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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92059944
Party	Plaintiff Peoples Club of Nigeria International Princeton Junction, NJ Branch, Inc., Peoples Club of Nigeria International-Miami Branch and Peoples Club of Nigeria International-Chicago Branch
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Submission	Plaintiff's Notice of Reliance
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Date	01/20/2016
Attachments	Supplemental Notice Of Reliance.pdf(104051 bytes) Petitioners 451-473.pdf(4001721 bytes)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 4,591,874
For the Mark: Peoples Club of Nigeria International Service Mark
Date registered: 08-26-2014

PEOPLES CLUB OF NIGERIA INTERNATIONAL (PCNI), PRINCETON JUNCTION BRANCH, PCNI CHICAGO, IL, PCNI MIAMI BRANCH, Petitioners, v. PEOPLES CLUB OF NIGERIA INTERNATIONAL, INC., A New Jersey Corporation, Registrant.	**PROCEEDING NO. 92059944** **SUPPLEMENTAL NOTICE OF RELIANCE**

TO: Commissioner for Trademarks
PO Box 1451
Alexandria, VA 22313-1451

Petitioners' Supplemental Notice of Reliance

Petitioners Peoples Club of Nigeria International ("PCNI") Princeton Junction branch, Chicago branch and Miami branch (collectively the "Petitioners") submit the following Supplemental Notice of Reliance:

1. Pursuant to T.B.M.P. 704.01, 704.07, 37 C.F.R. §2.122(e) and all applicable laws, Petitioners hereby introduce into evidence the following official records:

Certified True Copy of the July 8, 2013, Court Decision from the Federal High Court of Nigeria in the Awka Judicial Division Holden at Awka (Suit No: FHC/AWK/C5/24/2013	Bates stamped Petitioners 0451-473

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have, on this 20th day of January 2016, delivered a true and accurate copy of the attached Notice of Reliance, via regular and electronic mail to the following:

Matthew H. Swyers, Esquire
The Trademark Company
344 Maple Ave. West, Suite 151
Vienna, Virginia 22180
Attorneys for Registrant

I, the undersigned, hereby certify that I have, on this 20th day of January 2016, delivered a true and accurate copy of the attached Notice of Reliance, via Certified Mail and electronic filing to the following:

Commissioner for Trademarks
PO Box 1451
Alexandria, VA 22313-1451

STARK & STARK
A Professional Corporation

By:_____
CRAIG S. HILLIARD

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE AWKA JUDICIAL DIVISION
HOLDEN AT AWKA
ON MONDAY THE 8TH DAY OF JULY 2013
BEFORE THE HON. JUSTICE I.L. OJUKWU
JUDGE

BETWEEN

SUIT NO: FHC/AWK/24/2013

1. CHIEF MARCEL AYANLEWA
2. CHIEF DR. UCHE EZE
3. CHIEF DR. FABIAN ELUMA
4. CHIEF (PROF) GORDIAN NDUBUEZU ..... PLAINTIFFS

AND

1. HRH IGWE F.C. EZENWA (MFR) (EZE OKPOKO OBA)
2. CHIEF DESMOND OGUGUA
3. CHIEF LOJIKWU IKE,
4. INCORPORATED TRUSTEES OF PEOPLES CLUB OF NIGERIA (THE REGISTERED TRUSTEES OF PEOPLE'S CLUB OF NIGERIA)
5. DR. GABRY NWANKWO (THE ADMINSITRATOR, PEOPLE'S CLUB OF NIGERIA)
6. CORPORATE AFFAIRS COMMISSION
7. CHIEF R.O.C. NZE EKEDOZIE
8. CHIEF SHED EKWE
9. CHIEF J.J. JONES
10. FIRST BANK OF NIGERIA PLC
11. UNION BANK OF NIGERIA PLC ..... DEFENDANTS

Parties are absent.
I.C. Onuwasoigwe holding brief for
Dr. I.O. Arinze for the 1st and 4th Defendants/Applicants.
J.O. Nwankili with Peter Okoh for the Plaintiffs/Respondents.
Chief Emeka Okeke for the 7th, 8th and 9th Defendants/Respondents.
motion filed by I.O. Arinze

