

**SUPREME COURT OF NIGERIA**  
FRIDAY 11TH APRIL, 2003. SC. 310/2001  
**CORAM:- M. L. UWAISS CJN, M. E. OGUNDARE,**  
**A. I. IGU, A. I. KASTINA-ALU, D. MUSDAPHER, JJSC**

1. SOCIETE GENERALE BANK NIG. LTD ..... APPELLANT  
AND  
JOHN ADEBAYO ADEWUNMI ..... RESPONDENT

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COURT PROCESSES - Service - Fundamentality of - Where service of process is required - Failure to do so goes to the root of the case - As it deprives the court the jurisdiction to hear the suit (H1)

COURT PROCESSES - Service - Proof - As there was no affidavit of service and production of same - Contrary to the HC rules O. 12 r. 1 & 28 - It cannot be concluded that defendant knew of proceedings of that day (H2)

COURT PROCESSES - Affidavit of service - Purpose - It is to convince court that the person on whom processes are to be served - Has been duly served (H3)

JUDGMENTS - Nullity - Effect - Since judgment of 14/02/94 is a nullity - The order of trial court on 09/10/95 - For attachment and sale of defendant's property - In satisfaction of the judgment - Is equally null and void (H4)

**FACTS**

Before the High Court of Kaduna State, plaintiff/appellant instituted this action under the undefended list procedure pursuant to O. 22 rr. 1 and 2 of the High Court Rules, for recovery of the money and the accruing interests from defendant/respondent. Appellant's case is that respondent has despite repeated demands made on him, failed to pay the sum of N66, 216.01 being the outstanding balance of overdraft facilities and loan granted to respondent by appellant. The proceedings in the matter were stalled as a result of difficulties of service. Subsequently, appellant filed a motion ex parte seeking for an order of substituted service on respondent. The court granted the

application and adjourned the matter to 14<sup>th</sup> February 1994.

Respondent was absent on that date and the court went ahead to enter judgment in favour of appellant. Later on in October 1995, leave was obtained to attach and sell the immovable property of respondent to satisfy the judgment debt. The property was thus sold. Respondent was dissatisfied. Hence, he appealed to the Court of Appeal, Kaduna Division, contending that he was not served with the necessary originating processes in the matter. The court in its judgment held that there was no evidence of proof of service on respondent. By the reason of the lapse, the court therefore concluded that the trial court lacked jurisdiction to enter judgment against respondent on the 14<sup>th</sup> February 1994. Aggrieved, appellant brought appeal to Supreme Court.

### **ISSUE FOR DETERMINATION**

*“Whether the conclusion or findings by the court below that there was no credible proof that the appellant was served with the writ of summons and other court processes etc., is sustainable from the facts and evidences before it.”*

**HELD** (Unanimously dismissing the appeal per **KATSINA-ALU JSC**)

*COURT PROCESSES - Service - Fundamentality of*

**1. This, in my view, is the main issue in this appeal. This is because it is now trite law that failure to serve process, where service of process is required, is a failure which goes to the root of the case. Service of process on a party to a proceeding is fundamental. It is service that confers competence and jurisdiction on the court seised of the matter. Clearly due service of process of court is a condition sine qua non to the hearing of any suit. Therefore if there is a failure to serve ‘process where service of process is required, the person affected by the order but not served with the process is entitled ex debito justitiae to have the order set aside as a nullity. The result of all that I have said above is that the defendant was not served with the writ of summons and other court processes. The consequence is obvious. Failure to serve process**

**where service of process is required is a fundamental vice. It deprives the trial court of the necessary competence and jurisdiction to hear the suit. In other words the condition precedent to the exercise of jurisdiction was not fulfilled. That being so, the trial court, in my view, had no jurisdiction to hear the case before it on 14/2/94, and to enter judgment for the plaintiff. The proceedings of 14 February, 1994 were a nullity. (pp. 957 B/959 C)**

*COURT PROCESSES - Service - Proof*

**2. Looking at it, can it be said that there was proof of service of the processes on the defendant? The rules of court may be of great assistance here. The material rule for the purpose of this appeal is Order 12 rules 1 and 28 of the High Court Civil Procedure Rules of Kaduna State.**

