

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 13TH DAY OF DECEMBER, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO: FCT/HC/CV/1220/2014
MOTION NO: FCT/HC/M/11616/22

BETWEEN:

**SENATOR NICHOLAS YAHAYA UGBANE:....CLAIMANT/
RESPONDENT**

AND

HOUSING ALLIANCE LIMITED:....DEFENDANT/APPLICANT

AbdullahiHaruna (SAN), R.A. Ugbane, G.O. Adih for the Claimant/Respondent.
Peter O. Ofikwu for the Defendant/Applicant.

RULING.

The Defendant/Applicant filed this application after the Claimant/Respondent had filed his final written address.

The prayer sought are:-

1. An order of the Honourable Court setting aside the purported service of the Originating Summons, Statement of Claim, Witness Statement on Oath and the documents pleaded on the Defendant dated 30th June, 2014.
2. An order of the Honourable Court setting aside the Hearing and Order of the Honourable Court delivered on the 14th day of February, 2022 for substituted service on Ofikwu & Co; at Suite 076, 2nd Floor, Plot 943 Cadastral Zone, B06, Behind Federal Ministry of Works Mabushi, Abuja.

3. And for such further or other Order(s) that this Honourable Court may deem fit to make in the circumstances of this case.

Application is supported by 9 grounds and 10 paragraphs affidavit deposed to by Benedict Onalegwu. The grounds and affidavit in support averred that the Defendant registered office was at No 14 AdelekeAdedoyin Street VI Lagos with the regional office at 10 Durban Street off AdemolaAdetokunbo Crescent Wuse II, Abuja and renumbered to 40 Durban Street off AdemolaAdetokunbo Crescent and not No 6 Raymond Njoku Street South West, Ikoyi Lagos State. That the president/director of Defendant lived at No 6 Raymond Njoku Street South West, Ikoyi Lagos but has moved out from there in 2008.

In paragraph 4(c) of the affidavit in support, the learned counsel admitted being aware of the suit in Court from the time it was in the previous Court presided over by Belgore, J. but was not properly briefed by his clients. Further in paragraph 4(g) he admitted he was present in Court and was advised by Belgore, J to settle out of Court and he wrote for adjournment as the defence counsel to enable him get in touch with his client. Same also in paragraph 4, learned counsel admitted he had several communications with the learned silk for the Claimant which led to his collection of a copy of the originating summons which he signed.

That the Claimant later served him with the Court's order Motion Exparte. In his paragraph 4(r) Defence counsel averred ***"... Mr. Stephen Owotuse (i.e. head administration and finance of the Defendant) came to Abuja called him on phone and when he met him they discussed the case and he formally briefed him to defend the case and also***

informed him that they were not aware of the suit and no process was served on them...”

That upon being briefed he came to Court in January, 2022 and was informed that the case was for adoption of final written address.

In paragraph 5(a) the Defence counsel raised the issue of JURISDICTION of the Court based on failure of service of Court's processes.

In support of the application, the Applicant filed a 7 paragraph address raised 3 issues for determination;

1. Whether the Originating Processes in this suit were properly served on the Defendant/Applicant.
2. Whether this Honourable Court is seized with jurisdiction to entertain the instant suit.
3. Whether the Court can set aside the purported service of the Originating Processes claimed by Solomon Ogbogboyibo on 30th June, 2014 and Order of this Honourable Court of 14th February, 2022.

In concluding his argument on issue one, the Defence counsel submitted that the Plaintiff's counsel claimed to serve the Defendant the originating processes at No 6 Raymond Njoku Street South West, Ikoyi Lagos. Learned counsel further relied on Order 7 Rule 8 High Court Federal Capital Territory, whereby he raised the issue of originating summons being served personally by delivering same to the person and duly certified by the registrar. Defence counsel placed reliance on **Ogolo v. Ogolo (supra)** to submit that the service of the originating summons is in unreliably defective and should be set aside.

On issue of jurisdiction the Defence counsel argued by relying on Section 78 Company and Allied Matters Act and **Mark v Eke (2004) 5 NWLR (Pt.865) 54 SC**, to submit that service of originating summons must be at the registered office of the Company otherwise any other service would be bad and ineffective.

That the Court bailiff had earlier on deposed to an affidavit of non-service on the Defendant. Learned counsel submitted that non service of originating summons robs the Court of jurisdiction. He relied on **SCOA Nig PLC &Anor v. Methodist Church &Anor (2016) 8 CAR 204** and others.

