

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

ON WEDNESDAY, 30th DAY OF NOVEMBER, 2022

BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME

SUIT NO: FCT/HC/CV/2156/2022.
MOTION NO: FCT/HC/M/11472/2022.
FCT/HC/ M/11200/2022.

BETWEEN

MURI CONSTRUCTION CO. LTD

CLAIMANT/APPLICANT

AND

- 1. ENGINEER AHMED RUFAI**
- 2. SILVERQUEST NIGERIA LIMITED**
- 3. INSPIRATION TECHNOLOGY LIMITED**

**DEFENDANT/
RESPONDENT**

RULING

On 28th September, 2022, the Claimant/Applicant filed a motion to join the 2nd Claimant and 4th Respondent. In support thereof are: [i] Orders sought [ii] the Defendant/Applicant's 6-paragraph affidavit deposed to by one Nanlop James, a litigation Secretary in the law firm of TolaOlorunfunmi & Associates solicitors to the Claimant/Applicant and Exhibits A, Band C attached therewith; [iii] Written address of BashorunTolaOlorunfunmiEsq.

The Applicant is seeking the grant of the following orders:

1. An order joining the 2nd Applicant as the 2nd Claimant to this suit.
2. An order joining the 4th Respondent as the 4th Defendant to this suit.
3. An order granting leave to the Claimants/Applicants to amend their writ of summons, statement of claim and to withdraw the earlier statement on oath made by the 2nd Claimant/Applicant dated

24th day of June, 2022 and to replace same with a new witness statement on oath in the manner contained in Exhibits "A, B and C" herewith attached.

4. Any other order or further order(s) this Honourable Court may deem fit and proper to make in the circumstances of this suit.

In opposing the Motion Lawal Ayo Besiru, the Defendant/Respondent, filed a counter affidavit of 11 paragraphs on 06/10/2022; attached therewith are Exhibits 1 & 2. At the hearing of the Motion on 3/11/2022, the learned counsel for the parties adopted their respective processes.

The Defendant/Applicant filed a preliminary objection on 6/10/2022 praying this court for the following;

- 1. An order of this honourable Court dismissing suit number CV/2156/2022 between MURI CONSTRUCTION CO. LTD V ENGINEER AHMED RUFAl & 2 OTHERS for lack of reasonable cause of action and want of jurisdiction.**

The grounds of the objection are:

- i. The writ of summons purportedly initiating this proceeding was not signed and sealed by the Registrar of this Honourable Court and the statement of claim was not signed by the claimants counsel.
- ii. The time for payment by the 3rd defendant to 2nd defendant is running till the 30th day of October, 2022 upon which the claims of the claimant may purportedly crystallized.
- iii. This suit was purportedly filed on the 24th day of June, 2022 before the date for accrual of cause of action if any.
- iv. The claimant did not fulfill the condition precedent in commencing this action hence this application.

- v. There was no reasonable cause of action against the defendants.

In the affidavit of the Defendants/Applicant Lawal Ayo Besiru stated that:

1. From a perusal of the writ of summons served on all defendants shows that the writ of summons was not issued by the registrar of this court and the statement of claim was not signed by the claimant counsel. The writ of summons and statement of claim are attached as exhibits 1 and 2 respectively.
2. The agreement between the 2nd and 3rd defendants state the last date for payment to be 31st October, 2022 and this suit was filed on 24th June 2022. Payment of the agency fee is contingent upon successful deal between the 2nd and 3rd defendants. Copy of agreement is attached as Exhibit 3.
3. There was no agency agreement between the claimant and 1st and 2nd Defendant.
4. Due date for the agency fee if any is 31st day of October, 2022.
5. There is no agreement between the claimant and the 3rd defendant regarding payment of the agency fee.
6. The 1st Defendant does not have any agency relationship with the claimant but with one Engineer bello Safiu whom he has paid.
7. The letter of demand dated 7th day of June 2022 did not emanate from the 1st and 2nd Defendant but was authored by the Engineer Bello safiu who is not a claimant in this suit.
8. There is no reasonable cause of action against the defendants

In the Counter affidavit of the Claimant/Respondent Engineer Safiu Bello stated thus:

- a. The suit was properly commenced by due process of law with the writ of summons filed and paid for on 24th day of October, 2022 and registered in the court central registry with suit No CV/2156/2022 by the Registrar of this court. Referring to the original copy of the writ referred to in the record of the court.
- b. Claimant/Applicant writ and statement of claim were duly filed and executed with the name, mark and seal of A.A. ShaibuEsq of counsel who prepared and filed the processes.
- c. Claimant commenced this suit to enforce and claim for certain amount of money due to it from the Defendants and in accordance with paragraph 26 of the stone crusher sale agreement referring to exhibit 3 attached to Defendant/Applicant affidavit in support.
- d. The claimant claim against the Defendants is for the 5% due from the 2nd installment payment made by the 3rd Defendant to the 1st and 2nd Defendants on the 30th May, 2022 and for the amount undertaken by the 3rd Defendant to pay Engineer Bello as facilitation fee.
- e. Claimants case discloses a reasonable cause of action against the Defendant.

