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Research Article

Only Facts Not Evidence: The Indispensability of Pleadings in Modern Advocacy in Nigeria

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Abstract

At common law and in Nigeria pleadings are indispensable to dispute resolution procedure, as they operate to define and delimit with clarity and precision, the real matters of controversy between the parties and on which the court will be called upon to adjudicate and decide between them. Pleadings are peculiar to actions which commenced by writ of summons in the High Court, and it is briefed in the Court of Appeal. It is the role played by these documents known as pleadings in the administration of Justice in Nigeria that this paper explores. In conducting this research, a descriptive analysis has been carried out with the help of statutory enactments and judicial pronouncements. The paper found that before any civil matter is set down for actual hearing by the court, pleadings must be filed to define and ascertain the issues in despite between parties and those upon which parties had already agreed. It is our further findings that pleadings are the most useful and indispensable instrument for quick disposal of civil cases in our courts. The paper suggests that since pleadings provide an easy way of identifying the real facts -in -issue thereby saving the costs and time at trial in the High Courts the same concept should be introduced in the Magistrate's Courts and other courts of coordinate jurisdictions in Nigeria.

Keywords: Civil Procedure, Pleadings, Rules of Court, Quick Disposal, Modern Advocacy

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Pleadings are written statements or facts filed and served by each party in a case to the opponent, stating the facts relied on by the party serving, to establish his case or defence as the case may be and make amendments where necessary, it constitutes part of the preliminary document, which is exchanged between parties before the actual hearing of the suit and is mostly used in actions which commenced by writ of summons or petitions in the High Court as a court of the first instance. During the trial, the court will only allow the evidence in respect of matters pleaded that affect the facts-in-issue or material facts as facts not pleaded cannot be established by evidence. It is important to note that the concept of pleadings is only applicable to civil causes and matters, as distinct from the criminal proceeding[1]. Furthermore, it is pertinent to mention that concept of pleading is only applies to matters coming within the jurisdiction of some superior courts in Nigeria to writ: the High Court of a State, and the Federal Capital Territory and the Federal High Court of Nigeria. It is briefed in Court of Appeals[2]. It is often stated that the purpose of pleadings is to define the issues and give the other party fair notices of the case which he has to meet[3].

Brief historical development of pleadings

Originally, pleadings were oral, and it prevailed in English Court from the reign of Edward I of England until the regime of Edward III[4] when a plea was uttered, it would be recorded in roll of the Court. The parties stood opposite to each other. The plaintiff had to state his case by his mouth or that of his pleader (called narrator advocate). It was a formal statement "bristling with sacramental words, an omission of which would be fatal. The defendant had to preface his defence by the first denial of all that the plaintiff had by defending "the charged word for word with painful accuracy.

Judges moderate this oral controversy until a specific matter was affirmed by one side and denied by the other. When this point was reached the parties were said to be at issue and that it is the end of pleadings.

Before judicature Acts of 1873-1875, two systems of pleadings prevailed side by side, the common law system and the one of Chancery Courts. Under the Common Law, a plaintiff must choose the forms of action and the procedural rules which he must obey while under equity the procedure was by bill and answer. At about the beginning of the 15th century, the system of oral pleading began to be superseded by written pleadings.

What we now call a statement of claim was before 1875 called a declaration, a statement of defence was called a plea, and a reply called a replication. This remained in practice until the Judicature Acts of 1873-1875. These statutes introduced into the High Court of Justice in England the system of pleadings now in force and adopted by the Nigerian courts since 1945.

What then constitutes pleadings

Pleadings are made up of the plaintiff's statement of claim and plan (if any), the defendant's statement of defence and counterclaim (if any) and finally the plaintiff's reply to defendant's statement of defence and defence to counterclaim (if any). Also, the petition filed by a Petitioner in a Matrimonial Matter or in an Election Petition and the replies filed thereto by the Respondent from the pleadings in that instance. But not for any reason would an appellant or respondent brief of arguments in the Appeal Court. Neither does it cover the various documents filed in pursuance of one interlocutory matter or the other e.g., motion for extension of time to do an act with its accompanying affidavit.

