

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON THURSDAY, THE 25TH DAY OF MAY, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/1874/2021
MOTION NO.: M/4508/2023

BETWEEN:

ROMANUS EBERECHUKWU EZE

CLAIMANT/RESPONDENT

AND

KABIRU DILA

DEFENDANT/APPLICANT

RULING

This Ruling is on the Notice of Preliminary Objection urging this Honourable Court to set aside the service of the Writ of Summons on the ground that the said Writ of Summons has expired.

By a Writ of Summons dated and filed on the 5th of August, 2021, the Claimant brought an action seeking the following reliefs:-

- 1. A Declaration by this Honourable Court that the Plaintiff is the genuine and beneficial owner of House No. 20 Road 411, 4th Avenue, Kubwa Estate, Abuja originally allotted to Abdulkadir Musa Katsina by Federal Housing Authority Nigeria.*
- 2. A Declaration by this Honourable Court that the acts of the Defendant in tampering with the doors and building of House No. 20 Road 411, 4th Avenue,*

Kubwa Estate amount to trespass and encroachment on the beneficial right of ownership of the Plaintiff.

3. *An Order of the Honourable Court directing the Defendant to pay the sum of Fifty Million Naira (~~₦~~50,000,000.00) only to the Plaintiff as exemplary, aggravated and general damages for trespass and violation of the Plaintiff's extant ownership possessory (sic) right and interest over the said House No. 20 Road 411, 4th Avenue, Kubwa Estate.*
4. *An Order of perpetual injunction restraining the Defendant, his agents, servants, workmen, privies or howsoever called from entering or further entering and/or doing any acts or otherwise dealing with the Plaintiff's ownership possessory (sic) right over the said House No. 20, Road 411, 4th Avenue, Kubwa Estate, Kubwa.*
5. *Cost of this action at ~~₦~~1,000,000.00 (One Million Naira).*

On the 8th of February, 2023, the Defendant filed a Notice of Preliminary Objection dated the 2nd of February, 2023. The Notice of Preliminary Objection seeks the following reliefs:-

1. *An Order of this Honourable Court setting aside the purported service of an expired Writ of Summons and all its accompanying processes attached therewith, which originating processes were served on the Defendant/Applicant ("the Applicant") on 5th September 2022 for non-compliance with the Rules of this Honourable Court.*

2. *An Order of this Honourable Court declining to exercise further jurisdiction in this suit until proper service of the originating processes effected on the Defendant/Applicant.*
3. *And for such further Order(s) as this Honourable Court may deem fit to make in the circumstance.*

The Notice of Preliminary Objection is founded on nine grounds which revolve around the complaint that Writ of Summons which commenced this particular suit had expired at the time it was served on the Defendant on the 5th of September, 2022 and that the Claimant did not apply for an Order of this Honourable Court renewing the said expired Writ of Summons. The Notice of Preliminary Objection was deposed to by one Miss RukevweAnivoh a Litigation Secretary in the law firm representing the Defendant/Applicant who deposed to facts which supported the grounds of the application. The Defendant/Applicant also filed a Written Address which embodied the legal argument in support of the Notice of Preliminary Objection.

In response, the Defendant, on the 9th of February, 2023, filed a 4-paragraph Counter-Affidavit deposed to by Romanus Eberechukwu Eze, the Claimant in this suit. One exhibit was attached to the Counter-Affidavit while a Written Address was filed in compliance with the Rules of this Court.

The Defendant/Applicant, in a further reinforcement of his Notice of Preliminary Objection, on the 16th of February, 2023, his Reply Affidavit. The Reply Affidavit was deposed by the same Miss RukevweAnivoh who had deposed to the affidavit in

support of the Notice of Preliminary Objection. Accompanying the Reply Affidavit is a Written Address.

On the 23rd of March, 2023, this Court heard the arguments of Counsel on both sides of the divide and adjourned for Ruling. In determining this application, this Court hereby formulates the following sole issue, to wit: ***“Whether the Writ of Summons filed on the 5th of August, 2021 has not expired to justify an order of this Court setting it aside, its purported service and an Order declining further jurisdiction in this suit on the basis of the alleged expired Writ of Summons.”***

The *punctum originis* in the determination of this issue is, as usual, the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018. In having a recourse to the Rules of this Court, the object is to determine the lifespan of a Writ of Summons. To this end, Order 6 Rules 6(1) and (2) and 7 provides that

(1) The life span of every originating process shall be 6 months.

