AMENDMENT OF PROCESS UNDER THE HIGH COURT OF IMO STATE (CIVIL PROCEDURE) RULES, 2017- CASE LAW BASED ANALYSIS

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Abstract

It is hornbook law that parties to a case are bound rigidly by their processes as filed and/or their pleadings. However, this rule is not cast in stone as human beings are not infallible. Thus, Court processes may be amended in order to accommodate human frailties, bring before the Court the real issues between the parties and for determining the real questions in controversy. Deploying the doctrinal research method, this paper examined the procedure for amendment of Court process as enunciated under *Order 24* of the Imo State High Court (Civil Procedure) Rules, 2017. Plethora of relevant decided cases on the subject matter were also examined. The paper found that the procedure for amendment under the Imo State High Court (Civil Procedure) Rules, 2017 avails both parties and that the Court is rightly vested with the jurisdiction to amend clerical mistakes in a judgment. Notwithstanding, that the amendment procedure is elastic, it is however, fraught with a few ambiguities and lacunas. To enhance clarity and reduce controversy in the amendment procedure, it was recommended among other things that the Imo State High Court (Civil Procedure) Rules should be amended to specifically outline when an amendment may not be granted as obtainable under *Order 26, Rule 1(2)* of the National Industrial Court of Nigeria (civil Procedure) Rules, 2017.

Keywords- amendment, court process, process, regularize

1.0 Introduction

Although amendment of Court process is a cardinal issue in the adjudicatory process, yet its ramifications are sometimes misunderstood or subjected to abuse. The aim of this paper is to explicate in clear terms the procedure for amendment under the Imo State High Court (Civil Procedure) Rules, 2017. Aspects of the rules on amendment that have occasioned lacuna or require clarification will be highlighted in order to help achieve some of the stated overriding objectives of the High Court of Imo State (Civil Procedure) Rules, 2017 which include but are not limited to the following namely: (a) To promote a just determination of every civil proceeding; (b) To construe these Rules to secure simplicity in procedure, fairness in administration, elimination of unjustifiable expense and delay, efficient and speedy dispensation of justice. (c) Amicable resolution of disputes by use of Alternative Dispute Resolution mechanism.

Against the foregoing backdrop, this paper is divided into segments that critically examines the following:- interpretation or definition of "court process" or "process", "originating process"; different stages when court process can be amended; application for amendment generally; special procedure for amendment of originating process or pleading; failure to amend; filing and service of amended process; date of order and amendment to be displayed; salient arguments in support; circumstances when an amendment may not be granted; time

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an amended process or pleading takes effect or is deemed to have taken effect; criticisms and recommendations/the way forward and conclusion.

2.0 Meaning of "amendment"

Throughout the gamut of the Imo State High Court (Civil Procedure) Rules, 2017, the word or term "amendment" is neither interpreted nor defined. However, amendment is a synonym for "alteration", "adjustment", "variation" or "change". The term or phrase "amendment" was interpreted by the Supreme Court, per Oputa, JSC, in the case of *Chief Adedepo Adekeye & Ors. v Chief Akin Olugbade*[1] thus:

> An amendment is nothing but the correction of an error committed in any process, pleadings or proceedings at law or in equity and which is done either as on course or by consent of the parties or upon notice to the Court in which proceeding is pending.

The above interpretation was adopted by the Court of Appeal in *New Nigerian Bank Plc v Denclag Ltd & Anor*.[2] Furthermore, in *CBN v Okonkwo*,[3] the same Court of Appeal held that

> According to Black's Law Dictionary 9th Edition, an amendment is a formal revision of or addition proposed or made to a statute, Constitution, pleadings, order or other instrument. It is a change made by addition, deletion or correction. Thus, an amendment may be effected by addition or insertion, or by substitution.

Much as the term amendment is not interpreted in the Imo State High Court (Civil Procedure) Rules, 2017 but it merely provided for amendment, however, in this paper, amendment connotes the right of a party to formally amend, improve, change for the better by removing defects or faults in his Court process in terms allowed by the relevant Rules of Court.

