

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON WEDNESDAY THE 1ST DAY OF FEBRUARY, 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO. CV/2502/2022

BETWEEN

1. LILIAN MADU
2. BELLO BASIRAT TOSIN
3. OBI ONYINYECHI SCHOLASTICA
4. ONEBUNNE RACHAEL OKWUCHUKWU
5. NWOKOLO CHIKAODILI JANE
6. CHIAMAKA MURUAKO ADUKWU
7. FRED A RUTH BRUCE-BENNETT
8. NGOZI WINFRED UDOHA
9. NKEMJIKA CYNTHIA ISIOMA.
10. ONYEAZOR NZIJBE ONYEBUCHI
11. SHARRY LEAH JAPHET
12. APOESO BABATOPE OYEBOLA
13. APOESO DAMILARE OMOLABAKE
14. MRS. OGOCHUKWU M. UMEANOZIE-CHIKEZIE
15. CYNTHIA NKECHINYERE ODOGWU
16. JOAN SADO
17. ADEBOLA ADEDEJI AIYENIGBA
18. JANE ESTHER PAUL
19. PHIL-EZE BLESSING MARTHA
20. VIVIAN ONYINYECHI ONYEKABA
21. OLADIPUPO ESTHER FUNKE
22. SOTONYE TRACEY GEORGE
23. GEORGINIA MURUAKO
24. ALIU SUSAN YETIJNDE ----- CLAIMANTS
25. OLIJWAKEMI ODIJMERU
26. UKAUMUNNA CHINE-DU JOHN
27. OBENUGO NNEKA MARY
28. LUCIA CHINENYE AGBARAKWE
29. UKABUILU CHARLES IKENNA
30. NWANKWO EUNICE IFESINACHI
31. ELIGWE CHIAMAKA AUGUSTA
32. OGECHI ANITA NKEONYE
33. CHILOTAM NADIA AKALEZI

34. NGOZIKA CHIBUZO ANORUE
35. OGECHI COMFORT AKALEZI
36. AGU KINGSLEY CHIDOZIE
37. SOPHIA CHIZIE AKALEZI
38. NNADI LYNDA NGOZI
39. BLESSING ADA OGWUCHE
40. ENUOBI BLESSING IFEOMA
41. OJI CHIDERA A.
42. EGOCHUMA EZEMA
43. BENITA E. AGIDANI
44. AZUBUIKE CHISOM BLESSING OKORIE
45. DESTINY CHIGOZIE OGBUZURU
46. NWACHUKWU UCHE JOY
47. NNAM CHIDIMMA
48. CECILIA OGECHUKWU NWANONYE

AND

1. OVAIOZA FARM PRODUCE STORAGE BUSINESS LTD.
2. YUNUSA IMU ----- DEFENDANTS

RULING

The Claimant herein filed a writ of summons under the undefended list procedure praying for two (2) reliefs. The Defendants filed their joint Notice of Intention to Defend and an affidavit. However, on the date for hearing learned counsel for the defendants orally objected to the jurisdiction of this court. Counsel submitted that by Order 35 of the Rules of this Court, it is mandatory that to qualify under the undefended list, a Claimant files a writ with an affidavit in support stating the deponent's belief that defendant has no defence to the claim and the judge in chambers shall enter such an application in what shall be marked as an undefended list procedure. Also, that Order 2 Rule 5 of the Rules of this court provides that a writ shall be as in Form 1 to the appendices to the rules which gives a defendant 14days to enter appearance. However, that the processes before this court are incurably defective in that the writ before this court gave the defendant 5days to enter appearance instead of 14days which amount to abridgment of time without leave of court. Secondly, that the writ before this court has a written address, list of witnesses, documents referred to attached to it and it was filed without a certificate of pre-action counselling. That the processes are incompetent and should be struck out or moved to the

general cause list. Counsel further objected on the grounds of non-service of the originating processes as same was dumped at the registered address of the 1st defendant which is under lock and key and there was no order of court for substituted service. Counsel cited *GITTO CONSTRUCCION GENERALI V. EMMANUEL SIMON UDOITUEN* (2019) LCN/13603 (CA) and *WAEKO V. FORTUNE INT.* Counsel also submitted that 2nd defendant has not been served personally.

Claimant's counsel in response submitted that the pre-action certificate was filed and attached in compliance to the Rules of court. that in paragraph 11 of affidavit in support of the writ the deponent deposed that she believes the defendant has no defence to this suit. Counsel to the claimant admitted that the writ before this court gave the defendant 5 days to enter appearance instead of 14 days but urged the court to discountenance the submission of the defendant counsel as a mere issue of technicality. On the issue of service of originating processes counsel submitted that Order 7 Rule 8 of the Rules of Court allows a company to be served by leaving the process at the registered address of the company and that was done by the bailiff of this court. that the essence of service is to bring the suit to the notice of the defendant so that the defendant can enter appearance and defend the suit if he so wishes. Counsel submitted that they were unable to serve the 2nd defendant and had proposed to file for substituted service but was then served a memorandum of appearance from the defendant counsel expressly stating that he is entering a conditional appearance for both the 1st and 2nd defendant. Hence, they deemed service on the 2nd defendant has been overtaken by events and urged the court to treat such as a mere technicality.

