

**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/2854/19**  
**DATE: : THURSDAY 7<sup>TH</sup> MAY, 2020**

**BETWEEN**

**REZMA LIMITED ..... PLAINTIFF**

**AND**

**BIG UNCLE CONSTRUCTION LTD. - DEFENDANT**

**RULING**

The Plaintiff took out a Writ under the Undefended List Procedure Pursuant to Order 35 of the Rules of this Honourable Court. The claim of the Plaintiff against the Defendant is for the following:-

1. The sum of ₦5,500,000.00 (Five Million, Five Hundred Thousand Naira) only being the outstanding balance owed the Plaintiff by the Defendant by virtue of the Defendant's promise in their letter dated 19<sup>th</sup> October, 2018.
2. 10% Post Judgment interest until the entire sum is liquidated.

In line with Law and Procedure the said Writ was marked undefended on the 28<sup>th</sup> October, 2019, and the 18<sup>th</sup> November, 2019 was fixed as hearing date.

The claim of the Plaintiff as distilled from the affidavit in support of the Writ is that sometime in May, 2017 the Plaintiff was approached by the Defendant through one of

their Director Mr. EssienTopsy Emmanuel to jointly develop a land known and Situate at Plot 903 Cadastral B08 Jahi District into Mini Housing Complex and a formal agreement was executed vide Exhibit 'A'.

Plaintiff avers that the parties reached a compromise wherein the Defendant agreed and undertook to compensate the Plaintiff in the total sum of ₦14,000,000.00 (Fourteen Million Naira) vide Exhibit 'B'.

That out of the above stated sum, the Defendant had only paid the Plaintiff the sum of N8,500,000.00 leaving a balance of ₦5,500,000.00 despite several demands made by the Plaintiff vide Exhibit 'C'.

Upon service, the Defendant filed a Motion on Notice praying for the following:-

1. An Order Pursuant to Section 6(6)(b) of the Constitution striking out this suit for being incompetent on the ground that;
  - i. There is no seal of the Legal Practitioner who took out the Writ.

And for such further Orders as this Honourable Court may deem fit and proper to make in the circumstances.

In support of the Motion is a 6 paragraph affidavit duly deposed to by One NwamakaOfoegbu a Legal Practitioner in the Law Firm of Ikpeazu Counsel to the Applicant.

It is the deposition of the Applicant that the Writ of Summons in this suit has no seal of the Legal Practitioner who signed the Writ and therefore incompetent.

That it will be in the interest of justice to strike out the suit.

In line with law and procedure, a written address was filed wherein a sole issue to wit;*whether this suit is incompetent and liable to be struck out was formulated for determination.*

Learned Counsel argued that a look at the Writ of Summons discloses that it was taken out by AdakuOzokwereEsq however the seal of the said Legal Practitioner is not on the Writ.

Counsel cited and relied in Rule 10(1), (2) and (3) of the Rules of professional conduct to drive home his point.

The Defendant also filed Notice of Intention to Defend the action duly deposed to by Topsy U. Essien the managing Director of the Defendant.

It is the deposition of the Defendant that the contract between the Plaintiff and Defendant was mutually terminated because of the poor performance.

That after correspondence dated 19<sup>th</sup> October, 2018 was made, the Defendant did an assessment with a certified assessor on the work done and it was convinced that the value of work done by the Plaintiff did not exceed the sum of N8,500,00 already paid to the Plaintiff and Plaintiff was advised to get assessor to evaluate the work done.

That the issue of an outstanding claim between the parties has not crystallized and therefore not liquidated as the outstanding sum owed by the Defendant.

In response to the Notice of Preliminary Objection, Plaintiff replied on points of law wherein the sole issue for determination as formulated in the Applicant's written address to wit; *whether this suit is incompetent and liable to be struck out, was adopted.*

It is the contention of the Plaintiff that this Suit is competent as the requirements of the law as to who can sign and seal a Court Process has been fulfilled.

Counsel argued that, the rationale behind the requirement of affixing a seal and stamp to legal documents prepared by a Lawyer is to ensure that the person signing such document is one who has been called to the Nigerian Bar.

Learned Counsel contended further that the requirement has been fulfilled, therefore Court should dismiss the motion and enter Judgment for the Plaintiff.

Court:-It is settled law that document signed or filed by a Legal Practitioner without the seal and stamp approved by the Nigerian Bar Association has not been properly signed or filed and is therefore voidable.

Such a document remains voidable until it is regularized.

***NYESON VS PETERSIDE (2016) ALL FWLR (Pt. 842) 1573, DOGO VS MBAHI (2018) LPELR 45377 (CA).***

The Supreme Court in interpreting similar issue in ***YAKI VS BAGUDU (2015)18 NWLR (Pt. 1491) 288***

SC considered Rules 10(1),(2) and (3) of the Rules of Professional Conduct, 2007. The Rule provides as thus;

### **Rule 10**

- (1). A Lawyer acting in his capacity as a Legal Practitioner, Legal Officer or Adviser of any Governmental Department or Ministry or any Corporation, shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigerian Bar Association.
- (2). For the purpose of this rule ‘legal documents’ shall include pleadings, affidavits, depositions, applications, instruments, agreements, deeds, letters, memoranda, reports, legal opinions or any similar documents.
- (3). “If, without complying with the requirements of this rule a lawyer signs or files any legal document as defined in sub rule(2) of this rule, and in any of the



capacities mentioned in sub rule (1), the document so signed or filed shall be deemed not to have been properly signed or filed.”

Clearly in an attempt to comply with the aforesaid provisions, learned counsel for the Plaintiff who issued the writ affixed someone else’s stamp.

This to my mind is not just fundamentally morally and professionally wrong, it is within the domain of impersonation. The said exercise by counsel has not cured the irregularity thereby affecting the competence of this court to determine the matter. For above reasons, Suit No. **FCT/HC/CV/2854/19** is hereby struck – out.

*Justice Y. Halilu*  
*Hon. Judge*  
*7<sup>th</sup> May, 2020*

**APPEARANCES**

DANIEL EIWANLA – for the Plaintiff.

NWAMAKA O. – for the Defendant.