

**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/2013/2009

MOTION NUMBER: MOTION NO. FCT/HC/M/8441/2022

DATE: 12TH DECEMBER, 2022

BETWEEN:

MOHAMMED IBRAHIM PADACLAIMANT

(Suing by his Lawful attorney OlatunjiAyoade)

AND

- 1. HON. MINISTER OF FEDERAL CAPITAL TERRITORY**
2. NA'ALLAH IBN BALA (Joined by order of Court dated18/11/10) } DEFENDANTS

APPEARANCE:

Ogumu O. with UsmanUzomaEsq for the 1st Defendant/Applicant
Claimant/Respondent's counsel absent.

RULING

By a Motion on Notice with Motion No. M/8441/2022 dated the 24th of June, 2022 and filed same day. The Motion was brought pursuant to order 2 Rules 1, 2, (1), (2), (3), (4) and (5), order 6 Rules 1, 2, order 43 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure)

Rules, 2018 and under the inherent jurisdiction of this Honourable Court. The Applicant herein prayed this Honourable Court for the following reliefs:-

1. An Order of this Honourable Court striking out this suit for want of jurisdiction and incompetency.
2. And for such order or orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the Application was brought are as follows:-

1. Plaintiff/Claimant's existing, pending and subsisting Writ of Summons accompanied with statement of Claim, witness statement on Oath pre-action counselling certificate, list of Documents to be relied upon at the trial, list of witnesses, documents to be used in evidence dated the 17th day of February, 2015 and filed on 17th day of February, 2015 was not signed at all by the Counsel/Solicitor/Legal practitioner who issued the Writ of Summons, IfeanyiEzeuko; and even IfeanyiEzeuko, Esq, did not sign the attached statement of Claim, attached Pre-action counselling certificate, attached List of Documents to be relied upon at the Trial and attached list of witness as they were signed for IfeanyiEzeuko, Esq, by an unknown person.
2. The existing, pending and subsisting Plaintiff's Writ of Summons, statement of Claim, Pre-action Counselling certificate, list of documents to be relied upon at the Trial and list of witnesses not in signed by IfeanyiEzeuko, Esq, robs this Court of jurisdiction to entertain this suit and makes this suit incompetent.

In support of the Application is a five (5) paragraph Affidavit deposed to by one UsmanYuzoma, Director Litigation in the law firm of IdumodinOgumu& Co, Solicitors to the 1st Defendant/Applicant. Attached to the supporting Affidavit are annexure marked as Exhibits A, B, C, D, E, & F respectively.

Equally filed in support of the Application is a written address dated 24th day of June, 2022.

In the said written address, Counsel to the Applicant formulated a lone issue for determination which is whether it is in the interest of justice to grant this Application and strike out this Suit.

In arguing the issue, Counsel submitted that the Affidavit in support of the Motion and the Exhibits attached are clear. That Exhibit 'A' and 'C' have been amended and they are no longer relevant and material as the Court cannot fall back on Plaintiff's Originating Processes as in Exhibits 'A' & 'C' because this Court had ordered that they should be amended. To that extent counsel submitted that where a process of Court is amended, the amended process no more exists to define the proceedings.

Consequently, it is the contention of the Counsel that this Honourable Court is not to look at Exhibits 'A' and 'C' again but only on Exhibit "E". In support of this, counsel cited the cases of **REGISTERED TRUSTEES A. O. N V N. A. M. A (2014) 8 NWLR (PT. 1408 1 at 29-3-, 48, 58-59 OKUWADE VS OLAWALE (2014) 10 NWLR (PT. 1415) 207 at 245 R. T. S. L. B. C. VS. NMIKOL RES. LTD (2015) 14 NWLR (PT. 1479) 391 At 400, GREEN FINGERS LTD VS MUSAWA (2017) 5 NWLR (PT1558) 308 at332-333 PARA E-F.**

In his further submission, Counsel stated that, the existing and subsisting Writ of Summons and statement of Claim is as in Exhibit "E" attached to the Affidavit of the Applicant showing that the existing and subsisting Writ of Summons in this suit is not signed by the Plaintiff or his Counsel, Ifeanyi Ezeuko, Esq, as it is blank and there's no signature of Ifeanyi Ezeuko, Esq, who issued the Writ of Summons. In this respect, counsel submitted that the subsisting Plaintiff's Writ of Summons attached as Exhibit "E" having not been signed by Counsel who issued it is thus incompetent. Counsel Relied on the cases of **MAINASARA VS F. B. M PLC (2022) 6 NWLR (PT. 1827) 465 at 497- 498 PARAS F-B, OROK VS ETA (2021) 12 NWLR (PT. 1790) 350 at 370-376 PARAG.**

