1. ALHAJI ABDULKAREEM LAARO BUHARI (BALOGUN GAMBAR1 OF ILORIN)
2. ALHAJ1 BABA BUHARI

V.

1. ALHAJI MUHAMMED ALIYU ADEBAYO
2. HIS ROYAL HIGHNESS, ALHAJI IBRAHIM SULU GAMBARI (EMIR OF ILORIN)
3. ILORIN EMIRATE COUNCIL

COURT OF APPEAL
(ILORIN DIVISION)

CA/IL/106/2013

HUSSEIN MUK.HTAR, J.C.A. *(Presided)*
ISAIAH OLUEEMI AKEJU, J.C.A. *(Read the Leading Judgment)*
UCHECHUKWU ONYEMENAM, J.C.A.

THURSDAY, 27th FEBRUARY 2014

ACTION - Commencement of action – Modes of – Order 2 rules 1 and 2(1) of High Court of Kwara State (Civil Procedure) Rules, 2005.

ACTION - Commencement of action – Writ of summons – Processes and documents that must accompany writ of summons – Order rule 2(2) of High Court of Kwara State (Civil Procedure) Rules. 2005.

ACTION - Court process – Signatory of - Need for clarity of.

ACTION - Originating process – Preparation and endorsement of Order 6 rules 1, 2 and 3 of High Court of Kwara State (Civil Procedure) Rules 2005.

ACTION – Originating process – Where incompetent - Effect of.

ACTION-Originating process – Who may validly sign.

ACTION - Writ of summons - Signing of - Failure to sign in the required manner - Effect of.

ACTION - Writ of summons - Signing of - Legal Practitioner - Who is for the purpose of signing writ of summons for valid issuance thereof - Sections 2(1) and 24 of Legal Practitioners Act.

COURT- Jurisdiction of court- Importance of in court proceedings - Issue of - When can be raised.

DOCUMENT - Construction of documents - Rules of.

JURISDICTION - Jurisdiction of court - Importance of in court proceedings - issue of - When can he raised.

JURISDICTION - Writ of summons - Signing of - Failure to sign in the required manner - Effect of on jurisdiction of court.

LEGAL PRACTITIONER - Legal Practitioner - Who is - Section 2 (1), (2), (3) and (4) of Legal Practitioners Act.

LEGAL PRACTITIONER - Writ of summons - Signing of - Legal Practitioner - Who is for the purpose of signing writ of summons fur valid issuance thereof - Sections 2(1) and 24 of Legal Practitioners Act.

PRACTICE AND PROCEDURE - Commencement of action -Modes of - Order 2 rules 1 and 2 (f) of High Court of Kwara State (Civil Procedure) Rules. 2005.

PRACTICE AND PROCEDURE - Commencement of action - Processes and documents that must accompany writ of summons - Order 2 rule 2(2) of High Court of Kwara State (Civil Procedure) Rules, 2005.

PRACTICE AND PROCEDURE - Court process - Signatory of – Need for clarity of.

PRACTICE AND PROCEDURE - Originating process- Preparation and edorsement of – Order 6 rules 1,2 and 3 of High Court of Kwara State (Civil Procedure) Rules, 2005.

PRACTICE AND PROCEDURE - Originating process - Where, incompetent - Effect of.

PRACTICE AND PROCEDURE - Originating process - Who may validly sign.

PRACTICE AND PROCEDURE - Pleadings - Signing of- Pleadings filed at the Federal High Court - Who should sign - Order 26 rule 4(3), Federal High Court (Civil Procedure) Rules, 2000.

PRACTICE AND PROCEDURE - Statement of claim - Supercession of over writ of summons.

PRACTICE AND PROCEDURE - Writ of summons - Invalid writ-Whether statement of claim can cure.

PRINCIPLES OF INTERPRETATION - Construction of documents - Rules of.

WORDS AND PHRASES - Legal Practitioner - Who is.

Issues:

1. Whether the questioned writ of summons was issued and signed by a Legal Practitioner known to law.
2. Whether by the communal reading and effect of Order 2 rule 2(2) and Order 6 rule 2(3) of High Court of Kwara State (Civil Procedure) Rules, 2005, a statement of claim is an originating process.
3. Whether in the circumstances of this case, the doctrine of supercession of a statement of claim over writ applies.

Facts:

The Appellants commenced the action against the respondents by a writ of summons. The respondents joined issues, and pleadings where exchanged. The

matter went to trial. At the conclusion of trial, it was adjourned for judgment.

Before delivery of judgment, the 2nd and 3rd respondents filed an application in which they sought to challenge the competence of the suit and the jurisdiction of the court on ground that the writ of summons was not signed by a legal practitioner known to law. The appellants filed a counter-affidavit against the application and the 2nd and 3rd respondents filed a reply to same.

After hearing arguments on the application, the trial Judge declared the writ of summons invalid and struck it out.

Aggrieved, the appellants appealed to the Court of Appeal.

In determining the appeal, the Court of Appeal considered the provisions of Order 2 rules 1 and 2(1), High Court of Kwara State (Civil Procedure) Rules, 2005. It provides thus:

1. Subject to the provisions of any enactment, civil proceedings may be begun by a writ of summons, originating summons, originating motion or petition, as herein after provided.

2(1). Subject to the provisions of these Rules or any applicable law requiring any proceedings to be begun otherwise than by a writ, a writ of summons, shall be the form of commencing till proceedings.

(a) Where a claimant claims:

i) any relief or remedy for any civil wrong; or

ii) damages for breach of duty, whether contractual, statutory or otherwise; or

iii) Damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any property,

(b) When the claim is based on or includes an allegation of fraud; or

(i) Where an interested person claims a declaration.

Held *(Unanimously dismissing the appeal):*

1. *On Modes of commencement of action under the High Court of Kwara State (Civil Procedure) Rules –*
By virtue of Order 2 rules I **and 2 (1) of the High Court of Kwara State (Civil Procedure) Rules, 2005, subject to the provisions of any enactment, civil proceedings may be begun by a writ of summons, originating summons, originating motion or petition. Equally, subject to the provisions of the Rules or any applicable law requiring any proceedings to be begun otherwise than by a writ, a writ of summons, shall be the form of commencing all proceedings:**
(a) where a claimant claims:
(i) any relief or remedy for any civil wrong; or
(ii) damages for breach of duty, whether contractual, statutory or otherwise; or
(iii) damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or in respect of damage or injury to any property,
(b) When the claim is based on or includes an allegation of fraud; or where an interested person claims a declaration.
(Pp. 5H2-5S3. paras. D-B)

2. *On Preparation and endorsement of originating process under the High Court of Kwara State (Civil Procedure) Rules, 2005 –*
By virtue of Order 6 rules 1, 2 and 3 of the High Court of Kwara State (Civil Procedure) Rules, 2005, an originating process is to be prepared by the claimant or his legal practitioner who shall sign each copy thereof while same shall be sealed and therefore issued by the Registrar. *(P. 583, para.H)*

Per AKEJU, J.C.A. at page 585, paras. C-F:
"I **have perused the record of appeal and it is shown at page 12 thereof that the motion on notice dated the 25th day of October, 2005 and filed on 31/10/2005 clearly contains a signature under which it was stated thus:**

"A. O. Mohammed Esq.,
Femi Falana, A. O. Mohammed & Co;
Plaintiffs/appellants' counsel,
26, Sulu Gambari Road,
Ilorin."