I have considered the submissions of the learned counsel on this issue. In my opinion the defect on the date to enter appearance on the writ and attachment of list of witnesses is cured by **Order 5 Rule 1(1) & (2) of the High Court of the Federal Capital Territory Civil Procedure Rules 2018** which states:

- (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.

Also, the Court in **VORO V. VOTOH (2016) LPELR-40341 (CA)** had held that;

"A litigant, except he be guilty of some form of misconduct or ill behaviour in the failure or mistakes of his counsel, should rarely if at all or ever, be punished for such mistake of his counsel of which the litigant has no hand or contributed to its occurrence".

Breach of the rules of court should not be elevated to breach of the law as breach of the rules as itemized by the defendant on the face of the writ does not in any way affect the competence of the suit before this court, neither does it affect the jurisdiction of the court. Hence once the jurisdiction of the court to hear and determine a suit is intact as in this case, the breach of the rules of court takes 2nd seat and becomes secondary. Succinctly stated, the altar of Justice cannot be sacrificed for the technicality of the rules of court. It is vital to remind parties that rules of court are designed to assist in obtaining justice and for ease of administering justice and under no circumstances should it be made to asphyxiate justice. Hence, every non-compliance with the rules of court is not necessarily fatal to proceedings. See **UTC NIG LTD VS PAMOLES (1989) 2 NWLR (PT.10) @ PG.244 @ 296** where Belgore JSC held that *"Rules of court are made for the convenience and orderly hearing of cases. They are made to help the cause of justice and not to defeat Justice."*

I have looked at the irregularities on the face of the writ as raised by defendant counsel and it is my view that they do not oust the jurisdiction of the court and likewise do not affect the competence of the court and at best can be described as an irregularity but definitely not a nullity and I so hold.

On the issue of certificate of pre-action counselling, it is in the court file dated 27/7/2002 and attached to the writ before this court as submitted by Claimant's counsel; likewise in paragraph 11 of the affidavit in support of the writ the deponent averred thus *"That the Defendants have absolutely no defence whatsoever to our claims"*. It is my ruling that the argument of the Defendants counsel does not avail him.

On the issue of service of court processes, it is trite that service of originating process is a pre-condition to the exercise of jurisdiction by the Court. Where there is no service or there is a procedural fault in service, the subsequent proceedings are nullity ab initio. The 1st defendant being a Limited Liability Company, service of originating processes on it is covered by the provisions of **Section 104 of the Companies and Allied Matters Act 2020** and **Order 7, Rule 8 of the Federal Capital Territory Civil Procedure Rules 2018** which is reproduced below;

Section 104 of the Companies and Allied Matters Act 2020 provides:

“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”.

And **Order 7, Rule 8 of the Federal Capital Territory Civil Procedure Rules 2018** provides:

“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.”

From the above provision service may be effected on a company either at its head office or any other place of its business within this Court’s jurisdiction. From the certificate of service, the Bailiff of this Court stated that the office of the 1st defendant was under lock and key and he then dropped the processes at the front of the premises. Attached also is a picture photograph of the bailiff of court outside the premises of the 1st defendant with the gate padlocked and the processes on the floor. Therefore, flowing from the above the 1st defendant was not properly served as stipulated by the rules of this Honourable Court.

On the issue of personal service on the 2nd defendant, personal service of an originating process is a fundamental requirement of the law. The Rules of this Court require that the mode of service of originating processes shall be by personal service i.e. by delivering the required copies of said processes to the party to be served. **See Order 7 Rule 2 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018.** There seems to be no dispute that the 2nd Defendant was not served personally with the originating processes in this suit. The breach of the Rule is not

a mere irregularity but a fundamental breach which goes to the foundation of the suit because the Rules makes it mandatory by the use of the word **SHALL**. The service of originating processes is intimately tied to the jurisdiction of court, and constitutes the condition precedent which clothes the court with competence. It must be served personally unless otherwise directed or ordered by the court, or expressly exempted by the provisions of the law. It is not an irregularity that can be waived or cured as held in **SKEN CONSULT (NIG.) LTD v UKEY (1981) 1 SC 4**.

The whole essence of service of processes on a defendant is for him to be aware of the pendency of a suit against him and for him to be able to prepare his defence. This is an integral part of fair hearing as enshrined in our constitution. It also flows that any trial or orders or judgment done by a court without service on an individual or corporation as the case may be was done by the court without jurisdiction and liable to be set aside.

Fortunately, trial has not proceeded in this suit, neither has any order been pronounced by this court binding the defendant.

Consequently, at this stage Plaintiff is hereby ordered to serve 1st and 2nd defendants with originating processes and also correct the irregularity with regards to endorsement as to number of days to cause appearance in this suit on the writ accordingly.

Parties: Absent

Respondent: Benjamin Ogbaini appearing for the Claimants.
Defendants are not represented.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
01/02/2023

