

IN THE COURT OF APPEAL  
ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

ON FRIDAY THE 3<sup>RD</sup> DAY OF MAY, 2019

BEFORE THEIR LORDSHIPS:

ABDU ABOKI

JUSTICE, COURT OF APPEAL

ADAMU JAURO

JUSTICE, COURT OF APPEAL

EMMANUEL AKOMAYE AGIM

JUSTICE, COURT OF APPEAL

APPEAL NO. CA/A/355/2017

BETWEEN

JUMMAI GWALEM

} APPELLANT

AND

1. AMBASSADOR ADAMU SAIDU DAURA
2. MINISTER OF THE FEDERAL CAPITAL TERRITORY
3. FEDERAL CAPITAL TERRITORY DEVELOPMENT AUTHORITY

RESPONDENTS

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JUDGEMENT

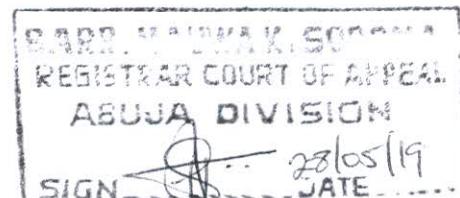
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This appeal No. CA/A/355/2017 was commenced on 8-3-2017 when the appellant herein filed a notice of appeal against the judgment of the High Court of Federal Capital Territory delivered on 2-2-2017 in Suit No. FCT/HC/CV/1804/2019 by I.U. Bello J. the notice of appeal contains 2 grounds of appeal.



Pd Wch Rm  
No. 811220296



With leave of this court the notice of appeal was amended on 21-5-2018. The amended notice of appeal filed on 6-11-2017 and deemed filed on 21-5-2018 contains 8 grounds of appeal.

All the parties herein have filed their respective briefs as follows- appellants brief, 1<sup>st</sup> respondent's brief 2<sup>nd</sup> and 3<sup>rd</sup> respondent's brief.

The appellant's brief raised two issues for determination as follows-

- 1. Whether the Writ of Summons by which the 1<sup>st</sup> Respondent commenced this case at the trial court is valid and vests jurisdiction on the trial court, it not having been signed by a legal practitioner. (Distilled from Grounds 1, 3 and 4 of the Amended Notice Appeal)**
- 2. Whether having regard to the letter of withdrawal of reinstatement dated 30 April, 2009 and all the facts and circumstances of this case, the trial court was right when it held that the 1<sup>st</sup> Respondent's interest in the land in dispute is still subsisting. (Distilled from Grounds 2, 5, 6, 7 & 8 of the Amended Notice of Appeal).**

The 1<sup>st</sup> respondent's brief also raised two issues for determination as follows-

- 1. Whether the lower Court was right when it held that the Writ of Summons by which the 1<sup>st</sup> Respondent**

commenced the suit at the trial Court, was valid.  
**(Ground 1, 3 and 4 of the Amended Notice of Appeal)**

2. **Whether the lower Court was right when it held that the 1<sup>st</sup> Respondent's interest in the land in dispute is still subsisting (Grounds 2, 5, 6 and 7 of the Amended Notice of Appeal).**

The 2<sup>nd</sup> and 3<sup>rd</sup> respondent's brief also raised two issues for determination as follows-

1. **Whether the Writ of Summons by which the 1<sup>st</sup> respondent commenced this case at the trial court is valid and vests jurisdiction on the trial court, it not having been signed by a Legal Practitioner. (Distilled from Grounds 1, 3 and 4 of the Amended Notice of Appeal).**
2. **Whether having regard to the letter of withdrawal of reinstatement dated 30<sup>th</sup> April, 2009 and all the facts and circumstances of this case, the trial court was right when it held that the respondent's interest in the land in dispute is still subsisting. (Distilled from Grounds, 2, 5.6.7 and 8 of the Amended Notice of Appeal)**

I will determine this appeal on the basis of the issues raised for determination in the appellant's brief.

Let me start with issue No. 1 which asks "**Whether the Writ of Summons by which the 1<sup>st</sup> Respondent commenced this case at the**

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**trial court is valid and vests jurisdiction on the trial court, it not having been signed by a legal practitioner"**

Learned Counsel for the appellant argued in substance that the Writ of Summons by which the suit leading to this appeal was commenced was incompetent because it was not signed by a legal practitioner, that therefore the trial court lacked the jurisdiction to entertain and determine the suit as a condition precedent to the exercise of jurisdiction was not fulfilled, that it is the legal practitioner's signature that authenticates the court process, that the absence of a legal practitioner's signature on the Writ of Summons is a matter of substantive law that cannot be waived, that the trial court was wrong to have held that the appellant having fully participated in the proceedings can no longer complain about the incompetence of the Writ of Summons and that even though a legal practitioner signed the statement of claim that accompanied the Writ of Summons, the action remained incompetent since the Writ of Summons was not signed by the legal practitioner.

Learned Counsel for the 1<sup>st</sup> respondent argued that an omission to sign a court process in compliance with rules of procedure is a mere irregularity that has nothing to do with the jurisdiction vested in the court by the constitution or a statute, that the Writ of Summons having been presented for filing by Chuks Udo-Kalu, a legal practitioner whose name is on the roll and

therefore known to law, was validly issued when signed by the Registrar, that the judicial decisions relied on by the appellant only deal with situations where a process is signed by a law firm instead of a legal practitioners and are therefore inapplicable to this case in which the legal practitioner who presented a Writ of Summons for filling did not sign it, that the judicial decisions of **A.G Abia State v Agharanya (1999) 6 NWLR (Pt. 607) 362 at 371** and **Fasehun v A.G Federation (2006) 6 NWLR (Pt. 975) 141** which deal with the admissibility of an unsigned document and the probative value of unsigned report are not applicable to this case in which the issue is the validity of Writ of Summons not signed by a legal practitioner, that the appellant did not raise the issue of the irregularity of the writ of summons timeously and raised it in its final address in the trial court, that until then it participated in the proceedings without raising it, that by virtue of Order 2 Rule 2(b) of the High Court of Federal Capital Territory Civil Procedure Rules 2004 the appellant is estopped from raising the issue at that stage having participated in the proceedings throughout.

Learned Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents argued that a Writ of Summons is issued upon it being signed by the Registrar, that even where it is not signed by the Registrar, it would not be rendered invalid once the plaintiff who presented it for filing has paid the appropriate filing fees, as such omission or error is a mere lapse or irregularity, it has nothing to do with the jurisdiction of that court, that it is immaterial whether or not a Writ of Summons

is signed by a legal practitioner as it is issued when signed by the Registrar, that a Writ of Summons is not complete without an accompanying statement of claim which supersedes the writ, that therefore once the statement of claim is duly signed by the plaintiff or his legal practitioner, the suit is validly commenced, that the appellant having taken several steps in the proceedings including filing of pleadings and joining issues on the merit of the case, waived his right to object to any irregularity in the Writ of Summons and can no longer complain against such irregularity.