This is in line with the accepted mode of signing processes by counsel as stated by the Supreme Court in both *SLB Consortium v. NNPC (supra)* and *Okafor v.Nweke (supra).*

I am not in any doubt that the writ of summons filed on 28/9/2005 in commencement of suit No. KWS/65/2005 from which the application that generated this appeal emanated was not signed by a legal practitioner known to law and same is incurably had."

3. *On Who may validly sign originating process –*
Per ONYEMENAM, J.C.A. at pages 589-590, paras. F-C:

"The position of the law is clear and does not require citation of authorities that for any originating process of the court to be valid, it must be signed by the litigant in person or by a Legal practitioner as defined under S. 2 of the Legal Practitioners Act.

The only question that needs to be answered here is who issued the writ of summons under consideration. Definitely not the litigant. Then the next question is, was it issued by a Legal Practitioner as defined under the Legal Practitioners Act. The answer to this question must be simple and direct 'Yes' or 'No'. It does not need explanations because a name is either a name of a legal practitioner or not. No sermon is required to show, that a name is that of a legal practitioner. For the avoidance of doubt, section 2 (1) of the Legal Practitioners Act provides;

> **"Subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor if, and only if, his name is on the roll".**

Whether the name of a person is on the roll calls for direct straight answer. Once the name requires some explanations to bring it within the name on the roll, then the name is not on the roll. If not on

the roll, the person bearing the name is not a Legal Practitioner and as such cannot sign an Originating Process.

So as in the instance, since the name "Femi Fanana, A.O Mohammed & Co. who issued the writ of summons in question cannot be categorically said to be the name of a person on the roll without strenuous factual explanations, I hold that the writ of summons dated 25th September, 2005 was not issued by a Legal Practitioner. It is therefore incompetent and was rightly struck out by the learned trial Judge."

4. *On Effect of incompetent originating process –*
An incompetent originating process is inchoate, legally non-existent and cannot be saved by way of an amendment. *[M.W.T., Adamawa State* ***v.*** *Yakubu* **(2013) 6 NWLR (Pt. 1351) 481 referred to.]** *(P. 587 paras. C-D)*
Per MUKHTAR, J.C.A. at page 588, paras. A-D:
"The court cannot, in any event ignore a situation in which the foundations of claim are based on a worthless "writ of summons signed otherwise than by a legal practitioner duly enrolled at the Supreme Court of Nigeria. The case was a complete non-starter rendering the entire proceedings null and void as rightly determined by the learned trial Judge. Basically, an unsigned or irregularly signed writ is worthless and incapable of hitting the ground running in legal proceedings. The writ of summons incompetent in that it was not issued by a legal practitioner known to law and is consequently struck out. Being an initiating process, the statement of claim and all other processes that swivel on the helpless writ are correspondingly affected by the same virus and consequently rendered incompetent."

5. *On Signing of pleadings under the federal High Court (Civil Procedure) Rules, 2000 –*
By virtue of Order 26 rule 4(3) of the Federal High Court (Civil Procedure) Rules, 2000, pleadings shall be

signed by a legal practitioner or by the party, if he sues or defends in person. (*P. 587, paras. A-B)*

6. *On Who is a legal practitioner –*
By virtue of section 2(1), (2), (3) and (4) of the Legal Practitioners Act, a legal practitioner is that person that has been called to the Bar to practice as a Barrister and Solicitor of the Supreme Court of Nigeria. *[Atake v. Afejuku* **(1994) 9 NWLR (Pt. 368) 379;** *Aburime v. N.P.A.* **(1978) 4 SC (Reprint) 80;** *Oketade v. Adewunmi* **(2010) 8 NWLR (Pt. 1195) 63 referred to.]** *(P. 5S4, paras. E-F)*

7. *On Who is a legal practitioner that can sign writ of summons for its valid issuance –*
By virtue of sections 2(1) and 24 of the Legal Practitioners Act, the person recognized by law as a legal practitioner who can sign a writ of summons for its valid issuance is a person who has his name on the Roll and is entitled to practice as a Barrister and Solicitor. A person whose name is not on the Roll cannot engage in any form of legal practice in Nigeria. *[Okafor v. Nweke* **(2007) 10 NWLR (Pt. 1043) 521 referred to.]***(P. 584 paras C – E)*

8. *On Need for clarity of signatory of court process –*
Once it cannot be said who signed a process, it is incurably bad. [*S.L.B. Consortium Ltd. v. NNPC* **(2011) 9 NWLR (Pt. 1252) 317 referred to.]** *(P. 585, para. B)*

Per AKEJU, J.C.A. at pages 584-585, paras. G – B:

> **"The learned senior counsel for the appellant had emphasised orally that the court process in the case were jointly prepared by Femi Falana and A. O. Mohammed, that the name of Femi Falana as lead counsel is endorsed on the writ before the firm of A. O. Mohammed & Co. and the use of comma shows that Femi Falana stands on its own and is not part of A. O. Mohammed & Co.**
>
> **I agree with the respondents that the above argument has no root in the evidence before the court. It is clear that what is stated on the writ and which has not been amended is "FEMI FANANA" (and not "FEMI FALANA" as now canvassed by the learned appellants' counsel). The signature that appears on the writ is not stated to belong to either**

Femi Falana (now a Senior Advocate of Nigeria) or even A. O. Mohammed & Co. There is therefore no exactitude or clarity as to who signed the writ of summons now disputed, and this obviously renders it incurably bad."

9. *On Effect of failure to sign writ in the required manner –*
The failure to sign a writ in the manner required by law fundamentally affects the validity of a suit as it calls the competence of the suit and the jurisdiction of the court to question. *(P. 585, para. F)*

10. *On Processes and documents that must accompany writ of summons under High Court of Kwara State (Civil Procedure) Rules, 2005 –*
By virtue of Order 2 rule 2(2) of the High Court of Kwara State (Civil Procedure) Rules, 2005, except where Order 23 of the Rules applies, every writ of summons shall be accompanied by:
(a) Statement of claim;
(b) List of witnesses to lie called at the trial;
(c) Written statement on oath of the witnesses; and
(d) Copies of every document to be relied on at the trial.
(P. 586, paras. C-D)

11. *On Supercession of statement of claim user writ of summons-*
The superiority of a statement of claim over a writ of summons is in respect of the claim averred in the writ of summons. Where a relief claimed in the statement of claim differs from the writ, the statement of claim supercedes the writ. Also, the statement of claim supercedes the writ where there is an issue of whether the claim itself has disclosed reasonable cause of action in which case, it is the statement of claim that is to be examined. *[Adebusokan v. Yunusa* **(1971) All NLR 257;** *ELF (Nig.) Ltd. r. Sillo* **(1994) 6 NWLR (Pt. 350) 258;** *Daniel Holdings Ltd. v. U.B.A. Plc* **(2005) 13 NWLR (Pt. 943) 533;** *Nta v. Anigbo* **(1972) 5 SC 156;** *Cookey v. Fombo* **(2005) 15 NWLR (Pt. 947) 182 referred to.]** *(P. 586, paras. E-G)*

12. *On Whether statement of claim can cure an invalid writ of summons –*

Per AKEJU, J.C.A. at page 587, paras. E-G:

