

***Originating Process Signed “For” or “By “Proxy” – Competence Of***

In the Supreme Court of Nigeria  
Holden at Abuja  
On Friday, the 8<sup>th</sup> Day of March, 2024

**Before Their Lordships**

Kudirat Motonmori Olatokunbo Kekere-Ekun  
Mohammed Lawal Garba  
Helen Moronkeji Ogunwumiju  
Adamu Jauro  
Tijjani Abubakar  
*Justices, Supreme Court*

SC.296/2013

**Between**

**ALHAJI SHEHU ASHAKA**

**APPELLANT**

...

**And**

**SAMSON CHIDI NWACHUKWU**

**RESPONDENT**

*(Lead judgement delivered by Honourable Adamu Jauro, JSC)*

**Facts**

The Respondent commenced the action leading to this appeal against the Appellant at the High Court of Plateau State *via* a Writ of Summons and an Affidavit in Support of the Claims. The Respondent claimed the sum of ₦2,000,000.00 (two million Naira) being the balance due to him from the Appellant for execution of a road contract for the Appellant. He also claimed pre judgement interest at the rate of 25% from 20<sup>th</sup> July, 2001 until judgement and post judgement interest at 10% per annum until the entire sum is liquidated.

Being a liquidated money demand, the Respondent filed a Motion *Ex parte* for the suit to be placed under the Undefended List. The Appellant responded by filing a Notice of Intention to Defend and an Affidavit in support thereof. When the matter came up for hearing, counsel for the Respondent consented that the matter be transferred to the General Cause List and the suit was so transferred. At the hearing of the suit, the Respondent called four witnesses as PW1 - PW4, while the Appellant testified alone for himself as DW 1.

At the close of trial and after the addresses of counsel, the trial court delivered its judgment wherein it granted the reliefs sought by the Respondent. The court ordered the Appellant to pay the Respondent the sum of ₦2,000,000.00 and awarded pre judgment interest at the rate of 22% per annum from July 2001 till the date of the judgment and post-judgment interest at the rate of 10% per annum. The Appellant's appeal to the court below was allowed in part as the court held that there was no basis for the award of 22% pre-judgment interest and set same aside.

Dissatisfied with the decision of the Court below, the Appellant initiated this appeal to the Supreme Court. At the Supreme Court, the Appellant challenged the competence of the originating processes and by implication, the jurisdiction of the court to determine the suit.

### **Issue for Determination**

Given its jurisdictional implications, the Supreme Court adopted the first issue for determination posed by the Appellant in determining the appeal, thus:

*"Having regard to the fact that the process commencing this action was not signed by a legal practitioner known to law, whether the whole proceeding, including the judgement of the lower court is not a nullity."*

### **Arguments**

On this issue, counsel for the Appellant relied on the case of **MADUKOLU v NKEMDILIM (1962) 1 ALL NLR (PT.4) 587**, to submit that the competence of an

originating process is one of the determinants of a court's jurisdiction. He argued that the action at the trial court was commenced by a Motion *Ex parte* to place the suit under the undefended list, but the process was not signed by a legal practitioner known to law, same having been signed by an unnamed person for (written as "f") another person. He relied on the case of **S.L.B CONSORTIUM v N.N.P.C (2011) 9 NWLR (PT. 1252) 317** to submit that the motion paper having been signed by an unknown person for a Legal Practitioner, was in the eyes of the law not signed at all and thus incapable of invoking the jurisdiction of the trial court. He submitted further that the consequence of the manner in which the originating process was signed is that same is fundamentally defective and deprived the court of jurisdiction to entertain the matter.

Responding to the submissions above, counsel for the Respondent submitted that the Motion *Ex parte* was only filed to apply for the suit to be placed under the Undefended List. He argued that a Motion *Ex parte* cannot be said to be the originating process, thus any defect thereon cannot affect the jurisdiction of the trial court to entertain the suit. He urged the court to resolve the issue against the Appellant.

The Appellant, in his reply brief, submitted that counsel for the Respondent ignored the argument on the validity or otherwise of the originating process, but only argued that the Motion *Ex parte* was not the originating process. He stated that counsel for the Respondent deliberately ignored the fact that the Writ of Summons at pages 3 - 4 of the record of appeal was equally signed in the same way as the Motion *Ex parte*. Counsel relied on the case of **NWANKWO v YAR'ADUA (2010) 12 NWLR (PT. 1209) 518** to submit that the failure to respond to the Appellant's argument amounts to concession that indeed the originating process is incompetent, thereby robbing the trial court and the court below of the jurisdiction to entertain the suit.

