

**SUPREME COURT OF NIGERIA**  
 18<sup>TH</sup> JULY, 1995. SC. 116/1989  
**CORAM:- M.L. UWAIS, LL. KUTIGI, E.G. OGWUEGBU,**  
**U. MOHAMMED, Y.O. ADIO, JJSC.**

NABSONS LIMITED .....RESPONDENT  
 AND  
 MOBIL OIL NIGERIA LIMITED ..... APPELLANT

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***PLEADINGS*** - Amendment - Application for amendment of pleadings - When refusal amounts to gross injustice.

***PLEADINGS*** - Discretion - Court's exercise of discretion - To grant amendment of pleadings - Guiding principles.

***PRACTICE & PROCEDURE*** - Adjournment - Application for adjournment - Refusal thereof - That takes away a party's right - Is erroneous.

***PRACTICE & PROCEDURE*** - Joinder of parties - Basis - Application for joinder - Whether its refusal is erroneous.

***PRACTICE & PROCEDURE*** - Proceedings - Counsel's refusal to continue with proceedings before a court - When held to be proper.

### **FACTS**

The proceedings leading to this appeal was instituted in the High Court of Cross River State, Calabar, wherein the Respondent as plaintiff in its Statement of Claim claimed a total sum of N71,630.00 as entitlements due to it from its business relationship as a dealer or peddler of the defendant's product. The defendant/appellant in its statement of defence denied having any business relationship with the Respondent, except one Mr. N.A. Bassey, which said business relationship was guided by the terms and conditions contained in an agreement of 24/1/78. The case went to trial. It was the testimony of the said Mr. N.A. Bassey at the trial that he incorporated the respondent to take over his business relationship with the appellant, upon the appellant's approval by its letters of 3/4/80, 20/6/80, among others; which founded the application by the respondent's counsel for amendment of pleadings, joinder of the said Mr. N.A. Bassey as a party to the suit and short adjournment. The trial court refused the application.

The respondent appealed to the Court of Appeal Enugu Division

which set aside the ruling. It is against that decision of the Court of Appeal that the appellant has appealed to the Supreme Court raising five issues.

**ISSUES FOR DETERMINATION**

*(1) Whether having regard to all the circumstances of this case the Court of Appeal was right in reversing the decision of the learned trial judge to the effect that he had no jurisdiction under the applicable Order 4 Rules 2 and 5(1) of the Eastern Nigeria High Court Rules, 1955, to grant the application for the Managing Director of the plaintiff company, N.A. Bassey to be joined as a co-plaintiff company, in the action.*

*(4) Whether the Court of appeal was right in interfering with the trial judge's discretion and deliberate judgment in refusing adjournment and striking out the case when the plaintiff refused to go on. etc (see p. 1477)*

**HELD** (Unanimously dismissing the appeal per lead judgment of **MOHAMMED JSC**)

***Joinder of parties - When refusal is erroneous***

1. From the above, it is plain that without joining Mr. N.A. Bassey as a co-plaintiff to this suit, the real question in controversy between the appellant and the respondent cannot effectively and completely be adjudicated upon and all questions involved in the cause or matter settled. In the result, I have to resolve the first issue in favour of the respondent and affirm the lower court's decision that the learned trial judge had erred in refusing to order for the joinder of Mr. N.A. Bassey as a co-plaintiff and that the error could lead to the defeat of the plaintiff's case. (p. 1479 D)

***Court's exercise of discretion***

2. When a party applies for an amendment it must place before the court materials upon which it is to exercise its discretion. I think it is now well settled and without citation of authorities that the correct principle for the guidance of a court in the exercise of its discretion is that an amendment of pleadings for the purpose of determining the real questions in controversy between the parties ought to be allowed unless such amendment will entail injustice or surprise or embarrassment to the other party or the applicant is acting mala fide, or cause injury to the respondent which cannot be compensated by costs or otherwise, (p. 1480C)

***Amendment of pleadings - When refusal is improper***

3. It is well established principle that the object of courts is to decide the rights of the parties, and not to punish them for mistakes which they make in the

conduct of their rights. The request for amendment of the Statement of Claim in the present case was submitted when PW1 had just started to give evidence. It would amount to gross injustice to refuse the request for the amendment of the Statement of Claim at that stage particularly as the bone of contention is the assignment of the dealership and peddling agreement which Mr. N. A. B Bassey did to the respondent. The Court below is quite right to order for the amendment which would undoubtedly lead to determination of the real question in controversy between the parties in this action. (p. 1480 E)

