

SERVICE AND COMMUNICATION OF COURT PROCESS AND  
DOCUMENTS: PRACTICE AND PROCEDURE

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## **PREFACE:-**

I am immensely grateful to the Chief Judge of Niger State, Hon. Justice Mohammed Aliyu Mayaki and the National Judicial Institute for inviting me to be part of this workshop.

I want to extend my appreciation to the court Registrars, Clerks and Bailiffs all over the Federation for their relevance in our legal system and effective dispensation of justice. I wish they would appreciate their importance, otherwise we would not be here gathered. It is in appreciation of the immense role they play in the judicial system that we are gathered here today. Their roles are so vital and inevitable that any negligence or mistake in playing their role could lead to substantial miscarriage of Justice and could portend the judiciary or the judicial system in bad light. I must therefore commend the National Judicial Institute for its avid interest in our court Registrars, Clerks and Bailiffs as training them amount to training the court.

## **INTRODUCTION**

Service of Process is a fundamental issue because it is a means of summoning parties to court and it also foist jurisdiction on the court to hear a suit. It is therefore a very important aspect of jurisdiction: the service of processes is essential to ensure that a party is put on notice of the pending litigation and what stage it is. Service on a defendant or any party is for him to know the claims against him so that he may be aware of, and be able to resist it, if he so desires, that which is claimed against him.

Evidence of Proof of Service is conclusive where a bailiff deposes to an affidavit to that effect. The proof is by material fact to be placed before a court. When a question of service is in issue, it automatically touches on the jurisdiction of a court which must be satisfied on the proof there of.

An affidavit of service deposed to by the person effecting the service serves as a proof of service. It is equally necessary for the court to satisfy itself where affidavit of service is disputed. Similarly, failure to serve a process where service is required renders any order made against the party who should have been served with the process null and void.

However, as regards election petitions, it has been held in the case of NYESOM V. PETERSIDE<sup>1</sup> that paragraphs 6 - 8 of the first schedule of the Electoral Act, adequately provides for the issuance and Service of election petitions. Consequently, it is not necessary to resort to the Federal High Court (Civil Procedure) Rules or the provisions of sections 97, 98, and 99 of the sheriff's and Civil Process Act.

## CONCEPTUAL CLARIFICATION OF TERMS

Before going any furthermore will be appropriate to highlight what I will refer to as 'conceptual clarifications' of some of the key terms that will feature prominently in this presentation for us to better understand and appreciate this topic. These includes the followings:-

- a. COURT:- has been defined as:

*"a place where Justice is judicially administered or the building where the Judge or Judges convene to adjudicate disputes and administer justice."*<sup>2</sup>

Similarly in the case of Legal Practitioners Disciplinary Committee Vs. Fawehenmi 'Court' was defined:

*"as a place where justice is judicially administered or any statutory body, which has power to decide controversies and gives a binding decision."*<sup>3</sup>

- b. PROCEDURE:- is defined to be a formal or official order or way of doing things or series of actions that need to be completed in order to achieve something. Procedure is also defined:

*"as one or more methods or steps for the enforcement or administration of rights, duties, justice or laws or a particular and especially established way of doing something."*<sup>4</sup>

c. SERVICE:- is defined as:

*"the act of delivering to or informing someone of a writ, summons, or other notice as prescribed by law. Service of process is primarily the means for a court to exert personal jurisdiction over a person, some form of service as by publication of notice in a newspaper."*<sup>5</sup>

d. PROCESS:- is defined as:

*"any means used by the court to acquire or exercise its jurisdiction over a person or over specific property. It is a means whereby a court compels the appearance of a defendant before it, in compliance with its demand."*<sup>6</sup>

e. COMMUNICATION:- is also defined as:

*"the expression to another of information or thoughts through speech, writing or gestures."*<sup>7</sup>

f. DOCUMENTS:-is defined:

*"as an instrument on which is recorded by means of letters, figures, or marks, matter which may be evidentially used. In this sense the term 'document' applies to writings, words, printed, lithographed, or photographed, seals, plates or stones in which inscriptions are cut or engraved, photographs, and pictures, maps, and plans...Documents includes not merely books but any other thing on which is impressed a meaning which emanating from one party is calculated to affect the rights of another party."*<sup>8</sup>

In addition to the above definitions, let me also briefly explain the following terms namely; Registrar, Court Clerk and Bailiff respectively. This is because the relevance of the participant here today mentioned above have been emphasized by one of our former Chief Justice of Nigeria, Hon. Justice I. N. Katsina Alu, GCON at the national workshop for court Registrars and clerks in June 2011 where he said and I quote

*"...the contribution of court personel was indispensable as it would fast track the desired standard and improve in justice delivery."*<sup>9</sup>

a. REGISTRAR:- is defined:

*"as a person whose job is to keep official records especially of births, Marriages and deaths."*<sup>10</sup>

These are categories of persons who are not lawyers but are well educated and certified in other professional callings other than Law. They are usually given adequate and appropriate training on how best to handle Judicial matters and processes tailored to their schedule of duties and responsibilities. The court Registrars normally complement and synergize with our Judicial officers saddled with the responsibility of adjudication and administration in the course of performing their judicial duties on the bench.

The Registrar is to the court, what an engine is to a motor - car, considering the fact that the duties and responsibilities of a registrar is seemingly in - exhaustive as a judge cannot function effectively without the support staff of his court: There is no doubt that the duties of the Registrar commence from the moment the litigant approach the court till the very last moment when judgment delivered in court is given effect to. It is therefore his responsibility to co - ordinate the handling of all court processes such as issuance of hearing notices, warrant of arrest and summons etc.