### **Court's Judgement and Rationale**

Resolving the sole issue, the Supreme Court held that the issue at hand is one which affects the jurisdiction of the court and the court is entitled to raise and decide same if it is noticed from a consideration of the record of appeal. Their Lordships held that *jurisdiction is the power or competence of a court to entertain a*

*matter or adjudicate over a dispute submitted to it. Jurisdiction is to legal proceedings what oxygen is to human beings for without jurisdiction, no proceedings can be conducted. Jurisdiction is of fundamental importance in our jurisprudence and a court must treat it with all sense of importance. It must not be treated lightly as its absence will render null, void and of no effect, every step taken in the proceedings. Any proceedings conducted in the absence of jurisdiction will amount to a nullity, an exercise in futility and a wasteful dissipation of energy. Hence, in order to avoid wasting precious judicial time, a court must determine whether or not it has jurisdiction immediately the issue arises.*

An originating process is the process that births legal proceedings. Being the process by which actions are commenced, its importance cannot be overemphasised. In order for an action to be competent, the initiating process itself must not suffer from any fundamental defect, otherwise the action will be on quicksand. It is therefore not in doubt that the competence of an originating process goes to the root of the jurisdiction of court. Given the relationship between an originating process and jurisdiction, a competent originating process is crucial in activating the jurisdiction of court. On the other hand, *the incompetence of an originating process such as the Writ of Summons contaminates the entire proceedings, including processes filed and the judgement or decision rendered. Such an incompetent originating process is inchoate, lifeless and in the eyes of the law, non-existent. It can therefore not give life to the proceedings before the court, thereby rendering every step taken null and void ab initio* - **ANI & ORS v EFFIOK & ORS (2023) LPELR - 59783 (SC)**

The Supreme Court went on to consider whether the Respondent's Writ of Summons filed before the trial court was signed by a legal practitioner whose name is on the roll. The Writ of summons in this case was signed thus; *"F" "signature/mark" Oba Maduabuchi, Esq, 4 New Zaria Terrace, Jos*". The Supreme Court held that when "F" or "PP" is written before appending the signature on a document, the letter "F" represents "For" and the letter "PP" represents "By proxy", showing that the signatory signed for someone else who is unable to sign the document. The court noted that there is nothing on the face of the Writ of Summons to show that it was signed by a legal practitioner. Their Lordships held that *court processes are either to be signed by parties or their*

*legal practitioner; the Legal Practitioners' Act does not envisage the signing of court processes through an unknown proxy. Once it cannot be said who signed a court process, it is automatically rendered incompetent - OKAFOR v NWEKE (2007) 10 NWLR (PT. 1043) 521. The court held further that the effect of an originating process not duly signed by a legal practitioner recognised to practice law in Nigeria by virtue of the provisions of Sections 2(1) and 24 of the Legal Practitioners' Act is a fundamental defect that robs the court of jurisdiction to entertain the suit.*

To buttress its holding, the apex court relied on its earlier decision in **VF WORLDWIDE HOLDINGS LTD. v DANA SERV. LTD. (2023) 15 NWLR (PT. 1908) 573** wherein it held that “From the above it is without a doubt that the name and identity of the signatory to the Appellant's originating process is an unknown person. This is an anomaly which the law treats as fundamental since the requirement of the law is that a court process must be signed either by a party or his legal practitioner. None of the aforesaid persons signed the originating process of the appellant in this case, rather the process was signed for Prof. Yemi Osinbajo, SAN by an unnamed proxy. This court is not in a position to speculate on the identity of this unknown proxy, and evidence cannot be taken to resolve his identity. The decision of this court on the incompetence of court process, not properly signed and filed, remain consistent and unequivocal”

Given the above, Their Lordships adjudged the Respondent's Writ of Summons as irredeemably and fatally incompetent. It never activated the jurisdiction of the trial court in the first place and in the eyes of the law, no proceedings were ever conducted before the trial court. Every step taken before the trial court and the lower court were predicated on the incompetent Writ of Summons. It is synonymous to placing something on nothing, it is bound to fall apart like a deck of cards. It is of utmost importance that such improperly signed processes be rejected and struck out in order to weed out quacks disguising as legal practitioners.

*Appeal allowed; Proceedings before the lower courts set aside.*

### **Representation**

Dr. M.Y. Danung, Esq with F.Z. Kaatpo, Esq. for the Appellants.

O.A. Alao Esq. with S.B. Olarinde Esq. for the 1<sup>st</sup> Respondent.

**Reported by Optimum Publishers Limited**

**Publishers of the Nigerian Monthly Law Reports (NMLR)**

*(An affiliate of Babalakin & Co.)*