IN THE HIGH COURT OF JUSTICE

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,

ON WEDNESDAY THE

11TH DAY OF JUNE, 2025.

BETWEEN: ***SUIT NO: B/326/2022***

ANDREW OBOH ***CLAIMANT/RESPONDENT***

AND

1. CHRISTOPHER PRINCE IGBINOSUN --1ST DEFENDANT/APPLICANT

2. EDO STATE GEOGRAPHICAL --- 2ND DEFENDANT/RESPONDENT INFORMATION SERVICE (EDOGIS)

RULING

This is a Ruling in respect of an application brought pursuant to ***Order 10 Rule 11, Order 20 Rule 13 and Order 30 Rule 5(2) of the Edo State High Court (Civil Procedure) Rules, 2018 and Section 36 (1) of the Constitution of the Federal Republic Of Nigeria, 1999 (as amended) and under the inherent jurisdiction of this Honourable Court.***

In this application, the Applicant is praying this Court for the following orders:

{a}AN ORDER granting extension of time within which the Honourable Court can set aside the judgment of this Honourable Court delivered on the 27th day of June, 2023, in the absence of the 1st Defendant/Applicant.

{b}AN ORDER setting aside the said judgment of this Honourable Court delivered on 27th day of June, 2023 in the absence of the 1st Defendant/Applicant and jurisdiction.

{c}AN ORDER of this Court restraining the Claimant/Respondent and the bailiffs of this Court from carrying out actions or further development on the subject matter, pending the hearing and determination of this application.

The grounds upon which this application is made are stated on the motion papers.

In support of the application, the Applicant filed a 40 paragraphs affidavit sworn by the 1st Defendant/Applicant's wife and lawful attorney, and a written address of counsel.

From the Applicant's affidavit in support of this application, the 1st Defendant/Applicant is maintaining that he was not served with the court processes.

She alleged that the Claimant/Respondent obtained an ex parte order for substituted service by misleading the court.

The affidavit asserts that the Claimant/Respondent falsely claimed the 1st Defendant/Applicant was erecting a building and in physical possession of the disputed land when the order for substituted service was granted.

She said that in reality, the 1st Defendant/Applicant was not occupying the land at that time, nor was he constructing any building.

The deponent maintained that it was the Claimant/Respondent who was in actual physical occupation of the disputed land, having placed a caravan and molded blocks there.

She said that the 1st Defendant/Applicant only became aware of the lawsuit and the default judgment in December 2023, after his wife visited the land and spoke with a man who was selling cement there.

The deponent alleged that the Claimant/Respondent fraudulently obtained the substituted service order by misrepresenting facts, thereby denying the 1st Defendant/Applicant a fair hearing.

She said that the 1st Defendant/Applicant has a valid defence and seeks to have the case tried on its merits.

The deponent also asserted that the court lacks jurisdiction and that the Claimant's documents relied upon for the judgment are products of fraud, detailing several particulars of the alleged fraud.

She also alleged that the Writ of Summons was defective because it was not signed by a legal practitioner.

In his written address, the learned counsel for the 1st Defendant/Applicant, ***A.Y. Thomas, Esq.*** formulated a sole issue for determination:

> ***Whether the default judgment delivered on 27th day of June, 2023 by this Honourable Court ought not to be aside in light of improper/non-service.***

In his argument on the sole issue for determination, learned counsel submitted that there are a number of reasons a judgement can be set aside. This includes irregular procedure, lack of jurisdiction, fraud etc. He cited the case of ***ARQUIETETURA ENGENHARIA COMMERCIAL LTD v. SARAHA HOMES (NIG) LTD & ANOR*** where the court stated that as a general rule, courts have inherent jurisdiction to set aside their own decisions where the judgment is null and void or where there is a fundamental defect in the proceedings. In support he also cited the cases of ***APC v. NDUUL & ORS (2017) LPELR-42415 (SC)***, ***ALAO v. ACB LTD (2000) 2 SCNQR 1067***, ***SALAMI OMOKEWU & ORS v. ABRAHAM OLABANJI & ANOR (1996) 3 NWLR (Pt. 435) 126***, and ***SKEN CONSULT NIG LTD v. UKEY (1981) 1 SC 6.***

