IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON TUESDAY, THE 15TH DAY OF MAY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE
SUIT NO.: FCT/HC/CV/2072/17

BETWEEN:

1. PHARM. CHUKWUJEKWU SUNDAY IKE
2. PHARM. WUYEP NIMNAN NANKAP ------- PLAINTIFFS
3. PHARM. ATUMEN SUPERIOR

{Representing the members of Association of Community Pharmacists of Nigeria (ACPN) Abuja Branch}

AND

DR. MOSES EDURU ---------- DEFENDANT

RULING

In this application checkered Suit the Defendant had filed a Motion for the Court to strike out the Suit for being null and void.

The Motion is based on the ground that the Writ of Summons which was issued at the FCT Court Registry was not endorsed for service on the Defendant at Nasarawa State. Again that the said Writ of Summons was not issued in accordance with S. 97 of Sheriff and Civil Process Act (SCPA) and that the Writ is altered without the leave of Court.

The Defendant supported the Motion with an Affidavit of 5 paragraphs which Ogaga Great Ediru deposed to. The main crux of the fact in support of the Motion is that the

Writ was not endorsed to show that it was for service outside jurisdiction at Nasarawa State and that it did not comply with S. 97 of Sheriff and Civil Process Act. That there was alteration from eight (8) days to thirty (30) days without the Order of the Court. Meanwhile the Defendant had filed a Statement of Defence and Amended Statement of Defence. The Plaintiffs had called all its Witnesses and Defendant had Cross-examined the Plaintiffs' Witnesses. It is left for the Defendant to open its defence. This action was instituted since the 2nd day of June, 2017. The Plaintiff had closed its case since the 14th day of June, 2018.

In the Written Address the Defendant Applicant raised an Issue for determination which is:

> "**Whether the Court can assume jurisdiction to entertain this Suit issued and served in Nasarawa State without compliance with S. 97 of the Sheriff and Civil Process Act Scpa and the Rules of this Court".**

He submitted that when the requirement of the law is mandatory it leaves no discretion to the Court. That non compliance renders the Writ of the Plaintiff in this case null and void and as such Court has no jurisdiction to entertain the Suit of the Plaintiff. That the Sheriff and Civil Process Act is an Act of the National Assembly and it is superior to the Rules of the Court on issuance and service of the Writ of Summons in this case. He referred and cited S. 97 Sheriff and Civil Process Act and the case of:

Izeze V. INEC

(2018) LPELR 44284 (SC)

He submitted that based on the decision of the Supreme Court in the above case and the doctrine of Stare Decisis this Court has no jurisdiction to entertain this Suit because of the non compliance with the provision of S. 97. That it rendered the Writ of Summons null and void as no appearance could be entered by Defendant to such Writ. He referred Court to paragraph 3 (a) & (b) of Affidavit in support of his Motion and paragraph 20 of his Statement of Defence. He referred to the case of:

Arabella V. NAIC
(2008) 32 WRN 1

That by the deposition of paragraph 3 (c) - (e) of the Affidavit in support that leave is a condition precedent for the alteration of the return date in the Writ from 8 days to 30 days and that the Plaintiff having failed to obtain the required leave, their Writ of Summon is void and that no Court has jurisdiction to entertain a void Writ. He urged Court to grant this application and decline to entertain the Plaintiffs' Writ and strike same out for being null and void.

Upon receipt of this Motion the Plaintiffs filed a Counter Affidavit of 6 paragraphs deposed to by Chinwe Onyekwere. The Plaintiffs had submitted that the Writ was not altered and that the Defendant had taken several steps in the prosecution of this Suit in that he had Cross-examined the Plaintiffs' Witness. That the matter was already adjourned for Defendant to open its defence but the Defendant decided to come up with this Motion after the Court had in a well reasoned Ruling dismissed the

Defendant's Motion for Amendment and that the last 2 adjournments were at the instance of the Defendant. That it will be in the interest of justice to refuse this application and order for Defendant to open its defence.

