

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI-ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

**SUIT NO: CV/3197/2020
MOTION NO: M/1590/2021**

BETWEEN:

MR. BABACAR NDIAYE.....CLAIMANT

AND

ERNST & YOUNG LLP.....DEFENDANT

RULING

The applicant herein filed this motion with No. M/1590/21 and prays for the following orders:

1. An order of this Honourable court setting aside the service of the originating processes in this suit on the applicant.
2. And for such further or other orders as this Honourable court may deem fit to make in the circumstances.

The grounds upon which this application is made are as follows:

1. The plaintiff commenced this action against the defendant herein by a Writ of Summons and supporting documents dated 17th November,

2020 (the originating processes) seeking certain orders of this Honourable court.

2. The originating processes in this motion are require to be served on the defendant in this suit, but same were erroneously served on the applicant at the applicant's Abuja address at 7th Floor, Labour House (Wing B), Central Business District, Abuja, Nigeria. The address reflected on the originating processes in this suit (that is, 7th Floor, Labour House (Wing B), Central Business District, Abuja is that of the applicant, and not of the defendant. The address of the defendant in this suit is I more London Place, Landon, United Kingdom.
3. While the party sued as the defendant in this suit is an entity registered and operating under the laws of the United Kingdom, the applicant is an entity registered and operating under the laws of the Federal Republic of Nigeria, with registration No. BN 182296.
4. The Forensic Audit Report, which is the subject of the claimant's case was not issued by the applicant Ernst & Young, while the partner of the firm who purportedly issued the report, Maryam Hussein, is neither a partner nor an employee of the applicant. The applicant, on whom the originating processes and all other processes in this suit were served, is not a party to this suit.
5. The defendant on record, Ernst & Young LLP, in a distinct and separate legal entity from the applicant. The applicant is not the same as the defendant on whom the originating and all

other processes filed in this suit, were meant to be served.

6. The service of the originating processes in this suit on the applicant is of no effect and therefore should be set aside.
7. Proper service of originating processes goes to the root of every matter and improper service of the originating processes robs the court of the necessary jurisdiction.

In the affidavit in support of this application, the deponent stated that the originating processes ought to be served on the defendant in this suit, but same were erroneously served on the applicant at the applicant's address at 7th Floor, Labour House (Wing B), Central Business District, Abuja, Nigeria. That the party sued as the defendant in this matter is an entity registered and operating in, and under the laws of the United Kingdom. While the applicant is an entity registered and existing under the laws of the Federal Republic of Nigeria, with registration No. BN 182296.

It is stated that rather than effecting the service of the originating processes on the defendant, the bailiff of this court erroneously effected the service of the originating processes and the accompanied documents on the applicant at its registered address at 7th Floor, Labour House (Wing B), Central Business District, Abuja. That the defendant on record has no place of business or address for service of court processes at 7th Floor, Labour House (Wing B), Central Business District, Abuja.

It is stated that the applicant is an entity registered in Nigeria at the Corporate Affairs Commission (CAC) with registration No. BN 182296, and that it is not a party to this suit.

In his written address the counsel to the applicant submitted that where a party is wrongly served with the court processes, such a party has the option of entering appearance as protest or entering conditional appearance and then filing an application by way of a motion in court to set aside the service of the processes that were irregularly served, and the court has the inherent jurisdiction to set it aside, and he cited the cases of **Saude V. Abdullahi (1989) 4 NWLR (pt 116) p. 387 at 432;** and **Ukachukwu V. Ezike & Ors (2014) LPELR – 22488 (CA).** He further submitted that the plaintiff sued Ernst & Young LLP, an entity registered and operating in the United Kingdom as the defendant in this suit, but served the originating processes on the applicant, which is an entity totally distinct from the defendant, and the applicant brought this application before the court to set aside the service on it.

The counsel raised this issue for determination, thus:

Whether the service of the originating processes on the applicant who is not a party to this suit is improper in law and therefore ought to be set aside?

The counsel answered the above question in the affirmative, and submitted that a careful examination of the Writ of Summons filed by the claimant shows that the suit was commenced against the defendant, Ernst & Young LLP, and not the applicant.

