**SERVICE OF COURT PROCESSES**

**BY**

**IKPI IKPI OTU, ESQ**

**FORMER DEPUTY CHIEF REGISTRAR**

**HIGH COURT OF CROSS RIVER STATE**

**A PAPER PRESENTED AT THE STATUTORY ANNUAL HYBRID NATIONAL WORKSHOP ON COURT SERVICES FOR FILING AND PROCESS SECTION OF THE COURTS, COURT REGISTRARS, COMMISSIONERS OF OATH, COURT CLERKS, BAILIFFS, PROCESS SERVERS, CONFIDENTIAL SECRETARIES, EXECUTIVE ASSISTANTS, PROTOCOL OFFICERS, INFORMATION DESK OFFICERS, PUBLIC RELATIONS OFFICERS, AND OTHER ADMINISTRATIVE STAFF OF THE JUDICIARY HELD AT ANDREWS OTUTU OBASEKI AUDITORIUM, NATIONAL JUDICIAL INSTITUTE, ABUJA, FEDERAL CAPITAL TERRITORY (FCT)**

 **TUESDAY, 6TH AUGUST, 2024**

**ABSTRACT**

The paper examined the subject, “Service of Court Processes” as a necessary and inevitable link in the chain of effective and efficient dispensation of Justice in Nigeria.

In Focus, are the essential staff or purveyors required to bring about the much talked about; speedy, faster and efficient Justice delivery system in Nigeria.

Also, the Court Registrars, Court Clerks, Commissioners of Oath, Bailiffs and Process Servers who are the target of this paper, are the key Staff that require training and retraining to enable them perform their duties of, service of court processes through the different modes listed herein; in Civil, Criminal, Matrimonial Proceedings, among others stipulated by the Rules of Court in force.

Therefore, the duties of these staff are indeed a key requirement for excellent and efficient performance devoid of undue influences as we march towards a Judiciary that commands the confidence of the citizenry.

**INTRODUCTION**

Service of Court Processes is an essential and necessary aspect of administration of Justice in Nigeria. Through service of court processes, a party comes to the knowledge that he has been summoned or commanded to appear in Court. For the Court to commence the hearing of a dispute or complaint or suit brought before it, the parties in dispute, whether in a civil suit or criminal charge ought to have been served with processes of Court. Therefore, service of court processes is indeed fundamental to the hearing of cases for speedy, faster, efficient and fair dispensation of Justice. Cases pending in Court may be stalled or delayed where service of court processes is lacking or absent. A Court may be reluctant or refrain from hearing a case brought before it where the parties or one of the parties have not been served processes of Court.

Where service of court processes has been made or effected on a party, the Court Officer who made the service shall depose to affidavit of service to proof that he made the service stating the date, place, time, method and mode of such service, and file the same in the Court’s case file. On the other hand, where the Officer of Court authorized to effect service of court processes could not or was unable to serve the processes, he will equally depose to and file affidavit of non-service stating the reason for his inability to serve the processes within seven days of the court processes being handed over to him.

The affidavit shall be *prima facie* proof of service or non-service. Whereupon the Court may commence hearing of the case.

However, where a Court delves into hearing a case without proof or evidence of service or non-service, the outcome of the proceedings when appealed against would be rendered null and void, and of no effect whatsoever.

**2. CONCEPTUAL FRAMEWORK.**

For a proper and better understanding and appreciation of the subject, key words and terms need clearer definition and interpretation thus:-

