

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

**SUIT NO: CV/233/2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN**

**BETWEEN**

**DOZIE AND DOZIE'S PHARM NIGERIA \_\_\_\_\_ CLAIMANTS/APPLICANTS**

**AND**

**AJANTA PHARMA NIGERIA LIMITED \_\_\_\_\_ DEFENDANT**

**RULING**

The defendant filed this notice of preliminary objection dated the 30<sup>th</sup> day of May, 2022 and seeks for the following order striking out this suit on the ground that this court lacks the jurisdiction to hear and determine the suit.

The grounds upon which this application is filed are contained in page 1 of the application. It is supported by nine paragraphed affidavit, and attached to the affidavit are some documents which are marked as EXH. 'A' and 'B', and is accompanied by a written address of counsel.

The claimant filed his counter affidavit of five paragraphs and attached to the counter affidavit are some documents marked as EXH. 'CD1', 'CD2', 'CD3", and it is accompanied by a written address of counsel.

It is in the supporting affidavit that the defendant as stated in the claimant's affidavit in support of the claims and the statement of claim to have its registered and carries on business at Plot 421, Omofade crescent, Omole Phase I, Ikeja, Lagos State outside the jurisdiction of this court, and the defendant has no office to carry on business therein, and failure to deliver pharmaceutical goods ordered by the claimant from the defendant, the subject matter of this suit, was to be performed by the delivery of

the goods to the claimant at the defendant's office/warehouse in Ikeja, Lagos State.

It is stated that the defendant company has not been served with the writ of summons, statement of claim and other originating processes in this suit at its registered office in Ikeja, Lagos, State as ordered by this Honourable Court on 8<sup>th</sup> March, 2022, and the defendant came to know about this suit through an email written by the claimant's counsel forwarding part of the originating court processes to a third party, Ajanta Pharma Limited (India). That the order of this court specifically directed the claimant to serve the originating processes on the defendant at its Ikeja, Lagos State, office.

In his written address, the counsel to the defendant formulated lone issue for determination in this application, thus:

**Whether Honourable Court has the jurisdiction to hear and determine this suit?**

The counsel to the defendant based his arguments on the grounds upon which the application is filed, and on ground 1, he argued that the defendant resides and carries on business at Ikeja, Lagos State and has no office in Abuja, and relying on Order 9 Rule 3 of the Rules of this court further argued that the place of instituting and of trial of all suits for breach of contract shall be where the contract ought to be performed or where the defendant resides or carries on business, and therefore submitted that this court has no jurisdiction.

On the ground 2, the counsel argued that the contract for the supply of pharmaceutical products to the claimant was to be performed by delivery of the said products to the claimant at the defendant's registered office/warehouse in Ikeja, Lagos State outside the jurisdiction of this court, and

still he relied on Order 9 Rule 3 of the Rules of this court and submitted that this court has no jurisdiction.

On ground 3, the counsel submitted that the originating processes have not been served on the defendant company at its Ikeja, Lagos State head office as directed by this court on 8<sup>th</sup> March, 2022 as the court order attached, and therefore argued that non-service of the originating processes on the defendant ousts the jurisdiction of the court to try this suit, and he relied on the case of **National Bank Ltd V. Guthrie (1993) 3 NWLR (pt 284) 643 at 659, paras. E-F.**

The counsel concluded by submitting that this court has no jurisdiction to entertain this suit which ought to have been instituted in Lagos State.

In his counter affidavit in opposition to the application, the claimant deposed to the fact that he made an order for combisunate anti malaria drugs worth N48,175,000.00 (Forty – Eight Million, One Hundred and Seventy-Five Thousand Naira only) through the AMFM Windows in September, 2018 for onward delivery to his two warehouses in Wuse Zone 2 No. 7 Bozoun Street, and Zone 4, 13 Gwari Street Suite No. 2 Hilltop Plaza respectively in Abuja which the defendant has failed, refused and/or neglected to supply up to date, and that the contract was entered and concluded at the claimant's Head Office situated at Suite No. 2, Hilltop Plaza, 13 Gwari Street, Wuse Zone 4 Abuja to which the defendant agreed to the delivery of the products at the claimant's two warehouses located at Wuse Zone 2 and Zone 4 respectively in Abuja, and that the claimant has no office or warehouse in Lagos State nor carry on business therein.

It is deposed to the fact that the defendant is refusing and avoiding to endorse the service of court processes in

this suit at its registered office address situated at Plot 421 Omotade Crescent, Omole Street, Phase 1, Ikeja, Lagos State, and that prior to the filing of this suit, the claimant learnt that the defendant no longer carry on business at its last known address at 421 Omotade Crescent, Omole Phase 1, Ikeja, Lagos State.

It is stated that the email address used for all correspondences at the time the claimant ordered for the supply was the same email address that was also used to serve court processes on him. That incompliance with the court order, the service was effected on the defendant through the court bailiff by substituted means including the defendant's email and that the defendant is aware of the suit through the email address.

