

**SUPREME COURT OF NIGERIA**  
*13TH DECEMBER, 1996. SC. 136/1990*  
**CORAM:- A. G. KARIBI-WHYTE, A. B. WALI,**  
**P. NNAEMEKA-AGU, I. L. KUTIGI, E. O. OGWUEGBU**

JESSICA TRADING CO. LTD. .... APPELLANT

AND

BENDEL INSURANCE CO. LTD. .... RESPONDENT

*APPEALS - Leave to amend writ of summons and pleadings on appeal - will not be granted if amendment will introduce completely new issues and claims.*

**FACTS**

The Appellant/Applicant as Plaintiff in the High Court claimed from the Respondent the Defendant N319,884.19 as damages for breach of contract. The trial Judge entered judgment for the appellant and awarded N227,513.18 as damages. The judgment was set aside by the court of appeal. On appeal to the Supreme Court, the Appellant/Applicant brought a motion, the subject matter of this ruling, praying the court for leave to amend the notice and grounds of Appeal, leave to amend the writ of Summons and pleadings to enable plaintiff claim interest for 13 years for their lost sugar and in USA Dollars and leave to argue points not taken in the court below.

**HELD** (unanimously granting leave to amend notice and Grounds of appeal and leave to argue more points, refusing to grant leave to amend writ and pleadings).

1. The Supreme Court has the power to amend the record of the trial court so as to comply with the facts proven before that court and decision given by it. The powers are exercised

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if and when necessary to prevent an occurrence of substantial injustice. (p. 84 L. 16)

2. As soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is a matter of right on his part to have it corrected if it can be done without injustice. (p. 84 L. 34)

3. The Applicant cannot be allowed to effect the amendments of writ and statement of claim, since it will lead to an expansion of the action and the court will not be in a position to amend for change witnesses' testimonies. (p. 85 L. 33)

**PER NNAEMEKA-AGU JSC** *"Any amendment which will result in injustice to the other party or which will violate the rule of audi alteram partem ought not to be allowed. The rule will be infringed if an amendment is introduced at such a stage that the other side no longer has the opportunity of adducing its own answer to the point which the amendment has enabled the applicant to introduce."* (p. 88 L. 14)

## **REPRESENTATION**

Appellant absent and unrepresented. For the Appellants  
R. I. I. Ogbemor For the Respondents

## **CASES REFERRED TO**

1. Enitan v. The State (1986) 3 NWLR (pt 30) 604
2. Garba v. Federal Civil Service Commission & anor (1988) 1 NWLR (pt 71) 449.
3. Igbe v. New Nigerian Bank (1991) 3 NWLR (pt 178) 233
4. Metal Construction (W.A.) Ltd & ors v. Migliore & anor (1979) 6 - 9 SC. 163.
5. Odogbolulu of Vakpo v. Itodo (1941) 7 WACA 164.
6. G.L. Baker Ltd v. Medway Building & Supplies Ltd. (1958) 1 WLR 1216
7. Amadi v. Thomas Alpin & Co. Ltd (1972) 1 ALL NLR 409
8. Oyenuga v. Provisional Council of the Univ. of Ife. (1965) NMLR 9
9. Sam Warri Esi v. Shell B.P. (1958) 3 FSC. 94

10. Re Pedro St. Matthew - Daniel (1950) 16 NLR 73
11. Foko & ors v. Foko & ors (1968) NMLR 441
12. Abasi v. Labiyi (1958) WRNLR 12
13. Crooper v. Smith (1884) 26 Ch. D. 700
14. Seklin v. Little 6 TLR 366

### **STATUTES REFERRED TO**

Insurance Act 1976 - S. 14, 46 (1)

### **BOOK**

Chitty on Contract 24th Ed.

### **LEAD JUDGMENT BY KUTIGI JSC**

This is a Motion on Notice by the appellant/applicant praying this Court for-

*“(a) Leave to amend the Notice and Grounds of Appeal filed on 27th January, 1989, against the judgment of the Court of Appeal dated 11th November, 1988;*

*(b) leave to amend Plaintiff Writ and pleadings to enable plaintiff claim for his lost 13371 bags of granulated white sugar in the currency of USA dollars in which plaintiff prepaid the cost of his entire cargo of sugar;*

*(c) leave to argue points not taken in the Courts below;*

*(d) an order waiving the rules of Court so as to deem as properly Filed and served the Additional Appellant Brief now sworn along as Exhibit D herein, being substantially the same as was filed without leave of Court on 25/11/91.*

