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Service of Originating Processes on Corporate Entities in Nigeria: Imperative for a Review by the Supreme Court of its Extant Decisions on the Point

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Abstract
One of the time honoured pillars upon which rest the concept of Justice is encapsulated in the Latin maxim, "audi alteram partem" which translated, simply means "hear the other part.[1] Therefore, the adverse party must be put on notice in order for jurisdiction to properly vest on the court and this requirement is a condition precedent that must be fulfilled. The valid issuance and service of originating processes therefore are mandatory conditions for the assumption of jurisdiction by a court over any matter brought before it[2]. In Nigeria, service of originating processes on corporate entities is essentially determined by the provisions of the Companies and Allied Matters Act and the applicable Rules of court. Consequently, the correct and proper interpretation of these Rules of Court cannot be over-emphasised. This effort is directed at showing the need for a reconsideration of the construction given by the Supreme Court on the Rules of various High Courts on service of originating processes on corporate entities. We conclude by asserting that except specifically provided for in any Rules of court, there is no justification for insisting that originating processes cannot be served via substituted means where personal service proves impossible or that such processes can only be effected on a company or corporation at its Registered or Head Office.

Introduction
One of the fundamental requirements of a fair trial is that processes of court must be served on the adverse party. This affords the other party to a proceeding the opportunity to answer or respond to the claims or reliefs sought from the court. It is a fundamental requirement or condition precedent to the exercise of jurisdiction[3] and where omitted, it entitles the party not served (against whom any order is made in his absence) to have such an order set aside[4]. Any court proceeding without the service of the processes on the adverse party is a nullity[5]. Niki Tobi, JSC had this to say on the point:

> "One reason why the respondent did not participate in the proceedings is that he was not served the court process. Service of court process is a precondition to vesting jurisdiction in the court. Where notice of proceedings is required, failure to notify any party is a fundamental omission which entitles the party not served and against whom any order is made in his absence to have the order set aside on the ground that a condition precedent in the exercise of jurisdiction for the making of the order has not been fulfilled" [6].

Consequently, the courts pay serious attention to whether or not court processes are served on the other party to a proceeding. Thus, it needs not be over-emphasised that pronouncements of superior courts especially that of the apex court on issuance and service of originating processes are of immense relevance to all practitioners in the light of the doctrine of judicial precedent (stare decisis).

While the law in Nigeria seems settled on the issue of service of Court processes on a Defendant who is a human or natural person, same cannot be said however, of the law regarding service of Court processes on a Defendant

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[1] Aina Blankson, notes on "Mark V. Eke (2005) 5 N.W.L.R. (Part 865) Page 54, Service Of Court Processes On A Company" , 2011, Lagos, in the newsletter "The Brief" a Publication Of The Dispute Resolution Group.

[2] Uwah Printers (Nig.) Ltd & Anor. V. Umoren (2000) 15 NWLR (Part 689) 78 where the court held that "where service of process is required, failure to serve is a fundamental vice and the person affected by the Order but not served with the process is entitled ex-debito justitiae to have the Order set aside as a nullity. Such an Order of nullity becomes a necessity because due service of process is a condition sine qua non to the hearing of any suit".
[3] Uwah Printers (Nig.) Ltd & Anor. V. Umoren (supra); Kida V. Ogunmola (2006) 13 NWLR (Pt.997) 377 at 394-395 (Paras H-C); Auto Import Exprt V. Adetayo (2002) 18 NWLR (pt.799) 554; SGBN V. Adewunmi (2003) 10 NWLR (Pt.829) 526; UBN Plc V. Okonkwo (2004) 5 NWLR (Pt.867) 445.
[4] PGSS Ikachi V.Igbudu (2005) 12 NWLR (Pt.940) 543 at 559; Okeke V. Petmag Nig. Ltd (2005) 4 NWLR (Pt.915) 245 at 265; Skenconsult v Ukey (1981) 1 SC 6.
[5] PGSS Ikachi v Igbudu (supra); Scott-Emuakpor v Ukavbe (1975) SC 41.
[6] Teno Eng. Ltd v Adisa (2005) 10 NWLR (Pt.933) 346 at 353 Paras C-E; see also Idiata v Ejeko (2005) 11 NWLR (Pt.936) 349 at 364-365.

who is a juristic person. This is particularly evident in the manifestly inconsistent and conflicting decisions of the Courts on the issue of service of Court processes on a Company.[1] This accounts for our interest in the Supreme Court's decisions on the point.

A. GABRIEL EKE V. KALU MARK & MAR-PRIK IND. NIG.LTD [2]

The Respondent (who was the Plaintiff) brought the action under the Undefended List procedure at the Aba Judicial Division of the High Court of Imo State (as it then was) in 1993, after the coming into force of the Company and Allied Matters Act, 1990, under the Imo State High Court (Civil Procedure) Rules, 1988. The 2nd Defendant is a Company registered in Nigeria and carrying on business in Aba. By an *exparte* motion, the Respondent obtained an order for substituted service by pasting the processes on the door to the office of the 2nd Appellant (2nd Defendant) at 102, School Road, Aba. The Court Bailiff swore to an affidavit of service to the effect that he pasted the Writ of Summons on the door of the office of the 2nd Appellant.

