

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**

**COURT NUMBER: HIGH COURT NO. 24**

**CASE NUMBER: SUIT NO. FCT/HC/CV/875/2020**

**MOTION NO. FCT/HC/M/1739/2022**

**DATE: 23/5/2023**

**BETWEEN:**

1. GODIRRA CHEMICALS NIG. LTD  
2. CHIEF INNOCENT OBIORA GODRICK } .....CLAIMANTS

**AND**

1. MR. AYODEJI STEPHEN OLUMAYEGUN  
2. UNKNOWN PERSONS  
3. MOHAMMED ISA  
4. ALHAJI AMINU ISA } .....DEFENDANTS

**APPEARANCES:**

A.Y. Jibrain Esq for the Claimant.

Oloruntoba Elijah Esq for the 1<sup>st</sup> Defendant

Chuka Egbo Esq for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants

2<sup>nd</sup> Defendant unrepresented.

**RULING**

By a Notice of Preliminary Objection dated 3<sup>rd</sup> day of November, 2022 and filed on 22<sup>nd</sup> day of November, 2022. The objection was brought pursuant to Section 6(6), Section 36 of the 1999 Constitution of the Federal Republic

of Nigeria as amended and Order 43 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018.

The Applicants/Defendants herein challenge the competence of the Claimant's suit and jurisdiction of the Honourable Court to hear same, equally praying that the suit should be struck out *brevimanu* for incompetence, uncertainty of Claimant's claims and for constituting gross abuse of judicial process.

The grounds upon which the Preliminary Objection is predicated are as follows:-

- “(1). The originating process and all pending applications filed by the Claimants in this suit are infested with the incurable plague of incompetence.***
- (2). The Claimants have no reasonable cause of action against the Defendants as the claims were speculative.***
- (3). The description of 3<sup>rd</sup> and 4<sup>th</sup> Defendants as “party joined” in their Amended Writ of Summons filed on 8<sup>th</sup> June, 2022, lacks the backing of any law or rules of Court, and in effect renders the entire aforementioned process defective on the face of it. There are no proper parties before the Court.***
- (4). The Claimants amended their Statement of Claim and changed the face of their action without leave of Court first sought and obtained.***
- (5). The instant suit as presently constituted typified a classical case of abuse of judicial process as the Claimants have two conflicting and varying Writ of Summons with different Statement of Claims, reliefs and subject matter.***
- (6). Motion No: M/1163/2022 filed on 12<sup>th</sup> October 2022 with the attendant affidavit in support is incompetent and the Honourable Court lacks the competence to grant the reliefs sought therein.***

- (7). The Order of the Court pursuant to the joinder of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants for consequential amendment of the Claimants originating process has not been complied.**
- (8). The originating process in this suit was not served on the 3<sup>rd</sup> and 4<sup>th</sup> Defendants according to law and rules of Court, thus the Honourable Court lacks jurisdiction to entertain the suit.**
- (9). The instant suit of the Claimants constitutes an abuse of judicial process.”**

Filed in support of the application is 4 paragraphed affidavit deposed to by one Alhaji Aminul Sah, the 4<sup>th</sup> Defendant/Applicant in this suit.

In compliance with the rules of Court, the Applicants filed a Written Address dated 3<sup>rd</sup> day of November, 2022.

In the said Written Address, Counsel to the Applicants formulated three issues for determination to wit:

- “(1). Whether having regard to the fact and circumstances of this case, the Claimants’ suit which has two varying originating processes, is not incompetent and an abuse of judicial process.**
- (2). Whether the Statement of Claim amended by the Claimants without leave of Court first sought and obtained is incompetent and liable to be struck out.**
- (3). If the answer in all of any of the two issues above is in affirmative whether the Honourable Court is not deprived of jurisdiction to entertain this suit.”**

In arguing the three issues together, Counsel submitted that the instant suit of the Claimants has two originating processes that vary in terms of reliefs, subject matter, Statement of Claim and the originating processes under consideration in their entirety are plagued with the vice of incompetence, not being proper before the Court and thereby no reasonable cause of action as all other pending applications in the suit are also accordingly infested with said plague.