The counsel referred this court to the depositions in paragraph 6 of the claimant's statement of claim where the claimant stated that his suspension from the ECOWAS was based on a Forensic Audit Report issued by the defendant, which is the cause of action in this suit. The applicant did not issue ECOWAS with the report of Forensic Audit, which is the subject matter of this suit, rather it was Maryam Hussein, who

issued the report for the defendant, and is neither a partner nor an employee of the applicant, and rather she is a partner of the defendant. The applicant is a distinct entity from the defendant, which is not a company registered in Nigeria.

The counsel submitted that the applicant and the defendant are separate and distinct legal entities, and 7th Floor, Labour House (Wing B) Central Area, Abuja were the originating processes were served on the defendant on record is an office address of the applicant in Abuja Nigeria, and that the defendant has no office or presence at the aforesaid address, and he submitted further that there is no provision in the Rules of this court by which a court processes can be served on a person or party other than the party on record, and he referred to the case of **Elmskip Ltd V. Exquisite Ind. Ltd (2003) 4 NWLR (pt 809) p. 88 at 123, para. D** for the effect that service of a process on a person who is not an agent of the party in this case is not proper service in law.

The counsel argued that there is a similarity in the names of the defendant on record and the applicant, and this fact in itself will not cloth the claimant with the power to serve the originating processes meant for the service on the defendant, this is because the applicant, on whom the originating processes were served, is a distinct and separate entity from the defendant on record as of the parties clearly shows the defendant as Ernst & Young LLP in contract to EXH, "A1" which shows that the applicant registered name is Ernst & Young.

The counsel submitted that the primary purpose of service is defeated and there is no way the defendant on record who is based in the United Kingdom will become aware of the pendency of the instant action against it, and

he cited the case of **Kida V. Ogunnola (2006) LPELR – 1690 (SC)**.

The counsel finally submitted that a close perusal of the originating processes of the claimant shows that the claimant has not sought any reliefs against the applicant, so as to warrant the service of originating processes on it.

It is in the counter affidavit of the claimant in opposition to the motion of the applicant that the originating processes were not erroneously served on the applicant, and that the defendant's office is within jurisdiction located at 7th Floor, Labour House (Wing B) Central Business District, Abuja, Nigeria.

In response to paragraph 3 (c) of the affidavit in support, it is stated that even though the defendant is an entity registered and operating in, and under the law of the United Kingdom, it has to comply with the existent laws regulating businesses in Nigeria hence the need to register its firm with the corporate Affairs Commission like any other business. That contrary to paragraph 3 (d), the bailiff of the court did not erroneously effect the service on the applicant.

It is stated that the lawyer of the deponent conducted a search at www.ey.com; the official website of the defendant and it discloses that it has an office within the jurisdiction of this court located at 7th Floor Labour House (Wing B), Central Business District, Abuja, and he annexed the copy of the page on the defendant's website at www.ey.com/en al/location at/Nigeria and is marked as EXH. "A".

It is stated that contrary to paragraph 3h, the applicant is not a distinct legal entity from the defendant as it is the integral part of the defendant as clearly disclosed in EXH. "A". It is stated that Maryam Hussein is a partner of the

applicant's firm who issued the Forensic Audit Report, and she was the team leader of the Forensic Audit team which composes other partners from the defendant's office in Nigeria. That the profile of the defendant includes the curriculum Vitae of the defendant's staff namely: Maryam Hussein and other staff who are currently working in the applicant's office in Nigeria, and as could be gleaned from the company's profile; Maryam Hussein, Linus Okeke, Chiazokam Okadigbo and Richard Ebuefse are employees of the defendant working in its Nigerian office known as Ernst & Young which is located at 7th Floor, Labour House (Wing B), Central Business District, Abuja.

It is stated that the defendant presented itself as a global network of firms with office in Nigeria in the consultancy service agreement for Forensic Audit with the Commission of the ECOWAS and he attached the copy of the agreement marked as EXH, "C", and that the deponent stated that in his capacity as the Director of Forensic of ECOWAS in the letter of invitation the defendant by this commission it was expressly stated that it is not permissible to transfer the said letter of invitation to any other firm.

The deponent was further informed by his lawyer and he verily believe to be true that the service on partners or firm are effected at the place of business within the jurisdiction of the court is a good service. That the originating processes in this suit are not required to be served in the United Kingdom as wrongly stated by the applicant. That the bailiff of this court was not in error when he effected service on the defendant's office located at 7th Floor, Labour House (Wing B), Central Business District, Abuja within the jurisdiction of this court.

