COSMAS MADUKA v. DR PATRICK IFEANYI UBAH; CAPITAL OIL AND GAS LTD; INSPECTOR GENERAL OF POLICE; CP AYODELE OGUNSAKIN; AIGBOJE AIG-IMUOKHUEDE

COURT OF APPEAL
(LAGOS DIVISION)

CA/L/199B/2013
FRIDAY 7TH NOVEMBER, 2014

(NDUKWE-ANYANWU; IKYEGH; IYIZOBA, JJ.CA)

COMMERCIAL LITIGATION – Originating Process – Failure to effect personal service as required by law robs court of jurisdiction.

COMMERCIAL LITIGATION – Originating Process – Unconditional appearance raises presumption of proper service.

COMMERCIAL LITIGATION – Service of Process – Contention that defendant was not served places burden of proving service on the claimant.

COMMERCIAL LITIGATION – Service of Process – Defendant alleging non-service must refute the service by filing an affidavit.

COMMERCIAL LITIGATION – Service of Process – Discrepancy in address for service and the place of service may be valid grounds for setting aside service.

COMMERCIAL LITIGATION – Judgment – given without jurisdiction is null and void.

COMMERCIAL LITIGATION – Affidavit – must deal with facts and not contain inferences or legal argument, and contravening averments must be expunged.

COMMERCIAL CRIME – Reporting – Every citizen has the duty to report conduct believed to be unlawful or criminal.

COMMERCIAL CRIME – Investigation – of a complaint by the police is not a breach of fundamental human rights.

Facts:

Sometime in July 2011, the 1st respondent and the appellant entered into a joint business relationship for the importation of Premium Motor Spirit (PMS). Under the arrangement, Coscharis Motors Ltd (the appellant's company) was to secure funding while the 1st and 2nd respondents were to provide logistics, handling and

sale of the PMS. Coscharis Motors Ltd obtained banking facilities from Access Bank Plc for the importation of the PMS for which 10 (ten) Letters of Credit were opened. A joint account in the name of Coscharis Motors Ltd and the 2nd respondent was opened at Access Bank Plc for the 1st and 2nd respondents to remit the proceeds of sale of the PMS imported *via* the joint venture.

It was alleged that the 1st and 2nd respondents received the shipments relating to the Letters of Credit (L/Cs) but only paid the proceeds of 6 L/Cs into the joint account. As a result of the failure of the 1st and 2nd respondents to remit the proceeds of the remaining 4 L/Cs, Coscharis Motors Ltd petitioned the Nigeria Police Force, Anti-fraud Unit, Milverton Road, Ikoyi complaining that the 1st and 2nd respondents diverted the proceeds. The police consequently set about investigating the complaint and invited the 1st and 2nd respondents for questioning.

The 1st and 2nd respondents felt that their rights had been violated and commenced fundamental rights enforcement proceedings against the appellant and the 3rd to 5th respondents.

In response, the appellant filed a notice of preliminary objection alleging non-service of the originating motion even though there was an affidavit deposed to by the bailiff of the court stating that service had been effected. The process was however stated to have been served at an address different from the address on record. The 3rd to 5th respondents also filed preliminary objections.

The trial court heard the preliminary objections together with substantive motion, over-ruled the preliminary objections and entered judgment for the 1st and 2nd respondents granting all the reliefs they claimed but awarded reduced damages.

Dissatisfied, the appellant appealed.

Held ***(unanimously allowing the appeal):***

[1] ***Commercial Litigation – Originating Process – Failure to effect personal service as required by law robs court of jurisdiction.***

I have read the processes including the written briefs of the parties. Where the law requires an originating process to be served personally on the defendant, failure to serve personally would mean that the case did not come before the court by due process of law and that one of the conditions precedent to the exercise of jurisdiction by the court has not been fulfilled. *Madukolu v. Nkemdilim* (1962) 1 All NLR 487. **(P. 168 lines 15 - 19)**

[2] ***Commercial Litigation – Originating Process – Unconditional appearance raises presumption of proper service.***

If the appellant had entered an unconditional appearance, there would have been an irrebuttable presumption of regularity in service, even in the absence of an affidavit of service. *Okesuji v. Lawal* 1 NWLR (Pt. 170) 661. From the record of appeal, the proceedings had gone on initially without the participation of the appellant. His counsel appeared in protest for the first time on 29/1/13. On that day, the court adjourned the case for hearing of all preliminary objections and substantive application together. The appellant then filed his preliminary objection praying the court to set aside the affidavit of service and to decline jurisdiction as it relates to the appellant for non service of the originating processes. **(P. 168 lines 27 - 35)**

[3] ***Commercial Litigation – Service of Process – Contention that defendant was not served places burden of proving service on the claimant.***

With profound respect to the learned trial judge, his reasoning is rather unduly technical and unsupportable. In the case of *Anyoha v. Chukwu* (2008) 4 NWLR (Pt. 1076) Rhodes-Vivour JCA (as he then was) held:

> "An affidavit of service is an affidavit, usually sworn to by the Bailiff indicating how and where he served the defendant. It is to convince the court that the defendants, on whom the processes are to be served, were duly served. An affidavit of service becomes a rebuttable presumption of service if the defendant says that he was not served. In such a situation.....an affidavit or endorsement as to service of originating process is not conclusive proof of service. The burden of proving service lies on the person (usually the plaintiff) asserting that there was service and this is done by inviting the parties to call oral evidence...."
> **(P. 169 lines 11 - 23)**

[4] ***Commercial Litigation – Service of Process – Defendant alleging non-service must refute the service by filing an affidavit.***

It is not in doubt that the appellant ought to have deposed to the affidavit of non-service himself because of the eventuality of need to call oral evidence. However I see no difference between a counter-affidavit denying service of the originating processes and an affidavit in support of a preliminary objection also challenging service. The cases relied on by the learned trial Judge in his judgment and Mr. Oluyede in his brief deal mainly with instances where service is being challenged orally without any affidavit or counter affidavit. For example, Mr. Oluyede reproduced a passage from the case of *Fatokun v. Somade* (2003) 1 NWLR (Pt. 802) 431 at 447 paras. G - H where Adamu, JCA observed:

> "Where there is proof of service on a party by means of an affidavit of service sworn to by a bailiff or an officer of court, the only recommended and acceptable way of challenging or rebutting the presumption of such service by the party concerned is by filing of a counter affidavit to controvert the affidavit of service. The failure by the appellant to file such a counter affidavit is fatal to his case and **oral argument on the hearing date that he was not served with the motion and other processes in the suit cannot avail him."**

