**A. B. AKANJI & ORS**

**V.**

**IBADAN NORTH EAST LOCAL GOVERNMENT & ANOR**

IN THE COURT OF APPEAL OF NIGERIA

ON FRIDAY, THE 10TH DAY OF MARCH, 2017

CA/I/165/2012

**LEX (2017) - CA/I/165/2012**

**OTHER CITATION**

3PLR/2017/1 (CA)

(2017) LPELR-42180(CA)

**BEFORE THEIR LORDSHIPS**

MONICA BOLNA'AN DONGBAN-MENSEM J.S.C

MODUPE FASANMI J.S.C

CHINWE EUGENIA IYIZOBA J.S.C

**BETWEEN**

A. B. AKANJI & 102 OTHERS Appellant(s)

**AND**

1. IBADAN NORTH EAST LOCAL GOVERNMENT

2. COMMISSIONER FOR ENVIRONMENT AND WATER RESOURCES Respondent(s)

**ORIGINATING COURT**

HIGH COURT OF OYO STATE, IBADAN JUDICIAL DIVISION (Ruling of Akinteye J.)

**REPRESENTATION/LAWYERS**

OLUWOLE ALUKO, Esq. - For the Appellants).  
AND

OLATUNDE ERINOSO, Esq. - For Respondents).

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

ADMINISTRATIVE AND GOVERNMENT LAW – LOCAL GOVERNMENT – EJECTION OF TRADERS FROM MARKET:- Suit seeking for the nullification of an administrative ejection action on ground that same was contrary to contract and unlawful –– How treated

REAL ESTATE AND PROPERTY LAW – FORCEFUL EJECTION FROM LAWFULLY ALLOCATED SHOPS BY LOCAL AUTHORITY:- Suit seeking for restoration of possession and for re-construction of destroyed shops - Interlocutory application brought in pursuance thereto – How treated

ETHICS – LEGAL PRACTITIONER – DUTY OF DILLIGENCE:- Endorsement of writs and processes filed on behalf of court – Duty to observe relevant rules thereto – Failure thereto – Endorsement of original writ of summons initiating the suit and the statement of claim with name of law firm instead of personal name of the legal practitioner – Legal effect – Whether defect in processes cannot be cured by amendment – Implication for client – Best course of action open to client

ETHICS – LEGAL PRACTITIONER:- Duty as an officer of the Court – Orchestrations devised to arrest the judgment of a Court – Evidence that a legal practitioner has a habit/pattern thereof – Attitude of court thereto

ETHICS – LEGAL PRACTITIONER – DUTY OF CANDOUR:- Bad case – Duty of Counsel to concede an adverse point or defeat of his claim so as to mitigate costs on his client – Attitude of court to failure thereto

STATUTE - Sections 2(1) and 24 of the Legal Practitioners Act Cap 207, Laws of the Federation, 2004 were also considered – Rule in Okafor v. Nweke – Basis of – Whether in substantive law or procedure – legal implications for court processes endorsed by any entity which is not a legal practitioner as recognised under Nigerian law

**PRACTICE AND PROCEDURE ISSUES**

ACTION - MISTAKE OF COUNSEL/COURT/REGISTRY:- Rule that mistake of Counsel cannot be visited on the litigant – Decision in Okafor V. Nweke distinguished therefrom – Whether non-compliance with a statutory requirement on part of lawyer which occasions costs or hardship is an except tion to the rule

COURT - ABUSE OF COURT/JUDICIAL PROCESS(ES):- Premature appeal of interlocutory ruling – When would amount to abuse of court - Attitude of Courts thereto

JUDGMENT AND ORDER - ARREST OF JUDGMENT:- Attitude of court thereto - Whether the rules of court make provision for the arrest of judgment about to be delivered.

JURISDICTION - ISSUE OF JURISDICTION: Essence and effect of - When can be raised - Court hearing a matter where it has no jurisdiction - Effect of.

PLEADINGS - COURT PROCESS(ES):- Incompetent Court process - Effect of – Proper order for court to make when confronted with an incompetent originating process – Whether striking out or dismissal

PLEADINGS- SIGNING OF COURT PROCESS(ES):- Court process signed/franked in the name of a law firm - Effect of - Proper person to sign a legal process

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellants as Plaintiffs at the Court below instituted this suit against the Defendants now Respondents claiming among others for a:

(i) Declaration that the forcible ejection of the Plaintiffs from the Mammy Market, Iwo Road, Ibadan by the defendants on February 23rd, 2005 without service of personal notice on them to quit the Mammy Market, Iwo Road, Ibadan and the destruction of their shops by the defendants with Caterpillar is illegal, unlawful and contrary to the terms and conditions in the allocation papers that were given to the Plaintiffs by the 1st defendant that the Plaintiffs are entitled to three or six months’ notice.

(v) Declaration that the establishment and maintenance of a market is vested on the 1st defendant under the 1999 Nigerian Constitution and the destruction of the Mammy Market, Iwo Road, Ibadan by the 2nd defendant as alleged by the 1st defendant is ultra vires of the duty of the 2nd defendant under the 1999 Nigeria Constitution.

The Appellants filed a Motion on Notice praying the lower Court to strike out the Amended Statement of Defence of the 1st Respondent against which the 1st Respondent filed a Counter-Affidavit. The trial Judge heard and dismissed the motion on the ground that the issue involved cannot be determined at the interlocutory stage of the proceeding.

DECISION(S) APPEALED AGAINST

This appeal was brought against the interlocutory ruling of the trial court dismissing the motion of the Plaintiff/Appellant praying the trial court below for a dismissal of the 1st Respondent/Defendant’s amended Statement of Defence.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

"(1) Whether the finding of the learned trial judge that the Court at the interlocutory stage of the proceeding will not determine the issue in the substantive suit without recourse to oral evidence and on which he based his decision in dismissing the application of the appellants to strike out the Amended Statement of Defence of the 1st respondent on the ground that it discloses no defence to the claim of the appellants that the respondents without service of requisite quit notices and order of the Court by self-help obtained possession of Mammy Market, Iwo Road, Ibadan from the appellant is perverse having regard:

(i) To the fact that the interpretation of the provisions of Order 15 Rule 18(1)(a) (b) (c) of the Oyo State High Court Rules 2010 by which the Court can strike out pleading at any stage of the proceeding on the ground that it discloses no defence to an action or constitute abuse of Court process is not in issue in any of the cases that were relied upon by the learned trial judge.

(ii) To the facts that the facts of the cases that he relied upon in reaching his decision can be distinguished from the facts of this case and cases on landlord and tenant where the law is settled that possession of property by self-help by a landlord from a tenant when it is established at any stage of the proceeding is a nullity and the tenant is entitled to be restored to possession.

