

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

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/CV/1062/2016**

**BETWEEN:**

**INTERGAX RESOURCERY LIMITED.....CLAIMANT**

**VS**

- 1. PINNACLE OIL & GAS LTD**
- 2. PETER MBAH**
- 3. CHRISTIAN MONEKE**
- 4. DR. EFUNTOYE TIMOTHY.....DEFENDANTS**

**RULING**

By a Notice of Preliminary Objection dated 15/11/2021 and filed on same day, brought pursuant to Order 2 Rule 4 of the FCT High Court (Civil Procedure) Rules 2018, Section 97 of the Sherriff and Civil Process Act And under the inherent jurisdiction of this Hon. Court, the 1<sup>st</sup>/2<sup>nd</sup> Defendant/ Applicant prays the Court for the following;

1. An Order of this Hon. court striking out Suit No. FCT/HC/CV/1062/16 for lack jurisdiction.
2. And for such further Order or other Orders as the Hon. Court

may deem fit to make in the circumstances.

The grounds upon which this Notice of Preliminary Objection is predicated are as follows:

- (1) **SUIT NO. FCT/HC/CV/1062/16** is a defective Writ and this Hon. Court has the power to strike out the Suit for being incompetent.
- (2) **Order 2 Rule 4 of the High Court of the Federal Capital Territory Civil Procedure Rules 2018**, makes it mandatory for this Writ which ought to be served on the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in Lagos, outside the jurisdiction of this Honourable Court to be specially endorsed thereon.
- (3) **Section 97 of Sheriffs and Civil Process Act Cap S6 LFN 2004**, provides that every Writ of Summons for service out of the State in which it was issued shall be endorsed thereon.
- (4) This Court is bound by the doctrine of stare decisis and as a consequence of the decision of the Supreme Court in PDP Vs INEC (2018) 12 NWLR (PT.1643) at 533, which is to the effect that any service of a Writ without proper endorsement is not a mere irregularity but a fundamental defect that renders the Writ incompetent.
- (5) This court has no jurisdiction to entertain this suit by reason of the aforesaid.

In support of the Notice of Preliminary is an affidavit of 6 Paragraph sworn to by Ogba Otokpa. Also filed a Written Address, adopts the Address, in urging the court to grant the application. Also filed a Further/Better affidavit dated 14/1/2022 of 6 Paragraphs with two (2) Exhibits annexed in response to the Counter-Affidavit of Claimant/Respondent.

In opposition, the Claimant filed a 10 Paragraph Counter-Affidavit sworn to by Moses Gyanche Istifanus with three (3) Exhibits attached marked "A – "A1" and "B". Also filed a Written Address, adopts the Address, in urging the court to refuse and dismiss the application.

In the Written Address of 1<sup>st</sup>/2<sup>nd</sup> Defendant, A.O. Ochogwu of Counsel formulated a lone issue for determination;

"Whether having regards to the defective nature of the Writ before this Hon. Court, this Hon. Court will not strike out this Suit for want of procedural jurisdiction".

And submit that the Writ of Summons filed and served by Claimant is fundamental defective and therefore robbed this court of jurisdiction. Further that the Claimant in their Writ of Summons were in breach of Rules of Court which have been held to be mandatory and non-compliance is a fundamental defect which goes to competence and jurisdiction of court.

Submits that its law that any Writ of Summons which is to be served outside jurisdiction must be endorsed. That 1<sup>st</sup>/2<sup>nd</sup> Defendant resides and carries out business in Lagos outside the jurisdiction of this Court and

