

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ON THE 11TH DAY OF OCTOBER, 2022
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/3133/19

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

**LEVITIKAL REALITIES AND CINSTRUCTION LTD CLAIMANT/
RESPONDENT**

AND

CHEMICAL AND ALLIED PRODUCTS PLC ... DEFENDANT/APPLICANT

RULING

The Defendant/Applicant's application dated 1/05/22 but filed on 19th is for an Order setting aside the issuance and service of the Writ of Summons in this suit same having not complied with the mandatory provisions of Sections 96, 97 and 99 of the Sheriff and Civil Process Act.

The grounds of the application relied upon by Learned Counsel to the Defendant is that issuance and service of same on the Defendant in Lagos State can only be valid where leave of this Court is first sought and obtained. That Claimant commenced this suit by means of Writ of Summons to be served on the Defendant in Lagos State without first seeking

and obtaining leave. The leave subsequently sought and obtained is nullity. The Claimant filed a Counter Affidavit deposing essentially that, it sought leave of this Court to issue and serve on the Defendant the Writ of Summons outside jurisdiction. That leave to issue and serve the Writ of Summons was granted on 5/11/19.

That in the light of leave to issue and serve (Exhibit A) the 30 days envisaged by the extant law was considered and the case was adjourned to accommodate same. That the return date was more than 30 days as envisaged by the Rule of Court. That Defendant had earlier filed a Notice of Objection which was dismissed in a considered ruling. That the Notice of Objection is the same as the one earlier filed.

That on 2/03/22, the Defendant sought to reargue the said Preliminary Objection upon which Ruling was delivered by Banjoko J. The Court in a bench ruling held that the said application cannot be resuscitated. That this application is an abuse of Court process.

I have considered the arguments of Counsel. This present application is strange. It has been dealt with by this Court.

Banjoko J.as she then was (now JCA) delivered a considered ruling on a similar application and on the same grounds on 8th of July, 2020. It is Exhibit B attached to the Claimant's Counter Affidavit.

Defendant's Counsel knowing fully well that his application was argued and a considered ruling delivered failed, refused and or neglected to appeal against the said Ruling. He sought to re-argue the said Preliminary Objection before me on the 2/03/22 when Defendant's Counsel knew that he had earlier argued the said motion and a Ruling delivered.

Today again, he refiled the said motion and argued it before this Court. Abuse of Court process is of infinite varieties. It is often to irritate and annoy the opposing party. It also involves filing of the same motion between the same parties on the same issue even at different times. I am surprised at the conduct of Defendant's Counsel. He ought to know that what he is doing is wrong.

It is my view that this Notice of Preliminary Objection dated 1/05/22 but filed on 19/05/22 is an abuse of Court process and it is accordingly dismissed.

The Defendant's Counsel has succeeded in wasting the time of the Court and that of the Claimant's Counsel. I shall therefore award cost against him personally. Cost of ₦50,000.00 (Fifty Thousand Naira) is awarded against the Defendant's Counsel VEMBE TERENCE TERFA, ESQ. in favour of the Claimant.

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HON. JUSTICE U.P. KEKEMEKE
(HOH. JUDGE)
11/10/22