### ***Application for adjournment***

4. Where there is a change of counsel, during trial, and the new counsel applies for a short adjournment to enable him prepare and be fully briefed by his client it will amount to a judicious exercise of discretion if the court grants the application. Refusal to adjourn, in such a situation may amount to taking away the right of a party to have a counsel of his choice. The trial High Court was definitely in error to refuse the application of Mr. Nta, the new counsel for the respondent for a short adjournment after he had taken over the case and appeared for the first time for the respondent. The Court of Appeal is quite right to declare that the refusal to adjourn was erroneous. (p. 1480 H)

### ***Counsel's refusal to continue with proceedings***

5. The refusal of the learned counsel for the respondent, Mr. Nta, to go ahead with the proceedings on that day was based on good reason. The counsel had been brought into the case after two vital applications of his client, to join an important party as co-plaintiff and to amend the Statement of Claim had been refused. His prayer for an adjournment to consider the next step in the proceedings was also refused. In the circumstances, the counsel had no alternative but to explain to the court of his inability to proceed with the case. The striking out of the action at that stage was wrong and the Court of Appeal was right to review and reverse such unfair ruling. (p. 1481 B)

## **NOTABLE POINTS OF INTEREST**

### **OGWUEGBUJSC**

#### ***1. Interest of justice***

The court below was perfectly in order when it reversed the decision of the learned trial judge refusing to (a) join N. A. Bassey as Plaintiff, (b) grant an amendment of the statement of claim and (c) grant an adjournment consequent upon his ruling refusing to exercise his discretion in favour of the applicant. The three applications were not frivolous. Mr. N.A. Bassey is a

necessary party and the interest of justice demands that as far as possible, the issues between the parties should be determined once and for all so as to avoid multiplicity of proceedings. (p. 1482 A)

### ***2. Use of information obtained outside court***

It is indeed undesirable and dangerous for a trial judge to make use of any information obtained outside the court as the basis for a decision in a case before him. (p. 1483 A)

### **ADIOJSC**

### ***3. Whether there is inherent jurisdiction to set aside exercise of discretion***

The attitude of an appellate court to a lower court's exercise of discretion is that no court has inherent jurisdiction to set aside the exercise of discretion of another court except where such exercise was capricious, was based on extraneous factors or did not follow accepted legal principles. (p. 1484 E)

### ***4. Appellate court's duty to review adverse ruling***

The court should also bear in mind the requirement that justice should be done to both parties and that it is also in the interest of justice that the hearing of a case should not be unduly delayed. The court should grant the application for an adjournment if a refusal of the application is most likely to defeat the rights of the parties altogether or be an injustice to one or the other of them, unless there is a good or sufficient cause for such refusal, otherwise an appellate court will not only have power but will be under a duty to review the ruling refusing the application. (p. 1485 A)

### **REPRESENTATION**

Chief Theodore Ezeobi with Paul Ezeobi for the appellant.  
Respondent absent and unrepresented.

### **CASES REFERRED TO**

Laibru Ltd v. Building and Civil Engineering Contractors (1962) 1 ANLR (part 3) 337

Odadhe v. Okujeni (1973) 11 S.C. 343

Uku v. D. E. Okumagba (1974) 3 S.C. 35

Miguel Sanchez and Companiay S. L. v. The Result (Owners) Nello Simoni Ltd. Third Party (1958) Probate 174

Okafor v. D.O. Ikeanyi (1979) 3-4 S.C. 99 at 106

Ojah v. Ogboni (1976) 4 S.C. 69

Ilona v. Dei (1971) 1 All NLR 8

Maxwell v. Keun (1928) 1 K.B. 645

Odadhe v. Okujeni (1973) 11 S.C. 343

Ntukidem v. Oko (1986) 5 N.W.L.R. (Pt. 45) 909

Omadide v. Adejero (1976) 12 S.C. 87 at 96

B Beck v. Value Capital Ltd (1976) 2 All E.R. 102

Odogwu v. Odogwu (1992) 2 N.W.L.R. (Pt. 225) 539

Ceekay Traders Ltd. v. General Motors Ltd. (1992) 2 N.W.L.R. (Pt. 222) 132

Adejumo v. Ayantegbe (1989) 3 N.W.L.R. (Pt. 110) 417

**STATUTES & RULES REFERRED TO**

C Cross River State High Court Rules, cap 51, 1981 O.4, r.2 and 5(1); O.34

Eastern Nigeria High Court Rules, 1955, O.4, r.2, and r.5(1); O.34

Supreme Court Rules O.6, r. 8(7)

