

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO

BEFORE: HIS LORDSHIP HON. JUSTICE J. O. ONWUEGBUZIE

THIS THURSDAY THE 13<sup>TH</sup> DAY OF MARCH, 2025

SUIT NO: FCT/HC/CV/856/2024

MOTION NO. M/30/2025

BETWEEN:

1. AIR VICE MARSHAL EMMANUEL ROBERT EJEH
2. ALIBRO TRANSPORT SERVICES LTD.....CLAIMANTS/APPLICANTS

AND

ACCESS BANK PLC .....DEFENDANT/RESPONDENT

RULING

INTRODUCTION

By a Motion on Notice dated the 6<sup>th</sup> day of January, 2025 and filed same day. The Motion is brought pursuant to Order 25 Rules 1 & 2 and Order 43 Rule 1 of the Federal Capital Territory (Civil Procedure) Rules, 2018, and Under the Inherent Jurisdiction of the Court.

The Claimant/Applicant prays the Court for the following Orders:

1. An Order of this Honourable Court granting leave to the Claimants/Applicants to amend their statement of claim to reflect the facts and corrections contained in the underlined portions in paragraphs 2,9, 10, 11, 12, 13, 14, 17, 20, and 23 of the proposed amended statements of claim by adding the underlined portion in the proposed amended statement of

claim to enable the court effectively and effectually settle the controversy between the parties.

2. An Order granting leave to the Claimants/Applicants to file additional witness statement on Oath for Air Vice Marshal Emmanuel Robert Ejeh to his existing statement on Oath filed on 11/1/2024.
3. And any further order(s) the court may deem fit to make in the circumstances of the case.

The application is supported by a 10 paragraph affidavit deposed to by the 1<sup>st</sup> Claimant/Applicant. The affidavit is attached with Exhibit 1 and Exhibit 2 respectively, being the proposed amended statement of claim and the proposed additional witness statement on oath. In compliance with the rules of this court, the Applicants filed a written address as their legal submission in support of the application.

By a way of response, the Defendant filed a five paragraph counter-affidavit deposed to by one Victoria Christopher, a litigation secretary in the office of the Counsel to the Defendant/Respondent. The Respondent also filed a written submission in opposition to the application in compliance with the rules of this court.

#### APPLICANTS' CASE

I, EMMAUEL ROBERTS EJEH, male, adult, Christian, citizen of Nigeria, of No 32 A.E Ekukinam street Utako Abuja, do hereby make oath and states follows:

1. That I am the 1<sup>st</sup> Claimant/Applicant in this suit by virtue of which I am conversant with the Fact of this case.

2. That except as otherwise stated all facts depose herein are within my personal knowledge. I have the consent of the 2<sup>nd</sup> Claimant to depose to this affidavit on our behalf.
3. That the Claimants initiated this suit on 11<sup>th</sup> January, 2024 against the Defendant/Respondent.
4. That in the process of reviewing our case in preparation for the hearing slated for 16<sup>th</sup> January, 2025 we discovered that some material facts related to our case before the court, were erroneously omitted.
5. I was informed by my Counsel Victor Agunzi on 6<sup>th</sup> of January, 2025 in his office at 7:30am and I verily believe him to be true as follows:
  - a) That there will be need to amend the Claimants statement of claim before the court filed on 11/1/2024 to correct the error and bring in the detail of the material facts omitted.
  - b) That the leave of the court is required to correct the error and bring in the detail of the material facts omitted.
  - c) That the amendment sought to be made is to enable the claimants secure substantial justice and for the court to settle the controversy between the parties and related issues arising there from.
6. That the amendment sought to be made are as contained on the underlined portion of the proposed amended statement of claim hereto attached and marked as Exhibit 1.
7. That the leave of this court is required to amend the exiting statement of claim in the manner underlined in the proposed amended statement of claim and to file additional witness statement for the claimants.
8. That my proposed additional witness statement on oath is attached and marked as Exhibit 2.
9. That the defendant will not be prejudiced by the grant of this application as the application is made in good faith.

10. That I depose to this Affidavit in good faith believing its contents to be true and correct in accordance with the Oath Act.

#### RESPONDENT'S CASE

1. I, Victoria Christopher (Ms.), Adult, Female and Nigerian citizen of Plot 1014 Samuel Ademulegun Street, Suite 122, Jinifa Plaza, Central Business District, Abuja do hereby make Oath and depose to this Affidavit as follows: -

2. I am the litigation secretary in the chambers of Austin Mwana & Co, Solicitors to the Defendant.

3. I have the consent and permission of the Defendant to depose to this affidavit from matters within my knowledge.

4. I am informed by Austin Mwana, ESQ of counsel personally handling this matter in our chambers on the 8th January, 2025 at about 10:00am and I verily believe him to be true and correct that:

i. The parties at the close of their respectively pleadings, the court on 27th May, 2024 began hearing in this suit and same was further adjourned to 15th November, 2024 wherein the 1st Claimant was led in evidence by his counsel, Victor Agunzi, Esq, having adopted his witness statement of oath.