**Under the rules two conditions are prescribed. The first is that there must be an affidavit of service. The second condition is that such affidavit shall be produced at the trial. Both conditions, I dare say, must be satisfied.**

**Looking at the record of what transpired on 14 February, 1994, the day judgment was entered for the plaintiff, it will be seen clearly that there was no affidavit of service. I say this because none was produced. The learned trial Judge had a duty to demand to know whether his order for substituted service was complied with. He had a further duty to demand to see the proof which is in the form of an affidavit of service sworn to by the bailiff. Evidently he did not. He took the ipse dixit of the learned counsel for the plaintiff that "the defendant was duly served" as proof of due service. In the absence of an affidavit of service, it cannot be seriously contended or concluded that the defendant knew of the proceedings of that day. (p. 958 A/F)**

*COURT PROCESSES - Affidavit of service - Purpose*

**3. It is to be recognised that the purpose of an affidavit of service is to convince the court that the person on whom the processes are to be served, has been duly served. It must be produced before the learned trial Judge as prima facie evi-**

**dence of service. It is not to be kept away, where it has been sworn to, to be produced at a later stage on appeal.**  
(p. 959 A)

*JUDGMENTS - Nullity - Effect*

- B 4. Since the judgment of 14 February, 1994 is a nullity, it follows that the subsequent order of the trial court on 9 October, 1995 for the attachment and sale of the defendant's immovable property situate at No. 4A, Dawaki Road, New Extension Kaduna in satisfaction of the judgment is null and void.**  
**C Both the judgment and the order of the trial court are hereby set aside.** (p. 961 A)

NOTABLE POINTS OF INTEREST

**D MUSDAPHER JSC**

**1. Parties must be heard when issue is raised suo motu**

It is settled law that where an appellate court raises an issue suo motu before it reaches a decision on such an issue it must give counsel appearing for the parties the benefits of being heard on the point.  
**E** (p. 963 B)

**2. Appellate court to restrict itself to issues distilled from grounds of appeal**

- F** The jurisdiction of an appellate court is essentially confined to the correction of errors of the court from which the appeal emanates. It can only do so naturally where the points argued before it consist of allegations of errors made by that court and not on matters not canvassed before it, nor on matters not properly based on the issues  
**G** distilled from the grounds of appeal. (p. 963 B)

**REPRESENTATION**

A. O. Mohammed, Esq, for Appellant  
Rose-Marie Iweze [Mrs.], for the Respondents

**H**

**CASES REFERRED TO**

Craig v. Kanssen (1943) KB 256  
Mbadinuju v. Ezuka (1994) 8 NWLR (pt. 364) 535

Obimonure v. Erinoshio (1966) All NLR 250

Scott-Emuakpor v. Ukavbe (1975) 12 SC 41

Bankole v. Pelu (1991) 8 NWLR (pt. 211) 523

Kuti v. Balogun (1978) 1 SC 53 (1978) 1 LRN 353

Auto Import Export v. Adebayo (2002) 18 NWLR (pt. 799) 554

Okesuji v. Lawal (1991) 1 NWLR (pt. 170) 661

B

### **RULES REFERRED TO**

High Court Civil Procedure Rules of Kaduna State, O. 12 r. 1 & 28

### **LEAD JUDGMENT BY KATSINA-ALU JSC**

C

This appeal by the plaintiff Societe Generale Bank (Nig.) Limited is from a decision of the Court of Appeal Kaduna Division given on 20 April, 1998. The plaintiff's claim against the defendant was for the sum of N66,216.01 being the outstanding balance of overdraft facilities and loan granted to the defendant on 24 May, 1982. The amount fell due but the defendant had failed, refused and or neglected to pay despite repeated demands. The plaintiff further claimed compound interest at the rate of 28% from 30 January, 1993 to date of judgment and thereafter interest at the rate of 15% until the entire debt was liquidated. The plaintiff brought this action under the undefended list pursuant to Order 22 rules 1 and 2 of the High Court (Civil Procedure) Rules of Kaduna State for recovery of the money. These proceedings were stalled owing to difficulties of service.