D

**LEAD JUDGMENT BY MOHAMMED JSC**

In these proceedings which commenced in the High Court of Cross River State holden at Calabar, the respondent as plaintiff, brought an action against the appellant, as defendant, with the following particulars:

E *“The plaintiff at all times materially in this case is a peddler of the defendant’s products. From this business relationship, the plaintiff maintains both product and deposit accounts with the defendant. The plaintiff apart from being entitled to make withdrawals from his deposit account was to be reimbursed on incidental expenses incurred by the plaintiff within and in the course of the business of the defendant.*

F *Whereof the plaintiff after repeated demands for these entitlements and persistent failure and or neglect by the defendant to meet these demands now claims a total sum of N71,636.00 as follows:-*

*1(a) N16,300.00 Deposit Account*

G *(b) 1,200.00 Claim on vehicle maintenance of the defendant*

*(c) 4,136.00 Freight expenses*

*N50,000.00 General damages”*

H In paragraph three of the statement of claim the respondent averred that “the plaintiff at all material times is a dealer or peddler of products of the defendant, among other things” and in paragraph four the plaintiff company explained that *“as a peddler and in line with the business practice of the defendant, the plaintiff maintains both product and deposit accounts with the defendant”* and in paragraph five of the statement of claim the respondent explained some business transaction between the two parties in the following

*“In accordance with the business practice between the parties, the plaintiff is entitled to make withdrawals from the said deposit account and to be reimbursed on incidental expenses incurred by him within and in the course of the business of the defendant. At the trial the plaintiff will rely on the defendant’s letter No. EB 134 dated August 13, 1983 being a reply to the plaintiff’s letter requesting for the sum of N30,000.00 from the defendant to enable the plaintiff put a vehicle on the road in furtherance of its business commitments to the defendant.”*

The appellant, in its Statement of Defence, denied knowing the respondent or ever having any contractual or other business relationship with the company as their dealer or peddler of petroleum products. The appellant further explained that it had a business relationship with one N.A. Bassey and that by an agreement dated 24/1/78 made between the appellant and the said N.A. Bassey the latter was appointed a peddler of the appellant’s kerosine product on terms and conditions set out in the said agreement. In paragraph 7 of the Statement of Defence the appellant disclosed one of the conditions of its agreement with N.A. Bassey, which reads:

*“By paragraph 2(q) of the said agreement the said N.A. Bassey undertook and bound himself not to assign, change or in any way encumber the benefit of the agreement or part thereof.”*

After pleadings were delivered and exchanged the trial opened on 11th February, 1986, before Udofia, J. Mr. Nsa Asuquo Bassey was the first witness for the plaintiff. During his testimony Mr. Bassey explained to the court how he transacted his business as a dealer and peddler in petroleum products with the appellant. It is pertinent to pause here and refer to paragraph 11 of the Statement of Defence. In that paragraph, the appellant pleaded that since the respondent was not a party to the kerosine peddling contract between the appellant and Mr. N.A. Bassey, Nabsons Limited (the respondent) had no locus standi to sue under the said agreement. The implication of paragraph 11 of the Statement of Claim became quite clear when Mr. N.A. Bassey said in his evidence before the court, thus:

*“When I became a member of the Cross River State House of Assembly, I wrote a letter to the defendant telling the defendant that I have transferred all my assets to Nabsons Limited which I had incorporated. “*

It was at this stage that learned counsel for the respondent sought for an adjournment of the hearing. When the court resumed, learned counsel for the respondent moved a motion seeking for an order to join Mr. N.A. Bassey as co-plaintiff in the action and for an order to amend the plaintiff’s statement of claim. The application was opposed by learned counsel for the defendant/appellant. In his ruling the learned trial Judge said:

*“It is trite law that a company has a personality different from those of its shareholders. Hence even though the applicant has sworn that he was a sole Proprietor of the Business before incorporation, once the company was incorporated it became a separate entity different from that of the applicant. Hence since the applicant has sworn in his affidavit that he had transferred all his assets and liabilities to the plaintiff, Nabsons Ltd., I hold that he does not have any more interest nor ground for instituting this suit which is different from Nabsons Limited. It does not matter whether or not he has all the shares in Nabsons Limited. It is Nabsons Limited as a legal personality which is entitled to institute the suit and the plaintiff can, if Nabsons Limited succeeds in the suit, take all the interests and benefits if he is the sole shareholder as he claims. The application by Mr. N.A. Bassey to be joined as a co-plaintiff therefore fails and I refuse it.”*

After this ruling a new counsel Mr. Nta, appeared for the respondent and requested for a short adjournment to prepare and be fully briefed by the respondent, particularly in view of the court’s ruling. The learned trial Judge refused to adjourn the case and ordered for the case to continue on that day. Mr Nta thereafter told the court that his client was unable to continue with the hearing of the case. The learned trial Judge struck out the case.