Let me now determine the merits of the above arguments of all sides.

It is glaring from the face of the Writ of Summons that commenced the suit leading to this appeal that it was not signed by Chuks Udo-Kalu, the legal practitioner who presented it for filing. But the appropriate filing fees were paid and it was signed by the Registrar of the court.

This accords with Order 4 Rules 1 and 15 of High Court of the Federal Capital Territory (Civil Procedure) Rules 2004 which provides for when and how a writ of summons is issued. The exact text of the provisions read thusly-

**"1. (1) A writ of summons shall be issued by a Registrar, or other officer of Court empowered to issue the summons, on an application.**

**(2) An application shall be made in writing by the plaintiff's solicitor who completes Form 1, as in the Appendix.**

**(3) Where an applicant for w writ of summons is illiterate, or has no solicitor, a Registrar or other officer of Court may dispense with a written application, put himself instead and record full particulars of the oral application made and on that record a writ of summons may be prepared, signed and issued.**

**15. A writ is issued when signed on by a Registrar or other officer of Court duly authorised to sign the writ and accompanied by-**

- (a) a statement of claim;**
- (b) copies of documents mentioned in the statement of claim to be used in evidence;**
- (c) witness statement on oath; and**
- (d) a certificate of pre-action counselling."**

The Legal Practitioner for the plaintiff complied with Order 4 Rule 1(2) when he presented for filling the complete typewritten Writ of Summons exactly as in Form 1 in the Appendix to the Rules at page 185 therein. The said Form 1 does not provide for a signature by the plaintiff's Legal Practitioner. It merely creates spaces for the legal practitioner's name, and address for service. It provides for signature of the Registrar who issued the Writ and the

signature of the person that served the Writ. It is noteworthy that the 2004 Rules were amended by the High Court of Federal Capital Territory (Civil Procedure) Rules 2018, which Rules is stated therein to commence on 15-10-2018. Form 1 therein is exactly the same as Form 1 in the 2004 Rules. It is again noteworthy that the suit leading to this appeal commenced in 2008 and final judgment was entered therein on 2-2-2017, before the commencement of the 2018 Rules. So the 2004 Rules were the extant Rules.

There is no part of the 2004 Rules that require that the plaintiff's legal practitioner must sign the Writ of Summons. S.2(1) and S.24 of the Legal Practitioners Act 2004 relied on by the appellant in arguing this issue is irrelevant to this issue. These provisions deal with when a person is entitled to practice as a Legal Practitioner and define a legal practitioner. The judicial decision of **FBN Plc v Maiwada (2013) 5 NWLR (Pt. 1348) 444**, **Okafor v. Nweke (2007) All FWLR (Pt. 368) 1016** and **Oketade v. Adewunmi (2010) 8 NWLR (Pt. 1195) 63** relied on by Learned Counsel for the appellant in arguing this issue are not relevant to this issue. Those cases deal with situations where the Rules require that a legal practitioner signs a process and the process is rather signed by a law firm or an unidentified person and the courts had to decide the validity of such process. In our present case there is no requirement of the Rules that a Writ of Summons be signed by the Plaintiff's legal practitioner and the Writ of Summons is not signed by a law firm.

The failure or omission by the plaintiff's legal practitioner to sign the Writ of Summons did not render it invalid. A plaintiff's legal practitioner need not sign a Writ of Summons presented for filing before it can be valid. This issue was determined by this court in its judgment in **Leadership Newspaper Group Ltd v Ogebe (CA/A/686/2013 delivered on 29-3-2017)** thusly- "it is Order 4 Rule 1(1) and Rule 15 of the High Court FCT (Civil Procedure) Rules, 2004 that determines who should or can sign a Writ of Summons to commence civil proceedings in the Federal Capital Territory High Court and when such a Writ of Summons can be said to have been validly issued. It correctly answered the question of who can sign the writ and when it should be considered validly issued when it held that it is the Registrar of the trial court that should sign the writ or other officer of court duly authorised to do so and that the Writ becomes validly issued when it is so signed. To buttress this position, the trial court rightly relied on the decision of the Supreme Court in **Famfa Oil Ltd v. A.G of the Federation & Anor (2003) 9 – 10 SC 31 at 44** that once a prospective plaintiff has properly made his claim as required by law, delivered the same to the Registrar of the court paid the necessary fees payable and such fees are fully paid, his responsibility ceases. What is left to be done, such as signing and issuance of the relevant processes, or the Writ of Summons or originating summons by a judge or other officers empowered by law to sign them are entirely the domestic administrative affairs of the Court and its staff and their failure to discharge any of their duties should not be visited on the litigant by allowing it vitiate any process filed by the litigant.



This decision represents the law on this point. It is noteworthy that the appellant made no attempt to fault the trial court's reliance on this Supreme Court decision. By not complaining against the trial court's reliance on the decision as representing the authoritative and binding case law on the point, the appellant accepted the trial court's reliance on that decision as correct.

Learned SAN for the appellant correctly relied on R.M.A.F.C V. Onwuekweikpe (*supra*) which applied Order 4 Rule 1(1) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2004 and held that it is the Registrar that is required to sign the Writ of Summons and that the writ became validly issued once signed by the Registrar of the trial court.

Let me point out here that there is no basis for the argument that the writ should have been signed by the plaintiff or an identifiable legal practitioner on his behalf. There is nothing in Order 4 Rule 1(1) and Rule 15 of the High Court (Civil Procedure) Rules, 2004 requiring that the writ be signed by the plaintiff or his or her legal practitioner. So the absence of the signature of the plaintiff or that of his legal practitioner on the Writ of Summons was of no moment and had no legal effect on the validity of the Writ of Summons that commenced the suit at the trial court."

The Writ of Summons having been presented for filing by a legal practitioner, the appropriate fees paid for its filing in the High Court registry, and the Registrar having signed it is duly issued and valid.



Assuming it is a requirement of the Rules that the Writ of Summons be signed by the legal practitioner of the plaintiff that presented it for filing, the appellant could no longer object to the validity of the Writ on the ground that it was not signed by the plaintiff's legal practitioner.

The objection to the validity of the Writ of Summons on the ground that it was not signed by the Legal practitioner that presented it for filing should not have been raised during final address at the trial after completion of pleadings and conclusion of evidence by both sides. The appellant as 1<sup>st</sup> defendant had filed her statement of defence and joined issues with the 1<sup>st</sup> respondent on the merits and concluded his evidence in defence before contending in his final written address that the Writ of Summons was invalid because it was not signed by the legal practitioner for the plaintiff. The appellant had filed and argued a notice of preliminary objection to the suit on 27-7-2009 on the grounds that the Writ of Summons was not served on him personally. The non-signing of the Writ of Summons by the plaintiff's legal practitioner was not a ground for the objection. So the appellant did not complain that the Writ of Summons was not signed by the legal practitioner that presented it for filing before he concluded his evidence in the case.

