**COMPACT MANIFOLD & ENERGY SERVICES LIMITED**

**V.**

**PAZAN SERVICES NIGERIA LIMITED**

IN THE SUPREME COURT OF NIGERIA

ON FRIDAY, THE 12TH DAY OF JULY, 2019

SC.361/2017

**LEX (2020) – SC. 361/2017**

**OTHER CITATIONS**

3PLR/2020/11 (SC)

(2019) LPELR-49221(SC)

**BEFORE THEIR LORDSHIPS**

IBRAHIM TANKO MUHAMMAD, JSC

OLUKAYODE ARIWOOLA, JSC

JOHN INYANG OKORO, JSC

PAUL ADAMU GALUMJE, JSC

UWANI MUSA ABBA AJI, JSC

**BETWEEN**

COMPACT MANIFOLD & ENERGY SERVICES LIMITED - Appellant(s)

AND

PAZAN SERVICES NIGERIA LIMITED - Respondent(s)

**ORIGINATING COURT**

1. Court of Appeal,

2. High Court of Lagos State (Oke Lawal, J. presiding)

**REPRESENTATION**

L.I.T. ERHABOR with him O.S EBHOMAN and AKOR DOMINIC - For Appellant

AND

O. WALI, SAN with him S.E. NWORIE - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

COMMERCIAL LAW – CONTRACT:- Claim for reliefs arising from contract - Unpaid balance of money for the supply of materials and services pursuant to the contract - Cost for unrecovered materials and equipment in possession of the defendant at project site, subject matter of contract - Release of materials belonging to the claimant still in the possession – How treated

CONSTITUTIONALAND HUMAN RIGHTS LAW - RIGHT TO FAIR HEARING IN JUDICIAL PROCEEDINGS:- Principle that once a trial Court has given a party ample opportunity to defend himself and the party does not avail himself of that opportunity, then the party cannot complain that he was denied fair hearing - Application of

ETHICS – LEGAL PRACTITIONER – DUTY OF CANDOUR:- Counsel not showing forthrightness in pursuit of case – Attitude of Court thereto

ETHICS – LEGAL PRACTITIONERS – DUTY AS OFFICERS OF THE COURT:- Erection of road blocks to expeditious hearing and determination of case – Where it affects the normal schedules for applying for case management conference and disposal of the case within prescribed period – Attitude of court thereto

SCIENCE AND TECHNOLOGY – GSM TECHNOLOGY AND ADJUDICATION OF JUSTICE:- Service of hearing notice by way of electronic means or text messages enabled by GSM information technology – Legal sufficiency of – Attitude of Court thereto – Whether notice by hardcopy/print is a legal requirement or has any legal superiority over other forms of communications

**PRACTICE AND PROCEDURE ISSUES**

ACTION – APPEAL - PRELIMINARY OBJECTION:- Principle that where a preliminary objection would not be the appropriate process to object or show to the Court defects in processes before it, a motion on notice filed complaining of a few grounds or defects would suffice – Failure thereto – Duty of court

ACTION – APPEAL - PRELIMINARY OBJECTION:- Purpose of - Where focused on the competency of one or more grounds of an appeal/action but not dispositive of all the grounds of appeal/action – Legal implication - Order 2 Rule 9(1) of the Supreme Court Rules, 2014 – Principle that a preliminary objection can only be issued against the hearing of the appeal, and not against a selection of grounds of appeal, which even if it is upheld cannot terminate the appeal in limine – Duty of court thereto

ACTION - HEARING NOTICE:- Essence and fundamental nature of the service of hearing notice on parties in the adjudication process – Duty of Court to satisfied itself that hearing notice had been served on a party – Duty of Court not to predicate its decision on mere assumption that because a party have been served with Court process at one stage, that he should be aware of subsequent hearing date(s)

ACTION - HEARING NOTICE:- Principle that "It is not in all cases that the absence of hearing notice will automatically vitiate trials in the context of Section 36 of the 1999 Constitution. A hearing Notice is not therefore a mandatory judicial process that must be issued and served in all cases. The requirement is a rule of the Court not a statutory requirement. Rules of Court are to aid the Court in adjudication of cases.” – Duty of court and parties thereto

ACTION - HEARING NOTICE:- Hearing notice served on a party or his counsel – Whether they are both deemed to have actual knowledge of the date the suit would be heard – Where such a party decides to stay away from Court – Attitude of court thereto

ACTION - HEARING NOTICE:- Service of hearing notice through electronic means/text message(s) by the registrar of Court – Attitude of court thereto – Legal sufficiency of as a Hearing Notice – Relevant considerations

ACTION - PRELIMINARY OBJECTION:- Principle that “a preliminary objection to the competence of an appeal, is an objection, if upheld, renders further proceedings before the Court or tribunal unnecessary” – Duty of court to resolve same whenever raised before venturing into the appeal

ACTION - PRE-TRIAL CONFERENCE:- Default judgment under the Lagos State High Court (Civil Procedure) Rules – Prescription of three months period for Case Management Conference – Purpose of - Expiration of – How computed