Learned counsel for the 1st defendant/applicant also cited the case of ***ALAO v. ACB LTD (2000) 9 NWLR (Pt. 672) 264***, where the court outlined five grounds for setting aside a judgment, namely:

a) When the judgment was obtained by fraud;

b) When the judgment is a nullity such as when the Court itself was not competent;

c) When the Court was misled into giving judgment under a mistaken belief that the Parties have consented to it;

d) When judgment was given without jurisdiction; and

e) Where the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication. In support he cited the cases of ***SKEN CONSULT VS UKEY (1981) 1 SC 6***; ***OJIAKO VS OGUEZE (1962) 1 ALL NCR 58; IGWE VS KALU (2002) 14 NWLR (PART 787), 435 AT 453-454***.

Learned counsel for the 1st defendant/applicant also relied on ***Order 10 Rule 11 of the Edo State High Court (Civil Procedure) Rules, 2018*** which provides as follows:

> ***"Where judgment is entered pursuant to any of the preceding rules of this Order, it shall be lawful for the court or a judge in chambers to set aside or vary such judgment upon such terms as may be just."***

He referred to ***Order 20 Rule 13 of the Edo State High Court (Civil Procedure) Rules 2018*** which also provides thus:

> ***"Any judgment by default, whether under this Order or under any order of these rules shall be final and remain valid and may only be set aside upon application to the judgment on grounds of fraud, non-service or lack of jurisdiction upon which terms as the court may deem fit."***

Learned counsel also cited ***Order 30 Rule 5(2) of the Edo State High Court (Civil Procedure) Rules, 2018.***

Furthermore, he relied on the case of ***MOHAMMED v HUSSEIN (1980) 14 NWLR (PT 584) 108 at 144*** where the Supreme Court stated as follows:

> ***"Any judgment obtained where one party does not appear at the trial may be set aside by the court upon such terms as many seem just upon an application made six days after the trial or within such long period as the court may allow for good cause of reason."***

He also cited the case of ***ISONG v UMOREN (2016) 6 NWLR (PT 1190) P. 364.***

It was the learned counsel's submission that this present case is on all fours with the case of ***MOHAMMED v HUSSEIN (supra)*** as according to him, the 1st Defendant/Applicant was never served with any Court processes and the Court processes were reportedly pasted on a purported building on the said parcel of

land in question. Learned counsel's submission was that there was no building on the parcel of land in issue, aside a dwarf fence. Therefore, the said substituted service by pasting on a building, could not have been done in the absence of the said building.

In support of his submission, learned counsel for the 1st defendant/applicant cited the case of ***MR. OSAROBO IDAHOSA & ANOR v DEG-ASIA NIGERIA COMPANY LTD & ANOR (2016) ALL FWLR (PT 830) 1325 at 1342***.

Learned counsel maintained that the 1st Defendant/Applicant absence from Court proceeding throughout the pendency of this case was occasioned by lack of service of the Writ of Summons, Statement of Claim and Hearing Notices on him. He also relied on the case of ***Mark v. Eke (2004) 5 NWLR (PT 54) 66***.

Learned counsel submitted that the service of hearing notice is a substantive issue that goes to the root of a court's jurisdiction. He also disputed the affidavit of service issued by the court bailiff in respect of the 1st defendant/applicant. He stated that the failure to serve the 1st Defendant/Applicant with the necessary process particularly the hearing notice of all the adjourned proceeding automatically rendered the whole proceedings and any decision therein a total nullity. Leaned counsel cited the case of ***OTABAIMERE v AKPORHE (2002) 4 NWLR (PT 894) 591 at 610 - 611.***

Learned counsel also relied on the case of ***NIGERIA UNIVERSAL BANK LTD. & ORS v SAMBA PETROLEUM CO. LTD (2006) LPELR 5674 at PP 25-26 PARAS C-B***.