In his written address, the counsel to the claimant submitted that it is trite that service of court process is

governed by the rules of court, that is to say, it is the rules of court that determines the mode of service, and he cited the cases of **Gabriel Eke V. Kalu Mark (2004) 5 NWLR (pt 865) 54; and Kraus Thompson Organisation V. The University of Calabar (2004) 9 NWLR (pt 789) 631.**

The counsel submitted that there is no dispute that the defendant is a firm of partners with several offices around the world, and he referred to paragraph (m) of the respondent's counter affidavit.

The counsel took his time to quote Order 7 Rule 7 (1) and (2) of the Rules of this court. He also emphasize on the fact that the consultancy service agreement for the auditing of ECOWAS institution was jointly carried out by the defendant's partners in Nigeria whose office is located at 7th Floor, Labour House (Wing B), Central Business District, Abuja as it is clearly reflected in EXH, "B" and "C" of the claimant's affidavit, and he urged the court to dismiss this application with substantial cost in favour of the claimant/respondent.

Let me formulate the following issues for determination in this application, thus:

- 1. Whether the defendant, by its official website, discloses that it has an office within the jurisdiction of this Honourable court located at 7th Floor, Labour House (Wing B), Central Business District, Abuja?**
- 2. Whether the defendant is a foreign company doing business within the jurisdiction of this court?**
- 3. Whether the originating processes requiring personal service may be served on any of the partners at the place of business within the jurisdiction?**

Thus, I agree with the submission of the counsel to the applicant that an irregular service can be set aside by the court upon timeous application by the aggrieved party. See **Garuba V. State (2014) All FWLR (pt 756) p. 440**. In the instant case, it is on the above premise the applicant filed this application seeking the court to set aside the service on the defendant through or at 7 Floor, Labour House (Wing B), Central Business District, Abuja, Nigeria on the ground that it was served erroneously and that the applicant is distinct and separate from the defendant, and the later has no place, on record, of business or address for service of court processes at 7th Floor, Labour House (Wing B), Central Business District, Abuja. While it is the contention of the claimant that the bailiff of this court did not erroneously effect the service of the court processes and the accompanied documents on the applicant at its registered address located at 7th Floor, Labour House, (Wing B), Central Business District, Abuja, this is because a search was conducted at www.ey.com being the official website of the defendant in which it discloses that it has an office within the jurisdiction of this court located at 7th Floor, Labour House (Wing B), Central Business District, Abuja, and a copy of the page on the defendant's website at www.ey.com/enal/loctions/nigeria was attached and marked as EXH, "A".

The applicant also attached to his affidavit the details of the public search on the website of the CAC which was marked as EXH. "A1".

From EXH. "A1" attached to the affidavit in support, it can be gleaned that the address of the applicant within Nigeria is 13th Floor UBA House, 57 Marina, Lagos, and which also showed that the applicant has been registered with the Corporate Affairs Commission on the 26th June, 2008. While

by the EXH. "A" attached to the counter affidavit of the claimant, and it can be gleaned that the Abuja address of the applicant is 7th Floor, Labour House (Wing B), Abuja. See the case of **Chevron Nig. Ltd V. Enioye (2008) All FWLR (pt 265) p. 1171 at 1173 paras. G – H** where the Court of Appeal, Benin Division held that it is in the affidavit that grounds upon which the party moving the motion intends to rely on are set out. In the instant case, it is in the counter affidavit of the claimant that the website of the defendant that it has an office within the jurisdiction of this court located at 7th Floor, Labour House (Wing B) Central Business District, Abuja, and this response has not been controverted as the applicant has not deemed it appropriate to file a reply affidavit to that effect with a view to counter the depositions in the counter affidavit. See the case of **Ikpana V. Registered Trustees P.C.N. (2006) All FWLR (pt 310) at p. 1725, paras. C – G Per Adam JCA.**

"Furthermore, under the rule of practice on the filing and exchange of affidavit evidence, the respondents upon being served with the counter affidavit filed by the appellant (where there was a denial of their allegation) should have filed a further affidavit to counter the denial of their allegation made by the said appellant. On their failure to counter appellant's averments in the counter affidavit, the effect is that the facts averred or deposed therein prevailed and are to be relied upon by the court"

In the instant case, the applicant averred that it has its office at 13th Floor, UBA House, 57, Marina, Lagos, while the claimant denied or averred that it has also Abuja office at 7th Floor, Labour House (Wing B) Central Business Area. Abuja, and the applicant did not file a reply affidavit or

rather a further affidavit to counter the denial or averments of the claimant, and this court has to deem that the averment deposed to in the counter affidavit is fine and this court has to rely upon it, and to this, I therefore so hold.

