

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

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 14
CASE NUMBER : SUIT NO: CV/153/2020
DATE: : TUESDAY 20TH FEBRUARY, 2024

BETWEEN:

RIVERDALE FINANCIAL SERVICES LTD.

**CLAIMANT/
RESPONDENT**

AND

1. KATSINA STATE GOVERNMENT

**2. ATTORNEY GERNERAL & COMMISSIONER
OF JUSTICE, KATSINA STATE**

**DEFENDANTS/
APPLICANTS**

RULING

This ruling is at the instance of the Defendants/Applicants who vide application No. M/6877/2023 sought for the following reliefs:

1. An Order of this Honourable Court setting aside the order made on the 10th day of December, 2020 directing and/or granting leave to the Claimant/Respondent to effect service of the writ of summons (under undefended list) filed and/or issued on the 11th May, 2020 on the Defendants in Katsina State;
2. An Order of this Honourable Court setting aside the service of the Writ of Summons filed and/or issued on the 11th day of May, 2020 and purportedly effected on the Defendants in Katsina State on the 4th day of March, 2021 pursuant to the Order of the Honourable Court made on the 10th day of December, 2020;
3. An Order of this Honourable Court striking out Claimant's suit as the originating process has become abate/lapsed.
4. And for such further Order(s) as the Honourable Court may deem fit to make in the circumstance.

The following grounds were raised in support of the application:-

- i. The Claimant instituted an action against the Defendants under the Undefended List vide a summons filed and/or issued by the registrar of this Honourable Court on the 11th day of May, 2020.
- ii. By the rules of this Honourable Court, the life span of a writ shall be 6 month.
- iii. The 6 Month validity period of the Writ of Summons under the Undefended List before this Honourable Court which was filed and/or issued on the 11th day of May, 2020 expired on the 11th day of November, 2020.
- iv. No writ of summons was served on the Defendants within its lifespan in this suit.
- v. The writ of summons under the Undefended List filed and/or issued on the 11th day of May, 2020 lies dormant and ineffective for service.
- vi. No proper service can be effected from an expired and invalid writ of summons.

- vii. The Order of this Honourable Court granted to the Claimant to effect service of the writ of summons was made without jurisdiction.
- viii. The Order of the Honourable Court was made in vain as there was no active and effective writ of summons before the Honourable court for service as at the 10th day of December, 2020.
- ix. The Claimant in this suit concealed the fundamental and crucial facts of the expiration of the writ of summons filed and/or issued on 11th day of May, 2020 from the Honourable Court.
- x. The writ of summons purportedly served on the Defendants has expired and remains inactive, dormant and service of same is invalid.
- xi. The Order of the Honourable Court made on the 10th December, 2020 was made in vacuo having been made for the service of expired, dormant, inactive and invalid writ of summons.
- xii. The Honourable Court has the power to set aside its Order of 10th December, 2020.

xiii. This Honourable Court lacks jurisdiction ab initio to make the Order of 10th December, 2020 and consequently the said Order of 10th December, 2020 was made without jurisdiction.

Affidavit of 21 paragraphs was filed in support of the application

That the Claimant/Respondent instituted an action against the Defendants under the Undefended List vide a writ of summons issued on 11th May, 2020.

That by calculation this writ of summons under the Undefended List filed and/or issued on the 11th day of May, 2020 had expired on the 11th day of November, 2020.

That they know as a fact that the said writ of summons filed and/or issued on 11th May, 2020 having expired, lies dormant and ineffective.

That the said writ of summons filed on the 11th May, 2020 was not served on the Defendants until the 4th day of March 2021 outside the 6 months period of its life span.

That the service of the expired writ of summons was effected on the Defendants on the 4th March, 2021 pursuant to an Order

made by this Honourable Court on 10th day of December, 2020 in the absence of the Defendants.

That no leave was sought for the renewal of the said expired writ of summons prior to the application upon which the said Ex-parte Order was premised and/or prior to the making of the Order.