Moreso, Counsel stated that an unsigned Writ of Summons is not an irregularity but goes to the root of the process that seek to originate the action. In this respect, Counsel cited the cases of **MR. OSCAR VS LAZARUS UMPIE CA/C/165/2014; FEBSON FITNESS CENTERE VS CAPP A H. LTD (2015) 6 NWLR (PT. 1455)263 at 278.**

In another submission, counsel argued that the validity of an originating process in a proceeding before a Court is Fundamental and a necessary requirement for competence of the suit and proceedings thereon. That the

originating Writ of Summons in this suit having not been signed by the plaintiff's legal practitioner cannot validly activate jurisdiction of this Court. Counsel cited in support the cases of **FEBSON FITNESS CENTRE VS CAPP H LTD (Supra) 6 NWLR (PT. 1455) 263 at 276; BRAITHWAITE VS SKYE BANK (2012) 52.2 NSCQR 458 at 473-474, 476, N. C. C. (NIG) LTD VS COSEDA (NIG) LTD (2018) 11 NWLR CA.1629) 47 at 5758.**

Submitting further, Counsel stated that jurisdiction is the foundation or pillar upon which a case before a court can stand and failure of the Plaintiffs legal practitioner to sign the subsisting Writ of Summons has legally ousted the Jurisdiction of this Honourable Court. Reliance was placed on the case of **SLB CONSORTIUM LTD VS N. N.P. C (2011) NWLR (PT. 1252) 317 at 329-330 PARA D-F.**

Therefore Counsel contended that the defect in the subsisting writ of summons of the Plaintiff cannot be cured by amendment, as the suit was dead on arrival and any amendment thereafter was of no moment. Counsel referred the Court to the case of **MIN. W & T. ADAMAWA STATE V. YAKUBU (2013) 6 NWLR (PT. 1351) 481 at 496 PARA B-G.**

Finally, Counsel urged the Court to strike out this suit in its entirety for want of jurisdiction and competency.

On the other hand, in opposing the Application, the Claimant/Respondent filed a Counter Affidavit of Sixteen (16) paragraphs deposed to by one Salome Sunday a litigation secretary in the law firm of N. J. KALU & CO. Counsel to the Claimant/Respondent in this suit. Attached to the Counter Affidavit is an annexure marked as Exhibit CLM. Equally filed in support of the Counter Affidavit is a written address dated the 13th day of October, 2022.

In the said written address, Counsel to the Claimant/Respondent formulated two issues for determination to wit:

1. Whether the Writ of Summons issued in this case by the Registrar of this Honourable Court on 18th August, 2009 is still valid and subsisting.

2. Whether the Applicant has presented enough facts to enable this Honourable Court grant this Application.

In arguing the issues, learned Counsel submitted on issue one that the only Writ of Summons issued by the Registrar of this Honourable Court was issued on the 18th August, 2009.

consequently, counsel argued that a Writ of Summons cannot be issued twice on a particular suit except if the Writ expires. Reference was made to order 6 Rule 2 (1) of the High Court of the Federal Capital Territory, Abuja. (Civil Procedure) 2018.

Therefore, counsel contended that the Writ of Summons filed on the 18th day of August, 2009 duly signed by the Counsel representing the Plaintiff and issued by the registrar of this Honourable Court remains the original and substantive Writ of Summons in this suit. That once a Writ of Summons kick starts a legal process, statement of Claim takes precedent over the writ of Summons.

In his further submissions, Counsel stated that the applicant has wrongly and ignorantly argued that Exhibit "E" attached to the Affidavit in support of the Motion on Notice is the subsisting Writ of Summons as the Applicant wrongly argued that the Writ of Summons issued on the 13th of August, 2009 was amended and as such cannot be a process.

In addition, counsel contended that the order made by the Court to join the 2nd defendant as "party to the suit was not for amendment of writ of summons but rather to amend and add 2nd Defendant as a party to the suit as the writ of summons dated 17th February, 2015 and filed on same date did not extinct the life of the original writ that was issued on the 18th August, 2009. Counsel placed reliance on the case of **DANIEL HOLDINGS LTD VS UBA PLC (2005) 13 NWLR (PT 943) 533** particularly at page 540 ratio 4.

