IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN IN BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON WEDNESDAY, THE 22ND DAY OF JUNE, 2016.

BETWEEN SUIT NO: B/14/2010

MR.OSAMUYIMEN EDOKPAYIé é é é é é é é é é é CLAIMANT/APPLICANT

AND

1. EDO STATE GOVERNMENT
2. ACCOUNTANT GENERAL OF EDO STATE
3. ATTORNEY GENERAL OF EDO STATE
4. PROBATE REGISTRAR
5. CHIEF REGISTRAR, HIGH COURT OF JUSTICE, EDO STATE
6. HEAD OF SERVICE, EDO STATE
7. MRS. FELICIA AYODELE EDOKPAYI

} DEFENDANTS/ RESPONDENTS

RULING

This is a Ruling on a Motion on Notice, brought pursuant to Order 24Rules, 1, 2, 3, and 8 of the Edo State High Court (Civil Procedure Rules), 2012 and under the inherent jurisdiction of the Court, praying the Court for leave to further amend the further amended statement of claim in the manner formulated and marked as Exhibit óAô and attached to the supporting affidavit. The amendments are underlined in red ink.

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 8 paragraphs and the Written Address of learned counsel for the Applicant. The Applicant exhibited the proposed further amended statement of claim as EXHIBIT óAô with the relevant amendments underlined in red ink. Moving the application, the learned counsel for the Applicant, J.O.Elenbalulu Esq. submitted that the amendment was

necessitated by the evolution of new facts which will aid the Court in arriving at a just decision of this case. He urged the Court to grant the application in the interest of justice as it will not occasion any prejudice in any manner.

Opposing the application, the learned counsel for the 7th Defendant/Respondent,C.J.Orji Esq., informed the Court that they filed a Counter Affidavit of 15 paragraphs together with a written Address of Counsel, in opposition to the Motion. He relied on all the paragraphs of the counter affidavit.

He identified two issues for determination as follows:

(i) Whether or not the Claimant/Applicantôs Motion to further amend his further amended statement of claim is competent for lack of proper signature, stamp and seal; and
(ii) Whether the Claimant/Applicant can further amend his further amended Statement of Claim more than twice after issues have been settled.

On the first issue, Counsel submitted that the Supreme Court has mandated that it is necessary to affix the NBA stamp to show that the document is competent and authentic. He maintained that where the stamp is different from the person who signed the motion paper, it raises some questions on the competence of that motion. Counsel referred the Court to a judgment delivered on 27th of October, 2015 in *Suit No. S/722\5 All Progressive Party v. General Bello Sarkin,*where the Supreme Court held that non compliance with the mandatory provision of Rules 10(1) of the Rules of Professional Conduct 2007 renders the document defective.
He also referred to the case of: *Braithwaite v Skye Bank Plc 5NWLR part 1346 page 18 para A-C, page 21, para C-D.*He quoted Galadima J.S.C.thus:

> *"This court in a plethora of cases has held that the validity of Originating processes in a proceeding before a court is sine qua non, an indispensable condition, necessary for the competence of the suit and indeed proceedings initiated by such processes"*

He therefore urged the Court to discountenance the Motion paper as it is an unsigned document especially, since the said document contravened Section 93 of the Evidence Act, 2011.

On the second issue of: whether this Court can exercise its discretion in favour of the claimant/applicant and grant an order to further amend his amended statement of claim more than twice after issues have been settled by both parties, Counsel said that he would base his submissions on the following points to wit:

1. The Claimant/Applicant cannot amend his Statement of Claim more than twice after issues have been settled;
2. Parties are bound by the Rules of this Honourable Court; and
3. The application by the Claimant/Applicant praying this Honourable Court for further amendment to their further amended statement or Claim is baseless and frivolous.