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On 26 November, 1993 the plaintiff brought a motion ex parte for the following order:-

*"1. An order of court granting the plaintiff/appellant leave to serve the defendant/respondent with the plaintiff writ of summons by substituted service by pasting same on the defendant's residence and last known address:- viz.*

*MR. JOHN ADEBAYO ADEWUNMI*

*KB 29 KUSE ROAD*

*KABALA EAST*

*P.O. BOX 10239*

*KADUNA.*

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*And to deem same as good and proper service on the defendant.*

*2. AND for such further or other orders as this Honourable*

*court will deem fit to make in the circumstances.”*

On 17 January, 1994 the learned trial Judge granted the application in the following terms:-

B *“The application is granted as prayed. The defendant shall be served with the writ of summons by substituted means namely by pasting same at the defendant’s residence which is No.29, Kuse Road Kabala East Kaduna and the same shall be deemed good and proper service. I adjourn this matter to 14/2/94 for mention”.*

On 14/2/94 the following took place:

C *“Parties - absent.*

A. O. Mohammed for the plaintiff.

*Mohammed: The writ of summons was taken on the undefended list. The defendant was duly served. He has not filed any notice of intention -to defend. We therefore ask for judgment.*

D *Court: Judgment is hereby entered in favour of the plaintiff against the defendant in the sum of N66,216 and interest at the rate of 28% per annum from 30/1/93 to date and thereafter at 10% interest per annum until the judgment sum is liquidated. I award N293.50 as costs against the defendant.”*

E In October, 1995 leave was obtained to attach and sell the immovable property of the defendant to satisfy the judgment debt. Consequently the defendant’s property at 4A, Dawaki Road, Kaduna was duly sold.

F The defendant appealed to the Court of Appeal, which allowed its appeal holding that:

G *“It follows therefore that I cannot regard exhibits 1, 2 and 3 as proof that the appellant was served with the writ of summons and other court processes to bring the appellant within the jurisdiction of the trial court the necessary competence and jurisdiction to enter judgment against the appellant on 14/2/94.”*

The plaintiff appealed to this court upon a number of grounds. The defendant also cross-appealed.

H Based on the grounds of appeal filed, the plaintiff submitted three issues for determination which read thus:

*“1. Whether it was proper for the Court of Appeal to have suo motu raised the issue of ‘validity of the service of the writ of summons on the appellant’ contrary to the 2 grounds of appeal alleging non-service of the writ of summons and other court processes on the*

*appellant on which issues were joined and canvassed upon by the parties.*

2. *Whether the issue raised suo motu and relied upon in determining the appeal without hearing from the parties amount to an error in law which has occasioned substantial miscarriage of justice.*

3. *Whether the conclusion or findings by the court below that there was no credible proof that the appellant was served with the writ of summons and other court processes etc., is sustainable from the facts and evidences before it."*

For his part, the defendant raised two issues for determination. They read:

1. *Whether the lower court was right when it proceeds to evaluate exhibits 1, 2 and 3 including the circumstances in which they were produced, when considering the issue as to whether or not the respondent was duly served with the writ of summons and hearing notices.*

2. *Was the lower court right in not ascribing any credibility to exhibits "1" "2" and "3" after considering the documents and the circumstances in which they were produced."*

The plaintiff argued its issues 1 and 2 together. The complaint in both issues is that the Court of Appeal suo motu raised the issue of the validity of the writ of summons and other court processes. It was contended that the issue raised by the defendant in his appeal before the Court of Appeal was one of non-service. In view of this complaint, I think it is imperative to read the relevant grounds of appeal and the issues thereon before the Court of Appeal. The relevant grounds of appeal are grounds 2 and 3 which read as follows:

#### **"2. ERROR IN LAW**

*The learned trial Judge erred in law when he entered judgment against the appellant on the 14th day of February, 1994 when there was no proof of service of the writ of summons or date of the service of the writ of summons and any hearing notice served on the appellant for that date.*

