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A critical evaluation of the writ of summons for competent service

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Abstract
The judiciary is the arm of government saddled with the constitutional responsibility of interpreting statutes as well as the settlement of disputes among citizens publicly. This solemn duty is performed vide the court which is validly established and properly constituted by law. The jurisdiction of the court is invoked by due process of law. One of the most common modes of igniting the court's power to perform its constitutional responsibility of adjudication of controversies among disputing parties is the service of validly issued Writ of Summons on the defendant. This paper therefore critically evaluates what constitutes a competent Writ of Summons for valid service on the defendant, albeit, a Writ of Summons issued by the court to commence civil action in a manner that would not result to objection of any kind. It adopts the meta-analytical style using primary and secondary sources of law, as well as the utilization of Socratic method of expository analysis and evaluation.

Keywords: judiciary, government, competent service

Introduction
It is undoubtedly an aphorism that a Writ of Summons is the principal mode of commencement of almost all civil suits, except where it is specifically provided otherwise in a written law in force [1]. The issuance and service of Writ of Summons has often led to so many preliminary objections, challenging the competence of the Writ on the ground that a legal practitioner or claimant cum plaintiff did not sign the issued Writ of Summons before service on the defendant. The numerous objections emanating from all jurisdictions of legal practice in Nigeria is the crux and linchpin of this paper. This paper therefore critically evaluates and the legal content and form of a validly issued Writ of Summons for competent service on the defendant that would be devoid of objection.

This scholarly appreciation shall uncover the subject matter of investigation by projecting carefully selected sub themes as frontiers of lubrication of the grounds of inquiry and the objector's reasoning by unveiling also the intended outcome of the work. Such sub-themes include:

- The definition and ownership of the Writ of Summons;
- Issuance and authentication of Writ of Summons;
- Whether the Writ of Summons is a disjunctive instrument from other originating processes of the court;
- Whether the signature of a legal practitioner or claimant is contemplated for the validity and authentication of the issued of Writ of Summons;
- Espousing the actual intendment of draftsman of Order 3 Rule 12 sub-rule 3 of the Federal High Court (Civil Procedure) Rules 2009 and rule 3, of Order 6 Rule 3 of the Bayelsa State High Court Rules, 2010 which are *in pari materia* with all other High Court Rules in Nigeria; and
- Whether the endorsement of claimant's claims on the Writ of Summons is still necessary in present day civil practice and procedure of the court.

It is hoped that the objective evaluation and scrutiny of the above sub themes shall quell to the barest minimum the doubts and inquisitiveness of the objectors, who normally raise preliminary objections challenging the competence of a Writ of Summons on the premise of non-signing of the Writ of Summons by a legal practitioner or claimant/plaintiff before service on the defendant. In achieving this herculean task, we shall make references specifically to the Federal High Court (Civil Procedure) Rules 2009 as a touchstone for all Federal trial courts and the Bayelsa State High Court Rules 2010 as sample representation of all States' High Courts in the Federation. Thereafter, we shall berth at a very secured quay upon evaluation and critical consideration of all the sub-themes raised above on the merit.

The Definition and Ownership of Writ of Summons
The writ system applicable in Nigeria is of British common law in terms of form, content and application which is assimilated into the legal system as a result of protracted colonial hegemony from 1861 to 1960. The British writ system before the advent of parliamentary supremacy was of royal prerogative and exclusiveness. It was the medium through which the Monarch expresses his pleasure to the courts [2]. The utilization of the writs devolved to the Sovereign Government where exists dual heads in the British system of government, that is, the Head of State and Head of Government. Thus, the writs system and Writ of Summons are of royalty and sovereignty and never in their historical

evolution and antecedent associated with banality.

According to the Stroud's Judicial Dictionary of Words and Phrases, a writ is defined as the process by which civil proceedings in the High Court are generally commenced [3]. Summons; means to command (a person) by service of a summons to appear in court [4]. A writ of summons is used to commence every action except if a particular rule or law provides otherwise. A writ of summons is stated to be a writ by which, under the Judicature Acts of 1873-1875 all actions are commenced [5]

According to section 95 of the Sheriffs and Civil Process Act, [6] 'writ of summons' is defined 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 interested in resisting such relief.

Furthermore, a writ of summons is defined as the court's written order in the name of the State or other competent legal authority, commanding the addressee to do or refrain from doing some specific acts [7]. Again, in *Ansa v Cross Line Ltd* [8], the Court of Appeal, per *Chukwuma-Eneh*, JCA, (as he then was), held that 'A writ of summons is a means of notifying the defendant of a suit against him and ordering him to appear in court'

It would seem that none of the various definitions of a writ of summons provided above fully capture the essence of a writ of summons. A working definition of a writ of summons is therefore provided as follows:

> *A command issued by the sovereign State vide the court to a defendant to appear before a court or tribunal of competent jurisdiction within specified days to answer allegations and claims made against him and failure to do so judgement might be entered against him.*

The writ of summons issued by the court must be dated and signed by the Registrar of the court. Below is a sample of Writ of Summons as contained in all Civil Form 1, appendix to all High Court Civil Procedure Rules in Nigeria save the variation in days within which the defendant may appear before the court [9].