> **"What I understand the learned SAN for appellants as saying on these issues is that the correctness of the endorsement of the statement of claim subsequently filed in the instant case should cure the glaring incurable defect in the signing of the writ of summons, but I decline to follow the Senior Advocate in this argument. I rather believe that it does not and I so hold. The writ of summons that originated the appellants' suit was not signed by a legal practitioner known to law and it was properly struck out by the learned trial Judge the immediate consequence of which is that the foundation of the action does not exist and so the suit was properly struck out based on the principle that no one can place something upon nothing,** *Macfoy v. UAC* **(2006) 16 WRN 185; the totality of which is that the appellants' suit lacks competence having not been initiated by due process of law**, *Madukolu v. Nkemdilim* **(1962) 1 All NLR 357,(1962) 2 SCNLR 341."**

13. *On Rules of construction of documents –*

In the construction of documents, words hear their ordinary dictionary meaning. No person, counsel and the court inclusive is permitted to introduce extraneous words or meaning in the construction of a document which would give an entirely different meaning to the document sought to be interpreted. [*Agbareh v. Mimra* **(2008) 2 NWLR (Pt. 1071) 378 referred to.]** *(Pp. 588-589, paras. H-A)*

Per ONYEMENAM, J.C.A. at page 589, paras. B-F:

> **"Without even a Macmillan Primary Webster dictionary, the portion of the writ of summons reproduced above is clear, certain and unambiguous. The purport of the said portion of the writ of summons is outstandingly obvious, speaking for itself and shouting to the high heavens and to anyone who cares to listen; I was issued by Femi Fanana, A.O Mohammed & Co.**
>
> **A party is presumed to intend what he has written down in a document. The part of the writ of summons in question wills therefore be construed**

and be given its ordinary and plain meaning which is that it was issued by "Femi Fanana, A.O Mohammed & Co." The words of A .O Mohammed, SAN on the import of the sign, 'comma' between the two names and the factual matters in paragraphs 1.01 - 1.02 at page 4 of the appellant's brief; cannot be imported into the writ of summons. It is unfortunate and against the rules of this court to assist Mr. Mohammed SAN, to rewrite the writ of summons at this point and through this mode.

It is my view that the writ of summons which is plain in its meaning does not require any aid in its construction. As plain as it is and in its ordinary meaning, it should be considered for the determination as to whether it qualities as having been signed by a Legal Practitioner without importing oral explanation to it."

14. *On Importance of jurisdiction in court proceedings and when it can be raised -*

The importance of jurisdiction in any court proceedings can never be overemphasized. Jurisdiction is the basis for adjudication by court and any adjudication by a court that lacks jurisdiction is an exercise in futility. It is for the reason of its significance that the issue of jurisdiction can be raised at any stage of the proceedings and even on appeal for the first time. *[Skenconsult (Nig.) Ltd. v. Ukey* **(1981) 1 SC 6**; *Okereke v. Yar'adua* **(2008) 12 NWLR (Pt. 1100) 95;** *Madukolu v. Nkemdilim* **(1962) 2 SCNLR 341;** *Utih v. Onoyivwe* **(1991) 1 NWLR (Pt. 166) 166;** *Adegoke v. Adibi* **(1992) 5 NWLR (Pt. 242) 410;** *Petrojessica Ent. Ltd. v. Leventis Tech. Co. Ltd.* **(1992) 5 NWLR (Pt. 244) 675 referred to.]** *(Pp. 585-586, paras. F-A)*

Nigerian Cases Referred to in the Judgment:

A.-G., Nasarawa State v. A.-G., Plateau State (2012) 12 NWLR (Pt. 1309) 419

A.-G., Rivers State v. A.-G., Akwa Ibom State (2011) 8 NWLR (Pt. 1248) 31

A.C.B. Int'l Bank Plc v. Otu (2008) 3 NWLR (Pt. 1073) 179

A.D.H. Ltd. v. Amalgamated Trustees Ltd. (2006) 10 NWLR (Pt. 989) 635

Aburime v. N.PA. (1978) 4 SC (Reprint) 80

Adebusokan v. Yunusa (1971) All NLR 257

Adegoke v. Adibi (1992) 5 NWLR (Pt. 242) 410

Agbahomovo v. Eduyegbe (1999) 3 NWLR (Pt. 594) 170

Agbareh v. Mimra (2008) 2 NWLR (Pt. 1071) 378

Ajide v. Kelani (1985) 3 NWLR (Pt. 12) 248

Ashibuogwu v.A.-G., Bendel State (1988) 1 NWLR (Pt. 69) 138

Atake v. Afejuku (1994) 9 NWLR (Pt. 368) 379

Chime v. Ezea (2009) 10 NWLR (Pt. 989) 635

Cookey v. Fombo (2005) 15 NWLR (Pt. 947) 182

Daniel Holdings Ltd. v. U.B.A. Plc (2005) 13 NWLR (Pt. 943) 533

ELF (Nig.) Ltd. v. Sillo (1994) 6 NWLR (Pt. 350) 258

Eya v. Olopade (2011) 11 NWLR (Pt. 1259) 505

Gambari v. Buhari (2009) All FWLR (Pt. 458) 1

Longe v. F.B.N. Plc (2006) 3 NWLR (Pt 967) 228

M.W.T., Adamawa State v. Yakubu (2013) 6 NWLR (Pt 1351)481

Madukolu v. Nkemdilim (1962) 2 SCNLR 341

Melaye v. Tajudeen (2012) 15 NWLR (Pt. 1323) 315

Ndayako v. Dantoro (2004) 13 NWLR (Pt. 889) 187

Nta v.Anigbo (1972) 5 SC 156

Odua Investment Coy Ltd. v. Talabi (1991) 1 NWLR (Pt. 170) 761

Okafor v. Nnaife (1987) 4 NWLR (Pt. 64) 129

Okafor v. Nweke (2007) 10 NWLR (Pt. 1043) 521

Okereke v. Yar'adua (2008) 12 NWLR (Pt. 1100) 95

Oketade v. Adewunmi (2010) 8 NWLR (Pt. 1195) 63

Onward Enterprises Ltd. v. Olam Int'l Ltd. (2010) All FWLR (Pt. 531) 1503

Petrojessiea Ent. Ltd. v. Leventis Tech. Co. Ltd. (1992) 5 NWLR (Pt. 244) 675

S.L.B. Consortium Ltd. v. NNPC (2011) 9 NWLR (Pt. 1252) 317

Shell B P v. F.B.I.R. (1976) FNLR 197

Skenconsult (Nig.) Ltd. v. Ukey (1981) 1 SC 6

State v. Azeez (2008) 14 NWLR (Pt. 1108) 439

U.B.N. Plc v. Ayodare & Sons (Nig.) Ltd. (2007) 13 NWLR (Pt. 1052)567

Utih v. Onoyivwe (1991) 1 NWLR (Pt. 166) 166

Foreign Case Referred to in the Judgment:

Macfoy v. UAC (1962) AC 152

Nigerian Statutes Referred to in the Judgment:

Interpretation Act, Cap. 123, Laws of the Federation of Nigeria, 2004, S.3 (1)

Legal Practitioners Act, Cap. 207, Laws of the Federation of Nigeria, 1990, Ss. 2 (l), (2), (3), (4); 24

Rules of Professional Conduct for Legal Practitioners, r. 13

Nigerian Rules of Court Referred to in the Judgment:

Federal High Court (Civil Procedure) Rules, 2000, O. 26 r. 4(3)

High Court of Kwara State (Civil Procedure) Rules, 2005, O. 6 r. 2(2) (3)

Appeal:

This was an appeal against the decision of the High Court which struck out the writ of summons for incompetence. The Court of Appeal, in a unanimous decision, dismissed the appeal.

