

**IN THE HIGH COURT OF JUSTICE**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP,**  
**HON.JUSTICE P.A.AKHIHIERO,**  
**ON THURSDAY,**  
**THE 8<sup>TH</sup> DAY OF MAY, 2025.**

**BETWEEN :**

**SUIT NO: B/700/2021**

**SIR (BARR.) CHRISTOPHER AGBONWANEGBE -----CLAIMANT/  
RESPONDENT**

**AND**

**MR. JOHN OSAMEDE ADUN (A.K.A BOB IZUA)-----DEFENDANT  
/APPLICANT**

**RULING**

This is a Ruling on a Motion on Notice, brought pursuant to ***Order 21 Rule, 1 and Order 45 Rule 4 of the Edo State High Court (Civil Procedure Rules), 2018*** and under the inherent jurisdiction of the Court, praying the Court for the following orders:

- 1) ***AN ORDER of this Honourable Court granting the Defendant/Applicant leave to amend his Statement of Defence in the manner underlined in the aforesaid processes attached to this motion herein and marked as Exhibit 'A';***

- 2) *AN ORDER granting leave to the Defendant/Applicant to file Additional Written deposition on Oath;*
- 3) *AN ORDER of this Honourable Court deeming the said Defendant's Amended Statement of Defence and the Additional written Statement on Oath attached to this application as properly filed and served, the appropriate filing fees having been paid.*

*And for such further Order{s} as this Honourable Court may deem fit to make in the circumstances of this case.*

The motion is supported by an affidavit of 6 paragraphs and the Written Address of learned counsel for the Defendant/Applicant. The Applicant exhibited the proposed Amended Statement of Defence as Exhibit 'A' with the relevant amendments underlined, while the additional deposition is attached as Exhibit "B".

In his supporting affidavit, the Deponent stated that while going through the processes already filed, the Defendant's counsel discovered that there are facts that needed to be included in the defence.

He stated that there is the need to amend the Defendant's Statement of Defence in this suit to place all the necessary facts before this Honourable Court for effective and effectual determination of this suit.

In his written address in support of this motion, the learned counsel for the Defendant/Applicant, *E.O. Afolabi SAN*, referred the Court to the case of the case of *ALAWIYE v. OGUNSANYA (2013) 5 NWLR (Pt.1348) Pg.570 @ 586 R 25* where the Supreme Court held that an amendment can be made at any time before judgment provided that doing so will not overreach or prejudice the other party.

He submitted that this amendment is not to overreach the Claimant but to bring the reliefs sought in line with evidence already adduced.

He relied on the case of *ALSOTHOM S.A v SARAHI (2010) 14 NWNLR (Pt 687) Pg 415@417-418 R 2 & 3* where the Supreme Court held as follows:

*"The basic principle governing the granting of leave to amend is for the purpose of determining the real issue or issues in controversy between the parties. The courts have always followed the established principle that the fundamental object*

*of adjudication is to decide the rights of the parties and not to impose sanctions merely for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights."*

He urged the Court to grant this application in the interest of justice. He maintained that the Claimant/Respondent will not be prejudiced in anyway whatsoever if this application is granted.

Opposing the application, the learned counsel for the Claimant/Respondent, **Chris Agbowanegbe Esq.**, filed a Counter Affidavit of 21 paragraphs together with a written address, in opposition to the motion.

In his Counter-Affidavit, the Claimant/Respondent stated that he will be highly prejudiced if this application is granted.

He said that the application is maliciously aimed at overreaching the Claimant.

He said that the parties have already joined issues since the 10<sup>th</sup> of January,2022 when the Defendant filed his Statement of Defence.

According to him, the Defendant/Applicant's additional written deposition on oath is ill motivated and an afterthought and should be discountenanced. He said that the document on which he based the additional statement on oath was not an exhibit previously front-loaded and was not even in the list of the documents to be relied upon in his earlier processes.

He said that the Defendant's counsel attempted to cross examine a witness on the purported contents of the additional statement on oath but failed and withdrew hence this mischievous application.

He maintained that there are no new facts that will relate to a fair and just resolution of this dispute and that this application is meant to derail the course of justice.

In his written address, the learned counsel for the Claimant/Respondent formulated three issues for determination as follows:

- 1) *Whether or not the purported Amended Statement of Defence is properly before the court in compliance with the rules of the Edo State High Court (Civil Procedure) Rules, 2018;*
- 2) *Whether or not this application is overreaching and will prejudice the Claimant in this case; and*
- 3) *Whether or not the Defendant/Applicant can raise the issue of fraud/forgery for the first time during amendment at the tail end of the claimants' case.*

Thereafter, the learned counsel argued the three issues seriatim.

