

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 21ST DAY OF JANUARY, 2025
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/6490/2023
MOTION NO.: FCT/HC/M/2866/2024

BETWEEN:

1. CHRISTOPHER NAANMA KATTIEMS
2. ZARA NANMIAP KATTIEMS
AND

CLAIMANTS/APPLICANTS

1. EMMANUEL TSENYEN DALUCHUKWU KATTIEMS
2. JOY NKIRU OKOYE-OKORO

DEFENDANT/RESPONDENTS

AND

MOTION NO.: M/4785/2024

BETWEEN:

1. CHRISTOPHER NAANMA KATTIEMS
2. ZARA NANMIAP KATTIEMS

CLAIMANTS/RESPONDENTS

AND

1. EMMANUEL TSENYEN DALUCHUKWU KATTIEMS
2. JOY NKIRU OKOYE-OKORO

DEFENDANT/APPLICANTS

RULING

This is a composite Ruling on two applications which were made to this Honourable Court on the 7th day of November, 2024. The first Motion on Notice with Motion Number M/2866/2024 was brought by the Claimants and seeks leave of this Honourable Court to amend their originating processes and

the accompanying processes. The second Motion on Notice with Motion Number M/4785/2024 was brought by the Defendants and seeks an order of this Honourable Court extending the time within which the Defendants could file their Counter-Affidavit and Written Address to the Motion on Notice of the Claimants with Motion Number M/2866/2024 seeking leave of this Honourable Court to amend their originating processes. I shall take the Motion on Notice of the Defendants seeking to regularise their processes before I rule on the Motion on Notice of the Claimants for amendment of their originating processes.

RULING ON MOTION ON NOTICE WITH MOTION NO.: M/4785/2024

On the 29th day of February, 2024, the Defendants filed this undated Motion on Notice with Motion Number M/4785/2024 seeking the following reliefs:-

- 1. An Order extending time within which the Defendants may file and serve their Counter-Affidavit and Written Address to [the] Claimants' Motion [with Motion Number] M2866/2024 for amendment of the originating processes in this suit.*
- 2. An Order deeming the Defendants' Counter-Affidavit and Written Address to [the] Claimants' Motion [with Motion Number] M2866/2024*

already filed and served as having been properly filed and served appropriate filing fees and penalty for late filing having been paid.

3. And for such further and other orders as this Honourable Court may deem fit to make in the circumstances.

The application was predicated on four grounds and was accompanied by a six-paragraph affidavit deposed to by the 1st Defendant and a Written Address filed in compliance with the Rules of this Honourable Court.

The Motion on Notice was served on the Claimants on the 8th day of March, 2024 through their Counsel. The Claimants did not file any process in opposition to the Motion on Notice.

On the 7th of November, 2024, learned Counsel for the Defendants, A. C. J. AzubuikeEsq. moved the said Motion on Notice. Learned Counsel for the Claimants, Mr A. C. Uba informed the Court that he was not opposing the Motion on Notice. This Court thereafter adjourned the Motion for Ruling.

In the Affidavit in support of the Motion on Notice, the deponent, Emmanuel TsenyenDaluchukwuKattiems, who is the 1st Defendant in this suit, confirmed that the Defendants were served with the Motion on Notice of the Claimants for the amendment of their originating processes on the 13th of February, 2024. He swore that he sent the Motion on Notice to his new Counsel, A. C. J.

AzubikeEsq. who was unable to prepare and file the Counter-Affidavit to the said Motion on Notice within the time stipulated by the rules of this Court owing to the volume of work he was handling at that time. He added that the inability of learned Counsel to prepare and file the Counter-Affidavit was not attributed to any form of disrespect to this Honourable Court, adding that the said Counter-Affidavit had been prepared and a copy attached to the affidavit in support of the Motion on Notice for extension of time as **Exhibit EDT1**.

In the Written Address in support of the application, learned Counsel formulated the following sole issue: “*Whether in the present circumstances, the Defendants by their affidavit evidence has made a case entitling him (sic) to the reliefs sought in the instant application.*”

In his submissions on this sole issue, learned Counsel agreed that though the nature of the reliefs sought in the present application was grantable at the discretion of the Court, the grant of such reliefs must be on good cause shown and not as a matter of course. He cited the cases of ***N. A. Williams & Others v. Hope Rising Voluntary Funds Society (1982) 1-2 SC 145 at 152*** and ***Long-John v. Blackk (1998) 6 NWLR (Pt. 555) 524 at 542, paras B-C*** in urging this Court to grant the reliefs sought, adding that the Defendants have placed sufficient materials before this Court to justify the grant of the reliefs

sought. He therefore urged the Court to resolve the sole issue formulated herein in favour of the Defendants and to grant the reliefs sought.

