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AMENDING A COURT PROCESS BEYOND THE EXTENT GRANTED BY A COURT: FATAL OR PARDONABLE?

1. Introduction

The need for litigants and their counsel to adhere strictly to court orders is not merely ornamental. It is a good legal hygiene and the cornerstone of the entire judicial process. This reality informs the widespread consensus in the legal profession that respect and due observance of the law remains the beauty of law.[2] On this note, where an amendment is granted by a court and a party, in line with the order of court, seeks to add, remove, correct, alter, vary and/or revise words, numbers, or any other content in the court processes, the expectation is that these modifications will fall within the scope of the leave granted by the court.[3] However, this adherence is not consistently observed in practice, as litigants and their counsel occasionally exceed the boundaries of the permission obtained from the court; a practice that is capable of creating complications and undermining the integrity of the judicial process.

This paper interrogates a recurrent conundrum in litigation: whether a party may validly amend a court process beyond the precise terms of an order granting leave to amend, and if so, whether such unilateral deviation is curable or inherently fatal. Drawing on a compelling array of judicial authorities from superior courts in Nigeria, the paper emphasizes the doctrinal imperative of strict compliance with court orders as a safeguard of the integrity, solemnity and authority of the judicial process. This paper identifies three interrelated obligations: the applicant's duty to comply faithfully with the leave granted; the respondent's duty to scrutinize and challenge overreaching amendments; and the court's duty to vigilantly monitor and enforce conformity through its "watchman role".

Through a doctrinal and case-based analysis, this paper discusses the legal consequences of unilateral alterations to amended processes, ranging from striking out the offending portions to the nullification of the entire process, especially where the deviation undermines jurisdiction. The paper critiques the isolated judicial

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2 See the insightful views of Edozie, JSC, in *Buhari v. Obasanjo* (2003) LPELR – 813 (SC) 68 [C].

3 This legal expectation applies not only to formal amendments but also to consequential amendments.

approach in **Co–operative and Commerce Bank (Nigeria) Limited v. Alex O. Onwuchekwa** ("**Onwuchekwa's Case**"),[4] which appears to condone non-compliance under the guise of "substantial justice", arguing that such a view threatens to erode the foundational discipline of legal procedure. It concludes that exceeding the scope of leave to amend is not a mere irregularity but a fundamental breach, and urges courts, litigants, and counsel alike to guard against procedural laxity by respecting the limits of court orders.

2. Review of Decided Cases from Superior Courts in Nigeria

For a wholesome appreciation of the propriety of amending a court process beyond the extent granted by a court, the relevant facts and reasoning of superior courts in Nigeria on several precedent-setting cases are discussed below.

2.1 Richard Onuwaje v. Stephen A. Ogbeide ("Onuwaje's Case")[5]

In **Onuwaje's Case**, the Defendant (now Appellant), at the trial Court, did not file his pleading on time. He later filed a Motion on Notice for extension of time within which to file his Statement of Defence and exhibited a proposed Statement of Defence of 18 paragraphs marked as "Exhibit A". In granting the application, the trial Court gave the Defendant an extension of 7 days within which to file the Statement of Defence in terms of "Exhibit A". On 13th July, 1981, the Defendant filed an 18 paragraph Statement of Defence identical with "Exhibit A" except with respect to paragraph 17, to which an additional fact was pleaded as follows, "*The defendant has expended over N50, 000 to develop the land all to the notice of the plaintiff*." At trial, the trial Court did not permit the Defendant to lead evidence on the cost of building of a house on the land in dispute on the footing that the said fact was clandestinely imported into the Statement of Defence.

On appeal, Learned Counsel to the Defendant (now Appellant) complained that he was not allowed, at the trial Court, to lead evidence in respect of the additional facts pleaded in the Statement of Defence on the ground that the Statement of Defence filed was different from "Exhibit A" which the Appellant was mandated to file by Order of Court. Learned Counsel to the Appellant further argued that "Exhibit A" was a "*Proposed Statement of Defence*" and not a "*Statement of Defence*" and therefore the Order of Court limiting the Defendant (now Appellant) to file his Statement of Defence in terms of "Exhibit A" could not properly be construed as limiting him to any particular Statement of Defence since what was attached to the Motion Paper was a "*Proposed Statement of Defence*" and not a "*Statement of Defence*". Again, Learned Counsel to the Appellant argued that since the trial was conducted on the erroneous impression by the trial Court and the Plaintiff (now Respondent) that "Exhibit A" was a Statement of Defence duly filed, it could not be said that pleadings had been properly exchanged and issues joined. In the alternative, it was argued that if the Statement of Defence filed on 13th July, 1981 was properly filed, the Defendant (now Appellant) had suffered a miscarriage of justice since he was not allowed to lead evidence on all the facts pleaded therein.

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4 (1998) 8 NWLR (Pt. 562) 375 (CA).

5 (1991) 3 NWLR (Pt. 178) 147 (CA).

The Court of Appeal, commenting on the need for litigants to scrupulously conform with the prescriptions in a court order and also endorsing the refusal of the trial Court to allow the Defendant (now Appellant) to lead evidence on the additional fact that was smuggled into the Statement of Defence without the leave of court, unhesitatingly held thus:

> I also hold the view that the order of the lower court in granting the motion was that the defendant should file a statement of defence in terms of Exh. 'A' even though Exh. 'A' was headed "a proposed statement of defence." …. As pointed out by learned counsel for the plaintiff, **it is amazing that the defendant should seek to take advantage of his own default**. **He was enjoined to file a statement of defence in terms of Exh.'A' but he failed to comply strictly with that order and now seeks to overturn the judgment of the lower court on that score. He cannot by his own irregularity be heard to say that pleadings were not properly exchanged and issues joined and urge this court to set aside the judgment of the lower court.** … It is inconceivable that the evidence on the averments underlined above could in any way have affected the merits of the case. **I therefore take the view, contrary to the submission of learned counsel for the defendant, that by the lower court's alleged refusal to allow the defendant to lead evidence on the cost of building of a house on the land in dispute, no miscarriage of justice had occurred**.[6]

2.2 **Co–operative and Commerce Bank (Nigeria) Limited v. Alex O. Onwuchekwa**[7]

