

**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/CV/70/2019
DATE: 24TH SEPTEMBER, 2020**

BETWEEN:

DANIEL HASSAN BWALA

-

CLAIMANT

AND

**MARWA MADGI CONSTRUCTION COMPANY LTD
MR. SAEED ALATRACH**

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DEFENDANTS

Parties absent.

A.A. Abogede for the Claimant appearing with E.E. Ndah Esq.

Imhanbe Osagie for the Defendant.

Claimant's Counsel – The matter is for ruling and we are ready.

R U L I N G

This ruling is predicated on a Notice of Preliminary Objection filed by the Defendant's counsel dated 29/5/2020 praying this Honourable court for the following reliefs:

1. An Order of this Honourable Court dismissing the instant suit for lacking in merit.
2. And such other order(s) as the Honourable Court shall deem fit to make in the circumstances.

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

- (a) The instant originating process is not signed by a legal practitioner.
- (b) There is no reasonable cause of action against the Defendants by the Claimant.
- (c) There is no Suit Number in this case.

Learned counsel to the Defendant/Applicant also filed a 3-page written address dated 29/5/2020 wherein counsel distilled the following issues for determination:

1. Whether the instant suit was initiated by due process.
2. Whether there is a reasonable cause of action against the Defendants by the Claimant.
3. Whether the instant suit has a valid Suit Number.

On Issue 1, it is the submission of counsel to the Defendants/Applicants that the instant suit was not initiated by legal due process. It is settled law that the only person that is competent to sign a process of court must be one registered and licensed as a legal practitioner in Nigeria. See *MOBILE OIL (NIG) PLC v YUSUF* (2012) 9 NWLR Pt 1304 P. 56 Paras D – F.

In the instant case, the writ was issued for D.H. Bwala Esq. LL.M (UK) MCI Arb (UK), the name of the person who issued it for him is not known. Court is urged to dismiss this suit for being incompetent.

On Issue 2, it is the submission that the instant suit has no reasonable cause of action; that the Claimant in paragraph 16 of his statement of claim indicated that the Defendant has paid him. The Claimant alleged that the Defendant's failure to pay him

timeously occasioned serious inconvenience but failed to show the court that he was ejected from the premises as a consequence of the alleged delay in payment of his rent.

It is submitted that in the absence of reasonable cause of action, the only course open to the court is to dismiss the suit. See EMENIKE v P.D.P. (2012) 12 NWLR Pg 572 ratio 13.

On Issue 3, it is the submission that the instant suit has no Suit Number; as the case was filed in the year 2020. Court is urged to dismiss this suit.

In response to the submission of learned counsel to the Defendants, the Claimant's counsel filed a 7-page reply dated 24/6/2020 wherein counsel distilled the following issues for determination:

1. Whether the instant originating process is not signed by a legal practitioner known to law.
2. Whether there is no reasonable cause of action against the Defendants by the Claimant.
3. Whether this suit has no suit number.

On Issue 1, it is the submission that the person that signed the originating process on behalf of D.H. Bwala Esq. is a legal practitioner in accordance with Section 2(1) of the Legal Practitioners Act with Supreme Court Number SCN 098312.

On Issue 2, it is the submission that the Defendant hurriedly paid the outstanding N1 Million in November 2019 when this matter has

been filed; that the Claimant are entitle to be paid damages for the embarrassment, loss and inconveniences caused by their refusal to pay the Claimant.

It is the contention of the Claimant that there is a reasonable cause of action against the Defendant.

On Issue 3, it is the submission that the Claimant after several demands on the Defendants filed Suit Number CV/70/19 as an undefended list suit on the 18/10/2019 and the suit was subsequently transferred to the general cause on 12/3/2020. Court is urged to hold that this suit was filed in 2019 and not 2020 as alleged by the Defendants and not to dismiss this suit.

I have carefully considered the processes filed and submission of learned counsel on both sides, for the justice of this application, I do adopt the issues formulated by learned counsel on both sides as the issues for determination by this court as follows:

1. Whether the instant originating process is not signed by a legal practitioner known to law.
2. Whether there is no reasonable cause of action against the Defendants by the Claimant.
3. Whether this suit has no suit number.

On Issue 1, it is the contention of the Defendants that the originating process that initiated this suit was not signed by a legal practitioner. That it was signed by an unknown person.

The Claimant counsel also contended that the originating process was duly signed by a legal practitioner as defined by Section 24 of the Legal Practitioners Act.

Now, a cursory perusal at the writ of summons dated 18/10/2019 which initiated this suit shows clearly that the writ of summons was not signed/issued by a legal practitioner as required by law.

As stated earlier, this suit was filed under the undefended list procedure but was subsequently transferred to the general cause list for trial and this court on 12/3/2020 ordered parties to file their respective pleadings.

However, instead of the Claimant to file his statement of claim, went ahead to re-file his writ of summons which is dated 24/3/2020 with the leave of this court to amend his writ of summons.

A cursory look at the said writ of summons shows that it was signed by an unknown person on behalf of D.H. Bwala; who is the Claimant in this suit. The N.B.A. Seal of the purported person that signed the said writ of summons was not affixed on same as required by law.

I must state here that it is unacceptable by this court for a writ of summons duly issued on 11/5/2020 to bear a 2019 suit number. It is clear that Suit No. CV/70/19 filed and issued on 18/10/19 under the undefended list is not same with the originating summons filed and issued on 11/5/2020 without the leave of this court to amend the writ of summons.

In the light of the above, I find no difficulty in coming to terms with the learned counsel to the Defendants that the originating summons issued on 11/5/2020 on behalf of D.H. Bwala Esq. was issued by an unknown person. The writ of summons is therefore incompetent and is liable to be struck out; and is hereby struck out. It will amount to academic exercise to delve into other issues.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
24/09/2020

Claimant's Counsel – We thank the court for the well considered ruling.

Defendant's Counsel – We thank the court for the ruling. We shall be asking for cost of N10,000.00 only.

Claimant's Counsel – We oppose the application for cost and urge the court not to grant any cost.

Court – After listening carefully to the submission of the learned counsel on both sides as regard to issue of cost, I award non in order to encourage the parties to entire reconcile as client and his counsel.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
24/09/2020