It is obvious that the problem is where the challenge is oral instead of by affidavit. What is important is that there should be some kind of sworn deposition denying service. Whether it is an affidavit or a counter affidavit is immaterial. I have no doubt that the learned trial Judge in holding that only a counter affidavit will do in the circumstances was paying undue regard to technicality at the expense of substantial justice. I find quite preposterous in the circumstances the view of the learned trial Judge that the affidavit of service remained unchallenged. **(P. 169 lines 25 - 45; P. 170 lines 1 - 5)**

.....The important point however is that the appellant denied service in his affidavit in support of the preliminary objection; notwithstanding the error as to place of service. That denial is sufficient to call for further investigation as to service. More so when the endorsement in the originating processes is for service at "Access Bank Headquarters, Plot 999C Danmole Street, Victoria Island and the bailiff claimed he served the appellant at No 1 Happy Home Avenue Mazamaza, an address apparently unknown to the appellant. The least the trial court should have done is to call on the bailiff to explain how he came by the address Happy Home. Service is a jurisdictional matter. In the case of *Okoye v. Centre Point Merchant Bank Ltd, (supra)* Tobi JSC emphasized the fundamental nature of service of originating process and the effect of non-compliance with the provisions of the Rules of Court regarding service.

> "Non service of writ of summons is not a mere defect in procedure. It is also not one of want of form but rather an incurable irregularity that is intrinsic to the jurisdiction of the court. It is beyond doing technical justice. It goes to the doing of substantial justice....."

The learned trial judge did not familiarize himself with the contents of the documents in the case file and did not pay adequate attention to the issues raised in the preliminary objection. **(P. 170 lines 22 - 43)**

[5] ***Commercial Litigation – Service of Process – Discrepancy in address for service and the place of service may be valid grounds for setting aside service.***

Even if the appellant at the lower court failed to call the attention of the court to the discrepancy in the place of service, it can be taken up on appeal. The discrepancy alone completely undermines the bailiff's claim that he served the appellant. The discrepancy called for further explanation from the bailiff. The learned trial Judge was wrong to have rejected the affidavit of the appellant because of the error therein as to place of service. His Lordship should have pursuant to Order VIII Rule 5(b) of the Fundamental Rights (Enforcement Procedure) Rules 2009 set aside the service on the appellant. His Lordship was in too much of a hurry. Failure of the lower court to call for oral evidence to explain the discrepancy in the place of service rendered the affidavit of service false as alleged by the appellant. There was no proof of service on the appellant.
(P. 170 lines 43 - 45; P. 171 lines 1 - 8)

[6] ***Commercial Litigation – Judgment – given without jurisdiction is null and void.***

The judgment given against the appellant without service is a judgment given without jurisdiction and is therefore null and void. *Mark & Anor v. Eke* (2004) 5 NWLR (Pt. 865) 54; *Okoye & Anor v. Centre Point Merchant Bank Ltd* (2008) 15 NWLR (Pt. 1110) 335. This appeal can be allowed on that ground alone. **(P. 171 lines 10 - 4)**

[7] ***Commercial Litigation – Affidavit – must deal with facts and not contain inferences or legal argument, and contravening averments must be expunged.***

In the case of *General Aviation Services Ltd. v. Thahal* (2004) All FWLR (Pt. 211) 1368 @ 1390, Uwaifo JSC set out the test for distinguishing facts and circumstances from legal arguments and conclusions in an affidavit:

> "The test for knowing facts and circumstances is to examine each of the paragraphs deposed to in the affidavit. If it is such that a witness may be entitled to adduce them in his testimony on oath and are legally admissible as evidence to prove or disprove a fact in issue, then they qualify as statement of facts or circumstances. This means that affidavit evidence must as a general rule deal with facts and avoid matters of inference or conclusion which fall within the province of the court; or objection, prayer or legal argument which must be left to counsel. If therefore affidavit evidence is in the form of conclusion, inference, legal argument, prayer or objection, it raises no fact which needs to be controverted but is simply regarded as extraneous to the determination of factual disputes."

It is thus quite clear from an examination of each of the above paragraphs that they are matters of inference, conclusions and legal arguments. The deponent cannot give them as oral evidence in court. The learned trial Judge ought to have struck them out and expunged them from the 1st respondent's affidavit. They are hereby struck out.
(P. 174 lines 14 - 34)

[8] ***Evidence – Public Documents – which are not duly certified will be deemed inadmissible and cannot be relied upon by the court.***

It is not in doubt that the interim investigation reports Exhibits COG3 and COG4 are public documents within the meaning of Section 102 of the Evidence Act 2011. They are documents forming the official acts or record of the official acts of a public officer, the 4th respondent who is the Commissioner of Police in charge of the Special Fraud Unit and addressed to the 3rd respondent, the Inspector General of Police. By Section 106 (ii) of the Evidence Act, such public document may be proved by the production of a copy of the document certified by the officer who made or issued such official communication or section 106 (iii) by the records of the government department concerned certified by the head of the Department. Exhibits COG3 and COG4 annexed to the originating motion of the 1st and 2nd respondents were not certified true copies and are therefore inadmissible in evidence. Mr. Oluyede had contended that even if the documents are ruled inadmissible, the contents having been admitted by the appellant and the 3rd to 5th respondents, the judgment of the lower court would not be affected. This, with due respect is not correct. The entire suit of the 1st and 2nd respondents was directed primarily to the nullification and setting aside of Exhibits COG3 and COG4. See Reliefs 2, 3, 4 and 6 of the Originating Motion at pages 4 - 6 of the Record of Appeal. The lower court cannot declare null and void a document not placed before it. The documents to be legally admissible must be certified true copies. In the case of *Eghobamien v. Federal Mortgage Bank Nigeria* (2002) 17 NWLR (Pt. 797) 488 @ 500 Mohammed JSC observed:

> "I do not have to repeat the clear provision of the law that a court of law can only determine an issue on legally admissible evidence. Courts have no discretion to act on evidence made inadmissible by the express provision of a Statute even with the consent of the parties." **(P. 174 lines 36 - 45; P. 175 lines 1 - 16)**

[9] ***Commercial Crime – Reporting – Every citizen has the duty to report conduct believed to be unlawful or criminal.***

