

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT MAITAMA-ABUJA**  
**ON THE 11<sup>TH</sup> DAY OF OCTOBER, 2021**

**BEFORE THEIR LORDSHIPS**  
**1. HON. JUSTICE C. N. OJI**  
**2. HON. JUSTICE SAMIRA UMAR BATURE**

**APPEAL NO: CVA/615/2020**  
**SUIT NO: CV/1622/2019**

**BETWEEN:**  
**STANLEY OPARAOCHA** ..... **APPELLANT**

**AND**

**MR CHUKWUMEZIE A. OKPALA** ..... **RESPONDENT**

***APPEARANCES:***  
***KOLA ALAPINNI ESQ. FOR THE APPELLANT***  
***RESPONDENT UNREPRESENTED***

**JUDGMENT**

The Appellant's notice of appeal was filed 11<sup>th</sup> September 2020 against the judgment of the District Court of the FCT sitting at Dutse Alhaji FCT, delivered on 29<sup>th</sup> June 2020 whereby the court granted the Respondent's (as Plaintiff's) reliefs under the Default Summons Procedure.

The sole ground for the appeal with its particulars are as follows:-

**"GROUND OF APPEAL**

**The court lacks jurisdiction to hear and enter judgment in the matter.  
The Defendant having not been served with the processes of the court.**

**Particulars:**

**(a)The Order of Substituted Service obtained by the Respondent on the 26<sup>th</sup> February 2020 was not complied with as evidenced by the various services effected by the court official thereby rendering the whole court proceedings a nullity.**

**(b)The Appellant was to be served at his last known address at Flat 5B Opposite Dantata and Sawoe Estate, Arab Road, Kubwa, Abuja as Ordered by the Honourable court. To the contrary the court official went on his own frolic and served the court order, default summons and various hearing notices by pasting on the door at Federal Mortgage Bank, Gwarimpa, Abuja.**

**(c)Service of originating processes is a *sine qua non* to a court assuming jurisdiction in any matter.**

In his brief of argument, Kola Alapinni Esq., learned counsel for the Appellant raised 3 issues for the court's determination as follows:-

1. Whether or not the court ought to have adduced oral evidence from the bailiff and other parties for clarity and to resolve the irregularities contained in their affidavits?
2. Whether or not the Appellant was duly and properly served by the Defendant?
3. Whether or not the lower court had jurisdiction to adjudicate over the suit?

It is quite clear from the notice of appeal that the Appellant filed his appeal only on one ground of appeal but has formulated 3 issues from this sole ground of appeal thereby creating a proliferation of issues.

The courts have constantly cautioned counsel against a proliferation of issues and the consequences thereof.

In **ROE LIMITED V UNN (2018) LPELR-43855 (SC)** the apex court per Galinje JSC at page 67 paragraph A stated:-

**“This court has in a number of decided cases deprecated the rather increasing habit of some counsel who appear before it of showing very**

little care in the way and manner prayers relating to appeals are drafted. The pronouncement of this court on proliferation of issues are made to guide counsel in the way and manner issues for determination are to be drafted...

The rule is that an issue can be tied to several grounds of appeal, but a ground of appeal cannot support more than one issue. Where issues framed by either Appellant or Respondent are in excess of the grounds of appeal, the issues in excess of the grounds of appeal which do not seem to arise from those grounds of appeal are liable to be struck out. See *AYANGADE V O.A.U.T.H.C.M.B* (2001) 7 NWLR (PT. 711); *DUNG V GYANG* (1994) 8 NWLR (PT. 362) 315; *LABIYI V ANRETIOLA* (1992) 8 NWLR (PT 258) 139; *OSINUBI V QUNATITY SURVEYORS REGISTRATION BOARD* (2018) LPELR-45290 (CA).”

In *FRSC & ANOR V GIDEON* (2015) LPELR-41830 (CA) Onyemenam JCA at page 8 paragraph D explained the functions of a ground of appeal as follows:-

“In our procedural law, Grounds of Appeal are accompanied by particulars. The function of such particulars in a ground of appeal is to highlight the actual nature of the complaint against the decision of the lower court under challenge and to ensure the other party appreciates and is well informed of the complaint of the Appellant in the decision appealed against. See *UWAZURIKE V NWACHUKWU & ORS* (2012) LPELR CA/OW/164/2011. Accordingly, a particular must arise from the main complaint in the Ground of Appeal. See *ARIBO V CBN & ANOR* (2010) LPELR CA/L/786/08; *VINCENT V VINCENT* (2008) 11 NWLR (PT 1097) 35”

Looking therefore at the Ground of Appeal and the particulars thereof at pages 72 to 73 of the record of appeal, the grievance of the Appellant is that the court lacked jurisdiction to hear and enter judgment in the matter, the Defendant (Applicant) having not been served the process of the lower court in accordance with the order of the court on substituted service made on 26<sup>th</sup> February 2020.