**ISSUE ONE:**

*Whether or not the purported Amended Statement of Defence is properly before the court in compliance with the rules of the Edo State High Court (Civil Procedure) Rules, 2018.*

Arguing this first issue, learned counsel referred the Court to **ORDER 24 (1) of THE EDO STATE HIGH COURT (CIVIL PROCEDURE) RULES, 2018** which stipulates that a party may amend his originating process and pleadings at any time before the settlement of issue and not less than twice during the trial before the close of the case, provided the court may grant more than two amendments in exceptional circumstances.

He submitted that in the exercise of the discretion, the Court must be guided by the supreme interest of the parties and justice; and should not be whimsical and capricious. He cited the following cases in support: **GENERAL ELECTRIC CO .vs. AKANDE & ORS (2016) LPELR-50673(CA); ADEKEYE V.AKIN-OLUGBADE (1987) 3 NWLR (PT. 60) 214 AT 223-225, OGUMA ASSOCIATED COMPANIES (NIG.) LTD. V. L.B.W.A. (1988) 1 NWLR (PT.73) 658 AND 674 (LETTERS A-B), OKAFOR V.IKEANYI (1979) 3-4 S.C. 99 AT 106-107, ENGLAND V. PALMER (1955) 14W.A.C.A.659 AT 660-661, ADETUTU V.ADEROHUNMU AND ORS.(1984)6 S.C. 92 AT 99 AND 108-109, IMONIKHE AND ANOR. V. A.G., BENDEL STATE AND ORS, (1992) 6 NWLR (PT.248) 396 AT 414 (LETTERS E-F).**

He posited that the purported Amended Statement of Defence has not shown that there are facts that will help in the just adjudication of the dispute before the court and therefore should be dismissed.

Furthermore, learned counsel referred to ***ORDER 24 RULE 3 of the EDO STATE HIGH COURT (CIVIL PROCEDURE) RULES, 2018*** which provides that where ***"any originating process and or pleadings is to be amended, a list of any additional witness to be called together with his written statement on oath and a copy of any document to be relied upon consequent on such amendment, shall be filed with the application."***

He also cited the case of ***BENDEL INSURANCE CO. PLC.V. BCM FIN. & SEC (NIG.) LTD. (1997) 8 NWLR (PT.518)597.***

He said that the present did not comply with any of the aforementioned provisions of the rules of Court and therefore should be dismissed.

Counsel submitted that it is trite law that an amendment cannot be granted where the pleading is intended to align with evidence which is not in the record of the Court and he cited the following cases: ***ADEKEYE VS.AKIN-OLUGBADE (1987) 3 NWLR (PT. 60) P.214; JOSEPH v. P.D.P &ORS (2020) LPELR-51193(CA).***

He said that the evidence which the Defendant is trying to bring in now was not frontloaded, neither was it listed as part of the documents to be relied upon during trial.

### **ISSUE TWO:**

***Whether or not this application is overreaching and will prejudice the Claimant in this case?***

Arguing this second issue, counsel submitted that it is settled law that in civil cases a party is entitled to amend his pleadings so as to enable the trial court decide the real issue or issues in controversy between the parties and he cited the case of ***SALAMI V. OKE (1987) LPELR-2982(SC).***

However, he said that an amendment can be refused where it is made **MALA FIDE** or if the proposed amendment will cause unnecessary delay or will in

anyway unfairly prejudice the opposite party, or is quite irrelevant or useless. See the cases of *ADEKEYE V.AKIN-OLUGBADE (1987) LPELR-104 (SC)*; and *OJA & ORS.V. OGBONI & ORS.(1978) 1 NWLR 95*.

He submitted that the Claimant will be highly overreached and prejudiced if this application is granted and he urged the Court to dismiss this application.

**ISSUE THREE:**

***Whether or not the Defendant/Applicant can raise the issue of fraud/forgery for the first time during amendment at the tail end of the Claimants' case?***

Counsel posited that the Defendant/ Applicant attempted to allege fraud in the proposed amended Statement of Defence by exhibiting an alleged Statement on Oath by one ADEMOLA .A. OSOKO ESQ.

He submitted that an allegation of fraud is a very grave one and very material element in the case of a party pleading it. He said that such an important matter should be contained in the pleadings.

He said that if it is sought to be introduced for the first time by amendment of the pleadings, the good faith of the application is called to question and the court may want to know why the matter was not pleaded originally.

He said that it has long been the universal practice except in exceptional circumstances, not to allow amendment for the purpose of adding a plea of fraud where fraud is not pleaded in the first instance.

Furthermore, he maintained that an allegation of fraud that is vague and or speculative because it completely bereft of any particulars of the fraud is not substantial and therefore not triable. Thus, an amendment to introduce such a vague and speculative allegation is useless.

He submitted that no admissible evidence of facts not pleaded can be adduced in support of such vague and bare allegation and he cited the following cases: *N.S.E V. KATCHY (2017) 7 NWLR (PT1564) CA*; *FABUNMI V. AGBE (1985) 1 NWLR (PT.2) 299*; *USEN V.BANK OF WEST AFRICA LTD (1965) ALL NLR, 344*; and *USENFOWOKAN V.IDOWU (1969) 1 NWLR 77*.