In the Defendant/Applicants written address, Bello Lukman IbrahimEsq submitted 3 issues for determination to wit:

- i. Whether this honorable court has jurisdiction to take cognizance of this suit when the writ of summons was not dated, unsigned and sealed by the Registrar of this honorable court and the statement of claim was not signed by the claimants counsel
- ii. Whether there is any reasonable cause of action disclosed against the defendants in this suit.

- iii. Whether the alleged payment of the agency fees being the principal claim in this suit is not made contingent upon payment of final sum in October, 2022 by the 3rd defendant when the said sum was not paid or received by the 1st and 2nd Defendants, if yes, whether the present suit is not premature.

For his part, BashorunTolaOlorunfunmi Esq. submitted a sole issue as follows:

Whether in the circumstance of this case, the Defendants/Applicants are entitled to the relief being sought.

SUBMISSIONS OF LEARNED COUNSEL FOR THE DEFENDANT/APPLICANT:

On issue 1, counsel submitted that jurisdiction is the life wire upon which a court of law takes cognizance of any matter. For a court to assume jurisdiction on any matter, the court must satisfy itself that the process initiating the proceeding and the composition of the court complied with the settled position of law laid down in **MADUKOLUM V NKEMDILIM (1962) ALL NLR 578**. The 3 conditions must be fulfilled for this court to assume jurisdiction; subject matter of litigation being within the jurisdiction of the court, no feature in the case that prevent the court from exercising its jurisdiction and the suit must be initiated by due process of law and fulfillment of condition precedent.

Writ of summons is incompetent as it is unsigned, dated or sealed by the registrar of this court hence this application relying on **ADMIN & EXEC OF THE ESTATE OF ABACHA V EKE-SPIFF (2009) LPLER 3152 SC Pp 58 paras B**).

Where the writ is incompetent court has no business proceeding based on an incompetent writ **BRAITHWAITE V SKYE BANK (2012) LPLER 15532 SC PP 22 PARAS A**.

Counsel submitted that it is in total disregard to the provisions of Order 6 rules 2(1) of the rules of this court. The wordings of the rule are

mandatory and do not accommodate discretion of the registrar to choose which writ to sign or seal or not.

An unsigned court process is a worthless paper and cannot ignite the jurisdiction of the court ***MR GOKE V PRINCE EMEKA IBENY (2014) LPLER 22534 CA AND OMEGA BANK NIG PLC V OBC LTD (2005) LPLER 2636 SC PP 36 PARAS A-A.***

Failure to commence a suit with a valid writ of summons goes to the root of the case and any order emanating from same is liable to be set aside for being a nullity the writ is void ab initio and cannot commence any proceeding before this court. ***NZOM V JINADU (1987) LPLER 2143 SC PP 33 PARAS A.***

The statement of claim cannot breathe life into a lifeless writ of summons ***NTA V ANIGBO (1972) LPLER 2069 S CPP 12 PARAS A-A.***

A statement of claim that will supersede a writ must be competent, signed and filed in line with the provision of the rules of the honorable court. See Order 15 of the rules of this court.

On issue 2,

Counsel submitted that it is trite law that where the defendants challenge the jurisdiction of court on grounds of non-disclosure of reasonable cause of action, the only document the court looks at is the statement of claim relying on ***IBRAHIM V OSIM (1988) LPLER 1403 (SC) (Pp 23 PARAS C).***

Counsel argued that the entire statement of claim does not reveal a complaint between the claimant and the 3rd Defendant and no nexus between the claimant and the 1st and 2nd Defendants. There is also no agreement pleaded between either the claimant on the record or Engineer Bello Safiu and the defendants. The 3rd defendant is not a party to the letter attached as Exhibit A to the witness statement on oath of Engineer Bello Safiu. The claimant has failed to state its right to

the sum of N10,000,000 claimed in relief D of the writ of summons against the 3rd Defendant. There is no reasonable cause of action against the 3rd Defendant in these proceeding. ***SPDC (NIG) LTD V NWAJKA (2003) LPLER – 3206 (SC) Pp. 19 paras C).***