Judgment was entered without any defence or response from the Appellants and the Respondent levied execution on the Appellants. The Appellants then applied to set aside the judgment on the ground that they were never served the originating processes of the court and that they only became aware when the Respondent served the writ of execution and went on to levy execution of the judgment. The Respondent filed a counter affidavit and exhibited the affidavit of service previously filed by the bailiff of the court that the Appellants were served by pasting of the court processes on the door to the premises of the 2nd Appellant. The trial Judge refused to set aside the judgment on the ground that judgment given under the undefended list procedure is a final judgment on the merit and can thus only be set aside on appeal. On appeal to the Court of Appeal, the decision of the trial court was affirmed and the appeal was dismissed. On further appeal to the Supreme Court, the Supreme Court considered the provisions of 78 of the Companies and Allied Matters Act and the Rules of the High Court of Imo State as applicable to Abia State (a state carved out of the old Imo state) on the service of court process on a corporate entity.

For proper understanding, the Judgment of the Supreme Court is quoted extensively. The court per Musdapher, JSC (as he then was), held as follows[3]:

> "When an order is made or judgment is entered against a defendant who claimed not to have been served with the originating processes, such an order or judgment becomes a nullity if the defendants prove non-service of the originating process. It is a nullity because the service of the originating process is a condition sine qua non to the exercise of any jurisdiction on the defendant. If there is no service the fundamental rule of natural justice *audi alterum partem* will be breached.... *The 2nd Appellant as the 2nd Defendant is a limited liability company. The mode of service on a limited liability company under the relevant rules of court is different from service of process on a natural person such as the 1st Appellant. The Companies and Allied Matters Act, section 78 makes a provision as how to serve documents generally on any company registered under it. By this, a court process is served on a company in the manner provided by the rules of court. A service on a company as this provided must be at the registered office of the company and it is therefore bad and ineffective if it is done at a branch office of the company...The procedure is by giving the writ to any director, trustee, secretary or other principal officer at the registered office of the company or by leaving the same at its office. That is why, I am of the view that the affidavit of service by substituted means sworn to by the bailiff is not enough to prove that the 2nd Appellant was duly served with the originating summons. I cannot see the need or the necessity of making a substituted service on a corporation such as the 2nd Appellant...The need for substituted service arises because personal service cannot be effected and since personal service can only be effected on a natural or juristic persons, the procedure for substituted service cannot be made to a corporation like the 2nd Appellant herein"*[4].

B. KRAUS THOMPSON ORGANISATION LTD V UNIVERSITY OF CALABAR[5]

[1] Aina Blankson op. Cit. at page 1-2.
[2] (2004) 5 NWLR (Pt.865) 54
[3] At pages 77-81 paragraphs G-E
[4] Underline ours for emphasis.
[5] (2004) 9 NWLR (PT.879) 631; Similar cases holding that service of court processes on a corporate entity through the branch office is defective are Unilorin v Oluwadare, infra, NUB Ltd v Samba Pet Co. Ltd, infra; NEPA v. Uruakpa (2010) 12 NWLR (pt.1208) 298; Auto

The appellant (the Plaintiff at the Lagos State High Court), brought the action against the Defendant for breach of a contract that was entered into and performed in Calabar. The originating processes were served on the Respondent through its liaison office in Lagos. Upon the Respondent's failure to enter appearance, the Appellant applied for judgment but before it could be delivered, the Respondent entered an unconditional appearance and applied for extension of time within which to file its defence. Subsequently, the appellant applied by Summons for judgment. In response, the Respondent challenged the competence of the suit on grounds that the writ of summons was not properly commenced in Lagos since the defendant is resident in Calabar and the contract was entered into in Calabar. The trial court after hearing the preliminary objections held that it had jurisdiction despite its observation that the contract was to be performed in Calabar, outside the jurisdiction of the court and the defendant does not reside within the jurisdiction of the court.

This observation or finding of the trial Court was not appealed against by the Appellant. On appeal by the University, the Court of Appeal set aside the decision of the trial Court and held that the trial Court had no jurisdiction over the action though the service through the liaison office of the University was proper. On further appeal to the Supreme Court, the Court considered Order 2 Rule 3 of the High Court of Lagos (Civil Procedure) Rules, 1972 which provides:

> "All suits for the specific performance, or upon the breach of any contract, may be commenced and determined in the judicial division in which such contract ought to have been performed or in which the defendant resides".

The Supreme Court, per Musdapher, JSC held as follows:

> "Now by virtue of Order 1A Rule 3 (now Order 2 Rule 3 of the High Court Rules of Lagos State, 1972) or as amended by virtue of Order 2 Rule 3 of the 1994 Rules, an action upon a breach of contract may be commenced and determined in any one of the following three places, namely:
>
> (a) Where the contract was made; or
> (b) Where the contract ought to have been performed; or
> (c) Where the defendant resides.
>
> Thus, a plaintiff suing for a breach of contract is entitled to take advantage of any of the alternatives and rely on it to choose the venue convenient for him. In the instant case, the plaintiff purportedly chose where according to him the defendant resides-i.e. the liaison office in Lagos... It is common ground that the contract in the instant case was not made in Lagos and was not to be performed in Lagos. So it is the residence of the defendant that the appellant was using in order to clothe the Lagos State High Court with the jurisdiction to entertain the matter. The appellants argue that the respondents have a liaison office in Lagos and they were served with the processes in that office and that being so, they say, the action was properly instituted in Lagos and that Lagos State High Court has jurisdiction on the grounds of residency of the respondent.... In my view, its residence or place of business can only be determined from the test applied to corporation or company under the Civil Procedure Rules. It has been judicially pronounced that the residence of a corporation is the place of its central management and control. This is normally the place where the Board of Directors function or the place of business of the Managing Director or that of the parent company and not a branch office or liaison office...It does appear reasonable to say that what could determine the residence of a University such as the Respondent herein may be the place of its central management and control. This is the place where the Vice Chancellor works or the main campus. The appellant has alluded to the observation made by the Court below, to the effect that the service of the originating process in the liaison office was valid, although not strictly, an issue before the Court, I am of the view that the observation is erroneous. A corporation body in this context, either a company registered under the Companies and Allied Matters Act, 1990 or a statutory corporation such as the respondent in this case, can only be served under the relevant rule of the court by giving the Writ of Summons or document to any director, trustee, secretary, or other principal officer of the corporate body to be served, or by leaving the same at its registered or head office. It is bad or ineffective to Serve the document at any branch office".