(2) Where a Court is satisfied that it has proved impossible to serve an originating process on any defendant within its life span and a claimant applied before its expiration for renewal of the process, the Court may renew the original or concurrent process for three months from the date of such renewal. A renewed originating process shall be as in Form 7 with such modifications or variations as circumstances may require.

7. The Court may order two renewals in each case strictly for good cause and upon prompt application, provided that no originating process shall be in force for longer than a total of nine months. The chief registrar shall state fact, date, and duration of renewal on every renewed originating process.

I am not unaware that the endorsement on Form 1 to the Rules of this Court stipulates that: -

“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.”

The question that remains to be determined is this: which should take precedence between the express provisions of the Rules of this Court and the endorsements in the forms which form the appendices to the Rules of this Court?

In answering this question, recourse must be had to the canons of interpretation. Primarily, it is settled that where the words used in a statute or any other written instrument is clear and unambiguous, the words must be given their literal, ordinary meaning. In *Integrated Finance Ltd. v. N.P.A. (2019) 17 NWLR (Pt. 1700) 131 C.A. at 163-164, paras H-C*, the Court held that **“The cardinal principle in the interpretation of statutes is that the meaning of a statute or legislation must be derived from the plain and unambiguous expression or words used therein**

rather than from any notion that may be entertained as to what is just and expedient. The literal rule of interpretation is always preferable unless it would lead to absurdity and inconsistency with the provision of the statute as a whole. This is applicable to interpretation of contract terms. The relevant rule of interpretation in the instant case is the literal rule and none other as the wording of the contract is clear and not subject to ambiguity.” See also the following cases: *I.N.E.C. v. Yusuf (2020) 4 NWLR (Pt. 1714) 374 S.C. at 410, paras. E-F; Ogbuoji v. Umahi (2022) 8 NWLR (Pt. 1832) 323 C.A. at 360, paras. A-C.*

In this case, what agitates the mind of this Court is the signification of the endorsement on the Writ of Summons vis-à-vis the clear provision of Order 6 Rule 6(1) of the Rules of this Court. In other words, how helpful are the incidental or other parts of a statute or other written instruments in the interpretation of the core provision of a statute or a written instrument? In *Stanbic IBTC Holding Plc v. FRCN (2020) 5 NWLR (Pt. 1716) 91 C.A. at 142, paras. A-B*, the Court held that “*In the attempt to discover the intention of the legislature in enacting a statute, the court can look at and take into account or consideration, the preamble or recitals which contain the concise purpose behind the provisions of the statute as well as the marginal notes which may provide the purport of specific provisions.*” Thus, though such incidental parts of a statute or other written instrument may be called in aid in the process of ascertaining true purport of a provision in the statute or written statute where the provision is ambiguous, they do

not form part of the statute. In **Skye Bank Plc v. Iwu (2017) 16 NWLR (Pt. 1590) 24 S.C. at 91-92, paras. H-B; 101, paras. D-F; 104, paras.D-E; 144, paras. D-G; 157-158, paras. D-A**, the Court held inter alia that **“Although side notes or marginal notes to an enactment do not form parts of the enactment and do not, generally, afford legitimate aid to its construction, it is permissible to determine the general purpose of a section in an enactment and the mischief at which it is aimed by considering the marginal note of the section.”**

How does this, then, apply to the present disputation? It is my considered view, and I so hold, that the endorsement on Form 1 as to the lifespan of a Writ of Summons cannot take precedence over the express, clear and unambiguous stipulations of Order 6 Rule 6(1) of the Rules of this Court. If this is the case, it follows that the lifespan of a Writ of Summons is six (6) months and not three months. **The Cambridge Dictionary** defines ‘lifespan’ as **“the length of time for which a person, animal, or thing exists”**. If Order 6 Rule 6(1) of the Rules of this Court says that the lifespan of every originating process shall be six months, then, the lifespan of a Writ of Summons is six months, notwithstanding the endorsement on Form to the contrary.

