

THE EMERGING LOG-JAM OVER VALID PERSONAL SERVICE OF ORIGINATING PROCESS ON REGISTERED COMPANIES IN NIGERIA

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ABSTRACT

This study aimed at examining the contending issues about the proper mode of service of originating processes on Registered Companies in Nigeria. A review of Company and Allied Matters Acts (CAMA)1999 relevant common law rules was adopted. It was observed that although some judicial decisions support the view that Registered Companies can only be validly served with originating processes at their registered or head offices, this study argued that those decisions were wrong, and influenced by the courts' inability to distill the true purport of Section 78(b) of CAMA, whilst ignoring the extant provisions of the applicable High Court Rules. It is the view of this study that services of originating processes on branch offices of companies remain valid so long as they ultimately reach the principal officers of the company. The need to reawaken the courts consciousness to the recognition of the in-built line of distinction between the two segments of section 78 of CAMA in the determination of propriety of service of originating processes on registered companies was recommended.

Keywords: *Log-jam, Registered Companies, originating processes, CAMA*

INTRODUCTION

It is imperative that service of originating processes in civil action must be effected personally on the defendant. Where there is no evidence of such service, the proceedings is bound to be set aside. It has equally been held in a plethora of cases, that where there is no evidence of personal service on a party, the entire service is irregular and any proceedings or judgment founded thereon is a nullity¹. It is equally now settled, that proceedings or even a judgment entered in a suit where there is irregular service, such a judgment is susceptible to being set aside². In that situation, the writ becomes voidable by reason of the defective service. See -Kisari Investment Ltd v. La-Terminal Co. Ltd³. Service on partnership is valid if effected on its accredited agent, but the law appears unsettled as to what amounts to personal service on registered companies.

There are however conflicting decisions on what constitutes a valid service on registered companies, especially in the light of applicable extant laws on the issue, including the relevant provisions of the Companies and Allied Matters Act, 1990⁴, the various High Court (Civil Procedure) rules and other enabling legislations. The foregoing scenario makes the discussion topical, and it is against this background that we intend to critically examine the varying court decisions on the matter with a view to ascertaining what constitutes valid service on registered companies⁵.

Statutory Provisions relating to Service of Originating Processes on Registered Companies: Three major statutes readily come to mind in this respect, namely, the Companies and Allied Matters Act⁶, High Court (Civil Procedure) Rules of the respective jurisdictions, and the Sheriff and Civil Process Act . Section 78 of the Companies and Allied Matters Act⁷, provides for service of originating processes on Registered Companies as follows:

A court process shall be served on a company in the manner provided for by the Rules of Court and any other document may be served on a company by leaving it at, or sending it by post to the registered office or head office of the company.

A careful perusal of Section 78 of CAMA necessarily calls to question rules of construction and interpretation of statutes. The intention of the legislature in the use of the word "and" in the section must be interpreted as denoting a disjunctive rather than conjunctive expression. Consequently, the section regulates the service of two sets of documents, namely; (i) Courts Processes (including Writ of Summons, Petition, Interlocutory Applications etc), and (ii) Any Other documents (including Solicitors Letters, Quit Notices, and other documents that are not court processes).

Implicitly, the first arm of this provision clearly leaves the prescription or mode of service of originating processes on corporate bodies to the High Court (Civil Procedure) Rules applicable to each case. By necessary implication, it is the high court rules that must be applied whenever the propriety or otherwise of service of process on a corporate entity becomes an issue. The second arm of Section 78 of CAMA shall be examined later in this work.

Order 13, Rule 8 of the Federal High Court (Civil Procedure) Rules provides:

When the suit is against a corporation or company authorized to sue, in its name or in the name of an officer or trustee, the writ or other document may be served subject to the enactment establishing such corporation or company or under which it is registered, as the case may be, by giving the same or document to any director or other principal officer, or by leaving it at the office of the corporation or company⁸.

For a clearer understanding of the true purport of this statutory rule, we shall separate the two modes of service mentioned therein, and examine them accordingly:

- (a) By giving the writ of summons or other originating process to any director, secretary or other principal officer of the company.
- (b) By leaving it at the registered office of the corporation.