1. **COURT REGISTRAR**- Is responsible for the custody of Court property such as keeping of Court seal, stamps, files, among others and he acts as the Sheriff. The Court Registrar, in carrying out his duties, must be polite, cautious, responsible, respectable and descent in dressing and appearance.
2. **COMMISSIONER OF OATHS** – Is a person who is authorized to administer and witness the signing of important documents, including affidavits, declarations, attestations or affirmations. He must have subscribed to and obtained the instrument to administer Oath given in the hand of the Chief Judge or the Chief Justice.
3. **COURT CLERK**- A Court Clerk is an Officer of the Court whose responsibilities include maintaining and keeping records of a Court and Court proceedings, papers filed, issuing processes (summonses and others), preparing dockets of cases, searching files and documents, keeping exhibits, swearing the witnesses and contacting Counsels, litigants and witnesses to convey and obtain information for the Court as specified by the rules of Court and or Statutes. He shall dress responsibly and respectably and be polite in his dealings with the public.
4. **BAILIFFS AND PROCESS SERVERS** – Bailiffs are Officers of Court who enforce the decisions of Court. They are responsible for serving court processes and managing the assets and properties taken in execution of Court judgments and conduct public auction to distained goods and chattels. He shall make a declaration before a Judge or Magistrate for the district in which he exercises such authority and shall be exempt from stamp duty and liability in the cause of performing his duties. (Section 39 Sheriffs and Civil Process Law of Vol. 6 CRS, 2004). Also, process servers are special Bailiffs or Competent persons appointed by the Chief Judge or Presidents of the Court to carry out service of processes of Court in the manner the Bailiff would have done. The process server may be a company or firm so appointed subject to the provision of any Act, Law or rule regulating of such processes.
5. **SERVICE** – Is the act of delivering to or informing someone of a writ, summons, petition or other notice as prescribed by Law. Service of court processes is primarily the means by which a Court exerts personal jurisdiction over a person, a form of service by publication of notice in a Newspaper, by registered post or courier service to the address of the party or the party’s counsel or by sending to the person concerned or through the email of the person’s Counsel or any other electronic mailing provided by the parties.
6. **PROCESSES** – Is a generic term for documents filed in a Court registry in aid of the claimant and the defendant in commencing and prosecuting a case brought before a Court of law for resolution. Examples of processes are;
7. Writ of summons
8. Originating summons
9. Originating motion
10. Plaints- used in Tenancy matters
11. Petitions – in Matrimonial Causes, Election matters, among others.
12. Applications- ex-parte, interlocutory, interim, fundamental rights among others.
13. Information or Charge in criminal cases.

All these are court processes which may be filed, the prescribed fees paid, then the Registrar will date, sign and seal it with the seal of the Court and place the original copy in the Court’s case file, issue the other copies to the authorized Court Officer, example the Bailiff who will serve on the person or the party named in the process.

1. **COURT** – Is a constitutional creation as enshrined in section 6 of the constitution of the Federal Republic of Nigeria, 1999 (as Amended). The hierarchy of the Courts in Nigeria are as follows:
2. The Supreme Court of Nigeria
3. The Court of Appeal
4. The Federal High Court
5. The National Industrial Court
6. The High Court of the Federal Capital Territory
7. The High Court of a State
8. The Sharia Court of Appeal of the FCT (Federal Capital Territory), Abuja.
9. The Sharia Court of Appeal of State
10. The Customary Court of Appeal of the FCT (Federal Capital Territory), Abuja.
11. The Customary Court of Appeal of a State
12. And such other Courts as may be authorized by Law

In L.P.D.C. 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.”***

3. **SERVICE OF COURT PROCESSES IN CIVIL PROCEEDINGS**

a) Who will effect service of Court Processes (using this example); - Order 12 Rule 1 (1) of the High Court of Cross River State (Civil Procedure) Rules, 2008.

***“service of Originating process shall be made by a Sheriff, Deputy Sheriff, Bailiff, Special Marshal or other Officer of the Court. The Chief Judge may also appoint and register any law Chambers, Courier Company or any other person to serve court processes and shall be called process server.***

***When a party is represented by a Legal Practitioner, service of Court process of which a personal service is not required may be made on such Legal Practitioner or on a person under his control”.***

b) **Modes of Service of Court Processes:**

Modes of Service of Court Processes:-Originating Processes such as civil summons by;

1. **Personal service of summons** - Originating summons or Originating motion shall be served on the person named on the process except where the Defendant has authorized his legal practitioner in writing to accept service or where his legal practitioner enters appearance in court.

2. **Substituted service**: Order 12 Rule 5(1) & (2) High Court of Cross River State (Civil Procedure) Rules, 2008.

***“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 Claimant make such order for substituted service as may seem just. 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”.***

3. **Service on persons under legal disability**: Order 12 Rule 6(1) & (2) High Court of Cross River State (Civil Procedure) Rules, 2008.

“Where a person under legal disability is a defendant, service on his guardian shall be deemed good and sufficient person service, unless a Judge 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. The Judge may order that personal service on a person under legal disability shall be deemed good and sufficient”.

 4. **Service on an Employee of Government** – Order 6 Rule 6(a) & (b) of the Federal High Court (Civil Procedure) Rules, 2019.