On issue 3 the learned counsel urged the Court based on the non-service of the originating process, that the Court can set aside the purported service of the originating summons.

That the Court has an inherent power to set aside its order as the Court was misled in making the order.

He relied on **P.W.T.H. Ag v. Ceddi Corp Ltd (2012)2 NWLR CA 469, CBN v. AT & B.S.** and Section 97 of the Sheriffs and Civil Process Act.

Defence counsel further submitted that assuming without conceding that the Defendant was served, that the mode of service was outside the order of the Court. That the mode of service was not to serve at No 6 Raymond Njoku Street South West, Ikoyi Lagos and that the bailiff alluded that he left the process at No 6 Raymond Njoku Street South West, Ikoyi Lagos. He relied on **Akulega v. Benue State Civil Service Commission (2001) 12 NWLR (Pt.721) 524** to submit that there was no fair hearing.

In conclusion the Defence counsel urged the Court to hold that the Defendant was not served.

In response the learned counsel to the Claimant AbdullahiHaruna (SAN) presented a 52 paragraph counter affidavit deposed to by one Godfrey O. Adih. The learned counsel for Claimant denied knowing anything about the garnishee proceeding but in his paragraph 8 Claimant averred that the Defence counsel, Mr. Ofikwu was part of the conversation and settlement of this case out of Court as far back as 2017 and that he had written letters for adjournment. That the Defence counsel, Mr. Ofikwu had from inception acted as counsel for the Defence.

In paragraph 12 of the counter affidavit, Claimant averred that his conversation with the Defence counsel, was based on the way forward for the settlement out of Court and not about service of Court process.

That the Defence counsel, appeared as counsel to the Defendant on the day the Claimant was relisting his matter through Motion on Notice M/1802/19 at the present Court on 29th January, 2020. That by paragraph 4(e) and (f) of affidavit in support, whereby the Defence counsel, admitted being aware of the suit in Court on 14th December, 2016. That thereafter the Respondent averred in paragraphs 16-18 of the counter affidavit that the Defence counsel participated in the proceedings leading to the relistment of the suit but failed to appear in Court at subsequent adjournments without excuse. That, that led to the respondent bringing an application to serve the Defence counsel by substituted means of pasting the subsequent processes since the Defence counsel's office was locked, which application was heard and granted on 22nd February, 2022.

In response to paragraph 5(a)-(l) the Claimant/Respondent averred that the Writ of Summons was duly marked and endorsed by the registrar.

That the Writ of Summons was issued and served on the Defendant by leave of Court outside jurisdiction on 23rd May, 2014. That following the issuance of the Writ of Summons and accompanying documents, Mr.Solomon Ogbogboyibo of the Claimant's counsel chambers gave an undertaking to serve the Writ of Summons and other accompanying documents outside jurisdiction of the Court,Exh 'A' was attached as the copy of the undertaking.

In paragraph 24, Respondent averred that the said Writ of Summons and other accompanying documents were served on the Defendant at its registered office at No 6 Raymond Njoku Street South West, Ikoyi, Lagos, on 30th June, 2014. Attached as Exh 'B' is the affidavit of service.Further in paragraph 25-31 the Claimant/Respondent's counsel stated, that in confirmation of the address of the Defendant, the Corporate Affairs Commission (CAC) on application by the Respondent,of the details of address of the Defendant gave Respondent's counsel the copy of the report marked Exh 'C'. That further to ensure the presence of the Defendant who refused to appear in Court that he obtained an order of Court on 11th February, 2015 from the previous Court Belgore J., to serve the Defendant hearing notice and subsequent processes by advertising same in Daily Trust a widely circulated Newspaper in Federal Republic of Nigeria.

That in compliance with the Court's order, the hearing notice was published at page 68 of the Daily Trust Newspaper on 23rd March, 2015 as against 14th April, 2015. That after the publication the case was heard on 17th May, 2017 and that the Defendant/Applicant's counsel Mr.P. Ofikwu wrote for adjournment on grounds of ill health and the matter was adjourned to 11th July, 2017. That in paragraph 31 he stated, that neither the Defendant nor the counsel appeared on the

said date and that the case lingered on until it was struck out on 1st February, 2018.

