

TOPIC

**SERVICE AND COMMUNICATION OF
COURT PROCESSES AND DOCUMENTS
PRACTICE AND PROCEDURE**

SPEAKER

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SERVICE AND COMMUNICATION OF COURT PROCESSES AND DOCUMENTS PRACTICE AND PROCEDURE

Court process is defined as any means used by court to acquire or exercise its jurisdiction over a person or over specific property. It is a means whereby court compels appearance of Defendant before it or a compliance with its demands. See the case of *AJIBOLA v SOGEKE* (2003) 9 NWLR (Pt 826) 494.

After the issuance of originating processes i.e. writ of summons, petition, originating summons or an originating motion, the processes must be served on the Defendant. The wisdom behind the service is to give notice to the Defendant, so that he may be aware of and be able to defend that which is sought against him.

It is pertinent to note that where service of court process is required, failure to serve is a fundamental vice which may lead to the setting aside or nullification of the proceedings in the case. Service is also a condition precedent to the exercise of jurisdiction by the court. See *EIMSKIP LIMITED v EXQUISITE INDUSTRIES (NIG) LTD* (2003) VOL. 3 NSCQR Pg 489 at 506 – 507.

Who effects court process

The duty of serving any court processes as stipulated by the various rules of court is imposed on the Sheriff, Deputy Sheriff, an officer of the court or by a person appointed by the Court/Chief

Judge. See Order 7 Rules 1 of the High Court of the Federal Capital Territory Abuja Civil Procedure, 2018 (HCCPR FCT Abuja).

In practice service is effected by officers of the court known as bailiffs who are specially appointed for that purpose. See Order 7 Rule 1 of the HCCPR, 2018.

For some special reasons the court may appoint a person as a special bailiff for the service of any particular process.

Time for Service

By the provision of Order 7 Rule 15 of the HCCPR 2018 Abuja, service of originating and other processes shall be effected between the hours of 6:00 a.m. and 6:00 p.m. provided that where service is effected after 6:00 p.m., such service will be deemed to have been effected on the next service day.

Service may be effected on any day except on a Sunday or a public holiday unless the court otherwise direct on grounds of exceptional circumstances, such an order is endorsed on the document to be served.

Note: A process served on any prohibited day may be an irregularity which can be cured by the party serving it by subsequently obtaining a deeming order to that effect. See Order 5 Rule 1(2) FCT HCCPR Abuja.

Mode of Service

There are two main ways by which a Defendant may be served an originating process:

1. Personal Service
2. Service other than personal service.

Personal Service means actual delivery of process to the person to whom it is directed or to someone authorized to receive it in his behalf. Personal Service is made by delivering to the person named therein, a copy of the summons and complaint duly certified by the Registrar as being a true copy of the originating process.

Note: Delivery of such process to such person's secretary, spouse, child or servant, agent etc. is not a personal service or good service. Also where the court orders personal service, any other service not in accord with the court order is not proper service.

It often happens that the person to be served would not or refuses to accept the process. In such a case, the process server should tell him what the document contains and then leave it as nearly as possible in his possession or control and this constitutes a valid personal service, but merely handing a process enclosed in an envelope, without telling the person being served what the content of the envelope is, does not suffice.

Apart from refusal to accept a process by the person to be served, personal service could also be frustrated by actual or threatened violence by him. To meet a situation of this nature, the rules provide that where a person to be served, alone or in concert with others, resists service or appears or threatens violence to the process server, the process server may leave the

process within the reach of person to be served, and this shall be deemed good and sufficient service. See Order 7 Rule 12 HCCPR Abuja.

Service Other than Personal Service

- (i) Service through a legal practitioner where a party is represented by legal practitioner. Service of any document may be effected on that legal practitioner. Order 7 Rule 3 HCCPR Abuja provides “No personal service of an originating process shall be required where the Defendant has authorized his legal practitioner in writing to accept service and such legal practitioner enters appearance”.
- (ii) Where the Defendant is an infant (Legal Disability). Where an infant is a Defendant to an action, service on his guardian or father shall be deemed good and sufficient personal service, unless the court otherwise orders. Provided that personal service on a minor who is over 16 years of age living independently or doing business is good and sufficient service. Order 7 Rule 5 HCCPR Abuja.
- (iii) Where person to be served is a prisoner or lunatic:
Where the person on whom service is to be effected is a prisoner or in prison; or a lunatic in an asylum, it is sufficient service to deliver the process at the prison or asylum on the head or other officer in charge of the station, facility or prison where the Defendant is.

(iv) Service on a Corporate Body:

A Corporate body herein refers to a company registered under the Companies and Allied Matters Act (CAMA) or a Statutory Corporation or a body incorporated under the law of another country.

