

**IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE OF 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 MONDAY THE 22ND DAY OF  
JANUARY, 2024**

**RMC/SCC/16/2023**

***BETWEEN***

**MR. UGO KENNEDY EGBUJIE - CLAIMANT**

**VS.**

**MR. WISDOM EDI BUDU - DEFENDANT**

Matter for Ruling

Parties;

**RULING**

The Claimant claims as follows:

The defendant owes the claimant N600,000.00 (Six Hundred Thousand Naira) for two drawings from Ministry of Urban Development, Rivers State.

**Facts**

The Defendant/Applicant filed a Motion on Notice dated and filed 8/11/23 praying the Court for an Order of this Honourable Court to set aside the proceedings made in this suit for non-service of the Court processes with the leave for substituted service made by the Court, which was not complied forth with.

In his affidavit, he deposed as follows:

- That he is the Defendant/Applicant to this suit.
- That he was not served with the processes of this pending case and was not aware of the pendency of this suit against him by the Claimant/Respondent.
- That he became aware of the pendency of this case on the 26/9/23, while he received a Hearing Notice from an unknown name on his WhatsApp message page. The screenshot of the said message is attached and marked as Exhibit AA1.

- His phone got bad in July 2023 and he could not use it to make any call or send any message, he swapped his MTN Sim card to his smaller phone, and purchased a new phone on the 22/9/23, the receipt for purchase is before me as Exhibit AA2.
- After he received the Hearing Notice, he called the unnamed number, who told him that he is a Court bailiff, and that he has a Court process to serve on him, but the Defendant could not see him, as he travelled.
- He consulted with his lawyer, Barr S.O. Aburu on the 13/10/23 at Infinite Law Attorneys, Eneka Link-road.
- That when he showed the Hearing Notice to his lawyer, he requested for the originating processes, which they received from the Court bailiff on the 13/10/23.
- He hitherto realized that the Claimant/Respondent filed a Small Claims case against him on the 25/8/23 and this Court ordered the Claimant's Counsel to effect service on him by pasting at his office, but the order was not served accordingly.
- He further submitted that he has seven (7) days to file Form RSSC5 and all his processes with an order of Court required to file these processes and the Court should deem the Form RSSC5 as properly filed and served, requisite filing fees paid.

Attached are Exhibit AA1, the service from the Court bailiff via a WhatsApp message, Exhibit AA2, the receipt of the phone purchased.

Attached also is a written address dated and filed 8/11/23 and a certificate of compliance in line with S. 84(4) of the Evidence Act 2011.

The Claimant/Respondent filled a counter affidavit of 23 paragraphs in response to the Defendant's Motion on Notice, dated 21/11/23, it was submitted therein that;

1. That this suit was filed against the Defendant on the 25/8/23.
2. The bailiff called the Defendant on phone to serve him personally, but the defendant was evading service, even after giving several appointments to the bailiff.
3. The Defendant's phone was not bad, he was answering the bailiff.
4. The Court granted an order for substituted service on the 18/9/23.
5. The bailiff served by substituted means.
6. The matter was heard on the 6/10/23, after service by the bailiff of the suit.
7. The Court ordered a Hearing Notice to be served on the Defendant after foreclosing him from cross-examination of CW1 and entering his defence.
8. The bailiff served him by whatsapp message
9. Affidavits of service are all before the Court.
10. No counter affidavit challenging the affidavit of service of the bailiff
11. The Defendant wants to arrest this judgement.

12. That the application be dismissed in the interest of justice.

A written address dated 21/11/23 is also attached, where he laid out arguments in support of his affidavit.

### **Issue for determination**

Whether the Defendant is entitled to his reliefs sought, praying the Court to set aside the proceeding of this suit for failure of the Claimant to serve him with the Court's processes?

### **COURT**

An affidavit of service is prima facie proof of service. This Court always peruses via the affidavit of service before commencing with any case, this must be deposed to by the Court bailiff, where the originating processes cannot be served by the said Court bailiff, the Court bailiff is required to depose to an affidavit of non-service Form RSSC4, for the Court to grant an order of substitute service as contained in Order 7 Rules 4 (d) of the Magistrate Court (Civil Procedure) Rules 2007, See Form RSSC7.

The affidavit of service is contained in Form RSSC6. The applicant in this case submits or contends that he was not served with the Court's originating processes, he was only served with a Hearing Notice served on the 26/9/2023, he was not aware of the pendency of this suit. The Respondent/Claimant objects to this, stating that he was served with all the processes (originating) and hearing notices by the bailiff of Court, that this motion is just a ploy to arrest the Court's judgment that would have been given or delivered on the 1/11/23.

Non-service of the originating Court processes in every suit, will bring such a suit to a nullity, no matter how well the proceedings are conducted, which robs the Court of jurisdiction to hear and determine the affected case.

A summons Form, RSSC3 was filed to be served on the Defendant, dated 25/8/23.

On the 4/9/23, the Court bailiff, Gospel Utorue via an affidavit of non-service, Form RSSC4, deposed to an affidavit of non-service, stating that he attempted to serve the Defendant a summons for small claims court, but was unable to. The affidavit of non-service is before the Court.

