

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU’AZU
SUIT NO: FCT/HC/ CV/6948/2023
MOTION NO. FCT/HC/M/14740/2024
DELIVERED ON THE 06/02/2025**

BETWEEN:

THEZALO NIGERIA LIMITED.....CLAIMANT/APPLICANT

AND

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| <ul style="list-style-type: none">1. THE HON. MINISTER, OF FEDERAL CAPITAL TERRITORY2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA)3. ABUJA METROPOLITAN MANAGEMENT COUNCIL4. PARKS AND RECREATION DEPARTMENT5. PERSONS UNKNOWN | } | <p>....DEFENDANTS/
RESPONDENTS</p> |
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RULING

This action was commenced by way of a writ of summons dated the 24th day of July, 2023 and filed on the same date. The Claimant claims against Defendants jointly and severally as follows:

- 1. *A declaration that the Claimant is the legal and beneficial owner of land entitled to the exclusive and absolute possession of all property known as Park No. 1845A, A09 lying and situate at Guzape District FCT - Abuja.*
- 2. *A declaration that the interest of the Claimant on Park No. 1845A, A09 District Park Guzape District is subsisting and the 1st and 4th*

- Defendants cannot allocate same to the 5th Defendant or any other person whatsoever.*
- 3. A declaration that the Defendants are trespasser on the grounds that all original title documents in respect to the said Park No. 1845A, A09, District Park, lying and situate at Guzape District FCT - Abuja is in favour of the Claimant respectively.*
 - 4. A declaration that any purported allocation made encroaching or covering the park or any position of it in favour of the 5th Defendant or any other person is illegal, null and void.*
 - 5. An order of perpetual injunction restraining the Defendants by themselves, their servants, agents and/or privies or any other person claiming through them, from trespassing or doing anything on the park.*
 - 6. A declaration that the entry by the 5th Defendant or agents of the 1st to 4th Defendants to the park was wrongful and illegal.*
 - 7. General damages to the tune of thirty million naira (₦30,000,000.00) only as consequences of the Defendant's act of trespass.*
 - 8. Exemplary damages in the sum of twenty million naira only (₦20,000,000.00)*
 - 9. Cost of action assessed at five million naira only (₦5,000,000.00).*
 - 10. Such further orders that this Hon. Court may deem fit to make in the circumstances of the case.*

The Defendants were duly served with the processes of this court as filed by the Claimant. The 1st to 4th Defendants filed their Memorandum of Appearance dated the 10th August, 2023 on the 11th August, 2023. In the same vein, the 1st to 4th Defendants filed their Statement of defence dated the 6th February, 2024 on the same date.

However, on the 5th November, 2024 the Claimant filed a motion on notice dated the same date praying the court for the following orders:

- 1. An order of this Hon. Court granting leave to the Claimant/Applicant to amend its Statement of claim and Witness Statement on oaths in support of the amended statement of claim, attached to the affidavit in support of this application as Exhibit 1.*
- 2. An order deeming the amended Statement of claim and Witness Statement on oaths in support of the amended Statement of claim already filed as properly filed and served, the required fees having been duly paid.*
- 3. And for such other orders as the court may deem fit to make in the circumstance*

The aforementioned orders are being prayed for based on the following grounds, namely:

- 1. The Claimant/Applicant's counsel while preparing the 2nd witness of the Claimant to give his evidence discover new evidence that will be vital to the dispensation of justice in this case.**
- 2. That the Claimant/Applicant have a good case and it is in the interest of justice to present all the facts before this court.**
- 3. Leave of this court is required before the applicant can amend it's Statement of claim.**
- 4. The Claimant has not closed its case and the Defendant will have ample opportunity to cross examine the Claimant's final witness.**

In support of the motion on notice is a seven 7-paragraph affidavit sworn to by one Uka Kalu, the Administrative Manager of the Claimant/Applicant and a written address adopted by the learned counsel to the Applicant as his oral argument in support of the application.

The learned counsel to the Applicant Emmanuel O. Omattah Esq in arguing his position formulated a sole issue for determination to wit:

"Whether the Claimant/Applicant by its supporting affidavit have placed before this honourable court weighty and compelling evidence to grant this application having regards to paragraphs 3(a) to 3(f) and 4 of the supporting affidavit.

