1. ALHAJI ABDULKAREEM LAARO BUHARI

(Balogun Gambari of Ilorin)

2. ALHAJI BABA BUHARI

V.

1. ALHAJI MUHAMMAD ALIYU ADEBAYO

2. H.R.H ALHAJI IBRAH1M SULU GAMBARI (Emir of Ilorin)

3. ILORIN EMIRATE COUNCIL

SUPREME COURT OF NIGERIA

SC. 247/2014

MARY UKAEGO PETER-ODILI, J.S.C. (*Presided*)

EJEMBI EKO, J.S.C.

MOHAMMED LAWAL GARBA, J.S.C.

IBRAHIM MOHAMMED MUSA SAULAWA, J.S.C.

TIJJANI ABUBAKAR, J.S.C. (*Read the Leading Judgment*)

FRIDAY, 18TH FEBRUARY 2022

ACTION - Abuse of court process - What constitutes.

ACTION - Case of party - Need for party to be consistent in his case.

ACTION - Originating process - Validity of - Fundamental nature of - Failure to commence action by valid originating process- Effect.

ACTION - Originating process - What is - Statement of claim -Whether originating process.

ACTION - Writ of summons - Indorsement thereon - Defect therein- Nature of - When defendant cannot raise objection thereto.

ACTION - Writ of summons - Legal practitioner acting on behalf of plaintiff - Need to endorse his name and address on writ of summons.

ACTION - Writ of summons - Origin of - Meaning of.

ACTION - Writ of summons - Signing of - Who can sign.

ACTION - Writ of summons - Statement of claim – Relationship between.

ACTION - Writ of summons - Statement of claim - When can supersede writ of summon .

ACTION - Writ of summons - Where defective - Properly endorsed statement of claim - Whether can save.

APPEAL - Brief of argument - Whether can be used to adduce oral evidence .

COURT - Competence of court - Determinants of – Originating process - Where void and nullity - Effect.

COURT - Court process - Signing of - How should be signed -When properly issued or endorsed.

COURT - Supreme Court - Power of to consider all available materials before it .

ESTOPPEL - Estoppel by conduct - Doctrine of - Operation of -Application of - Section 169, Evidence Act 2011.

ESTOPPEL - Nature of estoppel.

EVIDENCE - Estoppel - Nature of.

EVIDENCE - Estoppel by conduct - Doctrine of - Operation of -Application of - Section 169, Evidence Act 2011.

JURISDICTION - Issue of jurisdiction - When can be raised.

LEGAL PRACTITIONER - Legal practitioner - Duty of to maintain high standards in practice of profession

LEGAL PRACTITIONER - Legal practitioner - Name of - Name of law firm - Whether same as name of legal practitioner.

LEGAL PRACTITIONER - Legal practitioner - Who is - Who can practice as barrister and solicitor - Sections 2(1) and 24 ,Legal Practitioners Act and Order 26 rule 4(3), High Court of Kwara State (Civil Procedure) Rules 2005 .

PRACTICE AND PROCEDURE - "Void" - "Voidable" – Distinction between - Where act void - Whether order of court needed to set aside - Effect on proceedings .

PRACTICE AND PROCEDURE - Abuse of court process – What constitutes.

PRACTICE AND PROCEDURE - Appeal - Brief of argument -Whether can be used to adduce oral evidence .

PRACTICE AND PROCEDURE - Case of party - Need for party to be consistent in his case.

PRACTICE AND PROCEDURE - Competence of court -Determinants of - Originating process - Where void and nullity - Effect.

PRACTICE AND PROCEDURE - Court process - Defective process- What is.

PRACTICE AND PROCEDURE - Court process - Signing of – How should be signed - When properly issued or endorsed.

PRACTICE AND PROCEDURE - Issue of jurisdiction - When can be raised.

PRACTICE AND PROCEDURE - Legal practitioner - Who is – Who can practice as barrister and solicitor - Sections 2(1) and 24 ,Legal Practitioners Act and Order 26 rule 4(3), High Court of Kwara State (Civil Procedure) Rules 2005 .

PRACTICE AND PROCEDURE - Originating process – Validity of - Fundamental nature of - Failure to commence action by valid originating process - Effect.

PRACTICE AND PROCEDURE - Originating process – What is -Statement of claim - Whether originating process.

PRACTICE AND PROCEDURE - Supreme Court - Power of to consider all available materials before it.

PRACTICE AND PROCEDURE - Writ of summons – Indorsement thereon - Defect therein - Nature of - When defendant cannot raise objection thereto.

PRACTICE AND PROCEDURE - Writ of summons – Legal practitioner acting on behalf of plaintiff - Need to endorse his name and address on writ of summons .

PRACTICE AND PROCEDURE - Writ of summons - Origin of -Meaning of.

PRACTICE AND PROCEDURE - Writ of summons - Statement of claim - Relationship between .

PRACTICE AND PROCEDURE - Writ of summons - Statement ofclaim - When can s uper sede writ of summons .

PRACTICE AND PROCEDURE - Writ of summons – Where defective - Properly endorsed statement of claim – Whether can save

PRACTICE AND PROCEDURE - Writ of summons - Who can sign.

WORDS AND PHRASES - "Void" - "Voidable" – Distinction between .

WORDS AND PHRASES - Defective process - What is.

WORDS AND PHRASES - Originating process - What is.

WORDS AND PHRASES - Writ of summons - Origin of – Meaning of.

Issues:

Whether the instant writ of summons was signed by a legal practitioner known to law.

Whether the Court of Appeal misconstrued and misapplied the decisions of the Supreme Court in *SLB Consortium v. NNPC* (2011) 9 NWLR (Pt. 1252) *317and Ministry of Works & Transport Adamawa State v. Yakubu* (2013) 6 NWLR (Pt. 1351) 481 and whether the misconstruction and misapplication led to a gross miscarriage of justice.

Whether a statement of claim properly endorsed and filed with a writ of summons is capable of curing any defect in the writ by the doctrine of supercession of a statement of claim over a writ.

Facts:

The appellants commenced an action against the respondents at the High Court of Kwara State by a writ of summons dated 28thSeptember 2005. The writ was signed in the name of "Femi Falana, A.O. Mohammed & Co.". The case proceeded to trial.

At the conclusion of trial, before judgment was delivered, the 2nd and 3rd respondents filed an application at the trial court challenging the competence of the suit on the ground that the suit was commenced by a defective writ of summons because the writ was signed by a person unknown to law.

The trial court, in its judgment, struck out the suit for want of jurisdiction and held that the defective writ of summons robbed the court of its jurisdiction to hear and determine the matter.

The appellants were aggrieved and they appealed to the Court of Appeal. The Court of Appeal dismissed the appeal. It held that the writ of summons that originated the appellants' suit was not signed by a legal practitioner known to law and that it was properly struck out by the trial court.

Dissatisfied, the appellants appealed to the Supreme Court.

Held (*Unanimously dismissing the appeal***):**

1. *On Who is legal practitioner -*

By virtue of section 24 of the Legal Practitioners Act, a legal practitioner means a person entitled in accordance with the provisions of the Act to practice as a barrister and solicitor either generally or for the purposes of any particular office or proceedings. A legal practitioner contemplated by Order 26 rule 4(3) of the High Court of Kwara State (Civil Procedure) Rules 2005 is the one defined in section 24 of the Legal Practitioners Act. In the instant case, the originating summons was signed by "Femi Falana, A.O. Muhammed & Co.", who was neither a party to the action nor a person known to law. "Femi Falana, A. O. Mohammed & Co." is not a legal practitioner within the context of Order 26 rule 4(3) of the High Court of Kwara State (Civil Procedure) Rules 2005. (*P. 567, paras. B-F***)**

2. On Who can practice as barrister and solicitor -

By virtue of section 2(1) of the Legal Practitioners Act , a person shall be entitled to practice as a barrister and solicitor if, and only if, his name is on the roll. I n t he instant case , there was no evidence on record that Femi Falana, A.O. Mohammed & Co. is a legal practitioner whose name is on the roll and therefore qualifies to practice as a legal practitioner. The comma that appeared after the name of Femi Falana did not in any way prove the fact that the name is the name of a legal practitioner. (*P. 569, paras. B-E*)

3. *On Who can sign writ of summons -*

The person recognised 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 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 renders it incurably bad once it cannot be said who signed a process. In the instant case, the Court of Appeal rightly held that the writ of summons filed on 28/9/2005 was not signed by a legal practitioner known to law and same was incurably bad. (*Pp. 602-603, paras. H-D***)**

4. *On How court process should be signed and when court process properly issued or endorsed -*

All processes filed in court are to be signed as follows:

(a) the signature of counsel which may be any(a)contraption;
(b) the name of the counsel clearly written;
(c) who counsel represents; and
(d) name and address of legal firm.

In other words, a court process is properly issued or endorsed if there is inscribed on it a signature of the counsel which may be any contraption, the name of a known counsel clearly written, the party for which the counsel appears and the name and address of the legal firm. Once it cannot be said who signed the process, it is incurably bad and rules of court that seem to provide a remedy are of no use as rule cannot override the Legal Practitioners Act. There must be a strict compliance with the law. A law firm is not a legal practitioner and therefore cannot practice as such by filing processes in the courts or tribunals in Nigeria. The law does not say that what should be on the roll should be the signature of the legal practitioner but his name. In the instant case, there was not name written to legitimise the appellants' writ of summons. Therefore, it went to nothing and it was liable to be discountenanced. It was defective and incompetent. The requirement was satisfied in respect to the statement of claim but the same could not be said regarding the writ of summons. [*SLB Consortium v. N.N.P.C.*** **(2011) 9NWLR (Pt. 1252) 317;** ***Okafor v. Nweke*** **(2007) 10N WLR (Pt. 1043)**

521; *Oketade v. Adewumi* **(2010) 8N WLR (Pt. 119 5) 63;** *Ministry of Works & Transport Adamawa State v. Yakubu* **(2013) 6 N WLR (Pt. 1351)481 referred to.] (***Pp. 599-600, paras. G-B; 602-603, paras. H-H***)**

Per SAULAWA, J.S.C. at page 603, paras. D-G:

> **"It is obvious from the submissions of the learned counsel to the respective parties and affidavit evidence on record, that the purported issuing and signing of the writ of summons in question:**
>
> > **'By Femi Falana. A. O. Mohammed & Co. whose address for service is 26 Sulu Gambari, Road Ilorin, Kwara State of Nigeria.'**
>
> **has rendered the writ of summons grossly and incurably defective, thus liable to be struck out. Notwithstanding the vehement contention of the appellants to the contrary, itis undoubtedly clear that the contraption Femi Falana. A. O. Mohammed & Co. as depicted on the face of the writ of summons (pages 1-2 of the record) is not a legal practitioner known to law. Thus, the said legal firm as contracted cannot by any stretch of imagination practice as such, as for instance by filing processes in the courts of law or tribunals in this country. That being the case, therefore, the writ of summons purportedly filed in the trial court and all other processes filed subsequent thereto, were grossly incompetent, defective and liable to be struck out by the court."**

5. *On Whether name of law firm same as name of legal practitioner -*

There is a big legal difference between the name of a firm of legal practitioners and the name of a legal practitioner *simplicter***. While a firm has some corporate existence, the name of a legal practitioner is a name** *qua* **Solicitor and Advocate of the Supreme Court of Nigeria which has no corporate connotation. Both carry different legal entities in Nigerian jurisdiction of parties and one cannot be a substitute for the other because they are not synonymous. The name of a law firm is not a name of a legal practitioner. By section 2(1) of the Legal Practitioners Act, the only person in the profession wearing his professional name to practice law in Nigeria is a legal practitioner and the definition of the legal practitioner in section 24 of the Act does not include a law firm. That is not a mere technicality that can be brushed aside. Itis**

fundamental to the judicial process as it directly affects the legal processes that initiate a case.[*Oketade v. Adewumi* **(2010) 8 N WLR (Pt. 119 5)63 ;** *Ministry of Works & Transport Adamawa State v. Yakubu* **(2013) 6 N WLR (Pt. 1351) 481 referred to.](***Pp. 582-583, paras. E-H***)**

6. *On Fundamental nature of validity of originating process and effect of failure to commence action by valid originating process -*

The validity of the originating processes in a proceeding before a court is fundamental as the competence of the proceeding is a condition *sine qua non* **to the legitimacy of any suit or validity of any matter or action. Consequently, any failure to initiate or commence a proceeding with a valid originating process, be it a writ of summons, originating summons or originating motion, as the case maybe, deeply goes to the root of the suit or action. Any consequential order likely to emanate there from is liable to be set aside as being incompetent and a nullity. An incompetent originating process borders on the issue of jurisdiction and the competence of the court to adjudicate on the matter. Such issue ca n be raised at any time and it can never be alien to the proceedings. Since the action was not initiated or commenced by due process of the law by failure to fulfil a condition precedent for its competence and validity in law, the trial court and appellate court lack the requisite jurisdiction to adjudicate over it.[***Kida v. Ogunmola* **(2006) 13 NW LR (Pt. 997) 377;** *Nzom v. Jinadu* **(1987) 1 NW LR (Pt. 51) 533;** *Madukolu v. Nkemdilim* **(1962) 2 SCN L R 341;** *A.-G., AnambraState v. A.-G., Fed .* **(2007) 12 NW LR (Pt. 1047) 1 ;** *Utih v. Onoyivwe* **(1991) 1 NW LR (Pt. 166) 166 ;** *F.A.A.N. Ltd. v. Nwoye* **(2012) 3 SCNJ (Pt. II) 565 referred to.](***Pp. 568, paras. B-E; 593, paras. A-D***)**

7. *On Competence of court -*

A court is competent when -

(a) it is properly constituted as regards numbers(quorum) and qualifications of the bench, and no member is disqualified for one reason or another; and

(b) the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction; and

(c) the case comes before the court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction.

Where an originating process, such as a writ of summons, is adjudged to be fundamentally void and a nullity, neither the parties nor the court can save it from being so declared and struck out. The reason being that the matter was not initiated by the due process of law, thereby depriving the court of the fundamental jurisdiction to entertain and adjudicate upon the action. [*Madukolu v. Nkedilim* **(1962) 2 SCNLR 341 referred to.] (Pp. 604-605, paras. H-E)**

8. *On When issue of jurisdiction can be raised -*

The issue of jurisdiction, being fundamental to adjudication, can be raised at any stage in the proceedings, even for the first time on appeal. [*SLB Consortium v. N.N.P.C.* **(2011) 9 NWLR (Pt. 1252) 317 referred to.] (***P. 607, para. B***)**

9. *On Origin and meaning of writ of summons -*

The historical antecedent of the writ of summon is traceable to the 19th century. Under the Judicature Acts of 1873 -1875, all actions were ordered to be commenced by writ of summons. The term 'writ of summons' invariably connotes a judicial process commencing the plaintiff's action, thereby requiring the defendant to cause an appearance and answer thereto. A writ of summons includes any writ or process by which a suit is commenced, or of which the object is to require the appearance of any person against whom a relief is sought in a suit, or who is interested in resisting such a relief. [*Skenconsult Nigeria Ltd. v. Ukey* **(1981) 1 SC (Reprint) 4 referred to.]** *(P. 608, paras. E-G***)**

10. *On Need for legal practitioner acting on behalf of plaintiff to endorse his name and address on writ of summons -*

Where a plaintiff sues by or through a legal practitioner, such legal practitioner shall indorse upon the writ of summons his name and address. This appears to be one of anti-fraud measures. If the writ of summons does not contain an address for service, it shall not be accepted and if such address is illusory, fictitious or misleading, the writ of summons may be set aside by the court or the Judge in chambers on the application of the defendant. An indorsement upon which the registrar or a duly authorised officer of court was made to sign or seal a writ of summon by order of court suffers the same fate if the purported

attorney or legal practitioner acting on behalf of the plaintiff is unknown to law, fictitious or illusory. (*P. 591, paras. A-D***)**

Per EKO, J.S.C. at page 590, paras. F-A:

> **"The writ of summons, at page 1 of the records of appeal, was issued on 28th September, 2005 by an officer (the Registrar) of the High Court of Kwara State duly authorised by the extant Rules of the said High Court to do so. His signature appears boldly over the official stamp of the court. It is not in dispute that the writ of summons was issued by order of the said High Court in accordance with the Rules of that court.**
>
> **On the indorsement (at page 2), after paragraph thereof, there is a requirement that the name of the person at whose instance the writ of summons was taken out or issued to state his name and address. The address was therein provided. The name therein stated as the person who caused the writ to be issue is 'Femi Falana, A.O. Mohammed & Co.'. The contraption so named has not been shown to be the plaintiff(s) or a known legal persona. The signature purporting to be that of this contraption cannot be deciphered or related to any person, juristic or natural. It cannot be conjectured whose signature it is."**