Import Export v. Adebayo (2002) 18 NWLR (pt.799) 554; Habib Nig bank Ltd v Opomulero (2000) 15 NWLR (pt.690) 315

Analysis of the above Judgments of the Supreme Court

The following points can be gleaned or gathered from the pronouncement of the Supreme Court in the above cases as it affects our discourse:

a. Any judgment of the Court obtained without due service of the originating process on the defendant is a nullity;
b. The mode of service of court processes on a corporate entity is as stated in section 78 of the Companies and Allied Matters Act, and the relevant Rules of Court;
c. The mode of service of processes on a corporate entity is different from that of a natural persons;
d. Service of court processes on a company must be at the registered office of the company and not the branch office;
e. residence of a corporation is the place of its central management and control. This is normally the place where the Board of Directors functions or the place of business of the Managing Director or that of the parent company and not a branch office or liaison office.
f. The place to serve a corporate body is the registered or head office and service at the branch office is bad and ineffective.

It is submitted that (a), (b) and (e) above, are correct statements of the law on the points and therefore incontestable.

However, the pronouncements in (c), (d) and (f) deserve some comments.

1) The Learned Justice said the mode of service of processes on a corporate entity is different from a natural person. This is true only to the extent that the Companies and Allied Matters Act specifically provides for the mode of service of processes on a company registered under the Act:[1]

> "A court process shall be served on a company in the manner provided by the Rules of Court and any other document may be served on a company by leaving it at, or sending it by post to, the registered office or head office of the company."

And the difference is only to the extent that in the case of a natural person, it is the Rules of Court that determine the mode of service while in the case of a corporate entity, the provisions of the Companies and Allied Matters Act will have to be considered. Even at that, the Act does not provide for the mode of service of court processes on a corporate entity, rather it relies on the provisions of the relevant Rules of Court. Another difference is that in the Rules of Court, a specific provision is made for the service of court processes on corporate entities.

2) The court went further to say that a corporate entity cannot be served personally like a natural person. As a matter of fact, the words 'natural or juristic person' was used interchangeably throughout the judgment to refer to natural persons. We humbly submit that except to the extent that a corporate entity cannot be handled over court processes directly, that is, by hand, like a natural person, the Rules of Court provide for both personal service of court processes on a company as well as service by substituted means.

At this juncture it is pertinent that we consider the provisions of the Rules of some courts with regard to personal service:[2]

Order 7 rule 9 of the Federal Capital Territory (FCT) High Court (Civil Procedure) Rules provides[3]:

> "Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process or other process requiring personal service, may be served on the organization by delivering to a director, secretary, trustee or other senior or principal officer of the organization, or by leaving it at the registered, principal or at advertised office or place of business of the organization within the jurisdiction"

Order 9 Rule 7 of the Abia State High Court Rules provides[4]:

> "When the suit is against a corporation or company that can sue or be sued in its name or in the name of an officer or trustee, the claim or other document may be served subject to the enactment establishing such corporation or company or under which it is registered, as the case may be, by giving the same to any director, secretary, or other principal officer, or by leaving it at the office of the corporation or company'

Order 11 Rule 8 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2004 provides:

> 'When a suit is against a corporate body authorised to sue and be sued in its name or in the name of an officer or trustee, the documents may be served, subject to the enactment

[1] S.78, Companies and Allied Matters Act, Cap. Laws of the Federation of Nigeria (LFN), 2004.
[2] These provisions are in the main *in pari materia* in all the Rules of court in Nigeria.
[3] High Court of Lagos State (Civil Procedure) Rules, 2012. See also Order 11 Rule 8, High Court of Federal Capital Territory, Abuja (Civil Procedure) Rules, 2004.
[4] Abia State High Court (Civil Procedure) Rules, 2009.

establishing that corporation or company or under which it is registered, as the case may be, by giving the writ or documents to any director, secretary, or other principal officer or by leaving it at the corporate office'.

Order 7 Rule 6 of the National Industrial Court Rules provides:[1]

'Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process or other process requiring personal service, may be served on the organization by delivering to a director, secretary, trustee or other senior or principal or responsible officer of the organization, or by leaving it at the registered, principal or at advertised office or place of business of the organization within the jurisdiction'

From the various provisions above, it is apparent that, there exist provisions for personal service of court processes on a company. The processes are deemed personally served on the company where they are 'delivered to a director, secretary, or other principal officer' of the company. This is legally defensible as a company is seen to act through its alter ego, the directors, and its other principal officers[2]. A company does not have natural hands, legs, eyes and mouth, however, the hands, legs and mouth or mind of the directors, secretary and principal officers of the company are seen to be that of the company[3]. Hence most of the Rules of Court use the description 'every originating process or other process requiring personal service…'

From the above, we have firmly shown that personal service can be effected on a corporate entity therefore, it naturally flows that where personal service proves abortive, service can be effected through substituted means. It is therefore not correct to hold that'*the procedure for substituted service cannot be made to a corporation like the 2nd Appellant herein*' as stated by the Supreme Court above.

Section 78 of CAMA clearly states that a company will be served in the manner provided in the Rules of Court and it is not in doubt that the Rules of court provide for two modes of the service of court processes, namely:

a. Direct or personal service (where personal service is impossible or impracticable or would lead to unreasonable delay) and,
b. Service by substituted means.

