IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 29TH DAY OF NOVEMBER, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/332/2021

BETWEEN:

TOPAZ GLOBAL TRUST LIMITED **CLAIMANT**

AND

NINO CORPORATION LIMITED **DEFENDANT**

RULING

This Ruling is in respect of a Notice of Preliminary Objection which the Defendant in this suit filed.

The Claimant, by way of an undated Writ of Summons on the Undefended List which was filed on the 08th of February, 2021, had instituted the suit against which the Notice of Preliminary Objection is brought. In the said Writ of Summons, the Claimant had sought the following reliefs:-

1. The Claimant claims against the Defendant, the sum of NGN20,559,500.00 (Twenty Million, Five Hundred and Fifty-Nine Thousand, Five Hundred Naira only) being the debt owed to the Claimant by the Defendant for armoured wires supplied to the Defendant by the Claimant on the eleventh day of January 2019 (11/01/2019).

2. 25% interest on the total debt per annum from the 2nd February, 2019 till judgment is delivered in this matter.

3. 10% Court interest from the date of Judgment until the full liquidation of the entire Judgment sum.

4. Cost of this action put at NGN500,000.00.

This Court marked the Writ of Summons as "Undefended List" on the 02nd of March, 2021 and fixed the 16th of March, 2021 as the return date.

On the 15th of March, 2021, the Defendant through its Counsel, Francis Moses Nworah of F. M. Nworah & Co. filed a Motion on Notice dated the same date seeking for an Order of this Court for extending the time within which the Defendant could file its Affidavit in support of its Notice of Intention to Defend. It also sought an Order of this Court deeming the already filed Affidavit in support of the Notice of Intention to Defend as having been properly filed and served. Counsel for the Defendant moved this Motion, with Motion Number M/2602/2021, on the 31st of March, 2021 and this Court granted the prayers contained therein.

Though the Defendant had filed its Notice of Intention to Defend the suit on the 10th of March, 2021, it was not until the 15th of March, 2021, that it filed the affidavit disclosing its defence on the merits in support of its Notice of Intention to Defend. Also on the same 15th of March, 2021, the Defendant filed Notice of Preliminary Objection which it titled the Defendant's Notice of

Intention to Rely upon Preliminary Objection. Responding to the Defendant's Notice of Preliminary Objection, the Claimant on the 31st of March, 2021, filed its undated Reply on Points of law in opposition to the Defendant's Notice of Preliminary Objection. The Defendant, in response, on the 9th of July, 2021, filed its Further Reply on Points of Law to the Claimant's Reply on Points of Law to the Defendant's Notice of Preliminary Objection. The Defendant's Further Reply on points of law was dated the 3rd of May, 2021. It is instructive to note that the Claimant, also on the 31st of March, 2021, filed a Reply on Points of Law, also dated the 31st of March, 2021, in opposition to the Defendant's Notice of Intention to Defend. Similarly, the Defendant responded to this process by filing, on the 9th of July, 2021, what it titled the 'Defendant's Further Reply on Points of Law to New Issues Raised by the Claimant on his purported Reply on Points of Law in opposition to the Defendant's Affidavit in support of Notice of Intention to Defend'. The parties relied on their averments and adopted their arguments in support of and in opposition to the application as well as their averments and arguments in support of and in opposition to the Writ of Summons on the Undefended List. The Court thereafter adjourned for Ruling and Judgment.

The Defendant's Notice of Intention to Rely Upon Preliminary Objection was predicated on the following grounds: that the Defendant was not privy to any transaction by the Claimant; that the Writ of Summons was not properly signed and or issued by the legal practitioner representing the Claimant; that

the mode of service of the originating processes on the Defendant was unknown to the Rules of this Court and that this Court lacks the jurisdiction to hear and determine the present suit.

In the Defendant's Written Address, learned Counsel for the Defendant, F. M. Nworah Esq., formulated four issues for determination. The issues are: "*(1) Whether this suit as constituted is competent by virtue of the Form and party sued; (2) Whether the unsigned Writ of Summons for issuance purportedly served on the Defendant is competent vis-à-vis Orders 6 Rule 2(2) & (3) and 35 Rules 2 & 3(1) of the FCT High Court Abuja (Civil Procedure) Rules 2018? (3) Whether there was proper service? (4) Whether this Honourable Court has the requisite jurisdiction to hear this instant suit*."

In his argument on the first issue, learned Counsel contended that the Writ of Summons was incompetent because the Claimant did not comply with the requirements relating to the period of entering of appearance, lifespan of the writ, the position of signing and time for renewal of the writ. He insisted that the errors made the writ irredeemably bad because of the use of the word 'shall' in Order 2 Rule 4 of the Rules of this Court. He added that the mistakes were inexcusable even if the intention of the Claimant was to comply with the rules relating to Fast Track. Citing the cases of ***Okon v. Okon (2016) LPELR-42056 (CA)*** and ***Ugbomah v. Allanah & Ors (2018) LPELR-44832(CA)***, Counsel submitted that the suit of the Claimant was not initiated through the due process of the law.

On the question of whether the proper parties were before this Court, learned Counsel submitted that proper parties were not before the Court as there was nothing that showed that the Board of Directors of the Defendant approved any transaction in relation to which this suit was brought. He added that a company is distinct from its directors or shareholders and, therefore, should not be held liable for the actions of the said directors or shareholders. Referring this Court to the cases of ***M. A. Adeoti v. Oseni Akanni (2013) LPELR-20352 (CA), Donatus Okafor v. Ifeanyi Isiadinso (2014) LPELR-23015 (CA), Veralam Holdings Limited v. Galba Limited & Anor (2014) LPELR-22671 (CA)*** and ***Ifeanyichukwu Okonkwo v. National Universities Commission (2013) LPELR-20395 (CA)*** among other cases, he urged the Court to strike out or dismiss the suit.