The complaint of the 1st and 2nd respondents against the appellant is that he set in motion the machinery that culminated in the infraction of their

fundamental rights by the 3rd and 4th respondents. I agree with the appellant that it is within his legal rights as President of Coscharis Motors Ltd to address a petition to the Nigerian Police on the conduct of the 1st and 2nd respondents which he believed to be unlawful and criminal. Indeed, every citizen has a right or even a duty to report to the Police anyone suspected of committing a crime and the Police have a corresponding duty to investigate the report in the course of their statutory function of prevention, detection of crimes and generally preservation of law and order. In the case of *Fajemirokun v. Commercial Bank (Credit Lyonnais) Nigeria Limited* (2009) 5 NWLR (Pt. 1135) 558, the Supreme Court held:

> "Generally, it is the duty of citizens of this country to report cases of commission of crime to the Police for their investigation and what happens after such report is entirely the responsibility of the Police. The citizen cannot be held culpable for doing their duty unless it is shown that it is done *mala fide*."
> **(P. 175 lines 25 - 41)**

[10] ***Commercial Crime – Investigation – of a complaint by the police is not a breach of fundamental human rights.***

Having looked critically at the counter affidavit of the appellant, I am of the view that the appellant had reasonable grounds for the complaint lodged with the police. The learned trial Judge had no basis whatever for finding and holding that the fundamental rights of the 1st and 2nd respondents were grossly and flagrantly infracted upon by the appellant and the 3rd to 5th respondents by the way and manner the interim investigation Reports of the 4th respondent, i.e. Exhibits COG3 and COG4 in this proceedings were generated. It is a matter completely outside the purview of the Fundamental Rights provision in Chapter IV of the 1999 Constitution of Nigeria. **(P. 177 lines 2 - 10)**

IYIZOBA, JCA (Delivering the lead Judgment): By an originating motion dated the 4th day of January, 2013 and brought under the Fundamental Rights (Enforcement Procedure) Rules 2009, the 1st and 2nd respondents as Applicants claimed the following reliefs against the appellant (as 4th respondent) and 3rd - 5th respondents:

> *"1. A DECLARATION that the persecution and public condemnation of the Applicants, camouflaged by the 1st and 2nd respondents as an 'investigation" of allegations made by the Presidential Committee on verification and Reconciliation of Subsidy Payments to Petroleum Product Marketers under the control and Chairmanship of the 3rd respondent and allegations made by the 4th respondent, a co-director with the 3rd respondent in Access Bank Plc (over ongoing civil contractual disagreements with the*

Applicants) and who have both expressed a determination, by all means available to them, to damage the applicants reputation and business, is a prosecutorial misconduct, malicious process, misfeasance in public office and breach of the applicants' fundamental rights protected by Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

2. *A DECLARATION that the declared conclusion of the 2nd respondent, in his "Police Interim Investigation Report" dated 2nd November 2012 that "at the conclusion of investigation, suspects will be arraigned for a prima facie case of money laundering, stealing and criminal conspiracy to commit felony (In the surrounding circumstances of the complaint and facts revealed by the said Report including the fact that the matter was an entirely civil contractual dispute between the Applicants and the Complainant, the 4th respondent, a co-director in Access Bank Plc with the 3rd respondent) is a prosecutorial misconduct, malicious process, misfeasance in public office and breach of the Applicants fundamental right protected by Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).*

3. *A DECLARATION that the declared conclusion of the 2nd respondent, in his Police Interim Investigation Report dated 3rd November 2012 that "at the conclusion of these ongoing actions, a consolidated investigation report will be submitted on a prima facie case of conspiracy to commit felony, money laundering, forgery, stealing, obtaining under false pretences, and economic sabotage against Capital Oil & Gas, Ifeanyi Patrick Uba and those found to have conspired, colluded, or aided the culprits". In the surrounding circumstances of the compliant and the facts revealed in the said report, is a prosecutorial misconduct, malicious process, misfeasance in public office and breach of the Applicants' fundamental right protected by Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).*

4. *A DECLARATION that the said Police Interim Investigation reports issued by the 2nd respondent to the 1st respondent, dated respectively 2nd and 3rd November 2012 being incurably tainted by prosecutorial misconduct, malicious process, misfeasance in public office and breach of the provisions of Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), are invalid, ultra vires, null and void and cannot therefore be used for the purpose of any proceedings against the Applicants.*

5. *A DECLARATION that as the complaints made against the Applicants by the Presidential Committee on verification and Reconciliation of Subsidy, Payments to Petroleum Product Marketers under the control and Chairmanship of the 3rd respondent and by the 4th respondent (in respect of the purely civil contractual disputes between him and the Applicant(s) are tainted by malice on law enforcement agency whatsoever is at liberty or can validly act on the complaints.*

6. *AN ORDER nullifying and setting aside the said Interim Investigation Report of 2nd and 3rd November 2012 issued by the 2nd respondent and addressed to the 1st respondent.*

7. *AN ORDER OF PERPETUAL INJUNCTION restraining the 1st and 2nd respondents by themselves, their subordinates, officers, servants, agents and privies from further intimidating, harassing, arresting, detaining the Applicants or instituting or continuing any criminal process or proceedings whatsoever against them on the basis of any complaint from the Presidential Committee on Verification and Reconciliation of Subsidy Payments to Petroleum Product Marketers under the control and Chairmanship of the 3rd respondent and/or by the 4th respondent.*

8. *COMPENSATORY DAMAGES IN THE SUM OF 10 BILLION NAIRA to be paid by the respondents severally and jointly for the injury suffered by the Applicants as a result of the unlawful acts of the respondents including the breach of the 1st Applicant's fundamental right to liberty, pursuant to Section 35 of the Constitution of the Federal Republic of Nigeria, resulting from his detention in the Ikoyi office of the 2nd respondent from the 9th to the 19th of October 2012".*

The said originating motion was supported by an affidavit of 49 paragraphs deposed to by the 1st respondent. In opposition to the originating motion, the Appellant filed two processes:

1. Preliminary objection alleging non-service of the originating process;

2. A counter-affidavit of paragraphs with one exhibit, COSM in opposition to the originating motion.

The facts of the case as set out in the Appellant's brief are that sometime in July 2011, the 1st respondent approached the Appellant in his capacity as the President of Coscharis Motors Limited to assist him revive the debt ridden ailing business of

the 2nd respondent. After preliminary discussions, Coscharis Motors Ltd entered into joint business relationship with the 1st and 2nd respondents for the importation of Premium Motor Spirit (PMS). Under the arrangement, it was the responsibility of Coscharis Motors Ltd to source for fund to finance the PMS importation while the 1st and 2nd respondents were to provide logistics, handling and sale of the product. In furtherance of the said joint business arrangement, Coscharis Motors Ltd obtained banking facilities from Access Bank Plc for the importation of the PMS for which 10 (ten) Letters of Credit were opened. A joint account in the name of Coscharis Motors Ltd and the 2nd respondent was opened at Access Bank Plc where the 1st and 2nd respondents would pay-in proceeds of sale of the PMS imported via the joint venture.