In another submission, Counsel submitted that the Claimants have refused and neglected to fully comply with the Order of this Honourable Court as to consequential amendment of the originating process and pending applications in the suit with regard to consequential amendment order of 5<sup>th</sup> October, 2021 made subsequent to joinder of 3<sup>rd</sup> and 4<sup>th</sup> Defendants. Counsel cited Order 13 Rule 20 and Order 25 Rule 4 of the FCT High Court (Civil Procedure) Rules 2018.

Consequently, Counsel contended that the word “SHALL” used in the provision of Order 13 Rule 20 of the Court and specific order made by this Court on 5<sup>th</sup> October 2021 makes it mandatory that the said provisions and Order of Court must be obeyed by the Claimants in this case. But unfortunately, the Claimants woefully failed to obey or comply with the said mandatory order of this Honourable Court, which renders all processes filed in disobedience null and void for all intents and purposes.

Counsel further submitted that not only the Claimants purported “Amended Writ of Summons” filed on 8<sup>th</sup> June, 2022 was invalid and defective on the face of it, but also the service of same on the 3<sup>rd</sup> and 4<sup>th</sup> Defendants through their Counsel was totally irregular as same was not served on the 3<sup>rd</sup> and 4<sup>th</sup> Defendants personally being an originating process and same was also filed 239 days outside the 7 days stipulated by the rules of Court making it fatally incompetent.

Moreso, Counsel submitted that the Writ of Summons filed on 22<sup>nd</sup> January, 2021 and served on 1<sup>st</sup> and 2<sup>nd</sup> Defendants at the commencement of this suit prior to the joinder of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants is not the same with the purported Amended Writ of Summons filed on 8<sup>th</sup> June, 2022 and served on the 3<sup>rd</sup> and 4<sup>th</sup> Defendants on 14<sup>th</sup> October, 2022 and the two originating processes are dissimilar to each other as they vary in terms of subject matter, reliefs, sought and statement which impliedly makes the instant suit to be anchored on two unparallel subsisting originating processes meant for two sets of Defendants and it represents a worst case of abuse of judicial process, which is the improper use of the judicial process by a party in litigation aimed at interfering with due administration of justice. Reliance was placed on the cases of **ALLANAH VS KPOLOKWU (2016) 6 NWLR (Pt.1807) Pg. 1 at 27; ADESOJI V FUTA (2017) 9 NWLR (Pt.1570) 208 at 221, Paras C – D, 226, SARAHI V KOTOYE (1992) 9 NWLR (Pt.264) 156 at 188.**

Submitting further, learned Counsel stated that the suit of the Claimants is a classical case that lacks support in law and logic as the law is settled that the punishment for abuse of process is dismissal of the abusive process and not just mere striking out. In this respect, reliance was placed on the cases of **ARUBO V AIYELERU (1993) 3 NWLR (Pt.280) 126 at 142; DINGYADI v INEC NO.1 (2000) 18 NWLR (Pt.1224) 1 at 75 and AMAEFULE V STATE (1988) 2 NWLR (Pt.75) 156 at 177.**

To this end, Counsel submitted that despite the inconsistent pleadings and reliefs claimed by the Claimants, it is indeed explicit in the face of the entire processes that there is no scintilla of evidence showing any nexus between Claimants' purported Plot 3675 Lugbe 1 Extension Layout Abuja with that of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants' Plot 3075 Lugbe 1 Extension Layout, Lugbe FCT.

Finally, Counsel urged the Court to resolve the issues raised against the Claimants and hold that the Claimants' suit is beleaguered with incurable vices of incompetence and proceed to dismiss same in its entirety as no amendment can cure the innate and inherent deficiency which made it an abuse of Court process.

