

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT WUSE ZONE 2**  
**ON TUESDAY THE 30<sup>TH</sup> DAY OF OCTOBER, 2018**

**BEFORE THEIR LORDSHIPS:**

<b>HON. JUSTICE A. S ADEPOJU</b>	-	<b>PRESIDING</b>
<b>HON. JUSTICE Y. HALILU</b>	-	<b>MEMBER</b>

**APPEAL NO. CA/A/350/17**

**SUIT NO: CV/76/2017**

**BETWEEN:**

<b>1. FIRST CONTINENTAL PROPERTIES LTD</b>	}	<b>APPELLANTS</b>
<b>2. MAHY ANI BHAGWAN</b>		
<b>3. CHURCHGATE INVESTMENT LIMITED</b>		

**AND**

**A. CIMAK VENTURES LIMITED ..... RESPONDENT**

## **JUDGMENT**

This is an appeal against the judgment of Senior District Court II, Wuse Zone 2, Abuja presided over by his worship, **Ahmed Yusuf Ubangari** delivered on the 26<sup>th</sup> of September, 2017.

The case of the Respondent before the trial court was for the claim of the sum of **₦1,886,473.75** (One Million Eight

Hundred and Eighty Six Thousand Four Hundred and Seventy Three Naira, Seventy Five Kobo) being the total sum of the goods supplied by the Respondent to the Appellant between 2012/2013. The 2<sup>nd</sup> relief was 10% interest on the entire judgment sums. And the 3<sup>rd</sup> relief is for the sum of ₦350,000 (Three Hundred and Fifty Thousand Naira) only as cost of the suit.

The Appellant filed their Notice of Intention to defend and also filed a Notice of Preliminary Objection to the suit as contained in page 42-65 of the record of Appeal. Upon service of the processes on the Respondents, he filed a motion to amend his default summons and also filed a Plaintiff further and better affidavit in support of his application for default summons.

The Lower Court gave consolidated Ruling and awarded the sum of ₦1,886,473.75 in favour of the Respondent and the sum of ₦350,000 as the cost of the action.

The Appellant dissatisfied with the judgment of the Lower Court, filed this appeal and formulated the following issues for determination to wit:-

- 1) Whether the monetary sum claimed and granted by the Lower Court did not exceed its monetary limit as provided in the enabling law prescribing the jurisdiction of the Lower Court.
- 2) Whether the Lower Court was not in error to have entered Judgment under default summons without transferring the suit to the general cause list having regard to materials before the court.
- 3) Whether the Judgment of the Lower Court is not all together a nullity having regard to the fact that the Appellants were not served with the originating processes as required by law.

### **On issues No 1**

*“Whether the monetary sum claimed as granted by the Lower Court did not exceed its monetary limit as provided in the enabling law prescribing the jurisdiction of the Lower Court.”*

Learned counsel submit that the aggregated sum claimed by the Respondent in its originating summons was Two Million, Five Hundred and Thirty Six Thousand, Four Hundred and Seventy Three Naira, Seventy Six Kobo (₦3,536,473,76) above is monetary Jurisdiction.

Counsel cited District Courts (increase of Jurisdiction of District Judges) order 2014 Paragraph 2(a), (c) e & 4 and stated that the Lower Court is a court of limited Jurisdiction is provided in the extent enabling Legislation.

Learned counsel relied in the case of ***GBAGARIGHA VS GEORGE (2005)I NWLR (Pt. 953) 163***, to state that where a court lacks competence or jurisdiction to make an order whatever order that is made in such circumstance is certainly of no moment. And that court cannot acquire

jurisdiction by acquiescence of any party nor can a party by failure to exercise a right open to him donate jurisdiction to the court.

***MOBIL PRODUCING (NIG) UNLIMITED VS MONOKPO (2003)18 NWLR (Pt. 852) 346 at 434 – 435.***

**On issue two.**

***“Whether the Lower Court was not in error to have entered Judgment under Defendants summons without transferring the suit to the general cause list having regard to materials before the court.”***

Learned counsel submits that the issue of damages as an aspect of solicitor’s fees is not one that practicable in this country because there is no system of costs taxation to get a realistic figure.