Needless to observe that a Registrar in carrying out his duties and responsibilities should be courteous, polite and very organised and orderly. He must not be rude or disrespectful to any litigant or counsel. He should rather see himself as the image of the judiciary and should therefore be neatly dressed at all times.

b. COURT CLERKS:- The word 'clerk' is defined as a public official whose duties include keeping records or accounts. In addition, it also signify:

*"a court officer responsible for filling papers, issuing process and keeping records of court proceedings as generally specified by rule or statute."*<sup>11</sup>

He assists in serving court processes and orders, where bailiff is not readily available.

c. BAILIFFS:- is defined as:

*"a Sheriff's officer who executes writs and serves process."*<sup>12</sup>

The office of the bailiff is directly under the supervision of the Deputy/Assistant Chief Registrar, with the primary mandate to serve all court processes on litigants, from the writ

of summons to motion on notice, statement of claim and statement of defence, orders or injunctions, be it interim or interlocutory, which also extends to matters on appeal, where he is expected to undertake service of brief and other orders of the courts as the case as the may be, on the appellant or the respondent.

In discussing the subject matter of this paper “Service and Communication of Court Process and Documents: Practice and Procedure” more emphasis will be laid on the areas affecting our Court Registrars, Clerks, and Bailiffs. The nature of our legal system incorporates hierarchy of courts as is practiced by other commonwealth courts. Thus by virtue of sections 6(5) and 6(4) of the 1999 constitution of Nigeria<sup>13</sup> our court system has at its apex, Supreme Court, followed by the Court of Appeal, Federal High Court and State High Courts and Magistrate Courts respectively. It equally has indigenous courts incorporated alongside the common law Courts; namely the Customary/Area Courts and Sharia Courts as court of first instance and at appeal level. As a result of our political history and peculiar circumstances our legal system had at one time or the other tolerated some other special courts commonly referred to as ‘Tribunals’ during Military Regimes and Civil governance “court” is added as an appellation. The example of the former are: (1) Armed Robbery Tribunal. (2) Failed Bank Tribunal. (3) Election Petition Tribunal etc. whereas for the latter we have: Rent Tribunal, Anti – Corruption Court, Custom and Excise Court, Court Martial etc.

The existence of these tribunals and courts are often justified on speedy trial and quick dispensation of justice. The laws of most of these courts/tribunals have been actually integrated into our legal system.

## RATIONALE FOR RULES AND PROCEDURES

The court is perceived to have enormous power. It is often said that law is what it interprets it to be. Litigants, Lawyers and other stake holders are not spared either. Thus the need to curtail excesses has led to the creation of Laws, Rules and Procedure of Courts, more so that the court Registrars, clerks, bailiffs as well as the litigants must operate within the limits of these rules and procedures of our courts.

Every court is established by enabling law. In our legal system, courts are creation of both constitutional and local laws. Both the constitutional law and the local law individually make provisions for the rules and procedure of court it establishes. Rules of court are most often peculiar to its court. Rules of courts are arranged in orders. Courts are to operate within the confines of their rules, any proceedings in violation of these rules can be vitiated.

Over the years, stake holders in the administration of justice have been making efforts and trying to find ways and means of making proceedings in court expeditious and efficient. This objective of speedy and efficiency tally with the oft – repeated maxim “Justice delayed is Justice denied.” Rules have therefore been made, modified, amended, abandoned or repealed and new rules adopted as time or occasion demands. This culminated in the efforts, made by the Nigerian Law Reform Commission when it introduced the Uniform Civil Procedure Rules in 1987 for adoption by the High Courts in Nigeria. These rules are now in operation but with some modifications, in the various High Courts in Nigeria as we now have the new Niger State High Court Civil Procedure Rules 2018.

The importance of Court Rules and Court Procedures lies in the fact that no matter how meritorious a person's claims may be, he may fail to obtain adequate remedy or redress or no remedy at all if he fails to comply with these rules and the procedures. However, since the aim or end of these rules and procedure is the achievement of justice, the courts, especially, the Supreme Court, have cautioned, several times, on the need to follow the spirit of the rules and not the strict letters thereof. For example, in the case of U.T.C NIG. V. CHIEF J. P. PAMOTEI &ORS, Hon. Justice Belogore, JSC said:

*"Rules of procedure are made for the convenience and orderly hearing of cases in court, they are made to help the cause of justice and not to defeat justice. The rules are therefore aids to the Court and not be masters of the Court.*

*For Courts to read rules in the absolute without resource to the Justice of the cause, to my mind, will be making the courts slavish to the rules."*<sup>14</sup>

## SOURCES OF COURT RULES AND PROCEDURE

Proceedings in courts are generally classified into two, namely, Civil Proceedings and Criminal Proceedings. The rules and procedures which should be followed in civil proceedings are primarily found in the various courts civil procedures rules. In the case of Magistrates Courts, the rules would be found in the Magistrates Court Rules. The High Court (Civil Procedure) Rules are applicable to the High Courts. As has been noted earlier, the High Courts in Nigeria have adopted the Uniform Civil Procedure Rules recommended by the Nigerian Law Reform Commission in 1987. Even though some of them did introduce light modifications, the substance of the rules remain the same. In Niger State we have the High Court of Niger State Civil Procedures Rules 2018.

Civil Proceedings in the Courts of Appeal are regulated by the Court of Appeal Rules, 1987 as amended in 1984. It is now contained as a subsidiary Legislation under CAP. 62 Laws of the Federation of Nigeria, 1990. The Supreme Court Rules, applicable to the Supreme Court of Nigeria is also contained as a subsidiary Legislation to CAP. 62 Laws of the Federation of Nigeria.

Rules and Procedure Regulating Criminal Proceedings on the other hand are contained in the Criminal Procedure Act at the Federal level, Criminal Procedure Law (in the Southern States) and Criminal Procedure Code (in the Northern States). However, as a criminal matter proceeds to the appellate courts (the Court of Appeal and the Supreme Court) both the Court of Appeal Rules and the Supreme Court Rules respectively are also applicable in addition to the CPA, CPL or CPC.

Other sources of Court rules and procedures are the Matrimonial Causes Rules, the Sheriffs and Civil Process Act and Laws, the Law of Evidence and judicial decisions (or case law). In some instances, especially, in cases where specific provisions are not locally available on an issue of procedure, recourse may even be had, outside the shores of Nigeria to the Common Law Countries, like England, Canada, Australia and South Africa and United States of America.