*And for such further and/or other orders as this Honourable Court may deem fit to make in the circumstances.*

*And further take notice that the applicant will at the hearing of this Motion rely on the Record of Appeal already entered in this Court, and on the Brief in support of this Application.”*

The motion is supported by an affidavit of 41 paragraphs sworn to by one Andrew Iyere Wilson, the Managing Director of the plaintiff/appellant/applicant company. The relevant paragraphs therein  
5 read as follows -

*“4. By a Writ of Summons and a Statement of Claim filed in the Federal High Court on 13th March, and 2nd April, 1984 respectively, plaintiff sued defendant for a Marine Insurance Claim.*

10 *9. Plaintiff claimed N146,138.18 re-imbursement as cost of the 13371 bags of his granulated white sugar not found. Additionally, he claimed other Sums, including interest for that the loss was not paid at the proper time.*

15 *24. It is a feature of this case that the insurance loss has remained unpaid since September 1978, the date of the loss and, even after judgment in the trial court, only N100,000 was released to plaintiff, and that reverted to defendant upon the judgment of the Court of Appeal two years later. In the event of this Appeal succeeding, all*  
20 *payments in naira to plaintiff will be that the entire insurance loss is being settled in naira at the devalued rate, particularly the very adverse rate imposed by Government on March 5, 1992.*

*25. I am advised by Counsel, whom I verily believe, that it is*  
25 *necessary to seek leave of this Honourable Court to plead plaintiffs claim in the foreign currency of USA dollar as this is a non contentious method of avoiding a determination of the legal question whether plaintiff is held irrevocably bound by Counsel’s erroneous definition of terms in the social science of economics and accounts incorporated in Counsel’s formulation of plaintiff’s pleadings.*  
30

*25(a) In pleading the cost of Plaintiff’s 13371 bags granulated white sugar not found, plaintiff’s Counsel had erroneously pleaded the currency of plaintiff’s own accounting instead of the currency of prepayment for the lost sugar.*  
35

*27. I am advised by Counsel, whom I verily believe, that formulating the pleading in the suit to plead the replacement cost of the loss 13371 bags of imported sugar in naira currency in the circumstance of the C and F transactions in this case (Exhibits E, H, and F)*

*inevitably and necessarily implies pleading the adverse effects of foreign exchange rates (vis-a-vis naira currency) in any arrangement to replace the lost bags.*

*32. I am advised by Counsel that judgment delivered in naira is neither in the interest of justice itself, nor of justice to the parties, unless the award reflects the violent changes to which the naira has been subjected vis-a-vis the USA dollar currency of the C and F transaction. I believe Counsel.*

*38. The Notice and Grounds of Appeal as amended are sworn along herewith as Exhibit A.*

*39. Sworn along also are amendments to pleadings as Exhibits Band C, and the resultant Additional Appellant Brief first filed on 25/11/91 and now resubmitted, as Exhibit D."*

On the other hand paragraphs 4, 5, 8,9, 10, 11, 12, 13, 16, 17 and 18 of the defendant/respondent's affidavit state-

*"4. That the appellant and respondent in the substantive appeal in this matter filed their Briefs of Argument in the Registry of this Honourable Court on the 21st day of June, 1990 and 17th day of August, 1990 respectively.*

*5. That the substantive appeal was then fixed for definite hearing by this Honourable Court for the 11th day of March, 1991.*

*8. That as the plaintiff/applicant did not show any readiness on the 11th day of March, 1991, to argue its appeal, this Honourable Court adjourned the hearing thereof to the 14th day of October 1991.*

*9. That on the 14th day of October, 1991, and before a new Panel of Justices, this Honourable Court took the applicant's cumulative Motions dated the 21st day of June, 1990, the 22nd day of November, 1990, the 6th day of March, 1991 and the 14th day of May, 1991, all of which were withdrawn by the applicant therein, with costs to the respondent herein.*

*10. That no date was then fixed for the hearing of the substantive appeal.*

*11. That I have seen the applicant's Motion filed on the 12th*

80 Jessica Trading Ltd. v. Bendel Ins. Ltd. (1993) 1 KLR Kutigi JSC  
*day of May, 1992 with the supporting Affidavit and other annexures.*

12. *That the four Motions standing in the name of the plaintiff/appellant i.e. of 21/6/90; of 22/11/90, of 6/3/91 and of 14/5/91 were on the 14th day of October, 1991 taken and withdrawn by it*  
5 *with costs to the respondent*

