

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ABUJA
ON 4TH DAY OF OCTOBER, 2021
BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI
PRESIDING JUDGE

SUIT NO: FCT/HC/CV/704/2012

MOTION NO: M/2594/2021

BETWEEN:

ASO SAVINGS & LOANS PLC

.....

CLAIMANT

AND

RUKUBA SAMAILA AHALU

.....

DEFENDANT

APPEARANCES:

AUSTINE DIMONYE ESQ FOR THE CLAIMANT

B.O. OBIALO ESQ FOR THE DEFENDANT

RULING ON NOTICE OF PRELIMINARY OBJECTION

The Claimant initiated this suit by a writ of summons and affidavit under the undefended list. The Defendant filed a notice of intention to defend with an affidavit wherein he admitted part of the Claimant's claim. The court entered judgment in favour of the Claimant for the admitted sum and transferred the rest of the claim to the general cause list and ordered parties to file and exchange pleadings. The Claimant filed a statement of claim, the Defendant filed a statement of defence and the Claimant filed a reply to the statement of defence. Subsequently the Claimant amended his statement of claim. The matter proceeded to hearing.

In the cause of adopting his final written address on 9th March 2021 Mr B.O. Obialo for the Defendant challenged the jurisdiction of the court to entertain this suit.

The court ordered parties to file and exchange written addresses. On the 15th of March 2021, Mr Obialo filed his notice of preliminary objection challenging the jurisdiction of this court to entertain this suit on the grounds that:-

“a) That this suit is incompetent by virtue of the statement of claim not having reliefs sought by the Claimant in line with the extant provisions of the law.

b) That it is a well settled principle of law that the statement of claims (sic) supersedes the writ of summons and must itself disclose a good course (sic) of action.”

The notice of preliminary objection was supported by a written address wherein learned counsel raised two issues for determination:-

“a) Whether reliefs not claimed in the amended statement of claim is (sic) deemed to have been abandoned.

b) Whether statement of claim supersedes the writ of summons or not.”

The argument of learned defence counsel is simply that the Claimant’s amended statement of claim filed on 3rd March 2016 pursuant to the order of court dated 1st day of March 2016 and served on the Defendant on 7th March 2016 did not contain any reliefs sought by the Claimant. Therefore the reliefs claimed in the original statement of claim were deemed abandoned, for which the suit must be dismissed.

Furthermore, that the statement of claim supersedes the writ of summons, therefore any relief in the writ of summons not contained or repeated in the statement of claim is deemed abandoned. With the aid of decided cases, the court was urged to dismiss the suit.

Mr Dimonye for the Claimant filed a reply to the notice of preliminary objection on 15th June 2021 deemed duly filed and served on 15th July 2021. Therein he raised a sole issue for the court's determination thus:-

“Whether the preliminary objection filed by the Defendant does not amount to abuse of court process as the Claimant's amended statement of claim contains reliefs.”

Learned counsel submitted that the notice of preliminary objection is an abuse of court process as the Defendant was served with the statement of claim with reliefs on 7th March 2016. That the Defendant admitted being served with the process in paragraph 4.7 of his written address in support of the notice of preliminary objection.

He urged that the court is bound by its records and a look at the court's record will show that the amended statement of claim in the court's file contains reliefs. The notice of preliminary objection being an abuse of court process, that the necessary order of court would be a dismissal of the process.

Authorities were cited in support of his submissions.

Now it is true that a statement of claim supersedes the writ of summons and where the reliefs are not contained in a statement of claim such reliefs are deemed abandoned. See **GARAN V OLOMU (2013) LPELR - 20340 (SC); MBOSOH V JAMB (2008) LPELR -4306 (CA).**

It would be recalled that on 15th July 2021 after learned counsel to both parties had argued the notice of preliminary objection, the court looked through its records and informed Mr Obialo that the amended statement of claim before the court contains claims (reliefs) in paragraph 15 thereof and inquired of Mr Obialo if he thought his notice of preliminary objection was still justified. Mr Obialo maintained that it was their right and that this is a court of justice.

We then proceeded to the adoption of Mr Dimonye's final written address in the substantive suit. I state without hesitation that Mr Obialo's notice of preliminary objection is a gross abuse of court process.

I do not think the notice of preliminary objection was raised to ventilate any legitimate grievance but simply to belabour a very busy court with a frivolous application and to waste the valuable time of the court.

As rightly submitted by Mr Dimonye, the court and parties are bound by the record of the court. Before the court is the amended statement of claim of the Claimant dated 2nd March 2016 and filed 3rd March 2016. As I had earlier stated, it contains reliefs in paragraph 15 thereof as follows:-

"15 WHEREOF THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT AS FOLLOWS:

- (a) The sum of ₦13,242,906.37 (Thirteen Million, Two Hundred and Forty Two Thousand, Nine Hundred and Six, Naira Thirty Seven Kobo)***
- (b) Interest at the rate of 18% per annum***
- (c) Interest at the rate of 10% per annum from the date of judgement until full payment is made***
- (d) ₦500,000 (Five Hundred Thousand Naira) being cost of litigation."***

From the proof of service in the court's record the said amended statement of claim was served on the Defendant and received by Gabriel Nwafor C. of Suite 13, NNPC Estate Office Complex Area 11, Garki, Abuja, a Litigation Officer on 17th March 2016, and he signed for it.

How then can Mr Obialo come now, 5 years after service of the said process on them and at the conclusion of the case, to allege that they were served an amended statement of claim without reliefs?

Let us even assume for the sake of argument that the amended statement of claim is incompetent (and I hold that is not the case here), is there not

the original statement of claim which also contains the same reliefs in the court's record which the Claimant can rely on?

I think the duty of counsel as a minister in the temple of justice ought to outweigh his desire to win his case at all costs. A lawyer should not allow himself and his office to be used as tools by his client to retard, hamper and obstruct the administration of justice.

See YAKUBU V SHANO & 2 ORS (2020) LPELR-50866 (CA) PAGE 34 PARAS C-D per Abiru JCA; ADAMS V UMAR & ORS (2008) LPELR -3591 (CA) PAGE 61 PARA C-D per Sankey JCA.

I do not need to belabour the point. The amended statement of claim before the court and that served on the Defendant from the proof of service before the court both contain reliefs.

The notice of preliminary objection lacks merit. It is hereby dismissed.

Hon. Judge