I am not dead the contention of learned Counsel for the Defendant/Applicant that the intendment of the Rule is that the lifespan of a Writ of Summons is three months, with the option granted to the Court, upon proper cause shown by the Claimant, to renew same for a further period of three months on not more than two occasions, bringing the total duration of a Writ of Summons to nine months as per the provision

of Order 6 Rule 7. For the sake of immediacy, Order 6 Rule 7 provides that “***The Court may order two renewals in each case strictly for good cause and upon prompt application, provided that no originating process shall be in force for longer than a total of nine months. The chief registrar shall state fact, date, and duration of renewal on every renewed originating process.***” Adopting this argument would be a negation of the unambiguous provisions of Order 6 Rule 6(1) of the Rules of this Court. Ultimately, the duty of this Court is to determine whether the lifespan of the Writ of Summons which initiated this suit has expired at the time it was served on the Defendant.

To resolve this conundrum, this Court must perforce have recourse to its record. I have stated earlier that the Writ of Summons in this suit was filed on the 5th of August, 2021. On the 22nd of February, 2022, Counsel for the Claimant moved a Motion *Ex Parte* with Motion Number M/1375/2022 dated the 8th of February, 2022 but filed on the 9th of February, 2022. This Court heard learned Counsel for the Claimant move the Motion which sought an Order for leave of this Court to serve the Defendant by substituted means. As of the time the Motion was moved, it was already six months and twelve days after the Writ of Summons was filed. That was more than the six months stipulated by the Rules of this Court in Order 6 Rule 6 (1). On the 4th of March, 2022, the Bailiff of this Court served the Defendant by substituted means, to wit, by pasting at the *res* of this suit. By the time the originating summons was served on the Defendant by substituted means on the 4th of March,

2022, it was already six months, twenty-nine days after the Writ of Summons had been filed.

I am not unaware that one Silas Onwugbonu purported to accept service of the originating processes on the 27th of August, 2022. That was an exercise in superfluity as the Bailiff had already served the Defendant, on the 4th of March, 2022, with the Writ of Summons and other originating processes by substituted means, *vide*, by pasting the said Writ of Summons and other originating processes on the *res*. Moreover, it was already one year, three weeks and one day old when the said Silas Onwugbonu accepted service. It was an exercise in superfluity as it was not necessary.

I am not oblivious of the deposition of the Claimant/Respondent in paragraphs 3(i), (ii), (iii), and (vi) of his Counter-Affidavit, the purport of **Exhibit P1** and the arguments of Counsel in paragraph 3:2 of the Written Address in support of the Counter-Affidavit. In the afore-stated paragraphs of the Counter-Affidavit, the Claimant pointed out to the Court that the annual judicial vacation of the Court caught up and interfered with the service of the originating processes on the Defendant. This deposition was reinforced by **Exhibit P1** which is the notification of the 2021 Annual Court vacation issued by the Chief Judge of this Court to all the Honourable Judges of this Court. In the referenced paragraph of the Written Address in support of the Counter-Affidavit, the Claimant invited the Court to take judicial notice of the obligated suspension of time stipulated for the doing of a thing under the Rules of this Court. Order 52 Rule 6 of the Rules of this Court provides that “***The time for***

filing and service of pleadings shall not run during the annual vacation unless otherwise directed by the court.”

I have taken note that in **Exhibit P1** the annual judicial vacation for 2021 began on Friday, the 23rd of July, 2021 and terminated on Friday, the 3rd of September, 2021. This is a period of one month, one week and four days. In other words, the vacation lasted for a period of five weeks and four days. If this length of time is subtracted from the duration of the Writ of Summons when it was served on the 4th of March, 2022 by substituted means, that is, six months, twenty-nine days, we will be left with five months and eighteen days. Considering that Order 6 Rule 6(1) of the Rules of this Court stipulates that “***The life span of every originating process shall be 6 months***”, the logical and inexplicable conclusion, therefore, is that the Writ of Summons was still subsisting and valid when it was served on the 4th of March, 2022 pursuant to the Order of this Court made on the 22nd of February, 2022. I so hold.

To this end, therefore, the Notice of Preliminary Objection dated the 2nd day of February, 2023 and filed on the 8th of February, 2023 is unmeritorious and is liable to be dismissed. It is accordingly dismissed. I make no order as to costs.

This is the Ruling of this Honourable Court delivered today, the 25th of May, 2023.

HON. JUSTICE A. H. MUSA
JUDGE
25/05/2023