It appears clearly that the foregoing provides a plaintiff with two options of mode of service, first, he could choose to give the writ of summons or other originating process to the director, secretary or other principal officer of the company wherever he is found (whether at its head or branch office), second, if he chooses to leave it at the defendant's company premises without giving it to any of the aforementioned officers of the defendant company, he can only do so at the registered office of the company, and not any of its branch offices. On the first option, one crucial issue that crops up is whether service of the process on the director, secretary or other principal is valid if given to his subordinate not being a principal officer of the company (such as

receptionist, confidential secretary or typist) for onward transmission to his boss, and the process thus reached the latter. In *Panache Communications Ltd v. Aikhomu*⁹, the writ of summons was served on the defendant's company receptionist (Miss Laurretta Stephen) who in turn forwarded same to the company's secretary. The receptionist deposed to an affidavit to this effect, while the court bailiff also deposed to an affidavit of service. On appeal, the crucial question for determination was whether the service by the bailiff on the receptionist amounted to valid personal service on the defendant company as contemplated by Order 6 rule 11 of the Lagos State (Civil Procedure Rules) of 1973, which provides inter alia:

In the absence of any statutory provision regulating service of process on a corporation or registered company, every writ of summons or other documents requiring personal service may be served on a corporation authorized to sue and be sued in the name of an officer or trustee or on a registered company by delivery such process to any director, secretary or other principal officer of the corporation or company by leaving it at the registered office of the corporation or company or its principal place of business within the jurisdiction

Whilst construing this provision, the Court of Appeal held that the service by the bailiff on the receptionist was valid personal service on the company, since the said process ultimately reached the company secretary. The court reasoned that personal service as contemplated by Order 6 Rule 11 aforesaid did not mean that the bailiff must personally and physically hand the process to the officer; rather, it sufficed if the process or the existence of the pending suit was brought to the notice of the appropriate officer on behalf of the company or corporation. The court opined thus:

The main crux of this appeal and which must be addressed is the interpretation to be placed on personal service. Whether or not the receptionist had the authority to collect and deliver the process to the appellants should not be big a deal. What is more important is that the 2nd and 3rd appellant acknowledged having received the process the same day they were served and received by the lady for and on their behalf. What they can say, which can be corrected is that instead of receiving the process through the hands of the bailiff, they got them through the hands of their own staff, the receptionist of the company.

In *Integrated Builders v Domzaq (Nig) Ltd*¹⁰, service of the writ of summons was effected on the secretary to the Managing Director of the company. Unlike the *Panache's* case, there was no evidence that the managing Director ultimately received the process. The company did not take steps in the proceedings, but took immediate steps to set aside the service. The court held that the service was irregular and ineffectual. The case would have been decided differently if the defendant had taken steps in the proceedings, or if there was proof that the process reached any of the principal officers of the defendant company as in the case of *Job Charles (Nig) Ltd vs. Okonkwo*¹¹, where Akpabio J.C.A held as follows:

“Where a defendant through not properly served with a writ of summons nevertheless attends court and participates actively in the proceedings he would be believed to have waived his rights and would no more be heard to complain of non-service. This is so because failure to serve a writ (as required by court) is an irregularity and not illegality”

In *Kraus Thomson Organization v. University of Calabar*¹², the appellant commenced an action against the respondent university for breach of contract. The appellant served the originating process in the suit on the respondent at the latter's liaison office in Lagos, and thereafter filed a motion for judgment in default of respondent's appearance. The respondent in response took steps to set aside the service of the originating process on grounds that it was not served at the head office or main place of business. The trial court (High Court of Lagos State) held that the service of the originating process on the defendant in its Lagos liaison was proper and valid in the circumstances, and that it had jurisdiction to try the case. The decision was upheld by the Court of Appeal. On further appeal to the Supreme Court, it was held that service of the process on the University at its liaison office was improper and contrary to section 78 of the C.A.M.A. The court reasoned that there was no way principal officers of the University could be readily available at its liaison office. The court observed *inter alia*.

I am of the view ... that a body corporate in this context, either a company registered under the Companies and Allied Matters Act 1990 or a registered corporation such as the respondent in this case, can only be served under the relevant rules of court by giving the writ of summons or document to any Director, Trustee, Secretary or other Principal Officer of the Body Corporate to be served or by leaving the same at its Registered or Head Office. It is bad or ineffective to serve the documents at any Branch Office.

The Apex Court in the determination of the official residence of a company or corporation for the purpose of service of originating processes opined as follows:

It has been judicially pronounced that the residence of a corporation is the place of its central management and control. This is the place where the Board of Directors functions or the place of business of the Managing Director of that of the parent company and not a branch office or liaison office. It does appear reasonable to say that what would determine the residence of a university such as the respondent herein may be the place of its central management and control.

This is the place where the vice-chancellor works or the main campus.