The appellant had clearly consented to the procedure of the legal practitioner not signing the Writ of Summons when he did

not complain about it before filing his statement of defence or eliciting evidence in support of his defence. A party who consents to a particular procedure, even if it is wrong, cannot be heard later in the case to complain about it.

It is a requirement of the Rules that Order 2 Rule 2 of the 2004 Rules limits the time for bringing an application to set aside a court process for irregularity to "**a reasonable time before the applicant takes any fresh step after noticing the irregularity**".

In our instant case the appellant, upon being served a Writ of Summons filed several processes including his pleadings and elicited evidence in support of his defence to conclusion before making the application in his final written address to set aside the Writ of Summons for irregularity on the ground that it was not signed by the plaintiff's legal practitioner.

Order 2 Rules 2 of the 2004 bars a party from making a complain about a procedural error after such party has taken a step in the proceedings after becoming aware of the error. **Anyanwoko v. Okoye (2010) 5 NWLR (Pt. 1188) 497 at 516**, **Agbakoba v. INEC (2008) LPELR – 232 (SC)**, **Saude v. Abdullahi (1989) 7 SC (Pt. 11) 116** and **Uwekweghinya v. State (2005) 3 – 4 SC 24**.

The failure to sign a Writ of Summons by the person or officer required by the Rules to sign it is a mere irregularity that

cannot vitiate the Writ of Summons. In Anyankwoko v Okoye (supra) the Supreme Court held thusly-

***"....it occurs to me that the issue of non-signing of the originating summons by the Registrar of the trial court or an officer of the court duly authorise to sign same is mere lapse on the side of the Registrar of the trial court. It is non-compliance with the court Rules of Procedure which regulate the exercise of jurisdiction conferred on a court by a statute. It has nothing to do with the jurisdiction of that court."***

See also **Famfa Oil Ltd v A.G of the Federation & Anor (Supra)**.

In the light of the foregoing, I resolve issue No. 1 in favour of the respondent.

Let me now determine issue No. 2 which asks "Whether having regard to the letter of withdrawal of re-instatement dated 30 April, 2009 and all the facts and circumstances of this case, the trial court was right when it held that the 1<sup>st</sup> Respondent's interest in the land in dispute is still subsisting."

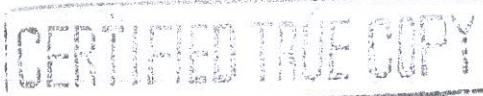
I have carefully read and considered the arguments of all parties herein on this issue. The established facts of this case are as follows: The 1<sup>st</sup> respondent was granted the Right of Occupancy of the disputed plot 3644, Maitama (A06) District Abuja on 22-5-2003, which plot is comprised in a Certificate of Occupancy No. 265uw-b0092-5eefr-10dd8-10, registered as No. 16550 at page 16550 in volume 82 of the Certificate of Occupancy Register in the

Lands Registry Office at Abuja on 20-3-2006 and the file No. is KT10395. The Certificate of Occupancy is in evidence as exhibit 2. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents' 25-2-2009 written demand that 1<sup>st</sup> respondent pay ground rent is exhibit 3 and the acknowledgement of receipt of the paid ground rent is exhibit 4. The appellant was on 2-3-2007 issued an offer of statutory right of occupancy of the same plot No. 3644, Cadastral Zone A06, Maitama with a new file No AD21302. The offer of statutory right of occupancy dated 2-3-2007, the site plan of the plot, approval of building plan, settlement of building plan fees, receipt and building plan and other documents were tendered as exhibit 1.

Both sides in their pleading and evidence disagreed on who has a valid title to the disputed plot. The 1<sup>st</sup> respondent as plaintiff averred in paragraphs 10 to 22 of the statement of claim thusly-

**"10. On the 23<sup>rd</sup> February, 2009 the plaintiff paid in full the sum of ₦243,976.26 as demanded by AGIS and was issued receipt No. 000028063 on the 2<sup>nd</sup> March, 2009.**

**11. The plaintiff avers that it was while making the payment aforesaid at AGIS that he discovered that the Plot was the subject matter of a suit against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants at the instance of the 1<sup>st</sup> Defendant before the High Court of the FCT in Suit No. CV/955/08-JUMMAI GWALEM VS HON. MINISTER, FCT ADMINISTRATION & ANOR.**



12. That the Plaintiff forthwith instructed his Solicitors Messers Ebenezer Obeya & Co. to conduct a legal search on the Plot. The search report which was signed by the Deeds Registrar (AGIS) and the Legal Adviser/Company Secretary (AGIS) on the 19<sup>th</sup> February, 2009 disclosed no encumbrance or interest adverse to the plaintiff's title.
13. On the 30<sup>th</sup> March, 2009 the Plaintiff applied to be joined as a defendant in Suit no. CV/955/08 whereupon the 1<sup>st</sup> Defendant promptly filed a Notice of Discontinuance after reading the plaintiff affidavit in support of the application which was also served n the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants.
14. That Suit No. CV/955/08 was consequently struck out on the 1<sup>st</sup> Defendant's own application on the 20<sup>th</sup> April, 2009 by HONOURABLE JUSTICE ANTHONY UGOCHUKWU OGAKWU.
15. To the Plaintiff's surprise and consternation, on the 7<sup>th</sup> day of May, 2009 or thereabouts he received a letter signed by one Mainasara, B.G. on behalf of the 2<sup>nd</sup> Defendant and dated the 30<sup>th</sup> April, 2009 purporting to withdraw a letter of re-instatement of plaintiff's interest dated 13<sup>th</sup> June, 2008.
16. That the letter of the 30<sup>th</sup> April, 2009 which was also copied to the 1<sup>st</sup> Defendant alleged that... the Minister of the Federal Capital Territory has considered the level of development on the Plot and

approved that the plot be retained by the second allottee who developed the land....

