

**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
HON. JUDGE HIGH COURT NO. 13
COURT CLERKS: T. P. SALLAH & ORS
DATE: 16/07/2020
FCT/HC/CV/1603/19**

BETWEEN

SAMUEL NWOGA CLAIMANT

AND

**1. FIRST BANK OF NIG. PLC
2. ILIYASU HARUNA YAMAH DEFENDANTS**

RULING

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

The Defendants however filed a Notice of Preliminary Objection dated 10th June,2019 (filed on 11th June,2019) and another Notice of Preliminary Objection dated 3rd October,2019 (filed on 4th October,2019) to the hearing of the instant suit.

The grounds for the Notice of Preliminary Objection dated 10th June,2019 and filed on 11th June,2019 are reproduced hereunder:-

1. No service of the Court process on the 1st Defendant at the corporate headquarters. (Pt. 200) FWLR (sic).
2. A defective writ: the appearance is to be done within 30 days and not 14 days as appears on the face of the Writ.
3. The mentioned Police Report is not attached contrary to Order 2 Rule 2(d) and R 4 of the Rules of this Honourable Court so as to prevent the Plaintiff from springing surprises on the Defendant at trial.
4. No leave was has and obtained (sic) for the writ to be served outside jurisdiction of this Court on the 1st Defendant in Lagos.
5. No endorsement on the writ as required by S. 97 of the Sheriff and Civil Process Act.
6. The address for service of the writ within is not required of the Plaintiff's Counsel by Rule of this Court is not endorsed in any of the Plaintiff's court process (sic).
7. The writ is patently and fundamentally defective, and consequently, robbed of this Honourable Court the competence and jurisdiction to entertain this suit.
8. This Honourable Court is urged to strike out this suit for lacking in merit.

I must mention that it is incredible that a legal practitioner worth his salt prepared the foregoing grounds with all its grammatical errors. This Honourable Court is however under

obligation to consider every application no matter how nonsensical it may appear.

The grounds of the other Notice of Preliminary Objection dated 3rd October,2019 and filed on 4th October,2019 are as follows:-

1. With respect to the purported 2nd Defendant, the grounds for the objection are that the 2nd purported Defendant is an agent of a disclosed principal of First Bank of Nigeria Limited, a company incorporated in Nigeria.
2. The purported 2nd Defendant cannot be sued while acting for a disclosed principal. The Plaintiff, in his paragraph 2 and 20 of both the witness statement on oaths admits that the purported 2nd Defendant is an agent of the 1st Defendant.

The Defendants filed a written address each in respect of each of the Notices of Preliminary Objection.

The Plaintiff's Counsel only filed a Reply to the Notice of Preliminary Objection dated 3rd October,2019 to which the Defendant's Counsel filed a Reply.

At the hearing of the Preliminary Objections, learned Counsel to the Plaintiff sought to argue orally that both Notices of Preliminary Objections are the same. I think not. The grounds of objection of both Notices are clearly different and raise different issues.

I will now consider the merits of each Notice of Preliminary Objection anon.

NOTICE OF PRELIMINARY OBJECTION DATED 10/6/19 AND FILED 11th June,2019:

Counsel to the Defendant formulated the issue for determination of Notice of Preliminary Objection dated 10th June, 2019 as follows:-

"Whether this Honourable Court is seized of the jurisdiction to try the matter and whether the suit is brought within the ambit of the law."

Learned Counsel submitted that the procedure for service on the 1st Defendant, a company, was not complied with in this case. He relied on Section 78 of the Companies and Allied Matters Act and the case of **KALU V. EKE (2004) ALL FWLR (PT. 200) P. 1455**. It is his position that service on a company must be at the registered office of the company and it is therefore bad and ineffective if it is done at a branch office of the company. He contended that a police report mentioned in the Statement of Claim was not frontloaded in accordance with the Rules of this Court. Counsel posited that the requisite leave was not obtained for the writ to be served outside jurisdiction of this Court on the 1st Defendant at its LagosHead/registered Office. He further contended that there was no endorsement on the writ as required by Section 97 of the Sheriff and Civil Process Act.

Now, under **Section 78 of the Companies and Allied Matters Act** a company is to be served with a court process in the *manner provided by the Rules of Court*. I have carefully considered the Rules of this Court. It certainly does not require service of a court process on a company to be at its registered office as erroneously posited by the Defendants. 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**. Under that provision a company may be served with originating court processes *by delivery at the head office or any other place of business of the organisation within jurisdiction of the Court*. In the instant case, the 1st Defendant-company's address for service endorsed on the writ of summons is as follows:-

"To the Defendants at Abuja, 1st Defendant at the Regional Headquarters CBD Abuja."

Proof of service shows that the 1st Defendant was served at its office within Abuja. The Defendant has not denied that the address at which it was served within jurisdiction of this Court is not its place of business. In the circumstances, service of the Originating processes in this case on the 1st Defendant at its place of business within Abuja is in compliance with the Rules of this Court. This ground of objection fails.

On the ground relating to failure to attach a police report with the writ in line with the Rules of this Honourable Court requiring frontloading of processes, it is my firm belief that the frontloading of documents is a rule of practice meant to aid convenience and speedy dispensation of justice. Mere failure to frontload documents along with the writ of summons does not vitiate the claim or proceedings. See the case of **ZENITH BANK V. IFEADI (2019) LPELR-46773(CA)**. This ground of objection also fails.