(2) Whether the decision of the learned trial judge that the Court at the interlocutory stage of the proceeding will not determine the issue in the substantive suit without recourse to oral evidence is perverse having regard:

(i) To the fact that at the close of the pleadings it is no longer in issue that the respondents in obtaining possession of the mammy Market, Iwo Road, Ibadan from the appellants are not relying on due process of the law by service of requisite notices on the appellants and warrant of possession of the Court.

(ii) To the fact that existence or non-existence of warrant of possession issued by the Court can be established without oral evidence since it is a public document that will be in the file of the Court if it exists and Court take judicial notice of this.

(3) Whether the decision of the learned trial judge that the Court at the interlocutory stage of the proceedings will not determine the issue in the substantive suit without oral evidence is perverse having regard:

(i) To the peculiar facts of this case that at the close of the pleadings it has been settled that the respondents by self-help and without warrant of possession issued by the Court obtained possession of Mammy Market, Iwo Road, Ibadan from the appellants.

(ii) To the settled principle of law that possession of a property that is secured by a landlord from a tenant by self-help is a nullity *ab initio.*

(4) Whether the learned trial judge was in error by not making finding on the issue of law raised in the written addresses of the appellants that at the close of the pleadings it is no longer an issue that the advertisement of quit notice in the Newspaper by the 1st respondent did not incorporate the names of the appellants or that the quit notice so advertised in the Newspaper fell on the anniversary of the tenancy of the appellants or that the relationship among the appellants and 1st respondent is not that of ordinary landlord and tenant by virtue of the provision of the Fourth Schedule of the 1999 Nigeria Constitution by which establishment of market is in perpetuity and that possession of Mammy Market Iwo Road Ibadan that was secured by the respondents by self-help is a nullity.

(5) Whether the learned trial judge was in error by not making finding on the issues raised in the written address of the appellants in support of their further affidavit that from the counter affidavit of the 1st respondent the 1st respondent is only relying on self-help for the possession of Mammy Market, Iwo Road, Ibadan from the appellants as no requisite quit notice or copy of the order of the Court to recover possession from the appellants were exhibited to the counter affidavit and that possession by self-help is a nullity.

(6) Whether the learned trial judge was in error by not striking out the Amended Statement of Defence of the 1st respondent that did not raise any issue that possession of Mammy Market, Iwo Road, Ibadan was recovered from the appellants by service of requite quit notices and warrant of possession of the Court on the appellants having regard to provision of Order 15 Rule 18(1)(a) (b) (c) (d) of the High Court Rules by which pleading that discloses no defence to an action can be struck out at any stage of the proceeding and Section 6(6)(b) of the 1999 Nigeria Constitution by which issue of law can be determined by the Court without oral evidence.

(7) Whether the learned trial judge was in error by not evaluating the affidavit and further affidavit in support of the application of the appellants to strike out the Amended Statement of Defence of 1st respondent and counter affidavit of the 1st respondent from which it can be inferred that the respondents are not relying on service of personal quit notices and order of the Court on the appellants to recover possession of the Mammy market, Iwo Road, Ibadan but self-help and that the burden of proof that this issue can only be resolved by the determination of the substantive suit through oral evidence was not discharged by the 1st respondent since no document was exhibited to the counter affidavit."

BY RESPONDENTS

1ST RESPONDENT

[Raised a preliminary objection as well as issues for determination against the substantive appeal viz:

"(i) Whether the learned trial judge was not right by holding that the Court will not at the interlocutory stage determine issues that ought to be determined in the substantive suit.

(ii) Whether the learned trial judge did not exercise his discretionary power under O.15 R.18 of the Oyo State High Court (Civil Procedure) Rules, 2010 judicially and judiciously.

*AS ADOPTED BY COURT*

[The Court adopted the Issues presented by the Respondents]

DECISION OF COURT OF APPEAL

1. The original writ of summons initiating the suit and the statement of claim having been signed by the law firm of Oluwole Aluko & Co is incompetent, null and void.

2. The amendment of the processes cannot cure the defect. The lower Court lacked the jurisdiction to entertain the suit. Likewise, this Court lacks the jurisdiction to entertain this appeal. The appeal is hereby struck out.

3. The case of OKAFOR v. NWEKE (2007) 3 SC pt.2, 55 clearly allows a diligent Counsel to take steps to replace the incompetent process with a proper legal process in order not to totally shut out the litigant. An argument urging this Court to overlook OKAFOR v. NWEKE is an invitation to engage in judicial rascality which this Court has no association with.

The preliminary objection of the 1st Respondent is upheld.

Appeal struck out.

**MAIN JUDGMENT**

CHINWE EUGENIA IYIZOBA, J.C.A. (Delivering the Leading Judgment):

This is an appeal against the Ruling of Akinteye J. of the High Court of Oyo State, Ibadan Judicial Division in Suit No I/76/2005 delivered on the 24th of day of April 2012 dismissing the application of the Appellants dated 11/02/11 in which they had prayed the Court to strike out the Amended Statement of Defence of the 1st Respondent.

The Appellants as Plaintiffs at the Court below instituted this suit against the Defendants now Respondents claiming as follows:

(i) Declaration that the forcible ejection of the Plaintiffs from the Mammy Market, Iwo Road, Ibadan by the defendants on February 23rd, 2005 without service of personal notice on them to quit the Mammy Market, Iwo Road, Ibadan and the destruction of their shops by the defendants with Caterpillar is illegal, unlawful and contrary to the terms and conditions in the allocation papers that were given to the Plaintiffs by the 1st defendant that the Plaintiffs are entitled to three or six months’ notice.

(ii) Declaration that the Plaintiffs are entitled from the 1st defendant allocation of plots of land at Mammy Market, Iwo Road, Ibadan by the defendants on February 23rd 2005.

(iii) An Order of the Court that the 1st defendant should restore the Plaintiffs back to the possession of the land at Mammy Market, Iwo Road, Ibadan.

(iv) An Order of the Court that the 1st defendant should allocate plots of land to the Plaintiffs at Mammy Market, Iwo Road, Ibadan for re-construction of their shops that were destroyed at Mammy Market, Iwo Road, Ibadan by the defendants on February 23rd, 2005.

(v) Declaration that the establishment and maintenance of a market is vested on the 1st defendant under the 1999 Nigerian Constitution and the destruction of the Mammy Market, Iwo Road, Ibadan by the 2nd defendant as alleged by the 1st defendant is ultra vires of the duty of the 2nd defendant under the 1999 Nigeria Constitution.

