

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE SAMIRAH UMAR BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 25
CASE NUMBER:	SUIT NO. FCT/HC/CV/2713/20
	MOTION NO: FCT/HC/M/4447/21
DATE:	4TH NOVEBER, 2021

BETWEEN:

1. BUILLT VENTURES LTD	}.....CLAIMANTS
2. MOSMARX NIG. LTD	

AND

MR. AKINTAYO ADARALEGBE.....DEFENDANT

APPEARANCES:

Chika Egbo Esq for the Claimants/Respondents.

Oluwatomisin Richie-Adewusi Esq for Defendant/Applicant.

RULING

By a Notice of Preliminary Objection dated 12th day of July, 2021 and filed same day; the Defendant/Applicant herein prayed the Court to strike out this suit for want of jurisdiction.

The grounds predicating the application are as follows: -

“(1). The suit is incompetent, inchoate, and preposterous to confer jurisdiction on this Honourable Court.

(2). The suit constitutes an abuse of Court process.”

The Notice of Preliminary Objection is supported by an Affidavit of 5-paragraphs deposed to by one Oluwatomisin Richie-Adewusi, a Counsel at EPHRAIM CHAMBERS, Counsel to the Defendant in this suit, as well as a Written Address dated 12th day of July, 2021.

Meanwhile, in opposition to the Notice of Preliminary Objection, the Claimants/Respondents herein, filed a Counter Affidavit of 7 paragraphs deposed to by one Henry Abba, a litigation clerk in Royal Chambers, the Law Firm representing the Claimants/Respondents. Also filed in opposition and in support of the Counter Affidavit is a Written Address dated 16th July 2021.

In the Defendant/Applicant’s Written Address to the Preliminary Objection, Tale Alabi Esq, Counsel to the Applicant formulated two issues for determination to wit:

(i). Whether the suit is incompetent to confer jurisdiction on this HOnourable Court.

(ii). Whether this suit as constituted does not amount to an abuse of Court process.”

Learned Counsel proceeded to argue same.

Meanwhile, the Claimants/Respondents argued the two issues for determination formulated by Defendant/Applicant in their address.

Now, I have carefully considered this Preliminary Objection, the grounds predicated same, the Supporting Affidavit as well as the Written Address.

In the same vein, I’ve also considered the Counter Affidavit of the Claimants/Respondents.

In a bid to determine this application, I shall adopt the two issues formulated by the Defendant/Applicant.

On the first issue, which is whether this suit is incompetent to confer jurisdiction on this Honourable Court, it is submitted among other things in the Applicant's address that assumption of jurisdiction to determine any suit is the propriety of the initiation of the process. That where the matter does not follow due process of law, the Court will lack the vires to entertain or continue with it, in support of this, Counsel cited the cases of **MADUKOLU NKEMDILIM (1962) 2 SCNLR, 341; SKEN CONSULT V UKEY (1981) 1 SC, 6; ODOFIN V AGU (1992) 3 NWLR, 354 (Pt. 229) 350; BUHARI V YUSUF (2003) 6 SC (Pt. 11) 156; (2003) 4 NWLR (Pt. 841) 446 at 492.**

Submitted further that an expired originating process has no curable effect. Reference was made to Order 6(1) of the Federal Capital Territory (Civil Procedure) Rules 2018. As well as the case of **EZEZOBO V SHABA & ANOR (2017) LPELR-42713 (CA).**

On fundamental nature of personal service on a Defendant, Counsel cited again **MADUKOLU V NKEMDILIM (supra); CGG NIG LTD V AMINU (2015) LPELR-24463 (SC); OKOYE & ANOR V CENTRE POINT MERCHANT BANK LTD (2008) LPELR-2505 (SC).**

The Court is urged to hold that there was no proper service on the Defendant to the extent that the address evidenced on the expired writ, the Motion on Notice asking for injunction and the Motion Exparte for service are contrasting, and in effect Counsel urged that the purported service effected on 23rd September, 2020 be set aside for being mala fide.