I have studied the Motion on Notice with Motion Number M/4785/2024, the reliefs contained on the face of the motion papers as well as the grounds upon which the reliefs sought are predicated. I have paid particular attention to the deposition of facts contained in the Affidavit in support of the Motion on Notice. I have also considered the legal submissions of learned Counsel for the Defendants on the position of the law regarding application for extension of time and the regularisation of processes filed outside the time limit stipulated by the Rules of the Court. The issue before me in this application is quite narrow, and that is: “***Whether the application of the Defendants as presently constituted is such that this Court can grant.***”

Where an act prescribed by a law or the Rules of the applicable court is required to be done within a specified time, that act must be done within that time specified for it in that law or Rules of the applicable Court. See ***Idris v. Audu (2005) 1 NWLR (Pt. 908) 612 CA at 632, paras B-C***. Where a party seeks to validate an act done outside the time stipulated by the law or rules of court, an application must be made to the court in that regard and the court must grant the reliefs sought before that act can be valid. See ***Leo Melos***

Pharmaceutical Industries Ltd. & 1 Or. V. Union Homes Savings & Loan Ltd. (2011) 7 NWLR (Pt. 1247) 519 CA at 531-532, paras H-B.

Indeed, applications for extension of time are granted at the discretion of the Court. In ***The Shell Petroleum Development Company of Nigeria Limited v. Torchi (2023) 5 NWLR (Pt. 1878) 499 SC at 519-520, paras. H-C***, the Supreme Court held that ***“An application which seeks extension or enlargement of time is granted or refused solely at the discretion of the court. However, like all instances that require the exercise of judicial discretion, the court is to be guided by the overriding principle that discretion is to be exercised judicially and judiciously. Judicial and judicious exercise of discretion implies that the exercise proceeds from sound judgment, taking into consideration the relevant facts and laws applicable in the circumstances of the case and is fair to all the parties involved. The court is required to apply the principles guiding the grant or refusal of the application to the facts and circumstances of the case to arrive at a just and fair determination.”***

In the instant application before me, that is Motion Number M/4785/2024, there is nothing before me upon which I can be urged to exercise my discretion judiciously and judicially. This is because the process before me, the Motion

on Notice and the Written Address in support of same are not signed. The fact that the names of three Counsel are subscribed thereat as Counsel for the Defendant does not remedy this fatal oversight. It is a settled position of the law that unsigned documents and processes are worthless and the Court cannot act on them. In ***State v. Amos (2024) 17 NWLR (Pt. 1968) 573 SC at 610, paras F-H***, the Supreme Court held that ***“An unsigned document is a worthless piece of paper with no probative value. It does not matter whether it was objected to at the point of tendering, or as in this case, during plea. As long as a document or court process is unsigned, it is worthless and does not have any efficacy in law. In the instant case, the unsigned charge upon which the respondent was tried and convicted was a worthless piece of paper which did not confer jurisdiction on the court to try him.”***

Earlier, the Supreme Court had held ***at page 606, paras. E-G of the Law Report*** that ***“An unsigned document, a fortiori, an originating process, commands no probative value as it cannot boast of the origin/source of its maker. An unsigned document creates grave doubt as to its authenticity in law. This is another serious defect that affected the appellant’s unsigned charge/information in this case. Therefore, it amounts to judicial impropriety to accord any validity to the***

charge/information on which the respondent was tried. In the circumstance, the charge/information is incompetent and invalid.”

In **Global Fleet Oil & Gas (Nig.) Ltd. v. Orok (2021) 1 NWLR (Pt. 1758) 451 CA at 470-471, paras. F-C;471, paras. E-F**, the Court of Appeal held that “It is the seal or signature of the author on a document that authenticates the document. A legal document or process of court must be settled or signed by either the litigant or the litigant’s legal practitioner. Where a court process is ex facie uncertain whether it was signed by the litigant or the litigant’s legal practitioner, the process is incompetent. A court process that purports to be settled by a legal practitioner must as a requirement of statute, have not only the signature of the legal practitioner, but also his name clearly shown and indicate that the signature is his. In other words, the process must have the signature or mark of the legal practitioner either against his name, or over and above his name.”

The Motion on Notice with Motion Number M/4785/2024 having not been signed by Counsel, is a worthless paper and lacks any efficacy in law. In other words, there is nothing before this Court upon which the Court can be urged upon to exercise its discretion.

It is for this reason therefore that I harbor no hesitation in holding that Motion on Notice with Motion Number M/4785/2024 is incompetent for having not been signed by Counsel or any of the Defendants. Accordingly, the Motion on Notice with Motion Number M/4785/2024 is hereby struck out.

This is the Ruling of this Court delivered today, the 21st of January, 2025.

