

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 20, GUDU-ABUJA
ON THURSDAY THE 2ND DAY OF JUNE 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE R. OSHO- ADEBIYI
FCT/HC/CV/1805/2020

BETWEEN:

- | | | |
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| 1. DEACON DENNIS NWODE
2. DEACON GODWILL ELIJA
3. DEACON SUNDAY OKAFOR
4. DEACON EMMANUEL ODO
5. DEACON JOSIA OMERUO
6. DEACON JULIUS GBOGAH | } | =====CLAIMANTS |
|---|---|----------------|

AND

- | | | |
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| 1. ZENITH BANK PLC
2. REV. STANLEY ANYANWU | ===== | DEFENDANTS |
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RULING

The Claimants instituted this action against the Defendants on the 11th day of June 2020. The 2nd Defendant entering a conditional appearance urged on the Court to strike out this suit for failure of the Claimants to regularize the Writ of Summons prior to service on the 2nd Defendant. The Court thereafter adjourned for the parties to address the Court on the validity or otherwise of the service of the Writ of Summons on the 2nd Defendant. The parties filed their respective addresses which this Court has read and digested.

The 2nd Defendant also filed a motion on notice praying the Court for the following reliefs;

1. An order of this Honourable Court dismissing the suit, same not commenced by due process of law and for abuse of Court process.

2. And for any further order or other orders as this Honourable Court may deem fit to make in the circumstance.

Attached to the motion is an affidavit of 9 paragraphs and the facts that gave rise to this application is that the Claimants served the writ of summons in this suit on the 2nd Defendant which had already expired and same was not renewed prior to service. That after the Court ordered that parties address the Court on this issue, the Claimants filed another fresh writ of Summons with suit No./CV/3416/2021 dated and filed on the 10th day of December 2021 before this Hon. Court. 2nd Defendant's Counsel also filed a written address, wherein Counsel raised two issues for determination thus;

1. Whether in the circumstances of this matter, an expired writ of summons which has not been renewed prior to service on the 2nd Defendant can be regarded as a valid process of Court on which the Court derives its jurisdiction and
2. Whether the filing of multiple suits is not an abuse of Court process liable to dismissal.

Arguing the issues and relying on authorities which this Court has duly noted, the 2nd Defendant's Counsel submitted that the effect of failure of Claimant to renew the Writ of Summons prior to service rendered the Writ invalid and therefore, robs the Court of its jurisdiction to hear and determine the matter.

Submitted that the Claimants filed a fresh writ of summons with the same parties, same subject matter and same reliefs which constitutes an abuse of Court process and urged this Court to dismiss the two suits with cost of N800,000.00 only.

In opposing the motion, the Claimants filed a counter affidavit of 7 paragraphs and a written address wherein Counsel raised a sole issue thus: “Whether this Court will do substantial justice in refusing the Applicant’s application.” Arguing the sole issue, Claimant’s Counsel submitted that there are no multiple suits over this action in any Court as the Court ordered a new Writ in place of the expired Writ. Submitted that the refiling of the suit is not frivolous or vexatious. Counsel urged the Court to refuse the application of the Applicant and hold that the 2nd Defendant has been properly served.

I have thoroughly read and examined the written addresses of both Claimants’ Counsel and the 2nd Defendant’s Counsel. I have also examined the motion of the 2nd Defendant urging on this Court to dismiss this suit for being an abuse of Court process and the reply of Claimants’ Counsel and the issue to be determined in this application is, **“Whether this Court has jurisdiction to entertain this suit against the 2nd Defendant”**

Before I delve into the issue for determination, I must at this point state that the facts stated in the affidavit of the Claimants in their counter affidavit to the 2nd Defendant’s motion on notice dated the 7th of February 2022, does not represent the true state of affairs of what transpired in Court, as at no point did this Court order that a new Writ be issued on the 2nd Defendant, moreover the Court record speaks for itself.

That being said, the law is trite that the validity of an originating process in a proceeding before a Court is fundamental, as the competence of the proceeding is a condition sine qua non to the

legitimacy of any suit as it borders on the issue of jurisdiction of the Court to hear the matter.