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RULING

By a motion on notice dated and filed 6/3/2013 and brought pursuant to the inherent Jurisdiction of this Honourable Court, the 1st and 4th Defendants/Applicants prayed this court for the following:

1. An Order dismissing or striking out the Plaintiffs suit for incompetence, abuse of court process and for lack of jurisdiction of the Honourable Court to entertain same.
2. And for such further Order or other Orders as the Honourable Court may deem fit to make in the circumstance.

In a 9 paragraph affidavit deposed to by one Hon. Elder Smart Ebere the National Secretary of the 4th Defendant, it was averred that the 1st Plaintiff is an impostor and not a member of the 1st Defendant while the 2nd, 3rd and 4th are not registered members. He averred that there is no proper Plaintiff before the court on record having been stripped of standing to initiate this action.

In his written address learned counsel for the 1st and 4th Defendants/Applicants Dr L.O. Arinze distilled 4 issues for the determination of the court as follows:

1. Whether the Plaintiffs have locus standi to bring this action against the Defendants.
2. Whether non-compliance with Section 96, 97 and 98 of the Sheriff and civil Process Act is capable of rendering the Plaintiffs Suit incompetent.

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3. Whether this suit and service of same on a corporate body like the 10th and 11th Defendants at its branch office is proper in law.

4. Whether this suit is an abuse of court process.

Proffering argument on the 1st issue, it was submitted that the Plaintiffs have no locus standi to initiate this action which robs the court of jurisdiction to entertain same. He called in aid the authority of **GREEN V. GREEN (1987) 3 NWLR (PT 61) 480, 500** where the apex court held that the incompetency of the plaintiff to bring an action touches on the foundation of the case and robs the court of jurisdiction to hear same.

He further submitted that the Constitution or Governing document of an Incorporated Trustee of any Association relates to only registered and opto dens members who are then imbued with legal standing to challenge or question any perceived wrong, not busy bodies like the Plaintiffs on record

He posited that the requirement of legal standing is mandatory and placed reliance on **ORJI VS D.T.M (NIG) LTD (2009) 18 NWLR (PT. 1173) 467-492.**

On the second issue it was submitted that if a Writ or Originating summons is incompetent, then the court itself is without jurisdiction to entertain a suit. Further that the Sherriff and Civil Process Act provides for the issuance and service of a Writ of Summons outside the jurisdiction in which it is issued, being an Act of the National Assembly, it takes precedence over State Legislations or Rules of Court.

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He noted that the address for service of the processes of court on the 6th Defendant is at Corporate Affairs Commission Headquarters Maitama, Abuja while the endorsement on the Originating Summons shows it was endorsed, sealed and issued on 1/2/2013 after it was filed on 30/1/2013. That being the case, the Plaintiff did not comply with the mandatory provisions of Sections 96, 97 and 98 of the Sheriff and Civil Process Act and the Rules of Court on issuance and service of the Writ outside jurisdiction.

He refers to the provisions of this Act and Order 6 Rules 14 and 18 of the Federal High Court Civil Procedure Rules, 2009.

FBN PLC V ABRAHAM (2008) 18 NWLR (PT 1118) 172, 192 ARABELLA V NAIC (2008) ALL FWLR (PT 443) 1229 etc.

He contended further that the provisions of the said Act were interpreted in **NPA V EYIANBA (2006) ALL FWLR (PT 320) 1022, 1031** and the Court held that the endorsement required on the Writ for issuance outside jurisdiction is mandatory and cannot be treated as an irregularity capable of being cured. He urged the court to so hold.

On the third issue, learned counsel Dr. I.O Arinze contended that the service of process on the 10th and 11th Defendant Banks must be at its Corporate Head Office and not the branch. I produced the endorsements for service with respect to these Defendants and submitted that by virtue of Section 78 of Companies and Allied

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Matters Act and Rules of Court that service shall be at the head office in accordance with the law.