Therefore what the learned Appellant's counsel framed as issues 2 and 3 are actually one issue which he split into 2, which he ought to have canvassed in this appeal.

We shall treat issues 2 and 3 as one issue: i.e whether the Appellant was duly served and whether the court had jurisdiction to adjudicate over the issue.

However, we do not think that issue 1 arose from the Ground of Appeal. We therefore strike it out.

On the issue of service therefore, learned counsel submitted that there was a valid and specific subsisting order of court granted on the 26<sup>th</sup> February 2020 which had not been vacated.

The said order was however violated and not complied with, which has robbed the court of its jurisdiction. In other words, the bailiff of the court was not at liberty to choose which address to effect service in defiance of the court order without obtaining another order varying the address for service.

See **GOLDEN SWAN V UNICONTROL HANDLING SERVICES (NIG) LTD (2018) LPELR-46558 (CA); REV. PROF. PAUL EMEKA V DR. CHIDI OKOROAFOR & ORS (2017) LPELR-W-41738 (SC).**

The court was urged to enter judgment in favour of the Appellant as the proceedings before the lower court are a nullity.

We have considered the notice of appeal and the Appellant's brief and oral submissions of Kola Alapinni Esq for the Appellant.

The Respondent did not file a brief of argument nor participate in the appeal despite the Notice of Appeal and hearing notices served on him.

The law is trite that though he is deemed to have conceded the issue and argument of the Appellant, the court will consider the appeal on its merits as the Appellant must succeed on the strength of his case and not on the weakness of the Respondent. See **CENTRAL BANK OF NIGERIA V CHIEF DANIEL OBAMENEKE OKEMUO & ANOR (2016) LPELR-41405 (CA); FIRST INLAND BANK & ORS V EFFIONG (2011) LPELR-42401 (CA); SKYE BANK & ANOR V AKINPELU (2010) LPELR-3073 (SC).**

Now at page 103 of the record of appeal, it is seen that Anita Ovuakporie-Uvo for the Plaintiff (Respondent) applied for substituted service of the default summons on the Defendant by affixing the notice on his last known address at Flat 5B Opposite Dantata & Sawoe Estate Arab Road Kubwa Abuja.

The court granted the application as prayed. At pages 95, 96, 98 and 99 of the record of appeal, it is evident from all the certificates of service therein that the court order, default summons and hearing notices were served on the Appellant by “pasting on the Defendant (sic) door at Federal Mortgage Bank, Gwarinpa, AMAC, FCT.”

Nothing was served on him by pasting at his last known address “at Flat 5B Opposite Dantata and Sawoe Estate Arab Road Kubwa, Abuja” as ordered by the court.

Even though the Appellant in paragraph 3 of his motion on notice seeking to set aside the judgment of the lower court (at page 35 of the record of appeal) admitted personal service of the default summons on him at Federal Housing Authority Mortgage Bank Gwarimpa, the service of the hearing notices on the Appellant at Federal Housing Authority Mortgage Bank Gwarimpa at variance with the order of court were null and void.

The District court therefore had no jurisdiction to enter judgment in the matter at the time it did.

It is merely stating the obvious that orders of a competent court are meant to be obeyed unless same have been set aside.

Indeed orders of the court must be obeyed by all affected by them, including the court that made them. See **KEHINDE ANUMEGE V MR GIDEON ANUMEGE (2014) LPELR -23996 (CA).**

In **KIDA V OGUNMOLA (2006) 6 SCNJ 165 AT 174**, Mustapher JSC held that:-

**“Failure to serve process where service of process is required is a fundamental vice. It deprives the trial court of the necessary**

**competence and jurisdiction to hear the suit. In other words, the condition precedent to the exercise of the court's jurisdiction was not fulfilled."**

Having stated the above, we answer the issue in the negative in favour of the Appellant. The appeal succeeds.

The judgment of the Senior District Court is hereby set aside as it is a nullity. The default summons is hereby remitted to the District Court to be retried by another District Judge.

No costs awarded.

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**Hon. Justice C.N. Oji**

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**Hon. Justice S.U. Bature**