

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

FRIDAY, MAY 17, 2019

BEFORE THEIR LORDSHIPS:

HON. JUSTICE PETER OYINAFFEN - PRESIDING JUDGE
HON. JUSTICE ASMAUAKANBI-YUSUF - JUDGE

APPEAL NO: FCT/CVA/354/2017

BETWEEN:

ABDULRAZAQMOHAMMED APPELLANT/APPLICANT

AND

HAJIA RABI ABDULAZEEZ RESPONDENT

J U D G M E N T

THIS IS an appeal against the Ruling of the Chief District Court of the Federal Capital Territory, Abuja delivered by *His Worship, Samuel E. Idiarhi* on the 9th day of February 2018. The Respondent herein [as Plaintiff] took out an action against the Appellant [as Defendant] by way of a plaint dated 19th December 2017 wherein he claims as follows:

- “a. AN ORDER of this Honourable Court directing the Defendant to pay the Plaintiff or her Attorney the sum of ₦1,300,000.00 (One Million Three Hundred Thousand Naira) only as rent from the period between 1st August 2016 to 31st July 2017.

- b. AN ORDER of this Honourable Court directing the Defendant to pay to the Plaintiff or her Attorney the sum of ₦108,333.3k per month as mesne profit from 31st July 2017 till vacant and peaceful possession of the property is yielded up to the Plaintiff or her Attorney.
- c. AN ORDER of this Honourable Court directing the Defendant to replace the ceiling he disposed of illegally.
- d. AN ORDER of this Honourable Court vesting the peaceful and vacant possession of the Plaintiff's three bedroom Bungalow which the Defendant holds on as tenant at will to the Plaintiff or her Attorney.
- e. The sum of ₦1,000,000.00 (One Million) Naira as special and general damage to the Plaintiff's property."

The Appellant challenged the competence of the action vide a motion dated 15/1/18 non-compliance with the mandatory provisions of Sections 7 and 8 of the Recovery of Premises Act (Abuja) Laws of the Federation 1990 in that Notice of Owner's Intention to Recover Possession was not served on the Defendant, which robs the Honourable Court of the requisite jurisdiction to entertain the suit as presently constituted.

The Lower Court took arguments from both parties and dismissed the objection in a brief Ruling delivered on 6/3/18 [which is at p. 49 of the Records]. Being aggrieved, the Appellant has appealed to this

Court vide a Notice of Appeal dated 5th March 2018 [at pp. 50 - 52 of the Records] raising three (3) grounds of appeal, as follows:

1. The Learned trial Magistrate misdirected itself (sic) when it refused the Appellant's Motion dated 15th January 2018 challenging its jurisdiction and held that it will be premature at this stage to determine the suit on the application challenging jurisdiction and thereby occasioned miscarriage of justice.
2. The trial court erred in law to have assumed jurisdiction and thereby occasioned miscarriage of justice.
3. That the Ruling of the lower court is unwarranted and against the weight of evidence.

Briefs of argument were filed and duly exchanged. The Appellant's Brief of Argument is dated 10th May 2018 and filed on 11th May 2018, whilst the Respondent's Brief of Argument is dated 10th December, 2018 and filed on 17th December, 2018.

Two (2) issues are formulated for determination in the Appellant's Brief of Argument, as follows:

1. Whether the trial court adopted a proper approach in the evaluation of facts put in evidence by the parties and in placing reliance on bailiff certificate of service in proof of personal service on the Appellant of the seven days' notice of owner's intention to recover possession to determine its jurisdiction in the circumstance of this case.

2. Whether the Lower Court had jurisdiction and competence to entertain the suit resulting in the instant appeal.

The Respondent adopted the issues formulated in the Appellant's Brief, and raised a Preliminary Objection which was argued in the Respondent's Brief. The grounds of the objection are as follow:

1. That the Appellant's Notice of Appeal dated 2nd March, 2018 and filed on 3rd March 2018 was not signed by a legal practitioner whose seal appeared on it.
2. That the Appellant's brief of Argument was founded on defective Notice of Appeal.
3. The Notice of Appeal is fundamentally and incurably defective.