In his submissions on the second issue he formulated, learned Counsel argued that Order 6 Rule 2(3) and Order 35 Rules 2 and 3(1) of the Rules of this Court made it mandatory for a Claimant suing, or where the Claimant is represented by a legal practitioner, then, the legal practitioner, to sign the writ by which the suit is initiated. He placed emphasis on the requirements of the Rules that the copy served on the Defendant must be similar. He contended that the failure to comply with this compulsory provision is detrimental to the suit of the Claimant. He asserted that the Claimant complied with only the provision for availing the proper number of copies for service but refused to comply with the requirements as to signing and proper service. Learned

Counsel maintained that this non-compliance is incurable. He cited ***Ugbomah v. Allanah & Ors (2018) supra*** and ***Umejei v. Amaechi (2020) LPELR-50377 (CA)*** the holdings of which he quoted extensively. Counsel opined that a party who decided to institute their suit and conduct same in a manner incompatible with the Rules of the Court or with stipulated conditions precedent in the statutes should be ready to bear the consequences of their non-adherence to the rules or the relevant statute. Citing the case of ***Madukolu v. Nkemdilim (1962) N.S.C.C. Vol. 2 page 374 at 379 lines 50 – 55, 380, lines 1 – 5***, he urged this Court to strike out the suit.

In his argument on the third issue, learned Counsel pointed out that whereas the Writ had Plot 261 Sefadu Street, Wuse Zone 4 Abuja as the address of the Defendant, the proof of service in the file of the Court showed that a certain Pame Lydia Sule at Zone 5, Wuse, Abuja received the processes meant for the Defendant. Learned Counsel maintained that the mode of service adopted by the Claimant went against the grain of the accepted means of service as provided for in Order 7 Rule 8 of the Rules of this Court and sections 77 and 78 of the Companies and Allied Matters Act, 2020. Citing the cases of ***Hon. Blessing Agbebaku v. The State (2014) LPELR-22134 (CA), Mark v. Eke (2004) 5 NWLR (Pt. 865) 54*** and ***Jumba v. Idris (2017) LPELR-43120 (CA)***, Counsel argued that the consequence for non-service is incurable. He urged the Court to dismiss the suit of the Claimant.

In his argument on the last issue, learned Counsel iterated that the Court is bereft of jurisdiction in view of his arguments on the three preceding issues. He quoted extensively from the case of ***Virgin Nigeria Airways Limited v. John Roijien (2013) LPELR-22044 (CA)*** and, in conclusion, urged this Court to decline jurisdiction.

In the Claimant's Reply on Points of Law in opposition to the Defendant's Notice of Intention to Rely on Preliminary Objection, learned Counsel formulated a sole issue for determination, namely: "*Whether this Honourable Court has the jurisdiction to entertain the Claimant's suit as presently constituted*."

Arguing this sole issue, learned Counsel contended that issuance of a writ of summons and the service of same determine its validity and not the endorsements contained therein. Citing a number of cases such as ***Vatsa & Ors v. FBN (2011) LPELR-4232 (CA), Jalbait Ventures (Nig.) Ltd & Anor v. Unity Bank Plc (2016) LPELR-41625 (CA)*** and Order 6 Rule 6(1) of the Rules of this Court, Counsel maintained that the Writ of Summons of the Claimant was properly issued and that same was served within the period stipulated in the Rules of this Court. He urged the Court to treat any inadvertence in the endorsements as an irregularity which should not be allowed to decimate the writ.

Proceeding to the contention of learned Counsel for the Defendant that the legal practitioner who issued the Writ of Summons did not sign it, Counsel for

the Claimant submitted that the legal practitioner for the Claimant properly signed the Writ of Summons, adding that the Rules of this Court did not make any provision that the writ of summons should be signed in a particular manner or that the signature should be on a particular position on the writ of summons. He further invited the Court to find that the irregularities on the Writ of Summons were not enough to vitiate the Writ of Summons. He cited the cases of ***Jock & Anor v. SUN-MEX (Nig.) Ltd (2017) LPELR-43394 (CA), Uzur & Sons (Nig.) Ltd v. Onwuzor & Ors (2006) LPELR-5727 (CA) and Media Techniques (Nig.) Ltd v. Adesina (2004) LPELR-5848 (CA)*** to support his position on this point.

On the issue of whether the Defendant is a proper party, Counsel for the Claimant pointed out that Counsel for the Defendant was more concerned about what constituted proper parties and failed to address the issue of whether the Defendant was a proper party. He argued that the submissions of the Counsel for the Defendant that a resolution of a company was required before a company could transact with persons was rather specious. Citing the case of ***Bolton (Engineering) Co. Ltd v. Graham & Sons (1959) 1 QB 159, Okolo & Anor v. UBN Ltd (2004) LPELR-2465 (SC)*** and section 89(1) of the Companies and Allied Matters Act, 2020, while also referring the Court to the documents annexed to the Claimant's Writ of Summons, he urged the Court to hold that a company could be held liable for the acts of its directors or officials. He also asked the Court to discountenance the arguments of

Counsel for the Defendant that the absence of a written contract vitiated the suit of the Claimant. On this point, he commended the case of ***BPS Construction & Engineering Co. Ltd v. FCDA (2017) LPELR-42516 (SC)***.

On the question of service, learned Counsel contended that the service on the Defendant through the Counsel who represented the Defendant throughout the process of negotiation prior to the initiation of the suit was proper service. he also invited the Court to take note of the proof of service in the case file and to find that the Defendant was served at the registered address of the company as well as on the Counsel who represented it during the negotiations prior to the suit. He commended the cases of ***ICRC v. Olabode (2009) LPELR-8764(CA), Ezechukwu & Anor v. Onwuka (2005) LPELR-6115 (CA)*** and ***Tuoyo Holdings Ltd v. Niger-Benue Transport Co. Ltd & Anor (2006) LPELR-11804 (CA)***. He also urged the Court to discountenance learned Counsel for the Defendant's reliance on section 77 of the Companies and Allied Matters Act, adding that section 77 of the Companies and Allied Matters Act, 2020 dealt with the issue of certificate of incorporation on re-registration.