17. The Plaintiff avers that his interest in the Plot was never revoked as no notice of any such revocation was ever served on him or brought to his attention by any means.
18. The Plaintiff further pleads that contrary to the claims in the letter of the 30<sup>th</sup> April, 2009 Plot No. 3644 is still bare and undeveloped. A similar false claim was made by the 2<sup>nd</sup> Defendant in paragraph 14 of her statement of claim in suit No. CV/955/08. The Plaintiff caused photographs of the bare Plot to be taken on the 6<sup>th</sup> May, 2009
19. That the Plaintiff instructed his solicitors Messers Ebenezer Obeya & Co. to address a letter to the 2<sup>nd</sup> Defendant in reply to the letter of 30<sup>th</sup> April, 2009. The reply is dated the 7<sup>th</sup> day of May, 2009.
20. The plaintiff contends that he has a prior title in the Plot which is valid and subsisting.
21. The plaintiff further contends that he is not in breach of any of the terms of the grant of right of occupancy and the acts of the defendants on the plot constitute trespass.
22. That the actions of the defendants particularly the letter of the 30<sup>th</sup> April, 2009 were done maliciously and in bad faith and contrived to unlawfully rid the

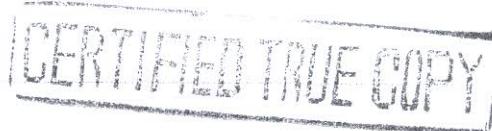
**Plaintiff of his lawful interest in the Plot without recourse to due process."**

The PW1's evidence in chief contained in his witness statement on oath support this averment.

The appellant as 1<sup>st</sup> defendant averred in paragraphs 10 to 33 of his statement of defence thusly-

- "10. That having authenticated her title with the Abuja Geographic Information Systems, the 1<sup>st</sup> Defendant sourced for funds and mobilized to site.**
- 11. That in the course of the construction and or development of the said plot, the 1<sup>st</sup> Defendant was to her dismay served a demolition notice. The said demotion notice is hereby pleaded.**
- 12. That apart from the demolition notice, the 1<sup>st</sup> Defendant has not been served any previous notice.**
- 13. The 1<sup>st</sup> Defendant avers that so far she has invested millions on the property and development of same had reached an advanced stage before the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants upon misinformation demolished the structures on the land.**
- 14. That inspite of clear evidence of ownership and approval for the development of the said property by the 1<sup>st</sup> defendant, the plaintiff has persistent in his unlawful claim of the said 1<sup>st</sup> defendant's plot.**

15. That by the nature of grant and or allocation, the 1<sup>st</sup> Defendant is expected to complete the development of the said plot under the accelerated process or risk the plot of being revoked.
16. That the 1<sup>st</sup> defendant has advanced in the development of the property and has spent a fortune on it.
17. The 1<sup>st</sup> Defendant contends that the act of the Plaintiff in laying false claim of ownership on the 1<sup>st</sup> Defendant's plot and obstructing the development of same is unlawful, illegal and without any legal justification.
18. In specific reply to paragraphs 6, 7 and 8 of the Statement of Claim, the 1<sup>st</sup> Defendant states that the Plaintiff neither took possession of the said plot nor took any step whatsoever to commence development over the said Plot No. 3644 within Cadastral Zone A06 Maitama.
19. In reply to paragraphs 11, 12 and 13 of the Statement of Claim, the 1<sup>st</sup> Defendant avers that the Plaintiff never cause any search to be conducted in respect of Plot No. 3644, the subject matter of this suit.
20. The 1<sup>st</sup> Defendant further avers that had the said search been carried out, the Plaintiff would have had knowledge that the said plot was encumbered.



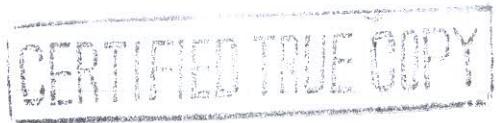
21. In reply to paragraphs 13 and 14 of the Statement of Claim, the 1<sup>st</sup> Defendant avers that the suit referred to in paragraph 11 of the Statement of Claim was discontinued because the parties reached an amicable out-of-court settlement and discontinuing the matter was a precondition for settlement and besides, as at the time the plaintiff applied to be joined as a party in Suit No. CV/955/08, the 1<sup>st</sup> Defendant had already settled with the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
22. In specific reply to paragraphs 15, 16 and 17 of the statement of claim, the 1<sup>st</sup> Defendant avers that the plaintiff's letter of reinstatement was withdrawn vide 2<sup>nd</sup> Defendant's letter dated 7<sup>th</sup> May, 2009
23. The 1<sup>st</sup> Defendant states that contrary to Plaintiff's claim, the Plaintiff was indeed issued with a notice of revocation.
24. In reply to paragraph 18 of the Statement of Claim, the 1<sup>st</sup> Defendant states that contrary to plaintiff's claim that the plot was bare and undeveloped, she had already invested millions of Naira on the property before same was demolished by official of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and it was the threat to demolition that prompted the 1<sup>st</sup> defendant to institute an action against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants in Suit No. CV/955/08.

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25. That it was during the pendency of Suit No. CV/955/08 that some overzealous staff of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants took the laws into their hands and caused the 1<sup>st</sup> Defendant's developments on the said land to be demolished. *The 1<sup>st</sup> Defendant pleads and shall at the hearing of this case rely on the pictures of development before and after the demolition.*
26. The 1<sup>st</sup> Defendant states further that the land was never at anytime bare except after the 1<sup>st</sup> Defendant's developments were demolished in error.
27. That it was after the demolition the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants discovered that the developments on the land by the 1<sup>st</sup> Defendant were in fact with the approval of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and it was therefore obvious that the authorities of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were misled into demolishing the 1<sup>st</sup> Defendant improvements on the land.
28. That it was upon realizing the fact that the demolition was done in error that the 1<sup>st</sup> defendant's title was restored to her with the improvements she had on the property before the unfortunate demolition.
29. In reply to paragraph 20 of the Statement of Claim, the 1<sup>st</sup> Defendant states that a letter of revocation dated 30<sup>th</sup> April, 2009 was issued to the plaintiff.

30. In specific reply to paragraph 21 of the Statement of Claim, the 1<sup>st</sup> Defendant states that by paragraph 5 of the Statement of Claim, the plaintiff was allocated the plot in 2003 and never took any step to develop the said plot thereby in breach of the terms of grant.
31. The 1<sup>st</sup> Defendant further avers that the Plaintiff's purported certificate of occupancy was revoked three (3) years after the Plaintiff had failed to commence development on the land.
32. In reply to paragraphs 22 and 23 of the Statement of Claim, the 1<sup>st</sup> Defendant states that she has not engaged in any malicious or unlawful act in respect of Plot No. 3644 and that the said plot was lawfully and validly allocated to her. *The 1<sup>st</sup> Defendant shall challenged the Plaintiff to prove the truth of these allegations.*
33. In specific reply to paragraph 24 of the Statement of Claim, the 1<sup>st</sup> Defendant states that the Plaintiff could not have seen a bulldozer clearing the plot as at the 9<sup>th</sup> day of July, 2009 because she had commenced development in 2007 and that the development was at an advanced stage as at the 9<sup>th</sup> day of July, 2009 save for the unfortunate incident of demolition."

The DW1's evidence in chief contained in his statement on oath support this averment.

