



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION HOLDEN AT ABUJA
ON WEDNESDAY, 14TH JUNE, 2023
BEFORE HON. JUSTICE NJIDEKA .K. NWOSU-IHEME

SUIT NO: CV/2161/2022

BETWEEN

DR. GEORGE SAMPSON AKPAN

CLAIMANT/RESPONDENT

AND

PETROLEUM AND NATURAL GAS

SENIOR STAFF ASSOCIATION OF NIGERIA

DEFENDANT/APPLICANT

RULING

The defendant/applicant filed a preliminary objection dated 1/11/2022 and filed on the 7/12/2022 praying this honorable court for an order dismissing the suit on the ground that this court lacks the jurisdiction to hear same. The defendant/applicant in support of this application filed a written address dated 7/12/2022.

The claimant/respondent in response to the preliminary objection filed a written address dated 13/3/2023.

The grounds upon which the preliminary objection is brought are;

1. The claimant did not comply with the provisions of Order 6 Rule 4 of the Rules of the Honourable Court; and
2. A condition precedent to the institution of this suit by the claimant/respondent against the defendant/applicant has not been fulfilled by the claimant/respondent being a member of the defendant/applicant.

According to the applicant, the summary of evidence germane to the hearing and determination of this preliminary objection are as follows;

1. That the defendant/applicant is a Trade Union with its registered office as U.M. Okoro House, 288, Ikorodu Road, Anthony, Lagos.
2. That the claimant/respondent's Writ of Summons gave the address of the defendant as 20 Lome Crescent, Zone 7 Wuse District, FCT Abuja, Nigeria.
3. The claimant/respondent's Writ of Summons only gave the defendant/applicant 14 (Fourteen) days to appear and defend the suit.
4. The claimant/respondent is a member of the defendant/applicant and works with Exxon Mobile which houses a branch of the defendant.
5. The dispute between the claimant/respondent and the defendant/applicant is an internal dispute within the defendant/applicant Association.
6. The defendant/applicant constitution provides for the procedure for internal dispute resolution.
7. The defendant/applicant has filed this preliminary objection to the claimant/respondent's suit challenging the honourable court's jurisdiction to entertain, consider, hear and determine the same.

The defendant/applicant in her written address distilled 2 issues for determination to wit;

- A. Whether the action of the claimant/respondent is competent by virtue of Sections 97, and 99 of the Sheriffs and Civil Processes Act, Laws of the Federation 2014? and**
- B. Whether the claimant/applicant has complied with the Conditions Precedent in commencing this action by following the provisions of the Constitution of the Defendant Trade Union?**

The claimant/respondent distilled 3 issues for determination to wit;

- A. Whether issuance and service of the writ of summons and other processes of this honorable court on the defendant should be effected in Lagos State to warrant the application of section 97 and 99 of the Sheriffs and Civil Process Act.**
- B. Whether the service of the writ of summons in this suit on the defendant at one of its corporate/liaison office i.e. 20**

LomeCrescent Zone 7 Wuse 2, FCT Abuja was proper service.

C. Whether the preliminary objection that alludes to a fact without a supporting affidavit is irregular and liable to be struck out.

I have gone through the processes filed before me and in resolving the issues before me; this court has formulated the following issues for determination;

- a. Whether the service of the Originating Summons and other court processes on the defendant/applicant at 20 Lome crescent, Wuse Zone 7 wuse, Abuja is a proper service in law and**
- b. Whether the claimant/respondent is a member of the defendant/applicant, is bound and has complied with the condition precedent in commencing this action vis-a-vis the provisions of the Constitution of the defendant/applicant?**

ARGUMENT OF THE DEFENDANT/APPLICANT

On Issue 1, E. C Okewu Esq submitted that this honourable court is vested with the jurisdiction to take judicial notice of processes filed before it. Relying on **GARUBA & ORS v. OMOKHODION & ORS (2011) LPELR- 1309 (SC)**

Counsel invited the court to appraise and evaluate the following processes:

- i. The Writ of Summons of the claimant/respondent whose address for service on the defendant/applicant is stated to be 20 Lome crescent, zone 7, Wuse District, FCT Abuja instead of U.M. Okoro House, 288, Ikorodu Road, Anthony, Lagos;
- ii. Paragraphs 5, 11, 12, 17, 18 and the reliefs claimed in paragraphs 22 (i)-(vi) of the Statement of Claim which aver to the correspondence between the claimant/respondent and the defendant/applicant as a Trade Union; and
- iii. The Constitution of the defendant/applicant.

