

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT 30, NYANYA**

SUIT NO: FCT/HC/CV/1769/2018

**BEFORE HIS LORDSHIP:**  
**HON. JUSTICE MUAWIYAH BABA IDRIS**

CLERK OF THE COURT: O. TOBI BLESSING

**BETWEEN:**

1. ENERGO NIGERIA LTD
2. MR. DEJAN JEROTIC
3. MR. MIODRAG BUHA.....PLAINTIFS/APPLICANTS

**AND**

1. JAXCON NIGERIA LTD
2. MR. ALEX ONYEKURU
3. CHINEDU ONYEUKWU
4. ASOON PARTNERS.....DEFENDANTS/RESPONDENTS

21<sup>ST</sup> January, 2018.

3<sup>rd</sup> Defendant in court.

A.A. Durojaiye Esq for the Claimants.

C.U. Onyankuru Esq for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. I also hold the brief of J.O. Asohuka ESq for the 4<sup>th</sup> Defendants.

**RULING ON PRELIMINARY OBJECTION**

The 1<sup>st</sup> and 2<sup>nd</sup> defendants filed Notice of Preliminary Objection vide Motion No: M/9271/18 on 8/10/18 praying for the following:

1. An Order of this Honourable court setting aside the writ of summons, statement of claim and all other originating processes in this suit of non-compliance with the mandatory requirement of the law.
2. An Order of this Honourable court striking out this suit in its entirety as this Hon. Court does not have jurisdiction to entertain the matter.
3. An Order of this Honourable court setting aside the purported service of the writ of summons, statement of claim and all other processes in this suit on the Defendants as such are fundamentally defective in law.
4. And such further order or orders as the Hon. Court may deem fit to make in the circumstance.

The grounds of the objection are:

1. The 1<sup>st</sup> defendant is a registered entity duly registered under the *CAMA Cap 120, LFN, 2004* with its registered office situate in Lagos state.
2. That the Claimant failed to comply with Mandatory Requirements of Section 97 of the sheriff and Civil Process Act which makes the writ of summons and statement of claim and other originating processes in the suit fundamentally defective.
3. That the writ of summons, statement of claim and other processes in this suit are invalid, worthless and void.
4. That the purported service of the writ of summons, statement of claim and other processes in this suit are fundamentally defective and therefore void.
5. A condition precedent based upon which this Hon.Court would assume jurisdiction to hear this suit was not complied with.

6. In the circumstance this Hon.Court does not have jurisdiction to entertain this matter.

The objection is supported by an affidavit 9, 11 paragraphs deposed to by one Chika Nwafor. 3 Exhibits are attached as Exhibit A. (Notice of Resgistered office of the 1<sup>st</sup> defendant) Exhibit B1 (Certificate of service) and Exhibit B2 (Hearing Notice)

Learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a written address.

The claimant filed a counter affidavit to the preliminary objection deposed by one Amisu Al-hassan. Exhibit A1 (Invoice of the 1<sup>st</sup> defendant) and Exhibit A2 (1<sup>st</sup> Defendant's letter to the claimant) learned counsel filed a written address.

The 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a further affidavit of 15 paragraphs deposed to by one Chika Nwafor. Exhibit B3 proof of service of writ of summons and Exhibit B4 copy of the writ of summons) are attached.

Learned counsel filed a reply on point of law.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants learned counsel raised 3 issues for determinations thus:

1. Whether considering Exhibit A attached to this application(Certified True Copy of Notice of situation of Registered office of the 1<sup>st</sup> defendant) the originating summons processes in this suit was( sic) was properly issued and served on the 1<sup>st</sup> defendant in view of the clear provision of Section 97 of the Sheriff and Civil process Act.
2. Whether this non-compliance with Section 97 SCPA which is a Mandatory condition requirement of the law does not render this suit incompetent and liable to be struck out.
3. Whether this Hon.Court has jurisdiction to entertain this suit considering the fact that a mandatory condition precedent has

not been complied with, relating to issuance, indorsement and service of the writ of summons and other statement of claims.

The claimants learned counsel raised one issue as follows:

“Whether by the Rules of this Hon. Court and available evidence, the 1<sup>st</sup> and 2<sup>nd</sup> defendants/Applicants have been properly served with the writ of summons dated 10/5/18 and other accompanying processes in this suit and this Hon. Court is clothed with jurisdiction to hear the suit as constituted”.

I have read the arguments of the learned counsel for the parties and may refer to the arguments in my consideration of issues:

By the affidavit in support of the Notice of Preliminary

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1. JAXCON NIGERIA LTD
2. MR. ALEX ONYEKURU
3. CHINEDU ONYEUKWU
4. ASOON PARTNERS.....DEFENDANTS/RESPONDENTS

14<sup>th</sup> March, 2019.

