IN THE COURT OF APPEAL

IBADAN JUDICIAL DIVISION

HOLDEN AT IBADAN

ON THURSDAY, 3RD DAY OF JULY 2025

BEFORE THEIR LORDSHIPS:

BIOBELE ABRAHAM GEORGEWILL	-	**JUSTICE, COURT OF APPEAL**
KENNETH IKECHUCKWU AMADI	-	**JUSTICE, COURT OF APPEAL**
FADAWU UMARU	-	**JUSTICE, COURT OF APPEAL**

APPEAL NO. CA/IB/182/2012

BETWEEN

1. **MADAM DORCAS ODU** - **APPELLANTS**
2. **BAALE FRANUS EBELAMU ODU**
3. **CHIEF S. AKANNI BURAIMOH**
4. **SEGUN ODU**
5. **IDOWU ODU**
6. **ALHAJI AMUSA ADENLE**

(For themselves and on behalf of IDO-AROBE Chieftaincy Family)

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AND

1. **CHIEF RASHEED BAMTEFA** - **RESPONDENTS**
2. **CHIEF SIKIRU ILO**
3. **ELDER RASHEED BABATUNDE**
4. **MR. AFOLABI FAGBOHUN**
5. **MR. AFOLABI IMOGA**
6. **MR. RASAK AJOSE**

(for themselves and on behalf of IGA-NLA Chieftaincy Family)

7. **CHIEF MOSHOOD ADISA DADA**
8. **CHIEF WAHB OLABODE ITU**
9. **ALFA RASHEED AKOMOLAFE**
10. **CHIEF (MRS) EBO AGBOMAWI**
11. **MR. TAJUDEEN AKOMOLAFE**

(for themselves and on behalf of IGA-AGO Chieftaincy Family)

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AND

12. BABA OYINBO
13. T.A OLUYOMI
14. D. JAIYEOLA
15. JOHN ABATAN
16. MR. GEORGE IDOWU
17. BISIRIYU EGUNJOBI
18. OSE LATIFU
19. CHIEF ADISA KUYEEBI
20. MR. BURAIMOH OKE
21. MR. AMORE AKAPO
22. MR. MUYIBI ARIYO
23. MR. JULIUS ADIO AJOSE
24. COMMISSIONER FOR CHIEFTANCY AND LOCAL GOVERNMENT AFFAIRS
25. ADO - ODO OTA LOCAL GOVERNMENT COUNCIL

JUDGMENT

(DELIVERED BY SIR BIOBELE ABRAHAM GEORGEWILL PJCA):

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This is an appeal against the Judgment of the High Court of Ogun State sitting in the Agbara Judicial Division, Coram: A. A. Akinyemi J, in **Suit No. HCT/59/2006: Madam Dorcas Odu & Ors V. Baba Oyinbo & Ors,** delivered on 28/11/2011, in which the Appellants' Suit as 7th - 12th Claimants was dismissed for lacking in merit.

The Appellants were peeved with the said judgment and had appealed against it vide their Notice of Appeal filed on 20/2/2012 on One Ground of Appeal. **See pp 638 - 639 of the Record of Appeal.** The Record of Appeal was compiled and transmitted to this Court on 23/7/2012 and was deemed as properly transmitted on the 24/3/2015. Subsequently, a Supplementary Record of Appeal was compiled and transmitted to this Court on 8/10/2018. However, with the leave of Court, an Amended Notice of Appeal was filed on 5/12/2018 on One Ground of Appeal. The Parties filed and exchanged their briefs, namely: The Appellants' brief, the 1st - 11th Respondents' brief and the 12th - 22nd Respondents' brief. The 23rd, 24th and 25th Respondents did not file any brief.

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The Appeal was heard earlier today, 3/7/2025. The Appellants were represented by M. O. Abudu Esq, who adopted the Appellants' brief as their arguments and urged the Court to allow the Appeal. The 1st - 11th Respondents were represented by O. Ayeteni Esq, who withdrew the 1st - 11th Respondents' brief, and informed the Court that the 1st - 11th Respondent were no longer opposing the Appeal. Consequently, the 1st - 11th Respondents' brief is hereby struck out. The 12th - 22nd Respondents were represented by Idris Kolawale Olajide Esq, who adopted the 12th - 22nd Respondents' brief as their arguments and urged the Court to dismiss the Appeal. The 23rd Respondent was represented by A. Ayanniyi Esq, who informed the Court that the 23rd Respondent is not opposing the Appeal. The 24th and 25th Respondent were represented by O. G. Bamgbose Esq., State counsel MOJ Ogun State who informed the Court that the 24th and 25th Respondents are not opposing the Appeal.

My lords, in the light of the age of this Appeal filed since 2012, and the very narrow and sole issue involved in this Appeal, dealing with whether or not the 1st - 11th Respondents and Appellants' Suit filed before the lower Court on 16/2/2006 was competent, judgment was reserved for later today, 3/7/2025 to enable the Court hold the pre - judgment conference, and for which the Court rose and had the pre - judgment conference and arrived at the findings and decisions as contained in this Judgment.