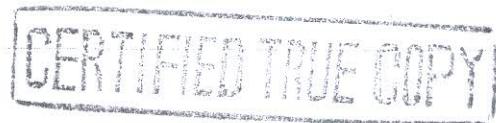


The trial court decided the dispute thusly- "I now come to consider the first issue as distilled by the plaintiff as it appears obvious that the pertinent question on which the entire claim of the plaintiff stands is as constituted by the plaintiff i.e whether the plaintiffs title in the subject matter was validly revoked in law?

In the cause of hearing the plaintiff after adopting his witness statement on oath, plaintiff as PW1 led evidence of title to the plot in dispute, a certificate of occupancy No. 265 vw-b009z-5eefr-10dd8-10 dated 20<sup>th</sup> March, 2006 showing the details of dimensions and all demand letters for payments of ground rent from 1<sup>st</sup> and 2<sup>nd</sup> defendants and evidence of payment thereof.

The 1<sup>st</sup> Defendant who lays claim over the same land also led evidence of title through one Aliyu A. Aliyu who gave evidence as DW1 after adoption of witness statement on oath, the witness (DW1) placed before this court, evidence of title to writ a certificate of occupancy dated 2<sup>nd</sup> of March, 2007.

Further the DW1 in his evidence stated that the plaintiff's right over the land had been revoked by the 1<sup>st</sup> and 2<sup>nd</sup> defendants, although under cross-examination, that he confirmed the fact of such revocation himself and clearly stated that 2<sup>nd</sup> and 3<sup>rd</sup> defendants representing the Minister of FCT and the Federal Capital Territory respectively have signed such revocation letter. Unfortunately, DW1 never presented any documentary evidence to substantiate this assertion despite his unambiguous assertions under paragraph 3 of the witness statement on oath which the DW1 adopted as his oral evidence before the court." That a letter of revocation dated 30<sup>th</sup> April, 2009 was issued to the plaintiff". It



is clear from the evidence before that the DW1 referred to as revocation notice is the letter addressed to the plaintiff captured "Withdrawal of Re-Instatement Letter over plot 3644 within Maitama (A06 District) and according to PW1, no letter of revocation was ever issued or served on him". Plaintiff submitted that exhibit 8, 8a captioned could not be a revocation notice and where there is no service of revocation notice the court of Appeal had this to say in the case of Admin/Executors of the Estate of SANI ABACHA VS David EKE-SPIFF and others (2003) 1 NWLR (Pt 800) 114.

"Where there is failure to serve the notice of intention to revoke a right of occupancy on the holder before the notice is published in the gazette, it amounts to a substantial non compliance with the law which render any acquisition pursuant thereto a nullity. In the instant case, there was no proper revocation of the 1<sup>st</sup> Respondent's right of occupancy in respect of the plot in issue since he was not given notice of intention to revoke his right of occupancy (page 179, paragraph C-G).

Letter of withdrawal of the Re-instatement over the plot (exhibit e) invest any view postulates the view that there was at sometimes a divesting or withdrawal of such interest of the plaintiff over the land, and the issuing authority must show by evidence a testimony of such withdrawal in the manner, presented by law, and that is by clear words of revocation notice. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants who were alleged to have issued revocation notice by DW1, never produced such revocation notice or at least by exhibiting same to the said title withdrawing Re-instatement, that would have more to it. Unfortunately 2<sup>nd</sup> and 3<sup>rd</sup> defendants never

presented in evidence copy of the said revocation order as issued and served on the plaintiff. This therefore means the plaintiff is right in maintaining the position that he was never served with any revocation notice over the plot. And assuming Exhibit 8 – the letter of withdrawal of the reinstatement is anything to go by, looking at the date of the said letter, 30<sup>th</sup> April, 2009 vis-avis the date on which 1<sup>st</sup> defendant was issued with CFO over the property which is 2/3/07, it will show that the issuance of the CFO 1<sup>st</sup> defendant was done before the said withdrawal of Reinstatement in exhibit 8, at a time when plaintiff was not in any way divested with proprietary interest in the property. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants had no land in the nature of the property in dispute to re allocate to anybody, such proprietary interest in the property not having been properly withdrawn by due revocation notice on the plaintiff.

By the decision in Nigeria Engineering Works Ltd vs Denap Ltd (2001) 8 NWLR (pt 746) 726 the Supreme Court stated thus:

"Any holder of a right of occupancy whether evidenced or yet to be evidenced by a CFO, holds that right as long as it is not revoked. Revocation in this instance is that one done in accordance with the law. For nobody will lose his CFO by revocation without his being notified first in writing and the subsequent revocation must also be notified to him in writing. Any other method may be a mere declaration of interest; it will never be notice or revocation. It will be a nullity. (Page 758, paragraph A-C).

Although it is clear, subsequent allocation of the plot to 1<sup>st</sup> defendant was made during the subsistence of the proprietary interest of the plaintiff over the land, which certainly makes such

allocation a nullity which, I so pronounce, it is not superfluous to stat that the said exhibit A is of no moment, not only that it does not rank is a proper revocation notice, it was made after the allocation to the 1<sup>st</sup> defendant was affected by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. Nemo dat non habet. The case of Gbadamosi vs Akiriboye (2013) 15 NWLR (Pt 1378) 455 the Apex Court stated thus:

**"Where there is a subsisting right of occupancy, it is good against any other right of. The grant of another right of occupancy over the same piece of land will therefore be merely illusory and invalid".**

**With the foregoing, I have no difficulty declaring the subsequent grant to 1<sup>st</sup> defendant CFO over the said plot as invalid, revocation notice not having been issued and served on the plaintiff. I so pronounce and having made such pronouncement, I believe is going to be a mere academic exercise to engage in examining other of the argument of the defendant which I hereby discountenanced as of no moment."**

Learned Counsel for the appellant has argued that the judgment of the trial court cannot stand if it is determined that the 1<sup>st</sup> respondent's interest in the land has been revoked, that the learned trial Chief Judge wrongly evaluated the evidence before him by giving wrong interpretation to the documents before him and thereby arriving at wrong conclusions on the purport of the documents, that on a true construction of Exhibit 6 it was not intended in the strict sense of it, to revoke the 1<sup>st</sup> Respondent's title over the land. Rather, the letter was intended to withdraw a

letter of 13 June, 2008 which had erroneously re-instated the 1<sup>st</sup> Respondent's title over the land after it was earlier revoked, that the clear implication and the necessary presumption that should be drawn on Exhibit 6 is that before 3 June, 2008, the 1<sup>st</sup> Respondent's interest in the land was not in existence, it having been revoked, that in the 1<sup>st</sup> Respondent's letter of 7 May, 2009 by which he responded to Exhibit 6, the 1<sup>st</sup> Respondent clearly alleged that he was never served with any notice of revocation, that exhibit 6 clearly made reference to a letter of re-instatement of the 1<sup>st</sup> Respondent's title dated 13 June, 2008, that it was actually this latter letter that Exhibit 6 sought to withdraw, that crucially, the 1<sup>st</sup> Respondent did not deny ever receiving the letter of 13 June, 2008, that the clear implication was that at the time the letter was written, the 1<sup>st</sup> Respondent accepted it because the content of the letter was to the effect that his interest in the land had been re-instated, that there cannot be re-instatement of the 1<sup>st</sup> Respondent's interest if the said interest had not been revoked, that the misapprehension of this crucial fact led to the perverse judgment of the trial Court, that the trial court equally held that the land in dispute was not available for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to allocate to the Appellant since grant of the land was made to the Appellant on 2 March, 2007 while the letter of withdrawal of the re-instatement letter was only written on 30 April, 2009, that the finding of fact by the trial court is perverse because he failed to consider the clear implication of the letter of

13 June, 2008 mentioned in Exhibit 6, that the letter of 13 June, 2008 clearly presupposes that the 1<sup>st</sup> Respondent's interest on the land had been revoked before then.