The defendant relied on the documents marked as EXH. CD 1, CD 2, and CD 3.

In his written address, the counsel to the claimant raised this issue for determination in this application, thus:

**Whether this Honourable court has the jurisdiction to hear and determine this suit?**

The counsel to the claimant submitted that Order 9 Rule 3 of the Rules of this court does not have bearing, significance or relevance whatsoever with any of the grounds relied by the defendant and it is therefore inapplicable and of no moment to the current matter at hand.

The counsel also relied on Order 3 Rule 3 of the Rules of this court to the effect that the contract for the supply of the drugs ought to have been performed and supplied at two warehouses of the claimant located in Wuse Zone 2 and Zone 4 respectively in Abuja which is within the jurisdiction of this court.

The counsel submitted that the bailiff was empowered by the court order granted by this court to effect service of the writ of summons and other processes in this suit on the defendant by substituted means at its Lagos office address including via the defendant's email, and therefore urged the court to discountenance the argument of the counsel to the defendant and refuse this application and to dismiss same.

Let me adopt the issue formulated already by the counsel to both parties, that is to say:

**Whether this Honourable Court has the jurisdiction to hear and determine this suit?**

It is the contention of the counsel to the defendant and the defendant that the defendant resides and carries on business at Ikeja, Lagos State and has no office in Abuja, and therefore relies on Order 9 Rule 3 of the Rules of this court to the effect that the place of instituting and of trial of all suit for the breach of contract shall be where the contract ought to have been performed or where the defendant resides or carries on business, while it is the contention of the claimant that Order 9 Rule 3 of the Rules of this court does not have bearing with this case and therefore inapplicable.

Thus, Order 9 Rule 3 of the Rules of this court provides:

**“The Registrar shall not accept any memorandum of appearance which does not contain an address for service, if any such address illusory, fictitious or misleading, the appearance may be set aside by the court on the application of a claimant or other parties”**

By the above quoted rule, it can be inferred to mean that it bothers on fictitious address that will be provided and contained in the memorandum of appearance, and

therefore does not have any securing whatsoever with the issue raised by the counsel to the defendant, and is therefore of no moment.

It is also the contention of the defendant and his counsel that the contract for the supply of the pharmaceutical products to the claimant was to be performed by delivery of the said products to the claimant at the defendant's registered office/warehouse in Ikeja, Lagos State which is outside the jurisdiction of this court, and the counsel further relies on Order 9 Rule 3 of the Rules of this court, while it is the contention of the claimant and that of his counsel that the contract for the supply of the drugs ought to have been performed and supplied at two warehouses of the claimant located in Wuse 2 and Zone 4, Abuja which are within the jurisdiction of this court and therefore relies on Order 3 Rule 3 of the Rules of this court which provides:

**“All suits for the specific performance or upon the breach of any contract, may be commenced and determined in the judicial division in which such contract ought to have been performed or in which the defendant resides or carries on business”**

In resolving and ascertaining where the contract ought to have been performed, recourse has to be made to the writ and the statement of claim. See the case of **P.C.H.S. Co. Ltd V. MIGFO (Nig.) Ltd (2012) All FWLR (pt 642) p. 1619 at 1634, paras. E-F** where the Supreme Court held that it is the plaintiff's claim that determines and vests jurisdiction in the court. In the instant case, I have gone through the statement of claim and have not seen where it is stated by the claimant that the contract for the supply of the drugs by

the defendant to the claimant was to be performed in Wuse 2 and Zone 4 of Abuja.

Thus, it was held by the Court of Appeal, Lagos Division in the case of **Owners of M.T. Venturer V. B.N.P.C (2012) All FWLR (pt 645) p. 400 at 406, paras. A-C** that in the general principle that in determining jurisdiction, a court is confined to its writ of summons and statement of claim subject to exception. In appropriate cases, the court may look beyond the statement of claim, for instance, if objection to jurisdiction made on motion on notice supported by an affidavit, the court is obliged to consider the motion and the affidavit. In the instant case, the defendant having filed the objection and supported by an affidavit, am inclined to go beyond the writ of summons and statement of claim of the claimant by considering the notice and the affidavit filed by both parties.

Looking at the affidavit in support of the notice of preliminary objection and the counter affidavit, it can be seen that there is a conflict as no any documentary evidence that can be resorted to in resolving the conflict. See the case of **Dana Impex Ltd V. Awukum (2006) All FWLR (pt 311) p. 1928 at pp. 1940 – 1941, paras. A-B.**

It was held by the Court of Appeal, Calabar Division in the case of **N.E.P.A V. Arobieke (2006) All FWLR (pt 316) p. 291 at pp. 310-311, paras. H-B** that where two parties in a dispute reduce their facts into affidavits and there are conflicts in the affidavits, such conflicts should be best resolved by having oral evidence from the parties. Once this situation of conflict arises and the conflict is not a judicial matter in the dispute, but on the substance of the dispute, whether the parties so request or not, it is incumbent on the court faced with such situation to advise the parties to give oral evidence to resolve the conflict. In the instant case, as

there is no documentary evidence, such as an agreement attached to either statement of claim or affidavits of both parties, the best is to call for oral evidence to resolve the issue as to where the contract ought to have been performed.