The issue in **Onwuchekwa's Case** arose from an amendment of the Statement of Claim made by the Respondent at the trial Court. The Respondent, in his Motion on Notice for amendment, exhibited the Proposed Amended Statement of Claim and his application was granted by the Court. However, when he filed his Amended Statement of Claim, his paragraph 18(a) was different from paragraph 18(a) of the Proposed Amended Statement of Claim which was the basis on which he got the leave to amend the Statement of Claim. The differences in the two processes are reproduced below:

i. The Proposed Amended Statement of Claim claimed £39,796.78, while the Amended Statement of Claim claimed only £32,500;

ii. The Proposed Amended Statement of Claim claimed, in the alternative, the current Naira equivalent of the Pounds Sterling while the Amended Statement of Claim was silent on the Naira equivalent; and

iii. The Proposed Amended Statement of Claim claimed the amount as "*the money which the defendant, negligently failed to remit to London on plaintiff's instruction*" while the Amended Statement of Claim, claimed the amount as "*an indemnity or recompense for the value of the money*…."

The Appellant in this case contended that the Amended Statement of Claim on which the case was fought was not the same as the Proposed Amended Statement of Claim on which the Respondent obtained leave to amend and that the Respondent exceeded the limit of the leave granted. On his part, the Respondent argued *inter alia* that he was

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6 *Ibid* 158 – 159 [H] – [F] (Edozie, JCA [as he then was]) (emphasis added).

7 *Onwuchekwa's Case* (n4).

right to file the Amended Statement of Claim in the manner in which he did since there was no opposition from the Appellant at the time it was filed. In deciding the issue, the Court of Appeal made special reference to the duty placed on a party to file an amended process that conforms with the proposed amended process for which leave to amend was granted, and concluded as follows:

> I say straightaway that there is both sense and force in his contention, **whenever pleading is amended with leave of the court, counsel filing an amended pleading must ensure that the amended pleading conforms with the proposed amended pleading for which he obtained leave to amend**. It is no use indulging in semantics in an attempt to explain away an obvious irregularity as is done by the respondent. I am not impressed by such semantics. It is correct law that an amended pleading supersedes (sic) and replaces the prior pleading but **the amended pleading must be in accordance with the pleading which the applicant obtained leave to file**. Let me take a rather extreme example having regard to the argument of learned senior counsel for respondent in his brief. **Suppose a person obtains leave of court to amend his suit on contract but when he files an amended pleading the new pleading was on a declaration or a claim in tort can it be seriously argued that leave to amend a pleading operates as a blank cheque to file anything as an amended pleading? It is not**.[8]

2.3 Oil Mineral Producing Areas Development Commission (OMPADEC) v. ICER Nigeria Limited & Anor. ("OMPADEC's Case")[9]

The factual position in OMPADEC's Case is apposite. The Appellant filed an application at the trial Court and sought an order for the joinder of a party as a defendant to the suit; leave to amend its Writ of Summons and Statement of Claim; and ancillary reliefs. After taking arguments from Counsel to the respective parties, the trial Court granted leave to the Appellant to amend some of the reliefs and paragraphs in the Proposed Amended Writ of Summons and Proposed Amended Statement of Claim. However, the trial Court refused to grant the Appellant's prayer for joinder of a third defendant to the suit and ordered that all paragraphs of the Appellant's Proposed Amended Statement of Claim in which the proposed third defendant is mentioned should be deleted from the Appellant's Proposed Amended Statement of Claim.

Subsequently, the Appellant filed its Amended Statement of Claim and incorporated several paragraphs which were not authorized by the trial Court. Some of these covertly incorporated paragraphs contained references to the proposed third defendant contrary to the Order of the trial Court. Consequently, the trial Court struck out the Appellant's Amended Statement of Claim. Displeased with the decision, the Appellant appealed to the Court of Appeal where it was contended on its behalf that the trial Court erred when it struck out the Amended Statement of Claim, especially as evidence had not been adduced in the suit by the Appellant. It was further argued that the trial Court erred in limiting the extent of the Appellant's amendment of its pleading.

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8 *Ibid* 396 [C] – [F] (Ubaezonu, JCA) (emphasis added).

9 (2001) 7 NWLR (Pt. 712) 327 (CA).

In addressing the complexities surrounding the expansion of pleadings to include amendments that have not been sanctioned by the Court, and further evaluating the appropriate judicial response when a party does not adhere to a court order mandating amendment, the Court of Appeal articulated the following:

> A close look at the court's ruling dated 21/3/94 and the proposed amended statement of claim filed by the appellant on 30/3/94 shown (sic) clearly that the **appellant went outside the leave granted to it and incorporated unauthorised facts in the amendment to suit it (sic) own purpose**. …. **A look at Exhibit "B", the proposed amended statement of claim, shows that it is materially different from the amendment granted by the court**. **Having filed an amended statement of claim which is not in strict compliance with the orders of the learned trial Judge, he is entitled to strike out the proposed amended statement of claim**. See Richard Onuwaje v. Stephen A. Ogbeide (1991) 3 NWLR (Pt. 178) 147. **It is therefore my view that the learned trial Judge was quite right in striking out the statement of claim filed on 30/3/94 by the appellant**. …. **The appellant was wrong in incorporating amendments which were not granted in his proposed amended statement of claim**. **The law is that when leave is granted to a party to amend its pleading and such leave is granted in some express terms, such a party is strictly bound to comply with the terms of the order of court in filing its amendments**. He cannot go outside such terms, and he is not allowed to expand it as the appellant did in this case. See. Mrs Burain Finnih v. Imade (1992) 1 NWLR (Pt. 219) 511 at 534.
> …. Besides, the striking out of the amended statement of claim or its offensive parts to my mind does not mean that the learned trial Judge dictated to the appellant's counsel what he should plead. **In this case, where the appellant unilaterally varied the express terms of the leave granted to it and incorporated extraneous amendments, the learned trial Judge was quite right in my view in striking out the amended statement or the offensive parts of it**.[10]

2.4 Health Care Products Nigeria Limited v. Alhaji Musa Bazza ("Bazza's Case")[11]

In **Bazza's Case**, the Respondent, while the matter was pending at the trial Court, applied and was granted leave of court to amend his original Statement of Claim. The Amended Writ and Amended Statement of Claim dated 12th June, 1995 included Rasaki Lasisi as the 1st Defendant and the Respondent then claimed special damages jointly and severally against the Appellant and Rasaki Lasisi. In the course of the proceedings, the trial Court observed that the Amended Writ of Summons was not signed by a Judge and the Court directed the Respondent to regularise the anomaly. At that stage, all that the Respondent's Counsel was expected to do was to regularize the situation without despoiling or violating the letter and spirit of the Order of Court which he sought and obtained for amendment.