The Respondent formulated a sole issue for determination on the preliminary objection, namely: ***Whether the Appellant's Notice of Appeal dated 2nd March 2018 and filed on 3rd March 2018 is a valid and competent process in law.*** Learned counsel for the Respondent argued that the name on the stamp and seal affixed to the Appellant's Notice of Appeal is different from the name of the counsel who signed the process, as such the Notice of Appeal is not a valid and competent process in law. Counsel submits further that the signature on the Notice of Appeal is not linked to the stamp and seal affixed to the Notice of Appeal, citing s. 10 (1) and (3) of the Rules of Professional Conduct for Legal Practitioners, 2007 (RPC) and the case of ***TANIMU v RABIU [2017] ALL FWLR (PT.900) 391***. The Court was urged to dismiss the appeal.

In his Reply brief, Learned Counsel for the Appellant relied on s. 10 (1) of the RPC and maintained that the essence of affixing stamp and seal is to ward off fake lawyers from parading themselves as legal practitioners in Nigeria. He submitted that ‘*Mohammed Ilyasu*’ who signed the Notice of Appeal dated 2nd March 2018 is the same as ‘*Ilyasu Mohammed Jamiu*’, whose enrolment number is 051511. Citing the case of ***DANKWAMBO v ABUBAKAR (2015) LPELR 25716 SC***, the Appellant’s counsel urged the Court to dismiss the preliminary objection, insisting that the Respondent has not demonstrated to the court that the name on the seal is unknown to law or that he has been misled or deceived in any way.

We have carefully considered the preliminary objection raised by the Respondent as well as the arguments put forward by counsel on both sides of the divide. Section 10 of the Rules of Professional Conduct 2007 provides thus:

10 (1) A Lawyer acting in his capacity as a legal practitioner, legal officer or adviser of any government department or Ministry of any corporation, shall not sign or file a legal document unless there is affixed on such document a seal and stamp approved by the Nigerian Bar Association.

(2) For the purpose of this rule “legal documents” shall include pleadings, affidavits, deposition, instruments, agreements, deeds, letters, memoranda, reports, legal opinion or any similar documents.

(3) If, without complying with the requirement of this rule, a lawyer signs or files any legal document as defined in sub-rule (2) of this Rule, and in any of the capacities mentioned in sub-rule (1), the document so signed shall be deemed not to have been properly signed or filed.

The records before us reveal that the Notice of Appeal dated 5th March 2018 was signed by one *Mohammed Ilyasu Esq.* whilst the name on the seal and stamp affixed thereon is *Ilyasu Mohammed Jamiu*. It is on this basis that Learned Counsel for the Respondent has submitted that the Notice of Appeal is not valid and competent in law, insisting that the person who signed the Notice of Appeal has two names whilst the stamp and seal affixed on the Notice of Appeal has three names.

The relevant enquiry therefore is whether the person whose stamp and seal is affixed to the Notice of Appeal is the same person that signed the process. This was explained in the Appellant's Reply Brief wherein counsel pointed out that *Mohammed Jamiu* is a compound name and is the same person known as *Ilyasu Mohammed Jamiu* whose Enrolment Number is 051511.

Now, the Legal Practitioners Act [s. 2(1)] provides that "subject to the provisions of this Act, a person shall be entitled to practice as a Barrister and Solicitor if, and only if, his name is on the Roll. The essence of s. 10 of the RPC 2007 requiring seal and stamp to be affixed on legal documents prepared by a lawyer is to show that such

person is a Legal Practitioner qualified to practice law in Nigeria and nothing more. Both the Act and the RPC seek to avoid impostors carrying out duties as legal practitioners. See **OKARIKA v. SAMUEL (2013) LPELR (19935) SC** where the Supreme Court held that the category of persons recognized to practice law is circumscribed to prevent any person outside the profession from usurping the power or duties of a legal practitioner. It is for the objector to prove that the person who signed the Notice of Appeal is not the bearer of the name on the stamp and seal affixed to the Notice of Appeal. In **ABUBAKAR v. DANKWAMBO & ORS** *supra* where objection was taken on the ground that counsel signed court processes and announced himself in court as 'Sam Kargbo, Esq.' instead of 'Samuel Peter Kargbo' being the name that appears on the Roll of Legal Practitioners, the Court of Appeal (per Ogakwu, JCA) held thus:

It seems clear therefore that the person who appeared as Sam Kargbo is a Legal Practitioner and not an impostor holding himself out as one. The pristine question however is whether the failure by Sam Kargbo to announce his appearance in the very same names in which he enrolled when appearing in Court is fatal and ought to result in his being denied audience in Court even when he is a legal practitioner.

I think it is ludicrous to extend the stipulations of the Legal Practitioners Act to the elastic extent of insisting that unless appearance in Court is announced in the very names in which the Legal Practitioner is enrolled then the Legal Practitioner has no right of audience in Court under Section 8 of the Legal Practitioners Act. I shudder to think of the effect and implication of such a construction.