The Plaintiffs did not raise any new Issue for determination. They relied on the issue raised by Defendant and responded to it. They submitted that Court can assume jurisdiction under certain circumstances as it rightly did in this case. That once the Defendant had taken several fresh steps to file a defence to this Suit and had actively participated in the trial by cross-examining Witnesses called by the Plaintiffs in this case. That he cannot and does not have the right to thereafter bring an action to strike the Suit out. That he, by his actions, waived his right. He cited and relied on the case of **Izeze V. INEC (Supra).**

That the Defendant has filed a Defence in this case and went on to cross-examine the Plaintiffs' Witnesses. That he had sought for amendment and the Court refused to grant that and the document was rejected. That the present case is clearly different from the **Izeze V. INEC** case.

That the Supreme Court has held that where a Defendant did not take step after being aware of the irregularity but simply file a Preliminary Objection challenging jurisdiction of Court, it is deemed that the person has waived his right to challenge the irregularity. Having taken further steps after being aware of the irregularity, he cannot turn around to raise such afterwards. The Plaintiff relied on the cases of:

Ezono V. Oyakhire
(1985) 1 NWLR (PT.2) 15

Odua Investment Ltd V. Talabi
(1997) 10 NWLR (PT. 523) 51 – 52 paragraph G – F

That Defendant/Applicant has taken steps to waive his right to complain and the complainant cannot stand. He referred and relied on the cases of:

Akumechili V. BCC Limited
(1997) 1 NWLR (PT. 484) 695

FMBN V. Adesokan
(2001) 11 NWLR (PT. 677) 108 @ 109

On the failure to endorse the Originating Process which they submitted referring to **Order 2 Rule 4 High Court Rules and S. 97 S & CPA.** That it is the duty of the Court Registrar to endorse the Process with the appropriate word and not the Plaintiffs. That such error cannot be visited on the Plaintiffs. He referred to the cases of:

RMAFC V. Onwukweikpe
(2009) 15 NWLR (PT. 1165) 592

Broad Bank of Nigeria Limited V. Olayiwola
(2005) 3 NWLR (PT. 912) 434

That the Plaintiffs cannot be held responsible or be punished for that omission of the Registrar of the Court. That the allegation that the Writ was altered was most unfounded. That the Writ was presented as it is and endorsed by the Registrar of the Court and served on the Defendant by the same Registrar. That there was no

alteration. That the Defendant has not presented before the Court any Writ that was served on it before the alteration as he alleged. That the Defendant has the duty to prove that assertion but he has not done so in this case.
The Plaintiffs urged Court to do refuse and dismiss the Motion with heavy cost as Defendant has waived his right to complain given all the further steps he had taken in this Suit.

COURT:

It has been preached in several judicial pronouncements in Court decision and other fora that Courts are enjoined at all times to do substantial justice in any case pending before them. This is because technical justice does no one good. It does not benefit the Judgement Creditor. It does not benefit the Judgement Debtor. It does not benefit the public or the polity. The only thing that technical justice does is that it wastes the time of the Court and the resources of the parties, including the resources of the party who had successfully obtained technical Judgement.

It is no secret that once a party has taken several bold "incriminating" and binding steps in the proceeding, such party has waived several of its right to complain about certain irregularities which it suppose to complain about before taking the bold steps in the case.

This is particularly so when the complaints are what is very Preliminary in the Suit. The journey of justice is ever forward and not backward. Shunting has no place in

justice. Once it is manifestly clear that a Process or an application will lead to shunting in the delivery of justice, the Court frowns at it and usually will not entertain or where already entertained, will not heed to such.

Judicial shunting only leads to a waste of the precious judicial time which should be used to do substantial justice. Technical justice is no longer part of jurisprudence. What applies here is Substantial Justice done with dispatch following appropriate procedure permitted by law.

The implication of striking out a Suit is that the owner of the Suit will have an option of correcting whatever wrong that has been committed by rectifying any omission in the matter that is struck out and re-filing such Process in the same Court. This usually takes a few hours or a few days, weeks or months depending on the person or the nature of the case. So in order to ensure that substantial justice is done and done fast the Court is enjoined to determine the issues raised in such an application, and where they are not weighty, the Court treats same as mere irregularities. This is the reasoning behind the provision of Order 2 High Court Rules of FCT 2018. Where that is the case the Court dismisses such application. But where the issues raised in the application to strike out is weighty, the Court will do the needful by not striking it out.

So where the application is not and will not affect the root of the issues in dispute, the Court treats it as mere irregularity.

