

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS  
COURT: 28**

**DATE: 22<sup>nd</sup> June, 2023**

**FCT/HC/CV/92/2022**

**BETWEEN:**

**MR. EKENE EZEGUONWU-----**

**PLAINTIFF**

**AND**

**MR. ABBAH JONAH-----**

**DEFENDANT**

**RULING**

The Defendant/Applicant filed a notice of preliminary objection on 26<sup>th</sup> January 2023, challenging the jurisdiction of this court to entertain the Claimant's suit and seeking the order of the court to strike out the Plaintiff's Writ of Summons and other accompanying processes/entire suit as being incompetent.

The grounds of the Defendant's preliminary objection is that the Defendant was not served personally with the Originating Process. That the originating process was served on Defendant's security guard and not served personally on the Defendant.

The Defendant/Applicant personally deposed to a 10 paragraphs affidavit in support of his preliminary objection.

In the written address, counsel to the Defendant/Applicant raised a sole issue for the court's determination. The issue was whether the court has

been robbed of its jurisdiction to hear this suit against the Defendant due to the improper mode of service of the Writ of Summons/Originating Process on the latter.

Relying on the decision in the case of **UMOH V. EKPO (2018) LPELR 45789 (CA)** and a host of other judicial authorities, counsel argued that in the absence of personal service of the originating process on the Defendant, the court will lack the jurisdiction to determine the matter.

In response to the Defendant's Preliminary Objection, the Plaintiff filed a Counter Affidavit dated 23<sup>rd</sup> March 2023 and deposed to by the Plaintiff himself (Ekene Ezegunwu), wherein the Plaintiff averred that the Defendant was personally served with a copy of the writ and hearing notice on the 2<sup>nd</sup> day of December 2022 at about 2 pm by Ahmadu Haruna, a Bailiff of the High Court of the Federal Capital Territory at No. 9A Rumbek Close, Wuse Zone 6, Abuja. The Plaintiff exhibited two exhibits JAC 1 and JAC 2, the endorsed copy of the processes, signed by the Defendant, and the certificate of service.

In the written address in support of the Counter Affidavit, counsel to the Plaintiff maintained that the Defendant personally acknowledged service of the originating process, which was duly served on him by the bailiff.

Counsel cited the decision of the court in **AKEREDOLU V. ABRAHAM (2018) 10 NWLR (PT. 1628) 510 AT 540-541**, and argued that assuming but not conceding the Defendant was not served personally, such would

only amount to a mere irregularity that does not void the originating process.

Counsel in a letter dated 2<sup>nd</sup> June 2023, cited additional instructive judicial authorities in support of his position.

In the Defendant's further affidavit, the deponent, one Cynthia Atuegbu maintained that the Defendant was not served personally with the Writ of Summons, as the Defendant was in Kaduna State at the said time of alleged service.

It is settled law that the service of Originating Process on a party to a proceeding is a fundamental and imperative step in the process of adjudication by a Court of law. It is what ignites or gives vent to the jurisdiction of the Court to entertain the matter and make an order that will be valid and subsisting. Therefore it is not an issue of the exercise of discretion by the Court because where Originating Process is not served in accordance with the law, it deprives the Court of the requisite jurisdiction to proceed with the hearing of the matter. In the case of **MARK VS. EKE (2004) 5 NWLR (PT 865)page 54** the Supreme Court held among others that:- "Service of the process especially Originating Process is an essential condition for the Court to have competence or jurisdiction to entertain the matter. Further failure to comply with this condition would render the whole proceeding including Judgment entered and all subsequent proceedings based thereon wholly irregular, null, and void." See also - **SKENCONSULT (NIGERIA) LTD & ANOTHER VS. UKEY (1981) LPELR - 3072 SC.**

I have taken the pains of not just critically considering the depositions of parties and their respective written addresses, but I have also taken a careful look at the Endorsement and Returned copies of the Originating Process before this court. The endorsement and returned copies clearly reveals that the Defendant was personally served with the processes, and he personally signed the endorsement copies. In fact, the signature of the Defendant on the endorsement copies of the originating processes closely resembles that on the affidavit of the Defendant in support of the Preliminary Objection.

A Defendant who is alleging improper service must strictly prove same. It is not enough to merely allege improper service, evidence must be led to prove that the process was served on a person other than the Defendant.

For me, it sounds ridiculous as it beats every sense of logic and sound reasoning, for a man, who has been served with the process of Court and for which he responded by entering his appearance and filing processes in his defence to contest the case, to turn round and seek the striking out of the suit, on the grounds that there was no due service of the originating process on him. That is pondering to a ridiculous level of use of technicalities to frustrate justice! Having come to Court and taken part in the proceedings, I believe the Defendant cannot, in good conscience, raise this preliminary objection.

I am always bothered about the level of mockery the law would be subjected, to when a party, who has been served with the processes of Court, comes to the same

Court to seek nullification of the service on him of the processes, alleging improper issuance or service of the process. See **OSENI VS. OLOJE & ANOR (2014) LPELR 22919 (CA); KHALID VS. AL-NASIM TRAVELS & TOURS LTD (2014) LPELR 22331 CA.**

I know that in appropriate circumstances, there can be a genuine complaint about issuance/service of process, that goes to the root of the case, as shown in the case of **KIDA VS. OGUNMOLA (2006) ALL FWLR (PT.327) 402 AT 406**, wherein it was held that failure to commence the original process, validly, affected the writ and robbed the Court of jurisdiction, as the process lacked competence, but that could not be said of this case, of which the originating process was duly issued, with the leave of the trial Court and served on the Defendant.

It amounts to a spite on the Court, and maybe, abuse of the Court process, in my view, for a party who has been served with the process of Court, to appear before that Court and urge it to set aside the process of Court served on him, for improper service. After all, the whole essence of service of Court process on a defendant is to put him on notice of the case against him and give him an opportunity to defend the action, if he so desires. See **DANIELS VS INSIGHT ENG. CO. LTD (2002) 10 NWLR (PT.775) 231 at 247, AND NUT TARABA STATE & ORS VS HABU & ORS (2018) LPELR - 44057 (SC)**, where my Lord Eko JSC, said:

*"The attitude of the Courts to service of Court's process and the consequence for non-service of Court's processes were aptly stated thus by this*

*Court in SKENCONSULT v. UKEY (supra) - The service of process on the defence (or the adversary) so as to enable him to appear to defend (or advance) the relief sought against him (or by him) and due appearance by the party or any counsel (retained by him) must be those fundamental conditions precedent before the Court can have competence and jurisdiction. This very well accords with the principles of natural justice."*

I find no merit in the Notice of Preliminary Objection filed by the Defendant. Consequently, the Preliminary Objection of the Defendant is hereby dismissed.

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**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**

Appearance

M.O. Nwutube:- Appearing with me is Grace Adie

Holding the brief of Uche Uzukwu for  
the Defendant.

Yahaya:- For the Claimant.