

**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: 2<sup>nd</sup> MARCH, 2020  
FCT/HC/CV/35/2019**

**BETWEEN:**

**VICTOR KHOURI**

**.... CLAIMANT**

**AND**

**1. HAJ. SAFIYA IDRIS YARO**

**2. ALH. ISSA IDRIS YARO**

**3. HAJ. KHALTUME IDRIS YARO**

**4. HAJ. HALIMATU S. IDRIS YARO**

**5. HAJ. MAIMUNA IDRIS YARO**

**DEFENDANTS**

**RULING**

The Claimant commenced this suit against the Defendants by Originating Summons and affidavit filed on 16<sup>TH</sup> October, 2019 seeking determination of various questions and the grant of various reliefs. Upon his application, the Claimant was granted leave on 2<sup>nd</sup> December, 2019 to serve the Defendants by substituted means.

With leave of Court, the Defendants subsequently filed their Joint Counter-Affidavit and written address (to the substantive originating summons) which processes they filed contemporaneously with the instant Notice of Preliminary Objection. Their Notice of Preliminary Objection is dated and filed on 11<sup>th</sup> December, 2019 pursuant to provisions of Order

7 Rules 2 and 3 of the Rules of this Honourable Court and under its inherent jurisdiction and seeks the following reliefs from this Court:-

- (a) An order of court declining jurisdiction in this proceedings in its entirety.
- (b) An order of court striking out this suit for want of Jurisdiction.
- (c) And for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

The grounds of the application are set out on the face of the notice and reproduced hereunder by me:-

1. That the Defendants were not personally served with the originating processes in accordance with the Rules of this Honourable Court.
2. That no Order for substituted service was obtained from this Honourable Court to effect any service other than personal service on the Defendants/Applicants.
3. That there was no written authorization from the parties to Counsel to accept service of such originating process.
4. That this Honourable Court lacks jurisdiction to entertain this matter, as a condition precedent has not been observed and parties are not properly before the Court.

The Defendants filed a 7-paragraphed Affidavit in Support of the application as well as their Counsel's Written Address.

Opposing the application, the Claimant filed a Counter-Affidavit of 8 paragraphs (with leave of Court) together with his Counsel's Written Address.

### **ISSUE FOR DETERMINATION:**

The Defendants' Counsel formulated the following as the issue for determination of the preliminary objection;

*“Whether in the circumstances of this case it is just and equitable to grant the application.”*

The Claimant’s Counsel distilled practically the same lone issue for determination, albeit with slightly different construction of words. I shall adopt the issue as formulated by the Defendants’ Counsel.

***Whether in the circumstances of this case it is just and equitable to grant the application.***

In his argument on the sole issue, learned Counsel to the Defendants submitted that service of originating court processes is to be by personal service on each of the Defendants in this suit. He relied on Order 7 Rule 2 of the Rules of this Honourable Court as well as the case of **OKIYE V. STATE (2014) LPELR-22194(CA)**. He contended that service of the originating processes on the Defendants in this case was however not by personal service. It is Counsel’s position that where personal service cannot be effected, substituted service is available to a claimant but such mode of substituted service must be in accordance with the Rules of Court. He relied on a plethora of judicial authorities. He further submitted that the mode of service adopted by the Claimant in this suit is in contravention of the Rules of this Court i.e Order 7 Rule 3 as there was no written authorization by the Defendants to their Counsel to accept service. He submitted that the Claimant having failed to comply with the said Rules of this Court, it is fatal to his case and denies this Court the jurisdiction necessary to entertain this suit. He urged this Court to grant the instant application.

Conversely, learned Counsel to the Claimant submitted that although the Defendants had been served with the originating summons in this case through their lawyers for expediency, the Claimant went ahead to thereafter do the proper thing by obtaining an order for substituted service.

He contended that substituted service can be ordered by the Court on application by a party where personal service cannot be effected. He relied on the provisions of Order 7 Rule 11(2)(b) of the Rules of this Court. Counsel submitted that the Claimant complied with this provision in view of the Order of this Court granting substituted service. He submitted that the Defendants filed their preliminary objection out of ignorance and urged this Court to dismiss same.

Now in the resolution of the issue at hand, it is not open to dispute or prevarication that the Rules of this Court require that the mode of service of originating court processes shall be by personal service i.e. by delivering the required copies of said processes to the party to be served. See **Order 7 Rule 2 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018**.

There seems to be no dispute that the Defendants were not served personally with the originating processes in this suit. The Rules of Court however permit service of originating court processes by some means other than personally on the Defendants. See **Order 11 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018**. Leave of Court is however required for service by such substituted means.

