

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI
ON THURSDAY THE 19TH DAY OF NOVEMBER, 2015
BEFORE HIS LORDSHIP
HONOURABLE JUSTICE M. A. ONYETENU
JUDGE**

SUIT NO:FHC/AI/CS/27/2011

BETWEEN:

**THE REGISTERED TRUSTEES OF THE
PRESBYTERIAN CHURCH OF NIGERIA - -PLAINTIFF/APPLICANT**

A N D

1. REV. IBIAM EGWU UKENI
2. REV. EZE. NWONU EZE
3. REV. AMARACHI NNACHI UKOMA
4. REV. AKA AKA IBIAM
5. ELDER CHRISTOPHER INYA EWA
6. ELDER JOMBO UKOMA
7. ELDER JOHN MMAHI
8. ELDER ROSE U. OKO

(For themselves and as representing the
Revoltng members of the Registered Trustees of PCN,
Mid-East Synod)

DEFENDANTS/RESPONDENTS

RULING

This Ruling is with respect to Motion on Notice filed by the
Plaintiff/Applicant in this suit, praying this court for:

1. An Order granting the Plaintiff/Applicant leave to amend her
statement of claim in this matter as contained in the **Schedule of
Amendment.**

M A Onyetenu

2. An Order declaring the Amended Statement of Claim as duly amended filed and served and for such further order or orders as this court may deem fit to make in the circumstances.

Counsel gave the grounds of this application as being that it was inadvertently omitted in the statement of claim and is the crux of the Plaintiff claim and would not require fresh evidence as facts to establish it are already in evidence before the court.

The motion is supported by a 10 paragraph affidavit which the Plaintiff/Applicant relied on.

In his written address Plaintiff Counsel gave a sole issue for determination to wit:

Whether this application for Amendment is meritorious and deserves to be granted.

Counsel submitted that the essence of an amendment is to correct errors and mistakes which may arise as a result of its nature citing **ADEKANYE & ORS vs AKIN OLUGBADE** 1987 3 NWLR pt 60 214.

Counsel submitted that in their affidavit, they have deposed to facts which disclose that the omission of the relief sought which is in their Writ

M A Oyelewa

of Summons due to inadvertence of Counsel was omitted in the statement of claim.

Counsel further submitted that situations which could deny a party the opportunity of an amendment include that which would spring a surprise on the adverse party or which will work hardship or become a vehicle for fraud or injustice or which would require leading new evidence are absent in this application as the relief sought in the amendment is already in the Writ of Summons and so will not surprise the Defendant.

Moreover Counsel submitted that the relief sought is the crux of the Plaintiff's cause of action and their evidence in support of this relief is already before the court citing

MRS. C. IYABO ADETUTU vs MRS. WINIFRED O.

ADEROHUNWU 1984 1 SCN LR 515.

Furthermore Counsel to the Plaintiff/Applicant submitted that one of the declaratory reliefs, reliefs (2) in the Statement of Claim borders on the relief sought in the amendment and this makes an injunctive relief a matter of course and is by its desirable nature is incidentally necessary to the reliefs citing

M. A. Oyelewa

MOSES O. ODUWOLE & ANOR. Vs SUNDAY SONIBARE AMA

2001 7 NWLR pt 741 at 1;

AKINBOBOLA vs PLISSON FSKO 1991 1 NWLR pt 167 at 270.

Counsel then submitted that if the Plaintiff succeeds in obtaining declaratory relief they would still be compelled to institute another suit to bring the declaratory order into effect which is against the judicial policy which enjoins discouragement of multiplicity of action citing

BUNYAN vs AKINGBOYE 2001 FWLR pt 41, 1990- 1991.

The Defendants filed a 7 paragraph counter affidavit which they relied on.

In his written address, Counsel to the Defendants/Respondents gave 2 reasons for their objection to this application.

The first Counsel submitted is with respect to the affidavit of the Plaintiff in this suit.

Counsel submitted that the core paragraphs in support of this application are paragraphs 5 and 8.

M. A. Oyetunji

That paragraph 5 are facts within the personal knowledge of the Counsel not the Deponent and the Deponent ought to have stated he was informed by his Counsel and hence it offends **S. 115 (1) of the Evidence Act 2011**.

He urged this court to discountenance that paragraph and when this court does this, there is then no sufficient facts upon which this application can succeed.

For paragraph 8, Counsel submitted that these are legal arguments and conclusions in breach of **S. 115 (2) of the Evidence Act** and urged this court to discountenance it and if this is done there is no sufficient facts on which it could succeed citing

CELTEL NIG vs ECONNET WIRELESS LTD 2011 3 NWLR pt 1233 at 156.