We humbly submit that there is nothing in the various Rules of Court that limit the grant of order of substituted service only to natural persons. The consideration for such a grant is that personal service could not be reasonably or practically or conveniently effected. The court will readily order substituted service so long as it is shown that by the mode sought, the processes will certainly come to the notice of the adverse party. Order 11 Rule 5 of the High Court of the FCT Rules provides[4]:

"Where it appears to a court (either after or without an attempt at personal service) that for any reason personal service cannot be conveniently effected, the court may order that service be effected either by-

a. Delivery of the document to some adult, inmate at the usual or last known place of abode or business of the person to be served; or
b. Delivery of the document to some person being an agent of the person to be served or to some other person on it being proved that there is reasonable probability that the document would in the ordinary course through that agent or other person, come to the knowledge of the person to be served; or
c. Advertisement in the federal gazette, or in some newspaper circulating within the jurisdiction; or
d. Notice put up at the principal court house of, or a place of public resort in the judicial division where the respective proceeding is instituted, or at the usual or last known place of abode or of business of the person to be served; or
e. E-mail or any other scientific device now known or later developed; and
f. Courier service or any other means convenient to the court."

Order 7 Rule 5(1) of the Lagos State High Court Rules provides[5]:

[1] National Industrial Court Rules, 2007.
[2] Section 65 of CAMA.
[3] Haston (Nig) Ltd v. ACB Plc (2002) 12 NWLR (pt.782) 623 at 644-645 paras E-B. For interpretation of what constitutes 'principal officer', 'office' see Cros River Basin & Rural Development Authority v Sule, supra; Kenfrank (Nig) Ltd v UBN Plc (2002) 8 NWLR (pt.789) 46 at 61-62 paras H-D; Panache Communications Ltd v Aikhomu (1994) 2 NWLR (pt.327) 420. See also Lennards' Carrying Co Ltd v Asiantic Petroleum Co Ltd (1915) AC 705 at 713 per Viscount Haldane. See also Okolo v UBN Ltd (2004) 3 NWLR (pt.859) 87 SC.
[4] Supra.
[5] Supra

"Where personal service of an originating process is required by these rules or otherwise and a judge is satisfied that prompt personal service cannot be effected, the judge may, upon application by the Claimant make such order for substituted service as may seem just."

Order 9 Rule 4 of the Abia State High Court Rules provides[1]:

Where it appears to the court (either after or without an attempt at personal service) that for any reason personal service cannot be conveniently effected, the court may order that service be effected either-

a. By delivery of the document to some adult, inmate at the usual or last known place of abode or business of the person to be served; or
b. By delivery thereof to some person being an agent of the person to be served or to some other person, on it being proved that there is reasonable probability that the document would, in the ordinary course, through that agent or other person, come to the knowledge of the person to be served; or
c. By advertisement in the State gazette, or in some newspaper circulating within the jurisdiction; or
d. By notice put up at the principal court house of, or some other place or public resort in the judicial division wherein the proceedings in respect of which the service is made is instituted, or at the usual or last known place of abode or of business of the person to be served;

Order 7 Rule 1(3) of the National Industrial Court Rules provides[2]:

"The court may direct that service of any document be dispensed with or be effected otherwise than in the manner prescribed by these Rules."

It is apparent from the above provisions that the rules of court provide for instances where court processes can be effected by substituted means. The rules rightly anticipate circumstances where it will be difficult to effect personal service. These difficulties are not limited to natural persons. Going by the pronouncement of His Lordship, there is no need to serve a company by substituted means as the relevant rules of court have provided an alternative means of serving a company where personal service is not possible or convenient. One may need to ask: 'which is easier to prove: service by 'leaving' the process at the head office or publication in a newspaper or by sending such processes through e-mail or by the use of Courier companies?

It is not arguable that a company that is served by 'leaving' the process at the head office is most likely to deny receipt of same (as was done in Mark v Eke) than where the process is served through a better substituted means like advertisement in a newspaper or by use of courier company. Service by 'leaving' the process at the head or registered office is more prone to fraudulent denials or claims than substituted means especially where the Court orders a more credible mode of service like advertisement or use of courier service. This especially so as the courts has held that such process to be served on a company by 'leaving', must be left with a person designated or authorised to receive processes or documents on behalf of the company and not just merely 'leaving the processes' with anybody that works in the company[3].

Also, there are instances where it is necessary to serve the company by substituted means, for example, where the Managing Director or other Directors, Secretary to the company or other Principal officers deliberately refuse to accept such processes or are evading service and the party at whose instance the service is sought to be effected does not know any 'designated officer to receive official documents'. Why should the processes not be pasted at the entrance to the office of the company, advertised or sent by a reputable courier company? It is trite law that the alter egos of a company are the Directors of the company. Where therefore, service is effected on the company through its Directors, it must of necessity be seen as personal service for the legs, hands and brain of the company are the directors[4].

It is going by the arguments so far, we firmly submit that the provisions in the various Rules of Court allowing substituted service are not limited to natural persons and therefore not correct to assert as was held in Mark v Eke that a company cannot be served by substituted means.

[1] Supra
[2] Supra.
[3] See Ranco Trading Co Ltd v UBN Ltd (1998) 4 NWLR (pt.547) 566 at 573 paras A-F; Cross River Basin & Rural Development Authority v Sule (2001) 6 NWLR (pt.708) 194 at 208-209, paras D-A.
[4] Haston (Nig) Ltd V. ACB Plc (2002) 12 NWLR (Pt.782) 623 at 644-645 Paras E-B; For interpretation of what constitutes 'principal officer' and 'office' see Cross River Basin & Rural Development Authority V. Sule, (supra). See also Kenfrank (Nig) Ltd V. UBN Plc (2002) 8 NWLR (Pt.789) 46 at 61-62 Paras H-D; Panache Communications Ltd V. Aikhomu (1994) 2 NWLR (Pt.327) 420.

