

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT HIGH COURT MAITAMA –ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**

**COURT NUMBER: HIGH COURT NO. 32**

**CASE NUMBER: SUIT NO. FCT/HC/CV/2240/2020**

**DATE: 17<sup>TH</sup> JUNE, 2021**

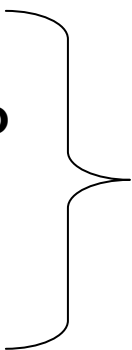
**BETWEEN:**

**BARR SUSSAN C. OKORIE.....CLAIMANT**

**(Trading under the Name and style of Capriconinanna Chambers)**

**AND**

- 1. GLOBAL TRUST MCS LTD**
- 2. MILKLAND HOMES LTD**
- 3. MARCUS POLI NIG LIMITED**
- 4. KHALID BALA ISA**
- 5. ABUBAKAR SALIHU**
- 6. ENGR. NUHU MUSA**
- 7. PERSONS UNKNOWN**



**DEFENDANTS**

**APPEARANCE:**

Godwin Attai Haruna Esq for the Claimant. Claimant is in Court.  
Nasir Saidu Esq for 2<sup>nd</sup> , 3<sup>rd</sup> and 4<sup>th</sup> and 7<sup>th</sup> Defendants (sought to be joined).  
M. M. Yusuf Esq for the 7<sup>th</sup> Defendant sued as unknown.

**RULING**

This ruling is in respect of two Applications. The first is a Motion on Notice with Motion No. M/9506/2020, dated 4<sup>th</sup> day of September, 2020, filed same day, by Nasir Saidu Esq, Learned Counsel to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, Defendants as well as person unknown.

The second is a Notice of Preliminary objection dated 31<sup>st</sup> day of August 2020 but filed on the 4<sup>th</sup> day of September, 2020 by M. M Yusuf Esq Learned Counsel to the 7<sup>th</sup> Defendant (sued as person unknown).

Now owing to the nature of the preliminary Objection, it is pertinent that it be considered first.

The reliefs sought in the Notice of Preliminary Objection are as follows:-

1. An Order granting leave to the 7<sup>th</sup> Defendant sued as unknown person to reflect his real name to wit: Hussaini Ahmed Abdulkarim.

And upon the grant of prayer one ante, prays for the relief hereunder as follows:-

2. An Order of this Court striking out this suit for lack of Jurisdiction to entertain same
3. An Order of this Honourable Court declining Jurisdiction to hear pending application to wit Motion on Notice dated and filed on 21<sup>st</sup> July, 2020 pending the determination of this Honourable Court.
4. Such further or other orders as this Honourable Court may deem fit to make in the circumstances.

7 Grounds predicating the Preliminary Objection are as contained in the Notice of Preliminary Objection, along with an Affidavit in support of the Motion on Notice comprised of 6 paragraphs deposed to by one Daniel Jumba, a litigation Secretary in the law firm of Abubakar A. Ashat & Co Chambers/Counsel to the 7<sup>th</sup> Defendant/Applicant. Also in support of same is a written address dated 31<sup>st</sup> of August, 2020.

Meanwhile, in opposition to the Notice of Preliminary Objection/Motion on Notice, the Claimant/Respondent filed a reply on points of law dated 22<sup>nd</sup> day of February, 2021.

In the Applicant's written address in support of this Preliminary Objection, M.M Yusuf Esq for the Applicant, formulated a lone issue for determination to wit:

***"Whether the Plaintiff's Writ of Summons having issued without the requisite leave and endorsement is competent having regard to the provision of Section 97 of the Sheriffs and Civil Processes Act and order 4 Rule 14 of the High Court of the Federal Capital Territory (Civil Procedure) rules 2018."***

Learned Counsel then proceeded to argue on the issue.

Meanwhile, on the part of the Claimant/Respondent also, a lone issue was formulated by Uche George Ibion, Esq for the Claimant to wit:

***"Whether Counsel to the 2<sup>nd</sup>, 4<sup>th</sup>, and 7<sup>th</sup> Defendants has made out a case worthy of Determination by this Honourable Court?"***

The issue was argued by the Learned Counsel to the Respondent.

Well, I have carefully considered this Notice of Preliminary Objection, the Reliefs sought, the grounds predicating same, the supporting Affidavit as well as the written address filed in support of same.