Counsel to the applicant submitted that the claimant is a member of the defendant/applicant by virtue of which he was allocated the Property which is the subject matter of this suit and from the evidence in the documents pleaded by the claimant/respondent, the defendant/applicant's addresses are all stated to be at U.M. Okoro House, 288, Ikorodu Road, Anthony, Lagos and not 20 Lome crescent, zone 7, Wuse District, FCT Abuja contrary to the provisions of the Sheriffs and Civil Processes Act, Laws of the Federation 2014. Counsel relied on **Sections 96, 97, 98 and 99 of the Sheriffs and Civil Processes Act, Laws of the Federation**

2014 and the case of **IZEZE v INEC & ORS (2018) LPELR-44283 SC** in prove of same.

On Issue 2 Emmanuel Okewu Esq. submitted that amongst all the documents presented by the claimant/respondent in support of his claims before the honourable Court, none of them shows he has complied with the Internal Dispute Resolution as contained in the said constitution of the defendant of which he is a member. This goes to show that the claimant/respondent has not fulfilled a condition precedent in commencing this suit. Counsel relied on suit No: **FCT/HC/CV/274/2012 between ABIYE IYALLA PEDRO (PLAINTIFF) AND PETROLEUM AND NATURAL GAS SENIOR STAFF ASSOCIATION AND 1 OTHER (DEFENDANTS)** and **SUIT NO: FCT/HC/CV/618/2012 BETWEEN KAMBI FURO MATTHEW (PLAINTIFF) AND PETROLEUM AND NATURAL GAS SENIOR STAFF ASSOCIATION AND 1 OTHER (DEFENDANTS)**, where this honourable court of the Federal Capital Territory struck out two suits based on similar facts for want of jurisdiction based on non-compliance with the Constitution of the defendant/applicant.

CLAIMANT/RESPONDENT'S ARGUMENT ON ISSUE ONE

On issue 1, Margaret Okpo-Mfon Esq submitted that defendant/applicant admitted in paragraphs 4.2.1 of its preliminary objection that the writ of summons and the originating processes were served on them at 20 Lome crescent, wuse zone 7 wuse Abuja which is within the jurisdiction of this honorable court where the defendant carries on its corporate business while relying on **Section 104 Of the Companies and Allied Matters Act, 2020 (CAMA)** which the applicant has not denied, counsel further relied on **Order 3 Rule 3 of the rules**.

On Issue 2, Counsel submitted that nothing is wrong with the service of the writ of summons on the defendant at its liaison office 20 Lome Crescent, zone 7 wuse 2 Abuja and urged court to hold that same is proper service and it will amount to a miscarriage of justice if the court holds otherwise. Referring to **RIVERS STATE GOVERNMENT OF NIGERIA AND THE ATTORNEY-GENERAL OF RIVERS STATE V. SPECIALIST KONSULT (2005) 7NWLR (P.T 923) @ (Pp. 167, para B-F, 172, Para F)**

On Issue 3, Okpo-Mfon Esq submitted that the defendant in its Preliminary Objection specifically in paragraph 1.5 claimed that the claimant is a member of PENGASSAN

and as such is required under the constitution of PENGASSAN to explore internal dispute settlement before instituting this suit but the claimant was not a member of PENGASSAN and never state that he was a member and the objection which alludes that facts must be supported by an affidavit. Relying on *Amah v Nwankwo* (2007) 12NWLR (PT049) @ (P.578, paras. A-C). Counsel in conclusion submitted that it is well settled law that facts not rooted in evidence will be discountenanced by the court

DECISION OF THE COURT

On Issue 1,

It is well settled law that the service of the originating processes is a condition precedent to the exercise of any jurisdiction.

In the recent decision of **PEOPLES DEMOCRATIC PARTY v. CHIEF NDUKA EDEDE & ANOR (2022) LPELR-57480(CA) (Pp. 28-29, paras. E-B)**, court held; **"I also agree with the learned counsel, that going by the parameters set by *Madukolu vs. Nkemdilim* (1962) SCNLR 341, and followed in *Salati vs. Shehu* (1986) INWLR (pt. 15) 198 @ 218, that a Court of law can only have and properly exercise its jurisdiction to hear and to determine a case before it where it is satisfied that:**

- a. The proper parties are before the Court.**
- b. The Court is properly constituted as to its membership and qualification.**
- c. Where the subject matter of the case is within the jurisdiction and there are no features in the case which prevent the court from exercising jurisdiction.**
- d. Where the case comes before the Court initiated by due process of the law, and upon fulfillment of any condition precedent to the assumption of jurisdiction"**

In a court proceedings where there is improper service of the initiating process, it constitutes a manifest breach of **Section 36 of the 1999 Constitution** which makes it mandatory for service of originating processes to be done accordingly either on an individual or corporation.