“Party 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 and a copy to the most senior officer of the Department of Government in the judicial division or place where the party to be served works or resides or to the Local Government in whose service the party to be served is, and such officer or Local Government shall cause the same to be served on the appropriate party; or any of the armed forces, the Nigerian Police Force and any parliamentary service or any of their officers, it shall be sufficient if served on the legal unit of such a service which shall cause same to be served on the appropriate party.”

 5. **Service on Partners** – Order 6 Rule 7 of the Federal High Court (Civil Procedure) Rules, 2019. “Where partners are sued in the name of the partnership, the writ or other documents shall be served upon any of the partners, or at the principal place within the judicial division of the business of the partnership, upon any person in that place having at the time of the service the control or management of the business and the service shall be deemed good service upon the partnership.”

6. **Service on Corporation or Company** – Order 6 Rule 8 of the Federal High Court (Civil Procedure) Rules, 2019. “Where the suit is against a corporation or a company authorized to sue and be sued in its name or in the name of an offender or trustee, the writ or any other document may be served, subject to the enactment establishing that corporation or company or under which the company is registered, as the case may be, by giving the writ or document to any director, secretary, or other principal officer, or by leaving it at the office of the corporation or company.” See: NBC PLC. V. UBANI (2013) LPELR, 21902 (SC)

7. **Service on Board Ship** – Order 6 Rule 9 of the Federal High Court (Civil Procedure) Rules, 2019.

“Where the person on whose service is to be effected lives or serves on Board a ship, it shall be sufficient to deliver the writ or other document to the person on board who is at the time of the service apparently in charge of that ship”

 8. **Service on prisoners or Lunatics** - Order 6 Rule 10 of the Federal High Court (Civil Procedure) Rules, 2019. “Where the person on whom service is to be effected is a prisoner in a prison or a lunatic in an asylum, it shall be sufficient service to deliver the writ or other document to the superintendent or person appearing to be the officer in charge of the prison or asylum.”

9. **Service on Infants** - Order 6 Rule 11 of the Federal High Court (Civil Procedure) Rules, 2019.

***“Where an infant is a party to an action, it shall be deemed good personal service on the infant where the process is served on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, unless the court or a Judge in Chambers orders otherwise. The Court or Judge may order that service made or to be made on an infant personally shall be deemed good service”.***

10. **Service on Local Agent of a Principal who is out of Jurisdiction** - Order 6 Rule 12 of the Federal High Court (Civil Procedure) Rules, 2019.

***“Where service is to be made upon a person residing out of but carrying on business within the jurisdiction in his own name or under the name of a firm through an authorized agent, and the proceeding is limited to a cause of action which arose within the jurisdiction, the writ or other documents may be served by giving it to the agent, and the service shall be equivalent to personal service.”***

11. **Time of service** – Order 12 Rule 15 of the High Court (Civil Procedure) Rules, 2008. *“Service of originating and other processes, pleadings, notices, summons, orders, and documents whatsoever shall be effected at any time and on any day including public holidays.”*

12. **Service where violence is threatened** – Order 12 Rule 12 of the High Court of Cross River State (Civil Procedure) Rules, 2008.

***“Where a person to be served whether alone or in concert with others resist service or applies or threatens violence to the process server, the process server may leave the process within the reach of the person to be served and this shall be deemed good and sufficient service for all purposes.”***

13. **Service out of jurisdiction** – Order 12 Rules 18 -19 of the High Court (Civil Procedure) Rules, 2008.

“A Judge may, whenever it appears proper service of any process outside Nigeria” “Where leave is granted to serve an originating process in a foreign country with which no convention in that behalf has been made, the following procedure may be adopted:

(a)The process to be served shall be sealed with the seal of the Court for service out of Nigeria, and shall be transmitted to the Solicitor-General of the Federation by the Chief Registrar, together with a copy translated into the language of that country if not English, and with 13 a request for its further transmission to the appropriate authority in that country. The request shall be in Form 8 with such modifications or variations as circumstances may require;

(b)a party wishing to serve a process under this rule shall file a praecipe in Form 9 with such modifications or variations as circumstances may require; (c) a certificate, declaration, affidavit or other notification of due service transmitted through diplomatic channels by a court or other appropriate authority of the foreign country to the court, shall be deemed good and sufficient proof of service; (d) where a certificate, declaration, affidavit or other notification transmitted as aforesaid states that efforts to serve a process have failed, a Jude may, on an ex parte application, other substituted service whereupon the process and a copy as well as the order for substituted service shall be sealed and transmitted to the Solicitor-General of the Federation together with a request in Form 10.”