In the same vein, I've equally given due consideration to the Reply on points of law filed by the Claimant/Respondent. In my view, the issue for determination is:-

***"Whether the Applicant has made out a case for the grant of the Reliefs sought?"***

Now, in the instant case, the main grouse of the Applicant (who was sued as person unknown i.e the 7<sup>th</sup> Defendant in the suit) is that the writ of

Summons was issued without requisite leave of Court and mandatory endorsement in compliance with Section 97 of the Sheriffs and Civil Processes Act and order 4 Rule 14 of the Rules of this Court.

I have gone through the Learned Counsel's arguments on the issue in the written address and the authorities cited therein, particularly in paragraphs 3.1-310 thereof and the supporting Affidavit, particularly paragraphs 3 & 4 thereof.

It is averred among other things that the Defendant/Applicant's attention was drawn to a Court process pasted close to his property but bearing description of his House No. B2, situate at Plot 72 (79) Cadastral Zone C05, Kafe District Abuja.

That he resides at C17, Zango Street, Makera, Kaduna south, Kaduna State outside the Jurisdiction of this Honourable Court, and that the above described property belongs to him which he singlehandedly financed its building to completion.

Averred further that no leave of Court was sought or obtained for its issuance and same was not endorsed for service outside Abuja in compliance with Section 97 of the Sheriffs and Civil Process Act.

In paragraph 4 (v) thereof it is averred that it is the duty of the Plaintiff to know names and places of abode of the Defendants in bringing this suit.

First of all let me begin by referring to the records of this Court.

My learned brother Hon. Justice V. S. Gaba (sitting as vacation Judge) by an ex parte order sought and obtained had granted leave to the Claimant to serve the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Defendants processes in this suit via substituted means to wit: pasting same on any conspicuous place within the gate of Plot 72 (79) AD, Zone C05, Kafe District, phase iii Abuja which is the subject matter of this suit. The order was made on the 13<sup>th</sup> day of August, 2020.

On this issue of non compliance with Section 97 of the Sheriff and Civil Processes Act, it is the argument of the Claimant/Respondent's Counsel particularly paragraph 34 thereof, where he submitted that it is unarguable that the Claimant in this matter as at the time of filing this suit, did not know the identity of the 7<sup>th</sup> Defendant as well as his place of abode because those facts were not within the Claimant's knowledge and that the Rules of this Honourable Court empowers the Claimant to describe the said 7<sup>th</sup> Defendant as person unknown.

Learned Counsel cited order 13 Rule 9 of the Rules of this Court in support. For clarity, it is reproduced here under.

***"Order 13 Rule 9:-***

***Where in land matters a Claimant is unable to identify the person against who he claims, he may subject to the Rules of this Court describe such a person as "person unknown".***

Now, although I've considered the submissions of Applicant's Counsel on this issue and the two authorities cited by Yusuf Esq while moving this preliminary Objection, I've observed with all due respect that in the case of **PFIZER INCORPORATED & ANOR V. MOHAMMED** (Supra) cited by Counsel, the Court held that it behoves the Plaintiff and his Counsel to supply the accurate name of the party or corporation the Plaintiff intends to sue or feels he has a right of relief against. In that case, the Court clearly made distinction on where a misnomer arises when the proper party is incorrectly named and where there is a mistake in the party's identity.

In the instant case, the party was sued as an unknown person and it has nothing to do with mistake of identity or misnomer in the party's name.

Secondly, on the case of **ABACHA V. KURASTICS NIG. LTD** (Supra) cited by Yusuf Esq, while addressing the Court on this Preliminary Objection, it is observed that the facts in that case are inapplicable to the instant case.

In the case cited (supra) the Court granted the Plaintiff leave to serve the Defendant outside Borno State and in Oyo State. But, since the Defendant used to reside in Maiduguri Borno State, the Bailiff against order of Court, effected service by substituted means i.e by pasting the process in question at the last known address of the Defendant in Maiduguri, against order for personal service outside Jurisdiction and in Oyo State.

It must be borne in mind that in that case the Defendant was known and his address was also known to be outside jurisdiction. In the instant case, the Defendant was unknown at the time of filing of the writ, therefore, I agree with Claimant's Counsel that the Claimant who sued an unknown person, could not possibly have known that he resides in Kaduna, at the time.