3) The view that service must only be at the registered office of the company flows neither from the Section of the CAMA[1] or the Rules of Court that was considered in arriving at the decisions in the two cases. We believe that the view expressed by the court is a carryover from the provisions of Section 36 of the Companies Act of 1968[2] which provided that "a document may be served on a company by leaving it at, or sending it by registered post, to the registered office of the company" The 1968 Act did not make separate provisions for the service of a court process and the service of any other document[3]. But, the CAMA unambiguously states the manner of service of court processes, and other documents on a Company thus:
    a. If it is a court process, it is to be served on a company in the MANNER PROVIDED BY THE RULES OF COURT, and
    b. If it is any other document that is not a court process, it may be served on a company by:
        i. Leaving it at the registered office or head office of the company, or
        ii. Sending it by post to the registered office or head office of the company

In the case of the person effecting service of 'any other document other than a court process', such a person has the discretion to either 'leave' the document at the registered or head office of the company or to 'send the document by post' to the registered or head office of the company. But where the documents to be served are court processes, it is the relevant Rules of the Court that determine the manner of service.

The Court of Appeal decision in the case of **NBC V. Ubani**,[4] is apposite in this regard, to wit:

> "...In the matter of service of corporations and companies, a distinction must be made between the position of the law under the Companies Act of 1968 and the present position under the Companies and Allied Matters Act, Cap.59, LFN, 1990 (CAMA). Before the new CAMA legislation, service of a corporation or company can only be effected by service on the secretary or principal officer of the corporation or company at its registered office and under the Companies Act of 1968, there was no flexibility as to the application of the provision because it was contained in a statute, the provision of which were mandatory.
>
> However, section 78 of CAMA 1990 carefully transferred the question of service of court's process from the Companies Act to be dealt with under the applicable rules of court and that any other document may be served on a company by leaving it at or sending it by post to the registered or head office of the company. The applicable rules of the court in the instant case are Order 12 Rule 8 of the High Court (Civil Procedure) Rules, 1987 (Cross River State)...".

Relying on the maxim of interpretation that the legislature do not use words in vain, we submit that if the legislature intended to have the qualifying words of the second arm of the section, which is '*by leaving it at, or sending it by post to, the registered office or head office*' apply to both the service of court processes and service of any other document on a company to be at the 'registered office or head office', the draftsman would have couched it differently.

We further submit, that the legislature intended to distinguish service of court processes, from service of any other document on a company whilst the manner of service of court processes is to be determined by the relevant or applicable Rules of Court, the section clearly states how service of any other document is to be served on a company. This is understandably clear especially in relation to Rules of Court in Nigeria. For in relation to court proceedings, the Rules of the Court whose jurisdiction is activated, determines how its processes are to be served on parties before it. Moreover, the Companies and Allied Matters Act was principally enacted to[5]:

a. Establish the Corporate Affairs Commission;
b. Regulate the incorporation of Companies and incidental matters to incorporation;
c. Regulate the registration of Business names, and
d. Regulate the incorporation of trustees of certain communities, bodies and associations

The Act thus, deliberately leaves issue of service of court processes that affect a company to the determination of the relevant rules of court. This position was affirmed by the Supreme Court in the two

[1] Section 78 of CAMA
[2] Repealed by virtue of Section 651 of the CAMA, 1990.
[3] Aina Blankson, op.cit. at page 2
[4] (2009) 3 NWLR (Pt.1129) 512 at 534-535 per Owoade JCA. Though the Learned Hon. Justice of the Court of Appeal still holds the view that the place of service, relying on *Mark v Eke*, and *Kraus Thompson Organisation Ltd v UNICAL*, supra, (perhaps by upholding the doctrine of *stare decisis*) should still be at the registered or head office, he appreciated the new dimension introduced by CAMA that service of processes on a corporation or company is now regulated by the applicable rules of court, and that the flexibility that courts usually apply to instances of non-compliance with rules of court will still apply to case of service of court processes on a corporation or company.
[5] See the preamble to the CAMA.

cases under discourse and it has also been reaffirmed in plethora of cases[1]. It is therefore beyond controversy that the statute regulating the service of court processes on a company is the relevant Rules of Court and NOT the provisions of the Companies and Allied Matters Act having surrendered that power to the Rules of Court. It is a trite law of interpretation of statutes that, the court is prohibited from importing into a statute words that are not so provided and also that where the words of a statute are clear and unambiguous, the literal grammatical meanings of the words used by the legislature, except they result in manifest injustice or absurdity, should be given to the words.[2] In urging the interpretation that limits the reference in CAMA of service of court processes to the relevant Rules of Court, no absurdity or manifest injustice is caused. There is therefore, no justification in importing 'registered or head office' to Section 78 of CAMA when referring to service of court processes or assuming 'registered office or head office' apply to every Rules of Court on service of court processes on a corporate entity.