The learned counsel to the Applicant referred this Hon. Court to a number of judicial authorities which include **UKWU V. BUNGE (1997) 8 NWLR (PT. 518) PG 527, AKANWO V. NSIRIM 33 NSCQR 2008 PG 1212, UMEOJIAKO V. EZENAMUO (1991) 21 NSCC PT. 1 PG 169**, all to the effect that it is a discretionary power of the court which should be exercised judicially and judiciously in the interest of justice. He also referred to the case of **OKAFOR V. IFEANYI (1979) 12 NSCC PG 43** where the Apex Court Per Bello JSC opined that:

"The correct principle for the guidance of a court in the exercise of its discretionary power is whether by the amendment of the pleadings, the real question in controversy between the parties will be placed before the court, then such application for amendment should be granted. In other words, the discretion ought to be exercised so as to do what Justice and fair play may require in the particular case".

He finally referred to the cases **OKEOWO V. MIGLIORE (1979) 11 SC pg 38** and **AKANINWO V. NSIRIM (Supra)** to the effect that:

"Justice should not only be done, it should manifestly appear to be done by affording the parties to a dispute in court to put their case fully before the court especially in a case conducted by pleadings, it 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."

He therefore urged this Honourable Court to grant his application.

In a response to the motion on notice the 1st to 4th Defendants/Respondents filed their counter affidavit dated the 7th November, 2024 and filed on the same date. The 11-paragraph counter affidavit sworn to by one Kelvin Ekene of Jude-Okay & Partners states at paragraphs 4, 7 and 8 respectively as follows:

- 4. That the instant amendment is aimed at overreaching the 1st to 4th Respondents by filing gaps as revealed during the cross - examination of the PWI thus (a) - (f) thereof.**
- 7. That the new paragraphs have introduced the issue of agency and representatives of the 1st to 4th Respondents being responsible for the purported acts of trespass, creation of access roads, attempt to forcibly take over the plot and reallocate same to the 5th Respondent even when there is no back up evidence except to defeat our cross examination sessions.**
- 8. That a careful perusal of paragraphs 13 and 16 of purported amended statement of claim would reveal that new facts of 2024 are introduced after the cause of action and institution of the action on the 24th July, 2023.**

The affidavit is also accompanied with a written address adopted by the learned counsel to the 1st to 4th Defendants as his oral argument in support of his opposition to this application. He formulated an issue for determination by this Hon. Court to wit:

"Whether the honourable court can fairly grant the instant application aimed at overreaching the 1st to 4th Respondents".

The learned counsel to the Respondents referred to the cases of **POLARIS BANK V. CLIFFORD (2022) LPELR- 57464(CA). KODE V. YUSSUF (2001) 4 NWLR (PT. 703) PG 392** and **EZE BENSON OBIALOR & ANOR V. JOSIAH UCHENDU & ORS (2013) LPELR- 22048 CA**, respectively. He particularly referred to the

case of **KHALIFA V. ONOTU & ANOR (2016) LPELR- 41163 (CA)** where it was observed that:

"On whether an amendment will overreach the opposing party or not, it is necessary to know what is meant by it". An overreaching amendment has been described in the case of Yusuf V. Adegoke (2009) All FWLR (Pt. 385) pg 384 by Tobi, JSC to mean:

"An overreaching conduct is a circumventing or artifice. It is designed to defeat the object or objective of the Respondent's case by going too far, in the sense of destroying the fulcrum of the Respondent case".

Similarly, in the case of **NIWA V. SPDC (NIG) LTD (2008) LPELR-1963 (SC) PG 21 PARAGRAPH A** it was observed that:

"Overreach means to circumvent, outwit or get better of something by cunning or artifice. It also connotes smartness on the part of a party in the litigation to defeat his opponent by a thoroughly organised plan to frustrate the intention and intendment of the adverse party. An overreaching conduct is an inequitable conduct because it is not fair and just".

The learned counsel to the 1st - 4th Defendants equally referred to the cases of **I.M.L. VS. TAWOSE (2004) 11 NWLR (PT. 884) PG 272 AT PG 287 RATIO 8, GOWON VS. IKE - OKONGWU & ORS (2003) LPELR- 1336 SC** and **IREPODUN - IFELODUN LOCAL GOV'T V. BALEMO & ORS (2007) LPELR- 8439 CA**. He finally referred to the case of **JATAU V. AHMED (2003) 3 NWLR (PT. 811) PG 498** where the Supreme Court Per Kalgo JSC allowed the appeal against the decision of the Court of Appeal and remitted the case back to the Court of Appeal Kaduna where issue of amendment became functus officio for this court to rehear and determine the issue by another panel.

“That being the case, the Appellant's submission before us is therefore pregnant with some valid points. Again, therefore the trial court's order for Amendment to Introduce causes of action accruing to the 1st and 2nd plaintiffs after the filing of their statement of claim cannot be competent ”.