In his Further Reply on Points of Law to the Claimant's Reply on Point of Law, learned Counsel for the Defendant insisted that there was no resolution of the Defendant that authorized whoever that entered into a contract with the Claimant to so do. He also contended that there was no application for, or any Order for any other form of service in the case file to justify the Claimant

serving the Defendant at a place other than the registered address of the Defendant. He referred this Court to the case of ***Solar Construction Services Ltd v. Honourable Minister of Federal Capital Territory & Others (2018) LPELR-46648 (CA); Nkubo Bassey Okon v. Mobil Producing Nigeria Unlimited (Suit No.: FHC/UY/CS/780/2013)*** and insisted that since service on corporate entities could be performed only in the manner stipulated by the Companies and Allied Matters Act, 2020 and the Rules of this Court, any form of service other than that provided for should be declared invalid and incompetent.

Counsel also insisted that proper parties are not before the Court. He cited the case of ***Veralam Holdings Limited v. Galba Limited & Anor (2014) LPELR-22671(CA); M. A. Adeoti v. Oseni Akanni (2013) LPELR-20352 (CA);*** and ***Fairline Pharmaceutical Industries Ltd & Anor v. Trust Adjusters Nigeria Ltd (2012) LPELR-20860 (CA)***. He urged the Court to uphold the objection of the Defendant to the competency of the Claimant's suit.

Those are the arguments of Counsel for and against the Defendant's Notice of Preliminary Objection challenging the competency of the suit of the Claimant. I have paid due diligence to the arguments of both parties in this application and I think the issue before me can be framed simply as this: "***Whether the suit of the Claimant as it is presently constituted is not competent***?" in resolving this sole issue, I shall treat the five issues which

learned Counsel for the Defendant had formulated in his Notice of Preliminary Objection as thematic sub-issues under the sole Issue I have formulated. These are the validity of the form of the Writ of Summons by which the present suit was commenced; the propriety of the person sued as the Defendant in this suit; the competency of a Writ of Summons that is signed in a particular manner, the question of proper service of the originating processes on the Defendant, which is a company; and, generally, whether this Court will be correct to assume jurisdiction where the Defendant has been able to establish any of the above vitiating elements.

I shall take the first and third thematic sub-issues jointly. On the first sub-thematic issue of the validity of the form of the Writ of Summons by which the action was commenced, learned Counsel for the Defendant had contended that "*by virtue of Order 2 Rule 5 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 the Form 1 used by the Claimant completely and willingly deviated from the provided Form 1 by making substantial changes as to period of entering appearance, lifespan of the Writ, position of signing and time for renewal of the writ*." He had argued that the use of the word "shall" in Order 2 Rule 5 made the obligation imposed in that Rule mandatory and not merely directory.

I have studied the Writ of Summons used in instituting this suit. With regards to period of entering appearance, the writ of summons states that "*You are hereby commanded that within fourteen days after the service of this writ on*

you…". As to the lifespan of the writ, the writ of summons provides that "*This writ is to be served within twelve (12) months from the date thereof or, if renewed, within six (6) calendar months from the date of the last renewal, including the day of such renewal and not afterwards*". As for the position of signing, I noticed that Counsel for the Claimant signed the Writ of Summons immediately below the date, which, in turn, is below the endorsement as to claim. Counsel also appended his signature directly above his name on the issuance clause where it is stated "*This writ was issued by Immanuel Ogba Ogbaga, of Messrs. GIMBG LEGALS, of 1 Durban Close, Opposite 48 Durban Street, off Ademola Adetokumbo Crescent Wuse II, Abuja, Legal Practitioners to the Plaintiff*."

How does the Writ of Summons of the Claimant compare with the standard Form 1 in the Rules of this Court? In Form 1, the period limited for entering appearance is fourteen days. The lifespan of the writ under the extant rules of this Court, that is, High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018, is three (3) months, renewable for another three (3) months. The issuance clause in Form 1 of the Rules is drafted thus: "***This writ was issued by G.H. of ……. whose address for service (c) is***

……agent for…… of

……legal practitioner for the said claimant who resides at (d)…… (mention the city

town or district and also the name of the street and number of the house of the claimant's residence, if any)."

It can be seen that the points of divergence between the Writ of Summons of the Claimant and the Writ of Summons in Form 1 of the Rules are on the lifespan of the writ and the time for renewal of same, as well as the issuance clause. It must be noted that though Form 1 do not have a provision for signing of a Writ of Summons, Order 6 Rule 2(3) of the Rules of this Court provides that "***Each copy [of an originating process] shall be signed by the legal practitioner or by a claimant where he sues in person…***". In spite of this lacuna in Form 1, learned Counsel for the Claimant complied with the provision of Order 6 Rule 2(3) of the Rules of this Court when he improvised a signature clause directly under the endorsement as to claims. That is commendable, considering the fact that the question of signing of a Writ of Summons by the Counsel who takes it out has agitated the minds of the Courts, such that the Civil Procedure Rules of some jurisdictions have been amended to accommodate this element.

The thrust of the argument of learned Counsel for the Defendant, relying on the case of ***Ugbomah v. Allanah & Ors (2018) LPELR-44832 (CA)***, is that Counsel for the Claimant should have signed the writ directly above, or against the clause "*This writ was issued by Immanuel Ogba Ogbaga, of Messrs. GIMBG LEGALS, of 1 Durban Close, Opposite 48 Durban Street, off Ademola Adetokumbo Crescent Wuse II, Abuja, Legal Practitioners to the*

Plaintiff". Counsel for the Defendant's train of argument is strange. ***Ugboman's case*** is distinguishable from this case. In ***Ugbomah's case***, Counsel for the Claimant did not sign the writ at all. In the case before me, Counsel for the Claimant signed the writ, not just immediately below the endorsement as to claim, but also directly above his name in the issuance clause.

