

SUPREME COURT OF NIGERIA
7TH DECEMBER, 2012. SC. 325/2010
CORAM:- C. M. CHUKWUMA-ENEH, J. A. FABIYI, S.
GALADIMA, M. D. MUHAMMAD, C. B. OGUNBIYI, JJSC

DR. TUNJI BRAITHWAITE APPELLANT
AND
SKYE BANK PLC RESPONDENT

ACTIONS - Commencement - Court processes - Jurisdiction - Failure to commence action with valid processes - Affects exercise of court's jurisdiction in the matter (H1)

SUPREME COURT - Judicial precedent - Binding nature of - The court is bound by its previous decision - Where facts and laws in the earlier case - Are similar to cases being determined (H2)

FACTS

By a notice of preliminary objection filed before the Supreme Court, respondent challenges the competence of this appeal on the ground that the same (being a continuation of the original suit No. LD/1850/2005) which brought about it was commenced by a defective Writ of Summons and Statement of Claim. It claims that the originating processes were not validly signed by a legal practitioner.

As such, respondent claims that the appeal is incurably defective thereby robbing the courts of the jurisdiction to hear and determine same. In opposing the preliminary objection, appellant relies on a fifteen paragraph counter-affidavit deposed to by one Ismail Shaib Usman a legal practitioner in appellant's Law firm - Tunji Braithwaite and Co. Both sides adopted and relied on their written addresses as their arguments for and against the preliminary objection.

HELD (Unanimously upholding the preliminary objection per **MUHAMMAD JSC**)

ACTIONS - Commencement - Court processes - Jurisdiction

1. Now, a perusal of Exhibits SKYE 1 and 3 certainly leaves

one in no doubt that the two have not been signed by a Legal Practitioner. Whereas Exhibit SKYE 1 is not signed at all, Exhibit SKYE 3 carries a signature on top of the same of the claimant's firm of solicitors, Oluyede and Oluyede. I agree with learned counsel to the Respondent/Objector that this court has consistently held that the validity of the originating processes in a proceeding before a court is fundamental and a necessary requirement for the competence of the suit and proceeding the processes set out to commence. Failure to commence a suit with a valid Writ and/or Statement of Claim goes to the root of the action since the conditions precedent to the exercise of the court's jurisdiction would not have been met to duly place the suit before the court. (p. 3093 B)

Judicial precedents - Binding nature of

2. Again, learned Appellant/Respondent counsel in asking us to ignore the decisions of this court in Okafor v. Nweke (supra) and SLB Consortium Ltd. v. NNPC (supra) because of the peculiar facts of the instant case seem to be requesting the impossible. The court remains bound by its previous decisions where the facts and the laws considered in the earlier cases are the same or similar in the cases being subsequently determined. (p. 3094 A)

NOTABLE POINTS OF INTEREST

FABIYI JSC

1. Jurisdiction - Fundamentality of

I seek leave to chip in a few words of my own in support. The preliminary objection has to do with the competence of the appeal and the court's jurisdiction to entertain same. Both are very basic and fundamental. Objection may be raised at any time by the parties in any manner deemed fit or by the court suo motu. It may be raised before any court; even for the first time in the Apex court. Jurisdiction should be determined at the earliest opportunity. If a court has no jurisdiction to hear and determine a case, the proceedings remain a nullity ab initio no matter how well conducted and decided. A de-

fect in competence is not only intrinsic, but also extrinsic to the entire process of adjudication. (p. 3096 A)

2. Rules of court are subject to Act of National Assembly

The rules of a court must be subject to the applicable Law - Legal Practitioners Act; Section 2(1) and 24, which mandate that processes filed in court must be signed by a Legal Practitioner enrolled in this court. Rule of court must bow before the Legal Practitioners Act duly passed by the National Assembly. (p. 3096 F)

REPRESENTATION

Razaq Okesiji Esq., for the Appellant

Olanrewaju A. Osinaike Esq. with A. O. Alatishe Esq. and A. Begbaji Esq., for the Respondent