> *You are hereby commanded that within forty-two (42) days after the service of this writ on you, inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit of the Claimant AB. and take notice that in default of your so doing the Claimant may proceed therein, and judgement may be given in your absence.* [10]

From the above practical illustration, a writ of summons is a command of the Sovereign State issued on her behalf by the judicial arm of government vide the court to a defendant to appear before the court and failure to so do within the prescribed period attract grave consequences [11]. The only variation as previously mentioned from the various High Court Civil Procedure Rules in Nigeria is the period to enter appearance. For instance, the High Court of the Federal Capital Territory (FCT) Abuja requires eight (8) days [12], the Federal High Court of Nigeria prescribes thirty (30) days [13], the High Court of Lagos State (Civil Procedure) Rules, stipulates forty-two (42) days [14], the Bayelsa State High Court Rules entrenches forty-two (42) days [15] the Sheriffs and Civil Process Act provides thirty (30) days [16] for appearance in court. All other High Court Rules in the Federation provide either forty-two or thirty days for the defendant to appear before the court [17].

In the light of the foregoing, it is certain that a Writ of Summons is a command of the sovereign and in resonance with its historical growth, evolution and development, because a Writ of Summons is exclusively associated with royalty and sovereignty it is an instrument of the State and none other's. Therefore, the Writ of Summons is a document of the Sovereign State of the Federal Republic of Nigeria that can only be restrictively issued and authenticated by the State itself as a prerogative exclusive of its authorized agent by law and not by a mere conventional practice or idiosyncrasy of a particular people without backing of the law.

Issuance and Authentication of a Writ of Summons

It is an axiom which foundation is very difficult to fault that the Writ of Summons is an issuable instrument, in this dimension, to issue denotes giving an official or public order to someone to do an act or refrain from doing an act. According to the Chambers Dictionary [18], issuable or issuance, 'is the act of giving out, promulgation, or that which is coming up from another as a charge or bearing.' Therefore, to issue simply means to give out an official or public order to another. Authentication is the act of making valid and competent, by legalizing an issuable instrument by affixing the authorized seal and appending the legally recognised signature on the instrument for legitimacy and absolute obedience to all persons and authorities concerned.

Issuance of a Writ of Summons is the act of officially giving out the writ by the Sovereign State through the Court to be validly served on the defendant who is summoned by the plaintiff for absolute obedience, and failure to comply therewith shall definitely attract grave consequences. It is a well settled principle of law that the Writ of Summons is validly issued for competent service on the defendant immediately the Registrar affixes the official seal and appends his signature thereto. This is the law as enshrined by the provisions of Order 3 Rule (12) sub-rule (1) of the Federal High Court (Civil Procedure) Rules 2009 [19], which states that, 'The Registrar shall seal every originating process whereupon it shall be deemed to be issued.'

The requirement for the issuance and authentication of the Writ of Summons as provided by all the High Court Civil Procedure Rules in Nigeria do not include or contemplate the input of a legal practitioner or the plaintiff/claimant as the case may be. It is however, instructive to opine that the requirement for sealing and signing originating process is restrictive to the Writ of Summons alone in actual practice and strict interpretation of the adjectival law provided above and no other process. It is imperative to note that, the issue of practice and procedure canvassed herein, have received the tacit approval of both the highest in echelon and the penultimate courts in a plethora of cases. A case in point is *R.M.A.F.C v Onwuekweikpe,* [20] where it was held that, 'The power to issue the writ of summons is given to the Registrar or other officers of the court.'

The power of the courts to issue and authenticate the Writ of Summons for valid and competent service on the defendant on behalf of the Sovereign State is derived from section 6 sub-sections (1) and (2) of the Constitution [21], which provide respectively as follows:

> *The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation;* [22]
> *The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State* [23].

On the strength of the statutory and judicial authorities beamed herein the Writ of Summons is validly issued and authenticated for competent service on the defendant once the court Registrar seals or appends his signature thereto. When such prerequisites are found on the Writ of Summons, the Writ is not void, inchoate, incompetent or invalid by the singular fact that a legal practitioner or plaintiff/claimant did not sign the Writ. It must be said here that there is no legal authority whatsoever for such presumption, particularly, in view of the innocuous provision in all Civil Form 1, an appendix to all the High Court Civil Procedure Rules in Nigeria, where the designation of a legal practitioner or plaintiff/claimant is not a *sine-qua-non* for the issuance and authentication of Writ of Summons for competent service on the defendant.

The practice by some legal practitioners to sign the Writ of Summons before service on the defendant is erroneous, superfluous, meaningless and an unnecessary venture that add no value to the issued Writ. Consequently, doing the most appropriate act by not signing the Writ of Summons by a legal practitioner or plaintiff/claimant for all intents and purposes of the law and practice should never form a basis of preliminary objection as to the competence of the Writ of Summons. The courts are therefore called upon to be more responsive to the reflective equilibrium of all adjectival laws in civil practice and procedure in Nigeria by vehemently resisting such objections that are not supported by law, as it is being done in some jurisdictions of civil practice and procedure in Nigeria, particularly the Bayelsa State High Court of Southern Nigeria.