Daily in Court, Legal Practitioners announce appearances in Court with the initials of their forenames and surname. Equally appearances are announced as in this matter with abbreviation of the forenames and the surname. To accept the position of the Respondents and endorse the decision of the Tribunal has the implication that any appearance announced other than in the name as enrolled would not be that of a Legal Practitioner. This with utmost respect sacrifices the substance of the stipulations of the Legal Practitioners Act on the altar of form and it will result in preposterous consequences... It seems to me that the issue of whether somebody who has announced appearance in Court as a legal practitioner is indeed a legal practitioner is whether in fact the person is a legal practitioner and not as simplistic as whether the name announced is as it appears on the Roll. May that day never come when a Legal Practitioner would be denied audience in court or the proceedings he conducted set aside and expunged, not because he is not a Legal Practitioner but because he did not announce appearance in exactly the names in which he enrolled. Banish the thought! Verily, may that day never come!!!

We therefore do not agree with the Respondent that the person who signed the Notice of Appeal is not entitled so to do or that he did not link his signature to the stamp and seal affixed on the Notice of Appeal. The Notice of Appeal in question was settled by one person, whose name is as stated on the process and there is no misconception whatsoever as to who signed or prepared the same. See ***GAMMEINTERGRATED RESOURCES SERVICE LTD v.FRN& ANOR (2017) LPELR 43012 (CA)***. There is also no necessity for the learned Appellant's Counsel to tick or link his signature to the name on the

process in the circumstances of this appeal as only one name appears on the Notice of Appeal. The preliminary objection raised by the Respondent to the competence of the Notice of Appeal is misconceived and the same is hereby dismissed.

Having disposed of the Preliminary Objection, we now proceed to the main appeal, which arises from refusal of the Lower Court to decline jurisdiction based on the Appellant/Applicant's objection.

It seems to us that the second issue formulated by the Appellant as to "***whether the lower court had jurisdiction and competence to entertain the suit resulting in the appeal***" subsumes the first issue and captures the gravamen of the Appellant's complaint against the Ruling of the Lower Court. We accordingly adopt the said issue in determining this appeal.

The argument of the Appellant is that the Respondent did not satisfy the condition precedent before instituting the action at the trial court. That is, the Respondent did not personally serve him a seven days' notice of owner's intention to recover possession and that the certificate of service deposed by the Bailiff confirms his position. Learned Counsel for the Appellant submits further that the purported service of statutory notice, in this instance notice of owner's intention to recover possession, which was posted on the premises without an attempt to personally serve the Appellant, is ineffective and in breach

of the mode of service prescribed by statute. Learned counsel to the Appellant urged the court to set aside the ruling of the trial court.

On behalf of the Respondent, it is submitted that the issues raised by the Appellant are matters to be determined in the substantive proceeding. He referred the Court to the facts deposed in the affidavit in support of the Appellant's objection at the trial court and maintained that these facts can only be determined in the substantive proceedings, insisting that it would be premature for this court to determine the Respondent's suit at an interlocutory stage, especially as the document in question is yet to be tendered in evidence nor admitted by the Court. He urged the Court to dismiss the appeal with substantial cost.

Having carefully and insightfully considered the Ruling of the Lower Court as well as the submissions of counsel, we do not entertain the slightest hesitation in agreeing with the trial Judge that matters bordering on service or non-service of recovery notices are substantive matters reserved for trial. We cannot fault the trial Court for refusing to decline jurisdiction at an interlocutory stage, particularly when evidence has not been led or evaluated.

It has been held that the issue of service of relevant notices in a suit between landlord and tenant for possession of premises can only be resolved at the trial after hearing evidence; and any pronouncement

on the issue would amount to the court pronouncing on a substantive matter at the interlocutory stage. See ***IWUAGOLU v. AZYKA (2007) 5 NWLR (PT. 1028) 613 at 630.***

The Ruling of the Learned Chief District Judge is unassailable and we find no reason whatsoever to interfere with or set it aside. The appeal fails and is hereby dismissed with costs assessed at ₦50,000.00 (Fifty Thousand Naira) only in favour of the Respondent against the Appellant.

PETER OYINAFFEN

Presiding Judge

ASMAUAKANBI-YUSUF

Hon. Judge

Counsel:

Mohammed Ilyasu, Esq. for the Appellant

Husseini Sani, Esq. for the Respondent