11. *On Nature of defect in indorsement on writ of summons* -

Generally, a defect in the indorsement on a writ of summons is regarded as a mere irregularity that is curable by amendment or subsequent statement of claim. However, it will be too late to raise an objection where the defendant to took advantage of an irregularity he accepted and acted on, without any harm done to him. The defendant is not entitled to take advantage of an irregularity occasioned by slip which has been mad e by the plaintiff and which had done no harm to the defendant. In the instant case, the respondents raised their preliminary objection to the competence of the writ of summons timeously; and the appellant did not take any step to remedy the defect by amending the indorsement. [*Sonuga v. Anadein* **(1967) NMLR 77;** *Alatade v. Falode* **(1966) 1 SCNLR 310 referred to.] (***Pp. 591-592, paras. E-B***)**

12. *On What is defective process -*

The term 'defective' is an adjective of the noun 'defect' and it denotes lacking in or devoid of legal sufficiency or competence. Thus, a defective process denotes a legal process that is void ab initio, of no legal effect whatsoever. (*Pp. 603-604, paras. H-A***)**

13. *On Distinction between "void" and "voidable" -*

The distinction between the terms "void" and "voidable" is usually of utmost importance whenever some technical accuracy is fundamentally required .Void can be aptly applied to those provisions that are tantamount of no effect whatsoever. That is to say, those provisions that are tantamount to an absolute nullity. If an act is void, then it is in law anullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. There is no decisive test for distinguishing between nullities and irregularities but a useful one is whether if the other side waived the flaw in the proceedings or took some fresh step after knowledge of it, he can afterwards in justice complain of the flaw. If the other side could complain despite the subsequent step, the flaw is a nullity. In the instant case, the originating process, the writ of summons, having been found to be grossly defective, null and voidable *ab initio***, it ought to be so declared and struck out. (***P. 604, paras. A-H***)**

14. *On What is originating process and whether statement of claim originating process -*

As the name implies, an originating process is a process used to initiate, originate or commence an action in a law court. By virtue of Order 2 rule 1 of the High Court of Kwara State (Civil Procedure) Rules, 2005, the various modes of initiating an action in the High Court of Kwara State are clearly set out. Thus, by the provision of Order 2 rule 1 subject to the provision of any enactment, civil proceedings may be begun by a writ of summons, originating summons, originating motion or petition, as therein after provided. Statement of claim is omitted and cannot be one of the ways or modes of commencing an action in Kwara State under the Rules. Order 2 rule 2 of the Rules provides in unambiguous terms that a writ of summons shall be the form of commencing all proceedings except where otherwise stated. A statement of claim is

and remains a mere accompaniment to a writ of summons alongside other accompaniments. This is the essence of Order 2 rule 2 of the Rules which provides that, except where Order 23 applies, every writ of summons shall be accompanied by statement of claim, list of witnesses to be called at the trial, copies of every document to be relied on at the trial and written statement on oath of the witnesses. The import is that statement of claim is in the same class as the list of witnesses to be called at trial, written statement on oaths of the witnesses and copies of all documents to be relied upon and as the wording of the Rules clearly show, all these remain mere accompaniments. In law, there is a world of difference between an original thing and an accompaniment. Whereas an original thing can stand on its own, the existence of an accompaniment relies or depends on the existence of the original thing. (*Pp. 584-585, paras. E-D***)**

Per PETER-ODILI, J.S.C. at pages 585-586, paras. D-G:

> **"The appellants seem to push for this court to treat a statement of claim as an originating process by referring to Order 6 rules 2 and 3 of the Rules. That position flies off the handle, as an originating process is solely a single process. This was what the Court of Appeal correctly found and decided upon. It said:-**
>
> > *'Thus from the above clear and unambiguous provisions, the statement of claim is one of the accompanying processes of be filed with a writ of summons in a proceedings initiated by a writ. The writ is the originating or initiating process*.' (**Italics mine**).
>
> **Indeed, if the makers of the Rules intended to treat the statement of claim as an originating process it would have deployed the plural word 'originating processes' as opposed to originating process used in Order 6 rule 2 (2).**
>
> **It is in recognition of the independent nature of a writ of summons and a statement of claim that provisions dealing with them are separately contained in different parts of the Rules. Whereas writ of summons is expressly dealt with by Order 2 rules 3 and 4, statement of claim is dealt with under pleadings in Order 27 of the rules.**

On yet another angle, it is seen that the originating process referred to in Order 6 rule2(2) could be no other than writ of summons as opposed to a statement of claim in this case.

See the provision of Order 6 rule 2(2) which runs thus:-

> **'A claimant or his legal practitioner shall, on presenting any originating process for sealing, leave with the register as many copies of the process as there are defendants to be served and one copy for endorsement of service on each defendant.'**

It is clear from the above that an originating process is expected to be sealed. This court takes judicial notice of the fact that it is only a writ of summons in an action that is commenced by way of writ of summons that is required by law to be sealed. A statement of claim is not expected to be sealed. Order 2 rule 10 which provides:

> **"(2) An originating process shall not be altered after it is sealed except upon application to a judge."**

A look at pages 1 and 2 of the record which show clearly that the appellants' action was indeed commenced via originating process i.e. writ of summons without a statement of claim contemporaneously filed with it. Pages 3-74 show that the statement of claim was subsequently filed with other accompaniments with the leave of the trial court.

A foray back in time to the records will bring up the following facts. That the 2nd and 3rd respondents' objection to the competence of the suit and the authority of the trial court to grant an application for extension of time to file the statement of claim and other accompaniments was overruled by the trial court. While the respondents' appeal on same to this court was dismissed on the ground that with the filing of an originating process i.e. writ of summons there is brought into existence a competent suit. While the trial court extended time to file their statement of claim and other accompaniments. See *His Royal Highness Alhaji Ibrahim Sulu Gambari & anor v. Alhaji Abdulkareem Laaro Buhari & ors* **(2009) All FWLR (Pt. 458) 1 at 588-509.**

This clearly, is a recognition of the writ of summons as the originating process and by inference the exclusion of statement of claim as an originating process but a mere accompaniment."

15. *On Relationship between writ of summons and statement of claim -*

The relationship between a writ of summons and a statement of claim can be likened to that between a foundation and a structure erected thereon. The writ of summons is like a foundation while the statement of claim is like the structure that was erected on the foundation. This is why a suit can exist on the basis of a writ of summons alone even before the statement of claim is filed and not the other way round. (*P. 589, paras. C-D***)**

16. *On When statement of claim can supersede writ of summons -*

It is important to limit and circumscribe the scope of the application of the principle that statement of claim supersedes a writ of summons. The correct position is that where the endorsement in a statement of claim though in tune with those on the writ of summons are more elaborate and lucid than those contained in the writ of summons , then those in the statement of claim will supersede and take precedence over those endorsements in determining the claims of the claimants. A claim made on the writ of summons, which is not repeated or varied in the statement of claim would be deemed abandoned or varied as such. However, for a statement of claim to supersede a writ of summons, it must be valid or competent. In the instant case, the appellants' statement of claim did not supersede the writ of summons so as to cure the defect inherent in the writ of summons. [*Eya v. Olapade*** **(2011) 11 NWLR (Pt. 12 5 9) 505;** *Ndayako v. Dantoro* **(2004) 13 NWLR (Pt. 889) 187;** *Daniel Holdings Ltd. v. UBA Plc* **(2005)13 NWLR (Pt. 94 3) 533 ;** *Overseas Construction Ltd v. Creek Ent. Ltd***. (1985) 3 NWLR (Pt. 13) 407;** *Tijani v. F.B.N. Plc* **(2014) 1 NW LR (Pt. 1387) 57 referred to.] (***Pp. 588-589, paras. H-B; 609, paras. C-E***)**

17. *On Whether properly endorsed statement of claim can save defective writ of summons -*

A statement of claim properly endorsed cannot save a defective writ of summons A statement of claim supersedes the writ of summons to the effect that the reliefs endorsed on the statement of claim supersede the ones in the writ of summons,

And nothing more. The two processes are mutually exclusive. A writ of summons can come to life without a statement of claim but the later cannot be alive without the former. Where the writ of summon s is defective, the plaintiff cannot rely on the statement of claim to cure the defective writ of summons. [*Onward Enterprises Ltd. v. Olam Int'l Ltd***. (2010) All FWLR (Pt. 531) 1503 referred to.] (***Pp.571, paras. A-C; 581, paras. D-E; 589, paras. D-E***)**

18. *On Operation and application of doctrine of estoppel by conduct -*

.By virtue of section 169 of the Evidence Act2011 (as amended), when one person has, either by virtue of an existing court judgment, deed or agreement, or by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed, in any proceeding between himself and such person or such person's representative in interest to deny the truth of that thing. Also called estoppel *in pais***, the common law principle forbids a person from leading his opponent from believing in and acting upon a state of affairs, only for the former to turn around and disclaim his act or omission. Both the common and statutory law do not permit the conduct. That is why the Act uses the emphatic phrase "neither he nor his representative in interest shall be allowed". [***A.-G., Nasarawa State v. A.-G., Plateau State* **(2012)10 N WLR (Pt. 1 30 9) 419;** *Odua Invest. Co. Ltd. v. Talabi (1991) 1 NWLR* **(Pt.170) 761;** *A.-G. , RiversState v. A.-G. , Akwa Ibom State* **(2011) 8 N WLR (Pt. 1248) 3 1 referred to.] (P. 580, paras. A-G)**

Per PETER-ODILI, J.S.C. at pages 579-580, paras. A-A:

> **"A perusal of the statement of claim filed by the claimants before the trial court will reveal clearly that all the arguments of the appellants about the failure of the court to construe and give effect to the comma in 'Femi Falana, A.O. Mohammed & Co' is nothing but a mere subterfuge to deny the obvious, contrary to the appellants contention that the mode is which Femi Falana, A.O. Mohammed and Co. was used is nothing but as a firm's name. I refer to pages 12 and 13 of the record where the following endorsement appears on both the statement of claim and the list of plaintiffs' witnesses:**

'A. O. Mohammed, Esq.,

Femi Falana, A.O. Mohammed & Co.

Plaintiff's counsel

26 Sulu Gambari Road

Ilorin.'

Instructively, it is this same firm name that was endorsed on the writ of summons upon which a signature was scribbled. With this state of affairs all the argument about the purport of comma in the name comes to nothing but a mere academic issue. See *ADH Ltd. v. Amalgamated Trustees Ltd.* **(2007) All FWLR (Pt. 392) 1781@ 1808, (2006) 10 NWLR (Pt.989) 635;** *State v. Azeez* **(2008) All FWLR (Pt. 424) 1423 @ 1464, (2008) 14 NWLR (Pt. 1108) 439.**

The appellants' complaints about failure of the trial court to use exhibit 2 (Certificate of Registration of the law firm of A.O. Mohammed& Co.) is a serious misconception. That position is strengthened by the fact that on their own showing based on the endorsement on the writ of summons and more specifically the ones on the statement of claim and the list of plaintiffs' witnesses which are contained respectively on pages 12 & 13 of the record, the appellants counsel on their own held out Femi Falana, A.D. Mohammed & Co as a firm's name with address at 26 Sulu Gambari Road, Ilorin.

The appellants are estopped from attempting to adduce or lead evidence to show that the representation which they made to both the trial court and other parties on record and on whom the said processes were served is indeed not correct. The trial court and the Court of Appeal were therefore right to have refused to be swayed by exhibit 2 attached to the appellants' counter affidavit which purport to show that their own representation of Femi Falana. A.O. Mohammed & Co. is not a firm of legal Practitioner. The argument of the appellants in the circumstances is to say the least lame and unconvincing. "

19. *On Nature of estoppel* -

In law, estoppel is an admission or something which the law views as equivalent to an admission. By its very nature, it is so important and conclusive that the party which it affects will not be allowed to plead it or adduce evidence to contradict it. [*A.-G., RiversState v. A.-G., Akwa Ibom State* **(2011) 8 N WLR (Pt. 1248) 31 referred to.] (***P. 580, paras. G-H***)**

20. *On Need for party to be consistent in his case* -

Per PETER-ODILI, J.S.C. at pages 586-587, paras. G-D:

> **"It is thereafter wrong for the appellants to canvass a position in a suit between the same parties only for them to make a complete U-turn to canvass an opposite even after their original position has been upheld by the court. This in summary is the position taken by the appellants who when it was convenient for them contended that it was not compulsory for a statement of claim to be filed contemporaneously with a writ of summons only for them to turn around now and canvass that statement of claim must be filed at the same time with the writ of summons even after a favourable decision of the court below had been obtained by them which kept the case alive until it was eventually struck out on the basis of the defect in the writ of summons. See** *His Royal Highness Alhaji Ibrahim Sulu Gambari & anor v. Alhaji Abdulkareem Laaro Buhari & ors* **(2009) All FWLR (Pt. 458) 1 at 491-500.**
>
> **These inconsistent positions of a party in litigation has been severally deplored by this court. I shall refer to one of such cases. See** *A.-G., Rivers State v. A.-G., Akwa Ibom State* **(2011) All FWLR (Pt. 579) 1023 1069-1070; (2011) 8NWLR (Pt. 1248) 31 where the position was admirably stated as follows:**
>
> > **'Secondly, I hold the view that for the 2nd defendant to contend before this court that the court has no jurisdiction to entertain the suit after it had contended the contrary at the Federal High Court is to speak from both sides of the mouth or to approbate arid reprobate, a situation frowned upon by law. For a party to contend that the court**

which he had earlier submitted to giving jurisdiction over a particular proceeding has no jurisdiction when the matter is duly filed before that court is to encourage uncertainty and to put it mildly irresponsibility.'"

21. *On What constitutes abuse of court process –*

The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. It's one common feature is the improper use of the judicial process by a party in litigation to interfere with due administration of justice. It is recognised that the abuse of the process may lie in both a proper or improper use of the judicial process in litigation. But the employment of judicial process is only regarded as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent, and the effective administration of justice. This will arise i n instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues. Thus, the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse. The abuse consists in the intention, purpose, and aim of the person exercising the right to harass, irritate and annoy the adversary and interfere with the administration of 'justice such as instituting different actions between the same parties simultaneously in different courts, even though on different grounds. In the instant case, the writ of summons which wa s irredeemably defective, incompetent, null, void and of no effect whatsoever was an abuse of process of court. [Saraki v. Kotoye (1992) 9 **NWLR (Pt. 264) 156;** C.B.N. v. Ahmed (2001) 11 **NWLR (Pt.724) 369 referred to**.] (Pp. 610-611, paras. G-G)

22. *On Duty of legal practitioner to maintain high standards i n practice of profession –*

The legal profession is a very serious business exclusively undertaken by responsible, honorable seriously committed practitioners. Therefore, legal practitioners owe the legal profession the duty to maintain the very high standards required in the practice

of the profession in the country. As it rarely happens that a man is fit to plead his own cause, lawyers are a class of the community, who by study and experience, have acquired the art and power of arranging evidence and of applying to the points at issue what the law has settled. A lawyer is to do for his client all that his client might fairly do for himself, if he could. [Okafor v. Nweke (2007) 10 **NWLR (Pt. 1043) 521;** Tijani v. F.B.N. Plc (2014) 1 **NWLR (Pt. 1387) 57;** P a ss c o Int. Ltd. v. Unity Bank Plc (2021) 7 **NWLR (Pt. 1775) 224referred** to.] (Pp. 611-612, paras. G-G)

23. *On Power of Supreme Court to consider all available materials before it –*

The Supreme Court has the vires to consider all available materials on its record in deciding a case before it. [Agbahomovo v. Eduyegbe (1993) 2 **NWLR (Pt. 540) 170 referred to**.] (Pp. 578-579, paras. G-A)

24. *On Whether brief of argument can be used to adduce oral evidence –*

A brief of argument is not a forum to adduce oral evidence. In the instant case, the appellants in their brief of argument alluded to factual matters which were not supported by the record when they stated that Femi Falana, SAN was briefed to lead A. Mohammed, Esq. SAN to prosecute the case for the appellants and further that the court processes were jointly prepared by the two-senior counsel. It was a matter in respect of which evidence would ordinarily be required. As there was no evidence on record to support the assertion, it was an attempt by the appellants to adduce evidence through the medium of their brief of argument. [UBN Plc, v. Ayodare & Sons Nig. Ltd. (2007) 13 **NWLR (Pt. 1052)567;** Chime v. Ezea (2009) 2 **NWLR (Pt. 1125) 2 6 3referred to.**] (P. 578, paras. D-G)

Nigerian Cases Referred to in the Judgment:

A.-G., Anambra State v. A.-G., Fed. (2007) 12 **NWLR (Pt. 1047) 1**

A.-G., Bendel State v. Aideyan (1989) 4 **NWLR (Pt. 118) 646**

A.-G., Nasarawa State v. A.-G., Plateau State (2012) 10 **NWLR (Pt. 1309) 419**

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

Adegoke Motors v. Adesanya (1989) 3 **NWLR (Pt. 109) 250**

ADH Ltd. v. Amalgamated Trustees Ltd. (2006) 10 **NWLR (Pt.989) 635**

Agbahomovo v. Eduyegbe (1993) 3 **NWLR (Pt. 594) 170**

Alatade v. Falode (1966) 1 SCNLR 310

Asafa Foods v. Alfaine Ltd. (2002) 12 **NWLR (Pt. 781) 353**

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

Central Bank of Nigeria v. Ahmed (2001) 11 **NWLR (Pt. 724) 369**

Chime v. Ezea (2009) 2 **NWLR (Pt. 1125) 262.**

Cookey v. Fambo (2005) 15 **NWLR (Pt. 947) 182**

Daniel holding 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**

F.A.A.N. Ltd. v. Nwoye (2012) 3 SCNJ 565

Harriman v. Harriman (1989) 5 **NWLR (Pt. 119) 6**

Heritage Bank Ltd. v. Bentworthe Finance (Nig.) Ltd. (2018) 9 **NWLR (Pt. 1625) 420**

IBWA Ltd. v. Pavex Int'l Co. (2000) 7 **NWLR (Pt. 663) 105**

Integrated Timber and Plywood Products Ltd. v. Union BankPlc (2006) 12 **NWLR (Pt. 995) 483**

Kida v. Ogunmola (2006) 13 **NWLR (Pt. 997) 377**

Lebile v. The Registrar Seraphim Church of Zion of Nigeria (2003) 2 **NWLR (Pt. 804) 399**

Madukolu v. Nkemdilim (1962) 2 SCNLR 341

Ministry of Works and Transport Adamawa State v. Yakubu (2013) 6 **NWLR (Pt. 1351) 481**

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

N. N. B. Plc v. Denclag Ltd. (2005) 4 **NWLR (Pt. 916) 549.**

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

NDIC v. C.B.N. (2002) 7 **NWLR (Pt. 766) 272**

N.t.a. v. Aniagbo (1972) 1 All NLR (Pt. 2) 74

Nzom v. Jinadu (1987) 1 **NWLR (Pt. 51) 533**

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

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

Oketade v. Adewumi (2010) 8 **NWLR (Pt. 1195) 63**

Okorodudu v. Okoromadu (1977) 3 SC 21

Onward Enterprise Ltd. v. Olam International Ltd. (2010) All FWLR (Pt. 531) 1503

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

Overseas Construction v. Creek Ent. Ltd. (1985) 3 **NWLR (Pt.13) 407**

Oyegbola v. Esso West Africa Inc. (1966) 2 SCNLR 35

Passco Int'l Ltd. v. Unity Bank Plc (2021) 7 **NWLR (Pt. 1775) 224**

Reg. Trustees Apostolic Church v. Akindele (1967) NMLR 263

Shell B.P. v. Onasanya (1976) 6 SC 89

SLB Consortium v. N.N.P.C. (2011) 9 **NWLR (Pt. 1252) 317**

Sokwo v. Kpongbo (2008) 7 **NWLR (Pt. 1086) 342**

Sonuga v. Anadein (1967) NMLR 77

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

Tyani v. First Bank of Nigeria Plc (2014) 1 **NWLR (Pt. 138) 57**

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

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

Foreign Cases Referred to in the Judgment:

Dickson v. Law and Davidson (1895) 2 Ch. D62

Macfoy v. U.A.C, (1962) AC 152

Pettit v. Greyhound Racing Association (No. 1) (1968) All ER 545

Wauga v. British Rails Board (1929) 2 All ER 1169

Books Referred to in the Judgment:

Aguda T.A.: Practice & Procedure of the Supreme Court, Court of Appeal and High Courts of Nigeria

Black's Law Dictionary, 11th Edition 2019, Pp. 527, 1459 @1885

Black Law Dictionary 1st Edition 2017, Pp. 1931

Boswell's Life of John (Birkbeck hill Edition) 26

Nigerian Statutes Referred to on in the Judgment:

Evidence Act, 2011, S. 169

Interpretation Act, Cap. I23, Laws of the Federation of Nigeria,2004, S. 3(1)

Legal Practitioners Act, Cap, 207, Laws of the Federation of Nigeria, (1990), Ss. 2, 2(1) and 24

Rules of Professional Conduct for Legal Practitioner, R. 13

Foreign Statute Referred on in the Judgment:

Judicature Act, 1873-1875

Nigerian Rules of Courts Referred to in the Judgment:

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

High Court of Kwara State (Civil Procedure) Rules 2005, O. 2r. (2); O. 23, O. 6 rr. 2(2)(3), O. 26 4(3)

Appeal:

This was an appeal against the decision of the Court of Appeal dismissing the appeal against the judgment of the High Court which struck out the appellants' suit for want of jurisdiction. The Supreme Court, in a unanimous decision, dismissed the appeal.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal: Mary Ukaego Peter Odili, J.S.C. (Presided); Ejembi Eko, J.S.C., Mohammed Lawal Garba, J.S.C. Ibrahim Mohammed

Musa Saulawa, J.S.C. Tijani Abubakar, J.S.C. *(Read the Leading Judgment)*

Appeal No.: SC/247/2014

Date of Judgment: Friday, 18th February 2022

Names of Counsel: Kamaldeen Quadri, Esq.- for the Appellants

L. O. Akangbe, Esq. (with him, I. B. Ayegbami, Esq. and Morris Duru, Esq.) - for the 1st Respondent

Yusuf Ali, SAN. (with him,.Yakub Dauda, Esq., Babakebe,Esq., K. B. Eleburuike, Esq. and Rita Nmarkwe, Esq.).-for the 2nd & 3rd Respondents

Court of Appeal:

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

Names of Justices that sat on the appeal: Mukhtar, J.C.A.(Presided); Akeju, J.C.A.; Onyemenam, J.C.A.

Appeal No.: CA/IL/106/2013

Date of Judgment: Thursday, 27th February 2014

High Court:

Name of the High Court: High Court of Kwara State.

Name of the Judge: Adewara, J.

Suit No.: KWS/165/2005

Date of Judgment: Wednesday, 23rd October 2013

Counsel:

Kamaldeen Quadri, Esq.- for the Appellants L. O. Akangbe, Esq. (with him, I. B. Ayegbami, Esq. and Morris Duru, Esq.) - for the 1st Respondent

Yusuf Ali, SAN. (with him,. Yakub Dauda, Esq., Babakebe, Esq., K. B. Eleburuike, Esq. and Rita Nmarkwe, Esq.). - for the 2nd & 3rd Respondents

ABUBAKAR, J.S.C. (Delivering the Leading Judgment): This appeal stems from the interlocutory ruling of the Court of Appeal sitting in Ilorin, delivered on the 27th day of February, 2014. In the said judgment, the lower court upheld the decision of the trial court and held that the objection raised by the 2nd and 3rddefendants/respondents to the competence of the writ of summon was competent.

The facts giving rise to this appeal are that the appellants commenced the action giving rise to this appeal in the High Court of Kwara State by a writ of summons dated 28th September, 2005. The case proceeded to trial, at the conclusion of trial, before judgment was delivered, the 2nd and 3rd respondents brought an application challenging the competence of the suit on the ground that the suit was commenced by a defective writ of summons because the writ was signed by a person unknown to law. The learned trial judge in his judgment struck out the suit for want of jurisdiction

and held that the defective writ of summons robbed the court of its jurisdiction to hear and determine the matter. The appellants therefore appealed to the Court of Appeal Ilorin Division, the lower court, which court in a unanimous decision dismissed the appellants' appeal.

Dissatisfied therefore, the appellants further appealed to this court via notice of appeal dated 7th March, 2014, containing 6grounds of appeal, learned counsel Kamaldeen B. Quadri, Esq. on behalf of the appellant, filed the appellant's brief of argument onthe 15th day of August, 2014. Learned counsel for the appellant nominated three issues for determination, the issues are as follows;

1. Whether the question writ of summon was signed by a legal practitioner known to law having record to the affidavit and documentary evidence on record (grounds 1, 2 and 3)
2. Whether the court of appeal had not misconstrued, mixed-up and misapplied the two decisions of this Honorable court cited before it to wit; SLB Consortium v. NNPC (2013) 4 SCNJ 211, (2011) 9 **NWLR (Pt. 1252) 317** and Ministry of Works and Transport Adamawa State v. Yakubu Isiaku (2013) 1 SCNJ 211, (2013) 6 **NWLR (Pt. 1351) 481** and whether the misconstruction, misapplication and mixed up by the Court of Appeal of the decisions in the two cases have not led to a gross miscarriage of justice in this appeal. (Grounds 4 and 5)
3. Whether a statement of claim properly endorsed and filed with a writ of summons is capable of curing any defects in the writ by the doctrine of supersession of a statement of claim over a writ. (Grounds 6)

The 1st respondent's amended brief of argument was filed by learned counsel Lateef Omoyemi Akangbe, Esq. on the 5th day of March, 2021, it was deemed as properly filed and served on the 21stday of November, 2021. In the brief of argument, learned counsel nominated the following two issues for determination:

1. Whether the writ of summons that originated the action at the High Court was properly signed as required by law.
2. Whether given the facts of this case, the doctrine of supersession of the writ of summons by the statement of claim is applicable to this case.

Learned senior counsel Yusuf Ali, SAN filed the 2nd and 3rdrespondents brief of argument on the 17th day of February 2015, the brief was deemed as properly filed and served on the 17th day of February, 2021. Counsel crafted three issues for discussion in this appeal, the issues are reproduced as follows:

1. Whether the Court of Appeal was not right in holding that the writ of summons with which the case was initiated was not signed by a legal practitioner known to law
2. Whether the Court of Appeal was not right in its decision that a statement of claim is not an originating process but merely one of the accompanying processes to be filed along with the writ of summons? And
3. Whether the Court of Appeal was not right in its decision that the defective statement of claim filed by the appellant in this case did not supersede the writ of summons?

Submissions of counsel for the appellants.

Issue one

Counsel for the appellants submitted that both the trial and lower courts failed to appreciate the effect of the use of comma (,) to separate the name Femi Falana from the law firm name of A.O. Mohammed & Co.

Learned counsel said the comma having been used to separate the name of Femi Falana from the A.O. Mohammed & Co, Femi Falana as person and distinct legal practitioner cannot be part of the law firm of A.O. Mohammed & Co.

Learned counsel submitted that had the trial court and lower court considered the effect of the comma used in the writ of summons, their decision would have been different.

Learned counsel cited the provisions of section 3 of the Interpretation Act, Cap. I23, L.F.N. 2004 and the decision of this court in Ashibalogun v. Bendel State A.-G., (1988) 2 SCNJ 230 at259; reported Ashibuogwu v. A.-G., Bendel State (1988) **1 NWLR (Pt. 69) 138** to argue that punctuation forms part of an enactment and regard shall be had to it accordingly in consisting the enactment and it is always crucial that enactment be construed in the context in which it was written.

Learned counsel submitted that the decision of the lower court that the signature that appears in the writ was not stated to belong to either Femi Falana or even A.O. Mohammed & Co.,

contradicted the decision of this court in SLB Consortium v. NNPC (2011) 4SCNJ 211; (2011) 9 **NWLR (Pt. 1252) 317.**

Learned counsel submitted that the conclusion of the Court of Appeal that the writ of summons was signed by a law firm is misconceived and unfounded as the counsel who issued and signed the writ is clearly distinguishable from the name of the law firm.

Learned counsel submitted that there is no known law firm known as Femi Falana, A.O. Mohammed & Co. within and outside jurisdiction. Counsel cited Rule 13 of the Rules of Professional Conduct for Legal Practitioners.

Counsel finally urged this court to hold that the writ of summons was properly issued and signed by Mr. Femi Falana SAN, he also urged that the appeal be allowed.

Issue Two

Learned counsel for the appellants submitted that Order 2 rule2 of the Kwara State High Court (Civil Procedure) Rules, 2005under which this case on appeal was filed provides as follows;

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.

Learned counsel maintained that it is irrelevant that the statement of claim may have been filed subsequently with the leave of the court after the writ of summons was filed and that will not change the provision of rule 2 that requires the writ of summons and statement of claim to be filed together. Learned counsel said under Order 2 rule 2(2) of the Kwara State High Court (Civil Procedure) Rules, 2005, there is no requirement for signing a writ of summons simpliciter or any of the processes filed under the sub rule for the purpose of compliance with the legal practitioners Act.

Learned counsel further submitted that it is Order 6 rule 2& of the Kwara State High Court (Civil Procedure) Rules, 2005that requires court processes to be signed by a legal practitioner for the purpose of compliance with section 2(1) and 24 of the Legal Practitioners Act.

Learned counsel submitted that the decision of the lower court that the position of the decision in SLB Consortium v. NNPC (supra)and the instant case are not the same was a poor assessment and non-appreciation of counsel's submission on the issue. Counsel further submitted that in SLB Consortium v. NNPC (supra), the court considered both the writ of summons and statement of claim together to determine if either of the originating processes was signed by a legal practitioner known to law within the meaning of sections 2 and 24 of the Legal Practitioners Act.

Learned counsel submitted that had the Court of Appeal carefully considered and evaluated the provisions of the two rules in conjunction with the provisions of sections 2 and 24 of the Legal Practitioners Act, it would have seen that the two set of rules are impari materia or at least have the same effect.

Learned counsel then submitted that assuming without conceding that the writ of summons was not signed by a legal practitioner known to law, can the same be said of the statement of claim which by Order 6 rule 2 of the High Court of Kwara State (Civil Procedure) Rules 2005 and the decision in the SLB v. N.N.P.C. (supra) is originating process? Learned counsel urged the court to resolve this issue in favor of the appellants against the respondents.

Issue Three

Learned counsel submitted that issue three is closely related to issue two that has already been argued, counsel therefore craved the indulgence of the court to adopt the argument canvassed under issue two as representing the argument of counsel on issue three.

Learned counsel then, submitted that the argument that where a statement of claim is required to be filed with a writ of summons as provided under Order 2 rule (2), the statement of claim once filed cures any defect in the writ of summons which is inferior to the statement of claim.

Learned counsel then submitted that the above submission finds solid support in the doctrine of super cessions of a statement of claim over a writ of summons as decided by this court in Ndayako v. Dantoro (2004) 13 **NWLR (Pt. 889) 187 at 218**.

Learned counsel however, cited the decision in Otu v. A.C.B. Int. l Bank Plc (2008) 3 NWLR (Pt. 1073) 179; (2008) All FWLR (Pt. 408) to argue that in civil proceedings, a statement of claim always supersedes the writ of summons. Counsel also cited the decision in A.-G., Bendel State and anor v. Aideyan (1989) 9 SCNJ80 (1989) 4 **NWLR (Pt. 118) 646** and Maffa v. Anigbo (1972) 5 S Cat 166 to support his argument.

Learned counsel finally urged that this issue be resolved in favor of the appellant against the respondents and the appeal be allowed.

Submissions of Counsel for the 1st Respondent.

Issue One

Submitting on behalf of the 1st respondent, learned counsel submitted that from the face of the writ of summon, could it be said that it was signed by a legal practitioner? Learned counsel then contended that going by the plethora of decided authorities, there is no doubt that the trial Judge was right to have decided that Falana, A. O. Moharnmed & Co, who signed the writ of summon is not a legal practitioner. Counsel cited the decision in Okafor v. Nweke; (2007) 10 NWLR (Pt. 1043) 521 and SLB Consortium v. NNPC (supra).

Learned counsel argued that the lower court in its judgment held that the names that signed the writ of summons are Femi Falana A.O. Muhammed & Co, and therefore, since the writ was not amended, the plaintiffs cannot claim that the name on the writ is for Femi Falana.

Learned counsel submitted that the appellant cited the provision of Order 2 rule 2 of the Kwara State High Court (Civil Procedure) Rules to argue that a statement of claim is an originating process, learned counsel also submitted that the assertion cannot be correct given the fact that the trial Judge having considered the definition of originating summons held that an action cannot be initiated by a statement of claim.

Learned counsel submitted that sub-rule of the same order relied on by the appellant mandated the filing of writ. Learned counsel urged this court to resolve this issue in favor of the respondent against the appellants.