History of the Case:

Court of Appeal:

Division of the Court of Appeal to which the appeal was brought: Court of Appeal, Ilorin

Names of Justices that sat on the appeal: Hussein Mukhtar, J.C.A. *(Presided);* Isaiah Olufemi Akeju, J.C.A. *(Read the Leading Judgment);* Uchechukwu Onyemenam, J .C.A.

Appeal No.: CA/IL/106/2013

Date of Judgment: Thursday, 27th February 2014

Names of Counsel: A.O. Mohammed, SAN *(with him.* Monisola Kamson [Mrs.] and Kudirat Mogaji [Miss]) – *for the Appellants*

B.A. Onuoha *(with him.* I.B. Ayegbami, Esq., A.B. Sulu Gambari, Esq., S.K. Hassan, Esq. and Oniye Shuaibu, Esq.) - *for the 1st Respondent*

Y.O. Ali, SAN *(with him.* K.K. Eleja, Esq., Bolakale Ajanaku, Esq., T.E. Akintunde, Esq. [Mrs.], A.F. Isau, Esq., Ibrahim Alabidun, Esq. and Saliman Adebayo A. Mufutau, Esq.) – *for the 2nd and 3rd Respondents*

High Court:

Name of the High Court: High Court of Kwara State, Ilorin

Suit No.: KWS/165/2005

Counsel:

A.O. Mohammed, SAN *(with him,* Monisola Kamson [Mrs.] and Kndirat Mogaji [Miss]) - *for the Appellant*

B.A. Onuoha *(with him,* I.B. Ayegbami, Esq., A.B. Sulu Gambari, Esq., S.K. Hassan, Esq. and Oniye Shuaibu, Esq.) -*for the 1st Respondent*

Y.O. Ali, SAN *(with him,* K.K. Eleja, Esq., Bolakale Ajanaku, Esq., T.E. Akintunde, Esq. (Mrs.], A.F. Isau, Esq., Ibrahim Alabidun, Esq. and Saliman Adebayo Mufutau, Esq.) - *for the 2nd and 3rd Respondents*

AKEJU, J.C.A. (Delivering the Leading Judgment): The appellants were the claimants in suit No. KWS/165/2005 at the High Court of Kwara State, Ilorin Division. They filed their writ of summons on 28/9/2005 in commencement of the suit while the statement of claim dated 25/10/2005 was filed with the motion filed on l/l1/05 for extension of time and leave to file the statement of claim with other processes. Pleadings were duly filed and exchanged and after the conclusion of trial the learned trial Judge adjourned for judgment; but before the delivery of the judgment, the 2nd and 3rd defendants (now respondents) filed a motion on notice on 26/7/13 for the following prayers:

"i. An order of the honourable court granting leave to the 2nd and 3rd defendants/applicants to bring the present application which is to challenge the competence of this suit and the jurisdiction of the honourable court to entertain same.

ii. An order of this honourable court striking out the writ of summons, with which this action

was initiated on 28th day of September, 2005 and the entire suit;

iii. And for such further orders and other orders as this honourable court may deem fit to make in the circumstances of this case.

The motion was filed on the grounds, as adumbrated thereon, that the writ of summons filed by the claimants in commencement of the suit is incurably defective in that it was not signed by any legal practitioner as required by law and this defect has affected the jurisdiction of the trial court to pronounce on the merit of the action. The motion was also filed with supporting affidavit of 11 paragraphs, written address and exhibit while the claimant filed counter affidavit on 2/8/13 also with written address and exhibits. The 2nd and 3rd defendants/applicant then filed a reply to the claimants' written address on 18/9/13, while leave to file same out of time was granted on 24/9/13. After hearing arguments on the motion, the learned trial Judge declared the writ of summons invalid and struck it out with the entire suit.

The claimants (now called the appellants) who were aggrieved by the ruling filed their notice of appeal on 25/10/13 with 5 grounds of appeal. In the appellants' brief of argument authored by Kamadeen Quadri Esq. of A.O. Mohammed & Co and filed on 29/11/2013, the following three issues were distilled for determination from the 5 grounds of appeal.

1. Whether the questioned writ of summons was issued and signed by a Legal Practitioner known to law.
2. Whether by the communal reading and effect of Order 2 rule 2(2) and Order 6 rule 2(3) of Kwara State High Court (Civil Procedure) Rules 2005, a statement of claim is an originating process.
3. Whether in the circumstances of this case, the doctrine of supercession of a statement of claim over a writ applies.

The 1st respondent's brief of argument was settled by B. A. Onuoha, Legal Practitioner and filed on 18/12/2013. The issues formulated for determination therein are:

1. Whether the learned trial Judge was right in striking out the writ of summons for being invalid as it was signed by a person unknown to law.

2. Whether given the facts of this case, the trial Judge was right to have held that the statement of claim did not supersede the writ of summons.

In the 2nd and 3rd respondents' brief issued by B. A. Ajanaku Esq. of Yusuf O. Ali & Co. and filed on 16/12/13, the issues set down for determination are:

1. Whether the learned trial Judge was not right in holding that the writ of summons with which the case was initiated was not signed by legal practitioner.
2. Whether the learned trial Judge was not right in the decision that a statement of claim is not an originating process and whether he did not consider relevant authorities (judicial and statutory) in reaching his decision.
3. Whether the learned trial Judge was not right in his decision that the statement of claim filed by the appellants did not supersede their writ of summons in the circumstance of this case.

The appellants subsequently filed a reply to 2nd and 3rd respondents' brief on 20/12/2013.

At the hearing of the appeal, the parties were represented by their respective learned counsel. A. O. Mohammed SAN led the team of appellants' counsel; B. A Onuoha Esq. was the leading counsel for 1st respondent while Y. O Ali SAN appeared with other counsel for the 2nd and 3rd respondents. The learned counsel adopted their respective briefs as earlier filed. While the learned senior counsel for the appellant urged court to allow the appeal, B. A. Onuoha Esq. and Y. O Ali SAN for 1st respondent and 2nd and 3rd respondents respectively urged that the appeal to dismissed.

The issues formulated by the 1st respondent and the 2nd and 3rd respondents respectively revolved around the same three issues raised by the appellants. I believed that this appeal can properly be determined on the basis of the appellants' three issues which are virtually the same as those for the respondents.