Moreover, it is further submitted that the 'and' between the first part of the section 78 of CAMA and the last part of the same section must be read or interpreted to be conjunctive only to the extent that the section relates to ways court processes and other document can be served on a company. This is manifest by the use of two different modifiers in both parts of the same section. Thus:

a. Where it is service of court process, the modifier is ' in the manner provided by the Rules of Court'; but
b. Where it is service of any other document, the modifier is 'the registered office or head office of the company'

It is therefore wrong to apply or extend the modifier of the last part of the section to the whole section. We therefore, humbly submit that to ascertain the manner of service of court processes on a company, the relevant Rules of the Court and only the Rules of Court should and must be considered. In the case of a statutory corporation, the law establishing the corporation, and the relevant Rules of Court should be the determining consideration. The Supreme Court cannot therefore be said to have correctly interpreted Section 78 of CAMA in the case of Mark v Eke when Hon Justice Mudsapher, JSC (as he then was) made the pronouncement that:

> '...A service on a company as this provided must be at the registered office of the company and it is therefore bad and ineffective if it is done at a branch office of the company.'[3]

Whether or not service of court processes must be at the Registered Office or Corporate office or head office of a company, solely depends on the provision of the applicable Rules of Court and different Rules of Court have different provisions (though they have certain similarities) on the service of court processes on a company. A few of these Rules are considered below:

A. *Lagos State High Court (Civil Procedure) Rules, 2012 (*Order 7 rule 9) provides[4]:

> 'Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process or other process requiring personal service, may be served on the organization by delivering to a director, secretary, trustee or other senior or principal officer of the organization, or by leaving it at the registered, principal or at advertised office or place of business of the organization within the jurisdiction'

Thus under the Lagos State High Court (Civil Procedure) Rules service on a company will be by:

a. by delivering to a director, secretary, trustee or other senior or principal officer of the organization, or
b. by leaving it at the registered, principal or at advertised office or place of business of the organization within the jurisdiction

The emphasis is on the officer of the company and not the place where the process is delivered. On the other hand, where the process is to be left, the emphasis is on the place and not the person with whom the process is left.

Under this rule, the place where a court process can be left must therefore be one of the above mentioned places which should be within the jurisdiction of the court. Advertised office or place of

[1] Agip (Nig) Ltd v Agip Petroli Int'l (2010) 5 NWLR (pt.1187) 348 at 389 paras C, where Adekeye, JSC held that 'The issue of service of process under the Nigerian Legal system is basically statutory. It is aptly covered by our rules of court both at State and Federal levels'. See also MTN Ltd v Bolingo Hotels Ltd (2004) 13 NWLR (pt.889) 117 at 125 paras E-F. See also Palm Beach Insurance v. Bruhns (1997) 9 NWLR (pt.519) 80; Texaco (Nig) PLc v Lukoko (1997) 6 NWLR (pt.510) 651; O.U Insurance Ltd v Marine & Gen Ass Co (2001) 9 NWLR (pt.717) 92 at 100 paras E-F.

[2] IBWA v Imano (Nig) Ltd (1988) NSCC (pt.II) 245; PDP v.INEC (1990) 11 NWLR (pt.626) 200; Awolowo v Shagari (1979) 6-9 SC 51; Bronik Motors Ltd v WEMA Bank Ltd (1983) NSCC 226.

[3] Mark v Eke, supra at p.79 paragraph H.

[4] High Court of Lagos State (Civil Procedure) Rules, 2004. See also Order 11 Rule 8, High Court of Federal Capital Territory, Abuja (Civil Procedure) Rules, 2004.

business of the organization need not be the registered office. It can be a branch office of the organization. A branch office within the jurisdiction of the Lagos State High Court can rightly be taken to be 'advertised office or place of business of the organization'. Thus under the Lagos State High Court Rules, the office of the company to be served needs not be a registered office or head office but any of its offices within the jurisdiction of Lagos State and this could be registered office, principal office, advertised office or office where it carries on its business.

B. *Abia State High Court (Civil Procedure) Rules.* (Order 9 Rule 7) provides[1]:

> 'When the suit is against a corporation or company that can sue or be sued in its name or in the name of an officer or trustee, the claim or other document may be served subject to the enactment establishing such corporation or company or under which it is registered, as the case may be, by giving the same to any director, secretary, or other principal officer, or by leaving it at the office of the corporation or company' by leaving it at the office of the corporation or company'

It is to be given to any of the officers of the company mentioned in the rule-director, secretary or principal officer of the company[2]. The process server can also leave the process at the office of the corporation or company. It is submitted that the use of the word 'office of the corporation or company' does not only mean the registered or head office of the corporation or company. It should include the branch office of the company.

C. *High Court of the Federal Capital Territory (Civil Procedure) Rules* 2004 (Order 11 Rule 8) provides:

> When a suit is against a corporate body authorised to sue and be sued in its name or in the name of an officer or trustee, the documents may be served, subject to the enactment establishing that corporation or company or under which it is registered, as the case may be, by giving the writ or documents to any director, secretary, or other principal officer or by leaving it at the corporate office.

Under the Abuja Rules, the service of court processes on a company is by:

a. by giving the writ or documents to any director, secretary, or other principal officer or
b. by leaving it at the corporate office'.

Therefore, whilst the processes under the Lagos and Abia States Rules can be left at the office of the company which needs not be the registered office or head office of the company, under the Abuja Rules, the process can only be left at the 'corporate office' of the company. In our opinion, 'corporate office' in the above rule depicts only the head or registered office and not a branch office.

D. National Industrial Court Rules, 2007[3]

The provision of Order 7 Rule 6) is similar to that of the Lagos State Rules.

The above analysis shows that there are no absolute uniformity in the provisions of the various Rules of Court on service of court processes on a company and this therefore strengthens our view that it is wrong to make such wide and conclusive pronouncement on the point without limitation or reference to the provisions of the particular Rules of Court under consideration as was done by the Supreme Court in Mark v Eke and Kraus Thompson Org Ltd V. UNICAL[4] to wit that, a company can only be served court processes at its head or registered office. That pronouncement must be taken subject to the relevant Rules of Court.

