

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 12TH DAY OF JANUARY, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 9
SUIT NO: CV/1800/2018

ETWEEN:

1. FATIMA YAHAYA
2. IDRIS YAHAYA
(Administrators of the Estate of AIG Ardo Yahaya Garba deceased) } CLAIMANTS

AND

SUZAN ARDO YAHAYA ----- DEFENDANT

RULING

This is suit was commenced by Originating Summons procedure on the 15/5/2018. The claimants are praying this Court for the determination of the following questions:

“1. Whether by virtue of the letters of administration dated 5/9/2017 issued to the claimants by this Court, the claimants are entitled to collect/gather the whole personal/real properties of AIG Ardo Yahaya Garba (deceased) including his personal documents,

banking documents, official documents required for processing his pension benefits and documents or titles over his landed properties.

2. Whether by virtue of the letters of administration dated 5/9/2017 issued to the claimants by this Court, the defendant is entitled to hold, detain and continue to keep in her possession personal/real properties of AIG Ardo Yahaya Garba (deceased) including his personal documents, banking documents, official documents required for processing his pension benefits and documents of titles over his landed properties without accounting and handing over same to the claimant.”

Pursuant to the above questions, the claimants pray the Court for the following reliefs:

“1. An order directing the defendant to immediately handover all the personal and real (land) properties of AIG Ardo Yahaya Garba (deceased) including his personal documents, banking documents, official

documents, required for processing his pension benefits and documents of titles over his landed properties to the claimant as his personal representatives.

2. An order directing the defendant to immediately give account on oath of all the personal and real properties of AIG Ardo Yahaya Garba (deceased) including his personal documents, banking documents, official documents required for processing his pension benefits and documents of titles over his landed properties to the claimants as his personal representatives.

3. An order of injunction restraining the defendant either by herself, her agents, representatives or successors in title, howsoever called from selling disposing, assigning, leasing or otherwise transferring or creating legal charge or equitable charge over any of the personal/real properties of AIG Ardo Yahaya Garba (deceased) without first seeking

and obtaining the consent of the claimants as his personal representatives.”

The summons is supported 18 paragraphs affidavit, 3 annexures marked as Exhibits A – C, and a written address duly adopted by **Chidinma Okorie Esq.**

The defendant filed a counter affidavit of 33 paragraphs with one annexure attached. The counter affidavit is supported with a written address adopted by **Yusuf Abdullahi Esq.**

The claimant filed a further and better affidavit and reply on points of law on the 18/10/2018.

Originating Summons is a special procedure designed for a special purpose and it was described in the case of **Dapianlong vs. Dariye (2007) LPELR-928 (SC)** as follows:

"The originating summons procedure is a means of commencement of action adopted in cases where the facts are not in dispute or there is no likelihood

of them being in dispute and when the sole or principal question in issue is or is likely to be one directed at the construction of a written law, Constitution or any instrument or of any deed, will, contract or other document or other question of law or in a circumstance where there is not likely to be any dispute as to the facts. In general terms, it is used for non-contentious actions or matters i.e. those actions where facts are not likely to be in dispute. In actions commenced by originating summons, pleadings are not required rather affidavit evidence are employed:"

See also Director State Security Service vs. Agbakoba (1999) 3 NWLR (Pt. 595) 314; Din vs. A-G of the Federation (1986) 1 NWLR (Pt. 17) 471; Keyamo vs. Lagos State House of Assembly & Ors (2002) 18 NWLR (Pt. 799) 605.

Originating Summons is best suited for cases where there are no substantial disputes of facts or likelihood of

facts. Originating Summons should only be applicable in circumstances where there is no dispute on the question of facts or even the likelihood of such dispute. Application for initiating contentious issues of facts where the facts of the plaintiff leave the matter for conjecture, Originating Summons is not an appropriate procedure. Where it is obvious from the state of the affidavit that there would be an air of friction in the proceedings, then an Originating Summons is not appropriate. Originating Summons should be used only where the proceeding involves the question of law, rather than disputed facts, even where the facts are not in dispute, the Originating Summons should not be used, if the proceedings are hostile. See Sani vs. Kogi State House of Assembly (2019) LPELR- 46404 (SC), Alfa vs. Attai & Ors (2017) LPELR - 42579 (SC).