Further in paragraph 32-37 the Respondent's counsel averred that he applied for relisting of the suit and subsequently the suit was transferred to Hon. Justice A.O. Otaluka in 2019 and the Motion M/1802/19 for relistment was filed on 9th December, 2019 and served on the chambers of the Defendant/Applicant's counsel at 076, 2nd floor Plot 945 Cadastral Zone, B06 Mabushi which is the address contained in the letter head of Defendant/Applicant's counsel which he used to apply for adjournment of the said case on 17th May, 2017, before Belgore J. That on 29th January, 2020 the application was heard and granted and the Defendant/Applicant's counsel, Mr. Ofikwu was in appearance. The suit was adjourned to 4th March, 2020 for hearing. That on 4th March, 2020 the Defendant and his counsel were absent. Attached is the receipt for default payment for late application to relist, marked Exh 'D'.

That the suit was yet adjourned to 28th April, 2020. That hearing was caught by the judicial staff strike, it was further adjourned to 18th November, 2020, and later 15th February, 2021.

In further responses in paragraph 37-43 of the counter affidavit, Respondent's counsel stated that he yet made another application to serve the Defendant/Applicant's counsel hearing notice by substituted means since they were not appearing in Court by pasting same at the subject matter the suit.

That the application was granted but as a result of a mix up in date, the matter was struck out again on 11th November, 2021. That it was again relisted by M/7965/22 and order to serve the Defendant by substituted means. That the application was granted. Further that the Defendant/Applicant's counsel,

Mr.Ofikwu also on 10th June, 2021 collected copies of the process from Respondent's counsel.

In paragraph 46, the Respondent's counsel averred that the Defendant and his counsel have been aware of the suit since 30th June, 2014. That since 20th June, 2014 that the Defendant has failed to file any defence or memorandum of appearance.

After summarising the application, affidavit in support, counter affidavit and further and better affidavit, supported by written addresses, the following issues are distilled for consideration:

1. Whether this Court has jurisdiction to entertain this matter based on:
 - a) Whether the application challenging jurisdiction was a demurrer.
 - b) Whether the originating summons were endorsed accordingly.
 - c) Whether there was proper service of the originating summons on the Defendant/Applicant.

In considering issue I(a), jurisdiction, is broadly defined as the limits of power imposed on a validly constituted Court to hear and determine a case. A Court therefore must have both jurisdiction and competence to be properly seized of a cause or matter –**PDP v. Okorocho (2012)15 NWLR 205.**

A Court before commencement of hearing ought to have legal power to hear and determine a suit commenced before it. Any objection to the jurisdiction of a Court can be raised based on the:

- (i) Face of the Writ of Summons.
- (ii) Statement of Claim.
- (iii) Capacity of those bringing the action.

(iv) On basis of evidence received.

Further the ingredients of jurisdiction constitute of:

- a) Court being properly constituted.
- b) Subject matter of the action being within jurisdiction.
- c) It must be initiated by due process of law.
- d) Condition precedent to exercise of jurisdiction must be fulfilled – **Madukolu v. Nkemdili (supra)**.

I will consider the issues raised by the Respondent's counsel AbdullahiHaruna (SAN) on whether his application challenging the jurisdiction of this Court was a demurrer.

It is my reasoning that objection to jurisdiction can be taken whether or not pleadings have been exchanged. Though the existence of demurrer proceedings have been quenched in High Court, Civil Procedure Rules, that does not mean that a party who has a genuine and legitimate objection on jurisdiction has no right to ventilate his grievance without the exchange of pleadings. It is not in doubt that jurisdiction of a Court is very fundamental and a matter of law and can be raised at any time before judgment. Thus in **Oba Jacob Oyerogba v. Chief LamidiAkinyemi&Ors, Court of Appeal** cited **Nigeria Deposit Ins Corp. V. CBN (2002) 7 NWLR (Pt.76) 776** where Uwaifo, JSC held that,

“The tendency to equate demurrer with objection to jurisdiction could be misleading... But as shown, the issue of jurisdiction is not a matter for demurrer proceedings. It is much more fundamental than that... what it involves is what will enable the Plaintiff seek hearing in Court over his grievance, and get it resolved because he is able to show that the Court is empowered to entertain the subject matter...”

Placing reliance on the above, obviously the application before this Court is not a demurrer. I therefore hold that the application before this Court is not a demurrer but a challenge on the jurisdiction of this Court.

