**MRS. UZO GRACE EBIGBO**

**V.**

**COMMISSIONER OF POLICE, IMO STATE & ORS**

IN THE COURT OF APPEAL OF NIGERIA

ON FRIDAY, THE 13TH DAY OF MARCH, 2020

CA/OW/33/2015

**LEX (2020) - CA/OW/33/2015**

**OTHER CITATIONS**

3PLR/2020/36 (CA)

(2020) LPELR-49553(CA)

**BEFORE THEIR LORDSHIPS**

RAPHAEL CHIKWE AGBO, JCA

AYOBODE OLUJIMI LOKULO-SODIPE, JCA

ITA GEORGE MBABA, JCA

**BETWEEN**

MRS UZO GRACE EBIGBO - Appellant(s)

AND

1. COMMISSIONER OF POLICE, IMO STATE

2. ASST. INSPECTOR GENERAL OF POLICE (Zone 9 Umuahia)

3. INSPECTOR GENERAL OF POLICE

4. DPO MGBIDI POLICE STATION

5. MR. G. IMO OFFICER IN CHARGE COMMAND SURELLANCE OWERRI

AND

1. HRN EZE PROF. P.O. EZIGBO (Ogbefi of Amaofuo)

2. UJU UZOIGWE

3. MICHAEL IGBONAJU

4. JAMES NZEREM - Respondent(s)

**ORIGINATING COURT(S)**

IMO STATE HIGH COURT [Justice L.C. Azuamaon Presiding]

**REPRESENTATION**

LUN NWAKAETI, ESQ. - For Appellant

AND

CHIEF B. J. ADIGWE for 2nd set of Respondents. - For Respondent

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

CONSTITUTIONAL AND HUMAN RIGHT LAW – FUNDAMENTAL RIGHTS ENFORCEMENT - PERSONAL LIBERTY - ARREST BY POLICE:- Application to restrain Police from arresting, harassing or detaining an applicant under the Fundamental Right (Enforcement Procedure) Rules 2009– Preliminary objection arising thereto - How treated

**PRACTICE AND PROCEDURE ISSUES**

ACTION - PRELIMINARY OBJECTION:- When raised against the competence of an action – Duty of trial court thereto

ACTION - PRELIMINARY OBJECTION:-Where a trial Court opts to hear a preliminary objection together with the substantive matter (with a view to delivering judgment together, at the end of trial) - Order VIII Rule 4, 5(a) & (b) of the Fundamental Right (Enforcement Procedure) Rules 2009 – Whether trial Court still has a duty to rule on the said preliminary objection, before proceeding to express opinion on the substantive matter

ACTION - SIGNING OF COURT PROCESS(ES): Proper person to sign a legal process/document - Legal process/document signed/franked by a law firm – Validity of

COURT:- Application to strike out case by plaintiff – When made on ground that suit is incompetent on ground of improper franking and that court has no jurisdiction to hear the matter – Proper order for court to make

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

At the Court below, the Applicants (2nd set of Respondents herein) had sought, among others, the following reliefs against the Respondents (now Appellant and the 1st set of the Respondents):

a) An order of the Honourable Court restraining the 2nd to 6th Respondents, officers, men and operatives of their respective commands from arresting, harassing or detaining the Applicants at the prompting or instigation of the 1st Respondent, pending the hearing and determination of the Motion on Notice.

b) And for such further or other orders as this Hon. Court shall deem fit to make in the circumstances.

The grounds for the application, also shown in the supporting affidavit, showed that on 13/8/2004, the 6th Respondent (Mr. C. Imo) Officer-in-charge, Command Surveillance, Owerri, in company of the 5th Respondent (D.P.O. Mgbidi) and other policemen, heavily armed came to the palace to arrest Applicants, but because they did not see Applicants, they dropped invitation letters at the palace (Exhibits A, B, C & D) for Applicants to report at the Police Station - Command office Appellants said that the attempt by 2nd to 6th Respondents to arrest them, resulted in their being trailed by the police, all on the instigation of the 1st Respondent, upon a phantom allegation stated in the Exhibits A to D - namely, threat to life.