These sub themes would not be berthed on a secured quay without making comparative incursion to the twin brother of civil suits which is the issuance and authentication of the commencement mechanism of criminal actions. In criminal trial, the issuance and authentication of the mode of commencement of action is either by way of an information or charge which is brazenly provided by enactment and not by mere human mannerism and ethos. For instance, the issuance and authentication of an information for both the Federal and State courts are provided in sections 174 and 211 of the Constitution [24] respectively, whereas that of a charge is provided in section 78 (b) of the Criminal Procedure Act [25] and many other enactments. Specifically, section 174 subsection (1) paragraph (a) of the Constitution [26] for the Federal courts provides:

> *The Attorney-General of the Federation shall have the power- to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly.*

For clarity of purpose, section 78 (b) of the Criminal procedure Act [27] *provides:*

> *Where proceedings are instituted in a magistrate's court, they may be instituted in either of the following ways- by bringing a person arrested without a warrant before the court upon a charge contained in a charge sheet specifying the name and occupation of the person charged, the charge against him and the time and place where the offence is alleged to have been committed; and the charge sheet shall be signed by the police officer in charge of the case.*

It is apparent that criminal proceedings are instituted vide the agents of the State, it therefore cannot be seen why the procedure for commencement of civil suits should be an exception which could be subjected to the whims and caprices of normative elements of a selected few.

Is the Writ of Summons a Disjunctive Instrument from Other Originating Processes of the Court?

The Writ of Summons is the principal originating process wherein-upon all other originating processes derived their lives. Just as the Constitution is the principal Act [28] of legislation wherein every other law stemmed from, so is the Writ of Summons for other originating processes of the court. By the provisions of Order 3 Rule 3 of the Federal High Court (Civil Procedure) Rules 2009 [29],

> *All civil proceedings commenced by writ of summons shall be accompanied by:*
> *(a) statement of claim;*
> *(b) copies of every document to be relied on at the trial;*
> *(c) list of non-documentary exhibits;*
> *(d) list of witnesses to be called at the trial; and*
> *(e) written statements on oath of the witnesses.*

By this arrangement of the procedural law stated above, there is a distinctive element of the Writ of Summons from other originating processes of the court. The Writ of Summons is always separated and disjunctive from other originating processes prepared by the claimant or his legal practitioner. All other processes are subordinate to the Writ of Summons because they cannot stand on their own without a Writ being issued. The Writ of Summons is a single document issuable by the State alone to be served on the defendant. Therefore, the Writ of Summons is an independent, separable and disjunctive instrument from other processes of the court that stand distinctively from others.

Is the Signature of a Legal Practitioner or Claimant Contemplated in the Authentication of a Writ of Summons?

In line with the foregoing evaluation of a writ of summons, it is imperative to note that all the procedural laws in Nigeria

have very close similarity and resemblance save on the arrangement of orders and rules. There is yet to be seen any provision which indicates contemplation of any sort, that a legal practitioner or plaintiff should authenticate the Writ of Summons before service on the defendant. If it is so required, the law which never works in gloves by concealing its intention would have expressly provided for such application and utilization by all and sundry without fear or favour. It is also contended that if the rules of court had in its contemplation, a plaintiff or legal practitioner's signature on the Writ of Summons, the model Civil Form 1 would have so provided, but this certainly is not the case, because it is only the column for the Registrar's signature that is conspicuously displayed on the Form, and no other designation is contained therein.

Further credence to the present writers' position is the sample concrete Civil Forms which are found in the appendix to all High Court Civil Procedure Rules in Nigeria which specifically names officers and designations who shall endorse each Civil Form for its authentication. The use of schedules, tables, forms, side notes, explanatory notes and marginal notes as veritable tools in the interpretation of provisions in the body of statutes was endorsed by the Supreme Court of Nigeria in, *Buhari v Yusuf* [30], citing with approval the case of *F.C.S.C v Laoye* [31], per Edozie, JSC., held:

> *That Schedules, Tables and Forms are useful in the interpretation of provisions in the body of a statute. In cases of ambiguity, they become useful handmaid to interpretation.*

Practical illustration using the Bayelsa State High Court Rules 2010 [32] as a sample representation of all Civil Procedure Rules in Nigeria, to substantiate the sound proposition of law wherein it entrenched as follows: Forms 1, 2, 12, 17^{A}, and 18^{A} are to be signed by the Registrar; Forms 8, 13, 15, 16, 19, 23, 41 and 43 are provided to be signed by a legal practitioner or the claimant; Forms 22, 27, 28, 29, 38, 39 and 42 are to be signed by the presiding Judge; Forms 7, 9, 10 and 24 are provided to be signed by the Chief Judge; Form 17 is provided to be signed by the Chief Registrar and many others. A close observation of the careful enumeration of the various Forms and authorised signatories, points to the fact that the draftsman of the High Court Rules never intended for a legal practitioner or claimant to sign Civil Form 1, which is the Writ of Summons expressly and copiously designated for only the Registrar to sign, and it is deemed to have been issued for valid and competent service on the defendant [33] immediately he seals and signs it.

The argument that the legal practitioner or plaintiff's signature should be appended to the writ of summons raises the question of, which column the legal practitioner or plaintiff should append such signature. Should it be before or after the Registrar's column? It is submitted that the non-inclusion of a signature column for a legal practitioner or plaintiff in all Civil Form 1 can only mean that it was never the intendment of the draftsman for the plaintiff or his Counsel to sign the writ of summons.