It was alleged that the 1st and 2nd respondents received the shipments relating to the Letters of Credit (L/Cs) but only paid the proceeds of 6 L/Cs into the joint account opened at Access Bank Plc.

The proceeds of the consignment relating to the remaining 4 (four) L/Cs were diverted by the 1st and 2nd respondents. All efforts by Coscharis Motors Ltd to get the 1st and 2nd respondents produce the proceeds relating to the remaining 4 L/Cs or account for the where about of the consignment were rebuffed. At different times, the 1st and 2nd respondents would admit having received the shipments but at others, they would claim that the shipments were still with the shippers in London. Finally a trip to London with the 1st respondent revealed that the shipment had been made and received by 1st and 2nd respondents. Angered and confused at the antics of the 1st and 2nd respondents, Coscharis Motors Ltd petitioned the Nigeria Police Force, Anti-fraud Unit Milverton Road, Ikoyi complaining of the 1st and 2nd respondents conduct in diverting the proceeds relating to the remaining 4 letters of credit. The Nigeria Police as the body statutorily empowered to investigate criminal allegations invited the 1st and 2nd respondents and officers of Coscharis Motors Ltd to enable it investigate the complaint. Alleging that their fundamental rights had been violated by the complaint made by the Appellant and the police action in investigating same, the 1st and 2nd respondents by an originating motion dated 4/01/13 applied to the court below for the enforcement of their Fundamental Rights under the Fundamental Rights (Enforcement Procedure) Rules 2009 claiming the reliefs set out above.

In the preliminary objection, the appellant alleged that the originating motion filed by the 1st and 2nd respondents was not served on him even though an affidavit of service was deposed to by the bailiff attached to the lower court to the effect that he served the Appellant with the originating process at ***No. 1, Happy Home Avenue, Mazamaza, Lagos,*** an address not borne out of any record before the lower court and different from ***Access Bank Headquarters, Plot 999C Danmole Street, Victoria Island,*** endorsed on the originating processes by the 1st and 2nd respondents as the address for service of the Appellant. In the preliminary objection the appellant prayed the lower court to decline jurisdiction against him on ground

of non service. The 1st and 2nd respondents filed no counter-affidavit to the affidavit in support of the Appellant's Notice of Preliminary Objection. The appellant also filed a counter-affidavit to the originating application of the 1st and 2nd respondents.

The lower court heard the preliminary objection of the appellant and those of the 3rd - 5th respondents together with substantive motion. After listening to argument of counsel, the learned trial judge over-ruled the preliminary objections and entered judgment for the 1st and 2nd respondents granting all the reliefs they claimed but reducing the damages awarded to ₦10 million. Dissatisfied with the judgment, the appellant filed a notice of appeal with five grounds of appeal at Pages 586 - 592 of the Records. In his brief of argument settled by Osita Mbamalu Esq. two issues were formulated out of the five grounds of appeal as follows:

(1) Whether the learned trial court was right when it dismissed the Appellants Notice of Preliminary Objection dated 6th day of February 2013 as lacking in merit (Ground 1).

(2) Whether considering all the circumstances of the case and the materials placed before it, the learned trial court was right in holding that the fundamental rights of the 1st and 2nd respondents were violated by the actions of the Appellant". (Grounds 3, 4 and 5)

In their brief of argument settled by R. A, Oluyede Esq., Ifeoma Esom (Mrs) and Mobolaji Akintude, Esq., the 1st and 2nd respondents adopted the issues formulated by the appellant.

ISSUE 1:

"Whether the learned trial court was right when it dismissed the Appellants Notice of Preliminary Objection dated 28/01/13 and filed on 6/02/13 as lacking in merit".

It was argued for the appellant relying on Order V Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009 that the originating process was not served on him directly or at all and that the affidavit of service deposed to by one Dandyson Abengowe, a bailiff of the court below was false and ought to be set aside. Counsel argued that the falsity of the affidavit is underscored by the fact that the bailiff deposed in the affidavit that service was effected on the appellant at No. 1 Happy Home Avenue Mazamaza Lagos when the address for service as endorsed on the Originating Motion was "Access Bank Headquarters, Plot 999C Danmole Street, Victoria Island". Learned counsel relying on the case of *Okoye v. Centre Point Merchant Bank Ltd* (2008) 15 NWLR (Pt 1110) 335 submitted that where the law provides for a particular way or method of service, non compliance with that particular way or method will nullify the service *ab initio*.

Mr. Oluyede for the 1st & 2nd respondents in his brief submitted that the learned trial judge was right in dismissing the preliminary objection on the ground that there was no counter affidavit in opposition to the affidavit of service deposed to by the bailiff. The affidavit of service consequently remained unchallenged. Counsel further submitted that even if the affidavit in support of the preliminary objection was taken as the counter affidavit to the affidavit of service, it did not assist the appellant because the depositions therein did not actually counter the averments in the bailiff's affidavit of service. Further, counsel submitted that the point now being raised in the appellant's brief as to the difference in the place of service and the place for service as endorsed in the originating processes was not raised in the affidavit in support of the preliminary objection. Counsel argued that the appellant was attempting to smuggle through the back door on appeal, an argument that he did not proffer at the lower court.