Instead of doing so, Learned Counsel to the Respondent filed another Amended Writ of Summons and Amended Statement of Claim dated 18th October, 1996 which was different from the one dated 12th June, 1995 for which he was granted leave to amend.

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10 *Ibid* 334 [F] – [H], 335 [E] – [G], and 336 [B] – [C] (Akpiroroh, JCA) (emphasis added).

11 (2004) 3 NWLR (Pt. 861) 582 (CA).

The differences in the amounts claimed as special damages and the period covered by the claim for loss of income and daily earnings in the two processes are set out below:

i. The 1st Amended Writ of Summons and Amended Statement of Claim dated 12th June, 1995 claimed the loss of income and daily earnings at the rate of ₦326,000 for the period between 29th October, 1993 to 30th April, 1994 and ₦2,000 from 30th April, 1994 till judgment while the 2nd Amended Writ of Summons and Amended Statement of Claim dated 18th October, 1996 claimed the loss of income and daily earnings at the rate of ₦1,050,000 from 30th October, 1996 till judgment.

ii. The total special damages claimed in the 1st Amended Writ of Summons amounted to ₦930,000 while the total special damages claimed in the 2nd Amended Writ of Summons was ₦1,654,300 with ₦1,000 as daily loss at ₦30,000 per month from 30th October, 1996 till judgment.[12]

The Court of Appeal iterated the need for an amended process to conform with the previously granted court order and proceeded to declare the 2nd Amended Writ of Summons and Amended Statement of Claim of the Respondent as "*null and void*". The Court held:

> From the above explanation it is not in doubt at all that the 2nd amended writ of summons and amended statement of claims dated 18/10/96 has altered completely the 1st amended writ of summons and amended statement of claim dated 12/6/95. **The latter writ which was meant to amend the original writ filed at the time the suit was instituted was issued with the leave of the court below. But the former i.e. one filed on 18/10/96 was not issued after leave was sought and obtained as the learned counsel for the respondent wanted this court to believe**. When the plaintiff/respondent obtained leave or order of the court to regularise the 1st amended writ all he was expected to do was to get same signed and served on the 1st defendant since it was discovered or observed by the learned trial Judge that it was not signed and not to file on a fresh and completely different processes as the processes, dated 18/10/96 appeared to be. Order 5 of rule 3 of the Plateau State High Court (Civil Procedure) Rules of 1987 clearly states that **any alteration of a writ without leave of the court shall render the record void**. **It is trite that where an application for amendment is allowed by a court the pleadings should be amended to the extent of the amendment formulated.** See Hyams v. Styart King (1908) 2 KB 696 at 724.
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> …. In the light of what I have said above I strongly hold the view that **since the plaintiff/respondent was shown not to have obtained leave to file the 2nd amended writ of summons and amended statement of claim dated 18/10/96 and it has been shown that the court below treated the suit on that same writ and pleading the court acted without jurisdiction since only a valid writ could give valid jurisdiction to a court**. The said writ **having not been issued with leave of the court is null and void**. The court therefore lacked jurisdiction to entertain and adjudicate on it. **It therefore having acted**

[12] *Ibid* 599 – 600 [A] – [F].

> **without jurisdiction, embarked on exercise in futility as it lacked competence to conduct the trial on these particular processes**.[13]

2.5 **David Orbee Uchiv & Anor. v. Pius Sabo & 2 Ors. ("Uchiv's Case")**[14]

In **Uchiv's Case**, the Appellants, who were disillusioned with the result of the Election as declared by the 3rd Respondent, promptly approached the National and State House of Assembly Election Tribunal sitting in Jalingo, Taraba State ("**the Lower Tribunal**") to challenge the outcome of the said election. Upon service of the Petition, the 1st and 2nd Respondents joined issues with the Appellants and the Petition proceeded to Pre-trial Conference. However, on 14th July, 2015, the original 4th and 5th Respondents, namely; "Nigerian Police Force" and "Nigerian Security and Civil Defence Corps" respectively, were struck out from the names of the parties on record.

In the Report of Pre-trial sessions on 27th July, 2015, the Lower Tribunal ordered the parties to file clean copies of their processes in the case consequent upon the striking out of the names of the 4th and 5th Respondents. The Appellants, as petitioners, filed what they termed a *"clean copy"* of the Petition on 31st July, 2015. On 4th August, 2015, the 1st Respondent's Counsel objected to the clean copy filed by the Appellants on the basis that there was an increase in the number of pages and a variation in the facts. It was further contended that the Appellants did not adhere to the specific order of court and this infraction rendered their amended process as a fresh Petition. In its considered Ruling, the Lower Tribunal, after hearing Counsel to the respective parties, upheld the objection of the 1st Respondent's Counsel and struck out the Petition of the Appellants on the ground that it was an abuse of court process and thus, null, void and incompetent.[15] Aggrieved by this decision, the Appellants appealed to the Court of Appeal.

In resolving the knotty issue, the Court of Appeal enjoined litigants to file clean copies that strictly comply with the order of court or risk having the amended process deemed an "*abuse of court process*". Importantly, the Court of Appeal deprecated the remissness on the part of the Lower Tribunal; unapologetically overruled the decision; and graphically clarified the factual position, thus:

> … a party in complying with the order of the court must do so genuinely and scrupulously not insincerely and unscrupulously. In this vein, **a party who is ordered to file a clean copy of his process** consequent, not upon any application by him to amend his Petition but, on the striking out of the names of some of the parties **must do so strictly within the limits and clear intendments of the order he is complying with**. Thus **where such a party uses the order as a leverage or subterfuge to carry out any unauthorized amendments to his petition, such brazen wrongful conduct would readily fit into the bill of abuse of court process**.
> …. I am thus thoroughly satisfied that **there has been a grave error on the part of the lower tribunal in hastily striking out the petition of the appellants, when just a little patience**, as I have done, **in taking the pains to go through the clean copy of the petition would**

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13 *Ibid* 600 – 601 [G] – [H] (Sanusi, JCA [as he then was]) (emphasis added).