The Appellants writ of Summons and Statement of Claim were later amended. The amended writ of summons and Further Amended statement of Claim are at pages 204A - 204H of the Record of Appeal. The 1st Respondent as 1st defendant filed her Amended Statement of Defence at pages 205 - 212 of the Record.

The original Writ of Summons and the Statement of Claim were not included in the Record of Appeal prepared by the Registrar of the lower Court. The 1st Respondent consequently sought and obtained the leave of Court to compile and transmit to the Court Additional Record of Appeal containing the original Writ of Summons and Statement of Claim.

The Appellants on 11/02/11 filed a Motion on Notice at pages 224 - 225 of the Record praying the Court to strike out the Amended Statement of Defence of the 1st Respondent of 03/02/11 at pages 208 - 212 of the Record. The 1st Respondent on 08/03/11 filed a Counter-Affidavit opposing the application of the Appellants (pages 252-253).

Learned Counsel to the parties filed written addresses which were duly adopted. Ruling was delivered by the learned trial Judge on 24/04/12 dismissing the application on the ground that the issue involved cannot be determined at the interlocutory stage of the proceeding. At page 269 of the Record the learned trial Judge held:

I wish to state that claimants/Applicants counsel has dealt extensively and powerfully too with the issue of non service of notice to quit on the claimants/applicants and notice of intention to commence action on them as not being raised in the Amended Statement of Defence. It is my respectful view that the issues raised in this application are what should be determined in the substantive suit. Since this is an interlocutory application, it cannot be determined at this stage. It is the law that substantive matter should not be determined at interlocutory stage I will therefore refrain myself from commenting on this. What is more, such issues cannot be determined without recourse to evidence.

It is also my further view that since the 1st defendant has filed a defence, the defence can only be considered on its merit at the trial and not at this interlocutory (sic) state. The issue of the Amended Statement of defence not being accompanied by written deposition of witnesses is no doubt an irregularity and since the 1st defendant has indicated its intention to regularize same, the claimants/applicants can only be compensated in costs. This is because the Courts have moved away from the era of doing technical justice to the era of doing substantive justice between the parties.

It is therefore my respectful view that this application fails and it is hereby dismissed.

The Appellants dissatisfied with the above Ruling filed a Notice of Appeal containing seven grounds at pages 273-279 of the Record. The parties filed and exchanged briefs of argument. In their brief of argument dated and filed 18/07/12, Oluwole Aluko Esq Appellants’ counsel formulated 7 issues for determination as follows:

"(1) Whether the finding of the learned trial judge that the Court at the interlocutory stage of the proceeding will not determine the issue in the substantive suit without recourse to oral evidence and on which he based his decision in dismissing the application of the appellants to strike out the Amended Statement of Defence of the 1st respondent on the ground that it discloses no defence to the claim of the appellants that the respondents without service of requisite quit notices and order of the Court by self-help obtained possession of Mammy Market, Iwo Road, Ibadan from the appellant is perverse having regard:

(i) To the fact that the interpretation of the provisions of Order 15 Rule 18(1)(a) (b) (c) of the Oyo State High Court Rules 2010 by which the Court can strike out pleading at any stage of the proceeding on the ground that it discloses no defence to an action or constitute abuse of Court process is not in issue in any of the cases that were relied upon by the learned trial judge.

(ii) To the facts that the facts of the cases that he relied upon in reaching his decision can be distinguished from the facts of this case and cases on landlord and tenant where the law is settled that possession of property by self-help by a landlord from a tenant when it is established at any stage of the proceeding is a nullity and the tenant is entitled to be restored to possession.

(2) Whether the decision of the learned trial judge that the Court at the interlocutory stage of the proceeding will not determine the issue in the substantive suit without recourse to oral evidence is perverse having regard:

(i) To the fact that at the close of the pleadings it is no longer in issue that the respondents in obtaining possession of the mammy Market, Iwo Road, Ibadan from the appellants are not relying on due process of the law by service of requisite notices on the appellants and warrant of possession of the Court.

(ii) To the fact that existence or non-existence of warrant of possession issued by the Court can be established without oral evidence since it is a public document that will be in the file of the Court if it exists and Court take judicial notice of this.

(3) Whether the decision of the learned trial judge that the Court at the interlocutory stage of the proceedings will not determine the issue in the substantive suit without oral evidence is perverse having regard:

(i) To the peculiar facts of this case that at the close of the pleadings it has been settled that the respondents by self-help and without warrant of possession issued by the Court obtained possession of Mammy Market, Iwo Road, Ibadan from the appellants.

(ii) To the settled principle of law that possession of a property that is secured by a landlord from a tenant by self-help is a nullity ab initio.

(4) Whether the learned trial judge was in error by not making finding on the issue of law raised in the written addresses of the appellants that at the close of the pleadings it is no longer an issue that the advertisement of quit notice in the Newspaper by the 1st respondent did not incorporate the names of the appellants or that the quit notice so advertised in the Newspaper fell on the anniversary of the tenancy of the appellants or that the relationship among the appellants and 1st respondent is not that of ordinary landlord and tenant by virtue of the provision of the Fourth Schedule of the 1999 Nigeria Constitution by which establishment of market is in perpetuity and that possession of Mammy Market Iwo Road Ibadan that was secured by the respondents by self-help is a nullity.

(5) Whether the learned trial judge was in error by not making finding on the issues raised in the written address of the appellants in support of their further affidavit that from the counter affidavit of the 1st respondent the 1st respondent is only relying on self-help for the possession of Mammy Market, Iwo Road, Ibadan from the appellants as no requisite quit notice or copy of the order of the Court to recover possession from the appellants were exhibited to the counter affidavit and that possession by self-help is a nullity.

(6) Whether the learned trial judge was in error by not striking out the Amended Statement of Defence of the 1st respondent that did not raise any issue that possession of Mammy Market, Iwo Road, Ibadan was recovered from the appellants by service of requite quit notices and warrant of possession of the Court on the appellants having regard to provision of Order 15 Rule 18(1)(a) (b) (c) (d) of the High Court Rules by which pleading that discloses no defence to an action can be struck out at any stage of the proceeding and Section 6(6)(b) of the 1999 Nigeria Constitution by which issue of law can be determined by the Court without oral evidence.

(7) Whether the learned trial judge was in error by not evaluating the affidavit and further affidavit in support of the application of the appellants to strike out the Amended Statement of Defence of 1st respondent and counter affidavit of the 1st respondent from which it can be inferred that the respondents are not relying on service of personal quit notices and order of the Court on the appellants to recover possession of the Mammy market, Iwo Road, Ibadan but self-help and that the burden of proof that this issue can only be resolved by the determination of the substantive suit through oral evidence was not discharged by the 1st respondent since no document was exhibited to the counter affidavit."