Furthermore, learned counsel referred the Court to ***Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended)*** which provides for the right to fair hearing. He stated that the 1st defendant/applicant has the right to own immovable property and all he prays for, is an opportunity to state his own side of the story and show this Honourable Court that he, the Defendant/Applicant, is the owner of the res in question.

He also cited the case of ***UGBA & ANOR v. SUSWAM & ORS (2014) LPELR-22882(SC) Per CLARA BATA OGUNBIYI, JSC (Pp 55 – 55 Paras A – C).***

Furthermore, learned counsel submitted that the Writ of Summons was not duly issued. According to him, the Writ of Summons was signed by one G.A. Izevbigie, Esq "For" A.P. Oboh & Co.

He submitted that it is now trite law that a law firm cannot sign a court process, as it is not a legal practitioner and he cited the case of ***IDUORIYIKEMWEN & ANOR v. BERNARDS & ORS (2023) LPELR-61325(CA) Per USMAN ALHAJI MUSALE, JCA Pp 19 – 21 Paras C – B,*** where it was stated as follows:

> ***"I have gone through the cases/decisions cited by the learned counsel. The practice had remained that processes signed (particularly originating processes) in the name of firm of legal practitioners e.g. Gabs Higzy & Co. are held to be incompetent.***

He also cited a quote from the judgment by His Lordship ***JAMES GAMBO ABUNDAGA, JCA (Pp 25 – 25 Paras C – F),*** who also stated thus;

> ***"The petition from which the judgment in this appeal was delivered was signed for and on behalf of Ken E. Mozie, (SAN) & Co. The clear meaning of this is that it was signed by a non-juristic person since there is no legal practitioner named and called "Ken E. Mozie (SAN) & Co" on the roll of Barristers and Solicitors of the Supreme Court of Nigeria. See Okafor V. Nweke (2007) All FWLR (Pt. 368) P. 1016 at Pp. 18-20. Therefore, I am on the same page with my learned brother that the petition was incompetent, and was rightly dismissed."***

Learned counsel for the 1st defendant/applicant also submitted that even if the writ is found to be properly signed, the Legal Practitioner's stamp on the process is an expired stamp which does not activate the jurisdiction of this court. Also, if the court is of the opinion that the stamp be affixed, that can only be done if the judgement is set aside.

Learned counsel for the 1st defendant/applicant concluded by stating that the 1st defendant/applicant has a good defence worthy of deep consideration. He also pointed out that 1st defendant/applicant's affidavit contains particulars of fraud but sees no reason to go further into it, in light of the jurisdictional issues already raised.

In response to this application, the Claimant/Respondent filed a 9- paragraph Counter-Affidavit and a written address of counsel.

In his written address, the learned counsel for the Claimant/Respondent, ***L.O. Alenkhe, Esq.*** formulated three issues for determination as follows:

1. ***Whether the application is competent in view of the failure to pay the appropriate filing fees (default fees) and this court being functus officio***

2. ***Whether the writ of summons was properly executed and served within six calendar months from the issuance of the writ; and***

3. ***Whether there was proper service of the processes of this Honourable Court on the 1st Defendant/Applicant.***

Thereafter, the learned counsel argued the three issues seriatim.

ISSUE 1

Whether the application is competent in view of the failure to pay the appropriate filing fees (default fees) and this court being functus officio;

Arguing this first issue, learned counsel for the Claimant/Respondent submitted that the 1st Defendant's application is incompetent and this Honourable Court lacks the requisite jurisdiction to entertain same for failure to pay the appropriate filing fees.