By the provision of Section 78 of the Companies and Allied Matters Act (CAMA), a court process shall be served on a company in a manner provided by the rules of court and any other document may be served by leaving it at or sending it by post to the registered office or head office of the company. Order 7 Rule 8 HCCPR Abuja provides thus:

“Subject to any Statutory provision regulating service on a registered company, corporation or body corporate, every originating process requiring personal service may be served on a registered company, corporation or body corporate, by delivery at the head office or any other place of business of the organization within the jurisdiction of the court”

In the light of the above, it is proper service to effect service on a company at its branch office. The processes could also be served on any Director, Trustee, Secretary, or other principal officer of the corporate body or by leaving the same at its office.

(v) Service on a partnership:

Where persons are sued as partners in the name of their firm, the originating processes shall be served upon any one or more of the partners at the place of business within the

jurisdiction or upon any person having control or management of the firm.

Where partners are sued personally on behalf of the partnership, those of them named as Defendants in the writ of summons should be personally served.

Where a firm has been dissolved to the knowledge of the Claimant before the commencement of the action, the originating process shall be served upon every person within the jurisdiction sought to be made liable.

(vi) Service on Boardship:

Where the person on whom service is to be effected is living or serving on board any ship, it is sufficient service to deliver the process(es) to the person or board who is at the time of the service apparently in charge of the ship.

(vii) Service on Employee of Government:

Where a party to be served is in the service of any ministry or non-ministerial department of government or of a local government, the court may transmit the document to be served on a copy thereof to the senior officer of such ministry, department or local government in the place where the party to be served works or resides, and such officer shall cause the same to be served on the party accordingly.

(viii) Substituted Service:

The term "Substituted Service" is not limited to a specific mode of service but may take any form whereby in the particular circumstances, the issue of the process can be

appropriately brought to the notice or knowledge of the Defendant.

A Claimant can only resort to substituted service by the order of court for which he must, first of all apply.

Substituted Service can only be employed when, for any reason, a Defendant cannot be served personally with the processes within the jurisdiction of the court. For example, when the Defendant cannot be traced or when it is known that the Defendant is evading service.

It should be noted that the procedure for substituted service is not applicable to a company. See the case of *MARK v eke* (2004) 5 NWLR (Pt 865) 54.

Where it is necessary to adopt substituted service, the claimant makes an application to the court by ex-parte motion. The affidavit in support should state the grounds on which the application is based as well as the form of substituted service which is proposed.

Where an order for substituted service is made, it is desirable that the drawn up order be attached to and served with the summons, but that is not a requirement of the law as there is no such stipulation in the rules of court which makes provision for substituted service. See the case of *DICKSON v OKOI* (2003) 16 NWLR (Pt 846) 398.

By the provision of Order 7 Rule 11(2) HCCPR Abuja the following are modes of substituted service:

- (a) By delivery of the document to some adult inmate at the usual or last known place of abode or business of the person to be served.
- (b) By delivery to some person being an agent of the person to be served, or to some other person, on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or other person come to the knowledge of the person to be served.
- (c) By advertisement in the Federal Gazette or in some newspapers circulating within the jurisdiction.
- (d) By notice put up at the principal court house, or some other place of public resort in the judicial division wherein the proceeding in respect of which the service is made is instituted, or at the usual or last known place of abode or business of the person to be served.
- (e) E-mail or any other scientific device now known or later developed and courier service or any other means convenient to the court.

Provided service by e-mail is contemplated by parties in a written agreement or subsequently agreed by counsel in the course of proceedings.

Expenses of Service:

The cost of the execution of any process in a suit and other expenses incidental thereto are paid by the party requiring such execution.

Note: The Chief Judge of the State or FCT may make rule/practice procedure for expenses/cost of effecting service. Order 7 Rule 14 Abuja Rules.

Proof of Service/Certificate of Service:

Where a process has been served, it is necessary for the court to have before it evidence of that fact.

Proof of Service is needed if the Defendant fails to appear in court in response to the process after he has been served.

The process Server shall after serving any process promptly depose to and file an affidavit setting out the fact, date, time, place and mode of service, describing the process served and shall exhibit the acknowledgment of service.

Proof of Service by e-mail shall be evidenced by an affidavit with a print out of an e-mail notifier attached thereto.

Book Recording Service:

A book is kept by the Registrar in every court for recording service of process in such form as the Chief Judge may direct.

In such a book, the process server or the Registrar shall record the names of the Claimant and Defendant, the method of service and the manner used to ascertain that the right person was served. Also, where any process shall have not been duly served, the cause of failure should be stated. See Order 7 Rule 18 HCCPR Abuja.

