

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE NYANYA JUDICIAL DIVISION**  
**HOLDEN AT COURT 7 NYANYA ON THE 4<sup>TH</sup> DAY OF FEBRUARY, 2021**  
**BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE**

**SUIT NO.FCT/HC/CV/696/17**

**COURT CLERK: BWALA NATHAN & ORS.**

**BETWEEN:**

1. ZANPA ZHIMABE  
2. DR. SIR LAWRENCE O. ARINZE } .....CLAIMANTS

**AND**

1. MOHAMMED ISA } .....DEFENDANTS  
2. EDWIN AKWUEH }

**RULING**

I have read the Notice of Objection. It is brought pursuant to Rule 17(5) of the Rules of Professional Conduct. It prays for the following:

- (1) That the Originating Processes before this Court are Incompetent and improperly filed.
- (2) An order striking out the suit for being incompetent and an abuse of Rules of Professional Conduct for Legal Practitioners.

The grounds for the objection are:

- (1) Dr. Sir Lawrence O. Arinze who prepared and signed the Originating Processes is the lawyer representing both himself and the 1<sup>st</sup> Claimant in this Suit.
- (2) The rules mentioned above forbids him from doing so.

Learned Counsel argued in his Address that the Originating Processes served on the Defendant was not sealed. He further contended that the 2<sup>nd</sup> Claimant is Dr. Sir Lawrence O. Arinze who is also the Counsel to the 1<sup>st</sup> Claimant. That the name of Dr. Sir Lawrence O. Arinze 2<sup>nd</sup> Claimant appears on the Originating Processes as Counsel for both 1<sup>st</sup> and 2<sup>nd</sup> Claimants.

He argued that the Originating Processes are therefore incompetent.

The 2<sup>nd</sup> Claimant's Counsel on the other hand argued in his Written Address that the wordings of Rule 17(5) of the Rules of Professional Conduct are clear and

unambiguous. He canvassed that “**shall not appear**” and not **shall not prepare and sign**”. That the Court should accord a word the ordinary meaning. That the express mention of a thing excludes any other not mentioned.

That to factor in the word prepared and signed into Rule 17 (5) of Rules of Professional Conduct will constitute a coup.

He further urges the Court to exercise its judicial powers under Section 56(6) of the 1999 Constitution.

That a contravention of the Rules of Professional Conduct does not erode the powers of the Court as stated in Section 251 of the 1999 Constitution.

I have carefully read and considered the Objection and the Reply thereto as summarised above. The first Issue is that the Writ of Summons and Statement of Claim is not sealed as required by law.

By Order 2, Rule 4 of the High Court of the FCT (Civil Procedure) Rules 2018, an Originating Summons shall be

as in Form 3, 4 or 5 to these rules with such variations as circumstances may require.

It shall be prepared by the Applicant or his Legal Practitioner and shall be sealed and filed in the Registry and when so sealed and filed shall be deemed to be issued.

I have looked at the Originating Process before me. It is not sealed as contended by Defendant/Applicant's Counsel.

However, the failure to seal the Originating Process is the negligence of the Registrar of Court.

The omission cannot therefore be visited on the 2<sup>nd</sup> Claimant's Counsel. In other words, a litigant cannot be punished for the offence of the Registrar of Court.

Secondly, by Order 5 (1) of the rules of Court, failure to comply with the requirement of these rules shall not nullify the proceedings.

It is an irregularity. The Court has discretion to regularise such steps.

On the 2<sup>nd</sup> issue whether failure to comply with Rule 17(5) vitiates the competence of the Originating processes.

I shall reproduce same.

***“A Lawyer shall not appear as Counsel for a client in a legal proceedings in which the Lawyer himself is a party”.***

In the instant case, the Writ of Summons and all other processes were filed by the 2<sup>nd</sup> Claimant Dr. Sir L.O. Arinze who described himself and put up himself as Claimant's Counsel. The question therefore is whether the 2<sup>nd</sup> Claimant has appeared for the 1<sup>st</sup> Claimant.

The Claimant has strenuously argued that there is a difference between ***‘shall not’*** and ***‘shall not prepare and sign a document.’***

In my humble view, the import of the signature of the 2<sup>nd</sup> Claimant on the Originating Process and the Claimants description thereon as ***“Plaintiff Counsel”*** suggests he is appearing for himself and the 1<sup>st</sup> Claimant.

The Rules of Professional Conduct states “**shall not appear**”.

He has appeared in this case. I agree with the Defendants’ Counsel that the 2<sup>nd</sup> Claimant is forbidden to appear as such hence the appearance is null and void.

The Writ of Summons cannot stand. It is incompetent and it is accordingly struck out.

.....

**HON. JUSTICE U.P. KEKEMEKE**

**(HON. JUDGE)**

**04/02/21.**

2<sup>nd</sup> Claimant present

1<sup>st</sup> Claimant absent

Defendants absent

2<sup>nd</sup> Claimant appears in person.

Ezenwa Okoli appears for the 2<sup>nd</sup> Defendant with me is Deborah Nwoke.

Signed.

HON. JUDGE

4/2/21