Issue Two

Learned counsel submitted that the appellant consistently argued that since the statement of claim was properly signed, and by the provision of order 2 cited by learned court, the statement of claim supersedes the writ of summons and therefore failure to sign the writ does not invalidate the writ. Learned counsel maintained that the argument is not correct. Learned counsel further submitted that the decision in Ndayako v. Dantoro (2004) 13 NWLR (Pt. 889)187 and other cases relied on by the appellant in support of the argument were not relevant in the determination of whether the originating process is the writ or the statement of claim as in the instant appeal. Counsel

further submitted that in all the cases, there was no principle laid down that statement of claim supersedes the writ of summons.

Learned counsel also submitted that the appellant's argument regarding the principle of superiority of a statement of claim over a writ of summons is with respect irrelevant in so far as complaint against the writ in this appeal is not based on discrepancies in the claims contained in the writ vis-a-vis the statement of claim.

Learned counsel urged this court to resolve this issue in favor of the respondent against the appellants and dismiss the appeal.

Submissions of Counsel for the 2nd and 3rd Respondents

Issue One

Learned senior counsel for the 2nd and 3rd respondents submitted that the lower court in its judgment found that the writ with which the action was commenced was not issued or signed by a legal practitioner known to law. Counsel further submitted that the findings of the lower court was not only profoundly sound but unassailable. Counsel further contended that the attempt by the appellant to fault the decision of the lower court is too weak and inconsequential. He further submitted that a perusal of the statement of claim filed by the claimants before the trial court will reveal that all the arguments of the appellant challenging the trial court for its failure to give effect to the comma in "Femi Falana, A.O. Mohammed & Co." is nothing but a mere subterfuge to deny the true position of the issue.

Learned senior counsel then submitted that the appellant's argument on the failure of the trial court to use exhibit 2 (certificate of registration of the law firm of A.O. Mohammed & Co.) is a serious misconception. Learned senior counsel then submitted that the appellants on their own showing admitted that Femi Falana. A. O. Mohammed & Co is a firm name with address at 26, Sulu Gambari Road Ilorin.

Learned senior counsel cited the provisions of section 169 of the Evidence Act, 2011 and the decisions in A.-G., Nasarawa State v. A.-G., Plateau State (2012) All FWLR (Pt. 630) 2262, (2012) 10 **NWLR (Pt. 1309) 419** and Odua Investment Company Ltd. v. Talab i(1991) 1 **NWLR (Pt. 170) 761** to argue that since the appellants on their own held out Femi Falana, A.O. Mohammed & Co as a name of law firm with address at 26, Sulu Gambari Road, Ilorin, they are stopped from attempting to adduce or lead evidence to show that the representation which they

made to both the trial court and other parties on record, on whom the said process were served is indeed not correct. Learned senior court urged this court to resolve this issue in favour of the respondents against the appellants.

Issue Two

Learned senior counsel submitted that this issue is to examine the correctness or otherwise of the lower court's decision that a statement of claim is not an originating process. Learned senior counsel submitted that by virtue of the provisions of Order 2 rule 2 of the Kwara State High Court (Civil Procedure) Rules 2005, the various mode of instituting an action in the state has been outlined and statement of claim is not among the modes. Learned senior counsel further argued that the statement of claim is in the same class as the list of witnesses to be called at the trial.

In trying to distinguish the writ of summons from statement of claim, learned senior counsel cited Order 6 rule 2 to argue that it is only the writ of summons that is required to be sealed, a statement of claim does not have to be sealed. He again urged this court to resolve this issue in favour of the respondents against the appellants.

Issue Three

Learned senior counsel submitted that the subject in contention in this issue is the correctness or otherwise of the decision of the lower court, the statement of claim filed in this appeal does not supersede the writ of summons so as to cure the defect inherent in the writ of summons, he submitted that the lower court in its judgment held that the defective writ of summons filed by the appellant cannot be cured on the principle that a statement of claim supersedes a writ of summons.

Learned counsel explained that the relationship between a writ of summons and a statement of claim is like a foundation and a structure erected thereon, while the writ of summons is like a foundation and the statement of claim is like a structure erected on the foundation. He submitted that, where there is no writ of summons there will be nothing upon which the statement of claim subsequently filed could be placed on. Learned senior counsel urged that this issue be resolved in favour of the respondents against the appellants. Counsel finally urged this court to resolve all the three issues in favor of the respondents and dismiss the appeal.

Resolution

The complain of the respondents at the trial court is that the writ of summons commencing the action was not signed by a person known to law, contrary to the provisions of Order 2 rule 1 of the Kwara State High Court (Civil Procedure) Rules, 2005, sections 2and 24 of the Legal Practitioners Act, and the decision of this court in Okafor v. Nweke (2007) All FWLR (Pt. 368) 1016; (2007) 10NWLR (Pt. 1043) 521. The sum total of respondent's grievance is that the matter, as instituted and commenced was not initiated by due process of law, and upon fulfillment of any condition precedent to the exercise by the court of its jurisdiction.

The provisions of Order 2 rule 1 of the Kwara State (Civil Procedure) Rules, 2005 and sections 2 and 24 of the Legal Practitioners Act as cited are very clear and unambiguous, looking at the originating summons, it is very clear that it was signed by" Femi Falana, A.O. Muhammed & Co." and that the said "Femi Falana A.O Mohammed & Co" is neither a party to the action nora person known to law. The pertinent question here is, is "Femi Falana A. O. Mohammed & Co" a legal practitioner within the contemplation of the law? as to come within the provisions of Order 2 rule 2 of the Kwara State Civil Procedure Rules 2005 and sections 2 and 24 of the Legal Practitioners Act?

To answer this question, I must have instant recourse to the provisions of section 24 of the Legal Practitioners Act, which provides as follows:

> "Legal Practitioner means a person entitled in accordance with the provisions of this Act to practice as a barrister and solicitor either generally or for the purposes of any particular office or proceedings."

A legal practitioner contemplated by Order 26 rule 4(3) supra is the one defined in section 24 of the Legal Practitioners Act. "Femi Falana, A. O. Mohammed & Co." is not a legal practitioner within the context of Order 26 rule 4(3). Learned counsel for the appellant made strenuous efforts to contend that a comma having been used to separate the name of Femi Falana from A.O. Muhammed solved the whole problem. According to learned counsel, Femi Falana as a person and a distinct legal practitioner cannot be part of the firm of A.O. Muhammed & Co. This argument by learned counsel is designed to postpone the evil day, the lower court at page 260 of the records of appeal held as follows:

> "the writ of summons that originated the appellant's 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) 36 WRN 185, the totality of which is that the appellant's suit lacks competence having not been initiated by due process of law. Madukolu v. Nkemdilim (1962) 1 All NLR 587, (1962) 2 SCNLR 341.

This court in Kida v. Ogunmola (2006) LPELR-1690 SC;(2006) 13 **NWLR (Pt. 997) 377** also held as follows:

> "… the validity of the originating processes in a proceeding before a court, is fundamental, as the competence of the proceeding is a condition sine qua non to the legitimacy of any suit. Therefore, the failure to commence proceedings with a valid writ of summons goes to the root of the case and any order emanating from such proceedings is liable to be set aside as incompetent and a nullity. It clearly borders on the issue of jurisdiction and the competence of the court to adjudicate on the matter. Such issue can be raised at any time and it can never be alien to the proceedings as claimed by the learned trial Judge."

The law is well settled that once a writ is defective it remains null and void and you cannot erect any valid proceedings on it, see: Nzom & anor v. Jinadu (1987) LPELR-2143(SC); (1987) 1 **NWLR (Pt. 51) 533.**

The lower court in an effort to nip the entire issue in the bud said as follows at page 254-255 of the records of appeal and I quote:

> "It is now well established that the person recognized 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 section 2(1) and 24 if the Legal Practitioners' Act, Cap. 207, LFN,1990 which provisions were considered in Okafor v. Nweke (2007) All FWLR (Pt. 368) at 1016, (2007) 10 **NWLR (Pt. 1043) 521** where Onnoghen, J.S.C. 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 then

> was) in Atake v. Afejuku (1994) LPELR (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)1 (2)1 and of the Legal Practitioners Act." See also A burime v. N.P.A. (1978) 4-SC 10 reprint 801 Oketade v. Adewumi (2010) 3 (Pt. 11) MJSC 21, (2010) 8 **NWLR (Pt. 1195) 63.**

It is clear from the facts of this case that there is no evidence on record that Femi Falana, A.D Mohammed & Co, is a legal practitioner whose name is on the roll, and therefore qualified to practice as a legal practitioner, the comma that appears after the name of Femi Falana does not in any way prove the fact that the name is the name of a legal practitioner. Section 2(1) of the Legal Practitioners Act clearly provides as follows;

> "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."

In the instant case, Femi Falana, A.O. Mohammed & Co is not a legal person. It can only function as such if it describes itself as: Femi Falana, SAN or A. O. Mohammed, SAN, counsel for the appellants cannot engage in legal gymnastics to revive a writ that is dead on arrival.

At this juncture, I must make it clear that the learned counsel for the appellant has not understood the principles in SLB Consortium v. NNPC (supra). The law is very clear that as there is no name written to legitimize the process, it then goes to nothing and it must be discountenanced. In SLB Consortium v. NNPC (supra) this court made it clear that:

> "All processes filed in court are to be signed as follows:
>
> (a) First the signature of counsel which may be any contraption;
> (b) Secondly, the name of the counsel clearly written;
> (c) Thirdly, who counsel represents;
> (d) Fourthly, name and address of legal firm".

I must reiterate the position taken by this court in SLB Consortium v. NNPC (supra) that: "Once it cannot be said who signed the process, it is incurably bad, and rules of court that seem to provide a remedy are of no use as rule cannot override the Legal Practitioners Act. There must be a strict compliance with the law. Accordingly, the writ of summons in this matter is defective and therefore incompetent.

Having said this, issues one and two are hereby resolved in favour of the respondents against the appellants.

Issue Three

Learned counsel for the appellant argued that where a statement of claim is required to be filed with a writ as provided under Order2 rule 2 (2), the statement of claim once filed cures any defect in the writ which is inferior to the statement of claim. It is the law that statement of claim properly endorsed cannot save a defective writ of summons, see: Onward Enterprise Ltd. v. Olam International Ltd. (2010) All FWLR (Pt. 531.) 1503 at 1511-1513. The lower court in its judgment at page 260 of the records of appeal held as follows;

> "what I understand the learned SAN for appellants assaying 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 appellant's 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 WRN185, the totality of which is that the appellant's suit lacks competence having not been initiated by due process of law, Madukolu v. Nkemdilim(1962) 1 All NLR 587, (1962) 2 SCNLR 341".

I agree with the submissions of the learned senior counsel for the 2nd and 3rd respondents on whether statement of claim supersedes the writ of summons that the reliefs endorsed on the statement of claim supersedes the once in the writ of summon, and nothing more. The two processes are mutually exclusive, a writ of summons can come to life without statement of claim but the later cannot be alive without the former. It is the principle of law that you cannot put something on nothing and expect it to stand, the writ of summon in this case which was the foundation of the appeal is defective, the appellant cannot rely on statement of claim to cure the defective writ of summons. The lower court has seen and answered it all.

From the foregoing therefore, it is my humble view that the statement of claim in the instant appeal cannot be said to supersede the writ of summons and take the place of the writ. This is more so where the writ of summons itself is invalid as it was not signed by a legal practitioner known to law.

I must state it clearly that the appellants chose to perpetuate in their error, they never admitted throughout the proceedings that they were in error, so that it would be treated as a mere irregularity and be redressed, the respondents also persistently and consistently pursued their objection to the point that they cannot be accused of waiving their rights. Finally, therefore, issue three is also resolved in favour of the respondents against the appellants.

In the circumstance therefore, I find no merit in this appeal, I hold that the writ of summons, held to be defective by concurrent findings of the trial and lower court is also found to be fundamentally defective by this court, it is therefore struck out. appellants appeal lacks merit, it is therefore accordingly dismissed. The judgment of the lower court delivered on the 27th day of February, 2024, is affirmed.

Parties in this appeal shall bear their respective costs.

PETER-ODILI, J.S.C.: I agree with the judgment just delivered by my learned brother, Tijjani Abubakar, JSC and to underscore the support I have in the reasonings from which the decision emanated, I shall make some remarks.

This is an appeal by the claimants/appellants against the decision of the Court of Appeal sitting in Ilorin, Coram: Justice M. Mukhtar, Justice I.O. Akeju and Justice U. Onyemenam, (JJCA). In the said decision which was delivered on the 27th day of February,2014, the court below upheld the decision of the trial High court presided over by Hon. Justice M.O. Adewara, where the 2nd and 3rddefendants/respondents herein raised an objection to the competence of the writ of summons with which the action was initiated. The trial court agreed with the objection and in consequence thereof struck out the defective writ of summons and indeed the entire suitof the claimants/appellants. The court of appeal upheld the decision of the trial High Court.

Aggrieved with the decision of the Court of Appeal, the appellant filed a notice of appeal containing six grounds of appeal on the 7th day of March, 2014.

Facts Briefly Stated

The appellants commenced the action giving rise to this appeal in the High Court of Kwara State by a writ of summons which is at pages 1-2 of the record. The case proceeded to trial. At the conclusion of trial, but before the delivery of judgment, the respondents brought an application challenging the competence of the suit on the ground that the suit at the court below was commenced by an invalid writ of summons in that the writ was signed by a person unknown to law. The learned trial judge gave a considered ruling which is at pages 140-155 of the record. In the ruling, the trial judge struck out the suit for want of jurisdiction holding that the invalid writ of summons had robbed the court of the jurisdiction to entertain the matter. The appellants appealed to the Court of Appeal Ilorin Division which court in a unanimous decision upheld the judgment of the High Court. The present appeal seeks to challenge that decision by virtue of a notice of appeal which is at pages 268-276 of the record.

At the hearing of the appeal on 22/11/2021, learned counsel for the appellant, Kamaldeen B. Quadri, Esq. adopted the brief of argument filed on 15/8/2014 in which were distilled three issues for determination, viz:

1. Whether the questioned writ of summon was signed by a Legal Practitioner known to law having regard to the affidavit and documentary evidence on record (grounds 1, 2 and 3 of grounds of appeal)
2. Whether the Court of Appeal had not misconstrued, mixed up and misapplied the two decisions of this honourable court cited before it to wit:

   SLB Consortium v. NNPC (2011) 4 SCJN 211, (2011) 9 NWLR (Pt. 1252) 317 and Ministry ofWorks and Transport Adamawa State v. Yakubu Isiaku (2013) SCNJ 269; (2013) 6 NWLR (Pt.1351) 481 and whether the misconstruction. Misapplication and mix up by the Court ofAppeal of the decisions in the two cases have not led to a gross miscarriage of justice in this appeal (grounds 4 & 5 of the ground of appeal)
3. Whether a statement of claim properly endorsed and filed with a writ of summons is capable of curing any defects in the writ by the doctrine of supersession of a statement of claim over a writ (ground 6 of the grounds of appeal).

Lateef Omoyeni Akangbe, learned counsel for the amended1st respondent's counsel adopted the brief of argument filed on5/3/2021 and deemed filed on 21/11/21. He donated two issues for determination, which are thus:

1. Whether the writ of summons that originated the action at the High Court was properly signed as required by law?
2. Whether given the facts of this case, the doctrine of supersession of the writ of summons by the statement of claim is applicable to this case?

Learned senior advocate, Yusuf O. Ali for the 2nd and 3rdrespondents adopted the brief of argument filed con 17/2/2015and deemed filed the same day. He distilled three issues for determination, which are as follows: -

1. Whether the Court of Appeal was not right in holding that the writ of summons with which the case was initiated was not signed by a legal practitioner known to law?
2. Whether the Court of Appeal was not right in its decision that a statement of claim is not an originating process but merely one of the accompanying processes to the filed alongside with the writ of summons? And
3. Whether the Court of Appeal was not right in it's decision that the defective statement of claim filed by the appellants in this case did not supercede the writ of summons?

I shall make use of the two issues crafted by the 1st respondent as in their simple form constitute the questions in contention in this appeal.

Issues 1 & 2

1. Whether the writ of summons that originated the action at the High Court was properly signed as required by law?
2. Whether given the facts of this case, the doctrine supersession of the writ of summons by the statement of claim is applicable of this case?

Learned counsel for the appellant argued along the lines stated hereafter, thus: -

The questioned writ of summons was also issued and signed by Femi Falana, a legal practitioner known to law. There is no law firm registered as Femi Falana,

a. A.O Mohammed & Co, as the comma after "Falana" clearly separated the law firm from "Femi Falana", who is a legal Practitioner Known to law.

b. The writ and statement of claim in this case of appeal having been filed together in accordance with the relevant Order 2 rule 2(2) and Order 6 rule 2(3) of the Kwara State Nigh Court (Civil Procedure) Rules 2005, the suit was initiated by originating Process as opposed to a writ, which is not a mode of instituting an action under the Rules. On the authority of the Supreme Court case of SLB v. NNPC (supra) and Ministry of Works v. Yakubu (supra), the statement of claim necessarily cures any defect in the writ (if any) being a superior. process.

c. The doctrine and rule of supercession of a statement of claim over a writ of summons eminently applies in this case having regard to the fact that they were filed together as required by the relevant rules of court. The known exception to the rule do not apply.