APPEAL - FRESH POINT(S) ON APPEAL:- Where fresh point pertains to an issue of jurisdiction – Hearing Notice – Whether can be raised without leave of the Court – Justification of

APPEAL - REPLY BRIEF: Essence of a reply brief – Principle that it is to reply to new issues that have arisen in the respondent's brief of argument – Effect of failure thereto

WORDS AND PHRASES:- “Hearing notice” – Meaning and essence of

WORDS AND PHRASES:- “Preliminary objection to the competence of an appeal” – Meaning of

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The respondent/plaintiff at the High Court of Lagos State claimed for three reliefs including –

1. unpaid balance of money for the supply of scaffolding materials and services to the defendant for the Chevron EGP-3B project, offshore Warri Delta State;

2. cost of the unrecovered scaffolding materials and equipment in possession of the defendant at Chevron EGP- 3G project, offshore Warri Delta State which have been rendered unfit and unusable due to salty water and high humidity at the project site; and

3. an order for the release of 2 offshore materials baskets belonging to the claimant still in NIWA yard warehouse of the defendant in Warri.

Issues having been joined and the case was set down for hearing, the Defendant orchestrated a series of motions and applications all of which were eventually dismissed by Court as well as applications for a series of adjournments when matter, was eventually, slated for Case Management Conference. On a latter date for continuation of the case management conference after an adjournment, the appellant and his counsel were absent. Thereupon, the respondent applied for judgment under Order 25 Rule 6 (2)(b) of the High Court (Civil Procedure) Rules, 2012 which was granted and judgment entered for the respondent. Appellant's appeal against the judgment of the Lagos State High Court was on the 10th March, 2017 dismissed by the Court of Appeal, hence this appeal.

DECISION(S) APPEALED AGAINST

1. Lower Court (Court of Appeal) dismissed the Appellant's appeal against the judgment of the Lagos State High Court was on the 10th March, 2017. Upholding all the reliefs granted.

2. Trial Court (High Court of Lagos State), by way of default judgment, granted all the reliefs sought by Plaintiff;

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1. Whether the lower Court was right to hold that the appellant was aware of the date the default judgment was entered when no hearing notice was served on the appellant.

2. Whether the lower Court was right to have upheld the default judgment entered against the appellant, when there was no proof of service of any hearing notice on the appellant before the trial Court, as at the time the default judgment was entered.

3. Whether from the material fact available in the record, the lower Court came to a right decision when it held at page 804 of the record that the default judgment was entered within the three months period of the commencement of case management conference (CMC) in accordance with the provisions of High Court of Lagos State (Civil Procedure) Rules 2012.

*BY RESPONDENT*

PRELIMINARY OBJECTION ISSUES

“i) The grounds of appeal relied upon by the appellant in Notice of appeal is a combination of both law and facts.

ii) By the provision of the Constitution of the Federal Republic of Nigeria, the appellant cannot appeal as of right where the grounds of appeals contain both facts and law, but must first seek the leave of Court to so do.

iii) The Court lacks jurisdiction to entertain this appeal.

iv) The appellant's notice of appeal filed on 13th day of March, 2017, is incompetent, for failure to obtain the said leave of Court to appeal against the decision of the Court of Appeal as required by the express provision of Section 233(1) (2) (3) of the 1999 Constitution.

v) Ground 2 of the notice of appeal and the particulars thereof, specifically paragraphs (ii) and (iii) are pure analysis of the exercise of discretion of the lower Court, thus leave is required to appeal same.

vi) Grounds 6 and 7 of the notice of appeal and the particulars thereof are mixture of both facts and law; hence leave of Court to appeal must be first sought and granted.

MAIN APPEAL ISSUES

a) Whether the lower Court was right when it held that the appellant was notified of the date the default judgment was entered.

b) Whether the lower Court was right to have upheld the default judgment entered against the appellant, having found that the appellant was sufficiently notified of the date the default judgment was entered.

c) Whether the lower Court came to a right decision when from the material facts available in the record it found that the default judgment was within the three months period from the date of commencement of case management conference (CMC) in accordance with the provisions of the High Court of Lagos State (Civil Procedure) Rules 2012.

*AS ADOPTED BY COURT*

[“The issues formulated for determination of this appeal by the parties are similar. However, it is the appellant that is aggrieved by the decision of the lower Court. It is his grievances that are being addressed in this appeal. The respondents duty is to reply to those grievances. This being so, I will adopt the issues formulated by the appellant in the determination of this appeal.

Issues one and two are complaints against service of Court process on the appellant. They will therefore be considered together, while the 3rd issue will be treated separately.”]

DECSION(S) OF SUPREME COURT

PRELIMINARY OBJECTION:- “From the authorities I have highlighted above, it is clear that the preliminary objection in the instant case is inappropriate and same is liable to be struck out. Accordingly, same is hereby struck out.

ISSUE ONE: Resolved against the appellants and in favour of the Respondent

ISSUE TWO: Resolved against the appellants and in favour of the Respondent

ISSUE THREE: Resolved against the appellants and in favour of the Respondent.

