

*Retroactivity of Procedural Laws – Scope and Application*

In the Supreme Court of Nigeria  
Holden at Abuja  
On Friday, the 4<sup>th</sup> Day of June, 2025

**Before Their Lordships**

John Inyang Okoro  
Helen Moronkeji Ogunwumiju  
Tijjani Abubakar  
Haruna Simon Tsammani  
Mohammed Baba Idris  
*Justices, Supreme Court*

**SC/471/2015**

**Between**

**FIRST BANK OF NIGERIA PLC**

**APPELLANT**

**AND**

**OBONG-IFIOK (DR.) ANNY ASIKPO ...**  
*(Trading under the name and style  
of Abbny Educational Publishers)*

**RESPONDENT**

*(Lead judgement delivered by Honourable Tijjani Abubakar, JSC)*

**Facts**

The Respondent commenced the suit at the High Court of Akwa Ibom State in 2008, by a Writ of Summons. Following a series of interlocutory applications in which leave was granted to the Respondent, the writ was subsequently amended. However, before the commencement of trial, the Appellant filed a preliminary objection contending that both the original and the amended writs were defective

*ab initio* on the ground that the original writ was not signed by counsel and that the amended writ could not cure that defect. After hearing the parties, the trial court dismissed the objection.

Dissatisfied with the ruling of the trial court, the Appellant appealed to the Court of Appeal. The Court of Appeal affirmed the decision of the trial court and dismissed the appeal. Still dissatisfied, the Appellant further appealed to the Supreme Court, challenging the decision of the lower court on three grounds.

### **Issue for Determination**

The Supreme Court adopted the sole issue formulated by the Appellant in its determination of the appeal, to wit:

*“Whether the lower court was right in holding that the writ of summons was properly filed before the trial court once it was signed by the Registrar of the said court even though it was not signed by the Legal Practitioner who issued same.”*

### **Argument**

Counsel for the Appellant argued that the trial court lacked jurisdiction to determine the suit because the originating Writ of Summons was not signed by counsel for the Respondent and was therefore incurably defective. He contended that the original writ bore only the name and address of counsel, without any signature. He faulted the reliance of the respondent on the provisions of High Court of Akwa Ibom State (Civil Procedure), 1989, arguing that requirement for signing is not dependent on whether a specific rule of court expressly mandates it. He contended that such rules cannot override a foundational requirement established by statute and binding precedent. In support of his position, he cited the cases of **BUHARI v ADEBAYO (2022) 13 NWLR (PT. 1848) 533 (SC) AT 598-599**; **ASHAKA v NWACHUKWU (2024) 9 NWLR (PT. 1942) 149 (SC) AT 173, PARA. D**; and **NETWORK SECURITIES LTD. v DAHIRU (2022) 14 NWLR (PT. 1850) 351 (SC) AT 374**. Counsel relied further on Section 91(4) of the Evidence Act, 1990, which requires documents to be signed or otherwise authenticated by their makers, and argued that the provision has constitutional force by virtue of Section 315(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). He also placed reliance on judicial authorities such as **OKAFOR v NWEKE (2007)**

10 NWLR (PT. 1043) 521 (SC) and **SLB CONSORTIUM LTD. v NNPC (2011) 9 NWLR (PT. 1252) 317 (SC)** to submit that proper authentication of court processes is fundamental.

In his further submission, counsel argued that the High Court of Akwa Ibom State (Civil Procedure) Rules 1989, when read together and harmonised with superior federal legislation such as the Legal Practitioners' Act and the Evidence Act, a duty is imposed on legal practitioners to sign originating processes they prepare and file. He relied on **KWARA INVESTMENT CO. LTD. v GARUBA (2000) 10 NWLR (PT. 674) 25 (SC)** and **KEYSTONE BANK LTD. v J.O.A.S. (NIG.) LTD. (2015) 1 NWLR (PT. 1439) 98 (SC)** to submit that an unsigned writ is worthless and incapable of invoking the jurisdiction of the court. Also, that since the suit was not initiated by due process of law, all proceedings founded upon it is a nullity, irrespective of the merits of the claim. He relied on **OKARIKA v SAMUEL (2013) 7 NWLR (PT. 1352) 19 (SC)** and **FBN PLC v MAIWADA (2013) 5 NWLR (PT. 1348) 444 (SC)**, as well as the principle enunciated in **MADUKOLU v NKEMDILIM (1962) 1 ALL NLR 587 (SC)**. In this regard, he maintained that for a court process to be valid, it must be signed by a legal practitioner duly enrolled to practice in Nigeria, and that any omission in that respect is not a mere irregularity. He therefore urged the court to hold that the unsigned writ of summons was incompetent, that the trial court lacked the jurisdiction to determine the suit, *ab initio*.