On the other hand, in opposing the application, the Claimants/Respondents filed a Counter Affidavit of 17 paragraphs deposed to by one Chief Innocent ObioraGodrick, the 2<sup>nd</sup> Claimant/Respondent in this suit. Equally filed in support of the Counter Affidavit is a Written Address dated the 8<sup>th</sup> day of December. 2022.

In the said Written Address, Counsel to the Claimants/Respondents formulated a sole issue for determination to wit:-

***“Whether the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants have placed any substantial facts before this Court to warrant the grant of their instant application.”***

In arguing the issue, learned Counsel submitted that non-compliance with the rules of this Court cannot make the processes filed by the Claimant before this Court incompetent thereby robbing the Court of jurisdiction to entertain this matter.

Arguing further, Counsel stated that the default fee complained about by the Counsel to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants was properly accessed and paid for as contained on the original copy before the Court and urged the Court to so hold and strike out the instant application.

In a similar vein, learned Counsel stated that as a matter of practice of law that where the rules of Court is not strictly complied with same is to be treated as an irregularity not fatal and cannot affect the jurisdiction of the Court to entertain this suit as rules of Court are rules of procedure unlike statute which must strictly be complied with and non-compliance of the rules of Court even where the word "SHALL" is used. It is discretionary in nature and not mandatory as wrongly envisaged by the Defendants/Applicants' Counsel and rules of Court are meant to facilitate justice and not to defeat the cause of justice. Counsel cited the cases of ***U.T.C (NIG) LTD V PAMOTEI (2002) ALL FWLR (Pt.129) 1557 at Pg. 1625, UKO V EKPEONGYOUNG (2006) ALL FWLR (Pt.324) 1927 at 1946; ODU V FAWEHINMI (RTD) (2006) ALL FWLR (Pt.301) 1848 at 1866; KENSAL FARMS LTD V NIGERIART CONSTRUCTION COMPANY (2013) VOL 18 WRN (Pt.1-187) at Pg.140 and FARM OIL LTD V ATTORNEY GENERAL OF THE FEDERATION (2013) LPELR-1239 SC.***

In response to issue of abuse of Court process raised by the Counsel to the Objector that there are two Writ of Summons before the Court. Counsel submitted that it is only one Writ of Summons that is before the Court which is the Amended Writ. Consequent upon joining of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants in this respect, reliance was placed on the cases of ***R-BENKAY NIGERIA LTD V CADBURY NIGERIA LTD (2012) LPELR-7820 (SC) and EDJE RODE V IKINE (2001) LPELR-1479 (SC).***

Consequently, Counsel contended that the process served on the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants are competent as the parties to the suit are contained therein and the cause of action is equally elicited and the reliefs properly and carefully stated as it is the law that what determines jurisdiction and competence to entertain a suit is the cause of action and the reliefs sought by party. Counsel cited the case of ***KEHINDE V CAN & ORS (2012) LPELR-14821 (CA).***

In his final submission, Counsel stated that the issuance of motion number is within the administrative power of the Court registry and not that of Counsel or litigant and it is the duty of Counsel to prepare his client process

and file as such motion without a motion number is not a deliberate act of the Counsel to the Claimant as he is not the one to issue motion number but that of the registry of the Court and the law is settled that the mistake of the Court or registry should not be visited on the litigant. In this respect, reliance was placed on the cases of ***KANGNAAN V KANGNAAN (2019) LPELR-46502 (CA); FIDELITY BANK PLC V MONYE (2012) ALL FWLR (Pt.631) Pg.1412 at 1430-1431, Para H – A and AMADI V ACHO (2005) 12 NWLR (Pt.939) 389.***

In conclusion, learned Counsel contended that Courts are enjoined to do substantial justice and not technical justice, as what Counsel is seeking for is technical justice. Consequently, Counsel urged this Honourable Court to hold that the suit is proper before the Court and that the Court has jurisdiction to entertain same and dismiss this application with punitive cost.

On the other hand, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants filed a Reply on points of law dated 3<sup>rd</sup> day of February, 2023.