His argument and submissions on the 4th issue was that the processes of court referred to herein were not issued bonafide and properly. He called in aid the decision in **C.O.P V FASEHUM (1997) 6 NWLR (PT 507) 370** and **SARAKI V KOTOYE (1992) 9 NWLR (PT 264) 156** etc and urged the Court to dismiss or strike out the suit for incompetence and want of jurisdiction.

Reacting to this motion, the Plaintiffs/Respondents filed a 14 paragraph counter affidavit deposed to by one Chief Marcel Ananukwu on behalf of himself and other Plaintiffs. He denied the averments of the 1st and 4th Defendants and contended that they are proper Plaintiffs with the locus standing to bring this action. He exhibited the membership Certificates and oath of office of 3rd and 4th Plaintiffs. These documents were exhibited as Exhibit AA, BB, CC, CCI, DD and EE as they relate to each of the Plaintiffs. (Learned Senior Counsel's written argument with respect to this motion was consolidated in his reply to 2nd and 5th Defendants motion also dated 6/3/2013).

Now the 3rd and 5th Defendants also filed a motion on notice dated 6/3/2013 urging the Honourable Court to strike out this suit for want of jurisdiction on the following grounds.

a. The suit is not initiated in line with due process.

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b. The Plaintiffs are not members of the People's Club of Nigeria as per the Constitution they attached of which the 5th Defendant is the Administrator and as a result they lack locus standi.

In their 5 paragraphs affidavit the National Secretary averred that the names of the Plaintiffs are not registered with any of the branches of the 4th Defendant. In his written argument learned counsel Chief Onyebueke F.O. formulated 2 issues for determination thus:

a. Whether the Plaintiffs have locus standi to bring the action.

b. Whether the action was initiated in line with due process.

In his argument, learned Counsel Chief Onyebueke F.O. submitted that the Plaintiffs are not members of any branch of the 4th Defendant, thus have no locus to institute this action. He referred to the averments in their originating process and posited that they are mere busy bodies.

He referred the Court to **COOPERATIVE & COMMERCIAL BANK (NIG) LTD VS MBAKIWE (2002) FWLR (PT 109) 1678, 1688.**

KOGI STATE VS ADVI LOCAL GOVERNMENT COUNCIL (2005) 16 NWLR (PT 951) 327

NDIC V CBN (2007) 7 NWLR (PT 799) 272 e.t.c.

He noted that the issue raised here affects the jurisdiction of this court and does not constitute a demurrer.

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On the second issue, it was argued that most of the Defendants reside outside the jurisdiction of this Court and the Plaintiffs ought to have obtained leave of court before issuing and serving the Originating Process. He relied on Sections 96, 97 of the Sheriffs and Civil Process Act which prescribed for the procedure and endorsement on such writ issued for service out of jurisdiction. He urged the Court to strike the matter out as being incompetent. He called in aid **EZEOBI V ABANG (2001) FWLR (PT 56) 652, 665.**

MARK VS EKE (2004) 5 NWLR (PT 865) 34, 61.

In their counter affidavit with respect to the particular motion, the Plaintiffs through one Chief Marcel Ananukwa 1st Plaintiff averred they have the proper locus standi to bring this action for the reason of being members and or Patrons of the club. He relied on their membership Certificates, Certificate of Honour and oath of office and the instrument establishing the Washington DC Branch of the Club etc in proof of their standing to bring this action.

In a consolidated written address in Response to the issues raised in the 2 motions, learned Senior Counsel Arthur Obi Okafor SAN formulated 4 issues for the determination of the court thus:

1. Whether the Plaintiffs have locus standi.
2. Whether the alleged non-compliance with Sections 96, 97 and 98 of the Sheriffs and Civil Process Act and Order 6 Rule 14 and 18 of the

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Federal High Court (Civil Procedure) Rules 2009 deprive the Honourable Court of jurisdiction to entertain this matter.