3<sup>rd</sup> defendant in court.

**RULING**

The Claimant object to Motion No: M/7716/18 filed by the 3<sup>rd</sup> and 4<sup>th</sup> defendants praying for the order of this Hon.court striking out their names from this suit. Reason according to the Claimant is that the Motion is in competent.

The grounds of the objection are:

1. The 3<sup>rd</sup> and 4<sup>th</sup> defendants' application is premature and incompetent, not having entered appearance before filing the same.
2. The 3<sup>rd</sup> and 4<sup>th</sup> defendants motion on Notice dated 2<sup>nd</sup> July, 2018 constitute a demurrer, having not filed their statement of defence in this suit before praying this Hon. Court to decide on point of law.
3. The relief sought ( and the order upon which it has been brought by the 3<sup>rd</sup> and 4<sup>th</sup> defendants (sic) in the Motion on Notice dated 2<sup>nd</sup> July, 2018 cannot be supported by the grounds stated on the face of the motion, and therefore incompetent.
4. The point of law sought to be determined does not require affidavit evidence, save for the claimants (sic) statement of claim i.e that the suit discloses no reasonable cause of action against the 3<sup>rd</sup> and 4<sup>th</sup> defendants suit is improperly constituted and there is no identifiable grievance against the 3<sup>rd</sup> and 4<sup>th</sup> defendants.

In support of the objection is a written address wherein the claimants raised the following issue:

“Whether the 3<sup>rd</sup> and 4<sup>th</sup> defendants' motion on Notice dated 2<sup>nd</sup> July, 2018 is incompetent, premature and an abused of court process and ought to be dismissed with cost.”

The 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a written address on 18/10/18 and raised the following issue:

“Whether the Claimants application “tagged claimant's Notice of Preliminary Objection does not amount to an abuse of process of this Hon. Court.”

On 24/10/18 the claimants filed reply to the 1<sup>st</sup> and 2<sup>nd</sup> defendants written address.

I have read the arguments of the learned counsel for the parties as contained in there written addresses and also considered their oral submission during the hearing of this objection.”

It should be noted that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants did not file written address in response the objection to their Motion No: M/07716/18. Their learned J.O. Asoluka Esq aligned himself with the submission of the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

I have particularly read the decision of the court of *APPEAL* in the case of *DIAMOND BANK LTD & ANOR VS. MR. ADEBAYO OLAOTI OLALERU (2008) LPELR -8337(CA)*. The decision of the court of Appeal in that case is on the same issue as the instant case. In that case, as it is in the present case, the appellant entered conditional appearance and subsequently filed an application praying for an order striking out its name from the suit. The respondent filed preliminary objection to the application on the ground that it was an abuse of court process, premature and incompetent frivolous, vexatious and cannot be entertained in law.

Learned counsel for the appellant relied on Order 23, Rule 2 and 3 of the High court of Lagos state (civil Procedure) Rules, 1994. Order 23 Rule Procedure) Rules, 1994. Order 23 Rule 1 of the FCT High Court (Civil Procedure) Rules, 2018 when it say “No demurrer shall be allowed”. The court of Appeal held that demurrer proceeding has been abolished in view of the clear provision of Order 23 Rule 1. The court further held that the only issue calling for determination is whether the appellants motion which its sought for an order striking out its name without filing a statement of defence was in a nature of demurrer and if so, could it properly raise a point of law under the Lagos Rules, 1994.

The court further held that:

“Clearly all what is being explained in the passage herein above is that a defendant wishing to rely on points of law to raise preliminary issue, is required to get out such points of law in the statement of defence before the preliminary is regarded as properly raised”.

The position of the law is clear in the case of Diamond Bank Vs Olaleru (supra) and Order 23 Rule 1 & 2 of the Rules of this court 2018.

I have no reason to disregard the above the case law. In other words this court is bound by the decision of the court of Appeal.

Consequently, hold that the Notice of Preliminary Objection of the claimant in Motion No: M/007/18 succeeds and the application in Motion No: M/7716/18 is premature and incompetent and cannot be entertained at this stage. It is accordingly struck out.

***HON. JUSTICE MUAWIYAH BABA IDRIS***  
14/3/19.

**APPEARANCES:**

Olamide Aleshinloye Esq for the Claimant.

C.U. Onyenkwu Esq for the 1<sup>st</sup> & 2<sup>nd</sup> .

Defendant also hold the brief of J.O. Asoluka Esq for the 3<sup>rd</sup> and 4<sup>th</sup> Defendant.