Counsel, argued that the error of the Lower Court becomes more obvious when he held as thus;

*“As I have said in a number of my Judgments, the summary proceedings or undefended list cause have caused more problems to the Courts. Some of the Courts of First instance are too ready to rush to Judgment as soon as they see a suit placed on the undefended list.”*

Counsel further submits that the claim for cost of action certainly does not qualify as a debt or liquidated money demand. *ODU VS AGBOR HEMESON (No 2) (2003) 2 NWLR (Pt. 804 at 38)* was cited and relied upon by learned counsel for the appellant.

**On issue No 3.**

*“Whether the Judgment of the Lower Court is not all together a nullity having regard to the fact that the Appellant were not served with the originating processed as required by law.”*

Learned counsel submit that the certificate of service by the bailiff of the Lower Court on page 41 of the record read as thus;

***“That the defendant refused me entry the premises. I call the Counsel of the Plaintiff, he told me to drop it with the security which I did”***

Counsel contended that there was no order for substituted service made by the Lower Court contrary to Order IV Rule 3(1) (a) of the District Court Rules.

Counsel finally pray the court to resolve all the issues canvassed in favour of the Appellants and allow the appeal.

Upon service the Respondent filed it brief of argument and distilled the following issues for determine to wit;

- 1) ***“Whether in failing to seek and obtain leave of Court before appealing on grounds 1, 2, 3 and 4 of the ground of appeal, the Appellants having not***

*raised the issues contained therein at the lower court, the said grounds are not incompetent before this Honourable Court.”*

2. *“Whether the grounds of appeal as contained in the Appellants notice of appeal are not grounds of mixed law and fact and if they are, whether the grounds are not incompetent before this Honourable Court.” (distilled from ground 1,2,3 and 4 of the notice of appeal).*
3. *“Whether from the facts and evidence presented before the lower court the Appellants did not fail to show any defence on the merit to have warranted the court not to transfer the matter to the general cause list.” (Distilled from grounds 3, and 5 of the notice of appeal).*
4. *“Whether the Appellants were not served with the default summons and whether the Appellants can on appeal challenge the judgment of the Lower*



*Court on the basis that they were not served with the default summons when indeed they participated and took several steps in the challenging the service of the court processes on them.” (Distilled from ground 4 of the notice of appeal).*

5. *“Whether the Court below does not have the jurisdiction to entertain the suit and whether by the grant of the of ₦350,000.00 as cost of the suit and 10% interest the Court below has exceeded its jurisdictional limit.” (Distilled from ground 1, 2 and 3 of the notice of appeal).*
6. *“Whether in the circumstances of this case this Honourable Court has the jurisdiction to entertain this appeal same being incompetent and an abuse of the court process.” (Distilled from grounds 1,2,3,4 and 5 of the grounds of appeal).*

**On issue one.**

*“Whether in failing to seek and obtain leave of Court before appealing on grounds 1, 2, 3 and 4 of the ground of appeal, the Appellants having not raised the issues contained there at the lower court, the said grounds are not incompetent before this Honourable Court.”*

Learned counsel for the Respondent contends that in failing to or seek and obtain leave of court before appealing on ground 3 as 4 of the grounds of appeal as contained in the notice of appeal, the said ground are incompetent before this Hon. Court.

***ALHAJI KASHIM SHETTIMA & 3ORS VS ALHAJI. MOHEMMED GONI & 6ors (2011) 10 SC 92.***

Learned counsel submit further that ground 3 & 4 of the notice of appeal were not canvassed or raised at the Lower Court and that where a ground of appeal cannot be fixed to within a particular issue in the judgment challenged, such ground of appeal cannot justifiably be

regarded as related to the decision. **SARAKI VS. KOTOYE (1992) 11 – 12 CNJ 26.**

**On issue two**

*“Whether the grounds of appeal as contained in the Appellants notice of appeal are not grounds of mixed law and fact and if they are, whether the grounds are not incompetent before this Honourable Court.” (distilled from ground 1,2,3 and 4 of the notice of appeal).*

Learned counsel submits that the Appellants notice of appeal are grounds of mixed law and fact and therefore leave must be first sought and obtained. **THE MINISTER OF PETROLEUM AND MINERAL RESOURCES AND ANOR VS. EXPU-LINE NIG. LTD. (2020) 3 – 5 SC (Pt. 1) 171.**

Counsel submits that the said Notice of Appeal is incompetent.