From the above observations, it is safe to submit that it would be wrong for the court to hold service effected on a corporation or company at a branch office to be ineffective or bad without recourse to the applicable rules of court, and without consideration of other surrounding facts, such as whether the process indeed got to the company (where it is served through persons who are not the secretary, director or principal officer) and whether the company has taken any step in the proceeding. Non-compliance with rules of court is generally an irregularity which could be waived or deemed waived, and should not be ground to nullify court proceedings[5].

To make it have a universal application, as was done in these cases, is not a proper statement of the law and has therefore worked absurdity and hardship on the part of litigants and legal practitioners alike and we humbly submit that this point should be revisited by the Supreme Court more especially so in the light of its recent decision in ***NBC Plc v Ubani***.[6]The appellant sought to attack the initiating processes at the trial court relating to the mode of service of the Writ of Summons on the appellant at the premises of its depot in Clabar. The issue

[1] Abia State High Court (Civil Procedure) Rules, 2009.
[2] This suggests physical handling over of the process to a natural person.
[3] National Industrial Court Rules, 2007.
[4] Supra.
[5] Dauphin Nigeria Ltd v Manufacturers Association of Nigeria (2001) FWLR (pt.47) 1127; Akintunde v Ojo (2002) FWLR (pt.99) 1158.
[6] Decided on the 13th day of December, 2013

formulated for determination there from was **"whether the writ of Summons issued and the service thereof effected on the appellant was proper and in accordance with relevant laws and court rules"**
The Supreme Court in resolving this issue held as follows:

> "...the validity of services of the instant processes being initiating processes have to comply as provided by the combined effect of section 78 CAMA and Order 12 Rule 8 (supra)...The defendant/appellant has suggested that service of processes as aforesaid on a company or corporation...must be at the registered or head office...However, I tend to agree more with the plaintiff/respondent that a close scrutiny of the said provisions does not so support...the above plain and unambiguous provisions of Rule 8(supra) clearly do not stipulate as contended...that service of court processes as here(sic) must be at the registered or head office...I therefore agree with the plaintiff/respondent that service of the instant court processes as per the above mode on the Depot Manager is proper service being a principal officer served within jurisdiction... The defendant/appellant has not contested nor denied... that the court processes have been brought to the said company's knowledge having knowingly thereafter taken steps in the proceedings... by virtue of Order 2 Rule 1 and2 (supra), the non-compliance amounts to no than a mere irregularity which can be waived and indeed has been deemed waived..."[1]

Finally on all the points, we submit that in the above cases of Mark v Eke, and Kraus Thompson Org v. UNICAL[2] under consideration, the Supreme Court did not consider the specific rules the Imo State High Court Rules as applicable to Abia State or the Lagos State High Court Rules on service of Court processes on a corporation or company. Rather the Supreme Court relied on the decision of the English court in **Watkins v Scottish Imperial Insurance Company**[3]. We submit that service of court processes is based on statutory provisions and not common law. It is the specific provisions of the relevant rule of court that required interpretation and not the common law position. This English decision did not interpret Rules of court similar to those under consideration in the two cases. And it is common knowledge that decisions of English Courts are not binding on our courts. They are only of persuasive effect, and that is where the issue to be determined in our courts and those determined by the English courts are on all fours, the same. It is therefore unjust to apply English decisions to a matter before the courts without a consideration of the local circumstances or the local legislation on the point. In the present cases of Mark v Eke and Kraus Thompson Org V. UNICAL, the local circumstances are the specific provisions in the rules of these courts. There is no evidence that in the English case cited above that was relied upon by the Supreme Court in both cases, interpreted similar rules of court with similar provisions. We admit that where the particular rule of court requires that its processes should be served on a company or corporation at its head or registered office, this must be complied with. However, in the absence of such specific requirement, the courts, including the Supreme Court, should not import such requirements in the rules of court, where none exists.
In fact, in Kraus Thompson Org v. UNICAL, what was called for interpretation was Order 2 Rule 3 of the High Court of Lagos State (Civil Procedure) Rule, 1972 which deals with venue to institute action for breach of contract or specific performance. **The issue before the court was place of action and not mode of service**. The Supreme Court was to determine whether or not a 'liaison office' can be taken as place of 'residence of a corporation or company' for the purpose of determining the venue for action for breach of contract under the relevant Rule of Lagos State High Court. This, we humbly submit, the Supreme Court rightly decided by holding that the action was incompetent. It was however, improper for the Supreme Court to now delve into the issue of mode of service and make such wide and sweeping pronouncements on service of court processes on a company or corporation, without any reference to provision of the extant Lagos State High Court Rules.

Consequences of the above Decisions

By the pronouncement of the Supreme Court, an additional burden is placed on the Plaintiff who sues a defendant company carrying on business within jurisdiction but with registered office outside jurisdiction. Two major conditions that must be met before service of court processes on a company where the action is commenced outside the State where the registered or head office of the company is located, is the need for 'leave to issue such writ'[4] and the endorsement of such writ in accordance with Section 97 of the Sheriff and Civil Process Act to show where the writ is issued and where it is to be served.

[1] Per Chukwuma-Eneh, JSC. This was also the mind of his learned brother (Mahmoud Mohammed, JSC) in his concurring judgement with regard to the above formulated issue "The answer to the above issue is of course in the positive having regard to the provisions of Section 78 of the Companies and Allied Matters Act and Order 12 Rule 8 of the Cross River State High Court (Civil Procedure) Rules, 1987."
[2] Similar Court of Appeal cases on the point. See Ranco Trading Co Ltd v UBN Ltd (1998) 4 NWLR (pt.547) 566 at 573 paras A-F; NEPA v Uruakpa (2010) 12 NWLR (pt.1208) 298 at 316 paras B-C, 317 paras B-C per Owoade, JCA.
[3] (1889) 23 QBD 285, a decision reached over a century ago.
[4] NPA v Eyamba (2005) 12 NWLR (pt.939) 409 445 paras G-H; 446-447 paras H-E.

