

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,
ON WEDNESDAY THE
22ND DAY OF FEBRUARY, 2022.

BETWEEN:

SUIT NO. B/495/2020

MR. UYIOSA OGBEMUDIA ----- CLAIMANT/ RESPONDENT

AND

MR. ALEXANDER OGBEMUDIA ----- DEFENDANT/APPLICANT

RULING

This is a Ruling on a Motion on Notice dated 1st of November, 2022, filed on the 10th of November, 2022 brought pursuant to Order 24 Rule 1, Order 40 Rule 1 and 2, of the Edo State High Court (Civil Procedure) Rules, 2018, and under the inherent jurisdiction of this Honourable Court.

By this application, the Claimant/Applicant is praying this Honourable Court for the following orders:

1. An ORDER granting leave to the Claimant/Applicant to amend his Claim and relief sought in this suit;
2. An ORDER deeming the attached amended Claim and relief sought as properly filed and served, the appropriate filing fees having been paid; and
3. AND FOR SUCH FURTHER ORDER OR ORDERS as this Honourable Court may deem fit to make in the circumstance.

The motion is also supported by a 6 paragraphs affidavit and a Written Address of the learned counsel for the Applicant.

In his written address which he adopted as his arguments in support of the application, the learned counsel for the Claimant/Applicant, ***E.O. Amiens Esq.*** submitted that this Court is empowered by its rules and by the provisions of the 1999 Constitution and by its inherent powers to grant this application. He relied on the case of ***PEARSE V. OLAYEDE & ORS. (2013) LPECR-22086 (CA)*** where the

Court defined the inherent jurisdiction of the Court as a source of law which is peculiar and special to civil procedure law. He said that the inherent jurisdiction of the Court is that which enables it to fulfill itself and effectively as a Court of Law and he urged the Court to grant the reliefs sought.

Upon receipt of the application, the Defendant/Respondent filed a Counter-Affidavit of 10 paragraphs and a written address of his counsel.

In his written address which he adopted at the hearing of this application, ***F.C. Jarikre Esq.*** the learned counsel for the Defendant/Respondent formulated a sole issue for determination as follows:

“Whether this Honourable Court can grant the Claimant/Applicant’s application as prayed.”

Arguing the issue, learned counsel referred to the provisions of ***Order 24 Rule 1 of the Edo State High Court Civil Procedure Rules, 2018*** which provides as follows:

“A party may amend its originating process and pleading at any time before the settlement of issue and not more than twice during trial but before the close of the case, provided the court may grant more than two amendments in exceptional circumstances”

He submitted that based on the unambiguous provision of Order 24 Rule 1 of the rules of this Honourable Court parties are not allowed to amend their originating process or pleading after the close of the case.

He posited that in the instant case, parties have long closed their cases after which the matter was adjourned for the adoption of final written address and as such, no application for amendment can be entertained and he urged the Court to so hold. He said that the nature of the amendment sought by the Applicant as underlined in red in the amended statement of claim is for proceeds of rent in respect of the six (6) rooms at No. 12, Nekpenekpen Street the subject matter of this suit, allegedly bequeathed to the Claimant.

That the said “proceeds” demanded is from when this suit was filed to the date of judgment which ordinarily falls within the precincts of facts relating to damages that arose after this suit was filed. He referred to **relief “f” of the Claimant’s amended claim** and to the case of ***World Gate Ltd V. Senbanjo (2001) 4 NWLR, Part 654, page 669 at 681 – 682, Para H-B***, where the Court of Appeal held as follows:

“No legal authority or any rule of law permits a plaintiff to amend his pleadings simply to plead facts either not occurred or been ascertained but only arose after the suit was filed”

He submitted that the nature of the amendment sought by the applicant is such that no evidence had previously been led in support of same to warrant the exercise

of the discretion of this Honourable Court in favour of the Claimant/Applicant and he referred to the case of *Imonikhe V.A.G. Bendel (1992) 6 NWLR, Part 248, Page 396 at 409, Para A-B, per Nnaemeka Agu JSC as he then was.*

Furthermore, counsel submitted that the claim for: “...proceeds of rent from when this suit was filed to the date of judgment to be computed and included” was never a part of the claimant’s claim before the court, as it was never assessed and/or paid for at the registry of this Honourable Court. That the claimant is seeking to smuggle into this case a strange claim which was neither endorsed on the writ nor contained in the statement of claim in this suit. He said that issues were not joined on it and he urged the Court to reject same.

