



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY, JUNE 6TH, 2023
BEFORE HON.JUSTICE NJIDEKA K. NWOSU-IHEME

SUIT NO: FCT/HC/CV/678/2022
MOTION NO: FCT/HC/CV/M/2630/2023

BETWEEN:

MRS DIBOR DOROTHY N. CLAIMANT/RESPONDENT

AND

- 1. FIRST CONSOLIDATED ENTERPRICES NIG LTD**
- 2. GWAGWALADA AREA COUNCIL..... APPLICANT/DEFENDANTS**

RULING

This ruling is predicated upon the notice of Preliminary Objection dated 10/3/2023 and filed on the 14/3/2023 by the 1st defendant/applicant, objecting to the jurisdiction of this Honourable Court to hear and determine this suit on the following grounds;

- a. The 1st Defendant/Applicant is a body corporate incorporated under the Companies and Allied Matters Act 2020.**
- b. That the Writ of Summons of this suit was not served on the 1st Defendant/Applicant as required by Section 104 of the Companies and Allied Matters Act 2020.**

c. The Writ of Summons and other processes of this Honourable Court was dumped in the site at Y. Junction along One-way Market Road where the 1st Defendant/Applicant is currently working on.

d. The 1st Defendant/Applicant cannot be served by substituted service if there is any subsisting order of this Honourable Court permitting the Claimant/Respondent to serve the 1st Defendant/Applicant by substituted means.

e. This Honourable Court cannot assume jurisdiction over the suit without a proper service of the original process on the 1st Defendant/Applicant.

In support of this application is a 4 paragraph affidavit deposed to by one **RAJI MUIDEEN OLAWALE** a litigation secretary of ESTOPPEL ATTORNEYS solicitors to the 1st defendant/applicant and a written address.

RAJI MUIDEEN OLAWALE deposed amongst others that;

1. The workers of the 1st defendant/applicant went to the site at Y. Junction along One-way Market Road where the 1st defendant/applicant is currently working on and found the writ of summons, motion on Notice and Hearing Notice in respect of this matter on the ground.
2. 1st defendant/applicant cannot be served by substituted means
3. dumping the originating process at the site at Y. Junction along One-Way Market Road where the 1st defendant/applicant is currently working on is not a proper service.
4. Y. Junction is not the head office or branch office of the 1st defendant/applicant.

In response to this application, the Claimant/respondent filed a reply on point of law to the 1st defendant/applicants Preliminary Objection dated 14/03/2023.

ISSUE FOR DETERMINATION

Counsel to the 1st defendant/applicant MustaphaIssaBalogunEsq raised a sole issue for determination to wit;

"Whether the defendant/applicant being a body corporate can be served with the originating process by substituted service"

Counsel to the claimant/respondent Etta Effiom Esq distilled the following issue for determination;

"On whether leaving the originating processes in this suit at the place of business of the 1st defendant within the jurisdiction of the court situate at plot no. 4 New Market Road, Gwagwalada, Abuja is a proper service"

Based on the evidence adduced by the claimant and the submission of the learned counsel, the Court is of the considered opinion that the sole issue determination in this matter is the issue as formulated by the claimant/respondent counsel.

Submissions of Learned Counsel for the 1st Defendant/applicant:

In his argument, Counsel to the 1st defendant/applicant submitted that by Order 6 Rule 4 of the High Court of the Federal Capital Territory Civil Procedure Rules, 2018 (the Rules), requires personal service of the originating process, unless leave is obtained under Order 7 Rule 4 of the High Court of the Federal Capital Territory, Civil Procedure Rules, 2018 (the Rules).

Balogun Esq. submitted that the claimant/respondent did not obtain leave to serve the 1st defendant/applicant by substituted means and such service is void. Relying on **IHEDIOHA V. OKOROCHA (2016) 1 NWLR (PT. 1492) 147 PP. 203, PARAS. D-E; 204, PARAS. B- E; G-H; 207, PARAS. C-D; G-H.**

Counsel further submitted that assuming but not conceding that the claimant/respondent obtained leave of this Court to serve the 1st defendant/applicant by substituted means, the 1st defendant/applicant cannot be served by substituted means. Order 7 Rule 8 of the Rules provides that every originating process requiring personal service may be served on a registered company, corporation or body corporate, by delivery

at the head office or any other place of business of the organization within the jurisdiction.

Counsel further argued that Order 7 Rule 8 of the Rules is not absolute, it subjects the service of the process of this Court to the Companies and Allied Matters Act, 2020(CAMA) being the principal act under which the 1stdefendant/applicant was established. Section 104 of the Act requires that a court process shall be served on a company in the manner provided by the rules of court and any other document may be served on a company by leaving it at, or sending it by post to, the registered office or head office of the company.

Counsel relied on the case of ***MARK V. EKE (2004) 5 NWLR (Pt. 865) 54***wherein the court held that by virtue of section 78 CAMA (now **Section 104 of CAMA, 2020**) the process of the court is served on a company in the manner provided by the rules of court. Service on a company must be at the registered office of the company and it is bad and ineffective if it is done at a branch office of the company. The procedure is by giving the process to any Director, Trustee, Secretary or other Principal Officers at the registered office of the company or by leaving the process at its office. In this regard, there is no need to make an order of substituted service on a company. The need for substituted service would arise where personal service cannot be effected and since personal service can only be effected on natural or juristic persons, the procedure for substituted service is not applicable to a company.

