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Evolving Fresh Means for Services of Writ of Summons in Nigeria

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Abstract
It is settled law that a Writ of Summons is the originating process of the court in a civil action. This is premised on the ground that due notification of the pendency of a suit to a party is a fundamental condition precedent required before a court can have competence and jurisdiction over the suit. This accords with the principle of natural justice in that the object of service of processes is to give notice to a defendant to be aware of, and be afforded opportunity to defend the suit. With particular emphasis on Writ of Summons, this paper evaluates the relevant provisions of the Sheriffs and Civil Process Act regarding the service of court processes. Based on the practice in two foreign jurisdictions- United Kingdom, and Kenya, the paper suggests a codification of the processes and the conditions precedent for the service of writs of summons to the effect that service may be effected on defendants by courier companies, law chambers, or any other person appointed by the court in so far as such companies, law chambers and persons are duly registered and accredited by the court.

Keywords: Bailiffs; Civil Process; Sheriffs; Writ of Summons

1. Introduction
Nigeria operates an adversarial system of justice administration wherein courts determine causes upon material presented by parties to a case. These proceedings are commenced by the issuance of court processes out of the registry of courts. A court process is defined as any means used by courts to acquire or exercise its jurisdiction over a person or over specific property.[1] It is a means whereby courts compel the appearance of defendants before it or a compliance with its demands.[2] Significantly, the competence of such a process is a pre-requisite for a valid and subsisting claim. Where the process fails to comply with the requirement of the law on service, the court cannot assume jurisdiction thereon. This is because jurisdiction of a court is constitutional and no court can confer jurisdiction upon itself, nor can parties by their mutual agreement also confer any jurisdiction.

A defective service of originating process cannot activate a court's jurisdiction.[3] It is therefore trite that after the issuance of a writ of summons or any originating process, proper service must be administered on the defendant to the action.[4] Without such service, the defendant may not know of being sued and the content of the claim. It is to give notice to the defendant of the claims. In the event of failure to serve a party who deserves to be served, and judgement is

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[1] See *Ajibola v Sogeke* [2003] NWLR (Pt. 826) 494
[2] ibid
[3] See *Braithwaite v Skye Bank Plc*. (2012) LPELR- 15532 (SC)
[4] *Kalu v Odili* (1992) 6 SCNJ, PT 1, 76 at 90

reached, the party concerned is entitled as a matter of right to have the order that emanated therefrom, set aside as a nullity because such a judgement would run contrary to the rules of natural justice.[1]By the provisions of the Sheriffs and Civil Process Actand the various rules of court, the service of court processes is carried out by Sheriffs, Deputy Sheriffs, Bailiffs, and other officers of court.[2]However, due to attendant difficulties (bureaucratic bottlenecks, staffing issues etc.), bailiffs and sheriffs often struggle to meet up with the demands of serving individual processes on defendants especially those outside jurisdiction.

This paper advocates for the explicit codification of the procedure and conditions precedent for the service of Writ of Summons on defendants under the Sheriffs and Civil Process Act through the expansion of the scope and category of persons authorised to carry out services of summons on defendants. The paper recommends the use of courier services, law chambers, or other persons appointed by the court for this purpose because they are well positioned to effectively notify parties of the pendency of the court processes probably more reliably than court officials.

2. The Requirement of Proper Service of Court Processes

Proper service must be effected by the persons authorized by the rules of court to effect service, accompanied with proof of service.It is trite that when a question of service is in issue, it automatically touches on the jurisdiction of a Court that must be satisfied on the proof thereof.[3] In other words, service of Court processes is a condition precedent to the exercise of jurisdiction and the absence of service or of an effective service will therefore rob the Court of jurisdiction to hear the suit before it.[4]

In stating the importance and significance of the proper service of a court process, the Supreme Court in *First Bank of Nigeria Plc. v. T.S.A. Industries Limited*[5]held that "the essence of service of process on parties in a case is to enable them to appear to prosecute and defend the case and also to ensure the appearance of the parties and those of their respective counsel in court...'' Without giving defendants the opportunity to be heard in their defense before rendering judgment against them, any judgment no matter how well considered is a nullity. This is hinged on the *audi alteram partem* principle- a fundamental concept of natural justice and the adversarial jurisprudence that Nigeria operates. It is the basis of the fair hearing clause enshrined in section 36 of the 1999 Constitution and no court of law can wish this away.[6] It is a fundamental procedure in adjudication and goes to the root of the adjudication and has the effect of rendering proceedings and subsequent judgments that have not complied, null.

Commencing court processes are to be served on a party personally. In the event of the impossibility of effecting personal service whether an attempt has been made or not, the other party may apply to court for an order to effect service by substituted means.[7] The essence of substituted service is to convey to the relevant party the notice of the pending case and the date to appear in court since it is difficult or impossible to serve him through normal service.[8] Substituted services is not limited to a specific mode of service, but could take any form whereby in the particular circumstances, the existence of the issue of process can be appropriately brought to the notice or knowledge of the defendant.