3.0 Interpretation or definition of "Court Process" or "Process", "Originating Process"

The diverse interpretations or meanings of the terms "Court Process" or "Process" and "Originating Process" are clearly stated under *Order 1* of the High Court of Imo State (Civil Procedure) Rules, 2017. Specifically, under *Order 1, Rule 2(2)* of the High Court of Imo State (Civil Procedure) Rules, 2017, "Court process" or "process" include "Writ of Summons, Originating Summons, Originating Process, Notices, Petitions, Pleadings, Orders, Motions, Summons, Warrants and all documents or written communication made in respect of a Cause or Matter". Hence, the terms "Court process" or "process" are used interchangeably. On the other hand, under the same *Order 1, Rule 2(2),* "Originating Process" means "any Court process by which a Suit is originated".[4] Thus, while a Court process or Process may include an Originating Process, it is not every Court Process that is an originating process.

4.0 Different Stages when Court process can be amended

There are two critical stages when a process can be amended under the Imo State High Court (Civil Procedure) Rules, 2017. These are amendment before the close of pre-trial conference

1 (1987) 3 NWLR (Pt. 60) 214 per Akeju, JCA.
2 (2004) LPELR-5942(CA) (Pp. 68-69 paras. C).
3 (2013) LPELR-21235(CA) (Pp. 15 paras. C).
4 Note that *Order 6* of the High Court of Imo State (Civil Procedure) Rules, 2017 contains a detailed protocol for the issuing of Originating process but this is clearly outside the direct purview of this paper.

and amendment after close of Pre-trial conference[5] and each of these carries or conjure different implications. Under *Order 24, Rule 1* of the High Court of Imo State (Civil Procedure) Rules, 2017, it is provided that a party may amend his originating process and pleadings at any time before the close of Pre-trial Conference and not more than twice during trial before judgment. By way of analysis, this *Order 24, Rule 1* promotes two stages or types of amendment regimes. These are (a) amendment before the close of pre-trial conference and (b) amendment after the close of PTC (during trial before judgment).

With respect to amendment before the close of PTC, there is no express limitation on the number of times when a party may amend his originating process and pleadings. However, after the close of PTC, a party may not amend his originating process and pleadings more than twice during trial before judgment. Where a party seeks to amend more than twice during trial, it is at the absolute discretion of the Court to grant or refuse to grant the application. Under *Order 24, Rule 8,* the general power of a Court to order amendment is duly recognised. Hence, it is provided therein that "Subject to the provisions of Rule 1 of this Order, a Judge may at any time and on such terms as to costs or otherwise as ay be just, amend any defect or error in any proceedings." An application can be granted in so far as it is not brought in bad faith or to overreach a party. It is trite law that amendments can be allowed even on the date of judgment or on appeal as held in *Egwa v Egwa*.[6] Significantly, no amendment is allowed after judgment. However, under *Order 24, Rule 7*, a Judge may at any time correct clerical mistakes in judgments or orders, or errors arising from any accidental slip or omission upon application, without appeal being filed.

5.0 Application for Amendment generally under the Imo State High Court (Civil Procedure) Rules 2017

Under *Order 24, Rule 2*, of the Imo State High Court (Civil Procedure) Rules 2017 application to amend may be made to a Judge. Such application shall be supported by an affidavit with the proposed amendment attached as an exhibit and may be allowed upon such terms as to costs or otherwise as may be just. Going by the above provision, specifically, the application shall be by way of motion on notice brought pursuant to *Order 24* of the Imo State High Court (Civil Procedure) Rules 2017 and under the inherent jurisdiction of the Honourable Court. This rule recognises that a party is not at liberty to amend a Court process without leave of Court. An application (motion on notice) for amendment may contain various prayers including an order deeming the applicant's amended process or pleadings and the applicant's witness(es) deposition filed alongside the motion as properly filed and served the appropriate fees having been paid.[7] It is also accompanied with the omnibus prayer for such further order or orders as the Honourable Court may deem fit to make in the circumstance.