ii. The 1st Claimant now seeks to file additional witness statement on oath having adopted his initial witness statement on oath which prejudices the Defendant.

iii. In the course of the above, objections were raised as to the admissibility of wherein no notice to produce was served on the Defendant and to which this court gave its ruling in favor of the Claimants, to wit: allowing the Claimants to withdraw the documents they sought to tender.

iv. Contrary to the position of the Claimants, there is no error to their claims before the court other than to introduce new facts to the case after the close of pleadings and having read the Defendant's pleadings filed since 22/2/2024.

v. The Claimant has filed their reply dated 19th April, 2024 to the Defendant's statement of defence paragraph 8 thereof shows the Claimants inability to liquidate their indebtedness to the Defendant.

vi. The Claimants in paragraph 4 of their affidavit in support of motion dated 6<sup>th</sup> January, 2025 stated that they discovered "some material facts" which were "erroneously omitted" and went on to state in paragraph 10 of the statement of claim that "the 2<sup>nd</sup> Claimant paid the loan facility given to it in the offer of credit facility dated 24<sup>th</sup> October, 2013 leaving a balance of N6,250,000.00".

vii. The dispute as to the above assertion of the Claimant is as to the payment of the loan facility or otherwise is presently the subject of the Appellants' appeal before the Supreme Court in Civil Suit No: SC/830/2023 challenging the concurrent judgment entered/subsisting in favor of the Defendant and thus there is no error by the Claimants in preparing their process/claims against the Defendant.

viii. The Proposed amendment have not been set out on the body of the motion and is overreaching and will greatly prejudice the Defendant.

ix. It is in the interest of justice to refuse the Claimants application with substantial costs.

5. I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Provisions of the Oaths Act.

#### COURT'S ANALYSIS

The Counsel to the Claimants/Applicants formulated a sole issue for the determination of this Court to wit:

1. Whether this Honourable Court has the power to grant leave to the Claimants to amend their Statement of Claim before the court.

While the Defendant/Respondent Counsel submitted two issues for determination to wit:

1. Whether the Claimants have furnished sufficient materials to enable the court exercise its discretion in their favour.
2. Whether considering the stage of this case, the court could exercise its discretion to grant an amendment as prayed for by the Claimants.

This Court thinks that the two issues formulated by the Defendant/Respondent's Counsel are the most appropriate issue to be considered by this Court. Hence this Court adopts the issues submitted by the Defendant/Respondent's Counsel above as the issues to be determined in this application.

On Issue One.

Whether the Claimants have furnished sufficient materials to enable the court exercise its discretion in their favour.

An application for amendment of pleadings calls for the exercise of the Court's discretionary powers which must be applied judiciously and judicially. An appellate court will intervene where it is shown that the trial Court did not exercise its discretion properly. **MELIFONWU V. EGBUNIKE & ORS (2000) LPELR-6828(CA) (PP. 7-10 PARAS. F)**

In the case of **THE REG. TRUSTEES OF INTERNATIONAL SECONDARY SCHOOL, ORLU & ANOR V. BICOZ OIL COMPANY NIG LTD & ORS (2014) LPELR-22836(CA) (PP. 35-36 PARAS. E)** the Court said:

**The Court should allow all amendments that are required for the purpose of using already available evidence and what is more using the findings of facts of the trial Court. The Court does not set a time limit to do justice and in the same vein it does not or perhaps also cannot set a**

**time limit to grant on amendment designed to achieve justice between the parties. In *William Rain v. Alexander Bravo* (1872) L.R. 4P. C.A. 287 the application to amend was made when the Judge was reading his judgment. It was refused by the trial Judge but it was ultimately granted by the Privy Council. The main concern of the Court in granting or refusing to grant an amendment is the interest of justice. All amendments ought to be granted if thereby justice is done between the contending parties. The Court below acted rightly in granting the amendment sought. Grounds 3 therefore fail. Ground 2 which also dealt with the Amendment also fails."**

**Per IGE ,JCA (Pp. 35-36, paras. E-D)**

As a general rule, a party would be granted leave to amend his pleadings before the end of hearing or judgment and sometimes even on appeal. I take my guide from **OGUMA V. INTERNATIONAL BANK FOR WEST AFRICA (1981) 2 NWLR (PT. 20) 124; SALAMI V. OKE (1987) 14 NWLR (PT. 63) 1."Per EKPE ,JCA (P. 20, paras. B-C).**

By the above provisions and by the authorities cited above, it is as clear as day light that courts are enjoined to grant applications for amendments when they are for the just determination of the issues and in the overall interest of justice.