I have read the processes including the written briefs of the parties. Where the law requires an originating process to be served personally on the defendant, failure to serve personally would mean that the case did not come before the court by due process of law and that one of the conditions precedent to the exercise of jurisdiction by the court has not been fulfilled. *Madukolu v. Nkemdilim* (1962) 1 All NLR 487. Order V Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009 provides that "Originating application must be served on all parties directly, so long as a service duly effected on the respondent's agent will amount to personal service on the respondent." One Dandyson Abengowe, a bailiff of the lower court had deposed to an affidavit that he served the appellant all the originating processes at No. 1 Happy Home Avenue Mazamaza Lagos by delivering same personally to the appellant who refused to accept same and the said processes were dropped on the appellant. If the appellant had entered an unconditional appearance, there would have been an irrebuttable presumption of regularity in service, even in the absence of an affidavit of service. *Okesuji v. Lawal* 1 NWLR (Pt. 170) 661. From the record of appeal, the proceedings had gone on initially without the participation of the appellant. His counsel appeared in protest for the first time on 29/1/13. On that day, the court adjourned the case for hearing of all preliminary objections and substantive application together. The appellant then filed his preliminary objection praying the court to set aside the affidavit of service and to decline jurisdiction as it relates to the appellant for non service of the originating processes. The learned trial judge in over-ruling the preliminary objection held:

> "The 4th respondent did not file any counter affidavit to the affidavit of service sworn to by the bailiff of this court. I am of the firm view that the Affidavit of Service stands unchallenged. Even if the Affidavit in Support of the 4th respondent's (Appellant's) Notice of Preliminary Objection of 28th January 2012 (sic) is taken as a counteraffidavit to the Affidavit of Service, it does not assist the 4th respondent's cause in any way. This is because, whereas the Affidavit of Service states that the 4th respondent was served at No 1 Happy Home Avenue Mazamaza Lagos, the deponent of the affidavit in

support of the 4th respondent Notice of Preliminary Objection stated that from 9th August 2012, the 4th respondent no longer resumes work at No 1 - 7 Coscharis Street, Kirikiri Industrial Estate, Apapa since Coscharis Motors Ltd only retained ware housing facility at No 1 – 7 Coscharis Street, Kirikiri, Apapa. This deposition may have been of some assistance if it had been deposed to in the Affidavit of Service that the 4th respondent was served at No 1 - 7 Coscharis Street, Kirikiri Industrial Estate, Apapa. I therefore hold that the 4th respondent's Preliminary Objection is devoid of merit and same is hereby dismissed" (Page 572 of the Records).

With profound respect to the learned trial judge, his reasoning is rather unduly technical and unsupportable. In the case of *Anyoha v. Chukwu* (2008) 4 NWLR (Pt. 1076) Rhodes-Vivour JCA (as he then was) held:

"An affidavit of service is an affidavit, usually sworn to by the Bailiff indicating how and where he served the defendant. It is to convince the court that the defendants, on whom the processes are to be served, were duly served. An affidavit of service becomes a rebuttable presumption of service if the defendant says that he was not served. In such a situation.....an affidavit or endorsement as to service of originating process is not conclusive proof of service. The burden of proving service lies on the person (usually the plaintiff) asserting that there was service and this is done by inviting the parties to call oral evidence...."

It is not in doubt that the appellant ought to have deposed to the affidavit of non-service himself because of the eventuality of need to call oral evidence. However I see no difference between a counter-affidavit denying service of the originating processes and an affidavit in support of a preliminary objection also challenging service. The cases relied on by the learned trial Judge in his judgment and Mr. Oluyede in his brief deal mainly with instances where service is being challenged orally without any affidavit or counter affidavit. For example, Mr. Oluyede reproduced a passage from the case of *Fatokun v. Somade* (2003) 1 NWLR (Pt. 802) 431 at 447 paras. G -H where Adamu, JCA observed:

"Where there is proof of service on a party by means of an affidavit of service sworn to by a bailiff or an officer of court, the only recommended and acceptable way of challenging or rebutting the presumption of such service by the party concerned is by filing of a counter affidavit to controvert the affidavit of service. The failure by the appellant to file such a counter affidavit is fatal to his case and **oral argument on the hearing date that he was not served with the motion and other processes in the suit cannot avail him."**

It is obvious that the problem is where the challenge is oral instead of by affidavit. What is important is that there should be some kind of sworn deposition denying

service. Whether it is an affidavit or a counter affidavit is immaterial. I have no doubt that the learned trial Judge in holding that only a counter affidavit will do in the circumstances was paying undue regard to technicality at the expense of substantial justice. I find quite preposterous in the circumstances the view of the learned trial Judge that the affidavit of service remained unchallenged.

I have looked at the affidavit in support of the preliminary objection and the affidavit of service of the bailiff annexed to it. I do not on the life of me understand why the deponent would leave No. 1 Happy Home Avenue Mazamaza where the bailiff claimed to have served the processes and be talking of movement of appellant's office from 1 – 7 Coscharis Avenue, Kirikiri Industrial Estate to Kilo 32 Lekki-Epe Expressway Awoyaya Lekki; implying that the bailiff could not have served him as he was no longer at the old office. However, the learned trial Judge in my opinion should have looked beyond the errors of counsel and gone to the root of the matter. The bottom line was whether the appellant was served with the originating processes. Enough had been said by the parties to raise doubts as to service. Although learned counsel for the appellant did not call the attention of the court in their affidavit to the fact that the address for service in the originating processes was different from where the bailiff purportedly effected service; the processes are in the court file and a trial judge is expected to be familiar with the contents of documents in the court file. How did the bailiff come about this Happy Home Avenue Mazamaza where he claimed to have served the appellant? The important point however is that the appellant denied service in his affidavit in support of the preliminary objection; notwithstanding the error as to place of service. That denial is sufficient to call for further investigation as to service. More so when the endorsement in the originating processes is for service at "Access Bank Headquarters, Plot 999C Danmole Street, Victoria Island and the bailiff claimed he served the appellant at No 1 Happy Home Avenue Mazamaza, an address apparently unknown to the appellant. The least the trial court should have done is to call on the bailiff to explain how he came by the address Happy Home. Service is a jurisdictional matter. In the case of *Okoye v. Centre Point Merchant Bank Ltd, (supra)* Tobi JSC emphasized the fundamental nature of service of originating process and the effect of non-compliance with the provisions of the Rules of Court regarding service.

> "Non service of writ of summons is not a mere defect in procedure. It is also not one of want of form but rather an incurable irregularity that is intrinsic to the jurisdiction of the court. It is beyond doing technical justice. It goes to the doing of substantial justice....."