The 1st Respondent in its brief settled by A. O. Lawrence Esq., of the chambers of R.A. Ogunwole SAN & Co raised a preliminary objection, notice of which had earlier been served on the Appellant. The Notice of Preliminary Objection reads thus:

TAKE NOTICE that the 1st Respondent herein named intends, at the hearing of this appeal, to rely upon the following preliminary objection notice whereof is hereby given to you viz:

That this Honourable Court has no jurisdiction to entertain this Appeal as the Originating Processes in the trial Court filed by the Appellants were not signed by a person registered to practice law as a Solicitor and Advocate in Nigeria contrary to Section 2 (1) and 24 of the Legal Practitioners’ Act Cap 207 LFN 2004.

AND TAKE FURTHER NOTICE that the grounds of the said objection are as follows:

1. The Writ of Summons initiating this action and the accompanying Statement of Claim (see Additional Record of Appeal) are signed by a law firm instead of an individual person or a legal practitioner.

2. The Amendment of Writ of Summons and Statement of Claim (see pages 204A to 204D and pages 204A to 204H of the Record of Appeal) cannot cure the defect.

3. The suit was not initiated by due process of law, therefore the lower Court lacked jurisdiction to entertain the suit.

4. The proceeding at the lower Court is null and void."  
  
The preliminary objection was argued at paragraphs 3.0 - 3.15 of the 1st Respondent’s brief of argument.

From paragraph 4.0 he distilled the following two issues for determination:

"(i) Whether the learned trial judge was not right by holding that the Court will not at the interlocutory stage determine issues that ought to be determined in the substantive suit.

(ii) Whether the learned trial judge did not exercise his discretionary power under O.15 R.18 of the Oyo State High Court (Civil Procedure) Rules, 2010 judicially and judiciously.

The Appellant’s Reply brief is dated and filed on the 25th day of August 2016. At pages 1 - 9 of the Reply brief, Oluwole Aluko Esq., reacted to the Preliminary objection. From the last paragraph of page 9, learned counsel responded to issues arising from the 1st Respondent’s brief of argument. The appeal came up for hearing on the 7th of February 2017. On that day, Oluwole Aluko Esq., moved a motion dated 25/08/16 praying for an order of this Court to strike out the Notice of Preliminary Objection of the 1st Respondent. Learned counsel for the 1st Respondent opposed the motion on the ground that the preliminary objection was argued in the 1st Respondent’s brief and duly responded to in the Reply brief. He submitted that the motion is unnecessary and urged us to strike it out. We agreed with Mr. Erinoso that the motion was superfluous and struck it out. Mr. Erinoso proceeded with the preliminary objection referring us to the relevant pages of his brief where it was argued. The parties adopted their respective briefs with the 1st Respondent urging us to uphold the preliminary objection or in the alternative to dismiss the appeal as lacking in merit; and the Appellants urging us to strike out the Notice of preliminary objection for lack of jurisdiction to entertain same and to allow the appeal. Judgment was thereupon reserved.

On Wednesday the 22nd of February 2017, my attention was called to a motion on Notice dated and filed by learned counsel for the Appellants, Oluwole Aluko Esq. on 13/02/17 praying this Court to stay further proceedings in this appeal pending the determination of an appeal he filed in the Supreme Court of Nigeria against the Ruling of this Court striking out its motion on Notice of 25/08/16. I find it hard to comprehend the basis for the appeal to the Supreme Court. We are yet to determine the application of Mr. Aluko asking us to strike out the preliminary objection filed by the 1st Respondent duly argued in his Reply Brief. All we did was to strike out the motion being superfluous and a waste of judicial time since Mr. Aluko had made the same arguments in his Reply brief. The Appeal has been argued and reserved for judgment. Why would Mr. Aluko not tarry to hear the view of this Court on his application before rushing off to the Supreme Court to complain about the striking out of the motion? This to my mind is a clear case of abuse of Court process. As this motion for stay of proceedings was filed after judgment had been reserved to the knowledge of Mr. Aluko, this is nothing short of an attempt to arrest the judgment of this Court. A similar step was taken in this Court by the same Mr. Aluko in Appeal No. CA/1B/278/2012, ALHAJI KAMORU AGBAJE & ORS V. MISS ADESOLA OTUNLA & ANOR (Unreported) delivered on the 2nd day of February 2017. Mr. Aluko had made an application after judgment had been reserved for leave to further address the Court; Tsammani JCA who delivered the lead judgment after observing that the application was incompetent as the issue he desired to address us further on did not arise from the grounds of appeal and did not even relate to the decision of the trial Court observed:

I wish to further add that this procedure adopted by learned counsel for the Appellant is akin to arrest or stay of the judgment of this Court which had been reserved for delivery. In the case of Newswatch Communications v. Attah (2006) All FWLR (Pt. 318) P. 580 @ 581 this Court held that:

The procedure for arrest of judgment is now hardly known in our civil jurisprudential system. It is the act of staying a judgment, or refusing to render judgment in an action at law in Criminal cases after verdict. It is usually for some intrinsic matter appearing on the face of the record, which would render the judgment if given erroneous or reversible under the old Common Law Rule the procedure for arrest of judgment is not peculiar to criminal cases alone. It was available in civil case under the old Common Law Rules, but the procedure is alien to the rule of Court and does not apply in civil matters. See Bob-Manuel v. Briggs (1995) 7 NWLR (Pt. 409) p. 537.

The above cited decision of this Court was given approval by the Supreme Court in the case of Shettima & Anor v. Goni & Ors (2011) 18 NWLR (Pt. 1279) p.413 at 416 paragraphs A-C where Onnoghen JSC (as he then was) held that:

“Apart from the peculiar nature of the proceedings giving rise to the appeal, generally speaking and by the decision of this Court in Newswatch Communications Ltd v Attah (Supra) the rules of Court have no provision for arrest of judgments about to be delivered by a Court. There is however an exception to that general rule as can be gleaned from the decision of this Court in the case of Dingyadi v. INEC (No. 1) (2010) 18 NWLR (Pt. 1224) 1; (2010) 4-7 SC (pt.1) 76 where the Sokoto Division of the Court of Appeal sitting on appeal in an election matter was stopped by this Court from delivering a judgment in an appeal arising from election petition filed in abuse of process as it is the duty of every Court to prevent abuse of its process."

Although here again, there is no specific application to arrest or stay the judgment of the Court, the application to stay further proceedings pending the appeal to the Supreme Court has exactly same effect—arresting the judgment of the Court.

As I said earlier, Mr. Aluko jumped the gun. We are yet to take a decision on the matter. His action smacks of nothing short of abuse of the process of this Court. As admonished above by Onnoghen JSC (as he then was), it is the duty of every Court to prevent abuse of its process. We shall do just that. The motion dated 12/02/17 and filed on 13/02/17 after this Court had reserved judgment in this appeal is hereby discountenanced.

