

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 24
CASE NUMBER : SUIT NO: CV/1038/19
DATE: : THURSDAY 12TH MARCH, 2020

BETWEEN

FEMI OYEKOLA CLAIMANT

(Practicing Law under the Name
and Style of Femi Oyekola & Co.)

AND

XERXES GLOBAL INVESTMENT } DEFENDANT
LIMITED }

RULING

The Plaintiff took out Writ under the Undefended List Procedure Pursuant to Order 35 of the Rules of this Honourable Court claiming the:-

- a. The sum of ₦34,000,000.00 (Thirty Four Million Naira) only being outstanding Professional Fee for Legal Service rendered by the Plaintiff to the Defendant.

The said Writ was marked Undefended and Suit fixed for hearing.

In support of the Writ is a 29 Paragraph affidavit duly deposed to by One BabasolaAdewumi a Legal Practitioner in the Law Firm of the Claimant.

It is the deposition of the Claimant that on the 20th day of August, 2015, the Defendant approached their office and instructed them to institute an action for them via Exhibit 'A' and that an approached was made to the Kann Utility

Company Limited to settled the matter but was unable and case was filed in Federal High Court vide Exhibit 'B'.

That on the 15th day of December, 2015, Exhibit 'C' herein was written to the Defendant intimated them of their plan case.

Claimant avers that on the 30th day of December, 2015 the Defendant approached them to defend an action on their behalf wherein they were sued as 3rd Defendant vide Exhibit 'D' and the Claimant informed the Defendant of their Professional Fees of ₦12,000,000.00 (Twelve Million Naira) only vide Exhibit 'E'.

It is the averment of the Claimant that the Defendant also approached them to defend Suit No. **FHC/ABJ/CS/896/2016** between CEC Africa Investment Limited Vs Xerxes Global Investment Limited and another and that processes were filed and Professional Fees of ₦10,000,000.00 (Ten Million Naira) only was demanded.

That based on the Defendant instruction, Notice of Appeal was filed vide Exhibit 'G' and that Notice of Appeal was filed in **Suit No. FHC/CS/838/2015** and an application for Stay of Proceeding vide Exhibit 'H & I' and periodic report were sent to the Defendant vide Exhibit 'J, K& L'.

The Claimant avers that demand letter for the payment of Professional Fee was also written vide Exhibit 'M'.

That it will be in the interest of justice to grant the application.

Upon service, the Defendant filed a Notice of Preliminary Objection seeking for an Order of Court to:-

- a. Striking out the Writ of Summons dated 5th February, 2019 and filed by the Claimant/Respondent in this Suit for being incompetent.
- b. An Order striking out and/or dismissing this Suit in its entirety.

The ground upon which the application was brought are:-

1. The Writ of Summons dated 5th February, 2019 was not signed by a Legal Practitioner within the meaning of the Legal Practitioners Act, Cap LII, Laws of the Federation of Nigeria 2004.
2. That the Nigeria Bar Association stamp and seal affixed on the Writ of Summons is different from the person whose name is on the said Writ of Summons.
3. The Writ of Summons was not signed by a Legal Practitioner as required by Rule 10 of the Rules of Professional Conducts for Legal Practitioners 2007.
4. That this Honourable Court does not have the jurisdiction to entertain this Suit.

In support of the preliminary objection,an 11 paragraph affidavit duly deposed to by One Emmanuel OyigodoOkewu, a Legal Practitioner in the law firm of the Defendant Applicant was also filed.

It is the deposition of the Applicant that by the Rules and Procedure of this Honourable Court, the Writ of Summons must be signed by a Legal Practitioner or by a Claimant but that this present Writ was not signed and that there is no stamp and seal of the Nigeria Bar Association on the Writ.

In line with Law and Procedure, a written address was filed wherein learned counsel distilled two issues for determination to wit;

- i. ***Whether the Writ of Summons dated 5th February, 2019 which was not signed by a Legal Practitioner is valid and competent in view of the provisions of Section 2 and 24 of the Legal Practitioners Act, Cap. 207 LFN 2004 and the decision in the case of PEAK MERCHANT BANK LIMITED VS. N.D.I.C (2011) NWLR (Pt. 1261) PAGE 253 AND OKAFOR & ORS VS. NWEKE & ORS (2007)3 SC (Pt.II) PAGE 55?***

ii. Whether the Claimant/Respondent Counsel's failure to affix the stamp and seal of the Nigerian Bar Association on the Writ of Summons dated 5th February, 2019 does not render it fundamentally incompetent by virtue of the Provisions of Rule 10 of the Rules of Professional Conducts for Legal Practitioners 2007 and the Supreme Court Decision in YAKI VS BAGUDU (2015)18 NWLR (Pt. 1491)288.