But on 4/7/2014 Applicants filed Notice of Discontinuance of the Suit and followed up with a Motion on Notice on 10/9/14, seeking the order of Court for leave to Applicants to discontinue the Suit against all the Respondents. That was in reaction to 1st Respondent’s application to strike out the suit. See pages 65 to 70 of the Records of Appeal. Surprisingly, the Trial Court heard the application to withdraw the suit and refused the same, ordering the parties to proceed with the suit!

DECISION(S) APPEALED AGAINST

Trial Court heard the application to withdraw the suit (by Plaintiff) and refused the same, ordering the parties to proceed with the suit regardless of Supreme Court dictum on the competency of a suit not signed by a Legal Practitioner instead of a law firm. Thereafter, the Court delivered its judgment granting the reliefs sought by Applicants.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1) Whether the signing of the originating processes in suit No. HOW/541/2014 by one B.J. Adigwe & Co, the law firm of Respondents Counsel, and accordingly a person not recognized as legal practitioner in Nigeria pursuant to Sections 2(1) and 24 of the Legal Practitioners Act, did not affect the competence of the suit and a fortiori the jurisdiction of the Court to hear and determine the matter (Ground 6)

2) Whether the learned trial judge was right to have overlooked the notice of preliminary objection challenging the competence of the suit as well as notice of discontinuance, without deciding same, either way. (Grounds 7)

3) Whether the conduct of the learned trial Judge did not occasion a miscarriage of Justice. (Grounds 1, 2 and 3)

4) Whether the failure of the learned trial judge to first determine if the police who were parties to the action had been served with the processes in the suit before going into the determination of same, did not infringe on the Appellants’ right to fair hearing, especially with regard to her right to pursue criminal complaint she lawfully make to the police against the Respondents. (Grounds 4 and 5)

*BY RESPONDENTS*

The 2nd set of Respondents filed a Notice of Preliminary Objection to the hearing of the Appeal on 30/4/2018 and also filed their Brief, in the alternative on 21/2/2015 and distilled 4 issues for the determination of the appeal, as follows:

“1) Whether the signing of the originating process in Suit HOU (sic)/541/2014 by one B.J. Adigwe & Co whose name is not “Roll” or (not on the Roll) has any effect on the Rules governing fundamental Rights Enforcement Procedure 2009 to fetter the jurisdiction of the Court to entertain the matter.

2) Whether the learned trial judge actually over looked the preliminary objection of the Respondent or did he comply with the Rules governing the Enforcement of Fundamental Right Procedure 2019.

3) Whether the conduct of the trial judge distilled from Grounds 1- 7 occasioned any miscarriage of justice such as denial of the fair hearing of the said suit of the Appellants Respondent.

4) Whether the learned trial judge actually failed to determine if the action had been served with the processes in the police who were parties in the said suit before going into the determination and whether same infringed the Fundamental Right of the Applicant to pursue a criminal complaint that she made to the police against the Respondents.”

*AS ADOPTED BY COURT*

[Case was resolved based on the preliminary objection]

DECISION OF [CURRENT] COURT

1. Preliminary Objection has been defeated and overtaken by events having been predicated on the motion on Notice by the Appellant, filed on 30/4/2015, which motion was argued by Appellant and granted on 14/4/2016, (about 2 years before the Notice of Preliminary Objection was filed on 30/4/2018!). The preliminary objection is therefore misplaced, belated and incompetent. It is accordingly dismissed for lacking in merit.

2. Having thus admitted that the originating processes were not properly franked and signed by a legal practitioner known to law and so the trial Court had no jurisdiction to hear and determine the suit, the trial Court was enjoined and had a duty to strike out the suit, at that stage, and to stop further waste of judicial time and resources to pursue an obvious nullity. It is also strange that 2nd set of Respondents’ Counsel, B.J. Adigwe Esq. is taking this stand, on appeal, defending the absurdity, after he had admitted that the trial Court had no jurisdiction to hear the suit, in the circumstances.

