

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 22
CASE NUMBER : SUIT NO: CV/2771/19
DATE: : THURSDAY 17TH SEPTEMBER, 2020

BETWEEN

HIGH CHIEF ABIOLA OGUNDOKUN } **CLAIMANT/
RESPONDENT**

AND

1. VANGUARD MEDIA LIMITED } **DEFENDANTS/
2. VANGUARD NEWS PAPER** } **RESPONDENTS3.**
THE EDITOR, VANGUARD NEWS PAPER }
4. HIGH CHIEF NAVY CAPT. A. B. AJUMOGOBIA }
5. CHIEF IBIM MASI BRIGGS } **DEFENDANTS/
6. CHIEF JACOB KARIBI DOKUBO BRIGGS** } **APPLICANTS**
7. CHIEF SOLOMON W.Y. BRIGGS }
8. CHIEF FESTUS DANIEL CAPTAIN BRIGGS }
9. CHIEF DUMO JOHN MEMBERE }
10. CHIEF C.F.L. MEMBERE }

RULING

This Ruling is at the instance of Defendants/Applicants who approached this Court on the ground of jurisdiction. The grounds upon which the Application is brought are as follows:-

1. The Writ of Summons was not signed by the Claimant or his Counsel as required by Order 6 Rule 2(3) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018).
2. The Writ of Summons was not properly endorsed to be served outside the jurisdiction of this Honourable Court as required by Section 97 of the Sheriff's and Civil Processes Act and Order 2 Rule 4 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018.
3. Certificate of Pre-Action Counseling was not filed by Claimant Counsel as required by Order 2 Rule 2 (e)

of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018.

4. Noncompliance with the Provision of Order 4 Rule 9 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018.

In line with law and procedure a written address was filed wherein a lone issue was formulated for determination to wit “*whether in the light of the issues raised in this objection this Honourable Court can exercise jurisdiction to hear and entertain this suit?*”

Arguing on the above issue, learned counsel submit that it is trite law that jurisdiction is the threshold of an adjudicating body, and that where no jurisdiction is found, no adjudication can competently be handled and that certain conditions precedents must be met conjunctively in Order to cloth a court with the requisite and competent jurisdiction to hear and entertain any matter or suit. We commend to my lord the case of ***AJAO & ORS VS ALAO***

& ORS. (1986)2 N.S.C.C 1327 @ 1341 Paras 20-30 where the Supreme Court in support of the afore-stated assertion, stated thus:

It is well settled that a Court is competent where all the conditions for its exercise of jurisdiction are satisfied. In **MADUKOLU VS NKEMDILIM (1962)1 all N.L.R 587 at P. 594, BAIRAMAN F.J.** has laid down the test, which has been relied upon by this Court on several occasions. See **SKEN-CONSULT (NIG) LTD. & ORS VS UKEY (1981)1 S.C 6.** These are that a Court is competent where:

1. Its statutory composition is properly constituted as regards numbers and qualification;
2. The subject matter of the action is within its jurisdiction;
3. The matter before the Court is initiated by due processes of law, and upon the fulfillment of any condition precedent to the exercise of jurisdiction.

Counsel submit further that Order 6 Rule 1 and 2(3) of the Rules of this Court provides that *“originating process shall be prepared by a Claimant or his legal practitioner and shall be clearly printed on A4 good quality paper”* and *“each copy shall be signed by the legal practitioner or by the Claimant where he sues in person and shall be certified after the verification by the registrar as being a true copy of the process filed.”*

Counsel argued that by the said provision of Order 6 Rule 2 Sub Rule 3 of the Rules of this Honourable Court, the Writ of Summons in this suit ought to have been signed by the Claimant or his Solicitor but was not signed by either of them. The Writ was issued by Aare Olumuyiwa Akinboro, SAN and as such we submit that he is the Solicitor of the Claimant who ought to have signed the said Writ, not Boniface Edet Bassey. We further submit that a writ cannot be signed by proxy, it can only be signed by the Claimant or his Solicitor and same having

not been signed by either of them is fundamentally and incurably defective.

Court was urged to strike out the suit.

Upon service, the Claimant filed a response to the notice of preliminary objection wherein he stated that the law is trite that the court has the power to look at documents and processes before it in resolving any question before it. Court was urged to look at the signature page of the Claimant's Statement of Claim (Page 23) where the name of Boniface Bassey was clearly listed among others as the Claimant's Solicitors. ***AGBAISI VS EBIKOREFE (1997)4 NWLR (Pt. 502) 630 at 648 Para D.***

Counsel further submit that the instant Writ of Summons was issued as a Concurrent and being a concurrent writ, the endorsement prescribed to be on same is not that provided Section 97 of the Sheriff and Civil Process Act. We submit that the right endorsement for such Concurrent

Writ is as provided in Section 98 of the Sheriff and Civil Process Act (SCPA) provides thus:

Section 98 SCPA:

“A writ of summons for service out of the State or the Capital Territory in which it was issued may be issued as a concurrent writ with one for service within such State or Capital Territory and shall in that case be marked as concurrent”.

Counsel submit that the words of Section 98 above must be given literal interpretation and it does not require any aid or reference to any other Section of Sheriff and Civil Process Act, and that where the Writ is otherwise valid, failure to endorse it as required by the Sheriff and Civil Process Act cannot have the effect of nullifying the Writ rather it renders the service of the Writ voidable. *P.W T.H.A.G VS CEDDI CORP LTD. (2012)2 NWLR (Pt. 1285) Pg. 465 at 490 Paras E-H.*

In response to Order 4 Rules 9 of the Rules of this Court as argued by the Applicant's Counsel, learned counsel contended that where the prescription of the law is that the Writ should be of a certain manner before it can be valid for service, it is the duty of the registrar to perform his duty of endorsing the process. The Plaintiff cannot be punished for the negligence or tardiness of the registrar in performance of his duty.