13. *That on the 21st day of April, 1992, the applicant's Further Motion of 25th November, 1992, in this matter was again struck out with N100.00 costs as neither the applicant nor its Counsel was*  
10 *in Court.*

16. *That in respect of paragraph 20(a) of the affidavit, I am advised by the respondent's Counsel, Reuben Igie Idemudia Ogbemor and I verily believe him, that the relevance of S.14 of the Insurance*  
15 *Act, 1976, sought to be raised for the first time in this Honourable Court was without the benefit of the judgments in the Federal High Court and Court of Appeal, Benin - City.*

17. *That I am further advised by the respondent's said Counsel. and I verily believe him, that there is no evidence on record to support the applicant's Relief 1(b) in its Motion and as canvassed in paragraphs 21, 22, 24, 25, 25(a), 26, 27, 28, 31, 32 and 34 of the applicant's Affidavit and will require the adducing of additional evidence.*  
25

18. *That I am finally advised by the respondent's said Counsel, and I verily believe him that the series of Motions brought by the applicant since the 11th day of March, 1991 when the substantive appeal was for definite hearing, are an abuse of the process of this*  
30 *Honourable Court."*

In moving the motion Mrs. Wilson learned counsel for the applicant said she relied on the affidavit and cited the following authorities in support - *AKANBI ENITAN V. THE STATE* (1986) 3 NWLR (Pt.30) 604 *SAIDU GARBA v. FEDERAL CIVIL SERVICE COMMISSION & 8 ANOR* (1988) 1 NWLR (Pt.71) 449 *IGBE v. NEW NIGERIA BANK LTD* (1991) 3 NWLR (Pt.178) 233.

35

She said the amendment sought in prayer (b) above was necessitated by the provisions of section 46(1) of the Insurance Decree, 1976 whereby Marine Insurance has to be taken out locally from a registered local underwriter. That the problem was further compounded when she as plaintiff/appellant's counsel defined plaintiff's 13371 bags of lost sugar in terms of the local currency and not in terms of the currency of the commercial invoice in which the sugar was purchased in France. She said the claim of N278,589.75 in the Writ and Statement of Claim was based on the conversion rate in 1978 of the C and F of USA dollar in France, the country in which the sugar was prepaid.

Learned counsel also referred to Chitty On Contract, 24th Edition. First Supplement paras. 1943 - 1945 to show that judgment may be given in foreign currency. I do not see how those foreign authorities assist the applicant in this case when the claim (and evidence led thereon) was not originally in a foreign currency. The application here is simply for the amendment of the Writ and the pleadings, she urged the court to grant the amendments sought in the interest of justice.

In his brief reply learned counsel for the respondent, Mr Ogbemor vehemently opposed the motion especially prayer (b) for amendment of the Writ and the Statement of Claim arguing that there was no basis for it. That it will require adducing additional evidence if granted. He said having regard to the number of motions filed by the applicant and struck out by this Court since 1990 when the parties filed their briefs in the appeal, the entire motion is an abuse of the process of Court. He relied on the counter affidavit. The Court was urged to dismiss the application.

I would rather deal with prayers (a) and (c) together.

1. Leave to amend the Notice and Grounds of Appeal filed on 27th January 1989 and to argue points not taken in the Courts Below:

The original grounds of appeal are set out on pages 219 - 310 of the record. They are thirteen in number.

By this application the applicant now seeks to -

- (i) amend grounds 1,4,5,9, 10and 11 by making them either more concise and or more meaningful;
- (ii) delete completely from the record grounds 3, 6, 7, and 12; and
- 5 (iii) file additional grounds14 & 15.

I have read through the Amended Notice and Grounds of Appeal, Exhibit A, attached to the motion. I think the prayers are proper. Additional grounds 14 & 15 in my view prima facie raised  
 10 substantial points of law (See for example ENITAN & ORS v. THE STATE (1986) 3 NWLR (Pt.30) 604. I will therefore grant the prayers sought. They are hereby granted.