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SUCCINCT STATEMENT OF FACTS

By a Writ of Summons filed on 16/2/2006, the 1st - 11th Respondents and the Appellants as 1st, 2nd and 3rd Sets of Claimants before the lower Court commenced an action by means of a Writ of Summons against the 12th - 22nd Respondents as Defendants claiming several Declaratory and Injunctive Reliefs in respect of lands situate at Ketu Adie Owe, Paramole, Ayigbaboro Village and Ishaga Idiroko Village. The Writ of Summons was endorsed by Marcus Babaoye and Co., without the signature of either the Claimants or their named counsel. Subsequently, the Writ of Summons was amended and still without the signature of either the Claimants or any named counsel who signed it. However, the Writ of Summons was signed by the Registrar of the lower Court and accompanied by an endorsement dated 16th

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February, 2006 issued by Marcus O. Babaoye and Co of 173 Igosere Road, Lagos or Chief Rasheed Bamtefa, Iga - Nla Chieftaincy, Ido - Arobe, Igbesa, Ota, Ogun State and accompanied by a Statement of Claim dated 16/2/2006 and signed by one Nweke Andy Ojo, legal practitioner. **See pp. 1 - 4 and 84 - 88 of the Record of Appeal. See also pp. I -2 of the Supplementary Record of Appeal.**

The Parties filed and exchanged pleadings and at the close of pleadings and upon joinder of issues therein, the matter proceeded to trial. The 12th - 22nd Respondents filed their Statement of Defence and a Counter Claim was also filed by the 12th Defendant/Respondent. **See pp. 343 - 360 of the Record of Appeal**. The Parties led evidence and closed their respective cases, and proceeded to file and exchanged their Final Written Addresses, which were subsequently duly adopted by them, and on 28/11/2011, the lower Court delivered its judgment in which it dismissed the claims of the Appellants and the 1st - 11th Respondents as 1st, 2nd and 3rd Sets of Claimants against the 12th - 22nd Respondents as Defendants, hence the appeal. **See pp. 629 - 635 and 636 - 639 of the Record of Appeal, and pp. 1 - 2 of the Supplementary Record of Appeal**

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ISSUES FOR DETERMINATION

In the Appellant's brief, a sole issue was distilled as arising for determination in this Appeal, namely:

> **"Whether or not the lower Court had jurisdiction to entertain and determine this Suit when the Suit was not properly commenced as required by law?" (Distilled from the sole Ground of Appeal)**

In the 12th - 22nd Respondent's brief, the sole issue as distilled in the Appellants' brief was also adopted in the 12th - 22nd Respondents' brief.

My lords, I have taken time to review the pleadings of the parties and the issues joined therein. I have also considered the evidence, both oral and documentary as led by the parties as in the Record of Appeal. I have further reviewed the submission of counsel for the parties in the light of the issue joined in this Appeal, and happily the parties are ad idem that the sole issue for determination as distilled in the Appellants' brief

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is the proper issue for determination in this Appeal. I agree with them and hereby adopt the sole issue for determination as distilled in the Appellants' brief as the sole issue. I shall proceed to consider the sole issue for determination anon!

SOLE ISSUE

"Whether or not the lower Court had jurisdiction to entertain and determine this Suit when the Suit was not properly commenced as required by law?"

APPELLANTS' COUNSEL SUBMISSIONS

On issue one for determination, learned counsel for the Appellants had submitted inter alia that in law an issue jurisdiction, even where not raised at the lower Court, can be raised for the first time at the Appeal stage, and contended that the Writ of Summons filed on 16/2/20006 before the lower Court was not signed by a legal Practitioner as envisaged by law since the name of the person who signed it was not disclosed but it was merely issued in the name of Marcus Babaoye and Co, a Law Firm and urged the Court to hold that in law such a Writ of Summons is incompetent notwithstanding the proper signing of the Statement of Claim, and thereby robed the lower Court of its jurisdiction and to allow the Appeal, set aside the null judgment of the lower Court and strike out the 1st - 11th Respondents' Suit for being incompetent. Learned counsel referred to **Section 2(1) of the Legal Practitioners Act 1975,** and relied on **Timitimi V. Amabebe (1953) 14 WACA 374; Peak Merchant Bank Limited V. Nigeria Deposit Insurance Corporation (2011) 12 NWLR (Pt. 1261) 253; Macfoy V UAC (1962) AC 152 @ p. 160; Okafor V. Nweke (2007) 10 NWLR (Pt. 1045) 521; SLB Consortium Limited V. NNP (2011) 9 NWLR (Pt. 1252) 317; First Bank of Nigeria Plc V. Maiwada (2013) 5 NWLR (Pt. 1348) 444 @ p. 497; Modern Oil Nigeria Limited V. George (2014) 15 NWLR (Pt. 1431) 624 @ p. 632; Sun Publishing Company Limited V. Leaders And Co Limited (2016) 7 NWLR (Pt. 1510) 1 @ pp. 7 - 8.**

