

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

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/M/013/2019
DATE: 15TH JANUARY, 2020**

BETWEEN:

HOMELINK HOLDING LIMITED - PLAINTIFF/RESPONDENT

AND

**1. ALH. MUHAMMAD BELLO SAIDU
2. IBRAHIM MUSA UMAR } DEFENDANTS/APPLICANTS**

Parties absent.

Francis Sylvester for the Defendants/Applicants.

Defendant's Counsel – The matter is for ruling. We are ready to take same. The Claimant is not represented.

R U L I N G

The court is to rule on a Notice of Preliminary Objection filed by the Defendant dated 14/10/2019 wherein counsel to the Defendant/Applicant urges this Honourable Court to dismiss this suit for want of competence.

The grounds upon which the objection is raised are as follows:

1. The Claimant's originating processes (writ of summons in Suit No. FCT/HC/CV/2798/2019) is defective thereby robs the court of its jurisdiction.

2. The Claimant has no legally recognizable rights to entitle her to the claims.
3. The suit did not disclose any reasonable cause of action.
4. This Honourable Court on account of the above lacked the competence to entertain this suit.

Learned counsel also filed a written address dated 14/10/2019 wherein counsel submitted that a careful perusal of the writ of summons shows that this suit was initiated under the old Rules of court and not the present Rules of court of 2018.

It is submitted that to determine whether a court is clothed with jurisdiction to adjudicate over a matter, the courts have always applied the golden Rule as encapsulated in the case of *MADUKOLU v NKEMDILIM* (1962) 2 SCNLR 341.

In the instant case, the originating processes are incompetent on the ground that the said processes were brought under the old Rules of FCT High Court Civil Procedure Rule 2004, Order 2 Rules 2(5). Form 1 (Appendix) of the High Court of FCT (Civil Procedure Rules 2018 makes provision for 14 days within which a Defendant can enter appearance upon being served; but it is not the position in the instant case.

It is the contention that the error of initiating this originating processes under the old Rules does not amount to a mere procedural irregularity. See *AKINGBEHIN v THOMPSON* (2008) 6 NWLR 9Pt 1003) 790 at 279.

It is submitted that the Claimant's writ of summons dated 3/9/2019 is defective therefore divest the court of jurisdiction; same having not been initiated under the present Civil Procedure Rules. See case of DR. TUNJI BRAITHWAITE v SKYE BANK PLC (2012) LPELR – 15532 (SC).

The originating process is the foundation upon which the Claimant intends to build his claim. The foundation having found to be defective nothing else can be laid on that defective foundation. See OLU OTTE OKPE v FAN MILK PLC & ANOR (2016) LPELR – 42562 (SC). Court is urged to dismiss this suit.

In opposition to the Notice of Preliminary Objection, learned counsel to the Claimant/Respondent filed a 3-page Reply on Points of Law dated 23/10/19 wherein counsel submitted that the Notice of Preliminary Objection is incompetent on the ground that the Defendant/Applicant choose to come by way of demurer which has long been abolished by the Rules of this court particularly in Order 23 Rule 1. That the Defendant/Applicant did not file any pleadings as provided by the Rules of court. See case of ADEJOBI v STATE (2011) 12 NWLR (Pt 1261) 347 at 366 – 367 Paras H – A.

It is submitted that in the instant application, the Defendant adopted wrong procedure to raise the issue of jurisdiction, the procedure that must be followed to raise the issue on point of law to ouster this court jurisdiction is as provided under Order 15 Rule 1 and Order 23 Rule 1 & 2 of the Rules of this Court 2018, and since it

is not followed rendered the Notice of Objection incompetent and liable to be struck out.

It is further submitted that the objection raised by the Defendant is solely technical and centered on the form rather than the substance of the case which the Rules of this court frown against. Court is referred to Order 15 Rule 15 of the Rules of this court.

It is submitted that it is not correct to say that the proceedings is incompetent because it carry 8 days to enter appearance instead of 14 days or that the writ life span indicate twelve months instead of 6 months, these are irregularity that cannot vitiate the proceedings or robs the court jurisdiction to hear the matter.

It is further submitted that by Order 5 Rule 1 and 2 of the Rules of this court 2018 failure to comply with the requirement as to form is treated as an irregularity. Court is urged to dismiss the Notice of Preliminary Objection.

I have carefully considered the processes filed and submission of learned counsel on both sides, it is without doubt that this writ of summons dated 3/9/2019 was initiated under the old Rules of this Court 2004 and not the present Rule of 2018 which regulates the procedures of invoking the jurisdiction of court. See MADUKOLU v NKEMDILIM (Supra).

It is the contention of the Claimant/Respondent's counsel that Defendant/Applicant came by way of a demurer which has been abolished and that omission and commission by the Claimant/Respondent on the face of the writ of summons are

irregularity that cannot vitiate the proceedings or rob the court of its jurisdiction.

It is trite law that where a condition precedent for the exercise of court's jurisdiction has not been fulfilled, such a court lacks the requisite jurisdiction or competence to adjudicate in the matter or suit, and where a court lacks jurisdiction to adjudicate in a proceedings, such proceedings when conducted is or amounts to a nullity, however well or beautifully conducted it right have been. The above is the decision in AKINGBEHIN v THOMPSON (Supra).

Also in the Supreme Court case of DR. TUNJI BRAITHWAITE v SKYE BANK PLC (Supra) held inter alia:

“A writ of summons is an originating process by means of which actions are commenced. The competence of such process is a pre-requisite for a valid and subsisting claim. Where the process fails to comply with the requirement of the law regulating its procedure, the court cannot assume jurisdiction thereon.

The court also went on to state that “a defective originating process cannot activate the court's jurisdiction”

In OLU ODE OKE v FAN MILK PLC & ANOR (Supra) the Apex court held as follows:

“An originating process is the foundation stone of any proceedings in any court. It thus, affects the jurisdiction of that court. No court of law can assume jurisdiction through a

defective originating process. If it does, the proceedings however well conducted will amount to a nullity”

In KIDA v OGUNMOLA (2006) 13 WLR (Pt 997) 377 P. 12 Paras A – B the court held that:

“A party served with a defective writ of summons or a summons that is in breach of statutory requirement and who seeks to raise any objection has the following steps to take: (1) Enter Conditional Appearance; and (2) Raise objection timeously before taking any step”

In the light of the above decisions I am of the firm view that the Notice of Preliminary Objection is competent and that the defective writ of summons cannot be treated as a mere irregularity that can be cured by Order 5 Rule 1 and 2 of the Rules of this Court 2018.

In the case of ALE v ADELEYE & ORS (2014) LPELR – 22782 (CA) it was held as follows:

“Where a court has no jurisdiction to hear a matter, such court clearly cannot look into the matter at all. However, where defective documents are filed before the court, that court is entitled to take a look into such matter, and if it finds that the document is defective, it has power to strike it out upon an objection by any of the parties. Such objection by a party must be timous, or else such defect would be deemed to have been waived...”

In the light of the above, I am of the considered view that the writ of summons having been filed under the old Rule of this court 2004 instead of the 2018 Rule, is defective and liable to be struck out.

Accordingly, this preliminary objection is of merit it is upheld, the writ of summons dated 3/9/2019 and filed on same date is hereby struck out for being defective.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
15/01/2010

O.K. Rugbere for the Claimants.

Claimant's Counsel – I am sorry for coming in late. We thank the court for the ruling.

Defendant's Counsel – Most grateful for the ruling.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
15/01/2010