

SUPREME COURT OF NIGERIA
FRIDAY 25TH JANUARY, 2013. SC. 217/2005
CORAM:-M. MOHAMMED, M. S. MUNTAKA-
COOMASSIE, B. RHODES-VIVOUR, N. S. NGWUTA,
S. S. ALAGOA, JJSC

1. MINISTRY OF WORKS &
TRANSPORT ADAMAWA STATE

2. ATTORNEY-GENERAL &
COMMISSIONER FOR JUSTICE
ADAMAWA STATE

3. MINISTRY OF FINANCE
COMMERCE & INDUSTRY
ADAMAWA STATE

..... APPELLANTS

4. DIRECTOR-GENERAL
DEPARTMENT OF LAND &
SURVEY, GOVERNOR'S OFFICE
ADAMAWA STATE

5. ADAMAWA STATE TASK FORCE
ON ENVIRONMENTAL SANITATION
AND

1. ALHAJI ISIYAKU YAKUBU

2. ALHAJI ISIYAKU YAKUBU
ENTERPRISES LIMITED

..... RESPONDENTS

LEGAL PRACTITIONERS - L.P. Act ss. 2(1) & 24 - Purpose - The sections ensure that only a lawyer whose name is on the call roll - Can sign legal documents - Thereby eliminating impersonators (H1)

COURT PROCESSES - Originating process - Not signed by counsel - Since the process was not signed by a legal practitioner - The same is incompetent as well as an appeal arising therefrom (H2)

COURT PROCESSES - Originating process - Defect in - Amendment - Process that was not properly signed by counsel is incompetent ab initio - And same cannot be cured by amendment (H3)

FACTS

Respondents instituted this action at the High Court of Adamawa State to claim the balance of money earlier paid to them as compensation as well as interest accruing thereon, following the demolition of their properties by 5th appellant on the order of the State Government. The court in its judgment, granted reliefs 1 and 2 of respondents' amended statement of claim but refused to grant the other reliefs. Aggrieved, respondents filed appeal at the Court of Appeal Yola Division. The court granted the entire reliefs sought by respondents.

Appellants were not satisfied. Hence, they lodged appeal at Supreme Court. In their amended Notice of Appeal, appellants have inter alia challenged the competence of the appeal before the Court of Appeal which arose from respondents' suit commenced before the trial High Court by Writ of Summons/Statement of Claim which was signed by a law firm instead of a legal practitioner known to sections 2(1) and 24 of the Legal Practitioners Act.

ISSUE FOR DETERMINATION

1. Whether the lower court had jurisdiction to entertain the respondents' appeal arising from their suit commenced by incompetent originating processes.

HELD (Unanimously allowing the appeal per

MUNTAKA-COOMASSIE JSC)

L.P. Act ss. 2(1) & 24 - Purpose

1. On issue 1, the learned counsel to the respondents did not challenge the position of the appellant that the Originating Process was incompetent on the ground that it was not endorsed by legal practitioner but by a law firm. However, it was his contention that the said incompetent process was amended hence it has substituted the incompetent process. This issue calls for the consideration of section 2(1) and 24 of the Legal Practitioners Act, Law of the Federation 2004. Section 2(1) provides thus:-

“Subject to the provisions of this Act, a person shall be entitled to practice as a Barrister and Solicitor if, and only if,

his name is on the call roll.”

Section 24 of the Act provides thus: -

“In this Act, unless the context otherwise requires the following expression have the meanings hereby assigned to them respectively, that is to say - Legal Practitioner” means a person entitled in accordance with the provisions of this Act to practice as a barrister or as a barrister and solicitor, either generally or for the purpose of any particular office or proceedings.”

It is not in doubt that the provisions of the law cited above are meant to protect the legal profession. To ensure that no person other than a lawyer whose name is on the call roll sign legal documents and eliminate impersonators and fake lawyers from legal practice. (p. 298 D)

Originating process - Not signed by counsel

2. My lord, in the instant appeal, it is not in dispute that the originating process was neither signed by a party to the case nor a legal practitioner but by “J. R. Ndawalam and Co.” a non-cognizance person whose name is not on the roll of this court. It must be stretched that there is a world of difference between a legal practitioner and his chambers. While a legal practitioner is a lawyer whose name is on the call roll, his law chambers is not, hence it cannot perform the duty of a legal practitioner and perhaps cannot be addressed as learned counsel or learned Senior Advocate of Nigeria, SAN as the case may be.