Learned Counsel further submitted that the 1<sup>st</sup> Respondent has woefully failed to prove that he has a valid and subsisting title over Plot NO. 3644 within Maitama (A06), Abuja, that his denial that he was not served with a valid revocation notice is an afterthought having not denied that he received the letter dated 13 June, 2008 from the 2<sup>nd</sup> Respondent, that the 1<sup>st</sup> Respondent has equally failed to show that he responded to the letter in any way that such a serious letter should have been responded to, that the 1<sup>st</sup> Respondent is therefore estopped from denying that his interest in the land in dispute was validly revoked.

Learned Counsel for the 1<sup>st</sup> respondent argued that the settled position of the law is that for as long as the title to or right of occupancy of a land subsists, no other rival or competing title or right of occupancy can simultaneously exist in or over the same piece of land, that the appellant failed to elicit evidence to prove that the 1<sup>st</sup> respondent was served a notice of revocation of his right of occupancy in the disputed plot personally or by any of the means prescribed in S.44 of the Land Use Act, that the 1<sup>st</sup> respondent having denied receipt or knowledge of the service of such notice of revocation on him, the burden was cast on the appellant and 2<sup>nd</sup> and 3<sup>rd</sup> respondents prove what he asserts, to

wit, that the 1<sup>st</sup> respondent was served a notice revoking his right of occupancy of the disputed plot, that in the absence of evidence that the 1<sup>st</sup> respondent's right of occupancy of the disputed plot was revoked by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, the court cannot speculate on whether such revocation took place and that a certificate of occupancy raises a presumption of ownership and exclusive occupation of the land comprised therein by the holder of the said certificate.

Learned Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents made submissions similar to those of the 1<sup>st</sup> respondent.

Let me now determine the merits of the above arguments.

It is glaring that the 1<sup>st</sup> respondent's statutory right of occupancy to the disputed plot was first in time, having been granted him by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents on 22-5-2003. The appellant justifies the later offer to her of the statutory right of occupancy of the same disputed plot on 2-3-2007, by asserting that the 1<sup>st</sup> respondent's statutory right of occupancy was revoked by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents before 13-6-2008, erroneously reinstated by a written letter on 13-6-2008 and the reinstatement withdrawn by a letter of 30-4-2009 (exhibit 6). It is significant that the 1<sup>st</sup> respondent contended that his statutory right of occupancy was never revoked and that he did not receive any notice revoking his right of occupancy of the disputed plot.

One of the questions that arise from the above assertions of the appellant in justifying the offer of the statutory right of occupancy of the same plot to her is on what specific date before 13-6-2008 was the 1<sup>st</sup> respondent's statutory right of occupancy of the disputed plot revoked by 2<sup>nd</sup> and 3<sup>rd</sup> respondents. This question is necessitated by the argument of Learned Counsel for the appellant that the clear implication of the letter of 13-6-2008 mentioned in exhibit 6 is that the 1<sup>st</sup> respondent's right of occupancy of the disputed plot had been revoked before 13-6-2008 and that the trial court ought to have drawn the necessary conclusion that as at 2-3-2007 when the appellant was granted the statutory right of occupancy to the said plot, the 1<sup>st</sup> respondent's interest therein was not in existence as it had been revoked. There is nothing in the evidence that show or suggest the specific date on which the 1<sup>st</sup> respondent's statutory right of occupancy was revoked before 13-6-2008, the date it was said to have been reinstated. May be if the letter of 13-6-2008 had been in evidence, it would have from its contents provided an answer to this question. But it was not tendered and admitted in evidence. There is nothing in exhibit 6 that show or suggest the exact date of the alleged revocation of the 1<sup>st</sup> respondent's right of occupancy of the disputed plot. For the appellant to successfully challenge the finding of the trial court that as at 2-3-2007, the 1<sup>st</sup> respondent's statutory right of occupancy of the disputed plot was still subsisting and that therefore it was not available for the 2<sup>nd</sup> and

3<sup>rd</sup> respondents to allocate to the appellant, the appellant must show that the revocation of the 1<sup>st</sup> respondent's right of occupancy of the disputed plot was done on a date before 2-3-2007. The appellant cannot discharge this burden by simply relying on the alleged reinstatement of the 1<sup>st</sup> respondent's right of occupancy on 13-6-2008 as suggestive of the fact that the revocation took place on a date before its reinstatement on 13-6-2008. The exact date of the alleged revocation is left in the realm of conjecture. A date before 13-6-2008 could have been a date after 2-3-2007 but before 13-6-2008, in which case the grant of the right of occupancy of the said plot to the appellant on 2-3-2007, would remain void, because as at that date, the 1<sup>st</sup> respondent's right of occupancy of the plot was still intact and subsisting. The 1<sup>st</sup> respondent whose case is that his statutory right of occupancy to the disputed plot has never been revoked, has no duty to prove that it was revoked on a particular date before 13-6-2008 or any other date. It is the appellant who is relying on the fact that the 1<sup>st</sup> respondent's right of occupancy of the said plot was revoked before 13-6-2008 to justify the grant to her of the right of occupancy of the same plot, to prove such revocation and the date it was made, so as to validate the grant of the same plot to her.

As is clear from exhibit 2, the 1<sup>st</sup> respondent has the Certificate of Occupancy of the disputed plot as evidence that he is the holder of the statutory right of occupancy of the disputed plot. It is the 1<sup>st</sup> respondent's case that this right has not been revoked

and is therefore subsisting. The appellant contends that it has been revoked. I agree with the submission of Learned Counsel for each respondent, particularly that of 2<sup>nd</sup> and 3<sup>rd</sup> respondent, that the appellant who asserts that the 1<sup>st</sup> respondent's right of occupancy had been revoked, has the legal duty to prove the fact of such revocation. See **Tsokwa Oil Marketing Co. Nig. Ltd v Bank of the North Ltd (2002) 5 SC (Pt. 11) 9 at 31** and **Osho v Foreign Finance Corp. (1991) 4 NWLR (Pt 184) 157 at 189 (SC)**.