CASES REFERRED TO

Madukolu v. Nkemdilim (1962) 2 NSCC 374

State v. Onagoruwa (1992) 2 NWLR (Pt.229) 33

Funduk Engineering Ltd. v. Mcarthur (1995) 4 NWLR (Pt.392) 640

Ma'aji Galadima v. Alhaji Adamu Tambai (2000) 11 NWLR (Pt.677) 15

Okafor v. Nweke (2007) 10 NWLR (Pt. 1043) 521,

SLB Consortium Ltd. v. NNPC (2011) 9 NWLR (Pt. 1252) 317

Anyoha v. Chukwu (2008) 4 NWLR (Pt.1076) 31

Ezomo v. Oyakhire (1985) 2 SC 260

Shobogun v. Sanni & Ors. (1974) 1 ALL NRL (Pt. 2) 311

BBN Ltd. v. S. Olayiwola & Sons Ltd. and Anor. (2005) 1 SC (Pt. 11) 1,

Adefawasin v. Dayekh (2007) ALL FWLR (Pt. 348) 911

NDP v. INEC (2001) ALL FWLR (Pt. 358) 1124

Abubakar v. Yar'adua (2008) ALL FWLR (Pt. 404) 1409

Famfa Oil Ltd. v. A.G. Federation (2003) 9-10 SC 31

Mohammed Mari Kida v. A. D. Ogunmola (2006) 13 NWLR (Pt. 997)

Adisa v. Oyinwola (2000) 10 NWLR (Pt. 674) 116 SC

STATUTE & RULES REFERRED TO

Legal Practitioners Act Cap 207 LFN 1990, ss.2(1), 24

High Court of Lagos State (Civil Procedure) Rules 2004, O.6 r.2(3) and O.15 r.2

LEAD JUDGMENT BY MUHAMMAD JSC

By its Notice of preliminary objection filed on 19th October 2011, the Respondent challenges the competence of the instant appeal on the ground that the appeal being a continuation of the original suit which brought it about, and the suit, suit No. LD/1850/2005 was commenced by a defective Writ of Summons and Statement of Claim, both dated and filed on 25th October 2005, the appeal is incurably defective thereby robbing the court of the jurisdiction to hear and determine the appeal.

A six paragraph affidavit and four Exhibits, SKYE 1, 2, 3 and 4 support the preliminary objection. These Exhibits are the Writ of Summons, statement of claim and the official receipts issued at the trial court, Lagos State High Court, for payments in respect of the two originating processes. In opposing the preliminary objection, the Appellant relies on the fifteen paragraph counter-affidavit deposed to by one Ismail Shaib Usman a legal practitioner in the Appellant/Respondent's Law firm: Tunji Braithwaite and Co. Both sides adopted and relied on their written addresses as their arguments for and against the preliminary objection.

Learned counsel to the Respondent/Objector, in their written address and orally, submits that the non-signing of the originating Writ of Summons and Statement of Claim by the claimant or his counsel as required by the mandatory provisions of Order 6 Rule 2 (3) and Order 15 Rule 2 of the High Court of Lagos State (Civil Procedure) Rules 2004 respectively, has deprived the trial court the jurisdiction over the suit in the first place. It is further submitted that neither the court below nor this court can, by extension, assume jurisdiction on the basis of the defective originating processes. The Appellant, it is further contended, sues through the law firm of Oluyede and Oluyede which is not a legal practitioner within the meaning of Section 24 of the Legal Practitioners Act Cap. 207 Laws of the Federation of Nigeria 1990. Originating processes signed by the law firm instead of a Legal Practitioner, learned counsel stresses, cannot be the basis of the claimant's action at the trial court and subsequent appeals arising from same. Relying on *Madukolu v. Nkemdilim* (1962)

2 NSCC 374 at 379-380; State v. Onagoruwa (1992) 2 NWLR (Pt.229) 33; Funduk Engineering Ltd. v. Mearthur (1995) 4 NWLR (Pt.392) 640 and Ma'aji Galadima v. Alhaji Adamu Tambai (2000) 11 NWLR (Pt.677) 15, learned counsel insists that the point he raises is a jurisdictional one and same can be raised for the first time even in this court. Further and particularly relying on Okafor v. Nweke (2007) 10 NWLR (Pt. 1043) 521, and SLB Consortium Ltd. v. NNPC (2011) 9 NWLR (Pt. 1252) 317 at 336, counsel urges us to uphold the preliminary objection and strike out the incompetent appeal. Paragraphs 9-11 of the Appellant/Respondent's counter-affidavit are hereunder reproduced for their significance in Appellant's opposition to the preliminary objection.

"9. That Exhibits SKYE 1, 2, 3 and 4 respectively attached to the Affidavit in Support are in the nature of additional evidence which are unrelated to the narrow issue involved in the Interlocutory Appeal in this Honourable Court.

10. That the Writ of Summons and Statement of Claim and associated processes in Suit No. LD/1850/2005 are not incurably defective as alleged.

