

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13 GWAGWALADA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THIS 8TH DAY OF MAY 2024**

**FCT/HC/CV/7699/2023
MOTION NO: M/5796/2024**

BETWEEN

AMINA ZAKARIA MAIMALARI -----CLAIMANT/RESPONDENT

AND

**1. MESSERS MOHAMMED ABTACHA & CO }
2. MOHAMMED ABATCHA }-DEFENDANTS/APPLICANTS**

*A.U. GAJI appears with ALIYU AHMED for the Claimant/Respondent.
SOLOMON AOR for the Defendants/Applicants.*

RULING

The Defendants/Applicants filed the instant application No. M/5796/2024 seeking to set aside the service of the writ of summons and other processes on the Defendants/Applicants for being improper and irregular. According to the applicants, the writ of summons and other court processes were not served on him three (3) months of issuance of the writ. That the applicant ought to obtain and seek leave to serve the writ of summons after three (3) months within which it ought to be served. Accompanying the application is a six (6) paragraphed affidavit of one Rosemary Okon, who averred in paragraph 3(a) and (b) that the writ of summons in this suit was filed and issued on 25th September, 2023 and served on Friday 12th January after 3 months and 17 days. In the accompanying written address, the Learned Counsel for the applicant

relied on the case of **FBN PLC V OBANDE (1998) 2 NWLR (PT. 538) 410 @ PP 418 – 419 PAR F – A** and **MARK V EKE (2004) 1 SCNJ 245 P. 263**. All the two cases relied on by the Defendants/Applicants' Counsel are on non-service of process and not improper or irregular service.

In reply the Claimant/Respondent filed a 6 paragraph affidavit of one Aminu Ahmed and in paragraph 4(a) – (i) the deponent averred that the originating process in this suit was prepared and filed on September, 25, 2023 for the Registry to handle the administrative process to seal, cause the issuance and assignment of the process filed. That the originating process was assigned to this court on October 31, 2023 and the case file was actually delivered on November 03, 2023. And that the Defendants/Applicants were served on January 08, 2024 and not January 12, 2024. That the writ of summons was issued on October 31st, 2023 is within the prescribed period of three (3) months. The Claimant's Counsel also in accordance with the rules of court filed along with his written submission, and the argument with the authorities supplied. The Defendants/Applicants also filed a reply on points of law.

A careful perusal of the application and the accompanying affidavit with the reply on points of law filed by the Defendants/Applicants showed that the Applicants are not contesting the validity of the writ but rather the time of service of the writ. It is evident that there was proper service of the writ on the Defendants. Service of writ is the responsibility of the Court after the filing by the party and the issuance by the Registry of the Court. An administrative error on the part of the court is not to be visited on a litigant. See the case of **ADEGOKE MOTORS V ADESANYA & ORS**

(1989) 3 NWLR (PT. 109) SC 250 relied on by the Claimant/Respondent's Counsel in his written address. The most important consideration by the court in a situation like this is what will meet the end of justice. And that is why the provision of Order 5, Rule 2 comes to the rescue of a litigant where noncompliance with the provision of the Rules of Court as to time, form, place and manner with respect to anything done or left undone in connection with any proceedings, such omissions are to be treated as irregularity, as long as they are not fundamental as to affect the jurisdiction or competence of the Court.

The rules of court are to assist parties in putting forward their cases, they are made to aid in the smooth course of justice and not to clog the wheel of justice. See **FIDELITY BANK PLC V MONYE & ORS (2012) LPELR 7819 SC** where the Court held:

“The normal and acceptable practice of the court is that it is not the habit of courts to punish or penalize a party/litigants because of the error or omission committed by the party's/litigant's counsel, the judge or even the court officials.”

What transpired in the instant case is an error on the part of the Registry of this Court and it is not so fundamental as to warrant the setting aside of service of the entire writ of summons. Let me also point out to the Learned Counsel for the Applicants that the writ in question is still valid. It has not expired. The life span of every originating process is six (6) months. See Order 6, Rule 6(i) of the Rule of this Court.

I endorse the written submission of Learned Counsel to the Claimant/Respondent and hold that the Preliminary Objection raised by the Defendants/Applicants is lacking in merit. It is hereby dismissed.

The defendants are hereby directed to file their pleadings. Pleadings are to be exchanged before the next adjourned date.

Matter is adjourned to 24/6/2024.

SIGN

HON. JUDGE

8/5/2024