3. Decision of Court set aside and suit struck out.

**ITA GEORGE MBABA, J.C.A. (Delivering the Leading Judgment):**

This appeal emanated from the decision of the Imo State High Court in Suit No. HOW/541/2014, delivered by Hon. Justice L.C. Azuamaon 12/9/2014, in an application for enforcement of fundamental rights, wherein the trial Court held in favour of the Applicants (the 2nd set of Respondents herein). On page 81 of the Records of Appeal, the learned trial Court held:

“I hold that the Applicants sufficiently made out a case of likelihood of infraction to their fundamental Right, where upon I hold that this application succeeds as prayed, with cost of N10,000.00 against 1st Respondent.”

At the Court below, the Applicants (2nd set of Respondents herein) had sought the following reliefs against the Respondents (now Appellant and the 1st set of the Respondents):

a) An order of the Honourable Court restraining the 2nd to 6th Respondents, officers, men and operatives of their respective commands from arresting, harassing or detaining the Applicants at the prompting or instigation of the 1st Respondent, pending the hearing and determination of the Motion on Notice.

b) And for such further or other orders as this Hon. Court shall deem fit to make in the circumstances.

c) Take further Notice that this Motion shall serve as a stay of all actions pending the hearing and determination of this motion.

The motion was supported by statement setting out the name and description of the Applicants, the Reliefs sought and the grounds thereof.

In the Reliefs (in the statement) Applicants claimed for:

a) A declaration that the impending and imminent arrest, and detention of the Applicants by the officers, and men of Command Surveillance of the Nigeria Police Command Owerri, manned by the 2nd Respondent at the behest of the 1st Respondent, over wholly civil matter (land dispute) without any tinge of criminality, is an infraction of the Fundamental Rights to personal Liberty and freedom of movement of the Applicants, as enshrined in Chapter 4 of the Constitution of Federal Republic of Nigeria 1999 as amended and Articles 6 And 12(1) of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act.

b) An order of injunction restraining the Respondents from further attempt to arrest and detain or cause further infractions of the Fundamental Rights of the Applicants at the instigation of the 1st Respondent. (See pages 1 to 5 of the Records of Appeal).

The grounds for the application, which also agreed with the supporting affidavit, showed that on 13/8/2004, the 6th Respondent (Mr. C. Imo) Officer-in-charge, Command Surveillance, Owerri, in company of the 5th Respondent (D.P.O. Mgbidi) and other policemen, armed to the teeth came to the palace to arrest Applicants, but because they did not see Applicants, they dropped invitation letters at the palace (Exhibits A, B, C & D) for Applicants to report at the Police Station - Command office; Appellants said that the attempt by 2nd to 6th Respondents to arrest them, resulted in their being trailed by the police, all on the instigation of the 1st Respondent, upon a phantom allegation stated in the Exhibits A to D - namely, threat to life.

Applicants said that, sometime in May 2014, the 1st Respondent (a widow of the deceased elder brother of 1st Applicant) at Amaofuo desired to extend the boundaries of the precincts of the palace, to plant flowers at a wrong portion; the families of Umuobiefuna, which comprises both the Applicants and 1st Respondent rightly intervened and advised the 1st Respondent, otherwise; they said that the 1st Respondent had earlier changed the character of the palace, by making some horticultural design, which took up a lot of space and thereby limiting the space of the palace ground, meant for traditional activities, but the family kept quiet, since it was faced with a serious chieftaincy tussle at Mgbidi High Court, which lasted for 6 years.