Service out of jurisdiction:

“Out of jurisdiction” under Order 8 Rule 1 HCCPR Abuja means “Out of Nigeria”. There are two forms of service out of jurisdiction. The first one is service within Nigeria but in a State different from the one in which the writ had been issued. The other is service out of Nigeria. The requirement and mode of service in the first case are regulated by the Sheriffs and Civil Process Act (SCPA) but in the latter, the regulating provisions are contained in Rules of the respective High Courts.

As far as the Federal Courts are concerned, this situation cannot arise as every part of the country falls within their territorial jurisdiction.

Leave of the State High Court must be obtained before a writ of summons can be issued for service outside jurisdiction. If no such leave was obtained, the issuance and service of the said writ of summons will be a nullity, invalid and void. See *MITI v NNB PLC* (1997) 3 NWLR (Pt 496) 737.

Section 96 of the SCPA provides as follows:

1. A writ of summons issued out of or requiring the Defendant to appear at any court of a State may be served on the Defendant in any other State.
2. Such Service may, subject to any rules of court which may be made under this Act, be effected in the same manner

as if the writ was served on the Defendant in the State in which the writ was issued.

It is pertinent to state that where a writ of summons is to be served out of jurisdiction, the following requirements must be satisfied:

- (a) It must be endorsed by the address of the Defendant where service on him is to be effected out of jurisdiction of the trial court.
- (b) A period of not less than thirty (30) days within which the Defendant(s) shall answer to the writ of summons shall be granted to him. Section 99 SCPA.
- (c) Except where there are some statutory exemptions, the claimant must obtain leave of court of a Judge in chambers. These are fundamental requirements, breach of which affects the jurisdiction of the court. See the case of KIDA v OGUNMOLA (2006) 13 NWLR (Pt 997) 377.

The originating summons to be served is to be endorsed as follow:

“This summons (or as the case may be) is to be served out ofState and in theState”

If it is a concurrent writ i.e. one for service within the State of issue and the other outside that State, the writ in such a case should be marked as “Concurrent”.

For this form of service out of jurisdiction, no leave is required under Section 96(1) SCPA.

Note: Non-compliance with Section 97 and 99 of the SCPA is fatal: SKENCONSULT (NIG) LTD & ANOR v UKEY (1981) 1 SC1. However where the defendant participated in the proceedings, he is deemed to have waived whatever right he had under the Section. See case of EZOMO v OYAKHIRE (1983) 1 SC 1.

In the recent case of IZEZE v INEC (2018) 11 NWLR (Pt 1629) 127 the Supreme Court re-echoed the law as follows:

“Service of an originating process without endorsement as clearly stated under Section 97 (Supra) is not an irregularity. It is a fundamental defect which renders the originating process void”.

Service Outside Nigeria:

Service of a process on a Defendant outside Nigeria is valid by virtue of the provisions of the Rules of court which allow it. Service outside Nigeria is by leave of court.

The Rules of court specify the types of actions in which service of a process could be effected on a Defendant outside Nigeria. By the provision of Order 8 Rule 1 HCCPR Abuja they are as follows:

1. Where the subject matter of the action is land situate within jurisdiction.
2. Where any act, deed, will, contract, obligation or liability affecting land situate within jurisdiction is sought to be construed.

3. Where any relief is sought against any person domiciled within jurisdiction.
4. Action for administration of personal estate of a deceased who at the time of death was domiciled within the jurisdiction.
5. Action on a contract which by its terms or implication is governed by the Laws of Nigeria.
6. Action founded on a tort admitted within jurisdiction.
7. The proceedings relate to a person under legal disability.
8. The proceeding relate to Probate Matters.
9. Where any proceedings under any law or rule of court have been instituted by any originating process.

Note: Look at the various Rules of Court.

Procedure for Service out of Nigeria:

Where leave is given to serve court process in a foreign country other than a country with which a convention in that behalf has been made, the following procedure is adopted.

The document to be served is sealed with the seal of the court for use out of the jurisdiction and is transmitted to the Permanent Secretary of the State's Ministry of Justice by the Chief Registrar on direction of the Chief Judge, together with a copy thereof translated into the language of the country in which service is to be effected and with a request for the further transmission of the same to the Government of that country.

An official certificate or declaration upon oath, transmitted through the diplomatic channel by the Government or court of the foreign country to the court in Nigeria shall, provided that it certifies the document to have been personally served or to have been duly served upon the Defendant in accordance with the law of such foreign country, or in words to that effect, to deemed to be sufficient proof of such service and shall be filed of record as and be equivalent to an affidavit of service within the requirements of these provisions in that behalf.

Where service is unable to be effected, the court or judge in chamber may, upon an ex-parte application by the Claimant order substituted service of such document.

Thank you for your attention.