It is submitted that this decision is wrong, first for the fact that it failed to take cognisance of the fact that the University did receive the originating summons. In fact, it was the unsuccessful step it took to set aside the service that culminated in this appeal. Furthermore, the court failed to distinguish the situation from those of registered companies such as banks where principal officers (branch managers) are readily found at branch offices.

On the second option of service, the courts have been unable to agree on whether service by registered post constitutes proper or valid personal service on a defendant company. In *Daily Times (Nig) Plc v. Justice Patrick Amaizu & Ors*¹³, the plaintiff/respondent commenced an action against the appellant (a publishing house) for publishing some letters alleged to be libelous. The originating process was served on the head office of the defendants/appellants through registered post (the Express Mail Services (EMS) Speed post of NIPOST). A chief bailiff of the court deposed to an affidavit of service to this effect.

At the trial court, the appellants initiated proceedings to set aside the service on grounds that it was defective and contrary to the rules of court. Specifically, the appellant contended that the purported service on it by registered post was not personal service as contemplated by the rules, but unauthorized substituted service. This argument was rejected by trial court, and the defendant's motion to set aside the service was dismissed. On appeal, the issue was again raised and the Court of Appeal was called upon to construe the true intent and purpose of Order 7 Rules 4(1) and (2) of the High Court of Anambra State (Civil Procedure Rules) 1988, and Sections 18(1) and 21 of the Nigerian Postal Service Department Act¹⁴, as they relate to proper postage and delivery of mails. Order 7 (4) (1)¹⁵ provided as follows:

Service on a limited liability company shall be effected as prescribed in the company's Act, provided that in default of such provision, service may be effected on a company by registered post addressed to its principal office in the state or by delivery to the principal officer wherever he may be found in the state or by delivery at the company's officer in the state to any one apparently in charge of such office. Provided further that where it has no office in the state, service shall be effected by registered post after due compliance with sub-rule 2 of this rule.

Sub-rule 2 of Order 7(4) provides:

Where the process for service is a writ of summons for service outside the state, it shall have an endorsement thereon a notice in the following effect that is to say. "This writ of summons is to be served out of Anambra State and in state. The endorsement shall be signed and dated by the issuing registrar".

The Court of Appeal in construing the foregoing provisions held that the service was valid in the circumstance, and in accordance with the rules of court. The court observed inter alia.

I am inclined to agree with the 1st respondent's counsel submission that the use of the words "may" and "shall" in the rules of court under consideration, was deliberate. The use of the words had some import. Counsel to the 1st respondent is right in his submission, that the word "may" as it appeared in the rules connotes the conferment of discretion on the 1st respondent in the light of the three modes of service from which to choose in effecting service on the appellant, where the service is to be effected within Anambra State. The provision did not preclude the 1st respondent from serving his writ on the appellant at the latter's headquarters in the instant case where it was the 1st respondents' choice to serve the appellant outside Anambra State.

Implicitly, this case became an authority for the proposition that where service was to be effected on a registered company within the court's jurisdiction three modes of service became permissible, namely:

- (i) Service by delivery to the principal officer wherever he may be found within the court's jurisdiction,
- (ii) Service by registered post addressed to the principal office in the state provided that, where the service is to be effected outside the jurisdiction of the court, it must be by a registered post to the said company's head office outside the state,
- (iii) Service by delivery of the process at the company's head quarters (regardless of the official status of the recipient employee in the defendant company)

It is submitted that the decision in *Daily Times (Nig) Plc v. Justice Patrick Amaizu*

& Ors¹⁶ provides a more appropriate guide on the law relating to service or originating process on corporate bodies. The modes of service outlined in order 7 rule 4 of Anambra High Court Civil Procedure Rules are sufficiently elaborate, and indeed commended for adoption in other High Court Rules. More importantly, it takes cognisance of the relevance of the extant provisions of the Sheriff and Civil Process Rules on the issue of service out of jurisdiction. We have established in this paper that court processes can only be served in accordance with applicable High Court Rules as far the first arm of the section is concerned. On the second arm of Section 78 of CAMA, which relates to service of documents apart from court processes, it is not obligatory that the document be served on the Director, Secretary or other principal officer of the company. It would be valid service if the document is simply left or sent by post to the registered office or head office of the company.