The learned trial judge did not familiarize himself with the contents of the documents in the case file and did not pay adequate attention to the issues raised in the preliminary objection. Even if the appellant at the lower court failed to call the attention of the court to the discrepancy in the place of service, it can be taken up on appeal. The discrepancy alone completely undermines the bailiff's claim that

he served the appellant. The discrepancy called for further explanation from the bailiff. The learned trial Judge was wrong to have rejected the affidavit of the appellant because of the error therein as to place of service. His Lordship should have pursuant to Order VIII Rule 5(b) of the Fundamental Rights (Enforcement Procedure) Rules 2009 set aside the service on the appellant. His Lordship was in too much of a hurry. Failure of the lower court to call for oral evidence to explain the discrepancy in the place of service rendered the affidavit of service false as alleged by the appellant. There was no proof of service on the appellant.

The judgment given against the appellant without service is a judgment given without jurisdiction and is therefore null and void. *Mark & Anor v. Eke* (2004) 5 NWLR (Pt. 865) 54; *Okoye & Anor v. Centre Point Merchant Bank Ltd* (2008) 15 NWLR (Pt. 1110) 335. This appeal can be allowed on that ground alone. But if allowed on that ground, it would be a matter of simply setting aside the alleged service and ordering the applicants to serve the originating processes properly on the appellant. It is necessary then to consider issue 2 in order to determine if the case has any merit at all.

ISSUE 2:

Whether considering all the circumstances of the case and the materials placed before it, the learned trial court was right in holding that the fundamental rights of the 1st and 2nd respondents were violated by the actions of the Appellant". (Grounds 3, 4 and 5)

Learned counsel for the appellant on this issue submitted that the 1st and 2nd respondents did not discharge the onus of placing before the lower court substantial material facts in their affidavit on which the lower court could find for them. Counsel urged the court to strike out paragraphs 33 - 39 of the affidavit of the 1st respondent as they contain only prayers, legal arguments and conclusions contrary to Section 115 (2) of the Evidence Act 2011.

Counsel further submitted that Exhibits COG3 and COG4, which are the main pillars of the application of the 1st and 2nd respondents, are public documents which were not certified as required by law and that the learned trial judge should have discountenanced the documents and not based its decision on them. Counsel relying on the case of *Onah v. Okenwa* (2010) 7 NWLR (Pt 1194) 512 submitted that the appellant was within his legal rights as the President of Coscharis Motors Ltd to address a petition to the Nigerian Police on the conduct of the 1st and 2nd respondents which he believed to be unlawful and out rightly criminal. Learned counsel finally submitted that the trial court simply reviewed the case of the 1st and 2nd respondents and thereafter made out a case for them without considering the appellant's counter affidavit and written address, thereby failing in its legal duty to hold the scale of justice evenly between the parties. Counsel urged us to set aside this one sided decision of the trial court as far as it concerns the appellant

herein.

In his brief of argument, Mr. Oluyede for the 1st and 2nd respondents submitted that the alleged offensive paragraphs of the applicants' affidavit if read together with paragraphs 31 and 32 will show that the said paragraphs did not offend the provisions of Section 115 of the Evidence Act. Counsel further submitted that assuming without conceding that Exhibits COG3 and COG4 are inadmissible to prove its contents and are expunged from the record of the court, that their existence as well as the facts contained therein not having been challenged or contradicted by the appellant and the 3rd - 5th respondents; that the 1st and 2nd respondents would still have been entitled to the reliefs sought based on the uncontroverted facts. Counsel submitted that the appellant is wrong in his contention that no case was made out against him in the affidavit in support of the originating motion. He referred to several paragraphs of the affidavit which he claimed implicated the appellant and the fact that the appellant failed to offer explanation as to why his petition written to the Police should be for the specific attention of the 2nd respondent herein who happened to be a member of the Presidential Committee on Verification and Reconciliation of Subsidy Payments to Petroleum Product Marketers (hereinafter referred to as Presidential Committee).

Counsel submitted that it was the appellant that set in motion the machinery that culminated in the infraction of the fundamental rights of the 1st and 2nd respondents by the 3rd and 4th respondents and was therefore liable as well. Counsel finally submitted that the failure of the lower court to consider the appellant's counter affidavit and written address did not occasion any miscarriage of justice but that if it did, this court should invoke its power under Section 15 of the Court of Appeal Act to resolve the issue and rule on it.

Section 115 of the Evidence Act 2011 provides:

> 1. Every affidavit used in the court shall contain only a statement of fact and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.
>
> 2. An affidavit shall not contain extraneous matter, by way of objection, prayer or legal argument or conclusion."

A careful examination of paragraphs 33 - 39 of the 2nd respondent's affidavit leaves one in no doubt that they are not statement of facts but mere arguments or conclusions. The relevant paragraphs read as follows:

> "33. The 2nd respondent nevertheless in his Interim report of 2nd November 2012, against the tide of his own findings, concluded

that the Applicants "fraudulently" paid some of the proceeds of the transaction into accounts in other banks apart from Access Bank and that the "diverted proceeds of sales into Zenith Bank, Skye Bank, First City Monument Bank Plc and Guaranty Trust Bank where Capital Oil and Gas Industries carried out huge financial transactions was deliberately done by Capital Oil and Gas Industries Limited to perpetrate large scale fraud".

34. He offered no evidence or explanation for this damaging conclusion.

35. In his Interim Report of 3rd November 2012 and the 2nd respondent without justification but in a desperate bid to discredit the confirmation of the validity of the Applicants transactions by the relevant and responsible Federal Government Agencies, made wild allegations against the Federal Government Agencies.

36. He stated concerning PPPRA: "That PPPRA formatted cloudy and shady transaction process where Oil and Gas firms were given glutonic leverages to extort money, as counter measures in place were lousy." "That the auditing process used in the computation and checking of subsidy claims are spurious and not transparent, and there by open to fraud." "It should be noted that the PPPRA relied on the Oil Marketing Companies documentations in the computation process of the subsidy claims. Capital Oil and Gas must have taken advantage of the lousy mechanism in this process and took extreme financial advantage of the process".

37. Realizing the paucity of his statements the 2nd respondent in that report of 3rd November 2012 finally admitted that "The prima facie case of conspiracy, money laundering, forgery, stealing, fraud, economic sabotage and obtaining under false pretences can be establish, but only with certified documents establishing the collaboration with officials of PPPRA, DPR, NIMASSA, NPA and the Nigerian Navy who perfected the documents used in the fraudulent transaction".

38. On the basis of these wild and untenable accusations and suspicious the 2nd respondent went on to state in the same report that "It can be stated that the cloudy transaction process which tilted heavily in favour of the Oil Marketing companies conferred on them the fraudulent advantages, which Capital oil appears to have maximize to make huge financial gains".