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[1] Babalola A., Drafting the Writ of Summons & Statement of Claim, Defences and Counter Claim, and Originating Summons Actions being. A paper delivered on 24th to 28th July 2000 on Advanced Skills in Civil Practice and Trial Advocacy at Centre for Law and Development Service at p. 93

[2] Order 23 of Abuja; order is of Lagos

[3] Bello V Eweka (1981) Isc101 at 102

[4] Halsbury's Law England 4th. edn. Vol 36 p. 3

It is upon these documents that the whole case is conducted, evidence being subsequently adduced by either party in proof of the averments contained in his pleadings and to disprove the opponent's material averments.
Unlike the writ of summons, the function of the Statement of Claim is to give fair notice of the case which has to be met and to define the issues on which the court will have to adjudicate in order to determine the matters in dispute between the parties. The old system of pleading at common law was to conceal as much as possible of what was going to be proved at the trial, but under the present system, a party must so state his case clearly that his opponent will not be taken by surprise.

The aims of pleadings

As earlier stated, pleadings are the written statements of the parties in actions begun by writing which are served by each party in turn on the other, setting forth in a summary form the material, facts on which each relies in support of his claim or defence, as the case may be. They are a means by which the parties are enabled to state and frame the issues which are in dispute between them, without embarking at the stage on the evidence which each party may adduce at the trial. It is often stated that:
The purpose of pleadings is to define the issues and give the other party fair notice of the case which he has to meet[5].
This was perhaps the reasoning of the English Court in the old case of Thorp v Holdsworth 3 where Jessel M.J. stated that:
The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules of Order XIX was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and to be decided was. In fact, the whole meaning of the system is to narrow the parties to definite issues, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing6.
Similar view as expressed by the Supreme Court of Nigeria by Olatawura JSC (as he then was) in the case of *Anya V. Ann*[7]where His Lordship said:
It must be appreciated that there cannot be a better notice of the case a party intends to make than pleadings
Also, parties, in order to prove their cases, must adduce evidence in support of their respective pleadings, as they will not be allowed to lead evidence in respect of matters not contained in their pleadings.
In *Morounfola V. Kwaratech*[8], the court held that a party is not entitled to lead evidence in respect of matters not pleaded. He cannot, therefore, depart from his pleadings, he is confined to lead evidence in respect of matters pleaded and any evidence which is not supported by the pleadings go to no issue.
Though the High Court Civil Procedure Rules does not provide for the definition of pleadings, from the foregoing, a pleading can be defined as:
Written statements of the parties in an action commenced by writ of summons which is served by each party in turn, material facts on which each relies in support of his claim or defence as the case may be.
Therefore, pleadings are written statements of facts on which the plaintiff bases his claim, and the defendant has his own defence to be claimed. In *Ukaegbu V. Ugoji*[9], the main court held that the main functions of pleadings in litigation made up of statement of claim of the plaintiff and the

[5]*Barclays Bank V. Boulter* (1999) 4 All ER 513 AT 517. Thus, a party's pleading represents notice of the case he intends to make, and it can never be substituted for evidence required in proof of the facts pleaded subject however to an admission made by the other party.
[6]*Thorp V. Holdsworth* (1876) 3 Ch. D. 637 AR 639
[7] (1992) 6 NLWR (PT 247) P. 319 AT 331
[8] (1990) 4 NLWR (PT 145) P.506 See also, S.O. Uwaifo JSC in Kalu Nwuchekwa V. B.I.D Ezeogwu (2002) 11 NSCQR 487 at p. 488, where he said that, the appellant must be held to be bound by his pleadings. The averments in his pleadings do not contain any facts upon which he may be allowed to lead evidence that, the land he acquired which is described to be by Arochukwu Streed is the same as the land in Kaduna Street, now in dispute. Evidence which goes beyond or outside its pleadings in inadmissible
[9] (1991) 6 NWLR (pt. 196) p. 127

statement of defence of the defendant are to enable the parties to ascertain as much as possible, the various matters actually in dispute and which there is agreement.

Also, it is worth noting that, pleadings cannot take the place of oral evidence in court in a matter, which is contentious and contested. In this situation, the pleader needs to plead oral evidence to awake the averments in the pleadings as was observed by Niki Tobi, JCA (as he then was) in *Ajikawo V. Ansaldo (Nig.) Limited*[10]*:*

Pleadings, though drafted by solicitors and advocates after receiving litigation instruction from their clients, cannot speak or talk in court. This is because they do not have the mouth to speak or talk. They have not the capacity or power to demonstrate in court. They cannot give the court a precise and concise pictorial view of the events pleads therein beyond this language. Accordingly, pleadings however brilliantly written cannot take the place of oral evidence in court in a matter, which is contentious and contested. In court pleadings lie helplessly in the case file, waiting anxiously for their owners through counsel to make the best use of them. And this, owners can do only by oral evidence to awaken the apparently dead averments.