Further credence to the above position can be found in the maxim *expressio unius est exclusio alterius* [34], which literally means, the expression of one thing is the exclusion of another; also termed *Inclusio unius est exclusio alterius*, meaning the inclusion of one thing is the express exclusion of all others. The maxim indicates that items not on the list are assumed not to be covered by the statute. Thus the non-inclusion of a signature column for a legal practitioner or plaintiff/claimant in all Civil Form 1 and the inclusion of the Registrar's column has automatically excluded all other signatures which may have applied by implication. This canon of interpretation of statutes has been adopted and applied in all superior courts in Nigeria, particularly the highest in echelon and the penultimate courts. Indeed, the apex Court, in *Attorney-General, Bendel State v Aideyan* [35], held thus:

> *It is a well settled principle of construction of statutes that where a section names specific things among many other possible alternatives, the intention is that those not named are not intended to be included, hence the maxim Expressio unius est exclusio alterius. This is that, the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have applied by implication.*

By the way, let us have a cogitation of the issue at hand, in the normal course of event. Can a party in contentious circumstance be subpoenaed by the other to explore means of dialogue for possible settlement? The response is almost as good as the act of extracting water from a baked loaf of bread. Such moves are always done by a neutral third party or the State and its agents which possess the coercive powers to compel obedience. The Writ of Summons is the coercive instrument of the Sovereign State. Therefore, the plaintiff or the legal practitioner who has no coercive power neither accredited agent of the State has no legitimate power to authenticate a State's instrument such as the Writ of Summons. The only duty required of plaintiff or legal practitioner in the issuance of a Writ of Summons is to be shown on the face thereof that it was actually applied for before it was issued for service. The Writ of Summons is the supreme command of the State, and as such a legal practitioner or claimant who are not sovereign authorities are incapacitated to sign and authenticate an issuable sovereign document as the Writ of Summons.

Corollary, to the above submission, the plaintiff or his counsel possess no infinitesimal power to command obedience of the defendant who is having some issues with him to appear in court. The decision of the court of last resort in Nigeria is quite instructive in that in, *Saude v Abdullahi* [36], it was held:

> *Surely. neither the plaintiff nor his counsel would be expected to issue these directives to the defendant; for the defendant who is at loggerheads with the plaintiff could ignore such directives and to no consequence, since neither the plaintiff nor his counsel could have any power to carry out or enforce the sanctions contained in the directives. It is only a Judge [or the Court] that is conferred with such coercive powers.*

The Interpretation of Order 3, Rule 12, Sub-Rule 3 of the Federal High Court (Civil Procedure) Rules, 2009.

One of the cardinal responsibilities of the judiciary is the interpretation of statutes. This is aimed at bringing to the fore the real intendment of the law makers, in doing this some pragmatic approaches are inevitable instruments. In this stem we shall adopt and apply the holistic strategic approach and the principle of community construction reading method. Order 3, rule 12, sub-rule 3 [37], reads:

> *Each copy shall be signed by the legal practitioner or by a plaintiff where the plaintiff sues in person and shall be certified after verification by the Registrar as being a true copy of the original process filed*.

This is, and has been the crux and linchpin of all the preliminary objections to quash the Writ of Summons that is not signed by a legal practitioner or plaintiff as purportedly being incompetent to ignite the substantive jurisdiction of the court. Before delving into the issue of interpretation of the above provision, it is imperative to take a cursory look at certain fundamental principles of law which are formidable facilitators to unveiling the actual intendment of draftsman, particularly in relation to veneered and hazy provisions such as this.

Firstly, the provisions of a statute of any kind are not to be read and interpreted in isolation or independent of other provisions, but the law as a whole must be considered. On this principle of law the Supreme Court per Onu, JSC, in *Adewunmi v Attorney-General, Ekiti State & Ors* [38], held:

> *It is a cardinal rule of construction that in seeking to interpret a particular section of a statute or subsidiary legislation one does not take the section in isolation, but one approaches the question of interpretation on the footing that the section is a part of greater whole. See further the case of Okafor & 5 Ors v Attorney-General, Anambra State 4 Ors.* [39]

Secondly, that schedules, tables, forms and marginal notes are very useful in the interpretation of the provisions of a statute. The importance of this canon of interpretation is further highlighted by the apex court in, *F.C.S.C v Laoye* [40], when it held:

> *That Schedules, Tables and Forms are useful in the interpretation of provisions in the body of a statute. In cases of ambiguity, they become useful handmaid to interpretation.*

The third is the application of the principle of community construction reading of the provisions of a statute. By this mechanism, related provisions of the law are read in conjunction with the one in controversy which throw more light in revealing easier the actual intendment of the legislators. This principle of construction has been adopted and followed as a sound judicial precedent in Nigeria when the highest in hierarchical order of courts in the land in, *Buhari v Yusuf* [41], per Uwaifo, JSC, held thus:

> *Going by the principle of community construction of the provisions of a statute, it is useful to consider some relevant provisions of the Act that may help in the proper understanding of those in contention. It will therefore be necessary to consider the relevant sections of the Act as well as paragraphs of the First Schedule thereto to ascertain whether the appellants were necessary parties to the petition. See also the following cases* [42].