However, on issue one, it is argued for the Claimants/Respondents that Defendant/Applicant failed woefully being unable to show how the lifespan of the extant Writ of Summons has elapsed bearing in mind the Rules of this Court and also the directives of the Honourable Chief Judge of the Federal Capital Territory with respect to the period of the JUSUN strike as it affects computation of time within which originating processes are served. It is therefore submitted that when the extant Writ of Summons was served on the Defendant it was valid and therefore, the suit as presently constituted, is competent and properly before this Honourable Court.

Reliance was placed on Order 7 Rule 15(2) and Order 49 Rules 2 and 3 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018; also on computation of time on holidays and weekends.

Reliance was placed on Section 1 of Public Holiday Act, Cap 123 LFN, 2004.

Submitted on the issue of service on the Defendant, that pursuant to Order 2 Rule 11(2)(d) of the Rules of this Court, 2018, Defendant/Applicant, was served via substituted means pursuant to leave having been sought and obtained.

Submitted moreso that the law is trite and firmly settled that the Object of service of Court processes as enunciated by the Apex Court in the case of **AKEREDOLU V ABRAHAM (2018) 10 NWLR (Pt. 1628) 510, SC**, is to bring to the Notice of the other party of an action against him, so as to resist or offer his defence, if he so wished. That in the instant case the objective was successfully achieved by the mode of service in this case and that Defendant reacted promptly by briefing a lawyer to enter appearance and file the instant Preliminary Objection on his behalf.

Submitted therefore that this application is a mere technicality which will not avail the Defendant/Applicant in obstructing the course of justice, that Applicant's solace in technicality will at best inure in futility.

The Court is urged to discountenance same and embrace current trend of our Courts in preference of doing substantial justice. Reliance was placed on the cases of **BALOGUN V E.O.C.B (NIG) LTD (2007) 5 NWLR (Pt. 1028) P. 58; IBRAHIM V OBAJE (2019) 3 NWLR (Pt. 1660) 389, SC; BOKO V NUNGWA (2019) 1 NWLR (Pt. 1654) 395; SALAWU AJIDE V KADIRI KELANI (1985) 1 NWLR 248 @ 269, per Oputa JSC (of blessed memory)**.

Learned Counsel then urged the Court to discountenance such technicalities as in this case.

On the issue of the expired writ, it is submitted further that the law is trite that even where a Writ of Summons has expired, service of same on a Defendant does not affect the jurisdiction of the Court, but the service itself, since it can be renewed upon application. Reliance was placed on the case of **KOLAWOLE V ALBERTO (1989) 1 NWLR (Pt. 98) 382**.

Finally, learned Counsel urged the Court to dismiss this Preliminary Objection with a punitive cost of N200, 000.00 and proceed to hear the

substantive suit on its merit, as the days of technical justice has gone forever.

Now, let me begin by considering whether this Writ has expired or not.

Order 6 Rule 6(1) and (2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 provides: -

“(1). The lifespan of every originating process shall be 6 months.

(2). Where a Court is satisfied that it has proved impossible to serve an originating process on any Defendant within its lifespan and a Claimant applied for renewal of the process, the Court may renew the original or concurrent process, for three months from the date of such renewal. A renewed originating process shall be as in Form 7 with such modifications or variations as circumstances may require.”

It is contented in Defendant/Applicant’s Supporting Affidavit particularly in paragraph 4(f) that this writ had expired at the time it was served on the Defendant.

Meanwhile, in the Claimants/Respondents’ Counter Affidavit particularly paragraph 4(b) it is averred that the Applicant’s Affidavit did not show how it arrived at the assertion that the lifespan of the extant Writ of Summons had expired.

In the instant case, I’ve noted that the extant writ was issued on 23rd September 2020 and served on the Defendant on 30th June 2021.

As clearly seen in Order 6 Rule 6(1) of this Court’s Rules reproduced earlier, lifespan of every originating process shall be 6 months.

However, by Order 6, Rules 6(2) of this Court’s Rules (also reproduced earlier) a Writ may be renewed upon application before it’s expiration. Now, although I’ve considered the averments contained in the Counter Affidavit of the Claimants/Respondents that there was the JUSUN strike,

the said Writ in this case was already due for renewal when the JUSUN strike commenced in April 2021.

Again, I've considered the averments contained in Respondent's Counter Affidavit particularly paragraph 4(c)(h)(i) thereof, that the Honourable Chief Judge of the Federal Capital Territory who has the constitutional powers to make Rules and Practice Direction, did direct that the period of JUSUN strike be excluded from computation of the time under the Rules of F.C.T High Court.