“Appeal shall be and it is hereby dismissed.”

**MAIN JUDGMENT**

PAUL ADAMU GALUMJE, J.S.C. (Delivering the Leading Judgment):

The respondent herein, as plaintiff at the High Court of Lagos State claimed at paragraph 23 of its statement of claim filed on the 31st March 2014, the following reliefs:-

1. The sum of N95,399,765.28 and the sum of $875,949.22 being the unpaid balance of money for the supply of scaffolding materials and services to the defendant for the Chevron EGP-3B project, offshore Warri Delta State.

2. The sum of N43,522,300.00 being the total cost of the unrecovered scaffolding materials and equipment in possession of the defendant at Chevron EGP-3G project, offshore Warri Delta State which have been rendered unfit and unusable due to salty water and high humidity at the project site.

3. An order for the release of 2 offshore materials baskets belonging to the claimant still in NIWA yard warehouse of the defendant in Warri.

The appellant herein filed a statement of defence on the 3rd of October, 2014. The respondent filed a reply on the 29th December, 2014.

Issues having been joined, the case was set down for hearing before Oke Lawal, J. on the 7th July, 2014. The appellant was not in Court and was not represented by a counsel. Hearing notice was ordered to be served on the appellant and the matter was further adjourned to the 15th September, 2014 at the request of its counsel who informed the Court that a move was being initiated for the matter to be settled out of Court. The Court did not sit on the 15th September, 2014 and the matter was adjourned to 13th October, 2014. On the said 13th October, 2014 Mr. Stephen Efediogor, learned counsel for the appellant applied for and was granted an adjournment in order to regularize the appellants processes. On 20th November, 2014 when the case came up, learned counsel for the appellant instead of regularizing their processes, moved a motion urging the Court to strike out the writ and the statement of claim for being irregular. The motion was heard and dismissed and the appellant was ordered to regularize its processes. The matter was then adjourned to 18th December, 2014 for mention and to hear the appellants motion seeking to regularize its processes. On the 18th December 2014, appellant moved its motion for extension of time to file its statement of defence, and same was granted and the case was adjourned to 19th and 26th January, 2015 for hearing. On 11th February 2015, Okey Wali learned counsel for the plaintiff, now respondent informed the Court about a possibility for settlement out of Court. The case was then adjourned to 25th March, 2015 for report of settlement. On the 6th of May 2015, the Court was informed of the parties' failure to settle.

It was at this stage that parties were directed to file forms 17 and 18 which deal with issues for determination and answers and the matter was adjourned to 17th June, 2015 as agreed by counsel for respective parties. The respondent filed forms 17 and 18 and the appellant also did the same, after having informed the Court that it had paid N20,000.00 to the respondent. On the 24th November, 2015 the appellants counsel drew the attention of the Court to a motion he filed on the 17th June, 2015 in which he sought for an order of dismissal of the suit on the ground that same had been abandoned by the respondent.

The trial Court took the application and dismissed it and the matter was adjourned to 15th of December, 2015 for case management conference.

Learned counsel for the appellant filed a notice of appeal on the 2nd December, 2015 against the ruling of 24th November,2015. After filing the appeal, the appellant failed to compile record. On the 15th December, 2015 when the case management conference was to commence, the appellant's counsel applied for adjournment, and the matter was adjourned to 26th January, 2016. On that day the case management conference went on and was later adjourned to 16th February, 2016. On that day the Court did not sit and the registrar of the Court sent fresh hearing notice to the parties, informing them that the matter had been adjourned to the 15th March, 2016 for continuation of the case management conference. On the appointed day when the matter came up for continuation of the case management conference, the appellant and his counsel were absent. The respondent applied for judgment under Order 25 Rule 6 (2)(b) of the High Court (Civil Procedure) Rules, 2012. The Court granted the application and went on to enter judgment for the respondent herein. By a motion on notice filed on the 18th March 2016, the appellant prayed the Court to set aside the judgment delivered on the 15th March, 2016. The application was refused. Appellant's appeal against the judgment of the Lagos State High Court was on the 10th March, 2017 dismissed by the Court of Appeal, hence this appeal. The appellant's notice of appeal, at pages 810- 816, filed on the 13th March, 2017 contains eight grounds of appeal.

Parties filed and exchanged briefs of argument. The appellant's brief of argument, settled by Mr. L.I.T. Erhabor was filed on the 17th July, 2017.

Three issues were formulated for determination of this appeal in the following order:-

1. Whether the lower Court was right to hold that the appellant was aware of the date the default judgment was entered when no hearing notice was served on the appellant.

2. Whether the lower Court was right to have upheld the default judgment entered against the appellant, when there was no proof of service of any hearing notice on the appellant before the trial Court, as at the time the default judgment was entered.

3. Whether from the material fact available in the record, the lower Court came to a right decision when it held at page 804 of the record that the default judgment was entered within the three months period of the commencement of case management conference (CMC) in accordance with the provisions of High Court of Lagos State (Civil Procedure) Rules 2012.