Another issue raised is **whether the process served on the Defendant/Applicant was initiated by due process of law.**

The Defendant/Applicant's counsel complaint was that the process was not endorsed as process to be served outside jurisdiction in compliance with Sheriff and Civil Process law and at same time not served properly. The Respondent's counsel argued to the contrary.

The Defendant/Applicant's counsel argued in paragraph 6.5 of his address in support of the application that the Claimant/Respondent failed to comply with Section 97 of the Sheriffs and Civil Process Act and therefore the non-compliance renders the service of the Writ of Summons voidable – **Odu'a Investment Co. Ltd v. Talabi (1997) 10 NWLR (Pt.523)1.**

I have looked carefully at the process before this Court which is the Writ of Summons dated and filed on 17th April, 2014 signed by the registrar which bears I quote, ***"This Writ of Summons is to be served out of FCT and in Lagos"***. This cannot be interpreted to be nothing else than an endorsement of service outside jurisdiction sufficient to serve the purpose of due process in law, and the jurisdiction of this Court cannot be question on this basis.

Another issue was on **whether there was proper service of the Writ of Summons on the Defendant.**

Defendant/Applicant's counsel vehemently argued and relying on Section 78 Company and Allied Matters Act in urging the Court to hold that the originating process and hearing notice

were not properly served and therefore, in the absence of proper service the Court lacks jurisdiction to determine this suit. He relied on **Dagana v. Usman (2013)6 NWLR (Pt.1349)51** and other cases cited.

Section 78 Companies and Allied Matters Act 2004 provides;

“A Court process shall be served on a company in the manner provided by the rules of Court or 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.”

In addition to this the Defendant relied on Order 7 Rule 8 High Court of Federal Capital Territory, Civil Procedure Rule and the case of **Mark v. Eke (supra)** to vigorously argue that there was no proper service in accordance with the law.

Defendant/Applicant's counsel argued to the contrary as analysed earlier. Defendant/Applicant's counsel argument precisely was that the bailiff Mr. Ojo Adeniyi of High Court Lagos initially attempted to serve the originating process and hearing notice at No. 6 Raymond Njoku St Lagos and failed and deposed to an affidavit of NON SERVICE (Exh 'B' attached to the application).

That later Solomon Ogbogboyibo on the order of Court on 5th May, 2014 now served the originating summons by leaving the process at No. 6 Raymond Njoku Street, South West Ikoyi, Lagos. Defendant/Applicant's counsel submitted *“that this was not the mode of service ordered”*.

However Defence counsel did not inform this Court of the mode of service ordered by the Court. In paragraph 5 (supposedly paragraph 6) of the affidavit in support, the Defendant averments were that the Defendant was not served the process

according to the order of Court. That if the service is not in accordance with the law that it is fundamental and any fundamental flaw in service, the order should be set aside. The Defendant/Applicant's counsel placed reliance strongly on Section 78 Company and Allied Matters Act 2004 and **Mark v. Eke (supra)**.

On rules of interpretation of Section 78 Company and Allied Matters Act; it is my opinion that where the words used in a statute are clear they should be given their ordinary meaning without embellishments– **Elizabeth MabaMije v. Hans Wolfgary Otto (2016)LPELR 26058(SC)**.

It is my opinion that Section 78 Companies Allied Matters Act is clear and unambiguous.

In the instant case the Court's process referred to is the originating process, the Act provides in step one that such process OR ANY OTHER DOCUMENT be served on a company by manner provided for by the Rules of Court. This means that the Act lent credence to the rules of High Court of Federal Capital Territory, Civil Procedure Rule. In other words, whatever way the rules of Court provides as a means of service on the company such should be complied with. Order 7 Rule 8 High Court of Federal Capital Territory, Civil Procedure Rule, therefore provides: ***"... every originating process requiring personal service may be served on registered corporate or body corporate by delivery at the head office, or any other place of business of the organisation within the jurisdiction of the Court."***

Step one requires that the originating Court process be served on the company by delivery at the head office or any other place of business of the company.

Also the Section 78 Companies and Allied Matters Act provided that such service is effective by leaving it at the company, that is at any of the company's address, at its registered office or the head office or any other place of business and it could also be served by delivery to the registered address or other place of business.