The legal duty to prove that the 1<sup>st</sup> respondent's statutory right of occupancy was revoked could have been discharged by eliciting evidence of the existence of a valid revocation notice which is either an original copy or certified true copy of such notice and evidence that the holder of the right of occupancy revoked or sought to be revoked was actually personally served the notice of revocation or served by one of the means of service specified in S.44 of the Land Use Act. See **Osho v Foreign Fin. Corp. (Supra)**. The revocation of a right of occupancy cannot be assumed or presumed. It must be strictly proved by admissible evidence of a copy of the actual notice of revocation that was issued and evidence of its service in accordance with S.44 of the Land Use Act. In the absence of such evidence, the argument of Learned Counsel for the appellant that the clear implication and the necessary presumption that should be drawn on exhibit 6 is that before 3 June, 2008, the 1<sup>st</sup> respondent's interest in the land was not in existence, it having been revoked, is invalid.

In any case, the letter of 3-6-2008 which exhibit 6 referred to as having reinstated the 1<sup>st</sup> respondent's right of occupancy of the land was not tendered and admitted in evidence. So its content is unknown and uncertain. What exhibit 6 alluded to or referred to as its content is hearsay and is not admissible evidence of the truth of its content that it reinstated the 1<sup>st</sup> respondent's right of occupancy of the disputed plot. So while exhibit 6 suggests that such a letter of reinstatement of the 1<sup>st</sup> respondent's right of occupancy may exist, it is not evidence of the letter of reinstatement itself and its exact content. It cannot also be adopted as evidence of the notice of revocation of the 1<sup>st</sup> respondent's right of occupancy.

This is because S.28(6) and 7 of the Land Use Act provides that-

- "6. The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor and notice thereof shall be given to the holder.**
- 7. The title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under subsection (6) of this section or on such later date as may be stated in the notice.**

So it is only evidence of a copy of such notice of revocation issued in compliance with subsection (6) and given to the 1<sup>st</sup> respondent by service of same on him in the manner prescribed in

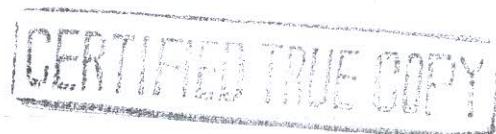
S.44 of the Land Use Act that can establish that the 1<sup>st</sup> respondent's right of occupancy was revoked. See **Osho & Anor v Foreign Finance Corp (Supra)**. The content of a document not in evidence before a court cannot be assumed or speculated upon by both the court and the parties. The trial court rightly refused to assume or conjecture from a nonexistent letter of reinstatement of 3-6-2008 that the 1<sup>st</sup> respondent's right of occupancy of the disputed plot was revoked without evidence of the actual notice of revocation and its service on the 1<sup>st</sup> respondent. As held by the Supreme Court in **Akpabio & Ors v The State (1994) LPELR – 369 (SC)** "The point must be stressed that it is a fundamental principle of law that findings of fact and conclusions from facts of a trial court should be based on evidence adduced before the court and not on speculation or possibilities. See **State v. Aihangbee & Anor (1988) 2 NSCC 192; (1988) 3 NWLR (Pt. 84) 548**. It is not the function of a court of law to speculate on possibilities which are not supported by any evidence. See **State v. Ibong Udo & Anor (1964) 1 All NLR 243, Queen v. Gabriel Adaoju Wilcox (1961) All NLR 631** and **Iteshi Onwe v. State (1975) 9-11 S.C. 23 at 31**. No trial court is entitled to draw conclusion of fact outside the available legal evidence before it. When a trial court veers off course and acts on speculation and possibilities rather than on the concrete evidence before it, it obviously has abandoned its proper role and such facts or conclusions of fact found without appropriate evidence in support thereof will be regarded as perverse by an appellate court". See also **Igabele v. State (2006) LPELR – 1441 (SC), Agip (Nig) Ltd v Agip Petrol Int'l (2010) LPELR**

– 250 (SC). See **ACB Ltd v. Emostrade Ltd** (2002) 4 SC (Pt. 11) 1 and **Ikenfa Best Nig. Ltd v. A-G Rovers State** (2008) 6 NWLR (Pt. 1084) 612 at 653 (CA).

Since there was no evidence that the 1<sup>st</sup> respondent's right of occupancy of the disputed plot was revoked by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, the right has continued to subsist till date, the trial court rightly held that the grant to the appellant of the statutory right of occupancy of the same plot by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents on 2-3-2007 during the subsistence of the 1<sup>st</sup> respondent's right of occupancy of same is void and of no effect. The trial court rightly relied on the restatement of the Supreme Court in **Gbadamosi v. Akiriboye** (2013) 15 NWLR (Pt 1378) 455 that "**Where there is subsisting right of occupancy, it is good against any other right. The grant of another right of occupancy over the same piece of land will therefore be merely illusory and invalid**".

See also **Abacha v. Eke-Spiff & Ors** (2003) 1 NWLR (Pt. 800) 114. In **CSS Bookshops Ltd v. The Registered Trustees of Muslim Community in Rivers State & Ors** (2006) LPELR – 824 (SC), the Supreme Court stated thusly- "**This court has held in several decisions that the mere grant of a right of occupancy over an existing right of occupancy or interest, does not amount to the revocation of such existing interest as was being suggested in various arguments behind section 5(2) of the Land Use Act.**"

In the light of the foregoing, issue No. 2 is resolved in favour of the respondent.

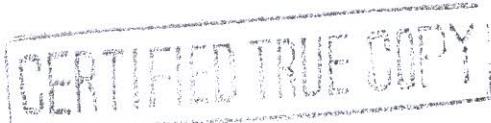
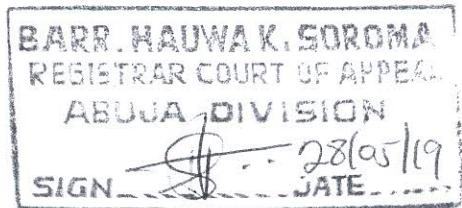


On the whole this appeal fails as it lacks merit. It is accordingly dismissed. The judgment of the High Court of Federal Capital Territory delivered on 2-2-2017 in Suit No FCT/HC/CV/1804/2009 by I.U. Bello J, is hereby affirmed and upheld.

The appellant shall pay costs of ₦400,000.00 to the 1<sup>st</sup> respondent.



