



Going further, the Claimant on the 25/01/2022 filed an application, praying the Court to relist SUIT/CV/2242/2021. The relief sought was granted; thereafter the matter was set down for Hearing.

The matter came up on the 18/11/2022, parties were represented by their Counsel, however, the matter couldn't go on, as the Defendant Counsel announced to the Court that she was briefed a day before the Court's sitting. Again, the matter came up for Hearing on the 20/2/2023, parties were absent, while the Claimant was represented by counsel. The matter was again adjourned to the 27/4/2023. On the adjourned date, parties were represented by their Counsel the Defendant Counsel, told the Court that the defendant had not been served with the Originating process. Counsel to the defendant, who announced appearance had not complied with Order 9 r (1) and Order 9 r (2) HCR 2018, thus, the Claimant's Counsel argued and adopted his originating process and the matter was adjourned for Judgment.

The matter came up on the 8/11/2023, Counsel to the claimant had filed an affidavit of fact, wherein he averred that there was service of the originating summons on the Defendant. Counsel to the Defendant informed the Court that they were not served with the affidavit of 9/6/2023. The Court further directed the Claimant to serve the Defendant a copy of the originating process and other documents they intend to rely on, and matter was adjourned to the 13/12/2023.

On the 13/12/2023, when the matter came up, both parties were represented by their Counsel. Counsel to the Claimant informed the Court that based on the history of the case, he took further steps by investigating the whereabouts of the proof of service of the originating service; that on the 12/12/2023, and at the Director of Litigation office FCT High Court, the Registrar of the Court, furnished them with the proof of service of the originating summons. He then

urged the Court to set the matter down for Judgment, as it is shown that the principle of fair hearing has been adhered to.

The Defendant's Counsel on the other hand, prayed the Court to allow them be heard having filed a response by way of a counter affidavit to the Originating Summons. That the Court should do justice by hearing the Defendant's Counter/Affidavit and the Claimant Originating Summons; that where there are competing Orders of the court, the Court has the inherent power to set aside its own Order or Ruling. He urged the Court to allow parties argue and adopt their processes and not shut the door of Justice at the Defendant.

Replying on points of law, Counsel to the Claimant submitted that it is trite law that the principle of fair hearing goes to the procedure and not just the substance of the decision arrived at. That a party who failed to utilize an opportunity of being heard, cannot be heard to complain of breach of fair hearing. He referred the Court to the case of MILITARY GOVERNOR OF LAGOS STATE V ADEYIGA & ORS (2012) LPELR 7836 and one other. He argued that the defendant had been given adequate opportunity to be heard, but failed to utilize same, therefore the defendant cannot complain of the breach of right of fair hearing; that if the court gives the defendant a second opportunity, it would mean a great injustice to the claimant.

I have listened to the submissions of both Counsels on whether the court should set the matter down for Judgment or give the defendant the opportunity to respond to the Originating Summons filed by the Claimant. Basically, the contention of counsel to the claimant is that the defendant having been served with originating processes, and given adequate time to respond, which they failed to utilize, the defendant should not be allowed to have another opportunity. The defendant's counsel is not in agreement with the claimant. He is of the view that the defendant should be allowed to

respond; that the door of justice should not be shut at the defendant. Having considered the arguments of counsel, and given the circumstances of this case, it is my firm view that the issues which calls for determination are - Whether the Defendant was served with the originating process before the 27/4/2023. If the answer is a Yes, should the processes of the defendant be countenanced in this proceeding?

It is trite that the object of service is to give notice to the Defendant so that he may be aware of and be able to defend, if he may, that which is sought against him. It is settled law that failure to serve a Defendant is a fundamental vice as service of a Writ of Summons is a condition precedent for the exercise of a Court's jurisdiction over the subject-matter of the action and over the Defendant. Thus, Non-service is a fundamental defect that affects the jurisdiction of a Court. See MADUKOLU V. NKEMDILIM (1962) 1 ALL NLR 587; SKENCONSULT (NIG) LTD v. UKEY (1981) 1 SC 6

Gleaning from the processes contained in the court's file, it is shown that the defendant was served with the originating summons on the 20/10/2021. (See the proof service attached to the certificate of pre action counseling). It is equally shown that as of the 27/4/2023, the defendant was yet to respond to the processes of the claimant or file a memorandum of appearance, be it conditional or unconditional. It is trite that justice is not only for a party, it is a two-way traffic. One for the claimant and the other for the defendant. In other words, justice means fair treatment to all manner of persons. Thus, the argument of counsel to the defendant that the defendant shouldn't be shut out is not availing. Equity aids the vigilant and not the indolent. Where a party has been given adequate time to respond to a process and he fails to act timeously, then he cannot be heard to complain of lack of service of the originating process. The defendant had from the 20/10/2021 to 27/4/2023 to either

respond to the claimant's process or at best enter a conditional appearance, but chose not to file any process. The counsel who announced appearance for the defendant on the 27/4/2023 failed to comply with Order 9 r (1) & (3); Order 9 r 2 (1) & (2) HCR 2018. The defendant cannot complain of non-service, without first complying with the mode of appearance as provided for under the rules. Also, given the fact that, the proof of service is now before the court, I find and hold that the defendant was given sufficient time to respond to the process of the claimant and or protest the non- service in accordance with the law, but it chose not to do so. I am therefore of the view that the defendant should not be given the opportunity to argue and adopt his process. And I so hold. Accordingly, the objection of counsel to the claimant is sustained. I shall now proceed to read my Judgment.

ASMAU AKANBI – YUSUF

(HON. JUDGE)

APPEARANCES;

V. C Irougalachi Esq, for the Claimant;

Defendant absent, and not represented.