

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/3248/2021

DATE: : FRIDAY 23RD JULY, 2021

BETWEEN:

**MRS. CHINYERE LILIAN
AMUCHINWA**

CLAIMANT

AND

- 1. IKEDI OHAKIM**
- 2. CHINEDU OKPAREKE**
- 3. KINGSLEY OGAM**

DEFENDANTS

RULING

This Ruling is at the instance of the 1st Defendant/Applicant who approached this Honourable Court for the following:-

1. An Order striking out this suit for being incurably defective, incompetent, disclosing no reasonable cause of action, and this Honourable Court lacking jurisdiction to entertain same.

OR IN THE ALTERNATIVE

2. An Order extending time within which the 1st Defendant may file his statement of defence, list of witnesses, written statement on oath of witness, list of documents and other processes.

The grounds for bringing the application are as follows:-

- a. The Writ of Summons (Originating process) was not sealed by the Registrar of the Honourable Court.
- b. Neither the Claimant nor her legal practitioner signed the originating process in this suit.
- c. The Originating Process in this suit is invalid, null and void.
- d. The Claimant failed to reproduce the whole of the letter dated 20th January, 2020 complained of.
- e. No reasonable cause of action has been disclosed in this suit.

In support of the application is an affidavit of 11 paragraph duly deposed to by one Jideofo Onuoha, a

legal practitioner in the law firm of the counsel to the Applicant.

It is the deposition of the Applicant that the writ of summons which is the originating processes served on the 1st Defendant was not sealed by the registrar of this Honourable Court.

That neither the Claimant nor her legal practitioner signed the originating process served on the 1st Defendant by substituted means. And that same is invalid, null and void, therefore this Honourable court lacks the jurisdiction to entertain this suit.

In compliance with law and procedure, a written address was filed wherein two issues were formulated for determination to wit;

- i. Whether having regard to the provisions of Order 6 Rule 1 and 2 of the High Court of the

Federal Capital Territory (FCT), Abuja (Civil Procedure Rules) 2018, the writ of summons in this suit is not defective, incompetent and invalid.

- ii. Whether failure to reproduce the whole letter complained of is not fatal and renders this suit incompetent.

On Issue 1, whether having regard to the provisions of Order 6 Rule 1 and 2 of the High Court of the Federal Capital Territory (FCT), Abuja (Civil Procedure Rules) 2018, the writ of summons in this suit is not defective, incompetent and invalid.

Learned counsel submit that objection that has to do with competence of a suit and jurisdiction of the court to entertain same are basic and fundamental and can be raised at any time. ***NASIR VS C.S.C***

KANO STATE (2010) 6 NWLR (Pt. 1190) 253 at 256.

Counsel submit that, procedurally, issuance of writ of summons is governed by Order 6 of the Rules of this Honourable Court which make it mandatory that the writ of summons must be signed by the legal practitioner or the Claimant. And that the breach of this substantive law renders an action as not having been instituted by due process of law.

It is further the argument of learned counsel that substantive law on the signing and issuance of court process by a legal practitioner is governed by section 24 of the legal practitioner Act 1990 which provides that a legal practitioner must sign all court processes filed.

Learned counsel argued further that Order 6 Rules 2(1) of the Rules of this Honourable Court mandate the Registrar of this court to seal every originating summons failure which renders the court process invalid. ***CHIEF J. OKWU – UGWU VS CHIEF J. ALAEKE ALAEBO (2016) LPELR 41810 (CA).***

On Issue two, i.e whether failure to reproduce the whole letter complained of is not fatal and renders this suit incompetent.

Learned counsel argued that by the rules of pleadings, every pleading must contain a statement of material facts on which the party pleading relies. ***OKAFOR VS IFEANYI (1979)3 and 4 (SC) pages 99.***

It is the contention of learned counsel that a careful perusal of the writ of summons will show that

Claimant did not reproduce the alleged offensive letter even in the statement of claim.

Court was urged to strike out this suit in the interest of justice.

On their part, learned counsel for the Claimant, did not file counter to the motion but replied on point of law.

Counsel for the Claimant referred the court to Order 5 Rules 1(1) and (2) of the Rules of this Honourable Court and urged the court to allow the Registrar of the Court affixed its seal and counsel be allowed to sign the writ of summons.

Counsel also relied on Order 23 of the Rules of the court which has abolished Demurer and urged the court to rule in her favour.

Court was on the whole urged to dismiss the application.

Court:-

I have gone through the Motion on Notice filed by the 1st Defendant/Applicant and the reply on points of law by Claimant's counsel. I shall be brief in addressing the issues raised in the interest of justice.

It is settled law that a court of law is competent where all the conditions for exercise of jurisdiction are satisfied, i.e,

1. Its statutory composition is properly constituted as regards number and qualification.
2. the subject matter of the action is within its jurisdiction.