5.1 Special Procedure for Amendment of Originating Process or Pleading

Recall that "Originating process" is interpreted in *Order 1, Rule 2(2) o*f the Imo State High Court (Civil Procedure) Rules, 2017 to mean "any Court process by which a Suit is originated". Amendment of originating process and or pleading attracts special consideration under the Rules. Under *Order 24, Rule 3,* where any Originating Process and or a Pleading is to be amended, a list of any additional witness to be called together with his written statement on oath (and or a further written statement on oath of an existing witness) as well as a copy of any document to be relied upon, shall be filed with the application. The use of the word "shall"

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5 Hereinafter abbreviated and referred to as "PTC".

6 (2007) 3 NWLR (Pt. 1014) 71.

7 *Nwarihi Nicholas Emmanuel & 4 Ors v Obioha Onyewuchi & 3 Ors* Suit No. HMI/64/2018.

imply mandatoriness.[8] In *Nwankwo v Yar Adua*,[9] it was held that the word "shall" in its ordinary meaning is a word of command which is normally given a compulsory meaning. The word is intended to denote an obligation. The word "shall" when used in a statutory provision import that a thing must be done. It is not merely permissive, it in mandatory. Thus, where an application for amendment of Originating process and or pleading is not accompanied with the requisite clean copy of the document sought to be amended, it shall not be granted.

5.2 Failure to amend

Under *Order 24, Rule 4*, if a party who has obtained an Order to amend does not amend accordingly within the time limited for that purpose by the Order or if no time is thereby limited then within seven (7) days from the date of the Order, such party shall pay an additional fee of N200.00 (Two hundred Naira) for each day of default. This rule is designed to checkmate indolence. It is submitted that this procedure may lend itself to abuse as a recalcitrant party intent on occasioning unreasonable delay in the proceedings may prefer to pay the paltry fee of N200.00 for each day of default instead of expeditiously complying with the appointed time to effect the amendment. It is recommended that the fine should be increased substantially to serve as a deterrent. An amended process that has not been regularised is incompetent and should be disregarded in the proceedings. In effect, the averments in the unregularised amended process will be discountenanced. Thus, an applicant must take steps to regularise an amended Court process.

5.3 Filing and Service of Amended process

By the provisions of *Order 24, Rule 5*, whenever any Originating Process or Pleading is amended, a copy of the document as amended shall be filed in the Registry and additional copies served on all the parties to the action.

5.4 Date of Order and Amendment to be displayed

It is a requirement that that the date of order and amendment should be displayed. Expressly, under *Order 24, Rule 6*, whenever any Indorsement or Pleading is amended, it shall be marked in the following manner- "Amended... day of ... pursuant to Order of (name of Judge) dated the. ... day of…." This endorsement helps to put the question date of amendment and the Judge under whose authority it was granted beyond doubt.

6.0 Salient Arguments in Support

When presenting an application for amendment, the following points of views or arguments and judicial decisions may come in handy namely:

(a) Amendment of Court process is not alien in the adjudicatory process. It is well recognised under the Imo State High Court (Civil Procedure) Rules, 2017. The essence of Rules of Court was aptly highlighted by the Supreme Court in the case of *Ighedo v PHCN Plc*[10] as follows; "Rules of court are meant to regulate matters in court and assist parties in the prosecution of their cases to achieve fair hearing and quick dispensation of justice." Usually, argument traded in favour of the prayer for leave to amend is that it is trite law that the essence

8 *Ani v State* (2024) LPELR-62746(SC) Pp. 9-11 paras. D). See also *A-G Federation v A-G Abia State & 35 Ors* (2024) LPELR-62576(SC).