By the combined effect of Order 4 Rule 6, Order 11 Rules 13(e) and Order 11 Rule 8 of the High Court Rules of the Federal Capital Territory, Abuja,[1] the leave of the Court is required to issue a writ for service outside jurisdiction. Order 4 Rule 6 provides:

> "Subject to these Rules or any written Law in force in the Federal Capital Territory, Abuja, no Writ of Summons for service out of the jurisdiction, shall be issued without leave of a court or Judge in Chambers."

Where such leave is not obtained before the issuance of the Writ, depending on the relevant Rules of Court, the Writ may be incompetent and both the issuance and service of the Writ of Summons would be set aside.[2]

The pronouncement of the Supreme Court does not take into consideration the fact that the cause of action may have occurred within jurisdiction through the company operating in a branch office. If the company can operate through the branch office, make profits or incur liabilities through the branch office, why should court processes not be served on that company through the branch office that may have been responsible for the cause of action? After all, a branch office is a part of the company.

Thus, suits that ordinarily would not require 'leave' and 'endorsement in line with section 97 of the Sheriff and Civil Process Act' would be found to be fundamentally defective for non-compliance as a result of the pronouncement of the Supreme Court in Mark v Eke and Thompson Kraus Organisation Ltd v UNICAL where a defendant company is served within jurisdiction at its branch office through a Principal officer like a branch manager if the defendant company has its registered or head office outside the jurisdiction of the court.

Another consequence flowing from the above decision which is more worrisome and had worked much hardship on litigants is the strict adherence to judicial precedent especially when it is a decision of a superior court. The need for the judiciary to ascertain the intention of the legislature relying on the maxims and rules of interpretation in interpreting the provisions of statutes cannot be over emphasised. This is pertinent in the face of the importance attached to the doctrine of judicial precedent as on important corner stone of the legal systems of common law jurisdictions, the world over. [3]That is why the Court of Appeal in NBC V. Ubani[4] despite stating the position of the law succinctly, went on to hold that service of processes must be at the registered or head office of a company.

The Supreme Court had this to say in respect of judicial precedent[5]

> "…Wherefore the only option before this court in the circumstances is merely to follow the precedents already set by this court in those cases decided on similar facts bases on the hallowed principle that similar matters should be treated alike and so make for a predictable outcome. This point is rooted in the principle of judicial precedents...which has to be adhered to here as clearly (sic) for that matter, in an age this court is increasingly being challenged by its conflicting decisions...it directs that once a point of law in a case has been pronounced by a court of competent jurisdiction that depending on the court's position in the hierarchical ladder, such pronouncement on the legal principle on the point...is not open to be re-examined or revisited by the same court or courts below it otherwise bound to follow the decision. This principle helps to steady justice on its proper course..."

In view of our discourse so far, can it be said, applying the reasonable man's test, that these cases has helped to steady the course of justice in relation to the issues raised? If anything, the Supreme Court decision in NBC V. Ubani as set out above, has introduced a new dimension to the already existing uncertainty. This is so, because the Court did not over rule its previous decisions (on the requirement of service of court processes on corporate entities only at their registered or head office) like the cases under discussion nor was the case distinguished from the others on this point. Lower courts will therefore have to bear the burden of choosing which of the conflicting decisions of the Supreme Court to follow and then hold their breath in hope that it will be upheld on appeal.

Conclusion

In this work, we have shown that by the provision of Section 78 of CAMA, court processes are required to be served in accordance with the relevant Rules of Court. This much has been confirmed by both the Supreme Court and various decisions of the Court of Appeal. It is the applicable Rules of court that should determine the mode of service of court processes on a corporate entity, and in the case of corporation established by a statute,

[1] Similar provisions can be found in the various Rules of courts.
[2] Odua Investment Co Ltd v. Talabi (1997) 10 NWLR (pt.523) 1; Unilorin v. Oluwadare (2006) 14 NWLR (pt.1000) 751; NUB Ltd v. Samba Pet Co. Ltd (2006) 12 NWLR (pt.993) 129; Nwabueze v. Obi-Okoye (1988) 4 NWLR (pt.91) 664; Ariori v Elemo 91983) 1 SCNLR 1; Ezomo v Oyakhire (1985) 1 NWLR (pt.2) 195; Ndoma-Egbe v. Govt of Cross River State (1991) 4 NWLR (pt.188) 773 at 789; NEPA v Onah (1997) 1 NWLR (pt.484) 680, and Arowolo v Adesina (2011) 2 NWLR (pt.1231) 315; and Skenconsult v Ukey (1981) 1 SC 6.
[3] NBC V. Ubani (supra) Supreme Court judgement.
[4] Supra.
[5] NBC V. Ubani (supra).

the particular statute, where it provides for service. A wide pronouncement without reference to any specific rule of court on the service of court processes on a corporate entity is therefore incorrect. We have also shown that except where specifically provided for in the relevant Rules of Court or any other statute, there is no statutory provision requiring service of court processes to be effected on a corporate entity only at the registered or head office and that a person, juristic or natural, can be served court processes personally or by substituted means. The pronouncements of the Supreme Court in *Mark v Eke* and *Thompson Kraus Organisation Ltd V UNICAL* are therefore quite broad and off tangent. We concluded by saying that the principles stated in both cases needs urgent review by the Supreme Court especially in the light of its recent conflicting decision in NBC V. Ubani, as this will make the law more certain, steady justice on its course and avoid working absurdity in the spirit of judicial precedent.

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