That they know as a fact that the Order of this Honourable Court made on the 10th day of December, 2020 is in respect of the writ of summons filed and/or issued on 11th May, 2020 which had become invalid, dormant and ineffectual.

That they know as a fact that this Honourable Court lacks the requisite jurisdiction to make the order or entertain the application upon which the said Order was made on the 10th December, 2020.

That they also known as a fact that the said Order of 10th December, 2020 was made without jurisdiction, the said writ of summons having expired and invalid.

That they know as a fact that the Claimant/Respondent also concealed the said fundamental fact of the expiration of the writ of summons filed and/or issued on the 11th May, 2020 from this Honourable Court.

That they know as a fact that the service of the expired writ of summons effected by the Claimant on the Defendants on the 4th March, 2021 pursuant to the Order of this Honourable Court made on the 10th December, 2020 is invalid and improper.

That this Honourable Court has the power to set aside its order made on the 10th day of December, 2020.

That it is in the interest of fair hearing and justice to grant this application.

That this Honourable Court cannot exercise jurisdiction on a spent, expired and invalid writ of summons.

That the prosecution of this case on an expired and invalid writ of summons is an attempt to harass and irritate the Defendants.

A 14 page written address and reply on points of law was similarly filed.

Learned counsel for the Defendants/Applicants formulated a lone issue for determination in urging the court to hold that the originating process of the Claimant has expired at the time of service of same on the Defendants/Applicants and therefore made it impossible for the court to have exercised its jurisdiction validly.

The issue is, "**Whether the Defendants/Applicants have not made out a case justifying the setting aside and debito justitiae, the Honourable Court Order of 10th December, 2020, the purported service effected on the Defendants on the 4th March, 2021 and striking out of the Claimant's suit.**"

Arguing on the lone issue, learned counsel cited Order 6 Rule 6 of the Rules of this Court to contend that the said Writ had lifespan of six (6) months and that same was already expired at the time of service renewing same hence incompetent to confer jurisdiction in this Court. Learned counsel cited the authority of **HRH. OBA RAPHAEL SUNDAY ARE (2014) LPELR – 23807.**

Learned counsel contended that no proper service could have been effected when the Writ was expired-abinitio.

Counsel then urged the Court to grant their application by setting aside the Order for substituted service and striking out the suit.

Reacting to the application of the Defendants seeking the setting aside of the initial Order for substituted service and striking-out of the Originating Process which was marked Undefined, learned counsel for the Claimant filed counter affidavit of 6 paragraphs and a 3 page written address.

It is the deposition of the Claimant, that this suit was commenced vide a Writ of Summons filed on 11th May, 2020.

That they knows as of fact that when the Suit was filed, the Covid 19 Pandemic was still raging thereby necessitating the closure of many Government offices as well as business premises.

That they knows as of fact that the bailiffs of this Honourable Court made attempts severally to serve the Defendants/Applicants in this case with the Originating processes in this Suit but all to no avail due to the closure of Government offices nationwide.

That their J. O. Okpe, Esq. also made two attempts on 16th June, 2020 and 3rd December, 2020 to serve the Defendants/Applicants with the Originating Processes in this Suit at liaison office of the 1st Defendant at Plot 38 Ralph Shodeinde Street, CBD, Abuja, but was told by the security staff that their Administration Department/Unit which is responsible for receiving correspondence and Court Processes is closed due to the pandemic and that the Security men were instructed not to accept any correspondence or process.

That Claimant knows as a fact that subsequent attempts were still made and the bailiff of this Honourable Court was only able to

effect service on the Defendants/Applicants at their liaison office on 20th September, 2020 which processes were served on and acknowledged by one Salamatu Balangoggo, an Admin staff of the 1st Defendant at its Abuja Liaison office. The acknowledgement page of the Writ of Summons which is in the records of this Honourable Court is hereby attached and marked as Exhibit "A".

That they know as a fact that from 11th May, 2020 to 20th September, 2020 being the dates on which the Originating processes were filed and effectively served on the Defendants amounted to four (4) months and 10days which period is covered by and within the six (6) months lifespan of the Writ as stipulated in the Rules of this Honourable Court.

