

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION**

HOLDEN AT APO

THIS MONDAY THE 15ND DAY OF DECEMBER, 2021

BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE

COURT 31 APO

SUIT NO: FCT/HC/CV/600/2021

M/5714/2021

RULING

BETWEEN:

MAJOR GENERAL OVO ADEHEKEGBA (RTD)--
CLAIMANT/RESPONDENT

AND

NOSAKHARE DAVID NESTA-----
DEFENDANT/APPLICANT

By a Notice of Preliminary Objection dated 9th September, 2021 and filed on 10th day of September, 2021, with motion No: M/5714/2021, the Defendant/Applicant raised an objection to the jurisdiction of this Honourable Court to hear and determine the instant case and urged the Court to strike out the matter for being incompetent and for want of jurisdiction.

GROUND OF THE APPLICATION are as follows:

- a. That the condition precedent set out in Order 2 Rule 9 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 for the commencement of this suit has not been complied with.
- b. That the Claimant's Writ of Summons and Statement of Claim dated 26th day of February, 2021 and filed on the 1st of March, 2021 were not executed as required by law.
- c. That the person "Wale Balogun Esq." who purportedly signed the writ and other originating processes is not a legal practitioner as his name is not on the Supreme Court of Nigeria's Roll of Legal Practitioners.
- d. That in consequence of ground 1, 2 and 3 above, the Writ of Summons before this Honourable Court is fatally and fundamentally defective and the Claimant's Suit incompetent.
- e. That the incompetence of this Suit has robbed this Honourable Court of the requisite jurisdiction to entertain same.

RELIEFS SOUGHT:

1. AN ORDER of the Honourable Court Striking out this instant suit for incompetence and for lack of jurisdiction.
2. AN ORDER of the Honourable Court awarding the cost of Five Hundred Thousand Naira (#500,000,00) only against the Claimant/Respondent pursuant to Relief one above.

The notice is supported by an eleven (11) paragraphed affidavit deposed to by Mohammed Kagara a legal practitioner in the law office of Law Corridor, the Defendant/Applicant's Counsel, with two (2) annexures as exhibit "A-B". In compliance with the rules of this Honourable Court the Defendant/Applicant

attached the Preliminary Objection with a written address dated 9th day of September, 2021.

The summary of the objection of the Defendant/Applicant is that the person “Wale Balogun Esq.” who purportedly signed the writ and other originating processes is not a legal practitioner as his name is not on the Supreme Court of Nigeria’s Roll of Legal Practitioners. That Court processes purported to be filed by a Legal Practitioner enrolled in the Supreme Court of Nigeria must be signed by the lawyer and his seal affixed thereto. That the name “Wale Balogun” as enlisted as a Legal Practitioner and the person who franked the Writ of Summons and Statement of Claim is not the same with “Kashiopefoluwa O. Balogun” as contained on the affixed seal. That in his bid to confirm the Status of the person who franked the Originating processes, the Defendant/Applicant Counsel conducted due diligence at the Registry of the Supreme Court, through a letter to the Chief Registrar of the Supreme Court to verify and confirm the Status of the name “Wale Balogun Esq.” on the Supreme Court Roll as a Legal Practitioner. This letter is shown in exhibit “A”. That the Supreme Court responded in exhibit “B” which stated that “Wale Balogun Esq.” is not a lawyer as his name does not appear on the Supreme Court Roll as a Legal Practitioner.

The Claimant/Respondent on the other hand filed fifteen (15) paragraphed Counter - Affidavit in opposition to the Notice of Preliminary Objection, deposed to by Seyi Adebayo-Azeez a counsel in the law firm of Greenbridge Partners, Solicitors to the Defendant/Applicant. Also in compliance with the rules of this Honourable Court the Claimant/Respondent attached to the Counter-Affidavit with a written address dated 17th day of September, 2021.