Now to the preliminary objection:

ARGUMENTS OF 1ST RESPONDENT:

The contention of learned counsel for the 1st Respondent is that the original writ of summons and statement of claim by which this suit was commenced were signed by a law firm Oluwole Aluko & Co and that this consequently deprived this Court of the jurisdiction to hear the appeal. Learned counsel submitted that the writ of summons and the Statement of Claim both dated and filed on the 28th of January, 2005 are in the Additional Record of Appeal compiled and transmitted to this Court on 28/09/15 but deemed on 03/03/16. Learned counsel referred to Section 2(1) and Section 24 of the Legal Practitioners Act Cap 207, Laws of the Federation, 2004 and submitted that the sections received judicial interpretation in the case of OKAFOR VS. NWEKE (2007) 3 SC (PT.2) 55 wherein the Supreme Court per Onnoghen JSC (as he then was) at page 63 stated:

The combined effect of the above provisions is that for a person to be qualified to practice as a Legal Practitioner, he must have his name on the roll otherwise he cannot engage in any form of Legal Practice in Nigeria.

Counsel submitted that the originating processes were signed by Oluwole Aluko & Co, a law firm not registered to practice as a legal practitioner. Relying on the case of SLB CONSORTIUM LTD. VS. NNPC (2011) 4 SC (PT.1) 86 @ 107, Counsel submitted that the subsequent amendment of the Writ of Summons and Statement of Claim by the Appellants cannot cure the defect. He further submitted that that the originating processes, the Amended writ of Summons and the Statement of Claim are liable to be struck out as one cannot put something on nothing and expect it to stand. He cited UAC VS. MCFOY (1962) AC 152 AT 160 AND SLB CONSORTIUM LTD. VS. NNPC (SUPRA) where FABIYI, JSC at page 105, paras. 26-32, stated:

In the prevailing circumstances all the proceedings which rested on the inchoate originating summons are deemed not to have taken place in law. One cannot put something on nothing and expect it to stand. This is as stated decades ago inUAC vs. Mcfoy (1962) AC 152 at 160.

Counsel opined that the Originating processes are incurably bad and cannot be cured by an amendment. He referred to MINISTRY OF WORKS & TRANSPORT, ADAMAWA STATE VS. ALHAJI ISIYAKU YAKUBU & ANOR. (2013) VOL.1 MJSC (PT. II). 

Learned Counsel submitted that the issue of jurisdiction is fundamental and crucial. It goes to the root of the matter and as such no matter how well conducted, in the absence of jurisdiction the whole exercise is a nullity. He further submitted that the originating processes in this action were not signed by a person known to law contrary to Sections 2 and 24 of the Legal Practitioner Act, and therefore, the case was not initiated by due process of law, which robs the lower Court of jurisdiction to entertain the suit. He cited UTIH VS. ONOYIVWE (1991) 1 SC (PT.1) 61 AT PAGE 96 where the SC per Bello C.J.N stated:

Jurisdiction is blood that gives life to the survival of an action it will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise.

Counsel submitted that lack of jurisdiction in any matter is fatal to the case as it renders the entire proceedings a nullity. He further submitted that in the absence of jurisdiction, the Court labours in vain and all it does amounts to nothing. Counsel submitted that jurisdiction being a threshold issue; it can be raised at any stage in the proceedings. He cited the following cases: SLB CONSORTIUM LTD. VS. NNPC (SUPRA); ELABANJO VS. DAWODU (2006) 6-7 SC 24 AT PAGE 35 and KATTO VS. C.B.N (1991) 11-12 (PT. 1) SC 176 AT 195. Learned counsel urged us to uphold the preliminary objection and to strike out the appeal for lack of jurisdiction to entertain same.

APPELLANTS’ ARGUMENTS:

Learned counsel for the Appellants, Mr. Aluko in his Reply brief in urging us to strike out the preliminary objection submitted that there is no jurisdiction in this Honourable Court under Section 240, 241(2) (c) and Section 242(1), 243(A) of the 1999 Nigeria Constitution and the principle of res judicata to entertain the notice of the preliminary objection of the 1st respondent on the following grounds:

(i) Order 10 Rule 2 Court of Appeal Rules 2011 on which the Notice of Preliminary Objection is based is not a statutory law that confers power on the Court of Appeal to strike out the amended Notice of Appeal in the absence of notice of appeal against the decision of the Court below that amended the Court processes as required by Section 241(1) (c) and 242(1) and 243(a) of the Constitution.

(ii) At paragraph 3.03 of the 1st respondent brief of argument the 1st respondent stated thus: the appellants amended the writ of summon and statement of claim pursuant to the order of the honourable Court accordingly the Amended Writ of Summon and Amended Statement of Claim both dated 2nd July 2009 were filed on the same date, see paragraph 204A to 204D and page 204G to 204H of the record of appeal.

(iii) It is already settled issue of law that amendment of the Court processes relate to the date of the original Court process amended and the suit must be determined by the Amended Court process and not the original Court process that becomes obsolete after the amendment. See Nwosu Vs. Imo State Environmental Sanitation (1990) 2 NWLR Part 135 Page 588 at 717; Oguma Associates Co. Nig. Ltd. Vs. IBWALTA (1988) 3 SC Page 20 at 24 and 41 the Supreme Court held in the two cases that the suits must be determined on the basis of the amended writ of summon and pleadings and not on the basis of the obsolete Court processes that have been amended. See Wimpey Nig. Ltd. Vs. Kelani Balogun (1986) 2 NWLR Part 28 Page 324 at 333 where the Court of Appeal held that there must be consequential amendment when parties are joined to the suit. The obsolete writ of summon and obsolete statement of claim contain 9 names and 1 defendant instead of 103 appellants and 2 respondents in this appeal and already reflected in the amended Court processes.

(iv) There is no Notice of Appeal from the 1st respondent against the decision of the Court below that made the order of the amendment of the Court processes and in the absence of Notice of Appeal as required by Section 241(2) (c ) and 242(1) of the 1999 Nigeria Constitution the issue of the Amended Writ of Summon and Amended Statement of Claim cannot be re-opened in this honourable Court under the principle of res judicata. See Aro Vs. Fabolude (1983) s2 SC Page 75 at 85.

(v) The only originating processes before the Court are the amended writ of summon and amended statement of claim that relate to the date of the obsolete writ of summon and obsolete statement of claim in the additional record that contain names of only 9 person and 1 respondent instead of 103 appellants and 2 respondents as reflected in the amended writ of summon and further amended statement of claim and amended statement of defence of the 1st respondent.