**EMMANUEL AKOMAYE AGIM**  
JUSTICE, COURT OF APPEAL



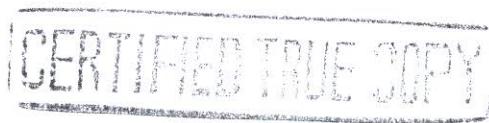
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**COUNSEL:**

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**Terhemba Gbashima, Esq.,** with W.A. Bandawa Esq, Ogochukwu Esenwah Esq., for 1<sup>st</sup> Respondent

**Karina Tunyan SAN** with M.J. Numa Esq, K.B. Ebit Esq Y.M Zakari Esq., for 2<sup>nd</sup> and 3<sup>rd</sup> Respondents



CA/A/355/2017

**ABDU ABOKI PJCA**

I have had the privilege of reading in advance the draft judgment of my Learned Brother, **EMMANUEL AKOMAYE AGIM JCA**. I entirely agree with the reasoning and conclusion reached therein.

I just want to add in reiteration that it is settled law that a writ of summons is an initiating legal process by which the jurisdiction of a trial High Court can properly and validly be invoked by a person or party who intends to utilize the judicial process of that Court to seek for reliefs or remedies from the Court against another on any legal ground. It is one way or mode of commencing actions in the High Court that is provided for in the Rules of that Court. As an initiating or originating process for the invocation of Court's jurisdiction, a writ of summons is the foundation and the process which gives life to a valid action before a High Court without which there could be no action before the Court in respect of which it can properly in law, assume jurisdiction to conduct proceedings or adjudicate. A valid writ of summons is thereof one of the due processes of the law by which jurisdiction of the Court can be invoked and vested in the Court to adjudicate over a matter. It is thus a sine qua non to

the assumption of the requisite jurisdiction by a Court to entertain or adjudicate over a matter commenced by that process. Any material and fundamental defect in a writ of summons would affect its validity and thereby be rendered legally incapable of invoking the requisite jurisdiction of the Court to adjudicate over it. See

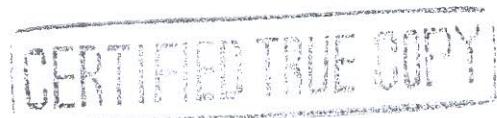
### **ZENITH BANK PLC v. UMOM (2013) LPELR 22001 (CA)**

The pertinent question is whether the writ of summons by which the 1<sup>st</sup> Respondent commenced this case at the Trial Court is valid and vests jurisdiction on the Trial Court, it having not been signed by a Legal Practitioner.

Let me hasten to state that the endorsement by a Legal Practitioner is superfluous and quite unnecessary. I say so because the function of issuing a writ of summons is not that of Counsel but of the Court. The only duty of the Plaintiff's Legal Practitioner or the Plaintiff himself as expressly provided in the uniform Rules of Court including the Rules of the Trial Court, is to apply to the Court for the issue of a writ of summons. Thus, by

**Order 4 Rules 1 (1) and 15 of the Rules of the Trial Court:**

- 1. (1) A writ of summons shall be issued by the Registrar, or other officer of Court empowered to*



*issue summons, on an application.*

*15. A writ is issued when signed on by a Registrar or other officer of Court duly authorized to sign the writ and accompanied by -*

*(a) a statement of claim;*

*(b) copies of documents mentioned in the statement of claim to be used in evidence;*

*(c) witness statement on oath; and*

*(d) a certificate of pre-action counselling.*

The application shall ordinarily be made in writing by the Plaintiff's solicitor completing Form I in the appendix to the Rules, after making all the necessary endorsements on the form. The Legal Practitioner or the Plaintiff then takes the writ to the Registrar or any other officer so empowered, and pays the appropriate fees. Once this is done, the Legal Practitioner or the Plaintiff would have done all that is required of him and the rest is left to the Court. It becomes the duty of the Registrar or other officer of the court so empowered, to issue the writ; and the writ becomes "issued" upon being signed by the Registrar or the officer of Court so designated to issue writs.

It is thus clear that a Legal Practitioner or the Plaintiff has no business or role to play with regards to the "issue" of a writ of summons. It is entirely the duty and function of the Court through the Registrar or any other officer so designated to perform that function. See

**OGBUANYINYA v. OKUDO (1990) 4 NWLR (Pt. 146) 551.**

This is why it has also been reasoned and decided in several cases that a Legal Practitioner or the Plaintiff cannot be blamed or held responsible for any delay or other failure in the issue of a writ of summons. See

**SAUDE v. ABDULLAHI (1989) 4 NWLR (Pt. 116) 387**

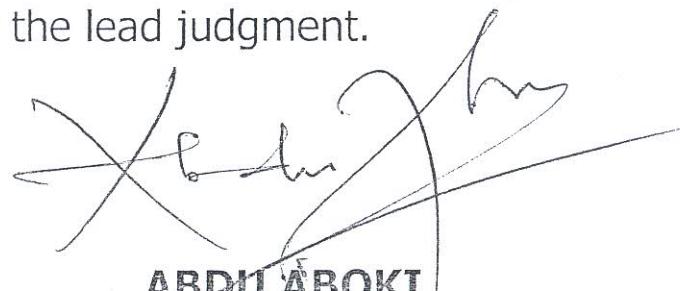
This same principle was also applied in **FAMFA OIL LTD v. A.G.F. (2003) 18 NWLR (Pt. 852) 453** wherein Belgore JSC (as he then was) held that the Plaintiff taking out the writ of summons deals directly with the Court and any mistake committed by the Registrar on the writ cannot be apportioned to the Plaintiff.

From the foregoing therefore, the logical conclusion is that since a writ of summons is not "issued" by the Legal Practitioner or the Plaintiff but by the Registrar of the Court, an endorsement

on the writ, by a Legal Practitioner is of no moment. It is only superfluous and a mere surplusage as long as the writ was duly signed by the Registrar of the Court who is by the Rules of Court responsible to sign same.

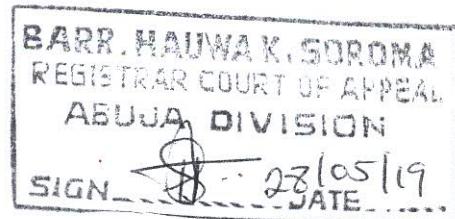
For this and the well articulated reasoning in the lead judgment of my Learned Brother **EMMANUEL AKOMAYE AGIM, JCA**, I also adjudge this appeal to be devoid of merit and it is hereby dismissed. The decision of the Trial Court is hereby affirmed.

I abide by the consequential orders of the lead judgment.



ABDU ABOKI

JUSTICE, COURT OF APPEAL



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**APPEAL NO. CA/A/355/2017**

**ADAMU JAURO, (JCA)**

I have had preview of the judgment just delivered by my learned brother, **Emmanuel Akomaye Agim, JCA**. I am in agreement with the reasoning and conclusion contained therein to the effect that the appeal is lacking in merit.

I adopt the said judgment as mine in dismissing the appeal. I abide by all consequential orders made.



**ADAMU JAURO**  
Justice, Court of Appeal



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