Counsel submitted that the effect of suit that discloses no cause of action should be struck out and suit dismissed. ***AG FEDERATION V AG ABIA STATE (2001) LPLER 24862 SC (Pp 58-59 paras G).***

There is no reasonable cause of action against the 1st and 2nd Defendants by the present statement of claim. Exhibit F the letter of demand refers to Bello Rafiu and does not refer to the claimant. Claimant claimed it was appointed an agent and relied on Exhibit A. By Exhibit F one Engr.Safiu Bello relied on same Exhibit A to claim he was also appointed an agent. The exhibit F does not refer to claimant as an agent of the 1st and 2nd Defendant.

Counsel submitted that the claims in the statement of claim and documents intended to be used in proving them are of diverse meanings and import and the implication is that neither of the two has a reasonable cause of action against the defendants. As exhibit F cannot convey appointment to two entities at the same time.

Where the statement of claim failed to disclose reasonable cause of action against the defendants the proper order to make is an order of dismissal. The rider is where an amendment can cure the defect but counsel argued that no amendment can cure the defect in this suit. The writ of summons and the statement of claim are unsigned and they are worthless. The essence of amendment is to cure a curable process since there is no claim ab initio, there is nothing to amend as the claimant cannot put something on nothing and expect it to stand. ***NZOM V JINADU (1987) LPLER 2143 (SC) Pp 33 paras A.***

There is no agreement or document linking MURI CONSTRUCTION CO. LTD to the transaction in issue.

On Issue 3, counsel argued that the accrual of cause of action for payment of alleged 5 % agency fees is upon successful deal and on the net sale price. The deal is ongoing between the 2nd and 3rd Defendants till the 31st October, 2022. The 2nd defendant is yet to convey title to the 3rd Defendant.

SUBMISSIONS OF LEARNED COUNSEL FOR THE CLAIMANT/RESPONDENT:

Counsel argued that the writ of summons was initiated properly pursuant to Order 2, rules 2(2) and 9 of rules of the court and if there is an omission such non-compliance are a mere irregularity and has nothing to do with jurisdiction of the court ***ANYANWOKO V OKOYE (2010) 41 NSCQR 46 at 64.***

Prior to hearing a suit a court can give a defaulting party the opportunity to rectify the defect in the writ of summons and statement of claim in the interest of justice ***BANK OF BARODA V IYALABANI (2002) 13 NWLR (PT 785) PG 551 @ 577 PARA E . ORDER 5 RULE 1(1 AND 2) OF RULES OF THIS COURT.***

Defendant by entering conditional appearances proceeded to file and serve statement of Defence and witness statement on oath have waived their right to challenge the validity of the writ of summons.

The case of the claimant is that he owed 5% commission on the 2nd installment paid to the 1st and 2nd Defendants by the 3rd Defendant this reveals a reasonable cause of action that when proved would entitle claimant to remedy against the Defendants. Averments in paragraphs 4,5,6,8,9, 10,11,11f,12,14 and reliefs a and d of the statement of claim. Issue 3 of the written address of defendants is an abuse of court process as the submissions intend to mislead the court to delve into the substantive matter at the preliminary stage ***PAVEX INTERNATIONAL CO LTD V IBVA (1994) 5NWLR (PT 347) 685.***

DECISION OF THE COURT

The court is faced with two conflicting motions:

1. Motion M/11200/2022 seeking joinder of 2nd Claimant and 4th Defendant and amendment of the writ of summons, statement of claim and filing of a new witness statement on oath and withdrawal of earlier statement on oath made by the 2nd Claimant/Applicant.
2. Motion M/11472/2022 which is notice of preliminary objection dismissing suit for lack of reasonable cause of action and want of jurisdiction.

It is trite that when this court is faced with 2 conflicting applications one to save and one to destroy, the court will consider the motion to save first.

In **CHUKWUMA & ANOR V. CHUKWUMA & ANOR (2021) LPELR-52686(CA) (PP. 23-24 PARAS. B-B)** the court of appeal reiterated the principle:

“Where a Court is faced with two contrary applications, one to save a cause and the other to kill it (strike it out), the application to save the cause should be taken first”

However, the peculiarity of the instant case is that the Defendant has raised the following issue which is its issue 1 in the written address in support of the preliminary objection.

Whether this honorable court has jurisdiction to take cognizance of this suit when the writ of summons was not dated, unsigned and sealed by the Registrar of this honorable court and the statement of claim was not signed by the claimants counsel

Answering the above question will determine whether this court can deal with the Motion to amend.