Dissatisfied with the court’s refusal to order for the joinder of Mr. N.A. Bassey as co-plaintiff, to amend the statement of claim, to adjourn the case and for striking out the suit, the respondent appealed to the Court of Appeal, Enugu Division. In a well considered judgment the Court of Appeal allowed the appeal, set aside the decision of the trial court and ordered that Mr. Bassey be joined as co-plaintiff in the suit. It also ordered for the amendment of the statement of claim which the respondent applied for before the trial court.

It is against the judgment of the Court of Appeal that the appellant registered this appeal and filed seven grounds of appeal in order to prosecute the appeal. On the day this court fixed this appeal for hearing only the appellant’s brief was before us. There was a sworn affidavit of service of the record of proceedings and the brief of the appellant on the respondent but the respondent had failed to file a respondent’s brief. Following the provision of this Court’s Rules, under Order 6 rule 8(7) we permitted the appeal to be argued on the appellant’s brief only.

Five issues were formulated by the appellant’s counsel, in the appellant’s brief, for determination of this appeal. They are as follows:

*“(1) Whether having regard to all the circumstances of this case the Court of Appeal was right in reversing the decision of the learned trial Judge to the effect that he had no jurisdiction under the applicable Order 4*

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*rules 2 and 5(1) of the Eastern Nigeria High Court Rules, 1955, to grant the application for the Managing Director of the plaintiff company, N.A. Bassey to be joined as a co-plaintiff in the action.*

(2) *Whether the Court of Appeal was right in substantially basing its decision to join the Managing Director of the plaintiff company (N.A. Bassey) as a co-plaintiff in this case on the judgment of the Federal Supreme Court in Laibru Ltd. v. Building and Civil Engineering Contractors (1962) 1 All NLR (Pt.3) 387; (1962) 2 SCNLR 118 when the facts and circumstances of that case are very different.*

(3) *Whether in the circumstances of this case the Court of Appeal was right in holding that an amendment of pleading is a question of right and whether that court was right in granting the amendment sought even when the learned trial Judge held that no case had been made out under O.34 of the Eastern Nigeria High Court Rules, 1955, for such amendment to be granted.*

(4) *Whether the Court of Appeal was right in interfering with the trial Judge's discretion and deliberate judgment in refusing adjournment and striking out the case when the plaintiff refused to go on.*

(5) *Whether the Court of Appeal was right in disregarding the objection taken before it as to the validity of the then appellant's brief and the right of the said appellant's counsel to be heard in oral argument thereof having regard to the fact that the brief did not comply with the rule that argument must be of the issues raised for determination in the appeal and not the grounds of appeal simpliciter."*

In his submission on the first issue learned counsel for the appellant argued that the Court of Appeal did not consider or adequately consider the peculiar facts as placed before the learned trial Judge by the applicant in order to determine whether those facts bring the applicant within the applicable rules so as to enable the court exercise the jurisdiction vested in it by those rules to order or not to order joinder according to the judicious exercise of its discretion. It is pertinent to refer to the Rules, Cap. 51 of the Laws of Cross River State, 1981, on joinder of parties.

Learned counsel for the appellant reproduced Order 4 rule 2 and 5(1) in his brief which provides as follows:

"2 *Where a person has jointly with other persons a ground for instituting a suit, all those other persons ought ordinarily to be made parties to the suit.*"

and

"5(1) *If it shall appear to the Court, at or before the hearing of a suit, that all the persons who may be entitled to or who claim some share or interest in the subject matter of the suit, or who may be likely to be affected by*



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*the result, have not been made parties, the court may adjourn the hearing of  
the suit to a future day, to be fixed by the court, and direct that such persons  
shall be made either plaintiffs or defendants in the suit, as the case may be  
....."*