(vi) There is no decision of any Court in Nigeria or anywhere in the world under the private international law that once the Court process is amended with the leave of the Court the appellate Court can disregard that leave and amended Court process and determine the case on the basis of the obsolete Court process that has been amended.

(vii) In all the cases that were referred to by the 1st respondent in its brief of argument there is none where the issue before the Supreme Court, as in this case, is that the Court process at the Court below has been amended with the order of the Court and that pursuant to that order both the appellants and respondents as in this case, filed amended Court processes in Court and that there is no notice of appeal against the order of the Court below. There is nowhere in any of the cases where the Supreme Court made decision to overturn the settled principle of law that amended Court process that has been amended supersede the original process amended.

(viii) The 1st respondent at paragraph 1.03 of its brief of argument stated that both the appellants and 1st respondent filed amended writ of summon, amended statement of claim and amended statement of defence in Court. The notice of preliminary objection has been defeated as the 1st respondent did not appeal against the order of the Court granting amendment of the Court processes and the 1st respondent has submitted to jurisdiction of the Court by taking part in the proceedings. The obsolete writ of summon and obsolete statement of claim in the additional record contain 9 names and 1 defendant but the amended Court processes at the Court below and in this honourable Court contain names of 103 appellants and 2 respondents.

The notice of preliminary objection is in violation of the provision of Section 36(1) of the 1999 Nigeria Constitution as obsolete writ of summon and statement of claim cannot be used against the appellants and 2nd respondent.

(ix) The Notice of Preliminary Objection did not draw distinction between statutory jurisdiction of the Court that can be raised at any stage of the proceeding even without any ground of appeal on it and procedural jurisdiction of the Court that can be waived under the principle of submission to the jurisdiction of the Court under the rules of the Court and private international law by taking part in the proceeding as in this case where the 1st respondent did not appeal against the order of the Court below that granted leave to the appellants to amend their pleadings after joining additional parties to the suit and the 1st respondent in reaction to the amended pleadings of the appellants filed in Court amended statement of defence in Court. The notice of preliminary objection did not raise the issue of jurisdiction at all as it did not make distinction between statutory jurisdiction of the Court that cannot be waived and procedural jurisdiction of the Court that can be waived as highlighted if there is submission to the jurisdiction of the Court by taking part in the proceeding. The notice of preliminary objection did not raise any issue against the notice of appeal that is the source of the procedural jurisdiction of the Court of Appeal and the amended writ of summon that is the source of the procedural jurisdiction of the High Court and which has superseded the obsolete writ of summon. By virtue of Order 6 Rule 2(1) of the High Court Rule Oyo State 2010 that provides as follows: “The Registrar shall seal every originating process where upon it shall be deemed to be issued" the Notice of Preliminary Objection is legally dead as the Amended Writ of Summon is sealed and issued by the Registrar of the High Court. By virtue of Order 5 Rule 15 of the High Court Rules Oyo State 1988 that provides as follows: “Issue of a writ takes place upon its being signed by the Registrar or other officer of the Court duly authorized to sign the writ” The notice of preliminary objection is legally dead as the obsolete writ of summon was signed and issued by the Registrar of the High Court and endorsement column for the address of service of Court process on a solicitor being relied upon by the 1st respondent is not the same as the column that must be signed by the Registrar of the Court before the writ of summon is deemed issued. Interpretation of the provision of Order 6 Rule 2(1) of the High Court Rules Oyo State 2010 and Order 5 Rule 15 of the High Court Rules Oyo State 1988 by which writ of summon is deemed issued when it is signed and sealed by the Registrar of the High Court is not in issue in any of the cases that the 1st respondent cited in its brief of argument and it was not canvassed before the Courts in any of the cases that endorsement column by the solicitor for address for service of the Court process on a solicitor is independent of the provision of the rules of the Court that confer statutory duty on the Registrar of the Court to sign and issue writ of summon.

(x) The Notice of Preliminary Objection constitute act of subversion of Section 241(2) of the 1999 Nigeria Constitution and Section 242(1) of the 1999 Nigeria Constitution that require leave of the Court below or this honourable Court to appeal against the decision of the Court below that made an order for the amendment of the Court processes of the appellants. The 1st respondent instead of appealing filed amended statement of defence and now in the absence of any notice of appeal against the decision of the Court below that made order for the amendment of the Court processes the 1st respondent by its notice of preliminary objection is urging this honourable Court to disregard the provisions of the Constitution that are binding on all authorities and person and vacate the order of the Court below. The 1st respondent and its counsel have committed criminal offence by this notice of preliminary objection as act of subversion of the provisions of the Constitution constitute treasonable offence.

(xi) Before the 1st respondent filed the notice of preliminary objection in Court on April 15th, 2016 the 1st Respondent counsel is in possession of the list of additional authorities filed in Court on January 21st, 2016 by the appellants and attached to the further affidavit to the motion on notice of November 26th 2015 containing the decision of the highest Court of the land in Oguma Associates Co. Nig. Ltd. Vs. IBWALTA (1988) 3 SC Page 20 at 24 and 41 and Nwosu Vs. Imo State Environmental Sanitation (1990) 2 NWLR Part 135 Page 588 at 717; that confirmed the notorious principle of law that amend writ of summon and statement of claim relate back to the date of the original Court process and supersede the original Court process and that the Court cannot rely on the process that has been amended to determine the suit but only on the amended Court process. If there is no intention on the part of the 1st respondent and counsel to the 1st respondent to mislead the Court in the administration of justice and pervert the cause of justice, why is the 1st respondent and counsel to the 1st respondent urging the Court to determine the suit on the basis of the obsolete writ of summon and obsolete statement of claim that had been amended with the order of the Court below and without notice of appeal against the decision of the Court below that made the order of amendment as required by Section 241(2) of the 1999 Constitution and Section 242(1) of the 1999 Nigeria Constitution. The 1st respondent and 1st respondent counsel know that the obsolete writ of summon and obsolete statement of claim in the additional record contain names of 9 plaintiffs and 1 defendant and that the amended Court processes that supercede the obsolete Court processes including that of the 1st respondent contain names of 103 appellants and 2 respondents. Worst still the 1st respondent in its brief of argument cannot refer to any case where a suit has been determined on the basis of the obsolete Court process instead of the Amended Court process.