14 (2016) 16 NWLR (Pt. 1538) 264 (CA).

15 *Ibid* 310 – 311 [D] – [F].

> **have revealed to the lower tribunal**, as it had been revealed to me, **that there was nothing new added to the clean copy of the petition filed by the appellants** on 31/7/2015 vis-à-vis the original petition as would have amounted to a fresh or new petition **as erroneously held by the lower tribunal**.[16]

2.6 **Obong Eshiet Charles Eno & 8 Ors. v. Nigerpet Structures Limited & 4 Ors. ("Nigerpet's Case")**[17]

The 1st Defendant in **Nigerpet's Case** filed a Motion on Notice for Joinder of parties as "*defendants*" on 1st July, 2019. The Court granted the said Motion on Notice on 13th July, 2021 and joined, as parties, the 2nd – 5th Defendants. The Court, in its Ruling of 13th July, 2021, ordered parties to "*consequentially amend their processes to reflect the Joinder within seven (7) days*." The Order made by the Court did not mandate the Claimants to amend their pleadings generally. However, the Claimants filed their Amended Writ of Summons, Amended Statement of Claim and other accompanying processes on 19th July, 2021 and unilaterally introduced new facts, documents, an additional witness and an additional Witness Statement on Oath without leave of Court.

This surreptitious move prompted the 1st Defendant to file a Motion on Notice challenging the competence and propriety of the amended processes of the Claimants. The 1st Defendant argued,[18] *inter alia*, that where a party desires an amendment, he has to apply for leave of court, which must be given first before he effects the amendment; otherwise, any purported amendment filed without such leave is null and void. Reliance was placed on the case of **Santa Fe Drilling Nigeria Limited v. Olomuro**.[19] It was further argued that a party is strictly bound to comply with the terms of the order of court in filing the amendment and he is not allowed to go outside such terms or to expand them. Reliance was respectively placed on **Onwuchekwa**, **OMPADEC**, and **Bazza's Case**. Conclusively, the Court was urged to declare the affected processes as incompetent, null and void; and strike them out.

In response, the Claimants argued, *inter alia*, that the amendment carried out was in compliance with the order of court and that the law allows a party to make an amendment in any manner provided it is made *bona fide* and will assist the court in effectively settling the issue(s) in controversy. Furthermore, the Claimants, relying on the case of **SPDC v. Edamkue**,[20] submitted that assuming the consequential

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16 *Ibid* 318 [E] – [G] and 322 [G] – [H] (Georgewill, JCA) (emphasis added).

17 Unreported Ruling in Suit No. HEK/35/2019 delivered by Honourable Justice Aniekan Eton, J. of the High Court of Akwa Ibom State, Eket Judicial Division on 26th April, 2023. This Ruling was in respect of the Motion on Notice filed by the 1st Defendant/Applicant on 6th June, 2022 to strike out the Amended Writ of Summons, Amended Statement of Claim and other accompanying processes of the Claimants/Respondents filed on 19th July, 2021 for introducing new facts, documents, an additional witness and an additional Witness Statement on Oath without leave of the court.

18 This author represented the 1st Defendant/Applicant in *Nigerpet's Case* and advanced the said arguments before the Court.

19 (2002) FWLR (Pt. 86) 595 (CA) 603.

20 (2009) 14 NWLR (Pt. 1160) 1 (SC).

amendment it made amounted to substitution, it is still permissible in law because "*as a matter of fact, a substitution is held as an amendment*."[21]

In its considered Ruling, the High Court of Akwa Ibom State resolved the application in favour of the 1st Defendant and held that the purported consequential amendment carried out by the Claimants did not comply with the Order of Court which was to "*consequentially amend their processes to reflect the Joinder*". The Court further held that the length and breadth of the purported consequential amendment, which involved the unilateral introduction of new facts, documents, an additional witness, and an additional Witness Statement on Oath, violated the Order of Court and exceeded the legal realm of "*consequentially amending to reflect the Joinder*". Consequently, the Court declared the Amended Writ of Summons, Amended Statement of Claim and other accompanying processes of the Claimants filed on 19th July, 2021 as null, void, and incompetent and accordingly struck out the said processes.[22]

3. Commentary

It is an established practice, when formally applying for the amendment of a court process, for an applicant to specify the manner, content, and extent to which the amendment is to be carried out. This is usually done in the "*Proposed Amended Process*" attached as an exhibit to the affidavit in support of the Motion on Notice for amendment.[23] Where any pleading is to be amended, a list of additional witnesses to be called together with the Witness Statement on Oath and a copy of any document that the party intends to rely upon consequent on such amendment must be filed.[24] This requirement of the law does not envisage partial compliance with its provision.[25]

Where an application for amendment is considered meritorious by a court, an order would be made for the Applicant to file an amended copy, which is commonly referred

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21 *Ibid* 25 [C].

22 It is instructive to mention that the Claimants/Respondents in *Nigerpet's Case* subsequently took the proper route by filing a formal application for amendment on 30th May, 2023 to enable them to introduce the new facts, documents, an additional witness and an additional Witness Statement on Oath.

23 This point is strengthened by the provisions of Order 24 Rule 2 of the *High Court of the Federal Territory (Civil Procedure) Rules*, 2025 which directs that "*Application to amend shall be supported by an affidavit* ***exhibiting the amendment with the proposed amended paragraphs of the pleadings duly highlighted***." (Emphasis added)
See also, the following provisions in other Rules of Court: Order 26 Rule 4 of the *National Industrial Court of Nigeria (Civil Procedure) Rules*, 2017; Order 17 Rule 2 of the *Federal High Court (Civil Procedure) Rules*, 2019; Order 26 Rule 2(1)(a) of the *High Court of Lagos State (Civil Procedure) Rules*, 2019; and Order 23 Rule 2(2) of the *Akwa Ibom State High Court (Civil Procedure) Rules*, 2024.

