IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION),
HOLDEN AT COURT NO. 12 MAITAMA, ABUJA.
ON THE 9TH DAY OF JUNE, 2016

BEFORE THEIR LORDSHIPS:HON. JUSTICE M.E ANENIH (PRESIDING JUDGE)

HON. JUSTICE JUDE OKEKE(HON. JUDGE)

APPEAL No. CVA/22/15

SUIT NO. CV/201/2014

BETWEEN:

FIRST CONTINENTAL PROPERTIES LTD …… APPELLANT

AND

BEVICON ASSOCIATES LTD …… RESPONDENT

JUDGMENT

This is an Appeal arising from the Ruling of His Worship Rahmatu A. Gulma (Mrs) of the Chief District Court Holden at Wuse 2 in the Federal Capital Territory Judicial Division Abuja on a motion to set aside a judgement delivered on the 29th of September 2014 under the default summons procedure in favour of the plaintiff/respondent.

The grounds of appeal are as follows:

GROUND 1

The learned Magistrate erred in law when she held that the appellant was properly sued and consequently dismissed the application.

Particulars of Error:

a). The proper parties are not before the court.

(b). The learned Magistrate held in her ruling that FIRST CONTINENTAL PROPERTIES LTD is the same as FIRST CONTINENTAL PROPERTIES LTD (Church gate).

c). It is only the Name of a registered company as appear/stated on the certificate of registration of company that a company can be sued with in a court of law as expressly provided for by section 37 and 38 of Companies and Allied Matters Act 1990.

d). The learned Magistrate in her Ruling delivered on the 9th of March 2015, held that the second defendant sued by the Respondent is neither here nor there since only the defendant is very evident, thereby given the respondent to approbate and reprobate at the same time on whether there are two defendants before the court or not.

e). It is the law that an action against a registered company that is not in the name in which it was so registered is incompetent as held in the case of NJEMANZE V. SHELL B.P HAIRCOURT (1966) 1 ALL N.L.R Pg. 8.

GROUND 2.

The learned Magistrate erred in law when she failed to grant adjournment to the appellant via letter dated 29th September 2014 thereby denied the Appellant right to fair hearing.

Particulars of Error

a. The appellant wrote a letter dated 29th September 2014 wherein its asked for adjournment because the Lawyer initially briefed said he would not be able to come to due to urgent family matter which needed his attention, this vital circumstance was ignored by the court and proceeded to give judgement in favour of the Respondent.

b. The learned Magistrate completely shut out the Appellant from defending this case on its merit by rejecting its application for adjournment on the ground that the case being a default summons, the appellant ought to have file process when it is evident that their counsel was the cause of not filing any process as envisage by the

letter dated 29th September 2014 thereby occasioned miscarriage of justice in this matter.

c. By rejecting the letter dated 29th September 2014 for adjournment the fundamental human right to fair hearing of the appellant has been violated and thus occasion miscarriage of justice.

d. The same letter which the learned Magistrate refused/ignored to treat was then used against the appellant in her ruling seeking to set aside the default judgement.

e. The learned Magistrate rely so much on the rules of court by refusing to grant adjournment via the letter dated 29th September 2014 but could not also rely on the same rules of court to set aside the default summons when if found out that the default summons was not signed by the Registrar as required by law.

f. The learned Magistrate visited the sin of its counsel on the appellant when the letter dated 29th September 2014 for adjournment was rejected.

g. That the rules of court cannot be interpreted to shot out the appellant from defending this case on it merit which the defendant was willing to but the learned Magistrate shot out the Defendant merely because it has not filed any processes as at 29th September 2014 even when the reason was obvious and compelling in the face of the said letter.

h. It is trite law that rules of court are meant to be obeyed. Of course that is why they are made. There should be no argument about that. But there is an important qualification or caveat and it is that their obedience cannot or shall not be slavish to the point of that justice in the case is destroyed or throw overboard. The greatest barometer as far as the public is concerned is whether at the end of the litigation process justice has been done to the parties. As held by NIKI TOBI J.S.C in ATIKU ABUBAKAR & 2 ORS V. MUSA YAR'ADUA & 5 ORS (2008) 2 NWLR (PT.1079) AT PG.511 PARAS. E-F.

GROUND 4.

The learned Magistrate erred in law when she held that the appellant was properly served in law with the court process.

Particulars of Error.

a. The learned Magistrate held that the appellant was served in her office but for mischief claimed she was not served whereas, the appellant does not have an office in Abuja.

b. The learned Magistrate completely ignored the certificate of incorporation which evidently showed that the registered office of the appellant is in Lagos particularly at PC/30 Church gate Street, Victoria Island Lagos. Also the correspondence attached to the respondent's default summons clearly indicated the address of the Appellant.

c. There is no evidence before the court showing that the appellant was carrying out business within the jurisdiction of Abuja within the meaning and scope of Order 4 Rule 3 of the District Court Rules.

d. That learned magistrate failed to act on the undeniable fact that the appellant resident outside jurisdiction and could only be served by the order of the court which was not sought.

e. It is the law that where the Statutes provides for a particular method of performing a duty regulated by a Statute, that method and no other must have to be adopted as held by the Supreme Court in the case of CCB (NIG) V. A.G. ANAMBRA STATE *(2002) 8NWLR (PART 261) PAGE 528 @ 556 PARA G.

f. The procedure adopted by the respondent and acceded to by the magistrate court in bringing the appellant to court is irregular and has occasioned injustice on the part of the appellant.

g. It is trite Law that when a party is not properly served with court process as required by law, it is a fundamental vice and the person affected by the order made therefore is entitled to ex debito to have the entire process set aside as held AUTO IMPORT V. ADEBAYO (2002) 18 NWLR (PT 554) PG. 582 PARA A.