Counsel submitted finally that substituted service of process on a limited liability company cannot stand referring to***SAVANNAH BANK (NIG.) PLC V. SABA(2018) 14 NWLR (Pt. 1638) 56.***

SUBMISSIONS OF LEARNED COUNSEL FOR THE CLAIMANT/RESPONDENT

Etta Efiom Esq. submitted that his answer to the issue raised is in the affirmative to the effect that service of originating process on a company must not be at its head office or registered office. And by the provisions of

Order 7 Rule 8, the Rules, the modes of service of originating processes on a company is clearly spelt out.

Counsel further submitted that, to insist that a proper service can only be had upon serving the originating process at the head office of the company is not within the purview of the provision of the rules. And that if it was intended that a company can only be served through its registered or head office, the rule would have stated that.

Counsel submitted also that based on Section 104 of CAMA, 2020 service of originating process is regulated by the domestic rules of courts. That the rule creates two ways of serving an originating process on a company either by delivering at the head office or any other place of business of the organization within the jurisdiction. Whichever mode of service employed will be deemed proper service in the eyes of the law.

It is counsel's submission that the bailiff of the Court left the originating processes at the place of business of the 1st defendant/applicant situate at Plot No. 4 New Market Road, Gwagwalada, Abuja within the jurisdiction of the court and where the 1st defendant carries on its business which is a proper service. Moreso the Applicant/Defendant admitted receipt of the originating processes via paragraph 3 (c) of its affidavit in support of the preliminary objection and cannot turn around to hold that service at place of business within jurisdiction is not a proper service in the eye of the law. Relying on ***PALM BRANCH INSURANCE CO, v BRUHNS (1997) 9 NWLR (PT.519) 80.***

DECISION OF COURT

Whenever the issue of jurisdiction, which is both intrinsic and extrinsic to judicial proceedings, arises or is raised in the course of proceedings (at all stages or steps of the judicial ladder), the court before which it arises or is raised has the duty and obligation to consider and determine it first before proceeding with other issues or taking further steps in the case. See ***ADEYEMI V ACHIMU/NDIC (2023) PART 1866 1NWLR P. 583 @ P. 610 PARAS B-D.***

Jurisdiction is the life-wire of a court as no court can entertain a matter where it lacks jurisdiction. The issue of jurisdiction can be raised at any time. See apex decision of ***DAIRO V UBN PLC (2007) 7 SC (PT II) PAGE 97 @ 111 paras 5-10.***

In the apex court decision of ***AUDU V APC (2019) LPLER 48134 SC PAGE 12,*** the court defined jurisdiction thus;

"Jurisdiction simply means "a Court's power to decide a case or issue" Black's Law Dictionary 9th Ed. Jurisdiction also refers to "the authority a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision" - Mobil Producing (Nig.) Unlimited V. LASEPA (2002) 18 NWLR (R. 798) 1 SC. Jurisdiction are of various types; substantive jurisdiction refers to matters over which the Court can adjudicate, and it is usually expressly provided by the Constitution or enabling statutes. PAGE 21 PER AMINA AUGIE JSC held thus;

".... jurisdiction is the pillar under which the entire case stands, therefore, filing an action in a Court presupposes that the Court has jurisdiction. However, once the Defendant shows that the Court has no jurisdiction then the "foundation of the case is not only shaken but is broken. The case crumbles."

See Okolo V. UBN (2004) 3 NWLR (Pt. 859) 87, wherein Tobi, JSC, added;

"In effect, there is no case before the Court for adjudication. The Parties cannot be heard on the merit of the case. That is the end of the litigation."

Due to the decisive nature of jurisdiction, it cannot be conferred on or taken away from any court because the parties have agreed or consented to do so. See ***DAIRO V UBN PLC (2007) SUPRA @ 111 PARAS 10-15 and ADEYEMI V ACHIMU/NDIC (supra) P. 618 paras B-C.***

Flowing from the position of the law on jurisdiction, there are conditions which must be satisfied before this court can exercise 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: (i.) The proper parties are before the Court. (ii.) The Court's properly constituted as to its membership and qualification. (iii.) 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. iv. 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."

The service of the originating process is a condition precedent to the exercise of any jurisdiction on the 1st defendant/applicant. A Court's proceedings where there is improper service of the initiating process 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.

The critical question for resolution is whether the service of the originating processes on the 1st defendant by ***dropping at the place of business of the 1st Defendant situate at Plot No. 4 New Market Road, Gwagwalada, Abuja*** satisfied the requirement of the law. I have considered the paragraphs **3(a)** of the applicant's AFFIDAVIT as well as the proof of service deposed to by the bailiff of this Court. The aggregate of which is that the 1st defendant/applicant was served with the originating processes dated 2/12/2022 on 2/3/2023 ***at Plot No. 4 New Market Road, Gwagwalada, Abuja*** by dropping the originating processes at the above address. Counsel to the 1st defendant/applicant argued that the originating processes were dropped at **Y Junction Market Road Abuja**.