9 (2010) 12 NWLR (Pt. 1209) 518. This was cited and relied on in *Speaker Kaduna State House of Assembly & Ors v Nkom & Anor* (2019) LPELR-50961(CA) (Pp. 13-14 paras. E)

10 (2018) 9 NWLR (Pt. 1623) 51 at 74, para. C.

of an amendment is to bring before the court the real issues between the parties and for determining the real questions in controversy. The rationale behind amendment of pleadings is the recognition of the fallible nature of man who by nature is prone to mistakes, errors, slips or omissions, hence the Supreme Court in the case of *Akaninwo v Nsirim*[11] held thus:

> In law, parties to a case in the Superior Courts of record are bound rigidly by their pleadings but in preparation of pleadings counsel are bound to or may be prone to make mistake. A party will not lose his right to have the dispute between him and his adversary decided on the merits simply because a mistake has been made in the preparation of his pleadings. It must always be remembered that the objects of courts is to decide the rights of parties and not to punish them for the mistake which they make in conduct of their cases by deciding otherwise in accordance with their rights. If it is seen that the mistake made in the course of preparing the case of a party to a litigation is not fraudulent, or calculated to overreach the opponent, the court must be ready to correct such a mistake upon an application to it, after all, courts do not exist for the sake of discipline but for the sake of deciding issues in controversy.

(b) The purpose of amendment is to aid fair hearing and to determine the real issues in controversy. With respect to the purpose of an amendment, it must be accentuated that Court process is not amended for the fun of it as parties are bound by their pleadings. In *Adekeye v Akin-Olugbade,*[12] it was held that 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 which is wrong to visit on a litigant.

(c) An amendment no matter how late it is sought ought to be allowed if it will not amount to injustice to the other side. This is because a step taken to ensure justice cannot at the same time and in the same breath be used to perpetuate an injustice on the opposite party. The primary purpose of amendment of process is to determine 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. This line of reasoning was adopted by the Court of Appeal, per Shuaibu JCA, in *Ammax (Nig.) Ltd & Anor v Diamond Bank Plc.*[13] Furthermore, in *Adekeye v Akin-Olugbade,*[14] it was held that 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 which is wrong to visit on a litigant. 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. This is because a step taken to ensure justice cannot at the same time and in the same breath be used to perpetuate an injustice on the opposite party.

7.0 Circumstances when an Amendment may not be Granted

Amendment of a Court process is seldom refused but it is not automatically granted. Striking a balance between these two opposite principles usually presents a problem to the Judex. Significantly, the Imo State High Court (Civil Procedure) Rules, 2017 provides the protocol for grant of amendment but it does not explicitly itemise circumstances when an amendment may not be allowed. This is thus left to the discretion of the Court unlike the express provision

11 (2008) 9 NWLR (Pt. 1093) 439 at 444 Ratio 4.
12 (1987) 3 NWLR (Pt. 60) 214.
13 (2020) LPELR-51258(CA) (Pp. 30-31 paras. A-A).
14 (1987)3 NWLR (Pt. 60) 214.

under *Order 26, Rule 1(2)* of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017, to the effect that an amendment may be refused where it would

(a) present a completely different case, or cause injustice to the other party or where the application for amendment is brought *mala fide*;
(b) necessitate the hearing of further evidence especially on appeal;
(c) not cure the defects in the procedure sought to be cured or where it is inconsistent and useless;
(d) amount to over-reaching the other party or an abuse of court process.

In *Polaris Bank v Clifford*,[15] the Court of Appeal relied on the decision of the Supreme Court in *Kode v Yusuf*[16] to hold that amendment is usually directed to the correction of blunders, errors and/or inadvertence of counsel. It may also be granted where the pleading is intended to be brought in line with the evidence already led on the record. But the Court is obliged to refuse to grant an application for amendment where it will have the effect of overreaching or will result in injustice to the other party or where it is brought *mala fide* or where the amendment will alter the nature of the case as considered by the Court. In *Ammax (Nig.) Ltd & Anor v Diamond Bank Plc,*[17] it was held that 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. This is because, what applies to one case, may not necessarily apply in another as no two cases are similar in all parameters. What is applicable in one case may wreak havoc and injustice in another case. No amendment will be granted where it will overreach a party or spring surprises to the adversary. In *Equity Bank (Nig) Ltd v Daura,*[18] it was rightly held that the purpose of amendment of proceedings is to determine 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."

