

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT 1, PORT HARCOURT
BEFORE HIS WORSHIP COLLINS G. ALI, ESQ.,¹ TODAY TUESDAY, THE 9TH
DAY OF JULY, 2024.

SUIT NO.:PMC/SCC/126/2024.

BETWEEN:

IPALIBO PROMISE GEORGE

CLAIMANT

AND

1. OWOKO FRED SAMUEL

2. BRAIDE EMMANUELLA NGUAVESE

}

DEFENDANTS

Case called.

Claimant present.

Defendants absent.

JUDGMENT

The Claimant commenced this suit against the Defendants on the 14th day of May 2024. The claims of the Claimant as can be gleaned from the complaint form and claim attached to the ordinary summons is as follows -

Debt/Amount Claimed -	₦4,800,000.00
Costs	- <u>₦1,200,000.00</u>
TOTAL	= <u>₦5,000,000.00</u>

The learned Claimant counsel after the observation of the Court in the total amount as summed up in the claim which ought to be N6,000,000.00, applied to abandon the excess of ₦1,000,000.00 during the trial thereby bringing the total amount of claim to ₦5,000,000.00 (Five Million Naira) only.

The ordinary summons issued for service on the Defendants alongside the complaint form and claim attached thereto were served on the 1st Defendant only; as there is nothing on the affidavit of service or endorsement and return copy which suggests that the 2nd Defendant was served with the processes on the 21st day of May, 2024. Following the reported service on the Defendants by the learned counsel

¹ LL B, LL M, BL, A. IDRI, Chief Magistrate Grade I, and the Presiding Magistrate, Small Claims Court 1, Port Harcourt, sitting at Chief Magistrate Court 7, Port Harcourt, Rivers State.

for the Claimant on the 26th day of June, 2024 the case inadvertently proceeded straight to hearing without plea been entered for the Defendants.

The Claimant testified as CW1 and the sole witness. The CW1 tendered one first Bank postdated cheque issued by the 2nd Defendant on the 25th September, 2023 as Exhibit A and a demand letter served on the 1st Defendant on the 20th November, 2023 as Exhibit B. The CW1 was not cross examined by the Defendants as they never appeared in Court during the trial of the case. The Defendants were foreclosed from cross examination of the CW1 and defence for failure to enter appearance in Court, and the case was adjourned for judgment.

I have carefully perused the processes in the case file and found that the 2nd Defendant was not served with the demand letter and originating processes in this case. The sole issue for determination therefore is thus -

Whether this Honourable Court has jurisdiction to hear and determine this case?

Jurisdiction is the livewire of any adjudication, and so any decision given by a Court without jurisdiction renders the entire proceedings invalid and of no effect whatsoever. It is well settled that if a Court is shown to have no jurisdiction to entertain a matter before it, the result will be that all its proceedings on the matter, however well conducted are a nullity and any decision reached thereon by the Court is void *ab initio* and of no effect whatsoever. See the case of *Lakanmi v Adene [2003] 10 NWLR (Pt 828) 353*. One of the determinants of the jurisdiction of a Court as espoused by the Supreme Court in the locus classicus case of *Madukolu & Ors. v Nkemdili [1962] LPELR-24023 (SC)*, is that the case before the Court must have been initiated by due process of the law, and upon fulfillment of any condition precedent to the exercise of jurisdiction. The practice direction of the Small Claims Court makes the service or issuance of demand letter a condition precedent to the commencement of an action against the defendant. See Article 2 (1) (e) RSSCC Practice Direction 2023. The demand letter tendered as Exhibit B by the Claimant and that issued before the commencement of this action were not issued and/or

served on the 2nd Defendant. The claim before the court is a joint claim against the 2nd Defendant who is said to be the guarantor of the 1st Defendant in a loan transaction. Infact, Exhibit A which is the cheque issued to the Claimant for the said loan repayment was issued by the 2nd Defendant.

Also, a careful examination of the affidavit of service deposed by the bailiff of Court one Chinah Chamberline on the 21st day of May, 2024 reveals that the 2nd Defendant was not served with the originating processes at all. The service of originating process is a condition precedent to the exercise of jurisdiction by a Court. See the case of *National Bank v Guthrie (Nig.) Ltd [1993] 3 NWLR (Pt 284) 643*. The law is that failure to serve originating processes where it is legally required and in accordance with the law; is a fundamental flaw which can render any order or decision therefrom as a nullity. See the case of *Akinmosin v Makinde & Anor. [2012] LPELR-19686 (CA)*.

From the foregoing, it is apparent that this Court lacks jurisdiction to hear and determine this case due to the failure of the Claimant to comply with the conditions precedent to the institution of the case, and non-service of the originating processes on the 2nd Defendant. The proper order a Court should make when it lacks jurisdiction to hear and determine a suit because it is incompetent, is an order striking out the case. See the cases of *Okoye v Nigeria Construction & Furniture Co. Ltd [1991] 6 NWLR (Pt 199) 501* and *WAEC v Adeyanju [2008] 9 NWLR (Pt 1092) 270, 296 paras. C-D (SC)*. The sole issue is resolved against the Claimant. I hold that this case is incompetent and liable to be struck out for want of jurisdiction.

IT IS ORDERED THAT this suit be and is hereby struck out for want of jurisdiction.



C. G. Ali, Esq.
(Chief Magistrate)
09/07/2024

LEGAL REPRESENTATION:

1. E. S. Imiye, Esq. holding the brief of S. Long-Williams, Esq. for the Claimant
2. Defendants not represented.