I therefore, advise the parties to resort to oral or documentary evidence to ascertain at where the court ought to have been performed.

It is the contention of the defendant that the defendant has not been served with the writ of summons, statement of claim and other originating processes in this suit at its registered office in Ikeja, Lagos State as ordered by this court on the 8<sup>th</sup> March, 2022, and the defendant came to know about this suit through an email written by the claimant's counsel forwarding part of the originating court processes to a third party Ajanta Pharma Ltd (India), while it is the contention of the claimant that the claimant is empowered by the court order of this court to serve the writ of summons, statement of claim and other originating processes on the defendant by substituted means including via the defendant's email as ordered by the court, and that both the defendant and Ajanta Pharma Ltd (India) use the email address as confirmed by the receipt of the claimant originating processes by the defendant's counsel. That the defendant is aware of the suit through the email address that has always been used by both the claimant and the defendant for all official correspondences and was equally sent to both directors and other officials of the company.

Thus, the court is not oblivious of the fundamental nature of service of originating processes. See the case of **Egbagbe V. Ishaku (2006) All FWLR (pt 331) p. 1278 at 1293, paras. B-D** where the Court of Appeal, Kaduna Division held that the service of a writ or process in a defendant is one of the



fundamental conditions precedent to the exercise of jurisdiction by a court of law.

The court is obliged to take judicial notice of its proceedings and records and their contents. See the case of **Nigerian Navy V. Garrick (2006) All FWLR (pt 315) p. 52 at 69, para. F**. It is against this bankrupt, that I have sent to the copy of the enrolled order as exhibited by the counsel to the defendant, the prayers of the claimant on motion ex parte for substituted service and how the bailiff of this court effect the service.

The third segment of the orders reads:

**“That leave is also given to the Bailiff of this Honourable Court to serve the originating processes in this suit on the defendant’s counsel at its law office address viz: DHL Courier Services, United Parcel Services or Fedex or Email and for the proof of service/delivery to be accepted as full and proper service upon production of relevant Airway bill, notwithstanding any other method as my be prescribed by rules”.**

Now going through the above quoted portion of the order granted by this court, the question that arose is:

**“Whether the originating processes in this suit were served on the defendant’s counsel at its law office address, either through courier, Fedex or email?”**

The claimant did not deny in his affidavit that the service was effected on Ajanta Pharma Limited (India), while the suit is against Ajanta Pharma Nigeria Ltd. which carries on business in Nigeria at Plot No. 4203, Omode Crescent, Phase I, Ikeja, Lagos State.

In the motion ex parte for substituted service, and on the affidavit in support, the deponent did not state the

email address and did not make any statement that regarding the email address that has always been used by both defendant and Ajanta Pharma Limited (India). I therefore, hold the view that the service via email of Ajanta Pharma Limited (India) is improper.

Looking back to the 2<sup>nd</sup> segment of the orders which reads:

**That leave is hereby granted to the claimant to serve the writ of summons on the defendant in Ikeja, Lagos State outside the jurisdiction of this Honourable Court.**

There is a certificate of service filed by the bailiff of this court and attached to it is the domestic Airway Bill of Fedstar Express, and in it the recipient name is Aputa office Lagos, and the address is Plot No. 420B Ondo Crescent, Phase I, Ikeja, Lagos State, while the claimant in his affidavit accompanying the writ stated in paragraph 4 that the registered office of Ajanta Pharma Nigeria Limited is situate at Plot 420B, Omode Crescent, Phase I, Ikeja Lagos, Nigeria. This looks vague. To my mind, the service was not effected at Plot 420B, Omode Crescent, Phase I, Ikeja, Lagos State, rather was served on plot 420B, Ondo Crescent, Phase I, Ikeja, Lagos State, and therefore, the service was improper.

The effect of improper service is that there is no jurisdiction to hear and entertain the matter, and to this I so hold. See the case of **B.B. Apugo & Sons Ltd V. O.H.M.B. (2006) All FWLR (pt 322) p. 1573 at pp. 1589-1590, paras. F-B.** In the instant case of the service improperly made is set aside, as the service should be effected through the email address of the counsel to the defendant or be served through courier on the defendant's counsel, this is in tandem with the earlier order for substituted service of this

court. The original processes can also be served upon the disclosed counsel to the defendant accordingly.

Hon. Judge  
Signed  
25/1/2024

Appearances:

C.A. Mbalusi Esq appeared for the claimant.

Ufedo Sani Esq appearing with Goodness Ajinomoh Esq for the defendant.

CT: The matter is adjourned to 17<sup>th</sup> April, 2024 for hearing.

Hon. Judge  
Signed  
25/1/2024