In urging the Court to resolve the first point in their favour and dismiss the application of the Claimant/Applicant, he quoted Order 24 Rule 1 of the Edo State High Court (Civil Procedure Rules) 2012 to wit:

Order 24 Rules 1
"A party may amend his originating process and pleadings at any time before settlement of issues and not more than twice during the trial"
He referred the Court to the case of: N.*N.B. Plc v. Denclay Ltd 2005 NWLR Part 916 page 602 para B,* where Sanusi J.C.A. stated that:

> *"Although a court has the discretion to grant permission for amendment such discretion must be however exercised judicially and judiciously.*

During his oral submissions, learned Counsel categorically informed the Court that the issues were settled in this suit on the 10th of March, 2016, before the matter was transferred to this Court.
He also cited the cases of: *Arojoye V U.B.A. & Anor (1986) 2NWLR (Pt. 20) 100,* and *Kade v Yusuf (2001)4 NWLR pt 703 pg 392.*
He referred to: Nze Benson Obialor & Anor v Josiah Uchendu & Ors (2013) LPELR 22048 (CA), where Okoro J.C.A. stated as follows:

> **"***But after the trial has commenced only two amendments can be allowed"*

On the second point, Counsel submitted that the Courts have decided in a plethora of cases that where a rule of Court specifies the mode, manner and procedure for an act to be done, such an act should be carried out in the manner as prescribed by the appropriate rules. See: *Nigeria Court Co. Ltd V. N.R.C. (1992) N.W.L.R. (Pt. 220) 747, Mudashiru V Person Unknown (2006) 8 N.W.C.R. (Pt 982) 267; Ogudu V. State (1994) 9 W.W.C.R (Pt. 366) 1 48, 49; National Bank of Nigeria V Aare Brothers (Nig) Limited (1977) 6 S.C. 97 at 107.*

On the third point, he referred the Court to the case of: *Amaefule V the State (1988)3 N.W.L.R. (Pt. 73) 156 @ Pg. 177* where Oputa Jsc held that:

> *"Abuse of process of the Court is a term generally applied to a proceeding which is wanting in bonafides and is frivolous, vexatious or oppressive. Abuse of*

process can also mean abuse of legal procedure or improper use of judicial process."
Also in: *Edet V The State (1988) 4 NWLR (Pt 722) Yakubu J.C.A*. held inter alia;

> *"An abuse of court process always involves some bias, some malice, some deliberateness and some desire to misuse or pervert the system"*

He posited that it is trite law that a court is enjoined to discontinue and dismiss procedures and baseless applications which could turn out to be vexatious and academic exercise and total waste of time.

Continuing his arguments, counsel maintained that the Court cannot sympathise with a party who deliberately failed to comply with clear and unambiguous rules of Court and relied on the case of: *Kraus Thompson Organisation V NIPSS (2004) 12 M.J.S.C 94 @ 103, R.5*

In conclusion, he urged the Court to dismiss the application of the Claimant/Applicant.

Replying on points of law, J.O.Elenbalulu Esq. referred to paragraph 7(a) of the counter affidavit of the 7th Defendant where she deposed to the fact that the Claimant/Applicant going by the rules of this Court, ought not to amend his Statement of Claim more than twice during trial. That is after issues have been settled by the parties. He however argued that their interpretation of this rule is misleading when considered side by side with the facts because issues have not been settled and trial is yet to commence.

He said that it takes the court and the parties represented by their counsel to settle issues and this has not been done. He said that if it had been done, a copy of the proceedings where the issues were settled ought to have been exhibited. He maintained that they did not exhibit it because we have not reached the stage of settlement of issues.

For emphasis, he quoted Order *24, Rule 1 of The Edo State High Court (Civil Procedure) Rules, 2012* as follows:

> *"A party may amend his originating process and pleadings at any time before the settlement of issues 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 cases."*

Counsel argued that the rule permits of not more than two amendments when the case has proceeded to the stage of hearing, but we have not reached that stage. He submitted that at hearing stage parties can still amend up to two times and even more subject to the discretion of court in exceptional cases. He posited

that the depositions in paragraph 7 (b) are not true but admitted paragraph 7(c) and maintained that it has not occasioned prejudice in any *material particular*.