It is the defendant/applicant's submission that the Writ of Summons of the claimant/respondent, the defendant/applicant's addresses are all stated to be at

U.M. Okoro House, 288, Ikorodu Road, Anthony, Lagos and not **20 Lome crescent, zone 7, Wuse District, FCT Abuja** which is where the defendant/respondent effected service of the originating processes in this suit and same is contrary to the provisions of the Sheriffs and Civil Processes Act, Laws of the Federation 2014.

The service of an originating process on a party to a proceeding is a fundamental and imperative step in the process of adjudication by a Court of law. It is what ignites or gives vent to the jurisdiction of the court to entertain the matter and make orders that will be valid and subsisting. Therefore, it is not an issue for the exercise of discretion by the Court because where the originating process is not served in accordance with the law; it deprives the Court of the requisite jurisdiction to proceed with the hearing of the matter.

The Supreme Court in the case of: **MARK V EKE (2004) 5 NWLR PART 865 PAGE 54** held among others that... failure to comply with this condition would render the whole proceeding including judgment entered and all subsequent proceedings based thereon wholly irregular, null and void." See the following cases: **MADUKOLU VS NKEMDILIM (1962) 2 SCNLR Page 341, (1962) 1 All NCR Page 587; - U.B.A. PLC VS AJILEGE (1999) 13 NWLR Part 633 Page 116.**

It is well settled law that the service of the originating processes is a condition precedent to the exercise of any jurisdiction and in considering whether a Court has jurisdiction to entertain a matter, the Court is guided by the claim before it by critically looking at the Writ of Summons and the Statement of Claim see **GAFAR V GOVT. KWARA STATE (2007) 4 NWLR (PT. 1024) PG. 375. ONUORAH V KRPC (2005) 6 NWLR (PT. 921) PG. 393.**

The claimant/respondent, instituted this action against the defendant/applicant claiming amongst others the following reliefs;

- a. Specific Performance of the contract by handing over to client a fully developed and completed four bed room fully detached duplex at plot 25 PENGASSAN estate site 3, Galadimawa District FTC Abuja, forthwith, which property must be completed to the satisfaction of the client.
- b. **IN THE ALTERNATIVE, AN ORDER** directing the defendant to pay the sum of N100,000,000.00 (One Hundred Million Naira) to the Client to enable the Client purchase a fully detached 4 bed Room detached Duplex within the Galadimawa District FCT, Abuja.

SECTION 96 OF THE SHERIFFS AND CIVIL PROCESSES ACT, LAWS OF THE FEDERATION 2014 reads:

1. A writ of summons issued out of or requiring the defendant to appear at any court of a State or the Capital Territory may be served on the defendant in any other State or the Capital Territory.
2. Such service **MAY**, subject to any rules of court which may be made under this Act, be effected in the same manner as if the writ was served on the defendant in the State or the Capital Territory in which the writ was issued.

The import of sub 1 and 2 of this section is to the effect that service of court processes can be effected within and outside the jurisdiction of the Federal Capital Territory where the cause of action emanated from and same is subject to the rules of this court.

Going by the provision of the above section, the operational word used here is "May" which is simply an enabling or permissive word. In that sense, it imposes or gives a discretion any or enabling power. But where the object of the power is to effectuate a legal right, "may" has been construed as compulsory or as imposing an obligatory duty." **Per GARBA, JSC (Pp. 34-35, paras. B-C) in ORAKUL RESOURCES LTD & ANOR V. NCC & ORS (PP. 34-35 PARAS. B)**

The critical questions for resolution is whether the service of the originating processes was effect and if the said service is a proper service required by law on the defendant

The proof of service of the originating processes reveals that service was effected on the 31st day of October, 2022 by 11;24am and received by one Innocent Tanket an office assistant at no 20 Lomecrecent, wuse Zone 7 Abuja. It is the applicants' contention that the said address where service of the originating processes was effected is not the registered address of the applicant and hence not proper service in law.