The 2nd Defendant is urging on this Court to hold that the Claimant's serving the 2nd Defendant an expired and unrenewed Writ robs this Court of its jurisdiction to entertain this case. By Order 6 Rule 1 of the FCT Civil Procedure Rule 2018, the lifespan of every originating process shall be 6 months. Order 6(2) also provide an option for renewal of the writ where it is impracticable to serve the Defendant within the stipulated time as stated in Order 6(1). Upon an examination of the processes in the Court's file, particularly the writ of summons, the Writ served on the 2nd Defendant was issued on the 11th of June 2020 and the 2nd Defendant was served on the 18th day of November 2021, which has clearly exceeded the 6 months as prescribed by the Rules of this Court. The Rules of this Court has been in place since 2018 and Claimants' counsel ought to have been well acquainted with the rules and do away with the old rules as it is very clear that this suit was filed using the form of the old rules as opposed to the 2018 Rules. The service of the Writ in this case was over a year after the prescribed 6 months and by that, the Claimant served an expired Writ to the Defendant without applying to the Court for a renewal, in essence, no order renewing the writ had been granted as prescribed by Order 6 Rule 6 (1) and (2) of the Rules of this Court.

Hence, the consequence of failure of the Claimant to renew the Writ before service of same on the Defendant is that the writ has become invalid as at the time it was served, and it is therefore incapable of activating the jurisdiction of this court.

The invalidity of the writ of summons unfortunately is a potent feature which prevents the court from exercising its jurisdiction to determine the substantive matter. The Supreme Court in the case of KENTE V. ISHAKU & ORS (2017) LPELR-42077(SC) Per Eko J.S.C held in page 27 para A-B that

“the validity of originating processes in a proceeding like the originating summons, writ of summons or notice of appeal, is the sine qua non for the competence of the proceeding that follows or that is initiated by such process”

Also, in the case of EWUKOYA & ANOR V. BUARI & ORS (2016) LPELR-40492 (CA) Per Nimpar J.C.A in pg 6-7 para D-A held

*“...the issue of the validity of the writ raises the question of jurisdiction of the Court as an invalid writ is worthless and cannot activate the jurisdiction of the Court to consider or entertain it. More so, the Court in the case of OLAGBENRO & ORS v. OLAYIWOLA & ORS (2014) LPELR-22597 (CA) held: “... a Court is only competent to adjudicate over a matter, when all the conditions precedent for its having jurisdiction have been satisfied. Thus, an action began by an incompetent process will divest the Court of jurisdiction to entertain the matter.”*See also the case of NEW NIGERIA BANK v. DENCLAG LTD (2005) 4 NWLR (PT. 916) 573.

Order 6 Rule 6 (1) of the FCT Rules which provides a life span of 6 months anticipated the eventuality of having difficulties in service of the Writ, hence it created an opportunity for renewal of the life span

of the writ under Rule 6 (2), which opportunity the Claimants failed to utilize before service of the process on the 2nd Defendant. There are also alternative means of service if the Claimants were finding it difficult to serve the 2nd Defendant, which the Claimants also failed to utilize. The Claimants' chose to sleep and are now scampering on how to rectify their blunder by making more blunder. I am in complete agreement with the 2nd Defendants' Counsel that the refiling of this suit, with a different suit number, same parties, same subject matter, and same reliefs amount to an abuse of Court process. This Court would therefore dismiss the suit filed by the Claimants with suit no.CV/3416/2021 against the Defendants as same amounts to an abuse of Court process. Be that as it may, as it relates to this instant suit, this Court cannot dismiss this entire suit as there are two defendants on record and would limit this ruling to the 2nd Defendant.

This Court therefore holds that it lacks the requisite jurisdiction or competence to determine the substantive suit against the 2nd Defendant. Consequently, the name of the 2nd Defendant is hereby struck out. I make no order as to cost.

Parties: 2nd Defendant present. All other parties absent.

Appearances: James Odiba, Esq., for the 2nd Defendant.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
2ND JUNE 2022