Counsel denied paragraph 11 of the counter affidavit and argued that if there was a clerical slip and their copy was not signed, then they can raise it and the slip shall be corrected so that the case can go on. He argued that as for the seal and stamp, the counsel in this case has since applied and paid for the provision of the stamps but the National Secretariat of the Nigerian Bar Association has not made them available and in order not to stultify the progress of this case, one of the counsel in their office made his own available for their use. As for the seal, he maintained that it was duly affixed but because every other copy apart from the courtôs copy is a photocopy, the impression would not show. He referred to the courtôs copy.

Counsel referred to *Section 10(1) of the Rules of Professional Conduct, 2007* as cited and quoted in the respondentsô written address and submitted that it relates to a situation where no stamp and seal were affixed at all and not as in this case. He said that the same situation applied to the case of *BRAITHWAITE v. SKYE BANK PLC 5 NWLR (Pt 1346)* as cited by the Respondent.

He submitted that all the other authorities cited and relied upon by the Respondents are in favour of granting this application in every respect. He added that there has not been any abuse of any of the processes of this Court. He also denied causing any delay in the case. He posited that they are the Claimants and are eager to get to the end of this case.

On the conclusion of the Respondents by urging this Honourable court to dismiss this application, he referred the Court to the decision of the Supreme Court in the case of: *Broad Bank of Nigeria Ltd v. Olayiwola (2005) 2 FWLR (pt 266) 927 @ 929 thus:* ñ*Where the prescription of the law is mandatory even if on procedural level, a court in its quest to do justice ought generally to be imbued with the dictates of reason and the nature of the particular case to seek to accommodate a party that appears to have run foul of the dictates of a procedural law. In the instant case, while it is conceded that the Appellants failed to do what it was supposed to do under the law, the trial court was wrong to have allowed too much technicality to affect its mind instead of focusing on the reality of the issue before it since it was dealing with an enactment that is directory and not obligatory.ò*

In conclusion, Counsel referred the Court to the provisions of Order 24 Rule 1 of the Edo State High Court Civil Procedure Rules, 2012 and asked for the leave of the Court to grant the amendment in the interest of justice even if the Court

finds that they have exceeded the number of amendments stipulated in the rules. He urged the Court to consider this application judicially and judiciously and grant same in the interest of justice.

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

The issues for determination in this application are as follows:

I. Whether the Claimant/Applicantôs Motion to amend his further amended statement of claim is in-competent for lack of proper signature, stamp and seal; and
II. Whether the Claimant/Applicant can amend his further amended Statement of Claim.

ISSUE (I)

This issue borders on the validity of the processes on the basis of the application of the new rule on stamping and sealing of legal documents.

For the avoidance of doubt, Rule 10 of the *Legal Practitioners Rules of Professional Conduct 2007*, states as follows:

> "10. ----- (1) A lawyer acting in his capacity as a legal practitioner, legal officer or adviser of any Government department or ministry or any corporation, shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigerian Bar Association.
> (2) For the purpose of this rule, "legal documents" shall include pleadings, affidavits, depositions, applications, instruments, agreements, deeds, letters, memoranda, reports, legal opinions or any similar documents.
> (3) If, without complying with the requirements of this rule, a lawyer signs or files any legal documents as defined in sub-rule (2) of this rule, and in any of the capacities mentioned in sub-rule (1), the document so signed or filed shall be deemed not to have been properly signed or filed."

The point must be made from the onset that the decisions on the application of this new rule on the sealing and stamping of legal documents appear not quite settled. In the case of: *MPPP Vs INEC (2015) 18 NWLR (Pt.1491), 207 at 209*, the Supreme Court held that the failure to affix the Legal Practitioner's Stamp and Seal on the document cannot invalidate a process filed in Court. However in the case of: *Yaki Vs Bagudu (2015) 18 NWLR (Pt.1491)288 at 301*, the same Court held that the stamp and seal must be affixed in a court process otherwise the process is invalid.

According to the Court, "…where a document is filed without the seal and stamp of the lawyer who prepared same, such document will be deemed not to have been properly signed and filed, and shall remain voidable until the necessary steps are taken to regularize same".