3. If issue two is resolved in favour of the 1st to 5th Defendants, does the said Sections 96,97 and 98 of the Sheriffs and Civil Process Act and Order 6 Rule 14 and 18 of the Federal High Court (Civil Procedure) Rules 2009 deprive the Honourable Court of jurisdiction to hear the matter.

4. Is the Plaintiff's action an abuse of court process?

In his argument, learned Senior Counsel submitted that the issue of locus standi includes the right to be heard in litigation, capacity of instituting an action in a competent court of law without inhibition etc. He relied on **ALHAJI AROWOLO V AKAPO & ORS (2004) ALL FWLR (PT 208) 807, 853.**

He posited that what determines locus standi is the statement of claim and facts in support of the Plaintiffs case are deemed admitted. He placed reliance on **ALHAJI KADIR V ALHAJI YUSUF (2003) FWLR (PT 151) 1930, 1938.** He urged the Court to look at the affidavit in support of the Originating Summons in the present case and particularly referred to paragraphs 2, 3, 4 and 41 where the locus of the Plaintiffs was averred. He posited that the respective affidavits challenging the Plaintiffs facts in regard to this cannot provide a platform to deny the Plaintiff the locus standi.

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In arguing issues 2 and 3 together, the provisions of Sections 96, 97 and 98 of the Sheriff's and Civil Process Act were reproduced. Learned Senior Counsel contended that there is nothing either on the face of the motions or affidavit in support that shows that Section 96 of the Act was infringed. That the objections relate to Sections 97 and 98 if any.

He traced the historical background of Sheriff's and Civil Process Act in line with decided authorities viz: **B.B.N LTD V S. OLAYEWOLE & SONS LTD (2005) 3 NWLR (PT 912) 434, 438.**

ADEGOKE MOTORS LTD VS ADESANYA (1989) 3 NWLR (PT 109) 250.

ODUA INVESTMENT LTD V TALABI (1997) 15 NWLR (PT 523) 42 etc and submitted that these authorities draw a distinction between the issuance of a Writ and service of a writ. That validity of a writ and validity of service are separate and that the Sheriffs and Civil Process Act deals with service of processes and not issuance which is the concern of the High Court.

Also relying on **M.V. ARABELLA V N.A.I.C (2008) 11 NWLR (PT 1099)** it was submitted that the above authority also draws a distinction between the issuance and service of a writ though inter-related.

He posited that the objection of the Defendants in regard to Sections 96, 97 and 98 of the Act only questions the validity of the service of the Writ effected on the 6th Defendant and not the Writ issued against the other Defendants. He referred to

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Order 16 Rule 14 and 18 of the Federal High Court Rules on service outside jurisdiction and noted that the rules do not relate to validity of issuance of writ.

Further learned Senior Counsel submitted that they filed a Notice of Discontinuance against the 6th Defendant vide Order 50 Rule 2(1) of the Federal High Court Rules 2009 and contended that the said notice brings the actions against the 6th Defendant to an end without further intervention from the Court.

He called in aid the decision of **A. OGUNKUNLE & ORS V REGISTERED TRUSTEES OF ETERNAL SACRED ORDER OF THE CHERUBIM & SERAPHIM & ORS (2001) FWLR (PT 62) 1866. 1874** and posited that the objections of the 1st-5th Defendants became abated with the discontinuance of the action against the 6th Defendant.

It was further argued that the 1st-5th Defendants do not have the standing to complain that the 6th Defendant or the 9th and 10th Defendants were not validly served. He readopts his position in ODUA'S case and posited that it is obvious from the Apex Court's decision in that case that the provisions of Sections 96, 97 and 98 of the sheriffs and Civil Process Act were made for the benefit of the Defendants who resides outside jurisdiction.

He cited **ABBA-AJI, JCA's** decision in **MAKO V UMOH (2010) 8 NWLR (PT 1195) 82, 108- 109** to buttress his position.

