

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
(APPELLATE DIVISION)  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA  
ON THE 15TH DAY OF DECEMBER 2016 APPEAL NO. FCT/HC/CVA143/15

BEFORE THEIR LORDSHIPS:  
HONOURABLE JUSTICE FOLASADE OJO (PRESIDING JUDGE)  
HONOURABLE JUSTICE D. Z. SENCHI - (JUDGE)

**BETWEEN:**

ATLANTIC DAWN LIMITED

APPELLANT

AND

BASIL BIDEMI AROGUNDADE

RESPONDENT

### JUDGMENT

OJO, J, Delivering the Judgment of the Court.

Judgment in suit No: CV/219/2014 between the respondent as plaintiff and the appellant as defendant was delivered on the 29<sup>th</sup> of April 2015 by the Chief District Court, Abuja. Dissatisfied with the judgment the appellant filed a notice of Appeal dated 3<sup>rd</sup> November 2015. The notice of appeal contains four grounds. The grounds of appeal and particulars are as follows:

*“GROUND ONE*

*The learned trial judge erred in law when he proceeded to hear the matter without proper service of the originating processes and subsequent processes been effected on the Appellant or his counsel.*

### PARTICULARS OF ERRORS

- i) The Appellant was not aware of the hearing of the suit because both the originating processes and the subsequent hearing notices were not served on him.*
- ii) The hearing was commenced after the respondent falsely deceived the Court into granting an order for substituted service of all the notices in this matter at Golden Gate Hotel.*
- iii) The Appellant was not represented in the matter throughout the duration of the trial.*

### GROUND TWO

*The learned trial District judge misdirected himself in facts and therefore occasioned a miscarriage of justice when he agreed with the Respondent's misrepresentation of fact that he won in a game owned by the Appellant.*

### PARTICULARS OF ERROR

- i) The appellant does not know the respondent whatsoever.*
- ii) The said game won by the respondent was never the Appellant's game.*
- iii) The Appellant does not know about the game played by the respondent and could not be held responsible to pay for the respondent's claim.*

### GROUND THREE

*The learned trial judge erred in law and misdirected himself in law and therefore occasioned a great miscarriage of justice when he proceeded with the trial and subsequent judgment without ensuring that proper parties are before him.*

### PARTICULARS OF ERROR

- i) The Appellant does not operate on line sport betting and gaming business but Winasbet Ventures does.*
- ii) Winasbet Ventures is a registered business name with corporate personality different from Atlantic Dawn Limited the Appellant in this case.*

### GROUND FOUR

*The judgment is against the weight of evidence.*

The reliefs sought before this Court are as follows:

- i) An order of this Court allowing the appeal.*
- ii) An order setting aside the judgment of 29<sup>th</sup> April 2015.*
- iii) An order for retrial at the Lower Court.”*

The appellants brief is dated 17<sup>th</sup> May 2016 while that of the Respondent is dated 2<sup>nd</sup> October 2016 but filed on the 4<sup>th</sup> October 2016. Counsel to the appellant and that of the respondent adopted their respective briefs of argument as their oral submissions.

Learned counsel to the Appellant in his brief of argument distilled two issues from the grounds of appeal to wit:

- “1. Whether or not the learned trial judge was right to have proceeded to hear the matter without proper service of the originating processes and subsequent processes been effected on the Appellant or his counsel.*
- 2. Whether or not the learned trial judge was right not to have ensured the proper parties were before him.”*

Learned counsel to the respondents in his brief of argument urged us to strike out Grounds II, III and IV of the Appeal on the ground that they are incompetent as no issues were formulated thereon.