3. The matter before the court is initiated by due processes of law, and upon the fulfillment of any conditions precedent to the exercise of jurisdiction.

MADUKOLO VS NHEMDILIM(1962) (1) ALL NWLR 587 at Page 594.

A writ of summons is an originating process by means of which actions are commenced. The competence of such process is a pre-requisite for a valid and subsisting claim and where the process fails to comply with law, the action is a nullity.

MINISTRY OF WORKS, ADAMAWA STATE & ORS VS ISIYAKU YAKUBU & ANOR (2013) 6 NWLR (Pt. 1351) SC 481.

It is the contention of the learned counsel for the Applicant that the writ of summon before this

Honourable is unsigned and unsealed, therefore, the jurisdiction of this Honourable Court was not properly activated.

It is instructive to state here that Order 6 Rules 1 and 2(3) of the Rules of this Honourable Court provide that;

“Originating process shall be prepared by a Claimant or his legal practitioner and shall be clearly printed on A4 good quality paper and each copy shall be signed by the legal practitioner or by the Claimant where he sues in his person and shall be certified after the verification by the registrar as being a true copy of the process filed.”

Arising from above, I shall therefore ask the following question:-

Was the writ of summons before this court signed by the legal practitioner as envisaged by the law.?

A glance at the writ will reveal that it was issued by one **Ifeanyichukwu Obasi – Nweze, of O.N Ifeanyichukwu & Co. (Halleluyah Chambers).**

Indeed, the court of Appeal was faced with a similar issue of unsigned writ when the appeal was lodged before them in the case of ***MINISTER OF FCT & 2ORS VS BISAD SYSTEMS NIG. LTD & ANOR, SUIT NO. CA/A/202/2014.***

Resolving the issue in contention, the following decision was unanimously reached by the panel of the justices, to wit;

“In the prevailing circumstances all the proceedings which rested on the writ of

summons and statement of claim were deemed not to have taken place in law.”

Per Tani Yusuf Hassan (JCA).

“I am in total agreement that the trial court had no jurisdiction to try the case as it was not initiated by the due process of the law and upon fulfillment of the condition precedent, in the sense that the writ was not signed by any legal practitioner or the Plaintiff.”

Per Abubakar Yahaya (JCA).

“I have had the privilege of reading before On the lead judgment of my learned brother Toni Yusuf Hassan, JCA and I agree with her reasoning and conclusion”

Mohammed Mustapha (JCA).

Upon above findings, the court of Appeal proceeded to strike out the said writ of summons filed, same having not been signed by a legal practitioner.

In the present case under consideration, the Claimant/Respondent on its part, relied on Order 5 Rules 1 and 2 of the Rules of this Honourable Court in urging this Honourable Court to treat the omission as mere irregularity which cannot vitiate the proceeding.

For avoidance of doubt, Order 5 Rules 1 and 2 provides;

1. ***“Where in beginning or purporting to begin any proceedings there has by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, such failure shall not nullify the proceeding.”***

2. *“Where at any stage in the course of or in connection with any proceedings there has by reason of anything done or left undone been a failure to comply with the requirements as to time, place, manner, or form, such failure may be treated as an irregularity. The Court may give any direction as he thinks fit to regularise such steps.”*

Indeed, a writ of summons is an originating process by which this action was commenced, the competence of the writ of summons is a pre-requisite for a valid and subsisting claim. Where as in the instant case, the writ of summons is defective, incompetent or invalid or fails to comply with the requirement of the law or that condition precedents are not met, the court cannot assume jurisdiction since the suit cannot be said to be initiated in

compliance with due process of law. *MADUKOLU VS NKEMDIRIM (1962) SCNLR 341.*

It is instructive to state here that the substantive law on signing and issuance of court processes by a legal practitioner is governed by section 24 of the Legal Practitioners Act, 1990 which provides that a legal practitioner must sign all court processes filed and Order 6 Rules 2(3) of the Rules of this Honourable Court which makes the signing of writ of summons mandatory by the Claimant or his legal practitioner.

Once there is no compliance with respect to the issue of signature, it becomes very impossible to cure any ailment since signature is what gives life to a document. You can only repair what is damaged on human body to preserve life and that can only be done when the body is alive.

The present writ of summons arrived the court already death.

I am in total agreement with the argument of learned counsel for the Defendants/Applicants.

Accordingly, suit **No. CV/3248/2020** is hereby struck – out.

Justice Y. Halilu
Hon. Judge
23rd July, 2021

APPEARANCE

Watchman O. with I.O Anene – for the Claimant.

James C. Ude – for the 2nd Defendant.

C.C Tom – Onukwugha with M.L Young – Arney – for the 1st Defendant.

3rd Defendant not in court and not represented.

