

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY 6TH NOVEMBER, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/1561/2020

BETWEEN:

ADEYEMI MAYOWA OLUSEGUN

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APPLICANT

1. NIGERIA POLICE FORCE

2. FCT, POLICE COMMAND, GARKI

3. MRS. RITA CHIKEZIE

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RESPONDENTS

RULING ON PRELIMINARY OBJECTION

In this case the Plaintiff had challenged the Defendants claiming that they violated his constitutional right as already read out.

- (1) A Declaration that his arrest and detention from 22nd – 26th April, 2020 and 4th May, 2020 till date at the Nigeria Police Force Command Garki II, Abuja by the Respondents, their servants, agents and privies was unlawful, unconstitutional and is gross violation of the Applicant's**

right to personal liberty and freedom of movement guaranteed under S. 35 & 41 of the Constitution and Article 6 & 12 (1) African Charter. CAP A9 Vol. 1 LFN 2001.

- (2) A Declaration that the detention of his brother's vehicle – RSH 05 HF from the 4th of May, 2020 till date by the Respondents, their agents, privies, etc is a gross violation of his right to property and freedom of movement.**
- (3) An Order directing the Respondents to immediately and unconditionally release the vehicle for their custody.**
- (4) An Order directing the Respondents to immediately release him from detention.**
- (5) An Order directing the Respondents to jointly and severally pay to Applicant Five Million Naira (₦5, 000,000.00) as exemplary and aggravated damages for the unlawful violation of the said Rights.**
- (6) An Order directing the Respondents to publish an apology to Applicant on two (2) National Dailies.**
- (7) Omnibus Prayer.**

The Court had reserved the matter for Judgment having been deceived by the Counsel for the Claimant who unashamedly lied to the Court stating that he had served the Respondents with their Originating Process while in truth he never did. He had deceptively told the Court that the 3rd Respondent was served long before

the date of hearing, when in actual fact the 3rd Defendant was never served as at that day.

The Court, believing him went ahead allowed the lying Counsel – Isaac Folarunso Esq. to move his application and then reserved for Judgment. But the truth came out and the Court discovered that the Defendants particularly the 3rd Defendant was not served as her Counsel came to Court on the day the matter was reserved for Judgment, stating that his client was never served or notified about the case. The Court halted delivering the Judgment and allowed the Defendants to exercise their constitutional right to fair-hearing.

The 3rd Defendant upon receipt of the Originating Process filed a Preliminary Objection and a Counter Affidavit challenging the Suit of the Claimant.

In the Preliminary Objection the 3rd Respondent claimed that this Court lacks the jurisdiction to entertain this Suit because the Originating Process was not served on the 3rd Respondent personally. That the leave of Court was not obtained before the 3rd Respondent was served by substituted means as is statutorily required. That the main Process in the Suit was not signed.

In the Written Address the 3rd Respondent did not raise any Issue in particular. Her Counsel on her behalf submitted that the Court is empowered to look at the records in the case file to do substantial justice. They referred to the case of:

PDP V. Ezeonwuka & Anor

(2017) LPELR – 42563 (SC)

That the 3rd Defendant was not served with the Originating Motion in this Suit personally. That it is the service of the Originating Process on a party that vests Court with the jurisdiction.

That by Order 5 of the FREP 2009 that the Respondent should be served with the Process personally and directly and not through a 3rd party. That it is only where direct personal service fails that the party can be served via substituted means with the leave of Court. That there is no evidence to show that the 3rd Defendant was served personally on the 2nd July, 2020. That the proceeding conducted earlier was without jurisdiction. That it is the duty of Court to ensure that the method of service of Process on the 3rd Defendant is such that the 3rd Respondent will know about the pendency of this Suit. They referred to the case of:

**Kido V. Ogunmola
(2006) LPELR – 1696 (SC)**

That the Statement accompanying the application and the Written Address were not signed. They referred to:

**Omega Bank V. OBC Limited
(2005) 8 NWLR (PT. 928)**

They urged the Court to grant the application by dismissing the Suit. But that if the Court is minded to consider the merit of the main Suit, that the Court should set aside the Ruling that adjourned this case for Judgment so that the 3rd Defendant can have her say.

The Plaintiff Counsel did not file any Counter or Written Address in response to the Preliminary Objection. But when the Court ordered the Plaintiff Counsel to respond orally, the Counsel said that he is not challenging the Preliminary Objection since the Preliminary Objection is for dismissing the Suit and setting aside the Ruling for adjournment for Judgment.

It is important to note that the evidence before this Court showed that the 3rd Defendant personally endorsed the Originating Motion by acknowledging the Process. The application was signed. The Statement in lieu was equally signed as well the Affidavit was signed and sealed by a Commissioner for Oath contrary to the submission of the 3rd Respondent in this Preliminary Objection. Technicality does no justice to anyone. This Preliminary Objection is a clear ploy to waste the time of the Court and it is an abuse of Court Process.

So going by the above, the Preliminary Objection is NOT MERITORIOUS. This Court therefore DISMISSES same.

This is the Ruling of this Court.

Delivered today the __ day of _____ 2020 by me.

**K.N. OGBONNAYA
HON. JUDGE**