Applying these principles to the case at hand, I have no doubt in my mind that the Originating Process having not being properly initiated, the action is incompetent and any appeal arising from such an incompetent process is also incompetent.

(pp. 299 C/300 B)

Originating process - Defect in - Amendment

3. My lords, I would have ended this judgment here, but for the submission of the respondent counsel that the said Originating Process was amended and as such it does not form basis upon which the case was tried and determined. The questions

that easily come to mind are that can an incompetent originating process or processes be amended, or can the incompetence of the process be cured by the amendment? No doubt, the learned counsel of the respondents pretends not to appreciate the fundamental nature of an Originating Process?

B *The fatal effect of the signing of an Originating Process by a law firm is that the entire suit was incompetent ab initio. It was dead at the point of filing. This highlights the painful realities that confront a litigant when counsel fails to sign processes as stipulated by law. The originating process, as in this case, is fundamentally defective and incompetent. It is inchoate, legally non-existent and can therefore not be cured by way of an amendment.*

C *Following the above stated principles I also set aside the processes and proceedings of the trial court being incompetent and a nullity. The judgment of the lower court is also set aside for lack of jurisdiction. I hereby resolve issue No. 1 in favour of the appellant.* (p. 300 C)

E **REPRESENTATION**

O. Osholabi with B.B. Lawal, O. I. Arasi and O. Ben Omotehinse, for the Appellants

Mrs. J. L. Usoroh with her M. Ogu (Miss), for the Respondent

F **CASES REFERRED TO**

Oketade v. Adewunmi (2010) All FWLR (pt. 526) 511

Okafor v. Nweke (2007) All FWLR (pt. 368) 1016

Eboiabe v. NNPC (1994) 5 NWLR (pt. 347) 649

G Okafor v. Anambra State (2005) 14 NWLR (pt. 945) 210

Odubeko v. Fowler (1999) 7 NMLR (pt. 308) 637

Shittu v. Higalic (1914) 16 NLR 21

Okeke v. Nweke (2007) All FWLR (pt. 360) 1016

Agboola v. Saibu (1991) 2 NWLR (pt. 175) 566

H Okubule v. Ovagbola (1990) 4 NWLR (pt. 147) 723

Rotimi v. Macareaon (1974) 11 S.C. 3

NAF v. James (2002) 12 SCNJ 379

NNPC v. Sele (2004) All FWLR (pt. 223) 1800

Osun State Govt. v. Dalami Nig. Ltd. (2007) 3 SC (pt. 1) 131

NWBHC v. Denclag Ltd. (2005) 4 NWLR (pt. 431) 843

Kida v. Ogunmola (2006) 60 All FWLR (pt. 327) 402

STATUTES REFERRED TO

Legal Practitioner Act, ss. 2(1) and 24

Public Officers Protection Act, s. 2(a)

Gongola State Environment Sanitation (Miscellaneous Provisions)

Edict 1985, s. 3(1)

Constitution of Federal Republic of Nigeria 1999, ss. 176, 206, 318(1)

LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC

This is an appeal against the judgment of the Court of Appeal Jos Division, hereinafter called the lower court. The said judgment was delivered on 23/3/2005. The appellants being aggrieved by the judgment of the lower court as a result, appealed to this court after leave was granted them to appeal on the amended Notice of Appeal which included a fundamental ground challenging the competence of the appeal before the lower court which arose from the respondents' suit commenced before the trial court by Writ of Summons/ Statement of Claim which were signed by a law firm instead of counsel.

Another ground is that the appeal involves the consideration of settled legal issues, i.e. the competence of an action commenced against a public officer outside the period prescribed by the Public Officers Protection Act (P.O.P), also the competence of an action against non-juristic person, the competence of reliefs which are statute barred, the propriety of granting reliefs which are neither claimed nor supported by pleadings and/or evidence and the propriety of granting double compensation in respect of the same injury.

