

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI  
ON THE 24<sup>TH</sup> DAY OF NOVEMBER, 2023  
BEFORE THEIR LORDSHIPS:**

- 1. HON. JUSTICE J. ENOBIE OBANOR (PRESIDING JUDGE)**
- 2. HON. JUSTICE B. DOGONYARO (HON. JUDGE)**

**APPEAL NO: /CVA/286/2022**

**SUIT NO: /CV/34/2022**

**BETWEEN:**

**MR & MRS OLUWOLE OGUNSOLA & 43  
ORS.....APPELLANT**

**AND**

**AVASTONE GLOBAL SERVICES LIMITED.....RESPONDENT**

**JUDGMENT**

This is an appeal against the judgment of the Upper Area Court, Bwari (hereinafter referred to as the "Lower Court") delivered on the 15<sup>th</sup> day of September, 2022 in Suit No: CV/34/2022 presided over by Hon. Gambo Garba wherein Judgment was entered in favour of the Claimant (who is now the Respondent in this appeal).

The Respondent initiated this suit at the Trial Court by a Civil Plaint against the Appellant seeking the following reliefs -:

1. AN ORDER for the Defendants to pay all the outstanding balance of the purchase agreement individually owed to the Plaintiff within 14 days. IF THEY FAIL, IN THE ALTERNATIVE.
2. AN ORDER that the Defendants vacate the houses and the Plaintiff shall refund the deposits paid by each Defendant under the purchase agreement.
3. AN ORDER for cost of this action.

After hearing the matter, judgment was delivered and entered in favour of the Respondent. Dissatisfied with the judgment of the Trial Court, the

Appellant filed the present appeal on the 1<sup>st</sup> of November, 2022 on 8 grounds reproduced as follows (without their particulars):

### **GROUND ONE**

The learned trial judge erred in law when he proceeded to conduct proceedings from the commencement of the suit leading to judgment against the Appellants without ensuring service of the Originating Process, hearing notices and all other processes were not effected on the Appellants as required by law or in the manner permitted by law.

### **GROUND TWO**

The judgment of the trial court is a nullity in that the proceeding or steps taken by the trial court leading to the judgment is in breach of the Appellants' right to fair hearing.

### **GROUND 3**

The Learned trial court erred in law when it held thus: "The Defendants were served with the court processes but did not appear before the court thereby forcing the court to conduct proceedings in line with Order 9 R 3 of ACCPR".

### **GROUND 4**

The learned trial Judge erred in law when it granted both the main and alternative reliefs and also made orders not specifically prayed for by the Respondent against the Appellants.

### **GROUND 5**

The learned trial Judge erred in law when he adjudged the Appellants as liable to pay the sums against their respective names when there was no proof or evidence to support the decision.

### **GROUND 6**

The learned trial Judge erred in law when he assumed jurisdiction over the Appellants, proceeded to hear and determined the matter against them when the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup> and 25<sup>th</sup> Appellants lacked the capacity to sue and be sure.

### **GROUND 7**

The learned trial Judge erred in law when he assumed jurisdiction over the suit in the absence of jurisdictional competence to hear and determine the entire suit.

### **GROUND 8**

The learned trial Judge erred in law when it assumed jurisdiction over the matter when the Respondent did not fulfil condition precedent before approaching the Court.

### **RELIEFS SOUGHT BY THE APPELLANTS**

1. An order allowing this Appeal and setting aside the judgment of the Upper Area Court, Bwari, Abuja, dated 15<sup>th</sup> day of September, 2022, in Suit No: CV/34)/2022.
2. Any other order(s) as the Court may deem fit to make in the circumstances of this case.

The Appellants from the Record of Appeal had duly served the Respondent the Record of this Appeal on the 1<sup>st</sup> of December, 2022. In spite of that, the Respondent did not file its response. From the Record of this Court, the Respondent is also aware of today's date for hearing of this appeal but it did not come. The Respondent did not harness all the avenue given to it to put up its defence. Hence, the Appellants adopted their Brief of argument already served on the Respondent.