He therefore urged this Hon. Court to refuse this application with costs.

In a further reply on point of law to the 1st to 4th Defendant's counter affidavit, the Applicant submitted that the essence of Amendment is to bring to fore the real issues in controversy between the parties and not otherwise. He referred to the case of **OKEOWO V. MIGLIORE (1979) 11 SC 138, 199 - 200** cited in (digest of the Supreme Court Cases DSCC), 1956 - 1984 Vol. 4 edited by Chief Gani Fawehinmi at pg 469 - Supreme Court Per Idigbe JSC held:

"The rule of conduct of the Courts in matters relating to an amendment of pleadings is that however careless or negligent the first omission to ask for amendment may have been and however late the application therefore, the amendment should be allowed by the court either on it's own motion or on the application of a party to the proceedings, if such amendment can be made without injustice to the opposite party (i.e the other side) and there can be no injustice if the opposite side can be compensated by the award in his favour of the costs occasioned by the amendment".

The learned counsel to the applicants also referred to the case of **VICTOR ADEGOKE ADEWUNMI V. THE ATTORNEY GENERAL OF EKITI STATE &IRS (2002) 2 NWLR(pt. 751) pg 474 at pg 507** where the Supreme Court Per Wari JSC held:-

"In all civil litigations, it is the duty of the court to aim at, and to do substantial justice and allow formal amendments as are

necessary for the ultimate achievement of justice and the end of litigation. While recognizing that Rules of court should be observed and followed, it should be emphasized that justice is not a fencing game in which the parties engage each other in a whirling of technicalities?"

He therefore urged this Honourable Court to strike out the entire counter affidavit of Kelvin Ekene on behalf of the 1st to 4th Defendants and grant their application.

Having thus paraphrased the entire processes filed by both parties by way of affidavits, counter affidavit and reply on point of law to the counter affidavit of the 1st to 4th Defendants, it will be in the interest of Justice to evaluate them with the aim of arriving at a just decision of this application. It will be in the interest of justice to refer to Order 25 rule 1 of the FCT High Court Civil Procedure Rules, 2018 which provides as follows:-

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

The implication of the above provision of the law is that this Hon. Court has the requisite jurisdiction to grant this type of application so long as it is made before the close of the case or before judgment.

It should be observed at this stage that the aforementioned Rules of this court did not define the word 'Amendment'. However, Black's Law Dictionary defined

"Amendment as a formal revision or addition proposed or made to a statute, constitution, pleading, order or other instrument specific, a change made by addition, deletion or correction, especially an alteration in wording".

The gravamen of the objection of the Respondent stems from the incorporation of a purported cause of action which arose after pleadings had been exchanged and in fact a witness has testified and that granting such an amendment is a breach of the Rules of Court. The fears and argument of the Respondents lies squarely on the content of paragraphs 6, 7, 8 and 9 of their counter affidavit wherein they referred to paragraphs 11 - 18 and particularly paragraphs 13 and 16 of the purported Amended Statement of claim wherein new facts of 2024 were alleged to have been introduced by the Applicants.

This being the case, it will be in the interest of Justice for this Hon. Court to adopt a sole issue for determination to wit:

"whether or not the applicant has placed before this honourable court weighty reasons enough to enjoy the grant of this application in his favour".

As earlier stated, the main grievances of the Respondents lies in the content of paragraphs 13 and 17 and particularly annexures 7 and 8 of the amended statement of claim. For emphasis sake, let me reproduce paragraphs 13 and 17 of the proposed amended statement of claim as follows:

13: "The Claimant equally have an acknowledgement of its allocation application confirmation dated the 20th May, 2024, from Department of Parks and Recreation Abuja Metropolitan Management Council, the 3rd and 4th Defendants with file No. 28949 and printed on 27th June, 2024..... FCDA official receipt are hereby pleaded and annexed as annexure 7 which shall be relied upon at the trial of this suit".

17: "The Claimant avers that they equally submitted a feasibility study on a proposed recreational park in FCT Abuja to Department of Parks and Recreation, the 4th Defendant for

approval. The feasibility study submitted to Parks and Recreation is hereby pleaded and annexed as Annexure 8 which shall be relied upon at the trial of this suit".