11. That the name of the Legal Practitioner who settled the Originating Processes in Suit No. LD/1850/2005 was stated in the Writ of Summons as Ajibola Oluyede of Oluyede & Oluyede, a registered firm of legal practitioners."

Respondent to the objector's arguments, learned Appellant's counsel submits that the grounds of the Respondent's objection consist of fresh issues that were not raised at the trial High Court or the court below, the Court of Appeal. Though the Respondent/Objector is entitled to raise a jurisdictional issues any time and even for the first time at the Apex Court, learned Appellant/Respondent counsel concedes, the issue, however, must be raised on the basis of a ground of Appeal. The Respondent having failed to raise the issue either at the trial court or the court below, it is contended, cannot raise the issue now. Learned Appellant/Respondent counsel supports his contention with the decisions in Anyoha v. Chukwu (2008) 4 NWLR (Pt.1076) 31 at 47, Usman Dan Fodio University v. Kraus Thompson, Organization (Nig.) Ltd. (2001) 15 NWLR (Pt. 736) 305, Ezomo v. Oyakhire (1985) 2 SC 260 and Shobogun v. Sanni & Ors. (1974) 1 ALL NRL (Pt. 2) 311 at 316.

On the merit of the preliminary objection, learned Appellant's counsel while conceding that Order 6 rule 2(3) and Order 15 rule (1) of the Lagos State High Court (civil procedure) require the two originating processes to be signed by a legal practitioner where the litigant does not sue in person, the same rules of court, counsel contends, provide that non-compliance with any of its provision must be raised timeously otherwise it would be deemed waived by the complainant. Besides, learned counsel argues, it is not every non-compliance with the rules that is capable of vitiating proceedings. The practice has grown, it is submitted, for courts to treat most non-compliance as irregularities incapable of nullifying proceedings.

In the instant case, it is further submitted, the mistakes is that of the counsel engaged by the Appellant and such mistakes, on a plethora of authorities, is never visited on the litigant. The provision of S.2 (1) of the Legal Practitioners Act, it is insisted by counsel, must not be read in isolation. The provision if read in the light of the rules of the trial court will be understanding to be an elastic one. The Respondent's objection is over-reaching and to uphold same at this stage, learned Appellant counsel argues, will be inequitable. He urges that the decisions of this court in *Okafor v. Nweke* (2007) 10 NWLR (Pt. 1043) 521 and *SLB Consortium Ltd. v. NNPC* (2011) 9 NWLR (1252) 317, given the peculiar facts in the case at hand, should not be applied. Relying on *BBN Ltd. v. S. Olayiwola & Sons Ltd. and Anor.* (2005) 1 SC (Pt. 11) 1, *Adefawasin v. Dayekh* (2007) ALL FWLR (Pt. 348) 911 at 930, *NDP v. INEC* (2001) ALL FWLR (Pt. 358) 1124 at 1144 - 1145, *Abubakar v. Yar'adua* (2008) ALL FWLR (Pt. 404) 1409 at 1449, *Famfa Oil Ltd. v. A.G. Federation* (2003) 9-10 SC 31. Appellant's counsel finally urges that the objection be dismissed as being unmeritorious.

The issue that arises from the Respondent's preliminary objection is whether the Writ of Summons and the Statement of Claim, Exhibits SKYE 1 and 3 annexed to the affidavit in support of the preliminary objection, not being signed by a legal practitioner, are by virtue of that defect incapable of maintaining suit No. LD/1850/2005 and by extension the instant appeal.

Learned Respondent/Objector's counsel, Osinaike Esq., insists that Exhibits 1 and 3 being fundamentally defective have affected the validity of the suit the Appellant purportedly commenced

with then as well as the two appeals which evolved from the incompetent suit.

On the other hand, learned Appellant/Respondent's counsel Okesiji Esq. counters that the defect in Exhibits SKYE 1 and 3 being procedural and which the Respondent/Objector did not raise timely, are deemed to have been waived. It is overreaching, learned counsel contends, to allow the Respondent raise his objection now which objection the rules of the trial court provides must be treated as merely irregularity.