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It was also contended flowing from the decision of **BISUAKAFE VAMANKE (2012) 5 NWLR (PT 1294), 455, 466-467** relating to the validity of Writ after its expiration period. Learned counsel submitted that since from the above case, it is only the expired writ that can be set aside by the affected Defendants in the same token the 1st-5th Defendants cannot be heard to complain in the present circumstances. He urged the court to so hold.

On the last issue, it was argued that Learned Senior Counsel adopted his submission with respect to the first issue for the reason that the alleged abuse of court process is anchored on the membership of the Plaintiffs.

It is on record that the 1st and 4th and 3rd and 5th Defendants filed further affidavit dated 23/4/2013 and 26/4/2013 respectively. Their main contention in the 25 and 12 paragraph affidavits respectively questions the membership of the Plaintiffs in the 4th Defendant. They averred that none of the Plaintiffs belong to any of the branches of 4th Defendant, particularly as their certificate of membership was not signed by the National President and National Secretary of the 4th Defendant, neither are their names found in the National Headquarters at Onitsha. They relied on the documents attached and the arguments preferred in their respective written addresses. It was particularly submitted by the learned counsel Dr. E. O. Arinze that the mode of commence of this case is irregular being an action where facts are in serious dispute and cannot be resolved by way of mere affidavit.

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He also posited that in view of the provision to Section 251(1)(d) of the 1999 Constitution, the Federal High Court cannot hear and determine issues bordering on the contractual relationships between a Bank and its customer.

He also submitted that the notice of discontinuance cannot operate to abate this action against the 6th Defendant as the suit against 6th was withdrawn by Senior counsel and not by an order of court having joined issues on the jurisdiction to entertain this matter.

Learned counsel Chief Onyebuchi reiterated the germane aspect of his earlier argument on locus standi and membership and relied on fully authorities to buttress his position seeking a striking out of this suit.

I have seen and relied on all the processes filed by the parties in the determination of this case.

I will adopt the germane issues formulated by the parties which speak directly on the real issues in controversy. I will subsume the principles of law raised herein in these profound arguments in considering those issues. These issues are however recounched as follows:

1. Whether the Plaintiffs have locus standi to institute this action.
2. Whether the Honourable Court has jurisdiction to entertain this suit in view of Sections 96, 97 and 98 of the Sheriffs and Civil Process Act

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Learned Senior Counsel and other learned counsel have made strong submissions with respect to the first issue. It is settled that a person is said to have locus standi if he has shown sufficient interest in the action and that his civil rights and obligations, have been or are in danger of being infringed. Since it is the legal capacity to institute proceedings in a court of law, it then means that locus standi will only be accorded to a Plaintiff who shows that his civil rights and obligations are in danger of being violated. There is therefore locus standi wherever there is a justifiable dispute.

In the instant suit, from the reliefs sought and the averments made in the Plaintiff's originating process, there is prima facie proof that their rights are in danger of infringement. It is to be noted that locus standi is determined by the Statement of Claim just like aspects of jurisdiction. See **OJUKWU V OJUKWU (2008) 36 NSCQR 1279, 1300.** See also **P.D.P VS SYLVA (2012) 13 NWLR (PT 1316) 85, 127** where it was held that no other document except the originating process and averments is needed to resolve this aspect of jurisdiction.

The Plaintiffs through the 1st Plaintiff have averred that they are Members/Patrons of the 4th Defendant and the crux of the complaint is that the Defendants have been jettisoning the Constitution of the 4th Defendant to their detriment and that of other interested members of the 4th Defendant.

It must be underscored that the issue of locus standi does not depend on the success or the merits of the case, but on whether the Plaintiff has or the Plaintiffs have

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sufficient interest or legal right in the subject matter of the dispute. See **COKER V OGUNTOLA & ORS (1985) 1 ANLR (PT 1) 278.**

Once a person has shown that he is a member of a family or an Association he has a right or duty to protect the interest or property and has the locus standi to institute an action in respect of any wrong doing to the family or Association. By joining issues in the main subject matter the Defendants have shown that indeed there exists a dispute between the parties. See **PRINCE ODUNEYE V PRINCE EFUNUGA (1990) 12 SCNJ 1, 8.**

It is therefore the view of this court that the Plaintiffs have the locus standi to institute this action. The contentions of the Defendants go to the merit of their case which is not yet ripe for hearing especially as they are triable issues.