### On issue 3

*“Whether from the facts and evidence presented before the lower court the Appellants did not fail to show any defence on the merit to have warranted the court not to transfer the matter to the general cause list.” (Distilled from grounds 3, and 5 of the notice of appeal).*

Learned counsel for the Respondent submit that the Appellants failed to show any defence on the merit to warrant the Lower Court not to enter judgment for the Respondent and that case is not transferred to the general cause list as a matter of course or routine but on proper scrutiny of the averments in the affidavit in support of the notice of intention to defend. ***UNITED BANK FOR AFRICA PLC & ANOR VS. ALHAJI BABANGIDA JAGARBA (2007) 5 SCNJ 127.***

### On issue of 4

*“Whether the Appellants were not served with the default summons and whether the Appellants can on appeal challenge the judgment of the Lower Court on the basis that they were not served with the default summons when indeed they participated and took several steps in the challenging the service of the court processes on them.”*

Counsel submit that the 2<sup>nd</sup> Appellant did not at any time in the course of the proceedings at the Lower Court challenge the issue of service of the court process on him but rather alongside the 1<sup>st</sup> and 3<sup>rd</sup> Appellants, took steps by filing a Notice of Intention to defend the suit and a preliminary objection on other grounds. ***JOAB U. EZOMO VS. GEORGE B.L. OYAKHIRE (1985) 2 sc 260.***

The Respondents submit further that the Appellants duly served with the court process in line with Order 4 Rules 3 (1) (b) (v) of the Rules of the District Court Act.

## On issue 5

*“Whether the Court below does not have the jurisdiction to entertain the suit and whether by the grant of the of N350,000.00 as cost of the suit and 10% interest the Court below has exceeded its jurisdictional limit.”*

Learned counsel submit that by awarding ₦350,000.00 and 10% interest on the judgment sum, the Lower Court did not exceed its monetary jurisdiction limit as the claim before the Lower Court is for ₦1,886,473.75 whereas the monetary jurisdictional limit of the court is ₦2,000,000.00 and cost is not a claim sought by the parties.

## On issue 6

*“Whether the Court below does not have the jurisdiction to entertain the suit and whether by the grant of the of N350,000.00 as cost of the suit and*

*10% interest the Court below has exceeded its jurisdictional limit.” (Distilled from ground 1, 2 and 3 of the notice of appeal).*

Counsel submit that this Hon. Court does not have jurisdiction entertain this appeal same being incompetent and as abuse of court process.

The Appellants filed a reply on point of law upon receipt of the Respondent’s brief of argument and urge the court to discountenance all the issues for determination raised and argued by the Respondent in its Respondent’s brief of Argument as they are grossly incompetent counsel relied on *SKYE BANK (NIG.) PLC VS. SCPH INVESTMENT LTD (2017) 13 NWLR (PT 158)1 82 AT 91 PARA D – H.*

On the part of court, we have considered the brief of argument of the Appellant and the reply on point of law on the one hand and the brief of argument of the Respondent on the other hand, we hereby adopt the issues

formulated by the Appellant for determination as issues to be considered by this court.

On issue one, *whether the monetary sum claimed and granted by the Lower Court did not exceed its monetary limit as provided in the enabling law prescribing the jurisdiction of the Lower Court.*

We must observe from the onset that the monetary jurisdiction of the Lower Court in question is ₦2,000,000.00 and the main claim of the Respondent at the Lower Court is N1,886,473.75 (One Million, Eight Hundred and Eighty Six Thousand, Four Hundred and Seventy Three Naira Seventy Five Kobo).

Jurisdiction is the life wire or blood that gives life to any adjudication in court. A court can only be competent when the case comes by due process of law and upon the fulfillment of any condition precedent to the exercise of jurisdiction.



***FORESTARY RESEARCH INSTITUTE OF NIGERIA  
VS. MR. I.A. ENA'FOGE GOLD (2007) 5 SCNJ 302.***

In determining whether or not a court has jurisdiction in a matter, the court will examine or consider the claims or relief of the Plaintiff.