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[1]*Mbadinuju v Ezuka* (1994) 8 NWLR PT 364; *Ewinstel Nigeria ltd v Abia* (2011) LPELR-4132 (CA)
[2]S.96 Sheriffs and Civil Process Act
[3] See *Estate of Late Chief Humphery Y.I.S. Idisi v. Ecodril Nig. Ltd. & Ors* (2016) LPELR-40438 (SC)
[4] Per Ogunwumiju JCA in *IGP & Anor V. Agbinone & Ors* (2019) LPELR-46431 (CA)
[5](2010) LPELR-1283 (SC)
[6]*Okeke v Lawal and ors* (2018) LPELR- 43920 (SC)
[7]*Mohammed v Babalola* (2011) LPELR-8973 (CA)
[8]*Akeredolu v Abraham and Ors* (2018) LPELR-44067 (SC)

3. Service of Writs of Summons Under the Sheriffs and Civil Process Act

One means by which service of processes are commenced is by a Writ of Summons. It is one of the most popular originating processes of the court in a civil action.[9] The Act defines a writ of summons to include any writ or process by which a suit is commenced or of which the object is to require the appearance of any person against whom relief is sought in a suit or who is interested in resisting such relief.[10] Simply put, a writ of summons is a means issuing notification of pending suit against the defendant and ordering the defendant's appearance.[11]

The Sheriffs and Civil Process Act makes provision for the appointment and duties of sheriffs, the enforcement of judgments and orders, and the service and execution of civil process of courts throughout Nigeria. Specifically, the Act provides for the appointment for each State of the Federation and the Federal Capital Territory, Abuja, a fit and proper person to be the Sheriff for the State or for the Federal Capital Territory, Abuja.[12] Similarly, for each State of the Federation and the Federal Capital Territory, Abuja, a fit and proper person is to be appointed as the Deputy Sheriff whose role is subject to the general control and direction of the Sheriff.[13] Towards discharging these duties, the Sheriff may appoint such number of persons as bailiffs as may be necessary.[14]

By the provisions of Section 96(1) of the Act, "a writ of summon issued out of or requiring the defendant to appear at any court of a State, or the Capital Territory may be served on the defendant in any other State or the Capital Territory.'' Such service may, subject to any rules of court which may be made under the Act, be effected in the same manner as if the writ was served on the defendant in the State or the Capital Territory in which the writ was issued.[15] These rules of court emanate from the powers conferred on the Chief Judge of the Federal Capital Territory and the Chief Judge of a State by section 94 of the Sheriffs Civil Process Act. By this provision, the aforementioned persons subject to the approval of the President or Governor as the case may be, are empowered to make rules of court in respect to items specifically mentioned in clauses (a)-(s) of section 94. Amongst these items are the powers to determine the conditions precedent for the issue of any process, the issue of process to or against any person or class of persons, and anything to be done by any person in respect of the issue or execution of process.[16]

Rules of court must be prima facie obeyed.[17] They are the lubricants of the machinery of justice and they contain minute details of the various steps that a litigant is expected to take in the process of getting the court to hear and adjudicate on the various types of cases which come before it.[18] However, notwithstanding that rules of court must be obeyed, it must not be lost to courts that rules of court serve mainly as handmaids to courts in dispensing justice in our adjudicative system, and should therefore not serve as stumbling blocks in the court's way of doing substantial justice in a matter.[19] The courts have also held that "where an applicant fails

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[9] Per Nimpar, JCA in *Madam Elizabeth Ewukoya & Anor v. Tajudeen Buari& Ors* (2016) LPELR-40492, Pp. 7-8, Paras. D-A
[10] Cap S6, LFN 2004
[11] ALL FWLR CA, 1285, Para H, 2006, 321-1271
[12] S. 3
[13] S. 4
[14] S. 5
[15] S. 96 (2)
[16] S. 94
[17] *Ratnam v Cumarasamy* (1965) 1 WLR
[18] *Akanbi v Alao* (1989) 3 NWLR Pt. 108, 118 @ 136
[19] *Stowe and Anor v Benstowe and Anor* (2016) LPELR-1552 (SC)

to do an act within a stipulated period of time, he must explain away the delay to the satisfaction of the court. Where he fails to do so, no indulgence should be granted to him.''[20]

It must be noted that the concept of court rules by their very nature provides discretionary powers both to the officers responsible for making them and also the courts. This may result in contravening the concept of uniformity of the law and its practical application due to the possibility of the various states having different provisions and guidelines for the service of writ of summons. Moreover, considerations of legal certainty and predictability are an inherent part of the rule of law because equal and uniform application of the law ensures the generality of the law, equality before the law and legal certainty.[21]

Similarly, the operation of these different legal regimes could result in conflicting court decisions over disputes of a similar nature, and this can create a state of legal uncertainty likely to reduce public confidence in the judicial system, one of the essential components on the rule of law. Based on the principle of stare-decisis, it is a cardinal principle of law that an inferior court is bound by a decision of a superior court no matter how wrongly decided.[22] Following previous decisions ensures certainty and order in the judicial system. It ensures stability, removes surprises and makes the task of dispensing justice easier and less onerous.[23] This legal principle is based on the binding nature of judicial precedent as one of those rules enshrined in the decisions of the courts in Nigeria.[24]