Consequently therefore, it is my considered opinion that the provisions of Section 97 of the Sheriffs and Civil Process Act, as well as Order 4 Rule 9 of this Court's Rules do not come into play here and failure to seek the requisite leave and endorsement does not Rob this Honourable Court of its jurisdiction to entertain this suit. I so hold.

Moreso, as rightly argued by Claimant's Counsel in the address, the object of all types of services of Court processes whether personal or substituted is to give notice to the other party on whom service is to be effected so that he might be aware of and be able to resist, if he may that which is sought against him.

Indeed it is trite law that (Person unknown) is expected to quickly identify himself and apply to be made a Defendant and show that he is a person interested, aggrieved or prejudiced by affected Judgment or order of Court and that such should be given leave.

On this premise, I refer to the case of **PERSONS, NAMES UNKNOWN V. SAHRIS INT'L LTD (2019) LPELR-49006 (SC)**, per Sunusi, J. S. C, at pp 22-31, para F-A.

In the case at hand, the person sued as unknown i.e the 7<sup>th</sup> Defendant has become aware of this pending action, and has through this notice of preliminary objection, applied to be joined as a Defendant in this suit.

Consequently, therefore the 1<sup>st</sup> relief sought is accordingly granted as prayed. The name of Hussaini Ahmed Abdulkarim (Sued as unknown person) is now to be reflected as the 7<sup>th</sup> Defendant in this suit.

Prayers 2 and 3 are lacking in merit and are refused and accordingly dismissed.

I shall now consider Motion NO. M/9506/2020. Brought pursuant to Section 6 (6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended); order 7 Rule 8, Order 4 Rule 7, Order 13 Rule 10, of the F.C.T High Court Civil Procedure Rules 2018, and under the inherent Jurisdiction of this Court.

The Application seeks the following Reliefs:-

1. An order of this Honourable Court substituting the name of the person sued as unknown persons with Alhaji Idris Babangida Nuhu being the owner of House NO. B4, whereof the processes in this suit were wrongly pasted.
2. An Order of this Honourable Court nullifying the service effected by pasting of the Court processes at House No. B4 for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant/Applicants being limited liability Companies.
3. An Order of this Honourable Court perpetually restraining the Plaintiff's/Respondent from further pasting of any Court processes in this suit at House No. B4, not being the subject matter of claim by the Claimant/Respondent in this suit.
4. Upon granting relief 3, An Order of this Honourable Court striking out the name of the 7<sup>th</sup> Defendant/Applicant in this Suit for want of reasonable cause of action against him.

5. Such further or other orders as the Honourable Court may deem fit to make in the circumstance.

The grounds predicating the Motion on Notice are as follows:-

- 1) That the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Applicants are limited liability companies and substituted service cannot be made on them.
- 2) That the 4<sup>th</sup> Defendant/Applicant resides at Kaduna State outside the Jurisdiction of this Honourable Court and the writ was issued without endorsement for service outside jurisdiction.
- 3) That the writ and other accompanying processes are pasted at the House of the 7<sup>th</sup> Defendant/Applicant known and described as No B4 instead of B2.
- 4) That the supporting document of the Claimant/Respondent's claim does not bear House No B4 but B2 and this the 7<sup>th</sup> Defendant/Applicant is not necessary party in this suit except for the fact that the Claimant/Respondent caused the originating processes to be pasted at his house wrongly.

Filed in support of the Motion on Notice, is a 2 paragraphed Affidavit deposed to by Peter Agu, a litigation secretary in the firm of Abdulaziz Ibrahim Co. Counsel to the Defendant herein, an annexure marked Exhibit A, as well as a written address dated 4<sup>th</sup> September, 2020.

Meanwhile, in opposition to the Motion on Notice, the Claimant/Respondent filed a Counter Affidavit of 4 paragraphs deposed to by Godwin Haruna Attai, a Counsel in the law firm of Ibiam George & Co, Counsel to the Claimant, as well as a written address dated 22<sup>nd</sup> day of February, 2021.