24 On this point, see Order 24 Rule 3 of the *High Court of the Federal Territory (Civil Procedure) Rules*, 2025; Order 26 Rule 5 of the *National Industrial Court of Nigeria (Civil Procedure) Rules*, 2017; Order 17 Rule 3 of the *Federal High Court (Civil Procedure) Rules*, 2019; Order 26 Rule 3 of the *High Court of Lagos State (Civil Procedure) Rules*, 2019; and Order 23 Rule 2(2) of the *Akwa Ibom State High Court (Civil Procedure) Rules*, 2024.

25 See the case of *Edward Nwadinobi v. Monier Construction Company (Nig.) Limited* (2016) 1 NWLR (Pt. 1494) 427 (CA) 449 [A] – [B], and 451 [D] – [E] (Eko, JCA [as he then was]).

to as "*clean copy*".[26] Having sought and obtained such a specific order for amendment, it cannot be open to the Applicant or his Counsel to tinker with or unilaterally vary, modify and/or alter the manner, content and extent of the amendment in the final process without a fresh order obtained from the Court.[27] Any step taken in giving effect to an order of court which is not in accordance with the clear and unambiguous language of the Court is "*ineffectual*"[28] and the Court itself lacks the discretion to recognize or accept any court process made in a manner that is contrary to its order.[29]

From the array of authorities reviewed above, two preliminary points are noteworthy. The first point is that strict conformance with the length and breadth of an amendment granted by a court is an inviolable rule that applies to any party seeking to amend its processes. Therefore, Claimants, Plaintiffs, Petitioners, Applicants, Defendants or Respondents, irrespective of the mode of commencing the action or the cause of action, are enjoined to observe this golden rule.

The second point is that a three-way duty arises whenever an amendment is granted by a court. The first strand of this duty is the "*Compliance Role*"[30] and this is imposed on the Applicant and his Counsel to ensure that amended processes scrupulously conform with the proposed amended processes by which the leave was obtained. The second strand of this duty is the "*Examiner Role*"[31] and this is placed on the Respondent and his Counsel to ensure that amended processes filed by the Applicant are diligently screened for conformity with the proposed amended processes and any variation, alteration and/or modification is promptly escalated and challenged. The third strand of this duty is the "*Watchman Role*"[32] and this is placed on the Court to ensure that the obligation to comply with its order is carried out conscientiously and scrupulously by an applicant. To effectively accomplish this duty, a court must clinically study and compare the content of the clean copy with that of the proposed amended process for strict compliance. Any misstep or neglect of this procedure by a trial court

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26 On the use of the phrases "*amended copy*" and "*clean copy*" as synonyms, see the views of Georgewill, JCA, in the case of *David Orbee Uchiv v. Pius Sabo* (2016) 16 NWLR (Pt. 1538) 264 (CA) 313 [H].

27 This uncompromising position of strict compliance with the prescriptions in an order of court has been reiterated even in cases involving substituted service of court processes. See the views of Onyemenam, JCA, in *Hon. Adamu Ochepo Entonu v. Chief Charles Ohajianya* (2021) LPELR – 56598 (CA) 9 – 10 [E] – [A]; and *Dr. Harry v. O. C. Menakaya* (2017) LPELR – 42363 (SC).

28 See the ageless views of Olatawura, JSC, in the case of *Odutola v. Kayode* (1994) 2 NWLR (Pt. 324) 1 (SC) 19 – 20 [G] – [A].

29 See, *Hon. Adamu Ochepo Entonu v. Chief Charles Ohajianya* (2021) LPELR – 56598 (CA) 20 [C] (Gafai, JCA).

30 The "*Compliance Role*" is a non-deviation expectation and it revolves around the need to follow and strictly comply with the specific terms in which an order for amendment is granted by a court.

31 The "*Examiner Role*" involves a review of the amended processes to ascertain whether they are a fair and accurate reproduction of the content in the proposed amended processes. This is to checkmate any clandestine alteration and ensure adherence to the express and specific order for amendment made by a court.

32 The "*Watchman Role*" contemplates every judicial function carried out by a court to guard the legal system; its proceedings; and any order made by it. The Court, in this role, becomes a vigilant protector and guardian of its orders and will not shy away from taking bold steps to ensure adherence by parties to the content and extent of an amendment earlier granted.

will lead to the kind of conclusion that was reached by the Court of Appeal in **Uchiv's Case**, as follows:

> … **nothing can be more farther from the truth and the true facts in this case than was erroneously, hastily and lackadaisically held by the lower tribunal**, **which it has become obvious never bothered to look at the averments in the clean copy of the petition vis-à-vis the original petition**, that the clean copy of the petition amounted to a fresh or new petition as erroneously and regrettably urged upon the lower tribunal by the 1st respondent's counsel, **a finding which in my view is grossly and embarrassingly in error and without any factual or legal basis and thus very perverse**….[33]

Moving forward, the Court in **Onuwaje's Case**[34] blazed the trail by acknowledging that a party who fails to strictly comply with the order for amendment in line with the terms of the proposed amended process cannot, on appeal, somersault and seek to overturn the judgment of the trial court on the basis that pleadings were not properly exchanged and issues joined. This is because such an underhand move would be akin to a party benefitting from his own default or wrongdoing. In **Onwuchekwa's Case**,[35] the Court made commendable and pace-setting contributions to the issue addressed in this paper by resolving that whenever a court process is amended with leave of the court, Counsel filing the amended process must ensure that it conforms with the proposed amended process for which he obtained leave to amend.

