

**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 S. U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/CV/2425/20

MOTION NO: FCT/HC/M/3667/21

DATE: 26TH NOVEMBER, 2021

BETWEEN:

PLATINUM INNOVATIVE LIMITED.....PLAINTIFF

AND

1. FLEXY HOMES LIMITED
2. CVS LIMITED }DEFENDANTS

APPEARANCES:

P.A. Ayang Esq for the 1st Defendant.

H. A. Ibrahim Esq for the 2nd Defendant.

RULING

By a Motion on Notice dated 17th day of June, 2021 and filed on 21st day of June, 2021, pursuant to Order 23 Rules 2(1) and (2) of the Rules of this Honourable Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Honourable Court.

The 1st Defendant/Applicant herein prayed this Honourable Court for the following Orders:-

- “(1). AN ORDER of the Honourable Court striking out this suit for being incompetent and for want of jurisdiction.**
- (2). AND FOR SUCH FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstance.”**

The Grounds upon which this application was predicated are as follows:

- “(a). That the Court’s file of this suit has been tampered with and the Court’s copy of the originating Summons doctored.**
- (b). That the Originating Summons both in its original state and in its altered/doctored state, is grossly incompetent.**
- (c). That in consequence of Grounds (a) and (b) above, the Honourable Court has been robbed of the requisite jurisdiction to entertain the Plaintiff’s suit as presently constituted.**

In support of this application is a 22 paragraphed affidavit deposed to by one Michael Odeyeinde Applicant’s lawful Attorney. Attached to the supporting affidavit are annexures marked as Exhibits A to K respectively. Equally filed in support of the motion is a Written Address dated the 17th day of June, 2021.

In the said Written Address learned Counsel to the 1st Defendant/Applicant, Joel A. N. Okoli Esq formulated a lone issue for determination which is whether the Plaintiff’s suit as presently constituted, is not grossly incompetent and liable to be struck out by this Honourable Court.

In arguing the issue, Counsel submitted that the Plaintiff’s suit as presently constituted is grossly incompetent and liable to be struck out. In his further submission Counsel stated that though the Plaintiff’s Originating Summons was dated the 20th day of July 2020 and filed on the 18th day of August, 2020 the copy of the same Originating Summons that was served on the 1st Defendant/Applicant on the 19th of March, 2021 through the 1st Defendant’s

lawyers as well as the endorsement and return copy of same are completely different in form from the copy of the same Plaintiff's Originating Summons that exists in the Court's file. Counsel referred the Court to paragraphs 12, 13, 14, 18 and 19 of the Affidavit in support of the Motion on Notice and paragraphs 19(p)(iv) of the Applicant's pleadings before the Court.

On the definition of the word 'tamper' Counsel referred the Court to the Black's Law Dictionary 18th Edition at page 1494 and submitted that the Court's copy of the Originating Summons was tampered with after the 1st Defendant/Applicant was served with a copy thereof on the 19th of March, 2021 through its lawyers. Reference was also made to paragraphs 12, 15, 16, 17, 20(v)(vii) and 20(i)(ii)(iii) of the Affidavit in support of the Applicant's motion and paragraphs 19(p)(ii)(iii) of the Applicant's pleadings. Counsel equally relied on the cases of **OKOKO V DAKOLO (2006) VOL. 27 NSCQR 259 at 288, Para E; DOHERTY V YUSUF & 2 ORS (2017) LPELR-41998 CA/L/762/2009.**

Consequently, Counsel submitted that the Originating Summons before this Court dated 20th July 2020 and filed the 18th of August 2020 has lost its authenticity and is legally unreliable, same having been tampered with and/or altered.

In another submission Counsel stated that the Plaintiff's instant Originating Summons in its originating state is invalid, legally unreliable and grossly incompetent. Reference was made to paragraphs 12, 13 and 14 of the Affidavit in support of the Applicant's Motion and Exhibit F (particularly the document marked as Exhibits A therein) G1 and G2 respectively.

Therefore, Counsel submitted that the Plaintiff's Originating Summons in its original state is grossly incompetent, same not having been signed by either the Plaintiff itself or by any of its legal practitioners and in consequence thereof, the jurisdiction of the Honourable Court to entertain the instant Originating Summons has been ousted. In support of his submission Counsel cited the cases of **AARON OKARIKA & 4 ORS V. SAMUEL (2013) 7 NWLR (Pt. 1352) 19 at 43, Paras A – d; MOMOH RABIU ALFA V. HON. (ALH) ABDULL; AHI ZAKARI (2010) VOL. 6 E.P.R 773 at 789-799, Paras H – A.**

It is the contention of the 1st Defendant/Applicant that the Plaintiff's suit in its altered/doctored state, is still incompetent and incurably bad. In this respect, Counsel referred the Court to paragraphs 18, 19 and 20 of the Affidavit in support of the motion and Exhibit K2.