On whether the company could be served by leaving the process at registered address or by substituted means, relying on **Atlantic Dawn Ltd & Ors v. G-Net Communication (2019) LPELR 47772 CA 28-32**, Court of Appeal held;

“Service of mandatory process is fundamental to the jurisdiction of the Court. When there is a specific provision that a party is to be served in a particular manner, that has to be observed otherwise, the jurisdiction of the Court against that party would not have been invoked. WEMA BANK PLC V. BRASTEM-STERR (NIG) LTD (2011) 6 NWLR (PT.1242)67. The essence of service of process is to put a party on notice. Section 85 of the Sheriffs and Civil Processes Act, CAP 470 LFN, 1990 stipulates that service shall be in accordance with the directive of the Court. In the instant case, the trial Court directed that substituted service be effected on the appellants. The mode of service on a limited company is different from service of process on a natural person. The Companies Allied Matters Act by Section 78, makes provision on how to serve documents generally on any company registered under it.

By leaving the Court process or other document at the office of the company. In the instant case, the appellants were served via substituted means. This was done by pasting the notice on the gate of the

appellants' hotel. Now, it is general law, that substituted service is not employed on a company. This is because the need for substituted service arises because personal service cannot be effected. However, there is an exception to the general rule. Where the plaintiff/respondent was unable to effect service on the defendants/appellants, then an order for substituted service is warranted.

- ***RFG LTD V. SKYE BANK PLC (SUPRA). After all, pasting the processes on the door at the corporate office of the 1st appellant, amounts to “serving the Court process at the office of the company” as required by Section 78 of CAMA, and Order 11 Rule 8 of the FCT Abuja High Court (Civil Procedure) Rules 2004. Such an evasive party cannot be allowed to hold its creditors and the Court to ransom.”(underlining mine)***

I draw inspiration from the Court of Appeal decision in **Atlantic Dawn Ltd &Ors v. G-Net (supra)** to hold that;

- (1) The service of the originating process was not only in accordance with the law but also in accordance with the directive of the Court in the instant case. Though the mode of service was not by substituted means but by the directive of the Court by an undertaking of the Claimant's counsel, ordered that the Defendant be served by the counsel Solomon Ogbogboyibo which he did serve on the Defendant by leaving the process at the Defendant's registered office was in accordance with the law.

The Defence counsel argument that the parties had agreed in paragraph 10 of the 'Memorandum of Agreement'Exh 'I'

attached to the affidavit in support that notices and communications be sent to No 10 Durban Street, off AdemolaAdetokunbo Crescent, Wuse II, Abuja. That such correspondence and notices includes the originating summons. I have carefully searched through Exh 'I' Memorandum of Agreement and was unable to discover where the parties made the agreement that service of Court's summons be served on the Defendant at No 10 Durban Street Wuse II, Abuja.

My interpretation of paragraph 10 of Exh 'I' is that correspondence to be delivered to the Defendant should be by courier to the addressee. No address was stated. I hold that the arrangement was an internal arrangement for the service of correspondence between the parties and not services of Court processes.

I am convinced that the reasonwhy the previous Court made order by substituted means of subsequent processes on the Defendant was because of the evasiveness of the Defendant in receiving subsequent processes. The authority of **RFG Ltd v Sky Bank PLC (supra)** held as good service pasting of the processes at the door of the corporate office of the company. It is therefore not a bad service if the hearing notice and other processes were left at the registered office of the Defendant or at the counsel's office.

Also, in the case of **PHCN Plc&Anor vs. AG Sokoto State &Anor(2014) LPELR-23825(CA) 14 p. 35-36, paras D-A** per Awotoye JCA, the Court of Appeal held thus:

“It is not in doubt in this appeal that the originating processes and other court processes were served on the defendants in their Sokoto office as opposed to their registered Head office. The contention of learned

senior counsel is that Order 12 Rule 8 of the High Court Civil Procedure Rules Sokoto allows this. True, Section 78 of the Company and Allied Matters Act leaves service of Court processes on companies to be governed by the Rules of Court. Section 78 of the Act reads 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 at, or sending it by post to the registered office of the company.”

The Section 78 of the Company and Allied Matters Act provision is unambiguous, clear and therefore must be given its literal meaning.

Further to the above, in the course of writing this ruling, I have meticulously perused the entire file and discovered that the Defendant/Applicant in an earlier motion M/7829/22 seeking the same reliefs, filed on 10th June, 2022 stated in paragraph 4(h) of the said affidavit in support.