Flowing from the foregoing, it is contended that, the proper interpretation of Order 3, rule 12, sub-rule 3 of the Federal High Court (Civil Procedure) Rules 2009, [49] could only be achieved by reading together the following Orders of the Adjectival Law used as sample representation of all similar laws, and in pari materia to all other Civil Procedure Laws in Nigeria. Examples of such provisions are: Order (3), rule (3), sub-rule (1), sub-sub-rules (a)-(e) [44], which reads:

> *All civil proceedings commenced by writ of summons shall be accompanied by:*
> *(a) statement of claim;*
> *(b) copies of every document to be relied on at the trial;*
> *(c) list of non-documentary exhibits;*
> *(d) list of witnesses to be called at the trial; and*
> *(e) written statements on oath of the witnesses.''*

The second is Order (3) rule (2) [45], which provides as follows:

> *Where a plaintiff fails to comply with sub-rule 1 of this rule, and rules 3 and 9 of this order his originating process shall not be accepted for filing by the Registrar.*

The third is the Civil Form 1 [46], General Form of Writ of Summons.

It is pertinent to further set forth the provisions of the sample Procedural Law, that is, the Federal High Court (Civil Procedure) Rules, 2009, for pellucid interpretation of Order 3, rule 12, sub-rule 3 [47], which reads:

> *Each copy shall be signed by the legal practitioner or by a plaintiff where the plaintiff sues in person and shall be certified after verification by the Registrar as being a true copy of the original process filed* [48].

An application of the community reading canon of interpretation to the foregoing provisions will reveal that the provisions of Order (3), Rule (12), Sub-rule (3) of the Federal High Court (Civil Procedure) Rules 2009, does not in any way or manner refer to the Writ of Summons, but to the accompanying documents such as the Statement of claim, Copies of every document to be relied on at the trial, List of non-documentary exhibits, List of witnesses to be called at the trial, and Written statement on oath of witnesses [49]. These documents are prepared by a plaintiff or a legal practitioner on behalf of a plaintiff.

Furthermore, the use of 'Each' in the construction of Order (3) Rule (12) Sub-rule (3) [50], is an indication of more than one document and one may be tempted to ask, each copy of what? If it is referred to the Writ of Summons as often projected by the objectors, then the follow up question begging for answer

is, how many copies is the Writ of Summons? As it has been established in this work, the Writ of Summons is always a single issuable document of the State severable from other originating processes. Thus, it is statutorily safe to opine that the provisions of Order (3) Rule (12) Sub-rule (3) of the Federal High Court (Civil Procedure) Rules 2009, does not refer to the Writ of Summons, but to other documents which must be attached alongside the Writ for filing.

Another dimension to a better understanding of the real interpretation of Order (3) Rule (12) Sub-rule (3) of the Federal High Court (Civil Procedure) Rules 2009, is that the marginal note which reads, 'Sealing of originating process', and not processes. What this means is that, before the Registrar shall seal and sign the Writ of Summons which gives life to the accompanying documents and to accept same for filing he makes sure that they are all properly signed by the plaintiff or a legal practitioner on behalf of a plaintiff. This imports the use of the clause 'and shall be certified after verification by the Registrar…' One may then ask the following pertinent questions:

Does the Registrar verify the Writ of Summons he issues by himself for service?

Does the Registrar seal the accompanying documents?

The answer to both questions must be in the negative, as the Registrar neither verifies the writ of summons which he issues, nor does he seal the accompanying documents. He seals and signs only the Writ of Summons which is the principal originating process for initiating civil action in the court.

As the above listed provisions of the Federal High Court (Civil Procedure) Rules, 2009 are read in synchronization with Order (3) Rule (12) Sub-rule (3) of the same Adjectival Law, there is no doubt that, the intention of the drafters of the subsidiary law is for the plaintiff or a legal practitioner to sign all accompanying processes which he prepares himself before same can be accepted by the Registrar for filing. The said provision does not in any way point to the Writ of Summons but to other documents which must be attached alongside the Writ. Sequel thereto, the validity of the Writ of Summons does not require the signature of the plaintiff or legal practitioner. The Writ is properly issued for competent and valid service on the defendant once the Registrar seals and signs it [51]. Therefore, all preliminary objections raised thereto are technical objections that are abhorred seriously by the courts which seek to do only substantial justice. The apex court held, frowning at technical justice in *Dapianlong v Dariye* [52], per Onnoghen, JSC., as follows:

> *The reign of technical justice is over and on the throne now sits substantial justice. Long may you reign substantial justice. See also the cases of: Mora v Adeleye (1990) 4 NWLR (Part 142) 76, 87; Ogba v The State (1992) 2 NWLR (Part 222) 164, 190; Akpan v The State (1992)62 NWLR (Part 248) 437, 471-472, particularly it was held in: Sani v Agara (2010) 2 NWLR (Part 1178) 371, [399 para E], that "(Technical objection would not be allowed to defeat substantial justice)."* [53]

Is the Endorsement of Claimant's Claims in the Writ of Summons Still Necessary in Present Day Civil Practice and Procedure?

The Writ of Summons as it operates in Nigeria today has two main parts, namely the command and the reliefs sought by the plaintiff. Prior to the adoption of front loading mechanism, only the Writ of Summons was served on the defendant, it then becomes imperative that the defendant be kept abreast of what is being alleged. This is followed by appearance of parties and preliminary arguments will be allowed, and thereafter the court may order for pleadings to be prepared, filed and exchanged by the parties. It is pertinent to note that, even in that dispensation (that is prior to the front loading mechanism), once pleadings are filed and exchanged, the reliefs in the statement of claim supersedes the ones contained in the Writ of Summons. Keeping the defendant abreast of the reliefs sought by the plaintiff in the Writ of Summons was considered justice and a covert display of fair hearing, in tandem with the spirit and philosophy of natural justice, fairness and good conscience. The question then arises whether this is still mandatory under the front loading system. This would be answered presently.