The essence of the wide and unending discretionary power of the Court is to take care of the short comings of man be

it the parties to the Suit or the Registrar of the Court. That is why the Court under the Rules has the power to make Orders whether sought for or not and abridge time and do all such other things that will aid the end of justice of the case pending before the Court.

The exercise of such powers must at all times be judicial and judicious. This discretionary power of the Court include the Court checkmating any abuse of Court process which may be occasioned by unnecessary applications which may be filed by any of the parties in a matter pending before the Court. All these are done in the interest of justice to the parties and the public.

In this application the Defendant/Applicant had sought for an Order of this Court to strike out the Suit of the Plaintiff because the Writ was not endorsed for service on him at Nasarawa State as required under the S. 97 of Sheriff and Civil Process Act. And that the Writ was altered without the Order of the Court. It is imperative to state that this matter was filed on the 2nd day of June, 2017 and the Defendant/Applicant was served via an Order for Substituted Service made on the 3rd day of July, 2017.

The Defendant personally endorsed the receipt of the Process in the copy of the Order on the 30th day of October, 2017. He entered appearance conditionally. He did not raise any objection to anything. The Defendant/Applicant only filed a Notice of Conditional Appearance and nothing more.

On the 23rd day of January, 2018 when the Plaintiff opened its case, the Defendant was asked by the Court

whether he has any reason why the Plaintiffs should not open its case that day he said he has no reason.
The Plaintiffs' Counsel opened its case, called 2 Witnesses, closed its case. The Defendant/Applicant Counsel Cross-examined the Plaintiffs' 2 Witnesses after which the Plaintiffs closed its case.

The matter was reserved for Defendant to open its defence. Rather than doing so the Defendant filed the present application. Meanwhile before then he had filed his Statement of Defence. He made an attempt to make an amendment long after the Plaintiff had closed its case, the Court dismissed the application in its Ruling.

Rather than open his defence the Defendant filed this application seeking the Court to strike out the Suit because of the reason the Court had stated earlier in this Ruling.

From all these the question is should this Court strike out this Suit based on the reasons and submission of the Defendant? Should doing so be in the interest of justice of this case at this stage?

It is my humble view that there will be no justice if this Suit is struck out. Striking it out will not in any way aid the end of justice of the case.

To start with it is the Registry of the Court that endorses the Writ. It is from the Registry that the Writ is served by the Court Bailiff. Any endorsement of a Writ is not done by the party – Plaintiffs in a case. So the submission of the Defendant/Applicant on this cannot stand because the Court cannot visit the "sins" of the Registrar of the

Court on an innocent Plaintiffs.

Moreover, the alleged alteration on the Writ was not done by the Plaintiffs. Again the Defendant did not show to the Court any other Writ which shows that there were eight (8) days on the face of the Writ before it was altered by the Plaintiffs as he erroneously and deceivingly alleged.

Most importantly the Court cannot strike out a Suit in which the Plaintiffs has closed its case on the ground that an alteration in the preamble to the Writ was done without the Order of the Court and that there was no endorsement showing that the Writ is for service on the Defendant in Nasarawa state. Meanwhile the service was done per an Order stating that service was to be effected outside jurisdiction in Nasarawa State. That Order of Court made on the 3rd day of July, 2017 suffices. It supersedes any endorsement that the Registrar of the Court can make. That Order was what heralded the service of the Writ on the Defendant. This Order was served on the Defendant personally. He acknowledged receipt of same.

So this Court holds that the service of the Process of the Writ on the Defendant and the Writ so served on him are in total compliance with the provision of the S. 97 S & CP Act since the Order of Court is more effective than a mere endorsement on the Writ.

Again the Defendant was not able to exhibit and prove that there was a Writ which had eight (8) days and that it was served on him or existed and later altered. Since he could not do so, this Court believes and holds that there was no such Writ and that the alleged alteration does not

exist.

The Court also holds that the present application from all indication is a clear and calculated ploy to waste the time of the Court and delay and dog the wheel of justice in this case.

It is a gross abuse of Court Process. More so when such frivolous and unmeritorious application is filed by a very senior Counsel who holds a Doctorate Degree in Pharmacy. Technicality does not aid or do justice.

This application is a gross abuse of Court Process. It lacks merit and it is frivolous. It is therefore DISMISSED.

This is the Ruling of this Court.

Delivered today the _____ day of _____ 2020 by me.

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K.N. OGBONNAYA
HON. JUDGE