Incidentally, the content of both paragraphs referred to above relate to issues already contained in the original Statement of claim particularly as it relates to the subject matter of this suit which deals with **"the land in dispute known and situate at Park No. 1845A, A09 District Park, Guzape District FCT- Abuja measuring 1.3 Hectares respectively within the jurisdiction of this Hon. Court.** The content of the proposed Amended Statement of claim deals with the same parties as contained in the original Statement of claim and based on the same subject matter as well as cause of action. It is clear from the content of Annexure 7 and 8 attached to the proposed amended statement of claim that they are offshoot of the earlier annexures 1 - 6 attached to the proposed Amended Statement of claim which were exhibited in the original Statement of claim.

The next question that should be addressed by this Hon. Court is whether or not the content of paragraphs 11 - 18 and annexure 7 and 8 are capable of depriving this Hon. Court the jurisdiction to grant this present Application. In order to answer this question let me refer to the case of **IREPODUN IFELODUN LOCAL GOVERNMENT V. CHIEF SIMEON OGUNDAHUNSI BALEMO & ORS (2007) LPELR - 8439 (CA)**, wherein the Supreme Court while referring to the case of **OGWUMA ASSOCIATED COMPANIES LTD. VS. I.B.W.A (1988) 1 NWLR pg 658** held as follows:

"The plaintiffs claim in 1981 was based on the loan agreement and that accordingly, the amendment did not seek to introduce a new loan agreement or constitute the addition of a new cause of action nor did it raise a different case and that it amounted to no more than a different or additional approach to the same

facts based on the same cause of action. The amendment was further held to have represented fresh claims arising out of the original cause of action and that to disallow it would defeat one of the main purpose of Amendment, namely, that as far as possible in any proceedings all questions should be decided so as to prevent multiplicity of actions by the same parties."

Again, in the case of **FOKO V. FOKO (1968) NMLR pg 441 and SOLANKE V. SOMEFUN (1974) 1 S.C pg 141** where the questions were raised as to whether there can be an amendment by substitution and it was variously held that

"A trial court would be within its power to grant an amendment even if to do so would be to add to the existing cause of action or substitute therefore a new cause provided that the additional or the new cause arises out of the same facts or substantially the same facts as a cause of action in respect of which the plaintiff has already claimed relief".

The only conclusion that could be derived from the above cited judicial authorities is that it will be most unconscionable for the parties if the Plaintiffs/Applicants are deprived of the incorporation of the claim and reliefs sought in the amendment. The filing of a new suit on the cause of action, which according to the Defendants arose after joining of issues, would tantamount to waste of judicial time and money and indeed make room for multiplicity of actions, which is incompatible with the intendment and spirit of **ORDER 25 of the FCT, High Court Civil Procedure Rules, 2018.**

Similarly, in the case of **OWOSHO V. ATIKO & ANOR (2022) LPELR - 58014 (CA)** it was held that:

"The position of the law that an amendment can be allowed at any stage of the proceedings is equally recognised by the

concept that allows for the amendment of pleadings to bring the same in line with evidence, which ordinarily ought not to have been admitted but which parties due to lack of concentration allowed to be on record. Suffice to say that it is clearly not in tandem with proper dispensation of justice for the lower court to have refused the amendment sought by the appellant. It is also tantamount to compelling the Appellant to contest the cause on the basis of what she no longer saw the need to do or to compel her to withdraw the case in question for the purpose of filing another case".

Let me also refer to the case of **OBIALOR & ANOTHER V. UCHENDU & ORS (2013) LPELR - 22048 (CA)** where it was observed that:-

"The need for amendment is to take care of the mistakes or blunders of counsel in the process of filing processes. It has been held that the object of the court is not to punish litigants for their mistakes or that of their counsel. Where an amendment does not cause injustice to the adverse party".

This Honourable Court is of the humble view that there is nothing new in the proposed Amended Statement of claim that has departed from the initial cause of action of this suit. The content of paragraphs 11 - 18 of the Amended Statement of claim has not disclosed anything significantly different from the original statement of claim. The cause of action, subject matter and parties remain the same. To refuse this present application will result into greater injustice to the parties who ought to have their case determined on merit without indulging in multiplicity of actions on the same subject matter.

In conclusion, it should hastily be observed that the right to amend pleadings has not been donated to the Plaintiff alone but to both parties to a suit.

In view, of the foregoing judicial authorities this court is of the humble view that this application is made on merit and deserve the favour of this Honourable Court. It ought to be granted and is accordingly granted as it would be most unconscionable for the parties if the Plaintiff is deprived of the incorporation of the claim and reliefs sought in the amendment.

**SIGNED:
HON.JUDGE
06/02/2025**

APPEARANCE:

Emmanuel .O. Omattah, Esq, for the Claimant/Applicant

Jude Oguanyi, Esq, for the 1st – 4th Defendants