**OGBOMOSO SOUTH LOCAL GOVERNMENT**

**v.**

**ADECENTRO NIGERIA LIMITED & ORS**

IN THE COURT OF APPEAL OF NIGERIA

ON FRIDAY, THE 21ST DAY OF FEBRUARY, 2020

CA/IB/283/2009

**LEX (2020) - CA/IB/283/2009**

**OTHER CITATIONS**

3PLR/2020/39 (CA)

(2020) LPELR-49532 (CA)

**BEFORE THEIR LORDSHIPS**

HARUNA SIMON TSAMMANI, JCA

NONYEREM OKORONKWO, JCA

FOLASADE AYODEJI OJO, JCA-end!

**BETWEEN**

OGBOMOSO SOUTH LOCAL GOVERNMENT - Appellant(s)

AND

1. ADECENTRO NIGERIA LIMITED

2. OGBOMOSO NORTH LOCAL GOVERNMENT

3. SURULERE LOCAL GOVERNMENT

4. OGOOLUWA LOCAL GOVERNMENT - Respondent(s)-end!

**ORIGINATING COURT(S)**

OYO STATE HIGH COURT [Holden at Ogbomoso]-end!

**REPRESENTATION**

Akinsumbo S. Akande, Esq. with him, H.O. Abdulazeez, Esq., I.C. Ezechukwu, Esq. and O.M. Ayeni, Esq. - For Appellant

AND

Respondents are absent and unrepresented. - For Respondent-end!

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

COMMERCIAL LAW – CONTRACT:- Suit relating thereto – Defect in originating Court processes – Legal effect of -end!

**PRACTICE AND PROCEDURE ISSUES**

ACTION – PLEADING - SIGNING OF COURT PROCESS(ES): Proper person(s) to sign a legal process/document -Court process signed in the name of a law firm – Competency of being in breach of substantive law – Breach of Sections 2(1) and 24 of the Legal Practitioners Act - Fundamental failure to comply with the requirement of a statute - Whether not a mere irregularity but a nullity - Proper order for court to make -end!

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

This is an appeal against the judgment of the Oyo State High Court of Justice sitting in Ogbomoso, delivered on the 30th day of October, 1998 in Suit No: HOG/11/91.

By a Writ of Summons filed on the 25/3/91 and a Further Amended Statement of Claim dated the 11/6/98 and filed on the 17/6/98, the 1st Respondent as Plaintiff claimed against the Appellant and 2nd - 3rd Respondents jointly and severally as follows:

(1). A declaration that the employer’s or defendants’ failure to cause to be issued certificate No.3 within time and/or to pay for work done and materials provided by the Plaintiff as building contractor on due dates is wrongful, improper and constitutes a breach of contract made between the Plaintiff and the employer or defendants for the construction of commercial and Motor Part Complex at Ogbomoso.

(2). The sum of N96,612.66 due and payable as balance for work done by the Plaintiff at the request of the Ogbomoso Local Government or the defendants.

(3). The sum of N3,703,450.60 as loss of profit on the said contract.

(4). The sum of N208,153.60 as itemized in paragraph 22 herein.

(5). The return of the Plaintiff’s plants, equipment, materials and tools as set out in paragraph 24(b) herein in good condition or their value in the sum of N23,613,030.00 or as may be assessed.

(6). The sum of N12,551,577.00 damages for loss of use of the plants, equipments, materials and tools for the period 1986 to 1991.

Issues were duly joined and the case went to trial.-end!

DECISION(S) APPEALED AGAINST

At the close of evidence, the trial Judge found the Plaintiff’s case as proved and granted all the reliefs sought.-end!

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1. Whether the learned trial Judge was right when he held that the Respondent’s action was not statute barred?

2. Whether the learned trial Judge was right when he held that Exhibit “1” before the Court is a proper notice to commencement of action which also binds the Appellant?

3. Whether having regard to the totality of the evidence on record, the learned trial Judge was right when he held that there was a contract between the Appellant and the Respondent?

4. Whether the Respondent established its case before the Honourable Court below, to be entitled to judgment.-end!

*BY RESPONDENTS*

[Filed no brief of argument]-end!

*AS ADOPTED BY COURT*

*[Adopted issues for determination as filed by Appellant]*-end!