In the Applicant's written address, Nasir Saidu Esq, formulated Four issues for determination to wit:

- "1. Whether the 7<sup>th</sup> Defendant/Applicant Alhaji Idris Babangida Nuhu is entitled to be substituted with his name instead of person unknown.***



2. ***whether the purported service of the writ of Summons and accompanying Court processes on the 2<sup>nd</sup>, and 3<sup>d</sup> Applicants/Defendants at House No. B4 was valid and proper.***
3. ***whether the Plaintiffs writ of Summons to be served on the 4<sup>th</sup> Defendant/Applicant who resides in Kaduna having issued without the requisite leave and endorsement is competent having regard to the provision of Section 97 of the Sheriffs and Civil Processes Act and order 4 Rule 14 of the High Court of the Federal Capital Territory, Abuja.***
4. ***whether the Suit discloses reasonable cause of action against the 7<sup>th</sup> Defendant/Applicant?"***

Learned Counsel proceeded to argue the issues separately.

Meanwhile, in the Claimant/Respondent's written address, in support of the Counter Affidavit, Uche George Ibiem Esq, formulated a sole issue for determination to wit:-

***"Whether Counsel to the 2<sup>nd</sup>, 3<sup>d</sup>, 4<sup>th</sup> and 7<sup>th</sup> Defendants have made out a case worthy of determination by this Honourable Court."***

In determining this Application, I will also adopt the issues formulated by the Defendants/Applicants in their written address.

On the first issue which is whether the 7<sup>th</sup> Defendant/Applicant Alhaji Idris Babangida Nuhu is entitled to be substituted with his name instead of person unknown, it is submitted by the Learned Counsel particularly in paragraph 3.1 of the address, that Order 13 Rule 10 of the Rules of this Honourable Court provides that where the Defendant in land matters is sued as unknown person, such a Defendant may by leave of Court apply

for the substitution of his name as a Defendant in lieu of the reference to him as unknown person.

It is observed that there's no averment in the Claimant/Respondent's Counter Affidavit challenging the first issue formulated by the Applicant, and neither is any argument canvassed in that regard.

Therefore, since order 13 Rule 1 of the Rules of this Court, permits a person sued as unknown to apply to substitute his name, this first issue is hereby resolved in favour of the applicant. However, since this Court has in this Ruling granted leave to another Defendant to be joined as 7<sup>th</sup> Defendant and this present Applicant who has shown interest in the subject matter particularly in paragraph 2 of the supporting Affidavit has applied to have his name substituted as 7<sup>th</sup> Defendant against person unknown, shall now be an additional 8<sup>th</sup> Defendant in this suit. I so hold.

On the second issue for determination which is whether the purported service of the writ of Summons and accompanying Court processes on the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants at House NO. B4 was valid and proper, it is submitted by the Learned Counsel that the law is settled that proper service of Court processes on parties to the proceeding are foundational conditions to the exercise of the Court's jurisdiction over any matter. Authorities were cited in that regard.

It is further submitted particularly in paragraphs 3.2. 2-3.2.3 that it is the case of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Applicants that service on a company can only be effected at its registered address. Learned Counsel argued that the purported service on the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants not being their registered address is bad. Learned Counsel placed heavy reliance on the locus classicus case of **GABRIEL EZE V. KALU MARK & MAR-PRIK IND. NIG. LTD (2004) 5 NWLR (PT. 865) 54 at 77-81 paras G-E.**

It is further submitted in paragraphs 3. 2. 5 of the address among other things that service in this suit was effected on the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants by substituted means pursuant to the order of this Court made on the 13<sup>th</sup>

day of August, 2020. And that by virtue of order 7 Rule 8 of this Court's Rules 2018, and Section 78 of CAMA, it is quite clear that service of Court processes on a Company is to be in the manner prescribed by the Rules of Court. That the Rules of this Court does not include service on a Company by substituted means.

Other authorities cited in support include:-

- 1) EMPORION WEST AFRICA LIMITED V AFLON LIMITED & ANOR (2014) LPELR 22975 (CA).**
- 2) RFG LIMITED & ANOR V SKYE BANK PLC (2012) LPELR-7880 (CA).**
- 3) SANBELL INVESTMENT LIMITED V EMLO HOLDINGS LIMITED & ORS (2014) LPELR-22991 (CA).**

Consequently, Leaned Counsel argued that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant's having been improperly served, the said order is liable to be set aside by this Honourable Court and urged the Court to so hold.