It will now be appropriate to delve into the topic of the day proper by observing that service of court processes goes to the jurisdiction of the Court to hear a matter. Parties must as a matter of law and practice ensure that the opposing party not only receives and acknowledges service of processes but also that the service effected is proper under Nigerian Law. The power of an appellate Court to set aside the entire judgment of a lower court on the grounds of lack of proper service alone emphasizes the importance of proper service of processes in a legal proceeding.

It is equally necessary to state the critical issues to be discussed in this paper which will include persons responsible to effect service of the court processes, what constitutes proper service of court processes, service of court processes on individuals, companies, persons with legal liability as well as those relating to matrimonial causes rules.

In addition, service of court processes abroad and Service of Court processes from foreign courts, substituted services as well as service of court processes outside jurisdiction will be discussed.

Above all, the legal effect of lack of proper services and proof of service will equally be dealt with in this paper.

## SERVICE OF COURT PROCESSES

This is an area that can either make or defeat the working of a Judicial officer. Court Clerks or Court Bailiffs are expected to ensure that there is proper service of court processes on desired parties before the hearing date. You must not deceive the court through the swearing of affidavit of service when in fact such service has not been effected. It leads to miscarriage of justice as whatever decision is handed down would be reversed on appeal thus going back through the entire process again. Once it is discovered that a court Bailiff has engaged in such tale swearing of affidavit, the way out will be shown to him, and where he remains in the service, he cannot enjoy the confidence of the judicial officers he works with. In my view such person should not remain in the service because not only that they are source of irritation to the judicial officer, they do not mean well to the service.

No suit can be determined by the Court unless the summons has been served on the defendant and it's proof of service obtained.

It is not just of importance, but is of fundamental importance in procedural law that a party to a law suit appropriately notifies the other party to the case of service of any court process. Parties must as a matter of law and practice ensure that the opposing party not only receives and acknowledge service of processes but also that the service is effected properly. It has been noted in a plethora of cases that the issue of service of court processes goes to the jurisdiction of the court. In the succeeding paragraphs, the paper would examine the legal effect and proof of service. In doing this, this paper would make reference to relevant judicial and statutory authorities, which will clearly show the importance of service as simply ensuring that the existence of a suit has been fully and legally communicated to the defendant

The aim of service therefore is to give notice to the defendant of the suit against him. Once he is served he is bound by it whether he puts appearance or not. Therefore, who should effect service?

#### WHO SHOULD EFFECT SERVICE

The Procedure Rules of most states in Nigeria stipulates that service may be effected by a bailiff or other officer of court authorised by the court; a person appointed by a court to effect service; a solicitor who gives an undertaking to a Registrar receiving the process, at the time of filing, that he or his chamber shall serve the processes on the other party or his solicitor, and would also file a proof of the service effected, or service in accordance with an order of a Judge on the mode of service.

In Niger State for example, order 7 R1 provides as follows:-

1. *"Service of the originating process shall be made by a Sheriff, Deputy Sheriff, Bailiff, Special Marshall, or other officer of the court. The Chief Judge may also appoint and register any courier company or any other person to serve court process and such person shall be called process server.*

2. *Where a party is represented by a legal practitioner service of court process of which personal service is not required may be made on such legal practitioner or his Law Chambers?"<sup>15</sup>*

Similarly, by virtue of Order IV R2 of the District Courts Rules of Niger State service of processes are effected by special bailiffs.

In the same vein, by Order 6 R1 of the Federal High Court Civil Procedure Rules 2009 provides as follows:-

*"1. Service of writs of summons, notices, petitions, pleadings, orders, summonses, warrants and all other proceedings, documents or written communication of which service is required, shall be made by:-*

*(a) the sheriff or deputy sheriff, Bailiff, officer of the court; or (b), (c), (d).*

*2. Save as otherwise prescribed by any of these Rules, an originating process shall be served personally by delivering to the person to be served a copy of the document, duly certified by the Registrar as being a true copy of the original process filed, without exhibiting the original thereof."<sup>16</sup>*

It is equally important to refer to Rule 4(3) of the Federal High Court (Criminal Trials) Practice Directions 2013 which provides as follows:-

*"To ensure speedy dispensation of justice, electronic mail, E - Mail and other electronic means may be employed by the Court in order to inform counsel of urgent court and case events.*

*Provided that such notification shall be given at least forty - eight hours before the schedule Court date."<sup>17</sup>*

The provisions of the Court of Appeal Rules 2016 provides in Order 2 Rule 1 provides as follows:-

*"(a) Every Notice of Appeal shall, subject to the provisions of Order 2 Rules 7, 8, and 9, be served personally; Provided that if the Court is satisfied that the notice of appeal has in fact been communicated to the Respondent, no objection to the hearing of the appeal shall lie on the ground that the notice of appeal was not served personally.*

*(b) Except as may be otherwise provided in these Rules or in any other written law, it shall not be mandatory for notices, orders, summonses, warrants, or other processes of the Court to be served personally.*"<sup>18</sup>

Furthermore, by virtue of Order 2 R4 of the Supreme Court Civil Procedure Rules 1985 provides as follows:-

*"the Registrar of the court below shall, after the notice of appeal has been filed, cause to be served a true copy thereof upon each of the parties mentioned in the notice of Appeal. It shall not be necessary to serve any party not directly affected: provided that in criminal cases, service on the Attorney - General of the Federation or on the Attorney - General of a state (as the case may require) shall be deemed to be good and sufficient service on the respondent in a criminal appeal other than an appeal in a private prosecution.*"<sup>19</sup>

It should be noted that similarly provisions relating to service of Criminal Summons and warrant of arrest as contained in sections 49 and 58 of the Criminal Procedure Code have earlier been offered to in this paper.

#### HOW IS SERVICE EFFECTED?

Court processes are to be served on a party personally.

Service of court process as required by the law is important because in the absence of the defendant the court shall adjourn the matter until proper service has been effected. The commonest proof of Service is endorsement of the copy of the writ or by an affidavit of service by the bailiff. The bailiff shall ensure that he send the return of the service and to the court before the date of the summons. Summons validly covets one year within which it shall be delivered on the defendant. The life of the summons begins with the date of its issue and not the date suit was instituted or date summons was signed. Its life can be resuscitated by renewal after the one year period.