When the court is faced with a challenge to its jurisdiction, it is the writ of summons and the accompanying processes only that the court will consider to determine if it has jurisdiction.

Jurisdiction is the life-wire of a court as no court can entertain a matter where it lacks jurisdiction. The issue of jurisdiction can be raised at any time. See apex decision of ***DAIRO V UBN PLC (2007) 7 SC (PT II) PAGE 97 @ 111 paras 5-10.***

In the apex court decision of ***AUDU V APC (2019) LPLER 48134 SC PAGE 12,*** the court defined jurisdiction thus;

"Jurisdiction simply means "a Court's power to decide a case or issue" Black's Law Dictionary 9th Ed. Jurisdiction also refers to "the authority a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision" - Mobil Producing (Nig.) Unlimited V. LASEPA (2002) 18 NWLR (R. 798) 1 SC. Jurisdiction are of various types; substantive jurisdiction refers to matters over which the Court can adjudicate, and it is usually expressly provided by the Constitution or enabling statutes. PAGE 21 PER AMINA AUGIE JSC held thus;

"... jurisdiction is the pillar under which the entire case stands, therefore, filing an action in a Court presupposes that the Court has jurisdiction. However, once the Defendant shows that the Court has no jurisdiction then the "foundation of the case is not only shaken but is broken. The case crumbles."

See Okolo V. UBN (2004) 3 NWLR (Pt. 859) 87, wherein Tobi, JSC, added;

"In effect, there is no case before the Court for adjudication. The Parties cannot be heard on the merit of the case. That is the end of the litigation."

For a court to be competent, it has to be properly constituted as regards number and qualification of members of the bench, and no member is disqualified for one reason or another; the subject matter of the case is within its jurisdiction, there is no feature in the case which prevents the court from exercising its jurisdiction and the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of its jurisdiction. It has to be brought forward by due process of law. See the locus classicus, ***MADUKOLUM V NKEMDILIM (1962) 1 ALL NLR 587 SC.***

In ***EKWEZOR V REGISTERED TRUSTEES OF THE SAVIOURS APOSTLE CHURCH 2020 SC LPLER 49568 PAGE 16*** the apex court held thus;

“the jurisdiction of a Court including the trial Court is determined by the plaintiff's claim as disclosed in the writ of summons and/or endorsed in the statement of claim. However, when evidence has been taken before the raising of the issue of jurisdiction, the Court may refer to any part thereof necessary. In this instance a reference to the plaintiff's pleadings becomes necessary to clarify any grey areas. See *Tukur v Government of Gongola State (NO. 2) (1989) 4 NWLR (Pt. 117) P. 517; Mustapha v Government Lagos State (1987) 2 NWLR (Pt.58) 539; Attorney General Kwara State v Olawale (1993) 1 NWLR (Pt. 272) 645; Adeyemi v Opeyori (1976) 9 - 10 SC 31.*”

Owing to the decisive nature of jurisdiction, it cannot be conferred on or taken away from any court because the parties have agreed or consented to do so. See ***DAIRO V UBN PLC (2007) SUPRA @ 111 PARAS 10-15.*** Flowing from the position of the law on jurisdiction, There are conditions which must be satisfied before this court can exercise jurisdiction.

In the recent decision of **PEOPLES DEMOCRATIC PARTY v. CHIEF NDUKA EDEDE & ANOR (2022) LPELR-57480(CA) (Pp. 28-29, paras. E-B)**, court held;

"I also agree with the learned counsel, that going by the parameters set by Madukolu vs. Nkemdilim (1962) SCNLR 341, and followed in Salati vs. Shehu (1986) INWLR (pt. 15) 198 @ 218, that a Court of law can only have and properly exercise its jurisdiction to hear and to determine a case before it where it is satisfied that: (i.) The proper parties are before the Court. (ii.) The Court's properly constituted as to its membership and qualification. (iii.) Where the subject matter of the case is within the jurisdiction and there are no features in the case which prevent the court from exercising jurisdiction. iv. Where the case comes before the Court initiated by due process of the law, and upon fulfillment of any condition precedent to the assumption of jurisdiction."

The grouse of Defendant counsel is that the suit was not initiated by due process and procedure of law as writ of summons and statement of claim are unsigned stamped and sealed paragraph 8 of the Defendant's Counter affidavit in opposition to the Motion to amend and Paragraph 4 of the Affidavit in support of the preliminary objection.

