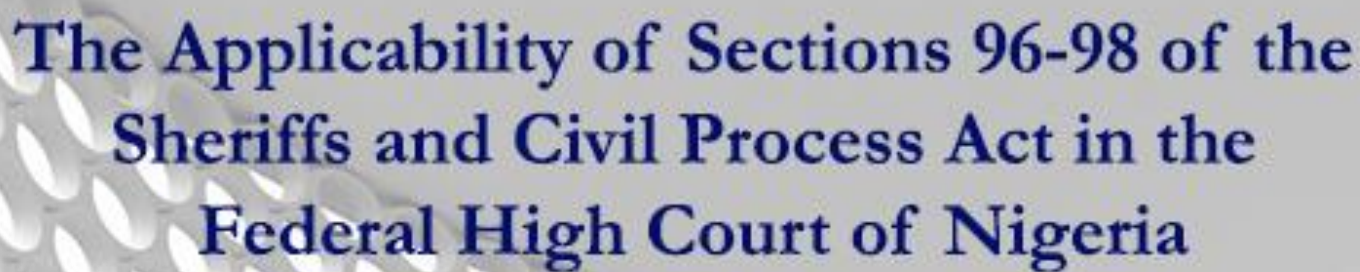

The Applicability of Sections 96-98 of the Sheriffs and Civil Process Act in the Federal High Court of Nigeria

Fadesike Salu
Ibitayo Reju

Introduction

The proper service of an originating process or any other court process is a fundamental requirement to activate the court's jurisdiction to entertain a case. It is the service of the court process that breathes life into every action. In stating the importance and significance of the proper service of a court process, the Supreme Court in **First Bank of Nigeria Plc. v. T.S.A. Industries Limited. (2010) LPELR-1283 (SC)** held;

> ***"The essence of service of process on parties in a case is to enable them to appear to prosecute and defend the case and also to ensure the appearance of the parties and those of their respective counsel in court. These are fundamental conditions to be seen to have been fulfilled before a court can have competence and exercise jurisdiction over a case. This also accords with the principle of natural justice which postulates that both sides to a case must be heard. Consequently, failure to serve a process where service of process is required to be served renders any order made against the party not served with process null and void. In the instant appeal not properly serving the appellant with process, whereupon service was served on it through counsel already debriefed by him to the knowledge of the applicant in the motion renders any order made against it in the application null and void".***

Due to the large geographic expanse of Nigeria, the Federal High Court in Nigeria has judicial divisions in all the States in the country. It is often the case that a Plaintiff who commences an action would be required to serve the originating process and other court process on a Defendant who is resident outside the State in which the judicial division of the Federal High Court is located. For example, a party commences an action at the Lagos Judicial Division of the Federal High Court and intends to effect service of its originating process on a Defendant who is resident in Ondo State.

The Sheriffs and Civil Process Act

Generally, the service of court process in Nigeria is governed by the Sheriffs and Civil Process Act Cap S6 Laws of the Federation of Nigeria 2004 (the "Act") and the Civil

Procedure Rules of the court where the matter was commenced. Section 96(1) of the Act provides that a Writ of Summons (or any other originating process) may be served in any part of the Federation. The section is reproduced below for ease of reference;

> ***"A writ of summons issued out of or requiring the defendant to appear at any court of a State, or the Capital Territory may be served on the Defendant in any other State or the Capital Territory."***

However, section 96(2) of the Act provides that such service should be done subject to the applicable rules of court and the service shall be effected in the same manner as if the Writ was served on the Defendant in the State where the Writ was issued. In the event that a Writ of Summons is to be served outside the State or Federal Capital Territory where it was issued, Section 97 of the Act provides that the Writ shall be endorsed for service outside jurisdiction. Section 97 of the Act is reproduced below for the ease of reference;

> ***"Every writ of summons for service under this Part out of the State or the Capital Territory in which it was issued shall, in addition to any other endorsement or notice required by the law of such State or the Capital Territory, have endorsed thereon a notice to the following effect (that is to say)- "This summons (or as the case may be) is to be served out of the... State (or as the case may be)... and in the...State (or as the case may be)."***

The decision of the Supreme Court in the Arabella case

The Supreme Court on the 16th day of May 2008 delivered a landmark judgment in ***Owners of the MV Arabella v Nigeria Agricultural Insurance Corporation (2008) 11 NWLR (Pt 1097) 182*** **("the Arabella case")** which became a *locus classicus* on the procedure for parties to adopt in the Federal High Court in effecting service of a Writ of Summons (and other originating process) on a party whose address is outside the State in which the Writ was issued. The Plaintiff in the *Arabella case* commenced an action at the Federal High Court, Lagos by a Writ of Summons which was served on the Respondent in Abuja. In response to the Plaintiff's claim, the Respondent filed a preliminary objection challenging the Writ for non-compliance with the requirements for service outside the State where it

was issued as contained in Section 97 of the Sheriffs and Civil Process Act. The trial court voided the writ and its service thereof and dismissed the suit. Dissatisfied with the decision of the trial court, the Plaintiff appealed to the Court of Appeal. The Court of Appeal affirmed the decision of the trial court but substituted the order of dismissal with an order striking out the suit.