### **ISSUES FOR DETERMINATION**

The Appellant's Brief of Argument settled by P.H.Kyelek Esq, formulated six (6) issues for determination as follows:

***1. WHETHER THE APPELLANTS WERE SERVED WITH THE ORIGINATING PROCESS AND OTHER PROCESSES THAT REQUIRED SERVICE IN THE INSTANT CASE, IN THE MANNER PERMITTED BY LAW SO AS TO VEST THIS COURT WITH THE COMPETENCE AND JURISDICTION TO ENTERTAIN THIS SUIT AND MAKE ANY ORDER AGAINST THE APPELLANTS?(GROUNDS ONE, TWO AND THREE)***

***2. WHETHER THE LOWER COURT IS VESTED WITH JURISDICTION AND COMPETENCE TO DETERMINE THE***

***CLAIMS OF THE RESPONDENT?(DISTILLED FROM GROUND 7)***

- 3. WHETHER THE SUIT OF THE RESPONDENT WAS NOT INCOMPETENT HAVING JOINED THE 1<sup>ST</sup>, 4<sup>TH</sup>, 5<sup>TH</sup>, 18<sup>TH</sup>, 19<sup>TH</sup> AND 25<sup>TH</sup> APPELLANTS WHO ARE NOT JURISTIC PERSONS KNOWN TO LAW? (DISTILLED FROM GROUND 6)***
- 4. WHETHER THE LOWER COURT'S DECISION IN AWARDING OR ADJUDGING THE APPELLANTS LIABLE TO PAY THE RESPECTIVE SUM WAS SUPPORTED BY EVIDENCE? (DISTILLED FROM GROUND 5)***
- 5. WHETHER THE RELIEFS GRANTED IN FAVOUR OF THE RESPONDENT DID NOT ENCOMPASS THE MAIN AND ALTERNATIVE RELIEFS AND WERE NOT WHAT WAS SOUGHT BY THE RESPONDENT? (GROUND 4)***
- 6. WHETHER THE LOWER COURT WAS COMPETENT TO HEAR AND DETERMINE THE MATTER IN THE FACE OF ARBITRATION CLAUSE WHICH THE PARTIES DID NOT EXPLORE BEFORE APPROACHING THE COURT?***

**APPELLANTS' SUBMISSION ON ISSUES 1-6**

Learned Counsel arguing issue 1 submitted that the Respondent's application for substituted service did not disclose the addresses where the processes were to be served by substituted means on the Appellants, nevertheless, the Lower Court granted the application. Therefore, Counsel maintained that it is curious how the Lower Court towed the line of the Respondent and accordingly, ordered the service of the originating process by substituted means without specifying or stating any address. Consequently, he insisted that the order for substituted service made by the Lower Court is irregular, wrong and not in compliance with the rules of court.

Again, Learned Counsel posits that assuming the addresses stated on the Complaint were to be considered or taken as the last known address of the

Defendants, there is still no proof in the record to show that the Appellants were indeed served at the aforesaid addresses as there is no certificate of service deposed to by the person that effected the said service at the addresses stated on the Plaint.

It is the further submission of Learned Counsel that there are two documents purporting to be affidavit of service deposed to by one Aminu Ibrahim – a staff attached to the Lower Court. The first affidavit of service is dated 22/8/2022 indicating that he could not serve the Appellants with Civil Summons Form 1 (the Plaint); there was no mention of the date attempt was made in effecting service, no time and addresses where the attempt was made. The affidavit is bereft of these requirements. He referred the Court to page 13 of the Record.

Learned Counsel further observed that the second affidavit evidence dated 8/9/22 did not disclose the particulars of the persons served and the place of service. The deponent only mentioned "main entrance of estate" without mentioning the place where the "main entrance of estate" is located. Consequently, Counsel submits that where an order of court or rule of practise provide for service to be effected in a particular place or manner, the name and address of the person who ought to be served and the place of service must be stated in the proof of service. He placed reliance on the case of **NWAOGWUGWU V. PRESIDENT, FRN (2007) All FWLR (PT. 389)1327@1353-1354S.G.B (NIG.)LIMITED V. ADEWUNMI (2003)FWLR(PT. 158)1181 @ 1192.**

He further contended that the issue of service of process is a basic and fundamental condition precedent to court assuming jurisdiction. Failure to comply with order to serve in a particular manner prescribed, would render any proceeding emanating from it void. He relied on the authority of **OKOMA V. UDOH (2002) FWLR (PT. 98)901 @ 907** and **SCHROEDER V. MAJOR & CO (1989)2 SCNJ, 210**. He further posits that failure to serve the necessary processes which required service on the Appellants before the judgment was delivered breached the Appellants' right to fair hearing as enjoined in Section 36 (1) of the Amended 1999 Constitution of the Federal Republic of Nigeria. The court is duty-bound to give an Appellant a notice when a matter is fixed behind him and his counsel. He urged the Court to resolve issue one in his favour.