GROUND 4.

The Learned Magistrate erred in law by refusing to hear the applicant's application dated 9th of April, 2015 seeking to set aside the default judgement for lack of leave to issue and serve outside jurisdiction

Particulars of error

a. The appellants being a party that resides outside the jurisdiction of the court could not be served with any process unless leave to issue and serves outside the jurisdiction of the court is duly sought and obtained.

b. The issue of leave to issue and served outside jurisdiction was never raised or argued before the court until our motion dated 9th April, 2015 with Motion No. M/7/15 which the learned magistrate refused to hear.

c.The court is bound to hear every application properly brought before it and ruled in one way or the other in a case pending before it and failure to do that amounts to denial of fair hearing.

d. The order granted by the court to issue default summons cannot obviate the need to seek the leave of court to serve the writ outside jurisdiction and mandatorily endorse the writ accordingly in line with the Sherriff and Civil process Act.

e. The provisions of the District court Rules which merely make provisions for leave for default summons cannot override the provisions of Sherriff and Civil processes Act which mandatory requires leave for service outside jurisdiction in case of party resident outside the jurisdiction of the court.

GROUND 5.

The learned Magistrate erred in law when she dismissed the Appellant's Motion and held that Default Summons even though it was not duly issued having not been signed by the Registrar of the court cannot therefore be set aside because the fault is from the registrar.

Particulars of error:

(a) The learned Magistrate having held that the default summons was not only signed as required by law ought to have struck out the same for non-compliance with the rules of court.

(b) The same default summons which was attached as exhibit to the motion seeking the leave to issue was the same default summons deemed to have been duly filed which is wrong in law.

(c) The learned Magistrate who rejected the application of the Applicant for adjournment using the rules of court regulating the default summons however save the default summons from being set aside.

The Reliefs sought before this Court is as follows:

a. This Honourable Court should allow this appeal.

b. An Order hearing the Appellant Motion dated 9th of April, 2015 on it merit by this court.

c. An Order of this Honourable Court setting aside the ruling of the lower court dated 9th March, 2014 in Suit No. CV/201/2014 which dismissed the appellant's motion.

d. AN ORDER of this Honourable court setting aside the judgment of the court delivered on the 29th of September, 2014 for non-service of Default Summons in line with the law and compliance with Section, 97 Sheriff and Civil Processes Act, Order V Rules 3(1) of the rules of the District court.

e. An Order striking out the plaintiff's /respondent's suit in its entirety in the term set out in the Default summons and all accompanying processes filed in this suit for non compliance with Order V Rules 1 and /or 5 of the District Court Rules.

f. An Order setting aside the writ of execution dated 16th October 2014 and the execution carried out against FIRST CONTINENTAL PROPERTIES LTD at it construction site located at plot 1333 Cadastral Zone Constitution Avenue Central Business District Abuja on the 17th April, 2015.

g. Cost of this appeal.

We have considered the entire appeal against the above mentioned Ruling, and the arguments of Counsel in respect thereof. And we are of the view that any resolution or determination of this appeal at this stage would only amount to an academic exercise which courts have been admonished to refrain from in the course of adjudication.

This Appeal No. CVA/22/15 was instituted against the Ruling of the District Court refusing to set aside its judgement of 29th September, 2014 in Plaint No. CV/201/2014. The said judgement has been set aside and the default summons struck out by this court vide Appeal No.CVA/92/15.

This court having set aside that entire proceeding and in fact struck out the default summons for want of competence and the entire suit for lack of jurisdiction, the judgement and final orders in respect thereof have become ineffective. Therefore neither this Appeal nor the

Ruling complained of have any legs to stand on. It is beyond peradventure that you cannot put something on nothing and expect it to stand. See

MACFOY V. U.A.C LTD (1961) 3 WLR Pg.1045 at 1049 Per lord Denning.

MARWA & ORS V. NYAKO & ORS (2012) LPELR-7837 (SC) Pg.51-52 Paras. D-B

BUKAR MODU AJI V. CHAD BASIN DEVELOPMENT AUTHORITY & ANOR (2015) LPELR-24562 (SC) Pg.27 Paras. F-G where his lordship Iyang Okoro J.S.C had this to say:

> *"…You cannot put something on nothing and expect it to stand. It will certainly collapse like a pack of cards…"*

See also

SHELIM & ANOR V. GEBANG (2009) 12 NWLR (Pt.1156) 435 or LPELR-3043 (SC) Pg.16-17 Paras.F-C.

Thus this appeal is found to have become obsolete as the issues raised therein are now otiose. Consequently it is hereby accordingly struck out.

Signed:	Signed:
HON JUSTICE M.E. ANENIH	HON JUSTICE JUDE OKEKE
(Presiding Judge)	(Hon. Judge)

Appearances.

Kehinde Soremikun Esq. for the Appellant.

Yagazie Obinna Esq., Benjamin B. Chinenye for Respondent.