(xii) The Notice of Preliminary Objection of the 1st respondent goes to the root of the legal profession that is noble and honourable and in keeping with this age long nobility of the profession, the 1st respondent counsel ought not to have filed the notice of preliminary objection in Court and urged the Court to rely on obsolete Court processes that had been amended with the order of the Court below without any appeal against that order and already superceded by the Amended Writ of Summon and amended statement of claim. The notice of preliminary objection of the 1st respondent constitutes an abuse of the process of the Court that will not be entertained by the Court on the following grounds:  
(i) At paragraphs 1.03 - 1.09 of the respondent brief of argument the 1st respondent counsel is aware that the appellants and the 1st respondent at the Court below relied on the amended writ of summon, further amended statement of defence and the ruling of the Court below now subject matter of appeal is based on the amended Court processes that contain names of 103 appellants and 2 respondents and not on obsolete writ of summon and obsolete statement of claim that contain names of 9 appellants and 1 defendant."

Learned counsel submitted that the cases referred to by the 1st respondent in its brief of argument at paragraphs 3.08-3.10 did not raise any issue that where Court processes had been amended, the Court must disregard the amended Court processes and go back to the obsolete Court process. He argued that in SLB Consortium Vs. NNPC; U.A.C. Vs. Mac Foy; Ministry of Works and Transport Adamawa State Vs. Alhaji Isiyaku Yakubu the Supreme Court did not state that where the Court below had made an order for the amendment of the Court processes then in the absence of Notice of appeal against that order the appellate Court can overturn that order. Counsel opined that it is not the law and that there is no jurisdiction in the appellate Court under the 1999 Nigeria Constitution to do so. Learned counsel submitted that Section 241(2) of the 1999 Nigeria Constitution and Section 242(1) of the 1999 Constitution which lay down procedure for appealing against decision of the High Court had for closed all the issues in the Notice of Preliminary Objection relating to the amendment of the Court processes by the appellants.

Learned counsel submitted that in determining this appeal this honourable Court can only exercise the jurisdiction that the Court below could have exercised by virtue of the provision of Section 15 of the Court of Appeal Act 2004. He argued that this honourable Court by virtue of the provision of Section 15 of the Court of Appeal Act 2004 cannot exercise the jurisdiction that the Court below could not have exercised; that there is no jurisdiction in the Court below to strike out the amended writ of summon and amended statement of claim as the Court below cannot sit as an appellate Court over its decision. He cited the case of CARDOZO VS. DANIEL (1986) 2 SC PAGE 491. Counsel submitted that in the absence of Notice of Appeal to this honourable Court against the decision of the Court below that amended the writ of summon and statement of claim, this honourable Court has no statutory jurisdiction to strike out the amended writ of summon and amended statement of claim. He opined that the Supreme Court in all the cases that were relied upon by the respondent did not strike out any amended writ of summon or amended statement of claim made by the order of the Court below and the exercise of power of the Supreme Court was confined to the power that the Court below could have exercised.

Learned counsel went on to submit that it is not the position of the law that the constitutional provision for appealing against the order of the Court below can be disregarded by the appellant or respondent. He relied on the case of UNITY BANK PLC VS. DENLAG LTD. (2012) NWLR PART 1332 PAGE 293 AT 327.

Counsel finally in urging us to strike out the preliminary objection submitted that if the Court processes in this appeal had not been amended then this honourable Court in pursuance to the provision of Section 15 of the Court of Appeal Act can exercise the power of the Court below by striking out the obsolete writ of summon and obsolete statement of claim.

RESOLUTION:

Order 6 Rule 1 of the Oyo State High Court (Civil Procedure) Rules provides:

“Originating Process shall be prepared by a Claimant or his Legal Practitioner, and shall be clearly printed on Opaque A4 paper of good quality.”

Section 2(1) of the Legal Practitioners Act Cap. 207, Laws of the Federation, 2004 provides as follows:

subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor if and only if his name is on the roll.

Section 24 of the Act defines a legal practitioner thus:

“Legal Practitioner means a person entitled in accordance with the provisions of this Act to practice as a barrister and solicitor either generally or for the purposes of any particular office or proceedings.”

The effect of the above provisions is that only legal practitioners whose names are enrolled in the Register of Legal practitioners in the Supreme Court of Nigeria are entitled to practice law in Nigeria. All Court processes must therefore be signed by such legal practitioners whose names are so registered. Somehow the practice developed of legal practitioners signing Court processes in the name of their law firm without any indication as to the name of the particular individual or legal practitioner whose signature is on the process. The Supreme Court finally dropped the hammer in 2007 in the case of OKAFOR V NWEKE (2007) 10 NWLR (PT. 1043) 521. All Court processes prepared and signed in the name of a law firm were declared incompetent, null and void. The outcome was devastating. Cases concluded years back and pending on appeal fell under the hammer. Many were thrown out for lack of jurisdiction. Lawyers complained. In the case of F.B.N. V MAIWADA (2013) 5 NWLR (PT. 1348) 444, a full Court of the Supreme Court was invited to review and depart from the decision of OKAFOR V NWEKE (SUPRA). The invitation was declined. The Supreme Court maintained its hard stand on the issue. The law today is that signing of originating process in any proceeding by a non legal practitioner such as a law firm will render the process null and void and deprive the Court of jurisdiction to entertain the case, no matter at what point in time the defect was discovered. The argument is that once a process in void, it is void for all purposes, any action based on the void process comes to nothing and is also a nullity. Whether or not a Court has jurisdiction goes to the root of the matter and where there is no jurisdiction, all steps taken in the case come to nothing, no matter how brilliantly the case was presented. See MADUKOLU VS. NKEMDILIM (1962) 2 SCNLR 341. See also the following cases: REGISTERED TRUSTEES, THE APOSTOLIC CHURCH V. R. AKINDELE (1967) NMLR 263; OKAFOR V. NWEKE (2007) 10 NWLR (PT. 1043) 521; SLB CONSORTIUM LTD V. NNPC (2011) 9 NWLR (PT. 1252) 317; ALAWIYE V. OGUNSANYA (2012) LPELR-19661(SC); HAMZAT V. SANNI & ORS (2015) LPELR-24302(SC) and many others.