2. Leave to Amend Plaintiff's Writ and pleadings.  
 15 The plaintiff/applicant's Writ of Summons issued at the Federal High Court Benin was endorsed as follows

#### "PARTICULARS OF CLAIM

20 *"At all material times, the plaintiff was fully interested in a policy of marine insurance evidence by certificate of marine insurance No. 4754 dated in Benin-City 13th July 1978. whereby the defendant insured 1,000 tons of white granulated sugar valued at N218,589.75, in the ship "Vori" at and from any European Port to*  
 25 *Warri Port. The vessel, M/V Vori, caught fire, of the coast of Abidjan and the plaintiff reasonably abandoned the cargo of sugar (B/L No.12) 10 the defendant, who ultimately agreed to settle the claim as per defendant's letter of 3rd April, 1979. The defendant has neglected/*  
 30 *refused to pay the said claim and/or to perform its part of the agreement contained in its said letter of 3rd April, 1979."*

The applicant now seeks to amend, the writ above by adding amongst others, the following paragraph at the end thereof-  
 35 *"Whereof plaintiff claims pro rata for 13.371 bags of granulated white sugar, not found, at the rate of their CIF plus 10% value (to wit USA dollar 310,000 plus 10%) for his entire consignment of 20,000 bags of granulated while sugar and plaintiff further claims interest of 13 years at the rate of 13% for that the loss was not paid at*



*the proper time.”*

The applicant also seeks to amend paragraphs 38 and 39 of his Statement of Claim which originally read as follows -

*“38. In the premises, the defendant breached the contract of 3rd April, 1979, whereby the plaintiff has suffered loss and damage in the sum of N319,884.19.*

*39. Alternatively, the said sum of N319,884.19 is due and payable to the plaintiff by the defendant as indemnification for the loss of cargo insured and interest for that the loss was not paid at the proper time.*

*AND the plaintiff claims:*

*(1) Damages for breach of the contract of 3/79 to wit.*

*(a) N146,138.18 being cost of 13371 bags of sugar lost:*

*(b) N29, 375.00 being money paid to Messrs Blaesberg on the authorisation of the defendant;*

*(c) N2,000.00 being expenditure on overtime services authorised by the defendant;*

*(d) N1423,71.01 being loss suffered by the plaintiff as interest on bank overdraft for that the defendant kept the plaintiff out of his (plaintiff's) money.*

*(2) Alternatively, payment of the said sum of N319,884.19 as indemnification of the plaintiff by the defendant for loss of plaintiff's cargo insured by the defendant, for plaintiff's portion of cargo interests contribution in getting the remains of carrying vessel and cargo to Warri, for discharge expenses and interest for that the loss was not paid at the proper time.”*

The proposed amendment are in these terms:

*“38. In the premises, the defendant breached the contract of 3rd April, 1979, and was negligent, breaching also its statutory duties under the Insurance Act 1976, Whereby the plaintiff has suffered loss and damage in the sum of USA \$207, 250, 50 plus 10% plus interest, for that the plaintiffs loss was not paid at the proper time, 13 years at 13%..*

*39. Alternatively, the sum of USA \$207, 250, 50 plus 10%, is due and payable to the plaintiff by the defendant as indemnification*

*for the loss of cargo insured plus interest for that the loss was not paid at the proper time, 13 years at 13%*

AND the plaintiff claims for payment in specie:

5 (1) Damages for breach of the contract of 3/4/79 to wit.

(a) USA \$207,250,50 plus 10% being cost of 13371 bags of sugar lost: plus interest for 13 years at 13%

(b) plus N29.375 for plaintiff's portion of cargo interest contribution in getting the remains for the carrying of vessel and cargo to Warri, plus N2000 for discharged expenses:

(c) plus interest, for the loss was not paid at the proper time, for 13 years at 13 %.

15

## 2. General Damages.

This Court undoubtedly has inherent powers to amend the record of the trial court so as to comply with the facts proved before that court and decision given by it. The powers are exercised if and when necessary to prevent an occurrence of substantial injustice (see Metal Construction (WA.) Ltd & Ors v. D.A. Migliore & Anor (1979) 6-9 SC, 163, Gbogbolulu of Vakpo v. Hodo (1941) 7 W.A.C.A. 164). So the crucial question at any given moment is under what circumstances will leave to amend the writ and or pleadings be granted? The guiding principle of cardinal importance is that generally speaking all such amendments ought to be made for the purpose of determining the real question in controversy between the parties or correcting any defect or error in the proceedings (See GL, Baker Ltd v. Medway Building & Supplies Ltd (1958) 1 WLR 1216; A.U. Amadi v. Thomas Applin & Co. Ltd (1972) 1 ALL NLR 409). The Court therefore must in the process consider the materiality of the amendment sought in deciding whether or not to grant it, and will not allow an inconsistent or useless amendment (See Oyenuga v. Provisional Council of the University of Ife (1965) NMLR 9, So that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is a matter of right on his part to have it corrected if it can be done without injus-

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tice. If the amendment sought relates to a mere misnomer, it will be granted almost as a matter of course (Olu of Warri v. Esi (1958) SCNLR 384; (1958) 3 FSC 94): but an amendment to create a suit where none existed would not be granted (Re Pedro St. Matthew-Daniel (Deceased) (1950) 19 NLR 73).