In the more recent case of: *Nyesom v Peterside(2016) 7 NWLR (Pt.1512) 452 at 484*,the Supreme Court held that the failure to affix the Nigerian Bar Association seal and stamp on a process does not render it null and void. Such an act or omission is an irregularity that can be cured by an application for extension of time and a deeming order.

Coming to this application, the first point which I need to address is on the affixing of the lawyer's seal. The learned counsel for the 7th Defendant/Respondent has alleged that the processes did not bear the seal. The applicant's counsel gave an explanation that it was duly applied but because every other copy apart from the courtôs copy is a photocopy, the impression would not show. He referred to the Courtôs copy. I will accept the explanation of the applicantôs counsel because I have examined the Courtôs copy and it was duly affixed with a seal. I think that settles the matter of sealing.

We now come to the issue of stamping. Although the process carries the stamp of a lawyer, the 7th Defendants counsel has challenged the validity of the stamp on the ground that it is not that of the lawyer who signed it. According to him, this rendered the stamping incompetent. There appears to be no direct authority on this vexed issue of one lawyer signing and another lawyerôs stamp being affixed. In the earlier case of: *Yaki vs Bagudu (2015) 18 NWLR (Pt.1491)288 at 301,* the Court used the phrase: *"… a document is filed without the seal and stamp of the lawyer who prepared same".* This phrase gives us the impression that the stamp and seal should be that of the lawyer who signed the process. In the same judgment, the Court explained the rationale thus: *"Ordinarily, any responsible member of the noble profession of lawyers will not sign or present any legal document which does not have his seal and stamp on it*(underlining, mine)*. This is to show authentication and responsibility*".Also,at p.304,the court explained further: "…the provisions of the Rules of Professional Conduct,2007 is directed at the Legal Practitioner, to provide evidence of his qualification to

practice law in Nigeria in addition to his name being in the Roll at the Supreme Court of Nigeria". From these comments from our superior courts, it is evident that the stamp and seal affixed on the document should be that of the lawyer who signed same. The measure is meant to authenticate the counsel who signed the process. This purpose will be defeated if the stamp and seal of a different lawyer is affixed on the document. It is an obvious irregularity when one lawyer signs the process and affixes the seal and stamp of another lawyer. This will be a breach of rule 10(1) of the: *Legal Practitioners Rules of Professional Conduct 2007*,

In his Written Reply on Points of Law, Counsel to the Claimant tried to explain why they could not affix the stamp of the counsel who signed the motion. According to him, the counsel has since applied and paid for the provision of the stamps but the National Secretariat of the Nigerian Bar Association has not made them available and in order not to stultify the progress of this case, another counsel in their office made his own available for their use.Incidentally, all these explanations are not contained in the affidavit in support of the application. I think it would have been proper for the lawyer who owned the stamp to have signed all the court processes.

However, in the case of : *Yaki Vs Bagudu (2015) supra at pp.301 to 302,*the Court stated that : "any process filed in breach of rule 10(1) of the *Legal Practitioners Rules of Professional Conduct 2007*, can be saved and its signing and filing regularised by affixing the approved seal and stamp on it". In the instant case, the breach can be regularised in either of two ways: The counsel who signed the process can now affix his stamp and seal on the processes; or the owner of the stamp can now sign the processes as counsel. It is worthy of note that in the recent case of: *Nyesom v Peterside(2016) 7 NWLR (Pt.1512) 452* at 512*,* when the objection was raised for the first time on appeal, the learned counsel for the 1st respondent, Chief Akin Olujinmi SAN,made an oral application to affix his stamp and seal and it was granted.

While Issue (1) is resolved in favour of the 7th respondent, in the interest of justice, the applicant will be granted the leave of Court to regularise the process by any of the two options earlier suggested. It is settled law that the Courts must

strive to do substantial justice. In the case of: *B.O.I.Ltd. v Adewale-Adediran (2015) 17 NWLR (Pt.1487) 114 at 118*, Danjuma J.C.A. explained the position thus: *"Substantial justice, where possible, must not be allowed to be defeated by irregularities or technicalities that could be cured by the exercise of a court's discretion".*

ISSUE (11)

As a general rule, amendment of a partyôs 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; Chijioke 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, 2012* 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."

