

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON TUESDAY THE 28TH DAY OF FEBRUARY, 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO. CV/328/2022

BETWEEN

1. MRS. A.N. IJADUNOLA
(Suing through her lawful attorney Alhaji A. Ijadunola)
2. Alhaji Yusuf Yahaya
3. Mr. John Mashella
4. Mr. Gabriel Afolabi
5. Mr. Akeem Atanda ----- CLAIMANTS/RESPONDENTS
6. Mr. Festus Ojekhephen
(Suing for themselves and on behalf of all
Subscribers/ owners of houses in Nelson
Mandela Gardens Estate)
7. The Registered Trustees of Nelson
Mandela Gardens Residents Association

AND

1. Otunba Adebisi Olafisoye
 2. A & G Estate
 3. African University of Science
and Technology ----- DEFENDANT/RESPONDENT
- } DEFENDANTS/OBJECTORS

RULING

On the 8th of November, 2022, the Plaintiff filed a writ of Summons in this court against the Defendants, upon service the 1st and 2nd Defendant filed a conditional appearance and a notice of preliminary objection pursuant to Order 4 Rules(8) (10); Order 2 Rules (1) (2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2004 and under the inherent jurisdiction of the Honourable Court, praying for an order striking out/dismissing the instant suit as the entire suit is coram non judice

The grounds upon which the application is brought are as follows;

1. The Claimant's originating process failed to comply with the provisions of the High Court of Federal Capital Territory Abuja (Civil Procedure) Rules, 2004.
2. The Claimant's writ failed to comply with Order 4 Rules (8) (10); Order 2 Rules (1) (2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2004.
3. The Claimant's writ is incurably defective.
4. The Claimant's writ is invalid.
5. The Claimant's writ is not endorsed.
6. The Claimant's originating process/writ is void.

Defendants/Applicants counsel in their written address succinctly submitted that it is trite that for a writ to be valid, it must properly be endorsed; and such endorsement must be at the reverse side of the writ. That the Claimants in this suit made their endorsement on a separate sheet in gross violation of the mandatory Rules of the Court. That it is defective; and such defect cannot even be cured by way of amendment. Counsel urged the court to set aside the Claimants' writ for not being properly endorsed or for lack of endorsement at all. Counsel cited the following authorities amongst others; **Order 4 Rules (8)(10); Order 2 Rules (1)(2) of the High Court of Federal Capital Territory Abuja (Civil Procedure) Rules, 2004; Alade v Falode & Ors (1966) 1 All NLR 104; Alawode v Semoh (1959) 4 F SC 29; Nwoye v Road Construction Ltd (1966) NMLR254 and Purechem Ind Ltd v SPICA Shipping Co. Ltd (2012) 3 NWLR327 @ 347 para C.**

The Claimants/Respondents counsel filed their written address in opposition to the Defendant's preliminary objection wherein counsel raised a sole issue for determination to wit;

“Whether the claimants' Originating Process is properly endorsed under the relevant Rules of this honourable court?”

Summarily learned counsel submitted that this honourable court should not waste scarce judicial time by according this Notice of Preliminary objection any serious consideration rather, that this honourable court should discountenance the Notice of Preliminary Objection and strike out same accordingly. That dissecting the Notice of preliminary objection and the written address in support thereof on its merit, will show that it amounts to mere hair splitting on the part of the objectors' counsel. That the cases referenced by the objectors' counsel, particularly, **ALATEDE V. FALODE & ANOR (supra); ALAWODE V. SEMOH (supra); NWOYE V. ROAD CONSTRUCTION LTD (supra)** etc

were all judicial decisions based on the specific peculiarities or circumstances of the facts of these cases and under the relevant provisions of the rules of the defunct High Court Rules of Western Nigeria. That the relevant Rules of the extant High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018, were never considered in the said decisions, as such, the cases are of no relevance whatsoever to the unique situation of this suit, where the Writ of summons was validly issued in accordance with the relevant Rules of this honourable court. That the defunct Rules of 2004, under which the objectors brought the application, does not contain such requirement that endorsement should be on the reverse side of a writ hence, the obvious inability of objectors'counsel to refer to any single judicial decision based on the said provisions of the defunct 2004 Rules that frowns at having the endorsement on Writ to be inserted in a separate sheet.Counsel submitted that in the current Form 1 of the General Writ of Summons contained at the schedule to the Rules of this honourable court 2018, there is no such requirement of an insertion of the phrase, "The Plaintiff's claim is endorsed on the reverse side hereof ", which will necessitate the insertion or compulsory endorsement on the reverse side of a Writ. That courts are no longer interested in mere technicalities in the administration of justice system and urged the court to discountenance the objectors' Preliminary objection as same is lacking in substance and unmeritorious. Counsel cited the following authorities amongst others; **Order 2 Rule 2 (5) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) 2018; EMI-JEZE & ORS V. GOVERNOR OF DELTA STATE & ORS (2014) LPELR-23201(CA); Ila Ent. Ltd and Anor v. Umar Ali & Co. (Nig.) Ltd. (2022) 18 NWLR (Pt. 1862) P. 501 @ 523 paras A-F and Order 5 Rule 1 (1) & (2) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) 2018.**

Let me observe at this juncture that this application was predicated upon the defunctCivil procedure Rules of the High Court of the Federal Capital Territory, Abuja 2004, but a new Rule was made and has been in existence since 2018. The preamble to the High Court of FCT, Abuja Civil Procedure Rules, 2018,¹ reads “The Civil Procedure Rules set out herein be the rules of Civil Procedure to be followed in the high court of the Federal Capital Territory, Abuja”. Therefore, the rule of court relied upon by the Defendant/Applicant is no longer in existence and cannot be relied upon by the Applicant.

I have considered the submission of the learned counsel on both sides on this issue. The basis of the grounds of this preliminary objection is basically on non-compliance of a defunct civil procedure rules as the 2004 rules wherein the Applicant based his preliminary objection is no longer in use. The civil procedure rules of the court that is currently in existence is the 2018 Civil Procedure Rules of the FCT High Court.

By Order 4 Rules (1-9) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) 2018 nowhere is it stated that endorsement on the writ must be at the reverse side of the writ as submitted by the Applicants' counsel. Hence the preliminary objection is incompetent as you cannot place something on nothing and expect it to stand. Having found that the application is incompetent for lacking in merit. It is worthy to state that it is a grave negligence on the part of Applicant counsel to base his application on a 2004 Rules of Court in the year 2023, exactly 19 years after the defunct old rules and interestingly when the legal society is in expectation of the launching of a new civil procedure rule. Counsel ought to be diligent in filing cases and processes on behalf of their client and also owe the court such duty. In the light of the above, the preliminary objection is accordingly struck out. Cost of N50,000.00 (Fifty Thousand Naira) to be paid by the Applicant's counsel to the Respondent counsel before the next adjournment.

The preliminary objection is accordingly hereby struck out.

Parties: 1st, 5th & 7th Claimants represented by Soji Oye who is present in court. Defendant is absent.

Appearances: Tope Alabi appearing for the 1st & 2nd defendants. Akinola Oladimeji appearing with Somachi Orji for the 3rd defendant. Ibrahim Idris (SAN) appearing with Obafemi Peter Ilori for the Claimant.

**HON. JUSTICE MODUPE OSHO-ADEBIYI
JUDGE
28TH FEBRUARY, 2023**