The Supreme Court is the final appellate Court in Nigeria. Its decisions are binding on every court in the country, and by the doctrine of stare-decisis, all courts are bound to follow its decisions.[25]This highlights the need for the explicitness of the laws and procedure regarding the service of writs of summons in the Sheriffs and Civil Process Act. This will ensure that the courts do not have to regularly distinguish between cases that are of a similar nature. It must be stated however that the courts have regularly held that the doctrine of stare decisis is based, first and foremost, on the relevant likeness between two cases. Where there is no likeness, it is an idle exercise to consider whether the previous one should be followed or departed from.[26] This notwithstanding, from the perspective of ensuring uniformity and consistency of case law and with the Sheriffs and Civil Process Act being a federal legislation, it is imperative that the procedure for the service of writ of summons is explicitly stated in the Act.

4. Cross-Country Analysis

I. United Kingdom:

By its Civil Procedure Rules and Practice Directions,[27] the United Kingdom utilises service of processes via post, fax or other electronic means, and by the Courts as well.[28] The services of specialist teams of court process servers are also retained and these services follow a strict set

[20]*Isiaka and Ors v Ogundimu and Ors* (2006) LPELR-1552 (SC)
[21]<https://rm.coe.int/opinion-no-20-2017-on-the-role-of-courts-with-respect-to-the-uniform-a/16807661e3> Accessed 23/11/2021
[22]*NEPA V. Onah* (1997) LPELR-1959 (SC)
[23]*Obiuweubi v. CBN* (2011) LPELR-2185 (SC)
[24]*Odi v. Osafile* (1985) 1 N.W.L.R. p.17
[25]*Odi v Osafile*, n 30
[26]*Adisa v. Oyinwola & Ors* (2000) LPELR-186 (SC)
[27]<http://www.justice.gov.uk/courts/procedurerules/civil/rules/part06/pd_part06a#1.1> Assessed 25/11/2021
[28] Rule 8 (1) CPR

of rules and special instructions provided to them by the court.[29] The table below shows every method of service and what is deemed as effective service.[30]

Method of Service	***Deemed Date of Service***
1. First class post (or other service which provides for delivery on the next business day)	The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day or if not, the next business day.
2. Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day.
3. Delivering the document to or leaving it at a permitted address	If it is delivered to or left at the permitted address on a business day before 4.30p.m on that day; or in any other case, on the next business day after that day.
4. Fax	If the transmission of the fax is completed on a business day before 4.30p.m on that day; or in any other case, on the next business day after the day on which it was transmitted.
5. Other electronic method	If the e-mail or other electronic transmission is sent on a business day before 4.30p.m on that day; or in any other case, on the next business day after the day on which it was sent.
6. Personal service	If the document is served personally before 4.30p.m on a business day, on that day; or in any other case, on the next business day after that day.[31]

The admirable takeaway from the UK experience is the detailed manner in which every method of service is structured. This gives room for an effective delivery system.

II. Kenya:

The provisions of Order 5 of the Civil Procedure Rules of Kenya 2010governs the service of summons by providing the procedure through which a defendant maybe informed that a suit has

[29] Diem Legal is one of such process servers- <https://www.diemlegal.co.uk/services/process-server/> Accessed 30/10/2021

[30] Order 6.26 of the Civil Procedure Rules-<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part06> Accessed 13/10/2021

[31] See https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part06#6.20 (Accessed 22/11/2021)

been instituted against him or her. The Kenyan judiciary allows for the use of courier services as a means of delivering a court process. It also makes use of the services of licensed firms that work as court process servers who are chosen after thorough interviewing process.[32]

Order 5 rule 22A of the Civil Procedure Rules of Kenya 2010 specifically makes provisions for service of Court process throughinternationally registered and recognized courier services. The rule specifically provides that:

(1) Summons may be sent to the Defendant by way of registered courier service provider; service shall be effected only with the leave of the Court through an internationally registered and recognized courier service provider to the defendant's last known physical address.

(2) Service shall be deemed to have been effected when the person being served acknowledges receipt by affixing his signature on the document or on confirmation of delivery by the courier service provider.

(3) An officer of the court duly authorized to effect service shall file an Affidavit of Service attaching the way bill receipt or consignment note from the courier service provider confirming service.

(4) An affidavit of service shall be proof enough that service was made even if the person being served declines to acknowledge receipt.

Order 5 Rule 22 B and C make provisions for service through electronic mail Services and mobile-enabled messaging applications.

5. Recommendation/Conclusion

The importance of proper service of court processes cannot be overemphasised. While a case cannot be won solely by adhering to this procedure, there would be a miscarriage of justice if proper service is not effected. Towards complying with sacrosanct procedure, it is imperative that the category of persons lawfully recognised to undertake such service is expanded in line with international best practices. From the cross-country evaluation, it is noted that service of Writs of Summons may be effected on defendants by courier companies, law chambers, or any other person appointed by the court in so far as such companies, law chambers and persons are duly registered and accredited by the court.

[32]<https://www.judiciary.go.ke/licensing-of-court-process-servers-begins/> Accessed 20/11/2021