In the circumstances, Counsel submitted that looking at the Court's copy of the Originating Summons it is uncertain who signed it and urged the Court to so hold. Reliance was placed on the cases of **GUARANTY TRUST BANK PLC V INNOSON NIGERIA LIMITED (2017) 6 NWLR (Pt. 1591) Pages 181 – 196, Paras E – B; SLB CONSORTIUM LIMITED V. NNPC (2011) 9 NWLR (Pt. 1253) 317 at 337-338, Paras G – A.**

To this end, Counsel urged the Court to grant this application in the interest of justice and hold that the Plaintiff's suit as presently constituted is grossly incompetent and liable to be struck out.

In opposing the motion the Plaintiff/Respondent filed a Counter Affidavit of 14 paragraphs deposed to by one Sonia Nwaodo, the Manager of the Plaintiff herein. Attached to the Counter Affidavit is an annexure marked as Exhibit TR. Equally filed in support is a Written Address dated the 25th day of June 2021

In the said Written Address, learned counsel to the Plaintiff/Respondent formulated two issues for determination to wit:-

- “(1). Whether this suit is properly instituted in line with the Rules of this Court, having regard to the circumstances of this case including the allegations of the 1st Defendant.***
- (2). Whether this Court has the jurisdiction to entertain this suit.”***

In arguing the issues, Counsel submitted on issue one that the originating process before this Court is one that can be sustained under Order 48 of the Rules of this Court going by the reliefs of the Plaintiff as well as the Affidavit disclosing the conditions as stipulated in Rules 2 of Order 48. Counsel stated that the subject matter is one which is properly constituted before this Court and urged the Court to so hold.

On the allegations of the 1st Defendant, Counsel submitted that the allegation as raised by the 1st Defendant are criminal in nature and so require proof beyond reasonable doubt. That he who alleges must show proof or concrete evidence in establishing his claims. It is the contention of the Plaintiff that the allegations are speculative and based on assumptions without any eye witness or video or even pictorial evidence in sustaining same. The learned Counsel referred the Court to the Counter Affidavit and stated that the onus is on the 1st Defendant to show how the alleged occurred. That failure to do so means that the 1st Defendant has not discharged that burden and urged the Court to so hold.

On issue two which is whether this Court has the jurisdiction to entertain this suit, Counsel submitted that jurisdiction is determined by the subject matter, the condition precedent in instituting the matter as well as requisite law in special matters as this. The learned Counsel stated that the Originating Summons in the instant case was brought under the interpleader summons as provided under Order 48 of the Rules of this Court. That the 1st Defendant has failed to show any deficiency in any of the factors that determine jurisdiction.

Consequently, Counsel submitted that this Honourable Court has the requisite jurisdiction to entertain this suit.

I have carefully perused the Motion on Notice, the reliefs sought, the grounds upon which same was predicated. The supporting Affidavit, the annexures attached therewith and the Written Address in support. I have equally gone through the Courter Affidavit in opposition to the motion and the Exhibits attached therewith and the Written Address.

Therefore in my humble view, the issue for determination is whether the 1st Defendant/Applicant herein has made out a case for the grant of this application?

It should be noted at the onset that the main contention of the Applicant herein as can be glanced from the grounds upon which the application was brought and the deposition in the supporting Affidavit is that the Court's file of this suit has been tampered with and the Court's copy of the Originating summons doctored. The Applicant deposed to these facts in the Supporting Affidavit particularly at paragraphs 20(i), (ii), (iii), (iv), (v) and (vi) for ease of reference I shall reproduce same hereunder:

- (i). That the Plaintiff tampered with the Court's file and the Court's copy of the Originating Summons to affix a signature thereon, after the said Originating Summons was filed and served unsigned.***
- (ii). That the Plaintiff tampered with the Court's copy of the Originating summons to add an additional name of a lawyer (THELMA ISANI, ESQ), in long hand, on the endorsement page thereof, after the said Originating Summons was filed and served with only two lawyers names of "Ugo Nwofor, Esq, and C.U. O Ebubealor, Esq." thereon.***
- (iii). That the Plaintiff tampered with the Court's copy of the Originating Summons to affix an additional lawyer's NBA seal of "ISANI THELMA ISANI" thereon, after the said Originating Summons was filed and served with only one lawyer's NBA seal of "UGOCHUKWU C. NWOFO" thereon.***
- (iv). That the Court's file of the instant Originating Summons Suit No: CV/2425/2020: Platinum Innovative Limited V. Flexy Homes Limited U anor has been tampered and the Court's copy of the Originating Summons doctored after the 1st Defendant/Applicant's copy of same was served on the 1st Defendant.***
- (v). That the Court's copy of the Originating Summons was doctored to enable the Plaintiff be in an overreaching position to dislodge the 1st Defendant's (as Appellant) argument on the 2nd Ground of its Appeal (Exh. J) wherein the 1st Defendant/Applicant (Appellant) argued that the instant Originating Summons suit is grossly incompetent, incurably bad and legally unreliable for not having been signed by either of the Plaintiff or any of its legal practitioners who purportedly settled the said process.***
- (vi). That the Court's file of the Plaintiff's suit was tampered with and the Court's copy of the Originating Summons doctored in order to enable the Plaintiff be in an overreaching position to forestall, afore hand, the***

probability of the 1st Defendant raising a Preliminary Objection in this suit on the incompetent nature of the Plaintiff's Originating Summons in its original state."

From the dispositions quoted above, it is clear that the allegation which the Applicant levied is criminal in nature. Consequently, it is trite law that he who alleges must prove with credible and admissible evidence. See Section 131 (1) of the Evidence Act 2011 (as Amended).

It is equally the law that where allegation of crime is made in civil matter the standard of proof is no longer on preponderance of evidence but on proof beyond reasonable doubt. In this respect I refer to the case of ***AFOLAHAN V STATE (2012) 13 NWLR (Pt. 1316) 185 at 208, Paras C – F***, where it was held thus: -

"...If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt..."

See also the case of ***OCHE V STATE (2007) 5 NWLR (Pt. 1027) 214***. See also Section 135(1) of Evidence Act 2011 (as amended).

At this juncture, it must be reinstated that the Applicant herein must prove beyond reasonable doubt that the Court's file of this suit has been tampered with and that Court's copy of the Originating Summons, doctored. The Applicant did not depose to the facts as to who tampered with the Court's file and doctored the Originating Summons in this suit and how it was done. The Applicant having failed to do so, cannot be said to have proved the allegation beyond reasonable doubt as required by law. I so hold.

In addition, the Claimant/Respondent in opposition to the motion deposed in the Counter Affidavit particularly at paragraphs 10(i), (ii), (iii) and (iv). I shall also reproduce same hereunder

"Paragraph 10 read thus:

- (i). That neither the Plaintiff nor its Solicitors did at any time, touch, tamper or cause to be tampered with the Court's file and the copy of the Originating Summons in order to affix***

any signature thereon or do any other thing whatsoever. It is a standing rule at the registry that unsigned processes particularly originating processes are not and cannot be accepted for filing at the registry.

- (ii). That the Plaintiff was not forced to file this suit, so there was nothing to hide or tamper with. The Plaintiff never tampered with the Court's file to add an additional name of one of its Solicitors Thelma Isani Esq in long hand. All names and signatures were used and included at the point of filing and still at the custody of the Plaintiff and its Solicitors. It is not true that the changes were made after filing and service. The Registry would not have accepted the file copy if it wasn't properly endorsed.**
- (iii). That Thelma isani, C.U.O Ebubealor Esq and Ugo Nwofor are all Counsel to the Plaintiff and well known to the Plaintiff.**
- (iv). That at the point of filing, the process clerk refused to allow for the use of only Ugo Nwofor's own seal being that it bore 'valid till March 2020' whereas the filing date was 18th August 2020, unless another seal with a future validity date was to be included. Our Counsel Thelma Isani who was available added her own seal as instructed or demanded by the process clerks and her name thereon included at the process at the point of filing."**

From the above depositions, the Claimant/Respondent has denied the allegation and I thought the 1st Defendant/Applicant will file a Further and Better Affidavit to controvert the depositions in the Counter Affidavit. In this respect, I refer to the case of **SIR IKECHUKWU OKEKE V GOVERNOR OF ENUGU STATE & ORS (2020) LPELR – 49838 (CA) per UMAR, JCA (PP. 22-23), Paras E** where it was held thus:

"It is trite that failure to swear to a Further Affidavit, where there is a Counter Affidavit, which is unchallenged, it is deemed that the Counter Affidavit is admitted as being correct. In other words, where there is unchallenged Counter Affidavit, the Court is at liberty to accept same as true and correct. I am of the

opinion that the failure of the 4th Respondent to file a Further Affidavit confers substance on the Counter Affidavit of the Appellant...