#### **PARTICULARS**

(a) *The learned trial Judge did not verify from the bailiff whether indeed his order for substituted service had been carried out, neither was any affidavit of service filed in proof of same.*

(b) *The learned trial Judge did not verify the date the writ of*

*summons was allegedly served on the applicant.*

### 3. ERROR IN LAW

*The learned trial Judge erred in law and in gross excess of jurisdiction when he entered judgment against the appellant on the 14th day of February, 1994 when there was no proof of service of the writ of summons or date of the service of the writ of summons, and any hearing served on the appellant for that date.*

#### PARTICULARS

*(a) The learned trial Judge did not verify from the court bailiff whether indeed his order for substituted service had been duly carried out, neither was any affidavit of service filed in proof of same."*

Based on these grounds of appeal the defendant raised the following issues for determination by the Court of Appeal: -

*"2. Whether or not failure to serve the writ of summons on the appellant denied the appellant a fair opportunity of presenting his case at the lower court and as such was fatal to the proceedings.*

*3. Whether the learned trial Judge rightly assumed jurisdiction over the appellant in this action without first ascertaining or satisfying himself that the appellant was duly served with the writ of summons before he proceeded to enter judgment against the appellant and thereafter granted leave to the respondent to attach and sell the appellant's immovable property to wit No. 4A, Dawaki Road, Extension Kaduna on the 9th day of October, 1995."*

As I have already stated, it was contended by the plaintiff that the issue of validity of the service of the writ of summons and other court processes was never made an issue before the Court of Appeal. It was said that what the defendant raised for consideration by that court was the issue of non-service which in his view is distinct from the issue of validity of service. I think there is a flaw in this submission. The issue of the validity of the service of the writ of summons and other court process revolves around the issue of whether the defendant was properly served or not especially in the light of documents produced by the plaintiff in proof of service but which documents were not produced at the hearing in the court of trial. In law an invalid service is no service. Having regard, therefore to the grounds of appeal and the issues raised in the Court of Appeal it can be seen clearly that this issue was raised in the court below. As a matter of fact, the case of the defendant in the court below was that he was



served. In my view, the contention that the Court of Appeal suo motu raised the issue is clearly without substance. Issues 1 and 2 raised by plaintiff together with submission thereon go to no issue.

I now turn to the plaintiff's third issue. For ease of reference I reproduced it again. It reads:

*"Whether the conclusion or findings by the court below that there was no credible proof that the appellant was served with the writ of summons and other court processes etc., is sustainable from the facts and evidences before it."*

***This, in my view, is the main issue in this appeal. This is because it is now trite law that failure to serve process, where service of process is required, is a failure which goes to the root of the case. See Craig v. Kanssen (1943) KB 256 at 262. Service of process on a party to a proceeding is fundamental. It is service that confers competence and jurisdiction on the court seised of the matter. Clearly due service of process of court is a condition sine qua non to the hearing of any suit. Therefore if there is a failure to serve 'process where service of process is required, the person affected by the order but not served with the process is entitled ex debito justitiae to have the order set aside as a nullity. See Mbadinuju v. Ezuka (1994) 8 NWLR (Pt. 364) 535.***

Now, the question to be resolved in the instant case is:- Was the defendant duly served with the writ of summons and other processes? Let me put it this way. Do exhibits "1", "2" and "3" constitute proof of service of the processes on the defendant? To examine the record of the trial court on the day judgment was entered for the plaintiff. Judgment was entered for the plaintiff on 14 February, 1994. The record of the trial court on 14 February, 1994 read thus:

*"Parties - absent.*

*A. O. Mohammed for the plaintiff.*

*Mohammed: The writ of summons was taken on the undefended list. The defendant was duly served. He has not filed any notice of intention to defend. We therefore ask for judgment.*

*Court: Judgment is hereby entered in favour of the plaintiff against the defendant in the sum of N66,216 and interest at the rate of 28% per annum from 30/1/93 to date and thereafter at 10% interest per annum until the judgment sum is liquidated. I award*