The Court of Appeal in its judgment considered the general practice established by a large number of authorities on the joinder of parties. If one  
B reads the High Court Rules of Cross River State, reproduced above, it is obvious that what it entails is what Ibekwe, J.S.C., said in the case of Oterail Odadhe v. Otowodo Okujeni & Ors. (1973) 11 SC 343, that joinder of parties, if it is found to be necessary, may be made at any time during trial with a view to adjudicate upon and settle all questions involved in the cause. The interest of  
C justice demands that, as far as possible, the issues between the parties should be determined once and for all, so as to avoid multiplicity of proceedings. This court in the case of Chief A.O. Uku & 4 Ors v. D.E Okumagba & 4 Ors (1974) 3 SC 35 applied with approval the opinion of Willmer J., on the issue of joinder of parties, in the case of Miguel Sanchez and Campana S.L. v. The Result  
D (Owners) Nello Simoni Ltd; Third Party (1958) Probate 174 where the learned Justice said:

*"The rule providing for the joinder of additional parties is R.S.C. Ord., 16, r. 11. It is not, I think, disputed that the third parties are entitled to the order sought only if they can bring themselves within the terms of that  
E rule. Having regard to the terms of the rule, it appears to me that the questions to be determined on this summons are these. First, is the cause or matter liable to be defeated by the non-joinder of the third parties as defendants? This, I think, means in effect: is it possible for the court to adjudicate upon the cause of action set up by the plaintiffs, unless the third parties be  
F added as defendants? Secondly, are the third parties persons who ought to have been joined as defendants in the first instance? Thirdly, and alternatively, are the third parties persons whose presence before the court as defendants will be necessary in order "to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the  
G cause or matter?"*

The learned justice of the Court of Appeal, who wrote the lead judgment, Uwaifo, J.C.A., considered the relevance of joining Mr. N.A. Bassey as co-plaintiff to the present action. The learned Justice pointed out, quite correctly, in my view, that what appears to have taken place between Mr. N.A. Bassey  
H and Nabsons Limited, the respondent, in respect of the business transactions with the appellant was an assignment. The appellant said that Mr. Bassey did that in contravention of the business agreement between them.

It is clear from the facts of this case that Mr. N.A. Bassey got Nabsons Limited incorporated with a view to transferring his business of dealership in

petroleum products with the appellant. In paragraphs 5, 6 and 7 of the proposed Amended Statement of Claim the respondent averred as follows:

“5. By letter dated 17th April, 1980 the 2nd plaintiff informed the defendant of the transfer of his business to the 1st plaintiff, By letter dated 20th June, 1980 the defendant acknowledged 2nd plaintiff’s letter dated 17/4/80 and requested him to forward the defendant’s legal department, copies of 1st plaintiff’s Memorandum and Articles of Association as well as Certificate of Incorporation. 2nd Plaintiff’s letter dated 17/4/80, defendant’s letter dated 20/6/80, Memorandum and Article of Association, Certificate of Incorporation herein referred are hereby pleaded.”

6. The 2nd plaintiff under cover of letter dated 1/7/80 forwarded the aforesaid documents to the defendant. The defendant by its letter of 3/4/80 copied the 2nd plaintiff sent the said document to one A.C. Osokolo, an officer of the defendant. The letters herein referred are hereby pleaded.

7. The defendant thereupon resumed the dealership business of the 2nd plaintiff with the 1st plaintiff and sent its invoices and addressed several letters to the 1st plaintiff.”

From the above, it is plain that without joining Mr. N.A. Bassey as a co-plaintiff to this suit, the real question in controversy between the appellant and the respondent cannot effectively and completely be adjudicated upon and all questions involved in the cause or matter settled. In the case of Laibru Ltd. v. Building and Civil Engineering Contractors (1962) 1 All NLR 387; (1962) 2 SCNLR 118 this court considered similar situation and ordered for joinder of a third party as a co-plaintiff. The Court of Appeal reported the facts of Laibru case and as the facts of that case are very similar to the facts of the case in hand I shall reproduce them as well. The facts have been reported as follows:

“An action was brought for goods sold and delivered by the appellant company as plaintiffs against the respondents as defendants. At the hearing of the action, the evidence adduced on behalf of the plaintiff company showed that early in 1959 one Michael Ibru, an individual trading under the name of “Laibru” sold goods in question to the defendants for which the defendants failed to pay. It further showed that, later in the same year, Michael Ibru and others formed the plaintiff company for the purpose of taking over and running the business formerly run by him personally and that he assigned all his assets in the business to the plaintiff company, including the debt owing to him by the defendants for goods sold by him to them earlier in the year. Notice of the said assignment was not given by Michael Ibru to the defendants. On those facts it was held that the said plaintiff company could only sue by joining the assignor, Michael Ibru, as a co-plaintiff”

In the result, I have to resolve the first issue in favour of the respon

dent and affirm the lower court's decision that the learned trial Judge had erred in refusing to order for the joinder of Mr. N.A. Bassey as a co-plaintiff and that the error could lead to the defeat of the plaintiff's case.