The Court on the 18/9/23 upon the application of the Claimant's Counsel, ordered the Defendant to be served via substituted service, by pasting at the Defendant's office, along Airport Road, Close to OPM Church Headquarters, Obio/Akpor, Rivers State. The order is dated 18/9/23 before me.

The bailiff of Court on the 25/9/23, deposed to an affidavit of service of the Court's summons on the Defendant, which service was effected on the 21/9/23, at 7:16, personally, via Whatsapp and phone call. The Form is before the Court. Form RSSC6 is before me, the affidavit of service, deposed to by the Court bailiff, Gospel Utorue.

The Defendant filed a Form of admission, defence and counter claim: Form RSSC5, dated 18/10/23.

On the 6/10/23, the claimant opened his case, CW1 gave evidence, after the Court confirmed proof of service on the Defendant. The Court ordered a Hearing Notice to be served on the Defendant at the conclusion of the evidence of CW1.

The Hearing Notice was served on the 10/10/23 via Whatsapp to the Defendant's phone number. The Hearing Notice is dated 6/10/23. Proof of same was attached to the applicant's motion before me as Exhibit AA1.

Exhibit AA1 also shows that the Court bailiff served him with the Court's summons on the 25/9/23 via a Whatsapp message, the order of substituted service was also served on him the Defendant, on the 26/9/23.

These were served, that is, the summons and order for substituted service on the 25/9/23 before the commencement of hearing on the 16/10/2023.

This is cogent and sufficient proof of service on the Defendant, why then is the Defendant complaining of lack of service of the Court's processes? This is just a frivolous and unmeritorious complaint.

He clearly contradicted his contention that he was not served, by attaching Exhibit AA1, which is sufficient proof of service. His contention is clearly false, baseless and smacks of fraud, it is a ploy to indeed arrest the Court's judgment as contended by the Claimant's Counsel.

The hearing notice was served on the 10/10/23 via a Whatsapp message and personally on the Defendant, see the said Exhibit AA1, filed by the Defendant. He could have appeared before the 11/10/23, the day the Court foreclosed him from defending this suit, but he chose not to and he was foreclosed from defending this suit.

He also stated in his affidavit paragraph 3 that he became aware of the pendency of this suit on the 26/9/23, via a WhatsApp message, this is a Small Claims Court, it is valid service when done via WhatsApp message, the rules of the SCC permit service via WhatsApp message.

Why then did he not appear in Court on the 11/10/23, the day the case was called for defence? He could have appeared and prayed the Court to vacate the foreclosure order against him to enable him cross-examine CW1 and also enter his defence. The Court rightly foreclosed him from defending this suit, he rather filed his defence on the 18/10/2023.

The Defendant cannot complain of lack of fair hearing, the hearing notice is one of the legal means of getting the Defendant to attend Court and defend the suit against him, he was served with the Originating process via a WhatsApp message which is very

valid, the Order of substituted service was also served via WhatsApp message, see Exhibit AA1. See also *Nwokocha vs Imo State* (2016) 17 WRN 61 at 80.

See *Banigo vs. Gov. of Adamawa State* (2012) All FWLR (Part. 633) 1908, *Adekoya vs. Attah* (2022) LPELR 57223 CA on the validity of service of a Hearing Notice.

The relief sought by the Defendant on the grounds postulated above is hereby dismissed as being false, misleading, frivolous and unmeritorious. The Court has taken its time to lay out the timeline of the service of the Court's processes on the Defendant and has found that the Defendant was duly served with all the Court's originating processes and Hearing Notice.

Furthermore, as rightly contended by the Claimant's Counsel in his final written address, the law is settled the only way to challenge or controvert an affidavit of service is by filing a counter affidavit to that effect; See *Uko vs. Ekpenyong* (2006) 5 NWLR (Pt. 972) at 981 paras C-G.

A party or person who challenges the service of the originating processes on him must depose by law, to a counter affidavit denying the service which must contain reliable and credible facts to rebut the averments in an affidavit of service.

Failure to do so, show that the facts deposed to therein are true and the Court will prevail on same in its judgment, as the Court has done in the instant case before the Court. Oral argument to this effect will not suffice. Failure to file a counter affidavit is fatal to the case of the applicant/defendant in this case.

The applicant should have filed a counter affidavit to counter the affidavit of service of the bailiff of Court.

See *Mgbenwelu vs. Olumba* (2017) 5 NWLR (part 1558) 169 @173. Service of the writ of summons constitutes adequate notice of the case against Defendant.

In *Nwokocha's* case, the Court held that, "fair hearing means that all parties must present their cases, where a party openly delays deliberately the hearing of a case, he cannot be classified as coming within that rule." see per *Ogunbiyi JSC*.

The Court is satisfied with the proof of service entered by the Court's bailiff, Affidavit of service being prima facie proof of service, and hereby orders that the motion on notice filed by the applicant/defendant is hereby dismissed without costs.

The Court will now go ahead and read its judgment.

This is the ruling of the Court.

**MRS BARIYAAH .H. ABE**  
**Chief Magistrate**  
**22nd January, 2024.**