Still dissatisfied with the decision, the Plaintiff appealed to the Supreme Court. In dismissing the appeal, the Supreme Court held (among other things) that pursuant to Section 97 of the Sheriffs and Civil Process Act, every Writ of Summons for service outside the state in which it was issued MUST in addition to any endorsement of notice required by the law of such state – have endorsed thereon a notice indicating that the summons is to be served out of the state of issuance and also in the state in which it is to be served. In a unanimous judgment, the Supreme Court upheld the decision of the Court of Appeal when it held that *"……. service of the Writ is very fundamental to assumption of jurisdiction by a court of law. If the service of the writ as in the instant case, is basically and fundamentally defective, at that point the court lacks jurisdiction to adjudicate and anything done thereon is null and void ….*"

The decision of the Supreme Court in Akeredolu v Abraham & Ors

On the 23rd day of March 2018, the Supreme Court of Nigeria had an opportunity to revisit its earlier decision in the *Arabella case* at it relates to the territorial jurisdiction of the Federal High Court. The appeal in ***Akeredolu v Abraham & Ors LPELR (2018) 44067- (SC)*** emanated from a matter that was commenced by a Writ at the Federal High Court, Abuja. In addition to filing its originating process the 1st Respondent (Plaintiff at the trial court) also sought an order to serve the originating processes by substituted means on the Appellant (Defendant at the trial court), who was resident in Owo, Ondo State. The trial court granted the 1st Respondent leave to serve the Appellant by substituted means.

In reaction to the order made by the trial court, the Appellant filed an application to set aside the order of the court contending (among other things) that the trial court lacked the requisite jurisdiction to grant leave to the 1st Respondent to serve him by substituted means because the Appellant was not within jurisdiction of the court, therefore, the 1st Respondent ought to have sought and obtained leave to serve the Appellant outside jurisdiction first before proceeding to seek leave to effect service on the Appellant by substituted means. The Appellant relied on the decision of the Supreme Court in **Kida v Ogunmola (2006) 13 NWLR (Pt 997) 377** where the apex court held that for a Defendant

to be legally bound to respond to the order(s) for him to appear in Court to answer a claim of the Plaintiff, he must be brought within the jurisdiction of the court. The Appellant in this case submitted at the trial court that he was resident in Ondo State, therefore, he was outside the jurisdiction of the Federal High Court in Abuja, hence, the Writ was incompetent.

The trial court dismissed the application and the Court of Appeal upheld the decision of the trial court. In dismissing the appeal, the Supreme Court distinguished the facts in **Kida v Ogunmola (supra)** from the present case. In Kida's case, the application to issue and serve the originating process was pursuant to the High Court of Borno State (Civil Procedure) Rules. The Supreme Court on the issue of territorial jurisdiction of the Federal High Court held;

> ***By virtue of Section 19 of the Federal High Court Act and Order 6 Rule 31 of the Federal High Court (Civil Procedure) Rules 2009, the Federal High Court has jurisdiction throughout the Federation and service out of jurisdiction is defined as out of the Federal Republic of Nigeria. Owo in Ondo State is within Nigeria and therefore within the jurisdiction of the Federal High Court sitting in Abuja.***

The Supreme Court in its judgment also remarked;

> ***In respect of processes issued in the Federal High Court to be served on a defendant at an address in any State of the Federation or of the Federal Capital Territory, it is one to be served within the territorial jurisdiction of the Federal High Court which comprises all the 36 States and the Federal Capital Territory as set out by the Constitution of the Federal Republic of Nigeria 1999 (as amended). What I am endeavoring to say is that the territorial boundaries of the Federation of Nigeria are the limits of the territorial jurisdiction of the Federal High Court as its processes apply as a matter of law throughout the country as the processes of a single Court issued within jurisdiction. Thus, all its processes including the initiating processes such as writ of summons are to be regulated and governed by the Rules made by the Chief Judge to regulate the practice and procedure in the Court pursuant to the powers vested in him by Section 254 of the Constitution.***