RULING ON MOTION ON NOTICE WITH MOTION NO.: M/2866/2024

On the 13th of February, 2024, the Claimants *vide* a Motion on Notice dated the same day with Motion Number M/2866/2024 brought this application seeking the following reliefs:-

- a. An Order of this Honourable Court granting leave to the Applicants to amend the originating process, statement of claim and other processes in the manner exhibited in this application.*
- b. And for such further order or orders as this Honourable Court may deem fit to make in the circumstances.*

The Motion on Notice was accompanied with a 4-paragraph affidavit deposed to by one Kalu David Obinna, a litigation assistant in the law firm of OA & C-Legal, Counsel to the Claimants in this suit. Also accompanying the Motion on

Notice is a Written Address filed in compliance with the Rules of this Honourable Court. Attached to the Affidavit in support of the Motion on Notice is an exhibit marked as **Exhibit A**, which is, the amended originating process and other accompanying processes.

The Defendants were served with the Motion on Notice, though the 1st Defendant who accepted service of the process specified neither the date nor the time he received the process. In paragraph 4 of the affidavit in support of the Motion on Notice for enlargement of time filed by the Defendants, the 1st Defendant as the deponent thereof averred that he received the process on the 13th of February, 2024.

The Defendants purported to file their Counter-Affidavit to the Motion on Notice for amendment on the 29th of February, 2024.

On the 7th of November, 2024, learned Counsel for the Claimants, A. C. UbaEsq. moved the Motion on Notice seeking the leave of this Court for the Claimants to amend their originating processes. On the other hand, learned Counsel for the Defendants, A. C. J. Azubike, Esq. purported to adopt the Counter-Affidavit and accompanying Written Address on behalf of the Defendants.

In the affidavit in support of the application, the deponent, Kalu David Obinna, averred that Claimants found there was a need for the Claimants to amend their originating processes when they sat in conference with their Counsel to review the originating processes. The deponent swore that hearing of the substantive suit had not commenced while the Defendants had not filed their Statement of Defence in answer to the suit of the Claimants. He added that the Witness Statement on Oath in support of the suit contained additional facts, and he expressed the desire of the Claimants to withdraw the Witness Statement on Oath earlier filed in this suit.

In the Written Address in support of the Motion on Notice, learned Counsel for the Claimants nominated a sole issue for determination, that is: “*Whether here is any merit in the extant application to warrant granting same by the Honourable Court.*”

Citing Order 25 Rules 1, 2 and 3 of the Rules of this Court, 2018, Counsel submitted that the Rules of this Honourable Court permit the amendment of processes filed in any proceeding. He referred this Court to the facts contained in the affidavit in support of the application and urged this Court to grant this application.

By virtue of the Ruling just delivered wherein this Honourable Court dismissed the application for enlargement of time and the regularisation of the Counter-Affidavit already filed and served for being incompetent, having not been signed by Counsel, the Counter-Affidavit which the Defendants filed in opposition to the Motion on Notice for amendment is incompetent having been filed outside the time limited by the Rules of this Court for the filing of counter-affidavits and in the absence of an order of this Honourable Court regularising the otherwise incompetent process. In view of this therefore the application of the Claimant seeking leave of this Honourable Court is unchallenged, as there is no competent Counter-Affidavit before this Court. I so hold.

In determining this application, this Court hereby formulates this simple Issue: ***“Whether the exercise of this Honourable Court’s discretionary powers in favour of the Claimants in respect of this application will not prejudice the Defendants considering the circumstances of this case?”***

In resolving this issue, Order 25 Rules 1 and 2 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 (being the Rules of this Court applicable at the time this application was filed) is relevant. The Order deals specifically with amendment. 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.

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. For instance, see ***AMMAX (Nigeria) Limited & Anor v. Diamond Bank Plc (2020) LPELR-51258(CA) at 30-31, para. A-A, John Oforishe vs. Nigerian Gas Company Ltd (2017) LPELR - 42766 (SC), Rotimi&Ors vs. Macgregor (1974) 11SC 133, In Mrs. Florence Osita v. Mrs. Uche Ani (2022) LPELR-59587(CA) at 20-21, paras E-A***, the Court held thus:

“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.”

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 Claimants anchored their application on the need to bring all the facts before the court to enable the court do substantial justice in the matter. They have also submitted in their Written address that they could amend their processes to reflect the necessary factual situation. I have taken note of the nature of the amendment.