The original copy of the Writ of Summons, that is, the file copy, has the signature of the Counsel for the Claimant both below the endorsement as to claim and above his name in the issuance clause. Counsel for the Defendant is urging this Court to rely on the provisions of Order 6 Rules 2(2) and (3) of the Rules of this Court to discountenance the originating processes of the Claimant. The sub-rules provide that

> "***(2) The claimant shall provide as many copies of the originating processes filed for the use of the Court and for service on the defendant(s).***
>
> ***(3) Each copy shall be signed by the legal practitioner or by a claimant where he sues in person and shall be certified after verification by the registrar as being a true copy of the process filed.***"

I have perused the copy of the Writ of Summons attached to the Notice of Preliminary Objection as an exhibit. Though the signature of Counsel for the Claimant is visible directly below the endorsement as to claim, it is lacking on

the issuance clause. Is this omission grievous enough to invalidate the Writ of Summons? Counsel for the Defendant has contended that the provisions of Order 6 Rule 2(2) and (3) are mandatory and not directory and, therefore, should be treat as a fundamental defect. On the other hand, Counsel for the Claimant has countered that the omission is an irregularity which should not nullify the Writ of Summons. He submitted, relying on ***Vatsa & Ors v. FBN Plc (2011) LPELR-4232 (CA)***, that the only grounds upon which a Writ of Summons could be voided is when it is improperly issued or when it is not served within twelve months in the first instance, or within the period of its renewal.

I am inclined to agree with learned Counsel for the Claimant. Counsel for the Claimant signed the Writ of Summons. I have no hesitation in arriving at this finding. Learned Counsel for the Defendant's contentions that the Writ of Summons should have been signed in a particular manner, or that the signature should have been endorsed on a certain position, or that the service copies of the writ of summons should have been served in a particular manner and position are arguments that seek to enthrone technical justice over substantial justice. Such arguments deify technical justice over substantial justice and should not be encouraged.

Still on the form of the Writ of Summons of the Claimant, the Counsel for the Defendant has contended that the endorsement as to the duration of the Writ of Summons rendered the writ invalid. In response, Counsel for the Claimant

argued that regardless of the endorsement on the Writ of Summons, the Writ of Summons was served within the six months provided for under Order 6 Rule 6(1) of the Rules of this Court and, therefore, the Writ of Summons is valid. The certificate of service deposed to by the Bailiff of this Court shows that the service of the originating processes was done on the 4th of March, 2021. This supports the assertion of the Counsel for the Claimant that the Writ of Summons was served within six months as provided for in Order 6 Rule 6(1) of the Rules of this Court.

I stated earlier that I have studied Form 1 in the Rules of this Court. The endorsement as to duration of the Writ of Summons reads as follows: "***This writ is to be served within three calendar months from the date of issuance, or if renewed, within three calendar months from the date of the last renewal, including the day of such date, and not afterwards.***" How, then, can this Court reconcile such contradictory information? Predictably, neither Counsel provided any clue as to this conflict, as neither Counsel adverted their minds to this paradox. It is my considered view that in reconciling this conundrum, the provisions of the Rules, and not the Forms which constitute mere appendages for guidance, should take precedence. To me, I believe that deliberate belief that forms serve the same purpose as marginal notes in a statutes and, for that reason, should be so treated in determining the intendment of the lawmakers. As I have been stated in several decided cases, marginal notes do not form part of an enactment. See

Yabugbe v. C.O.P. (1992) LPELR-3505 (SC) at pp. 17 – 18, paras C – A; OSIEC & Anor v. AC & Others (2010) LPELR-2818 (SC) at p. 55, paras B – C; Akintokun v. LPDC (2014) LPELR-22941 (SC) at p. 129, para D; Oyewumi v. Governor of Oyo State & Others (2021) CA at p. 47, paras D – E; Enoghama & Others v. Osagie & Others (2022) LPELR-58504 (CA) at pp. 14 – 18, paras A - B among others on this subject.

Order 6 Rule 6(1) designates the lifespan of a Writ of Summons as six (6) months. The determining factor for validity of the Writ of Summons therefore, is the date of service of the originating processes on the Defendant. In that case, since the Writ of Summons was filed on the 8th of February, 2021 and same was served on the 4th of March, 2021, that is, within a period of twenty-four (24) days, I have no difficulty in holding that the Writ of Summons is valid. To hold otherwise will defeat the ends of justice.

The Rules of this Court has directions for the Court in situations of this nature. Order 5 Rules 1 and 2 provide thus:-

> "***(1) Where in beginning or purporting to begin any proceedings there has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, such failure shall not nullify the proceedings.***
>
> ***(2) Where at any stage in the course of or in connection with any proceedings there has by reason of anything done or left undone been a failure to comply with the requirements as to***

time, place, manner, or form, such failure may be treated as an irregularity. The court may give any direction as he thinks fit to regularise such steps."

In the case of ***Mr. Boniface Ufoegbunam v. Barr. Jideofor Okongwu (2018) LPELR-45086(CA)***, the Court per Helen Moronkeji Ogunwumiju, JCA (as he then was), while commenting on the construction of Order 4 Rule 6(1) and Order 5 Rule 1 and 2 of the High Court of Anambra State (Civil Procedure) Rules, 2006, which is *in pari materia* with the provisions of Order 4 Rule 6(1) and Order 5 Rule 1 and 2 of the Rules of this Court, held *inter alia* ***at pp. 10 – 18, para E – E*** as follows:-

"***In the construction of a statute or rule of Court, no portion can or must be taken in isolation. A holistic view of the legislation must be taken in order to ensure that the intendment of the legislature is what the Courts decipher and enforce… Where there appears to be a mandatory requirement, that requirement even where there is an omission as to manner or form can be treated as an irregularity… The spirit of the law has changed for the better and that irregularity even if we concede that it exists here for the sake of argument must not be confused with total lack of jurisdiction… The current conventional wisdom is that noncompliance with the mandatory provisions of an act is fatal whereas noncompliance with the rules of Court may be an***

irregularity which can be waived depending on the peculiar circumstances of the case to meet the ends of justice… Mandatory words or provisions in rules of Court as that contained in Order 4 Rule 1(1) of the Anambra State Rules are generally treated as permissive or directory and allow for discretionary enforcement."