DECISION OF COURT OF APPEAL

1. It is settled therefore that, such a Court process signed in the name of a Law Firm is incurably defective and cannot be cured by an amendment, it being a nullity. The issue is one of substantive law, and not a matter of mere procedure. Accordingly, any originating process filed in breach of a statutory provision, such as Sections 2(1) and 24 of the Legal Practitioners’ Act, is null and void and cannot be relied upon in any judicial proceeding.

2. It therefore follows that the Writ of Summons and Statements of Claim in this case, which were signed in the name of Bandele A. Aiku & Co., are null and void, and the Trial Court was therefore deprived of the jurisdiction to hear and determine the matter. Those originating processes have been declared to be a nullity, the entire proceedings conducted thereon and the judgments are also null and void liable to be set aside. -end!

**MAIN JUDGMENT**

HARUNA SIMON TSAMMANI, J.C.A. (Delivering the Leading Judgment):

This is an appeal against the judgment of the Oyo State High Court of Justice sitting in Ogbomoso, delivered on the 30th day of October, 1998 in Suit No: HOG/11/91.

By a Writ of Summons filed on the 25/3/91 and a Further Amended Statement of Claim dated the 11/6/98 and filed on the 17/6/98, the 1st Respondent as Plaintiff claimed against the Appellant and 2nd - 3rd Respondents jointly and severally as follows:

(1). A declaration that the employer’s or defendants’ failure to cause to be issued certificate No.3 within time and/or to pay for work done and materials provided by the Plaintiff as building contractor on due dates is wrongful, improper and constitutes a breach of contract made between the Plaintiff and the employer or defendants for the construction of commercial and Motor Part Complex at Ogbomoso.

(2). The sum of N96,612.66 due and payable as balance for work done by the Plaintiff at the request of the Ogbomoso Local Government or the defendants.

(3). The sum of N3,703,450.60 as loss of profit on the said contract.

(4). The sum of N208,153.60 as itemized in paragraph 22 herein.

(5). The return of the Plaintiff’s plants, equipment, materials and tools as set out in paragraph 24(b) herein in good condition or their value in the sum of N23,613,030.00 or as may be assessed.

(6). The sum of N12,551,577.00 damages for loss of use of the plants, equipments, materials and tools for the period 1986 to 1991.

Issues were duly joined and the case went to trial. At the close of evidence, counsel addressed the Court and in a well-considered judgment delivered on the 30/10/98, the learned trial Judge found the Plaintiff’s case as proved and granted all the reliefs sought. The Appellant who was the 2nd Defendant in the trial Court, was dissatisfied with the decision of the trial Court and therefore filed this appeal.

The Original Notice of Appeal at pages 565 - 566 of the record of appeal was dated and filed on the 30/10/98. Same was amended by leave of this Court granted on the 14/11/2016. This appeal was therefore heard on the Amended Notice of Appeal filed on the 03/11/16 but Deemed filed on the 14/11/2016. The Appellant therefore complied with the Rules of this Court by filing an Appellant’s Brief of Arguments which was amended by leave of this Court. The extant Appellant’s Brief is therefore, the Amended Appellant’s Brief of Arguments which was filed on the 18/11/2016. Therein, four issues were distilled for determination as follows:

1. Whether the learned trial Judge was right when he held that the Respondent’s action was not statute barred?

2. Whether the learned trial Judge was right when he held that Exhibit “1” before the Court is a proper notice to commencement of action which also binds the Appellant?

3. Whether having regard to the totality of the evidence on record, the learned trial Judge was right when he held that there was a contract between the Appellant and the Respondent?

4. Whether the Respondent established its case before the Honourable Court below, to be entitled to judgment.

The Respondents did not file any Respondent’s Brief of Arguments. Consequently, on the Motion of the Appellant filed on the 02/3/17 and granted on the 7/11/18, this Court set down the appeal for hearing on the Appellant’s Brief of Arguments alone, the Respondents having failed to filed their Brief of Arguments. On the 27/01/2020, when this appeal was heard, learned counsel for the Appellant adopted the Appellant’s Brief of Arguments and urged us to allow the appeal.