That Claimant/Respondent was informed by their Peter Jiya, Esq., a Principal Counsel in the Law Firm of Messrs GREENFIELDS at our office of the same address on 1st April, 2021 by 2:30pm prompt and they believe him, that one Sam T. Ologunorisa, SAN., on 16th November, 2020 telephoned him to confirm been briefed by the 1st Defendant and desiring to know the specific Court in which the matter is pending and he was accordingly obliged.

That they know as a fact that subsequently, Sam T. Ologunorisa, SAN., Counsel to the Defendants sent One Tayyibat Akano, Esq., an associate in the learned Silk's office, together with two others to both confirm the specific Court in which the matter is pending and furnish them with a copy of the Writ of Summons and other processes and they were so obliged. The Proof of Service on the said Tayyibat Akano on page of the Writ Summons served on Sam T Ologunorisa SAN., on 17th November, 2020 is hereby attached and marked as Exhibit "B".

That Claimant knows as of fact that as at the time of the service of this Writ on the Defendants/Respondents on 20th September, 2020, the Writ of Summons was active, valid and alive and NOT invalid.

That they knows as of fact that it was after service had been validly effected on the Defendants that the Court sat on 3rd November, 2020 and the Defendants together with their Counsel were absent hence, the Honourable Court gave a directive that the Claimant/Respondent should ensure service in Katsina, Katsina State to fulfill all righteousness.

That consequent upon the Order of the Court, A Motion Ex-parte for Issuance and service of the Writ outside the jurisdiction of this

Honourable Court was filed and moved on 10th December, 2020. This Honorable Court granted the Motion and made the Order for service outside jurisdiction on Katsina State Government in Katsina State and the case was adjourned to 18th February, 2021.

That they know as a fact that as at 10th December, 2020 when the Order of this Honourable Court was made, the Writ of Summons was valid, active and had neither lapsed nor expired and therefore the Court Order was not made without jurisdiction.

That Claimant know as of fact that the service of the Writ of Summons in this Suit on the Defendants/Applicants on 4th March, 2021 was only complimentary and in compliance with the Order of this Honorable Court made on 10th December, 2020 and does not invalidate the service effected earlier on 20th September, 2020 at the liaison office of the 1st Defendant/Applicant.

That the six months life span of a Writ of Summons filed on 11th May, 2020 will expire on 12th November, 2020 or thereabout.

That it will be in the interest of justice if this Application is refused and dismissed with substantial cost.

Learned counsel for the Claimant distilled a lone issue for determination in its written address in opposition to the Defendants/Applicants' application. The issue is as follow;

"Whether or not the Writ of Summons in this case was invalid as at the time of service of same to warrant this Honourable Court to strike it out."

Learned counsel contended that the lifespan of a Writ is six (6) months and that same was filed on the 11th May, 2020 and served on the 20th September, 2020 which was still within the validation period.

It is the argument of learned counsel for the Claimant, that the said Writ having been served on the Liaison Office is good service in the eyes of the law. Counsel cited the case of ***RIVER STATE GOVERNMENT OF NIGERIA & ANOR VS. SPECIALIST KONSULT (SWEDISH GROUP) (2005) LPELR 2950 (SC)*** in support.

On above authority, learned counsel then urged the Court to hold that the Writ was valid at the time of service, dismiss the application of the Defendants; same being frivolous.

COURT:-

I have read with interest the legal arguments of both parties vis – a – vis the respective affidavits in support of the divergent arguments for and against the application in question.

It is clear from the legal antagonism that the arguments have been narrowed to the lifespan of the writ in question and whether same was expired or not before service on the Defendants, hence a challenged to jurisdiction of this court.

It is therefore clear that without much ado, the endorsement and return on the writ of summons, when the writ was taken out shall be the only pointers to lead the court to the subject answer for the resolution of the legal conundrum.

It is not in doubt that the originating process of the Claimant was filed on the 11th May, 2020 and issued the same date by one Solomon Abute, the Registrar of Court.