B The next issue is the question of refusal of the trial court to grant the order for an amendment to the statement of claim. The Court of Appeal referred to the amendment proposed and found that, contrary to what the appellant had said, the proposed amendment was to show that the appellant dealt with Nabsons Limited as a peddler of its products in place of and at the instance of Mr. Bassey.

C Learned counsel for the appellant referred to Order 34 of the High Court Rules of Eastern Nigeria 1955 (applicable to the Cross River State) and submitted that amendment of proceedings are at the discretion of the court. When a party applies for an amendment it must place before the court materials upon which it is to exercise its discretion. I think it is now well settled and without citation of authorities that the correct principle for the guidance of a court in the exercise of its discretion is that an amendment of pleadings for the purpose of determining the real questions in controversy between the parties ought to be allowed unless such amendment will entail injustice or surprise or embarrassment to the other party or the applicant is acting mala fide, or cause injury to the respondent which cannot be compensated by costs or otherwise.  
D See Chief S.O.N. Okafor v. D.O. Ikeanyi & Ors. (1979) 3-4 S.C. 99 at 106 where Bello, J.S.C. (as he then was) referred to an earlier decision of this court in Chief Ojah & Ors. v. Chief Eyo Ogboni & Ors. (1976) 4 SC 69. It is well established principle that the object of courts is to decide the rights of the parties, and not to punish them for mistakes which they make in the conduct of their rights.  
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The request for an amendment of the Statement of Claim in the present case was submitted when PW1 had just started to give evidence. It would amount to gross injustice to refuse the request for the amendment of the statement of claim at that stage particularly as the bone of contention is the assignment of the dealership and peddling agreement which Mr. N.A. Bassey did to the respondent. The Court below is quite right to order for the amendment which would undoubtedly lead to determination of the real question in controversy between the parties in this action.  
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H Turning to the issue of the trial court's refusal to grant the prayer for adjournment: should be explained that the power of a court to grant adjournment is a typical exercise of purely discretionary power which must at all time be exercised not only judicially but also judiciously: - See Ilona & Ors. v. Dei & Ors. (1971) 1 All NLR 8. Where there is a change of counsel, during trial, and the new counsel applies for a short adjournment to enable him prepare and be

fully briefed by his client it will amount to a judicious exercise of discretion if the courts grants the application. Refusal to adjourn, in such a situation may amount to taking away the right of a party to have a counsel of his choice. The trial High Court was definitely in error to refuse the application of Mr. Nta, the new counsel for the respondent for a short adjournment after he had taken over the case and appeared for the first time for the respondent. The Court of Appeal is quite right to declare that the refusal to adjourn was erroneous. B

The refusal of the learned counsel for the respondent, Mr. Nta, to go ahead with the proceedings on that day was based on good reason. The counsel had been brought into the case after two vital applications of his client, to join an important party as co-plaintiff and to amend the Statement of Claim had been refused. His prayer for an adjournment to consider the next step in the proceedings was also refused. In the circumstances, the counsel had no alternative but to explain to the court of his inability to proceed with the case. The striking out of the action at that stage was wrong and the Court of Appeal was right to review and reverse such unfair ruling:- See Maxwell v. Keun (1928) 1 K.B. 645. This appeal is devoid of any merit and it is dismissed. The judgment and order of the Court of Appeal are hereby affirmed. Since the respondent has not written any brief and did not put up appearance there will be no order as to costs. C D E

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**UWAIS JSC**

I have had the opportunity of reading in draft the judgment read by my brother Mohammed, J.S.C. I agree with him that this appeal has no merit and that it should be dismissed. I too hereby dismiss it with no order as to costs. F

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**KUTIGIJSC**

I read in advance the judgment just delivered by my learned brother Mohammed, J.S.C. I will also dismiss the appeal and affirm the decision and orders of the Court of Appeal. G H

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**OGWUEGBU JSC**

I have had the advantage of reading the draft of the judgment just read by my learned brother, Mohammed, J.S.C. and I entirely agree that the

appeal has no merit and should be dismissed.