Mr. Okey Wali, learned senior counsel for the respondent issued a preliminary objection to the competence of this appeal which he filed on the 26th February, 2018. The grounds upon which the preliminary objection is based are:-

i) The grounds of appeal relied upon by the appellant in Notice of appeal is a combination of both law and facts.

ii) By the provision of the Constitution of the Federal Republic of Nigeria, the appellant cannot appeal as of right where the grounds of appeals contain both facts and law, but must first seek the leave of Court to so do.

iii) The Court lacks jurisdiction to entertain this appeal.

iv) The appellant's notice of appeal filed on 13th day of March, 2017, is incompetent, for failure to obtain the said leave of Court to appeal against the decision of the Court of Appeal as required by the express provision of Section 233(1) (2) (3) of the 1999 Constitution.

v) Ground 2 of the notice of appeal and the particulars thereof, specifically paragraphs (ii) and (iii) are pure analysis of the exercise of discretion of the lower Court, thus leave is required to appeal same.

vi) Grounds 6 and 7 of the notice of appeal and the particulars thereof are mixture of both facts and law; hence leave of Court to appeal must be first sought and granted.

The preliminary objection is argued in the respondents brief of argument. In case the preliminary objection is overruled. Learned senior counsel equally formulated three issues for determination of this appeal in the following terms:-

a) Whether the lower Court was right when it held that the appellant was notified of the date the default judgment was entered.

b) Whether the lower Court was right to have upheld the default judgment entered against the appellant, having found that the appellant was sufficiently notified of the date the default judgment was entered.

c) Whether the lower Court came to a right decision when from the material facts available in the record it found that the default judgment was within the three months period from the date of commencement of case management conference (CMC) in accordance with the provisions of the High Court of Lagos State (Civil Procedure) Rules 2012.

Learned counsel for the appellant filed a reply brief on the 6th of December, 2017.

A preliminary objection to the competence of an appeal, is an objection, if upheld, renders further proceedings before the Court or tribunal unnecessary. Therefore, when it is raised, it must be resolved before venturing into the appeal.

The respondents notice of preliminary objection reads as follows:-

TAKE NOTICE that the respondent herein shall, at or before the hearing of this appeal, raise and rely upon the following preliminary objection against the appellants appeal and pray the Honourable Court for:-

AN ORDER striking out or dismissing the appellants appeal.

I have reproduced the grounds of objection elsewhere in this judgment. From the contents of the notice, it will appear that the objection is directed at the hearing of the appeal. However, learned senior counsel for the respondent/objector in his argument in support of the preliminary objection at pages 2-7 of the respondents brief of argument, attacked only the 2nd, 3rd, 4th, 6th and 7th grounds of appeal. The appellants notice of appeal filed on 13th March, 2017 contains eight grounds of appeal. Since no argument was preferred in respect of the 1st, 5th and 8th grounds of appeal by the learned senior counsel for the respondent/objector, it means those grounds are competent, as such they can sustain the appeal. Order 2 Rule 9(1) of the Supreme Court Rules, 2014 (as amended) provides as follows:-

“A respondent intending to rely upon a preliminary objection to the hearing of the appeal, shall give the appellant three clear days notice thereof before the hearing, setting out the grounds of objection, and shall file such notice together with ten copies thereof with the registrar within the same time." (Italics is mine for Emphasis).

The emphasis is that a preliminary objection can only be issued against the hearing of the appeal, and not against a selection of grounds of appeal, which even if it is upheld cannot terminate the appeal in limine. In KLM Royal Dutch Airlines v. Aloma (2017) LPELR- 42588 (SC), this Court, per Kudirat Motonmori Olatokunbo Kekere-Ekun, JSC at pages 6-7, paras D-B, held:-

The purpose of a preliminary objection is to truncate the hearing of an appeal in limine. It is raised where the respondent is satisfied that there is a fundamental defect in the appeal that would affect the Courts jurisdiction to entertain it. Where there are other grounds that could sustain the appeal, a preliminary objection should not be filed. Where the purpose of the objection is merely to challenge the competence of some grounds of appeal, the best procedure is by way of motion on notice. The reason is that the success of the objection would not terminate the hearing of the appeal. See Odunukwe v. Ofomata (2010) 18 NWLR (Pt.1225) 404 at 423 C-F, Ndigwe v. Nwude (1999) 11 NWLR (Pt.626) 314; N.E.P.A. v. Ango (2001) 15 NWLR (Pt. 734) 627; Muhammed v. Military Administrator Plateau State (2001) 18 NWLR (Pt.744) 183.

See also the case of Adejumo v. Olawaiye (2014) 12 NWLR(Pt.1421) 252 at 279 where this Court, per Rhodes-Vivour said:-

A preliminary objection should only be filed against the hearing of an appeal and not against one or more grounds of appeal which are not capable of disturbing the hearing of the appeal... Where a preliminary objection would not be the appropriate process to object or show to the Court defects in processes before it, a motion on notice filed complaining of a few grounds or defects would suffice.