On 29/5/2014, when a family member was being buried, Appellants said the 1st Respondent who lives partly in England, arrived from England, with her 2 adult male children, and after about 5 minutes of their arrival, a police van with armed police officers from Mgbidi Police Station, arrived the compound and camped; that while the Applicants were at the burial, the 1st Respondent employed some workers to dig up some portions of the palace to blockade the 1st Applicant’s access to the palace from his house; that the 1st son of the 1st Respondent, Emeka, was supervising the work while the police was waiting on; that act attracted community members who pleaded with the 1st Respondent not to change the character of the palace, as the same is not a personal property. They said that 1st Applicant, on hearing of what happened at the palace, left the burial ground to the palace (his palace) to handle the situation at a family level; he met the 1st Respondent and her sons in a closed door meeting and they appeared to understand that the palace belonged to the community and agreed to stop the work. But surprisingly, after about 2 months of the incident, the 1st Respondent instigated the 2nd to 6th Respondents to arrest and detain the Applicants over the same civil matter, which was believed to have been amicably settled; they said that she (1st Respondent) maliciously alleged threat to life in her complaint, to justify the unjust and inappropriate criminalization of the land dispute, to humiliate the 1st Appellant, who is the traditional ruler of the town; that there is no tinge of criminality in the entire conduct and disagreement of the parties in the case. (See pages 5 and 6 of the Records of Appeal).

The 1st Respondent (now Appellant) had filed a motion on 1/9/14, seeking an Order to strike out the Applicants’ suit, for lack of jurisdiction of the Court to entertain it. (Pages 37 - 40 of the Records). She, however, later filed a counter-affidavit to contest the Applicants’ Motion (See pages 56 of the Records of Appeal), and the Counter affidavit was deposed to by a clerk in her solicitors Law Office, who said in paragraphs 2 of her affidavit; as follows:

“2) That the facts deposed herein are within my knowledge, by virtue of the circumstances enunciated in paragraph 1 above and upon the information obtained from Emmanuel Emenike Nwoye, Esquire (1st Respondent Counsel) in chambers on August 29, 2014 at 12.20pm of which I verify/believe to be true as follows:

a) That the 1st Respondent is the widow and Ugoeze of Late Eze Dr. R.P.M. Ebigbo the Ogbueli V of Amaofuo in Oru West Local Government Area of Imo State.

b) That the late Eze Dr APM Ebigbo was the elder brother of the 1st Applicant.

c) That Chukwuemeka Ebigbo is the 1st son of his father late Dr. A.P.M. Ebigbo who succeeded his own father as Eze.

d) That the house, compound and premises of the 1st Respondent and her children and her late husband are distinct from that of the 1st Applicant with different gates.

e) That sometime after the death of her husband she relocated temporarily to the United Kingdom with her two children following threats to their lives

f) That she had painstakingly perused the Applications; grounds for the relief, affidavit setting out facts relied upon, all attached to the Applicants’ application and hereby state, unequivocally, that the assertions in the paragraphs of the said affidavits are malicious and barefaced falsehood, fabricated to mislead this Honourable Court and to further the Applicants’ penchant for doing mischief and their gold-digging venture and as such are hereby expressly denied.

g) That paragraphs 1 - 6 of the Applicants’ Affidavit in support of their Motion are denied.

h) That the 1st Respondent wrote a petition to the Inspector General of Police about threat to her life and that of her two children, Chukwuemeka and Chinaedum Obieze Ebigbo.

i) That following the events which occurred on 29/05/2014 and 31/05/2014, the following persons were given a matchet cut; namely Chinedum Obieze Ebigbo, the 1st Respondent’s son, Mrs Ngozi her cook and Shuwaibu Mohammed, her security man.

j) That the matchet cuts given to Chinaedum Obieze Ebigbo, Mrs. Ngozi, the cook and Shuwaibu Mohammed was a culmination of several physical threat and other satanic and cultic activities against the 1st Respondent and her children to ensure that they don’t return to their family home.

3) That 1st Respondent is not an employee of the 2nd to 6th Respondents.”

The 2nd to 6th Respondents filed no counter-affidavit.