In response to the Preliminary Objection, the Claimant/Respondent averred that MR. WALE BALOGUN’S full name is “KASHOPEFOLUWA OLAWALE,

BALOGUN”. That his name is also written sometimes as “KASHOPEFOLUWA O. BALOGUN”. That MR. BALOGUN, is a legal practitioner and he was called to the Nigerian Bar in 2003, as a Barrister and Solicitor of the Supreme Court of Nigeria and the Chief Justice of Nigeria also appointed him as a Notary Public. That the Writ of Summons and other processes in this suit were signed and settled by MR. WALE BALOGUN whose full name is “KASHOPEFOLUWA OLAWALE BALOGUN OR KASHOPEFOLUWA O. BALOGUN; that the names being one and the same, referring to “MR. BALOGUN” although abbreviated. The Claimant/Respondent further stated that Mr. Balogun has also deposed to an affidavit of facts and confirmation of name before this Honourable Court to confirm the aforementioned names to be his. That the Applicant is aware that “MR. WALE BALOGUN” is the same person as “KASHOPEFOLUWA OLAWALE BALOGUN and or “KASHOPEFOLUWA O. BALOGUN”.

The Counsel to the Claimant/Respondent whose identity is being challenged in this Preliminary Objection filed an Affidavit of Facts by himself, stating that his full name is “KASHOPEFOLUWA OLAWALE BALOGUN”, that he was called to the Nigerian Bar on the 1st July, 2003 as a Barrister and Solicitor of the Supreme Court of Nigeria. That the Stamp and Seal of the Nigerian Bar Association which shows that he has been confirmed and verified to have called to the Nigerian Bar is affixed here below. The Counsel further averred that his enrolment number on the Roll of the Supreme Court of Nigeria as shown in the said Stamp and Seal is SCN 038572. That his name shown on the said NBA Stamp and Seal is “KASHOPEFOLUWA O. BALOGUN”. That he often use the abbreviation form of his name which is “WALE BALOGUN” to settle and sign Court process. That the name “KASHOPEFOLUWA O. BALOGUN” , “KASHOPEFOLUWA OLAWALE BALOGUN” and or “WALE BALOGUN” are one and the same.

The Defendant/Applicant filed a Counter-Affidavit to the Affidavit of Facts and Confirmation of name filed by the Claimant/Respondent Counsel. The Defendant/Respondent averred that “WALE” is not the abbreviation of “KASHOPEFOLUWA” which is the first name of the Legal Practitioner on the Roll as “KASHOPEFOLUWA O. BALOGUN”

In the written address filed by the Defendant/Applicant Counsel, he formulated two issues for the Determination of this Court vix:

- 1. Whether the Claimant’s Writ of Summons herein is defective in view of non – compliance with the condition precedent set out in Order 2 Rule 9 of the High Court of Federal Capital Territory, Abuja (Civil Procedure) Rule, 2018.*
- 2. Whether the Claimant’s originating processes as filed before this Honourable court signed by a persons whose name is not on the Supreme Court roll of legal practitioners was duly executed and competent in the eyes of the law.*

In his argument on issue one the Counsel submitted that the Claimant’s Writ of Summons dated the 26th day of February, 2021 and filed on the 1st of March, 2021 before this Honourable Court was signed /settled by “WALE BALOGUN ESQ.” whose seal was not affixed on the process assuming he was a Legal Practitioner as required by law. Written on the seal affixed on the Claimant’s Writ of Summons was the name “KASHOPEFOLUWA O. BALOGUN” a Legal Practitioner who did not sign/settle the Writ and was not listed as the Claimant’s Counsel. The seal affixed on the Claimant’s Writ of Summons did not bear the name “WALE BALOGUN ESQ.” the Counsel who signed the said Writ.

That there is a vast different between “KASHIOPEFOLUWA O. BALAGUN” and “WALE BALAGUN ESQ., BL, LL.M MBA” for the purpose of identification. They are two different names and cannot be ascribe to the same individuals.