The court below was perfectly in order when it reversed the decision of the learned trial Judge refusing to (a) join N.A. Bassey as plaintiff, (b) grant an amendment of the statement of claim and (c) grant an adjournment consequent upon his ruling refusing to exercise his discretion in favour of the applicant. The three applications were not frivolous. Mr. N.A. Bassey is a necessary party and the interest of justice demands that as far as possible, the issues between the parties should be determined once and for all so as to avoid multiplicity of proceedings. See *Odadhe v. Otowodo Okujeni & Ors* (1973) 11 SC 343.

The amendment of the statement of claim flowed from the application for joinder. Both prayers for joinder and amendment would not have caused any injustice to the appellant if granted.

As to the refusal to adjourn the case and the order striking out the suit when the learned counsel for the respondent could not continue with the case cannot be justified. The learned trial Judge on 8/4/86, adjourned the case to 20/5/86 for "*ruling and, if possible, for continuation also*". On 20/5/86, Mr. Nta was leading Mr. Ndah. Following the ruling refusing the application for joinder and amendment of the statement of claim, Mr. Nta applied for a short adjournment to enable him prepare and be fully briefed by the plaintiff as he was appearing in the case for the first time.

This application was opposed by the learned counsel for the defendant. The learned trial Judge in his ruling said:

*"It is not true as can clearly be seen in the records that counsel is coming new into the case. He is from the firm of Iron Bar and Associates which had represented the plaintiff on 8th April, 1986 when the motion was argued. On that day Mr. Ndah appeared. But today Mr. Nta is appearing to lead Mr. Ndah. Both counsel are from the same chambers. On 8th of April, 1986 when I adjourned the case for today, I stated as follows:*

*"This case is adjourned to 20th, May 1986 for ruling and, if possible, for continuation."*

Since the case was part-heard since 11th February, 1986, it is in the interest of justice which does not operate for the plaintiff only but also for the defendant and the court that this case should continue.

NOTE: Despite the ruling by the Court, Counsel for the plaintiff says that the plaintiff is unable to continue.

Order:- This case is struck out with N100 (One Hundred Naira) cost against the plaintiff."

I would say that the observation of the learned trial Judge that Mr. Nta is from the firm of Iron Bar and Associates which represented the plaintiff

on 8/4/86 is not borne out by the record. There is also nothing in the record of appeal to show that both Mr. Nta and Mr Ndah are from the same Chambers. It is indeed undesirable and dangerous for a trial Judge to make use of any information obtained outside the court as the basis for a decision in a case before him.

The Rules confer on the court unfettered discretion at any time or of its own motion to adjourn any proceeding before it from time to time. The question -whether or not to grant an adjournment is a matter within the discretion of the court. Where a trial Judge is not shown to have erred in principle, his exercise of a discretionary power should not be interfered with unless the appellate court is of the opinion that his conclusion is one that involves injustice. See Chief James Ntukidem & Ors. v. Chief Asuquo Oko & Ors. (1986) 5 NWLR (Pt. 45) 909; Omadide v. Adajero & Ors. (1976) 12 SC 87 at 96 and Beck v. Value Capital Ltd. (1976) 2 All ER 102.

In the circumstances of this case, the refusal by the learned trial Judge, Udofia, J. to grant the adjournment asked for, he clearly exercised his discretion wrongly. He was influenced by irrelevant considerations. The Court of Appeal was right in interfering with the exercise of his judicial discretion.

For the above reasons and the fuller reasons contained in the lead judgment of Mohammed, J.S.C., I too, dismiss the appeal and affirm the decision of the court below. The appeal is devoid of any merit. I abide by all the consequential orders contained in the lead judgment.

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### **ADIO JSC**

I have had the opportunity of reading, in draft, the judgment just read by my learned brother, Mohammed, J.S.C., and I agree with it. The appeal has no merit and, accordingly, I too dismiss it.