The records of this Court show (as I have mentioned earlier) that the Claimant sought and obtained leave of this Court on 2<sup>nd</sup> December, 2019 to serve the Defendants by substituted means to wit; by delivering the originating processes in this suit to their solicitors Belgore, Olufadi & Co, at Suite 211B, Samfa Plaza, Ndola Crescent, Wuse Zone 5, Abuja in line with **Rule 11(2)(b) of Order 11 of the Rules of this Court**.

Records show that the Defendants had been served in exactly this manner on 17<sup>th</sup> October, 2019. The Defendants have themselves stated in their affidavit in support of the

instant preliminary objection that their Counsel, BelgoreOlufadi& Co., was served with the originating summons on 16<sup>th</sup> October,2019.

It would appear that the problem is that the Claimant had served his originating processes on the Defendants by substituted means before obtaining the order to serve by such substituted means from this Honourable Court. The service by substituted means thus preceded the order itself.

In the case of **KANGNAAN V. KANGNAAN (2019) LPELR-46502(CA)** the Court of Appeal held as follows:-

“The procedure before leave for substituted service could be obtained was spelt out in Fidelis Nwadialo (Civil Procedure in Nigeria) 2nd Ed. (2000) at page 258 thus -

A plaintiff can only resort to substituted service by the order of Court for which he must, first of all apply. All the rules provide for this mode of service.”

It is therefore clear that the appropriate time for obtaining leave from the court to serve by substituted means is not AFTER the process has been served but BEFORE it is served by substituted means.

I have however looked at the peculiar circumstances of the facts in this case. The originating processes have been served in exactly the same manner ordered by this Court (albeit before the order was made). The Defendants are before this Court and are all aware of the pendency of this suit against them as well as the nature of the suit. They have had opportunity to prepare their defence and have indeed filed the necessary processes to defend the merit of the substantive suit against them. It is my humble opinion that the purpose of service on them and the order of substituted service made on them by this Court have been served. The position of the law is that the purpose of service

of Court processes (whether personal or by substituted means) on the parties to a case is to bring to their notice/attention the pendency of the case, the contents of the case and give them an opportunity to react to the said processes. See the cases of ***ALL STATES TRUST BANK PLC V. REGISTERED TRUSTEES OF MISSION HOUSE INTERNATIONAL & ORS (2018) LPELR-44349(CA)*** and ***NJOEMANA V. UGBOMA & ANOR (2014) LPELR-22494(CA)***. See also the case of ***KANGNAAN V. KANGNAAN (SUPRA)*** where the Court of Appeal held as follows:-

“Now, the essence of service of a Court process is to bring it to the attention of the party served, and thus it should really make no difference whether the process was served by substituted means or personally, **unless the party served suffered a detriment by reason of the mode of service.** The Appellant suffered no detriment by the substituted service of the originating process on him, yet his Counsel filed a motion before the lower Court to set aside the service on the ground that the Respondent did not do the needful before obtaining the order for substituted service.”

In the instant case, it would indeed amount to unnecessary wanton technicalities to set aside service of the originating processes on the Defendants in the peculiar circumstances of the instant suit. No proceedings have yet been conducted against the Defendants to their prejudice thus far in this suit. They have ample opportunity to be heard and have filed the necessary processes to be heard on the merits of the substantive case. They shall therefore not be prejudiced if the service on them is not set aside and the substantive matter is heard on the merit. The Defendants averred in their affidavit in support of the instant application that they will be prejudiced if this application is not granted. This is a conclusion which has no place in their affidavit. They have certainly not alleged cogent facts to show whatever prejudice they will suffer if the service on them is not set

aside. I hold the view that the Defendants shall suffer no miscarriage of justice if this Honourable Court proceeds to hear the substantive suit in the circumstances and I so hold.

In the case of ***BOI LTD & ORS V. ADEWALE-ADEDIRAN & ANOR (2014) LPELR-23703(CA)*** held:-

“In the instant appeal, however, there has been service of the Originating Summons, although not personally but on another person, who the Court found to have been served, apparently for delivery to the 2 Defendants. The Court has discretion under the Order 6, Rule 5 referred to supra, to **suomotu** or on an application to order service in either of the alternative means, ways listed thereat for substituted service, as no attempt at personal service had been made.