Of great import and signification to the argument of Counsel for the Defendant is the holding of the Supreme Court in the case of ***B.B.N. Ltd. v. S. Olayiwola & Sons Ltd. [2005] 3 NWLR (Pt. 912) 434 at P. 454, paras. D-E at p. 457, paras G – H, p. 458, para B*** where it held, with particular reference to section 99 of the Sheriffs and Civil Process Act that "***The provision of section 99 of the Sheriffs and Civil Process Act is directory. Consequently, once a defendant is given 30 days to enter appearance to a writ of summons served outside the jurisdiction of a court, the failure to endorse on the writ that the defendant has 30 days within which to enter appearance to the writ would not invalidate the writ.***"

Applying this dictum *mutatis mutandis* to the arguments of the Counsel for the Defendant on the endorsement as to duration of the Writ of Summons, it is my considered view, and I so hold, that the inadvertence of Counsel for the Claimant in endorsing twelve months as the duration of the Writ of Summons instead of three months as contained in Form 1 will not invalidate the Writ of Summons as long as the Writ of Summons was served within the period

stipulated as the duration of the Writ of Summons in Order 6 Rule 6(1) of the Rules of this Court.

I will move immediately to the second thematic sub-issue which borders on whether the Defendant is a proper party to be sued. It is the argument of Counsel for the Defendant that the Defendant is not the proper party to be sued. According to him, in paragraph 2.4, "*there is nothing on record from the writ vis-à-vis the claim of the Claimant/Respondent that indicates any approved transaction by the Board of the Defendant/Applicant to warrant it been sued as any kind of party whatsoever, be described (sic) as proper, desirable or even necessary parties…*" In paragraph 2.6, he reiterated that "*the Defendant being a company is completely different from any Director or shareholder of the company in decision taken with Board Resolution…*" These paragraphs contain the crux of the argument of learned Counsel for the Defendant in his contention that proper parties are not before the Court. He also cited several authorities in support of his position.

In his response, Counsel for the Claimant argued that companies, being a creature of legal fiction, act through human agents. He referred the Court to the English case of ***Bolton (Engineering) Co. Ltd v. Graham & Sons (1959) 1 QB 159***, the Nigerian case of ***Okolo & Anor v. UBN Ltd (2004) LPELR-2465 (SC)*** and section 89(1) of the Companies and Allied Matters Act, 2020.

I have reflected on these authorities cited by both Counsel. Both Counsel are agreed that proper parties must be before the Court before the suit can be

competent. Both Counsel are also in agreement that a company is a legal personality quite distinct from its directors, members or shareholders. The point of divergence, however, is the propriety of making the Defendant a party. In resolving this conundrum, the *terminus a quo*, naturally, will be the relevant provisions of the Companies and Allied Matters Act, 2020. At the risk of being prolix, I will reproduce the entire provisions of section 87, 88, 89 and 90 of the Act. These sections provide as follows:-

> ***87. (1) A company shall act through its members in general meeting or its board of directors or through officers or agents appointed by, or under authority derived from, the members in general meeting or the board of directors.***
>
> ***(3) Except as otherwise provided in the company's articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Act or the articles required to be exercised by the members in general meeting.***
>
> ***88. Unless otherwise provided in this Act or in the articles, the board of directors may—***
>
> ***(a) exercise its powers through committees consisting of such members of their body as they think fit; or***

(b) from time to time, appoint one or more of its members to the office of managing director and may delegate all or any of its powers to such managing director.

89. Any act of the members in general meeting, the board of directors, or a managing director while carrying on in the usual way the business of the company, shall be treated as the act of the company itself and the company is criminally and civilly liable to the same extent as if it were a natural person:

Provided that—

(a) the company shall not incur civil liability to any person if that person had actual knowledge at the time of the transaction in question that the general meeting, board of directors, or managing director, as the case may be, had no power to act in the matter or had acted in an irregular manner or if, having regard to his position with or relationship to the company, he ought to have known of the absence of such power or of their irregularity; and

(b) if in fact a business is being carried on by the company, the company shall not escape liability for acts undertaken in connection with that business merely because the business in

question was not among the business authorised by the company's memorandum.

90. (1) Except as provided in section 89 of this Act, the acts of any officer or agent of a company shall not be deemed to be acts of the company, unless—

(a) the company, acting through its members in general meeting, board of directors, or managing director, shall have expressly or impliedly authorised such officer or agent to act in the matter; or

(b) the company, acting as mentioned in paragraph (a), shall have represented the officer or agent as having its authority to act in the matter, in which event the company shall be civilly liable to any person who has entered into the transaction in reliance on such representation unless such person had actual knowledge that the officer or agent had no authority or unless having regard to his position with or relationship to the company, he ought to have known of such absence of authority.

(2) The authority of an officer or agent of the company may be conferred prior to any action by him or by subsequent ratification, and knowledge of such action by the officer or

agent and acquiescence by all the members of the company or by the directors or by the managing director for the time being, shall be equivalent to ratification by the members in general meeting, board of directors, or managing director, as the case may be.

(3) Nothing in this section shall derogate from the vicarious liability of the company for the acts of its servants while acting within the scope of their employment.

Only one meaning emerges from a community reading of these sections, and, that is: a company acts through human agents who may be the directors, the members, the shareholders, the officers or its agents. Acts of these persons asre deemed acts of the company, especially, where they are done in the usual course of the company's business. In fact, by virtue of section 89(b), a company is forbidden from denying liability for the acts of its officers even if the acts of the officers are not covered by the memorandum of association of the company.