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It was also submitted that in law a defective Writ of Summons cannot be amended since an amendment cannot cure the defect in the original process and contended that

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the Writ of Summons being invalid having been signed by a person not known to law is incompetent, and urged the Court to so hold and to allow the Appeal, set aside the null judgment of the lower Court and strike out the 1st - 11th Respondents and Appellants' Suit for being incompetent. Learned counsel relied on **Mobil Oil Nigeria Plc V. Yusuf (2012) 9 NWL (Pt. 1304) 47.**

12TH - 22ND RESPONDENTS' COUNSEL SUBMISSIONS

On the sole issue for determination, learned counsel for the 12th - 22nd Respondents had submitted inter alia that throughout the trial, the Appellants as Claimants never complained neither was the identity of their counsel questioned by the Respondents or their counsel and evidence was led by both parties and judgment consequently delivered without any complaint, and contended that the Appellants, who were the Claimants themselves cannot benefit from their own purported wrong and urged the Court to hold that the Appellants are estopped from raising the issue now, and to dismiss the Appeal for lacking in bona - fide and affirm the sound judgment of the lower Court. Learned counsel relied on **Bureau of Public Enterprises V. Dangote Cement Plc (2019) 6 - 7 SC 1 @ p. 24.**

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It was also submitted that by the Rules applicable at the time of the filing of the Appellant's Suit, which was that Ogun State High Court (Civil Procedure) Rules Edict 1987, the endorsement on the Writ should contain either the name of the legal practitioner or his firm within jurisdiction, and contended that the Appellants complied with the provisions of the said Rule then in force by inserting the name of Marcus O. Babaoye & Co and their address, and urged the Court to hold that the Rules applicable then did not require any signature of a counsel on the Writ of Summons, as it was merely surplusage to do so, and to dismiss the Appeal as the Appellants' Writ of Summons, which was amended and duly signed by the Registrar of the lower Court was valid and competent and to affirm the sound judgment of the lower Court. Learned counsel referred to **Order 5 Rules 10 (a) and 12 (1) of the Ogun State High Court (Civil Procedure) Rules Edict, 1987.**

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It was further submitted that the decision in **Okafor V. Nweke (2007) 10 NWLR (Pt. 1045) 521** is not an authority that counsel should capitalize on and make use of their own perceived procedural errors to score points on appeal, and contended that under the applicable Rules of High Court in Ogun State in 2006, the Ogun State High Court (Civil Procedure) Rules Edict 1987, the Writ of Summons was duly issued by the Registrar on 7/3/2006, and was duly amended on 23/2/2007, and therefore, both valid and competent and urged the Court to hold that under the then applicable Rules of the lower Court it was the signing and sealing of the Writ by the Registrar on the Originating Processes that gives life to the action, and to dismiss the Appeal for lacking in merit. Learned counsel referred to **Order 5 Rule (1); 9; 10 (a) and 12 (1) of the Ogun State High Court (Civil Procedure) Rules Edict 1987,** and relied on **Heritage Bank V. Bentworth Finance (Nig.) (2018) 1 - 2 SC 175.**

RESOLUTION OF THE SOLE ISSUE

My lords, the sole issue for determination challenges the competence of the 1st - 11th Respondents and Appellants' Suit commenced by means of a Writ of Summons filed on 16/2/2006 before the lower Court. To properly consider and resolve this sole issue for determination, I have taken a calm look at the Writ of Summons, the originating process, filed by the 1st - 11th Respondent as Co - Claimants with the Appellants on 16/2/2006, particularly the endorsements as to its authentication as a validly issued Writ of Summons.

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Now, the 1st - 11th Respondents and the Appellants' Writ of Summons was endorsed by Marcus Babaoye and Co., a Law Firm, but without the signature of either the Claimants or any named counsel for the Claimants before the lower Court. It appears that subsequently the Writ of Summons was amended but still without the signature of either the Claimants or any named counsel for the Claimants. However, the Writ of Summons was signed by the Registrar of the lower Court and accompanied by an endorsement dated 16th February, 2006 issued by Marcus O. Babaoye and Co of 173 Igosere Road, Lagos or Chief Rasheed Bamtefa, Iga-Nla Chieftaincy, Ido - Arobe, Igbesa, Ota, Ogun State and accompanied by a Statement of Claim dated 16/2/2006, which was signed by one Nweke Andy Ojo, a Legal Practitioner for the Claimants

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before the lower Court. **See pp. 1 - 4 and 84 - 88 of the Record of Appeal. See also pp. I -2 of the Supplementary Record of Appeal.**