Paragraph 8 reads;

- **That the grant of this amendment will prejudice the 1st to 3rd Defendants as the original writ of summons was not signed by the Registrar of this Court and the statement of claim was not signed by the Counsel.**

Paragraph 4 reads;

- **That a careful perusal of the writ of summons served on all defendants shows that the writ of summons was not issued by the Registrar of this honourable court and the**

statement of claim was not signed by the claimants counsel. The writ of summons and the statement of claim is attached as Exhibits 1 & 2.

The argument of the Defendant/Respondent is that the writ of summons is neither stamped or sealed by the Registrar or judge. I have taken a critical look at the courts copy of the writ of summons and it has the stamp and seal of the court and it is signed by the registrar of the court. It satisfies the requirements of the Rules of this court Order 2 Rule 5 which states;

Except in the cases in which different forms are provided in these rules, the writ of summons shall be as in Form 1 with such modifications or variations as circumstances may require as in Form 33 (fast track)

Looking at Form 1 in the schedule it clearly complies with the writ summons and I so hold.

Counsel to the Defendant argued that the statement of claim was not signed by the legal practitioner.

From the court's records, it is clear that the statement of claim was not signed even though same has the seal of the legal practitioner that prepared the processes and the other accompanied documents were properly signed and sealed by the legal practitioner that issued the process.

In Order 2 Rule 2 of the FCT High Court Rules stated the documents that must accompany a writ of Summons and I'll reproduce;

All civil proceedings commenced by writ of summons shall be accompanied by:

- (a) Statement of claim.
- (b) List of witness (es) to be called at the trial

- (c) Written statements on oath of the witnesses, except a subpoenaed witness,
- (d) Copies of every document to be relied on at the trial and
- (e) Certificate of pre-action counseling; as in Form 6.

It is clear from rules of this court that the statement of claim is one of the originating processes and its presence is mandatory.

Order 15(2)(3) of the Rules of this court provides;

"Pleadings shall be signed by a legal practitioner or by the party if he sues or defends himself".

The use of the word 'shall' in both provisions goes to show the intendment of the law maker which is mandatory in nature. See ***BPS CONSTRUCTION & ENGINEERING CO. LTD V. FCDA (2017) LPELR-42516(SC) (PP. 34-35 PARAS. G)***

What is the effect of failure to sign the statement of claim?

In ***ADENIYI V. OGUNLANA (2015) LPELR-40908(CA) (PP. 19 PARAS. A)*** the appellate court held:

"I agree with the reasons given and the conclusion reached, inter alia that it is the statement of claim that activates and breathe life to the jurisdiction of the Court and that when a statement of claim is irregular, it will be held to be defective and therefore incapable of activating the jurisdiction of the Court."

In ***WHILZY INDUSTRIES (NIG) LTD & ORS V. UBA PLC & ANOR (2022) LPELR-58123 (PP. 13 PARAS. C)*** the Court of Appeal held:

"The appellants' writ of summons and statement of claim, having not been signed by any legal person, can be regarded as unsigned processes. The law is that an

unsigned document or process is worthless and has no efficacy in law. See Abdul Hamid Ojo v. Primate E. O. Adejobi (1978) 11 NSCC 161, Attorney-General of Abia State v. Silas O. Agharanya (1999) 6 NWLR (Pt. 607) 362, Faro Bottling Co. Ltd v. Lawrence Osuji (2002) 1 NWLR (Pt. 748) 311 and Omega Bank (Nigeria) Plc. v. O.B.C. Ltd. (2005) 1 SCNJ 150; (2005) 8 NWLR (Pt. 928) 547."

The statement of claim breathes life into this court and the existence of an unsigned claim robs this court of its jurisdiction and this is a defect that I am afraid cannot be amended by a mere motion.

I agree with counsel to the Defendant relying on **O'BAU ENGINEERING LIMITED V ALMASOL NIGERIA LIMITED (2022) LPLER 57985 SC** that failure to sign the originating processes filed in court presupposes the case was not initiated by due process, thus robbing this court of its jurisdiction.

The statement of claim filed 24/6/2022 being unsigned by counsel the effect is that it confers no jurisdiction on the trial court and the proper order is to strike out the proceedings relying on **HAMZAT & ANOR V SANNI & ORDS (2015) LPLER 24302 Pp 32-33 paras F-F .**

Having determined that the statement of claim is incompetent this court cannot delve into all the other issues raised by both parties as they are otiose. The suit is hereby struck out and parties are to bear their own costs.

HON. JUSTICE NJIDEKA K. NWOSU-IHEME
[JUDGE]

Appearance of Counsel:

1. TolaOlorunfunmiEsqfor the Claimant/Applicant.
2. Bello Ahmed LukmanEsqfor the Defendant/Respondent