“That the failure of the Defendant/Applicant to file and serve its statement of defence/counter claim in this suit was not calculated to delay the hearing of the suit as both the Chairman and Head of Admin and Finance of the Defendant has been indisposed. A copy of Our Lady of Apostles Hospital Medical report dated 27/4/21 is attached and marked as Exh ‘A’.”

By reason of these authorities **Ugochukwu v. Nwoke&Anor (2010) LPELR-11616(CA)**, in Court of Appeal held,

“It is trite law that in order to do justice, Court is entitled to look at a document in its file while writing judgment or ruling even if such document was not tendered or admitted as exhibit at the trial.”

Also in **A.G. Federation v. Uwazurile&Ors (2006) LPELR-1185(CA)** Court of Appeal held;

“It is settled law that a Court is entitled to look at a document or documents in its file.”

Based on the above authorities, I found out that paragraph 4(h) of the affidavit in support of the earlier motion seeking the same reliefs was an admission by the Defence counsel who informed the deponent that the Defendant was served the originating process but that the Defendant could not file a defence in time because the Chairman of the Defendant was indisposed. With this admission of service of the originating summons, the Defence counsel cannot be heard to say that the Defendant was not served any process in the suit in the present Motion on Notice M/11616/22.

This Court relying on the authority of **Ideh v. Onyejese&Anor (1997) LPELR-8066 (CA)** has every right and authority to use the averment of paragraph 4(h) which is admission of service to arrive at a decision.

Again the question that arises is **who should serve Court process?** Service of originating process must be served by a Sheriff, Deputy Sheriff, Bailiff or other Court officer which includes lawyers and such services are:-.

- Personal service.
- Through courier.
- Service by hand.
- Through an adult at the premises of Defendant.
- Service by substituted means which is by the order of the Court.

In the instant suit, the Applicant argued that the service by substituted means of the hearing notice and other processes

was not in accordance with the Court's order. Defendant averred in paragraph 5(f),6(f) that;

“The honourable Court did not order substituted service of the originating process on the Defendant and Solomon Ogbogboyibo cannot carry out substituted service as claimed by him.”

Also in paragraph 5(d)(sic)(6d), the Defendant/Applicant's counsel concluded that **“where service of process is legally required, the failure to serve it in accordance with the law is fundamental flaw...to have the order set aside.”**

As I was analysing the affidavit and exhibits attached, I discovered that the Defendant/Applicant attached an order of Court for leave to issue and serve the Writ of Summons on the Defendant at No 6 Raymond Njoku Street South West, Ikoyi, Lagos dated 5th May, 2014.

The question is, **was the service of the originating process effected by the said Solomon a substituted service.**

The records from the existing file showed that the bailiff failed to serve the Defendant and swore to an affidavit of non-service on the Defendant at No 6 Raymond Njoku Street South West, Ikoyi, Lagos. The argument of the Respondent's counsel was that they obtained an undertaking from the Court Exh 'A' dated 27th June, 2014 to serve the originating summons and hearing notice outside jurisdiction which was granted. Further Solomon Ogbogboyibo deposed to an affidavit that based on the undertaking that the originating summons and hearing notice were subsequently served on the Defendant.

The Respondent's counsel submitted that based on the letter of undertaking to the Court and Court's approval that he was handed over the Writ of Summons and other processes which

he served on the Defendant outside jurisdiction by dropping same at No 6 Raymond Njoku Street South West, Ikoyi, Lagos, on 30th June, 2014. This is not substituted service as claimed by the Defendant/Applicant's counsel, but looking at it from Section 78 Company and Allied Matters Act and Order 7 Rule 8, the service of dropping at the registered address of a company is allowed and deemed to be proper service.

In other words the service effected by the Claimant on the Defendant complied with both Section 78 Company and Allied Matters Act and Order 7 Rule 8 of the High Court Rules of this Court.