The C.P.A. and C.P.C. provide way through which criminal justice can be achieved after an aggrieved person or complainant has filed a complaint before a court. There are three

different ways of securing the appearance of an accused before the court that will try him. These are: by the issuance of summons, warrant of arrest, and public summons.

Issue of summons is usually preceded by a complaint laid by a complainant before a magistrate or a judge as provided in sections 77(a) and 78(a) of the C.P.A. and section 143(a) of the C.P.C. A complaint is defined as an allegation made orally or in writing to a court that any named person has committed an offence with a view of moving such court to issue a process.

However, where a warrant of arrest is sought a complaint must be in writing and on oath as provided in section 23 CPA & 143 of CPC.

A summons to appear may be issued by a court against any accused. I refer section 80 CPA and section 47 (I) CPC. Such a summons must state in writing the substance of complaint, name of the accused, the date of issue and must be in duplicate, signed by the magistrate or justice of the peace. I equally refer to section 87 CPC and section 47(2) CPC as well as sections 81 and 83 of CPA respectively.

The usual practice is that Summons should be served personally on the person summoned as provided in sections 89 (a) and section 49 (i) CPC. However, where personal service is not possible or is difficult, service of summons may be done by leaving a copy of the summons with an adult male member of the accused's family as provided by section 52 CPC. By virtue of section 49(1) of the CPC:

*"the summons shall if practicable be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons."*<sup>20</sup>

In the same vein section 58(1) of the criminal procedure code provides as follows:-

*"A warrant of arrest shall ordinarily be directed to one or more public officers or other public servants who may be authorised to make an arrest, but the court or justice of the peace issuing the warrant may, if its immediate execution is necessary and no police officer or other public servant so authorised is immediately available, direct it to any other person or persons."*<sup>21</sup>

Similarly by virtue of section 50 of the criminal procedure code:

*"Service of a summons on an incorporated company or other body corporate may be effected by service on the Secretary, local manager or other principal officer of the corporation at any office of the corporation in Northern Nigeria,"<sup>22</sup>*

In the Southern states a copy of the summons could be affixed to a conspicuous part of the premises in which the accused ordinarily resides. As contained in section 90 CPA.

However, leave of court is needed before effecting substituted service.

It should be observed that after personal service is effected, person served must acknowledge receipt by signing at the back of the duplicate. I refer to the provisions of sections 94 CPA and section 40(2) CPC. However, a person who refuses to sign such duplicate may be detained or committed to prison for 14 days as contained in section 95 CPA.

Service of summons on the defendant shall be personal which means the bailiff has to deliver the summons personally to the defendant except when the latter becomes violent, the bailiff can throw it at his feet. It is all the same considered personal. It is also a personal service when a bailiff deliver summons to an agent of a defendant carrying business within the Jurisdiction of the court even though he resides elsewhere. It is personal service of summons if delivered on the registered office of a Trade Union that is such. Similarly, summons can be served on any of the partners in a Partnership Business just like the limited liability company. While a Service on the chairman through his office personally or by registered post is good service.

Service of Court process is a precondition of vesting jurisdiction in the court. Where notice of proceedings is required, failure to notify any party is a fundamental omission which entitles the party not served and against whom any order is made in his absence to have the order set aside on the ground that a condition precedent in the exercise of jurisdiction for the making of the order has not been fulfilled.

## SERVICE OF COURT PROCESSES ON A COMPANY

The mode of service of processes on a corporate entity is different from a natural person. This is true only to the extent that the companies and Allied Matters Act specifically provides for the mode of service of processes on a company registered under the Act as in Section 78 of the companies and Allied Matters Act. which provides as follows:-

*"A court process shall be served on a company in the manner provided by the Rules of Court and any other document may be served on a company by leaving it at, or sending it by post to the registered office or head office of the company."*<sup>23</sup>

In the case of natural person, it is the Rules of Court that determine the mode of service while in the case of a corporate entity, the provisions of the companies and Allied Matters Act will have to be considered. It is therefore necessary to also refer to Rules of some of our courts to establish the fact that there exists provisions for personal service of court process on a company. The processes are deemed personally served on the company where they are delivered to a director, Secretary or other principal officer of the company.

This is legally defensible as a company is seen to act through its alter ego, the directors, and its other principal officers as stipulated by section 65 of CAMA (Companies and Allied Matters Act) 2004.

It is pertinent therefore that the provisions of the Rules of some of our courts with regard to service on companies are considered. These provisions are in the main in Pari Materia in all the Rules of Court in Nigeria. These are:-

### 1. Order 7 Rule 9 Federal Capital Territory Civil Procedure Rules Provides:-

*"Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process or other process requiring personal service, may be served on the organisation by delivering to a director, Secretary, trustee or other senior or principal or place of business of the organisation, or by leaving it at the*

*registered, principal or advertised office or place or business of the organisation within the jurisdiction.*"<sup>24</sup>

2. Order 9 Rule 7 Abia State High Court Civil Procedure Rules provides:-

*"When the suit is against a corporation or company that can sue or be sued in its name or in the name of an officer or trustee, the claim or other document may be served subject to the enactment establishing such corporation or company or under which it is registered, as the case may be, by giving the same to any director, Secretary, or other principal officer, or by leaving it at the office of the corporation or company.*"<sup>25</sup>

3. Order 11 Rule 8 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2004 provides:-

*"When a suit is against a corporate body authorised to sue and be sued in its name or in the name of an officer or trustee, the documents may be served, subject to the enactment establishing that corporation or company or under which it is registered, as the case may be, by giving the writ or documents to any director, Secretary, or other principal officer or by leaving it at the corporate office.*"<sup>26</sup>

4. Order 7 Rule 6 of the National Industrial Court Rules provides:-

*"Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process or other process requiring personal service, may be served on the organisation by delivering to a director, Secretary, trustee or other senior or principal or responsible officer of the organisation, or by leaving it at the registered, principal or at advertised office or place of business of the organisation within the jurisdiction.*"<sup>27</sup>

