

**IN THE HIGH COURT OF JUSTICE OF THE
CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE: HON. JUSTICE O. C. AGBAZA**

COURT CLERKS: UKONU KALU, GODSPOWER EBAHOR & ORS.

COURT NO: 6

SUIT NO: FCT/HC/CV/253/2018

MOTION: M/054/2020

BETWEEN:

PAGEF NIGERIA LIMITED.....PLAINTIFF

VS

FIRST CONTINENTAL PROPERTIES LTD.....DEFENDANT

RULING

By a Motion on Notice filed on 3/5/2020 with Motion No. M/054/2020, brought pursuant to Section 6(6) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) Order 2 Rule 5 (2) and Order 25 Rule 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court. The Defendant/Applicant seeks the court the following reliefs;

- (1) An Order of this Honourable Court striking out the Renewed Writ of Plaintiff/Respondent dated October 2, 2020, the order to renew same having been obtained mischievously and contrary to the Provision of law and the Rules of this court, thereby making the Renewed Writ incompetent.
- (2) An Order of court striking out the Renewed Writ for none service of the Motion on Notice seeking the order for the renewal of the Writ.

(3) And the Omnibus relief.

The Motion is supported by a 5 Paragraph affidavit deposed to by one Andrew Eze Administrative Assistant in the Law Firm of Applicant's Counsel. Also filed a Written Address and adopts same as oral argument in urging the court to grant the application.

Responding, Claimant/Respondent filed a 10 Paragraph Counter-Affidavit dated 13/4/2012 deposed to by one Fredrick Adino a Lawyer in the Law Firm of Claimant/Respondent's Counsel. Also filed a Written Address and adopts same as oral submission in urging the court to refuse the application.

In the Written Address of Defendant/Applicant Chimezie E nukia Esq. of Counsel formulated two issues for determination namely;

- (1) Whether the Renewed Writ of Summons is valid, amendments having been effected on same contrary to the modalities for such amendments as set out in Order 25 Rule 2 of the High Court of the FCT (Civil Procedure) Rules 2018 and in consideration of Order 2 Rule 5 (2) of High Court of the FCT (Civil Procedure) Rules (Supra).
- (2) Whether this Honourable Court has the powers to strike out the Renewed Writ of Summons in this suit same having been rendered incompetent by the amendments made thereon without the application for such Amendment/Renewal being served on the Defendant.

On issue one, submits that the Claimant deftly inserted amendments while applying for renewal of the Writ of Summons, without seeking the leave of court contrary to the provisions of Order 25 Rules 2 and Order 2 Rule 5 (2) of the Rules of Court. Therefore, the Writ is defective urge court to hold same as incompetent. Refer to Dada Vs Oluwodipe (2017) 10 WRN 113 Para 2, Obaro Vs Hassan (2013) 8 NWLR @ 454, Chief Dominic Onuorah Ifezue Vs Livinus Mbadugha & Anor (1984) LPELR SC. 68/1982 and Poroye Vs Makarfi (2017) 71 1 NSCQR @ 147 Para 5.

On issue two, submits on the strength of Order 2 Rule 5 (2) of the Rules of Court, and the cases of Chief Dominic Onuorah Ifezue Vs Livinus Mbadugha & Anor (Supra) and Poroye Vs Makarfi (Supra) urge Court should hold that the Renewed Writ of Summons currently before the court is incompetent and urge court to strike out same. However, assuming but not conceding to the fact that the application for Renewal of the Writ was made and granted by this court, it was necessary for the Claimant to put the Defendant on Notice, thus failure to put the Defence on Notice in the Claimant's application for renewal of the Writ and amendment of same without leave of court thereafter, robs court of the jurisdiction to hear the application in the first place. The attendant consequence of all of these is that the Renewed Writ of Summons is incompetent and liable to be struck out. Refer to Ogundoyin Vs Adeyemi (2003) 13 NWLR (PT. 730) 403 @ 66 Ratio 9.

Finally urge Court to strike out the Renewed Writ for being incompetent.