On the other hand, there is nothing from the Defendants challenging the application of the Claimant, as their Counter-Affidavit is incompetent and cannot be acted upon by this Court. This Court therefore is bound to act on the unchallenged averments of the Claimants. In **Central Bank of Nigeria v. Dauda D. Jubril & Ors (2022) LPELR-57185(CA) at 33-35, paras. F-A**, the Court of Appeal per Senchi, JCA held thus:-

“On the effect of uncontroverted facts in an Affidavit, this Court held in the case of NIPCO PLC V. HENSMOR (NIG) LTD (2011) LPELR 9264 as

follows: "Once averments in an Affidavit are not effectually denied or controverted, the Court is bound to accept and act upon such depositions as representing the correct and true position of the facts so deposed. Now, from the Records before the Court, the Appellant did not file a Reply to either the Counter-Affidavit or Further Affidavit of the Respondents, nor to the Further Affidavits of the erstwhile 2nd and 3rd Garnishees. The Supreme Court of Nigeria in the case of AKITI V. OYEKUNLE (2018) LPELR-43721 held as follows: "I must state that depositions in Affidavits on material facts resolve applications in Court and where depositions on material facts in an Affidavit in support of an application are not denied, the Affidavit in support remains the correct position and the Court acts on them except they are moonshine. Material facts in a Counter-Affidavit not denied by a Reply Affidavit are the true position. It is only when the Affidavits cannot resolve facts that parties are invited to lead evidence in proof of the facts they deposed to." See AKINSETE V. AKINDUTIRE (1966)4 NSCC, P.157; EBOH V. OKI (1974) 9 NSCC PAGE 29; NATIONAL BANK (NIG) LTD V. THE ARE BROTHERS (NIG) LTD (1077)11 WSCC P. 382 and ALAGBE V. ABIMBOLA (1978) 2 SC 39."

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. In other words, the Court is not obligated to grant an application where it is shown that the other party may or could be prejudiced, that the application is brought *malafide*, or that it is intended to truncated the lawful and equitable administration of justice. See *Oloro v. Falana (2011) 17 NWLR (Pt. 1275) 207 C.A. at 221, paras A-C*. See also *Polaris Bank Plc v. Mr. W. A. Clifford (2022) LPELR-57464(CA) at 7, paras B-D* where 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.**”

At this stage of the proceeding, I do not see why an amendment of the nature sought by the Claimants cannot be granted by this Court. This is because

hearing in the substantive matter has not commenced. Further to this, the Defendants, at the time the application was brought, had not filed their Statement of Defence. It must be stated that even if the suit has gone to hearing, and the Defendants had filed their Statement of Defence, the Rules of this Court allow a party to amend their pleadings at least two times before the close of their case. This is consistent with the provisions of Order 25 of the Rules of this Court.

When a Court makes an order granting leave to the Applicant to amend their processes, the other party has to be given the opportunity to meet and address the amended averments. This is consistent with the right of every litigant before the Court to fair hearing in the adjudication of the case. This right to fair hearing is two-way: it operates to ensure that a party who seeks to ventilate his grievances properly *via* the medium of amendment of their process should be allowed to do so if that will enable the Court to determine conclusively and once and for all the issues between the parties; it is also available to the other party to amend their pleadings consequentially, if they see the need, to address the new facts contained in the amended process. It is through the medium of amendment that all the issues relating to the dispute, including all the possible causes of actions relating to the suit, are effectively resolved for all times.

In view of the foregoing, therefore, I do not see how the grant of this application will prejudice or overreach the Defendants. This Court will, therefore, grant the application sought by the Claimants. The application is meritorious and hereby succeeds.

- 1. The principal relief sought in the Motion on Notice with Motion Number FCT/HC/M/2866/2024 dated and filed on the 13th day of February, 2024, to wit: “*An Order of this Honourable Court granting leave to the Applicants to amend the originating process, statement of claim and other processes in the manner exhibited in this application*” is hereby granted as prayed.**
- 2. The Claimants are hereby ordered to file the Amended Writ of Summons, Amended Statement of Claim, Amended Witness Statement on Oath of the Claimant/Applicant and the Additional Witness Statement on Oath of the 1st Claimant collectively attached to the affidavit in support of the Motion on Notice as Exhibit Anot later than fourteen days from the date of this Ruling.**
- 3. Further to the above, the Claimants shall endorse on the amended originating processes the following endorsement provided for under Order 24 Rule 6 of the Rules of this Court, 2018: “*Amended*”**

*..... day of pursuant to Order of (name of Judge)
dated the..... day of.....”*

4. Consequentially, the Defendants are hereby ordered to file their Amended Statement of Defence and to amend the accompanying processes if they see the need so to do in answer to the amended processes of the Claimants and same must be done within the time stipulated by Order 15 Rule 1(2) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 for doing of same, to wit, twenty-one (21) days from the date of service of the amended originating processes on them. The Claimants shall file their Reply in answer to the Amended Statement of Defence, if need be, within the time allowed for same under Order 15 Rule 1(3) of the 2018 Rules of this Honourable Court if they find it necessary, to wit, fourteen (14) days from the date of service of the amended Statement of Defence on them.

This is the Ruling of this Honourable Court delivered today, the 21st day of January, 2025.

HON. JUSTICE A. H. MUSA
JUDGE
21/01/2025