39. Ignoring all the evidence that went against his pre-conceived finding of the Applicants' guilt in the above manner the 2nd respondent then promised in his report of 2nd November 2012 that "at the conclusion of investigation, suspects will be arraigned for a *prima facie* case of money laundering, stealing and criminal conspiracy to commit felony." and in his report of 3rd November 2012 that "at the conclusion of these ongoing actions, a consolidated investigation report will be submitted on a prima facie case of conspiracy to commit felony, money laundering, forgery, stealing, obtaining under false pretences, and economic sabotage against Capital Oil & Gas, Ifeanyi Patrick Ubah and those found to have conspired, colluded, or aided the culprits".

In the case of *General Aviation Services Ltd. v. Thahal* (2004) All FWLR (Pt. 211) 1368 @ 1390, Uwaifo JSC set out the test for distinguishing facts and circumstances from legal arguments and conclusions in an affidavit:

> "The test for knowing facts and circumstances is to examine each of the paragraphs deposed to in the affidavit. If it is such that a witness may be entitled to adduce them in his testimony on oath and are legally admissible as evidence to prove or disprove a fact in issue, then they qualify as statement of facts or circumstances. This means that affidavit evidence must as a general rule deal with facts and avoid matters of inference or conclusion which fall within the province of the court; or objection, prayer or legal argument which must be left to counsel. If therefore affidavit evidence is in the form of conclusion, inference, legal argument, prayer or objection, it raises no fact which needs to be controverted but is simply regarded as extraneous to the determination of factual disputes."

It is thus quite clear from an examination of each of the above paragraphs that they are matters of inference, conclusions and legal arguments. The deponent cannot give them as oral evidence in court. The learned trial Judge ought to have struck them out and expunged them from the 1st respondent's affidavit. They are hereby struck out.

It is not in doubt that the interim investigation reports Exhibits COG3 and COG4 are public documents within the meaning of Section 102 of the Evidence Act 2011. They are documents forming the official acts or record of the official acts of a public officer, the 4th respondent who is the Commissioner of Police in charge of the Special Fraud Unit and addressed to the 3rd respondent, the Inspector General of Police. By Section 106 (ii) of the Evidence Act, such public document may be proved by the production of a copy of the document certified by the officer who made or issued such official communication or section 106 (iii) by the records of the government department concerned certified by the head of the Department. Exhibits COG3 and COG4 annexed to the originating motion of the 1st and 2nd

respondents were not certified true copies and are therefore inadmissible in evidence. Mr. Oluyede had contended that even if the documents are ruled inadmissible, the contents having been admitted by the appellant and the 3rd to 5th respondents, the judgment of the lower court would not be affected. This, with due respect is not correct. The entire suit of the 1st and 2nd respondents was directed primarily to the nullification and setting aside of Exhibits COG3 and COG4. See Reliefs 2, 3, 4 and 6 of the Originating Motion at pages 4 - 6 of the Record of Appeal. The lower court cannot declare null and void a document not placed before it. The documents to be legally admissible must be certified true copies. In the case of *Eghobamien v. Federal Mortgage Bank Nigeria* (2002) 17 NWLR (Pt. 797) 488 @ 500 Mohammed JSC observed:

> "I do not have to repeat the clear provision of the law that a court of law can only determine an issue on legally admissible evidence. Courts have no discretion to act on evidence made inadmissible by the express provision of a Statute even with the consent of the parties."

See also *Okafor v. Okpala* (1995) 1 NWLR (Pt. 374) 749 @ 758; *Abdullahi v. Milad Kaduna State* (2004) 5 NWLR (Pt. 866) 232, 250; *Agbi v. Ogbe* (2006) 11 NWLR (Pt. 990) 65 @ 119; *Nigerian Bank of Commerce & Industry v. Ogbemi*. Failure to produce certified true copies of Exhibits COG 3 & 4 has dealt a fatal blow to the case of the 1st and 2nd respondents. The learned trial judge erred in relying on them.

The complaint of the 1st and 2nd respondents against the appellant is that he set in motion the machinery that culminated in the infraction of their fundamental rights by the 3rd and 4th respondents. I agree with the appellant that it is within his legal rights as President of Coscharis Motors Ltd to address a petition to the Nigerian Police on the conduct of the 1st and 2nd respondents which he believed to be unlawful and criminal. Indeed, every citizen has a right or even a duty to report to the Police anyone suspected of committing a crime and the Police have a corresponding duty to investigate the report in the course of their statutory function of prevention, detection of crimes and generally preservation of law and order. In the case of *Fajemirokun v. Commercial Bank (Credit Lyonnais) Nigeria Limited* (2009) 5 NWLR (Pt. 1135) 558, the Supreme Court held:

> "Generally, it is the duty of citizens of this country to report cases of commission of crime to the Police for their investigation and what happens after such report is entirely the responsibility of the Police. The citizen cannot be held culpable for doing their duty unless it is shown that it is done *mala fide*."

See also *Onah v. Okenwa* (2010) 7 NWLR (Pt. 1194) 512 cited by the appellant where the court held:

> "Every person in Nigeria who feels an offence has been committed has a right to report to the Nigerian Police Force. Once that right of complaint to the Police who are custodians of order, in the society is exercised, the right shifts to the Police to exercise, their statutory powers under S.4 of the Police Act. The power conferred on the Police under the Police Act includes, investigation, arrest, interrogation, search and detention of any suspect".

The allegation of the 1st and 2nd respondents was that the appellant and the 5th respondent manipulated the Presidential Committee to indict the applicants as vendetta over certain business relationship that went sour. The appellant argued that if the learned trial Judge had given due consideration to his counter affidavit, the facts averred therein would have punctured the allegation of the applicants. I have again read carefully, the judgment of the lower court. It is indeed true that the learned trial judge did not consider the counter affidavit and written address of the appellant in arriving at his decision on the originating motion. The judgment of the court on the substantive application is from page 572 to 578 of the Record. Therein, the court summarized the case of the 1st and 2nd respondents as set out in their affidavit in a way that made it look as though he had accepted those facts as the true situation of things without any consideration whatever for the facts in the appellant's counter affidavit. With that scenario in mind, the court went on to consider the case of the 1st and 2nd respondents (3rd and 4th respondents herein), IGP and CP Ogunsakin and at the end held:

> "In summation, I find and hold that the fundamental rights of the Applicants have been grossly and flagrantly infracted upon by the respondents by the way and manner the interim investigation Reports of the 2nd respondent, i.e. Exhibits COG3 and COG4 in this proceedings were generated which this Honourable Court has a duty in redressing the said infraction. Accordingly, I hereby make the following orders..."