therefore behooves on Claimant to specially endorse the Writ of Summons before service of same on 1<sup>st</sup> /2<sup>nd</sup> Defendant. Submit further that Claimant's suit is incompetent having failed to endorse the Writ of Summons and thereby deprived this court of jurisdiction. That a Defendant who complain of such non-compliance, as in the instant, is entitled ex-debito justitae to have same set aside. In all, commended the court to Order 2 Rule 4 of the Rules this Court, Section 97 of Sheriffs And Civil Process Act and several juridical authorities; Uti Vs Onoyivwe (1991) 1 SCNJ, 25, D.E.N.R Vs Trans Int;l Bank Ltd 92008) 18 NWLR PT 1119, 388, MadukoluVsNkedilim (1962) SC, 587, Atalagbe Vs Awunu (1997) 9 NWLR PT. 522, 536, Bello Vs National Bank of Nigeria (1992) 6 NWLR (PT. 246, 206, Touton SA Vs Grimadi Campagnia Naviga Zioni SPA & Ors (2011) 4 NWLR PT 1236, 22, P.D.P Vs INEC (2018) 12 NWLR PT. 1634 533, Ezeobi Vs Abang (2000) 9 NWLR PT. 672, 244, Nwabueze Vs Okoye (1988) 4 NWLR PT 91, 644, Ogunmola Vs Kida (2001) 12 NWLR PT 726, 93.

In the Written Address of Claimant, Counsel for Claimant, Ejumejowo Anthony formulated a sole issue for determination;

“Whether or not the Plaintiff's Writ of Summons is defective”

And submits that Claimant's Writ of Summons is not defective and is in compliance with Provision of Section 97 Sheriffs And Civil Process Act and Order 4 of Rules of this Court. That a look at the Claimant's Writ of Summons dated 24/2/2016 but filed on 25/2/2016 which 1<sup>st</sup>/2<sup>nd</sup> Defendant based its application and Claimant's Amended Writ of Summons filed on 17/3/2021, that is the Exhibit “A” and “A1” of Claimant, will reveal that

they were marked at the top of the left hand side of the process as concurrent Writ and the inscription. "This Writ of Summons is to be served out of Abuja Federal Capital Territory in Lagos State" clearly written at the bottom of the third pages of both Exhibits "A" and "A1". Further that Exhibit "B" is an Order of Court made on 9/6/2016 granting leave to Claimant to serve the Originating process and all other process on 1<sup>st</sup> /2<sup>nd</sup> Defendant. Submits 1<sup>st</sup>/2<sup>nd</sup> Defendant application is absurd and lacks merit. Urge court to dismiss same with substantial cost.

3<sup>rd</sup> Defendant aligns with the position of 1<sup>st</sup>/2<sup>nd</sup> Defendant, while 4<sup>th</sup> Defendant is, however, in Agreement with the submission of Claimant. That the amended concurrent Writ is dated 17/3/2021, refer the court to Supreme Court position in Yesufu Vs Adegoke & Or (2007) LPELR – 3534 – (SC) and submits, therefore, that it is always expedient that the justice of any matter be decided on its merit and not on technicalities.

In his reply on point of law, 1<sup>st</sup>/2<sup>nd</sup> Defendant submits that the Order of Court was made on 9/6/16 whereas the Writ has been issued on 25/2/2016, apparently issued without Order of Court which makes it incompetent. Further that there is no application or order granting the regularization of that Writ so issued.

Having considered the submission of counsel and the judicial and statutory authorities cited, the court finds that only one (1) issue calls for determination and that is;

"Whether or not this court has the jurisdiction to entertain and determine this Suit".

Jurisdiction is fundamental in nature and once raised, the court has a duty to determine it once and for all as it is the legal power or authority which a court must possess to decide matters being litigated before it. If a court is bereft of jurisdiction to hear and determine a matter before it any step taken in the matter is null and void. See the case of *Ujoka Vs Govt of Ebonyi State* (2009) 9 NWLR PT 1147, 439 at 442.

In this instant, the gravamen of the Notice of Preliminary Objection of 1<sup>st</sup>/2<sup>nd</sup> Defendant is predicated upon the non-compliance by Claimant with the Provisions of Section 97 Sheriffs And Civil process Act and Order 2 Rule 4 of Rules of Court in terms of endorsement on the Writ of Summons for service outside the FCT, Abuja.

Section 97, Sheriffs And Civil Process Act provides;

“Every Writ of Summons for service under this part of the state or the capital Territory in which it was issued shall in addition to any other endorsement or notice required by the law of such State or the Capital Territory have endorsed thereon a notice to the following effect (that is to say) – “This Summons (as the case may be) is to be served out of the ...State”.

And by Order 2 Rule 4 of the Rules of Court which reads;

“Subject to the provisions of the Sheriffs And Civil Process Act, a Writ of Summons or other originating Process issued by the Court for service in Nigeria outside the FCT shall be endorsed by the Registrar of the Court with the following notice”.