The case of **Mark v. Eke (supra)** is only applicable where rules of Court of a specific jurisdiction fail to stipulate the mode of service of process on companies. The authority of **First Bank Nig PLC v. Cornelius Ozoegbula (2014)LPELR 24024 CA,** the Court of Appeal threw more light and held that:

“Strict application of the above provisions as in (Mark v. Eke) led to much controversy and in fact, hardship on Plaintiffs whose cases and matters were prone to being struck out or dismissed where the originating process were served on branch office or Defendant who was a corporate person. Sometimes, the law looked on, in pretence or apparent mischief, as counsel for a corporate person approached the Court, admitting service of the original process on his client, but applying for nullification of the service for being improper because it was not served at the registered or head office of company ... for me it sounds ridiculous as it beats every sense of logic and sound reasoning for a man, who has been served with the process of Court and for which he responded by entering appearance and filing his defence at the end

of the case, turns around and seeks to nullify the judgment on grounds that there was no due service of the originating process...”

The reasoning of the Court of Appeal goes to settle the issues raised in the instant case.

The Defence counsel responded in writing letters and presenting himself as counsel to Defendant in the Court. However, Defendant/Applicant’s counsel argued that he was unaware of the case until sometime in June, 2022 because there was no proper service. In admitting service, in paragraph 4(f)(g)(h) of affidavit in support of the application and paragraph 4(f)(g)(h) of the further and better affidavit, the Defendant/Applicant’s counsel repeated himself and I replicate the said paragraphs.

(f) “It was as a result of the above activities that he became aware of this case but that he was not briefed to defend same.

(g) That he was given a hint by the Honourable Judge, Belgore J. to try and get briefed so as to amicably settle the case and to that end, he applied for an adjournment of the case to get in touch with the Management of the Defendant.

(h) On the next adjourned date, he had been unable to get across to either the Chairman or the head of administration of the Defendant, Messrs. Gregory Ozegbe and Stephen and wrote to the court that he was indisposed to come to court to brief it and asked more time to get across to the Management of the Defendant.”

Let's recall that the affidavit of service which is a conclusive evidence of service reads "service effected on 30th June, 2014."

Defendant/Applicant's counsel in the above paragraphs of his different affidavits admitted being aware of the case on 14th December, 2016. Paragraph 4(e) of the affidavit in support implies strongly, that the Defendant had been served with the originating summons. To confirm that he was aware of this case in 2014, in paragraph 4(h) of the affidavit in support and paragraph 4(h) of the further and better affidavit the Defendant/Applicant's counsel said that he was unable to get across to the administration of the Defendant Messrs Gregory Ozegbe & Stephen and that he wrote to the Court that he was indisposed to come to Court and he asked for more time to get across to the Management of the Defendant. The Defence counsel cannot without being briefed write to a Court on behalf of a party without the party instructing him. Again it is a strong inference drawn from paragraph 4(h) of Motion on Notice M/7829/22 dated and filed on 10th June, 2022 that before the admissions of the Defence counsel that indeed the Defendant was served. The originating summons and by employing delay tactics, Defence counsel refused to enter an appearance and file a defence. It is not in doubt that by these admissions, this Court has jurisdiction to hear and entertain this extant suit.

After deeply X-Raying these averments amounting to admission of being properly served I borrow my lords words in the case of **First Bank Nig PLC v. Cornelius Ozoegbula (supra)** that it sounds ridiculous and bewildering and devoid of any logic and sound reasoning for a counsel to depose to an affidavit that he became aware of this matter on 14th December, 2016 and responded by writing a letter for adjournment asking

the Court to give him more time to come to Court to brief the Court and also to get across to the Defendant.

The Defendant/Applicant's counsel did not stop there he kept on having conversation with the Respondent's counsel over settlement of the matter out of Court and at same time seeking for adjournments to get "formally briefed". See paragraph 4(m) of the affidavit in support of the application.

The question is if Defendant was not served the originating process and put on notice about the pending suit, how would the Defendant/Applicant's counsel be writing for adjournments, having conversation for amicable settlement if he were not briefed.

In any case, the inference I can draw from these, particularly paragraph 4(m) of the affidavit in support is that the Defendant had been served with the originating summons, the Defendant/Applicant's counsel Mr. Ofikwu was briefed (see paragraph 4(m) of the affidavit in support) and he was communicating with the Respondent's counsel and the Court through letters of adjournment to enable him meet with his client.

The argument of the Defendant/Applicant's counsel that there are two contradicting affidavits of service and that oral evidence should have been called to resolve it, is a lame argument. The affidavit of service before the Court was the affidavit of Solomon Ogbogboyibo. The earlier affidavit of the bailiff that he was unable to serve shows that there was an attempt to serve but it did not succeed.