Furthermore, in the case of *Total Nig. Ltd. & Anor V. Wilfred Nwako & Anor*[11]*,*the Supreme Court stated that:

Once the rules of pleadings are infringed or brushed aside the trial cannot be free and fair. Consequently, there will be no fair hearing. It is also for this that reliance must not be placed on facts not pleaded.

Also, in *SALAMI V. OKE*[12] Oputa, JSC (as he then was) said:

The primary aim of pleadings is to settle the issues to be contested and on which the trial court will be called upon to decide. To arrive at such evidence, the trial court will rely on material evidence tendered in support or in proof of such issues.

In *OLALE V. EKWELENDU*[13] Oputa, JSC quoting from *Overseas Construction V. Creek Enterprises*[14] said:

The aim of ordering pleadings is and has always been to secure from the defendant as many admissions as the facts and circumstances of each particular/given case warrant and thus narrow the scope of the controversy15.

From the foregoing elucidator pronouncements of the Supreme Court on the essence of ordering pleadings, one could safely say that the aims of pleadings which incidentally are the advantages inherent in ordering pleadings include the following:

1. Pleadings afford the advantage of putting each party's case before the court and the other party so that nobody is taken by surprise. The Golden Rule of pleadings and indeed of practise is that parties are entitled to know the case the other party has against them[16].

Reiterating this golden principle, Bairamaian F.J. quoting Lord Moulton in *NORT-WESTERN SALT V. ELECTROLYTIC ALKALI CO.*[17] said in the case of *Abimbola George & Ors V. Dominion Flour Mills Ltd.*[18]*:*

The plaintiffs have received no notice that the point will be raised and are presumably not prepared with the necessary evidence. Even if they are in a position to call evidence, they are not at liberty to do so because they are only entitled to call evidence on the issues raised by the pleadings.

2. Pleadings also help to ascertain with as much certainty as possible the various matters actually in dispute among the parties and those in which there is an agreement between them.

Once pleadings have been settled, then subject to the principle regarding amendment of pleadings (infra), neither party will be allowed to raise at the trial of the suit, an issue which has not been pleaded. This principle has found judicial support in a host of cases, including the following: In Vanderpuye's case, Belgore, JSC put the matter more succinctly as follows:

[10] (1991) 2 NWLR (pt. 173) p. 359 at 375
[11] (1978) 5 SCI
[12](1987) 4 NWLR (PART 634) 1
[13](1989) 4 NWLR (Pt. 115) 326 AT 360
[14](1985) 2 NWLR (Pt. 13) 407 at 418
[15]MOROHUNFOLU VS KWARA TECH (1990) 4 NWLR (Pt. 145) 450
[16] Abimbola George & Ors V. Dominion Flour Mills Ltd (1963) 1 ALL NLR 70
[17] (1914) AC 5
[18]Ibid at p.71

The purport of pleading is to let the adversary known the case he is to meet. As pleadings state clear facts upon which a party relies for his case, he is bound to present before the court evidence in support of those facts only and nothing more. However, where a party departs from facts pleaded by him and offers evidence on matters not pleaded, that evidence will go to no issue and must be disregarded by the trial court if it had inadvertently received such evidence.
This is more so because a part's case is defined circumscribed and limited by its pleadings19. It must also be pointed out that once facts pleaded by one party is admitted by his adversary, such facts which are admitted need no further proof.20

3. Pleadings are also useful in determining the issues of fact or points of law actually decided in the case which will form the basis of the plea of *res judicata* in subsequent proceedings. As a corollary to this is the fact that pleadings in some instances help to determine where the litigants are *ad idem*. This was the situation envisaged by section 74 of the Evidence Act which states as follows:

No fact needs to be proved in any civil proceedings which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agreed to admit by any writing under their hands, or which by any rule or pleadings in force at the time they are deemed to have admitted by the pleadings
Also, in A.C.B LTD V. EGBUNIKE21 PER Oguntade, JCA where he said:
It is also settled law that there is no issue between the parties in respect of matters expressly admitted on the pleadings and therefore no evidence is admissible in respect of those matters
It is also the object of pleadings to inform the court of the precise matters in issue between the parties which the court may determine, since they set the limits of the actions which may not be extended without due amendment being made. This was the issue canvassed in the case of *Why Not*[22]*, where His Lordship* Phillimore J. Said:
Pleadings are not to be considered as constituting a game of skill between the advocates. They ought to be so framed as not only to assist the party in the statement of his case but the court in its investigation of the truth between the litigants.