In the said Reply, learned Counsel contended that the purported Claimants Amended originating process of 8<sup>th</sup> June, 2022 which on the face of it described the 3<sup>rd</sup> and 4<sup>th</sup> Defendants as party joined is infested with the plague of incompetence thus automatically the entire pending application of the Claimants with motion no M/11643/2022 of 12<sup>th</sup> October, 2022 and motion without motion number of 8<sup>th</sup> June 2022 are all joint partakers of the said plague as they derived their claims, significance and purpose from the said purported amended originating process.

In another submission, Counsel stated that after obtaining the order of the Court on 5<sup>th</sup> October 2021 for consequential amendment pursuant to Order 13 Rule 20 and Order 25 Rule 4, the Claimants chose to amend, file and serve on the 3<sup>rd</sup> and 4<sup>th</sup> Defendants purported “Amended” originating process of 8<sup>th</sup> June 2022 outside the prescribed seven days of the rules of the Court without leave, without payment of default fees, and it is imperative that an application for extension of time, evidence of payment of default penalty be exhibited where a party made a consequential amendment outside the prescribed period as failure of which is considered very fundamental and inextricably tied to the jurisdiction of the Court as such the purported Amended originating process has no breath of life in it to sustain the jurisdiction of the Court.

In this respect, Counsel cited the cases of ***WILLIAM & ORS V HOPRISING VOLUNTARY FUND SOCIETY (2001) 34 WRN 171; ABIA STATE TRANSPORTATION CORPORATION & ORS V QUORUM CONSTORIUM LTD (2009) 4 SCNJ Pg. 1; AKPAJI V UDEMBA (2009) 2 – 3 SC (Pt.11) 12 and MADUKOLU V NKEMDILIM (1962) 2 SCNLR 341.***

In his final submission, Counsel submitted that the Claimants act of brazen disregard to Court rules as demonstrated by their repeated delays and failures to comply with procedural guideline and disobedience of Court Order cannot be tolerated by any Court.

On the whole, the learned Counsel urged the Court to discountenance the Counter Affidavit of the Claimants and their Written submissions and make an Order striking out the Claimants' purported Amended" originating process of 8<sup>th</sup> June 2022 as well as the entire pending applications filed by the Claimants for being plagued with incompetence and for not being proper before this Honourable Court.

I have carefully perused the Notice of Preliminary Objection, the grounds upon which the Preliminary Objection was predicated, the reliefs sought, the supporting affidavit and the Written Address. I have equally gone through the Counter Affidavit in opposition and the Written Address filed alongside the Counter Affidavit.

In addition, I have also studied the reply on points of law. Therefore, it is my humble view that the issue for determination is ***"whether the Defendants/Applicants herein have made out a case for the grant of this application."***

This application was predicated on several grounds but I will limit myself to ground 4 which in my opinion capture the whole essence of this application.

A careful study of the grounds upon which the Preliminary Objection is predicated and the entire depositions in the supporting affidavit vis-à-vis the submission of the learned Counsel to the Applicants, one can deduce that the main contention of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants is the Claimants' suit is incompetent on the ground that the Claimants amended their Statement of Claim without the leave of Court first had and obtained as required by the rules of this Honourable Court as well as the Order of the Court pursuant to the joinder of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants for



consequential amendment of the Claimants originating process which has not been complied with.

It is trite law that rules of Court are meant to be obeyed and not for fancy. It is equally settled law that rules of Court bind parties to the proceedings. On this, see the case of **ONYALI V OKPALA (2001) 1 NWLR (Pt.694) PER MUHAMMED J.C.A P. 302** where it was held thus:-

***“The Rules of Court bind parties to the proceeding and regulate the very proceedings by which a relief is sought. Rules of Court are meant to be obeyed. The rules of Court should have the force of law.”***

At this juncture, I will say before I proceed that, the procedural rules are made to guide the Court of law and the legal practitioner, and they are meant to be strictly obeyed.

However, the question that comes to mind is whether parties to a case can amend their Court processes without the leave of Court.