The law is that any ground of appeal from which no issue is distilled is deemed abandoned and no argument on such ground would be

countenanced. See WEST AFRICAN EXAMINATION COUNCIL (WAEC) VS. ADEYANJU (2008) 9 NWLR Pt. 1092 Pg. 290 and ALBERT AFEGBAI VS. ATTORNEY GENERAL EDO STATE & ORS. (2001) 14 NWLR Pt. 733 Pg. 425. The appellant distilled two issues from the grounds of appeal. Upon a careful perusal of the appellant's brief of argument we find that only the first issue was argued. No argument was canvassed in support of the second issue. We are of the view that the second issue is abandoned and we so hold.

The first issue formulated is distilled from the first ground of appeal. We find no valid issue formulated from grounds 2, 3 and 4. They are therefore deemed abandoned and liable to be struck out. Grounds 2, 3 and 4 are accordingly struck out.

The lone issue left reads thus:

*"Whether or not the learned trial judge was right to have proceeded to hear the matter without proper service of the originating processes and subsequent processes been effected on the Appellant or his counsel."*

The appellant's counsel in his brief of argument submitted that the appellant was not served with the originating processes as well as hearing notices notifying him of the pendency of the suit. The respondent's counsel argued per contra.

The judgment of the trial Court is at pages 39 - 42 of the record of appeal. We find it necessary to reproduce part of the judgment where the trial judge made his summary on the service of processes. Page 39 reads in part as follows:

*"This action was filed by the plaintiff a registered user/customer of www.winsbet.com a betting and gaming on-line website owned by the defendant which provides for the premium betting services to all registered users. The action was brought*

*under the default summons list the plaintiff having applied for leave to issue and serve same on the defendant via a motion ex parte dated 28<sup>th</sup> November 2014 and filed 29<sup>th</sup> of same month. The process were issued and served on the defendant on the 16<sup>th</sup> December 2014 while the hearing notice was served on the defendant on the 9<sup>th</sup> February 2015 by the bailiff of the Court. See the certificates of service deposed to by Mohammed Audu Court's bailiff evidencing service of the originating process and subsequent hearing notice dated 16<sup>th</sup> December 2014 and 19<sup>th</sup> February 2015 respectively."*

The respondent in paragraph 4 of the affidavit in support of the claim stated that the appellant is a duly incorporated company under the Companies and Allied Matters Act. See page 4 of the record of Appeal. The address of service of the appellant provided by the respondent as plaintiff in the summons filed at the Lower Court is No. 2, Tessoua Close, Wuse Zone 5, Abuja, FCT. An affidavit of service of the bailiff of Court is at page 32 of the record. The affidavit of service deposed to by the Court bailiff reads as follows:

*"That on the 16<sup>th</sup> of December 2014 I went to serve the defendant with Court Order, Default Summons and plaint at No. 2, Tessoua Close, Wuse Zone 5, Abuja, FCT. The defendant refused to collect the process. I serve by throwing same."*

Page 33 is an affidavit of service of the bailiff indicating that hearing notice notifying the defendant of the hearing of 11<sup>th</sup> February 2015 was served on her. The hearing notice is at page 34 of the record. Order IV Rule 3(1)(b)(v) of the District Court Rules of the FCT which is applicable in the Lower Court permits service of Court

processes on the Appellant (a corporation) by leaving same at its principal place of business.

There is evidence that the originating processes were duly served on the appellant at its office and we so hold. The appellant has not said that No. 2, Tessoua Close, Wuse Zone 5, Abuja where the process was served is not its place of business. The appellant who was duly served with the originating process and hearing notice notifying him of the hearing of the case cannot complain of lack of fair hearing and we so hold. The trial Court was therefore right to have assumed jurisdiction in the matter. The lone issue in this appeal is resolved against the appellant.

This being so, the appeal must fail. We find no merit in this appeal and it is accordingly dismissed.

**HON. JUSTICE FOLASADE OJO**  
**PRESIDING JUDGE**  
**15/12/2016**

**HON. JUSTICE D. Z. SENCHI**  
**HON. JUDGE**  
**15/12/2016**

H.O. Obidinma with Ngunimi Ungwa (Miss) for the appellant.

Mike Enahoro Evah for the respondent.