4. Pleadings assist the court in determining the party on whom the burden of proof lies on the respective issues raised[23].
5. It aids the parties to determine the proper approach to the opponents' case. A party may upon pleadings apply for judgment upon admission of all facts stated[24]

Rules of pleading

Another very important aspect of the concept of pleadings is the cardinal rules as to what the pleadings should contain or should not contain. This work reveals that all state High Courts and Civil Procedure Rules and Uniform High Court Rules and procedure have the same basic rules of pleadings. For instance, order 15 rules 2 of Akwa Ibom State High Court Procedure Rules States thus:
Every pleading shall contain a statement in summary form of the material facts on which the party pleading relies for his claim or defence as the case may but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively.
Similar provisions are made under order 23 Rule 4 Abuja Rules, 2004 and order 15 Rules 19 of Lagos Rules, 2012.
Accordingly, pleadings should contain only the following:

1. Material facts, not law. The materials facts are those facts essential to the party's case.
2. Not contain Evidence but shall contain facts by which the evidence is shown.
3. A party is not allowed to plead law or legal arguments or conclusions except where the point of law pleaded while disposing of the entire action.
4. The facts must be stated precisely, positively, distinctly, and briefly, and

[19] *Registered Trustees Apostolic Church V. Olowoleni* (1990) 6 NWLR (PT. 158) 514 at 534.
ORRI V. OTTI (1992) 7 NWLR (Pt. 252) 187 at 208-211
[21](1998) 4 NWLR (Pt. 88) 350 at p 365
[22] (1980) IAC ER 166 at p. 173
[23] Bakare V ACB Ltd (1986) 5 SC 48
[24] Order 28 rule 3 (Abuja); order 19 rule 4 (Lagos)

5. Pleadings must contain relief sought or prayers.

Statement of claim

This is a written statement by the plaintiff in an action, showing the facts on which, he relies to support his claim against the defendant and the relief which he claims. The facts averred in the statement of claim shall be only those which if proved are sufficient to enter judgement for the plaintiff. This shall be filed in the court for onward service to the defendants25. A statement of claim has three important parts namely: the introductory averments, the body and the payer or relief.

Statement of defence

This is the Defendant's answer to the facts averred by the plaintiff in the statement of claim. It deals with the Statement of Claim paragraph by paragraph. All the facts which the defendant dispute is asserted. It shall allege such new facts, not contained in the Statement of Claim.
Where a defendant has entered an appearance, he shall file his defence within 14days from the time-limited for appearance or from the service of the statement of claim, whichever shall be later, unless such time is extended by consent in writing or by the court26.

Counterclaim

This is cross action. It is made by a defendant who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff instead of bringing a separate action. The Rules of Court make available for any claim either in law or equity, that the defendant has against the plaintiff; whether a raising out of the same or series of transactions or not27.
The guiding rule of the counter is that it must be an action in which the Defendant can sue as the plaintiff. The plaintiff in the substantive action must be a Defendant to the counterclaim.
However, it is possible to include some other persons who are not parties in the substantive action in the counterclaim28.
In GOWON V. OKONGWU29 it was held that:
A counterclaim is for any practical purposes an independent section in which the defendant assumes the position of a Plaintiff and the latter is put in the position of a defendant. It needs not be connected with the plaintiff's cause of action
The Court in EYIBAGBE[30] held that a counterclaim is a substantive claim in itself.
Counterclaims feature most especially inland matters where the parties have sued for a declaration of title of land. If the defendant files a defence to the plaintiff's claim without filing a counterclaim, then in the event the plaintiff loses the case, it does not follow that the defendant has thereby acquired title to the land, it only means that as against the defendant, the plaintiff is not entitled to ownership of that land. But, if the defendant files a counterclaim, in the event the plaintiff loses, then the defendant's counterclaim would have to be determined and if it succeeds, he gets the declaration which will be good against the whole world at large[31].
Where a defendant has a monetary claim against the plaintiff (e.g., in a case of hire purchase), he can set it off through a counterclaim[32], and the dictum of Nnaemeka Agu, JCA (as he then was) in the case of *Empahil Ltd. V. Odili*[33] His Lordship had this to say on the law regarding claims and counterclaims:
It is trite law that a counterclaim is for many practical purposes an independent action in which the defendant counter claimant is in the position of a plaintiff, and the plaintiff is in the position of