Counsel on the 2nd leg submitted that in paragraphs 5 (b) of this counter affidavit that they had averred that this application was over reaching as it was brought in reaction to their final address citing

CELTEL NIG vs ECONET WIRELESS NIG LTD (Supra)

SHELL PETROLEUM DEVELOPMENT COORPERATION OF NIG LTD vs JOHN 2011 2 NWLR pt 1231 Ratio 1, 2, 3, 4;

m. n. Oyeleke

SOLHUNI vs AYINDE 2011 1 NWLR pt 1227 ratio 7.

Counsel submitted that this relief was abandoned in the statement of claim and if it is brought in now, it will amount to taking undue advantage of the said Defendant's final written Address.

Counsel also submitted that the Plaintiffs cannot apply to amend their pleadings at this time of address to include a relief that they abandoned in the Statement of Claim and never originally claimed in their statement of claim citing

OKO BIA vs AJANYA 1998 5SCN 5 93;

SHELL PETROLEUM DEVELOPMENT COORPERATION

Counsel then submitted that the power to grant this application is discretionary and that this discretion ought to be exercised judiciously and judicially. And in this case, it cannot be exercised in favour of the Plaintiff/Applicant as he did that after reading the final address of the Defendants. The Plaintiff has not acted timeously and this application is meant to confer undue advantage on the Plaintiff/Applicant.

M. A. Oyelewa

Now I have carefully considered the application sought by the Plaintiff/Applicant in this case. I have also considered the reply of Counsel to the Defendant.

I will take the 2 objections of Counsel to the Defendant as the issues for determination by this court.

First on paragraph 5 and 8 of the Affidavit in Support of this application being an information within the Personal Knowledge of Counsel and not the Deponent, and paragraph 8 being a legal conclusion. Let me state quickly that the Defendant is a clerk in the chambers of Counsel and that information can come to him in the course of his work. It is not particularly within the knowledge of Counsel, so that I see nothing wrong in paragraph 5 of the Affidavit in Support of this application.

On paragraph 8, I am of the humble view that it is not a legal conclusion or argument but a statement of fact. I find that it does not offend the said **Section 115 (2) of the Evidence Act**.

So that I will not discountenance it. Even the Deponent to the Counter Affidavit stated that this application was over reaching, so it is an issue of the kettle calling the pot black.

M A Ouyatemy

Now for the 2nd objection that this application is overreaching, I have studied the Supreme Court decision in **OKOBIA vs AJANYA (Supra)** in that case the amendment sought was to include a relief which had never been claimed by the Plaintiff.

In the present case, the relief in question that of an injunction is stated in the Writ of Summons of the Plaintiffs in this case lending credence that it is an error.

ADEKANYE & ORS vs AKIN OLUGBADI (Supra)

CELTEL NIG LTD vs ECONET WIRELESS LTD (Supra) R. 4.

The latter states:

“The aim of an amendment is usually to prevent the manifest justice of a cause from being defaulted or defeated by formal slips which arise from the inadvertence of Counsel. It will certainly be wrong to visit the inadvertence or mistake of Counsel on the litigant...

M. A. Oyejide

The Courts have therefore through the years taken a stand that however negligent or careless may have been the slip, however late the proposed amendment it ought to be allowed if this can be done without injustice to the other side... (See OLOGUN vs FATOYE 2013 pt 1335 1 NWLR 303.

I have studied the said amendment which is contained in the Writ of Summons. It is therefore not a surprise to the Defendant.

Moreover the Plaintiffs have deposed that it will bring the evidence in line with the pleadings as fact leading to it is already in evidence so that there will be no need to lead further evidence on it.

The Defendant's main grouse is that it is overreaching as it is contained in their final address but an amendment can be done at any stage even at judgement and the Defendant have a right to consequential amendment.

I do not see how this amendment is overreaching to them.

See the cases cited by Counsel to the Defendant to wit:

SPDC NIG LTD vs JOHN (Supra) Ratio 1-4

M A Oyeteru

Besides as submitted by Plaintiff Counsel, it is the policy of court to avoid multiplicity of suits. I also agree with him that allowing an amendment that will include an injunctive relief will prevent the filing of another suit as this relief is incidental and consequential upon grant of a declaratory relief.

I am also satisfied that this application was not brought in bad faith.

For the above reasons, I am of the humble view that this amendment ought to be granted and I so hold and make the following orders:

1. The Plaintiff/Applicant is hereby granted leave to amend her Statement of Claim in the matter contained in the Schedule of Amendment.
2. The Amended Statement of Claim is duly amended as per the proposed Amended Statement of Claim.

M.A. Onyetenu
M. A. ONYETENU
JUDGE
19/11/15

M.A. Onyetenu

Plaintiff absent.

All parties absent.

Uche S. Awa for the Plaintiff.

O. Okorie for the Defendants.

M. A. Oyelewa