

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI

COURT CLERKS: T. P. SALLAH & ORS

COURT NUMBER: HIGH COURT NO. 13

DATE: 18TH MARCH, 2020

FCT/HC/M/6547/19

FCT/HC/CV/3103/18

BETWEEN:

THE LORDS ESTATE LIMITED CLAIMANT/RESPONDENT

AND

EGAME TECHNOLOGY AFRICA LIMITED DEFENDANT/APPLICANT

RULING

The instant suit was commenced by the Claimant against the Defendant by writ of summons and statement of claim.

The Defendant then filed the instant Motion on Notice No. M/6547/19 dated 21st May, 2019 and filed 22nd May, 2019 pursuant to the provisions of Section 78 of the Companies and Allied Matters Act, Order 5 Rules 1 & 2 and Order 49 Rule 4 of the Rules of this Honourable Court as well as under this Court's inherent jurisdiction. By the motion, the Defendant/Applicant seeks the following reliefs from this Honourable Court:-

1. An order of this Honourable Court setting aside the purported service of the originating processes on the Defendant/Applicant.
2. An order of this Honourable Court striking out/dismissing this suit for want of jurisdiction.
3. And for such further order or order(s) as this Honourable Court may deem fit to make in the circumstance of this case.

The grounds for the application are set out on the face of the motion paper and are reproduced hereunder:-

- a. The Defendant is a company duly incorporated and registered with Corporate Affairs Commission (C.A.C)
- b. The purported service of the originating processes on the Defendant was not effected to the registered office address.
- c. The service of the originating processes on the Defendant/Applicant is incompetent.
- d. In regards to the above circumstances and considering the defective originating process served, this Honourable Court lacks the requisite jurisdiction to entertain this suit.

The Defendant/Applicant filed an affidavit of 6 main paragraphs and its Counsel's written address in support of the application.

Opposing the application, the Claimant/Respondent filed its Counter-Affidavit of 5 paragraphs with its Counsel's written address with leave of Court.

The Defendant/Applicant further Responded by filing a reply affidavit and a reply address on points of law.

Counsel to the Defendant/Applicant formulated the sole issue for the determination of this application thus:-

"Whether non proper service of the originating processes on the Defendant registered address constitute a proper service to confer the Honourable Court with jurisdiction to determine the substantive suit."

Counsel to the Claimant/Respondent on the otherhand, distilled the issue for determination as follows:-

"Whether from the combined provisions of Section 78 of the Companies and Allied Matters Act and Order 7 Rule 8 of the

High Court of the FCT Civil Procedure Rules 2018, proper service was or not effected on the Defendant/Applicant.”

In its affidavit in support, the facts relied upon by the Defendant/Applicant for the application is that it is a duly registered company whose registered office address is not Plot 1361 No. 4 Justice Sowemimo Street, Asokoro District, Abuja where it was served with the originating process in this suit. That the writ of summons was not served at its head office but at its branch office in Abuja.

The Claimant/Respondent averred in its Counter-Affidavit that the originating processes were served at Plot 1361 No. 4 Justice Sowemimo Street, Asokoro, Abuja being the office address of the Defendant/Applicant company.

Learned Counsel to the Defendant/Applicant submitted that Section 78 of the Companies and Allied Matters Act only permits service of originating process on a company such as the Defendant at its registered or head office either by post or by leaving the originating processes at the registered or Head Office only. He posited that any other service at the Branch Office whatsoever is a nullity. He relied on the cases of **KRAUS THOMPSON ORG. LTD V. UNICAL (2004) NWLR (PT. 879) P. 631 AND MARK V. EKE (2004) 5 NWLR (PT. 865) P. 54** as well as other decided cases. He submitted further that Order 7 Rule 8 of the Civil Procedure Rules of this Honourable Court only permits a company to be served at the registered head office and, alternatively, other place of business when service at registered head office is difficult. Counsel contended that in this case, service was neither done at the head office or any place of business. He argued that the service in this case is therefore defective and should be set aside as such. His position is thus that this Court does not have the jurisdiction to entertain this matter as the non-compliance is not a mere irregularity. He finally urged this Court to strike out the suit for being incompetent and lacking in jurisdiction.

In his response, learned Counsel to the Claimant/Respondent submitted in his address that service of process on registered office address of a corporate body is not mandatory. He also relied on Section 78 of the Companies and Allied Matters Act as well as Order 7 Rule 8 of the Civil Procedure Rules of this Honourable Court. He posited therefore that the service effected at Plot 1361, No. 4 Sowemimo Street Asokoro Abuja, which is the Defendant/Applicant's 'place of business' is proper and effective in law. He relied on the case of **PLASTEX NIG. LTD V. MAINLAND OIL AND GAS (2018) LPELR(CA)**. He submitted that the decision in the case of **MARK V. EKE (2004) 5 NWLR (PT. 865) P. 79** relied upon by Defendant/Applicant's Counsel is not binding on this Court. He therefore urged this Court to refuse the instant application in the overall interest of justice.