He cited the following cases:

1. Ashibuogwu v. A.-G., Bendel State (1988) 1 SCJN 130at 159, (1988) 1 **NWLR (Pt. 69) 138.**

2. Asafa Foods v. Alfaine Ltd. (2002) 5 SCNJ 53 at 66;(2002) 12 **NWLR (Pt. 781) 353**

3. SLB Consortion v. NNPC (2011) 4 SCJN 211, (2011)9 **NWLR (Pt. 1252) 317**

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

5. Reg. Trustees Apostolic Church v. Radman Akindele (1967) NMLR 263 at 265.

6. Okafor v. Nweke & Ors. (2007) 10 **NWLR (Pt. 1043)521**

7. Oketade v. Adewumi (2010) All FWLR (Pt. 526) 511;(2010) 8 **NWLR (Pt. 1195) 63.**

8. Kida v. Ogunmola (2006) All FWLR (Pt. 327) 402;(2006) 13 **NWLR (Pt. 997) 377**

9. Ndayako v. Dantoro (2004) 13 **NWLR (Pt. 889) 187** at 218

Learned counsel for the 1st respondent contending that the writ of summons which was the process that originated the action in the court below was invalid and that being the case, that court below and now the apex court lack the necessary jurisdiction to entertain the suit and the statement of claim cannot validly supercede the writ of summons. He cited SLB Consortium v. NNPC (2011) 9

NWLR (Pt. 1252) 317; Ministry of Works v. Yakubu (2013) 6 NWLR (Pt.1351) 481; Adegoke Motors v. Adesanya (1989) 3 NWLR (Pt. 109)250 at 275; Integrated Timber and Plywood Products Ltd v Union Bank Plc (2006) 12 NWLR (Pt. 995) 483 at 504.

Yusuf O. Ali, SAN of counsel for the 2nd and 3rd respondents submitted along the following lines:

1. The writ of summons in this case was issued by "Femi Falana A.O. Mohammed & Co," an entity that is unknown to the Legal Practitioners Act as a Legal Practitioner.
2. The issuance of the Writ of summons in the circumstance renders the writ of summons incurably defective and liable to be struck out.
3. The decision of the trial court upheld by the court below striking out the defective writ of summons is profoundly sound impeccable, unimpeachable and unimpeached even on appeal.
4. The doctrine of supercession of the writ of summons by a statement of claim does not extend to the statement of claim during a fundamental defect in thewrit summons
5. A statement of claim is not an originating process but a mere accompaniment to a writ of summons and which independently cannot ground the existence of a case
6. The conduct of the appellants in blowing hot and cold and being inconsistent in their argument ought not be encouraged by this honourable court.
7. It is in the interest of justice to dismiss this appeal.

He cited the cases hereunder stated, viz: -

1. NDIC v. CBN (2002) 7 **NWLR (Pt. 766) 272**
2. Sokwo v. Kpongbo (2008) All FWLR (pt. 410)680 at 695 – 696; (2008) 7 **NWLR (Pt. 1086)342**
3. UBN & anor v. Ayodare & Sons Nig. Ltd. (2007) All FWLR (Pt. 383) 1 at 42; (2007) 13 **NWLR (Pt. 1052) 567**
4. State v. Azeez (2008) All FWLR (Pt. 424) 1432at 1464; (2008) 14 **NWLR (Pt. 1108) 439**
5. A.-G., Rivers State v. A.-G., Akwa Ibom State (2001) All FWLR (Pt. 579) 1023 at 1069-1070, (2011) 8 **NWLR (Pt. 1248) 31**
6. Eya v. Olopade (2011) All FWLR (Pt. 554) 73at 84; (2011) 11 **NWLR (Pt. 1259) 505**

Resolution of the Issues

The finding of the court below being the fulcrum of the appeal before this court is that the writ of summons with which the action was commenced was not issued or signed by a legal practitioner known to law.

The questioned writ of summons is at pages 1 & 2 and a certified true copy of it could also be found on pages 92 & 93 of the record. The relevant portion of it which is on page 2 runs thus:

> "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".

Clearly seen is that a signature was scribbled even though noton any particular name on the same writ of summons on page 2 of the record.

While the 3rd respondents contended at both the High Court and the Court of Appeal that the name as endorsee on the writ of summons and the signature scribbled thereon are not that of any legal practitioner known to law, but the appellants claim that the endorsement on the writ of summons shows that same was issued by Femi Falana, Esq. (now SAN).

In resolving the issue, the Court of Appeal restated the categories of persons who in law can validly sign a writ of summons for issuance at pages 254-255 of the record thus:

> "It is now well established that the person recognized 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 section2(1) and 24 if the Legal Practitioners' Act, Cap. 207LFN, 1990 which provisions were considered in Okafor v. Nweke (2007) All FWLR (Pt. 368) at 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 whoa legal practitioner is, Belgore, J.S.C, (as then was) in Atake v. Afejuku (1994) LPELR (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), and of the Legal Practitioners'

Act." See also Aburime v. NPA (1978) 4 SC Reprint 80; Oketade v. Adewumi (2010) 3(Pt. 11) MJSC 21; (2010) 8 **NWLR (Pt. 1195) 63.**

The Court of Appeal stated further:

> "I agree with the respondents that the above argument has no root in the Evidence Act before the court. Itis clear that what is stated on the writ and which hasnot been amended is "Femi Falana (and not "'Femi Falana as now canvassed by the learned appellants 'counsel). The signature that appears on the writ is notstated to belong to either Femi Falana (now a Senior Advocate of Nigeria) or even A. O. Muhammed & Co.
>
> There is 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, J.S.C. in SLB Consortium v. NNPC (2011) 3-4 MJSC145 at 166; (2011) 9 NWLR (Pt. 1252) 317 that nonce it cannot be said who signed a process it is incurably bad"

The court below put to rest the matter of the status of the writ as to whether it was issued by a legal practitioner known to law in the words following thus:

> "I am not in doubt that the writ of summons filed on28/9/2005 in commencement of suit No. KWS/65/2005from which the application that generated this appeal emanated was not signed by a legal practitioner known to law and same is incurably bad."

The appellants in paragraphs 3.01 - 3.02 on page 5 of their brief of argument made allusion to some factual matters which are not supported by the record when they stated that Femi Falana, Esq. SAN was briefed to lead A.O. Mohammed, Esq. SAN to prosecute the case for the claimants/appellants and further that the court processes were jointly prepared by the two-senior counsel. It is my humble view submission that whether or not a counsel was briefed to lead another by the appellants is not supported by the record. Itis a matter in respect of which evidence will be required ordinarily. As there is no evidence on record to support the assertion, it smacks of an attempt by the appellants to adduce evidence through the medium of their brief of argument.

I have no difficulty agreeing with Yusuf Ali, SAN that a brief of argument is not a forum to adduce oral evidence. See UBN &Anor v. Ayodare & Sons Nig. Ltd. (2007) All FWLR (Pt. 383)

1 at42, (2007) 13 **NWLR (Pt. 1052) 567;** F.G Chime v. Ezea (2009) All FWLR (Pt. 470) 659 at 748; (2009) 2 **NWLR (Pt. 1125) 263.**

The appellants had argued that the use of the word 'comma 'after the inscription "Femi Falana" shows that Femi Falana stands on its own and is not of A.O. Mohammed & Co. That posture of the appellants is merely an attempt to create something from nothing and therefore goes nowhere. The reason is simple and that is that this court has the vires to consider all available materials on its record in deciding a case before it and so that opening has laid to rest what the appellants sought to push through. I refer to the case of Agbahomovo v. Eduyegbe (1993) 2 SCJN 94 @ 102 or (1993) 2 **NWLR (Pt. 540) 170.**

A perusal of the statement of claim filed by the claimantsbefore the trial court will reveal clearly that all the arguments of theappellants about the failure of the court to construe and give effectto the comma in "Femi Falana, A.O. Mohammed & Co" is nothingbut a mere subterfuge to deny the obvious, contrary to the appellantscontention that the mode is which Femi Falana, A.O. Mohammedand co. was used is nothing but as a firm's name. I refer to pages 12and 13 of the record where the following endorsement appears onboth the statement of claim and the list of plaintiffs witnesses:

"A. O. Mohammed, Esq,

Femi Falana, A.O. Mohammed & Co.

Plaintiff's Counsel

26 Sulu Gambari Road

Ilorin."

Instructively, it is this same firm name that was endorsed on the writ of summons upon which a signature was scribbled. With this state of affairs all the argument about the purport of comma in the name comes to nothing but a mere academic issue. See ADH Ltd v. Amalgamated Trustees Ltd. (2007) All FWLR (Pt. 392) 1781@ 1808, (2006) 10 **NWLR (Pt. 989) 635**; State v. Azeez (2008) All FWLR (Pt. 424) 1423 @ 1464; (2008) 14 **NWLR (Pt. 1108) 439.**

The appellants' complaints about failure of the trial court to use exhibit 2 (Certificate of Registration of the law firm of A.O.Mohammed & Co.) is a serious misconception. That position is strengthened by the fact that on their own showing based on the endorsement on the writ of summons and more specifically the ones on the statement of claim and the list of plaintiffs'

witnesses which are contained respectively on pages 12 & 13 of the record, the appellants counsel on their own held out Femi Falana, A.D. Mohammed & Co as a firm's name with address at 26 Sulu Gambari Road, Ilorin.

The appellants are estopped from attempting to adduce or lead evidence to show that the representation which they made to both the trial court and other parties on record and on whom the said processes were served is indeed not correct. The trial court and the Court of Appeal were therefore right to have refused to be swayed by exhibit 2 attached to the appellants' counter affidavit which purport to show that their own representation of Femi Falana. A.O. Mohammed & Co. is not a firm of legal Practitioner. The argument of the appellants in the circumstances is to say the least lame and unconvincing.

On the principle guiding estoppel, I shall refer to section 169 of the Evidence Act, 2011 (as amended) which stipulates thus: -

> "When one person has, either by virtue of an existing court judgment, deed or agreement, or by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed, in any proceeding between himself and such person or such person's representative in interest to deny the truth of that thing.'"

See also the cases of A.-G. Nasarawa State v. A.G. Plateau State (2012) All FWLR (Pt. 630) 1262 @ 1298 – 1299; (2012) 10 **NWLR (Pt. 1309) 419** and Odua Investment Company Ltd. v. Talabi (1991)1 **NWLR (Pt.170) 761.**

In the case of A.-G. Rivers State v. A.-G. Akwa Ibom State (2011) All FWLR (Pt.579) 1023 at 1055; (2011) 8 **NWLR (Pt.1248) 31** the Supreme Court stated the position as follows:

> "Also called estopped in pais, this common law principle which as shown above, has gained statutory acceptance in Nigeria; forbids a person from leading his opponent from believing in and acting upon a state of affairs, only for the former to turn around and disclaim his act or omission. Both the common and statutory law do not permit this conduct; that is why

> section 151 of the Evidence Act has used the emphatic phrase "neither he nor his representative interest shall be allowed ..."
>
> in law, estoppel is an admission or something which the law views as equivalent to an admission by its very nature it is so important and conclusive that the party which it affects will not be allowed to plead it or adduce evidence to contradict it."

I posit humbly that the complaint on lack of use of exhibit 2 by the trial court, is highly misplaced as both parties and the court is precluded from placing reliance on the said exhibit 2 which is the certificate of registration of the law firm of A.O. Mohammed & Co.to defeat the clear representation that Femi Falana. A.O Mohammed & Co is a firm of legal practitioners. Having held themselves out as such, equity disentitles them to mislead the unwary about the representation.

With regard to the availability of the endorsement in the statement of claim and the list of witnesses both filed by the appellants before the trial court all the entreaties and arguments on the position of comma in an enactment or a document are irrelevant and unhelpful. The heavy weather made on the provision of section 3 of the Interpretation Act, Cap. 123, LFN, 2004 and the cases of Ashibuogwu v. A.-G. Bendel (1988) 1 SCNJ 130, (1988) 1 **NWLR (Pt. 69) 139** and Shell B.P. v. Onasanya (1976) 6 SC 89 translate to nothing.

In the case of SLB Consortium v. NNPC (2011) 4 SCNJ 211@ 228, (2011) 9 NWLR (Pt.1252) 317 it was held that a court process will be said to have been properly issued or endorsed if there is inscribed on it, a signature of the counsel which may by any contraction, the name of a known counsel clearly written the party for which the counsel appears and the name and address of the legal firm. That requirement was satisfied in respect to the statement of claim but the same cannot be said regarding the writ of summons. The statement of claim properly endorsed would not save the defective writ of summons. See the cases of Onward Enterprise Ltd. v. Olam International Ltd. (2010) All FWLR (Pt. 531) 1503@ 15111 - 1513. In the case of Okafor v. Nweke (2007) All FWLR (Pt. 368) 1016 @ 1026 - 1027, (2007) 10 **NWLR (Pt. 1043)** 521 the Supreme Court stated the position as follows in circumstances that are not too dissimilar to the present one:

> "From the submissions of both counsels, it is very clear that the answer to that question is in the negative. In other words, both senior counsel agree that J.H.C. Okofo, SAN & Co. is not a legal practitioner and therefore cannot practice as such by say, filing processes in the courts of this country. It is in recognition of this fact that accounts for the argument of learned Senior Advocate for the applicants that to determine the actual person who signed the processes, evidence would have to be adduced which would necessarily establish the fact that the signature on top of the inscription J.H.C. Okolo, SAN & Co. actually belongs to J.H.C. Okolo, SAN who is a legal practitioner on the roll. I had earlier stated that the law does not say that what should be on the roll should be the signature of the legal practitioner but his name, that apart, it is very clear that by looking at the documents, the signature which learned Senior Advocate claims to be his really belongs to J.H.C. Okolo, SAN & Co. or was appended on its behalf since it was signed on top of that name, since both counsel agree that J.H.C. Okolo, SAN & Co. is not a legal practitioner recognised by law, it follows that the said J.H.C. Okolo, SAN & Co. cannot legally sign and/or file any process in the courts and as such, the motion on notice filed on 19th December, 2005~ notice of cross appeal and applicant's brief of argument in support of the said motion all signed and issued by the firm known and called J.H.C. Okolo, SAN & Co. are incompetent in law particularly as the said firm J.H.C. Okolo SAN & Co. is not a registered Legal Practitioners".

The apex court maintained the same consistent attitude in the latter case of: Oketade v. Adewumi (2010) All FWLR (Pt. 526) 511@ 516, (2010) 8 **NWLR (Pt. 1195) 63** when it held thus:

> "It does not appear that counsel for the appellant has an answer for the objection. There is a big legal difference between the name of a firm of legal practitioner and the name of a legal practitioner *simplicter*. While the name of Olujimi and Akeredolu is a firm with some corporate existence, the name of a legal practitioner is a name qua Solicitor and Advocate of the Supreme Court of Nigeria which has no corporate connotation. As both

> carry different legal entities in our jurisdiction of parties, one cannot be a substitute for the other because they are not synonymous. It is clear that Ojujimi and Akeredolu is not a name of a legal practitioner and that violates section 2(1) and 24 of the legal practitioner and that violates section 2(1) and24 of the Legal Practitioners Act. By section 2(1) of the Act, the only person in the profession wearing his professional name to practice law in Nigeria is a legal practitioner and the definition of the legal practitioner in section 24 of the Act does not include Olujimi and Akeredolu. This to me, is not a mere technicality that can be brushed aside. It is fundamental to the judicial process as it directly affects the legal processes that brought the case on appeal. I am in entire agreement with counsel for the respondent that as the process which brought the appeals are incompetent, the appeal itself is incompetent. He has correctly invoked the cases of Macfoy v. U.A.C. (2006) 16 WRN 185 and N.N.B. Plc v. Denclag Ltd. (2004) All FWLR (Pt. 228)606, (2005) 4 NWLR (Pt. 916) 549 at 573.
>
> In the light of the above, the appeal has no props to stand and I do not have the option than to dismiss the appeal, and I dismiss it."

