

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI – ABUJA**

**THIS 26<sup>TH</sup> APRIL, 2022**

**BEFORE HIS LORDSHIP HON: JUSTICE A. A. FASHOLA**

**SUIT NO :FCT/HC/CV/1102/2022**

**MOTION NO. M/701/2022**

**BETWEEN**

**DR AJAH ELECTUS-----CLAIMANT**

**AND**

**AVASTONE GLOBAL SERVICE LTD & 1OR -----DEFENDANTS**

**RULING**

The Defendant/Applicant brought this Notice of preliminary objection dated and filed on the 25<sup>th</sup> day of January against the originating processes filed by the plaintiff/Respondent. The said preliminary Objection seeks this Honourable Court to strike out this suit for want of jurisdiction.

The ground upon which the application is brought is as follows:

1. That the originating processes in this suit, that is, the writ of summons, statement of claim, statement on oath of witnesses and exhibits were not served on the defendants/applicants as required by the rules of this honourable court.

In support of the Objection learned counsel filed a written Address, wherein the defendants/applicants raised a lone issue for determination

***Whether this Honourable Court could exercise jurisdiction to hear determine the claimant claim in view of the failure to serve the originating process as required by law***

Learned counsel argued that the service of the originating processes on parties is a precondition for the exercise of the jurisdiction of the court in a case.

Learned counsel argued that a court is not only entitled, but bound to bring an end to proceedings when it becomes manifest that they are incompetent. He referred this Court of the case of **SKEN CONSULT (NIG) LTD V UKEY (1981) 1 SC 6 AT 26 TO 27** and **FBN PLC VS OBAIDE SONS LTD (1998) 2 NWLR (PT 538) U10**.

Learned counsel relied on **ORDER 7 RULES 8 OF THE FCT High Court (civil procedure) Rules 2018**

*“subject to any statutory provision regulating service on a registered Company, Corporation or body Corporate, every originating process requiring personal service may be serve on a registered Company Corporation or body corporate, by delivery at the Head office or any other place of business of the organisation within the jurisdiction of the Court”.*

He further argued that the proof of service of the originating processes on the first Defendant before the court purports to have been served by delivery at the place of business of the 1<sup>ST</sup> defendant/Applicant and that the legal requirement is that the person receiving must be identifiable and must have connection with the 1<sup>ST</sup> defendant

Learned counsel to the applicant submitted that the 2<sup>nd</sup> defendant was improperly served on a person other than the 2<sup>nd</sup> defendant, that it is observable from the record of the court that no order of substituted service was made to warrant such service. He cited

the case of **MOHAMMED VS MUSTAPHA (1993)5 NWLR (PT 292) 222**, it was held that

*“failure to serve process where the service of process is required is a failure which goes to the root of the Jurisdiction of the court Any proceedings in such a case is a nullity”*

Learned counsel to the defendant/applicants concluded that proper service of the originating processes is sine qua non. Where a court lacks jurisdiction to adjudicate on a matter the only order it can make is to strike out the claim.

In Response to the Preliminary Objection, plaintiff/Respondents filed a 7 paragraph counter affidavit dated 1<sup>st</sup> February 2022 deposed to by one celine Amuzie a. (Mrs).

Filed along the counter affidavit is a written address wherein learned silk to the plaintiff/Respondent formulated a sole issue for determination

***Whether this Honourable Court could exercise jurisdiction to hear and determine the claimant/Respondents claim in view of fact the adverse party is aware of the pending action and even took steps by participating in the ongoing proceedings?***

In respect of the lone issue above, learned SAN counsel to the plaintiff/Respondent argued that evidence on record shows that the person that took service on behalf of the defendant called himself secretary which by all necessary indication means the secretary of the Company. He relied on the case of **WOKSON INTERNATIONAL LTD VS DUFAN (NIG) LTD (2019) LPELR-48599 (CA)** to the effect that service on the company receptionist is a proper service.

Learned silk further contested that the second leg of the objection was that the 2<sup>nd</sup> defendant was also not properly serve, learned SAN argued that the awareness of the pendency of the suit is the object of the law he relied on **INEC V IZUNASO & ORS (2019) LPELR 148446 (CA)**

Learned Silk submitted that going by the principle of law the 1<sup>st</sup> & 2<sup>nd</sup> defendant have submitted to the jurisdiction of the court by taking steps in this matter by filling the memorandum of conditional appearance the defendants' joint statement of defence, list of witness, witness statement on Oath.

I have carefully perused the Preliminary Objection as filed by the Defendants/Applicants. I have in the same vein very carefully perused the counter affidavit as filed by the claimant/Respondents herein.

It is trite law that service of court process is a precondition to the jurisdiction of the court, this is because the service of originating processes is a condition precedent for the exercise of the court's jurisdiction see the case of **NWOKO V AZEKWO (2012) 12 NWLR (PT 1313) P 151.**

The position of the law is clear with regards to service of court processes on companies, It is trite that court processes may be served on the director, secretary or other principal officer or by leaving it as the office of the incorporation or company, see the case of **DAGAZAU V BOKIR INTL LTD (2011) 14 NWLR (PT 1267) P 261.** While service of processes on individual is by personal service.

From the evidence before me, the defendants in the instant suit have filed their memorandum of conditional appearance, Statement of defence, list of witnesses and witness Statement on oath. The defendants cannot therefore be said not to be aware of

the pendency of this suit. I therefore hold that the preliminary Objection filed by the defendants/applicants is lacking in merit, same is hereby dismissed.

It is trite that the proceedings on non service or improper service of originating processes can only be pronounced a nullity where the right to fair hearing has been breached as a result of non service. In other words, non service should not automatically render a proceeding a nullity unless the party relying on it proves that the principles of fair hearing are violated in the process. See the case of **DAHIRU MUHAMMED VS TAJU MUSTAPHA (1993) 5 NWLR PT (292) TENO ENG. LTD VS ADISA (2005) 22 NSCQR 858 Ratio 2 & 3 SKENCONSULT NIG LTD VS UKEY (1981) 15C6.**

As mentioned earlier in this course of this ruling, the defendant in this instant suit have filed their memorandum of conditional appearance, statement on defence, list of witness and witness statement on oath. Even where a writ of summons is not properly served on a defendant and he nonetheless attends court and participates actively in the proceedings, he would be deemed to have waived his rights and would no more be heard to complain of non service. This is because failure to serve a writ as required by court rules is an irregularity and not an illegality. See the case of **JOB CHARLES NIG LTD VS OKONKWO (2002) FWLR (PT.117)1067** Ration. A perusal of the records of this Honourable Court reveals that the originating process was served on the 2<sup>nd</sup> defendant's lawyers 12<sup>th</sup> April, 2022. In my opinion, this is an irregularity and not an illegality more so same had been cured by the defendant having filed their responses I so hold.

Having so hold, the defendant notice of preliminary objection dated and filed on 25<sup>th</sup> January, 2022 is lacking in merit it is hereby struck out.

**Appearances:**

Parties absent.

P.O OKOLO SAN With A J Okolo Esq J.O Amah Esq & P.O Akoji Esq for the Claimant.

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Ruling delivered in open court

**Signed**

**Presiding Hon. Judge**

**26<sup>th</sup>/04/2022**