That the Bailiff of this Court had made several efforts to serve the originating processes in this suit on the Defendant personally at his given address at House 37, 1(f) Road, Beside RCC Resurrection Parish, FHA, Lugbe, Abuja without success.

That consequently, the Claimants/Respondents sought and obtained leave of this Honourable Court to serve by substituted means the originating process on the Defendant at No. 12 Monrovia Street, Wuse 2 Abuja being last known abode with the belief that he will immediately become aware of this suit through that mode of service.

That upon service of the said Originating Process through the aforesaid mode of service, the Defendant/Applicant truly became aware of this suit and promptly briefed a lawyer to enter appearance and file the instant processes on his behalf.

Be that as it may, I have noted the provision of Order 6 Rule 7 of the Rules of this Court 2018, which provides: -

“The Court may order two renewals in each case strictly for good cause and upon prompt application provided that no originating process shall be in force for longer than a total of nine months. The Chief Registrar shall state the fact, date and duration of renewal on every renewed, originating process.”

In the instant case therefore I have taken judicial notice of the Practice Direction of the Hon. Chief Judge of the Federal Capital Territory on exclusion from computation of time under the rules of the F.C.T High Court the period of JUSUN strike. Therefore, the lifespan of this extant writ which was issued on 23rd September 2020 considering the computation and

exclusion of time due to JUSUN strike, has not exceeded the 9 months as provided under Order 6 Rule 7 of the Rules (supra).

Therefore, from the Rules of this Honourable Court referred to above, it is clear that the extant writ was valid as at the time it was served on the Defendant, although it was due for renewal upon application for good reasons given.

Also, by the Rules of this Court on computation of time, the Court may extend time of doing any act under the Rules.

On this premise, I refer to Order 49 Rule 4 of the F.C.T High Court (Civil Procedure) Rules, 2018, which provides:-

“The Court may, as often as he deems fit and either before or after the expiration of the time appointed by these rules or by any Judgment or Order of the Court, extend the time or adjourn for doing any act or taking any proceedings.”

I also rely on the Supreme Court decision of ***KOLAWOLE V ALBERTO(1989) 1 NWLR (Pt. 98) 382 (supra)*** cited by Claimants/ Respondents in the Written Address. The Court held as follows:

“I am unable to accept the proposition that on the expiration of the period of twelve months prescribed, the writ becomes a nullity. That is to say, the Writ of Summons should be regarded as void after, and as having never been issued. It is paradoxical to hold that an action once legally valid can be rendered a nullity by subsequent act unrelated to its creation. A nullity results from the effect of a fundamental vice or defect in the constituent elements of a legal act rendering the act never to have been constituted or come into being. Where an act originally valid is rendered invalid by subsequent act, the invalidity arising thereby is temporary and is curable. In my view, it is a mere irregularity. A Writ of Summons which has not been served for twelve months remains a valid Writ of Summons, but lies dormant and ineffective for service waiting to be reactivated and rendered efficacious in the manner prescribed by Rules of Court.” Underlining mine for emphasis.

Consequently, therefore, Claimants/Applicants are to file an application for renewal of the writ.

In view of the above, the first issue is hereby resolved in favour of the Claimants/Respondents against the Defendant/Applicant.

In addition, I strongly hold that this suit is not incompetent, inchoate nor preposterous. I would also urge learned Counsel to Defendant/Applicant to be wary of using words such as “preposterous” when making applications before the Court as it tends to be discourteous to both the Court and opposing Counsel.

In conclusion however, since the extant writ was due for renewal when it was served on the Defendant, I hereby set aside the service of the writ on the Defendant for being irregular. The Claimants/Respondents after obtaining an Order of this Honourable Court to renew the extant writ, should serve the Defendant again with the renewed writ.

At this juncture, having resolved issue one in favour of the Claimants/ Respondents, I do not see any need to consider the second issue which is whether the suit is an abuse of Court process, as I do not see it as such. The 2nd issue is also resolved in favour of the Claimants/Respondents against the Defendant/Applicant.

No order as to cost.

Signed:

***Hon. Justice Samirah Umar Bature
4/11 /2021***