Now on the second issue which turns on Section 96, 97 and 98 of the Sheriffs and Civil Process Act, I state that I totally agree with the submissions of the Defendants/Applicants to the extent of what was decided in the cases cited and relied upon by them. But I note here that every case is decided according to its peculiar facts and circumstances. Sections 96 of the Sheriffs and Civil Process Act provides for service of Writ outside the jurisdiction of the issuing state. While Section 97 provides for the endorsement on the Writ of service outside the jurisdiction of the issuing state. Section 98 on the other hand provides for endorsement of concurrent writ.

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Without any prevarication, the writ served on the 6th whose address for service is in Abuja outside the jurisdiction of this court was not in compliance with Sections 97 and 98 of the sheriffs and civil Process Act. Section 97 provides as follows:

> *"Every writ of summons for service under this part out of the State or the Capital Territory in which it was issued shall in addition to any other endorsement or notice required by the law of such State or the Capital Territory, have endorsed thereon a notice to the following effect....."(See endorsement required).*

This section does not affect writs for service within the jurisdiction of the issuing State and neither is such writs expected to be marked as concurrent writ. In other words, flowing from the authorities cited by the Defendants which I lean on including **OWNERS OF MV ARABELLA V N.I.A.C** (Supra) etc. such noncompliance vitiate the said Writ for service out of jurisdiction. It does not affect the writ properly served. The defect in noncompliance is with respect to 6th Defendant who in any case is no longer a party in this suit. Leave of court is not a necessary requirement for issuance of, and service of writ within its jurisdiction.

Again in the peculiar circumstances of this case, this suit was discontinued against the 6th Defendant on 19/3/2013 but the contention of the 1st-5th Defendants is that learned Senior Counsel did not obtain leave of court before discontinuance notice was filed having joined issues with him, I have carefully considered the provisions of Order 50 Rule 2 of the Federal High Court Rules providing for discontinuance

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of action without leave of court. It specifically allows the Plaintiff without leave of court to discontinue an action against a Defendant not later than forteen (14) days after service of the defence on him by serving a notice to that effect on the Defendant concerned.

The 6th Defendant has not served any defence and curiously she was represented on 7/3/2013 and her counsel withdrew appearance for the 6th Defendant from this action since 7/3/2013. Action against her was discontinued on 19/3/2013.

1st to 5th Defendants have not served their own defence. Their preliminary objection does not amount to the defence envisaged here for the reason that where the objections are overruled, they still have a chance to file a proper defence to the action. The preliminary objection in a manner of speaking is a precursor to the main defence.

Now, there is the dicey question whether the 1st to 5th Defendants have the locus standi to quest on the service of the Writ on the 6th Defendant. Parties joined issues in their arguments on this point. It is on record that neither Dr. L.O. Arinze nor Chief Onyebueke F.O. announced appearance for the 6th Defendant, yet they questioned the service on the 6th Defendant.

In **UMEANADU V A.G. ANAMBRA STATE (2008) 9 NWLR (PT 1091) 175, 187-188**, the Supreme Court held that the duty to complain about non-service of a process (in that case, form 5 pursuant to Order 3 Rule 10 of the High Court of

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Anambra (Civil Procedure) Rules 1988) enures to the party required to be served. The complaint of the Appellant that the 2nd Respondent was not served was to assume responsibility which does not belong to the Appellant.

Again the Supreme Court in **AUGUSTA CHIME & 4 ORS V MOSES CHIME & 3 ORS (2001) 3 NWLR (PT 701), 527, 542-543** had this to say.

> *"... for a party to a suit to apply for the proceedings to be nullified by reason of failure of service where service is a requirement, it must sufficiently be established that he or she has not been served in respect of the proceedings and that the order made therein affects him. It is not open to every party to the proceedings to make such an officious complaint".*

Wali JSC at page 542 particularly stated.

