counter-affidavit of any party to the proceedings.”*** By virtue of Rule 5 of the same order, ***“Where the applicant intends to ask to be allowed to amend his statement or use further affidavits, he must put the other party or parties on notice of his intention to amend.”***

It is important to note that the amendment of any process is granted pursuant to the exercise of the discretionary powers of the Court. Thus, the party seeking the exercising of discretion in their favour must place sufficient material particulars before the Court to be entitled to the exercise of the Court’s discretion in their favour.

The Courts have pronounced on the importance and necessity of amendment as an integral part of our legal process in a plethora of decided cases. In *Mrs. Florence Osita v. Mrs. Uche Ani (2022) LPELR-59587(CA) at 20-21, paras E-A*, the Court held that ***“Let me say that amendment of pleadings is ultimately to enable the Court decide the real issues in controversy between the parties. That amendment relates to the original pleadings and all amendments before the final amendment cease to be pleadings to be relied upon in the trial.”***

It is not in all cases that the Court will grant an application for amendment. In *Polaris Bank Plc v. Mr. W. A. Clifford (2022) LPELR-57464(CA)at 7, paras B-D*, the Court held that ***“Amendment is usually directed to the correction of blunders, errors and/or inadvertence of counsel. It may also be granted where the pleading is intended to be brought in line with the evidence already led on the record. But the Court is obliged to refuse to grant an application for amendment where it will have the effect of overreaching or will result in injustice to the other party or where it is brought mala fide or where the amendment will alter the nature of the case as considered by the Court.”***

I have reflected on the processes the parties before me have filed in respect of this application. The application appears innocuous on the face of the process. The Applicant/Respondent hinges its application on the

need to certify a certain document which it believes ought to be certified but which it did not certify when it was filing its Counter-Affidavit to the originating application of the Respondents/Applicants. It also seeks to amend the figure contained in paragraph 9 of its Counter-Affidavit being the sum it claimed was transferred from the account of one Victor Onukago to the accounts of the Respondents/Applicants.

On the other hand, the Respondents/Applicants believe that the application is a contrivance to further delay this suit – a charge the Applicant/Respondent vehemently denies.

I have reviewed the authorities cited by both Counsel in their written submissions. I must state that applications of this nature are granted at the discretion of the Court. When the Court is invited to exercise its discretionary powers in any case or application before it, it is beholden to exercise same judiciously and judicially with an eye on the need to do substantial justice and not to allow itself to be hamstrung by technicalities.

Furthermore, each case is treated on its merits and the circumstances of each case considered by the court in arriving at a decision of whether to grant or not to grant an application for amendment. That notwithstanding, the Courts have distilled a string of principles that can guide a court when it is faced with an application for amendment. In ***F.B.N. Pic. v. May Med.***

Clinics (1996) 9 NWLR (Pt. 471) 195 C.A. at 204, paras. D-F; 205 paras.

A-C, the Court of Appeal laid down the following guardrails when it held thus:-

“The court will refuse to grant an application for amendment in the following situations; that is, where: (a) the amendment will cause injustice to a party to the proceedings; (b) the amendment will surprise or cause embarrassment to the other party; (c) the applicant is acting mala fide in bringing the application for amendment; (d) the applicant by his blunder has done some injury to the respondent which cannot be compensated by costs or otherwise; (e) the amendment has the effect of changing the action into one of a substantially different character; (f) the amendment will not cure the defect in the proceeding; (g) the amendment is inconsistent and useless; (h) the amendment is not material; (i) the amendment is capable of causing undue delay to the case.”

I have considered the nature of the amendment sought and I do not see how the amendments sought to be effected will affect the decision of this Court in the substantive matter one way or the other. One of the amendments sought by the Applicant/Respondent is to replace the figure

stated in paragraph 9 being the amount alleged to have been transferred from the bank account of one Victor Onukago to the bank accounts of the Respondents/Applicants. This amendment, in my view, does not affect the substance of the substantive suit, which is an application for the enforcement of the fundamental rights of the Respondents/Applicants. In ***Durbar Hotel Ltd. v. Kasaba United Ltd (2017) 2 NWLR (Pt. 1549) 321 C.A. at 345-346, paras H-A***, the Court held that ***“In considering whether or not to grant an amendment to pleadings, the court must always be guided by the materiality of the amendment sought, the rules of audialterampartem and the genuineness of the amendment.”***

In other words, there is nothing material about the amendment relating to the figure of the money alleged to have been transferred fraudulently to the accounts of the Applicants/Respondents *vis-a-vis* the cause of action giving rise to the substantive suit. I so hold.