Finally, he urged the Court to refuse the application.

I have carefully considered all the processes filed in this application, together with the arguments of the learned counsel for the parties.

I am of the view that the sole issue for determination in this application is whether the Defendant/Applicant can amend his Statement of Defence at this stage.

As a general rule, amendment of a party's processes can be made at any time before judgment. See the following decisions on the point: *Oyewole v Lasisi (2000) 14 NWLR (Pt.687)342*; *Chijioko v Soetan (2006)11 NWLR (Pt.990) 179*; and *Asuen v Omoregie (2012) 13 NWLR (Pt.1316) 71*.

However under our present rules, there are some limitations on the number of amendments a party may effect on his originating processes and pleadings. ***Order 24, Rule 1 of the Edo State High Court Civil Procedure Rules, 2018*** provides as follows:

***“Order 24***

***1. Amendment of originating process and pleadings***

***A party may amend his originating process and pleadings at any time before the settlement of issue and not more than twice during the trial but before the close of the case, provided the Court may grant more than two amendments in exceptional circumstances.”***

In his objection to this application, the learned counsel for the Claimant/Respondent has not alleged that the Defendant is trying to amend beyond the stipulated number of twice during the trial before the close of the case as stipulated by ***Order 24, Rule 1 of the Edo State High Court Civil Procedure Rules, 2018*** which is quoted above.

The objection of the Claimant is that the present objection is meant to overreach him and that it is brought in bad faith.

The point must be made that although the amendment of pleadings is at the discretion of the court, this discretion must be exercised judicially and judiciously,

following some settled principles. Some of the guiding principles for the amendment of pleadings include the consideration of the justice of the case and the rights of the parties before the court.

Whenever it is possible to cure and correct an honest or unintentional blunder or mistake and where the amendment will help to expedite the case without injustice to the other party, it should be granted. See the case of *Akpan v O.A.T.R.C (2015)16 NWLR (Pt.1486) 431 at 433.At p.434*. In the said case, the Court stated thus:

***“In granting amendments of pleadings, courts guard against prejudice to the opponent while encouraging the emergence of the real issues in dispute between the parties”.***

It is settled law that in civil cases, a party is entitled to amend his pleadings so as to enable the Court decide the real issues in controversy between the parties. See the case of *Salami vs. Oke (1987) LPELR-2982 (SC)*.

However, an amendment can be refused where it is made malafide or if the proposed amendment will cause unnecessary delay or will unfairly prejudice the opposite party. See the case of *Adekeye vs. Akin-Olugbade (1987) LPELR- 104 (SC)*.

The principle of law is that the purpose of an amendment is to enable the parties conduct their cases properly by placing all relevant facts necessary for the just determination of the case.

In the instant case, the Defendant/Applicant has shown that the amendment will facilitate his defence in this suit.

The Claimant/Respondent has not shown how the proposed amendment is in bad faith or will cause unnecessary delay or unfairly prejudice his case.

With respect of the alleged failure of the Defendant to frontload the affidavit of the said Ademola Osoko Esq., there is no law that says a document, which is not frontloaded, is inadmissible. It is all about weight and nothing but weight; there is a difference between admissibility of a document and the weight to be ascribed to

the document. See the case of *AKONJOM & ANOR V. EKOM & ORS (2019) LPELR-49093(CA) (PP. 25-26 PARAS. E)*

In this application, the Applicant has deposed to the fact that while his counsel was going through the processes already filed in this suit, he discovered that there are facts that needed to be included in the defence. Thus, the amendment is to enable the Defendant to properly defend this suit. I think it will be a breach of fair hearing to prevent the defendant from putting up facts to support his defence.

Furthermore, the Claimant/Respondent is entitled to file a consequential amendment if this application is granted so I do not see how this amendment can overreach or prejudice the Claimant.

*On the whole, I hold that the Defendant/Applicant is entitled to amend his Statement of Defence at this stage. I therefore resolve the sole issue in favour of the Defendant/Applicant.*

*Consequently, this application succeeds and I hereby make the following orders:*

- 1) AN ORDER of this Honourable Court granting the Defendant/Applicant leave to amend his Statement of Defence in the manner underlined in the processes attached to the affidavit in support of this motion as Exhibit 'A';*
- 2) AN ORDER granting leave to the Defendant/Applicant to file Additional Written deposition on Oath;*
- 3) AN ORDER of this Honourable Court deeming the said Defendant's Amended Statement of Defence and the Additional written Statement on Oath attached to this application as properly filed and served, the appropriate filing fees having been paid;*
- 4) The Claimant/Respondent shall file his consequential amendments within 14 days from today.*

*There shall be no order as to costs.*

**P.A.AKHIHIERO**  
**JUDGE**  
**08/05/25**

**COUNSEL:**

**1. Chris Agbowanegbe Esq-----Claimant/Respondent**

**2. E.O. Afolabi SAN-----Defendant/Applicant**