AO2 LAW | Anaje Olumide Oke

SERVICE OF ORIGINATING PROCESSES AT THE FEDERAL HIGH COURT OF NIGERIA:

Did Akeredolu v Abraham (2018) LPELR-44067 (SC) settle the controversy?

Introduction

Overtime, it has continued to be a raging controversy among legal minds on whether leave of Court should indeed be required for service of an originating process sealed from the registry of a State judicial division of the Federal High Court of Nigeria to another. Put differently, should leave of Court be required for service of originating processes issued in the Lagos State judicial division to a Defendant resident in Ogun or Anambra State.

It is to be noted that this controversy arose out of the divergent opinions of Legal Practitioners over the following issues:

a. The administrative set-up of the Federal High Court of Nigeria as well as the true purport of the legal phrase "out of jurisdiction" as used in the Federal High Court (Civil Procedure) Rules, 2009, and
b. The scope of application of the Sheriffs and Civil Processes Act ("SCPA"), Cap S6...., Laws of the Federation of Nigeria, 2004.

I shall summarily comment on the particularised issues stated above.

1. The administrative set-up of the Federal High Court of Nigeria

A careful consideration of **Section 19 of the Federal High Court Act** reveals that the Federal High Court is conferred with a nationwide jurisdiction i.e. there is only one Federal High Court of Nigeria, however, has judicial divisions in the various states and the Federal Capital Territory for administrative convenience.

The above position is further strengthened by the provisions of **Order 6, Rule 31 of the Federal High Court (Civil Procedure) Rules, 2009**, wherein "out of jurisdiction" for the purposes of the Federal High Court of Nigeria was defined to *mean out of the Federal Republic of Nigeria.*

The conclusion drawn from the above therefore, is that the jurisdiction of the Federal High Court of Nigeria is one for all intents and purposes.

2. The scope of application of the "SCPA"

It has been argued by a school of thought, that the provisions of the SCPA do not apply to the Federal High Court of Nigeria. This is in view of the fact that the Federal High Court which was established as a federal revenue court in 1976 did not exist at the time of the enactment of the SCPA and therefore was not contemplated by that legislation. According to the proponents of this view, it is the intendment of the draftsmen of the SCPA that its provisions apply only to the High Court of the various States. This can be clearly deduced from the wordings used in the SCPA. Please see the Marginal note in Part VII of the SCPA, and Sections 96-98 of the SCPA.

However, our judicial authorities jointly hold a different view, as it has been held in a plethora of cases that the provisions of the SCPA are applicable in all High Courts, including the Federal High Court. Chief among these judicial authorities, is the famous case of ***MV Arabella v NAIC (2008) 11 NWLR (Pt 1097) 182 at 20, 221 H – A.***

Did Akeredolu v Abraham (supra) come to the rescue?

In answering the above question, my humble view is that the Federal High Court has jurisdiction throughout the federation of Nigeria; and service out of jurisdiction for the purposes of the Federal High Court means out of Nigeria as a Country.
It is very clear from a community reading of **Order 6, Rules 13 & 14 of the Federal High Court (Civil Procedure) Rules, 2009** that leave of Court is required for service of an originating process out of jurisdiction. However, the pertinent question to ask is whether "out of jurisdiction" as used in relation to the Federal High Court conveys the same meaning as "out of State" as envisaged under the SCPA. The answer will be in the negative because while "out of jurisdiction" means out of Nigeria, "out of State" means out of a State in Nigeria to another State.
However, and unfortunately, our Courts are of different view about this position and have consequently in a myriad of cases held that failure to obtain leave of Court to serve an originating process sealed out of the registry of a State judicial division of the Federal High Court to another, nullifies the proceedings. See ***Ben Obi Nwabueze & Anor v Justice obi Okoye (1988) LPELR SC. 24/1988; NEPA v. Onah (1997) 1 NWLR (Pt.484) 680 at 694***

In the famous case of ***Owners of the MV Arabella v Nigeria Agricultural Insurance Corporation (Supra)***, the Supreme re-echoed the seemingly settled law that leave of Court is required for service of a Writ of Summons out of jurisdiction and that this requirement applies to the Federal High Court as well as the State High Courts. In MV Arabella's case, the appellant commenced a suit against the respondent at the Federal High Court in Lagos. Service of the Writ of Summons was effected on the Respondent in Abuja. The Respondent filed a preliminary objection claiming that the Writ of Summons was improperly issued and served due to the failure to endorse it in accordance with the provisions of Section 97 of the SCPA. The trial court set aside the Writ of Summons and service thereof and dismissed the suit.
On appeal to the Supreme Court, the apex Court affirmed that the issuance and service of the Writ of Summons was void, but set aside the order dismissing the suit, while substituting same with an order to strike it out instead.

The apex Court further held as follows:
"The provisions of section 97 of the Sheriffs and Civil Process Act are applicable in all High Courts, including the Federal High Court. The provision of the section has nothing to do with the coverage of the jurisdiction of the Federal High Court, which is nationwide. It is therefore a total misconception of the law to contend that the provision of the section is inapplicable to the Federal High Court because the jurisdiction of that court covers the entire nation."

It is to be noted that decision in ***MV Arabella's case*** has been criticised by legal practitioners because it applied principles derived from cases relating to State High Courts to the Federal High Court. And in so doing, the Supreme Court, with due respect, overlooked the fact that the Federal High Court's Rules, operational at the time, specifically state that, with respect to the Federal High Court, 'out of jurisdiction' means 'out of Nigeria'. The apex Court further did not take into consideration, the fact that the Federal High Court which was established as a federal revenue Court in 1976 did not exist at the time of the enactment of the SCPA and therefore was not contemplated by that legislation.

In the most recent case of ***Akeredolu v. Abraham (2018) LPELR-44067 (SC)***, the Supreme Court appeared to have departed from its decision made in ***MV Arabella's case*** and therefore put to eternal rest the raging controversy.
However, a careful look at ***Akeredolu case*** reveals that although the Supreme Court commented to say that the Federal High Court has one nationwide jurisdiction and as such leave is not required for service of originating processes out of one State to another, it is my view that such comment by way of obiter dictum, does not form the ratio decidendi of the Court. It is therefore legally right to posit that in the absence of an express attempt by the apex Court to overrule its earlier position on this issue as laid down in the MV Arabella case, its obiter in Akeredolu's case cannot replace the ratio decidendi in ***MV Arabella's case***. It is trite principle of law that the obiter dictum of a later case cannot overrule the ratio decidendi in an earlier one even where reached in manifest ignorance or per incuriam. Therefore, the law as it is today, is as laid down in the ***MV Arabella case***.
As the controversy continues to rage among legal minds, it is my hope that an early opportunity will present itself before the erudite and Honourable Justices of the Supreme Court, in order to afford them the opportunity to correct the Court's decision in the case of ***MV Arabella***.

CONTACT US:

For further information on the foregoing, please contact Ebuka Obidigwe (ebuka.obidigwe@ao2law.com/09032681734)