

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. 15
CASE NUMBER : SUIT NO: CV/2383/2020
DATE: : WEDNESDAY 15TH SEPTEMBER, 2021

BETWEEN:

DR. (CHIEF) CAIRO OJOUGBOH } **CLAIMANT/
RESPONDENT**

AND

MRS. GLORIA OKOLOGBO } **DEFENDANT/
APPLICANT**

RULING

The Applicant vide a Motion on Notice approached this Honourable Court for the following:-

1. An Order of this Honourable Court dismissing this suit in its entirety for being incompetent for want of jurisdiction.
2. And for such further Order or Orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the Applicant was brought is as follows:-

The Originating process in this suit which was to be served outside the FCT, specifically in Benin city state was served without leave of this Honourable

Court and without the requisite endorsement thereon.

In support of the application is a 6 paragraph affidavit deposed to by one Mbang Shishang, John of suite C37 Danziyal Plaza, Olusegun Obasanjo way, Central Area Abuja.

It is the deposition of the Applicant that the Defendant was served with the originating process in this suit including the writ of summons sometime in the month of November, 2020.

It is the averment of the Applicant that the address for service which was attributed to the Defendant as it appears on the writ of summons is “Phychatric Hospital, Benin City, Edo State.”

That there is nowhere on the face of the writ where it was endorsed to be served outside jurisdiction. A

copy of the said writ of summons is herewith annexed and marked Exhibit “A”.

That the Defendant does not reside within the jurisdiction of this Honourable Court and that he knows that Benin City Edo State is outside the jurisdiction of the court.

That he was informed by G.O Egbule Esq. of counsel on Monday the 1st day of February, 2021 at about 12 noon in our Central Area Office that leave of this Honourable Court ought to be first sought and secured before the Defendant could be properly served.

A written address was filed wherein 2 issues were formulated for determination to wit;

- a. Whether the failure to endorse the writ for service outside the state renders the above suit incompetent for want of jurisdiction.
- b. Whether the failure of the Claimant to obtain, leave of this Honourable Court before serving the originating process constitutes a fundamental defect which strips this Honourable Court of jurisdiction.

On issue one, learned counsel submit that it is a trite law that jurisdiction is the lifeblood of any suit, the issue of jurisdiction is fundamental as it touches on the competence of the court to entertain any process, jurisdiction is so important that it can be brought up at anytime even on appeal, and whenever it is brought up, the court must address it first before diving into the substance of the suit. ***OLOBA VS***

AKEREJA (1988) 3 NWLR (Pt. 84) 508; INEC VS OGBADIBO LOCAL GOVERNMENT & ORS (2015) LPELR – 24839 (SC); MADUKOLU & ORS VS NKEMDILIRI (1962) LPELR – 24023 (SC); KIDA VS OGUNMOLA (2006) ALL FWLR (327) 402, (06) LPELR, 15 were cited.

Learned counsel contended further that pursuant to the Sheriffs and Civil Process Act that any writ of summons issued which is to be served outside a state must be so endorsed, no such endorsement was made on the face of the writ of summons in this suit. Section 97 of the Sheriffs and Civil Process Act was cited.

Counsel finally submit that the writ of summons being an integral part of the originating process is incompetent due to the absence of the requisite

endorsement for service outside of a state, it therefore goes to the issue of jurisdiction counsel therefore urge the court to dismiss this action in its entirety.

Upon service, the Claimant filed a counter affidavit of 8 paragraph deposed to by one Olaolu Alao.

It is the deposition of the Respondent that. He was shown a filed copy of a purported Notice of preliminary objection as well as an affidavit in support filed by the Defendant herein.

That he knows as a fact that the contents of the said affidavit are false.

That contrary to paragraph 3, 4 and 5 of the said affdaivit, he know as a fact the Claimant gave him the phone number of the Defendant which forwarded

to the Bailiff/Sheriff of this court sometime in November, 2020.

The Respondent further deposed that he knows as a fact that he was in attendance when the Defendant was called on her phone by the Bailiff/Sheriff of this court and she personally informed the bailiff of this court that she is now residing in Abuja but she was yet to have a specific address for service within FCT, but that the bailiff could call her on phone at anytime to come and receive the originating process at the High Court premises in Maitama, Abuja – FCT.

That the bailiff of this court rightly informed him on 17th November, 2020 through phone call at about 12 noon that he called the Defendant on the same day and she immediately came to the FCT High Court,

Maitama, Abuja premises where she was personally served with the originating processes. The Affidavit of service deposed to by the said bailiff/sheriff dated 17th November, 2020 is hereby attached as “Exhibit A”

That the Defendant received all the originating processes in this suit from the bailiff at the premises of the FCT High Court Maitama, within the jurisdiction of this court.

A written address was filed wherein a sole issue was raised for determination to wit;

“Whether the Notice of Preliminary objection is competent and therefore can be countenanced”

Learned counsel submit that the Applicant’s Notice of Preliminary objection is frivolous and incompetent. The Defendant has erroneously posited

that the originating process in this suit was not properly served and this robbed the court of the requisite jurisdiction to entertain this suit.

Learned counsel submit that, the Defendant at the time of the service of the originating process in this case, resides within the jurisdiction of the court and was duly served with same by the bailiff of this court. Therefore, the contention of the Applicant that the originating process in this suit was served without the leave of this court and without the requisite endorsement thereon is of no moment, unrealistic, uncalled for and thus should be discountenanced.

Counsel submit further that the application of the Defendant is very frivolous and its intendment is to embarrass and annoy the claimant, thus, the court is

urged to dismiss the notice of preliminary objection for being frivolous and abusive of the process of court.

COURT:-

I have read with interest the arguments of both counsel touching on the issue of importance of endorsement on a writ meant to be served outside jurisdiction.

It is instructive to observe that section 97 of the Sheriffs and Civil Process Act touching on endorsement on a writ meant to be served outside jurisdiction is for the benefit of the Defendant. The endorsement simpliciter is meant to inform the Defendant that a writ has been issued in another state. The Defendant can waive the requirement for endorsement.

Thus he can do by proceeding with the trial. See ***ODUA INVESTMENT CO. LTD VS TALABE (1997) 10 NWLR (Pt.523)***. Where Defendant as in this case decides to challenge the provision of service, the court shall then consider the implication of such challenge.

I have seen the endorsement on the writ of summons and the endorsement and return made by the Defendant with her address at No. 1 Governors' Street, off Nnebisi way, Asaba – Delta State. Contrary to the argument of Claimant's counsel that Defendant who willingly came to the court previously and collected services, Defendant still has her address of service outside the FCT.

Regardless of the fact that Defendant accepted service, having endorsed a writ meant to be served

outside FCT, the procedure of which is already established, bailiff of this court ought to have proceeded to Benin City, Edo State to serve the Defendant in view of the leave sought and obtained on the one hand, and the endorsement on the writ of summons.

On the other hand, Defendant who was served with process of court which is irregular and who decides to enter unconditional appearance is deemed in law to have waived his right.

See BOI LTD & ORS VS ADEDIVAN & ANOR (2014) LPELR – 23703 (CA).

I have seen the memorandum of appearance filed by learned counsel for the Defendant which is unconditional. Statement of defence has been filed.

The essence of service therefore would have been fulfilled. Filing yet another preliminary objection after filing unconditional memorandum of appearance is most undesirable at this stage. The justice of this case is to allow the sleeping dog lie by dismissing the preliminary objection in the interest of justice. Same is hereby dismissed.

Justice Y. Halilu
Hon. Judge
15th September, 2021