Now, a perusal of Exhibits SKYE 1 and 3 certainly leaves one in no doubt that the two have not been signed by a Legal Practitioner. Whereas Exhibit SKYE 1 is not signed at all, Exhibit SKYE 3 carries a signature on top of the same of the claimant's firm of solicitors, Oluyede and Oluyede. I agree with learned counsel to the Respondent/Objector that this court has consistently held that the validity of the originating processes in a proceeding before a court is fundamental and a necessary requirement for the competence of the suit and proceeding the processes set out to commence. Failure to commence a suit with a valid Writ and/or Statement of Claim goes to the root of the action since the conditions precedent to the exercise of the court's jurisdiction would not have been met to duly place the suit before the court. See *Madukolu v. Nkemdilim* (supra) and *Mohammed Mari Kida v. A. D. Ogunmola* (2006) 13 NWLR (Pt. 997). I am unable to agree with Learned Appellant/Respondent counsel that the defect in Exhibits SKYE 1 and 3 are procedural and having not been made an issue timeously the Respondent/Objector is deemed to have waived his right. Being procedural mistakes, Appellant/Respondent counsel further urges, the defects in the Exhibits should, given the adjectival rules of the trial court, be treated as mere irregularities. Learned counsel must be reminded that Respondent's preliminary objection is not founded on order 6 rule 2 (3) and order 15 rule 2 of the High Court of Lagos State (civil procedure) rules 2004 applicable to the trial court alone, non-compliance with which adjectival provisions of the same rules of court consider to be mere irregularity. Beyond that, the preliminary objection is also founded on S.2(1) and S.24 of the legal practitioners Act CAP Laws of the Federation 2004.

Again, learned Appellant/Respondent counsel in asking us to ignore the decisions of this court in Okafor v. Nweke (supra) and SLB Consortium Ltd. v. NNPC (supra) because of the peculiar facts of the instant case seem to be requesting the impossible. The court remains bound by its previous decisions where the facts and the laws considered in the earlier cases are the same or similar in the cases being subsequently determined. See Adisa v. Oyinwola (2000) 10 NWLR (Pt. 674) 116 SC and Okulate v. Awosanya (2000) 2 NWLR (Pt. 646) 530.

The resolution of the issue that arises from Respondent's preliminary objection in the case at hand, Learned Appellant counsel is to be reminded, also requires the application of the provisions of Section 2 (1) and 24 of the Legal Practitioner's Act, Laws of the Federation of Nigeria the application of which provisions, to similar facts, informed the decisions of this court in Okafor v. Nweke (supra) and SLB Consortium Ltd. v. NNPC (supra). I hasten to note that sitting as a full court, this court has further applied the principle it enunciated in the two earlier cases the Appellant/Respondent asked us to deviate from in its unreported decision in First Bank of Nigeria Plc and another v. Alhaji Salmanu Maiwada in Appeal No. SC.204/2002 delivered on 25th May, 2012. At page 12 of the judgment, the court per my learned brother Fabiyi JSC succinctly restated the principle thus:-

"The purpose of sections 2(1) and 24 of the act is to ensure that only legal practitioner whose name is on the roll of this court sign court processes..."

In my considered opinion, the words employed in drafting sections 2 (1) and 24 of the Act 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 v. Nweke before then, His lordship Fabiyi, JSC proceeded at page 21 of the judgment thus:

"The decision Okafor v. 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. According to Oguntade, JSC, at page

534 of the judgment on *Okafor v. Nweke*, 'It would have been quite another matter if what is in issue is a mere compliance with court rules.' Let me say bluntly that where the provisions of an act like the legal Practitioners Act is at play, as herein, provisions of rules of court which are subject to the law must take the sideline."

His lordship had earlier in his judgment opined thus:-

"The provisions S.2(2) and 24 of the Act as reproduced above remain in law and shall continue to be so until when same is repealed or amended. For now, I see nothing amiss about the law."

Learned Appellant/Respondent's counsel has made similar suggestions considered by this court that since the non-signing of Exhibits SKYE 1 and 3 are lapses on the part of counsel, the latter's sin should not be visited on the litigant; that to allow adjectival provisions stultify proceedings is to enthrone technicality and that finding merit in Respondent's objection that has not been raised timeously will occasion miscarriage of justice. The decision of this court in *First Bank Plc and Anor. v. Alhaji Salmanu Maiwada*, shown in the passages of the judgment deliberately reproduced earlier in this has addressed all these questions. Learned Appellant's/Respondent's Counsel who has not shown to us that the earlier decisions he urges us not to apply in the instant case were reached per incuriam that the decisions are clearly wrong, erroneous in law or that public policy considerations will necessitate the departure cannot be indulged along the lines he canvasses. We are bound by these earlier decisions of ours.