That the Supreme Court held in the case of **ESENOWO V. UKPONG (1999) vol. 68 LRCN, 882 at 898, para. C-E** that:

“There is a world of difference between “E.J Esenowo” and “J.E Esenowo , it may well be that the plaintiff was used to arranging the initial interchangeably for which he needed to so placed and lead credible evidence in respect thereof... Clearly there was need to furnish some lucid explanation otherwise it will be unacceptable to accede that the name “Dr. E.J Esenowo” is the same as “Dr. J.E Esenowo,”

That the position of law have shown clearly that the purported originating processes before this court is incompetent as same was not initiated in accordance with due process of law. He relied on the case of **BUHARI & ANOR V. ADEBAYO & ORS. (2014) LPELR-22521 (CA)**

That the Claimant’s Writ of Summons herein is defective for non-compliance with the condition procedure set out in Order 2 Rule 9 of the High Court of Federal Capital Territory, Abuja (Civil Procedure) Rules, and 2018 for all court processes filed at the registry of this Honourable Court. The Counsel relied on the case of **ONYEMAIZU V. OJIAKO (2000) 6 NWLR (PT. 659), page at 34; OKE V. MIMIKO (2013) Vol. 54 (pt.2) NSCQR, 996 at 1036, para. B-C; ABRAHAM V. OLORUNFUNMI (1991) 1 NWLR (pt.105)53 and YAKI V. BAGUDU (2015) 18 NWLR (pt. 1491), 288 at 346, para. C-D**

The Counsel urged the Court to resolve issue one against the Claimant and hold that the Claimant’s Writ of Summons before this Honourable Court is defective for not complying with the condition precedent set out in Order 2, Rule 9 of the High Court of FCT, Abuja (Civil Procedure) Rules 2018.

On issue two the Leaned Counsel to the Defendant/Applicant submitted that the Claimant’s Statement of Claim before this Honourable Court was not signed/settled as required by law as same was signed by a person whose name is not on the Roll of Legal Practitioners and therefore robs the court of its jurisdiction. He relied on Sections 2 (1) and 24 of the Legal Practitioner Act, 1962 also in the case of **OYEBO & ANOR.V. LASISI & ORS (2019) LPELR-47882 (CA); GTB v. INNOSON NIGERIA LIMITED (2017) LPELR-42368 (SC).**

The Counsel submitted further that the exhibit attached has shown clearly that the name “WALE BALAGUN ESQ.,” is not a name of a Legal Practitioner who is entitled to practice as a barrister and solicitors in Nigeria as the name is not among the names of lawyers duly called to the Nigeria Bar. It thus suffices to say that the Claimant’s Writ and all the originating processes are incompetent and therefore

robs the court of its jurisdiction to entertain this suit. The Counsel relied on the case of **BUHARI & ANOR V. ADEBAYO & ORS (SUPRA)**, at pages 589-590.

The Counsel finally submitted that the purported suit before this court was signed by a person whose identity is unknown as a Legal Practitioner in Nigeria therefore renders the suit incompetent and therefore urged this Court to strike out same with cost.

In the Learned Counsel to the Claimant/Respondent's written address, he formulated a sole issue for the determination of this Court:

Whether the originating processes before the court are lawfully signed by a legal practitioner properly so called:

In his argument the Counsel submitted that the Rules of this Honourable Court has abolished the procedure being used by the Applicant. The Applicant under the Rules is expected to file his pleading together with the preliminary objection. He cited Order 23, Rules 1 and 2 of the High Court of the FCT, Abuja (Civil Procedure) Rules, 2018.

That from above, it is clear that demurrer proceeding, where a defendant who raise a preliminary point of law which he believes can terminate the proceedings refuses to file his pleadings notwithstanding the truth or otherwise of the plaintiff's claims, is no longer allowed. What is permitted is a modified form, referred to as proceedings in lieu of demurrer. The Counsel relied on the case of **INTERDRILL (NIG) LTD & ANOR VS. UBA PLC (2017) LPELR-41907 (SC); ONOKONMA VS. UNION BANK (2017) LPELR-42748 (CA); AKINYEMI & ANOR VS. BANJOKO (2017) LPELR-42377 (CA) AND JFS INVESTMENT LTD VS. BRAWAL LINE LTD (2010) LPELR-1610 (SC);**