The Courts have pronounced on the provisions of these sections in a number of decided authorities. See ***Ekene Peter Okoye v. The State (2019) LPELR-48860(CA) at pp. 7-18, paras. E-A***. In ***Eastern Metals Limited v. Federal Republic Of Nigeria (2019) LPELR-50840(CA) at 35-36, paras. A-C)***, the Court held per Tijani Abubakar, JCA that,

"The law is trite, that a Company is a legal personality different and distinct from its staffs, agents and/or officers; however, the difference and distinction is a slim one because a Company being a legal person can only act through its directing minds, agents and/or officers. See Olalekan v. Wema Bank Plc [2006] 13 NWLR (Pt. 998) 617; (2006) LPELR-2562 (SC) Pg. 7-8, Paras. E - A. ..." This Court further held in the same case that "In the case of N.N.S.V V. Sabana (1988) NWLR (Pt. 74) 29, the apex Court held: "A company, it has been said is an abstraction. It therefore acts through living persons. But it is not the act of every servant of the company that binds the company. Those whose acts bind the company are their alter ego - those persons who because of their positions are the directing mind and will of the company, the very ego and corporate personality of the company."…"

Similarly, in ***Adeyemi v. Lan & Baker (Nig.) Ltd. (2000) 7 NWLR (Pt. 663) 33 C.A. P.51, paras. A - B***, the Court held that,

"***An incorporated limited liability company is always regarded as a separate and distinct entity from its shareholders and directors with the result that the acts of any of these biological persons carried out within the ambit of the memorandum and articles of association of the incorporated company is solely the***

acts of the incorporated company for which it alone is responsible. In effect, the consequence of recognising the separate personality of a company is to draw a veil of incorporation over the company generally. No one is entitled to go behind or lift the veil. Since a limited liability company only exist in the eye of the law it can only operate by means of human beings; usually, a company acts through its directors and managers whose actions can be attributed to the company."

In ***NEU-KOM Microfinance Bank Limited & Ors v. Mrs. Mosunsola Oluwafunmilola Indongesit Nkanga (2022) LPELR-58171(CA) at pp. 10-11, paras. C-E***, the Court held that

"***Undeniably, the 1st Appellant is a corporate entity, a juristic person in law, different from its members, subscribers or shareholders. For good reasons, the law has conferred upon it enormous immunity and privilege owing to its basic gullible feature of living a life without a mind or brain, without hands or legs, without a body or physical form. It is by the undaunting force of the law at the bottom of its creation, and protected through its growth or promotion to a functional juristic personality that it exists differently from, though not in isolation of its human components which reside mainly in its directors. That is the postulate in the doctrine of corporate personality***

which appears to have originated and gained persistent legitimacy for one hundred and twenty-five years now from the English decision in Salomon vs Salomon (1897) 2 AC 22. It applies in Nigeria as well. See Section 42 of the Companies and Allied Matters Act 2020. In Adamu Muhammad Gbedu & Ors vs. Joseph I. Itie (Liquidator) (2020) 3 NWLR (Pt. 1710), 104 at 124 para C - D, the Supreme Court held that: "Company law derives from Common Law and that includes the Companies and Allied Matters Act, CAMA, applicable in Nigeria." Its application in Nigeria has been consistently upheld by both the Apex Court and this Court. See Marina Nominees Ltd vs. FBIR (1986) LPELR - 1839 (SC), Ramanchandani vs. Ekpenyong Trenco (Nig) Ltd vs. African Real Estate & Investment Co. Ltd & Anor (1978) LPELR 33264 (SC), United Cement Co. Ltd vs Libend Group Ltd & Anor (S016) LPELR - 42038 (SC)."

A perusal of the documents in this case negates the arguments of Counsel for the Defendant that the Defendant should not be a party in this suit. Who, then, should be a party in a suit? Again, at the risk of being prolix, I must reproduce the relevant authorities in this regard. In the case of ***Bello v. INEC & Ors (2010) LPELR-767 (SC)***, for example, the apex Court per Adekeye, JSC explained at ***pp. 80 – 81, paras E*** that,

"While parties in the case of* Green v. Green (1987) NSCC pg. 115 at pg. 121 *is defined as "persons whose names appear on the record as plaintiff or defendant", in the case of* Fawehinmi v. NBA (No. 1) 1989 2 NWLR (Pt. 105 pg. 494 at pg. 550 – *a party is defined as follows: "A party to an action is a person whose name is designated on record as plaintiff or defendant, the term party refers to that person(s) by or against whom a legal suit is sought whether natural or legal person but all others who may be affected by the suit indirectly or consequently are persons interested and not parties.""

The Supreme Court had reason to identify and define the various categories of parties in the *locus classicus* ***Green v. Green (1987) LPELR-1338 (SC)***. In that case, the Supreme Court per the erudite Oputa, JSC (of blessed memory) ***at pages 16 – 17, paras F*** furnished us with this timeless dictum:

"***This now leads on to the consideration of the difference between 'proper parties', 'desirable parties', and 'necessary parties'. Proper parties are those who, though not interested in the Plaintiff's claim, are made parties for some good reasons, e.g. where an action is brought to rescind a contract, any person is a proper party to it who was active or concurring in the matters which gave the plaintiff the right to rescind. Desirable parties are those who have an interest or who may be affected***

by the result. Necessary parties are those who are not only interested in the subject-matter of the proceedings but also who in their absence, the proceedings could not be fairly dealt with. In other words, the question to be settled in the action between the existing parties must be a question which cannot be properly settled unless they are parties to the action instituted by the plaintiff."