But on 4/7/2014 Applicants filed Notice of Discontinuance of the Suit and followed up with a Motion on Notice on 10/9/14, seeking the order of Court for leave to Applicants to discontinue the Suit against all the Respondents. That was in reaction to 1st Respondent’s application to strike out the suit. See pages 65 to 70 of the Records of Appeal.

Surprisingly, the Trial Court heard the application to withdraw the suit and refused the same, ordering the parties to proceed with the suit!

That was on 11/9/2014, when the trial Court also adjourned the case for judgment. (See page 73 - 74 of the Records of Appeal).

That Trial Court delivered its judgment on 12/9/14, and granted the reliefs sought by Applicants, and awarded cost of N10,000.00 to the Applicants, against the 1st Respondent (Appellant herein).

That is the decision Appellant appealed against, as per the Notice of Appeal, filed on 3/10/2014 (pages 82 to 37 of the Records) Appellant filed amended notice of appeal on 5/4/17, and a brief of argument on 20/4/16, upon Regularising the Records of Appeal, on 14/4/16, when it was deemed as duly compiled and transmitted to this Court. She distilled 4 issues for the determination of the Appeal, as follows:

1) Whether the signing of the originating processes in suit No. HOW/541/2014 by one B.J. Adigwe & Co, the law firm of Respondents Counsel, and accordingly a person not recognized as legal practitioner in Nigeria pursuant to Sections 2(1) and 24 of the Legal Practitioners Act, did not affect the competence of the suit and a fortiori the jurisdiction of the Court to hear and determine the matter (Ground 6)

2) Whether the learned trial judge was right to have overlooked the notice of preliminary objection challenging the competence of the suit as well as notice of discontinuance, without deciding same, either way. (Grounds 7 )

3) Whether the conduct of the learned trial Judge did not occasion a miscarriage of Justice. (Grounds 1, 2 and 3)

4) Whether the failure of the learned trial judge to first determine if the police who were parties to the action had been served with the processes in the suit before going into the determination of same, did not infringe on the Appellants’ right to fair hearing, especially with regard to her right to pursue criminal complaint she lawfully make to the police against the Respondents. (Grounds 4 and 5)

The 2nd set of Respondents filed a Notice of Preliminary Objection to the hearing of the Appeal on 30/4/2018 and also filed their Brief, in the alternative on 21/2/2015 and distilled 4 issues for the determination of the appeal, as follows:

“1) Whether the signing of the originating process in Suit HOU (sic)/541/2014 by one B.J. Adigwe & Co whose name is not “Roll” or (not on the Roll) has any effect on the Rules governing fundamental Rights Enforcement Procedure 2009 to fetter the jurisdiction of the Court to entertain the matter.

2) Whether the learned trial judge actually overlooked the preliminary objection of the Respondent or did he comply with the Rules governing the Enforcement of Fundamental Right Procedure 2019.

3) Whether the conduct of the trial judge distilled from Grounds 1- 7 occasioned any miscarriage of justice such as denial of the fair hearing of the said suit of the Appellants Respondent.

4) Whether the learned trial judge actually failed to determine if the action had been served with the processes in the police who were parties in the said suit before going into the determination and whether same infringed the Fundamental Right of the Applicant to pursue a criminal complaint that she made to the police against the Respondents.”

Appellant filed a Reply brief to contest the Preliminary Objection by the 2nd set of Respondents.

The Notice of Preliminary Objection was predicated on the grounds that:

1) The appeal is incompetent

2) The brief of Argument dated 20th April 2015 and filed on 30/4/2015 is incompetent.

3) The Appellant filed another brief of Arguments without leave of Court.

4) The proposed Amended Notice and grounds of Appeal is undated and unsigned.

5) The additional ground sought to be included in the Amended Notice and grounds of Appeal were included, without praying for an extension of time within which to include the additional grounds of appeal, having been out of the mandatory period to file notice and grounds of appeal.