It is similarly not in doubt that Claimant/Respondent admitted the fact that the said Writ was filed during Covid 19 pandemic which necessitated closure of many government office as well as business places.

It is his further deposition that the Bailiff of this court made attempts to serve the Defendants with the Originating Process but to no avail, but that eventually the Defendants were served at their liaison office with the Originating process on the 20th September, 2020.

When then is a Writ issued in law?

A Writ is issued when same is signed by a judge or an officer of the Court duly authorized to sign the writ.

On above, the case of ***KIMC VS. GOVERNOR OF PLATEAU STATE & ORS. (2016) LPELR – 40793 (CA);***

MOBIL OIL NIGERIA LTD. VS. ALHAJI HAMMED IJAIYA (1964) L.L.R 60 at 61.

Above position is in tacit agreement with the provision of Order 6 Rules 1 and 6 of the High Court Civil Procedure Rules of the FCT 2018 as amended.

For clarity, I hereunder reproduce the said provisions:-

ORDER 6

Rule 1

Originating Process shall be prepared by a Claimant or his legal Practitioner, and shall be clearly printed on A4 good quality paper.

Rule 2(1)

The registrar shall seal every originating process and it shall be deemed to be issued.

Rule 6(1)

The life span of every Originating Process shall be 6 months.

Rule 6(2)

Where a Court is satisfied that it has proved impossible to serve an Originating Process on any Defendant within its life span and a Claimant applied before its expiration for renewal of the process, the Court may renew the original or concurrent process for three (3) months from the date of such renewal. A renewed originating process shall be as in Form 7 with such modifications or variations as circumstances may require.

From the foregoing, therefore, it is true that Claimant was under an obligation to serve Defendants with the marked and issued

writ within the 6 months validation period or risk the instant consequences sought against it.

With or without attempt at service of Originating Process, the court upon application will always grant application for substituted service of court process.

It is on record that Claimant sought leave of this court to effect service of the Originating Process on the Defendants vide Motion **No. M/11935/2020** dated the 11th November, 2020.

The said leave was granted on the 10th December, 2020. Whereupon, the Defendants were served with the Originating Process.

Indeed it is the law through a long line of cases that documentary evidence is the best form of evidence.

The Order of this Court granting the said leave and the record of proceedings has both been taking judicial notice of... see ***ADEGBUYI VS. APC & ORS. (2013) LPELR – 22779 (CA)***.

Eventhough learned counsel tried to swim out of the crocodile infected waters by using every available skills at its disposal, the order of this court for substituted service made pursuant to the ex-parte application of the Claimant/Applicant betrayed Claimant.

It is very true that the Originating Process of Claimant was expired when Defendants/Applicants were served with same.

Jurisdiction is a threshold issue.. In view of its efficacy, once it is raised, same shall be resolved to avoid any efforts in futility.

Jurisdiction is the elixir of life of judicial power. Any exercise of Judicial Power in the absence of jurisdiction, no matter the erudition or the industry would not confer any legal benefit, same being void abinitio.

The cases of ***BRONIK MOTORS LTD. VS. WEMA BANK LTD. (1983) 1 SCNLR 296;***

MADUKOLU VS. NKEDELIM (1962) LPELR – 24023 (SC).

The fact that the said Originating process was served way outside the period of 6 months without renewal is indeed the vice and indeed virus that infested the process, hence robbed the court of its jurisdiction to entertain the matter.

It is therefore a more convenient point to set aside the initial order granting leave to Claimant/Respondent to effect service of the expired writ on the Defendants and ultimately strike- out the Originating Process for above reason.

On the whole therefore, the Order of this court granted on the 10th December, 2020 is hereby set aside.

On the whole, the expired Writ of Summons dated the 11th March, 2020 but filed on 11th May, 2020 with leave to serve on the Defendants sought and obtained on the 10th December, 2020 is hereby struck – out.

***Justice Y. Halilu
Hon. Judge
20th February, 2024***

APPEARANCES

A. C Nwsu, Esq. – for the Claimant.

Bolaji O., Esq. with Kehinde O., Esq. – for the Defendants/Applicants.