Court ought to dismiss the application.

Upon service, the Defendants/Applicants filed a reply wherein they submitted that Order 6 Rule 1 and Rules 2(3) of the Rules of this Honourable Court, it is the Claimant or his Counsel as reflected on the writ that can sign the writ of summons. ***SLB CONSORTIUM LTD. VS N.N.P.C (2011)9 NWLR Part 1252 Page 317 at 337 to 338.***

Counsel submit that, the provision of Section 97 of the Sheriff's and Civil Processes Act are very clear and are to

the effect that in so far as a Writ is to be served outside the jurisdiction in which it was issued it must have thereon the endorsement pursuant to the said Section 97 and as such even a Concurrent Writ must be so endorsed.

Court:- I have gone through the Notice of Preliminary Objection filed by the 4th, 5th, 6th, 7th, 8th, 9th and 10th Defendants/Applicants cum the response of the Claimant/Respondent and the reply on points of law filed by the Applicant. I shall be brief in addressing the issues raised in the interest of justice.

It is a settled law that a court of law is competent where all the conditions for its exercise of jurisdiction are satisfied i.e:

1. Its statutory composition is properly constituted as regards number and qualification.
2. The subject matter of the action is within its jurisdiction.

3. The matter before the court is initiated by due processes of law, and upon the fulfillment of any condition precedent to the exercise of jurisdiction. ***MADUKOLU VS NKEMDILIN (1962)1 ALL NWLR 587 at P. 594.***

A writ of summons is an originating process by means of which actions are commenced. The competence of such process is a pre-requisite for a valid and subsisting claim and where the process fails to comply with the law, the action is a nullity.

MINISTRY OF WORKS, ADAMAWA STATE & ORS VS ISIYAKU YAKUBU & ANOR (2013)6 NWLR (Pt. 1351) SC. 481.

It is the contention of the learned counsel for the Applicants that the Writ of Summon before this Honourable Court is unsigned and therefore, the jurisdiction of this Honourable Court was not properly activated.

It is instructive to state here that Order 6 Rules 1 and 2(3) of the Rules of this Honourable Court provides that *“originating process shall be prepared by a Claimant or his Legal Practitioner and shall be clearly printed on A4 good quality paper “and” each copy shall be signed by the Legal Practitioner or by the Claimant where he sues in his person and shall be certified after the verification by the registrar as being a true copy of the process filed”*.

Was the Writ of Summon before this Court signed by the Legal Practitioner as envisaged by the law..?

A glance at the writ will reveal that it was issued by one Aare Olumuyiwa Akinboro, SAN of Akinboro & Co. and on top of the above name is handwritten name of Boniface Basseyy with his signature and Nigerian Bar Association seal affixed to the writ.

Indeed, the Supreme Court held in the case of ***WILLIAMS VS ADOLE/STAM INTERNATIONAL***

LTD. (2017)17 NWLR (Pt. 1560) Page 1, had this to say:-

That a process prepared and filed in court by a Legal Practitioner must be signed by a Legal Practitioner, and it insufficient signature if the Legal Practitioner simply write his name over and above the name of his firm in which he carries out his practice. The name Ladi Williams, though handwritten, was very clear and legible.

From the above, it is obvious that the said writ has comply with the law. I so hold. Defendants are hereby overruled on this issue.

The next argument is on the issue of endorsement of the Writ by the Registrar of the Court, in line with Section 97 of the Sheriffs and Civil Processes Act.

It is the argument of the learned counsel for the Applicants that, it is a mandatory provisions of law and

must be complied with and that any step taken on a process which does not comply with mandatory provisions would be a nullity.

It is instructive to state here that the instant Writ of Summons was issued as a concurrent Writ of Summons for service on some parties (1st – 3rd) Defendants within jurisdiction and 4th to 10th Defendant outside jurisdiction.

Section 98 of Sheriffs and Civil Processes Act provides as thus;

“A Writ of Summons for service out of the state or the Capital Territory in which it was issued may be issued as a concurrent writ with one for service within such state or Capital Territory and shall in that case be marked as concurrent”.

Indeed, the cardinal principle of law of interpretation is that a court, when interpreting a provision of a statute must give words and the language used their simple and

ordinary meaning and not to venture outside it by introducing extraneous matter into it. ***UNIPETROL NIG. PLC VS E.S.B.I.R (2006)8 NWLR (Pt. 983) 624 at 636.***

It is my ruling that the writ of summons having been so endorsed as concurrent writ has fully complied with the requirements of the applicable law. I so hold.

Learned counsel for the Applicant further contended that, by the Provision of Order 2 Rule 2 (e) of the Rules of this court, the filing of a certificate of pre-action counseling by the Claimant Counsel is mandatory and it is a condition precedent to the exercise of jurisdiction by this Honourable Court.

I have perused through the originating process filed by the Claimant in this Court. It is obvious that pre-action counseling certificate was filed in compliance with the law, as shown in page 34 of the writ.

From the above therefore, I shall dismiss this Notice of Preliminary Objection. Consequently same is hereby dismiss.

For want of credible and sustainable argument, the said preliminary objection is liable to fail and be dismissed. It is hereby so dismissed.

Justice Y. Halilu
Hon. Judge
17th September, 2020

APPEARANCES

UCHE A. – for the Claimant.

E.F. OLOWOFELA with W.I. ACHUKE – for the 1st –
3rd Defendants.

The other Defendants not in court and not represented.