Now, before I proceed (if there is need to do so), I would like to point out that, I have carefully perused the Writ of Summons and Statement of Claim both filed on the 25/3/91, it would be seen that same were issued out and signed in the name of Bandele A. Aiku & Co.; a Law Firm. Similarly, the Writ of Summons filed on the 22/10/2008 and Statement of Claim also filed on the 22/10/2008 were signed in the name of Bandele A. Aiku & Co; the same Law Firm. The Further Amended Statement of Claim upon which the suit was heard and determined, and filed on the 28/2/96 was also issued and signed in the name of Bandele Aiku & Co.

The law is now settled that any originating process, and indeed any other Court process purported to be signed by a Legal Practitioner, must be signed by a Legal Practitioner known to the Nigerian Law. Such a person must be a human being who has been called to bar to practice as a Barrister and Solicitor of the Supreme Court of Nigeria. The name of such a person must therefore be on the register (or roll) of Legal Practitioners kept in the Supreme Court Registry, Consequently, any originating process or other Court process signed in the name of a Law Firm will be incompetent and a nullity. Accordingly any proceeding conducted and judgment given pursuant to such null process, will be set aside on appeal. See Zartech Limited v. Olaogun Enterprises Limited (2016) LPELR - 41927(CA); GTB v. Innoson Nigeria Ltd (2017) LPELR - 42368 (SC); Chief Sule Adetona & Ors v. Abudu Obaoku & Ors (2016) LPELR - 41931 (CA); Okafor v. Nweke (2007) 10 NWLR (pt.1043) 521; F.B.N. Plc v. Maiwada (2013) 5 NWLR (pt.1348) 444; Alhaji Tajudeen Babatunde Hamzat & Anor v. Alhaji Saliu Ireyemi Sanni & Ors(2015) LPELR - 24302 (SC) and Amidu Ishola & Ors v. Ibadan North-East Local Gov’t & Anor (2013) LPELR - 20477 (CA). Thus in Okarika & Ors v. Samuel & Anor (2013) 7 NWLR (pt.1352) 19, my Lord, I.T. Muhammad, J.S.C. (as he then was) observed as follows:

“Initiating a process in a Court of first instance or an Appeal which lies to an Appeal Court has to be sponsored by a person, natural or artificial. In case the Appeal proceeds from a natural person, it has to be filed and prosecuted by that natural person who has the capacity to see, hear, talk, feel or perceive or, where circumstances demand, by his counsel who has the same qualities/capacity. Where the process or Appeal proceeds from an artificial person such as a corporation or a law firm, that corporation or law firm has to be represented by a natural person such as Director, Manager, Company Secretary (natural Person) etc who should have pursued the matter on its behalf or by mandating a legal practitioner(s) who should pursue the matter/appeal to its logical conclusion. This is because, the corporation, law firm or company lacks these human qualities which will qualify it to pursue the matter/appeal to its logical conclusion. That is why it is improper where a law firm is consulted by an individual for legal services to indicate on the initiating process(es) that such a process is signed by the law firm. The law firm is incapable of signing the process.”

It is settled therefore that, such a Court process signed in the name of a Law Firm is incurably defective and cannot be cured by an amendment, it being a nullity. The issue is one of substantive law, and not a matter of mere procedure. Accordingly, any originating process filed in breach of a statutory provision, such as Sections 2(1) and 24 of the Legal Practitioners’ Act, is null and void and cannot be relied upon in any judicial proceeding. See Rev. (Dr.) A. B. Ayanlowo v. Sagamu Local Government & Anor (2016) LPELR - 41936 (CA); Akinsanya & Ors v. Shoneye (2016) LPELR - 41939 (CA); Ajayi v. Oguntowo & Anor (2017) LPELR - 42387 (CA) and SLB Consortium Ltd v. NNPC (2011) 9 NWLR (pt.1252) 317. Thus inProfessor A. B. Fafunwa v. Bellview Travels Ltd (2013) LPELR - 20800 (CA); this Court per Augie, J.C.A. (as he then was) held that:

“The situation is not any different from that in Okafor v. Nweke (2007) 10 NWLR (pt.1043) 521, where the Supreme Court hammered the nail down hard with its decision that a law firm cannot legally sign and/or file any process in the Courts; and that any such process signed by a law firm is “incompetent in law”, which means that the process is not only defective but also incurably bad, and in a case like this one, robs the Court of the jurisdiction to entertain the suit.”