Having found that Exhibits SKYE 1 and 3 have not been signed by a Legal Practitioner as required by both the rules of the trial court and extant provisions of the legal Practitioners Act, the two originating processes are on the authorities fundamentally defective and incapable of initiating any competent action. Suit No. LD/1850/2005 purportedly commenced by the defective originating processes being incompetent is incapable of giving rise to a competent appeal. In the result, I find merit in the Respondent's preliminary objection and strike out the incompetent Appeal No. SC.325/2010. Parties should bear their respective costs.

FABIYI JSC

I have had a preview of the Ruling just handed out by my

learned brother-M. D. Muhammad, JSC. I agree with the reasons therein articulated to arrive at the conclusion that the preliminary objection raised to the competence of the appeal should be sustained.

I seek leave to chip in a few words of my own in support. The preliminary objection has to do with the competence of the appeal and the court's jurisdiction to entertain same. Both are very basic and fundamental. Objection may be raised at any time by the parties in any manner deemed fit or by the court suo motu. It may be raised before any court; even for the first time in the Apex court. Jurisdiction should be determined at the earliest opportunity. If a court has no jurisdiction to hear and determine a case, the proceedings remain a nullity ab initio no matter how well conducted and decided. A defect in competence is not only intrinsic, but also extrinsic to the entire process of adjudication.] See: Timitimi v. Amabebe 14 WACA 379, Mustapha v. Governor of Gongola State (1987) 4 NWLR (Pt.117) 517 at 545; Madukolu v. Nkemdilim (1962) 1 All NLR 578 at 594 Skenconsult Nig. Ltd. & Anor v. Godwin Ukey (1981) 1 SC 6 at 26 and Oloba v. Akereja (1988) 3 NWLR (Pt.84) 508.

The real issue is whether the processes to wit: Exhibits SKYE 1 and 3 annexed to the affidavit in support of the preliminary objection, not being signed by a Legal Practitioner, are capable of maintaining suit No.LD/1850/2005 and by extension, this appeal. The appellant did not say that they were signed. It was contended on behalf of the appellant that the complaint was not raised timeously and that same should be treated as a mere irregularity as provided by the rules of the trial court.

The rules of a court must be subject to the applicable Law - Legal Practitioners Act; Section 2(1) and 24, which mandate that processes filed in court must be signed by a Legal Practitioner enrolled in this court. Rule of court must bow before the Legal Practitioners Act duly passed by the National Assembly.] See: Okafor v. Nweke (2007) 10 NWLR (Pt.1043) 421 at 534. What is in issue is the dictate of a substantive law and not a mere compliance with court rules. Since the initiating processes were not signed by a Legal Practitioner as dictated by the applicable law, the suit was not initiated with due process. It is, no doubt, incompetent and the court is robbed of jurisdiction, ab initio.

For the above reasons and the detailed ones carefully adum-

brated by my learned brother which I hereby adopt, I too feel that the preliminary objection should be sustained. I order accordingly and strike out the incompetent appeal No.SC.325/2010. Parties should bear his/its costs.

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GALADIMA JSC

The Notice of preliminary objection is to the competence of this appeal on the ground that the Appellant filed its originating Writ of Summons and Statement of claim both dated and filed on 25th October, 2005 at the Lagos State High Court, was signed by the Law Firm instead of a Legal Practitioner, and therefore was incurably defective thereby robbing the Court of the jurisdiction to hear and determine the appeal. It is contended by the Respondent that this failure offends the mandatory provisions of Order 6 Rule 2 (3) and Order 15 Rule 2 of the High Court of Lagos State (Civil procedure) Rules, 2004 respectively and therefore neither the court below nor this court can assume jurisdiction on the basis of the defective processes. Reliance was placed on the cases of:-MADUKOLU v. NKEMDILIM (1962) NSCC 374 of 379 - 380; STATE v. ONAGORUWA (1992) 2 NWLR (Pt.229) 33; FUNDUK ENGINEERING LTD v. MCARTHUR (1995) 4 NWLR 640; MA'AJI GALADIMA v. ALHAJI ADAMU TAMBAL (2000) 11 NWLR (Pt.577) p.15; OKAFOR v. NWEKE (2007) 10 NWLR (Pt.1043) 521; and SLB CONSORTIUM v. NNPC (2011) 9 NWLR (Pt.1252) 317 at 336.