The striking aspect of suits commenced by Originating Summons is that there are no pleadings or witnesses, and so proceedings are simple and concluded

quickly. See Dada & ors vs. Alabi & ors (2019) LPELR - 47561 (CA), Pam vs. Mohammed (2008) 5-6 SC (part 1) P.83, Osunbade vs. Oyewunmi (2007) 4-5 SC p.98, FGN & Ors vs. Zebra Energy Ltd (2002) 12 SC (Part 11) 136, Ogah vs. Ikepeazu & Ors LPELR- 42372, Oba Adegboyega Osunbade & Ors vs. Oba Jimoh Oladunmi Oyewunmi & Ors NSCQR VOL. 30 2007 page 434.

In this instance, the claimants are praying the Court to order the defendant to immediately handover all the personal and real properties of AIG Ardo Yahaya Garba (deceased). They claim that they are in possession of letter's of administration as next of kin to the late Ardo. That the documents being the personal and real properties of the deceased are in possession of the defendant. The defendant denied being in possession of any document to that effect and also challenged the legality of the letters of administration by virtue of the fact that being the biological mother of Gabriel Yahaya (minor and lawful next of Kin of the deceased) she did

not authorize the 2nd claimant to stand in as guardian to Gabriel Yahaya. The defendant has also denied being in possession of any documents belonging to the deceased and accused the claimants of breaking into her home and carting away documents in relation to inventory listed in the letter of administration. A further and better affidavit was filed by the claimant making further allegation.

Ordinarily, the filing of a counter affidavit signifies a challenge to the suit and when a trial judge is confronted with such a situation, he is duty bound to look at the affidavits in support and counter affidavit to determine whether the facts are contentious or not. Going by the peculiar traits of originating summons which does not accommodate disputed facts, the trial Court must satisfy itself that the facts are undisputed and it is upon such that the questions put forward can be answered and reliefs granted. The trial Court does not have the competence to resolve disputed facts by way of oral evidence in an originating summons procedure. When

affidavits are conflicting, the rule is that oral evidence in an originating summons procedure be called to resolve the conflict. See Niger Progress Ltd vs. N.E.L. Corp. (1989) 3 NWLR (Part 107) 68 @ 94, Group Danone vs. Voltic (NIG.) LTD (2008) 7 NWLR (Part 1087) 637.

I have viewed the affidavits and attached exhibits and I am of the view that the facts before this Court are disputed and contentious thus making the originating summons a hostile proceedings. Except for the admitted death of the said AIG Ardo Yahaya and the fact that the defendant is his widow and the claimants are his children along with other children of the deceased, all other facts have been denied.

All these are not facts that can be resolved without oral evidence. My considered view therefore is that since the facts are contentious, the suit must be heard on the general cause list and upon pleadings.

Where issues joined in an originating summons by way of controversies as to facts in the parties' affidavit,

the beauty of Originating Summons procedure becomes eclipsed with the subsequent emergence of the order of the trial Court to convert the originating summons to writ of Summons and the filing and exchange of pleadings. See Awolaja & anor vs. Balogun (2018) LPELR - 45538 (CA), Ezeaku vs. Okonkwo (2012) 4 NWLR (Part 1291) 529 at 533. An originating summons should therefore not be adopted if the proceedings are hostile proceedings, that is, proceedings in which the facts are apparently disputable.

Eventhough learned counsel to the defendant has called on the Court to dismiss this suit, this Court shall determine the case on its merit. Pleadings shall be filed and served as per the provisions of the Rules.

Signed
Honourable Judge

Appearances:

Chidinma Okorie Esq – for the claimant

Yusuf Abdullahi Esq with him A.I. Malik Esq – for the
defendant