

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. 22
CASE NUMBER : SUIT NO: CV/495/19
DATE: : MONDAY 21ST JUNE, 2021

BETWEEN:

**1. JACK – RICH TEIN JNR CLAIMANTS/
2.BELEMAOIL PRODUCING LIMITED RESPONDENTS**

AND

HOPE DAN OPUSINGI DEFENDANT/APPLICANT

RULING

By a Motion on Notice filed on the 17th day March, 2020, by the Defendant/Applicant, the Applicant approached this Court for the following reliefs:-

1. An Order setting aside the Order made by this Court in Motion No. M/1838/2019 for leave to cause the Writ of Summons and all other accompanying documents in this Suit on the Defendant outside the jurisdiction of the Court.
2. An Order setting aside the Order made by this Honourable Court in Motion No. M/1839/2019, for leave for substituted service of the Writ of Summons and all other accompanying documents/process in this Suit on the Defendant.
3. An Order setting aside the purported service of the process on the Defendant/Applicant.

4. An Order setting aside the affidavit of service dated the 18th day of December, 2019, deposed to by Mr. AakooNwiyerekaAakoo, Bailiff of Court of the Deputy Sheriffs Office, High Court Port-Harcourt, River State.
5. An Order striking out this suit before the Honourable Court for want of jurisdiction.

And for such other Order(s) as the Honourable Court may deem necessary to make in the circumstance.

The grounds upon which the Motion is relied upon was also filed.

In support of the Motion is a 15 paragraph affidavit duly deposed to by One Ibrahim Adebayo James the public relation Assistant of Damariq Nig. Ltd. a Company of which the Defendant/Applicant is Chief Executive Officer.

It is the deposition of the Applicant that there was no any court process pasted at the gates of the company, or pasted anywhere which he is aware of and that at no time in the months from September to December, 2019 was any process of court pasted anywhere in the Company process.

Applicant aver that the Bailiff of court made deposition that the processes was pasted on the front gate of the company. So there is no front gate of the company reason being that the company is a dredging company and is located in an open field of dredged sand and there is no gate anywhere near or around the company premises.

In line with extant laws and procedure, a written address was filed wherein a sole issue was raised to wit; *whether the Defendant has made out a proper*

case in his application sufficient for the Court to grant the reliefs sought therein.

Learned counsel argued that the dispensation of justice requires that Order of Court must be obey. That this includes the person in whose favour the Order is made. The law is established that the Order of a Court of competent jurisdiction remains valid until set aside. ***MOBIL OIL NIG. LTD. VS ASSAN (1995) 8 NWLR, Pt. 412 P. 129 Paras E – G*** was cited.

Learned counsel further argued that the totality of the facts contained in the Defendant's affidavit in support of this application and counter affidavit to the affidavit of service of the Bailiff is that he was not served any of the processes as Ordered by the Court. The implication is that the Order of Court

both for service outside jurisdiction and through substituted means are a nullity. That a party cannot be allowed to toy with the Order he obtained from Court, as even though, the Order is at his instance, he is bound by law, and the principles of equity to abide and obey the said Order. ***YAKUBU ENT. LTD. VS OMOLABOYE (2006) S.C. (Pt. 111) 1, and AKINYEMI V. SOYANWO (2006) 7 S.C. (Pt. 1) 39.*** Were cited.

Learned Counsel submit therefore that, it is by reason of the forgoing that he is urging the Court to grant the reliefs as contained on the face of the Motion paper, in the interest of justice by setting aside the Order for service of the process outside the jurisdiction of Court, and the Order for substituted service, and generally striking out the Suit in limine,

in accordance with the dictates and due process of the law.

On his part, Claimants/Respondent filed counter affidavit upon service and deposed to by One Faisal Abubakar.

It is the deposition of the Claimants/Respondents that according to Order 7 Rule (2), an Order for substituted service can be made either after or without an attempt at service for any reason that prompt service cannot be effected.

That to show proof of the said service having been effected on the Defendant/Applicant, an affidavit of service in Form C27 was duly sworn to by the Bailiff of this Court in compliance with Order 7 Rule (13) of the rules of the Court.

That contrary to paragraphs 4, 5, 6, 7, 8 and 9 of the Defendant/Applicant's affidavit in support of Motion dated 17th March, 2020, the Bailiff of this Court served the Defendant by pasting at his last known address being No. 1 Danariq Industries Way, Off Eze J.W. Eke Road, Gbalajair, Woji, Port-Harcourt, as Ordered by the Court.

It is the deposition of the Claimants/Respondent that the only way the Defendant/Applicant's prayers as contained on its said Motion dated 17th March, 2020 could be sustained is if Exhibits 'JACK 02' and 'JACK 03' was obtained by fraud, misrepresentation or the Court lacked the jurisdiction to grant them.