Arguing further, counsel stated that all the cases cited by the Applicant Counsel on the effect of amended process has no relationship with instant case as the Supreme Court case of **MAINASARA V. F. B. M. PLC** cited by the Applicant's Counsel is of no moment because the case can be distinguished.

Also Learned Counsel stated that the other Court processes attached to the Writ such as pre-action Counselling certificate and list of documents remains valid and subsisting as there was no Application for amendment of these processes.

Counsel submitted that document speaks for itself. He referred the Court to Exhibit "E" and stated that statement of claim was signed by IfeanyiEzeuko Esq, which is the only name on the process.

In his further submission, counsel stated that the Claimant has filed another Writ of Summons by mistake which he ought not to have filed, except filing of statement of Claim, which supercedes Writ of Summons.

finally, on issue one, Counsel stated that it is not enough for the Court to decline jurisdiction to hear and determine this suit on its merits as the Writ of Summons dated 17th February 2015, can be at most regarded as a matter of manner or form which can be treated as an irregularity. Counsel cited the case of **CHIME V. CHIME (2001) 3 NWL (PT. 701 at 527 particularly page 535 Ratio 10.**

On issue two, which is whether the Applicant has presented enough facts to enable this Honourable Court grant this Application, learned counsel contended that the Applicant's counsel argued that the statement of Claim signed by IfeanyiEzeuko, Esq dated 17th February, 2015 was not signed by a lawyer or a legal practitioner, however, looking at Exhibit "E" which contains the said statement of Claim, the Court will find that the statement of claim as contained in Exhibit "E" was signed by the Claimants lawyer Mr. IfeanyiEzeuko Esq. Therefore, Counsel submitted that document speaks for itself, as oral evidence cannot be used to contradict documentary evidence. Reference was made to the case of **GURARA SEC& FIN VS T. I. C LTD (1999) 2 NWLR (PT. 589 page 29 at page 31 Ratio 2.**

In a similar vein, Counsel submitted that there is no provision in the Rules of Court that will deprive the Court of its jurisdiction to hear and determine a matter because pre-action counselling certificate and list of documents to be relied upon at the trial was not signed.

In his further submission, Counsel stated that if the applicant's Counsel want the Court to look at various signatures and compare it with other, The

signature must be tendered in evidence and will be tendered by the maker which is IfeanyiEzeuko. Therefore, Counsel urged the Court to discountenance all the illustrations made by the Applicant's Counsel as the Court cannot pick and choose the one to rely on since the maker of the signature is not called to prove same or deny same. Reliance was placed on Section 93 (1) of the Evidence Act, 2011.

In his final submission on issue two, Counsel stated that the Applicant's Counsel is giving evidence in his written address and the law is trite that written address no matter how well written cannot take the place of evidence. Reference was made to the cases of **P. H. M. B VS EDOSA (2001) 5 NWLR (PT. 707) page 612 at page 616 Ratio 6 and CHIME VS CHIME (2001) 3 NWLR (PT. 701) at 527.**

On the whole, Counsel urged the Court to dismiss this Application with substantial cost against the 1st Defendant who has failed to present adequate facts to this Honourable Court for grant of this Application and to hold that the original Writ of Summons filed on the 18th August 2009, which kick started this suit is still valid.

I have carefully perused the motion on notice, the reliefs sought, the supporting affidavit, the annexure attached therewith and the written address in support of the motion. I have equally gone through the Counter Affidavit in opposition to the motion, the annexure attached therewith and the written address filed alongside the Counter Affidavit. Therefore, it is my humble view that the issue for determination is whether the Applicant herein has made out a case for the grant of this Application.

It should be borne in mind at the onset that Writ of Summons is one of the modes of commencing civil action. In this respect, see order 2 Rule 2 (1) of the Rules of this Honourable Court.

It is trite law that Rules of Court are meant to be obeyed and there are not for fancy. This position of law was reinstated by the Apex Court in the case of **OWNERS OF THE MV. ARABELLA VS N. A. I.C (2008) 11 NWLR (PT. 1097) PP 205-206 PARAS G-C, 222 PARAS. C-D** where it was held thus:-

"Rules of Court are not mere Rules. They partake of the nature of subsidiary legislation by virtue of Section 18 (1) of the Interpretation Act consequently, Rules of Court have the force of law. That is why Rules of Court must be obeyed. And when there is non-compliance with the Rules of Court, the Court should not remain passive and helpless but should sanction the non-compliant party otherwise the purpose of enacting the Rules of Court will be defeated. In other words, rules of Court are not only meant to be obeyed, they are binding on all parties before the court and any party who fails to obey the rules of Court must bear the consequence of his failure or omission."