The old Gongola State Government decided to rid off Yola Metropolis of illegal structures. To implement its decision it constituted the 5th appellant. In the course of its assignment, the Task Force observed that some of the respondents' properties were constructed without authorization and advised the respondents to remove them by a particular date. When the period expired, the Tax Force demolished the properties of the respondents in June, 1984. The respondents submitted petition for compensation to be paid to him to the Government i.e. Gongola State Government. After careful consider-

ation of the claims, the Gongola State Government paid the sum of N285.523.10 in 1990 to the respondent in two installments of N205, 998.78 and 79,524.32 respectively leaving a balance sum of N623, 626.90 outstanding. During this period, Adamawa State was created out of the old Gongola State and assumed this liability. The said balance was not paid to the respondents as a result the respondents, this time around, petitioned the Land Use and Allocation Committee of the Adamawa State Ministry of Land and Survey, the 4th appellant. The petition was made on 27/5/1992 about the respondent's outstanding balance and accruable interest therein.

The committee considered the respondent's petition and submitted their report to the Adamawa State Government. The report recommended the payment of the outstanding amount/balance of N623.626.90 together with interest thereon in the sum of N814,409.34 to the respondents. The respondents were notified of their recommendation on 17/6/1992. The Adamawa State Government adopted the committee recommendation and resolved to pay the outstanding balance and interest totaling N1, 447,409.34, as compensation for their demolished properties from 1984 to June, 1992. On 27/8/1992 the Government of Adamawa State approved the balance outstanding payment of the sum of N623,626.90 by 30/9/1992 to the respondents. The respondents were notified of the payment and advised to follow up.

By 30/9/1992 the respondents were not paid, as a result on 28/6/1993 they sued the appellants at the High Court of Justice Adamawa State. The court, hereinafter the trial court delivered its judgment in which reliefs 1 and 2 of their amended statement of claim were granted i.e. N 1,447.409.34 and part of the accruable interest thereon. The trial court refused to grant the other reliefs. The respondents appealed to the lower court in October, 1995 and the court granted their entire reliefs. The appellants were aggrieved and as a result appealed to this court, filed a Notice of Appeal containing 13 grounds of appeal. The amended Notice of Appeal was relied upon. Each party filed its own brief of argument. The appellant adopted its own brief of argument and in it distilled four issues for the determination of the appeal thus:

"1. In the appellant's respectful view, the following issues have risen for determination by this Honourable court to wit:

1. *Whether the lower court had jurisdiction to entertain the respondents' appeal arising from their suit commenced by incompetent originating processes.*

2. *Whether the lower court had jurisdiction to either entertain the respondent's appeal against the 2nd appellant arising from a statute barred suit or grant any of the reliefs?* B

3. *Whether the lower court had jurisdiction to entertain the respondents' appeal and deliver judgment against the 1st, 3^d, 4th and 5th appellants who are non-juristic persons?*

4. *Whether the lower court was right to have entertained paragraph 59 (4), (5), (7), (8) and (10) of the respondents' ASOC with compound interest respectively when the respondents never claimed compound interest in any of the said relief?"* C

The respondents, Alhaji Isiyaku Yakubu and another, argued the issues seriatim from pages 739 - 772 of their respondent's brief of argument and submitted that in the light of the foregoing analysis, the judgment of the lower court ought not to be allowed to stand for several reasons of which is that it was product of incompetent proceedings as a result of the respondents incompetent originating processes which robbed the trial court of jurisdiction to entertain the suit. In addition, the claim was also statute barred having been commenced after the statutory period prescribed by (P.O.P). E

The respondents submitted four (4) issues for determination of the appeal out of the thirteen (13) grounds of appeal as follows:- F

"1. *Should the lower court have entertained an appeal which arose from a defective process at the trial court?*

2. *Was the lower court's decision against the 2nd appellant incompetent (sic) as a result of it being statute barred?*

3. *Were the 1st, 3^d, 4th and 5th appellants non-juristic person against, whom the lower court should not have entertained an appeal?* G

4. *Did the lower court err for allowing the respondents' claim in paragraphs (59), (2), (3), (4), (7), (8), (9) and 10 of the amended statement of claim?"* H

The learned counsel to the appellants submitted that the originating process before the trial court was incompetent that it was endorsed by a law firm "*I. R. Ndawalam and Co.*" and not by a legal practitioner as required by the law i.e. Section 2 (1) and 24 of the

Legal Practitioner Act. He further relied on the cases of Oketade v. Adewunmi (2010 All FWLR (Pt. 526) 511 at 516; and Okafor v. Nweke (2007) All FWLR (pt. 368) 1016 at 1027. It was therefore submitted that the effect of the incompetent action is to rob the trial court and to certain extent this court of the jurisdiction to hear this matter. Therefore the entire proceedings and judgment of the lower court which were based on an incompetent process was a nullity.