“This Summons (or as the case may be) is to be served out of the Federal Capital Territory. Abuja and in the .....State”.

I have looked at the Claimant’s Writ of Summons filed on 25/2/2016 and served on 1<sup>st</sup> /2<sup>nd</sup> Defendant which is the basis of this application and find that it was marked to be served out of Abuja, the Federal Capital Territory on 1<sup>st</sup>/2<sup>nd</sup> Defendant in Lagos State in compliance with Section 97 of Sheriff And Civil Process Act and Order 2 Rule 4 of the Rules of this Court. Even the Claimant’s Amended Writ of Summons filed on 17/3/2021 was also so marked, and further marked as concurrent Writ in consonance with the Provisions of Section 98 of Sheriffs And Civil process Act. See Exhibit “A” and “A1” annexed to the Counter-Affidavit of the Claimant.

It is also of note that the Claimant was granted leave of court on 9/6/2016 to serve the originating Processes of this Suit on 1<sup>st</sup>/2<sup>nd</sup> Defendant outside the jurisdiction of this court consequent upon the application of Claimant in compliance with the Rules of Court as can be seen from the Exhibit “B” of Claimant. It is, therefore, the firm view of court that the Claimant complied with the law and the Rules in effecting service of the Originating Processes of this Suit on 1<sup>st</sup>/2<sup>nd</sup> Defendant.

However, assuming without conceding that the Claimant failed to comply with the law and the Rules in effecting service of the Originating Processes on the 1<sup>st</sup> /2<sup>nd</sup> Defendant, this instant application would not have avail the 1<sup>st</sup>/2<sup>nd</sup> Defendant. I say this because it is law that where a Defendant is served with a Writ of Summons in breach of Section 97 of Sheriffs And Civil Process Act, he has a choice to object to have the Writ of Summons set

aside and the Court *ex debito justitiae* will accede to the application provided he has not taken step in the proceedings. By entering appearance and filing pleadings, he will be deemed to have waived his right and cannot later in the proceedings seek to set aside the Writ of Summons. See the case of *NACB Ltd Vs Ono Foods Development Co Ltd* (2006) 9 NWLR PT 985, 323 at 326 – 327. See also *Panalpina World Transport Vs Ceddi Corporation Ltd* (2011) ALL FWLR PT 600, 1258 at 1262. It is on record that upon being served with the Writ of Summons, 1<sup>st</sup>/2<sup>nd</sup> Defendant filed a Memorandum of Appearance and Statement of Defence and same were served on Claimant. By implication, if the Claimant had failed to comply with the law and Rules in effecting the originating Summons on 1<sup>st</sup>/2<sup>nd</sup> Defendant, the 1<sup>st</sup> /2<sup>nd</sup> Defendant would be deemed to have waived his right to object to the Writ of Summons served on them.

In addition, the law now tilts towards doing substantial justice rather than dwelling on technicality. The failure to make the prescribed endorsement on Writ of Summons for service out of a State is now seen as procedural irregularity that should not affect the court's jurisdiction to adjudicate in the matter. See *Christaben Group Ltd Vs Oni* (2010) ALL FWLR PT 504, 1439 at 1442. See also Order 5 Rule 1 (1) of the Rules of Court.

From all of these, it is the view of court that this application is unmeritorious, frivolous and baseless. It is hereby dismissed. Cost of sum of ₦30,000.00 (Thirty Thousand Naira) only is awarded in favour of Claimant against the 1<sup>st</sup>/2<sup>nd</sup> Defendant to be paid before the next adjourned date. I so order.



Signed

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

26/5/2022

**APPEARANCE**

A.O. OCHOGWU – FOR 1<sup>ST</sup>/2<sup>ND</sup> DEFENDANT/APPLICANT

A.A. EJUMEJOWO WITH J.I. CHRISTOPHER, I.B. JOMBO (MRS) – FOR CLAIMANT/RESPONDENT.

BENSON IBEZIM WITH ANITA CHIGBO – FOR 3<sup>RD</sup> DEFENDANT.

ABRAHAM ABISOYE – FOR 4<sup>TH</sup> DEFENDANT