From the authorities I have highlighted above, it is clear that the preliminary objection in the instant case is inappropriate and same is liable to be struck out. Accordingly, same is hereby struck out.

For the appeal, learned counsel for the appellant formulated three issues for appropriate determination of this appeal, and they are reproduced hereunder as follows:-

1. Whether the lower Court was right to hold that the appellant was aware of the date the default judgment was entered when no hearing notice was served on the appellant.

2. Whether the lower Court was right to have upheld the default judgment entered against the appellant, when there was no proof of service of any hearing notice on the appellant before the trial Court as at the time the default judgment was entered.

3. Whether from the material facts available in the record the lower Court came to a right decision when it held at page 804 of the record that the default judgment was entered within the three months' period of the commencement of case management conference (CMC) in accordance with the provision of High Court of Lagos State (Civil Procedure) Rules, 2012.

For the respondent, three issues were formulated as follows:-

a) Whether the lower Court was right when it held that the appellant was notified of the date the default judgment was entered.

b) Whether the lower Court was right to have upheld the default judgment entered against the appellant, having found that the appellant was sufficiently notified of the date the default judgment was entered.

c) Whether the lower Court came to a right decision when from the material facts available in the record it found that the default judgment was within the three months period from the date of commencement of case management conference (CMC) in accordance with the provisions of the High Court of Lagos State (Civil Procedure) Rules.

The issues formulated for determination of this appeal by the parties are similar. However, it is the appellant that is aggrieved by the decision of the lower Court.

It is his grievances that are being addressed in this appeal. The respondents duty is to reply to those grievances. This being so, I will adopt the issues formulated by the appellant in the determination of this appeal. Issues one and two are complaints against service of Court process on the appellant. They will therefore be considered together, while the 3rd issue will be treated separately.

Learned counsel for the appellant, in his argument, submitted that the appellant was not served with hearing notice against the 15th of March 2016, the day the default judgment, subject matter of this appeal, was entered against him. Learned counsel submitted that although electronic service is permitted by the rules of the trial Court, none was effected on the appellant, and there was no affidavit of service to that effect. According to the learned counsel, there was no evidence before the trial Court upon which the lower Court could come to the conclusion or assumed that the text message which the Court room registrar of the trial Court allegedly sent to the appellants learned counsels phone was received. In a further argument, learned counsel submitted that since the trial Court did not sit at the last adjourned date, it was absolutely necessary to verify whether the appellant who was absent at the previous session was properly served. Failure of the trial Court to verify whether the appellant was served was fatal to the Courts proceedings, and the lower Court was wrong in upholding the decision of the trial Court. In aid, Learned counsel cited Arabella v. NAIC (2008) FWLR (Pt.44) 1208 at 176 paras. E - G; Ahmed v. Ahmed (2013) 15 NWLR (Pt.1377) 274 at 349, paras E-G.

Finally, learned counsel urged this Court to hold that the appellant was denied the right of fair hearing when it entered judgment without confirming that the appellant was served with hearing notice that the matter was fixed for 15th March, 2016 for continuation of the Case Management Conference.

Mr. Okey Wali, learned senior counsel for respondent submitted that the lower Court was right when it upheld the default judgment entered against the appellant on the 15th March, 2016 for default of appearance. Learned senior counsel argued forcefully, as a preliminary point that the issue of whether the appellant was aware of the date the default judgment was entered, was never in contention at the lower Court. According to the learned senior counsel, the appellants contention at the lower Court was basically the mode of service of the hearing notice which was effected by the use of short message service (SMS) to the phone numbers of the counsel in this matter intimating them of the next date of adjournment.

In the appellants reply brief, the only new issue worthy of a reply was the appearance in Court of the learned counsel for the appellant on the 16th March, 2016. Learned counsel considered that issue that was raised by learned counsel for respondents preposterous, unimaginable and unthinkable that he appeared as a result of the SMS allegedly sent to his phone. Apart from this, learned counsel only reargued the 1st and 2nd issue for determination of this appeal that have to do with service of hearing notice. The essence of a reply brief is not to reopen argument already canvassed. It is to reply to new issues that have arisen in the respondents brief of argument.

In resolving the issue of service, the lower Court per Nimpar, JCA said:-

I am of the view that the Court below was in order by directing that the appellant should be informed by text. The Court has a discretion to direct the notification in a particular way. Issuance of a hard copy hearing notice is not a requirement of law and failure to issue and serve same cannot offend the rule of fair hearing.

Order 7 Rule 13 of the Lagos State High Court (Civil Procedure) Rules 2012 provides as follows:-

After serving any process, the process server shall promptly depose to and file an affidavit setting out the fact, date, time, place and mode of service describing the process served and shall exhibit the acknowledgement of service, such affidavit shall be prima facie proof of service.

The appellants amended brief of argument at the lower Court is at pages 699-725 of the record of this appeal. At page 702 of the record, learned counsel for the appellant submitted three issues for determination of the appeal. The specific issue that concerned the question of service is the 2nd issue for determination of the appellants appeal and I reproduce same hereunder as follows:-

Whether the lower Court was right when it entered default judgment against the defendant for failure of appearance when no hearing notice was served on the defendant as required by law.