**4. SERVICE OF COURT PROCESSES IN THE NATIONAL INDUSTRIAL COURT -**

Service of Court Processes or document by this Court on any person who is a party in a case brought before the court may be done in the following ways:

1. By handing a copy of the process or document to the person or to his Counsel.
2. By leaving a copy of the process or document at the person’s residence or place or business or that of his Counsel.
3. By leaving a copy of the process or document at the person’s place of employment;
4. By sending a copy of the process or document by registered post or Courier Services to the last known address of the party or his Counsel.
5. By sending a copy of the process or document to the person or his Counsel through the email addresses or electronic mailing device provided by the parties.
6. By sending a notification of hearing notice through a telephone short message service (SMS) of the person named in the process as a party.
7. By leaving a copy of the court process at the person’s address for service or where no address for service is provided, at the registered office or principal place of business or last known address.
8. If the person is a company or corporate body, by serving a copy of the court process on a senior employee of the company or corporate body at its registered office or principal place of business.
9. If the person is a trade union or employer organization, by serving a copy of the court process on an officer or employee of the union or employer’s organization who is in charge of the main office or the trade union or employers’ organization in the time being.
10. If the person is a partnership, firm or association, by serving a copy of the court process on a person who at the time of service is in charge of the place of business of such partnership, firm or association; but if the partnership, firm or association has no place of business, by serving a copy of the court process on a partner, Owner of the firm or Chairman or Chief Executive Officer or Secretary.

**5**. **SERVICE OF COURT PROCESSES IN CRIMINAL PROCEEDINGS -**

Service of Court Processes in Criminal proceedings is governed by the Administration of Criminal Justice Act, 2015.

1. Service of Summons – Part 15 Section 122

**“A summon shall be served by a Police Officer or the Officer of the Court issuing it or other public officer or through a courier service company duly registered with the Chief Judge as a process service agent of the Court under this Act.”**

1. Normal methods of effecting service – Section 123

“The person effecting service of a summons shall deliver it on;

a). An individual, to him personally

b. A firm or corporation;

(i) To one of the partners;

(ii) to a director;

(iii) to a secretary

(iv) to the chief agent within the jurisdiction;

(v) by leaving it at the principal place of business in Nigeria of the firm or corporation;

(vi) or to any one having, at the time of service control of the business of the firm;

c. A Local Government Council, in accordance with the Local Government Act or Law;

d. The Nigeria Police Force or the office of the Inspector General of Police to Commissioner of Police of the FCT, Abuja or of the State;

e. Any Federal Government Ministry, Department or Agency to the Attorney-General of the Federation or to the Legal Department of such Ministry, Department or Agency;

f. Any state Government Ministry, Department or Agency, to the Attorney-General of the State or to the legal Department of such Ministry, Department or Agency;

g. any arm of the armed forces, to the director of legal services of the service or command concerned;

iii. Service where person summoned cannot be found – Section 124; Where service in the manner provided by section 123 (a) of this act cannot by the exercise of due diligence, be effected, the serving officer may with leave of Court, affix one of the duplicates of the summons to some conspicuous part of the premises or place in which the individual to be served ordinarily resides or works and on doing so the summons shall be deemed to have been duly served.

iv. Service on Public Officers, Section 125(1) - where a public officer is to be served with a summons, the Court issuing the summons may send it in duplicate to the officer in-charge of the department in which the person is employed for the purpose of been served on the person, if it to the court that it may be most conveniently so served. (2)- the officer in-charge of the department shall on receiving the summons, cause it to be served in the manner provided by section 123 (a) of Act and shall return the duplicate to the Court under his signature, with the endorsement required by section 115 of this Act, which signature shall be evidence of this service.

(v) Service Outside jurisdiction of Court, Section 126- where a Court issues a summons to a person outside its jurisdiction the summons shall be sent in duplicate to a Court in whose jurisdiction the person resides or works.

