

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 10

SUIT NO: FCT/HC/CV/71/2019

BETWEEN:

L AND T INTERNATIONAL LIMITED.....CLAIMANT

VS

1. KYC INTER PROJECT LIMITED

2. HONOURABLE MINISTER OF THE FCT.....DEFENDANTS

RULING

By a Motion on Notice, with No M/8315/2020 dated 6/7/2020 and filed on the same day, brought pursuant to Order 43 Rule 1 (1) (2) (3) & (4), Order 2 Rule 2 (5), Order 5 Rule 2 (1) (2) of FCT High Court (Civil Procedure) Rules, Section 36 (1) of 1999 Constitution (As Amended) and under the inherent jurisdiction of this Hon. Court, the Applicant pray the court for the following:-

1. An Order of this Hon. Court setting aside the Writ of Summons and other originating process in this suit for being irregular and stale/expired prior to service thereof on the Applicant without renewal.

2. An Order awarding cost of ~~N~~500,000.00 (Five Hundred Thousand Naira) against the Claimant in favour of the Applicant.
Or
3. An Order of this Court declining jurisdiction from entertaining this suit for that same is commenced by undue process of law.
4. And the Omnibus reliefs.

The grounds of the motion are:-

- i. That the Writ of Summons in this suit is irregular and cannot reconciled with form 1 to the Rules of this Honourable Court. Moreover the writ was served on the 1st Defendant/Applicant in March 2020 after its expiration.
- ii. That failure of the Claimant/Respondent to renew the life of the Writ of Summons after three calendar months being on or about 14th January, 2020 prior to service thereof on the Applicant is fatally irreversible. This suit is thus commenced by undue process of law.
- iii. That having retain service of Counsel, attended court repeatedly and filed processes, the Applicant is entitled to recover cost against the Claimant.

In support of the motion is an affidavit of eight (8) Paragraphs sworn to by one Michael Ayuba, the group MD & CEO of Applicant with one annexure marked Exhibit "A". Also filed a Written Address, adopts the said address, in urging the court to grant the relief sought.

In opposition to the motion, Claimant/Respondent filed a Written Address on 9/7/2020, adopts the said Written Address, in urging the court to dismiss the application.

In the Written Address of Applicant, Emmanuel Onuoha of Counsel formulated three (3) issues for determination namely;

- A. Whether considering the present features of Form I in the Civil Procedure Rules of this Honourable Court 2018, the Writ of Summons in this suit is not irregular and thus fatally defective.
- B. Whether Writ of Summons which is not served after three calendar months is not expired and thus liable to renewal under the FCT High Court Civil Procedure Rules 2018.
- C. Whether the Applicant herein is not entitled to cost under the principle of restitution intergrum in event this motion is upheld.

On issue A, submits the Writ of Summons is irregular and gross departure from the direction provided in form 1 to the Rules and Order 5 Rule 2(1) & (2) of the Rules which allows court to set it aside for irregularity. Submits the word "may" in Order 5 Rule 2(1) & (2) is in the mandatory sense and commend the court to Ude Vs Nwara (1993) 2 SCNJ, 47.

On issue B, submits service of the writ and other processes on Applicant after three months without any renewal was in breach of Rules of Court, refer to Kolawole Vs Alberto (1989) 2 SCNJ, 1. Further submits an irregular, void or expired writ does not qualify as due process of law for the commencement of an action before court and commend the court to

Madukolu Vs Nkendilim (1962) 2 SCNLR, 341, Tukur Vs Govt. of Gongola State (1989) 4 NWLR (PT. 3) 231, Lasisi Ajibola Vs Aminu Ojora (1961) ANLR, 283.

On issue C, submits its settled law that the entire essence of civil proceeding is captured in the Legal phase "restitution in integrum" meaning a party should be restored as much as possible to the position he was prior to the occurrence of a thing for which the party approach the court, refer to Amira Nig Ltd Vs Mal Nig Ltd (2001) 17 L. R (PT. 742) @ 469. Submits Applicant expended sum of ₦500,000.00 as direct consequence of service of irregular, expired and void writ and court is bound to restore Applicant to its original financial status.