6) That the Amended Notice and Grounds of Appeal contain prayers

7) That the appeal is Otise (sic) academic and contains technicalities.

8) The appeal is characterized by falsehood.

RESOLUTION OF THE PRELIMINARY OBJECTION

The whole concept and essence of this Preliminary Objection has been defeated and overtaken, in my opinion, having been predicated on the motion on Notice by the Appellant, filed on 30/4/2015, which motion was argued by Appellant and granted on 14/4/2016, (about 2 years before the Notice of Preliminary Objection was filed on 30/4/2018!) By the said Order made on 14/4/16, Appellant was granted extension of time to compile and transmit the Records of Appeal, and the Records of Appeal transmitted to this Court on 30/3/2015, was deemed as having been duly done on the 14/4/16. Appellant was also granted leave to raise and argue issue of jurisdiction, and to amend the Notice of Appeal to incorporate the said issue. The amended Notice of Appeal was filed on 5/4/2017 (and was deemed duly filed on 18/1/2018). Of course, Appellant’s brief was duly filed on 20/4/16, upon the Records of Appeal being regularized on 14/4/16. The preliminary objection is therefore misplaced, belated and incompetent. It is accordingly dismissed for lacking in merit.

Arguing the appeal, Appellant’s counsel, L.U.N. Nwakaeti Esq. submitted on issue one, that the processes that originated the suit was not signed by a legal practitioner known to law, as it was purportedly endorsed by “B.J. Adigwe & Co.” (which is not a legal practitioner, but the name of a law firm). He relied on Section 2(1) of the Legal Practitioners Act, Laws of the Federation of Nigeria, 2004. Order 1 Rule 2 of the Fundamental Right (Enforcement Procedure) Rules 2009 (FREPR); Section 112 of the Evidence Act, 2011. He also relied on the case of Okafor V. Nweke (2007) All FWLR (pt.368) 1025.

On issue 2, Counsel said once the issue of jurisdiction is raised in a suit, the Court has a duty to determine the same, first, the matter being a threshold issue; that Appellant, as 1st Respondent, had filed a preliminary objection to the suit, but the trial Court failed to consider and determine it.

He relied on Omokhafe V. Milad Edo State (2005) 2 MJC 173 at 183 - 184 (among other cases).

On issue 3 and 4, Appellant relied on Adebayo v. A.G. Ogun State (2008)4 MJSC 89, to say that Appellant was not granted fair hearing when the Court brushed aside the complaint of non-service of the originating processes on the 2nd to 6th Respondents. He also relied on Saced v. Mohammed (2011) All FWLR (Pt.581) 1553, Isiyaku Mohammed Vs Kano Native Authority (1983) 1 SCNLR 1 at 15; Ariori v. Elemo (1983) 1 SC 13.

In his response, the 2nd set of Respondents’ Counsel, Chief B.I. Adigwe, in summary, argued that by the 2009 Fundamental Rights (Enforcement Procedure) Rules, it did not matter that the originating processes were signed by: “B.J. Adigwe & Co.”; that that law contained an innovation in the introductory paragraph (preamble) of the Fundamental Rights Enforcement Rules, that the Court shall encourage and welcome public interest litigation; that no such case on human right may be struck out for locus standi reasons etc. He argued that the case of Okafor V. Nweke supra was done 2 years before the 2009 Fundamental Right (Enforcement Procedure) Rules. He argued that the law has moved away from the technicalities of allowing the signing of the process by B.J. Adigwe & Co. (law firm) to defeat the substantial interest of justice of the case.

Counsel said that arguments on the issue of jurisdiction was merely academic issue, as the preliminary objection by 1st Respondent did not touch on the substance of the suit. He added that the trial Court acted with due diligence and in line with Order VIII Rule 4, 5(a) and (b) of the FREPR; and that it heard that Preliminary Objection along with the substantive application.