The Learned Counsel submitted that the above argument will not be available to the defendant/Applicant. This is in view of the fact that, the Applicant's objection to

the Court's Jurisdiction is not a challenge to the fact that the court does not have jurisdiction "over the subject matter of the suit", or that the "Court is not properly constituted" rather the Applicant's objection is only as regards to "form" not "substance" but on the technicality of whether the Claimant's lawyer "Wale belogun" is the same as "Kashopefoluwa O. Balogun" or not. He cited *ARAKA VS. EGBUE (2003) 17 NWLR PT. 848 PAGE 1*

The Counsel further submitted that the totality of the Applicant case is that the name "Wale Balogun" who signed the originating processes in this suit is not one and the same with the name "Kashopefoluwa O. Balogun" whose "NBA Stamp and Seal" is affixed to the processes. This being the case according to the Applicant, the processes signed by the said "Wale Balogun" are incompetent and the court cannot adjudicate on them.

That the Applicant did not dispute the name "Kashopefoluwa O. Balogun" being called to Bar, rather, the crux the challenge is "Wale Balogun" not being a legal practitioner.

That the crux of his argument is simply to show to Your Lordship that the name "Wale Balogun" is the abbreviation of "Kashopefoluwa O. Balogun" and that both names are one and the same. And to further respectfully show Your Lordship that abbreviation of a name or a lawyer's name to sign and or endorse a court process is permissible in law.

That relying on the totality of the Claimant Counter Affidavit and also the Claimant's Counsel Affidavit of facts and confirmation of names to urge Your Lordship to hold that the name "Wale Balogun" and "KashopefoluwaOlawaleBalogun or Kashopefoluwa O. Balogun" are one and the same.

The Counsel submitted that the Claimant's Counsel under the sanctity of an oath deposed expressly that his full name is "KashofofoluwaOlawaleBalogun" and that "Wale Balogun" is the abbreviation of his name, and that the affixed "NBA Stamp and Seal" with the name "Kashofofoluwa O. Balogun" is his stamp and seal.

That it has become settled that the "NBA Stamp and Seal" is a confirmation of being called to the Nigerian Bar, as a legal practitioner. This is in view of the fact that such Stamp and Seal is only issued after a very rigorous verification procedure, both by the Nigerian Bar Association and the Supreme Court of Nigeria. He relied heavily on the case of **DANKWAMBO v. ABUBAKAR & ORS (2015) LPELR-25716** where my lord **OLUKAYODE ARIWOOLA, JSC** at pages 66-70 paras E-A opined as follows,

"I must say clearly, that an abbreviated name is legal and permissible. It does not cease to be a person's name or render it to lose its juristic personality. In other words, an abbreviation of the first name of any persons whose name is on the role of legal practitioners does not render the abbreviated name to become unregistered or unknown to law as argued by the appellant. This is a different situation from the use of two names that are on the role as a legal practitioner name to file processes in court. There is no doubt that two persons or personalities cannot become, except in marriage when the statutory law of marriage treats husband and wife of two different personalities as one as far as the relationship exists. In *Amos Oketade vs. OlayinkaAdewunmi&Ors. (2010) NWLR (pt.1195) 63 at 74*, this court opined as follows: "There is a big difference between the name of 3 firm of legal practitioner simpliciter. While the name of Olujinmi and Akeredulo is a firm with some corporate existence, the name of a legal practitioner is a name qua

solicitor and advocate of the supreme court of Nigeria which has no corporate connotation. As both carry different legal entities in our jurisprudence of parties, one cannot be a substitute for the other because they are not synonyms. It is clear that Olujinmi and Akeredolu is not a name of a legal practitioner in Nigeria There is no such name in the roll of legal practitioner.... “There is no doubt that the court came to the above conclusion in that case because it was not disputed that the name Olujinmi and Akeredolu are two different names of two distinct personalities. The two names with the conjunctive word cannot make it one name of a legal practitioner on the roll of legal practitioners. Such name cannot be found on the roll. But the name of Samuel Peter Kargbo which is on the roll remains a legal practitioner who is entitled to practice law in the Nigeria courts by that name either with abbreviated first name or initials of his other names other than the family name -Kargbo. It cannot be said that the name “Sam Kaegbo” is either a fictitious or false name. I agree that it is the same name of Samuel Peter Kargbo – a Legal Practitioner on the roll of the supreme court of Nigeria. I agree entirely with the court below when at P.2226 of the record the court, per Ogunwumiju, JCA stated beautifully, inter alia, as follows” The purpose of sections 2 and 24 of the legal practitioners Act is to exclude anyone from practicing as a Barrister and solicitor who had not been called to the bar and whose name had not Advocate of the supreme court Nigeria. There was no doubt that the counsel who appeared before the tribunal was a Barrister and solicitor duly enrolled to practice law before the court in Nigeria. Counsel’s affidavit to that effect was never countered.” I cannot agree more with the court below. The trial tribunal was wrong to have held that the