Learned counsel to the Respondent cited ***Order 10 Rules 11 of the Edo State High Court Civil Procedure Rules 2018*** which provides that:

> ***"Where judgment is entered under any of the preceding Rules of this order, the court may on an application by the defendant set aside or vary such judgment on terms. The application shall be made within a reasonable time, showing evidence of payment of penalty, a good defence to the claim and a reasonable cause for the default.***

He also cited ***Order 30 Rule 5(3) of the Edo State High Court Civil Procedure Rules 2018*** which provides;

> ***"An application to relist a cause struck out or to set aside a judgment shall be made within 6 days after the Order or Judgment or such other longer period as the Judge may allow for a good cause shown."***

According to the learned counsel, the penalty stipulated under ***Order 45 Rules 3 of the Edo State High Court Civil Procedures Rules 2018*** is ₦200 per day. By Rules of Court and judicial decisions, the 1st Defendant/Applicant has six (6) days within which to file this application. Learned counsel submitted that this Court delivered its judgment on the 27th day of June, 2023 and the applicant

only filed this application on the 10th of December, 2024 and thereby incurred a default of one year and six months. Citing cases like ***OKOLO VS. U.B.N. LTD. (2004) 3 NWLR (PT. 850) 87*** and ***ONWUGBUFOR VS. OKOYE (1996) 1 NWLR (PT. 424) 252***, learned counsel emphasized that paying filing fees is a mandatory precondition for a court to assume jurisdiction.

The learned counsel further argued that the judgment in question was a judgment on the merit, not a default judgment, and therefore, the court, having disposed of the case, is now *functus officio* and lacks jurisdiction to revisit its own decision. He also stated that the 1st Defendant/Applicant had previously filed a similar application on December 15, 2023, which was struck out on May 27, 2024. The learned counsel's argument is that a second application is not permissible in a post-judgment scenario, and the only recourse for the 1st Defendant/Applicant should be an appeal.

Assuming, without conceding, that it was a default judgment, learned counsel for the Claimant/Respondent then referred to preconditions for setting aside such judgments, as outlined in ***WILLIAMS VS. HOPE RISING VOLUNTARY FUNDS (2001) 34 W.R.N. 171; (1982) 1 – 2 S.C. 145*** and ***DANGOTE CEMENT PLC VS. ODO (2020) 34 W.R.N. 22,*** including the reason for default, delay, potential prejudice to the Respondent, and the Applicant's conduct.

He emphasized that an applicant must demonstrate a tenable defence on the merit, citing ***S. IDUGBOE & CO. LTD. VS. MACAULAY (1976) 2 FRN 123*** and ***LASACO ASS. PLC. VS. DESERVE SAVINGS & LOANS LTD. (2012) 2 NWLR (PT. 1283) 95.***

He maintained that the 1st Defendant/Applicant's affidavit in support failed to show a tenable defence, merely mentioning a Certificate of Occupancy which the Claimant/Respondent alleges was obtained by dubious means and is subject to being set aside.

ISSUE 2

Whether the writ of summons was properly executed and served within six calendar months from the issuance of the writ.

On **Issue Two**, the learned counsel for the Claimant/Respondent submitted that the writ of summons was properly executed and served within its lifespan. He maintained that the Writ was properly signed, because G.A. Izevbigie, Esq., a duly called and registered legal practitioner, signed the writ "for and on behalf of A.P. Oboh & Co."

He distinguished this case from other cases where the processes were signed directly by law firms, which are not legal practitioners.

He also maintained that a valid stamp was affixed and that any such issue would merely be an irregularity, not a nullity and he cited the provisions of ***Order 5 Rules 2 & 3 of the Edo State High Court Civil Procedure Rules, 2018.*** Furthermore, he maintained that the Writ was served within time.

ISSUE 3

Whether there was proper service of the processes of this Honourable Court on the 1st Defendant/Applicant.

Learned counsel for the Claimant/Respondent posited that the processes were conspicuously pasted on the fence of the disputed land, as supported by a counter-affidavit and photographs.

He further argued that the Claimant/Respondent did not mislead the court in the *ex parte* application for substituted service, as the Applicant's own admission of fencing the land supports the basis for the substituted service order.