In her Written Address, S.E. Adino Esq. for Claimant/Respondent formulated a sole issue for determination that is;

“Whether from a community examination of the application of the Defendant/Applicant together with all the processes currently before the Honourable Court it can be validly maintained that this Honourable Court lacks the jurisdiction to entertain the suit of the Plaintiff/Respondent as presently constituted”

Submits that jurisdiction is the fulcrum of adjudication and no court should be cowed just because its jurisdiction is challenged, as it must critically examine the reasons for the challenge. Submits further that the submissions and authorities cited by Defendant/Applicant’s Counsel on the issue of service are correct, but are irrelevant and unavailing in this case, as, service must be had to facts of a particular case. Refer to *Adebayo Vs Shogo* (2005) Vol. 125 LRCN 318 @ 319.

Submits that by the nature of the application for leave to issue Renewal of Writ on the Defendant/Applicant, the Defendant/Applicant was not entitled to service considering that she was yet to enter appearance in the matter, when the application was moved and granted. Refer court to Paragraph 3 (d) of the Defendant/Applicant’s affidavit in support of the Motion further refer court to Paragraph 6 of Claimant/Respondent’s Counter-Affidavit as well as the dates, the Motion numbers M/9132/2019 and M/9470/2019 were filed, urge court to resolve the sole issue in favour of Claimant/Respondent and dismiss this application with punitive cost.

Having carefully considered the affidavit evidence of the parties, the submission of Counsel as well the judicial authorities, I find that the issues which calls for determination is;

“Whether the Renewed Writ of the Claimant/Respondent dated 2/10/2020 is competent”

In the determination of the issue raised by this court and ultimately whether this court have the requisite jurisdiction to entertain this suit based on the Renewed Writ of the Claimant/Respondent dated 2/9/2019 the court must consider its record and this the court is empowered to do. See Agbareh Vs Mimra (2008) All FWLR (PT. 409) 559 and upon a well-considered perusal of its records, the court finds that the original Writ of Summons dated 11/10/2018 was served on the Defendant/Applicant on 3/6/2019 and via a Motion Exparte dated 25/9/2019 with Motion No. M/9132/2019, Claimant sought and obtained leave of court to issue Renewed Writ of Summons and other processes in this suit and serve same on the Defendant outside the Jurisdiction of Court. And while seeking the leave of court to do the above, Clamant/Respondent surreptiously amended Paragraphs 12 (ii) and (iv) of the original Statement of Claim as well as her (ii) (iv) endorsement on their Writ of Summons, without the leave of court, as required by the Rules of Court. A breach the Defendant/Respondent admitted but justifies on the ground that she has filed Motion No. M/12664/2020 which would comprehensively take care of the complaints of the Defendant/Applicant. It is trite that Rules of Court are meant to be obeyed to advance the course of justice. In Nico Oliver Vs Dangote Industries Ltd (2010) All FWLR (PT. 506) 1858 @ 1882. Paragraph F – G. the correct held that;

“Rules of Court should be obeyed and not flouted with impunity”

From all of these, the failure of Claimant/Respondent to seek the leave of Court before amending her Originating Process amounts to a breach of the Provisions of Order 25 Rule (1) and (2) of the Rules of Court, therefore renders the Renewed Writ of Summons and other processes filed along incompetent, and this particular feature of the case consequently prevents the court from exercising its jurisdiction on the said Writ. See *Madukolu Vs Nkemdilim* (1962) 1 All NLR 587 SC.

In conclusion this application has merit and should succeed. Accordingly, this court hereby grant an Order striking out the Renewed Writ of the Claimant/Respondent dated October 2nd 2020. The Order to renew same having been obtained contrary to the Rules of this Honourable Court.

HON. JUSTICE O.C. AGBAZA

Presiding Judge

27/10/2022

APPEARANCE:

S.E. ADINO ESQ. FOR THE CLAIMANT/RESPONDENT

PAUL AUDU ESQ. WITH G.T. BAGE ESQ. FOR THE DEFENDANT/APPLICANT