

**IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE, NIGERIA
IN THE RUMUODOMAYA MAGISTERIAL DISTRICT
HOLDEN AT RUMUODOMAYA**

**BEFORE HIS WORSHIP B.H. ABE (MRS), ESQ., SITTING AT THE CHIEF
MAGISTRATE COURT 1, RUMUODOMAYA ON FRIDAY THE 27TH DAY OF
FEBRUARY, 2026**

RMC/SCC/25/2025

BETWEEN

**MR. FRANCIS WALI
(TRADING UNDER THE NAME AND STYLE
OF DE FRANKTEX INTEGRATED SERVICES)**

}

CLAIMANT/RESPONDENT

VS

NICHOLAS ONYENWEUWA

-

DEFENDANT/APPLICANT

Matter for Ruling.

RULING

Facts

Agochi Amadi, Esq. with Lord Ikonwa, Esq. for the claimant\respondent, J. U. Eze, Esq. for the defendant/applicant.

Motion on notice adopted on the 30th January, 2026 dated 27th November, 2025, by the applicant's counsel, brought pursuant to section 36(1), 6(A) and B of 1999 Constitution of the Federal Republic of Nigeria as Amended and under the inherent jurisdiction of this Court, praying the Court for following reliefs;

1. An order to set aside the proceedings of this Honourable Court conducted on 10th November, 2025 for being without fair hearing.
2. An Order to set aside the proceedings of this Honourable Court, which were conducted on other various days of 12th and 13th days of November, 2025 for being without fair hearing.

In the alternative;

1. An order to vacate and; or set aside the order of this Honourable Court made on 13th November, 2025, which foreclosed the defendant from defending this action.
2. An order to vacate and; or set aside the order of this Honourable Court made on 12th November, 2025, which foreclosed the defendant from cross-examining the cw1, Mr. Francis Wali.

Attached is an affidavit of 20 paragraphs deposed by Hon. Nicholas Onyenweuwa, the defendant in this suit living at Success Avenue, off Happy Street, Rukpokwu, Obio/Akpor Local Government Area of Rivers State.

Wherefore the defendant deposed as follows;

That when the process of this Court was served on him he received it and shortly thereafter his illness became worse, he was taken to the village for the local drugs/treatment.

On the 20th November, 2025 after he returned, he briefed his counsel, C. C. Eze, Esq. of the process who informed him that on the 10th November, 2025, this Court took the evidence of cw1 without the defendant being served with a hearing notice, hearing notice served on him after the case on the 12th and 13th November, 2025. He was foreclosed from cross-examination of cw1 and defending this action, no hearing notice served on him before the 10th November, 2025, 12th and 13th November, 2025 proceedings.

He is entitled as of right to be served with a hearing notice, hearing done in contravention of his right to fair hearing and is liable to be set aside, constitutes an abuse of Court process, which is fundamental to this Court, which the Court is bound to consider. That the claimant's conduct is tantamount to an abuse of judicial process.

He denied being indebted to the claimant to the tune of N3,140,000.00, he exhibited proof of payments to the claimant, paid to the claimant to his account and by cash he collected by hand, it is in the interest of the Court to set aside the proceedings and allow him defend this suit.

Receipts of payments to the claimant are annexed to the motion on notice, a written address in support of the motion on notice is also attached; wherein the Issue for determination posited by the applicant's counsel is whether the applicant has placed sufficient materials by way of the supporting affidavit to warrant the grant of the reliefs sought in the motion paper?

Legal arguments

The Applicant's contention is predicated on section 36(1) of the 1999 Constitution of Nigeria as amended, the actions of the Court have led to the defendant being denied fair hearing, foreclosing him from defence; relying on cited authorities; also section 36(1) of the 1999 Constitution.

The Court wherefore is urged to vacate the order foreclosing the defendant from defending this action. Dated 27th November, 2025.

Counter affidavit in opposition to the affidavit of service filed on the 11th November, 2025, deposed by the defendant, denying receiving the hearing notice served by Mr. Chizunew Victor or any other officer of this Honourable Court.

He was not given notice of any hearing or proceeding with regard to his defence to this suit. That he did not sign the hearing notice, any signature appearing thereon does not belong to him; dated 18th December, 2025 filed same day.

The claimant/respondent filed a counter affidavit in opposition to the motion on notice filed 25th November, 2025, denying paragraphs 3 – 19 of the affidavit in support of the motion on notice. The deponent Francis Wali deposed as follows;

That the defendant was not sick, he received the processes himself but refused to appear in Court to defend himself, served via the bailiff of Court, his right of fair hearing was never infringed upon, this suit is not an abuse of Court process.

That the judgment of this Court was arrested by the defendant, he only wants to delay this matter.

Written address attached, issue for determination – whether the applicant's application is not frivolous and liable to be dismissed by the Court?

The law is that a party who has been served with a process of Court and does not appear in Court cannot turn around to complain of denial of fair hearing, relying on the cases cited therein.

The defendant was served with the originating processes and the hearing notice. Urged the Court to take judicial notice of the affidavit of service of the Court bailiff and to hold that the defendant was duly served. His application is to arrest the Court's judgment, dated 21st January, 2026.

Reply on points of law filed by the applicant filed 30th January, 2026.

The defendant filed a counter affidavit as required by law to controvert the purported service by the claimant/respondent. Proceedings conducted without service of a hearing notice nullifies the proceedings as it amounts to denial of fair hearing.

See;

1. Ecobank Nigeria Plc. vs. Kunle (2019) 10 NWLR (pt. 1679).
2. Maduka vs. Ubah (2015) 11 NWLR (pt. 1470) pg. 201 CA.

The respondent's response should be discountenanced.