Furthermore, a party is not expected to journey outside or expand the extent of the leave granted to it by incorporating unauthorised facts in the amended process. Any default in this regard will be considered a serious and inexcusable shortcoming which will be met with the judicial sledgehammer. **OMPADEC's Case** concretized this position by declaring that where a party unilaterally varies the express terms of the leave granted to him and imports extraneous amendments, the proper order for the Court to make is to strike out the amended process or the offensive parts of it.[36]

Bazza's Case sustained the progress made in **OMPADEC's Case** by iterating that where an application for amendment is granted by a court, the processes should be amended to the extent of the amendment formulated. **Bazza's Case** is significant because it went a step further to establish that where unilateral or unauthorized alterations are carried out on an Originating Process, in the guise of "amendment", such an Originating Process would be deemed to have been issued without the leave of court and, for that reason, null and void. Accordingly, the Court would be robbed of jurisdiction and/or competence to conduct trial on the irredeemably tainted processes. Like a breath of fresh air, **Uchiv's Case** arrived the legal scene and contributed to the existing jurisprudence by deciding that where a party employs an order of court for amendment as a smokescreen, mask, or subterfuge to carry out any unauthorised amendment to his court process, such a premeditated and inequitable conduct would

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33 *Uchiv's Case* (n14), 321 [G] – [H] (Georgewill, JCA) (emphasis added).
34 *Onuwaje's Case* (n5) 158 – 159 [H] – [F] (Edozie, JCA [as he then was]).
35 *Onwuchekwa's Case* (n4) 396 [C] – [F] (Ubaezonu, JCA).
36 *OMPADEC's Case* (n9), 336 [B] – [C] (Akpiroroh, JCA).

be regarded as an "*abuse of court process*"[37] and will occasion a striking out of the offending process.

Though a High Court decision, **Nigerpet's Case**[38] is of major importance because it addresses the issue raised in the paper in the context of "*Consequential Amendments*".[39] In **Nigerpet's Case**, the High Court of Akwa Ibom State struck out the consequentially amended processes of the Claimants/Respondents after it found that the purported consequential amendment wantonly violated the order of court that directed parties to "*consequentially amend to reflect the Joinder*" by unilaterally introducing new facts, documents, an additional witness, and an additional Witness Statement on Oath. This decision is in harmony with the settled position of the law popularised by the Supreme Court in **Peter Ojoh v. Owuala Kamalu**,[40] that consequential amendments *"must of necessity relate to the amendment made by the other party and is not a licence to amend generally."*[41] In this wise, a party cannot use consequential amendment as a blank cheque to make broad, unrelated changes to his pleadings or processes but must confine the amendment(s) to the specific facts or issues raised by the opposing party's amendment.

4. Critique of a Holding in Onwuchekwa's Case

At this juncture, it is necessary to critically examine the legal viability and precedential value of a statement made by the Court of Appeal in **Onwuchekwa's Case**. The Court, in an attempt to de-emphasize the unilateral additions made by the Respondent, concluded thus:

> Be that as it may, in the instant case, **the amount claimed in the amended statement of claim is less than the amount claimed in the proposed amended statement of claim**. Furthermore, **the difference in the two claims was not challenged in the appellant's pleading. The appellant did not make an issue of it in its pleading**. **The irregularity may be overlooked on the basis of doing substantial justice**. This, however, is not an authority for saying that

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37 *Uchiv's Case* (n14), 318 [C] – [G] (Georgewill, JCA).

38 *Nigerpet's Case* (n17).

39 Consequential Amendment is a genre of amendment that is permitted by law to fix the domino effect created by a prior amendment and this is achieved by permitting the party affected by the rippling effects of the prior amendment to respond to the new facts/issues and other alterations made. A ready example arises where there is joinder of a party to a suit and it is necessary to amend the Writ of Summons, Statement of Claim, Statement of Defence, Reply to Statement of Defence and their accompanying processes to reflect and include the joined party. See the case of *Newbreed Press Limited v. Arch. S. O. Jaiyesin* (2000) 6 NWLR (Pt. 662) 561 (CA) 571 – 572 [H] – [A]. An order of court for parties to consequentially amend their processes to meet up with the novel facts or changes introduced in the amended process of the opposing party is not an esoteric legal proposition. See the decision of the Supreme Court in the case of *Raymond Eze v. Betram Ene* (2017) 12 NWLR (Pt. 1579) 313 (SC) 328 [F] – [G], where it was decided that where an application to amend a party's pleading is granted, the adverse party may apply to effect consequential amendments to his pleadings and ask for a date to recall witnesses for cross-examination on the amendment granted.

40 (2005) 18 NWLR (Pt. 958) 523 (SC).

41 *Ibid* 559 [A] (Onu, JSC).

> where there is a serious difference the discrepancy shall be overlooked.[42]

It is the deferential view of this author that the above conclusion reached by the Court of Appeal in **Onwuchekwa's Case** is worrisome; legally unsustainable; and runs contrary to a sea of judicial authorities. On the first arm of the conclusion, the fact that the unilateral addition in the amended process was a lesser sum than what was contained in the proposed amended process does not pardon, excuse, or blot out the transgression. Any tinge of deviation from the prescriptions in a court order strikes at the heart of the legal substructure: the integrity and authority of the judicial process.[43] Consequently, the 'Slight Harm Principle'[44] is inapplicable to this situation. Court orders are intended to be wholly enforceable and are never made in vain,[45] rendering the 'trifling matters' exception invalid. Whichever way the issue is appraised, the covert importation of a "lesser sum" without leave of court amounts to an unauthorized alteration.

On the second arm of the conclusion, and contrary to the position reached by the Court in **Onwuchekwa's Case**, failure to plead and challenge, in its pleadings, the differences in the content of an amended process and a proposed amended process does not rob or disentitle a party from raising the said point. Such a point is neither a matter of procedural jurisdiction, which is waived if not specifically pleaded, nor a procedural irregularity deemed waived by taking further steps in the proceedings. In fact, the issue need not be pleaded. As was done in **Nigerpet's Case**, it can be raised via a Motion on Notice where the supporting affidavit will set out the unilateral and unauthorised alterations and the other party will be permitted to join issues by filing a Counter Affidavit. In isolated cases, it can be raised and argued orally,[46] as was done before the Lower Tribunal in **Uchiv's Case**.

Thirdly, while it is conceded that some procedural errors or omissions within a case may be considered as "irregularities,"[47] it is the view of this author that non-compliance

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42 *Ibid* 396 [C] – [F] (Ubaezonu, JCA) (emphasis added).