On issue two (2) it was the submission of the learned counsel to the appellants that the action instituted against the 2nd respondent a public officer, after the expiration of three months is incompetent. It was his submission that the action to recover compensation in the sum of N1,477,409.54 accrued on 30/9/92, while this action was commenced on 28/6/93. Section 2 (a) Public Officers Protection Act was cited. See cases of Eboiabe v. NNPC (1994) 5 NWLR (pt. 347) 649 at 659; Okafor v. Anambra State (2005) 14 NWLR (pt. 945) 210 at 222 - 223; Odubeko v. Fowler (1999) 7 NMLR (pt. 308) 637 at 661 - 662.

Issue No. 3 of the appellants questioned the incompetence of the action against the 1st, 3rd, 4th and 5th appellants who are not juristic persons. It was contended that for an action to be competent and properly constituted such as to vest jurisdiction in a court to adjudicate on it there must be competent plaintiff and defendant that it is only natural persons, and juristic or artificial bodies (i.e. body corporate) that are competent to sue or be sued; the cases of Shittu v. Higalic (1914) 16 NLR 21; Agbonmagbe Bank Ltd. v. General Manager G. B. Ollivant (1961) All NLR 116 were cited. Learned counsel therefore submitted that the 1st, 3rd appellants are not juristic person. Specifically, that Ministry is not juristic person which is capable of being sued or suing. The case of Agboola v. Saibu (1991) 2 NWLR (pt. 175) 566 at 576 was cited. The 4th and 5th appellants are not creations of statute but are administrative positions and creations of the State Government and they are mere floating bodies without any legal capacity or personality.

On issue 4, the learned counsel to the appellants referred to paragraph 59 (4), (5), (7), (8) and (10) of the amended statement of claim where respondents claimed "interest" on the sums claimed, however the trial court went ahead and granted compound interest which said compound interest was never claimed by the respondents.

It was therefore submitted that courts are circumscribed and bound by the pleadings and reliefs sought or claimed by the parties, and the court is only bound to grant the reliefs claimed if proved by the evidence in court, the case of *Okubule v. Ovagbola* (1990) 4 NWLR (pt. 147) 723 at 744 was cited.

The learned counsel to the respondents submitted on issue B No. 1 that the statement of claim referred to by the appellants did not form the basis of the judgment of the trial court, that the statement of claim signed by I. R. Ndawalam & Co. was amended at the trial court by an application brought by the respondents. He contended that an amendment has been defined to mean either an alteration, addition C or substitution. Learned counsel referred to the cases of *Rotimi v. Macareaon* (1974) 11 S.C. 3; *NAF v. James* (2002) 12 SCNJ 379 at 393. Hence by virtue of the amendment, it follows that what stood before the amendment is no longer material, and did not define the D issues that were tried.

On the issue No. 2, it was contended that it was erroneous of the appellants to contend that the cause of action accrued on 30/9/1992. He preferred to contend that the cause of action accrued on 30/9/1992. He referred to the 1st and 3rd appellants' letter of 7/9/ E 1992 which stated that the money would be released when due. Notwithstanding learned counsel contended that where there had been admission of liability during negotiation and all that remain is the fulfillment of the agreement the statute of limitation would not apply. He cited the case of *NNPC v. Sele* (2004) All FWLR (pt. 223) F 1800 at 1914. He therefore contended that in view of the admission of liability by the government and in particular the approval of the then Military Administrator to pay the amount approved, the statute of limitation cannot be raised. He further contended that this is a G claim for recovery of money, hence the Public Officers Protection Act does not apply, he cited the case of *Osun State Government v. Dalami Nig. Ltd.* (2007) 3 SC (pt. 1) 131 at 172.

On issue No. 3, learned counsel submitted that the 3rd appellant is a juristic person, he referred to section 3(1), (2) and (7) of the Ministry of Finance incorporated which provides that the Ministry of Finance is a corporate sole which shall act as Trustee and hold money to trust and on behalf of the Government while the 5th appellant was established by the Gongola State Environment Sanitation (Miscella- H

neous Provisions) Edict 1985 and section 3(1) authorized to sue or be sued.