It is our considered view that the continued inclusion of the plaintiff's reliefs in the Writ of Summons in today's era of front loading where all required documents and processes are filed and forwarded to the defendant could be equated to a reverse version of the categorical judicial pronouncement of *Lord Denning, MR.*, in *Parker v Parker* [54], cited with approval by the Supreme Court of Nigeria in the *Federal Republic of Nigeria v Fani-Kayode* [55], that we are doing it irrespective of the practical reality and innovation of the present dispensation, because we have been doing it from time immemorial and change is abstruse, such dispositions of being adamant to flexibility and dynamism of the times and seasons are not healthy for the growth and development of our law. The law and its processes are not static or constant as the sun but dynamic and progressive as the wind and tidal waters.

Our stand point is that, the continued practice of endorsing the plaintiff's reliefs in the Writ of Summons in this dispensation of front loading where all accompanying documents are filed and served on the defendant is unnecessary and uncalled for, as it plays no role again in the present day process of adjudication. This informed opinion is built on the well settled principle of law that the statement of claim is superior to the claims in the Writ of Summons. It is logical and we think, should be the correct position of the law that the one with superior quality should prevail over the one of subservient status. This standpoint finds support in a plethora of judicial authorities by the apex and penultimate courts. Indeed in, *Ugbomor v Hadomeh* [56], it was held:

> *In law, a plaintiff is not expected to give details of his case in the writ of summons. He is to give only a brief outline of it in the writ of summons, while the details are reserved to be stated fully in the statement of claim. That is why it is a well settled principle of law that a statement of claim supersedes the writ of summons. And, in order to supersede the writ of summons, the statement*

> *of claim must itself contain a claim or claims therein set out. See also Omnia Nigeria Ltd v Dyktrade Ltd* [57].

The law is well settled and admits no exception or variation of any kind that the unit of the plaintiff's claim in the Writ of Summons is completely annihilated by the statement of claim once it is filed. Suppression of the Writ of Summons by the statement of claim, is that the unit in the Writ of Summons has been wholesomely severed by the statement of claim and thus ceased to exist, the statement of claim now play any role it would have played. Accentuating this legal reasoning the Supreme Court of Nigeria, in *Garan v Olomu* [58], per M.D Muhammad, JSC., held:

> *For suppression of an earlier process by a subsequent process to occur there must be a complete disconnect between the two imposed by the fact of one completely occupying the place or role of the other. I therefore agree with learned appellant's counsel that the decision of the court below to the contrary is perverse.*

It is the law etched on indelible marble that the claims in the Writ of Summons are subservient, insubordinate and inferior to those in the statement of claim once it filed. The Writ of Summons has plaintiff's claims, the statement of claim has plaintiff's claims also and both are filed simultaneously in the court. It therefore, follows that the plaintiff's claims or reliefs contained in the Writ of Summons appears to be meaningless, plays no role and adds no legal utility or value to the plaintiff's case. Then, of what use is the inclusion of the plaintiff's claims in the Writ of Summons when the statement of claim is filed at the same time with the Writ? The act of duplicity of the claims is superfluous and should be discouraged in order to reflect the current practice and procedure of the time. Consequently, a Writ of Summons bereft of plaintiff's claims or reliefs is not void, incompetent, invalid or a nullity to that effect but, competent, valid and suffers no legal disability when service of same is effected on the defendant.

According to the exposition of this work a Writ of Summons bereft of plaintiff's relief or claim in this period of front loading is not void, inchoate or a nullity but legally valid, competent and suffers no legal disability if served on the defendant. In the light of the foregoing, we therefore call upon the Supreme Court to revisit and if possible set aside its decision in *Halilco Nigeria Ltd v Equity Bank Nigeria Ltd* [59], where Ngwuta, JSC., held that:

> *Appellant's learned counsel conceded a writ of summons bereft of claims is incompetent and further that a court can raise an issue suo motu. In my view, these concessions are rightly made by the learned counsel.*

The decision in *Halilco Nigeria Ltd v Equity Bank Nigeria Ltd* [60], was supported by the *locus classicus*, *Madukolu & Ors v Nkemdilim* [61]; in igniting the jurisdiction of the court. It is hereby submitted that, the case was reported in 1962, and it is distinguishable from the present reality, because there was no front loading in Nigeria when this case was decided. Therefore, *Nkemdilim's* case is inappropriate to be used as a precedent to that effect today when Nigeria operates a front loading system and all processes including the writ of summons and the statement of claim are filed and served at the same time. Thus, it should be more rewarding to set aside the judgement in *Halilco Nigeria Ltd v Equity Bank Nigeria Ltd* [62] in order to reflect the actual spirit and philosophy of the jurisprudence of practice and procedure in Nigeria.