It is submitted that in the absence of express provision, the above principles should guide a Court to determine whether it should refuse to grant an amendment brought under the Imo State High Court (Civil Procedure) Rules, 2017.

8.0 Time an Amended Process or Pleading Takes Effect or is Deemed to have Taken Effect

What time does an amended process take effect or is deemed to have taken effect? Direct answers to these twin questions are fundamental because they are not expressly provided in the Imo State High Court (Civil Procedure) Rules, 2017. Thus, the time which an amended process takes effect or is deemed to have taken effect is often controversial although it does not require to be so. Succinctly stated, from the body of judicial decisions, it is settled law that an amended process has retrospective effect. In *Ilodibia v Nigerian Cement Company Ltd*,[19] the Supreme Court, per Ogundare, JSC, had held that where pleadings are amended, what stood before the amendment was no longer material to determine the issues between the parties; the amendment speaks from the date the original pleading was filed- The law is ensconced that an amendment or further and better amendment of Statement of Claim is for the purpose of

15 (2022) LPELR-57464(CA) (Pp. 7 paras. B).
16 (2001) 4 NWLR (Pt. 703) 392.
17 (2020) LPELR-51258(CA) (Pp. 30-31 paras. A-A).
18 (1999) 10 NWLR (Pt. 621) 147.
19 (1997) LPELR-1494(SC) (Pp. 43-44 paras. F). See also *Warner v Sampson & Anor* (1959) 1 QB 297 at 321; *Rotimi v MacGregor* (1974) 11 SC 133, 152.

curing a defect in an existing Statement of Claim and replacing it with a new one. The same is true of various types of pleadings including affidavit evidence upon an amendment. In *John Oforishe v Nigerian Gas Company Ltd*,[20] the Supreme Court, per Rhodes- Vivour, JSC, as follows:

> After amendment of pleadings by both sides, the final pleadings were the amended statement of claim filed on 3rd May 1995 and the further amended statement of defence filed on 7th June, 1995. The purpose of amending pleadings is to prevent the Court from giving judgment in ignorance of facts that should be known before rights are finally decided. Put in another way amendments to pleadings are ultimately to enable the Court decide the real issues in controversy between the parties. The position of the law is that the amendment relates to the original pleadings and all amendments before the final amendments seize to be pleadings to be relied on in the trial. They remain worthless.

In *Alhaji Fatai O. Yusuf v Mobil Oil Nigeria Plc,*[21] one contentious issue was that the appellant/applicant admitted in paragraph 3(J) of his supporting affidavit that the judgment of the trial Court in this matter was based on the incompetent 4th amended statement of claim. The Supreme Court held that it could not have been otherwise because the principle of law governing the amendment is that an amendment duly made takes effect from the date of the original document sought to be amended and this applies to every successive further amendment of whichever nature and at whatever stage it is made. Therefore, when a writ of summons or statement of claim as in this case is amended it dates back to the date of the original issue of such writ or filing of the statement of claim. Consequently, the action will continue as if the amendment has been inserted from the beginning. This was the earlier line of reasoning of the apex Court in *Victor Adegoke Adewumi & Anor v. The Attorney General of Ekiti State,*[22] *Oguma v IBWA*[23] *and Brittania-U (Nig.) Ltd. v. Seplat Petroleum Dev. Company Limited Ors.*[24]