*N293.50 as costs against the defendant.”*

That is all that transpired on that day. **Looking at it, can it be said that there was proof of service of the processes on the defendant? The rules of court may be of great assistance here. The material rule for the purpose of this appeal is Order 12 rules 1 and 28 of the High Court Civil Procedure Rules of Kaduna State** which provides as follows:

“1. Service of writ summons, notices, petitions, pleadings, orders, summonses, warrants and all other proceedings, documents, or written communications of which service is required, shall be made by the Sheriff or a deputy Sheriff bailiff, officer of the court, or by a person appointed therefore (either especially or generally) by the court, or by a Judge in Chambers, unless another mode of service is prescribed by these rules, or the Court or Judge in Chambers otherwise directs:

*Provided that when a party is represented by a legal practitioner, service of notices, pleadings, petitions, orders, summonses, warrants and all other proceedings, documents or written communications of which personal service is not required may be made by or on such legal practitioner or his clerk under his control.*

28. In cases where service of any writ or document shall have been effected by a bailiff or officer of the court an affidavit of service sworn to by such bailiff or other officer shall on production, without proof of signature, be prima facie evidence of service.” (Italics mine)

**Under the rules two conditions are prescribed. The first is that there must be an affidavit of service. The second condition is that such affidavit shall be produced at the trial. Both conditions, I dare say, must be satisfied.**

**Looking at the record of what transpired on 14 February, 1994, the day judgment was entered for the plaintiff, it will be seen clearly that there was no affidavit of service. I say this because none was produced. The learned trial Judge had a duty to demand to know whether his order for substituted service was complied with. He had a further duty to demand to see the proof which is in the form of an affidavit of service sworn to by the bailiff. Evidently he did not. He took the ipse dixit of the learned counsel for the plaintiff that “the defendant was duly served” as proof of due service. In the absence of an**

**affidavit of service, it cannot be seriously contended or concluded that the defendant knew of the proceedings of that day.**

**It is to be recognised that the purpose of an affidavit of service is to convince the court that the person on whom the processes are to be served, has been duly served. It must be produced before the learned trial Judge as prima facie evidence of service. It is not to be kept away, where it has been sworn to, to be produced at a later stage on appeal.**

This is what happened in the instant case. Exhibits “1”, “2” and “3” which were not produced at the hearing in the trial court propped up in the Court of Appeal. In my judgment the Court of Appeal was right in not ascribing any credibility to these documents.

**The result of all that I have said above is that the defendant was not served with the writ of summons and other court processes. The consequence is obvious. Failure to serve process where service of process is required is a fundamental vice. It deprives the trial court of the necessary competence and jurisdiction to hear the suit. In other words the condition precedent to the exercise of jurisdiction was not fulfilled. That being so, the trial court, in my view, had no jurisdiction to hear the case before it on 14/2/94, and to enter judgment for the plaintiff. The proceedings of 14 February, 1994 were a nullity.** In the case of *Mbadinuju v. Ezuka* (supra) this court per Ogundare, JSC held that:

*“As the record of appeal shows, the two motions for extension of time to file plaintiffs, statement of claim and that to dismiss the suit for want of prosecution respectively were fixed for 1st February for hearing. There is nothing on record to show whether or not the motions came up that day and whether they were adjourned and why. All we now know is that the two motions came before the court on 13/2/78. This is confirmed by the court’s record book which the court below called for and examined. The parties and their counsel were absent in court when the motions were called although the defence counsel subsequently put in appearance. There is nothing on record to show whether the parties and/or their counsel were served with hearing notice for 13/2/78. Neither is there anything on record to show that the parties were served with hearing notice that the main suit itself would be put on the court’s list for that day. The two motions were*

*struck out because parties were absent. Why was the defence counsel, who was present, not called upon to move the defendants' motion to dismiss for want of prosecution? Why was it necessary to strike that one out too? Surely for the trial Judge to strike out the two motions before him without first ensuring that the parties were served with hearing notices for 13/2/78, his order is a nullity."* - See *Obimonure v. Erinosho & Anor.* (1966) All NLR (Reprint) 250 at 253 where the dictum of Lord Greene had in the latter case said:

*"Those cases appear to me to establish that a person who is affected by an order which can properly be described as a nullity is entitled ex debito justitiae to have it set aside. So far as procedure is concerned it seems to me that the court in its inherent jurisdiction can set aside its own order, and that it is not necessary to appeal from it. I say nothing on the question whether or not an appeal from the order, assuming it to be made in proper time, would be competent. The question, therefore, which we have to decide is whether the admitted failure to serve on the defendant the summons on which the order of January 18th, 1940, was based was a mere irregularity, or whether it gives the defendant the right to have the order set aside. In my opinion, it is beyond question that failure to serve process where service of process is required goes to the root of our conceptions of the proper procedure in litigation. Apart from proper ex parte proceedings, the idea that an order can validly be made against a man who has had no notification of any intention to apply for it has never been adopted in this country. It cannot be maintained that an order which has been made in those circumstances is to be treated as mere irregularity and not as something which is affected by a fundamental vice."*

See also: *Scott-Emuakpor v. Ukavbe* (1975) 12 SC 41; (1975) NSCC 435, 438 where Bello, JSC (as he then was) observed:

*"Where notice of any proceeding is required, failure to notify any party is a fundamental omission which entitles the party not served and against whom any order is made in his absence to have the order set aside on the ground that a condition precedent to the exercise of jurisdiction for the making of the order has not been fulfilled see Marion Obimonure v. Ojumoola Erinosho and Anor. (1966) 1 All NLR 250. As neither the appellant nor his counsel was notified of the proceedings of 1st September, 1972, the learned Judge, in our*

*view ought to have exercised his discretion under Order 26 rule 8 of the High Court (Civil Procedure) Rules, Cap. 44, Laws of Western Region of Nigeria, 1959, which apply in the Mid-Western State, in favour of the appellant."*

**Since the judgment of 14 February, 1994 is a nullity, it follows that the subsequent order of the trial court on 9 October, 1995 for the attachment and sale of the defendant's immovable property situate at No. 4A, Dawaki Road, New Extension Kaduna in satisfaction of the judgment is null and void. Both the judgment and the order of the trial court are hereby set aside.**

This judgment adequately takes care of the defendant's cross-appeal. I do not deem it necessary to deal with the cross-appeal in detail in view of my decision in the main appeal. In the result this appeal fails and I dismiss it. Accordingly I affirm the judgment of the Court of Appeal given on 20 April, 1998. The defendant-respondent is entitled to N10,000.00 costs against the plaintiff.

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### UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother, Katsina-Alu, JSC. I entirely agree with the judgment.

I accordingly adopt the conclusion reached and the order made by my learned brother, Katsina-Alu, JSC.

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### OGUNDARE JSC

I read in advance the judgment of my learned brother, Katsina-Alu, JSC just delivered. I agree for the reasons given by him, which reasons I hereby adopt as mine, that the appeal of the plaintiff fails. It is dismissed by me also. I only need to comment briefly on the defendant's cross-appeal. The defendant had complained that the court below failed to make a finding on his complaint before that court that the service of hearing notice by substituted service was null and void as it was not authorized by any order of the trial court. I think this complaint is purely academic. It is true that the order for substituted service made by the trial Judge related only to service of

the writ of summons and did not extend to other processes. But the issue of the validity of the service of hearing notices - which is the fulcrum of defendant's complaint, is subsumed in the finding of the court below, per Umaru Abdullahi, JCA, (as he then was) that -

*"It follows therefore, that I cannot regard exhibits 1, 2 and 3 as proof that the appellant was served with the writ of summons and other court processes to bring the appellant within the jurisdiction of the trial court and to give the trial court the necessary competence and jurisdiction to enter judgment against the appellant on 14/2/94."*

Exhibits 1, 2 and 3 are the documents the plaintiff relied on to show that court's processes, that is, writ of summons and hearing notices, were served on the defendant. The authenticity of these documents was questioned by the court below and, therefore, not relied on in proof of service of processes on the defendant. In effect, that court did not accept that processes were served on the defendant, a finding I agree with. With this finding, the issue of the validity of service of hearing notice by substituted service without order of court peters into insignificance and no longer arises for any consideration; it has become academic. One does not consider the validity, or otherwise, of something that has not been proved to exist.