Throughout the argument of the learned counsel for the appellant at the lower Court, learned counsel did not deny knowledge of the fact that this matter was fixed for Case Management Conference on the 15th of March, 2016. Learned counsels argument concentrated on the fact that the service of process was not in conformity with Order 7 Rule 13 of the Lagos High Court (Civil Procedure) Rules. In that regard, learned counsel cited Okoye v. C.P.M.B. Ltd (2008) 11 M.J.S.C. 76 at 88, paras C-D, Arabella v. NAIC (supra), Ahmed v. Ahmed (Supra).

In this Court, learned counsel for the appellant has argued forcefully that no hearing notice was served on the appellant informing it or its counsel that the case was adjourned to 15th March 2016, the date the default judgment was entered. Learned counsels argument in this Court has clearly set out a scenario different from the appellants argument at the lower Court. Learned counsel for the appellant said the service was not in accordance with the law as such even if he knew the date the case was adjourned to, his failure to appear would have not been the reason for entering judgment in default of appearance.

Before this Court, the story is that the date to which the case was adjourned was not communicated to him. Although the receiving of hearing notice is a new issue in this Court, it can be raised without leave of the Court, since it has bearing on the jurisdiction of the trial Court, the Court of Appeal and this Court.

What then is the essence of hearing notice? The issue of service of hearing notice on a party notifying him of the hearing date of matters is very fundamental to the administration of justice. It is the service of hearing notice that confers on the Court the jurisdictional competence to entertain the matter before it. Thus where a matter is adjourned to a date other than the date the parties had previous notice of hearing, the Court has a duty to notify them of the subsequent adjournment. The Court should not predicate its decision on mere assumption that a party must have been served with Court process at one stage and that he should be aware of the subsequent hearing dates. See Obimonure v. Erinosho (1966) 1 ANLR 250, Skenconsult (Nig.) Ltd v. Ukey (1981) 1 SC.6; Wema Bank Nig. Ltd v. Odulaja (2000) FWLR (Pt.17) 138 142-143.

In the instant case, there is evidence that parties left their phone numbers with the registry of the Court. The phone numbers were supplied for the purpose of communication between the parties in this matter and the registry. There is evidence that a text message containing 15th March, 2016 as the hearing date of this matter was sent to learned counsel for respective parties through their phone numbers. Clearly, parties were properly served with hearing notice. I agree with the lower Court that at this age of information technology super highway, it will be foolhardy for any litigant to insist on being served with hard copy hearing notice. Once a notice is sent to the GSM numbers supplied by the litigants, that is sufficient. Learned senior counsel for the respondent was served the same way appellants counsel was served. At the lower Court, learned counsel for the appellant did not deny at the earliest opportunity that he did not receive any hearing notice. He only argued that the hearing notice was not served in accordance with the rules of Lagos State High Court. His sudden somersault before this Court is an attempt to frustrate the speedy disposal of this case. From the history of this case, learned counsel for the appellant has not been forthright in pursuit of this case. Having therefore been properly served with hearing notice, the appellants right of fair hearing has not been breached at all. The 1st and 2nd issues are resolved against the appellant.

The third and last issue is whether the default judgment was entered against the appellant within the three months period of case Management Conference in accordance with the provisions of High Court of Lagos State (Civil Procedure) Rules 2012. Learned counsel for the appellant submitted that the default judgment was delivered after the expiration of three months, contrary to the provision of Order 25 Rules 1 and 2(g) of the High Court of Lagos State (Civil Procedure) Rules. It is learned counsel contention that, any proceedings or judgment after the expiration of the period for case management conference is null and void if none of the parties applies for and is granted extension of time. In a further argument, learned counsel submitted that in the instant case, there was no extension of time, as such the default judgment, subject matter of this appeal is null and void. Learned counsel therefore urged this Court to either allow the appeal and dismiss the suit or set aside the judgment of the lower Court delivered on the 10th March, 2017 and remit the case for trial on merit before another Judge.

Learned senior counsel for the respondent submitted in reply that the case management conference commenced on the 26th of January, 2016 and was due to lapse on the 25th April, 2016. Learned senior counsel submitted that the case management conference started late due to numerous applications by the learned counsel for the appellant.

The lower Court in its judgment at page 804 said:-

To resolve the question of whether 3 months had expired, the starting date must be identified and three months therefrom can be easily discerned. When did the process commence? The record of proceedings (Sic)page 557 shows that the Court below dismissed an application to dismiss the appeal on the 24th November, 2015 for failure to apply for case management conference as required by Order 25 Rule 1 (1) and (3) of the Lagos State High Court, Rules. The case was adjourned to 15th December, 2015 for the case management conference to start, but was aborted by the appellant who informed the Court they were desirous of settlement of the pre-trial conference. On the next date being the 26th January, 2016, the conference started. So the started (Sic, Starting) date is 26th January, 2016 and three months would ordinarily take us to 25th March, 2016. The judgment was entered on the 15th of March, 2016 within the period of pre-trial conference.