Similarly in the case of ***ANEKPE & ANOR V A.G. FEDERATION (2018) LPELR- CA/E/357/14*** where it was held thus:

“It is trite that failure to swear to a Further Affidavit where there is a Counter Affidavit, which is unchallenged it is deemed that the Counter Affidavit is admitted as being correct.”

See also the case of ***CENTRAL BANK OF NIGERIA V IFEANYICHUKWU OKONKWO (2013) LPELR-21235 (CA)***.

In view of the foregoing, it is my considered opinion that the 1st Defendant/Applicant has failed to prove his allegation of Court's file being tampered with and Court's copy of the Originating Summons being doctored. I so hold.

Furthermore, on the submission of the 1st Defendant/Applicant in their Written Address at para 4.16 to the effect that the Originating Summons the Written Address filed in support of the Originating Summons were not signed by either the Plaintiff itself or his legal practitioner as well as the mandatory pre-Action Counseling Certificate was neither dated nor signed, I refer to paragraphs 9 and 10(v) of the Counter Affidavit. I shall reproduced same here for ease of reference.

Paragraph 9 read thus:

“That I personally went with our Counsel, Ugo Nwofor Esq to the Court's registry for the filing of this processes. That I affixed my signature in the presence of the Commissioner for Oaths, and I witnessed as Ugo Nwofor Esq aforesaid affixed his signature on the processes as submitted to the registry, which is now in the Court's file.

Paragraph 10(v) read thus:

That all processes in the Court's file were duly signed at the point of filing. The copies served on the 2nd Defendant were duly

signed. This suit was assigned many weeks after same was filed, and so the copy attached to the motion in the District Court was not a certified copy from the Court's file, as this suit was not yet assigned at the time."

In a similar vein, I have perused carefully processes in the case file. I have discovered that they were all signed i.e the Originating Summons the Written Address in support and the Pre-action Counseling Certificate.

To that extend, it is settled law that Courts are bound by their record. This position of law was re-echoed in the case of ***CPL. OSAFELE FRIDAY V NGERIA ARMY (2016) LPELR-41604 (CA) per ABBA AJI J.C.A at page 11, Paras A*** where it was held thus:

It is trite that the Court is bound by its records which is the true reflection of what transpired in the case."

See also the case of ***LEADERS OF COMPANY LIMITED & ANOR V MAJOR GENERAL MUSA BAMAIYI (2010) LPELR-1771 (SC)***.

In addition, it was held in the case of ***JOHNSON OKOLO & ORS V LEONARD NWAFOR & ANOR (2016) LPELR-41534 (CA) per BOLAJI – YUSUF J.C.A at page 13 -15, Para E*** that:

"...It is now firmly settled that any Court process prepared and filed by a legal practitioner must be signed by that legal Practitioner..."

Consequently, the Court's copy in the file having been signed as required by law the Court is bound by it and the submission of the 1st Defendant/Applicant's Counsel in this regard is hereby discountenanced.

To this end, it should be noted that affixing an expired NBA seal on a Court process does not render the process null and void. It is an irregularity that can be cured. See the case of ***DR. TIM EFUNTOYE V ADEWUMI ADEBAYO & ANOR (2018) LPELR – 46324 (CA)***.

On the whole and without necessarily dwelling into the merits of the substantive suit at this stage, the Originating summons filed by the Plaintiff pursuant to Order 48 of the Rules of this Court for Interpleader is

competent same having been filed in substantial compliance with the Rules. On that note, this Honourable Court has unfettered jurisdiction to heard and determine same on its merit. I so hold.

At this juncture and in the light of the foregoing, it is my considered opinion that the 1st Defendant/Applicant has failed to make out a case for the grant of this application. In that respect and without further ado, I hereby resolve the issue for determination in favour of the Claimant/Respondent against the 1st Defendant/Applicant and hold very strongly that this application lacks merit and same is hereby dismissed in its entirety.

However, having held that the Court's copy of Originating Summons was signed and the learned Counsel to the 2nd Defendant Y. G. Haruna Esq equally told the Court that the Originating Summons served on the 2nd Defendant was duly signed, I order that the Plaintiff/Respondent should avail the 1st Defendant/Applicant with a copy of a signed Originating Summons in the interest of justice.

Signed:

Hon. Justice S. U. Bature
26/11/2021