My lords, at **pp. 1 - 4 and 84 - 88 of the Records of Appeal,** I can see the name of Marcus Babaoye and Co., a Law Firm as Legal Practitioners for the 1st - 11th Respondents and Appellants as Claimants before the lower Court, but regrettably I cannot see the signature of any name counsel appended thereto or the signature of any of the Claimants. Thus, there is only the name of Marcus Babaoye and Co., a Law Firm of counsel to the 1st - 11th Respondents and Appellants as Claimants before the lower Court but no signature of any identifiable Legal Practitioner on the Writ of Summons, and to start with, a Law Firm, such as Marcus Babaoye and Co., is in law not a Legal Practitioner, whose name is on the Roll of Legal Practitioners at the Supreme Court of Nigeria and enrolled to practice law as a Legal Practitioner. **See Okafor V. Nweke (2007) 10 NWLR (Pt. 1043) 521. See also GTB Plc V. Innoson Nigeria Limited (2017) 6 NWLR (Pt. 1594) 186.**

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However, I have taken a clam look at **pp. 1 - 2 of the Supplementary Record of Appeal**, the initial Writ of Summons filed by the Claimants before the lower Court, prior to the amendment, and I can neither see the name of any counsel for the 1st, 2nd and 3rd sets of Claimants nor any signature of either any of the Claimants nor the signature of any of their named Counsel as required by law to authentic the contents, as to the facts and claims of the Claimants, in the Writ of Summons. All I can see is that the Writ of Summons was endorsed by the Law Firm of Marcus Babaoye and Co., as Legal Practitioners for the 1st - 11th Respondents and the Appellants as 1st, 2nd and 3rd Sets of Claimants before the lower Court. Yes, it is true and I can see the signature of the Registrar of the lower Court on the Writ of Summons but I am of the firm view, and I so hold, without much ado, that the signature of the Registrar of the lower Court is not, and cannot be, a substitute for the signature of either the 1st - 11th Respondents and the Appellants, as Claimants, or any named counsel for the Claimants before the lower Court. **See p. 2 of the Supplementary Record of Appeal.**

In law, the signing of an originating process, such as the 1st - 11th Respondents and Appellants' Writ of Summons is a sine quo non for its validity and such a process

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must be signed either by the party or by his counsel in the name clearly and on the Roll of Legal Practitioners in the Supreme Court of Nigeria by virtue of Sections 2 and 24 of the Legal Practitioners Act 1976, failing which it would render such an originating process irredeemably and incurably defective and therefore, incompetent. **See Diamond Bank Plc V. Tranter International Limited & Anor (2019) LPELR - 47618(CA).**

My lords, by **Rules 10(1), (2) and (3) of the Rules of Professional Conduct of the Legal Profession, 2007**, it is provided as follows:

> **10(1): "A Lawyer acting in this capacity as a Legal practitioner, legal officer or adviser of any government department or ministry or any corporation shall not sign or file a legal document unless there is affixed in any such document a seal and stamp approved by the Nigerian Bar Association.:**
>
> **10(2): For the purpose of this rule "legal documents" shall include pleadings, affidavits, depositions, applications, instruments, agreements, deeds, letters, memoranda, reports, legal opinions or any similar documents"**

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> **10 (3): If without complying with the requirements of this rule, a lawyer signs or files any legal documents as defined in sub-rule (2) of this rule and in any of the capacities mentioned in sub-rule (1), the document so signed shall be deemed not to have been properly signed or filed".**

Nowadays, so strict is the **'Rule in Okafor V. Nweke (2007) 10 NWLR (Pt. 1043) 521'** that it is no longer only when a Court process is signed in the name of a Law Firm that it is incompetent, it is also incompetent when it is signed by no verifiable person. In **GTB Plc V. Innoson Nigeria Limited (2017) 6 NWLR (Pt. 1594) 186,** the Apex Court, **per Eko JSC,** had held inter alia thus:

> **"A Court process that purports to be settled by a legal practitioner must, as a requirement of statute, have not only the signature of the legal practitioner but also his name clearly shown and indicating that the signature is his.....The process must have the signature or mark of the legal practitioner either against his name, or over and above his name. The written addresses filed on 6th April, 2016 and 21st June, 2016 are clearly incompetent. The signature on each of them cannot be**

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verified or traced to any registered legal practitioner. They are accordingly struck out"

See also SLB Construction V. NNPC (2011) 9 NWLR (Pt.1252) 317 @ pp. 336 -337.

The Apex Court has spoken and I have heard and must perforce bow to it that any Court process for that matter, and more particularly an originating process, not verifiable to have been signed by either the party himself or his legal practitioner is incompetent and therefore, liable to be struck out. **See Solumade V. Kuti (2022) 1 NWLR (Pt. 1810) 31 @ p. 70,** where the Supreme Court had pronounced with finality inter alia thus:

> **"A legal document not signed by a Legal Practitioner in accordance with the law is nothing but a worthless piece of document or process and cannot activate rights and obligations of the parties or confer jurisdiction on the court before which it appertains".**

See also Sky Power Express Airways Ltd. V. UBA Plc & Anor (2022) 6 NWLR (Pt. 1826) 203 @ p. 209.