The difference between the assertion of the applicant and that of the claimant is that apart from the registered office of the applicant in Lagos, there is Abuja office located at 7th Floor, Labour House (Wing B) Central Business District, Abuja, which by the website of the defendant the office serves as the office of the defendant within the jurisdiction of this court, and to this, I so hold.

In the circumstances, the issue No. 1 is resolved in favour of the claimant that the defendant as office address located at 7th Floor Labour House (Wing B) Central Business District, Abuja.

On the issue No. 2, the applicant in its affidavit averred that defendant Ernst & Young LLP, is a firm registered and operating in, and under the laws of the United Kingdom, and this, the claimant agreed with such averment that in paragraph 3 (d) of the counter affidavit that the defendant is an entity registered and operating in, and under the laws of the United Kingdom. To this, I am inclined to agree with both the applicant and the claimant that the defendant is a foreign company, and by the agreement EXH. "C", attached to the counter affidavit which has not been controverted, I also come to the conclusion is doing business in Nigeria within the jurisdiction of this court, and to this, I therefore hold.

On the issue No. 3, let me have recourse to the affidavit both parties is determining whether the originating processes were served and where were they served.

By paragraph 3 (b) of the affidavit in support, it is averred that the originating processes ought to be served

on the defendant in this suit, but same were erroneously served on the applicant at the applicant's address at 7th Floor, Labour House (Wing B), Central Business District, Abuja, Nigeria. While it is the averment of the claimant in his counter affidavit that contrary to paragraph 3 (h) of the supporting affidavit, the originating process was not served erroneously on the applicant, as the defendant's office within jurisdiction is located at 7th Floor, Labour House (Wing B), Central Business District, Abuja, Nigeria.

It is also in the affidavit of the applicant that the defendant record has no place of business or address for service of court processes at 7th Floor, Labour House (Wing B), Central Business District, Abuja and this was denied by the claimant in paragraph 3 (i) (j) (k) and (c) of his counter affidavit that Maryam Hussein was the team leader of the forensic audit team which comprises other partners from the defendant's office in Nigeria. That the profile of the defendant include curriculum vitae of the defendant's staff namely: Maryam Hussein, and other staff who are presently working in the applicant's office in Nigeria. That as could be gleaned from the company's profile: Maryam Hussein, Linus Okeke, Chiazokam Okadigbo and Richard Ebuetsse are employees of the defendant. That Linus Okeke, Chiazokam Okadigbo and Richard Ebuetsse are employees of the defendant working in its Nigerian office known as Ernst & Young which is located at 7th Floor, Labour Business District, Abuja. These averments are in denial of the averment of the applicant, and it did not file a reply affidavit or rather further affidavit to counter these relevant, and as such by the authority of **Ikpana V. Registered Trustee P.C.N. (supra)**, I have to deem that these averments deposed herein prevail. The averments in the counter affidavit of the

claimant in that regard prevail, and I have to act upon them.

I agree with the counsel to the claimant in applying Order 7 Rule 7 (1) and (2) of the rules of this court which provides:

“(1) Where the persons are sued as partners in the name of their firm, the originating process shall be served upon any one or more of the partners at the place of business within the jurisdiction or upon any person having control or management of the firm.

(2) The service of the originating process shall be deemed good service upon the firm whether any of the members are out of the jurisdiction or not and no leave to serve an originating process against them shall be necessary.”

It on the above premise, I have come to the conclusion that the service was good upon the applicant at 7th Floor, Labour House (Wing B), Central Business District, Abuja, within the jurisdiction of this court.

Hon. Judge
Signed
31/01/2022

Appearances:

Chijoeke Ochogwu Esq appeared for the applicants.

Isyaku Balarabe Mohammed Esq appearing with M. A. Dauda Esq for the claimant/respondent.

CT: The matter is adjourned to 24th day of March, 2022 for hearing.

Hon. Judge
Signed
31/01/2022