[25] Order 16 Rule 1 of Akwa Ibom State High Court Civil Procedure Rules, 2009.
[26]Order 17 Rule 1, Akwa Ibom State High Court Civil Procedure Rules, 2009.
[27] Order 17 rule 6 and 8, Akwa Ibom State High Court Civil Procedure Rules, 2009; order 23 Rule 16 Abuja, order 25 rule 16 (Kano) and order 17 rule 6 (Lagos)
[28] Ibid.
[29] (1994) 2 NWLR (Pt 326) P. 105
[30] (1996) 1 NWLR (Pt. 425) P.96
[31] *Ezeani V. Onwordi* (1986) NWLR (Pt. 33) 27
[32] Order 25 Rule 16 High Court (Civil Procedure) Rules, 1987 Lagos
[33] (1987) 4 NWLR (Pt. 67) 915 at 937

a defendant34. Although we sometimes hear of "defence by way of counterclaim", it is necessary to emphasise that whereas a set-off is a defence to the plaintiff's claims a counterclaim need not be so. In fact, a "counterclaim" need not be connected with a plaintiff's action at all35. It is because a counterclaim is regarded as a separate action in which the rules relating to the counterclaim and defence thereto are governed by the rules governing a plaintiff's and defendant's pleadings respectively, that in practice the facts lied upon to sustain a counterclaim are separated from those relied upon to sustain the defence to plaintiff's action. This is also why, as in the instant case it is possible for the amount claimed in the original suit of the plaintiff and the counterclaim need not be an auction of the same nature as plaintiff's action36.
It is also to be noted that there must be a defence to the counterclaim unless the plaintiff would be deemed to have admitted the counterclaim[37].
A plaintiff who is responding to a counterclaim may sometimes find that he would need to rely on his earlier witnesses or some of them who had testified for him in proof of his main claim in establishing his defence to the counterclaim. It is permissible for him to "recall" any of this former witnesses. Technically speaking he is not "recalling" them within the strict meaning of the word. He is merely putting up a defence to the counterclaim[38].

Reply

A reply is a second pleading that is usually filed by the plaintiff when new issues are raised in a statement of Defence by The Defendant which were not originally contained in the statement of claim or when the plaintiff has to reply on point of law.
In all the State of the Federation, leave of court is not required before filling, a reply except where the time provided for service of the reply has expired. In Akwa Ibom State of Nigeria, the rules of court provides that a plaintiff is required to file a reply within 14 days from the service of the counter-claim by the Defendant in line with the provisions of order 18 rule 1 and order 3 rule 2(1) (b) (c) and (d).
It is pertinent to mention that Reply to a statement of defence is necessary. This was perhaps the reasoning behind the decision of the court in the case of Muhamed v. Klargester (Nig) Ltd.39 where the court held that the proper function of a reply to a statement of defence is to raise an answer to the defence… Where there is a counterclaim, failure by the plaintiff to file a reply may be constructed as admission and reply must not contradict the statement of claim.

Set-off

Where the defendant has a claim for a sum of money from the plaintiff and he wants to rely on this as a defence to the whole part of the plaintiff claim, the defendant may include it in the defence and set it off against the plaintiff's claim40. It must be understood that this money pleaded by the defendant as a defence to the plaintiff's claim where successful, the court will set-off or reduct the different claim from the sum claimed by the plaintiff. Thus, set-off reduces the plaintiff's claim. It is important to note that this plea collapses with the discontinuance or resolution of the plaintiff's action because it does not stand on its own. That is to say, if the plaintiff's actions fail, the set-off will also fail. It is also worthy of note that where the amount of set –off exceeds the plaintiff's claim, the defences should come by way of counter –claim earlier stated in this paper. Set –off is usually provided under the rules of courts41. It is perhaps necessary to point out that a plea of set-off can only be raised against the plaintiff personally: Thus, if the set-off is a debt or