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So, on the face of the endorsements and contents of the Writ of Summons, filed by the 1st - 11th Respondents and the Appellants as the 1st, 2nd and 3rd Sets of Claimants on 16/2/2006 before the lower Court, was it duly signed as required by law and thus valid and competent? This issue is based on what can now, in the Nigerian legal jurisprudence, be called the **'Rule in Okafor V. Nweke (2007) 10 NWLR (Pt. 1043) 521,** predicated on the succinct provisions of **Sections 2 (1) and 24 of the Legal Practitioner Act. Cap 207 LFN 1990.** Having looked at the Writ of Summons, particularly at **pages 1 - 2 of the Supplementary Record of Appeal,** there is neither any signature of any named counsel for and or representing any of the Claimants therein to authentic the authorship of the facts and contents of the said Writ of Summons. I find the mere endorsement of the name of Marcus Babaoye and Co., Legal Practitioners for the Claimants before the lower Court as completely irrelevant and of no moment in relation to the issue in contention in this Appeal, namely the failure of any named Legal Practitioner enrolled at the Supreme Court and whose name is on the Roll of

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Legal Practitioners signing the Writ of Summons of the Claimants before the lower Court. In law, the signing of an originating process, such as the 1 - 11th Respondents' and Appellants' Suit either by the Claimant or his counsel as required by law is a sine quo non for its validity. Thus, such an originating process to be valid in law must be duly signed either by the party or by his counsel in the name clearly on the Roll of Legal Practitioners in the Supreme Court of Nigeria by virtue of Sections 2 and 24 of the Legal Practitioners Act 1976, failing which it would render such an originating process irredeemably and incurably defective and therefore, incompetent. **See Diamond Bank Plc V. Tranter International Limited & Anor (2019) LPELR - 47618(CA). See also NUC V. Uyo (2023) 16 NWLR (Pt. 1910) 309 @ p. 361.**

My lords, the issue of failure to sign an originating process as required by law raises the issue of competence, which is a threshold issue of jurisdiction. It does not give the Court any joy seeing the parties and itself belabouring in vain to determine on the merit matters which are incurably defective and hopelessly incompetent. In **SLB Consortium Ltd V. NNPC (2011) 9 NWLR (Pt. 1252) 317 @ pp. 331- 332,** the Apex Court per **Onnoghen JSC,** (but later CJN), had with finality restated the law inter alia thus:

> **"A process prepared and filed in a Court of law by a legal practitioner must be signed by the legal practitioner and that it is sufficient signature if the legal practitioner simply writes his own name over and above the name of his/or firm in which he carries out his practice. It has been argued that noncompliance with the provision of Order 26 Rule 4(3) supra is mere irregularity.....as the same involves the procedural jurisdiction of the Court. I hold the view that the submission is misconceived on the authority of Madukolu V. Nkemdilim (supra)..."**

On his part, his lordship **Rhodes - Vivour JSC.@ pp. 337 - 338**, had with precision put this issue succinctly inter alia thus:

> **"All processes filed in Court are to be signed as follows: First, the signature of counsel, which may be any contraption. Secondly, the name of counsel written; Thirdly, who the counsel represents. Fourthly, name and address of legal**

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firm…Once it cannot be said who signed a process it is incurably bad, and rules of Court that seem to provide a remedy are of no use as a rule cannot override the law (i.e. the Legal Practitioner Act.)"

See also Nigeria Army V. Samuel (2013) 14 NWLR (Pt. 1375) 466 @ p. 483; Dickson Ogunseinde Virya Farms Ltd. V. Societe Generale Bank Ltd & Ors (2018) LPELR - 43710 (SC) @ pp. 24 - 29; Olagbenro V. Olayiwola (2014) 17 NWLR (Pt. 1436) 313 @ pp. 366 - 367; NUC V. Uyo (2023) 16 NWLR (Pt. 1910) 309 @ p. 361.

It has therefore, become very clear to me and I so find as fact that the Writ of Summons filed on 16/2/206 by the 1st - 11th Respondents and the Appellants as 1st, 2nd and 3rd Sets of Claimants before the lower Court was neither signed by the Claimants nor any named Counsel on their behalf as their Solicitor as required by law and was therefore, invalid and thus incompetent, notwithstanding the endorsement of same by Marcus Babaoye and Co., as Legal Practitioners for the Claimants. In law, an incompetent originating process, such as the Writ of Summons of the 1st - 11th Respondents and the Appellants as Claimants before the lower Court cannot form the basis of any valid hearing and or determination by the lower Court, no matter how zealous the lower Court may have been in its quest to render substantial justice to the parties before it. Indeed, such zealousness is sheer over zealousness! In law, the initiating process must be competent before any hearing and or decision can validly result in any proceedings before a Court of law. **See Okafor V. Nweke (2007) 10 NWLR (Pt. 1043) 521. See also Madukolu V. Nkemdilim (1962) 1 All NL 587 @ p. 595; Odejayi & Anor V. Henley Industries Limited (2013) LPELR - 20368 (CA) @ pp. 27 - 28; NUC V. Uyo (2023) 16 NWLR (Pt. 1910) 309 @ p. 361.**