The 1st and 4th appellant's learned counsel submitted that Chapter VI part 1 of the Constitution of Federal Republic of Nigeria 1999 provides for the creation of the State Executive and the Civil Service.

B See section 176 and 206 which section 318(1) define the Civil Service. It is therefore contended that all the appellants are public officers.

C On issue No. 4, this was not made an issue before the lower court and as such it is incompetent.

The appellants filed a reply of argument where they contended that an incompetent originating process is legally non-existent and consequently cannot be or could not have been cured or saved by amendment, the cases of NNPC v. SLB Consortium (supra) NNPC v. D Ojo (2005) 21 NRN 77 at 93 - 94; Nwaigwe v. Okere (2008) All FWLR (pt. 431) 843 at 864 were cited. These are submissions of the learned counsel to the parties in this case.

On issue 1, the learned counsel to the respondents did not challenge the position of the appellant that the Originating Process was incompetent on the ground that it was not endorsed by legal practitioner but by a law firm. However, it was his contention that the said incompetent process was amended hence it has substituted the incompetent process. This issue calls for the consideration of section 2(1) and 24 of the Legal Practitioners Act, Law of the Federation 2004. Section 2(1) provides thus:-

"Subject to the provisions of this Act, a person shall be entitled to practice as a Barrister and Solicitor if, and only if, his name is on the call roll."

Section 24 of the Act provides thus: -

"In this Act, unless the context otherwise requires the following expression have the meanings hereby assigned to them respectively, that is to say - Legal Practitioner" means a person entitled in accordance with the provisions of this Act to practice as a barrister or as a barrister and solicitor, either generally or for the purpose of any particular office or proceedings."

It is not in doubt that the provisions of the law cited above

are meant to protect the legal profession. To ensure that no person other than a lawyer whose name is on the call roll sign legal documents and eliminate impersonators and fake lawyers from legal practice.

In the case of First Bank of Nigeria Plc and Ors v. Salmanu Maiwada suit No. SC.204/2002 delivered 25/5/2012 this court, per B Fabiyi, J.S.C. stated the position clearly as follows:-

“The purpose of a legislation is of permanent factor. The purposes of section 2(1) and 24 of the Act is to ensure that only a legal practitioner whose name is on the roll of this court should sign court process. It is to ensure responsibility and accountability on the part of a legal practitioner who signs a court process. It is to ensure that fake lawyers do not invade the profession.” C

My lord, in the instant appeal, it is not in dispute that the originating process was neither signed by a party to the case nor a legal practitioner but by “J. R. Ndawalam and Co.” a non-cognizance person whose name is not on the roll of this court. It must be stretched that there is a world of difference between a legal practitioner and his chambers. While a legal practitioner is a lawyer whose name is on the call roll, his law chambers is not, hence it cannot perform the duty of a legal practitioner and perhaps cannot be addressed as learned counsel or learned Senior Advocate of Nigeria, SAN as the case may be. D E

In the case of Oketade v. Adewunmi (2010) All FWLR (pt. F 526) 511 at 516 this court stated the position thus:

“There is a big legal difference between the name of a firm of legal practitioners and the name of a legal practitioner simpliciter. While the name or Olujimi and Akeredolu is a firm with some corporate existence, the name of a legal practitioner is a name qua solicitor and advocate of the Supreme Court of Nigeria which has no corporate connotation. As both carry different legal entities in our jurisdiction of parties. One cannot be a substitute for the other because they are not synonymous. It is clear that Olujimi and Akeredolu is not a name of a legal practitioner and that it violates section 2(1) and 24 of the Legal Practitioners Act. By section 2 (1) of the Act, the only person in the profession wearing his professional name to practice law in Nigeria is a legal practitioner and the definition of the legal practitio- G H

ner in Section 24 of the Act does not include Olujimi and Akeredolu. This is to me is not a mere technicality that can be brushed aside. It is fundamental to the judicial process as it directly affects the legal process that brought the case on appeal. I am in entire agreement with counsel of the respondent that as the process which brought the ap-
B *peals is incompetent the appeal itself is incompetent.”*

Applying these principles to the case at hand, I have no doubt in my mind that the Originating Process having not being properly initiated, the action is incompetent and any ap-
C **peal arising from such an incompetent process is also incompetent.** See also *Okeke v. Nweke (2007) All FWLR (pt. 360) 1016* at 1025 - 1027. *The Registered Trustee of Apostolic Church Lagos v. Akindele (1967) NMLR 213* at 265.