> *"It is not in dispute that neither 1st Respondent nor the 3rd Respondent complained against the non-service of the court processes referred to above or any other order made. It does not therefore lie in the mouth of the Appellants to complain on their behalf."*

The instant case ditto.

Since the 6th Defendant has not complained about service or any defect in the process served on them, it does not lie in the mouth of the 1st to 5th Defendants to

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cry more than the bereaved. See **ODUA INVESTMENT COMPANY LTD TALABI** *(Supra)* where the Supreme Court stated.

> *"Reading carefully the words of Sections 97 and 99 of the Act (Sheriffs and Civil Process Act). I am of the firm view that the provisions of these sections are for the benefit of the Defendants alone rather than the general public...*

The facts in **ARABELLA'S** case also support the stance that it is only the affected parties that have the standing to complain about non-compliance. In the instant case, flowing from its peculiarities which is not found in any of these decided cases. I am of the view that the 1st-5th Defendants are not the proper persons to complain about non-compliance with Sections 96, 97 and 98 of the sheriffs and Civil Process Act. And on the further reasoning stated in the determination of this issue, the objections of the 1st-5th Defendants are overruled.

On whether this action was properly brought by way of originating summons (this was raised by Dr. L.O. Arinze) I note that from the averments in the affidavit filed in this case there are serious facts in dispute. It has gone beyond mere interpretation of documents or minor dispute that can be resolved by documentary evidence. I will revisit this issue. Before I close on these motions, it is my position as supported by Superior authorities that the Federal High Court can hear and

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determine suits or disputes between a bank and its customer. This issue was canvassed by 1st and 4th Defendants.

In **INTEGRATED TIMBER AND PLYWOOD PRODUCTS LTD V UNION BANK NIGERIA PLC (2006) ALL FWLR (PT 324) 1789, 1803**, the Supreme Court held that the Federal High Court does not have exclusive jurisdiction in banking and banker-customer relationships. It has concurrent jurisdiction with state High Courts in that respect. Thus, where the dispute is between two banks in a banking transaction or between a bank and its customer, both the Federal High Court and State High Court have concurrent jurisdiction. See **NIGERIA DEPOSIT INSURANCE CORPORATION V. OKEM ENTERPRISES LTD (2004) ALL FWLR (PT 210) 1176.** I will say no more.

On their own part the 7th-9th Defendants filed a motion on notice dated 20/2/2013 and filed 5/4/2013 seeking the order of this court striking out the names of the 10th and 11th Defendants from this suit. The facts forming their reliefs as shown in their 14 paragraph affidavit are that the Plaintiffs have disclosed no cause of action against these Defendants. That the inclusion of their names was to cripple the running of the 4th Defendant especially as this court cannot entertain any suit involving the 4th Defendant and 10th and 11th Defendants. In his written address learned counsel Chief Emeka Okeke formulated 2 issues for determination flowing from the above reliefs.

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He submitted that 7th and 9th Defendant's can raise these issues bordering on jurisdiction of this court to entertain the suit without filing any statement of defence for the reason that it is only when issues of jurisdiction is determined that the court can go into the merit of the case. He relied on the provision to Section 251(1) (d) of the Constitution of the Federal Republic of Nigeria 1999. He contended that once there is a dispute between a Bank and its customer, the Federal High Court lacks the jurisdiction to entertain same. He also relied on the definition of "dispute" and "customer" and urged the court to rely on their averments and decline jurisdiction.

On the second issue bordering on whether a reasonable cause of action has been disclosed herein against the 10th and 11th Defendants, learned counsel relied on **P.N. UDOH TRADING CO. LTD V SUNDAY ABERE & ANOR (2001) 5 SC (PT 11) 64, 72** where the Supreme Court held that a reasonable cause of action is defined ***as a combination of facts and circumstances giving rise to the right to file a claim in court for a remedy.***

He contended that the Plaintiffs have no reliefs or remedy against the 10th and 11th Defendants nor was anything done by them to deserve being sued. He urged the court to strike out their names.