[34] *Amon V Robbet* (1889) 22 Q.B.D. 543, at P.548
[35] *Stooke V. Taylor* (1880) 5 Q.B.D 569
[36] *Beddal V. Maitland* (1881) 17 Ch. D 187
[37] *Barau V. Cublits* (1990) 5 NWLR (Pt. 152) 630 at 645 *Udoh V. O.H.M.B. (1990) 4 NWLR (Pt. 142) 52 at 71-72s*
[38] *Fayemi V. Olorunfemi* (1998) 1 NWLR (Pt. 534) 523 at 531
[39] (1996) 1 NWLR (Pt.422.) P.56
[40] Babalola, A., Drafting the Writ of Summons & Statement of Claim, Defences and Counter Claim, and Originating Summons Actions being. A paper delivered on 24th to 28th July 2000 on Advanced Skills in Civil Practice and Trial Advocacy at Centre for Law and Development Service, at p.102
[41] Order 23 rules 16 and 33 (Abuja)

damages accusing to the Defendant, from the plaintiff in a representative capacity, the defendant cannot plead it against the plaintiff, in a personal capacity42

Amendment of pleadings

The Court may at any stage of the proceedings either of its own motion or on the application of either party to the proceeding, order any proceeding to be amended. Application for amendment could be made before the hearing, at the hearing or after the hearing but not after judgement. Amendment of pleadings is aimed at enabling the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded.

Thus, the court before exercising this power will be guided by the principle that such amendment is mainly for the purpose of determining the real question in controversy between the parties. The above proposition must have been the reasoning behind the decision of the court in Adaka V. Ikot Abasi T.R.C.43 In this case, the court would ordinarily allow amendments of the court's processes and pleadings of all parties in order to ensure that the case is properly tried on merit, subject however to payment of cost by the party so applying for such amendment(s) to the other party to compensate him for the delay or any other injury, he may suffer. The English case that best illustrate the above principle is that of copper V. Smith44, where His Lordship Bowell, L.J. (as he then was) Stated as follows:

Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy and I do not regard amendment of pleadings as a matter of favour or grace …. It seems to me that, as soon as it appears that the way in which a party has formed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice as anything else in the case is a matter of right."

Therefore, an amendment may be disallowed by the court where:

a. The other party would be prejudiced as a result of, by such an amendment, it would occasion an injustice.
b. The proposed amendment is immaterial.
c. The facts sought to be added were not in existence at the commencement of the suit.
d. An award for the cost will not be sufficient or adequate as compensation for the injury suffered by the other party.
e. The application is brought malafidely and is intended to over-reach the adverse party in the litigation.
f. If the amendment is allowed, it will change the nature of the claim
g. The amendment will amount to hearing further evidence.
h. It is to introduce fraud or defence of justification for the first time.
i. It would not cure the defects in the procedure sought to be cured or where it is inconsistent and useless.

His Lordship Hon. Justice Niki Tobi rightly proffering the opinion of the Court of Appeal had this to say in the case of Adaka V. Ikot Abasi45,

After all, litigation is not a game of hide and seek where one party by sheer manipulation of some tendentious show of dexterity outreach or outsmart the adverse party. By the rules of equity, litigation is supposed to be a clean game and the court makes it so.

Also, in the case of Aina V. Jinadu46, the court held that an application for amendment will be refused where it is designed to overreach or outsmart the adverse party with a view to win cheap victory or victory at all.

Also, another principle upon which an amendment will be allowed is where the pleading is required to be amended so as to tally with the evidence before the court. In these situations, the court will invariably grant leave to amend when it is aimed at incorporating such material facts that are conducive to the determination of the real question in controversy in a proceeding

42 Efe v werhan, D.I; Principles of civil procedure in Nigeria (2nd edn. Snaap Press Ltd, Enugu 2013) P.270
43 (1991) 6 NWLR (Pt. 198) p. 480
44 (1884) 26 Ch. D. 700-710 at p. 711.