Section 104 of CAMA provides thus;

"A court process shall be served on a company in the manner provided by the rules of court and any other document may be served on a company by leaving it at, or sending it by post to, the registered office or head office of the company".

The above section is stating that service of court process on a company is determined by the rules of court. However, other documents can be delivered by leaving it, or sending it by post to the registered office or head office of the company.

Now, the rules provide under Order 7 rule 8 thus;

"Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process requiring personal service may be served on a registered company, corporation or body corporate by delivery at the head office or any other place of business of the organization within the jurisdiction of the Court."

The law recognizes only two modes of service of process on a company to wit:

i. By giving the process to any Director, Trustee, Secretary Principal Officers at the Registered Office of the Company or at any branch office of the Company.

ii. By leaving or sending the process at only the Registered Office of the Company.

See the cases of **LEADERSHIP NEWSPAPER GROUP LTD V. MANTU (2017) 2 NWLR (PT. 1548) PAGE 15; SKYE BANK (NIG.) PLC V. OKPARA (2015) 17 NWLR (PT. 1489) 613, MARK V. EKE (2004) 5 NWLR (Pt. 865) 54.**

"In LEADERSHIP NEWSPAPER GROUP LTD V. MANTU (2017) 2 NWLR (PT. 1548) PAGE 15 at page 40 paragraphs B - C; page 41 - 42, paragraphs A — E, the Court of Appeal held, "By virtue of section 78 Of the Companies and Allied Matters Act, a court process shall be served on a company in the manner provided by the Rules of court and any other document may be served on a company by leaving it at/or sending it by post to the registered office or head office of the Company. Thus, any service of court process effected contrary to the applicable Rules of court is invalid.

In *SKYE BANK (NIG.) PLC V. OKPARA (2015) 17 NWLR (Pt. 1489) page 613 at pages 639-641, paragraphs B - H, page 645, paragraphs B - E.*the Court of Appeal held thus,

"The mode of service on a limited liability company is different from service of process on natural person, The Companies and Allied Matters Act by section 78 makes provisions on how to serve documents generally on any company registered under it, By this, a court process is served on a company in the body in this context either a company registered under the Companies and Allied Matters Act, 1990 or a Statutory Corporation such as the respondent in this case, can only be served under the relevant rules of court by giving the writ of summons or document to any Director, Trustee, Secretary, or other Principal Officer of the corporate body to be served/ or by leaving the same at its registered or head office. It is bad and ineffective to serve at any branch office"

From a joint reading of the provisions of section 104 of CAMA and Order 7 Rule 8 of the Rules, a writ of summons or other court processes or any other document meant for service on a registered company under CAMA, can be served or effected on the company BY EITHER Order 7 rule 8 of the rules or Section 104 of CAMA.

From the affidavit of service deposed to by the court bailiff, the service on the 1st defendant was by dropping (leaving) the Originating processes on the 1st defendant/applicant at Plot No. 4 New Market Road, Gwagwalada, Abuja. The 1st defendant submitted that the originating processes were served by dumping them in the site of the 1st defendant/applicant at Y. Junction along One-way Market Gwagwalada. The bailiff and the 1st defendant/applicant are both referring to DIFFERENT addresses.

In paragraph 3(a) of the affidavit in support of the preliminary objection, the RAJI OLAWALE deposed thus;

The workers of the 1st Defendant/Applicant went to the site at Y. Junction along One-way Market Road where the 1st Defendant/Applicant is currently working on and found the writ of summons, motion on Notice and Hearing Notice in respect of this matter on the ground.

The question to ask now is can a company of this nature be served an originating process at a site THEY ARE WORKING ON? Can it satisfy the requirement of the law? Substituted service cannot be served on a company the need for substituted service would arise where personal service cannot be effected and since personal service can only be effected on natural or juristic persons, the procedure for substituted service is not applicable to a company. See ***SAVANNAH BANK (NIG) PLC V SABA (2018) 14 NWLR 56 @ PAGE 103 PARAS C-D.***

I hold the view that service was not effected at their registered office. The site is neither the registered business nor the head office of the company. This is improper service and the implication of improper service is that there has been non-service.

Per ADUMEIN, J.C.A in ***MATAHOR & ANOR V. IBARAKUNYE (2017) LPELR-43346(CA) (PP. 41 PARAS. B)***

"Having regard to the facts of this case, as fully set out and demonstrated in the leading judgment, the effect of the improper service complained of is the same as that of non-service. It should be borne in mind always that the effect of non-service, where service is required, is that the Court is deprived or divested of its competence and jurisdiction to entertain the cause or matter.

I answer the issue for resolution in the negative and in favour of the 1st defendant/applicant. There is merit in the preliminary objection and the Suit is hereby struck out.

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

Appearance of Counsel:

1. ETTA EFFIOM ESQ (For Claimant/Respondent)
2. A. D. MOHAMMED HOLDING BRIEF OF M.I. BALOGUN ESQ(For 1st Defendant/Applicant)