Learned counsel submitted that the 1st Defendant/Applicant was aware of the case but chose to ignore it, evidenced by the fact that the Okaeghele of the community informed the 1st Defendant/Applicant's wife about the pending case when she caused trouble on the land.

Lastly, He challenged the validity of the affidavit supporting the application to set aside the judgment, stating that it was deposed by Aisien Cynthia Ogohomwen and violates ***Section 115 of the Evidence Act 2011*** by containing extraneous matter, inferences, legal arguments, and conclusions not within her personal knowledge, thus urging the court to discountenance it.

The learned counsel for the Claimant/Respondent concluded by urging the court to dismiss the application with substantial costs.

Learned counsel to the Claimant/Respondent also submitted a list of additional authorities in support of their argument on whether affixing an expired stamp on a court process will render same invalid and liable to be struck out. In the said additional list of authorities, he referred the Court to the case of ***EMECHEBE VS. CETO INTERNATIONAL NIG. LTD. (2017) LPELR – 45365CA,*** where the court of appeal ***per Tijjani Abubakar, JCA*** held as follows:

"The originating processes were duly signed and stamped by the learned counsel for the Respondent, and a stamp of the legal practitioner affixed even though expired, in my view, there is no sufficient basis to strike out the processes, so doing in my view will amount to pushing technicalities too far".

I have carefully examined the relevant court processes in respect of the application together with the addresses of the learned counsel for the parties.

I am of the view that the sole issue for determination is: ***Whether the judgment of this Court should be set aside for lack of jurisdiction?***

It is well settled that a Court of law cannot and should not shut its eyes against an issue bordering on jurisdiction. Thus the court must consider any issue of jurisdiction regardless of the manner in which it was raised. See the case of ***GOVERNOR OF NASARAWA STATE & ORS V. SHEWAZA & ORS (2017) LPELR-44032 (CA).*** See also, ***JEV. IYORTYOM (2014) LPELR-23000(SC).***

It is settled law that a Court of law may have jurisdiction to set aside its own judgement. In ***MOHD ABUBAKAR RIMI SABON GARI MARKET CO. LTD V. OKEKE (2017) LPELR-43181 (CA) per ADEFOPE-OKOJIE, JCA (Pp. 16-17, paras. D-B)*** the court of appeal stated thus;

> ***"It is undoubted that the trial Court has jurisdiction both to enter judgement against a defaulting defendant and to set aside its judgment entered. Order 37 Rules 2 and 4 of the Kano State High Court (Civil Procedure) Rules 1988 provide as follows: (2) If, when a trial is called on the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him. (4) Any judgement obtained where one party does not appear at the trial; may be set aside by the Court upon such terms as may seem just, upon an application made within six days after the trial may be set aside by the Court upon such terms as may seem just, upon an application made within six days after the trial or within such longer***

period as the Court may allow for good cause shown. In consequence, the trial Court may set aside its judgement where good cause is shown and where the application brought within the specified period or as extended by the Court."

See also the case of ***FIRST BANK V. AKPAN & ORS (2011) LPELR-4163 (CA)***, where the court stated that,

"It is no longer in doubt that a Court of record has the power to set aside its own order made in absence of a party affected by that order. See Obimonure v. Erinosho (1966) 1NLR 250; Nwosu v. Udeaja (1990) 1 SCNJ 167. The Court will set such an order aside on the application of a party affected by it…In Mohammed v. Husseini (1998) 11-12 SC 135, it was held that unless and until the court pronounces a judgement on merit or by consent, it retains the power to set aside its own default judgement."