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My lords, I saw it argued somewhere by the counsel for the 12th - 22nd Respondents that the Writ of Summons was subsequently amended to reflect the signature of counsel for the Claimants and that such a subsequent amended satisfied the requirement of the law that a Writ of Summons shall be signed by either the Claimant or his counsel. It was also argued for the 11th - 22nd Respondents' that at any rate, the applicable Rules of the lower Court at the time the Writ of Summons was filed on

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16/2/2006, does not require the signature of counsel for the Claimants. My simple answer to the above two contentions is that they are most misconceived and do not represent the extant position of the law. In law, when it comes to Rules of Court, it is the extant Rule of Court that prevails and not the previous Rules of Court. **See Kuma V. Gov. Of Benue State & Ors (2023) LPELR-59610(CA),** where this Court had reiterated inter alia thus:

> **"I think I only need to point it out at once that in law when it comes to applicable Rules of Court to govern procedural matters it is the extant Rules of Court at the time of hearing the matter that is to be reckoned with and not the Rules of Court at the time the process was filed. This is unlike substantive law in which the applicable law is the law in existence at the time the cause of action arose."**

See also Nwora & Ors. V. Nwabueze & Ors. (2019) LPELR - 46803 (SC) @ pp. 19 - 21; Zerock Construction Nigeria Ltd V. Faplin Nig. Ltd (2022) LPELR - 57504 (CA); Agbajo V. Attorney General of the Federation (1986) 2 NWLR (Pt. 23) 528; Savannah Bank of Nigeria Ltd V. Atlantic Shipping & Transport Agencies Ltd (1987) 1 NWLR (Pt. 49) 212; Agbon - Ojeme V. Selo - Ojeme & Ors (2020) LPELR - 49688 (CA).

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It is also the law that an incompetent originating process cannot be amended in order to render it competent. In other words, once an originating process, such as a Writ of Summons, is incompetent, not merely irregular, it remains incompetent for all purposes and remains so till eternity and cannot be cured by any amendment. Thus, it is only where an originating process is merely irregular that it can or may be amendment to render it valid, but not an incompetent originating process. **See Ahemba & Ors V. Akosu (2023) LPELR - 60479 (CA),** where this court had reiterated inter alia thus:

> **"My Lords, the law is that an incompetent originating process remains incompetent for all times and season and therefore, cannot be amended to restore life to it. Thus, not even by any subsequent amendment could such an invalid and void initiating originating process be salvaged. In law, it is only a valid but merely irregular originating process that can be subsequently validly amended. In other words, where an originating process is invalid, such as not being signed by either the party**

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or counsel and or the Registrar of the lower Court as in the instant case, it cannot be amended and the principle of law that an amendment relates back to the date of the original process amended does not arise. It follows therefore, the Respondent's original Writ of Summons having been found to be invalid, it cannot in law be amended to be rendered valid or confer any validity on the Respondent's subsequent amended Writ of Summons. This is so because in law one cannot put something on nothing and expect it to stand. No, it would definitely collapse!

See also Macfoy V. UAC Ltd. (1962) AC 152 @ p. 160; Agbon - Ojeme V. Selo -Ojeme & Ors (2020) LPELR- 49688 (CA).

It follows therefore, in law an incompetent originating process, such as the 1st - 11th Respondents and Appellants' Suit cannot form the basis of any valid hearing and or determination by the lower Court, no matter how zealous the lower Court may have been in its quest to render substantial justice to the parties before it. In law, the initiating process must be competent before any hearing and or decision can validly result in any proceedings before a Court of law. **See Okafor V. Nweke (2007) 10 NWLR (Pt. 1043) 521. See also Madukolu V. Nkemdilim (1962) 1 All NL 587 @ p. 595; Odejayi & Anor V. Henley Industries Limited (2013) LPELR – 20368 (CA) @ pp. 27 - 28; NUC V. Uyo (2023) 16 NWLR (Pt. 1910) 309 @ p. 361.**

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In the light of all I have said, found and held above and in the light of the applicable law in the **'Rule in Okafor V. Nweke (2007) 10 NWLR (Pt. 1043) 521',** I hold that the 1st - 11th Respondents and Appellants' Suit filed on 16/2/2006, and not signed by either the 1st - 11th Respondents and Appellants' as Claimants or by any named Counsel, is incompetent and thus liable to be struck out as rightly contended by the Appellants. In law, there can be no valid action or matter or cause before the lower Court to proceed to trial on the merit once there is no competent Suit before it. Thus, the originating process, be it Writ of Summons or the Notice of Appeal, is the life - giving source of competency and validity to an Action or Suit or Appeal before the Court to be heard and determined on the merit. It is indeed the spinal cord on which the body of the case of the party lies for its competence and validity. It follows therefore, once the originating process is incompetent, an action or matter or cause founded on it is likewise incompetent and liable to be struck out. **See Mingi Services Ltd V. lmaote**

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(2003) FWLR (Pt. 143) 341 @ p 346; Mokwe V. Williams (1997) 11 NWLR (Pt.528) 309 @ p. 311; Ekpan V. Uyo (1986) 3 NWLR (Pt.26) 63 @ pp. 598 - 599; Mohammed V. Kayode (1997) 11 NWLR (Pt. 530) 584 @ p. 590; NUC V. Uyo (2023) 16 NWLR (Pt. 1910) 309 @ p. 361.