"It is trite that the best evidence of service of a process is the affidavit of service deposed to by the person who effected the service setting out the place, mode, date of service and a description of the process served. See **ONWUBUYA VS. IKEGBUNAM (2019) 16 NWLR (PT.1697) 94, IDISI VS. ECODRIL NIGERIA LIMITED (2016) 12 NWLR (PT. 1527) 355, AND NDAYAKO VS. DANTORO (2004) 13 NWLR (PT.889) 187.**" **Per OJO ,J.C.A IN SOLANKE & ORS V. FASINA & ORS (2022) LPELR-56564(CA) (PP. 26 PARAS. B)**

It is no doubt that service was effected but was it done on the defendant/applicant as required by the law?

I have taken a cursory look at the statement of claim filed by the claimant and also the exhibits attached therewith particularly the provisional allocation letter to the claimant of the house which is the subject matter of this suit dated April 7th, 2011, correspondences including the letters of Demand for Compensation written to the respondent by the claimant's attorney dated May 20, 2011 and July 30th, 2011 respectively and I also find in the letter headed paper of the respondent that "All correspondence be addressed to the General Secretary, UM OKORO HOUSE , 288 IKORODU ROAD , ANTHONY LAGOS, the court is convinced that the registered address of the applicant is U. M OKORO HOUSE, 288 IKORODU ROAD , ANTHONY LAGOS.

The submission of learned counsel to the claimant/respondent is that 20 Lome crescent wuse zone 7, wuse Abuja is the claimant's liaison office which is within the jurisdiction of this honorable court where the defendant carries on its corporate business while relying on **Section 104 of CAMA, 2020** and this was not supported by any evidence however skeletal in their response to the preliminary objection.

It is trite law that he who alleges must prove. The duty to disprove such allegation can only arise when the party so alleging has discharged the burden to prove it. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other." Subsection (2) of the same S. 136 provides that:" In considering the amount of evidence necessary to shift the burden of proof regard shall be had by the Court to the opportunity of knowledge with respect to the fact to be proved which may be possessed by the parties respectively. See the case of **KINGSLEY EMESIANI v. LEVI EMESIANI (2013) LPELR-21360(CA)**

Failure of counsel to the claimant/respondent to adduce evidence in support of assertion that 20 Lome Crescent Wuse Zone 7, Wuse 2 Abuja is the liaison office of the applicant is very fatal to his case and the court is not permitted in law to undertake a voyage of discovery as to the confirmation of the alleged liaison office address by the claimant/respondent.

The reliance of counsel to the respondent on **section 104 of CAMA, 2020** in his argument is grossly misleading.

Need I at this point state that it is not in doubt that the defendant is a trade

Union regulated by the Trade Union Act and not an incorporation covered by either Parts A, B or C and regulated by CAMA, 2020.

A Trade Union is a group of workers, working collectively, for the purpose of protecting their interest and promoting their cause as workers, including mutual understanding between the workers and the employer through collective bargaining.

The Constitution of Nigeria provides freedom to join and form unions. Every person is entitled to assemble freely and form association with political party, trade union or any other association for the protection of their rights. Exception includes workers of armed forces; police; customs, Immigration and the prison service and Young workers under the age of sixteen may not join a union

In **NIGERIA CIVIL SERVICE UNION V. ASSOCIATION OF SENIOR CIVIL SERVANTS OF NIGERIA [2004] NWLR (PT 3) 429** the court held that the "right to freedom of association guaranteed under the constitution are qualified and not absolute rights, thus, the right to associate with other persons to form a trade union must be within the limits by the Trade Union Act".

Hence the submission and reliance of the claimant/respondent CAMA is hereby discountenanced.

In ***FIRST BANK OF NIGERIA PLC V. T.S.A. INDUSTRIES LIMITED (2010) LPELR-1283(SC)***, Adekeye, JSC, while stating the importance of service of Court processes, held as follows:

"The essence of service of process on parties in a case is to enable them to appear to prosecute and defend the case and also to ensure the appearance of the parties and those of their respective counsel in Court. These are fundamental conditions to be seen to have been fulfilled before a Court can have competence and exercise jurisdiction over a case. This also accords with the principle of natural justice which postulates that both sides to a case must be heard. Consequently, failure to serve a process where service of process is required to be served renders any order made against the party not served with process null and void... MADUKOLU V. NKEMDILIM (1962) 2 SCNLR PG. 341 U.B.A. PLC V. AJILEYE (1999) 13 NWLR PG. 633 PG.116. OKE V. AIYEDUN (1986) 2 NWLR PT. 23 PG. 548."