The law is quite clear that once an amendment is ordered what stood before amendment is no longer material before the Court and no longer defines the issues to be tried. It takes effect from the commencement of the action. The position of the law on amendment of process or processes of Court in a suit or action is very clear and settled to the effect that once an amendment is made or granted by the Court seised of the matter to any process, the earlier processes ceased to be in existence and no longer defines the issues between the parties to the action or suit.[25] Once an amendment is granted, what stood before the amendment no longer defines the issues tried. This is because once an amendment to a pleading is allowed by the Court the amendment relates to the original pleading which must be regarded as having been discarded. Indeed, an amendment duly made takes effect from the date of the original document sought to be amended, and this applies to every successive further amendment of

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20 (2018) 2 NWLR (PART 1602) 35 at 56 G-H to 57 A. See also *Rotimi Ors v Mc Gregor* (1974) II SC 133; *C.G.D.G. (Nig) Ltd v Idorenyin* (2015) 5-6 SC (Pt. II) 1.

21 (2019) 13 NWLR (Pt. 1689) 374 at 392 C-H, per Okoro, JSC.

22 (2002) 2 NWLR (Pt. 751) 47 approving the English decision in *Sneade v Wotherton* (1904) 1 KB 297.

23 (1988) 1 NWLR (Pt. 73) 658.

24 (2016) LPELR-40007 (SC). See also *UBA Plc v Abdullahi* (2003) 3 NWLR (Pt. 87) 359 at 378 para C- F.

25 See *Vulcan Gases Ltd v Gesellschaft Fur Industries Gasvenvertung (GIV)* (2001) 5 SC (Pt. 1) 1; *Col. Rotimi v MacGregor* (1974) 11 SC 133 at 152; and *Osita Nwosu v Imo State Environmental Authority* (1990) 2 NWLR (Pt. 135) 688.

which ever nature and at whatever stage it is made.[26] Thus, the effect of amendment of pleadings or processes is that once there is an amendment to an existing process like Statement of Claim, Statement of Defence, such earlier process ceases to be in existence and no longer define the issues in controversy between the parties. It is the latest amended process that will govern and define the issues the trial Court is called upon to adjudicate upon.

9.0 Criticisms and recommendations/the way forward

As already noted, the Imo State High Court (Civil Procedure) Rules, 2017 does not explicitly catalogue or enumerate circumstances when an amendment may not be allowed. This is left to the discretion of the Court unlike the express provision under *Order 26, Rule 1(2)* of the National Industrial Court of Nigeria (civil Procedure) Rules, 2017. It is therefore recommended that the Imo State High Court (Civil Procedure) Rules, 2017 should be amended to expressly provide these circumstances in order for the process of amendment not be used as a device for abuse or unreasonable delay. Furthermore, with respect to imposition of additional levy of N200.00 for each day of default for failure to amend within limited time for that purpose, it is recommended that the fine should be increased substantially in order to serve as a deterrence. A party that does not take steps to regularise his amended process after an unreasonable delay should not treated with a slap on the wrist because the Rules exist to eliminate delay and ensure speedy dispensation of justice.

10.0 Conclusion

The Imo State High Court (Civil Procedure) Rules, 2017 has a robust protocol for amendment of Court process. Aspects of the relevant rule on amendment requiring attention have been clearly pointed out. Parties and or Counsel are reminded that amendment is a fundamental part of the adjudication process but the process must not be abused. At all material times, the Court must be vigilant as to ensure that Counsel or party must not use the device of application for amendment or a granted application to amend occasion or cause unreasonable delay in the proceedings. To do otherwise will defeat the overall objective of the Imo State High Court (Civil Procedure) Rules, 2017 which among other things is to secure simplicity in procedure, fairness in administration, elimination of unjustifiable expense and delay, efficient and speedy dispensation of justice.

[26] This principle has been followed in a long of cases like *Madam Safuratu Salami & Ors v Sunmonu Eniola Oke* (1987) 9 - 11 SC 43; *Victor Adegoke Adewunmi & Anor v Attorney General of Ekiti State* (2002) 2 SCM 1; *Nwosu v I.S.E.S.A* (1990) 4 SC 7 and *Yomade & Ors v Yomade & Ors* (2015) LPELR-25806(CA) (Pp. 20-21 paras. E).