My lords, an incompetent Suit initiated by an incompetent originating process, such as the 1st - 11th Respondents and Appellants' Suit, is not one over which neither the lower Court nor this Court would have the jurisdiction to determine any issues in it on the merit. Thus, the proper order to make is one setting aside the judgment of the lower Court based on the incompetent 1st - 11th Respondents and Appellants' Suit, and to strike out the said 1st - 11th Respondents and Appellants' Suit for being incompetent. **See Musical Copyright Society of Nig Ltd. V. NCC (2016) LPELR - 41009(CA). See also Umaru V. Yahaya (2015) LPELR - 26043(CA); Ogunde V. Abdulsalam (2017) LPELR - 41875 (CA); Michael V. Access Bank Plc (2017) LPELR - 41981 (CA); NUC V. Uyo (2023) 16 NWLR (Pt. 1910) 309 @ p. 361.**

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In my finding therefore, and I so hold, there was no jurisdictional competence in the lower Court, as well as this Court, to consider the merit of the substantive claims in the 1st - 11th Respondents and Appellants' incompetent Suit. Accordingly, I hereby resolve the sole issue for determination in favor of the Appellants against all the Respondents. **See Dr. Daniel Amu & Anor V. K. S. Okeaya - Inneh Esq. SAN & Anor 2021) LPELR - 55660 (CA). See also Bell View Airlines Limited V. Carter Harris (Proprietary) Limited (2016) LPELR - 40989 (CA); Elephant Group Plc. V. National Security Adviser &Anor (2018) LPELR - 45528 (CA); Global Fleet Oil & Gas Ltd V. Chukwurah I. Ifeanyi (2021) LPELR - 54561 (CA).**

My lords, having resolved the sole issue for determination in favor of the Appellants against all the Respondent, in law once an Originating process, such as the 1st - 11th Respondents and Appellants' Suit, is found to be incompetent, the only order available to the Court is one of striking out the 1st - 11th Respondents and Appellants' Suit. Indeed, there is no other cards or options on the table to choose from than to strike out the 1st - 11th Respondents and Appellants' Suit, for being incompetent. In the circumstances therefore, I hold firmly that the failure of either the 1st - 11th

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Respondents and the Appellants or any named Counsel for the Claimants to sign the originating process, that is their Writ of Summons filed by them on 16/2/2006 clearly rendered the 1st - 11th Respondents and Appellants' Suit, the entire proceedings and the judgment of the lower Court entered thereon all a nullity, and liable to be set aside. **See AGIP (Nig.) Ltd. V AGIP Petroli Int'l (2010) 5 NWLR (Pt. 1187) 348 @ pp. 384 - 395. See also NUC V. Uyo (2023) 16 NWLR (Pt. 1910) 309 @ p. 361.**

In law, in the absence of jurisdiction there can be no competence in the 1st - 11th Respondents and Appellants' Suit to be heard and determined on the merit, since jurisdiction is the life blood of every cause or action. Thus, where the requisite jurisdiction is found to be lacking that is indeed the end of the matter. In **AG. Lagos State V. Dosunmu (1989) 3 NWLR (Pt. 111) 552,** the Supreme Court per **Kayode Eso JSC,** (God bless his soul) had put it so poetically thus:

> **"Without jurisdiction, the laborers that is the litigant and counsel on the one hand and the court on the hand labour in vain"**

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See also Madukolu V. Nkemdilim (1962) 2 All NLR 581; P. E. Ltd. Leventis Trading Co. Ltd. (2002) 5 NWLR (Pt. 244) 693; Jinadu & Ors V. Oseni & Anor (2021) LPELR-54547(CA); NUC V. Uyo (2023) 16 NWLR (Pt. 1910) 309 @ p. 361.

Now, having arrived at the inescapable conclusion that the 1st - 11th Respondents and Appellants' Suit, as 1st, 2nd and 3rd Sets of Claimants before the lower Court, filed on 16/2/2006 was incompetent, the issue of the perennial battle for supremacy between **'substantial justice'** and **'technical justice'** reared up its head at once to play on the conscience of the Court; should we jettison and discountenance technicality bordering on incompetence of the 1st - 11th Respondents and Appellants' Suit, and consider the merit of the judgment of the lower Court appealed against or should we give effect to the settled principle of law that nothing worth anything can ever come out from an incompetent Suit? In **African Songs Limited &Anor V. King Sunday Adeniyi Adegeye (2019) 2 NWLR (Pt. 1656) 335 @ p. 365 - 366,** this Court had cause to consider the place of 'substantial justice' and 'technical justice' in the due

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administration of justice in this Country and had **per Sir Biobele Abraham Georgewill JCA,** opined inter alia thus:

> **"My lords, while in today's jurisprudence of 'substantial justice' the issue of 'mere technicality' no longer holds sway, yet it is truism that competence is the soul of adjudication. It is in this sense the issue of competence can no longer in law truly be regarded as 'mere technicality' but rather be seen as substantial issue of law. In other words, while eschewing technicality for its sake, a Court can only exercise jurisdiction where all conditions precedent to the exercise of its powers have been fulfilled."**

I do not think I can improve on the statement of law I made above and thus, I cannot but bow to it. I fully subscribe to its truism and so it is with the 1st - 11th Respondents and Appellants' Suit, which is irredeemably and incurably incompetent.