In the Written Address of Claimant/Respondent, Akin Akintan of Counsel submits a sole issue for determination and that is;

"Having regard to the clear provisions of Order 6 Rule 6 of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018 as well as form 1 in the appendix to the same Rules of court, whether the application should be granted"

And submits that the provision of Order 6 Rule 6 (1) of the Rules of Court overrides form 1 of the Appendix to the Rules which is the fulcrum upon which the application is premised, refer the court to FCSC Vs Laoye (1989) 2 NWLR (PT. 106) 652 @ 711, Nwole Vs Iwuagwu (2004) 15 NWLR (PT. 895) 61 @ 85. Further that contrary to the contention of Applicant, its right to fair hearing was never breached as Order 9 Rule 1(1) and (3) limits the period to enter appearance to 7 days and not 14. That its obvious

Applicant again in making the submission wrongly uplifted the format contained in form 1 of the Appendix to the Rules to override clear provisions of Order 9 Rule 1 (1) & (3). Submits the law is settled that failure to strictly adhere to forms and formats prescribed in the Rules be treated as mere irregularity, refer to Order 5 Rule 1 (1) & (2) of Rules of Court and *Okada Airlines Ltd Vs FAAN* (2015) 1 NWLR (PT. 1439) 1 @ 15, *OKpetu Vs Commissioner of Police Delta State* (2001) 1 FWLR (PT. 69) 1317.

On issue of cost, submits such practice is extremely unethical and refer to *Guinness (Nig) Ltd Vs Nwoke* (2000) 15 NWLR (PT. 689) 135 @ 150, *Ihekwoaba Vs A C B Ltd* (1998) 10 NWLR PT. 571 590 @ 610 – 611, *Nwanji Vs Coastal Service Nig Ltd* (2004) 11 NWLR (PT. 885) 552 @ 567. Further that Section 83(3) Evidence Act forbids admissibility of any documentary evidence made by party to proceeding during the pendency of a matter.

Having carefully considered the submission of both counsel for and against the grant of this application and the statutory and judicial authorities cited the court finds that only one (1) issue calls for determination and that is;

“Whether or not the Applicant has made out a case to warrant the grant of the reliefs sought in this application”.

The contention of Applicant, in the main, is that the Writ of Summons in this suit has expired before service of same was affected on Applicant without its renewal and therefore contravenes the provisions of the Rules of court.

Order 6 Rules 6 (1) of the Rules provides;

“The life span of every originating process shall be 6 months”

And by the provisions of Sub-rule (ii)

“Whether a court is satisfied that it has proved impossible to serve an originating process on any Defendant within its life span and a Claimant applied before its expiration for renewal of the process, the court may renew the original or concurrent process for three months from the date of such renewal”

And in determining whether or not the life span of the writ in this instant suit has expired before it was served on Defendant/Applicant, recourse must be had to the records of court and this the court is empowered to do. See *Agbareh Vs Mimra* (2008) All FWLR (PT. 409) 559 @ 564. I have accordingly, taken a considered look at the records and found that the writ and other processes in this instant suit was filed on 14/10/2019 and was served on Defendant/Applicant on 13/3/2020. And by computation, it was for a period of about 5 months before the said writ and other processes was served on Defendant/Applicant and does not in any way contravene the provisions of the Rules as canvassed by the Applicant because its life span as at when it was served on Defendant/Applicant has not expired and does not require a renewal. In the view of court, the contention of the applicant is a clear misconstruction of the provisions of the Rules. The life span of an originating process under the rules is 6 months and not 3 months as contended by Applicant.

On the argument by Applicant that the writ of summons in this suit is irregular as it's not in line with form 1 of the appendix to the Rules. This argument by Applicant, in my view, is a mere academic because the provisions of the Rules supersedes and take precedence. In any event, by virtue of Order 5 Rule 1 of the Rules, failure to strictly adhere to forms and formats prescribed in the Rules are to be treated as irregularity.

On the contention by Applicant that it's right to fair hearing was contravened because the writ of summons in the instant case directed that Defendants/Applicants enter appearance within 8 days. Order 9 Rule 1 (1) of the Rules is clear on the period limited for Defendants to enter appearance which is 7 days. It is clear that the Applicant by virtue of its argument still labored under the form 1 of the appendix to the Rules which cannot override clear Provisions of the Rules. And the fact that the writ directed Defendant/Applicant to enter appearance within 8 days does not make it irregular and at best treated as mere irregularity.

From all of these, it is the finding of court that the Defendants/Applicants has not established a case that will warrant the court to set aside the Writ of Summons and other originating process of this suit I so hold.

On the relief 2, an Order awarding cost of ₦500,000.00 having found that the Defendants/Applicants has not made a case to warrant the court to set aside the writ of summons and other originating processes, that is the relief 1, the relief 2 in consequence fails and of no moment.

In conclusion, this application by Defendants/applicant fails and it's hereby dismissed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

17/12/2020

APPEARANCE:

EMMANUEL ONUOHA ESQ. FOR THE 1ST DEFENDANT/APPLICANT

AKIN AKINTAN FOR THE CLAIMANT/RESPONDENT