My lords, I would have ended this judgment here, but for
D **the submission of the respondent counsel that the said Originating Process was amended and as such it does not form basis upon which the case was tried and determined. The questions that easily come to mind are that can an incompetent originating process or processes be amended, or can the in-**
E **competence of the process be cured by the amendment? No doubt, the learned counsel of the respondents pretends not to appreciate the fundamental nature of an Originating Process? The fatal effect of the signing of an Originating Process by a**
F **law firm is that the entire suit was incompetent ab initio. It was dead at the point of filing. This highlights the painful realities that confront a litigant when counsel fails to sign processes as stipulated by law. The originating process, as in this case, is fundamentally defective and incompetent. It is incho-**
G **ate, legally non-existent and can therefore not be cured by way of an amendment.** See *NWBHC v. Denclag Ltd. (2005) 4 NWLR (pt. 431) 843*.

This court, in the case of *Kida v. Ogunmola (2006) 60 All FWLR (pt. 327) 402* at 412 held as follows:

H “The validity of the Originating Process in a proceeding before a court is fundamental as the competence of the proceeding is a condition sine-qua-non to the legitimacy of any suit Therefore, the failure to commence proceeding with valid writ of summons goes to the root of the case and any order emanating from such proceedings

is liable to be set aside as incompetent and nullity.”

Following the above stated principles I also set aside the processes and proceedings of the trial court being incompetent and a nullity. The judgment of the lower court is also set aside for lack of jurisdiction. I hereby resolve issue No. 1 in favour of the appellant.

My Lord, having held that the whole action and proceedings are nullity it would amount to mere academic exercise if I proceed to consider the other three remaining issues. It is a settled principle of law that this court lacks jurisdiction to determine academic issue.

Finally, I hold that this appeal is pregnant with a lot of merits. Same must and is hereby allowed. The judgment of the lower court is set aside having been delivered without jurisdiction while the whole processes and proceedings before the trial court leading to this appeal are equally set aside for being incompetent The suit before the trial court is also struck out. No order as to costs.

MOHAMMED JSC

It is quite plain from the record of this appeal, particularly the processes filed at the trial Court to initiate the action of the Plaintiffs that the statement of claim found at pages 6 -13 of the record was signed by an unknown person in the Law Firm of J. R. Ndawalam & Co. This situation found in the record of appeal was attacked by the Appellants in ground 13 of their amended Notice of Appeal filed on 15th July, 2010 which reads -

“13. The lower Court erred in law when it exercised jurisdiction to entertain the appeal against the trial Court’s judgment when the originating processes by which the suit was commenced were incompetent.”

The issue arising from this ground of appeal had long been settled in the decisions of this Court in the Registered Trustees of Apostolic Church Lagos v. Rahman Akindele (1967) N.M.L.R. 263 at 265, Okafor & 2 Ors. v. Nweke & 4 Ors. (2007) 10 N.W.L.R. (Pt. H 1043) 521, SLB 30 Consortium v. N.N.P.C. (2011) 4 S.C.N.J 211 which decisions were restated and affirmed by a panel of full Court of this Court in unreported decisions in SC.204/2002 1st Bank of Nigeria Ltd v. Maiwada and SC.269/2005 Frenphino Pharmaceuti-

cals v. Jawa International Ltd in the judgments delivered on 25th May, 2012 which held that the combined effect of the provisions of Sections 2(1) and 24 of the Legal Practitioners Act was that only Legal Practitioners using their names as registered in the Register of Legal Practitioners in Nigeria that can validly sign initiating processes of actions and other matters in our law Courts in Nigeria.

In the present case therefore it being clear that the originating process being the Plaintiffs' statement of claim was not signed by a legal practitioner duly registered to practice Law in Nigeria, is fundamentally defective and incapable of validly supporting the proceedings of the hearing of the Plaintiffs' suit by the trial High Court.