And where service is not effected, or a wrong party is served in place of another,

the intendment of the law becomes defeated and such failure of a condition precedent goes to the root of the matter see the case of **EKE VS. OGBONDA (2007) ALL FWLR (PT. 351) 1456 AT 1482, PARA. H (SC), Niki Tobi, JSC**

In summary **Order 5 rule 14 of the rules of this court states;**

14. No writ which, or notice of which, is to be served out of the jurisdiction shall be issued without leave of the Court.

Provided that if any claim made by a writ is one which by virtue of an enactment the Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction, the foregoing provisions shall not apply to the writ.

In totality, this court holds that the service of originating processes at 20 Lome Crescent, Wuse Zone 7, Wuse 2 Abuja falls short of the requirements of the law everything else goes up in flames, because the competence of the court is jeopardized by that singular failing. It is also very important to bear in mind that failure to serve cannot be equated with an irregularity that can be cured, because it is fatal in every sense of the word and hence defective. The Issue 1 is resolved in favour of the defendant/applicant against the claimant/respondent.

On Issue 2, I have gleaned through the processes filed before me and there is no doubt as to the membership of the claimant with the defendant/applicant, I have also looked at the exhibits annexed that is, the constitution of the defendant/applicant. Section 28 (1) provides;

All Internal Disputes shall be subjected to Internal Dispute Resolution as contained in Schedule 3".

Schedule 3: Internal Dispute Resolution

The following shall be the Dispute Resolution Mechanism of the Association: All internal disputes shall be subordinated through the following organs: Unit-Chapter-Branch-Zone-CWC-NEC in that Order.

A Member who is aggrieved with the actions of a Unit/Chapter shall report such a matter to the Branch Executive Committee/Council who shall resolve the matter within two weeks.

- a. Member who is aggrieved with the decisions or actions of Branch Executive Committee/Council shall report such matter to the Zonal Executive Committee, If such a Member is from a Branch that is spread beyond one Zone, the matter shall be reported directly to the**

**CWC who shall dispose of it within four weeks,
A member or Branch who is aggrieved with the decisions or actions of
the CWC shall report the matter to the NEC through the General/
Secretary.**

Need I emphasize at this point that the nature and the purpose of a constitution in an organization is simultaneously a legal, political, and social instrument. Legally, it enshrines rights and creates a predictable legal landscape, its provisions provide a framework under which the organizational regulations, and procedures operate. It binds members and articulates their rights which must not be infringed, and which members must strive to ensure.

Where the parties agreed in their constitution which members are bound to comply with that all disputes shall be referred to arbitration, this court would require very strong reasons to permit one of the parties to go back on their word.

The provision of Section 28 of the constitution of the defendant/applicant is quite explicit as to the dispute resolution mechanisms to be implored when issues arise. The Court should not be seen to encourage the breach of a valid clause.

It is important to point out that in the statement of claim claimant averred thus in paragraph 1;

1. The claimant was, at the relevant time of the events giving rise to this action, an employee of Mobil Producing Nigeria Unlimited.

From the averment in the claim it is obvious the claimant/respondent was in the employ of the Mobil Producing Nigeria Unlimited and entitled to subscribe for the housing scheme based on his position in the company.

A party generally cannot both approbate and reprobate and it is the duty of courts to encourage parties to peacefully settle their disagreements out of court. It is not the business of a court to insist or compel the parties to complete their case before it, more so, where there is room for amicable settlement. See the cases of; ***CROWN FLOUR MILLS VS OWODUNNI (2005) ALL FWLR PT.255 PG 1553. OBAYIUWANA VS EDE (1998) 1 NWLR PT.535 PG 670. "PER ABOKI ,J.C.A IN CITEC INTERNATIONAL ESTATES LTD V. MINISTER OF FCT & ORS (2018) LPELR-45955(CA) (PP. 26 PARAS. C).***

Consequent upon the above the 2nd issue is resolved in favour of the applicant against the respondent

From the foregoing and in totality this preliminary objection is meritorious and the suit having fallen short of the requirements of the law is hereby struck out

HON. JUSTICE NJIDEKA K. NWOSU-IHEME
[JUDGE]

Appearance:

1. Margaret Okpo –Mfon for the claimant
2. E. O Okewu for the respondent