In the instant case, there is no dispute that the originating writ of summons and the statement of claim were both signed by “Oluwole Aluko & Co.” Amended processes were later filed. The 1st Respondent apparently took up the matter when the anomaly was spotted. I went out of my way to set down almost verbatim the arguments of learned counsel Mr. Aluko. The arguments are so unconnected with the issue at stake that I just decided to set them all down to avoid any possible complaint by Mr. Aluko that the issues he raised were not addressed. Mr. Aluko took out of context the view expressed by learned counsel for the 1st Respondent in the course of his argument that “the originating processes, the Amended writ of Summons and the Statement of Claim are liable to be struck out as one cannot put something on nothing and expect it to stand”. The 1st Respondent is not asking this Court to strike out the amended writ and the amended statement of claim. If that was the prayer of the 1st Respondent, then the issue of Notice of Appeal and the relevant constitutional provisions referred to by Mr. Aluko would become relevant. What the 1st Respondent is asking of this Court is to strike out the appeal filed by the Appellants for lack of jurisdiction. His contention is that the originating processes by which the suit was commenced at the lower Court were null and void, the processes having been signed by a law firm not recognized as a legal Practitioner under the Law. The processes therefore rendered a nullity every step taken subsequently in the suit; the amended processes, the motion on notice and the Ruling delivered thereon by the Court because of lack of jurisdiction. See the quotation in the 1st Respondent’s brief lifted from the Supreme Court case of MINISTRY OF WORKS & TRANSPORT, ADAMAWA STATE VS. ALHAJI ISIYAKU YAKUBU & ANOR. (2013) VOL.1 MJSC (PT. II):

The fatal effect of signing of an originating process by a law firm is that the entire suit was incompetent ab initio. It was dead at the point of filing. This highlights the painful realities that confront a litigant when counsel fails to sign processes as stipulated by law. The originating process, as in this case, is fundamentally defective and incompetent. It is inchoate, legally non-existent and can therefore not be cured by way of an amendment.

In the same vein notwithstanding the subsequent amendment of the processes, the original writ of summons and statement of claim having been signed by a law firm are inchoate and legally nonexistent.

The lower Court lacked jurisdiction to hear the case and this Court would also lack the jurisdiction to hear the appeal. Mr. Aluko did not address these issues. Or he preferred the view that jurisdiction here is mere procedural jurisdiction which had been waived by the 1st Respondent when it filed its amended statement of defence. There are a plethora of Supreme Court decisions on these points. Learned counsel for the 1st Respondent cited a number of them. I do not think Mr. Aluko took the trouble to actually read the authorities. For example, in SLB CONSORTIUM LTD. VS. NNPC (SUPRA) Onnoghen JSC (as he then was) observed:

“Jurisdiction is the pillar upon which the entire case before a Court stands. Filing an action in a Court of law presupposes that the Court has jurisdiction. But once the Defendant shows that the Court has no jurisdiction, the foundation of the case is not only shaken but is entirely broken. In effect, there is no case before the Court for adjudication and therefore the parties cannot be heard on the merits of the case.”

Contrary to the contention of Mr. Aluko, the jurisdiction in question here is statutory jurisdiction and not procedural jurisdiction. It is not a matter of procedure but one rooted in due compliance with the statutory provision in Sections 2(1) and 24 of the Legal Practitioners Act Cap 207, Laws of the Federation, 2004. In F.B.N. V MAIWADA (SUPRA) Fabiyi JSC observed:

“The decision in Okafor v Nweke was based on substantive law, an Act of the National Assembly i.e. the Legal Practitioners Act. It is not based on Rules of Court. According to Oguntade, JSC at page 534 of the judgment in Okafor v. Nweke:

It would have been quite another matter if what is in issue is non compliance with Court Rules.

Let me say it bluntly that where the provisions of an Act like Legal Practitioners Act is at play, as herein, provisions of Rule of Court which are subject to the law must take side line.

So there we have it from the apex court. It is an issue of statutory jurisdiction, it can be raised at any stage of the proceedings and without any ground of appeal, even in the Supreme Court. On this, learned counsel for the 1st Respondent also cited SLB CONSORTIUM LTD. VS. NNPC (SUPRA) .Sections 2(1) and 24 of the Legal Practitioners Act Cap 207, Laws of the Federation, 2004 were also considered. Onnoghen JSC (as he then was) held:

The argument that the objection ought to have been taken before the trial Court and that it is rather too late in the day to raise same in this Court particularly as the respondents had taken steps in the proceedings after becoming aware of the defect or irregularities is erroneous because the issue involved in the objection is not a matter of irregularity in procedure but of substantive law an issue of jurisdiction of the Courts to hear and determine the matter as constituted and it is settled law, which has been conceded by both counsel in the proceedings that an issue of jurisdiction is fundamental to adjudication and can be raised at any stage in the proceedings, even for the first time in the Supreme Court.

I do appreciate the predicament of Mr. Aluko. But unfortunately he is facing a brick wall. I think it is more honourable when counsel is faced with this sort of difficult situation to throw in the towel, rather than the attempt to grasp at straw to delay the inevitable consequence. The only party who would suffer thereby is the unfortunate litigant who had already suffered untold hardship contrary to the age long principle that a litigant should not be made to suffer for the inadvertence or mistake of counsel. But then the mistake here is a matter of law not procedure. The only comfort resulting from the hard stand of the SC is that counsel have learnt their lesson the hard way. No process can ever be signed by a law firm in the present time. We are still dealing with the relics before 2007 when the Supreme Court dropped the hammer in OKAFOR V NWEKE (SUPRA).

In conclusion, the preliminary objection of the 1st Respondent is upheld. The original writ of summons initiating the suit and the statement of claim having been signed by the law firm of Oluwole Aluko & Co is incompetent, null and void. The amendment of the processes cannot cure the defect. The lower Court lacked the jurisdiction to entertain the suit. Likewise, this Court lacks the jurisdiction to entertain this appeal. The appeal is hereby struck out.

MONICA BOLNA'AN DONGBAN-MENSEM, J.C.A.: I agree with the lead Judgment prepared by my learned brother CHINWE EUGENIA IYIZOBA JCA, striking out this appeal which is not the first of its kind being piloted by Olumoke Aluko Esq. of learned Counsel for the Appellant.

An incompetent process cannot be amended nor can the Respondent's own incompetent process confer competence on the incompetent process of the Appellant.

My lord FABIYI JSC reiterated this point in the SLB CONSORTIUM LTD v. NNPC case (cited in the lead Judgment), that the fact that you cannot put something on nothing and expect it to stand has been pointed out decades ago in UAC v. MCFOY (1962) AC 152@160.

Persistence in abstinence in the prosecution of fundamentally flawed appeals unnecessarily saps the energy and resources of the litigant and the time of the Court.

The case of OKAFOR v. NWEKE (2007) 3 SC pt.2, 55 clearly allows a diligent Counsel to take steps to replace the incompetent process with a proper legal process in order not to totally shut out the litigant. An argument urging this Court to overlook OKAFOR v. NWEKE is an invitation to engage in judicial rascality which this Court has no association with.

**MODUPE FASANMI, J.C.A.:**

I have read before now the draft of the lead judgment of my learned brother, CHINWE EUGENIA IYIZOBA, JCA just delivered.

Any process signed in the name of a law firm is incompetent and liable to be struck out. This Court lacks the jurisdiction to entertain it.

I agree that the appeal be struck out and it is also struck out by me.