This Court has seen Exhibit 1 and Exhibit 2 which is the Proposed Amended Statement of Claim and Proposed Additional Witness Statement on Oath attached to the Claimants/Applicant's affidavit in support of this application, and considered paragraphs 8, 9, 11, 12, 13, and 14 of Exhibit 1 attached to the affidavit in support of the motion and came to a just conclusion that it would not overreach the Defendant or occasion injustice to allow the Claimants amend their Statement of Claim as highlighted in paragraphs 8, 9, 11, 12, 13, and 14 of the Exhibit 1 and file additional witness statement on Oath as well. I find and so hold.

The court further finds that, it would serve the interest of justice and for the just determination of the issues before the Court to allow the Applicants amend their Statement of Claim and file Additional Witness Statement on Oath in this suit. I so hold.

Therefore, the argument of the Defendant/Respondent at paragraph 3.00 to 3.02 of its written address is in my view, completely misconceived, hence discountenanced. I so hold.

Issue one is therefore resolved in favour of the Applicants.

On Issue Two.

Whether considering the stage of this case, the court could exercise its discretion to grant an amendment as prayed for by the Claimants.

As a general rule, a party would be granted leave to amend his pleadings before the end of hearing or judgment and sometimes even on appeal. I take my guide from **OGUMA V. INTERNATIONAL BANK FOR WEST AFRICA (1981) 2 NWLR (PT. 20) 124; SALAMI V. OKE (1987) 14 NWLR (PT. 63) 1.**"Per EKPE ,JCA (P. 20, paras. B-C).

The Court in the case of **ADENIRAN V. TOGUNDE (2011) LPELR-3609(CA) (PP. 15-17 PARAS. B)** held thus:

**The law is that amendment may be granted any stage of the trial even on appeal. See: - The National Assembly v. The President of the Federal Republic of Nigeria & Ors. (2003) 41 WRN 94; Oladiti v. Sungas Co. Ltd. (1994) 1 NWLR (pt.321) 433; Globe Fishing Industris Ltd v. Chief Folarin Coker (1990) 7 NWLR (Pt.162) 265; Taoridi A. Sufianu v. Wahab Abass Animashaun (2000) 14 NWLR (pt.688) 650; Mobil Producing Nigeria Unlimited v. Chief S. Monokpo & Ors (2003) 18 NWLR (Pt.852) 346; SPDC Nig. Ltd. v. Kwameh Ambah (1999) 3**

NWLR (pt.593) 1., See also *Totty v. Udofia* (supra); *Alstom S.Vs. Saraki (sura) Oguntimehin v. Gubere* (supra). The trial Court was therefore wrong when it gave consideration to the stage of the proceeding making it a factor in its refusal to allow the amendment sought for by the appellant who was the applicant before it. Order 26 Rule 2 of the Oyo state (civil procedure) Rules 1988 provides that the Court or judge in chambers may at any stage of proceedings allow either part to alter or amend his endorsement or pleadings...."Any stage" is the binding force. Another area of concern is what the trial judge stated in his judgment at page 35 paragraph 15: - "...To a counter claim when pleadings are deemed closed when trial had commenced and the plaintiff is at the concluding stage of his case, no doubt enormous delay would not only be occasioned it would entail enormous injustice to the plaintiff..." From the above clearly the Court had set a time limit to do justice which is again wrong. The law is already settled that the Court should allow amendments that are required for the purpose of using already available evidence. The Appellant from the record before this Court had sought for his application at this stage, when the Respondent (pw6) at the lower Court was being cross-examined was in progress which the law allows. What is more is that the law allows amendment to be sought for using the findings of the trial Court. The Court does not set a time limit to do justice and in the same vein it does not or perhaps also cannot set a grant to an amendment designed to achieve justice between the parties. See *Williams Rainy v. Alexander Bravo* (1872) IR 4 PCA. 287, the application to amend was made when the judge was reading his judgment. It was refused by the trial judge but it was ultimately granted by the Privy council. The main concern of the Court in granting or refusing to grant an amendment is the interest of justice. An amendment ought to be granted if thereby justice is done between the contending parties.

The following case of *Chief Adedapo Adekeye & anor v. Chief o.B. Akin Olugbade* (1987) 6 SC 268 at pp. 280-281 and 285-286; *Agbabiaka v. Mcgregor* (1974) SC 133; *Uzoukwu v. Egbeomu* (1991) 1 NWLR (Pt.200) 708.

**Per BAGE ,J.C.A in adeniran v. togunde (2011) LPELR-3609(CA) (Pp. 15-17 paras. B) aptly supports the above principle of law.**

It is on this note that issue two is as well resolved in favour of the Claimant/Respondent.

#### COURT'S DECISION

In the final summation therefore, leave is hereby granted to the Claimants/Applicants to amend their processes and file additional witness statement on oath to enable the court determine the real issues in controversy between the Claimants/Applicants and the Defendant/Respondent; as set out on the face of the motion paper in reliefs 1 to 3 respectively.

This is the ruling of the court.

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Hon. Justice Jude O. Onwuegbuzie