counsel to the practitioner who is the 1st respondent herein cannot practice law with his abbreviated name. The court below was perfectly right and put the point straight. There are many senior legal practitioners and judicial officers whose first name as it appears on the roll of legal practitioners of the supreme court of Nigeria has been abbreviated as it stands today, yet that abbreviation has not robbed and could not rob them of their status as legal practitioners nor can it be said that they have contravened the legal practitioners Act. Many first names such as Oluwole, Olukayode, Akinlolu, Christian, Okechukwu, Joseph, Samuel Emmanuel Omotayo, Olajide, Oladele, Olabode appear in the roll but today stand abbreviated as first name of Legal Practitioners as Wole, Akin, Okey, Joe, Sam, Emma, Tayo, Jide, Dele, Bode, Until the contrary is proved abbreviated first name or initials before family name used on documents for filling processes in court or announced as appearing for litigants remain valid and proper forever.”

The Claimant/Respondent Counsel concluded that, the thrust of the Applicant’s application relates essentially to whether the ends of justice are better realized if this Honourable Court holds that the abbreviation of “*Kashopefoluwa O. Balogun*” as the named legal practitioner “*Wale Balogun*” on the settled originating court process necessarily renders same incompetent or invalid, this would divest, deprive and strip the court of its jurisdiction to entertain and determine the substantive questions of law raised before it.

The Counsel respectfully urged the Court to hold that “*Wale Balogun*” is one and the same as “*Kashopefoluwa O. Balogun*” and order for accelerated hearing of the substantive matter.

In a way of reply on points of law, the Defendant/Applicant Counsel submitted that in the case of *AJAYI VS. ADEBIYI & ORS 92012) LPELR-781 SC* the Apex Court held thus;

“It is, therefore, noteworthy that an application or preliminary objection seeking an order to strike out a suit for being incompetent on the ground of absence of jurisdiction is not a demurrer and therefore can be filed and taken even before the Defendant files his statement of defence or without the Defendant filing a statement of defence. The reason being the issue of jurisdiction can be raised at any time”.

That it is their argument in the Preliminary objection that the suit was not instituted by due process of law since the originating processes were signed by one “Wale Balogun” whom the Supreme Court through the uncontroverted and unchallenged Exhibit B in the affidavit in support of our Notice of preliminary objection had declared not to be a Legal Practitioner as his name is not on the roll of lawyers duly called to the Nigeria Bar. It is the submission of the Defendant/Applicant that filing a defence as argued by the Claimant/Respondent would amount to submitting to the jurisdiction of the Court that is being contested by the defendant/Applicant.

The Counsel replied that on the abundance of authorities cited by the Claimant/Respondent’s Counsel with respect to the meaning of “abbreviation”, it is crystal clear that abbreviation means abbreviation of the first name of a person. He also relied on the case of *DANKWAMBO VS. ABUBAKAR & ORS. (2015) LPELR-25716 (SC)*. That the Claimant/Respondent in a bid to mislead this Honourable Court averred that Wale Balogun is the abbreviation of

Kashopefoluwa O. Balogun, cited several examples and different authorities in support of their argument wherein counsel in those matters abbreviated their first names. However, those authorities do not avail the Claimant/Respondent as the issue in those cases were instances where counsel abbreviated their first names as they appear on the roll of Legal Practitioners. This is distinguishable from the instant case where the document from the Supreme Court has clearly declared that the name Wale Balogun is not on the roll of Legal Practitioners.