A glean at pages 79 – 81 of the record of proceedings, shows the claim of Plaintiff before the lower court was for N1,886,473.75.

The Lower Court awarded the sum of ₦350,000 as cost for litigation bringing the total sum to ₦2,536,473.76).

The Appellant in his argument argued that the amounts granted by this Lower Court is above the monetary jurisdiction of the court.

Indeed, the power to award cost is provided by Rules of Court. The said power being discretionary in nature must be exercised judicially and judiciously with the ultimate aim or objective of restituting or compensating the

successful party to the initial expenses incurred in the litigation. Therefore, in the consideration of awarding cost and assessment of the quantum, the court is to have due regard to the following:-

- (a) The summons fees paid.
- (b) The duration of the case.
- (c) The number of witnesses called by the successfully party.
- (d) The nature of the claim or defence thereto by the parties.
- (e) The cost of legal representation.
- (F) The monetary value at the time of incurring the expenses and
- (g) The value and purchasing power of this currency of award at the material time.

***MUDUN & ORS VS. ADANCHI ORS (2013) LPELR 20774.***

From above, it is clear that cost was not the principal claim before the trial court but what the court allows a

party to get as respite for prosecuting its case. Cost is absolutely the discretion of the Judge.

Therefore, the award of cost does not vitiate or remove the jurisdiction of the Lower Court to hear the matter we so hold.. we accordingly resolve issue in favour of the Respondent.

On issue two, **whether the Judgment of the Lower Court is not all together a nullity having regard to the fact that the Appellants were not served with the originating processes as required by law.**

It is settled peradventure that service of process particularly writ of summons and hearing notice is fundamental to the exercise of jurisdiction by court. Where service is not effected on a named party such proceedings, no matter how well conducted remain a nullity.

Consequently where service of process is not done in the proper manner prescribed by law, in many cases by personal service on the party, not only the proceedings which ensued from it is a nullity, subsequent proceeding in the suit is a nullity.

***ASANGHENENG VS. UDO (2007) LPELR 8466(CA).***

In page 41 of the record of proceedings, the bailiff stated as thus; ***“That the Defendant refused me of entry the premises, I call the counsel of the Plaintiff, he told me to drop it with the security which I did”***.

Based on the proof of service as stated above, the 2<sup>nd</sup> Appellant entered an appearance before the Lower Court.

Indeed, where a party does not object to any irregularity or invalidity in the service of process on him before the trial court, he has waived his right. ***JOAB U. EZEOMO VS. GEORGE B.L. OYAKHIRE (1986) 2 SC 260.***

It is our conclusion that the Appellant having failed to raise the issue of service on the 1<sup>st</sup> Respondent or any of the party cannot raise it now. We therefore resolve issue 2 in favour of the Respondent.

On issue 3; i.e whether the Lower Court was not in error to have entered judgment under default summons without transferring this suit to the general cause list having regard to materials before this court, we make bold to say that a case is not transferred to the general cause list as a matter of course or routine but on proper scrutiny of the averment in the affidavit in support of the notice of intention to defend. ***UNITED BANK FOR AFRICA PLC & ANOR VS. ALHAJI BABANGIDA JAGARBA (2007) 5 SCNJ 127.***

In determining whether a Defendant has disclosed or shown any defence to the application for judgment under undefended list, the court has to scrutinize the affidavit in

support of the parties' case so as to determine whether or not there is a defence on the merit to the application.

The Defendants' affidavit must condescend to particulars and should as far as possible deal specifically with the Plaintiff's claim and affidavit, and state concisely what the defence is and what facts and documents are raised as to support it.

From the documents annexed by the Respondent i.e Exhibit "A1", "B1", "C1" and "D1" it is obvious that the trial Judge was right in his finding and therefore we see no reasons disturbing the decision of the trial Magistrate.

In all, this appeal lacking in merit is hereby dismissed.

***Justice A.S Adepoju***  
***(Hon. Judge)***  
***(Presiding)***

***Justice Y. Halilu***  
***(Hon. Judge)***  
***(Member)***