5. Order 7 R 10 of the Niger State High Court Civil Procedure Rules Provides 2018 provides as follows:-

*"Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process or*

*other process requiring personal service may be served on the organisation by delivering to a Director, Secretary, Trustee or other principal or senior officer of the organisation, or by leaving it at the registered, principal or advertised office or place of business of the organisation within the jurisdiction.*"<sup>28</sup>

Order 10 Rule 11 says:-

*"When the suit is against a foreign corporation or company within the meaning of section 54 of the companies and Allied Matters Act, having an office and carry on business within the jurisdiction, and such suit is limited to a cause of action arose within the jurisdiction, the originating process or other documents requiring personal service may be served on the principal officer or representative of such foreign corporation or company within the jurisdiction. Provided that where a foreign company has complied with the provisions of chapter 3 of the companies and Allied Matters Act personal service shall be effected on one of the persons authorised to accept service on behalf of the company.*"<sup>29</sup>

One of the time honored pillars upon which rest the concept of modern Justice is captured in the Latin maxim, "audi alteram partem" which when translated means "hear the other Party". This rule of natural justice ensures that equal opportunity and protection is afforded the competing interests and rights of the contending Parties. To achieve this, a party commencing a suit placed before Court for adjudication has an obligation to ensure that all Processes filed by him, in the suit, gets to the attention of the Defendant by proper service. Such is the importance of service of court processes on a defendant and failure to discharge this obligation to serve is paramount enough to rob the Court of jurisdiction to hear and determine the matter and thereby rendering as null and void all proceedings taken without service. Section 78 of CAMA is the statutory provision on the issue of service on companies/corporations and it provides thus:

*"A Court process shall be served on a company in the manner provided by the Rules of Court and any other document may be served on a company by*

*leaving it at, or sending it by post to the registered office or head office of the Company.*”<sup>30</sup>

However, it should be noted that the “Rules of Court” as contained in Section 78 of CAMA means the Rules of Court from where the court process was issued while Court process shall be served on a company in the manner provided by the Rules of Court, other documents, other than Court Processes such as letters may be served on a company by leaving it at, or sending it by post to the registered office or head office of the Company. In other words, while the mode of service of other documents is specifically provided for by Section 78 of CAMA, service of Court Processes is mandatorily subject to the provisions of the Rules of Court in the relevant jurisdiction on mode of service on a company.

It is in obvious recognition of the defective reasoning and the erroneous conclusion reached in the case of MARK v. EKE (Supra) that the same Supreme Court has now offered a cure in the recent decision in N. B. C. v. UBANI, when it rightly interpreted Section 78 of CAMA and applied Order 12 Rule 8 of the High Court of Cross River State (Civil procedure Rules) which was the relevant Rule in the case and held thus:

*“Unlike under the Act which provided that the place of service should be at the Registered or Head Office, the Rules of Court however provide that possible personal service could be effected and it does not necessarily have to be at the Registered or Head Office. The confirmation is the use of the word “giving” which signifies personal service. Service under the Rules is therefore deemed competent provided it is carried out within the jurisdiction of the court and effected on the appropriate designated officers, that is to say, Director, Secretary or other Principal Officer. The Rules of court had in the circumstance, clearly defeated the contemplation by the appellant that, service of the processes must be effected at the Registered or Head Office”.*<sup>31</sup>

It is clear from the above, that the Supreme Court has over-ruled itself and has ushered in a new legal era where service of a court process on a company in its branch office will no longer deny a Court of law the jurisdiction to properly adjudicate on the said matter.

The new decision is also commendable as it encourages dynamism and development in our jurisprudence. In recognition of the role of the Supreme Court in amending a defect in its previous judgments, the revered Justice Chukwudifu Oputa (JSC) of blessed memory puts it succinctly in the case of ADEGOKE MOTORS v. ADESANYA.

*“We are final not because we are infallible; rather we are infallible because we are final. Justices of this Court are human beings capable of erring. It will be short sighted arrogance not to accept this obvious truth. It is also true that this Court can do inestimable good through its wise decisions. Similarly, the Court can do incalculable harm through its mistakes. When therefore it appears to a learned counsel that any decision of this Court has been given per incuriam, such counsel should have the boldness and courage to ask that such a decision be over-ruled.”<sup>32</sup>*

It can therefore be concluded that Service on a company is effected by delivery of the processes at its branch office or registered office or serving its director, secretary or other principal officer of the company.

#### Service of Court Process on Persons with Legal Liability

Service on a prisoner is served on the superintendent or the head of the prison where the prisoner is kept.

Service on a lunatic is served on the superintendent or head of the asylum where the lunatic is kept.

Service on an infant is served on his father, guardian or any person whom the court may direct.

Service on a company in liquidation is served at the registered address of the company, liquidator or receiver as the case may be.

#### EFFECTING SERVICE OF PROCESSES FROM A FOREIGN COURT

Service is effected by delivering the foreign process as indicated in the order of the foreign court for leave to serve the processes in Nigeria, to the person to be served with the processes and an affidavit of service transmitted to the foreign court as prima facie proof of service of the processes.

#### EFFECTING SERVICE OF PROCESS UNDER MATRIMONIAL CAUSES RULES

Processes in matrimonial proceedings are served by a person other than a party to the proceedings but may be effected by that other person in the presence of a party. If it is impracticable for another person to effect service, a party may effect service and depose to an affidavit stating the circumstances which rendered it impracticable for another person to effect service.

Service may also be effected by serving the document on the person by post together with a form in accordance with Form 11 for acknowledging service of the document, a stamped envelope with the name of the person on whose behalf the document is being served, or the name of his legal practitioner and the address for service of that person. It may be sent as a letter to the person at the last address of the person.

Where it is impracticable to effect personal service, the court processes may be served by advertisement of the processes or by pasting them at the last known place address of the person.

#### WHAT CONSTITUTES PROPER PROOF OF SERVICE?

If the service is effected by a bailiff or other officer of the court, a completed acknowledgement form must be signed.

If effected by a solicitor, the acknowledgement of service should be attached to an affidavit of service.