On the first issue, the learned counsel for the appellant contended that because Femi Falana Esq. (now a Senior Advocate of Nigeria) was briefed at the inception of this

case to lead A. O. Mohammed (also now a Senior Advocate of Nigeria) in prosecuting the case, the name of Femi Falana was endorsed on the writ file in the case before the firm of A. O Mohammed & Co. and that be the use of comma to separate the name of Femi Falana from A. O. Mohammed & Co, it is clear that the name of Femi Falan is be taken and interpreted disjunctively from the firm name of A. O. Mohammed & Co. and not part of that firm name. The learned counsel referred to exhibit 2 at page 102 of the record of appeal which is the registration certificate of A. O. Mohammed & Co. as a law firm which does not contain anything like Femi Falana. It was argued that the use of comma in the writ of summons is to show that two different counsels were to prosecute the case i.e. Femi Fulana and the law firm of A. O. Mohammed. The importance and mastery of the use of punctuation marks, the learned counsel argued, is emphasised in section 3(1) of the Interpretation Act, Cap. I 23, LFN 2004. It was also submitted that the principles of interpretation of enactments and documents are the same, citing 1 the cases of *Ashibuogwu v. A.-G., Bendel State* (1988) 1 SCNJ 130, (1988) I NWLR (Pt. 69) 138 and *Shell B.P v. FBIR* (1976) FNLR 1 197.

The learned counsel submitted that the trial court did not consider the import of the use of comma after Femi Falana on the writ and so did not realize that Femi Falana as a person differs from the law firm of A. O. Mohammed & Co.. it was further argued that the learned trial Judge mechanically misapplied the relevant portion in the case of *S.L.B Consortium Ltd. v. NNPC* (2011) 4 SCNJ 211, (2011) 9 NWLR (Pt. 1252) 317 which illustrates how a court process should be signed, viz that there should be a signature which may be any contraption, the name of a legal practitioner duly registered to practice law in Nigeria, the party represented by counsel and the name and address of legal firm, all of which are present on the writ in question in the instance case. It was contended that the counsel who issued the writ is clearly distinguished from the name of the law firm by the use of comma. The case of *Melaye v.*

Tajudeen (2015) 15 NWLR (Pt. 1323) 315 was cited as further illustration of the decision in *S.L.B. Consortium Ltd. v. NNPC (Supra)* that it is sufficient signature if the counsel issuing the writ or originating process writes only his name on the process.

It was contended that there is no law firm known as Femi Falana, A. O. Mohammed & Co. registered within or outside this jurisdiction in line with rule 13 of the Rules of Professional Conduct for Legal Practitioners and the decision of the trial court is therefore perverse. It was contended that the writ in this case was properly issued/signed by Femi Falana, a legal practitioner known to law and covered by sections 2(1) and 24 of the Legal Practitioners Act, and Order 6 rule 2(3) of the Kwara State High Court (Civil Procedure) Rules, 2005.

On this issue of the signature on the writ of summons, the 1st respondent contended that the record shows that the writ was signed by Femi Fanana, A. O. Mohammed & Co. (not Falana) and the trial Judge rightly reasoned that this was not a person registered to practice law in Nigeria, citing *Okafor v. Nweke* (2007) 10 NWLR (Pt. 1043) 521, *SLB Consortium Ltd.* v. *NNPC* (2011) 9 NWLR (Pt. 1252)317.

It was submitted by the 2nd & 3rd respondents on this issue that the decision of the trial court is quite profound and unassailable, and that the allusion by the learned counsel for the appellants that Femi Falana Esq. (now SAN) was briefed at the inception of this case to lead A. O. Mohammed Esq. (Now SAN) has no evidence on the record to support it and it is not open to the appellants to adduce evidence through their brief of argument. We were urged to discountenance that evidence given by the appellants in their brief. The eases of *U.B.N. Plc v. Ayodare & Sons Nig,. Ltd.* (2007) All FWLR (Pt. 383) 1, (2007) 13 NWLR (Pt. 1052) 567 and *F. G. Chime v. Ezea* (2009) All FWLR (Pt. 470) 659, (2009) 10 NWLR (Pt. 989) 635 were cited in support. It was contended also that the available materials before the trial court do not support the appellants' contention that the use of comma has made Femi Falana to stand out on its own and not as part of A. O. Mohammed &

Co. citing the case of *Agbahomovo v. Eduyegbe* (1993) 2 SCNJ 94, (1999) 3 NWLR (Pt. 594) 170 in support of the submission that the court is to consider all available materials on its record before deciding a ease before it.

The 2nd & 3rd respondents' counsel submitted that the endorsement on the statement of claim and list of plaintiff witnesses' shows that the Femi Falana, A. O. Mohammed & Co on the writ was intended as the firm of counsel that represented the appellants and the rest of the arguments thereon amount to academic exercise which a court does not delve into. The case of *A.D.H. Ltd. v. Amalgamated Trustees Ltd.* (2007) All FWLR (Pt. 392) 1781, (2006) 10 NWLR (Pt. 989) 635 and *State v. Azeez* (2008) All FWLR (Pt. 424) 1423, (2008) 14 NWLR (Pt. 1108) 43 were relied upon.

It was contended that the appellants' complaints about failure of the trial court to consider exhibit 2 is a misconception because the appellants had by their endorsement on the statement of claim and their list of witnesses held out Femi Falana, A. O. Mohammed & Co. as a firm name with address at 26 Sulu Gambari Road, Ilorin and they are estopped from stating that their representation at the trial court is not correct. On the principle of estoppel, reference was made to section 169 of Evidence Act, 2011 and the decisions in *A.-G., Nasarawa State v. A.-G., Plateau State* (2012) All FWLR (Pt. 630) 1262, (2012) 12 NWLR (Pt. 1309) 419; *Odua Investment Coy Ltd. v. Talabi* (1991) 1 NWLR (Pt.170) 761 and *A.-G., Rivers State v. A.-G., Akwa lbom State* (2011) All FWLR (Pt. 579) 1023, (2011) 8 NWLR (Pt. 1248) 31.

It was submitted that whereas Femi Falana Esq. SAN and A. O. Mohammed Esq. SAN are known and identifiable Legal Practitioners in Nigeria, within the meaning of the Legal Practitioners Act, Femi Falana, A. O. Mohammed *& Co.* that issued the writ is not a legal practitioner known to the Act. It was submitted that while the requirements stated in *SLB Consortium Ltd. v. NNPC (supra)* were met in respect of the statement of claim in the instant case, they were not met in respect of the writ of summons, citing *Onward*

Enterprise Ltd. v. Olam International Ltd. (2010) All FWLR (Pt. 531) 1503; *Okafor v. Nweke* (2007) All FWLR (Pt. 368) 1016, (2007) 10 NWLR (Pt. 1043) 521; *Oketade v. Adewunmi* (2010) All FWLR (Pt. 526) 511, (2010) 8 NWLR (Pt. 1195) 63; *Ministry of Works & Transport Adamawa State v. Yakubu* (2013) All FWLR (Pt. 694) 23, (2013) 6 NWLR (Pt. 1351) 481.

It was submitted that the contention of the appellant that there is no law firm known as Falana, A. O. Mohammed & Co calls for application of the doctrine of estoppel against the appellants, it also amounts to blowing hot and cold by a party at the same time, citing *Ajide v. Kelani* (1985) 3 NWLR (Pt. 12) 248; *Longe v. F.B.N. Plc* (2006) All FWLR (Pt. 313) 46, (2006) 3 NWLR (Pt 967) 228.

The learned counsel for the appellants argued issues 2 and 3 together.