It is also settled that any judgement in default of pleadings or of appearance is not a final judgment on the merit or by consent but rather it is a default judgement which may the set aside by the high court in which the judgement was obtained. See the case of ***GOVERNOR OF NASARAWA STATE & ORS V. SHEWAZA & ORS (Supra).*** See also the cases of ***BELLO V. INEC (2010) LPELR-767 (SC), (2010) 8 NWLR (Pt.1196)342; MARK V. EKE (2004) 7 SC (Pt.11) 1.***

In ***INEC & ANOR V. MADUABUM (2008) LPELR-4316 (CA)***, the Court of Appeal stated as follows;

"The power to set aside a default judgment is both inherent as well as statutory. In Akinrinboya vs. Akinsola – Default judgement was defined as a judgement rendered in consequence of the non-appearance of the Defendant. It is one entered upon the failure of a party to appear or plead at the appointed time. Put differently, default judgement means judgement entered under statutes or rules of Court, for want of affidavit or defence, plea, answer and the like, or for failure to take some required step in the cause."

However, the decision to set aside such judgement obtained in default of pleadings is discretionary, and the exercise of such discretion must be judicious in accordance with extant rules of Court and settled legal principles. See the

cases of ***NIGERIAN AGRICULTURAL CO-OPERATIVE BANK LTD V. OBADIAH (2003) LPELR-7282 (CA); RABIU V. SUNMONU (2000) 4 NWLR (Pt. 704) 439.***

In ***INEC & ANOR V. MADUABUM (Supra),*** the Court of Appeal also went further to state that;

> ***"It is trite that even though a Court of law may have jurisdiction to set aside its own judgement, it can only do so where the conditions for doing so have been met by the party seeking such order to set aside. Sufficient materials must be placed before the Court for the exercise of such discretion."***

In ***SANUSI V. AYOOLA (1993) 10 LRCN 159***, the Supreme Court stated the conditions to set aside judgement as follows:

a) ***The Applicant must show good reasons for being absent at the hearing.***
b) ***The application must have been brought within the prescribed period.***
c) ***The Applicant must show an arguable defence to the action, which is not manifestly unsupportable.***
d) ***The conduct of the Applicant throughout the trial must be such as is not condemnable but deserving sympathy.***
e) ***The applicant must show that the Respondent will not suffer any prejudice or embarrassment if the Judgement is set aside.***
f) ***Whether the Judgement is tainted with fraud or irregularly obtained.***

Thus, in order for an application to set aside a judgment to succeed, the applicant must show an arguable defence which is not manifestly unsupportable. Thus, a statement of defence must be attached to the applicant's affidavit. In ***INEC & ANOR V. MADUABUM (Supra)***, the court stated thus;

> ***"A perusal of the record of proceedings and the Judgment of the trial judge showed that the Applicant failed to exhibit any proposed Statement of Defence, failed to satisfy any of the conditions that can move the Court to set aside its judgement and failed to proffer any reason for its absence. It is therefore my view that the reasoning and conclusion of the learned trial judge cannot be faulted and I hold that the learned trial judge was right in refusing the application of the Appellant to set aside the Judgement of the Court entered on 14th March 2007."***

Also, in the case of ***OGOLO V. OGOLO (2006) LPELR-2311 (SC),*** the Supreme Court restated the conditions which ought to guide a trial court in considering an application to set aside a default judgement as follows;

> ***"The crucial question which necessarily follows is: what are the relevant considerations upon which the Court relies in deciding whether or not to grant an application to set aside its judgment given in default of defence? These have been laid down by this Court in the case of Williams v. Hope Rising Voluntary Funds Society (1982) 1-2 S.C. 145 as follows:-***
>
> 1. ***The reason for the default in filing the defence.***
> 2. ***Whether there has been undue delay in making the application so as to prejudice the respondent.***
> 3. ***Whether the respondent would be prejudiced or embarrassed upon an order for rehearing being made so as to render it inequitable to permit the case to be re-opened and,***
> 4. ***Whether the applicant's case is manifestly unsupportable."***

In ***GOVERNOR OF NASARAWA STATE & ORS V. SHEWAZA & ORS (supra),*** the court stated that in determining whether the applicant's case is manifestly unsupportable, the Court would have regard to the applicant's proposed statement of defence which must be exhibited to the affidavit in support of the application to set aside the default judgment. The learned justice stated as follows;