This section does not cover service of court process by post on registered companies. Consequently, service of court process by post on a company is permissible only in situations where the head office of the defendant company is outside the jurisdiction of the trial court, and can only be done in accordance with the relevant provisions of the Sheriff and Civil Process Act. Consequently, Section 78 of CAMA¹⁷ is no authority for the proposition that a writ of summons or other originating processes must be served at the Head Office or Registered Office of a company. This point was exhaustively discussed in *Nigerian Bottling Co. Plc v. Ubani*¹⁸, where the Court of Appeal reviewed the mode of service on companies and corporations under the defunct Act of 1968 and the extant 1990 Act. It held as follows:

In the matter of service of corporations and companies, a distinction must be made between the position of the law under the Companies Act 1968 and the present position under the Companies and Allied Matters Act Cap 59 LFN 1990 (CAMA). Before the new CAMA legislation, service of a Corporation or Company can only be effected by service on the secretary or principal officer of the corporation at its registered office under the Company Act 1968, there was no flexibility as to the application of the provision because it was contained in a statute, the provision of which was mandatory. However, Section 78 of CAMA 1990, carefully transferred the question of service of court process from the companies Act to be dealt with under the applicable rules of court and that any other document may be served on a company by leaving it at or sending it by post to the Registered or Head Office of the Company.

This judgment apart from being a most illuminating one has sufficiently laid to rest the hitherto misconception about the true intent and purpose of Section 78 of the Companies and Allied Matters Act 1990 regarding the proper mode of service of originating processes on registered companies. In summary, the logical deductions that could be made from the judgment include the following:

- (i) Under the present CAMA, service of a court process (originating processes amongst others) is regulated only by the applicable High Court Civil Procedure rules, by virtue of the express superiority accorded the latter by the former.
- (ii) The second arm of section 78 of CAMA is not applicable to service of court

processes by post; it only regulates the service of documents other than Court processes on registered companies.

- (iii) It is now settled that by the extant rules of court, service of originating process on a company at its branch or head office provided it was served on a principal officer of the company (irrespective of whether the said principal officer was served directly or indirectly).

CONCLUDING REMARK

We have in the course of this paper examined the contending issues about the proper mode of service of originating processes on Registered Companies. In the course of this work, it was observed that although some judicial decisions support the view that Registered Companies can only be validly served with originating processes at their registered or head offices, it is our contention that those decisions were wrongly decided, and influenced by the courts' inability to distill the true purport of Section 78(b) of C.AMA, whilst ignoring the extant provisions of the applicable High Court Rules. It is our firm view that services of originating processes on branch offices of companies remain valid so long as they ultimately reach the principal officer of the company. On the whole, a convenient way to conclude this work might be to recommend to courts on the need to reawaken their consciousness to the recognition of the in-built line of distinction between the two segments of Section 78 of CAMA in the determination of propriety of service of originating processes on registered companies.

NOTES

¹ See. *Wimpey v Balogun* (1986) 3 N.W.L.R (PT23) 274, See also, *Scott Emuapkor V Uhavwe*(1978) 12 S.C 141

²See *Sken-consults v Sekondey-ukey* (1981) 12 N.S.C.C 1, *Ojkolobo VAlamu*(1987)18N.S.C.C991, See also *A.C.B Ltd V Losada*(1995)7N.W.L.R(PT405)26

³(2001)16 NWLR (Part.739)381

⁴Hereinafter referred to as CAMA

⁵See *Idiata v.Ejiako* (2005) 11 N.W.L.R (PT936) 349 where this continuing debate was addressed.

⁶Cap C20 L.F.N 2004(Hereinafter called CAMA)

⁷Cap S6 LFN 2004,See Sections 96.97 and 98 thereof dealing with the issuance and service originating processes especially the Writ of Summons outside jurisdiction.

⁸This Rule is Ipsima verba with Order 12,Rule 8 of the Bendel State High Court (Civil Procedure)Rules 1988, Applicable in Edo State.

⁹(1994) 2 NWLR (pt 327) 420. This Rule is Ipsima verba with Order 12,Rule 8 of the Bendel State High Court (Civil Procedure)Rules 1988, Applicable in Edo State.

¹⁰(1994) 2 NWLR (pt 327) 420

¹¹(2002) FWLR (pt 117) 1067

¹²(2004) 9 NWLR (pt 879) 631. S.C.

¹³(1999) 12 NWLR (pt 631) 439 S.C.

¹⁴Cap. 322, L.F.N, 1990

¹⁵High Court of Anambra State (Civil Procedure Rules) 1988,

¹⁶Supra

¹⁷LFN 1990

¹⁸(2009) 3 NWLR (PT 1129) 512 AT 534-535