Meanwhile, it is deposed in the Claimant/Respondent's Counter-Affidavit, particularly paragraph 3D, that the originating processes of this Honourable Court were duly and properly served on the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as shown in the endorsement and return of the said processes.

In his submissions on this issue, the Learned Respondent's Counsel argued particularly in paragraphs 3-23-33, that the objective of service was achieved in the instant case since the Defendants in this matter are aware of the pendency of this suit against them upon the proper service of the originating processes of this Court. Reliance was also placed on order 7 Rule 8 of the Rules of this Honourable Court.

Indeed, the purpose of service of Court process is to give notice to the other party that there is a pending suit against him and to enable him prepare to do the needful.

I refer to the case of **C. B. N V AT & BS LIMITED (2010) 9 NWLR (PT. 1200) 567 at 585.**

Now, order 7 Rules 8 of this Court's Rules 2018, provides:-

***"Subject to any statutory provision regulating service on a registered Company, corporation or body corporate, every originating process requiring personal service, may be served on a registered Company, corporation or body corporate by delivery at the head office or any other place of business of the organization within the jurisdiction of the Court."***

In the instant case, service was effected on the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants via substituted means to wit: in this suit on any conspicuous place within the gate of Plot 72 (79) CAD, zone C05, Kafe District, Phase iii, Abuja, which is the subject matter in this suit.

Clearly on the process i.e exparte Motion with NO. M/9006/2020, filed on 6/8/2020 seeking order for the said substituted service, listed therein as the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are Milkland Homes Ltd and Marcus Poli Nig. Ltd, which are limited liability companies.

The Rules of this Court are clear, precisely order 7 Rule 8 reproduced above, states that the process is to be delivered at the head office or any other place of business of the organization within the Jurisdiction of the Court.

Now although it is observed particularly in paragraphs 3 & 4 of the Claimant's statement of Claim that both the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants office is at plot 72 (79) CADASTRAL ZONE CO5 KAFE District, Phase iii, Abuja, service of the Court process was not effected in the proper mode but by pasting at the said address contrary to the Rules of this Honourable Court.

In addition, it is well settled now by a long line of decided authorities, that substituted service cannot be made on a company or corporation.

On this premise, I refer to the case of **SKYE BANK PLC V OKPARA & ORS (2014) LPELR- 24357 (CA)**.

In the case of **PLASTEX (NIG) LTD V MAINLAND OIL & GAS (2018) 43509 (CA)** the Court held, per Barka J.C.A, at pp 36-41, paras B-C as follows:-

***".....I have in that context looked at the order for substituted service and paragraphs of the appellant's deposition. I have also looked at the proof of service filed by the Bailiff of the lower Court. The aggregate of which is that the appellants were purported to have been served by substituted means, as was effected upon the appellants by pasting of the documents on the perimeter fence of the land in dispute.....This Court in the case of RFG LH AND ANOR V SKY BANK PLC (2012) LPELR-7880 CA per: OGUNWUMIJU JCA, on whether a corporation such as the appellant, can be served by substituted service under the High Court of Lagos (Civil Procedure) Rules 2004, held that.***

***In respect of service on the 1<sup>st</sup> Defendant/Applicant, I am aware of Section 78 of CAMA and order 7 Rule 9 of the High Court of Lagos (Civil Procedure) rules, also the Supreme Court in MARK V EZE (Supra) per Musdapher JSC made it clear that by the combined provisions of Section 78 of CAMA and order 7 Rule 9 of the Lagos High Court (Civil Procedure) Rules there cannot be substituted service on a company. This is because the need for substituted service arises because personal service cannot be effected on natural or justice persons, the procedure for substituted service cannot be made to a corporation, company I agree in the circumstance that the order for substituted service on the 1<sup>st</sup> Defendant must be set aside as erroneous."***

It follows therefore that in the instant case, since service was not effected in the manner prescribed by law, which is a condition precedent to hearing of a suit, it clearly touches on the jurisdiction of the Court to adjudicate on same as it is not a mere irregularity, but a fact which is incurable.