If served by a courier company, the returned acknowledgements form should be duly filed.

Service on a prisoner or a lunatic is acknowledged by the head or superintendent of the prison or asylum.

Service on an infant is acknowledged by the father, guardian or any other person that received the process on behalf of the infant.

Service on a company is acknowledged by a director, secretary or other principal officer of the company.

In a matrimonial cause, if the processes were served by another person, the person shall deliver to the party proof of such service but if the person to whom service was effected refuses to acknowledge service, that other person who effected service will depose to an affidavit stating that the person refused to acknowledge service. Proper service by post shall not be deemed if the person to be served did not sign and return the acknowledgement of service form.

From the foregoing, it is clear that for service to be proper, it must be effected by the persons authorized by the rules of Court to effect service, effected in accordance with the rules of Court or other legislation regulating service of processes and there must be proof that the service was effected in accordance with the procedure provided by law.

#### THE LEGAL EFFECT OF LACK OF PROPER SERVICE AND PROOF OF SERVICE

By order 7 R14 of the Niger State Civil Procedure Rules 2018, it is provided as follows:-

1. *“After serving any process, the process server shall promptly depose to and file an affidavit setting out the facts, date, time, place and mode of service, describing the process served and shall exhibit the acknowledgement of service.*
2. *After service, the affidavit shall be prima facie proof of service.”<sup>33</sup>*

In the case of Chime V. Chime the Court of Appeal held as follows:-

*“a defect arising from a failure of service of Process is fundamental as to entitle a defendant in the proceedings as of absolute right ex debito justiae, to have the judgment vitiated and set aside.....”<sup>34</sup>*

The importance to swearing to an affidavit of service has also been reiterated in Order 6 Rule 27 of the Federal High Court Civil Procedure Rules 2009 provides as follows:-

*“In all cases where service of any writ or document has been effected by a bailiff or other officer of Court, an affidavit of service sworn to by the*

*bailiff or other officer shall, on production, without proof of signature, be prima facie evidence of service.*"<sup>35</sup>

In the same vein, in the case of ADEWUMI V. SGB, counsel for the plaintiff had informed the court that the defendant had been served with the writ and had not filed a notice of intention to defend. He urged the court to enter judgment for the plaintiff. It did so. The judgment was executed and the house sold. On Appeal, the issue of service fell for consideration. The court of Appeal, held that the trial judge merely accepted the words of counsel on service without an inquiry. It said "courts should always be too careful to verify one sided information, particularly when it relates to service of court processes, especially when the parties affected are not present when the information is offered."

The court of Appeal went on to hold that:-

*"In this case, there was no credible proof that the appellant was served with the writ of summons and other court processes in fulfillment of the condition precedent required by law to the exercise of jurisdiction of the trial court to enter judgment against the appellant as it did - it is well established that lack of service does not only affect the form but goes to the root of the matter....."*<sup>36</sup>

Thus, in the case of;

1. Uwah Printers (Nig) Ltd & ANOR V. Umoren the court held that:-

*"where service of Process is required, failure to serve is a fundamental vice and the person affected by the order but not served with the process is entitled ex debito justitiae to have the order set aside as a nullity. Such an order of nullity becomes a necessity because due service of Process is a condition sine qua non to the hearing of any suit."*<sup>37</sup>

2. In the case of TECNO NIG. LTD V. ADISA Hon justice NIKI TOBI (JSC) said:-

*"When service of Process has been effected, evidence of such should be prepared and preserved in the Registry. The way to do this is by swearing*

*to an affidavit of service and kept and preserved in the Registry as the issue of service may crop up during trial or even on Appeal.*"<sup>38</sup>

Thus, in the case of ALICE OKESUJI V. ALABI LAWAL the Supreme Court per Olatawura JSC held that;

*"the purpose of affidavit of service is to convince the court that the persons on whom the processes are to be served have been duly served. Where there is no affidavit of service and the person served with a writ or any process of court appears in court, there is no further need to insist on a proof of service.... It is common knowledge that parties inform the court of the service of writ, Subpoena, Hearing notice etc on their opponents. In such a case, without the appearance of the person allegedly served or an affidavit of service, the court should be circumspect in such a situation."*<sup>39</sup>

It is therefore clear that an affidavit of service deposed to by the bailiff of a court stating the fact, place, mode and date of service and describing the process or document served is a prima facie proof of the matter stated in the affidavit. The presumption of regularity in this regard is however rebuttable. In this wise, a defendant who intends to challenge the affidavit of service deposed to by the bailiff must file an affidavit denying service and detailing specific facts which show that he could not have been served on the date, or at the time or at the place or in the manner deposed to. It would then be for the court to determine whether or not the party complaining was indeed served accordingly. Thus, in the case of DIKE V. KAY - KAY CONSTRUCTION LTD the court held that:

*"where the service of the process evidence in the affidavit of service is disputed by the defendant the court has a duty to satisfy itself that there had in fact been service on the defendant."*<sup>40</sup>

On the other hand, in the case of Mgbenwelu V. Olumba it was held that:

*"in the absence of counter - affidavit by a party challenging the facts in the affidavit of service that he was personally served, it cannot be said that any conflict had arisen which could have made it imperative for the trial court to call for oral evidence to resolve same."*<sup>41</sup>

However, where a bailiff gives contradictory affidavits of service, the court has held that materially conflicting affidavits of service of the bailiff does not prove that the bailiff did the service of the originating process as demanded of him by law because the court, in the circumstance, cannot pick and choose which of the two affidavits to believe or disbelieve.