Issues for determination by the Court

1. Whether the Court can grant the applications of the applicant?

2. Whether the proceedings conducted on 10th, 12th, 13th November, 2025 are liable to be set aside for lack of service of hearing notice and consequent denial of fair hearing?

COURT

It is the practice of this Court to always confirm proof of service of the Court's processes on the defendant before commencing with proceedings in the case, where there is no affidavit of service, the Court will insist that the defendant be served with the ordinary summons first before plea is taken.

I have perused via all the processes filed by both parties and counsels and authorities therein cited.

This matter commenced on the 10th November, 2025, the claimant was in Court, the defendant absent, proof of service was before the Court as seen in the affidavit of service dated 31st October, 2025 **deposed by Chizunem Victor, the bailiff of Court, an officer of the Court**, by delivering the ordinary summons to the defendant personally on the 31st October, 2025 at his address at 9am. The defendant in his affidavit averred that he received the ordinary summons but did not receive the hearing notice because he was sick and had to travel for his treatment.

On the 10th November, 2025, the Court issued a hearing notice to be served on the defendant informing him of the case coming up on the 12th November, 2025, affidavit of service before me dated 11th November, 2025, served by pasting and WhatsApp.

The Court foreclosed the defendant from defending this suit by foreclosing him from cross-examination of cw1 and entering his defence in line with the rules of the small claims Court, after verifying that the defendant was duly served with the hearing notice on the 14th November, 2025.

The Court is not duly bound to look for the defendant to bring him to Court to defend his suit, the Court is not a father Christmas, the Court decides every case justly on the preponderance of evidence before the Court, this is a small claims Court where cases are to be heard within 60days of filing of the suit. The defendant should have been more diligent and meticulous in defending this suit, for "he who comes to equity must come with clean hands"; "Equity Aids the Vigilant and not the Indolent".

Where an applicant prays the court to set aside its proceedings on the ground of lack of fair hearing due to non-service of hearing notice, the issue is fundamentally a jurisdictional issue. A decision of the Court reached without proper service is a nullity.

Whether the proceedings of this Court ought to be set aside on the ground that the Applicant was not served with a hearing notice, thereby denying him fair hearing will now be determined.

Service of hearing notices is not a procedural cosmetic; it is a condition precedent to valid adjudication.

See the Governing Principles;

(a) Constitutional Basis

Section 36(1) of the Constitution of the Federal Republic of Nigeria as amended guarantees fair hearing.

Failure to serve a hearing notice where a matter is taken in the absence of a party constitutes a breach of that right.

(b) Effect of Non-Service

The Supreme Court has consistently held that failure to serve hearing notice renders proceedings a nullity:

- Igbeke vs. Okadigbo
- Obimonure vs. Erinoshoh
- Ogunye vs. State
- Onagoruwa vs. State

The principle distilled from these authorities:

Where hearing notice is required but not served, any proceedings conducted in the absence of the party affected are null and void.

In determining valid service, the court must examine:

- The case file
- The proof of service
- Bailiff's endorsement
- Affidavit of service

Key questions to consider:

1. Was a hearing notice issued?
2. Was it served personally or by substituted means?
3. Is there an affidavit or endorsement proving service?
4. Is there evidence contradicting service?

If the record is silent or defective as to service, the presumption of regularity does not cure absence of service.

The defendant was served with the ordinary summons as submitted by him in his affidavit; see paragraph 3 of the affidavit attached to the motion on notice deposed by him, he should have contacted the Court through his counsel to inform the Court that

he will be traveling on health grounds rather than stay away and appear later at his own convenience to arrest the Court's judgment.

Service of hearing notices is fundamental to the exercise of jurisdiction. Failure thereof constitutes a denial of fair hearing and renders the proceedings a nullity.

LEGAL FRAMEWORK

1. Section 36(1) of the Constitution of the Federal Republic of Nigeria guarantees the right to fair hearing.
2. Service of hearing notice is fundamental to the exercise of judicial authority over an absent party.
3. Supreme Court authorities are settled on this principle; see the following;

Obimonure vs. Erinosh (1966 SCNLR 228) Proceedings conducted without service of notice are null and void, and liable to be set aside.

Igbeke vs. Okadigbo (2013 10 NWLR Pt1363 SC) Non-service is jurisdictional; orders/judgments made without notice are void ab initio.

Ogunye vs. State (1999 5 NWLR Pt604 SC) Absence of service invalidates proceedings even if record appears regular.

NBN Ltd vs Guthrie Nig Ltd & Anr (1993) 3 NWLR (PRT 384) P 63; the supreme Court established that where a process is not served the Court lacks jurisdiction even if the defendant enters an appearance.

Skenconsult Nig. Ltd. vs. Ukey (1981) 1 SC 6

EVALUATION OF THE RECORD

The Court has examined the file and finds: that a Hearing notice was issued and served on the Applicant; via WhatsApp and by pasting.

Proof of service appears in the file (Bailiff's endorsement / Affidavit of Service).

FINDING

Personal Service: Proper service was effected on the defendant/applicant; Applicant had the opportunity to be heard but failed to utilize it to his advantage by entering his defence, consequently No breach of fair hearing recorded, accordingly the Proceedings in this case stand.

This Court hereby orders as follows;

1. That The motion be and is hereby dismissed;
2. That The proceedings conducted commencing from the 10th November, 2025 remain valid;

3. That The matter shall proceed accordingly.
4. That There is no breach of fair hearing as contended by the applicant.
5. That This application lacks merit and is frivolous.
6. That It is thus dismissed without any punitive costs.

This shall be the Ruling of the Court

MRS. BARIYAAH .H. ABE
Chief Magistrate
27th February, 2026.