It is germane to point out before I proceed that the main ground upon which this application is predicated is that the claimants existing, pending and subsisting writ of summons accompanied with statement of claim, witness statement on oath, pre-action counselling certificate, list of documents to be relied upon at the trial list of witnesses documents to be used in evidence dated the 17th day of February 2015 and filed same date was not signed at all by the Counsel/Solicitor/legal practitioner who issued the writ of summons, IfeanyiEzeuko.

Having pointed out this, it is settled law that every legal practitioner owes a duty to prosecute his client's case diligently and the law is equally trite on issue of signing of Court process by legal practitioners. The jurisprudence behind the law is simply to ascertain that the person bringing the process for filing is really a legal practitioner under the Definition in the legal practitioners Act and to make the legal practitioner responsible. This point was elaborated by the Supreme Court in the case of **F. B. N PLC & ORS VS ALHAJI SALMANU MAIWADA & 2 ORS (2012) LPELR-9713 PER JOHN AFOLABI FABIYI JSC** where it was held thus:-

"I wish to repeat that we are interpreting a law which seeks to make legal practitioners responsible and accountable more especially in modern times that we are presently operating. I see nothing technical in insisting that a legal practitioner should abide by the dictates of the law in signing Court processes."

In the instant case, the Applicant deposed in the supporting Affidavit particularly at paragraph 4 (h) which for ease of reference, I shall reproduce same hereunder. It reads thus:-

"(h) That in the Writ of Summons as in Exhibit "E", it was not signed at all by IfeanyiEzeuko, Esq and it was not even written amended, and not endorsed in accordance with Order 24 Rule 6 of the defunct High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004."

On the other hand, the Claimant/Respondent equally deposed in the Counter Affidavit particularly at paragraph 4 (F) which for ease of reference, I shall reproduce same hereunder. It reads thus:-

"(f) That IfeanyiEzeuko signed all the Court processes which indicated his signature as shown in Exhibit "E" contrary to the averments contained in paragraph 4(h) of the Affidavit in support."

At this juncture, I have studied carefully Exhibit E attached to the supporting Affidavit which is the Writ of Summons dated 17th day of February, 2015 and filed same day and I find that the said Writ of Summons which is the initiating process was not signed by the legal practitioner i.e.IfeanyiEzeuko Esq who issued same nor the Claimant himself. In this respect, I refer to the case of **AYA VS NKANU (2022) 1 NWLR (PT. 1840) Per Augie JSC at 186 PARA B-H** where it was held thus:-

"An unsigned Process, particularly originating process, is a worthless document, which does not have any efficacy in law. This is because a document which is not signed has no origin in terms of its maker. Such a process or document which is not traceable to any known author may be said to have a spurious origin, therefore, it is incurably bad and cannot be remedied. Since the originating process used for the commencement of the suit before the trial Court (the Writ of Summons) was not signed by either the Respondents or legal practitioner, as their counsel, in line with the requirements of the Rules of Court the suit was incompetent

ab initio, thereby depriving the trial Court as well as the Court of Appeal and the Supreme Court of the requisite jurisdiction to adjudicate over it on the merit and the Appeal arising there from."

See also the case of **G. S. D. IND LTD VS N. A. F. D. A. C (2012) 5 NWLR (PT. 1294) 536**

It should be noted that the submission of the Learned Counsel to the Claimant/Respondent that the issue should be regarded as a matter of manner or form which can be treated as an irregularity, ought to be discountenanced because an unsigned writ of Summons as in the instant case, touches on the jurisdiction of the Court to hear and determine the suit. This position of law was re-echoed in the case of **OROK VS ETA (2021) 12 NWLR (PT. 1790) PER BARKA J.C. A PP 375- 376 PARAS F-A** where it was held that:-

"An unsigned Writ of Summons is not an irregularity. It goes to the root of the process that seeks to originate the action. It is incompetent in the eyes of the law which robbed the Court of the jurisdiction to try the suit before it."

To this end and without further ado, it is my considered opinion that the Writ of Summons in the instant case being the initiating process having not been signed as required by law is incompetent, defective and thereby robs this honourable Court of its jurisdiction to entertain this matter. I so hold.

Consequently, I hereby resolve the lone issue for determination in favour of the Defendant/Applicant against the Plaintiff/Respondent. To that extent, this suit with suit no FCT/HC/CV/2013/2009 is hereby struck out.

I make no order as to cost.

Signed:

***Hon. Justice S. U. Bature
12/12/2022.***