43 See the case of *Josiah Orakwute v. Ogueshin Wokoye Agagwu* (1996) 8 NWLR (Pt. 466) 359 (CA) 376 [F] – [H].

44 This principle posits that the legal system should not fritter away time or resources on trivial, inconsequential, negligible, or insignificant harms. It is often referred to by the Latin maxim: *De minimis non curat lex*, which literally translates, "the law does not concern itself with trifles".

45 It is settled beyond doubt that courts do not make orders which are impossible to be obeyed or implemented. See the following cases: *Bulumkulu v. Zangina* (1997) 11 NWLR (Pt. 529) 526 (CA) 539 – 540 [H] – [A]; *C. C. B. (Nigeria) PLC v. Ogochukwu Okpala* (1997) 8 NWLR (Pt. 518) 673 (CA) 694 [E] – [G]; and *Oladipo v. Oyelami* (1989) 5 NWLR (Pt. 120) 210 (CA) 221 [E] – [F].

46 On the propriety of an oral application, Galadima, JCA, cleared the air in the case of *Chief Emma Onuorah Emesim v. Hon. Calista Nwachukwu* (1999) 3 NWLR (Pt. 596) 590 (CA) 604 [B] – [C], as follows: "*I think* ***motion means an application which can be oral*** *or written depending on the peculiar nature of the case.* ***If for instance, you have an application which is based on law only, or on undisputed facts which both parties and sometimes, the court accepted (sic) application can be made orally***." (Emphasis added)

47 The term, "*irregularity*", in respect of procedure, is most often construed by the court to denote something not being fundamentally tainting or besmirching a proceeding as to render it invalid or a nullity. Simply put, it is a curable, forgivable or pardonable procedural slip. See the views of Pats-

with the express terms of a court order goes beyond that.[48] Such an infraction constitutes a profound affront to the majesty of the court, threatening the integrity of the entire legal process. It is not merely an irregularity, but a fatal flaw that asphyxiates the legal embryo of the amended process(es). Speaking on the need for courts to exterminate every budding seed of non-compliance with its orders, the Court of Appeal in the case of **Josiah Orakwute v. Ogueshin Wokoye Agagwu**,[49] counselled:

> … compliance with the Orders of Court is the very basis of the proper functioning of the Court. **It is therefore not right and indeed it must not be allowed to germinate in the system that parties and/or their counsel are free to choose when to obey orders of Court**. I think **it is a violation of the Rule of Law so to do**.[50]

Finally, there is no legal distinction between "*serious*" and "*minor*" discrepancies or differences when a court order is violated. Put differently, non-conformance with the prescriptions in a court order is not merely a discrepancy; it is, unequivocally, sheer non-compliance. It is the view of this author that deviating or departing from the prescriptions of a court order is not a matter of degree, quantum or scale, but rather a direct failure to comply. Thus, any violation of a court order is considered a breach and constitutes non-compliance, regardless of the perceived severity of the "*discrepancy*". This is because the legal standard is objective and requires "*strict compliance*". The Supreme Court summed up this point in the case of **Lt. Col. Mrs. R. A. F. Finnih v. J. O. Imade**,[51] when it sounded a note of warning that, *"Counsel must however comply strictly with orders of Court made during the hearing of cases."*[52] To this end, waving the messianic flag of "*substantial justice*" when issues challenging the solemnity, authority, majesty, dignity, sanctity, and effectiveness of the Court are raised is a subtle invitation to litigant-counsel rascality; situational, piecemeal or context-based adherence to court orders; and cherry-picking in terms of conformance with court

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Acholonu, JSC, in the case of *Mr. G. O Duke v. Akpabuyo Local Government* (2006) 2 CLRN 92 (SC) 99 [1] – [10].

48 This is because a "Court Order" denotes an authoritative, binding and non-negotiable mandate, precept and command made or entered in writing by a court. It is never discretionary or waivable. In the case of *Olaore v. Oke* (1987) Vol. 18 (Pt. 2) 1213 (SC) 1215, Craig, JSC, confirmed this point, thus: "*In its basic form,* ***an order issued by a Judge is usually a positive command directing a party to perform certain acts****, (or to reframe from doing some acts)* ***and specifying the mode*** *and time* ***within which such acts shall be performed***." (Emphasis added)
See also, the views of Mohammed, JSC (later CJN), in the case of *Maderibe v. FRN* (2014) 5 NWLR (Pt. 1399) 68 (SC) 91 and the views of Ogbuinya, JCA (as he then was), in the case of *N. P. G. Properties & Construction Works Limited v. Zenith Bank PLC* (2023) LPELR – 60614 (CA) 20 [E].

49 (1996) 8 NWLR (Pt. 466) 359 (CA).

50 *Ibid* 376 [F] – [H] (Ejiwunmi, JCA [as he then was]) (emphasis added).

51 (1992) 1 NWLR (Pt. 219) 511 (SC).

52 *Ibid* 534 [C], (Babalakin, JSC). See also, *OMPADEC's Case* (n9), 335 [E] – [F], where the Court of Appeal declared thus: *"Where leave is granted by a court to a party to amend his pleading and such leave is granted in some express terms,* ***such a party is strictly bound to comply with the terms of the order of court in filing his amendments. He cannot go outside such terms and he is not allowed to expand it****."* (Emphasis added)

orders.[53] This reminds legal philosophers and theorists of Paul Feyerabend's anarchic theory of "*anything goes*".[54] Conclusively, the distinction attempted by the Court of Appeal in **Onwuchekwa's Case** is out of harmony with controlling precedents; as such, it must pale into insignificance and should not be followed in subsequent cases.[55]

5. Conclusion

In a court of justice, a party that comes to seek justice must come with clean hands. Equity acts *in personam* and therefore would regard a party who deliberately comes to obfuscate issues before the court by blowing hot and cold over the same issues as a person who did not come to seek justice with clean hands.[56] A party amending a court process must lead by example by being in strict compliance with the specific terms and directives of the order of court. It is an unpardonable litigant-counsel rascality for a party and/or his counsel, in one breadth, to make an application for amendment specifying what he intends to add, subtract or modify; and in another breadth, after the amendment has been granted in express terms by the court, summersault to make unilateral, inconsistent or unauthorized alterations.