Upon receipt of the Counter-Affidavit, the Claimant/Applicant filed a 5 paragraphs Further Affidavit in support of the application and a Reply on Points of Law in support of the application.

In his Reply on Points of Law, the learned counsel submitted that the Court can grant this application for amendment in the interest of justice. He submitted that the amendment sought is not over reaching but to bring the pleadings in line with the evidence before the Court. He emphasized that an application for amendment is based on the exercise of the discretion of the Court.

I have carefully examined the processes filed in respect of this application together with the submissions of learned counsel for the parties.

The aim of an amendment is usually to prevent the manifest justice of a cause from being defeated or delayed by formal steps arising from the mistake of counsel. Thus, an amendment no matter how late it is sought ought to be allowed if it will not amount to injustice to the other side. See *ADEKEYE V. AKIN-OLUGBADE (1987)3 NWLR (Pt. 60) 214.*

The question of granting or refusing leave to amend pleading is dependent on the exact facts of a particular situation and a Court seised of the proceedings ought generally before granting or refusing any application give the whole matter a holistic overview in its bid to do justice. It is settled law that the purpose of amendment of proceedings is to determine the real issue in controversy between the parties which ought to be allowed at any stage of the proceedings unless such amendment will spring surprises to the adversary and or bring injustice. See the case of *AMMAX (NIGERIA) LIMITED & ANOR v. DIAMOND BANK PLC (2020) LPELR-51258(CA).*

The Court, in considering an application for amendment of pleadings normally looks into the following; namely: the attitude of the parties, the nature of the amendment sought in relation to the suit, the question in controversy, the time for bringing the application for amendment, the materiality of the amendment sought. The Courts will not easily grant an application for amendment which if

granted will unduly delay the hearing of the suit or unfairly prejudice either party to the suit.

The Court will not grant an amendment to change the nature of the claims before the Court. The Court will not grant an amendment where it will create a suit where none existed. Leave will not be granted if the amendment would not cure the defect in the proceedings. See **OKOLO & ANOR V. U.B.N LTD (1999) 10 NWLR (PT 623) 429; ALSTHOM S.A V. SARAKI (2000) 10-11 SC 48; and OLATUYI V. GOVERNOR OF ONDO STATE & ANOR (2016) LPELR-41371(CA) (PP. 28 PARAS. B).**

Coming to the present application for amendment, I observed that the Claimant/Applicant merely seeks to amend the claim to include the proceeds of rent from when this suit was filed to the date of judgment to be computed and included. I think it was an error on the part of the counsel to have claimed the proceeds of rent up to the time of the filing of the suit. The standard best practice is to claim up till the date of judgment. As earlier stated, an amendment can be granted to correct the mistake of a counsel. Furthermore, the mistake of the counsel should not be visited on the litigant. See **ADEKEYE V. AKIN-OLUGBADE supra.**

Again, it is settled law that an amendment can be granted to bring the pleadings in line with the evidence. Contrary to the submission of the learned counsel for the Defendant/Respondent, I think the evidence before the Court is sufficient to support the present amendment. The evidence of the monthly rent is already before the court so there will be no need to call or recall any witness as a result of this amendment. I do not see how the Defendant will be prejudiced by this amendment. I think it will be in the overall interest of justice to grant this amendment.

Sequel to the foregoing, I hold that the application is meritorious and it is granted as follows:

The Claimant/Applicant is granted leave to amend his Claim and relief sought in this suit and the amended Claim and relief attached to the affidavit in support of this motion is deemed as properly filed and served, the appropriate filing fees having been paid. I award the sum of N50, 000.00 (fifty thousand naira) as costs in favour of the Claimant/Applicant.

**P.A.AKHIHIERO
JUDGE
22/02/2023**

COUNSEL:

E.O. AMIENS ESQ-----CLAIMANT/APPLICANT

H.O.OSATOHANMWEN ESQ-----DEFENDANT/RESPONDENT