My lords, I have no doubt in my mind that the attitude of the Appellants, who were part of the Claimants before the lower Court, now turning around to, as it were,

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impugn their own processes filed before the lower Court is worrisome. However, no matter how worrisome their attitude or conduct could or may be, a Court of law is only empowered to hear and determine matters or actions that come before it in compliance with due process of law, and are therefore, competent before it. The issue of estoppel, on the face of an incompetent Suit, with due deference to learned counsel for the 12th - 22nd Respondents, does not and cannot arise. There is no sentiment in this regard, and therefore, if a Suit or matter or action is in law incompetent, then it is incompetent and a no Court of law can or would or should, for any sentimental basis, entertain an incompetent Suit or Matter and expect to arrive at a valid verdict. No, it cannot! In law, every of a Court' proceedings and judgment founded on an incompetent Suit would be mere nullity and a sheer waste of its precious and scarce judicial time. Indeed, it is even sheer over zealousness for a Court to, whatever be the reason, determine an incompetent Suit on the merit. In law, the initiating process must be competent before any hearing and or decision can validly result in any proceedings before a Court of law. **See Okafor V. Nweke (2007) 10 NWLR (Pt. 1043) 521. See also Madukolu V. Nkemdilim (1962) 1 All NL 587 @ p. 595; Odejayi & Anor V. Henley**

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Industries Limited (2013) LPELR - 20368 (CA) @ pp. 27 - 28; NUC V. Uyo (2023) 16 NWLR (Pt. 1910) 309 @ p. 361.

On the whole therefore, having resolved the sole issue for determination in favour of the Appellants against all the Respondents, I hold that this Appeal has merit and ought to be allowed. Accordingly, the Appeal is hereby allowed.

In the result, the Judgment of the High Court of Ogun State sitting in the Agbara Judicial Division, Coram: A. A. Akinyemi J, in **Suit No. HCT/59/2006: Madam Dorcas Odu & Ors V. Baba Oyinbo & Ors,** delivered on 28/11/2011, in which the Appellants' Suit was dismissed for lacking in merit, is hereby set aside.

In its stead, the 1st - 11th Respondents and Appellants' **Suit No. HCT/59/2006: Madam Dorcas Odu & Ors V. Baba Oyinbo & Ors,** is hereby struck out for being incompetent, having not been initiated by due process of law.

There shall be no order as to cost.

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Sir Biobele Abraham Georgewill
Presiding Justice, Court of Appeal.

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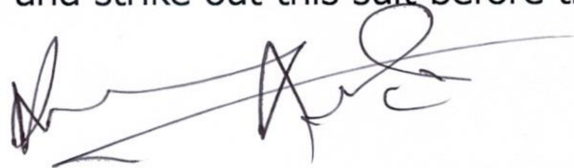
O. G. Bamgbose Esq., State counsel MOJ Ogun State for the 24th and 25th Respondents

CA/IB/182/2012

JUSTICE KENNETH IKECHUKWU AMADI *Ph.D.* JCA

I had the privilege of reading the draft copy of the leading judgment in this appeal just read and delivered by my learned brother ***SIR, BIOBELE ABRAHAM GEORGEWILL, PJCA.*** I agree with his reasoning and conclusion reached that this appeal is not lacking in merit. The law is firmly settled that any originating writ of summons not signed in the name of a Legal Practitioner but signed in the name of the Law firm of the Plaintiff is null and void. *See Ogundele V. Agiri (2010) 180 LRCN 183, Oketade V. Adewumi (2010) 8 NWLR (Pt. 1195) 63, SLB, Consortium Ltd, V. NNPC (2011) 4 SCNJ 211.* The effect is that the trial Court is robbed of the jurisdiction to entertain the suit. I also allow this appeal and strike out this suit before the lower court.



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KENNETH IKECHUKWU AMADI *Ph.D.* JCA
JUSTICE, COURT OF APPEAL

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FADAWU UMARU, JCA.

My lord, **Sir Biobele Abraham Georgewill, PJCA,** availed me the draft copy of the lead judgment just delivered. Expectedly, my learned brother in his tidy nature painstakingly resolved the sole issue canvassed in this appeal. I agree with the reasoning and conclusion that the appeal has merit. I too allow the appeal, set aside the judgment of the lower Court and and strike out the claimants' suit for being incompetent.

FADAWU UMARU
JUSTICE, COURT OF APPEAL

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