Replying on points of law, Counsel to the Defendant/Applicant submitted that it is the right of a party to be properly and regularly served with the originating process.

Now in the resolution of the issue at hand, it appears not to be in dispute that the Defendant/Applicant is a company which is thus subject to the provisions of the **Companies and Allied Matters Act**. Both parties to this case have referred this Court to Section 78 of that Act on service of Court processes on a company. There seems to be no dispute that this is the applicable provision in respect of service of Court process on a company such as the Defendant/Applicant. It is however on the interpretation of this provision that parties seem to differ.

Section 78 of the Companies and Allied Matters Act provides as follows:-

"78. A Court process shall be served on a company in the manner provided by the Rules of Court and any other document may be served on a company by leaving it at, or sending it by post to, the registered office or head office of the company."

It must be noted from the above that the provision talks about service of two types of documents on a company i.e. Court processes and other documents. While it is mandatory to serve Court processes on a company in the manner provided by the Rules of Court, other documents (that are not Court processes) may be served on a company by leaving it at, or sending it by post to, the registered office or head office of the company. For avoidance of doubt, **Section 78 of the Companies and Allied Matters Act** does NOT provide that Court processes are to be served on a company at its registered or head office (as posited by the Defendant/Applicant's Counsel). That mode of service on a company is reserved for documents other than court processes.

Learned Counsel to the Defendant/Applicant has also relied on a number of cases including **MARK V. EKE (SUPRA)** to contend that originating Court processes must be served at the registered or Head Office only and any other service at the branch office whatsoever is a nullity.

I have read the Supreme Court's decision in the case of **MARK & ANOR V. EKE (2004) LPELR-1841(SC)**. One thing that strikes me in that decision (as with other cases relied upon by the Defendant/Applicant's Counsel) is that the Supreme Court, in interpreting **Section 78 of the Companies and Allied Matters Act**, had rightly held that a Court process is served on a company in the manner provided by the rules of Court. The High Court Civil Procedure Rules of Imo State which was the applicable Rules of Court in that case specifically provided that service of Court processes on a company is to be at its registered office. It was therefore in the consideration of this provision of the High Court Civil Procedure Rules of Imo State that the Supreme Court found in **MARK V. EKE (supra)** that service on a company, in accordance with those rules, must be at the registered office of the company and is bad and ineffective if done at a branch office of the company.

Since the established position of the law is that a company is to be served with a court process in the *manner provided by the*

Rules of Court (see **Section 78 of the Companies and Allied Matters Act**), the pertinent question is, how is service required to be effected on a company under the extant Rules of this Court?

The relevant provisions of the extant Rules of this Honourable Court which deals with the issue of service particularly on a company is **Order 7 Rule 8 of the High Court of the FCT, Abuja (Civil Procedure Rules) 2018**. It is reproduced by me hereunder:-

"8. Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process requiring personal service may be served on a registered company, corporation or body corporate, by delivery at the Head Office or any other place of business of the organisation within the jurisdiction of the Court."

From the above provision, there are two options available to effect originating processes of this Honourable Court on a company such as the Defendant/Applicant in this case. Service may be effected on a company either at its head office or any other place of its business within this Court's jurisdiction. Either of these two options may be resorted to in the first instance. I therefore do not subscribe to the Defendant/Applicant's Counsel's suggestion that the option of service at Head Office must be exhausted before service on any other place of business can be validly resorted to. If this were the position, then **Order 7 Rule 8** of the Rules of this Court would have made that clear. As it is, there is nothing in the clear words of **Order 7 Rule 8** that suggests this and this Court cannot accept such interpretation from Counsel.

Now, the two options available to serve a company with originating Court processes under the Rules of this Honourable Court do not make it mandatory to serve a company at its registered office address. By the second option, a company can be served at its branch office (being its place of business) within

the FCT i.e. within the jurisdiction of this Court. It follows therefore that the decision of the Supreme Court in **MARK V. EKE (supra)** that service of court processes on a company must be at its registered address where the Rules of Court so provides and is bad at its branch office, cannot be applicable to this case or binding on this Court. –See the case of **PHCN PLC & ANOR V. AG SOKOTO STATE & ANOR (2014) LPELR-23825(CA)**.

