

**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. 12**

**COURT CLERKS: T. P. SALLAH & ORS**

**DATE: 10/12/2020**

**BETWEEN**

**FCT/HC/CV/74/19**

**SPARKLEAN SERVICES NIG. LTD—————**

**CLAIMANT/RESPONDENT**

**AND**

**1. NIGERIAN COMMUNICATIONS COMMISSION**

**DEFENDANT/APPLICANT**

**2. DIGITAL BRIDGE INSTITUTE ...**

**DEFENDANT/RESPONDENT**

### **RULING**

The Claimant herein commenced the instant action in this Court against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants vide a writ of summons and statement of claim filed on 18<sup>th</sup> October, 2019. Upon being served, both Defendants filed their respective memorandum of appearances with leave of Court while the 1<sup>st</sup> Defendant also filed its statement of defence.

The 1<sup>st</sup> Defendant has now filed the instant Motion on Notice No. M/8511/2020 dated 12<sup>th</sup> May, 2020 and filed the same date pursuant to the provisions of Orders 43 and Order 49 and under the inherent jurisdiction of this Court seeking the following reliefs:-

1. An Order of this Court setting aside the writ of summons in this suit for non-compliance with the provisions of Section 97 of the Sheriff and Civil Process Act.
2. And for such order or further orders as this Honourable Court may deem fit to make in the circumstances.

The grounds for the application as per the motion paper are as follows:-

1. The suit as presently constituted before this Court is incompetent.
2. The writ was not marked as required by the mandatory provisions of section 97 of the Sheriff and Civil Process Act.
3. That the Court has no jurisdiction to hear this suit.

In support of the application, the 1<sup>st</sup> Defendant/Applicant filed an affidavit of 9 paragraphs and a written address dated 12<sup>th</sup> May,2020 in compliance with the Rules of this Court.

In opposition to the application, the Claimant/Respondent filed a 22 paragraph counter-affidavit with its Counsel's written address dated 8<sup>th</sup> July,2020. In response, the 1<sup>st</sup> Defendant/Applicant filed a Reply affidavit and an address.

The 2<sup>nd</sup> Defendant/Respondent is not opposed to the application. In her address, learned Counsel to the 1<sup>st</sup> Defendant/Applicant formulated a sole issue for determination of the application, to wit:-

*"Whether the suit of the Claimant/Respondent as presently constituted before this court is not incompetent by reason of the non-compliance with the provision of section 97 of the sheriff and Civil Process Act and the court therefore without jurisdiction to entertain the suit."*

The Claimant/Respondent's Counsel on the otherhand, distilled two issues for determination as follows:-

1. Whether the Claimant/Respondent's suit marked as CONCURRENT WRIT on the face is in compliance with the provisions of Section 98 of the Sheriff and Civil Process Act being a suit to be served within and outside of the Federal Capital Territory.
2. Whether the 1<sup>st</sup> Defendant/Applicant has not waived her right of objection having participated in the proceedings of this suit.

To resolve and determine this objection, I am of the view that the Claimant/Respondent's issues can be adequately addressed under the 1<sup>st</sup> Defendant/Applicant's sole issue for determination which I hereby adopt as mine. The issue for determination is therefore thus:-

***"Whether the suit of the Claimant/Respondent as presently constituted before this Court is not incompetent by reason of the non-compliance with the provision of section 97 of the Sheriff and Civil Process Act and the court therefore without jurisdiction to entertain the suit."***

Before I launch full swing into the merits of the instant application, it has struck me that the party complaining about non-compliance with Section 97 of the Sheriffs and Civil Process Act in this suit is the 1<sup>st</sup> Defendant and not the 2<sup>nd</sup> Defendant. In other words, the 2<sup>nd</sup> Defendant is not complaining but rather the 1<sup>st</sup> Defendant's complaint it appears is more than the bereaved

In any event by virtue of **Section 97 of the Sheriffs and Civil Process Act, CAP. S6 LFN 2004**, every writ of summons issued in this Court for service outside its jurisdiction i.e. outside the FCT, shall carry an endorsement to the effect that it is to be served outside the FCT and in the state in which it is to be served.