From the above, it is clear that the Court has discretion in the issue of service of Court process, and its jurisdiction over the subject suit and trial thereof remain intact and was not affected thereby. This is more so that the Court had found and held that the suit was properly commenced. The cases of ***MADUKOLU V NKEMDILIM (1962) ALL NLR 581; EQUITY BANK OF NIG.LTD V HALLICO NIG. LTD (2006) ALL FWLR (PT. 337) 438 at 452 - 453*** referred to by the Respondents' Learned Counsel in arguing that the suit at the trial was by fact of non-personal service of the Originating Summons incompetent and the trial Judge without jurisdiction, are cited and applied out of context, as they are inapplicable to the facts and circumstances of this appeal. I respectfully, do not agree that the suit is incompetent and the trial judge lacking in jurisdiction to hear it on the merit.

What is the effect of the non-compliance with the provisions for personal service or service in particular mode? Was the Originating Summons valid? It was.

The Court so held and rightly. As the Appellants' Learned Counsel argued, it would amount to approbating and reprobating as did the trial Court when having held that the action was competently taken out, to turn summersault to hold that the Court had no jurisdiction because of the service of the process. Has the irregular service converted the action to an incompetent one? Or has the suit ceased to be one initiated by an Originating Summons as provide by the Rules and which was so done accordingly? It is therefore, my view that the argument of the Learned Counsel for the Respondents is not in consonance with fair hearing and justice. As this Court stated per Sotonye Denton-West, JCA, PJ in its judgment in CA/AK/18M/2013 **M.T.N Nig. Communications Ltd V Mrs. Taibatu Babayoye** delivered on 25th day of June 2014,

*“Our Courts have in various occasions emphasized on substantial compliance with the provisions of our laws rather than strict compliance. This, in our view, is to avoid justice threading on a thin line scale, thereby laying foundations for enthronement of technicalities in our laws. Law, we should know is a creation of mortals. Judges like every other person are mortals who are not without weaknesses, so do litigants and their solicitors out there”.*

The binding necessity which is an overriding one coming on the fusion of the principles of the common law and equity in 1875 by the Judicature Act is that law shall be administered concurrently with equity and in the case of conflict, the doctrines of equity shall prevail. The Supreme Court in **OMOJU V FRN (2008) 7 NWLR (pt. 1085) 38 P. 14 paragraphs F - G** held thus:

*“Substantial Justice which is actual and concrete Justice is Justice personified. It is secreted in the*



*elbows of cordial and fair jurisprudence with a human face and fair understanding. It is excellent to follow in our law. It pays to follow it as it brings invaluable dividends in any legal system anchored or predicated on the rule of law, the life blood of democracy”.*

Substantial Justice, where possible, must not be allowed to be defeated by irregularities or technicalities that could be cured by the exercise of a Court's discretion. See **EKWERE V. THE STATE (1981) 9 SC 3**. It is in this respect that I recall the admission of indebtedness, efforts at repayment of the liability that was the subject of the Suit at the trial Court. This is also a good reason to exercise the discretion of waiving the requirement of personal service and condoning the actual substituted service which had already been effected and appearance already entered by the parties who were not misled that they were the Respondents sued.

What purpose is to be achieved by undoing the service as if it had not taken place? Has the purpose of issuing the Originating Summons not been achieved? It has been achieved loudly and eloquently as even the Court alluded to that fact. To conclude the discussion on this issue of service of process in a way other than the mode provided (which as I had indicated earlier in this Judgment may be waived and does not affect the jurisdiction of the Court nor the competence of the suit), it is clear that the Originating Summons was served; except that it was not served on the Respondents personally as stipulated by the Rules of Court in the 1st instance. Although, it was not carried out **strictusensu**, the pre-occupation of the trial Judge ought to have been on the need to determine the action on its merit, the parties having appeared.”

In view of the foregoing, I hold the view that the purpose of service of the originating process on the Defendants in this case has been met and I so hold. They are properly before this Court and have opportunity of being heard. It therefore does not matter that the service effected on them in the manner ordered by this court was done before the order itself was made. The Defendants have suffered no miscarriage of justice by this irregularity. They have been adequately notified of the pendency of this suit by the service on them. Consequently, this Court has jurisdiction to entertain the instant suit. The issue for determination must be resolved against the Defendants and in favour of the Claimant. The instant preliminary objection thus fails and it is hereby dismissed.

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**HON. JUSTICE D.Z. SENCHI**  
**(PRESIDING JUDGE)**  
**3/03/2020**

Parties:-Absent.

Simpa Ibrahim:-For the Claimant/Respondent

Stephen Yahaya:For the Defendants.

Simpa:-Case is for ruling.

Simpa:- in the circumstances of the ruling, we ask for a date for hearing.

Stephen:-No objection.

Court:- Case adjourned to 13<sup>th</sup> May, 2010 for hearing-

**Sign**  
**Judge**  
**3/3/2020**