Also an amendment to change the nature of the claims before the court will not be allowed (see Foko & Ors v. Foko & Ors (1968) NMLR 44). Again leave to amend will not be granted if the amendment would not cure the defect in the proceeding (Abasi v. Labiyi (1958) WRNLR 12).

I shall bear in mind all the principles referred to above in determining this prayer.

In the instant case it is evident from the Writ of Summons and the Statement of Claim that plaintiff/applicant's claim was for N319,884.19 (See paras. 38 & 39 of the Statement of Claim (which superceded the Writ herein). At the trial court judgment for N277,513.18 was entered for it. That judgment was then set aside by the Court of Appeal, hence the appeal to this Court, What was claimed in para, 39(i) of the Statement of Claim was -

*"N319,884.19 being damages for breach of contract of 3/4/79" only.*

There was no claim for "interest of 13years at the rate of 13% as now sought to be amended, There was equally no claim for general damages either in the writ or in the statement of claim. The applicant is also now seeking to amend the figures N319,884.19 wherever they appear in paras. 38 & 39 of the Statement of Claim to read *"\$207,250.50 plus 10% interest. In addition while the original claim was based simply on a breach of contract; it is now being amended and expanded to include an action in negligence thus - "the defendant was negligent, breaking also its statutory duties under Insurance Act 1976".*

I am clearly of the view that it will amount to changing the nature of the claims if the applicant is now allowed to effect the amendments sought above (See Foko v. Foko (Supra). The action founded on contract is now being expanded to include an action in negligence as well. The claims of the applicant will now be partly in Naira and

partly in foreign American dollars instead of the Naira as originally claimed. There will also now be an added claim for general damages. Here again, my view is that having regard to the fact that the three witnesses who testified for the plaintiff and the single witness who testified for the defendant, all gave their testimonies in the local currency, the Naira, the proposed amendment if granted will be useless because they will be inconsistent with those testimonies of witnesses on which both the plaintiff/applicant and the respondent fought the case. (See *Oyenuga v. Provisional Council of the University of Ife* (Supra). It is thus quite clear that if the Writ and the Statement of Claim are amended as prayed the court will not be in a position to amend or change witnesses' testimonies. I agree with Mr Ogbebor that the amendment if granted will certainly require the adducing of additional evidence if not a new trial. That will be intolerable. This prayer is accordingly refused.

3. To deem as properly filed and served additional applicant's brief (EXHIBIT D).

I think having granted applicant's prayer (a) for leave to amend the notice and grounds of appeal the prayer for leave to file and to deem as properly filed and served additional appellant's brief (EXH.D) attached to the motion, cannot be resisted. I observe that the additional appellant's brief is actually a new brief taking into account all the amendments allowed under prayer (a) above. I think it is proper and quite in order. It is hereby granted.

Accordingly it is hereby ordered as follows -

(1) Leave to amend the Notice and Grounds of Appeal filed on 27th January, 1989 and to argue points not taken in the courts below are hereby granted.

(2) Additional appellant's brief (EXH.D) is deemed properly filed and served. The respondent should if necessary, file additional brief as well before hearing date.

(3) Leave to amend plaintiffs writ and pleadings is refused. The defendant/respondent is awarded costs of N100.00.

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### **KARIBI-WHYTE JSC**

I have read the ruling of my learned brother Kutigi J.S.C. I agree entirely with his reasoning the conclusion.

I subscribe to the Orders made in the ruling.

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**WALI JSC**

I have had a preview of the lead Ruling of my learning brother. 5  
Kutigi J.S.C. and I entirely agree with his reasoning and conclusions.

For those reasons ably stated by my learned brother Kutigi.  
J.S.C. in his Ruling I shall also grant prayers (a) and (c) of the appli- 10  
cation to wit

(i) Leave to amend the Notice and Grounds of Appeal al-  
ready filed, and

(ii) to argue points not taken in the courts below.

(iii) Leave to file additional brief as contained in Exhibit D 15  
,and same is deemed as properly filed.