See also Ministry of Works & Transport Adamawa State v. Yakubu (2013) All FWLR (Pt.694) 23 @ 34 - 35, (2013) 6 **NWLR (Pt.1351) 481** where the position was re-echoed:

> "There is a big legal difference between the name of a firm of legal practitioners and the name of the legal practitioner simpliciter. While the name of Olujimi and Akeredolu is a firm with some corporate existence, the flame of a legal practitioner is a name qua solicitor and advocate of the Supreme Court of Nigeria which has no co-operate connotation as both carry different legal entities in our jurisdiction of parties. One cannot be a substitute for the other because they are not synonymous. It is clear that Olujimi and Akeredolu is not a name of a legal practitioner and that it violates section 2(1) and 24 of the Legal Practitioners Act. By section 2(1) of the Act, the only person in the profession wearing his professional name

> to practice law is Nigeria is a legal practitioner in section 24 of the Act. This does not include Olujimi and Akeredolu. This is to me is not a mere technically that can be brushed aside. It is fundamental to the judicial process as it directly affects the legal process that brought the case of appeal. I am in entire agreement with counsel to the respondent that as the process which brought the appeals are incompetent the appeal itself is incompetent.
>
> Applying these principles to the case at hand, I have no doubt in my mind that the originating process having not being properly initiated, the action is also incompetent."

I agree with counsel for respondents that the dicta in the case of *SLB Consortium v. NNPC* (2011) 4 SCNJ, (2011) 9 NWLR (Pt. 1252) 317 quoted on pages 7, 8 and 9 of the appellants' brief of argument are unhelpful to the rather precarious situation of the appellants, for the principal reason that the name of a legal practitioner within the meaning of the provision of section 2(1) the Legal Practitioners Act was not subscribed.

This court would not hesitate to uphold the decisions of both the trial court and the Court of Appeal that the writ of summons filed on 28/09/2005 in commencement of suit No. KWS/65/2005 which generated this appeal was not issued by any legal practitioner known to law.

On the issue is designed to examine the correctness or otherwise of the Court of Appeal's decision that a statement of claim is not an originating process. As the name implies, an originating process is a process used to initiate, originate or commence an action in a law court. By virtue of Order 2 rule 1 of the High Court (Civil Procedure) Rules, 2005 of Kwara State, the various modes of initiating an action in the High Court of Kwara State are clearly set out.

The provision of Order 2 rule 1 is represented hereunder thus:

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

Statement of claim is omitted and cannot be one of the ways or modes of commencing an action in Kwara State under the 2005 Rules of Court.

Order 2 rule 2 of the same rules provides in unambiguous terms that a writ of summons shall be the form of commencing all proceedings except where otherwise stated. Contrary to the submission of the appellants in their brief of argument, a statement of claim is and remains a mere accompaniment to a writ of summons alongside other accompaniments. This is the essence of Order 2 rule 2 of the trial court rules which provides as follows:

2. "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. Copies of every document to be relied on at the trial and;
   d. Written statement on oath of the witnesses."

The import is that statement of claim is in the same class as the list of witnesses to be called at trial. Written statement on oaths of the witnesses and copies of all documents to be relied upon and as the wording of the Rules clearly show, all these remain mere accompaniments. Clearly in law there is a world of difference between an original thing and accompaniment. Whereas an original thing can stand on its own the existence of an accompaniment relies or depends on the existence of the original thing.

The appellants seem to push for this court to treat a statement of claim as an originating process b, referring to Order 6 rules 2 and 3 of the Rules. That position flies off the handle, as an originating process is solely a single process. This was what the Court of Appeal correctly found and decided upon. It said:-

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

Indeed if the makers of the Rules intended to treat the statement of claim as an originating process it would have deployed the plural word "originating processes" as opposed to originating process used in Order 6 rule 2 (2).

It is in recognition of the independent nature of a writ of summons and a statement of claim that provisions dealing with the mare separately contained in different parts of the rules. Whereas writ of summons is expressly dealt with by Order 2 rules 3 and 4.Statement of claim is dealt with under pleadings in Order 27 of the rules.

On yet another angle, it is seen that the originating process referred to in Order 6 rule 2(2) could be no other than writ of summons as opposed to a statement of claim in this case.

See the provision of Order 6 rule 2 which runs thus:-

> "A claimant or his Legal Practitioner shall, on presenting any originating process for sealing, leave with the register as many copies of the process as there are defendants to be served and one copy for endorsement of service on each defendant."

It is clear from the above that an originating process is expected to be sealed. This court takes judicial notice of the fact that it is only a writ of summons in an action that is commenced by way of writ of summons that is required by law to be sealed. A statement of claim is not expected to be sealed. Order 2 rule 10 which provides:

> "(2) An originating process shall not be altered after it is sealed except upon application to a judge."

A look at pages 1 and 2 of the record which show clearly that the appellants' action was indeed commenced via originating process i.e. writ of summons without a statement of claim contemporaneously filed with it. Pages 3-74 show that the statement of claim was subsequently filed with other accompaniments with the leave of the trial court.

A foray back in time to the records will bring up the following facts. That the 2nd and 3rd respondents objection to the competence of the suit and the authority of the trial court to grant an application for extension of time to file the statement of claim and other accompaniments was overruled by the trial court. While the respondents appeal on same to this court was dismissed on the ground that with the filing of an originating process i.e. writ of summons there is brought into existence a competent suit. While the trial court extended time to file their statement of claim and other accompaniments. See *His Royal Highness Alhaji Ibrahim Sulu Gambari & anor v. Alhaji Abdulkareem Laaro Buhari & ors* (2009) All FWLR (Pt. 458) 1 at 588-509.

This clearly, is a recognition of the writ of summons as the originating process and by inference the exclusion of statement of claim as an originating process but a mere accompaniment.

It is thereafter wrong for the appellants to canvass? position in a suit between the same parties only for them to make a complete U-turn to canvass an opposite even after their original position has been upheld by the court. This in summary is the position taken by the appellants who when it was convenient for them contended that it was not compulsory for a statement of claim to be filed contemporaneously with a writ of summons only for them to turnaround now and canvass that statement of claim must be filed at the same time with the writ of summons even after a favourable decision of the court below had been obtained by

them which kept the case alive until it was eventually struck out on the basis of the defect in the writ of summons. *See His Royal Highness Alhaji Ibrahim Sulu Gambari & anor v. Alhaji Abdulkareem Laaro Buhari & ors* (2009) All FWLR (Pt. 458) 1 at 491-500.

These inconsistent positions of a party in litigation has been severally deplored by this court. I shall refer to one of such cases. See *A.-G., Rivers State v. A.-G., Akwa Ibom State* (2001) All FWLR (Pt. 579) 1023 1069-1070, (2011) 8 NWLR (Pt. 1248) 31 where the position was admirably stated as follows:

> "Secondly, I hold the view that for the 2nd defendant to contend before this court that the court has no jurisdiction to entertain the suit after it had contended the contrary at the Federal High Court is to speak from both sides of the mouth or to approbate arid reprobate, a situation frowned upon by law. For a party to contend that the court which he had earlier submitted to giving jurisdiction over a particular proceeding has no jurisdiction when the matter is duly filed before that court is to encourage uncertainty and to put it mildly irresponsibility."

Contrary to the position espoused in paragraphs 4.11-4.13 of the appellants brief spanning pages 18-21 thereof that the provisions of the Kwara State High Court (Civil Procedure), Rules, 2005 did not call for interpretation in the cases of *SLB Consortium vs. NNPC* (supra) and *Ministry of Works & Transport Adamawa State v. Yakubu* (supra) was the word originating process considered or pronounced upon. In the case SLB Consortium v. NNPC (supra) the vice that afflicted the suit was that both the writ of summons and statement of claim were not signed as required by law. That was what necessitated advertence to the statement of claim which was treated as such in that case. *The case of Ministry of Works &Transport Adamawa State v. Yakubu* (supra) has also not altered the meaning of originating process within the context of the Kwara state High Court Rules.

The Court of Appeal categorically distinguished the complaints in both *SLB Consortium v. NNPC* (supra) and the case of *Ministry of Works v. Yakubu* (supra) which the appellants heavily relied upon and the present case. The submissions of the appellants counsel at paragraphs 4.14-4.20 are unhelpful because the appellants' senior counsel has called in aid what is extraneous to the matter in hand. At page 259 of the record, the court of appeal stated as thus:-

> "On these issues the learned senior counsel for the appellants has strenuously relied on the case of *SLB Consortium v. NNPC* (supra) and *Ministry of Works v. Yakubu* (2013) 1 SCNJ 269, (2013) 6 NWLR (Pt.1351) 481 to signed by a legal practitioner under Order6 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 v. NNPC* is that the "originating processes" were not signed by a person known to law contrary to the provision of Order 26 rules 4(3) of Federal High Court (Civil Procedure) Rules 2000 which provides that

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

The complaint in that case and the provisions 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 Isiaka Alhaji* also reported in (2014) 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 in inchoate, legally nonexistent and cannot be saved by way of an amendment.

The point has to be made at this stage and strongly too that the statement of claim filed in this case does not supersede the writ of summons so as to cure the defect inherent in the writ of summons. This, the court below rightly stated.

It is important to limit and circumscribe the scope of the application of the principle that statement of claim supercedes a writ of summons. The correct position is that where the endorsement in a statement of claim though in tune with those on the writ of summons are more elaborate and lucid than those contained in the writ of summons. Then those in the statement of claim will supercede and take precedence over those endorsements in determining the claims of the claimants. I refer to the case of *Eya v. Olopade* (2011) All FWLR (Pt. 554) 73 @ 84; (2011) 11 NWLR (Pt. 1259) 505. See also *Ndayako v. Dantoro* (2004) 13 NWLR (Pt. 889) 187 @ 218.

In order to underscore the position taken by the trial court. I wish to liken the relationship between a writ of summons and a statement of claim to that between a foundation and a structure erected thereon. The writ of summons is like a foundation while the statement of claim is like the structure that was erected on the foundation. This is why a suit could exist on the basis of a writ of summons alone even before the statement of claim is filed and not the other way round.

When it is said that a statement of claim supercedes the ones on the writ. Nothing more. The two processes are mutually exclusive, a writ of summons can come to life without a statement of claim but the latter cannot be alive without the former. At page 258 of the record, the Court of Appeal held on the superiority of the statement of claim and the writ of summons as follows:-

> 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 *Elf Nig Ltdv v. Sillo* (1994) 6 NWLR (Pt. 350) 258; *Daniel Holding Ltd. v. UBA Plc* (2005) TSC (Pt.1) 18; (2005) 13 NWLR (Pt. 943) 533. *NTA v. Aniagbo* (1972)5 SC 156; (1972) 1 All NLR 74.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. Fambo* (2005) 15 NWLR (Pt. 947) 182; (2005) 13 NWLR (Pt.943) 533.

The Court of Appeal went further at page 260 thus:

> "What I understand the learned SAN for the appellant 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".

For a fact what the court below said it all faultless and without blemish, thus hindering an interference with findings of facts of the two courts below. It therefore needs no saying that this appeal lacks merit and I hereby dismiss it. I abide by the consequential order smade.

Appeal Dismissed.

EKO, J.S.C.: The writ of summons, at page 1 of the records of appeal, was issued on 28th September, 2005 by an officer (the Registrar) of the High Court of Kwara State duly authorised by the extant Rules of the said High Court to do so. His signature appears boldly over the official stamp of the court. It is not in dispute that the writ of summons was issued by order of the said High Court in accordance with the Rules of that court.

On the indorsement (at page 2), after paragraph thereof, there is a requirement that the name of the person at whose instance the writ of summons was taken out or issued to state his name and address. The address was therein provided. The name therein stated as the person who caused the writ to be issue is "Femi Falana, A.O. Mohammed & Co. The contraption so named has not been shown to be the plaintiff(s) or a known legal persona. The signature purporting to be that of this contraption cannot be deciphered or related to any person, juristic or natural. It cannot be conjectured whose signature it is.

Where a plaintiff sues by or through a legal practitioner, such legal practitioner shall indorse upon the writ of summons his name and address. This appears to be one of anti-fraud measures. For instance T. Akinola Aguda: Practice & Procedure of the Supreme Court, Court of Appeal and High Courts of Nigeria, opines that if the writ of summons does not contain an address for service, it shall not be accepted and if such address is illusory, fictitious or misleading the writ of summons may be set aside by the Court or the Judge in Chambers on the application of the defendant. By way of analogy: an indorsement upon which the registrar or a duly authorised officer of court was made to sign or seal a writ of summon "by order court" suffers the same fate if the purported attorney or legal practitioner acting on behalf of the plaintiff is unknown to law, fictitious or illusory. This in my view is the only known defect bedeviling the suit the subject of this appeal. This case, therefore, does not fall within the parameters of the celebrated. *Okafor v. Nweke* (2007) All FWLR (Pt. 368) 1016, (2007) 10NWLR (Pt. 1043) 521.

The defendants at the trial acted timeously as they should, in the objection resulting in the trial court striking out the suit.

Generally, a defect on the indorsement is regarded as a mere irregularity that is curable by amendment or subsequent statement of claim: *Sonuga & ors v. Anadein & ors.* (1967) NMLR 77 (SC). The plaintiffs/appellants, in this case, defended vigorously what they did. They never conceded the alleged error or defect on which the defence predicated their preliminary objection resulting in the trial court striking out their suit. The defence also was not guilty of waiving their right to the preliminary objection which they raised timeously without anything suggesting prevarication. In *Alatade v. Falode & anor*. (1966) 1 All NLR 104, (1966) 1 SCNLR 310 this court said poignantly Sonuga's case (supra):

> In the appeal before us, the question appears to be, Is it right for the defendant to take advantage of an irregularity he had accepted and acted on it, without any harm to done to him? We think it is now too late to raise an objection. In the case of *Dickson v. Law and Davidson* (1895) 2 Ch.D 62 where an amended writ was served out of jurisdiction did not bear the indorsement prescribed by an appendix to the Rules of Court for the writ to be served out of jurisdiction. It was held that the defendant Is not entitled to take advantage of an irregularity occasioned by slip which has been made by the plaintiff and which had done no harm to the defendant.

As I stated earlier the defendants raised their preliminary objection to the competence of the writ of summons timeously; and the plaintiffs took no steps to remedy the defect by amending the indorsement.

The issue in this appeal really is: whether Femi Falana, A.O. Mohammed & Co" is a legal practitioner or an existing known firm of legal practitioners? That is whether that nomenclature, with an indecipherable signature on top, is not an illusory, fictitious or misleading contraption used to obtain the issuance of the writ of summons fraudulently? Inspite of all their semantics the appellants' counsel, at page 12, paragraphs 3.19 & 3.20 of the appellants' brief, admits "that there is no known firm known as "Femi Falana, A.O. Mohammed & Co." within or outside this jurisdiction". The matter ends here. The admission is very fundamental and overreaching. The appellants, thereby, have established against their own interest that they procured the issuance of the writ of summons by fraud. To this extent only I am in agreement that this appeal be, and is hereby, dismissed.

Appeal dismissed. I abide by all orders, including order as to costs made in the lead judgment just delivered by Tijjani Abubakar, JSC.

GARBA, J.S.C.: A draft of the lead judgment written by my learned brother, Tijjani Abubakar, JSC, in this appeal was read by me and I completely agree that the originating process; i.e. the originating summons, used to initiate the action before the trial High Court was not signed by an identifiable legal practitioner known to the law contrary to the provisions of the Legal Practitioners Act, as have been repeatedly interpreted by this court in the judicial authorities referred to therein, and many more.

The lead judgment has comprehensively expounded the extant principle on the legal consequences of failure to comply with the scriptures of the law on the signing of an originating process used or employed to commence a legal action or an appeal before a court of law and I need to say no more than that I endorse the conclusion that the said process from which this appeal emanated was incompetent *ab initio*; dead on

arrival at trial court's registry. Since the action was not initiated or commenced by due process of the law by failure to fulfill a condition precedent for its competence and validity in law, the trial court and court below lacked the requisite jurisdiction to adjudicate over it. The defect has contiguously and fatally affected and infected the jurisdiction of this court to adjudicate over the appeal. See *Madukolum v. Nkemdilim* (1962) 2 SCNLR 341; (1962) 1 All NLR 587; *A.-G., Anambra State v. A.-G., Federation* (2007) LPELR - 603 (SC), (2007) 12 NWLR (Pt. 1047) 1; *Utih v. Onoyivwe* (1991) 1 SCNS, 25; (1991) 1 NWLR (Pt. 166) 166; *F.A.A.N. Ltd. v. Sylevester Nwoye* (2012) 3 SCNJ (Pt. II) 565.

I join in dismissing the appeal for being bereft of merit in terms of the lead judgment.

SAULAWA, J.S.C.: The instant appeal is a natural fall-out of the judgment of the Court of Appeal, Ilorin Judicial Division, delivered on February 27, 2014 in appeal No. CA/IL/106/2013. By the judgment in-question, the court below Coram Mukhtar, Akeju and Onyemenam, JJCA, dismissed the appellant's appeal against the decision of the Kwara State High court delivered on 23/10/2013.

