

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 8, NYANYA-ABUJA ON THE 22ND DAY OF
JANUARY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE
SUIT NO.FCT/HC/CV/1644/18

COURT CLERKS: JOSEPH ISHAKU BALAMI & ORS.
BETWEEN:

LINACRES NIGERIA LIMITED.....PLAINTIFF

AND

ACCESS BANK PLCDEFENDANT

R U L I N G

The Defendant's Notice of Preliminary Objection dated 4/11/19 and filed on same date is brought pursuant to Order 2 Rules 2, 3, 4 and 5 and Order 43 Rule 1 of the High Court of the FCT (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Court.

It prays the Court for an Order striking out this Suit for lack of jurisdiction as the Writ of Summons is incompetent.

The grounds for the Objection are succinctly as follows:

1. The Writ of Summons was not accompanied at the time of filing with other documents as provided by the extant rules of Court.
2. The Writ of Summons was filed on the 28/05/18 and the other processes were filed on 30/04/18 which is a flagrant disregard of the rules.
3. The Writ of Summons was brought under the old rules when the new rules became operational since 15/02/18.

4. That due process was not followed by the Claimant in instituting the action.
5. That the above defect raised jurisdictional questions.

The application is supported by an Affidavit of 11 paragraphs.

Learned Counsel to the Defendant/Applicant relied on all the paragraphs of the Affidavit.

The Claimant's Counsel on the other hand relied on his five paragraph Counter Affidavit, sworn to by Udenyi Micheal Innocent. He deposes that the Writ of Summons was filed and accompanied by all the necessary documents on the same day being the 30th day of April 2018 in line with the extant provisions of the rules.

The Originating Processes were assessed on the cover page of the process with the prescribed fee and receipt number clearly endorsed thereon on 30/04/18.

Refers to Exhibit 1.

That the Statement on Oath which was also assessed alongside the other processes was deposed to on the same 30/04/18 before a Commissioner for Oath. The copy of Exhibit 2.

That the Writ of Summons was brought pursuant to the new rules.

It is the duty of the Court through its Registrar to issue, sign and endorse a Writ of Summons in a matter brought before it.

That due process was followed in instituting and filing this Suit.

I have also read and considered the Written Addresses of Counsel:

The issue for determination in my view is whether this Suit was instituted by due process.

Order 2 (2) states:

“All civil proceedings commenced by Writ of Summons shall be accompanied by

- a. Statement of Claim.*
- b. List of Witnesses to be called at the trial.*
- c. Written Statements on Oath of the Witnesses except a subpoenaed witness.*
- d. Copies of every document to be relied on at the trial and*
- e. Certificate of Pre-action Counselling as in Form 6.”*

The subsection 3 states:

“The Claimant shall provide as many copies of the processes listed in a-e above for the use of the Court and as there are Defendants to be served.”

Subsection 4 states:

“Where a Claimant fails to comply with Rules 2 and 3 above, his originating process shall not be accepted for filing by the Registry.”

The Defendant/Applicant argued that the Writ of Summons was not accompanied by the other documents at the time of filing. The Claimant/Respondent deposed otherwise.

By the rules of Court, the Registry ought not to have accepted the Writ of Summons for filing if it was not accompanied by other processes as provided by law.

Therefore, the acceptance of the Writ of Summons for filing means only one thing. The Writ was accompanied by all relevant documents.

I have perused the Writ of Summons in the Court's file. It is dated, endorsed and assessed on 30/04/18. It is accompanied by the Statement of Claim, Witness Statement on Oath duly sworn to on the 30th day of April 2018, List of Witnesses and documents.

The date of filing is not endorsed on same.

However, the endorsement copy was signed by the Registrar and dated 28/05/18 while the assessment on the Writ of Summons is dated 30/4/18.

The above is clearly an error of the Court Registry. The Defendant's copy is signed, sealed and dated. He was served. The original copy in the court's file does not bear the date 28/5/18 which Defendant's Counsel is not comfortable with.

The law is that a defect in the signatures on a Writ is merely an administrative error which should not be visited on the Claimant.

The Defendant was not misled neither has he deposed that it suffered any injustices.

The Defendant has taken steps by filing a Statement of Defence. This application was not filed within a reasonable time.

It is clear that all the complaints of the Defendant in their Preliminary Objection are the negligent acts of the Court Registry. It is still good law that the fault of Court or Registry staffs should not be visited on a litigant.

I have read the Writ of Summons. There is nothing to suggest that the Writ of Summons was brought under the old rules.

Aside the above, by Order 5(1) and (2) of the rules of Court, failure to comply with the requirements of these rules shall not nullify the proceedings, it may be treated as an irregularity.

I therefore treat the errors or omission of the Registrar as an irregularity which does not vitiate the proceedings or Writ of Summons particularly when the original Writ of Summons does not contain the said date but an omission to endorse the date.

The Courts have since moved away from technicalities to doing substantial justice. The Parties having joined issues and the hearing opened and the case for Cross-examination of Claimant's Witness No. 1. The Writ of Summons is deemed to be properly filed and served, pursuant to Order 5 Rule 2 of the rules of Court.

In the circumstance of this case, the application fails and it is accordingly dismissed.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
22/01/20.