In light of the decision of the Supreme Court in **Akeredolu v Abraham & Ors (supra),** it appears the Supreme Court departed from its earlier decision on the territorial jurisdiction of the Federal High Court as laid down in the *Arabella case*. Although the basis of the objection in the *Arabella case* and this appeal are different, however, the Supreme Court resist the opportunity to make a pronouncement on the territorial jurisdiction of the Federal High Court which was essentially the bedrock of its decision in this appeal. In arriving at its decision in this appeal, the Supreme Court considered the provisions of the Federal High Court Act and the Federal High Court (Civil Procedure) Rules 2009. Order 6 Rule 31 of the Federal High Court (Civil Procedure) Rules 2009 defines what "out of jurisdiction means" as it relates to the Federal High Court. Order 6 Rule 31 is reproduced below for the ease of reference;

> ***"In this order "out of jurisdiction" means out of the Federal Republic of Nigeria.***

The birth of a new dawn; the decision of the Supreme Court in Biem v S.D.P & 2 Ors

On 14 May 2019, the Supreme Court had another opportunity to address the controversy regarding the territorial jurisdiction of the Federal High Court of Nigeria. In ***John Hingah Biem v S.D.P & 2 Ors (Appeal no. SC/341/2019)***, the issue for determination before the Supreme Court in the main appeal was, whether the failure by the registrar at the trial court to mark an originating process as "concurrent", was capable of voiding the originating process? This issue emanates from the requirement in section 98 of the Act which is reproduced below for the ease of reference;

> ***"A writ of summons for service out of the State or the Capital Territory in which it was issued may be issued as a concurrent writ with one for service within such State or the Capital Territory and shall in that case be marked as concurrent"***

Although the facts of the case in **Biem v S.D.P & Ors (supr**a**)** are slightly distinguishable from the Arabella case*,* it did not stop the court from settling the controversy regarding the applicability of the Act to the service of originating processes issued in the Federal High Court in one state which is to be served in another state.

The Supreme Court boldly restated that the Act is NOT the only statute that governs the service of court process filed in all courts in Nigeria. In stating the basis of its decision, the court *Per Akaahs* JSC (who read the lead judgment) at pages 43-44 remarked;

> ***"The service of any process issued by the Federal High Court can be carried under the Sheriffs and Civil Process Act, if such service is to be executed outside the territory of Nigeria. Order 6 Rule 31 of the Federal High Rules interprets outside jurisdiction to mean <u>outside the Federal Republic of Nigeria</u>. Thus to hold that an originating summons which was issued out of the registry of the Federal High Court, Warri which was addressed for service at Abuja outside Delta State where the originating summons was issued from should be nullified because it did not comply with section 97 of the Sheriffs and Civil Process Act as this Court did in Izeze v INEC (2018) 11 NWLR (Pt. 1629) 110 at 132 did not take cognisance of Section 19 of the Act and Order 6 Rule 31. I am of the considered view that the Originating Summons issued by the Federal High Court, Makurdi which is to be served in Abuja cannot be considered to be service outside jurisdiction and therefore does not require to be endorsed as a concurrent Writ"***

Conclusion

It is safe to say that the decision of the Supreme Court in **Biem v S.D.P & Ors (supra)** appears to have settled this procedural controversy which was created by its earlier decision in the *Arabella case*. It is absolutely commendable that the Supreme Court courageously put an end to this longstanding controversy. The basis of the decision of the Supreme Court in **Akeredolu v Abraham & Ors** (supra) and **Biem v S.D.P & Ors**(supra) is that the Federal High Court just like the Court of Appeal is one, the different judicial divisions are only established for administrative convenience. It is also useful to observe that the Act was enacted in 1945 and the Federal High Court (formerly known as the Federal Revenue Court) was subsequently established in 1973, twenty-eight years after the Act was enacted. It is therefore safe to say that unlike the State High Courts that were in existence at the time of the enactment of the Act, the provisions of the Act could not have envisaged the creation of the Federal High Court.

Other observations

One wonders whether or not the Supreme Court in **Biem v S.D.P & Ors (supra)** in departing from its earlier decision in the *Arabella case* ought to have sat as a full court given the position of the law as espoused in one of its earlier decisions in **Sodeinde Brothers (Nig.) Ltd V A.C.B Ltd. (1982) 6. S.C. 137 at pg. 139** where it held that the Supreme Court ought to sit as a full court in the event that it seeks to depart from its earlier decision.

On a final note, we hope that the Supreme Court continues to rise to the occasion as it did in the cases of **Biem v S.D.P & Ors (supra) and Akeredolu v Abraham & anor (supra)** in settling controversies that have acted as a clog on the wheel of justice in our courts. It would be encouraging for the apex court to continue to develop the frontiers of our jurisprudence.

Fadesike Salu
Senior Associate
fsalu@alp.company

Ibitayo Reju
Associate
treju@alp.company