Conclusion

From the foregoing expository revelation canvassed in this piece of research work, proactive members of the Bench and Bar should reach a reflective equilibrium on the issues raised and argued upon. It is never the intendment of the drafters of civil Adjectival Laws, that is, Civil Procedure Laws in Nigeria, for a legal practitioner or plaintiff to sign and authenticate the Writ of Summons before service on the defendant. It is not also proper and appropriate for the inclusion of plaintiff's claims in the Writ of Summons in present day dispensation of front loading when the Writ of Summons and the Statement of Claim are filed and served simultaneously. Therefore, it is our firm conclusion that a Writ of Summons bereft of plaintiff's or legal practitioner's signature, as well as plaintiff's claims is not void, invalid, a nullity, or incompetent but, valid, competent and has no legal disability whatsoever when same is served on the defendant.

Reference

1. Order 3 Rule 2 of the Federal High Court Civil Procedure Rules, provides Subject to the provisions of these Rules or any applicable law requiring any proceeding to be begun otherwise than by writ, a writ of summons shall be the form of commencing all proceedings; Order 3 Rule 1 of the Bayelsa State High Court Rules, 2010, provides Subject to the provisions of these rules or any applicable law requiring any proceeding to be begun otherwise than by writ, a writ of summons shall be the form of commencing all proceedings. Similar provisions are made in all the High Rules in the Federation of Nigeria, 2009.
2. Bryan A Garner, Editor-in-Chief, Black's Law Dictionary, Seventh 7th Edition, St Paul's West Group MINN USA, 1999, 1602.
3. Stroud's Judicial Dictionary of Words and Phrases, Sixth Edition Volume 3 Q-Z, Sweet & Maxwell 2000, 2960.
4. Bryan A. Garner, Editor-in-Chief, Black's Law Dictionary, Seventh 7th Edition, St Paul's West Group MINN USA, 1999, 1449.
5. *Ansa v Cross Lines Ltd* ALL FWLR Part 321, 2006, 1271.
6. CAP S6, Laws of the Federation of Nigeria LFN, 2004.
7. Bryan A. Garner, Editor-in-Chief, Black's Law Dictionary, Seventh 7th Edition, St Paul's West Group MINN USA, 1999, 1602.
8. ALL FWLR CA, 1285 para H, 2006, 321-1271.
9. Ibid page 9.
10. Civil Form 1, General Form of Writ of Summons, Order 3 Rule 3 of the Bayelsa State High Court Rules, 2010.
11. Okolo and Derik-Ferdinand, Renewal of Writ of Summons after Its Lifespan, Journals of Humanities and Social Science IOSR-JHSS, London, United Kingdom,