Exceeding the specific scope set by a court for amendment is inherently fatal as it constitutes a breach of the order of court and an abuse of court process.[57] This will lead to a rejection of the amended process by the court and the rejection could take any of the following forms:

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53 The wise counsel of Fabiyi, JSC, in the oft-cited case of *First Bank of Nigeria PLC v. Alhaji Salmanu Maiwada* (2012) 5 SCNJ 1 (Pt. 1) 24 [25], and 27 [15], is instructive, to wit: "*… **substantial justice can only be attained not by bending the law but by applying it as it is**; not as it ought to be…. **The law should not be bent to suit the whims and caprices of the parties/counsel**. …. **The convenience of counsel should have no pre-eminence over the dictate of the law***." (Emphasis added)

54 Though Paul Feyerabend's "*anything goes*" thesis, primarily presented in "*Against Method*", does not advocate for chaos or the complete disregard of all rules, it unrepentantly challenges the imposition of a single, all-conforming and/or rigid set of methodological rules on scientific inquiry. When considering the context of obeying court orders, some Legal Philosophers may interpret his philosophy as a justification for non-compliance. However, a more nuanced understanding reveals that it does not provide a blanket endorsement of disobedience. Rather, it emphasizes the importance of context, critical examination, and the potential limitations of universal rules when applied to complex situations like legal disputes.

55 This reasoning is validated by the case of *Afelumo & Ors. v. Ojo* (2013) LPELR – 19976 (CA) 24 – 25 [E]– [B], where Abiru, JCA (as he then was), remarked: "*The position of the law is that such statements which go against an avalanche of case law authorities must pale into insignificance and cannot be followed or relied upon."*

56 See the views of Eko, JCA (as he then was), in the case of *Edward Nwadinobi v. Monier Construction Company (Nig.) Limited* (2016) 1 NWLR (Pt. 1494) 427 (CA) 449 – 450 [H] – [A].

57 Once a process has been filed for "*improper use*" in court, such a process would constitute an "*abuse of court process*" if it is shown that it would interfere with due administration of justice and lead to the irritation or annoyance of the adverse party. See the following cases: *Saraki v. Kotoye* (1992) 9 NWLR (Pt. 264) 156 (SC) 188 [F]; *Allanah v. Kpolokwu* (2016) 6 NWLR (Pt. 1507) 1 (SC) 27 [F] – [G]; and *Ogboru v. Uduaghan* (2013) 13 NWLR (Pt. 1370) 33 (SC) 53 – 54 [H] – [A]. The "improper use" in this context is resident in the filing of a clean copy or amended copy of a court process which exceeds the scope of the amendment granted by a court.

i. Striking out of the entire amended process;[58]

ii. Refusing to allow the party in default to lead evidence on the unauthorized additional facts;[59]

iii. Applying the Blue Pencil Rule, if possible, to strike out or discountenance the part(s) of the amended process that harbours the extraneous, unilateral and unauthorized alterations;[60] or

iv. Where the offensive amended process is an Originating Process, it will be deemed to have been issued without the leave of the court and consequently, null and void.[61]

6. Recommendations

Given the extensive commentary made in this paper, this author makes the following recommendations:

i. Where a party obtains leave of court to amend its processes in a specific manner but thereafter intends to alter the content and extent of the amendment earlier granted, such a party can abandon the earlier leave to amend; allow same to lapse and become void; and thereafter seek fresh leave to amend its processes.[62] This approach will save such a party from the pitfalls associated with unilaterally exceeding the extent of an amendment expressly granted by a court.

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58 This position finds support in *OMPADEC's Case* (n9), 334 [F] – [H], and 336 [B] – [C]; and *Nigerpet's Case* (n17) where the offending amended processes were struck out in their entirety. It should be parenthetically noted that where a trial Court strikes out a Plaintiff's Amended Statement of Claim, it cannot turn around to base its Judgment on the facts and reliefs in the original Statement of Claim and on the evidence adduced in respect of the Amended Statement of Claim. See the case of *Green Fingers Limited v. Alhaji Musa Musawa* (2017) 5 NWLR (Pt. 1558) 308 (CA) 332 – 333 [F] – [B], and 334 [E] – [F] (Wambai, JCA).

59 *Onuwaje's Case* (n5), 158 – 159 [H] – [F], supports this position.

60 This position finds support in *OMPADEC's Case* (n9), 336 [B] – [C], where the Court of Appeal propagated the gospel of striking out the offensive parts of an amended process. See also, *Uchiv's Case* (n14), 325 [B] – [C], where Tur, JCA, held as follows: "*My humble opinion is that at the behest of counsel representing the parties those paragraphs in the petition and the respondents' replies complaining of the acts and conduct of the 4th and 5th respondent whose names were struck out should have followed suit.* ***The paragraphs should have been struck out as to enable the Election Tribunal proceed to hear the petition against the 1st –3rd respondent***." (Emphasis added)

61 This position finds support in *Bazza's Case* (n11), 600 – 601 [G] – [H] (Sanusi, JCA [as he then was]).

62 Honourable Justice Akpiroroh, JCA, propagated and endorsed this position in *OMPADEC's Case* (n9), 335 [F], when he observed as follows: "*There is nothing preventing the appellant to abandon the leave to amend its statement of claim granted to it by the court below, allow the same to lapse and become void and thereafter seek fresh leave to amend the statement of claim by C. J. Ayabowei Esq. in such a manner to cater for the additional reliefs which it now seeks to claim under the amended writ of summons."*

ii. The "*Watchman Role*" performed by the court in situations like the one addressed in this paper must be scrupulously maintained.[63] A court must painstakingly study and compare the content of the amended process with that of the proposed amended process and provide justification for rejecting any act of interference that tends to weaken, expand, modify, alter and/or vary the order for amendment.

iii. Respondents must be vigilant and proactive in the exercise of their "*Examiner Role*" by promptly challenging any amendment by an Applicant that exceeds the scope of the order of court.

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[63] Importantly, the court has a vital role to preserve its integrity by ensuring that its orders are not flouted or treated with contempt. See the case of *B. P. E. v. BFI Group Corporation* (2025) 2 NWLR (Pt. 1976) 371 (SC) 422 [A] – [B].