As to how to determine who a proper party is, the Supreme Court per Augie JSC went on to hold in the case of ***U.O.O. (Nig.) Plc v. Okafor 11 NWLR (Pt. 1736) 409 SC at pp. 438, paras A – E; 441, paras A – B*** that "***…before an action can succeed, the parties must be shown to be the proper parties to whom rights and obligations arising from the cause of action can attach…***" Earlier, in the case of ***Cotecna Int'l Ltd v. Churchgate Nig. Ltd & Anor (2010) LPELR-897 (SC)***, the Supreme Court had held per Adekeye at ***pp. 50 – 51, paras C*** that,

"***It is trite law that for a Court to be competent and have jurisdiction over a matter, proper parties must be identified. Before an action can succeed, the parties to it must be shown to be the proper parties to whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the Court as it goes to the foundation of the suit*** **in limine*****. Where***

the proper parties are not before the Court, then the Court lacks jurisdiction to hear the suit. **Best Vision Centre Limited v. U.A.C. NPDC Plc (2003) 13 NWLR (Pt. 838) pg. 594; Ikene v. Anakwe (2000) 8 NWLR (Pt. 669) pg. 484; Peenok Ltd v. Hotel Presidential (1983) 4 NCLR 122; Ehidinhen v. Musa (2000) 8 NWLR (Pt. 669) pg. 540.**"

In ***Carlen (Nig.) Ltd v. UniJos & Anor (1994) LPELR-832(SC) at pp. 50, paras D,*** **per Onu, JSC**, the apex Court succinctly put it thus: "***As to who is "proper party", the settled principle of law relating thereto has been re-stated in*** **Green v. Green (1987) 3 NWLR (Pt. 61) 480 at 493** ***following*** **Peenok v. Hotel Presidential (1983) 4 NCLR 122** ***that what determines it is the subject-matter of the action.***"

The question, then, is this: upon a dispassionate consideration of the provisions of section 87, 88, 89 and 90 of the Companies and Allied Matters Act, 2020 and the above judicial authorities, can the Defendant be described as a person "***to whom rights and obligations arising from the cause of action attach"***? At the risk of delving into the substantive suit, I will say no more on this thematic sub-issue other than to answer this question in the affirmative.

I will touch on the thematic sub-issue which relates to the question of service of the originating processes on the Defendant. Service of court processes is regulated by the provisions of the Companies and Allied Matters Act, 2020 as

well as the provisions of the Rules of this Court. The relevant section of the Companies and Allied Matters Act, 2020 is section 104 of the Act. It provides that

> "***A court process shall be served on a company in the manner provided by the rules of court and any other document may be served on a company by leaving it at, or sending it by post to, the registered office or head office of the company***."

Order 7 Rule 8 deals with the service of originating process requiring personal service. The Rule provides that,

> ***Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process requiring personal service may be served 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.***

Thus, it can be seen that Order 7 Rule 8 provides the manner in which service on a company may be effected, pursuant to the provisions of section 104 of the Companies and Allied Matters Act, 2020. For service of a Court process, in this case, an originating process to be valid, it must be "***by delivery at the head office or any other place of business of the organization within the jurisdiction of the Court***." Any other method of

service that is at variance with this categorical stipulation is unacceptable. That is the import of a combined reading of section 104 of the Companies and Allied Matters Act, 2020 and Order 7 Rule 8 of the Rules of this Court.

Counsel for the Defendant has argued that service of the originating processes on one Pame Lydia Sule at Joshua Plaza, Wuse, Zone 5, Abuja instead of on any director, trustee, secretary or other principal officer at the registered office of the company which was shown on the Writ of Summons as Plot 261 Sefadu Street, Wuse, Zone 4, Abuja was invalid. He cited the case of ***Mark & Anor v. Eke (2004) LPELR-1841 (SC)*** to support his case. In his response, Counsel for the Claimant argued that the service of the originating process on the Counsel for the Defendant at Joshua Plaza, Zone 5, Wuse, Abuja was proper, having regard to the cases of ***ICRC v. Olabode (2009) LPELR-8764 (CA), Ezechukwu & Anor v. Onwuka (2005) LPELR-6115 (CA)***.

I agree with learned Counsel for the Defendant that service on the Defendant at Joshua Plaza, Zone 5, Wuse, Abuja, being an address other than the registered address of the Defendant shown on the Writ of Summons as Plot 261 Sefadu Street, Zone 4, Wuse, Abuja was wrong and incompetent. I do not agree with him, however, that the service on a company must be on the director, secretary, trustee or any other principal officer of the company. Counsel for the Defendant, in pushing his argument cited section 78 of the Companies and Allied Matters Act, 2020 which, according to him, provides

that "*A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorized officer of the company, and need not be under its common seal unless otherwise so required in this Part of this Act*." Apart from the fact that Counsel got the section wrong, as what he wanted to quote was section 101 which provides that "*A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be signed as a deed unless otherwise so required in this Part and that an electronic signature is deemed to satisfy the requirement for signing under this section*"; the provision on authentication is totally irrelevant to the issue of service of court process. There is no correlation between the two. What is the meaning of 'authentication'? According to the ordinary dictionary connotation of that word, the word means '*validating the authenticity of something or someone*'. How this is relevant to the question of service of court process is indeterminate and befuddling. Unfortunately for learned Counsel for the Defendant, this Court is very much awake to its judicial responsibility to be taken in by his disingenuous casuistry.

The case of ***Mark & Anor v. Eke (2004), supra*** would have been good authority if the extant Rules of this Court were to be the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2004. Order 11 Rule 8 of the now abrogated Rules provides that "***Where a suit is against a corporate body authorized to sue and be sued in its name or in the***

name of an officer or trustee, the document may be served, subject to the enactment establishing that corporation or company or under which it is registered, as the case may be, by giving the writ or document to any director, secretary, or other principal officer, or by leaving it at the corporate office." The enactment establishing companies as at the time the case of ***Mark & Anor v. Eke (2004), supra*** was decided was the Companies and Allied Matters Act, 1990 and the applicable Rules of this Court was the 2004 Rules. That Act and that Rules are no longer in existence. Accordingly, ***Mark & Anor v. Eke (2004), supra*** which was decided on the basis of those enactments can no longer be a good authority on this subject. I so hold.