On issue 2, Learned Counsel relied on Section 11 of the Area Courts (Repeal and Enactment) Act 2010 ("the Act") and submits that the parties that are subject to the jurisdiction of Area Court are Muslims and persons who consent to the exercise of jurisdiction by the Lower Court. He also cited Section 15 of the Act and argued that the law that is to be applied to matters before an Area Court in civil cases is the Islamic Law of the Maliki School of Jurisprudence. Therefore, Counsel posits that in the instant appeal, the claim of the Respondent before the Lower Court is contractual in nature being governed by principles of English Law and equity. The judgment and the orders made against the Appellants were based on principles of English Law. Therefore, the Lower Court indeed acted without jurisdiction when it determined the matter and made the said orders against the Appellants.

He contends further that the effect of a Court assuming and exercising jurisdiction over a matter it has no jurisdiction to entertain is that it acts ultra vires its jurisdiction and its proceedings and decision or order, no matter how well conducted and considered, are all null and void as held in **MOBIL V. SUFFOLK PETROLUEM SERVICES LIMITED (2016) LPELR-40054** and **OKPALA V. EZEANI & ORS. (1999) 4 NWLR (PT 598) 250 AT 257**.

On issue 3, it is the submission of Learned Counsel that the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup> and 25<sup>th</sup> Appellants, respectively sued as MR. & MRS. OLUWOLE, MR. & MRS. TUNJI FATILEWA, MR. & MRS. BABATUNDE OMOTOSHO, MR. & MRS. PETER EDOBOR, ONYEMAKONOR, MR. & MRS. BABATUNDE OMOTOSHO and MR. & MRS. AYEKE NNENNAYA AND CHIDI are non-juristic persons capable of being sued. They are neither natural persons nor are they creation of any statute nor artificial persons created by law or incorporation. He relied on the case **LION OF AFRICA INSURANCE COMPANY LTD. V. ESAN (1999) 8 NWLR (PT. 614) 197** and further asserts that where the court finds that a party sued lacks juristic personality, the remedy is in striking out the suit. He cited the case of **THE CORPS MARSHAL V. MOHAMMED GANA (2022) LPELR-57813(CA)**.

Furthermore, Learned Counsel submits that the decision reached by the Lower Court was not supported by evidence on the Record as careful perusal of the testimony of PW1 will indeed show that there was nowhere the witness gave evidence of specific sums or amount or

arrears the Appellants respectively owed the Respondent. The Exhibit A(at pages 15-23) tendered through the said witness did not contain the names of all the Appellants, their signatures or the respective sums owed the Respondent hence, the Appellants indeed did not execute Exhibit A. The name on the said exhibit is Ajayi Femi. The Appellants were sued individually and each having his or her contract separate and distinct from the others. Thus, Counsel submits that where a Trial Court fails to evaluate or erroneously appraises the evidence before it, an appellate Court has an onerous responsibility to reappraise and re-evaluate the evidence with a view to reaching a fair and just decision for the parties. He relied on the case of **ANZAKU V. GOVERNOR, NASARAWA STATE (2006) ALL FWLR (PT. 303) 308@351.**

He also submits that when a party's claim is in the alternative, the assumption is that he wants either of the reliefs sought, in which case when he is granted either or any of the reliefs, he cannot be granted the other one(s) because the one granted suffices for the purpose of his claim. Where, however, the main claim succeeds and is granted, there will be no need to consider any alternative claim in the pleadings. However, in the instant case, Learned Counsel submits that the Lower Court indeed transgressed this legal principle in making an award which encapsulated the alternative reliefs sought by the Claimant at the Lower Court.