46 (1992) 4 NWLR (pt. 233) p. 91

between the parties. Thus, amendment was clearly granted by the court in Oguntimehin V Gubere47.
Furthermore, an amendment may be allowed in a pleading to reflect where necessary, facts given in evidence by any witness whether of the party who filed it or of his opponent. Therefore, useful facts that we extracted from the cross-examination of the opponent's witness(s) can be used as evidence only after amending the pleadings along that direction.
Similarly, pleadings may be amended to accommodate an additional claim(s), where there is evidence on record to sustain the claim(s) and parties have canvassed it in the proceeding. So, if the evidence tendered by the defendant is in support of a claim not pleaded by the plaintiff, the plaintiff may amend his statement of claim. This was the situation in the case of Shomade V. Sunmonu48 where the trial judge refused to grant a leave to amend, sought by the plaintiffs to give their story as to the land dispute, belonging to their father, on the ground that, such amendment would conflict with the evidence given by the plaintiffs, and gave judgment for the defendant. On appeal, the West African Court of Appeal held that substantial justice could have only been secured between the parties by allowing the amendment sought.
Also, mistakes are sometimes being made in the names of parties to an action. Thus, in a situation like this, if there is a case of a misnomer or the use of a wrong name, i.e., where an entity is misnamed, the court may allow an amendment; otherwise, the court shall strike out the case if a non-juristic person is expressed as the plaintiff. This is because by naming a non-juristic person as a party is not a misnomer and cannot be amended so as to substitute it for a juristic person. Hence, in such a case, there cannot be any valid amendment of title to the suit as there was never a legal person. This was the approach adopted in Ajakaiye V. Adedeji49; it was held that in so far as an amendment is not intended to over-reach or made malafide, there is no limit to the number of times which it could be done.
However, it was held in Nwafornso V. Taibui50 that, the amendment of pleadings should not introduce a new dimension into the action or bring in new matters. Thus, in amending a statement of defence, another dimension or new matters, which would put the plaintiff completely out of gear, should not be introduced.

The time limit for amendment of pleadings

It must be understood that amendment of pleadings may be made in Akwa Ibom, Abuja and Kano by either party at any time during the trial but before judgment51. Thus, the right to grant or refuse an amendment to pleadings of the parties is a matter within the discretionary powers of the court to exercise it judiciously and judicially.
Ordinarily, an amendment is supposed to be made before the commencement of any proceeding. But this is not often possible, as the need for an amendment may arise when the trial is already in progress. In such a situation, unless either party can still adduce evidence in the case on the new facts introduced by the amendment at the stage when the amendment is sought, the application will not be granted. Thus, the objectives for amendment are often based on their timing as well as their substance. For instance, an amendment embodying new facts is hardly of any use to the party making it, if he has closed his case, as he cannot therefore call witnesses anymore to prove those facts. Also, if it is the opposing party that has closed his case, he will not be able to adduce evidence to rebut newly introduced facts. This proposition was the underling factor that influenced the court in the case of Adetutu V. Mrs. W.O. Aderohunmu52, the Supreme Court, unanimously held that, in allowing an amendment, the court ought to exercise it discretion so as to do what justice and fairness may require in the particular case. And on the premises of this case, it was not a proper case to grant the amendment sought which raised new issues. However, there are occasions, when an amendment is allowed after parties have completed their cases but before judgement. The direction of the court in, Imonikhe V. A.G. Bendel State53,

[47] (1964) 1 All NLR 176.
[48] (1937) WACA 48
[49] (1990) 7 NWLR (pt. 161) p. 192
[50] (1992) 1 NWLR (pt. 219) p. 619.
[51] 0.24 rr 1&2 (Akwa Ibom); 0.24 rr 1&2 (Abuja); 0.26 rr 1&2 (Kano).
[52](1984) 6 SC 92
[53] (1992) 6 NWLR (pt. 248) p. 396

is very instructive on this point as the court, in this case, held that different considerations apply to depend on whether the amendment is being sought before or after the close of evidence by parties. If it is before the close of evidence,
such are allowed to make such evidence as may be called to be admissible, as any evidence on an issue which is not pleaded or claim not on record is strictly inadmissible. But, once calling of evidence has been concluded, any amendment of pleading or claim can be justified or allowed only on the premises that, evidence in support of it is already on record, so that, it is necessary and in the interest of justice to allow the amendment in order to make the pleading or the claim accords with the evidence already on record.
The Court of Appeal in the case of Abah v Jabusco 45 had considered the issue of the right of a party to amend its pleadings and time limit and decided, rather ultimately, that,
an application to amend pleadings can be made any time before judgement, and there are certain times when amendments are allowed on appeal. It is within the power of the court to grant an amendment even if the amendment would add to the existing cause of action or substitute; therefore, a new cause of action provided the additional or the new cause of action arises out of the same or substantially the same facts as are contained in the pleadings. Not only is a court entitled to make final amendments, it indeed has a duty to do so, and this duty remains whether there is a formal application before the court or not and whether it is in the trial court or any of the appellate courts.
Therefore, where an amendment is granted after the close of the case, the other party may be allowed to recall witnesses and or amend his or her pleading. Thus, in Okafor v. Ikeanyi54, amendment was made while the judge was reading his judgment. Generally, amendment may also be made even on appeal55. In Edoigiawerie v. Aideyan56, was held that where the matter involved in the proposed amendment had been raised in the course of trial by evidence adduced, and it will not be prejudicial to the other party, it will be allowed even on appeal to bring evidence on record in line with the pleadings.