The other amendment is to replace **Exhibit P1** already attached to the Counter-Affidavit with the certified copy of the same **Exhibit P1**. This amendment is unnecessary, as documents attached to affidavits need not be certified before a court can act on them. It is immaterial that the said document is a public document within the meaning of section 102 of the Evidence Act, 2011. Such documents attached to an affidavit are not caught up by the provisions of sections 89(e), 90(c), 104 and 105 of the

Evidence Act, 2011. This matter was put to rest by the Supreme Court in the case of ***Aondoakaa v. Obot (2022) 5 NWLR (Pt. 1824) 523 SC at 599, paras C-D*** where the Court held that ***“Copies of public documents attached to an affidavit as exhibits need not be certified true copies because the documents already form part of the evidence adduced by the deponent before the court, and are available to the court to use once it is satisfied that they are credible.”***

In any case, I observed that the Motion on Notice for amendment was not accompanied by a Written Address as provided for under Order 43 Rule 1(1) and (2) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 being the extant Rules of this Court at the time the application was brought. This provision states that ***“(1) Whereby in this Rules any application is authorised to be made to the court, it shall be made by motion which may be supported by affidavit and shall state the rule of court or enactment under which the application is brought. (2) Every application shall be accompanied by a written address.”***

It is now settled that the use of the word “shall” denotes a mandatory requirement; that provision is not merely directory. In ***Yerima v. Balami (2023) 6 NWLR (Pt. 1881) 487 S.C. at 523, paras. E-G***, the apex Court explained that ***“The use of the word “shall in a statute or rules of court makes it mandatory that provision of the statute or rule must be***

observed and complied with. The word "shall" is used to express a command or exhortation or what is legally mandatory."

Rules of Court are meant to be obeyed. See ***Kano Plastics Ltd, v. Century Merchant Bank (1998) 3 NWLR (Pt. 543) 567 C.A. at 572, para D, Drexel Energy and Natural Resources Ltd. & 2 Others v. Trans Int'l Bank Ltd. & 2 Others (2008) 18 NWLR (Pt. 1119) 388 at 430, para B, Adegbola v. Idowu (2017) 17 NWLR (Pt. 1595) 353 SC at 382, paras. F-H.***

The Court of Appeal in ***Olomo v. Ape (2015) 14 NWLR (Pt. 1478) 46 CA at 62, paras. B-C; paras. F-G*** did not mince words when it held that ***"It is an established principle of law that rules of court are to be obeyed and complied with, where breached or not complied with without any explanation, it cannot be overlooked or swept under the carpet in favour of the party in breach. Rules of court are not only meant to be obeyed, they are also binding on all the parties before the court."*** In ***Sakamori Construction Nigeria Limited v. Lagos State Water Corporation (2022) 5 NWLR (Pt. 1823) 339 SC at 393, paras. G-H***, the Supreme Court succinctly warned that ***"Rules of court must be obeyed and where there is non-compliance it must be explained, otherwise, no indulgence of the court would be granted."***

Having failed to file the Written Address as stipulated by the mandatory requirement of Order 43 Rule 1(2) of the Rules of this Court, 2018, the Motion on Notice for amendment brought by the Applicant/Respondent is incompetent.

I therefore agree with the Respondents/Applicants that the application for amendment which the Applicant/Respondent has brought is calculated to waste the time of this Honourable Court. It lacks merit and should not be countenanced by this Honourable Court. I so hold.

It is in view of this, therefore, that I hasten to dismiss the application for amendment filed by the Applicant/Respondent. Accordingly, reliefs sought in the Motion on Notice with Motion Number FCT/HC/M/19214/2024 dated the 11th of July, 2024 and filed on the same day are hereby refused. Having determined this Motion on Notice on the merits, the Motion on Notice itself is hereby dismissed. I make no order as to costs.

This is the Ruling of this Court delivered today, the 16th day of January, 2025.

HON. JUSTICE A. H. MUSA
JUDGE
16/01/2025