

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

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS**

**COURT:28**

**DATE: 5<sup>TH</sup> APRIL, 2022**

**FCT/HC/CV/135/21**

**BETWEEN:**

**ACCESS BANK PLC -----**

**CLAIMANT**

**AND**

**1. NNENNA DORIS UBANI**

**2. NNESSCA GLOBAL SERVICES LIMITED**

**DEFENDANTS**

**RULING**

At the Proceedings of this Honourable Court in this matter on 23<sup>rd</sup> February, 2022, Counsel to the Defendant sought to call a witness to give evidence Pursuant to a Subpoena.

Counsel to the Claimant however objected to the witnesses testifying and tendering documents in this case on grounds that his statement on oath was not frontloaded and therefore an ambush on parties. Counsel to the Claimant further submitted that the subpoenaed ought to depose to a statement on oath and serve same on parties with all documents sought to be tendered.

Counsel to the Defendant in response submitted that the objection of Counsel amounts to a fault-finding and that there are ways to set aside a subpoena and not by objection.

The totality of arguments canvassed by Counsel can be narrowed down to a sole issue to wit:

"Whether a subpoenaed witness must file a written deposition before the testimony and documents sought to be tendered by such witness is admitted as evidence".

The record of this Court shows that Pursuant to an application by the Defendant, a subpoena was issued on one Mr. Adeyanyu Akeem to appear before the Court to give evidence on behalf of the Defendant and also bring with him and produce at the same time and place relevant documents in defence of this matter.

A subpoena is a formal document issued by the Court commanding a person required by a party to a suit to attend Court at a given date, to give evidence on behalf of the party or bring with him and produce any specified documents required by the party as evidence or for both purposes. See ***OBI ODU V DUKE (2006)1 NWLR (PT.961) P. 375 at 391. AMERE AKINTAYO V GEORGE JOLAJOYE & ORS (2010) LPELR 3688(CA).***

There has been a lot of dust raised in the instant case as to whether a subpoenaed witness ought to depose to a witness statement on oath and whether it is mandatory that a witness statement on oath ought to be filed in respect of such a witness. I believe Order 2 Rule 2(2) of the High Court of the FCT, Abuja (Civil Procedure Rules) 2018 makes the position of the Rules of Court abundantly clear. The said provision states as follows: -

(2) "All Civil Proceedings commenced by writ of summons shall be accompanied by:

A) Statement of Claim

B) List of Witnesses to be called at the trial

C) Written Statement on Oath of the witnesses, **except A SUBPOENAED WITNESS:**

D) Copies of every document to be relied upon at trial

E) Certificate of pre-action counseling; as in form 6.

Of relevance to this issue is the decision of the Court of Appeal in the case of **LAGOS STATE URBAN RENEWAL AUTHORITY V CHIEF GANIYU BALOGUN OKOLO & ANOR (2010) LPELR- 4421 (CA)** where it was held per Pemu JCA as follows;

"A Court or tribunal can suo motu call for any evidence which it believes can iron out the crisis in any matter. A subpoenaed witness by the very nature of his call, does not have to depose to a written statement on oath. I do not think it is the intention of the drafters of the Rules of Court to destroy the land marks of our jurisprudence relating to evidence".

In the case of **LASUN V AWOYEMI (2009) 16 NWLR PT. 1168 P. 513**, the CA held per Ogunbiyi JCA thus; " the general provisions of the Practice Direction on frontloading of witness's deposition on oath only contemplates willing and voluntary witness and not one who had to be compelled by an order of Court to testify by way of subpoena.."

Similarly, In the case of **MICHALE OKAROH V THE STATE (1988) 3NWLR (PT.81) 214 AT 220**, their Lordships of the apex Court said;

"The Courts should see to it that justice is never defeated by technical rules of procedure. These rules should be seen as subservient hand maid to justice, not as omnipotent masters at war with justice ".

As a matter of law, no Court or Tribunal can do substantial justice in any case when all the relevant facts and documents available are not placed before it. Thus, the essence of justice would be defeated should the Court shut out oral and documentary evidence being brought forward through

subpoena because there has not been compliance with frontloading requirements.

Where a subpoena is properly issued and served like in the instant case, any party affected by same may apply to have it set aside and in the instant case, no application was brought to that effect before this Court.

In conclusion, it is my considered view that the Rules of this Court do not require the filling of a witness statement or deposition before a subpoenaed witness can testify at the trial of a matter. The witness subpoenaed by the Defense Counsel can competently testify as a subpoenaed witness without filling his witness statement on Oath or deposition.

The issue for determination is hereby resolved against the Claimant in favour of the Defendant.

From the application made by the learned Silk above " I apply that the Court make an order that the party in whose favour this witness seek to testify, his witness statement on oath be made to us also served us everything he intend to use in his evidence. This is not the position going by order 2 Rule 2 of the rules of this Court. I therefore consequently disagreed with the learned Silk. The objection raised by the learned Counsel to the Claimant cannot hold water reason being that a subpoena witness either testificandum need not to be subjected to the procedure applied by the learned silk there is no such procedure in existence. It is helpful to always remember that technical justice is no justice at all, and a Court of law should distance itself. Courts of law should not be unduly tired down by technicalities particularly where no miscarriage of justice would be occasioned. Justice can only be done in substance and not by impending it with mere technical procedural irregularity that occasion no miscarriage of justice. Where the fact are glaringly clear, the Court should ignore mere technicalities in order to do substantial justice see ***ABUBAKAR VS YARADUA (2008) 4 NWLR (pt 1078) 465 AKAN VS***

***BOB (2010)17 NWLR (pt 1223) 421 FAFI VOL LTD VS A.G FED (2013) 18 NWLR (PT 852) 453.*** From the totality of the authorities cited above and order 4 rule 2 (2) of the Rules of this Court made me to overrule the Claimant's Counsel. Accordingly the objection raised by the Claimant's Counsel is hereby overruled.

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**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**  
**5/4/ 2020**