On issues 3 and 4, Counsel said there was no record to support the allegation that 2nd to 6th Respondents were not served with the originating processes; that the Counsel for 2nd to 6th Respondents, Barr. O.C. Edward, was in Court and agreed that they had not filed anything; Counsel said that Appellant was not denied fair hearing.

In his Reply Brief, Appellant said that, even where a trial Court hears an objection to a suit along with the substantive matter, it has a duty to give its ruling on the objection, before proceedings to decide on the substantive matter. He relied on Garba v Mohammed (2017) All FWLR (Pt.867) 490; that in this case, the trial Court failed to consider the preliminary objection and to rule on same.

RESOLUTION OF THE ISSUES

I think the main and crucial issue for the determination of this Appeal is - whether the trial Court had jurisdiction to hear and determine the suit, when the originating processes were purportedly signed by ”B.I. Adigwe & Co”, (a law firm), and even when Applicant applied to discontinue the suit, upon receiving the preliminary objection challenging the competence of the suit, for not being signed by a legal practitioner known to law, the Court proceeded to deliver judgment in the suit.

The handling of this case by the learned trial Court appeared rather strange, as it appears to have forced the Applicants (2nd set of the Respondents) to proceed with the suit, even after they (Applicants) had filed a notice of discontinuance, and further demonstrated their determination to discontinue the case by filing a motion, seeking the leave of Court to withdraw the suit. (See pages 65 to 68 of the Records of Appeal). Ruling on the application to discontinue the suit, on 11/9/2014, the trial Court said:

“Application to withdraw this suit is not time-wisely made, as the 1st Respondent has not only joined issues with the Applicant once (sic) the suit but has also filed preliminary objection to the competence of the same. Consequently, this Court hereby requires (sic) the application and calls as (sic) parties to proceed with the suit.” (Page 73 of the Records).

Counsel for 2nd to 6th Respondents did not oppose the application to withdraw the suit, though the Counsel for 1st Respondent (who had filed the preliminary objection, which led to application to withdraw the suit, merely said that Order 9 Rule 1 (which law?) was not relevant to the case.

The 1st Respondent had filed a motion on 1/9/2014, seeking “an order striking out the suit, for this Honourable Court lacks jurisdiction to entertain same”. The ground for the application was that the suit, as constituted was incompetent, as the originating process (Exhibit A) and the motion were not signed by a person known to law, but purportedly by a law firm “B.I. Adigwe & Co.” (See pages 3 and 7 of the Records of Appeal).

In his affidavit in support of the application to withdraw the suit, Applicants had averred:

“3) That my principal came back from this Court on 2/9/2014 and informed me in our chambers at Okija and I verily believed her, as follows:

a) That I made mistake when I was typing the originating processes that I did not write B.J. Adigwe before I wrote B.J. Adigwe & Co. at the signing column of the suit.

b) That the suit was not properly franked and same rob the Court of the jurisdiction to hear and determine same on the merit.

c) That on the resumed hearing of this case on 2/9/2014, the Counsel who appear for 1st Respondent, E.E. Nwonye Esq., served on her a counter-Affidavit, preliminary objection to the suit and a motion for extension of time.” See pages 69 - 70 of the Records of Appeal).

Having thus admitted that the originating processes were not properly franked and signed by a legal practitioner known to law and so the trial Court had no jurisdiction to hear and determine the suit, the trial Court was enjoined and had a duty to strike out the suit, at that stage, and to stop further waste of judicial time and resources to pursue an obvious nullity. It is also strange that 2nd set of Respondents’ Counsel, B.J. Adigwe Esq. is taking this stand, on appeal, defending the absurdity, after he had admitted that the trial Court had no jurisdiction to hear the suit, in the circumstances.