2015; 20(3).
12. The Appendix; Civil Procedure Form 1, General Form of Writ of Summons, Order 4 Rules 1 and 8, High Court of the Federal Capital Territory FCT, Abuja Civil Procedure Rules, 2004.
13. Appendix 6; Civil Procedure Form 1, General Form of Writ of Summons, Order 3 Rule 4 The Federal High Court of Nigeria FHC Civil Procedure Rules, 2009.
14. The Appendix; Form 1, General Form of Writ of Summons, Order 3 Rule 3, High Court of Lagos State Civil Procedure Rules, 2004.
15. Civil Form 1, General Form of Writ of Summons, Order 3 Rule 1 of the Bayelsa State High Court Rules, 2010.
16. Section 99, Sheriffs and Civil Process Act, Cap S 6 Laws of the Federation of Nigeria LFN, 2004, 14.
17. Okolo and Derik-Ferdinand, ''Renewal of Writ of Summons after Its Lifespan'', Journals of Humanities and Social Science IOSR-JHSS, London, United Kingdom, 2015; 20(3).
18. 10th Edition, Allied Chambers India Limited, New Delhi, India, 2007, 792.
19. In the same vein sub rule (1) of rule (2) of Order 6, of the Bayelsa State High Court Rules, 2010 provides inter-alia: The Registrar shall sign and stamp every originating process, whereupon it shall be deemed to be issued.
20. ALL FWLR Part 528, 947, 958 para D, 2010.
21. The Constitution of the Federal Republic of Nigeria CFRN, 1999, as amended.
22. Section 6 (1) ibid
23. Section 6 (2) ibid
24. The Constitution of the Federal Republic of Nigeria CFRN, as amended 2011-1999.
25. CAP C41, Vol. 4, Laws of the Federation of Nigeria LFN, 2010.
26. Ibid. In the same vein, paragraph (a), of sub-section (1), of section 211 of the Constitution of the Federal Republic of Nigeria 1999 as amended provides thus for the State Courts: The Attorney-General of a State shall have the power- to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial in respect of any offence created by or under any law of the House of Assembly.
27. Ibid
28. The 1999 Constitutional of the Federal Republic of Nigeria, as amended, 2011.
29. Same provisions are contained in Order 3, Rule 2, sub-rule (1) of the Bayelsa State High Court Rules 2010, wherein it states inter-alia: 'Any civil proceedings commenced by writ of summons shall be accompanied by: (a) statement of claim; (b) list of witnesses to be called at the trial: (c) written statements on oath of the witnesses; (d) copies of every document to be relied on at the trial; and (e) a list of non-documentary evidence to be relied upon at the trial.'
30. 14 NWLR Part 841 446 S.C 545, paras C-D. Also in F.C.S.C v Laoye 1989 2 NWLR Part 106 652 SC, 2003.
31. 2 NWLR Part 106 652 S.C, particularly, 1989, 711.
32. Supra. The Bayelsa State High Court Rules 2010. Same as in the appendix to the Federal High Court Civil Procedure Rules, 2009.
33. Okolo and Derik-Ferdinand, Renewal of Writ of Summons after Its Lifespan, Journals of Humanities and Social Science IOSR-JHSS, London, United Kingdom, 2015; 20(3).
34. A canon of interpretation of statutes, which means, the express mention of one thing excludes all others
35. 4 NWLR Part 118 646 SC. See also, Ogbuanyinya v Okudo 1979 6-9 SC 32, Military Governor of Ondo State v Adewunmi 1988 3 NWLR Part 82 280 SC; Udoh v Orthopedic Hospital Management Board 1993 7 NWLR Part 304 139 SC; Buhari v Yusuf 2003 14 NWLR Part 841 446 SC 499, paras F-G, per Uwaifo, JSC, 1998.
36. 4 NWLR Part 116 387 SC; 1989 3 NSCC 177, 187, 1989.
37. The Federal High Court Civil Procedure Rules, 2009.
38. 2 NWLR Part 751 474 SC, 522, also James Orubu v National Electoral Commission & 13 Ors 1988 5 NWLR Part 94 323 SC, 2002.
39. 1999 7 SC Part I 106, 117-118 paras 40-5, where the Supreme Court held: It is a cardinal rule of interpretation of law and I think, well settled that in order to ascertain the intention of the law marker, the entire provisions of an enactment should be read and construed together as a whole.
40. 2 NWLR Part 106 652 S.C, particularly, 1989, 711.
41. Supra particularly at pages 499-450, paras H-A.
42. Ojokolobo v Alamu 1987 3 NWLR Part 61 377 SC; Aqua Ltd v Ondo State Sports Council 1988 4 NWLR Part 91 622 SC, 641-647; Salami v Chairman L.E.D.B 1989 5 NWLR Part 123 539 SC, 550-551, 1989.
43. The Federal High Court Civil Procedure Rules, 2009.
44. Ibid
45. Ibid
46. Appendix 6, to the Federal High Court Civil Procedure Rules, Civil Procedure Forms, General Form of Writ of Summons, that provides only a column for Registrar's signature and not that of either a legal practitioner or plaintiff suing for himself, 2009.
47. The Federal High Court Civil Procedure Rules, 2009.
48. Emphasis mine
49. See, Order (3), rule (3), sub-sub-rule (1), sub-rules (a) to (e) of the Federal High Court Civil Procedure Rules, 2009.
50. The Federal High Civil Procedure Rules, 2009.
51. See, Order (3), rule (12), sub-rule (1) of the Federal High Court (Civil Procedure) Rules, 2009, and sub-rule (1) of rule (2) of Order 6, of the Bayelsa State High Court Rules, 2010 which provides inter-alia: The Registrar shall sign and stamp every originating process, whereupon it shall be deemed to be issued.
52. NSCQR 1069; 2007 8 NWLR Part 1036 332, 2007.
53. The Supreme Court per Rhodes-Vivour, JSC., in, Wassah v Kara 2015 4 NWLR Part 1449 374 SC 396, paras B-C, held: 'The aim of the courts is to do substantial justice between the parties and any technicality that rears its ugly head to defeat the course of justice will be rebuffed by the court. The attitude of the court is that cases should not be decided on the basis of technicalities, for the days of technical justice are over.' See also the cases of Lagga v Sarhuna 2008 16 NWLR Part 1114 427 SC; Odeh v FRN 2008 13 NWLR Part 1103 1 SC; Chief of Air Staff v Iyen

2005 6 NWLR Part 922 496 SC; Bello v Ringim 1991 7 NWLR Part 206 668 SC; Bello v Attorney-General of Oyo State 1986 12 S.C 1; 1986 5 NWLR Part 45 828 SC, and a plethora of judicial authorities too numerous to catalogue, 2007.

54. 2 ALL E.R 127, wherein the pundit and adroit Law Lord, Lord Denning, DR held: What is the argument on the other side? Only that no case has been found in which it has been done before, that argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand whilst the rest of the world goes on, and that will be bad for both, 1953.
55. 18 NWLR Part 1214 481 SC, 508, 2010.
56. 9 NWLR Part 520 307 CA, 324, paras E-G, 1997.
57. ALL FWLR Part 394 201 SC, 231, paras E-F, where the Supreme Court held: For the settled authority is that a statement of claim supersedes the writ of summons. See further the cases of Lahan & Ors v Lajoyetan & Ors 1972 6 SC 190, 192; 1972 NSCC 460, 461; Otanioku v Ali 1972 11-12 SC 9; Elf Nigeria Ltd v Sillo 1994 7-8 SCNJ Part I 119; Ndayako Etsu Nupe & Anor v Alhaji Dantoro & 6 Ors 2004 ALL FWLR Part 216 390 SC; 2004 13 NWLR Part 889 189 SC; 2004 5 SCNJ 152, 175-176; Philips v EOC & Ind Co Ltd [2013] 1 NWLR (Part 1336) 618 SC; Garan v Olomu [2013] 11 NWLR (Part 1365) 227 SC, 253, paras D-E and many others, 2007.
58. 11 NWLR Part 1365 227 SC, 250, paras F-H, 2013.
59. 12 NWLR Part 1367 1 SC, 11, paras A-B, 2013.
60. Ibid
61. ALL NLR 587; 1962 2 SCNLR 341.
62. Supra