It is not in dispute that the originating court processes were served on the Defendant/Applicant in this case. I will not bother with the unfortunate saga surrounding the service of the said processes wherein the Court Bailiff of this Court was slapped and beaten by the Managing Director but he later apologize to the Court and the Court Bailiff. It is not relevant to the issue now before this Court. Suffice it to say that the writ of summons in this case was issued for service on the Defendant/Applicant at 'Plot 1361, No. 4, Justice Sowemimo Street, Asokoro District, Abuja'. There is certificate of service of Bailiff of this Court to the effect that service of the writ was effected on the Defendant/Applicant at the said address. The Defendant/Applicant has admitted this much in its affidavit in support of the instant application. For avoidance of doubt, the relevant paragraphs of the Defendant/Applicant's affidavit are hereunder reproduced by me:-

4.

- e) *That the purported service of the Writ of Summons on the Defendant/Applicant was done at Plot 1361 No. 4 Justice Sowemimo Street, Asokoro District, Abuja by dropping same there.*
- f) *.....*
- g) *That the writ of summons was served at the Defendant's branch office at Abuja as such the writ of summons is consequently defective and liable to be set aside.*

By its affidavit, the Defendant/Applicant has admitted that it was served with the originating process in this suit at its branch office in Abuja. The Defendant/Applicant has thus been served at its

place of business (other than its head office) within the jurisdiction of the Court in accordance with the extant Rules of this Honourable Court. See again **Order 7 Rule 8 of the High Court of the FCT, Abuja (Civil Procedure Rules) 2018** which, as I have said earlier, allows for service on a company at its branch office within jurisdiction.

In the case of **FBN PLC V. OZOEGBULA (2014) LPELR-24024(CA)** where the Court of Appeal per Mbaba JCA held that:-

*"I have lamented about the apparent injustice of a party coming to Court, after service of the process of Court on him, to pray the Court that the service be set aside because the same was served at the branch office of the bank (not at the registered or Head Office of the bank), whereas the branch was all that the customer knew and transacted business with and the branch manager assumed all the responsibilities of the Bank when it was receiving deposits from the customer, only to plead incapacity when the customer tries to call the bank to order. Thankfully, that situation is changing as many Rules of Court have now seen the need to provide for service of Court processes on branch companies operating in their jurisdictions. See the case of Mobile Producing **NigUnLtd v. Effiong (2013) ALL FWLR (pt. 673) 1942**, where it was held:-*

"By the provisions of Section 78 of the Company and Allied Matters Act, 1990 . . . and Order 12 Rule 8 of AkwaIbom State High Court (Civil procedure) Rules, service of processes at the office of a company not being necessarily registered office is permitted..."

Similar provision is made in Order 7 Rule 9 of the Imo State High Court (Civil Procedure) Rules, which says:

"Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process or other process

requiring personal service may be served on the organisation by delivering to a director, secretary, trustee or other senior, principal or responsible officer of the organisation, or by the leaving it at the registered, principal or advertised office or place of business of the organisation within the jurisdiction."

Of course, the important phrase in the above which makes a huge difference is:"...at the registered, principal, or advertised office or place of business of the organisation within the jurisdiction."

In the instant case, the Rules of this Court provide that the Defendant/Applicant company may be served with originating processes at its place of business (other than its head office) within the jurisdiction of this Court. The Defendant/Applicant was admittedly served at its branch office in Abuja which is its place of business within the jurisdiction of this Court. The law has therefore been complied with in respect of service of the originating processes in this case on the Defendant/Applicant. This Court thus has the requisite jurisdiction to entertain this suit against the Defendant/Applicant. The issue for determination must be resolved in favour of the Claimant/Respondent and against the Defendant/Applicant. The instant application to set aside service on the Defendant/Applicant and strike out this suit thus fails and is hereby dismissed in its entirety.

I do not wish not to end without mentioning that it is appalling that such a frivolous application such as the instant one would emanate from the Chambers of the calibre of that of Defendant/Applicant's Counsel. In view of the very clear provisions of the law and the Rules of this Honourable Court, it is clear that this application is not brought in good faith. This very application is as frivolous as they come. It is misconceived both in fact and in law. It is without any merit whatsoever and is hereby dismissed. It is nothing but a calculated attempt to waste the precious time of this Honourable Court and one that should attract the appropriate order of cost against Counsel personally.

Accordingly, a cost of N200, 000.00 is hereby awarded against the Defendant's Counsel in favour of the Plaintiff and the cost must be paid on or before the next adjourned date.

**HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
18/03/2020**

Parties:- Absent.

OluwasenuAlabi:-With me is Charles Okpeke for the claimant.

I.A shabata:-For the Defendant.

Court:- Case adjourned to the 28th May, 2020 for hearing/defence. No application for adjournment would be entertained under any guise from either party.

**Sign
Judge
18/03/2020**