It therefore follows that the Writ of Summons and Statements of Claim in this case, which were signed in the name of Bandele A. Aiku & Co., are null and void, and the Trial Court was therefore deprived of the jurisdiction to hear and determine the matter. Those originating processes have been declared to be a nullity, the entire proceedings conducted thereon and the judgments are also null and void. They are accordingly set aside for being a nullity.

Consequently, the entire proceedings of the trial Court and the judgment of the Oyo State High Court delivered on the 30th day of October, 1998 in Suit No: HOG/11/91 based on those null processes are hereby set aside.

**NONYEREM OKORONKWO, J.C.A.:**

The Writ of Summons and the Statement of Claim by which proceedings were begun in this case leading to this appeal were signed by Bandete A. Aiku & Co. a Law Firm.

The Law has become now hackneyed that an Originating Process has to be signed by the Suitor or by the Legal Practitioner representing the Suitor under the various rules of Court. The Legal Practitioners Act 1975 has defined who a legal practitioner is which excludes a Law Firm.

A Law firm cannot purport to initial or sign a process such as the Writ of Summons by which this action is commence, such practice has variously been held to result in a nullity. This one is also a nullity and nothing can stand on it.

I therefore agree with the lead judgment of my Lord Haruna Simon Tsammani, J.C.A. that the nullity has vitiated the entire proceedings which are set aside.

**FOLASADE AYODEJI OJO, J.C.A.:**

I have had the privilege to read in draft, the lead judgment of my learned brother, Haruna Simon Tsammani, J.C.A.

It is not in dispute that the originating processes, that is, the Writ of Summons and Statement of Claim with which the action was commenced before the lower Court was not signed by a legal practitioner enrolled in the Supreme Court of Nigeria. This constitutes a brazen breach of Sections 2(1) and 24 of the Legal Practitioners Act. The law is trite that where there is fundamental failure to comply with the requirement of a statute the resultant effect is not a mere irregularity, but a nullity. See Nigercare Development Co. Ltd vs. Adamawa State Water Board & Ors (2008) 9 NWLR (Pt. 1093) 498; Eimskip Ltd vs. Exquisite Industries (Nig) Ltd (2003) 4 NWLR (Pt. 809) 88. The said originating processes are thus null and void. See also the cases Okafor v Nweke (2007) 10 NWLR (Pt. 1043) 521; Oketade vs. Adewunmi(2010) 8 NWLR (Pt. 1195)63; SLB Consortium Ltd vs. NNPC (2011) 9 NWLR (Pt. 1252) 317; Okwuosa vs. Gomwalk & Ors (2017) 9 NWLR (Pt. 1570) 259; Alikor vs. Ogwo (2019) 15 NWLR (Pt. 1695) 331; Ministry of Works and Transport, Adamawa State vs. Yakubu (2013) 6 NWLR (Pt. 1351) 481 on the effect of signing Court processes in the name of a law firm. In Braithwaite vs. Skye Bank Plc (2013) 5 NWLR (Pt 1346) 1, the Supreme Court, per Muhammad, J.S.C. held that:

In my considered opinion, the words employed in drafting Sections 2 (1) of the Legal Practitioner’s Act, Laws of the Federation of Nigeria and Section 24 of the Legal Practitioner's Act, Law of the Federation of Nigeria are simple and straight forward. The literal construction of the law is that Legal Practitioners who are animate personalities should sign Court processes and not a firm of legal practitioners which is inanimate and cannot be found in the roll of this Court.

Further addressing the collateral issue similarly raised in the case at hand as it was earlier raised in Okafor vs. Nweke before then, His Lordship Fabiyi, J.S.C. proceeded at page 21 of the judgment thus:

“The decision in Okafor vs. Nweke was based on a substantive law - an Act of the National Assembly i.e. the Legal Practitioners Act. It is not based on Rules of Court."

I am in complete agreement with my learned brother that a Court process signed in the name of a law firm is incurably defective and cannot be relied upon in any judicial proceeding. Failure to commence a suit with a valid Writ and/or Statement of Claim goes to the root of the action. See Madukolu vs. Nkemdilim; (1962) 2 SCNLR 341;Hamzat & Anor. v Sanni & Ors(2015) 5 NWLR (Pt. 1453) 486; Kida vs. Ogunmola (2006) 13 NWLR (Pt. 997).

In the circumstance and for the fuller reasons contained in the lead Judgment, I also set aside the proceedings conducted before the lower Court as well as the Judgment premised thereon.-end!