Learned Counsel also cited and relied on Rule 2(3) of the Rules of this Honourable Court and the case of *EDET VS CHIEF OF AIR STAFF (1994)2 NWLR (Pt. 324) Page 41 at 65 – 66*. In urging the court to strike out the suit. In the event that the preliminary objection is refused, Learned Counsel also Filed Notice of Intention to defend and counter claim wherein Defendant stated that the Claimant unprofessionalism in the handling of the briefs given to him by the Defendant caused the Defendant to

engage a new law firm with additional cost that was never envisaged.

That the suit is grossly frivolous and amounts to a complete abuse of Court Process.

The affidavit in support of the Notice to defend was deposed to by One Emmanuel OyigodoOkewu a Legal Practitioner in the Law firm of the Defendant.

It is the deposition of the Defendant that there is no single agreement between the Claimant and the Defendant with regards to the Professional Fees and that Professional Fee does not fall among the claims that may be brought under the Undefended List.

Defendant avers that due to the Claimant's non challent attitude towards his Legal representation that led to the Defendant substituting him with the present law firm and that the Claimant was served the Originating Motion on Notice for change of Counsel in the following cases:

FHC/ABJ/CS/838/2015, FHC/ABJ/CS/915/2015, FHC/ABJ/CS/896/2016 which he did not file any opposition to the withdrawal.

Copies of the affidavit of service were annexed as Exhibit ‘AAA1’.

That the letter annexed by the Claimant as Exhibits ‘C’, ‘E’ and ‘F’ were not received by the Defendant as there was no acknowledgment of the said letter’s.

The Defendant avers that the Suit are still ongoing as the Claimant has never stated that it completed one of the Suit.

That the irrational attitude of the Claimant in the Prosecution of the Defendant’s brief was highlighted by the Hon. Judge through it Judgment annexed as Exhibit ‘AAA2’.

That it would be in the interest of justice to transferred the suit to general cause list.

Upon service, the Claimant filed a Counter to the Notice of Preliminary Objection deposed to by One Gospel Enoch.

It is the deposition of the Claimant that the seal and stamp of Omatayo – OjoOlanrewajuEsq, the Legal Practitioner who issued the Writ of Summons was properly affixed in the original process.

That not signing the Writ of Summons by the Legal Practitioner does not invalidate the Writ and that they are ready to regularize the Writ.

In line with Law and Procedure, a written address was filed wherein Learned Counsel cited Order 6 Rule 1 and 2(1) of the Rules of this Hon. Court and stated that the Registrar of this Court properly issued the Writ of Summons in this case and therefore proper.

Counsel cited the case of ***JALABATI VENTURES (NIG) LIMITED & ANOR VS UNITY BANK PLC. (2016) LPELR 41625 (CA).***

Court:- I have gone through the motion filed by the Defendant/Applicant and the reaction of the Plaintiff/Respondent. I shall first of all resolve the issue of the Learned Counsel signature on the Writ first.

The position of the law is that an unsigned document is worthless and void, it commands no judicial value or validity. ***IKELI & ANOR VS AGBER (2014)LPELR 22653 (CA).***

A cursory look at the Writ of Summons, clearly reveals that it was issued by Omotayo-ojo Olanrewaju Esq. but was not signed.

However the Nigeria Bar Association seal affixed on the Writ belongs to one ChukwuChijiokeChuku.

As stated earlier, the unsigned document is a worthless paper.

Indeed, it is a fundamental requirement of the law that where a Legal Practitioner signs and initiate process, he must append his name for the process to be competent.

For avoidance of doubt, Section 2(1) of the Legal Practitioners Act Cap 207, Laws of the Federation 1990, provide that processes must be signed by a named Legal Practitioner known to law is a condition precedent to the assumption of jurisdiction by the court. Consequently, any person signing processes on behalf of a principal partner in chamber must be indicated.

The house of the Plaintiff is build on a poor foundation on the ill advice of the Civil Engineer and Architect, same shall fall on the Plaintiff head..it hereby falls accordingly.

Consequently, said suit No. FCT/HC/CV/1038/19 is hereby struck out.

*Justice Y. Halilu
Hon. Judge
12th March, 2020*

APPEARANCE

JOHN A. – for the Claimant.

E.O OKEWO – for the Defendant.