### SUBSTITUTED SERVICE

This is applicable whenever personal service is not practicable either due to defendant nature of business or his attitude of evading personal service. In such circumstances the plaintiff has remedy by applying to the court for a substituted service. Once the court is satisfied with reasons for the application it exercises its power and grant it by ordering a substituted service through a manner that is stated as grounds for the application. Substituted service may be done by leaving a copy of the summons or court process with an adult male member of the accused's family as provided in Section 52 of the Criminal Procedure Code. Alternatively, a copy of the summons or writ should be a fixed to a conspicuous part of the premises in which the accused or the defendant ordinarily resides as in Section 90 of the Criminal Procedure Act. This mode is also permissible under section 52 of the Criminal Procedure Code. It should be noted that leave of the court is needed before effecting substituted service. By virtue of Order 7 Rule 5 (1) of the Niger State High Court Procedure Rules 2018;

*"Where personal service of an originating process is required by these Rules or otherwise and a judge is satisfied that prompt personal service cannot be effected, the judge may upon application by the plaintiff make such order for substituted service as may seem just. It further provides Order 7 Rule 5 (2) as follows:-*

*"Every application to the judge for substituted service or for the substitution of notice for service shall be supported by an affidavit setting forth the grounds upon which the application is made."<sup>42</sup>*

Similarly by Order 6 Rule 5 of the Federal High Court Civil Procedure Rules 2009 provides as follows:-

*"Where it appears to the Court (either after or without an attempt at personal service) that for any reason personal service cannot be conveniently effected, the court may order that Service be effected either - (d) by notice put up at the principal Court - House of, or some other place of the 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 of business, of the person to be served."*<sup>43</sup>

A similar position has also been provided in Order 2 Rule 15 of the Court of Appeal Civil Procedure Rules 2016 for substituted service.

It is necessary to refer to the case of GABRIEL EKE V. KALU MARK & MAR - PRIK IND. NIG. LTD.

The facts briefly restated are that the respondents (who was the Plaintiff) brought the action under the undefended list procedure at the Aba Judicial Division of the High Court of Imo State (as it then was) in 1993, after the coming into force of the Company and Allied Matters Act, 1990 under the Imo State High Court (Civil Procedure) Rules, 1988. The 2nd defendant is a company registered in Nigeria and carrying on business in Aba. By an ex-parte motion, the respondent obtained an order for substituted service by pasting the processes on the door to the office of the 2nd Appellant (2nd defendant) at 102, School Road, Aba. The court Bailiff swore to an affidavit of service to the effect that he pasted the writ of summons on the door of the office of the 2nd Appellant.

Judgment was entered without any defence or response from the Appellants and the Respondents levied execution on the Appellants. The Appellants then applied to set aside the judgment on the ground that they were never served the originating processes of the court and that they only became aware when the respondent served the writ of execution and went on to levy execution of the judgment. The respondent filed a counter affidavit and exhibited the affidavit of service previously filed by the bailiff of the court that she Appellants were served by pasting of the court processes on the door to the premises of the 2nd Appellant. The trial judge refused to set aside the judgment on the ground that judgment given under the undefended list procedure is a final judgment on the merit and

can thus only be set aside on Appeal. On appeal to the Court of Appeal, the decision of the trial court was affirmed and the appeal was dismissed. On further appeal to the Supreme Court, the Supreme Court considered the provisions of 78 of the Companies and Allied Matters Act and the Rules of the High Court of Imo State as applicable to Abia State on the service of court process on a corporate entity.

For proper understanding, the judgment of Supreme Court is quoted extensively. The court per Musdapher, JSC (as he then was), held as follows:-

*"I am of the view that the affidavit of service by substituted means sworn to by the bailiff is not enough to prove that the 2nd Appellant was duly served with the originating summons. I cannot see the need or the necessity of making a substituted service on a corporation such as the 2nd Appellant....The need for substituted service arises because personal service cannot be effected and since personal service can only be effected on a natural or juristic persons, the procedure for substituted service cannot be made to a corporation like the 2nd Appellant herein."*<sup>44</sup>

However section 78 of CAMA states that a company will be served in the manner provided in the Rules of Court and it is not in doubt that the Rules of court provide for two modes of the service of court processes, namely:-

- a. Direct or personal service (Where personal service is impossible or impracticable or would lead to unreasonable delay) and,
- b. Service by substituted means.

It is therefore clear that there is nothing in the various Rules of Court that limit the grant of order of substituted service only to natural persons. The consideration for such a grant is that personal service could not be reasonably or practically or conveniently effected. The court will readily order substituted service so long as it is shown that by the mode sought, the processes will certainly come to the notice of the adverse party.

Let me now refer to Order 9 Rule 4 of the Abia State High Court Rules which Provides as follows:-

"Where it appears to the court (either after or without an attempt at personal service) that for any reason service cannot be conveniently effected, the court may order that service be effected either-

- 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; or
- b. By delivery thereof 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; or
- c. By advertisement in the State gazette, or in some newspaper circulating within the jurisdiction; or
- d. By notice put up at the principal court house of, or some other place or public resort in the judicial division wherein the proceedings in respect of which the service is made is instituted, or at the usual or last known place of abode or of business of the person to be served."<sup>45</sup>

In the same vein, Order 7 Rule 1(3) of the National Industrial Court Rules provides:

*"The court may direct that service of any document be dispensed with or be effected otherwise than in the manner prescribed by these Rules."*<sup>46</sup>

It is apparent from the above provisions that the rules of court provide for instances where court processes can be effected by substituted means. The rules rightly anticipate circumstances where it will be difficult to effect personal service. These difficulties are not limited to natural persons. In line with the above rules of the court I refer Order 11 R5 of the High Court of FCT Rules, Order 7 Rules 5(1) of the Lagos state High Court Rules and Order 7 Rules 5 of the Niger State High Court Civil Procedure Rules 2018 respectively.

Therefore there are instances where it is necessary to serve the company by substituted means, for example, where the Managing Director or other Directors, Secretary to the company or other Principal officers deliberately refuse to accept such processes or are evading service and the party at whose instance the service is sought to be effected does not know any "designated officer to receive official documents." Why should the processes not be pasted at the entrance to the office of

the company, advertised or sent by a reputable courier company? It is trite law that the alter egos of a company are the Directors of the company. Where therefore, service is effected on the company through its Directors, it must of necessity be seen as personal service for the legs, hands and brain of the company are the directors. It is going by the arguments so far, we firmly submit that the provisions in the various Rules of Court allowing substituted service are not limited to natural persons.