It was contended that by Order 2 rule 2(2) of the Kwara Slate High Court (Civil Procedure) Rules 2005, a civil action cannot be commenced in the High Court of Kwara State by a writ of summons alone, but must be accompanied by a statement of claim and other processes stated therein. It was contended also that the process a legal practitioner is expected to endorse in commencement of a civil action as stated under Order 6 rules 2(2) & (3) is originating process as opposed to a writ *simpliciter* and in the light of this the case law authorities relevant to the instant case are *SLB Consortium Ltd. v. NNPC* (2011) 4 SCNJ 211, (2011) 9 NWLR (Pt. 1252) 317 and *Ministry of Works v. Yakubu* (2013) 1 SCNJ 269, (2013) 6 NWLR (Pt. 1351) 481.

It was argued that under Order 2 rule 2(2) of Kwara State High Court (Civil Procedure) Rules 2005, a civil action is commenced by:

1. Writ of summons
2. Statement of claim
3. List of witnesses to be called
4. Witness statement on oath

All of which are jointly called originating process under Order 6 and to be signed by a legal practitioner under Order 6 rule 2(3).

It was the contention of the learned counsel that in determining whether the originating process has been signed by a legal practitioner as required by law, the statement of claim must be considered with the writ as done in *SLB Consortium Ltd.* v. *NNPC (supra)* and *Ministry of Works & Transport v. Yakubu (supra),* we were urged to hold that the statement of claim in this suit being an originating process, and having been signed by a legal practitioner known to law, the action has been initiated by valid process.

It was submitted by the learned counsel that a statement of claim supercedes a writ of summons and cures any defect in the writ of summons except where a different claim or suit is set therein from the one endorsed on the writ. The cases of *Ndayako v. Dantoro* (2004) 13 NWLR (Pt. 889) 187 and *ACB Int'l Bank Plc v. Otu* (2008) All FWLR (Pt. 408) 1817, (2008) 3 NWLR (Pt. 1073) 179 were cited and relied upon.

The 1st respondent contended on those issues that the trial court correctly held that an action cannot be initiated by a statement of claim, and that a community reading of the relevant rules of court will show that an action is commenced by a writ of summons which is to be accompanied by those processes specified in Order 2 (rule 2(2) of Kwara State High Court (Civil Procedure) Rules 2005 and that the originating process that commenced the instant case at the trial court is the writ of summons. On whether the statement of claim supercedes the writ, it was argued that the statement of claim cannot take the place of the writ of summons and even if it will supercede the writ, it must be a valid writ as one cannot put something on nothing. The statement of claim supercedes only in respect of the endorsement in the statement of claim *vis-a-vis* the writ of summons.

On issue number 2, the 2nd and 3rd respondents relied on Order 2 rules 1, 2(1) and (2) to contend that the originating process is the writ while a statement of claim is not an originating process but one of the processes required to accompany the writ of summons under Order 2 rule 2(2) of the High Court Rules of Kwara State.

It was submitted that the position now taken by the appellants is inconsistent with their earlier position in this case that a statement of claim may be filed subsequent to filing of the writ of summons. On the need for a party to be consistent in prosecuting his case, the case of *A.-G., Rivers State v. A.-G., Akwa Ibom State* (2011) All FWLR (Pt. 579)

1023,(2011) 8 NWLR (Pt. 1248) 31 was cited and relied upon.

On whether the statement of claim supercedes the writ of summons as canvassed by the appellants, the learned counsel submitted that the correct position is that where the endorsements in a statement of claim are in tune with those in the writ of summons but more elaborate and lucid, then those endorsements in the statement of claim will take precedent over and supercede those in the writ of summons in the determination of the claimants' claim, citing *Eya v. Olopade* (2011) All FWLR (Pt. 554) 73, (2011) 11 NWLR (Pt. 1259) 505 and *Ndayako v. Dantoro* (2004) 13 NWLR (Pt. 889) 187.

It was the argument of counsel that like a foundation of a house, it is the writ of summons that carries the suit while the statement of claim is the structure, so the suit can exist without the statement of claim but the statement of claim must stand on the writ of summons. Where therefore the writ of summons is defective, the suit must collapse as one cannot put something upon nothing, citing *Macfoy v. UAC* (2006) 16 WRN 185. The statement of claim cannot cure the defect in an action that was commenced by a defective writ of summons. It was submitted that it is not proper for the appellants to have cited and relied on authorities, the facts and circumstances of which differ from their case, relying on *Okafor & Ors v. Nnaife* (1987) 2 NSCC 1194, (1987) 4 NWLR (Pt. 64) 129.

In the appellants' reply brief, it was contended that it is the respondents that have been inconsistent or have been blowing hot and cold in that they have now canvassed that a civil action can validly be commenced without a statement of claim, contrary to their argument in *H.R.H. Alhaji Ibrahim Sulu Gambari & Anor v. Alhaji Abulkareem Laaro Buhari & Ors* (2009) All FWLR (Pt.458) 1 that for a writ of summons to be valid, it must be filed with a statement of claim. The learned counsel submitted that an action is initiated by the processes stated in Order 2 rule 2(2) of Kwara State High Court (Civil Procedure) Rules 2005 and not by a writ of summons *simpliciter*.

It was submitted also that as at the time the motion that resulted in this appeal was filed at the trial court there was a valid statement of claim before the court and that court as well as this court are under a duty to consider the statement of claim together with the writ of summons to determine whether the originating process required to be signed by a legal practitioner under Order 6 rule 2(2) and (3) of Kwara

State High Court Rules, 2005 was signed, as that was the approach of the Supreme Court in *SLB Consortium Ltd. v. NNPC* (2011) 4 SCNJ 211, (2011) 9 NWLR (Pt. 1252) 317.

I will now consider the issues raised and argued in this appeal.

The Rules of civil procedure in the High Court of Kwara State are contained in the Kwara State High Court (Civil Procedure) Rules 2005, Order 2 of which deals with form and commencement of action. Rules 1 and 2(1) of the said Order 2 provide as follows on the mode of beginning civil proceedings and the proceedings that must be begun by writ;

"1. Subject to the provisions of any enactment, civil proceedings may be begun by a writ of summons originating summons, originating motion or petition as herein after provided.

2(1) Subject to the provisions of these Rules or any applicable law requiring any proceedings to be begun otherwise than by a writ, a writ of summons, shall be the form of commencing all proceedings

(a) Where a claimant claims:

i) any relief or remedy for any civil wrong, or

ii) damages for breach of duty, whether contractual, statutory or otherwise; or

iii) Damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or in respect of damage or injury to any property.

(b) when the claim is based on or includes an allegation of fraud; or

(i) Where an interested person claims a declaration."

The claimants in the instant case who are now the appellants before this court commenced their suit No. KWS/65/2005 by the means of the writ of summons filed on 26/9/2005 for the reliefs of declarations and orders of perpetual injunction as clearly adumbrated on the said writ of summons which is on pages 1-2 of the record of appeal.

After the trial in the suit had been concluded and had been adjourned for judgment, the 1st and 2,ld defendants who are now 1st and 2nd respondents in this appeal filed a motion on notice on 26/7/2013 praying the court *inter alia* for an

order striking out the writ of summons with which the action was initiated, and consequently the entire suit on the basic ground that the writ was not signed by any legal practitioner within the meaning of the law which has rendered the writ incurably defective and touches the jurisdiction of the court to consider the merit of the action.