The above rule has introduced a limitation of not more than two amendments during trial but before the close of the case. The learned counsel to the 7th Defendant is of the view that the amendment cannot be effected because issues have been settled since on the 10th of March, 2016, before the matter was transferred to this Court. The Claimantôs counsel has vehemently denied this fact.

I have gone through the court files in search of any processes filed by the parties on the settlement of issues in this suit but I found none. There is nothing in the previous records to show that the issues were settled on the 10th of March as alleged. Even if we assume that the issues have been settled, can we say at this stage that trial has commenced when no evidence has been adduced? I donôt think so. The word ñtrialò is not defined in the rules but it appears to be synonymous with a hearing. *Order 29, Rule 7* of the rules states thus:

"7. Times of commencement and termination of trial

The Registrar or other proper officer present at any trial or hearing, shall make a note of the times at which the trial or hearing commences and terminates respectively and the time actually occupied on each day it goes on for communication to the taxing officer if required(underlining, mine)".

Clearly, the hearing is yet to commence in this suit. For a hearing involves the calling of evidence. In the case of: *Nze Benson Obialor & Anor v Josiah Uchendu & Ors (2013) LPELR 22048 (CA*) which was relied upon by the learned counsel for the 7th Defendant ,Inyang Okoro J.C.A in his lead judgment, supported this position thus: ñé although by the rules, an amendment to the pleadings can be made at any stage of the proceedings, different considerations apply depending on whether the amendment is being sought before or after the close of evidence by the partiesé Generally, before the close of evidence, such amendments are allowed to make such evidence as may be called, admissibleò.

In the present suit, the claimant is yet to adduce any evidence. The proceedings so far have been on interlocutory applications. The *8th Edition of Black's Law Dictionary*, defines a trial as: *"A formal judicial examination of evidence and determination of legal claims in an adversary proceeding".* I am of the view that trial is yet to commence.

On the whole, we must bear in mind 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: *Akpan v O.A.T.R.C (2015)16 NWLR (Pt.1486) 431 at 433.*At p.434 of the same judgment, the Court also stated that:"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". The applicant has deposed to the fact that the amendment is necessitated by the evolution of new facts which will assist the court in arriving at a just decision of this case. Furthermore, that it will be in the interest of justice to grant same as it will not prejudice the respondents in any manner. I think these facts are germane enough to warrant the exercise of the courtôs discretion in favour of the applicant.

In any event, the Court has the discretion to grant more than two amendments even during the trial in exceptional circumstances pursuant to Order 24 Rule 1 of the rules. While addressing the Court, the learned counsel for the applicant urged the Court in the alternative, to grant the application on that ground and in the interest of justice.

On the whole, I hold that the applicant has not exhausted his right to further amend his pleadings. I therefore resolve Issue (11) in favour of the Claimant/Applicant.

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

I. The Claimant/Applicant is granted leave to regularise his motion papers within 7 days by either: affixing the stamp and seal of the counsel who signed same (L.I.Edokpayi Esq.); or the lawyer whose stamp was affixed (Philip Ojeifo Ajanaku Esq.), should append his signature to the motion papers.

II. The Claimant/Applicant is granted leave to further amend the further amended statement of claim in the manner formulated and marked as Exhibit óAô in the affidavit in support of this motion;

III. The Claimant/Applicant shall file and serve clean copies of the regularised motion papers and the Further Amended Statement of Claim on the Defendants/Respondents within the said 7 days.

IV. Upon the service of the Further Amended Statement of Claim on the Defendants, the Defendants/Respondents are given 14 days to file any consequential amendments.

There shall be no order as to costs.

P.A.AKHIHIERO
JUDGE

22/06/16

COUNSEL:

1. G.A. EGHOBAMIEN ESQ. ……..CLAIMANT/APPLICANT

2. THE ATTORNEY GENERAL, EDO STATE……1^{ST}-6^{TH} DEFENDANTS/RESPONDENTS

3. CHIEF FERD ORBIH S.A.N……7^{TH} DEFENDANT/RESPONDENT