

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON THURSDAY THE 28TH DAY OF JANUARY 2021.

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CV/2044/2019

MOTION NO: M/11816/2021

NORTHSIDE APARTMENT LTD ----- CLAIMANT

AND

ASO SAVINGS & LOANS PLC-----DEFENDANT/APPLICANT

RULING

The Claimant in this case filed a Writ of Summons on the 30th of May 2019 Claiming for five reliefs against the Defendant. The Defendant has now filed a motion on notice brought pursuant to Order 6 Rule 6 of the FCT High Court Civil Procedure Rules 2018 and under the inherent jurisdiction of this Court praying for an order striking out this suit for lack of jurisdiction and for such orders that the Court may deem fit to make in the circumstances.

The grounds upon which the Defendant filed this application are that:

1. The Claimant filed this suit against the Defendant via a writ of summons on the 30th day of May 2019 at the Registry of this Honourable Court.

2. The Writ of Summons was served on the Defendant sometime in March 2020.
3. Under and by virtue of the rules of this Honourable Court, a Writ of Summons must be served on a Defendant not later than six months after it is filed or nine months, where there is an extension granted by the Court within the six months lifespan.
4. The lifespan of the Writ of Summons had expired by the time it was served on the Defendant.
5. No application was made to extend the lifespan within the six months timeframe, and none was granted by this Honourable Court,
6. In the circumstances of the instant case, this Court lacks the vires to hear the suit and the only option open to the Court is to strike out this suit.

Attached to the motion is an affidavit of 4 paragraphs deposed to by one Julius Ayuba, a law office assistant in the law firm of the Defendant. Also attached is a written address as argument in support of the application wherein Counsel submitted that Order 6 Rule 2 of the Rules of this Court gives the Claimant a window to seek an extension of not more than 3 months and that must be explored within the 6 months period, which the claimant failed to do. Counsel submitted that the effect of the nonservice of the writ on the Defendant within 6 months of the issuance of the writ, this Court should decline jurisdiction and strike out this suit.

Counsel relied on the following case laws;

1. Madukolu V. Nkemdilim (1962) 2 SCNLR 234

2. Rossek V. ACB Limited (1993) 8 NWLR (Pt.312) @ 382
3. Kolawale V. Alberto (1985) 1 NWLR (Pt.14) 96 at 99
4. Food and Commodities V. Aremu (1988) 2 NWLR (pt.134). 554 at 564-565

The Claimant was duly served with this motion but failed to file a counter affidavit to the motion.

I have examined the Defendant's motion, the affidavit and the written address in support of the application as well as the writ of summons initiating this case. The law is trite that the validity of an originating process in a proceeding before a Court is fundamental, as the competence of the proceeding is a condition sine qua non to the legitimacy of any suit as it borders on the issue of jurisdiction of the Court to hear the matter.

By Order 6 Rule 1 of the FCT Civil Procedure Rule 2018, the lifespan of every originating process shall be 6 months. Order 6(2) also provide an option for renewal of the writ where it is impracticable to serve the Defendant within the stipulated time as stated in Order 6(1). Upon a thorough examination of the processes in the Court's file, particularly the writ of summons, the Writ was issued on the 30th of May 2019 and from the examination of the Endorsement and Return copy of the Writ of summons, the Defendant was served on the 16th day of March 2020, which has clearly exceeded the 6 months as prescribed by the Rules of this Court. On the face of the Writ of Summons initiating this action, it is clearly stated that "*This writ is to be served within three calendar months from the date of issuance, or if renewed within three calendar months from the date of the last*

renewal, including the day of such date, and not afterwards.”It is clear that the service of the Writ was about four months after the prescribed 6 months and by that, the Claimant served an expired Writ to the Defendant without applying to the Court for a renewal and no order renewing the writ has been granted as prescribed by Order 6 Rule 6 (1) and (2) of the Rules of this Court.

Hence, the consequence of failure of the Claimant to renew the Writ before service of same on the Defendant is that the writ has become invalid as at the time it was served, and it is therefore incapable of activating the jurisdiction of this court.

The invalidity of the writ of summons unfortunately is a potent feature which prevents the court from exercising its jurisdiction to determine the substantive matter. The Supreme Court in the case of KENTE V. ISHAKU & ORS (2017) LPELR-42077(SC) Per Eko J.S.C held in page 27 para A-B that

“the validity of originating processes in a proceeding like the originating summons, writ of summons or notice of appeal, is the sine qua non for the competence of the proceeding that follows or that is initiated by such process”

Also, in the case of EWUKOYA & ANOR V. BUARI & ORS (2016) LPELR-40492 (CA) Per Nimpar J.C.A in pg 6-7 para D-A held

“...the issue of the validity of the writ raises the question of jurisdiction of the Court as an invalid writ is worthless and cannot activate the jurisdiction of the Court to

consider or entertain it. See the case of NEW NIGERIA BANK v. DENCLAG LTD (2005) 4 NWLR (PT. 916) 573. Moreso, the Court in the case of OLAGBENRO & ORS v. OLAYIWOLA & ORS (2014) LPELR - 22597 (CA) held: "... a Court is only competent to adjudicate over a matter, when all the conditions precedent for its having jurisdiction have been satisfied. Thus, an action begun by an incompetent process will divest the Court of jurisdiction to entertain the matter."

Order 6 Rule 6 (1) of the FCT Rules which provides a life span of 6 months anticipated the eventuality of having difficulties in service of the Writ, hence it created an opportunity for renewal of the life span of the writ under Rule 6 (2), which opportunity the Claimant failed to utilize before service of the process on the Defendant. This Court therefore lacks the requisite jurisdiction or competence to determine the substantive suit, consequently, this suit as presently constituted is hereby struck out.

Parties: Parties absent.

Appearances: Ifeanyichukwu Ugu-Amaechi, Esq., for the Defendant/Applicant.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI

JUDGE

28TH JANUARY 2021