The parties filed affidavit and counter affidavit as well as written addresses and exchanged them, after which, upon listening to address of counsel, the learned trial Judge in his considered ruling on pages 140 - 155 of the record of appeal held that:

> "without much ado, having shown clearly that the originating process being the writ of summons in this case was not issued or signed by a legal practitioner duly registered to practice law in Nigeria, is fundamentally defective and incapable of validly supporting the proceedings of the hearing and determination of the claimants' suit."
>
> The suit was consequently struck out for the reason that the incompetence of the writ had robbed the court of its jurisdiction to-entertain same.

By Order 6 rules 1, 2 and 3 of the Kwara State (Civil Procedure) Rules 2005, an originating process is to be prepared by the claimant or his legal practitioner who shall sign each copy thereof while same shall be sealed, and therefore issued by the Registrar. The writ in the instant case contains the following endorsement as in respect of the legal practitioner as gleaned on page 2 of the record as well as exhibit Emirate Council 1 filed with the 1st and 2nd respondents' motion on pages 192 - 193 of the record.

> "This writ was issued by "FEMI FALANA, A. O. MOHAMMED & CO. whose address for service is 26, Sulu Gambari Road, Ilorin, Kwara State of Nigeria. Legal Practitioners for the plaintiffs who reside at Balogun Gambari Compound, Ilorin, Kwara State of Nigeria."

There is a signature that is not directly on top of the above endorsement.

It is now well established that the person recognised by law as a Legal Practitioner who can sign the writ of summons for its valid issuance is a person who has his name on the roll and entitled to practice as a barrister and solicitor. This is the combined effect of sections 2(1) and 24

of the Legal Practitioners Act, Cap. 207, Laws of the Federation of Nigeria, 1990 which provisions were considered in *Okafor v. Nweke* (2007) All FWLR (Pt. 368) 1016, (2007) 10 NWLR (Pt. 1043) 521, where Onnoghen, JSC stated at page 1026 that "The combined effect of the above provisions is that for a person to be qualified to practice as a legal practitioner, he must have his name on the roll otherwise he cannot engage in any form of legal practice in Nigeria." In answering the poser who a legal practitioner is, Belgore, JSC (as he then was) in *Atake v. Afejuku* (1994) LPELR 585 (SC), (1994) 9 NWLR (Pt. 368) 379 put it thus "who is a legal practitioner? He is that person that has been called to the Bar to practice as a barrister and solicitor of the Supreme Court of Nigeria as provided in section 2(1), (2), (3) and (4) of Legal Practitioner Act." See also *Aburime v. N.P.A.* (1978) 4 SC (Reprint) 80; *Oketade v. Adewunmi* (2010) 3 (Pt. 1 1) MJSC 31, (2010) 8 NWLR (Pt. 1195) 63.

The learned senior counsel for the appellant had emphasised orally that the court process in the case were jointly prepared by Femi Falana and A. O. Mohammed, that the name of Femi Falana as lead counsel is endorsed on the writ before the firm of A. O, Mohammed & Co. and the use of comma shows that Femi Falana stands on its own and is not part of A. O. Mohammed & Co.

I agree with the respondents that the above argument has no root in the evidence before the court. It is clear that what is stated on the writ and which has not been amended is "FEMI FANANA" (and not "FEMI FALANA" as now canvassed by the learned appellants' counsel). The signature that appears on the writ is not stated to belong to either Femi Falana (now a Senior Advocate of Nigeria) or even A. O. Mohammed & Co. There is therefore no exactitude or clarity as to who signed the writ of summons now disputed, and this obviously renders it incurably bad as well stated by Fabiyi, JSC in *SLB Consortium Ltd. v. NNPC* (2011) 3 - 4 MJSC 145 at 166, (2011) 9 NWLR (Pt. 1252) 317 at 337 para. G that "Once it cannot be said who signed a process it is incurably bad."

I have perused the record of appeal and it is shown at page 12 thereof that the motion on notice dated the 25th day

of October, 2005 and filed on 31/10/2005 clearly contains a signature under which it was stated thus;

"A. O. Mohammed Esq.,
Femi Falana, A. O. Mohammed Co;
Plaintiffs/appellants' counsel,
26, Sulu Gambari Road,
Ilorin."

This is in line with the accepted mode of signing processes by counsel as stated by the Supreme Court in both *SLB Consortium Ltd. v. NNPC (supra)* and *Okafor v. Nweke (supra).*

I am not in any doubt that the writ of summons filed on 28/9/2005 in commencement of suit No. KWS/65/2005 from which the application that generated this appeal emanated was not signed by a legal practitioner known to law and same is incurably bad.

The failure to sign the writ in the manner required by law fundamentally affects the validity of the appellants' suit as it calls the competence of the suit and the jurisdiction of the court into question. The importance of jurisdiction in any court proceedings can never be over emphasised. Jurisdiction is the basis for adjudication by court and any adjudication by a court that lacks jurisdiction is an exercise in futility. See *Skenconsult (Nig.) Ltd. v. Ukey(1981)* 1 SC 6; *Okereke v. Yar'adua* (2008) All FWLR (Pt. 430) 6262, (2008) 12 NWLR (Pt. 1100) 95; *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341; *Utih v. Onoyivwe* (1991) 1 NWLR (Pt. 166) 166. It is for this reason of its significance that the issue of jurisdiction can be raised at any stage of the proceedings and even on appeal for the first time. See *Adegoke v. Adibi* (1992) 6 SCNJ 136, (1992) 5 NWLR (Pt. 242) 410; *Petrojessica Enterprises Ltd. v. Leventis Technical Company Ltd.* (1992) LPELR 2915 (SC), (1992) 5 NWLR (Pt. 244) 675.

I resolve this issue one against the appellants.

On issues 2 and 3 argued together by the appellants with the aim of persuading this court that a statement of claim is an originating process and that the doctrine of statement of claim superseding the writ applies to this instant case, I had earlier on set out the provisions of Order 2 rules 1 and 2(1) of the Kwara State High Court (Civil Procedure) Rules, 2005 concerning the commencement of proceedings in that court which is by way of a writ of summons except as may be otherwise required by the rules or any applicable law.

Order 2 rule 2(2) of the same Rules makes provision to the effect that:

> "Except where Order 23 applies, every writ of summons shall be accompanied by:
> "a) statement of claim
> b) list of witnesses to be called at the trial
> c) written statement on oath of the witnesses; and
> d) copies of every document to be relied on at the trial."

Thus from the above clear and unambiguous provisions, the statement of claim is one of the accompanying processes to be filed with a writ of summons in a proceedings initiated by a writ. The writ is the originating or initiating process.

The superiority of a statement of claim over the writ is in respect of the claim averred therein, as it is settled law that where a relief claimed in the statement of claim differs from the writ, the statement of claim supercedes the writ. See *Adebusokan v. Yunusa* (1971) All NLR 257; *ELF (Nig.) Ltd. v. Sillo* (1994) 6 NWLR (Pt 350) 258; *Daniel Holdings Ltd. v. UBA Plc* (2005) 7 SC (Pt. 1)18, (2005) 13 NWLR (Pt. 943) 533; *Nta v. Anigbo* (1972) 5 SC 156. Another aspect in which the statement of claim supercedes the writ is where there is issue of whether the claim itself has disclosed reasonable cause of action, in which case it is the claim that is to be examined. See *Cookey* v. *Fombo* (2005) 15 NWLR (Pt. 947) 182.