In their 9 paragraph counter affidavit dated 6/5/2013, the Plaintiff averred that the 7th-9th Defendants have no standing to bring this application on behalf of the 10th and 11th Defendants. They submitted in their address that the competence to

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question an action against a particular party lies only in the mouth of such party. Since the Banks are not questioning their joinder, that there is a presumption that the suit discloses a reasonable cause of action against them. Moreover that these banks are nominal Defendants joined so that they will be bound by the result of the action. They relied on **OBASANJO V. YUSUF (2004) 9 NWLR (PT 877) 144, 186** to buttress their submissions. Learned Senior Counsel urged the court to refuse this application of 7th -9th Defendants.

Now, it is obvious that the first issue raised here on whether the Federal High Court has jurisdiction to entertain a suit between Bank and its Customers has been determined in the motion brought by the 1st-4th Defendants. I adopt my earlier ruling on that legal point. I reiterate that the provision to Section 251(1)(d) of the Constitution relates to "exclusive" jurisdiction of the Federal High Court to entertain Bank and Customer relationship/transactions. Both the Federal High Courts have concurrent jurisdiction in such transactions. See again the Supreme Court authority of **INTEGRATED TIMBER AND PLYWOOD PRODUCTS LTD V UNION BANK NIGERIA PLC (supra) at page 1803.**

On the second issue I agree with the Plaintiffs that the 7th-9th Defendants "Terms of reference" do not extend to an application to strike out the names of a party who has not asked the court for such relief and who is not represented by learned counsel Chief Emeka Okeke. If the 10th and 11th Defendants who have been served

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with the originating processes are comfortable with the suit and believe that they are proper parties in this case, so be it. It does not lie in the mouths of 7th - 9th Defendants to hold otherwise. Therefore the reliefs sought in the motion dated 20/3/2013 and filed 5/4/2013 are refused.

Now let me revisit one of the contentions of Dr. L.O. Arinze on the propriety of this case vide an Originating Summons. It is now well settled that an Originating Summons is an unusual method of commencing proceedings in the High Court and it is confined to causes where special statutory provisions exist for its application. Where the proceedings are hostile and the facts are in dispute as in the instant case, it is not an appropriate method. See **OBA OSUNBADE V OBA OYEWUNMI (2007) 30 NSCQR 435, 449.**

AMANDA PETERS PAM V NASIRU MOHAMMED (2008) 35 NSCQR 123, 158.

The case at hand may appear to be a simple question of construction or interpretation of documents but the facts in support and documents attached have been put in serious dispute by the Defendants. Originating summons can no longer settle this case. The proper method should be by way of pleadings. In the final analysis here, the parties are hereby ordered to file their pleadings. I also want to settle the issue of service. Corporate Bodies such as the 10th and 11th Defendants ordinarily should be served in their registered offices or where they carry out their

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substantial part of business not [illegible]

THOMPSON ORG. LTD VS UNICAL (2004) 9 NWLR (PT 879) 631. Though it does not lie in the mouths of the 1st and 4th Defendants to make that complaint, Plaintiffs are however ordered to effect proper service if service was wrongly done.

At this stage Ofili Egbusi appears for the 1st to the 4th and 7th -9th Defendants says he is now appearing for 5th Respondent. He apologizes for his lateness. Chief Emeka Okeke for the 7th-9th Defendants thanks the court for the sound ruling. 1st and 4th Defendant's counsel thanks the court for this judgment and says it was well decided. 5th Defendants counsel thanks the court for the very erudite ruling, says it is one of the best he has heard. Plaintiffs' counsel also thanks the court for the well decided case. An Amicus Curie says that the ruling was very erudite and thanks the court for the Ruling.

Court: Thank you learned counsel.

Court: the matter is adjourned to 17/10/2013 for mention.

23/9/2013
C-T-C #320.00
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IJEOMA E. OJEKWU
PRESIDING JUDGE
8TH JULY, 2013

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23/09/2013