Prayer (b) which is for amendment of the Writ of Summons  
and the pleadings to introduce issues that will if granted substantially 20  
change the original claims filed before the trial court and litigated  
upon, will not only result in injustice to the respondent, but will also  
entail the adduction of additional evidence to support the same. This  
will certainly spring surprise on the respondent who would then be  
faced with *fait accompli*. See *Bello Adegoke Foko and Ors. v. Oladokun*  
*Agboola Foko & Ors. (1968) NMLR 441*. It is for these reasons and 25  
the reasons contained in the lead Ruling, which I have already indi-  
cated that I have agreed with, that I hereby subscribe to the orders  
contained therein.

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**NNAEMEKA-AGU JSC**

I have had a preview of the ruling of my learned brother. Kutigi,  
J.S.C. in this appeal. I agree with him that the prayers (a) and (c) for 35  
leave to amend the Notice and Grounds of Appeal filed and to argue  
points not taken in the court below have merit and ought to be  
granted.

The prayers to amend the writ of summons and the pleadings  
are, however, quite different kettle of fish. They seek to introduce

quite different issues in the case from those contested in (the courts below, For they now seek to introduce issues of negligence and breach of statutory duty. They also seek to introduce a claim for 13,371 bags  
5 of granulated white sugar not found after the ship-wreck. So plaintiff now claim U.S. \$207, 250.00 being their value in dollars plus interest at 13% per annum for thirteen years.

Now, basically an amendment of a writ or party's pleading is allowed if such an amendment can prevent injustice: Cropper v. Smith  
10 (1884) 26 ch. D. 700. p. 710. Conversely, any amendment which will result in injustice to the other party or which will violate the rule of audi alteram partem ought not be allowed. The rule will be infringed if an amendment is introduced at such a stage that the other side no longer has the opportunity of adducing its own answer to the  
15 point which the amendment has enabled the applicant to introduce. It is for these reasons that although an appellate court has inherent powers of amendment of the proceedings in proper cases, for which see Metal Construction (W.A.) Ltd v. D.A Migliore & Anor (1979) 6-  
9 S.C. 163, p. 171-172, such powers are exercised rather restrictively on appeal. Generally, they are exercised to correct obvious  
20 accidental slips and omissions apparent on the record and also to enable the pleading conform with the evidence on record. In Seklin v. Little 6 T.L.R. 366, the Court of Appeal in England in a slander  
25 action ordered an amendment of the statement of claim to conform with the word proved at the trial. Pursuant to the same principle, the West African Court of Appeal in the case of Divisional Chief Gbogbolulu of Vakpo Afeyi as Representing the Stool Vakpo v. Head Chief Itodo of Anfoega as Representing The Stool of Anfoega (1941) 7 W.A.C.A.  
30 164, at p.165 in a third stage appeal, in so far as the record of proceedings showed that the plaintiff prosecuted the action and the defendant defended it in representative capacities, amended the parties to show those capacities. Their lordship summarized the principle thus:

35     *"The Court has full powers to take this course and since it appeared that no hardship would accrue to either party by the heading of the suit being amended, even at this late stage, so as to make clear*

*the representative capacities of the parties, we ordered in the course of the hearing of the appeal that the title of the suit be altered to read as now appears as the heading of this judgment.”*

The underlying principle has always been that no amendment would be allowed if it would enable the applicant to over-reach his adversary or in circumstances in which the adversary finds that he ought to have answered back any point raised by or introduced as a result of the amendment, but because the proceedings were at an appellate stage at which no further evidence would be admissible, he could not. Viewed from these perspectives, it appears clear to me that the amendments which the applicant seeks to make to its writ and statement of claim, in so far as they will introduce completely new issues of which there is no evidence on record and which the respondent did not and will not have the opportunity to answer back by calling appropriate evidence in rebuttal, will strike at the very foundations of fair hearing and result in injustice. I, therefore, agree that such amendments ought not to be allowed. It cannot be justice to allow a plaintiff sneak in such substantial issues in the course of a final appeal. For justice is not a game of hide and seek. Rather, it is a game of fairness which is played with openness and according to the rules of the game.

For the above reasons and others contained in the leading ruling of my learned brother, Kutigi, J.S.C., I agree with the ruling and subscribe to the orders made in the leading ruling.

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**OGWUEGBU JSC**

I have had a preview of the ruling of my learned brother Kutigi, J.S.C. and I agree with his reasoning and conclusion.

I also abide by the orders made in the said ruling including the order as to costs.