The Counsel submitted that document speaks for itself, as appeared on the originating processes, the name on the seal carries “Kashopefoluwa O. Balogun” whereas the Writ was issued and signed by one “Wale Balogun”. The Counsel further submitted that, by no wide range of interpretation would it be rightly said that “Wale” is the abbreviation of the word “Kashopefoluwa” neither could it be said that “O” is the initials of a word that starts with “W”.

That before this Honourable Court is exhibit “B” from Supreme Court, the custodian of the roll of all Legal Practitioners in Nigeria, stating that there is no name such as Wale Balogun on the roll of call.

Lastly that the law is trite that a person may represent himself before a court in person or by a Legal Practitioner. He cited Section 36(5) (C) of constitution of Federal Republic of Nigeria 1999 (as amended). That in the instant case, the originating processes were not signed by the Claimant himself but was signed by one “Wale Balogun” who the unchallenged and uncontroverted record of the Apex Court of the land has clearly shown not to be a Legal Practitioner. The fact of this case is distinguishable from the cases cited by the Claimant/Respondent Counsel.

I have taking my time to go through all the averments in the affidavit in support of the Preliminary Objection and the Counter-Affidavit by both the

Defendant/Applicant and the Claimant/Respondent. I have equally gone through the Argument of both Counsel in the respective written addresses.

It is the view of the Court that the issue that calls for the determination of this Court is that *whether the name “Wale Balogun” is the abbreviation of the name “Kashopefoluwa O. Balogun” as it is shown on the NBA Stamp and Seal affixed on the Writ of Summons and Statement of Claim filled before this Court.*

The Supreme Court in ***DANKWAMBO VS. ABUBAKAR & ORS (Supra)*** defines “abbreviation” as:

“to make a word, phrase or name shorter by leaving out letters or using only the first Letter of each word”.

Rule 10(1) of the Rules of Professional Conduct for Legal Practitioners, 2007 makes it mandatory for Legal Practitioner filling Court Process to affix his or her NBA Stamp and Seal which shows the name of the Counsel that signed the said Court Process as it is on the Roll of the Supreme Court of Nigeria.

The Supreme Court in the same case of ***DANKWAMBO VS. ABUBAKAR & ORS (Supra)*** also held that:

“...there is nothing in Section 2(1) of the Legal Practitioners Act that prohibits the use of an abbreviation of one’s name or initials in signing documents and/or conducting proceedings in any court of law in Nigeria”

However, a careful look at the name *“Wale Balogun”* as the Counsel who settled and signed the Writ of Summons and Statement of Claim on the Court record and the name *“Kashopefoluwa O. Balogun”* as it appears on the NBA Stamp and Seal affixed on the same Writ of Summons and Statement of Claim before this Court. It

is crystal clear that there is no resemblance of word, phrase or name or even using the first letter of each word on the name “*Kashopefoluwa O*”. The name “*Kashopefoluwa O. Balogun*” is the name on the Supreme Court Roll and that is exactly how it written and appears on the NBA Stamp and Seal affixed on the Affidavit of Facts and Confirmation of Name deposited and filed before this Court. Looking at the Court processes before this Court, “Wale” is not an abbreviation of “*Kashopefoluwa O*” and I so hold.

In the case of **MOBIL OIL (NIG) PLC V. MOHAMMED & ANOR (2018) LPELR-43667 (CA)** the court held thus:

“It is to the effect that every Court process is to be signed in the name of a named person who has been registered to practice as a barrister and solicitor and whose name is on the nominal roll kept in the Supreme Court Registry.”

By virtue of “exhibit B” “Wale Balogun” is not a named person who has been registered to practice as a barrister and solicitor in Nigeria. Therefore “Wale Balogun” who is not a Legal Practitioner licensed to practice in Nigeria and his name is not on Supreme Court’s Roll of Legal Practitioners signing the Writ of Summons, Statement of Claim and other originating Court processes before this Court is fundamentally incurable, defective and incompetent hence liable to be struck out.

In the circumstances this Suit is hereby struck for being incompetent.

I make no award to cost.

Hon. Justice Jude O. Onwuegbuzie