On the issue of failure to obtain leave to serve outside jurisdiction, I must say that the Defendant's Counsel is belabouring himself over obsolete law. The extant 2018 version of the Civil Procedure Rules of this Honourable Court no longer requires leave of Court to issue and serve a writ of summons meant for service outside jurisdiction. Be that as it may, I have said that the address for service on the 1st Defendant as endorsed on the Plaintiff's writ of summons is meant for service within the jurisdiction of this Court. The issue of service of the originating processes on the 1st Defendant outside jurisdiction therefore does not arise in this case. Consequently, all the Defendants' grounds of objection that have to do with service of writ outside jurisdiction go to no issue. Their contention on requirement of 30 days for appearance to a writ issued out of jurisdiction

and endorsement on same ought to be discountenanced and it is accordingly discountanced.

It follows therefore that all the grounds of the Notice of Preliminary Objection dated 10th June,2019 and filed on 11th June,2019 must fail. The Defendant's Counsel's issue for determination must be resolved against the Defendants and in favour of the Plaintiff. In the circumstances, I find the Notice of Preliminary Objection dated 10th June,2019 and filed on 11th June, 2019 to be without any merit whatsoever. It is appalling that such an application will be brought purely to waste the precious time of this Honourable Court and it is hereby dismissed with costs assessed at N25,000.00 against each Defendant in favour of the Plaintiff.

NOTICE OF PRELIMINARY OBJECTION DATED 3rd October,2019 AND FILED 4th October, 2019:

In respect of this Notice of Preliminary Objection dated 3rd October, 2019 the Defendant's Counsel submitted that the fact was known that the 2nd Defendant was acting as a legal practitioner to the 1st Defendant. Counsel posited that the law is clear that where a principal is disclosed, he takes liability for the acts done by his agent on his behalf. He relied on the case of **SAMUEL OSIGWE V. PLPLS MANAGEMENT CONSORTIUM LIMITED (2009) 3 NWLR (PT. 1128) P. 378**. He submitted therefore that the 2nd Defendant, as an agent, is not liable for the actions of his

principal and urged this Court to strike out the writ of summons on this ground.

For his part, Counsel to the Plaintiff submitted in his reply that in the law of contract, an agent is not liable for his actions where the principal is known or disclosed but it is not the same thing in the law of tort. He relied on the case of **OKEKE V. PETMAG NIG. LIMITED (2005) 4 NWLR (PT. 915) P. 245** and a plethora of like cases. He urged this Court to discountenance the preliminary objection.

The Defendants' Counsel reiterated his position in his own reply to the Plaintiff.

Now it is well settled principle of law that an agent acting on behalf of a disclosed and known principal is not liable for his acts of agency. Only the principal should be liable as the act of an agent, for a particular purpose, is the act of the principal. See the cases of **LEVENTIS TECH. LTD. V. PETROJESSICA ENT. LTD. (1992) 2 NWLR (PT. 224) P. 459** and **UKPANA V. AYAYA (2010) LPELR-8590(CA)**.

This principle may however not be available in criminal law and the law of tort.

Under the law of tort, an agent who commits a tort on behalf of his principal and the principal are joint tortfeasors and may be sued jointly or severally. See the cases of **DUMEZ (NIG) LTD. V. UKPENI (1991) 4 NWLR (Pt. 188) P. 734** and **BEKS KIMSE (NIG) LTD V. AFRICA & ANOR (2015) LPELR-24436(CA)**.

In the case of **FCMB PLC V. ONOBO & ORS (2015) LPELR-40421(CA)**, the Court of Appeal had this to say:-

"It is trite Law that an agent who commits a tort on behalf of his principal and the principal are joint tortfeasors and may be sued jointly or severally. In other words, an agent who commits a tort on behalf of his principal is a joint tortfeasor with his principal."

In his statement of Claim, the Plaintiff alleged that the 2nd Defendant was not only Counsel to the 1st Defendant but was also appointed Receiver/Manager and in which capacity he personally led the alleged acts of trespass complained of. It is therefore alleged that the 2nd Defendant wasn't just acting in his capacity as legal practitioner when he committed the alleged trespass. Trespass is a tort. The facts as alleged by the Plaintiff in his statement of claim therefore disclose the 1st and 2nd Defendants to be joint tortfeasors being principal and agent respectively. It follows that the Plaintiff is at liberty to sue either of the Defendants or both for the alleged acts of trespass committed by one on behalf of the other. I therefore hold that the Plaintiff was on *terra firma* to have sued both Defendants as was his choice. The instant action is therefore competent against the 2nd Defendant.

In the circumstances, the 2nd Defendant cannot be heard to contend that he was improperly sued. Consequently, the ground of the Notice of Preliminary Objection dated 3rd October, 2019 and filed on 4th October, 2019 fails. It is

hereby dismissed with costs assessed at N25,000.00 against each Defendant and in favour of the Plaintiff.

**HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
25/02/2020**

Parties:- Absent.

No legal appearances

Court:-Case adjourned to 11th May, 2020 for hearing.

**Sign
Judge
25/02/2020**