> ***"The point has been made that a Court before which an application to set aside a default judgment is brought must determine whether the applicant's case is manifestly unsupportable; Ogolo v. Ogolo (supra). In so doing, the applicant's defence, which must be exhibited to his affidavit in support of the application to set aside the default judgement, has to be examined by the Court. The requirement that the applicant's case must not be manifestly unsupportable can only be judicially and judiciously settled when his defence is also scrutinized."***

Also in ***OGOLO V. OGOLO (Supra),*** the court stated as follows;

> ***"An applicant who fails or neglects to exhibit a proposed statement of defence to an application for an order to set aside a judgment in default of defence cannot be granted that indulgence because he must satisfy***

the Court that he has a defence on the merit before he can be allowed to defend the action."

Also, in ***ALPHA STEEL & WIRE INDUSTRIES LTD & ORS V. GTB PLC Per OJO JCA (Pp. 25-26, paras. E-D)***, the Court stated as follows;

> ***"The power of a Court of law to set aside its judgement given in default of defence is an exercise of the discretionary power of the Court which must be exercised judicially and judiciously. An applicant who files a motion on notice seeking an order to set aside a default judgement must exhibit the proposed statement of defence to the affidavit in support of the motion. The proposed defence is the material to be considered by the Court in the determination of whether or not the applicant is entitled to the discretion of the Court. An applicant for such indulgence must satisfy the Court that he has a defence on the merit. Failure to do this is fatal to the application. See OGOLO V. OGOLO (2006) 5 NWLR (PT. 972) 163; LASACO ASSURANCE PLC VS. DESERVE SAVINGS AND LOANS LIMITED (2012) 2 NWLR (PT. 1285) 95 AND INGROSS TRAKH INSURANCE CO. LTD VS. FIOGRET LIMITED & ORS (2013) LPELR-19957 (CA)."***

A look at the processes filed by the learned counsel to the 1st Defendant/Applicant shows that no Statement of Defence was attached to the 1st Defendant/Applicant's affidavit. As stated by the court in the numerous cases cited above, this failure is fatal to the 1st Defendant/Applicant's application.

On the issue of the alleged incompetence of the Writ of Summons on the ground that it was signed by the Law Firm instead of the Legal Practitioner, I have examined the said Writ of Summons and I observed that it was actually signed by a Legal Practitioner to wit: G.A. Izevbigie Esq. I do not think the mere addition of the words "For: A.P. Oboh & Co." can invalidate the Writ of Summons.

Furthermore, on the challenge based on the alleged expired stamp, in the case of ***EMECHEBE VS CETO INTERNATIONAL NIG. LTD (2017) LPELR 41260 CA***, the Court of Appeal held thus:

"The originating processes were duly signed and stamped by the learned Counsel for the Respondent, and a stamp of the legal Practitioner affixed even though expired, in my view, there is no sufficient basis to strike out the

said processes, so doing in my view will amount to pushing technicities too far. See also ***NYESOM Vs. PETERSIDE & ORS (2016) LPELR-40036 (SC) Pg. 35, Paras. B – D.***

Thus, the use of an expired stamp cannot invalidate the originating process.

From the foregoing, it is evident that the 1st Defendant/Applicant has not established any valid ground to warrant the setting aside of the judgment earlier delivered in this suit.

The sole issue for determination is therefore resolved against the 1st Defendant/Applicant.

I hold that this application lacks merit and it is dismissed with N50, 000.00 (Fifty Thousand Naira) costs in favour of the Claimant/Respondent.

Hon. Justice P.A. Akhihiero
JUDGE
11/06/2025

<u>COUNSEL:</u>

1. A.Y. Thomas, Esq.……..……..…1st Defendant/Applicant

2. L.O. Alenkhe, Esq……...……...……Claimant/Respondent

3. E.E. Akhimie, Esq ……..2nd Defendant/Respondent