Now, the writ of summons in this case indicates the 1<sup>st</sup> Defendant/Applicant's address for service is at Maitama District, Abuja while the 2<sup>nd</sup> Defendant/Respondent's address for service is at Oshodi, Lagos. The writ is therefore for service on the 1<sup>st</sup> Defendant/Applicant within jurisdiction while it is to be served on the 2<sup>nd</sup> Defendant/Respondent outside jurisdiction. While the endorsement required in Section 97 of the Sheriffs and Civil Process Act might possibly apply to the copy of the writ to be served on the 2<sup>nd</sup> Defendant/Respondent outside jurisdiction, it certainly does not apply to the copy of the writ to be served on the 1<sup>st</sup> Defendant/Applicant within jurisdiction. Yet, it is the 1<sup>st</sup> Defendant/Applicant who is now complaining of failure to endorse in compliance with Section 97 of the

Sheriffs and Civil Process Act and not the 2<sup>nd</sup> Defendant/Respondent who ought to be entitled to the provision.

The Court of Appeal was faced with a similar situation in the recent case of **HWANDE V. BIEM & ORS (2019) LPELR-46868(CA)**. Deciding the issue of whether a party can be a beneficiary of the provisions of the law on service of Court process outside jurisdiction, when his address for service is within the State the process was issued, the Court of Appeal held as follows:-

*"The address for service of the originating summons on the appellant is "C/o His Residence Makurdi Township Makurdi Local Government Area of Benue State".*

*There is no complaint that he was served outside Benue State. It is the addresses for service on the 2nd Respondent and 3rd respondent that are in Abuja, outside Benue State. The appellant is not therefore entitled to the benefit of the provisions of Sections 97 and 98 of the SCPA. In the case of **ODU'A INVESTMENT COMPANY LTD V TALABI (1997) 52 LRCN 2107, 2183**Ogundare JSC, considering Sections 97 and 99 of the SCPA 1990, stated:-*

*"Reading carefully the wordings of Sections 97 and 99 of the Act I am of the firm view that the provisions of these sections are for the benefit of the Defendants alone rather than of the general public. The purpose of Section 99 is to give a Defendant served in a state outside the one in which the writ was issued sufficient time to enable him make appearance. The endorsement to the writ required by Section 97 informs him that the writ was issued in another state."*

*It needs be added that the same reasoning applies to Section 98 of the SCPA. The party whose address for service is within the state where the originating process was issued is not a beneficiary of the provisions. It therefore does not lie in his mouth to raise the issue of non - compliance with Sections 97, 98 and 99 of the SCPA or the issue of failure to obtain leave to issue or serve such writ. In **Zakirai v Muhammad (2017) 17 NWLR (Pt. 1594) 181**, Appellant resided within Kano State where the originating summons was issued and*

served on him. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' addresses for service were in Abuja but they were eventually served in Kano State. Appellant raised the issue that the originating summons was not endorsed as required by the SCPA and that it was not served at Abuja. At pages 231 - 232, Augie, JSC, opined thus:

*"It is the Appellant who was not affected by the service within jurisdiction instead of outside jurisdiction; as specified in the process, that took the challenge and fought the battle from the trial Court to the Court below, and finally to this Court. Was he right? I will just say that it was none of his business..."*

At page 232, His Lordship added that –

*"In this case, the Appellant is not a Knight in Shining armour and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not need him to fight their battles."*

*I adopt the position of the Supreme Court above and only add that the Appellant is not entitled to fight a battle that is not his own as he has done under this issue."*

In the same vein, I hold the view in the instant case that it does not lie in the mouth of the 1<sup>st</sup> Defendant/Applicant to complain that the writ in this case was not endorsed as required by Section 97 of the Sheriffs and Civil Process Act and I so hold. Since service outside jurisdiction is not meant for the 1<sup>st</sup> Defendant/Applicant, it cannot complain and hence the 1<sup>st</sup> Defendant can be described as a middlesome interloper. Consequently, the instant application brought by the 1<sup>st</sup> Defendant/Applicant complaining of non-compliance with Section 97 of the Sheriffs and Civil Process Act is incompetent. The 1<sup>st</sup> Defendant/Applicant lacks the necessary locus to bring same. The instant application ought to be dismissed and it is accordingly dismissed. The sum of N50,000.00 is hereby awarded to the claimant against the 1<sup>st</sup> Defendant.

---

**HON. JUSTICE D. Z. SENCHI**  
**(Presiding Judge)**  
**10/12/2020**

Parties:- 2<sup>nd</sup> Defendant represented by Amos Blessing (Snr. Officer Legal)

EzeVinmartins:- With me is TriyaOkonkwo for the Plaintiff/Respondent.

OkoluEjike:- With me is OnuohaChinedu for the 1<sup>st</sup> Defendant

W. O Akenuwa:- For the 2<sup>nd</sup> Defendant

Court:-Case adjourned to the 8<sup>th</sup> March, 2021 for hearing.

**Sign**  
**Judge**  
**10/12/2020**