I totally agree with the lower Court. Order 25 Rules 1 and 2 (a) of the Lagos State High Court (Civil Procedure) Rules provides as follows:-

1. Within fourteen (14) days after close of pleadings, the claimant shall apply for the issuance of a Case Management Conference Notice as in form 17.

2. Upon application by a claimant under Sub-rule (1) above, the Judge shall cause to be issued to the parties and their legal practitioners (if any) a case management conference notice as in form 17 accompanied management information sheet as in form 18 for the purposes set out hereunder: -

a) disposal of matters which must or can be dealt with on interlocutory application;

b) giving such direction as to the future course of the action as appears best adopted to secure its just, expeditious and economical disposal;

c) promoting amicable settlement of the case or adoption of ADR.

2. At the Case Management Conference, the Judge shall consider and take appropriate action with respect to such of following (or aspects of them) as may be necessary or desirable.

g) Hearing and determination of applications and objections on points of Law.

Learned counsel for the appellant has argued that what kick-started the case management conference in this case on appeal was not the order/directive of Court, but the filing and service of form 18, signed by the Registrar of the trial Court on the 7th of May, 2015 after pleadings were closed. Order 25 Rules 1 and 2 clearly provides 14 days within which a claimant shall apply for issuance of a case management conference notice as in form 17, after close of pleadings. From the history of this case where the appellants herein erected road blocks to expeditious hearing and determination of this case, the normal schedules for applying for case management conference and disposal of the case within the prescribed period was clearly put asunder. This is the reason why the lower Court did not hide its displeasure with the conduct of the learned counsel for the appellant when it said:-

It may be safely concluded that the appellant was technically planning to scuttle the proceedings so that the pre-trial conference will expire and that explains its application to go settle and refusal to come to Court even when notified by the registrar of the Court below.

For all I have said, I entirely agree with the learned senior counsel that the default judgment was not entered outside the three months prescribed by the Lagos State High Court (Civil Procedure) Rules 2012. This issue is resolved against the appellant.

Having resolved the three issues submitted for determination against the appellant, this appeal shall be and it is hereby dismissed.

The cost of prosecuting this appeal is assessed at N500,000.00 in favour of the respondent and against the appellant.

**IBRAHIM TANKO MUHAMMAD, C.J.N.:**

I have had the privilege of reading in advance the judgment of my learned brother, Galumje, JSC. I agree with his Lordships reasoning and conclusion that the appeal ought to be dismissed. I too hereby, dismiss the appeal. I abide by all orders made in the lead judgment.

**OLUKAYODE ARIWOOLA, J.S.C.:**

I had the privilege of reading in draft the lead judgment of my learned brother, Galumje, JSC just delivered. I agree entirely with the reasoning and conclusion that the appeal lacks merit and should be dismissed. I too will dismiss the appeal.

I abide by the consequential order in the leading judgment including the order on costs. Appeal dismissed.

**JOHN INYANG OKORO, J.S.C.:**

I am in agreement with the judgment just delivered by my learned brother, Paul Adamu Galumje, JSC. For emphasis on the reasons adumbrated therein, I shall proffer a few comments of my own.

I hold the view that issues 1 and 2 formulated by both parties, which are similar, are central and sufficient to the determination of this appeal. The fulcrum of the appellants grievance is on non-service of hearing notice, hence denial of fair hearing.

Service of hearing notice before hearing any matter in Court is fundamental to the exercise of Courts jurisdiction over the matter before it. Hearing notice is the only legal means of informing a party who was absent from Court of the return date. Where the Court is satisfied that hearing notice had not been served on a party, it would not proceed with the business of the day. See Alhaji Auwalu Darma v. Ecobank Nig. Ltd (2017) 9 NWLR (Pt. 1571) 480 at 511; Nigerian Agricultural & Co-operative Bank Ltd v. Mr. Lewechi Ozoemelam (2016) 9 NWLR (Pt. 1517) 376.

In the instant appeal, there is evidence that a text message was sent by the registry of the Court to the G.S.M. numbers provided by counsel to both parties informing them that the matter had been adjourned to 15th March, 2016 for continuation of the case management conference. The respondent (as plaintiff) attended Court on the said 15th March, 2016 but the appellant stayed away. I hold the view that at this age of prevalence of information technology, the service of hearing notice through text message by the registrar of Court is good and sufficient notice.

Now, the question begging for answer is whether the appellant was denied fair hearing by the trial Court. My answer to the above question is in the negative. The appellant cannot complain of denial of fair hearing when it had ample opportunity to defend itself but failed to avail itself of that opportunity. The settled position of the law is that once a trial Court has given a party ample opportunity to defend himself and the party does not avail himself of that opportunity, then the party cannot complain that he was denied fair hearing. See Ogunsanya v. State (2011) 12 NWLR (Pt. 1261) page 40; Ordi Orugbo v. Una (2002) 16 NWLR (Pt. 792) 175.