That by virtue of Order 7 Rule 13(3), the affidavit of service (Exhibit 'JACK 01') duly sworn by the

Bailiff of this Court shall suffice as prima facie proof of service.

That it is in the interest of justice to refuse the application of Defendant/Applicant.

A written address was filed by the Claimants/Respondents along with the counter affidavit wherein a sole issue for determination was formulated to wit;

Whether having regard to the Defendant/Applicant's Motion on Notice dated 17th March, 2020 and the affidavit in support therein, the Defendant/Applicant has placed anything before this Honourable Court to warrant the grant of the said application.

Counsel argued that service of an Originating Process can either be made personally or by substitution means in accordance with the rules of

this Court and as in the instant case, the Claimants/Respondents chose the latter mode of service. It is trite law that a Motion to set aside service can only be made on the grounds of either jurisdiction, fraud or misrepresentation which the Respondent failed woefully to do so. Order 7 Rule 11 (1) & (2) and the case of *OGIDI VS ODOGWU (2006) 6 NWLR (Pt. 918) 286 at 327* were cited.

Learned counsel further argued that contrary to the Applicant's prayer 1 in its motion dated 17th March, 2020, seeking the court to set aside the leave granted to the Respondent by the Court to serve the Applicant outside jurisdiction which the Respondent did, that by the provisions of Section 96 and 97 of the Sheriffs and Civil Processes Act, leave of this Court was necessary for the Originating Processes and all other processes to be served on the Applicant as

such the Applicant's contention cannot hold water. *M.V ARABELLA V.N.A.I.C (2008) 11 NWLR (Pt. 1097) 182, 222* was cited.

Learned Counsel therefore urged the Court to dismiss the Defendant/Applicant's Motion on Notice dated 17th day of March, 2020 seeking to set aside service of the Originating Processes on the Defendant/Applicant.

Upon service, the Defendant/Applicant replied on points of law wherein he contended that almost the entire paragraphs of the counter affidavit contain extraneous matters contrary to Section 115 of the Evidence Act, 2011. The act clearly disallows in mandatory words extraneous matters by way of objection, prayer, legal argument or conclusion.

He further argued that however strongly a Deponent may feel about a matter, he is precluded from raising them or drawing conclusion in the affidavit.

EZEKIEL NNEJI & 3 ORS VS. CHIEF NWANKWO CHUKWU & 7 ORS, ALHAJI ABU MOMODU & 6 ORS VS. HIS HIGHNESS A.G. MOMODU & ANOR (1986) 5 NWLR, Part 43, 689. 621, and A.G. ADAMAWA STATE VS A.G. FEDERATION (2005) 12 SC. (Part II), 133 at 187 – 188 were cited.

The Court on the whole was urged to grant the application.

COURT:-

I have gone through the Motion filed by the Defendant/Applicant and the argument therein, I have equally abbraised myself with the

Respondent's argument. I shall be brief, but succinct in addressing the legal issues raised.

But before delving into the issue raised by the Defendant/Applicant, I must state from the onset that the Defendant/Applicant aside the memorandum filed by him and the present application, did not file his defence.

Indeed, Rules of Court must be obeyed and failure to obey same has effect therein..this is because the parties have the duty to comply with the rules of court in the conduct of their cases and the Court has the duty to ensure that its rules which are deliberately and purposefully made to regulate practice and procedure in proceedings before it, are obeyed and complied with by the parties that come before it. The rules of court must be obeyed.

***DASHE & ORS VS. JATAU & ORS (2016)
LPELR 40180 (CA).***

In compliance with Order 9 of the Rules of this Honourable Court, the Defendant/Applicant filed a memorandum of appearance but the said memorandum of appearance was not signed.

For avoidance of doubt, Order 9 Rules 1 of the Rules of this Honourable Court provides as thus;

“A Defendant served with an Originating Process shall, within the period prescribed for appearance, file in the registry as many copies of the completed and signed memorandum of appearance as in Form with such modification or variation as circumstances may requires for the use of the Court and for service on the other party”

Order 9(2) *“the Registrar shall, on receipt of the memorandum of appearance, make an entry and stamp the copy with the seal showing the date he received it and return the sealed copy to the person making the appearance.”*

A perusal of the memorandum of conditional appearance before the Court would reveal that same was not dated, unsigned and was not filed in compliance with the law.

Indeed, unsigned document is a written piece of paper that has no evidential value in law. ***OGUDU VS STAK (2011) LPELR 868 (SC)***.

Having initiated this process without due process of law and couple with the fact that you cannot place something on nothing and expected it to stand, the

application of the Applicant is deem as if same was not filed in law.

Consequently, I shall do the needful by striking out same. Motion No. **M/6524/2020** is hereby struck-out.

Justice Y. Halilu
Hon. Judge
21st June, 2021

APPEARANCE

Kachollom G. Peter for Claimant/Respondent.

F.A Egwuche with Dr. D.D Makolo - for Defendant/Applicant.