In this respect, let me refer to the case of **NIGERE V OKURUKET “XIV” (2014) 11 NWLR (Pt.1417) P.175 Paras G – H, PER RHODES VIVOUR J.S.C** where it was held that:-

***“Where the Rules of Court provide for leave before a process is filed and the process is filed without leave, such a process would be thrown out, it being null and void.”***

Similarly, it was held in the case of **DARSEY DIGITAL PRESS LTD V AYO (2019) 1 NWLR (Pt.1654) P. 392 Paras B – C per UGO J.C.A** that:

***“It is not permissible for Litigants to amend their process by themselves without leave of Court.”***

At this junction, it is worthy of note that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants deposed in the supporting Affidavit particularly at paragraphs 2(h) and 2(j) as follows:

***“Paragraph 2(h). That the Claimants amended their Statement of***

***Claim and changed the face of the action without leave of Court first sought and obtained.***

***Paragraph 2(j). That the Claimants have two conflicting and varying Writ of Summons with different Statement of Claims, reliefs and subject matter. The Honourable Court lacks the jurisdiction to entertain the Claimants' suit."***

On the other hand, the Claimants/Respondents equally deposed in the Counter Affidavit in opposition to the Preliminary Objection particularly at paragraphs 12 and 13 as follows:

***"Paragraph 12. That I know as a fact in response to paragraph 2(h and j) of the 3<sup>rd</sup> and Defendants/Applicants affidavit. I know as a fact that the Statement of Claim did not and has changed the face of the action. The processes/applications pending before the Court are valid and capable of activating the jurisdiction of the Court.***

***Paragraph 13. That paragraph 2(j and k) of the Defendants/Applicants affidavit are not true in that I know as a fact that it is only one Writ of Summons, which is the Amended Writ of Summons and the accompanying processes and there are no different Statements of Claims, Reliefs and subject matter as alleged by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants. In further response to the above paragraph, I know as a fact that I and the 1<sup>st</sup> Claimant herein before the Court has locus standi to initiate this suit and same is not speculative against the Defendants."***

In the instant case, a careful study of the paragraphs quoted above, originating Writ of Summons, the Statement of Claim dated 9<sup>th</sup> day of December. 2019 as well as the Amended Writ of Summons and Statement of Claim dated 8<sup>th</sup> day of June 2022, the reliefs sought and all the paragraphs contained in the Amended Statement of Claim were amended by the Claimant without the leave of this Honourable Court obtained as

required by the rules of this Court and the Court only ordered the Claimants to make consequential amendment to reflect the Order for joinder of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants only as parties to the instant suit. I so hold.

Moreso, it is settled law that any alteration in the originating process (i.e Writ of Summons) without the leave of Court shall render the Writ defective which touches on the jurisdiction of the Court. This position was re-echoed by the Court of Appeal in the case of **HEALTH CARE PROD (NIG) LTD V BAZZA (2004) 3 NWLR (Pt.861) P. 601, Paras A, Paras G – A per AMIRU SANUSI J.C.A** where it was held thus:-

***“Any alteration of a Writ of Summons without leave of Court shall render the Writ void. And since an action cannot be commenced without a Writ of Summons properly issued as provided by the rules of Court, an action founded upon a Writ that was altered without leave of Court becomes incompetent.”***

In the instant suit, having held earlier that the originating process was amended by the Claimant without the leave of this Honourable Court, it is my considered opinion that the failure to obtain the required leave touches on the jurisdiction of this Honourable Court. I so hold.

In the final analysis, it is my considered opinion that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants have made out a case for the grant of this application. I so hold.

In the light of the above and without further ado, I hereby resolve the issue for determination in favour of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants against the Claimants and hold very strongly that this application has merit and is accordingly granted as prayed in the interest of justice.

Consequently, this suit with no: FCT/HC/CV/875/2020, be and is hereby struck out.

**Signed:**

**Hon. Justice S. U. Bature  
23/5/2023.**