I refer to the case of **MADUKOLUM V NKWMDILIM (1962) 2 SCNLR, 341; WESTERN STEEL WORKS UNION (No. 1) (1986) 3 NWLR (pt. 50 617); OKOLO & ANOR V UBN LTD (2004) LPELR-2465 (SC).**

On the third issue which is whether the Plaintiffs Respondent's purported writ of Summons purportedly served on 4<sup>th</sup> Defendant/Applicant via substituted means who resides in Kaduna without requisite leave and endorsement is competent having regard to the provision of Section 97 of the Sherriff and Civil Process Act and order 4 Rule 7 of the Rules of this Court, Learned Applicant's Counsel Relied on the case of **MV" KOTA MANIS & ORS V GEEPEE INDUSTRIES (NIG) LTD & ANOR (2018) LPELR-44098 (CA).**

Learned Counsel argued that the above provisions were not complied with in this case since the 4<sup>th</sup> Defendant resides outside this Court's jurisdiction and not amenable to the writ and urged the Court to so hold and strike out the writ against the 4<sup>th</sup> Defendant/Applicant.

However, it is the contention of the Respondent particularly in paragraph 3.2 of the address that the objective of service was achieved in that the Defendants in this matter are aware of the pendency of this suit against them upon the proper service of the originating processes of this Court.

I have taken my time to look at the Affidavit in support of Motion Exparte with No. M/9006/2020, which was sought and obtained on the 13<sup>th</sup> of August 2020. In particular I refer to paragraph 4 thereof, in which the deponent states that the Claimant has made several efforts to serve the originating processes in this suit on the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants but to no avail.

Likewise, I've studied the statement of Claim in support of the Claimant/Respondent's writ of Summons, particularly paragraph 5 thereof which states that the 4<sup>th</sup> Defendant is the Director and the alter ego of the 2<sup>nd</sup> Defendant.

There's nothing there indicating that at the time of filing the suit, the Claimant knew that the 4<sup>th</sup> Defendant resided in Kaduna outside the jurisdiction of this Court.

Moreso, the Rules of this Court in particular order 7 Rule 11 (1) of the Rules of this Court provides thus:-

***"Where service of an originating process is required by this Rules or any other enactment and the Court is satisfied that prompt service cannot be effected, the Court may upon application by the Claimant make such order for substituted service as may seem just."***

It must also be borne in mind that under order 11 Rule 11 (2) there is no requirement that there must have been attempts at personal service before substituted service may be resorted to, a Claimant may apply to Court to serve by substituted means.

Therefore, the submissions of the Learned Counsel to the Applicant on this issue is discountenanced.

The 4<sup>th</sup> Defendant is aware of the pending action against him, therefore the aim of service has been achieved. I so hold.

The 3<sup>rd</sup> issue is therefore resolved against the Applicant in favour of the Respondent. I so hold.

Lastly, the forth issue for determination formulated by the Applicant, is whether this suit discloses any reasonable cause of action against the 7<sup>th</sup> Defendant.

As stated earlier there's now a seventh Defendant in person of Hussaini Ahmed Abdukarim, therefore in treating this issue, I shall refer to this Applicant as the 8<sup>th</sup> Defendant.

On this issue, the Learned Applicant's Counsel submitted in the address that the proper order to make in the circumstances is to strike out the name and restrain further pasting of the processes in House No. B4 since it is not the subject matter of this suit as revealed by the pleading and annexures filed by the Plaintiff/Respondent herein.

On the part of the Claimant, it is averred in paragraph 3 (B) of the Counter Affidavit that at the time of filing this action before this Honourable Court the Claimant did not know the identity of the 7<sup>th</sup> Defendant.

Interestingly, I find this Application of the Learned Applicant's Counsel for striking out Applicant's name rather strange since prayer NO. 1 is an Application for substitution of the name of the Applicant from that of person unknown being an interested party.

Therefore, Learned Counsel's submission is equally discountenanced.

Consequently, this forth issue is hereby resolved against the Applicant in favour of the Claimant/Respondent. I so hold.

Consequently, reliefs No. 3 and 4 are dismissed.

This Court hereby sets aside service effected on the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, and order that they be served again personally.

Signed

***HON. JUSTICE SAMIRAH UMAR  
BATURE.***

17/06/2021