Responding to the objection learned counsel for the Appellant submits that the grounds of the Respondents objection consist of fresh issues that were never raised at the trial High Court or the Court below. Besides while conceding that order 6 rule 2(3) and order 15 rule (1) of the Lagos State High Court (Civil) procedure rules requires the two originating processes to be signed by a legal practitioner where the litigant does not sue in person, the same rules of Court counsel contended, provides that non-compliance with any of the provisions must be raised timeously, otherwise it would be deemed waived by the complainant. Learned counsel for the Appellant has urged that the decisions of this Court in OKAFOR v. NWEKE (2007) 10 NWLR (Pt.1043) 521 and S.L.B. CONSORTIUM LTD v. NNPC (2011) 9 NWLR (Pt.1252) 317 should not be applied, if the circum-

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stances and nature of this case is considered.

I will commence the consideration of this objection by looking at the originating summons and statement of claim. Processes which initiated the proceeding at the Lagos State High Court were signed by the Law Firm instead of Legal Practitioner. This Court in
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plethora of cases has held that the validity of originating processes in a proceeding before a court is sine qua non, an indispensable condition, necessary for the competence of the suit and indeed proceeding initiated by such processes. This case at hand is caught by one of
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the principles enunciated in the case of MADUKOLU v. NKEMDILIM (1962) 2 NSCC 374; (1962) 2 SCNLR 341. It is on the competence of a Court and this borders on jurisdiction. The principle stated in that case is as follows:

*“The case comes up before a court initiated by due process
D of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.”*

It is an elementary law that the issue of jurisdiction is pivotal and can be raised at any stage of proceedings, even in this court. It can even be raised suo motu: see EJIOFODOMI v. OKONKWO (1982)
E 11 sc. 74; SWISS AIR TRANSPORT CO. LTD v. AFRICAN CONTINENTAL BANK LTD (1971) 1 ALL NLR 37. EZOMO v. OYAKHIRE (1985) 1 NWLR (Pt.2) 195 and GALADIMA v. TAMBAL (2000) 11 NWLR (Pt. 677) 1. The argument of the learned counsel for the
F Appellant, that this objection ought to have been taken before now, and that it is rather belated to raise same in this court, particularly as the Respondent had taken steps on the proceedings when it had become aware of the defect or irregularities, is to my mind erroneous, because the issue involved in the objection is not a matter of
G irregularity in procedure but of substantive law.

In the circumstance, I find merit in the preliminary objection and it is upheld. The originating processes in this case having been found to be fundamentally defective are hereby struck out as being incompetent and incapable of initiating proceedings, thereby robbing
H the courts of the jurisdiction to hear and determine the action initiated. Accordingly Appeal No.SC.325/2010 is hereby struck out. Parties to bear their costs.

OGUNBIYI JSC

A writ of summons is an originating process by means of which actions are commenced. The competence of such process is a pre-requisite for a valid and subsisting claim. Where the process fails to comply with the requirement of the law regulating its procedure, the court cannot assume jurisdiction thereon. B

Jurisdiction of a court is constitutional. No court can therefore confer jurisdiction upon itself, nor can parties by their mutual agreement also confer any jurisdiction. A defective originating process cannot activate the court's jurisdiction. The writ of summons in question was taken out in the Lagos State high Court wherein order 6 rule 2(3) and order 15 rule 2 of the High Court of Lagos State (Civil Procedure) Rules 2004 are mandatory and applicable. The appellant's originating process is shown to have been signed by the law firm of Oluyede and Oluyede which is not a legal practitioner C within the meaning of section 24 of the legal practitioners Act Cap 207 Laws of the Federation of Nigeria 1990. The claimant's action has failed to satisfy the mandatory and necessary pre-requisite conditions which are a must for activating a court's jurisdiction. D

In other words, the applicable conditions which are laid down in the locus classical case of *Madukolu v. Nkemdilim* (1962) 2 NSCC 374 AT 379 - 380 are not met. The authenticating authority is the case of *Okafor v. Nweke* (2007) 10 NWLR (Pt.1043) 521, a decision by this court. The defect is fundamental as it goes to the root of the action. This has been the position of this court in cases of this nature. E An example is the recent decision wherein this court reaffirmed the authority in the case *Okafor v. Nweke* (supra) in an unreported case of *First Bank of Nigeria Plc and another v. Alhaji Salmanu Maiwada* in Appeal No. SC.204/2002 delivered on 25th May, 2012. F

The case in issue is not distinguishable from the forgoing authorities. As a consequence, it must therefore also suffer the same fate for being incompetent. The preliminary objection raised by the respondent has merit. In the same vein, I also therefore concur with my learned brother Dattijo Muhammad JSC and strike out appeal G No.SC.327/2010 as incompetent. H