On these issues the learned senior counsel for the appellants has strenuously relied on the cases of *SLB Consortium Ltd. v. NNPC (supra)* and *Ministry of Works v. Yakubu* (2013) 1 SCNJ 269 [reported as *M.W.T., Adamawa State v. Yakubu* (2013) 6 NWLR (Pt.1351) 481] to contend that in considering the originating process to be signed by a legal practitioner under Order 6 rule 2(3) of Kwara State High Court Rules 2005, the statement of claim must be considered with the writ.

With respect to the senior counsel, the complaint in *SLB Consortium Ltd. v. NNPC* is that the "originating processes" were not signed by a person known to law contrary to the provision of Order 26 rule 4(3) of Federal High Court (Civil Procedure) Rules, 2000 which provides that:

> "Pleadings shall be signed by a legal practitioner or by the party, if he sues or defends in person."

The complaint in that case and the provision of the Court Rule considered therein are not the same as the instant case where the complaint relates to the non signing of the writ of summons as required under Order 6 rule 3 of the Kwara State High Court (Civil Procedure) Rules, 2005.

In *Ministry of Works and Transport, Adamawa State v. Yakubu Isiyaku Alhaji* also reported in (2013) 24 WRN 1, (2013) 6 NWLR (Pt. 1351) 481, the challenge was with regard to the statement of claim filed and the learned counsel sought to take solace in the amendment made to the disputed statement of claim, but the Supreme Court held that the incompetent originating process is inchoate, legally non existent and cannot be saved by way of an amendment.

What I understand the learned SAN for appellants as saying on these issues is that the correctness of the endorsement of the statement of claim subsequently filed in the instant case should cure the glaring incurable defect in the signing of the writ of summons, but I decline to follow the Senior Advocate in this argument. I rather believe that it does not and I so hold. The writ of summons that originated the appellants' suit was not signed by a legal practitioner known to law and it was properly struck out by the learned trial Judge the immediate consequence of which is that the foundation of the action does not exist and so the suit was properly struck out based on the principle that no one can place something upon nothing, *Macfoy v. UAC* (2006) 16 WRN 185; the totality of which is that the appellants' suit lacks competence having not been initiated by due process of law, *Madukolu v. Nkemdilim* (1962) I All NLR 357, (1962) 2 SCNLR 341.

Based on the foregoing, I resolve the remaining two issues against the appellant and in the final analysis I hold that the appeal is bereft of any merit. I dismiss the appeal with costs of N30, 000.00 to the respondents.

MUKHTAR, J.C. A.: I was privileged to read in advance the judgment of my learned brother, Isaiah Olufemi Akeju, JCA. I agree entirely with his reasoning for the conclusion that the appeal is unmeritorious and ought to be dismissed.

The court cannot, in any event ignore a situation in which the foundations of claim are based on a worthless "writ of summons" signed otherwise than by a legal practitioner duly enrolled at the Supreme Court of Nigeria.

The case was a complete nonstarter rendering the entire proceedings null and void as rightly determined by the learned trial Judge. Basically, an unsigned or irregularly signed writ is worthless and incapable of hitting the ground running in legal proceedings. The writ of summons is incompetent in that it was not issued by a legal practitioner known to law and is consequently struck out. Being an initiating process, the statement of claim and all other processes that swivel on the helpless writ are correspondingly affected by the same virus and consequently rendered incompetent. The appeal is patently devoid of merit and is hereby dismissed.

I endorse the consequential orders made in the judgment inclusive of the one on costs.

ONYEMENAM, J.C.A.: I had the advantage of reading in draft the judgment just delivered.

The poser here is whether on the face of the writ of summons dated 28th September, 2005, the said writ was signed by Femi Falana Esq. (now SAN)

The writ of summons which could be found at page 2 of the record reads thus;

> "This writ was issued by FEMI FANANA, A.O MOHAMMED & CO, whose Address for service is 26 Sulu Gambari Road Ilorin, Kwara State of Nigeria. Legal practitioners for the said plaintiffs who reside at Balogun Gambari compound Ilorin, Kwara State of Nigeria".

On the face of the writ of summons particularly the portion reproduced above, on top of the words; "Who's Address for" is a signature.

The rule of construction of document is settled. In the construction of document, words bear their ordinary dictionary meaning. No person, counsel and the court inclusive, is permitted to introduce extraneous words or meaning in the construction of a document which would give an entirely different meaning to the document sought to be interpreted. See; *Agbareh* v. *Mimra* (2008) LPELR-235 (SC), (2008) 2 NWLR (Pt. 1071) 378.

Without even a Macmillan Primary Webster dictionary, the portion of the writ of summons reproduced above is clear, certain and unambiguous. The purport of the said portion of the writ of summons is outstandingly obvious,

speaking for itself and shouting to the high heavens and to anyone who cares to listen; I was issued by Femi Fanana, A.O. Mohammed & Co.

A party is presumed to intend what he has written down in a document. The part of the writ of summons in question will therefore be construed and be given its ordinary and plain meaning which is that it was issued by "Femi Fanana, A.O. Mohammed & Co." The words of A.O. Mohammed, SAN on the import of the sign, 'comma' between the two names and the factual matters in paragraphs 1.01 - 1.02 at page 4 of the appellant's brief; cannot be imported into the writ of summons. It is unfortunate and against the rules of this court to assist Mr. Mohammed SAN, to rewrite the writ of summons at this point and through this mode.

It is my view that the writ of summons which is plain in its meaning does not require any aid in its construction. As plain as it is and in its ordinary meaning, it should be considered for the determination as to whether it qualities as having been signed by a Legal Practitioner without importing oral explanation to it.

The position of the law is clear and does not require citation of authorities that for any originating process of the court to be valid, it must be signed by the litigant in person or by a Legal practitioner as defined under S. 2 of the Legal Practitioners Act.

The only question that needs to be answered here is who issued the writ of summons under consideration. Definitely not the litigant. Then the next question is, was it issued by a Legal Practitioner as defined under the Legal Practitioners Act. The answer to this question must be simple and direct 'Yes' or 'No'. It does not need explanations because a name is either a name of a Legal Practitioner or not. No sermon is required to show, that a name is that of a legal practitioner. For the avoidance of doubt, section 2(1) of the Legal Practitioners Act provides;

> "Subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor if, and only if, his name is on the roll".

Whether the name of a person is on the roll calls for direct straight answer. Once the name requires some explanations to bring it within the name on the roll, then the name is not on the roll. If not on the roll, the person bearing the name is not a Legal Practitioner and as such cannot sign an Originating Process.

So as in the instance, since the name "Femi Fanana, A.O. Mohammed & Co." who issued the writ of summons in question cannot be categorically said to be the name of a person on the roll without strenuous factual explanations, I hold that the writ of summons dated 25th September, 2005 was not issued by a Legal Practitioner. It is therefore incompetent and was rightly struck out by the learned trial Judge.

It is for the above, and the reasons adduced in the lead judgment of my learned brother, Isaiah Olufemi Akeju, JCA that I agree that the appeal lacks merit. I also, therefore dismiss the same.

I uphold the decision of the High Court of Kwara Slate, Ilorin in suit No. KWS/165/2005.

I abide by the order as to costs.

Appeal dismissed