It can thus be seen not only that the appellant was not given a fair hearing; he was not given any hearing at all. His summary of the facts in his counter affidavit was completely ignored. If the trial Judge had considered those facts, he could have seen a different dimension of the case which could have given rise to a completely different conclusion. But he did note the fact that the appellant's petition was addressed for the specific attention of the 4th respondent CP Ogunsakin who happened to be a member of the Presidential Committee. The learned Judge closed his eyes to the fact that CP Ogunsakin was the Commissioner of Police in charge of the Fraud Unit; and the proper person to whom the petition should be addressed. The learned trial Judge chose not to consider whether indeed the appellant had reasonable grounds for the petition written and whether there was basis for reasonable suspicion that the 1st and 2nd respondents may have committed criminal offences that justified the investigation; irrespective of all the sentiments they whipped up in order to kill the investigation. These are issues that could have

been resolved one way or the other if the appellant's counter affidavit had been considered. There was, I think, a grave miscarriage of justice. Having looked critically at the counter affidavit of the appellant, I am of the view that the appellant had reasonable grounds for the complaint lodged with the police. The learned trial Judge had no basis whatever for finding and holding that the fundamental rights of the 1st and 2nd respondents were grossly and flagrantly infracted upon by the appellant and the 3rd to 5th respondents by the way and manner the interim investigation Reports of the 4th respondent, i.e. Exhibits COG3 and COG4 in this proceedings were generated. It is a matter completely outside the purview of the Fundamental Rights provision in Chapter IV of the 1999 Constitution of Nigeria. The two issues formulated by the appellant are resolved in his favour and against the 1st and 2nd respondents. I hold that this appeal has merit. It is hereby allowed. The judgment of Aneke J of the Federal High Court sitting in Lagos in suit No. FHC/L/CS/07/13 delivered on the 18th day of February 2013 is hereby set aside as against the appellant herein. In its place the claims against the appellant are dismissed with cost assessed at ₦50,000.00 against the 1st and 2nd respondents.

NDUKWE-ANYANWU, JCA: I had the privilege of reading in draft form, the Judgment just delivered by my learned brother, C.E. Iyizoba, JCA. I agree with her reasoning and final conclusions. I have nothing to add. I abide by all the consequential orders in the lead Judgment and adopt them as mine.

IKYEGH, JCA: I had the privilege of reading before now the judgment prepared by my learned brother, Chinwe Eugenia Iyizoba, J.C.A., in which I concur.

I desire to add by way of emphasis that service of originating process on a party to the action is a fundamental precondition to the exercise of jurisdiction by the court. Any proceedings predicated on non service of the originating process on a party is a nullity and susceptible to be set aside at the instance of the party that was not served the originating process. See *Ayogu v. Nnamani* (2004) 15 NWLR (Pt. 895) 134, *Makeri Smelting Co. Ltd v. Access Bank (Nig) Plc.* (2002) 7 NWLR (Pt. 766) 447, *Societe General Bank (Nig) Ltd. v. Adewunmi* (2003) 6 SCM 133 and *ACB International Bank Plc. v. Otu and Anor.* (2008) 1 SC (Pt. 11) page 1.

The unresolved grave doubt on service of the originating application on the appellant rendered the proceedings at the court below a nullity. And it is on the basis of the unresolved doubt on the service of the originating process on the appellant and for the reasons ably stated in the lead judgment that I too find merit in the appeal and hereby allow it and abide by the consequential orders contained in the lead judgment.

Cases cited in the judgment

Abdullahi v. Milad Kaduna State (2004) 5 NWLR (Pt. 866) 232
ACB International Bank Plc. v. Otu & Anor. (2008) 1 SC (Pt. 11) 1
Agbi v. Ogbe (2006) 11 NWLR (Pt. 990) 65

Anyoha v. Chukwu (2008) 4 NWLR (Pt. 1076)
Ayogu v. Nnamani (2004) 15 NWLR (Pt. 895) 134
Eghobamien v. Federal Mortgage Bank Nigeria (2002) 17 NWLR (Pt. 797) 488
Fajemirokun v. Commercial Bank (Credit Lyonnais) Nigeria Limited (2009) 5 NWLR (Pt. 1135) 558
Fatokun v. Somade (2003) 1 NWLR (Pt. 802) 431
General Aviation Services Ltd. v. Thahal (2004) 10 CLRN 33
Madukolu v. Nkemdilim (1962) 1 All NLR 487
Makeri Smelting Co. Ltd v. Access Bank (Nig) Plc. (2002) 7 NWLR (Pt. 766) 447
Mark & Anor v. Eke (2004) 5 NWLR (Pt. 865) 54
Okafor v. Okpala (1995) 1 NWLR (Pt. 374) 749
Okesuji v. Lawal (1991) 1 NWLR (Pt. 170) 661
Okoye & Anor v. Centre Point Merchant Bank Ltd (2008) 8 CLRN 1
Onah v. Okenwa (2010) 7 NWLR (Pt 1194) 512
Societe General Bank (Nig) Ltd. v. Adewunmi (2003) 6 SCM 133

Statutes cited in the judgment
Sections 102, 106 and 115 of the Evidence Act 2011
Section 15 of the Court of Appeal Act
*Se*ction 36(5) of the Constitution of the Federal Republic of Nigeria 1999

Rules of court referred to in the judgment
Order V Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009
Order VIII Rule 5(b) of the Fundamental Rights (Enforcement Procedure) Rules 2009

History:

HIGH COURT
Federal High Court of Lagos State
Aneke, J

COURT OF APPEAL (Lagos Division)
Uzo I. Ndukwe-Anyanwu, JCA *(Presided)*
Joseph Shagbaor Ikyegh, JCA
Chinwe Eugenia Iyizoba, JCA (*Read the lead Judgment)*

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N. O. Olaiya with K. Udemezue, C. O. Onumaegbu and J. C. Umeh for the appellant.
Ifeoma Esom for the 1st and 2nd respondents.
Chief G. O. Obla, SAN with Olusola Folarin and M. R. Obla (Miss) for the 3rd & 4th respondents.
Paul Usoro wth Oladimeji Saruni; Taofik Adeleda and O. O. Amadi for the 5th respondent.