Effect of amended pleadings

An amendment, when duly made, takes effect from the date the document has been amended, by the Court and the suit continues as if the document amended, was originally filed at the commencement of the action. Therefore, once pleadings are amended, what stood before the amendment is no longer before the court as it no longer defines the issues to be tried, since the purpose of the amendment, is to determine the real question in controversy between the parties. Thus, in Oniyide v. Ajemba57, it was held by the court that, once pleadings have been amended, what stood before the amendment is no longer before the court and no more defences the issue to be tried. From the foregoing, it is clear that once amendment is granted by the court, it is the amended pleadings that define the issues between the parties58 it would, therefore, be wrong in law for the judge to base his findings on facts contained in a pleading that has been amended. Also, a struck-out paragraph in a pleading will not be taken into account in deciding a case.
Similarly, the court, in Abraham v. Olorunfunmi59 held that the trial judge has no jurisdiction to ignore amendment fall-back on the original pleadings. The original pleadings have been overtaken by events and should be treated as such.

Conclusion/Recommendations

Much has been written about the role of pleadings in the administration of justice in Nigeria. Indeed, from our findings, it is manifesting clear that pleadings are indispensable to dispute resolution procedure as they operate to define and delimit with clarity and precision the real

54 (179) 3-4 SC 99; see also Efevwerhan D.I., Principles of civil procedure in Nigeria (2nd edn. Snaap Press Ltd, Enugu 2013) P. 280
55*Okolo v. UBN Ltd* (1999) 6 SCNJ 193, S. 16 Court of Appeal Act 1976, Cap C36 LFN 2004; O. 1 r. 20, Court of Appeal Rules, 2002
56 (2006) 10 NWLR (Pt. 988) 438 at 449
57 (1991) 4 NWLR (pt. 134) p. 203
58 Katto V CBN (1999) 5 SCNJ at p.1
59 (1991) 1 NWLR (pt. 168) p. 53

matters in controversy between the parties which in turn would guide the court as to the precise matters to decide between the parties. This paper further showed that the concept of pleadings in civil litigation having provided for easy mode of identifying precise matters in- issue between the parties and those matters in which parties are in agreement is a very useful instrument for speedy disposal of civil cases in our courts. This is so because, on the exchange of pleadings, parties may get to know that there is really nothing to fight about in which case the matter may be withdrawn or settle out of court by the parties themselves or through mechanism of Alternative Dispute Resolution (ADR).

The paper also reveals that a legal practitioner that pay attention to detail, law and applicable Civil Procedure Rules in the drafting of his client's pleadings is likely to succeed whereas a careless counsel who refused to comply with Rules of Courts and procedural rules of pleadings and standardised form is likely to compromise his client's case.

Therefore, counsel should know that a good pleading is an art, and a good case may be lost on bad pleadings. All these are predicated on efficacy and effort of the counsel. The author submits that all lawyers handling a client's matter should be careful while drafting their client's pleadings in order to contribute and arrive at substantive justice as envisaged by the very concept of pleadings.

The study finally found that a trial court has no power to close the door to amendment of pleadings against parties before its judgement, and any pronouncement by a trial court which is suggestive of closing the door to amendments against the parties before it, such judgment would be regarded as being made without jurisdiction and can be set aside by the Appeal Court. The author is of the view that this concept is very intelligent and was intended to ensure that the basic function of the Judiciary is to see that justice is done to parties. The author submits that whilst a party is entitled to amend its pleadings, this entitlement must be moderated by the courts, in the interest of justice and fair hearing, which interest was the very reason to allow those amendments in the first place.

This paper has established that the concept of pleadings is a useful procedural instrument put in place by statutes and Rules of Court for quick disposal of civil cases in our High Courts. Accordingly, we recommend that our High Courts civil procedure Rules be amended to provide for the applicability of the concept and practice of pleadings in our magistrate's Courts and other Courts of coordinate jurisdiction in Nigeria.

"I, as the Corresponding Author, declare and undertake that in the study titled "Only Facts Not Evidence: The Indispensability of Pleadings in Modern Advocacy in Nigeria", scientific, ethical and citation rules were followed; the Journal Editorial Board has no responsibility for all ethical violations to be encountered, that all responsibility belongs to the author/s and that this study has not been sent to any other academic publication platform for evaluation."