Background Facts

The genesis of the present appeal is traceable to 28/09/20005. Indeed, that was the day the appellants caused the suit vide a writ of summons to be instituted at the trial court, thereby seeking some declaratory and injunctive reliefs against the 1st - 3rd respondents, viz:

1. A declaration that the purported deposition/removal of the plaintiff as the Balogun Gambari of Ilorin by the 2nd defendant is irregular, unlawful null and void and of no effect whatsoever because:
   (a) It is contrary to the custom, tradition and practice of the Balogun Gambari family of Ilorin.
   (b) The position of Balogun Gambari of Ilorin is held by the 1st plaintiff who is alive, healthy and performing the functions of the office of Balogun Gambaro of Ilorin.
   (c) The Gambari family of florin has not removed or recommended the 1st plaintiff to the 2nd & 3rd defendants for deposition/removal.
   (d) The 1st plaintiff still commands the respect, support and loyalty of the ell tire members of the Gambari family with the exception of the 1st defendant.

2. A declaration that the purported appointment of the 1st defendant as a parallel Balogun Gambari of Ilorin by 2nd defendant is contrary to the custom, tradition and practice of Balogun Gambari family and is therefore null and void of no effect whatsoever.

3. A further declaration that the purported appointment of the defendant as a parallel Balogun Gambari of Ilorin by the 2nd defendant whilst the 1st plaintiff 'the holder of the office and position is alive, healthy and performing the functions of that office is illegal, unlawful null and void and of no effect whatsoever.

4. A declaration that the 1st plaintiff is still the Balogun Gambari of Ilorin and should be so recognized and accorded the respect, honour and should be paid the salaries emolument and allowances of that office by the defendants.

5. An order of perpetual injunction restraining the 2nd and 3rd defendants their Servant, Agents howsoever from appointing and/or giving effect to the purported appointment of the 1st defendant as the Balogun Gambari of Ilorin.

6. All order of perpetual injunction restraining the 1st defendant from parading himself or holding himself out as the Balogun Gambari of Ilorin or performing the functions or using the office/palace of the Balogun Gambari of Ilorin.

By the endorsement upon the said writ of summons, it's clearly asserted that:

> 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.

On 31/10/2005, the appellants' counsel, A. O. Mohammed Esq. filed in the trial court an application thereby seeking the following reliefs:

(a) Leave of court to file plaintiffs' statement of claim , list of witnesses to be called at the trial, written statements on oath of the witnesses and copies of documents reliedon, which could not he filed with the writ of summons.
(b) Extension of time within which the plaintiffs can file their statement of claim, list of witnesses to he called at the trial, written statement of oath of the witnesses and copies of documents relied 011, which could not be filed on 28/9/2005 with the writ of summons.

(c) An Order deel11ing all the aforementioned documents attached hereto and marked as exhibits A, B, B1, B2,C, D2, D3, D4, D5, D6, D7, D8, D9, D10, D11, D12, D13,D14, D15, D16, D17, D18, D19, D20 and properly filed and(c)served.

(d) And for such other order(s) this honourable court may deem lit to make ill the circumstances.

That application was supported by a 12 paragraphed affidavit, deposed to personally by the 2nd appellant. Attached to the affidavit were various documents marked as exhibits A, B1, B2, C, D1, D20, respectively.

On 26/7/2013, in the course of the pendency of the appellants' suit, the 2nd and 3rd respondents (2nd and 3rd defendants) filed an application thereby urging upon the trial court for the following reliefs:

i. An order of the honourable court granting leave to the 2nd and 3rd defendants/application 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 is 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 it fit to make in the circumstances of this case.

The application in-question-was predicated upon a total of five grounds:

i. Final addresses had been filed, exchanged and adopted by the parties herein with the judgment reserved to a date to he communicated to parties.

ii. It has just been discovered by the applicants' counsel that the writ of summons filed by the claimants on the28th day of September, 2005 is incurably defective as it was not signed by any legal practitioner within the meaning of the law.

iii. The fundamental defect which afflicts the writ of summons is an incurable one which affects the jurisdiction of the honourable court to entertain the case *abintio*.

iv. The honorable court is without jurisdictions to take coquisance of pronounce or consider the merit of the case.

v. It is the interest of justice to grant the application by striking out the entire suit.

The application was indeed supported by an 11 paragraphed affidavit deposed to by Bolakale Ajanaku, Esq, legal practitioner in the Law Firm of Yusuf O. Ali & Co, the 2nd and 3rd respondents'counsel.

On 02/8/2013, the appellants filed a counter affidavit, deposed to by Kamaldeen Abdulquadri, Esq., thereby vehemently reacting to the 2nd and 3rd respondents' application in-question.

On 23/10/2013, the trial court delivered the vexed ruling regarding the 2nd and 3rd respondents' application in question, to the following conclusive effect:

> 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 in capable of validly supporting the proceedings of tile hearing and determination of the claimants' suit.
>
> *... Kida v. Ogunmola 336...*
>
> Taking a cue from the above, therefore, I hold that the writ of summons issued by Femi Falana, A. O. Mohammed & Co. in initiating this action is invalid and same is hereby accordingly struck out.
>
> The fact of the incompetency of the writ has also robbed this court of the required jurisdiction to entertain the suit The suit is accordingly struck out.

On 27/02/2014, the court below, having been seized of the appeal against the trial court's ruling alluded to above, delivered the vexed judgment in question to the conclusive effect:

> The writ of summons that originated the appellant's suit was not signed by a legal practitioner known to law and it is 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) 16WRN 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 AllNLR 357, (1962) 2 SCNLR 341.
>
> Based, on the foregoing, resolve the remaining two issues against the appellant (sic) 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.

Instructively, on 22/11/2022, when this appeal at long last came up tor hearing, the learned counsel were remarkably accorded the opportunity of addressing the court and adopting the argument contained in their respective briefs, thereby resulting in reserving judgment to today.

Must particularly, the appellants' brief of argument, settled by Kamaldeen B. Quadri, Esq. of A. O. Mohammed & Co. On15/8/2014, spans a total of 31 pages. At page 4 of that brief, three issues have been thrown up for determination. Viz:

1. Whether the questioned writ of summon was signed by a legal practitioner known to law having regard to the affidavit and document evidence on record (grounds 1, 2 and 3 of grounds of appeal).
2. Whether the Court of Appeal had not misconstrued, mixed lip and misapplied the two decisions of this honourable court cited before it to writ:

   SLB Consortium v. NNPC (2011) 4 SCNJ 211, (2011) 9 NWLR (Pt. 1252) 317 and *Ministry of Works and Transport Adamawa State v. Yakubu Isiaku* (2013) 1SCNJ 269, (2013) 6 NWLR (Pt. 1351) 481 and whether the misconstruction, misapplication and mix up by the Court of Appeal of the decisions in the two cases have not led to a gross miscarriage of justice in this appeal (grounds 4 & 5 of the grounds of appeal)

3. Whether a statement of claim properly endorsed and filed with a writ of summons is capable of curring any defects in the writ by the doctrine of supersession of a statement of claim over a writ (ground 6 of the grounds of appeal)

The issue 1 is canvassed at pages 5 -13 of the said brief. In the main, the argument of the appellants learned counsel is to the conclusive effect that A., O. Mohammed & Co. as a registered law firm is well known all over the country. That it is on record that there is no firm (known) as "Femi Falana. A. O. Mohammed & Co. within and outside the jurisdiction. And that:

> 'The conclusion of the Court of Appeal to the effect that the writ was issued by such a firm is grossly misconceived and perverse as there is no firm as such. The addition of A. O. Mohammed & Co". After the comma is for the purpose of address for service within jurisdiction is based in Lagos.

The court is urged upon to hold, that upon a careful perusal of the questioned writ and affidavit evidence on record, that the writ (of summons) in this case was properly issued and signed by Mr. Femi Falana within the meaning of sections 2(1) and 24 of the Legal Practitioners Act, and Order 6 rule 2 of the Kwara State (Civil Procedure) Rules, 2005, and accordingly allow the appeal. see *SLB Consortium v. NNPC* (2011) 4 SCNJ 2011, (2011) 9 NWLR (Pt.1252) 317.

The issue 2 is argued at pages 13-28 of the brief to the effect, *inter alia*, that under Order 2 rule 2(2) of the Kwara State High Court (Civil Procedure) Rules, 2005, there's no requirement for signing a writ of summons or any processes filed for compliance with sections 2 and 24 of the Legal Practitioners Act (supra). Conclusively argued, that by the several decisions of this court, to the effect that originating processes must be signed by a Legal practitioner known to law, are not meant to unduly punish litigants, by striking out their cases, as was done ill the instant case 3 See *Registered Trustees Apostolic Church v. Rahman Akindele* (1967)NMLR 263 @ 265; *Okafor v. Nweke* (2007) 16 NWLR (Pt. 1043)521; *Oketade v. Adewumi* (2010) All FWLR (Pt. 526) 511, (2010)8 NWLR (Pt. 1195) 63; *Kida v. Ogunmola* (2006) All FWLR (Pt.327) 402, (2006) 13 NWLR (Pt. 997) 371.

The court is urged to so hold and answer issue 2 in the affirmative.

Lastly but not the least, the issue 3 is argued at pages 28-32 of the brief. In a nutshell, it is submitted that under Order 2 rule 2(2) (supra), a statement of claim is required to be filed with a writ of summons. And that the statement once filed cures any defect in the writ which is inferior to the statement of claim. See *Ndayako v. Dantoro* (2004) 13 NWLR (Pt. 889) 187 @ 218, paragraphs D-F; *ACB Int. Bank Plc v. Otu* (2008) All FWLR (Pt. 408) 1817 @ 1842, paragraph D. et a1.

The court is urged to so hold and answer issue 3 in the affirmative.

On the whole, the court is urged to allow the appeal.

Contrariwise, the 1st respondent's amended brief settled by Lateef Onuyemi Akangbe, Esq. on 05/3/2021 but deemed properly filed on 21/11/2021. At page 6 of the brief, a couple of issues have been couched for determination:

i. Whether the writ of summons that originated the action at the High Court was properly signed as required by law.
ii. Whether give, the facts of this case, the doctrine of supersession of the writ of summons by the statement of claim is applicable to this case?

The issue 1 is argued at pages 6-14 of the brief. It is submitted in the main that contrary to the appellants' assertion, there's no way it could be said that the person who signed the writ of summons is not a law firm. And that it is of no moment that a comma was used to separate the names.

Further submitted, that a community reading of Order 2 rule 2 of the High Court (Civil Procedure) Rules 2005 (supra) would show that an action is commenced by a writ of summons which is(2)accompanied by the processes stated in Order 2 rule 2 (2), supra.

It is argued, that a statement of claim is not an originating process. See *Heritage Bank Ltd. v. Bentworthe Finance* (Nig.) Ltd. (2018) 9 NWLR (Pt. 1625) 420 @ 434 paragraphs C-D.

Further argued, that contrary to the appellants' contention, the cases of *SLB Consortium v. NNPC* (2011) 9 NWLR (Pt. 1252) 317 and *Ministry of Works Adamawa State v. Yakub* (2013) 6 NWLR (Pt.1351) 481, have not been misapplied by the court below in arriving at the vexed decision on the issue under consideration. That even if it did so, though not concede, it is not every error that leads to the reversal of a judgment, as long as the conclusion is correct. See *Lebile v. The Register, Sheraphin Church of Zion of Nigeria* (2003)2 NWLR (Pt.804) 399, 422 - 413 paragraphs A-B; *IBWA v. PavexInt'l Co. Ltd*. (2000) 7 NWLR (Pt. 663) 105 @ 128, paragraphs F-G.

Finally postulated on the issue, that contrary to the appellants contention, there's no principle laid down in *Ndayako v. Dantoro* (2004) 13 NWLR (Pt. 889) 187 et al, that a statement of claim should supersede the writ of summons in any respect. That the principle admits of the exception that the plaintiff would not be allowed to set a completely different suit or claim in his statement of claim. Therefore, a writ of summons has to be valid before the statement of claim can supercede it. Otherwise, it would amount to putting something on nothing, which cannot stand. See *Mcfoy v. UAC* (2006) 16 WRN 185.

Conclusively, the court is urged to dismiss the appeal.

On the other hand, the 2nd and 3rd respondents' brief was settled by Dr. Adekilekun of Yusuf O. Ali & Co; on 17/02/2015. That brief spans a total of 31 pages. At page 7, three issues have been couched for determination:

1. Whether the Court of Appeal was not right in holding that the writ of summons with which the ca ….
2. Whether the Court of Appeal was not right in its decision that a statement of claim is not an originating process but merely one of the accompanying processes to be filed alongside with the writ of summons? And
3. Whether the Court of Appeal was not right in its decision that the defective statement of claim filed by the appellants ill this case did not supercede the writ of summons?

The issue 1 is extensively canvassed at pages 8-1 7 of the brief in-question. The hallmark of the 2nd and 3rd respondents' submission on issue No. 1 is that the court below was right in its opinion at page 256 of the record, to the effect that the writ of summons in the instant suit (KWS/65/2005) was signed by a person not known to law, and therefore incurably bad.

It is argued, that all the argument about the purport of comma in the name comes to nothing but a mere academic issue. See *ADH Ltd. v. Amalgamated Trustees Ltd*. (2007) All FWLR (Pt. 392)1781 @ 1808, (2006) 10 NWLR (Pt. 989) 635; *State v. Azeez* (2008) All FWLR (Pt. 424) 1423 @ 1464; (2008) 14 NWLR (Pt. 1108) 439; *Okafor v. Nweke* (2007) All FWLR (Pt. 368) 1016 @ 1026, (2007) 10 NWLR (Pt. 1043) 521.

Relying upon the case of *SLB Consortium v. NNPC* (2011)4 SCNJ, (2011) 9 NWLR (Pt. 1252) 317 it was postulated that the dicta therein are unhelpful to the appellants for the principal reason that the name of a legal practitioner within the meaning of the provision of section 2(1) of the Legal Practitioners Act, was not subscribed.

The court is urged to so hold and resolve issue 1 against the appellants.

The issue 2 is extensively canvassed at pages 18-26 of the said brief. In the main, it is submitted that by virtue of Order 2 rule of the High Court (Civil procedure) Rules 2005 of Kwara State, the various modes of initiating an action in the High Court are clearly stated. Therefore, a statement of claim is omitted, and cannot be one of the ways or modes of commencement of an action in the said High Court.

Further argued, that the originating process referred to in Order6 rule 2 could be no other than writ of summons, as opposed to a statement of claim in this case. And that the provisions of the High Court Civil Procedure Rules did not call for interpretation in the cases of *SLB Consortium v. NNPC* (supra) and *Ministry of Works &Transport Adamawa State v. Yakubu* (supra).

On the whole, the court is urged to resolve issue 2 in favour of the respondents.

The issue 3 is argued at pages 26-28 of the brief, to the conclusive effect that there is nothing in the provision of Order 6rule 2 of the High Court Rules (supra) which the appellants have hung unto in their brief, that (could) cure the defect in a defectivewrit of summons by subsequently filing of a statement of claim.

The court is urged to so hold.

Conclusively, the court is urged upon to dismiss the appeal inits entirety, and strike out the suit.

I have accorded a very critical albeit dispassionate regard upon the nature and circumstances surrounding the appeal, the far-reaching submissions of the learned counsel contained in the respective briefs of argument thereof vis-a-vis the entirety of the records of appeal. I am appreciative of the fact that the issues that have so far been thrown up by the learned counsel in their respective briefs of argument are not at all mutually exclusive. Thus, I have deemed it most expedient to adopt the appellants' three issues, copiously alluded to above, for the ultimate determination of the appeal, anon.

Issue No. 1

As copiously-referred here-to- fore, the first issue raises the very

Vexed question of whether or not the questioned writ of summons was signed by a legal practitioner known to law, having regard to the affidavit and documentary evidence on record. The first issue is evidently distilled from grounds 1, 2 and 3 of the notice of appeal.

It is not at all in doubt, as depicted by the record (pages 1-2), that the writ of summons upon which the action (suit) was predicated and commenced was neither issued nor signed (endorsed) by a legal practitioner known to law. As a matter of fact, it is so obvious on the face thereof, that the writ of summons was stated to have been issued thus:

> "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."