As I searched through the case file for proof of service of the originating process, I saw the certificate of service deposed to by the Bailiff of this Court. The Bailiff stated that "*On the 4th day of March, 2021, at 9:26am, I served upon the Defendant Writ of Summons (marked undefended list) by delivering at the registered changed* (sic) *address of the Defendant at Plot 261 Sefadu Street, and extending* (sic) *a copy to Suite 32, Joshua Plaza, 7 Dalaba Close, where a secretary received and endorse same*." Section 104 provides that "***A court process shall be served on a company in the manner provided by the rules of court…***" Order 7 Rule 8 of the Rules of this Court, 2018, to which the Act defers in so far as what is to be served on a company is a court process, stipulates that "***every originating process requiring personal service may be served 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…"

Having fulfilled the requirement of section 104 of the Companies and Allied Matters Act, 2020 and Order 7 Rule 8 of the Rules of this Court, 2018 which provides that service on a company is properly and duly effected "***by delivery at the head office or any other place of business of the organisation within the jurisdiction of the Court***", I have no hesitation in holding that the Defendant was properly served when the Bailiff delivered the Writ of Summons at Plot 261 Sefadu Street, Zone 4 Wuse, Abuja. I so hold. The service at Joshua Plaza, Zone 5, Wuse, Abuja was done *ex gratia* and *ex abundanti cautela*. If that were the only service of the originating processes done on the Defendant, I would not have hesitated to set it aside, the commendations by the learned Counsel for the Claimant of the cases of ***ICRC v. Olabode (2009) LPELR-8764 (CA), Ezechukwu & Anor v. Onwuka (2005) LPELR-6115 (CA)*** to this Court notwithstanding.

The importance of an affidavit of service deposed to by the Bailiff of the Court has been pronounced upon by the Courts. In ***Registered Trustees of Presbyterian Church of Nigeria v. Etim (2017) 13 NWLR (Pt. 1581) 1 SC at 29 – 30 paras H - C***, the apex Court held that,

> "***The several ways in which service of process can be validly effected, depending on whether the process itself is originating process or otherwise and depending on the mode of service***

prescribed by rules of Court, whether personal service and/or service other than personal, proof thereof can be validly acknowledged by certificate of service; affidavit of service; certificate of posting (where service is effected by registered post and, in some rules of Court, by tendering a service recording book/register in which certain details relating to service effected on parties are entered by the officer serving the process or by the Registrar of the Court. Such entry is prima facie proof of service."

Elsewhere in the same judgment, at ***page 30, paras D – F***, the Supreme Court held further that,

"***The purpose of affidavit of service is to convince the Court that the persons on whom the processes are to be served have been duly served. Where there is no affidavit of service and the person served with a writ or any other processes of court appears in Court, there is no further need to insist on proof of service. There cannot be a better proof than the appearance in Court of the person on whom the process was served***."

I therefore hold that the Defendant was properly served with the originating process at its registered address at Plot 261 Sefadu Street, Zone 5, Wuse, Abuja.

It needs to be stated that Counsel should always update their knowledge of the extant laws and Rules of Court. It does no good to the image of learned Counsel for the Defendant to cite and quote sections from abrogated laws. As Counsel for the Claimant rightly pointed out, section 77 of the Companies and Allied Matters Act, 2020 deals with issue of certificate of incorporation on re-registration while section 78 relates to foreign companies intending to carry on business in Nigeria. Apparently, Counsel for the Defendant was quoting from the old Companies and Allied Matters Act, 1990. This is an unflattering portrait erudition.

In view of the foregoing therefore, the resolution of the fifth thematic sub-issue becomes immediately fluid. This Court has the requisite jurisdiction to hear and determine this suit. In the case of ***Ogbuji v. Amadi (2022) 5 NWLR (Pt. 1822) 99 at p. 132, paras. A-C*****,** the apex Court, relying on ***Madukolu v. Nkemdilim (1962) 2 SCNLR 341***, held that

> "***A court is competent to exercise jurisdiction when: it is properly constituted as regards numbers and qualification of the members of the bench, and no member is disqualified for (a) one reason or another; and the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from (b) exercising its jurisdiction; and the case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of***

***(c) jurisdiction. Any defect in competence is fatal, for the proceedings are a nullity, no matter how well conducted or decided, as the defect is extrinsic to the adjudication.*"**

In view of the foregoing, therefore, I am of the firm conviction that the Notice of Preliminary Objection deserves to fail. The grounds for same are paved on technicalities. I have held them up to the law and justice for intense scrutiny, and they have not survived the intense inspection. The arguments of Counsel for the Defendant, especially his submissions on form of the Writ of Summons and position of signature thereon are nihilistic of the ultimate ends of justice and self-defeating of the Rules of the Court. The Defendant has not shown how the non-compliance with Form 1 has inflicted a miscarriage of justice on it. The arguments must accordingly fail, and they hereby fail.

I must round off this Ruling with the following timeless words from the incomparable Oputa JSC (of blessed memory) in the case of ***Nosiru Bello v. AG Oyo State (1986) 5 NWLR Pt. 45 Pg. 828***:-

"***The picture of law and its technical rules triumphant, and justice prostrate may no doubt have its admirers. But the spirit of Justice does not reside in forms and formalities, nor in technicalities, nor is the triumph of the administration of justice to be found in successfully picking one's way between pitfalls of technicalities. Law and all its technical rules ought to be but a hand maid of justice and legal inflexibility (which may be***

becoming of law) may, if strictly followed, only serves to render Justice grotesque or even lead to outright injustice. The Court will not endure that mere form or fiction of law, introduced for the sake of Justice, should work a wrong, contrary to the real truth and substance of the case before it."

Accordingly, the Notice of Preliminary Objection of the Defendant dated and filed on the 15th of March, 2021 is hereby dismissed. Parties should bear their costs.

This is the Ruling of this Court delivered today, the 29th day of November, 2022.

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HON. JUSTICE A. H. MUSA
29/11/2022
JUDGE