I agree with the judgment of my learned brother, Muntaka-Coomassie, JSC that this appeal must be allowed. Accordingly, I also allow the appeal, set aside the judgment of the Court below and strike out the Plaintiffs/Respondents action at the trial High Court which was heard and determined on an incompetent statement of claim, I abide by the order on costs in the leading judgment.

RHODES-VIVOUR JSC

In this appeal there are two live issues, and they are:

1. Whether the originating process is valid; and
2. Whether the plaintiff/respondents action is statute-barred.

The originating process that commenced this suit was signed by J.R. Ndawalam & Co. In *SLB Consortium v. NNPC* (2011) 4 SCNJ p. 211 - I said that all processes filed in court are to be signed as follows:

First, the signature of counsel, which may be any contraption. Secondly the name of counsel clearly written. Thirdly, who counsel represents. Fourthly, name and address of Legal Firm. See also SC. 204/2002 & 2669/2005 consolidated. 1st Bank of Nigeria Ltd v. Maiwada, Frenpino Pharmaceuticals v. Jawa International Ltd Judgment of this court delivered on 25/5/2012, Okafor & Ors v. Nweke & 4Ors (2007) All FWLR (pt. 368) p. 1016.

The combined effect of sections 2(1) and 24 of the Legal Practitioners Act is that only lawyers using their professional name can practice law in Nigeria. J. R. Ndawalam & Co. is not the name of Counsel. It is a firm with corporate existence. On the other hand the

name of counsel is the name of a Legal Practitioner as it appears on the roll of Legal Practitioners. The names on the roll of Legal Practitioners have no corporate implication. The definition of Legal Practitioner in Section 24 of the Legal Practitioners Act does not include J.R. Ndawalam & Co.

It is clear now, that the originating process in this case is fundamentally defective. It was not signed by a legal practitioner registered to practice as a Solicitor and Advocate in Nigeria. Consequently the entire proceedings are also a complete nullity, as something put on nothing can never stand.

In the light of this finding the need to consider whether the action is statute barred would no longer be necessary. I agree entirely with the leading judgment delivered by my learned brother, Muntaka-Coomassie, JSC.

NGWUTA JSC

I was privileged to read in draft the lead judgment of My Lord, Coomassie. JSC and I adopt the reasoning and conclusion therein.

A firm of lawyers is not a legal practitioner within the meaning and intendment of s. 24 of the Legal Practitioners Act. Only a legal practitioner, not a firm of legal practitioners can sign the originating process in this case. The originating process signed by J.R. Ndawalam & CO. is invalid. See *Okafor & Ors v. Nweke & Ors* (2007) All FWLR (Pt. 368) page 1016.

The issue of validity vel non of the originating process has been resolved in favour of the appellant. The second issue on statute of limitation is rendered academic.

From the above and the more exhaustive reasoning in the lead judgment of My Lord, Coomassie, JSC, I also allow the appeal and abide by orders therein.

ALAGOA JSC

This is an appeal against the judgment of the Court of Appeal Jos Division delivered on the 22nd March, 2005. The facts are as contained in the lead judgment of my learned brother and do not need any restatement. Ground 13 of the Amended Notice of Appeal dated

12th 5 July, 2010 and filed on the 15th July, 2010 reads as follows,

“The lower court erred in law when it exercised jurisdiction to entertain the Appeal against the trial court’s judgment when the originating processes by which the Suit was commenced were incompetent.”

B At pages 6 -13 of the Record is the Statement of Claim of the Respondents in the High Court dated 12th July, 1993. It will be observed that the said Statement of Claim was signed for or by J. R. Ndawalam & Co. This renders the suit at the High Court incompetent ab initio. See Okafor & 2 Ors. V. Nweke & 4 Ors. 15 (2007) All C FWLR (pt. 368) 1016 at 1025; The Registered Trustees of Apostolic Church Lagos V. Rahman Akindele (1967) NMLR 263 at 265; Nyame V. FRN (2010) All FWLR (PART 527) 618 at 657; Skenconsult V. Ukey (1981) 1 SC 6 at 15. On this score alone the Appeal has merit D and ought to be allowed.

It is for this reason and the fuller reasons contained in the judgment of Coomassie, JSC whose lead judgment I was privileged to read before now that I also allow the appeal. I abide by all other order or orders contained in the said lead judgment including order E on costs.

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