(vi) Person refusing to sign receipt may be arrested, section 129- a person who is required to sign a receipt on the back of a duplicate summons to the effect that he has received the summons and failed to sign the receipt may be;

(a) arrested by the person serving the summons or any other person with powers of arrest under this Act and taken before the Court which issued the summons;

(b) detained in custody or committed to prison for such time not exceeding 14 days as the Court may deem fit.

(vii) Proof of service, Section 130 - an affidavit or declaration made before a Court by the serving officer or by a witness to the service or return slip of a registered courier service company that a summons has been served and a duplicate of the summons endorsed by the person to whom it was delivered or tendered or with whom it was left is admissible in evidence and the statements made in it is deemed to be correct unless the contrary is proof.

**6. SERVICE OF COURT PROSSESES UNDER THE MATRIMONIAL CAUSES ACT-**

PART 1- Stipulates service in Nigeria and outside Nigeria.

1. Mode of service by;

(a) delivering the process or document to the person personally;

(b) serving the process or document on the person by post in accordance with rule 3 of this order;

(c) if the person has and address for service for the purpose of the proceedings, by delivering the document at that address or by posting the document as a letter to the person or his legal practitioner as the case may be;

(d) delivering the process or document at, or by addressing and posting the document as a letter to the person at the last address of the person known to the person on whose behalf the document is been served;

2. Personal service-

(i) Subject to sub rule (2) of this rule, service of a document on a person by delivering it to him personally shall not be effected by the party to proceedings on whose behalf the document is been served but may be effected by another person in the presence of that party.

(ii) Where it is impracticable to serve a person by delivering it personally by a person other than the party to proceedings, that party may effect service of the document on the person in that manner and shall state in the affidavit of service the circumstances that rendered it impracticable for another person to effect the service.

(iii) Where service of a court process or document on a person is delivered to him personally by the party on whose behalf the document is been served, that party shall obtain from the person a receipt signed by the person unless the person refuses to sign and give a receipt for the document and depose to affidavit of service of the document by him and state whether the person signed or refused to sign a receipt for the document.

3. Service by post- for the purpose of paragraph (b) of rule 1 of this order, service of a document on a person shall be effected by properly addressing and posting the document together with Form 11 (SM 11).

4. Where service effected is posted to address of service where; service is effected in accordance with paragraph (c) or (d) of rule 1 of this order by posting the same to the person or his legal practitioner, service of the document shall be deemed to have been effected on the person at the time the document is delivered at address to which it is posted.

Normal modes of effecting service of court processes apply to other courts such as Customary Court of Appeal and Sharia Court of Appeal

**7. IMPORTANCE OF SERVICE OF COURT PROCESSES -**

The service of court process such as a writ of summons on the defendant is a fundamental condition precedent to the Court’s exercise of Jurisdiction to hear and determine the suit. Any judgment or order given against a defendant without service of court process is a judgment or order given without jurisdiction and is therefore null and void. Failure to serve a process is not merely an irregularity but a fundamental defect which renders the proceedings a nullity (Okoye V. C. P. M. B. Ltd. (2008) 11 M. J. S.C 76 at 77 S.C.)

**8 PROOF OF SERVICE OF COURT PROCESSES: -**

This is the first action in the judicial process which must be done with all the exactitude. This is done by deposing to affidavit of service by the person or Court official effecting the service, setting out the fact, place, mode, date, and time of service, and, describing the processes or document served. This shall be *prima- facie* proof of the matter stated in the endorsement (Okoye V. C. P. M. B. Ltd. (2008) 11 M. J. S.C 76 at 79 S.C.)

**9. EFFECT OF NON-SERVICE OF COURT PROCESSES: -**

Where a party in a proceeding is not or was not served with Court processes, this will render the proceedings on such non- service null and void. (Tsokwa Motors Ltd. Vs. U. B. A. (2008) 2 M J S C 104 at 107 S C)

**10. CONCLUSION**.

From the discussion and thoughts shared, we have come to the conclusion that the Court Registrars, Court Clerks, Commissioners of Oath, Bailiffs and Process Servers belong to the cadre of staff who are of great value in the administration of Justice in Nigeria. Thus, you will be required to go through this paper again, as a guide for effective and efficient service delivery in your routine schedule of duties. Consequently, you are reminded that your duties are indeed the key needed to unlock a justice delivery system that is routed in confidence.

Thank you for your time.

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