

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU**

**ON MONDAY 22<sup>nd</sup> DAY OF MARCH, 2021**

**MOTION NO: FCT/HC/M/12256/2020**

**SUIT NO: FCT/HC/CV/3243/2020**

**BETWEEN:**

**EBENEZER DELE OJO ..... CLAIMANT/  
RESPONDENT.**

**AND**

**EATONGATE CAPITAL LIMITED ..... DEFENDANT/  
APPLICANT.**

**RULING**

The Defendant/Applicant in this matter filed a Preliminary Objection dated 1/03/2021 praying the Court for an Order of Court dismissing/striking out this suit for want of jurisdiction.

The application is anchored on two grounds as thus:-

- (1) The mandatory provisions of Sections 96 and 97 of the sheriffs and Civil Process Act has not been complied with in serving the Writ of Summons.

- (2) The subject matter of the suit took place outside the jurisdiction of this Court.

A Written Address dated 1/03/2021 was filed in support of the Notice of Preliminary Objection. The Learned Counsel for the Applicant in dismissing the need for Affidavit sought to rely on the grounds the application is predicated on the processes already before the Court.

The Learned Counsel formulated a sole issue for determination to wit:-

“Whether, having regards to the facts of the case, the Court has the requisite jurisdiction to entertain this suit.”

Learned Counsel argued the above issue succinctly in urging the Court to grant the application.

Upon service of the Notice of Preliminary Objection the Claimant/Respondent filed Reply on point of Law dated 3/03/2012.

The Learned Counsel made submissions mostly on the failure of the Defendant/Applicant to support the application with Affidavit evidences and urged the Court to discountenance the Preliminary Objection and dismiss same for being incompetent.

I have given consideration to the Notice of Preliminary objection, particularly the grounds in support and the Written Address of Counsel for the Applicant on the one part and the Reply on point

of law and submissions of Learned Counsel for the Claimant/Respondent on the other part.

The Applicant challenges the competence of the Claimant's writ and by extension jurisdiction of the Court to entertain the suit on two grounds.

The first ground is challenging the competence of the Writ of Summons of the Claimant/Respondent as it was served outside jurisdiction of this Court without complying with the mandatory provisions of the Sheriffs and Civil Process Act which provides under Section 97 as follows:-

“Every Writ of Summons for service under this part out of the state or the capital territory in which it was issued shall, in addition to any other endorsement or notice required by the Law of such state or the Capital Territory, have endorsed thereon a notice to the following effect (that is to say), ‘This summon(or as the case may be) is to be served out of the . . . . state (or as the case may be) and in the . . . . . state (or as the case may be).’”

Learned Counsel relied on the authority in **IZEZE V. INEC & ORS (2018) LPELR-44284-SC** Where Apex Court said the following in respect of none compliance with Section 97 of the Sheriff and Civil Process Act:-

“When the words used in Section 97 of Sheriff and Civil Process Act are given their ordinary plain meaning without embellishments, it becomes very

clear that the provision is mandatory. Service of an Originating Process without the endorsement as clearly stated under Section 97 supra is not an irregularity, it is a fundamental defect which renders the originating process void.”

Clearly, it is the wish of the Applicant to rely on the processes filed before the Court as proof of this fact. However the Learned Counsel for the Respondent has argued that the Application must fail as the process has not be forwarded or exhibited before the Court as he contended it is an issue of fact and not Law.

The question that begs for an answer at this point is whether the Claimant can succeed placing reliances only on the processes before the Court without filing an affidavit in support.

The answer is an emphatic yes. The Learned Counsel for the Respondent has cited numerous authorities that support the position, where the necessity of adducing evidences does not exist.

I do not find that it is necessary in this case to adduce or tender the process for which the objection was raised. I rely on the authority in **ODUMEGU OJUKWU V. YARADUA & ORS (2007) LPELR 9008 (CA)** where the Court held that.

“Preliminary Objections are rather determined on the face of the processes filed and no more. A Preliminary Objection is an objection against the irregularity of a Court process which if it succeeds

terminate the proceedings at that stage. All that is necessary is that the objector puts the other party on notice of his objection and the ground for the objection. Evidence at this point is completely irrelevant. In fact the basic gain accruing from a successful Preliminary Objection is the obviation of the necessity to lead evidence in trial.”

Accordingly, this being an issue that has to do with what is in the record of the Court i.e processes filed. I have examined the Claimants Writ of Summons and found no endorsement in line with provision of Section 97 of the Sheriffs and Civil Process Act and hereby found that the first ground of objection i.e none compliance with mandatory provision of Section 97 of the Sheriff and Civil Process Act, succeed.

On the second ground of the objection the Applicant contends that the subject matter of this suit took place outside the jurisdiction of the Court.

The Applicant relied on paragraph 2 of the Statement of Claim which provides that the Defendat/Applicant resides and carries on business in Lagos State and the basis of the Defendants breach or default (in the wrongful presentation of cheque took place at Lagos outside the territorial jurisdiction of this Court.

On the second ground I will have to agree with the Learned Counsel for the Respondent that where on Applicant wishes to or intends to raise an objection bothering on facts, the proper mode to bring the application is by a motion on notice supported by an affidavit stating the facts in support of the

application. Whereas the statement of Claim reveals that the Applicant is residing and carries on business in Lagos and the a cheque was wrongly presented in Lagos these are not the only basis for assuming jurisdiction. For instance where was the agreement entered into? The Respondent relied on the authority of the cases of **UTB V. OZOEMENA (2007) ALL FWLR (Pt.358), 1014 at 1041** paragraph D-F where the SC held .....

“However, if a Preliminary objection issues the exclusive domain of Law and flirts with facts of the case, then the burden rest on the Applicant to justify the objection by adducing facts in an affidavit.”

In view of the finding above the second ground must fail.

In all, the preliminary objection succeed in part (in view of finding on first ground of objection). Accordingly, this suit is hereby struck out for incompetance.

**SIGND**  
**HON. JUDGE**  
**22/3/2021**

### **LEGAL REPRESENTATIONS**

- (1) Adedeji Adegbite for the Claimant/Respondent.
- (2) Yemisi Akinyemi Aremu for the Defendant/Applicant.