For the reason given herein, I see no merit in the cross appeal which I hereby dismiss. As the main appeal of the plaintiff fails, I abide by the order for costs made by my learned brother, Katsina-Alu, JSC.

### **IGUH JSC**

I have had the privilege of reading in draft the judgment of my learned brother, Katsina-Alu, JSC just delivered and I agree that this appeal is without substance and it is hereby dismissed by me.

For the same reasons as are contained in the leading judgment with which I agree, the judgment of the court below delivered on the 20th day of April, 1998 is hereby affirmed. I abide by the order for costs made in the leading judgment.

### **MUSDAPHER JSC**

I have read in advance the judgment of my learned brother,

Katsina-Alu, JSC. I agree entirely with his reasoning and conclusion.

My learned brother has set out the facts in full and has considered the crucial issues submitted to this court for the determination of both the appeal and the cross-appeal. I only wish to comment on two points merely for the sake of emphasis.

It is settled law that where an appellate court raises an issue suo motu before it reaches a decision on such an issue it must give counsel appearing for the parties the benefits of being heard on the point. The jurisdiction of an appellate court is essentially confined to the correction of errors of the court from which the appeal emanates. It can only do so naturally where the points argued before it consist of allegations of errors made by that court and not on matters not canvassed before it, nor on matters not properly based on the issues distilled from the grounds of appeal. See *Bankole v. Pelu* (1991) 8 NWLR (Pt. 211) 523 at 547; *Kuti v. Balogun* (1978) 1 SC 53 (1978) 1 LRN 353 at 357. In my view questioning the validity of service of a writ of summons and non-service of a writ of summons under the circumstances of this case amounts to a difference without a distinction. It is either that the respondent was served with the writ of summons or he was not served. Under the circumstances it cannot be correct to say that the court below raised any point suo motu not raised by the respondent in his notice of appeal.

Under an adversary system of jurisprudence, to hear a case without one of the parties having been served with the necessary process except in a proper ex parte proceedings would render the trial a nullity as service of the court's processes is basic and indispensable to any adjudication. Failure to serve the court processes robs the trial court of the jurisdiction and competence to deal with the matter. See *Mbadinuju v. Ezuka* (1994) 8 NWLR (Pt.364) 535; (1994) 10 SCNJ 109; *Auto Import Export v. Adebayo* (2002) 18 NWLR (Pt.799) 554; (2003) FWLR (Pt. 140) 1686. And any decision arrived at under such a situation is null and void.

That is why it is very fundamental and necessary for the court to have before it, the evidence of the service of, the process. The appearance in court of the party as ordered in the process or on the return date as stated in it or on the hearing notice attached thereto is the strongest evidence of service. Rules of court provide the modes of proof of service e.g. by a certificate or affidavit of the bailiff or any

officer of the court. This is because of the fundamental requirement of the proof of service of a process on a party.  
In the case of Okesuji v. Lawal (1991) 1 NWLR (Pt. 170) 661 at 678, Olatawura, JSC observed as follows:-

“The purpose of affidavit of service is to convince the court  
B that the persons on whom the processes are to be served have been  
duly served. Where there is no affidavit of service and the persons  
served with a writ or any other process of a court appears in court,  
there is no further need to insist on proof of service. There cannot be  
C a better proof than the appearance in court of the person on whom  
the process was served.”

In the instant case “the learned trial Judge was clearly in error  
to have accepted at its face value the statement of the respondents’  
counsel especially in a situation such as this, when personal service  
D could not be effected and the court had to order substituted service.  
I also agree with the decision of the court below, that considering the  
circumstances of this case the credibility of the exhibits tendered in  
that court proving due service is clearly questionable. It is for these  
and further reasons stated in the aforesaid leading judgment, that I,  
E too dismiss the appeal and affirm the decision of the court below.  
The defendant/respondent is entitled to costs of 10,000.00 against  
the plaintiff/appellant.

Appeal dismissed. Cross-appeal dismissed.

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