The full facts have been set out in the lead judgment of my learned brother, Mohammed, J.S.C. One of the fundamental issues, seriously canvassed in the court below and in this court, was that the learned trial Judge should have granted the application of the learned counsel for the respondent for an adjournment because of a change of counsel by the respondent. As a result of certain developments in the case, the respondent had earlier applied to the learned trial Judge to join a certain Mr. Basse as a co-plaintiff in this action and to amend the respondent's statement of claim. Both applications were refused by the learned trial Judge. After the ruling of the learned trial Judge, a new counsel appeared for the respondent and requested the learned trial Judge for a short adjournment to enable him to be fully briefed by the

respondent and to prepare the case of the respondent bearing in mind the ruling which was just given by the trial court. The application was refused and when the respondent was unable to proceed with the case, on the same day that the ruling was given, as ordered by him, the learned trial Judge struck out the respondent's case.

B Dissatisfied with the judgment of the learned trial Judge, the respondent appealed to the court below. After due consideration of the submissions made for the parties on the question of whether the learned trial Judge was right in refusing the application for an adjournment, the court below came to the conclusion that the learned trial Judge was wrong and the court below  
C allowed the appeal.

Dissatisfied with the judgment of the court below, the appellant has appealed against it to this court. The main issue, on the question of an adjournment, was whether the court below was right in interfering with the discretion of the learned trial Judge in refusing an adjournment in the circumstances of this case? It was submitted for the appellant that the answer should be in the negative. It was further submitted for the appellant that an adjournment could, therefore, not be secured as a matter of course. After setting out what were described as the materials before the learned trial Judge and the relevant legal principles on circumstances in which an appellate court could  
E interfere with the exercise of discretion by a lower court, it was submitted that the court below did not bear in mind the aforesaid materials and relevant legal principles before interfering with the exercise of the discretion of the learned trial Judge.

The attitude of an appellate court to a lower court's exercise of discretion is that no court has an inherent jurisdiction to set aside the exercise of discretion of another court except where such exercise was capricious; was based on extraneous factors or did not follow accepted legal principles. See *Odogwu v. Odogwu* (1992) 2 NWLR (Pt. 225) 539. The question whether an adjournment should be granted having regard to the circumstances of each  
G particular case depends on the discretion of the court. See *Ceekay Traders Ltd. v. General Motors Ltd.* (1992) 2 NWLR (Pt. 222) 132. Where a matter is a question of the exercise of discretion, an appellate court will rarely, if at all, interfere with the decision of the trial court and the appellate court is not entitled to substitute its own discretion for that of the trial court. See *Adejumo*  
H *v. Ayantegbe* (1989) 3 NWLR (Pt. 110) 417. An appellate court will not interfere simply because faced with a similar situation it would have exercised its discretion differently. See *Adejumo's case supra*. However, if an appellate court is satisfied that it is in the interest of justice to do so, an appellate court has power to interfere with the exercise of the discretion of a lower court. See

The foregoing is not the end of the matter. If an application for an adjournment is made to a court, it should bear in mind that the discretion which it has in the determination of the matter should be exercised both judiciously and judicially. See *Ilona v. Dei* (1971) 1 All NLR 8. The court should also bear in mind the requirement that justice should be done to both parties and that it is also in the interest of justice that the hearing of a case should not be unduly delayed. The court should grant the application for an adjournment if a refusal of the application is most likely to defeat the rights of the parties altogether or be an injustice to one or the other of them, unless there is a good or sufficient cause for such refusal, otherwise an appellate court will not only have power but will be under a duty to review the ruling refusing the application. In the present case, there was no doubt that immediately after the learned trial Judge had refused the application for joining another party as a co-plaintiff and for an amendment of the statement of claim, the respondent's case was really in disarray and that something had to be done about it quickly to remedy the situation if it was to have any chance of success. Further, another learned counsel had just appeared for the respondent in place of its former learned counsel. The new learned counsel for the respondent wanted the adjournment for the purpose of inter alia, preparing the respondent's case. In the circumstance, there was good and sufficient cause for the learned trial Judge to grant the application for an adjournment. One more adjournment could not, in the circumstances of this case, have caused any harm bearing in mind that the discretion of the learned trial Judge should not be exercised arbitrarily and should be exercised judicially and judiciously. See *Udo v. The State* (1988) 3 NWLR (Pt. 82) 316. The learned trial Judge by refusing the application for an adjournment and by peremptorily striking out the respondent's claim upon the failure of the respondent to proceed with the case did not exercise his discretion judicially and judiciously. He did not exercise the discretion properly and the court below was right to interfere.

It is for the foregoing reasons and for the detailed reasons given in the lead judgment of my learned brother, Mohammed, J.S.C., that I agree that the appeal has no merit. I accordingly dismiss it.

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