#### SERVICE OUT OF JURISDICTION

A party who wishes to serve an application outside the jurisdiction of the court must bring an application before the court supported by an affidavit stating that it has a good case and State or Country where the defendant is to be found.

Upon grant of the application, the writ to be served outside jurisdiction of a State will be endorsed thus;

**"This summons is to be served out of .....State and in .....State"**

#### **Service of court process abroad**

Upon obtaining an order for service of processes abroad, the party seeking service abroad will deliver the processes at the Court's registry stating whether it requires the processes to be served directly through diplomatic channels or through the foreign judicial authority. The documents to be served shall be under the seal of court for use out of jurisdiction and shall be forwarded to the Permanent Secretary of Foreign Affairs for transmission to the foreign country.

Nevertheless, service may be effected in accordance with a convention to which Nigeria is a member.

Which means a Service from state A to state B, that is, service outside the territorial boarding of a state. Interstate service of processes including writs of summons is regulated by sections 95 - 103 of the Sheriffs and Civil Process Act of Nigeria CAP. 189 together with the rules made there under relating to each state. The rules of the court make it mandatory to effect such service with leave of court. The practice is that application for leave is made by motion Ex - Parte supported by affidavit deposing to

facts which shall satisfy the court that there is the need for the leave to serve outside jurisdiction or among other convincing reasons. This shall be done by sending the summons in duplicate to a court in whose jurisdiction the accused is. That the court shall thereafter direct service as if it had issued the summons. On this note, let me specifically refer to section 54 of the CPC which provides as follows:-

*"A summons required to her served outside the local limits of the jurisdiction of the court or justice of the peace issuing it shall ordinarily be sent in duplicate to a court within the local limits of whose jurisdiction the person summoned resides or is, to be there served."*<sup>47</sup>

It is clear that order 6 Rule 12 (1) of the Federal High Court Civil Procedure Rules 2000 and section 98 of the Sheriff's and Civil Process Act make it mandatory for leave to be obtained before the issuance of a writ of summons involving a defendant who resides outside the jurisdiction of the writ for service outside jurisdiction of the court. Failure to comply with the provisions of Order 6 rule 12(1) of the Federal High Court Civil Procedure Rules 2000 and section 98 of the Sheriff's and Civil Process Act is fundamental vice, which goes to the issue of jurisdiction and renders the issuance of such writ void.

Furthermore, service out of jurisdiction has been provided by virtue of Order 6 Rule 13 paragraph (g) of the Federal High Court Civil Procedure Rules 2009 which provides as follows:-

*"Service out of jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge in Chambers whenever -  
(g) any person out of jurisdiction is a necessary or proper party to an action properly brought against some other party within the jurisdiction."*<sup>48</sup>

Similarly, Order 2 Rule 16(1) of the Court of Appeal Rules 2016 provides as follows:-

*"Where any person out of the jurisdiction of the Court is a necessary or proper party to an appeal before the Court and it is necessary to serve him with the notice of appeal or other document relating to the appeal, the*

*Court may allow service of the notice of appeal or such other document out of the jurisdiction.*"<sup>49</sup>

Before a writ can be served on a defendant who resides outside jurisdiction it must be so endorsed and leave of court must be obtained. Where an originating process ought to be endorsed, but was served without being so endorsed, the service of Process is voidable and can be set aside at the instance of the defendant served with the processes and who has not waived the right to do so.

However, the setting aside of the process is without prejudice to the competence of the suit as constituted. This was the decision of the court in the case of MV MSC Agada V. Nestle (supra) as well as the cases of owners MV Arabella V. N. A. I. C (2008) 11 NWLR Pt. 1097 pg 182 and Mako V. Umoh (2010) 8 NWLR pt. 1195 pg 82.

It should hastily be mentioned here that the hearing of a motion on notice in the absence of a party who has not been served will amount to lack of fair hearing.

However, it is not the duty of the court to wait for a party who is duly served with the processes of court and fails to show up. The court is free to begin hearing any matter when it is satisfied that the parties to the case were duly served with hearing notices.

Finally, let me conclude this paper by referring to Order 11 R 5(e) & (f) of the High Court of Justice FCT Rules which provides that:-

*"....the court may order that Service be effected either by: (e) E - Mail or any other scientific device now known or later developed; and (f) Courier Service or any other means convenient to the court."*<sup>50</sup>

No wonder, in the case of ENL CONSORTIUM LIMITED Vs. SHAMBILAT SHELTER (NIG) LTD it was held as follows:-

*"The point has to be made that the phone call mode of service would ordinarily be of good service so long as the party is provided the notice at least 48 hours before the scheduled court date. The regularity of service is no longer jettisoned because it was made electronically as the current Rules of Court have ensued."*<sup>51</sup>

## CONCLUSION

I have attempted in this paper to put down some thoughts on the rules and procedures of our courts as it relates to service of court processes. These duties are mostly performed by those that constitute the participants in this workshop today. It is therefore the responsibility of these staffs to have a full and proper understanding of their duties and functions as provided by the various laws setting up our courts. It is therefore pertinent for each one of you to also be acquainted with the provisions of our laws; so as to find your work easier.

Furthermore, the Registrar, Court clerks and Bailiffs are advised to acquaint themselves with modern trends relating to information technology and field of law generally. This is to enhance efficiency and of course speedy disposal of cases which are achievable through proper and timely service of court processes on litigants. We must avoid derailing of the course of justice by refusing to do our duties efficiently as provided by the law. It is indeed a fact that if processes of courts are timely and properly served on the necessary parties, then quick dispensation of justice can easily be achieved.

However, it will be inappropriate to conclude this paper without reechoing the issue of the total autonomy for the judiciary. This is because inadequate remuneration and lack of conducive atmosphere will most certainly give way to lack of motivation and open the floodgate of corruption and other vices. We must do everything possible to eradicate this and display good sense of responsibility. It is therefore incumbent on the government to ensure that judicial staff are placed in safe hands whereby their remuneration and conditions of service will be guaranteed which will greatly assist in achieving the aim of this workshop with the theme "**Towards Improving the Quality of Judicial Services in Nigeria.**"

Thank you for your patience.

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