

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE AWKA JUDICIAL DIVISION
HOLDEN AT AWKA
ON THURSDAY THE 26th DAY OF MAY 2014
BEFORE THE HONOURABLE JUSTICE I.B. GAFAI
JUDGE
SUIT NO: FHC/AWK/CS/ 309/2013

BETWEEN:

A. C. EZE AND SONS LTD. ... PLAINTIFF

A N D

1. MR. CHARLES EGUMOLE
2. EXCELLENT BINACO IND. LTD. ... DEFENDANTS
3. OBINNA NGENE

Parties absent.

Taiwo Fafobi with Atawudi Akor holding the brief of C. L. Ndukaihe for the 1st Respondent.

Plaintiff onnotice but absent.

RULING ON THE DEFENDANTS'
MOTION DATED 7/2/14 CHALLENGING THE
THE JURISDICTION OF THIS COURT.

2.

The Plaintiff herein namely A. C. Eze & Sons Ltd. instituted this suit on the 18th of December 2013 by way of writ of summons and a statement of claim dated the same date. The Defendants namely Mr. Charles Egumole (2) Excellent Binaco Industries Ltd. and (3) Obioma Ngene were served with both the writ and the Plaintiff's statement of claim as follows:

- i - On the 2nd and 3rd Defendants on the 29th of January 2014 at no.66 Modebe Avenue Onitsha; and later
- ii - On the 1st Defendant on the 31st of January 2014 at no.12 Idelumo Street Idumota Lagos.

On the 7th of February 2014, the 1st Defendant caused to be filed in the suit:

- a - A memorandum of Conditional Appearance;
- b - A motion on notice challenging the jurisdiction of this Court;
- c - A counter affidavit in opposition to the Plaintiff's motion on notice earlier filed on the 18th of December 2013, seeking for interlocutory injunctions pending the determination of the suit; and
- d - A statement of Defence.

3.

It is hoped that the foregoing recap will assist the parties and those in court listening to have a better understanding of the context and purport of the 1st Defendant's motion; which as I mentioned, is challenging the jurisdiction of this Court. The motion is supported by an 11 paragraph affidavit and filed along with a written address of his learned Counsel C. C. Ndukaihe.

The Plaintiff did not file any process in Defence of this motion but has later caused to be filed a motion on notice also by which it is to seek for leave for substituted service of all its processes on the 1st Defendant through the office of Sir C. L. Ndukaihe.

At the hearing, the learned Counsel for the Plaintiff applied to withdraw the said motion seeking for substituted service. No reason were offered by him. The motion is thus hereby struck out. The motion by the 1st Defendant was however fully heard, albeit undefended. The grounds for the 1st Defendant's challenge is that the processes served on him at Lagos were:

- i - served on him in Lagos without obtaining the leave of this Court; and
- ii - the writ of summons was not endorsed in accordance with the provisions of the Sheriffs and Civil Process Act.

4.

I have carefully read and considered the uncontested facts contained in the affidavit in support of the motion. I have also carefully read and considered the written submissions of the learned Counsel for the 1st Defendant. I have further the considered the provisions of section 97 of the Sheriffs and Civil Process Act viz- a-viz the writ issued and served on the 1st Defendant.

I am fully satisfied that the 1st Defendant's claim is correct. The Plaintiff did not seek for nor was he therefore granted leave to serve the writ out of the jurisdiction of this Court. The writ was not endorsed in the manner prescribed under section 97 of the Act. I am in full agreement with the submission of the learned Counsel for the 1st Defendant that Provisions of section 97 are mandatory and thus the writ as issued and served is a nullity. Consequently, the purported service on him of both the writ of summons and statement of claim in the manner done is hereby set aside. Suit adjourned to 16/10/14 for hearing. Hearing notice to be served on the parties not in Court today.



I. B. GAFAI

JUDGE

26/05/2014