Countering the submissions above, counsel for the Respondent argued that the complaint of the Appellant was founded on an alleged procedural defect, namely the absence of a counsel's signature on the Writ of Summons. The Respondent submitted that the complaint was misconceived because the suit was commenced in 2008 under the 1989 Rules. By virtue of the 1989 Rules, a writ is valid once it is issued and signed by the court Registrar, and that the 1989 Rules does not contain any requirement for the signature of a legal practitioner. He argued further that the signature requirement introduced by the 2009 Rules could not apply retrospectively. In support of the above, he invoked the well-established principle of law against the retrospective application of procedural or substantive statutory amendments, unless expressly provided for, or necessarily implied. Reliance was placed on the following decisions in urging the court to dismiss the appeal -

**ADESANOYE v ADEWALE (2000) 9 NWLR (PT. 671) 127 and AFOLABI v GOVERNOR OF OYO STATE (1985) 2 NWLR (PT. 9) 734.**

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

Deciding the appeal, the Supreme Court noted that the suit was commenced in 2008, at a time when the 1989 Rules was still applicable. The Supreme Court held that, by virtue of Order 5 Rule 15 of the 1989 Rules, a writ of summons is validly issued once it is signed by the Registrar or a duly authorised officer of the court, and that the Rules imposed no requirement for the signature of a legal practitioner. Their Lordships reaffirmed the statutory interpretation principle - *expressio unius est exclusio alterius* (which literally means, "the express mention of one thing excludes all others") to hold that the court cannot read into a rule what is not provided therein.

Notably, the learned Justices of the Supreme Court distinguished the authorities relied upon by the Appellant, particularly *SLB CONSORTIUM LTD. v NNPC*, explaining that it was decided under Order 26 Rule 4(3) of the Federal High Court (Civil Procedure) Rules, 2000, which expressly required pleadings to be signed by a legal practitioner or party. The Supreme Court also distinguished the decision in *OKAFOR v NWEKE (2007) 10 NWLR (PT. 1043) 521*, holding that the mischief addressed in those cases – namely, the signing of court processes by law firms or entities that do not qualify as legal practitioners - did not arise in the present case.

The Supreme Court also rejected reliance on the provisions of the Legal Practitioners' Act and Section 91(4) of the Evidence Act, holding that neither statute independently imposes a mandatory obligation that Writ of Summons must be signed by legal practitioners where the applicable rules of court does not provide for such.

Remarkably, the Supreme Court held that procedural rules and statutory instruments are not retrospective unless expressly stated, and that a process which was valid under the law in force at the time it was issued cannot be invalidated by later amendments. Their Lordships held that *a court process filed in compliance with the rules of court existing at the time cannot be invalidated retroactively by subsequent amendments. Statutory instruments and subsidiary legislation,*

*particularly rules of procedure, are not retrospective in operation unless they explicitly so provide. To insist otherwise would be to expose litigants and legal practitioners to uncertainty, insecurity, and a constantly shifting procedural goalpost.*

Flowing from the above, the Supreme Court resolved the sole issue against the Appellant and dismissed the appeal. The court also ordered costs in the sum of ~~₦~~4,000,000.00 (Four Million Naira Only) against the Appellant, in favour of the Respondent.

*Appeal Dismissed.*

**Representation**

Jerry Akpan, Esq., with Edikan J. Akpan, Esq., for the Appellant.

Francis Ekanam, Esq., with Emen Ekanem, Esq., for the Respondent.

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