

LITIGATION UPDATE

SEPTEMBER, 2018



ADVOCAT
LAW PRACTICE

3RD FLOOR, LAW UNION & ROCK HOUSE,
14 HUGHES AVENUE,
ALAGOMEJI, YABA,
LAGOS,
NIGERIA.

Can Service of a court process via social media be deemed properly served under Nigerian Law?

MUHAMMAD AWWALDANLAMI, ESQ. V. GOVERNOR OF TARABA STATE & 24 OTHERS

SUIT NO: TRST/11/2018; MOTION NO: TRST/67M/2018

Background

Under Nigerian law, a suit is deemed to have commenced in court at the point of filing all the required originating processes depending on the mode of commencement which could either be by way of a writ of summons, petition or originating summons or as may be provided under the rules establishing the various courts in Nigeria. However for the court to be able to assume jurisdiction of the matter, it must satisfy itself that the defendant to an action has been served with the court processes. Service of court processes on parties to a suit is therefore, an indispensable requirement in the determination of a case. Service in this context has been defined as “The formal delivery of a writ, summons or other legal process.”¹

Service of court processes in Nigeria is regulated by both the rules of the various courts and the Sheriff and Civil Process Act.² The law provides that service of all processes must be by personal service.³ However, in cases where personal service of court processes cannot be made, same can be done by way of substituted service upon an application made to the Court for this purpose.

The focus of this update is on service of processes by substituted means . Substituted means has been defined as “Any method of service allowed by law in place of personal service, such as service by mail”.⁴ Whilst the manner of service of court processes by substituted means may be said to be open-ended given that the various rules of court do not expressly stipulate the manner or form of substituted service, what is typical in practice is substituted service by publication in the newspapers, official gazettes, by handing over to a relative or spouse of the defendant the processes or by pasting or dropping same at the last known address of the defendant and in very rare cases by electronic mail.

The scope of service of court process by substituted means has now been broadened by the recent decision in **MUHAMMAD AWWALDANLAMI, ESQ. V. GOVERNOR OF TARABA STATE & 24 OTHERS**, where the High Court of Taraba State⁵ held that originating process and other processes of the court can be served on the defendants to the suit by posting and sharing same on social media.

Brief Facts

The facts of the case are that the Plaintiff instituted this action at the High Court of Taraba State against the Executive Governor of Taraba State and the Attorney General of the State together with 23 other defendants. The Plaintiff unable to serve the originating processes on the 3rd to 25th Defendants applied to the Court to serve

¹ Black’s Law Dictionary 8th Edition at page 1399

² Sheriff and Civil Process Act Cap. S6 Laws of the Federation of Nigeria 2004

³ Order 7 Rules 2 High Court of Lagos State (Civil Procedure) Rules 2012. See also Order 2 Rules 2(1)a of the Court of Appeal Rules 2016 (also noting the exceptions in Rules 7, 8 and 9 of the same Order 2).

⁴ Black’s Law Dictionary 8th Edition at page 1399

⁵ Taraba is one one of the 36 States in Nigeria.

them by substituted means. The court in its ruling ordered that the originating process and other processes of the court in respect of the substantive case including Order or Judgment of the Court be served on the 3rd to 25th Defendants by posting and sharing same on social media. The Court further held that any process served through this means shall be deemed properly served.

Basis of the Court's decision

It is imperative to look at the salient provisions of the Taraba State High Court (Civil Procedure) Rules 2011 upon which the Court made its order . **Order 6 Rules 4** which is reproduced hereunder states as follows:

"4. All processes in respect of which personal service is not expressly required by these Rules or any applicable law, shall be sufficiently served by courier service or if left with an adult person resident or employed at the address for service given under Order 5, rule 6.

(1) Where it appears to the Court (either after or without an attempt at personal service), that for any reason Personal service cannot be conveniently effected, but that there is a reasonable probability that the document will come to the knowledge of the person to be served, the Court may order that service be effected either:

(a) by delivery of the document to an adult inmate at the usual or last known place of abode or business of the person to be served; or

(b) by delivery thereof to a person being an agent of the person to be served, or to some other person, on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or other person, come to the knowledge of the person to be served; or

(c) by advertising in the State Gazette or in a newspaper circulating within the jurisdiction; or

(d) by notice put up at the principal court house of or other place of public resort in, the Judicial Division wherein the proceeding in respect of which the service is made is instituted or at the usual or last known place of abode or of business, of the Person to be served.

(e) by email, or courier service or any other scientific device now known or later developed."

The emphasis as has been highlighted is the provision in **Rule 4(e)** which clearly allows service to be made through any other scientific device now known or later developed. This provision of the Rules obviously does not only take into consideration the recent developments in technology but also looks at any such technological development that may be developed in the future.

Commentary

This decision appears clearly to have stretched the limits of our laws in its conforming to the changing trends in technology and virtual communication particularly with the now seamless way of serving court processes which often times proves difficult to do. It is important to state here that non-service and/or improper service of court

processes have resulted in the untimely end of many cases in court not decided on their merits but on this simple technicality. This decision seems to have also taken care of the difficulty typically associated with service of court processes on government agencies and similarly eliminates the huge costs associated with newspaper advertisements as a substituted means of serving court process.

We therefore anticipate that both the Court of Appeal and the Supreme Court will in the foreseeable future buy into this process of effecting service of court processes. This perhaps is a plus to the Nigerian justice system.

Key Contact



George U. Ukwuoma
Senior Associate

george.ukwuoma@advocaat-law.com

.....
This publication is for general information purposes only and should not be taken as a substitute to seeking detailed legal advice. For specific legal advice on any aspect of the contents herein, please contact George Ukwuoma or alternatively call us on +234 1 4531004, 4547932, 2714042 or email at the above email addresses or info@advocaat-law.com.