Again, the argument that the address of service at No. 6 Raymond Njoku St S/West, Lagos was not registered address of the Defendant. Defendant/Applicant's counsel produced another Corporate Affairs Commission (CAC) Form C07 to

argue that Exh 'C' (attached to Counter affidavit) 'status report' on the Defendant from Corporate Affairs Commission (CAC) was wrong. The Corporate Affairs Commission (CAC) from Exh 'C' confirmed that the registered address of Defendant is at 6 Raymond Njoku St S/West, Lagos.

The Exh 'C' also exhibited the Directors of the Defendant with same No. 6 Raymond Njoku Street South West, Lagos which did not indicate that No. 6 Raymond Njoku Street South West, Lagos, was the residential address, of the director.

The said Exh 'C' is dated 8th December, 2020. The Defendant/Applicant's counsel argued that the Exh 'C' "status report of Housing Alliance Limited" conflicts with Exh 'B01' (attached to further and better affidavit) showing directors of the Company. The Defence counsel admitted thereafter that there existed No6 Raymond Njoku St S/West, Lagos, which was residence of the director but that he had moved out of the premises. I consider this argument an afterthought. It is trite law that he who asserts must prove, the onus still rests on the Applicant to prove that the Defendant's registered address was not at 6 Raymond Njoku Street South West, Lagos at any time, in contradiction to the 'status report' Exh 'C' attached to the counter affidavit. Again this cannot be the case because the earlier paragraph 4(h) of Motion on Notice M/7829/22 was a clear admission of being properly served but could not file a defence in time.

The Exh 'C' dated currently 8th December, 2020 while Exh 'B01' attached to the further and better affidavit is dated 2004. I hold that the Defendant's company was at No 6 Raymond Njoku St South West, Ikoyi Lagos and he was properly served. Having resolved the above issue that the services on the Defendant at No. 6 Raymond Njoku St South West, Lagos was a proper service, basically relying on the admissions of the

Defendant/Applicant's counsel again in paragraph 5(e)(f)(g) of the affidavit in support to further hold that service on the Defendant at No 6 Raymond Njoku Street South West, Ikoyi Lagos is proper.

I would further add that the Court order to serve the Defendant hearing notice and subsequent processes in this suit was equally complied with and the averment of the Defendant in paragraph 24 of the further and better affidavit that he does not read Daily Newspaper that is to his own detriment. I also hold that hearing notices were properly served on the Defendant.

There is need to also address the issue raised by the Respondent's counsel on **whether the Defendant/Applicant's counsel who continued to appear in Court but never filed a memo of appearance had any right of hearing in this case?**

The records of this Court showed that since this matter was transferred to this Court, in 2018, the Defendant/Applicant's counsel, Mr. Peter Ofikwu has been putting up appearance on several dates and the records showed he was served hearing notices, for adjournment to wit; 22nd March, 2022 absent in Court but served, 16th May, 2022 absent in Court but served, 4th July, 2022 present, 27th September, 2022 present and 15th November, 2022 he was present, yet he had not deemed it fit to formally enter appearance. The legal implication is that the Defendant is not formally represented and the Defendant/Applicant's counsel cannot be heard until he complies with Order 9 of the High Court, Federal Capital Territory, Civil Procedure Rules. The key word is that the Defendant SHALL file memorandum of appearance in Order 9 of the rules of this Court.

The above order is a condition precedent for any party to be represented by a counsel. Failure of counsel to enter appearance implies that the counsel cannot not be heard.

Any application filed by such counsel does not have any legal backing because the rules must be obeyed. Therefore, assuming but without conceding that the Defendant was not properly served, Mr. Peter Ofikwu the Defence counsel who failed to enter any appearance whether full or conditional has no legal status to be heard in this matter. A party cannot be in breach of the rules while urging the Court to sanction other party.

Another issue worthy of consideration is whether paragraph 5(a-d) of affidavit in support fell short of Section 115 Evidence Act. I have meticulously perused the said affidavit and found that indeed paragraphs 4(a), 5(a-d) of the affidavit in support contain extraneous matter, legal argument, way of objection and conclusions and therefore fall short of requirements of Section 115 Evidence Act and are hereby expunged.

Based on the above, the application before this Court is baseless and is hereby dismissed.

HON. JUSTICE A. O. OTALUKA
13/12/2022.