It was the contention of the counsel of the appellants, that the signature (endorsement) scribbled on the face of the writ of summons (pages 1 - 2) was attributable to Femi Falana, Esq. (now SAN). Contrariwise, the respondents' learned counsel held a contrary view. In upholding the findings of the trial court regarding the issue, the court below held at pages 254-255 of the records:

> It is now well established that the person recognized 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 the combined effect of sections 2 and 24 of the Legal Practitioners Act, Cap. 207, LFN, 1990 which obviously renders it incurably bad as well stated by Fabiyi, JSC in SLB Consortium v. NNPC (2011) 3-4 MJ - SC 145 at 166, (2011) 9 NWLR(Pt. 1252) 317 that once it cannot be said who signed a(1)process it is in curably bad.

The court below having aptly reiterated the fundamental trite doctrine on the issue went further to hold at page 256 of the record:

> "I am not in doubt that the writ of summons filed on 28/9/2005 emanated was not signed by a legal practitioner known to law and same is incurably bad."

I think, I cannot agree more with the foregoing finding of the court below, which said finding is undoubtedly cogent, unassailable, and duly backed up by the circumstances of the case, affidavit evidence and trite authorities on the record.

It is obvious from the submissions of the learned counsel to the respective parties and affidavit evidence on record, that the purported issuing and signing of the writ of summons in question:

> "By Femi Falana. A. O. Mohammed & Co. whose address for service is 26 Sulu Gambari, Road Ilorin, Kwara State of Nigeria."

has rendered the writ of summons grossly and incurably defective, thus liable to be struck out. Notwithstanding the vehement contention of the appellants to the contrary, it is undoubtedly clear that the contraption Femi Falana. A. O. Mohammed & Co. as depicted on the face of the writ of summons (pages 1-2 of the record) is not a legal practitioner known to law. Thus, the said legal firm as contracted cannot by any stretch of imagination practice as such, as for instance by filing processes in the courts of law or tribunals in this country. That being the case, therefore, the writ of summons purportedly filed in the trial court and all other processes filed subsequent there to, were grossly incompetent, defective and liable to be struck out by the court. See *Okafor v. Nweke* (2007) All FWLR (Pt. 368) 1016 @ 1026-10273, (2007) 10 NWLR (Pt. 1043) 521; *Oketade v. Adewumi* (2010) All FWLR (Pt.526) 511 @ 516, (2010) 8 NWLR (Pt. 1195) 63; *Ministry of Works Adamawa State v. Yakubu* (2013) All FWLR (Pt.694) 23 @34-35, (2013) 16 NWLR (Pt. 1351) 481; *SLB Consortium v. NNPC* 4SCNJ, (2011) 9 NWLR (Pt. 1252) 317.

Invariably, the term 'defective' (an adjective of the noun 'defect,') denotes lacking in or devoid of legal sufficiency or competence. Thus, a defective process, as in the present case, denotes a legal process that is void ab initio, of no legal effect whatsoever.

Undoubtedly, the distinction between the terms 'void' and 'voidable' is usually of utmost importance whenever some technical accuracy is fundamentally required, as in the instant case, void can be aptly applied to those provision that are tantamount of no effect whatsoever. That's to say, those provisions that are tantamount to an absolute nullity. See Black's Law Dictionary, 11th edition 2019@ 527, 1459 & 1885.

Thus, it ought to be reiterated, that the originating process (the writ of summons) in question, having been aptly adjudged to be grossly defective, null and voidable *ab initio*, it ought to be so declared and struck out. This is absolutely predicated upon the trite fundamental doctrine, that one cannot place something upon nothing and expect it to stand. Most undoubtedly, it would collapse. See *Macfoy v. UAC Ltd* (1961) UKPC 49; (1961) 3 All ER. 1169; (1962) AC 152, wherein the English Court of Appeal aptly held:

> If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You
>
> No court had ever attempted to lay down a decisive test for distinguishing between nullities and irregularities but a useful one was whether if the other side waived the flaw in the proceedings or took some fresh step after knowledge of it ... (C)ould he afterwards in justice complain of the flaw?
>
> If the other side could complain despite the subsequent step, the flaw was a nullity.

Per Lord Denning, MR.

Arguably, the implication of the foregoing dictum reiterated by the legendary Lord Denning, MR, is that where an originating process, (as in the instant case the writ of summons), is adjudged to be fundamentally void and a nullity, neither the parties nor the court can save it from being so declared and struck out. The reason being that the matter was not initiated by the due process of law, thereby depriving the court of the fundamental jurisdiction to entertain and adjudicate upon the action. As aptly propounded by this court seven decades ago:

> [A] court is competent when-
>
> (1) It is properly constituted as regards numbers (*quorum*) and qualifications of the bench, and no member is disqualified for one reason or another; and
>
> (2) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction, and
>
> (3) The case comes before the court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction.

See *Madukolu v. Nkemdilim* (1962) SCNLR 341; (1962) per Bairamian, FJSC @ 379-380.

In the circumstances, the first issue ought to be, and same is hereby resolved against the appellants.

Issue No. 2

The second issue raises the question of whether or not the court below had not misconstrued, mixed up and misapplied the two decisions of the Supreme Court in

(i) *SLB Consortium v. NNPC* (2011) 4 SCNJ 261, (2011) 9 NWLR (Pt. 1252) 317 and

(ii) *Ministry of Works and Transport Adamawa State v. Yakubu Isiaku* (2013) 1 SCNJ 269, (2013) 6 NWLR (Pt. 1351) 481

thereby leading to a gross miscarriage of justice in …

Having amply addressed its mind to the issue pertaining to the determination of whether the originating process was duly signed by a legal practitioner known to law, the court below in the course of the vexed judgment held at page 259 of the record:

> On these issue the learned senior counsel for the appellants has strenuously relied on the case of *SLB Consortium vs. NNPC* (supra) and *Ministry of Works v. Yakubu* (2013) 1 SCNJ 269 to on these issues the learned senior counsellor the appellants has strenuously relief on the cases of *SLB Consortium v. NNPC* (supra)and Ministry of *Works v. Yakubu* (2013) 1 SCNJ 269,(2013) 6 NWLR (Pt. 1351) 481 to contend that inconsidering 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 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, 2000which provides that, "pleading 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 High Court Civil Procedure) Rules, 2005.

> In *Ministry of Works and Transport, Adamawa State v. Yakubu Isiyaku Alhaji* also reported in (2013) 24 WRN1, 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 in inchoate, legally non-existent and cannot be saved by way of an amendment.

It was the vehement contention of the appellants that the findings of the court below copiously referred to above constitute a poor assessment and non-appreciation of appellants' submission on the issue, and thereby at variance with the decision of this court in *SLB Consortium v. NNPC* (supra).

As aptly postulated upon by the respondents, contrary to the appellants' vehement contention, the provisions of the Kwara State High Court (Civil procedure) Rules, 2005 did not call for the interpretation of the cases of *SLB Consortium v. NNPC* (supra) and *Ministry of Works& Transport*, *Adamawa State v. Yakubu Isyaku* (supra).

Ironically, the issue of originating process was not considered or pronounced upon in any of the cases in-question. Most particularly, in the' case of SLB Consortium v. NNPC (supra), the fundamental question that cropped up for determination was that both the writ of summons and statement of claim were not signed as required by law. That was what resulted in adverting therein to the statement of claim by the court. In the case of *SLB Consortium v. NNPC* (supra), this court aptly held, *inter alia*, that the issue of jurisdiction being fundamental to adjudication can be raised at any stage in the proceedings, even for the first time on appeal. The court went further to conclusively hold that -

> The originating processes in this case haven been found to be fundamentally defective are hereby struck out for being incompetent and incapable of initiating the proceedings thereby robbing the courts of the jurisdiction to hear and determine the action as initiated.
>
> In the final analysis the appeal arising from the proceedings initiated and conducted without jurisdiction is hereby struck out for want of jurisdiction.

Per Onnghen, JSC (as he then was) @ 17, paragraphs A-G.

In the same vein, the case of *Ministry of Works & Transport, Adamawa State v. Yakubu Isyakit* (supra), has equally not altered the meaning of 'originating process' within the purview of the provisions of Kwara State High Court (Civil Procedure) Rules, 2005 (supra).

Thus, there is every cogent reason for me to appreciate the fact that the court below was absolutely correct in its findings at page259 of the record, viz:

What I understand the learned SAN for appellants assaying 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.

Hence, in view of the foregoing postulations, I am unable to appreciate let alone uphold the preposterous contention of the appellants, that the findings of the court below have occasioned a misconstruction, misapplication, mix-up and, or miscarriage of justice in the appeal before it. And I so hold.

In the circumstances, the second issue is hereby resolved against the appellant.

Issue No.3

Lastly, but by no means the least, the third issue which raises the very vexed question of whether a statement of claim properly enclosed and filed with a writ of summons is capable of carrying any defects in the writ by the doctrine of supercession of a statement of claim over a writ. The third issue is solely predicated upon ground6 of the notice of appeal.

As aptly admitted by the appellants, the "third issue is closely related to issue No. 2." Thus, not surprisingly the appellants have urged upon the court "to permit us to adopt the argument canvassed under issue No. 2 for issue No. 3."

It's trite, that a statement of claim supercedes a writ of summons. Thus, explains the notion that a claim made on the writ of summons, which is not repeated, or varied, in the statement of claim would be deemed abandoned or varied as such. See *Daniel Holdings Ltd. v. UBA Plc* (2005) LPELR - SC 10/2001 per Oguntade, JSC @ 13, paragraphs B - C; *Overseas Construction Ltd. v. Creek Ent. Ltd*. (1985) ... NWLR (Pt. 13) 407.

Arguably, the historical antecedent of the writ of summon is traceable to the 19th century. Under the Judicature Acts of 1873-1875, all actions were ordered to be commenced by "writ of summons. See. Blacks Law Dictionary 1st Edition 2019 @) 1931.

The term 'writ of summons' invariably connotes a judicial process commencing the plaintiffs (complainant's) action, thereby requiring the defendant to cause an appearance and answer thereto. It was

aptly postulated by this court in *Skenconsult Nigeria Ltd. v. Ukey* (1981) 1 SC (Reprint) 4; (1981) LPELR - 3072 (SC), that a writ of summons includes any writ or process by which a suit is commenced, or of which the object is to require the appearance of any person against whom a relief is sought in a suit, or who is interested in resisting such a relief. Per Nnamani, JSC @ 19-20, paragraphs G-A.

As extensively postulated above, the validity of the originating processes in a proceeding before a court of law or tribunal is fundamental. This is absolutely so, because the competence of the proceeding is a condition precedent, thus *sine qua non* to the legitimacy or validity of any matter or action. Thus, any blatant failure to initiate or commence a proceeding wall a valid originating process (be it a writ of summons, originating summons, or originating motion, as the case may be) deeply goes to the roots of the suit or action; any consequential order likely to emanate therefrom is liable to be set aside as being incompetent and a nullity. As aptly held by this court, an incompetent originating process -

> "Clearly borders on the issue of jurisdiction and the competence of the court to adjudicate on the matter. Such issue call be raised at any time and it can never be alien to the proceedings."

See *Kida v. Ogunmola* (2006) 13 NWLR (Pt. 997) 317; (2006) LRELR-1690 (SC), per Musdapher, JSC (as he then was) @ 15, paragraphs E - G.

In the case of *Tijani v. First Bank of Nigeria Plc* (2013) LPELR- 20656 (CA); (2014) 1 NWLR (Pt. 1387) 57 it was aptly reiterated *inter alia*:

> "indeed, it is trite, that the filing a statement of claims supercedes a writ of summons. However, for a statement of claim to supercede a writ of summons, it must be valid (competent)."

Per Saulawa, J.C.A. (as he then was) @ 24, paragraphs D - E.

It was the finding of the court below, at the tail-end of the vexed judgment, that the defective writ of summons filed by the appellants at the trial High Court, Ilorin could not (cannot) by any stretch of imagination be cured. According to the court below:

> 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 tile learned trial Judge the immediate consequence of which is that the foundation of the action does not exist was properly struck out based on the principle that on one can place something upon nothing, *Macfoy v. UAC* (2006) 16WRN 185; the totality of which is that the appellants' suit lacks

competence having not been in initiated due process of law, *Madukolu v. Nkemdilim* (1962) 1 All NLR 357, (1962) 2 SCNLR 341.

… In the final analysis I hold that the appeal is bereft of merit. I dismiss the appeal with costs of N30,000.00to the respondents.

In my considered view, the foregoing conclusive finding of the court below is most aptly unassailable, cogent and duly supported by the circumstances surrounding the appeal and relevant formidable authorities on the record. Thus, the third issue ought to be and same is hereby resolved against the appellants, in favour of the respondents.

Hence, against the back-drop of the foregoing postulations, and the detailed reasoning and conclusion reached in the lead judgment just delivered by my learned brother, the Hon. Justice Tijjani Abubakar, JSC, I have no hesitation in coming to the most inevitable conclusion, to the effect that the instant appeal is unmeritorious. Accordingly, the appeal is dismissed.

Consequently, the concurrent judgment of the Court of Appeal, Ilorin Judicial Division delivered on the 27th day of February 2014,in appeal No. CA/IL/106/2013, is hereby affirmed by me.

There shall be no order in regards to costs.

Before placing the final dot this judgment, I have deemed it most imperative to allude to the unfortunate recalcitrant attitudinal disposition of the appellants vis - a - vis abuse of court process.

As aptly alluded to above at the outset of this judgment the suit(KWS/165/2005) was instituted at the trial High Court of KwaraState exactly on 28/09/2005. Thus, arguably, from the 28/09/1005(when the suit was instituted at the trial court) to 18/02/2022 (whenthe final judgment was delivered by this court):

(i) 16 years 5 months;

(ii) 197 months;

(iii) 857 weeks;

(iv) 5997 days;

(v) 147,907 hrs

(vi) 8, 634, 479 minutes; and

(vii) 518,068,770 seconds,

had wastefully elapsed.

the years to ruminate on the disturbing trends of abuse of court process. In the case of *Saraki v. Kotoye* (1992) 9 NWLR (Pt. 264)156, this court aptly postulated:

> The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. Its one common feature is the improper use of the judicial process by a party inlitigation to interfere with due administration of justice.
>
> It is recognised that the abuse of the process may lie in both a proper or improper use of the judicial process in litigation. But the employment of judicial process is only regarded as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent, and the effective administration of justice. This will arise ill instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues See *Okorodudu v. Okoromadu* (1977) 3 SC. 21; *Oyegbola v. Esso West Africa Inc*. (1966) 1 All NLR 170, (1966)2 SCNLR 35.Thus the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse ... The same parties even where there exists a right to bring the action is regarded as an abuse … The abuse consists in the intention, purpose, and aim of the person exercising the right to harass, irritate and annoy the adversary and interfere with the administration of 'justice; such as instituting different actions between the same parties simultaneously in different courts, even though on different grounds. See *Harriman v. Harriman* (1989) 5 NWLR (Pt. 119) 6.

per Karibi-Whyte, JSC @ 188-189; *Central Bank of Nigria v. Saidu H. Ahmed* (2001) 11 NWLR (Pt.724) 369; (2001) 5 SC (Pt.11) 146; (2001) LPELR-837 (SC), per Ogundare, JSC @ 62-63, paragraphs C - D.

As far-reachingly postulated, it is so obvious, the writ of summons in-question procured by grand is irredeemably, defective, incompetent, null, void and of no effect whatsoever; very clearly an abuse of process of court. Yet, the appellant's counsel deemed it expedient, for reasons best known thereto, to defiantly forge ahead with the trial of the matter and the two appeals at both the court below and this court. This, in my considered view, is most reprehensible and unbecoming of the appellants, nay their counsel.

I think, it was in the case of *Okafor v. Nweke* (2007) 10 NWLR (Pt. 1043) 521. (2007) LPELR-SC 27/2008 @ 12-13, paragraphs E-B that this court aptly reiterated the fundamental axiom, that the legal

profession is a very serious business exclusively undertaken by responsible, honourable and seriously committed practitioners.

> "We therefore owe the legal profession the duty to maintain the very high standards required in the practice of the profession in this country."

In the case of *Wauga v. British Rails Board* (1929) 2 All ER1169, Lord Simond had a cause to cite with approval Dr. Johnson's observations in Boswell's Life of John (Birkbeck Hill Edition) 26:

> As it rarely happens that a man is fit to plead his own cause, lawyers are a class of the community, who by study and experience, have acquired the art and power of arranging evidence, and of applying to the points a tissue what the law has settled. A lawyer is to do for his client all that his client might fairly do for himself, if he could.

See also *Tijani v. First Bank Plc* (2014) 1 NWLR (Pt. 1387) 57; *Passco Intl Ltd. v. Unity Bank Plc* (2021) 7 NWLR (Pt. 1775) 224, per Saulawa, JSC @ 260-262 paragraphs C-A; *Pettitt v. Greyhound Racing Association* (No.1) (1968) All E.R. 545, per Lord Denning, MR. @ 549.

Appeal dismissed.