In the final analysis, I agree entirely with the conclusion of my learned brother in the lead judgment that this appeal has no merit. It is accordingly dismissed by me. I abide by the costs awarded in favour of the respondent and against the appellant.

Appeal dismissed.

**UWANI MUSA ABBA AJI, J.S.C.:**

I have had a preview of the judgment of my learned brother, P.A. Galumje, JSC just delivered. I agree with the reasoning and conclusion arrived at therein that the appeal is devoid of any merit.

The appellant distilled 3 issues for consideration in this appeal:

1. Whether the lower Court was right to hold that the appellant was aware of the date the default judgment was entered when no hearing notice was served on the appellant.

2. Whether the lower Court was right to have upheld the default judgment entered against the appellant, when there was no proof of service of any hearing notice on the appellant before the trial Court, as at the time the default judgment was entered.

3. Whether from the material fact available in the record, the lower Court came to a right decision when it held at page 804 of the record that the default judgment was entered within the three months' period of the commencement of case management conference (CMC) in accordance with the provisions of High Court of Lagos State (Civil Procedure) Rules, 2012.

The fuller facts are contained in the lead judgment of my learned brother. Nevertheless, the default judgment entered against the appellant was as a result of lack of appearances by the learned counsel to the appellant and the chequered and protracted history in the proceedings of the trial Court that necessitated the respondents learned senior counsel to apply for default judgment under Order 25 Rule 6(2)(b) of the High Court (Civil Procedure) Rules, 2012. On appeal to the lower Court to set the default judgment aside, the appellant lost and here in the apex Court, my learned brother has dismissed same.

May I dwell on the issue of hearing notice that was allegedly not served on the appellant as amounting to denial of fair hearing. It is however the mode of service that is being challenged by the appellants learned counsel in this appeal to have denied him fair hearing. Failure to give notice of proceedings to the opposing party in a case where service of process is required is a fundamental omission which renders such proceedings void. This is so because the Court would have no jurisdiction to entertain it. Hearing notice is a document or information that emanates from the registry of a Court, giving legal notification to parties in a suit the dates on which the suit would be heard. Once a party or his counsel is served hearing notice they are both deemed to have actual knowledge of the date the suit would be heard, and if such a party decides to stay away from Court he does so at his own peril. See Per RHODES-VIVOUR, JSC in DARMA v. ECOBANK (2017) LPELR-41663 (SC).

Nevertheless, it is on record that the appellant was served or informed of the hearing date of 15/3/2016 via SMS. The Evidence Act has now taken notice of the technology age we are in that electronic evidence is now admissible. This was ably tackled by my learned brother, per PETER-ODILI, JSC in ENL CONSORTIUM LTD. V. SHAMBILAT SHELTER (NIG.) LTD. (2018) LPELR- 43902 (SC), when he pungently and right held:

The point has to be made that the phone call mode of service would ordinarily be of good service so long as the party is provided the notice at least 48 hours before the scheduled Court date. The regularity of service is no longer jettisoned because it was made electronically as the current rules of Court have ensured. See Order 2 Rule 4(c) of the Court of Appeal, 2013 rules.

The lower Court in this case reported as COMPACT MANIFOLD & ENERGY SERVICES LTD V. PAZAN SERVICES (NIG.) LTD. (2017) LPELR-41913 (CA), Per NIMPAR, JCA, observed and I adopt and agree with him as a solid legal foundation for electronic service of hearing notice and other legal processes thus:

The essence of a hearing notice is to bring to the notice of the party that his matter will come on the date named in the notice of hearing. Can the notice be effected by other means of notification? The answer is in the affirmative. When the rules use the words hearing notice, it did not specify that it must be hardcopy. Was the judge wrong to use the electronic method of informing parties about the date of hearing? I pause here to say this is the 21st century and technology is ruling every aspect of human endeavour and therefore even Courts must be abreast of these technological advancement and be ready to absorb the aspects that will enhance the quality of justice and aid speedy determination of cases. The Courts have also moved on in that regard. Indeed, electronic service has taken root in the Nigerian legal system and it would be strange for anybody to frown at being served electronically. See CONTINENTAL SALES LTD. V. R. SHIPPING INC (2012) LPELR- 7905 (CA). I am of the view that the Court below was in order by directing that the appellant should be informed by text. The Court as a discretion to direct the notification in a particular way. Issuance of a hard copy hearing notice is not a requirement of law and failure to issue and serve same cannot offend the rule of fair hearing. See MIRCHANDANI V. PINHEIRO (2001) 3 NWLR (Pt. 701) 552 @ 573. wherein the Court held: It is not in all cases that the absence of it will automatically vitiate trials in the context of Section 36 of the 1999 Constitution. A hearing Notice is not therefore a mandatory judicial process that must be issued and served in all cases. The requirement is a rule of the Court not a statutory requirement. Rules of Court are to aid the Court in adjudication of cases. It is not to arm-twist the Court into becoming a robot.

For the more comprehensive and deeper reasons in the lead judgment of my learned brother, I accordingly dismiss the appeal and I abide by the order as to costs.