The law has settled all such controversies in a long line of decided cases, that a process of Court signed by, or purportedly signed in the name of a law firm, to originate a suit, is a nullity. See Okafor v. Nweke (2007) All FWLR Pt. 368 (2007) LPELR - 2412 SC; Iwunze & Ors v. Okenwa & Anor (2015) LPELR - 24905 CA; and Onyekwuluje & Anor v. Animashaun & Anor (2019) LPELR - 465528 (SC), which applied the principle in Okafor v. Nweke (supra), as follows:

“it is clear that, by looking at the documents the signature which learned senior advocate claims to be his, really belongs to J.H.C. Okolo SAN & CO. or was appended on its behalf, since it was signed on top of that name. Since both counsel agree that the said J.H.C Okolo SAN & Co cannot legally sign and/or file any process in the Courts and such motion on notice filed on 19th December 2015, notice of cross-appeal and applicant’s brief of argument in support for the said motion all signed and issued by the firm known and called J.H.C. Okolo SAN & Co. are incompetent in law particularly as the said law firm of J.H.C Okolo SAN & Co. is not a registered Legal practitioner.” See also Mrs. Amos Oketade v. Mrs. Olayinka Adewunmi & Ors (2010)8 NWLR (Pt.119) 63 at 74 to 75; FBN PLC & Anor V. Maiwada & Anor (2013)5 NWLR (Pt.1348) 444 at 494.

In the case of Lt. Col. Abudullahi Dan-Asabe (Rtd) & Anor. v. Alh. Ibrahim Babale (2013) LPELR - 22360 (CA), it was said:

“We have held, several times, that a notice of appeal or any process of Court, prepared and allegedly signed by a law firm, without disclosing the legal practitioner who prepared and signed it, is worthless and cannot activate the jurisdiction of the Court to consider or entertain it. See the case of New Nigeria Bank v. Denclag Ltd (2005) 4 NWLR (Pt.916) 573; Bello v. Adamu (2011) LPELR - 3722 CA; SLB Consortium Ltd Vs NNPC (2011)9 NWLR (Pt.1252) 317??.

Thus, embarking on the conclusion of the case, even after the Applicants, who filed it, had applied to withdraw it, for the reason stated, the trial Court was on a misadventure, as it was obvious that the decision reached by it, in the circumstances, would be a nullity, as it lacked jurisdiction to entertain a suit, with such fundamental defect - the motion not signed by a person known to law, pursuant to Section 2 (1) of the Legal Practitioners Act and/or Section - 112 of the Evidence Act 2011.

I have earlier stated in this judgment, that the trial Judge was also in gross error to have ignored the preliminary objection, filed by the 1st Respondent, which was not opposed by the Applicants (who, infact, laid the foundation for the said preliminary objection). Even where a trial Court opts to hear a preliminary objection together with the substantive matter (with a view to delivering judgment together, at the end of trial) as stipulated by Order VIII Rule 4, 5(a) & (b) of the Fundamental Right (Enforcement Procedure) Rules 2009, the trial Court still has a duty to rule on the said preliminary objection, before proceeding to express opinion on the substantive matter. See Enukeme v. Mazi (2014) LPELR - 25540 (CA); Dr Emeruche Kalu Nto & Anor v. Global Soap & Detergent Ind. Ltd (2012) LPELR - 7997 CA. Destra Investments Ltd v. FRN & Anor (2018) LPELR - 43883 (SC); Garba v. Mohammed (2017) All FWLR (Pt.867)490.

I therefore see merit in this appeal and so resolve the issue for Appellant and set aside the unfortunate decision of the learned trial Court and strike out the Suit No. HOW/541/2014 for incompetence.

The parties shall bear their respective costs.

**RAPHAEL CHIKWE AGBO, J.C.A.:**

I have read the lead judgment of my learned brother Mbaba, JCA and I agree with both his reasoning and conclusions.

The trial Court obviously acted without jurisdiction and it is irresponsible for him to have proceeded to hear the matter on the merits after the obvious incompetence was pointed out to him and the applicant had applied to withdraw the application. I have no difficulty dismissing the appeal and striking out the initiating suit.

**AYOBODE OLUJIMI LOKULO-SODIPE, J.C.A.:**

I agree.