Against this background, he observed that the Lower Court acted outside its jurisdiction by granting reliefs 1, 2, 3 and 4 not specifically claimed or sought for by the Respondent at the Lower Court. He called to his aid the case of **OMOKHAFE V. ESEKHOMO (1993) NWLR (PT.309) 58; EKPEYONG V. NYONG (1975) 2 SC 71; ABU V. KUYABANA & ORS. (2001) FWLR (PT.70) 1141 1152 C.A and ABDULLAHI & ORS. V. ALHAJI I. N. TASHA (2001) FWLR [PT.81] 1807 @ 1829.**

On issue 6, Learned Senior Counsel argued that in the face of arbitration clause in Exhibit A, the Lower Court lacked the competence to hear and determine the matter without ensuring or giving effect to the said clause before entertaining the matter. This is because parties are bound by the terms of their contract and the Court can only interpret the terms of an agreement not re-write same. He anchored his argument on the

authority of **LAEMIE V.DP.M.S LTD (2005) 18 NWLR (Pt. 958) Pg. 438; (2005) LPELR-1756 (SC) Pg. 31, Paras. D-E.** Thus, Counsel asserted that a cursory look at paragraph 11 of Exhibit A (page 17 of the Record) will reveal that parties by that paragraph agreed to submit their dispute to Arbitration. He referred to the cases of **DREXEL ENERGY & NAT. RES. LTD. & ORS. V. T.I.B LTD & ORS (2008) LPELR-962(SC)** and **ADHEKEGBAV. THE HONOURABLE MINISTER OF DEFENCE & ORS. (2013) LPELR- 20154(CA)** and submits that the law is trite that where there is a condition precedent provided for the doing of an act, that condition precedent must be followed. Any action taken in contravention of the condition precedent will render the act a nullity.

Conclusively, Learned Counsel urged this Honourable Court to allow this appeal.

### **RESOLUTION OF ISSUES 1 – 6**

On issue one, Learned Counsel raised a jurisdictional issue. He vehemently complained that the substituted service granted and effected by the Lower Court was done outside requirement of the law. He argued that the address where the Appellants were to be served was not stated in the Court Order for substituted service on the Appellants. He also faulted the certificate of service deposed to by the person who effected the service on the ground that there was no mention of the date, time and address when and where attempt was made. Also, he observed that in the 2<sup>nd</sup> affidavit did not disclose particulars of the persons served and place of service.

It is abecedarian that the issue of service of Court Process on a Defendant is central in any adjudication of Courts, and unless or until service of originating processes are effected on a Defendant, the Court seized of the cause or matter cannot assume jurisdiction and embark upon hearing of the suit or action. See **ONWUBUYA V. IKEGBUNAM (2019) 16 NWLR (PT. 1697) 94 at 110 - 111.**

Furthermore, failure to serve a process where service is required is so fundamental that the party not served and against whom any order is made in his absence is entitled to have the order set aside on the ground that a condition precedent to the exercise of jurisdiction by the Court has not been fulfilled. It is the service of such originating



processes on a Defendant that ignites or gives vent to the jurisdiction of the Court to entertain a matter and make order(s) that will be valid and subsisting. Therefore, a court has no jurisdiction over a person not served with the Court Processes. See **ROFICO LTD V. STUDIO PRESS (NIG) PLC (PP. 7-9 PARAS. F); TREASURE LINE INTERLINK LTD V. TAOREED (2019) LPELR-46940(CA) (PP. 9-11 PARAS. B); FIDELITY BANK PLC V. THE MT. TABORA (2018) 12 NWLR (PT. 1632) 135 at 162 - 163, KIDA V. OGUNMOLA (2006) 13 NWLR (997) 377; NATIONAL BANK OF NIGERIA LTD V. GUTHRIE (NIG) LTD (1993) 3 NWLR (PT. 284) 643 and H. B. GADA GLOBAL INVESTMENT (NIG.) LTD V. ZAMFARA STATE GOVT & ANOR (2019) LPELR-46940(CA) (PP. 8-9 PARAS. F).**

It should be borne in mind that the mere fact that a Bailiff deposed to an affidavit of service or certificate of service is not a conclusive proof of service of process. The burden of proving service rests on the person asserting that there was service. Therefore, for an affidavit of service to be valid, it must contain details of the following – when, who, what and where. Put differently, an affidavit of service deposed to by a Court Bailiff or the person effecting such service must set out the facts of such service, the place, mode and date of service. It must also describe the processes or documents served. See **AHMED V. AHMED & ORS (2013) LPELR-21143(SC) (PP. 89 PARAS. A)** and **ADEBAYO V. OLAJOGUN (2016) LPELR-41390(CA) (PP. 25 PARAS. C)**. In a clearer and all-encompassing manner, Per NIMPAR, J.C.A in **7-UP BOTTLING CO. PLC V. NEW NYANYA TRANSPORT CO. LTD & ORS (PP. 55 PARAS. C)** summed up the requirement of an Affidavit of service in these terms:

**"An affidavit of service should contain the following: firstly, Name of bailiff; secondly, Date of service; thirdly, Name of person upon whom the process was served; fourthly, Mode of service; fifthly, Description of process/document served; sixthly, Place of service. See OKEKE VS. A.G. ANAMBRA STATE (1997) 9 NWLR (PT. 519) 123 at 149."**

In the instant case, we have seen the Affidavit of service deposed to by one Aminu Ibrahim, a staff of the Lower Court at page 12 of the Record of Appeal. For the avoidance of doubt, the Bailiff deposed as follows:

**I Aminu Ibrahim of Upper Area Court, Bwari FCT make oaths and says**

- 1. That I am the above named person, male, adult, Civil Servant, Nigerian citizen and the deponent on this affidavit herein (sic).**
- 2. That I am a staff of Upper Area Court Bwari FCT and I have issued with a Civil Summons form 1 to serve the defendants in the Case No. CV/34/2022, but all effort made to effect the service proved abortive as the Defendant are not reachable due to the tight security of the entrance into the Defendant's premises and their full office address is unknown and there is no any phone numbers of the defendants, hence I swear to this Affidavit to buttress my report that the service has not being(sic) effected (sic).**

From the above deposition of the Bailiff, it is unarguable that the Bailiff did not state the date upon which he tried to serve the Appellants at the Trial Court. His affidavit also did not disclose the address of service rather it only stated that it was in an estate, leaving room for speculation, which Courts do not act upon. The deposition is no doubt, bereft of the legal requirements of the law.

Furthermore, at page 24 of the Record, the Respondent through its Counsel, F. H.Enefole,Esq. applied orally before the Court for an Order of substituted service without specifying the address for the substituted service thus:

**FH Enefole for the Plaintiff holding the brief of Ataguba S. Asoja for the Plaintiff. The defendants are not in court. We are unable to serve the defendants personally. In the circumstances we apply for substituted service against the defendants at their last known address pursuant to order 3 R 5 of ACCPS.**

**Court: Application is granted, all the defendants should be served with the court process in this case by way of substituted service, i.e. by pasting same at their last known address and that shall be deemed as good and proper service.**

**Case adjourned to 1/9/2022 for mention.**

Obviously, the application of the Court Order before the Lower Court was vague and void of precision. It is the law that a Court order must be clear and unambiguous leaving no room for speculations. Thus, His Lordship Per TOBI, J.C.A in **EZEADUKWA V. MADUKA & ANOR (PP. 52-53 PARAS. F)** held as follows:

***"an order of a Court must be precise, succinct and to the minutest detail. An order of a Court must also be complete. Parties should not be exposed to speculations as to the real content of the order. The abbreviation etc means et cetera. It is a Latin phrase meaning "and the rest" and something in addition. A judge should never make an order wearing a cognomen of "etc". It is too vague, lacking restraint and therefore not useful in an order of a Court."***

From the above analysis, I will not hesitate in resolving issue one in favour of the Appellants in this Appeal. The implication therefore is that where service of court process is irregular and not in compliance with the law, it affects the foundation of the entire suit. On this Point, the Apex Court held in **HARRY V. MENAKAYA (2017) LPELR-42363 (SC)** thus:

**"The law is trite and well settled on the fact that service of the originating process or hearing notice constitutes the foundation on which the whole structure of litigation or appeal is built, and in its absence, the entire proceeding will be rendered void and any decision reached thereon is a nullity. Therefore, the issue of service of an initiating process, be it a Writ of Summons, an Originating Summons, a Notice of Appeal or a Notice of Petition, whether in election matters or in winding-up proceedings et cetera, is so central, fundamental and very germane to the proceedings springing or emanating from such processes. Service is the very pillar or foundation upon which any proceeding is built, before any Court no matter its status...**

Standing firmly upon the above authority, this court is left with no option than to set aside the Judgment delivered by the Lower Court for being a nullity. Accordingly, the Judgment delivered by the Learned Trial Court on the 15<sup>th</sup> day of September, 2022 in Suit No: CV/34/2022 is hereby set aside.

Having set aside this Appeal at this stage, it will amount to an academic exercise and waste of time to continue on other issues. This Appeal is accordingly allowed.

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<b>HON. JUSTICE J ENOBIE</b>	<b>HON. JUSTICE B. DOGONYARO</b>
<b>OBANOR</b>	
<b>(PRESIDING JUDGE)</b>	<b>(HON. JUDGE)</b>