

## **Renewal of Writ of Summons after Its Lifespan**

Philips O. Okolo, Frhd, Mnipr, Mspsp, Acipm°. And O.I. Derik-Ferdinand,  
Aci Arb°°.,

---

**Abstract:** Practice and procedure of the courts are by their peculiar character semi regimental in nature. This is predicated on the sound premise that the conducts, styles and patterns of behaviour of litigants and their legal representatives as well the court itself are regulated by the numerous Rules of Courts which are imperative of absolute obedience and reverence by all and sundry who are in attendance in court. In light of this background laid so far, this scholarly appreciation is beamed at the judicial enquiry and investigation into the potentiality, feasibility and possibility of swaying, tilting and making flexible the pendulum of Rules of Courts, with particular credence and inference to the issuance, sealing, endorsement, service and renewal of a writ of summons after the mandatory expiration period of twelve (12) calendar months as prescribed by the various Rules of Courts.

**Keywords:** Courts, Lifespan, Renewal, Summons, Writ,.

---

### **I. Introduction**

The Writ of Summons is by all intents and purposes the most popular and common modes of commencement of actions in civil suits in the High Courts and almost all Judicial Tribunals. As a matter of practice and procedure, it is a veritable process and means by which most actions and if not all in civil suits are commenced in the High Courts and other courts. In this paper, it is our candid and spirited intention to make deliberate incursion into the very judicial likelihood that despite the regimental nature of Rules of Courts that the Courts are not bridled in the exercise of their wide statutory and inherent jurisdiction to act on their unfettered discretionary powers to grant an application for renewal of a writ of summons after the effluxion of the mandatory period of twelve calendar months.

In this work we shall prime and venture an incursion into the meaning and definition of a writ of summons, the lifespan of a writ of summons, renewal of writ of summons as prescribed by Rules of Courts in Nigeria, the attitudes of Trial Courts and Appellate Courts toward application for renewal of writ of summons after twelve months before the Supreme Court decision in *Kolawole vs Alberto* (1989) 20 NSCC (Part 1) 167, judicial appraisal of *Kolawole's* case supra, the attitudes of trial Courts and Court of Appeal with regard to applications for renewal of writ of summons after twelve months period in post *Kolawole's* era and the impact on the jurisprudential inclination on adjectival law in Nigeria, and finally berth on suggestions cum recommendations and conclusion. In espousing this work case law, adjectival law, opinions, observations and contributions of learned authors and jurists shall be utilized to the maximum.

### **II. The Meaning Of Writ Of Summons**

The historical background of the writs system is traceable to the Anglo-Saxon periods and formulae, particularly in Norman's England after the conquest in 1066. It was an avenue by which the King used to communicate his pleasure to the courts and persons. Indeed, the Anglo-Norman writs which followed the conquest were substantially Anglo-Saxon in origin, which were turned into Latin. However what was new and important is the much greater use of writs owing to the increase of royal powers which came with the conquest.

The writ system is applicable in Nigeria by virtue of the Received English Law vide Ordinance No 3 of 1863 in the then Colony of Lagos. The writ system as applied in Nigeria is wholesomely of common law origin in form and nature.

According to Stroud's Judicial Dictionary of Words and Phrases, a writ is the process by which civil proceedings in the High Court are generally commenced. Summons; means to command (a person) by service of a summons to appear in court. A writ of summons is used to commence every action except if a particular rule or law provides otherwise, a writ of summons is stated to be a writ by which, under the Judicature Acts of 1873-1875 all actions are commenced. In *Ansa vs Cross Lines Ltd* [2006] ALL FWLR (Part 321) 1271 CA, 1285 paras H per Chukwuma-Eneh JCA, held:

**''A writ of Summons is a means of notifying the defendant of the suit against him and ordering him to appear in court.''**

According to section 95, "writ of summons" is defined to include 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 relief is sought in a suit or interested in resisting such relief.

A writ of summons; is a court's written order in the name of the state or other component legal authority, commanding the addressee to do or refrain from doing some specific acts.

Espousing from the foregoing contributions on the semantic property and value of writs and writ of summons, none is all embracing to conform with the intendments of this scholarly appreciation. However, very serious attempts were made toward the meaning and definition of writs and writ of summons, particularly those of judicial origin. In this paper we shall restrict ourselves exclusively to writ of summons issued by the courts to commence civil actions.

A writ of summons simply, is a command issued by the government vide the judiciary the (courts) to a defendant to appear before a court or tribunal of competent jurisdiction within specified days to answer allegations and claims made against him and failure to do so judgement might be entered against him. The writ of summons issued by the court must be dated and signed by the Registrar of the court. Below is a sample of writ of summons as ascribed in Civil Form 1, of all the High Court Rules in Nigeria:

**"You are hereby commanded that within forty-two (42) days after the service of this writ on you, inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit of the Claimant AB. and take notice that in default of your so doing the Claimant may proceed therein, and judgement may be given in your absence"**.

Therefore a writ of summons is a command issued by the state vide the judiciary (court) to a defendant and failure to so do within the prescribed period attract grave consequences. What is different from the various rules of courts in Nigeria is the period of appearance. The High Court of the Federal Capital Territory (FCT) Abuja has eight (8)days, the Federal High Court of Nigeria has thirty (30) days, the High Court of Lagos State (Civil Procedure) Rules, stipulates forty-two (42) days, the Sheriffs and Civil Process Act has thirty (30) daysto appearance in court.

### **III. The Lifespan Of A Writ Of Summons:**

The lifespan of a writ of summons; is the validity period of the issued writ, that is, the time frame within which a writ of summons is expected to last for service on the defendant. Barely all the High Court Rules in Nigeria, save the Federal High Court (Civil Procedure) Rules, 2009; that prescribes a life expectancy of two (2) years, all other High Court Rules in Nigeria have a validity period of twelve (12) calendar months. A period at which an issued writ of summons ought to have been served on the defendant and failure to do so within the stipulated time render the writ of summons inchoate, invalid, incompetent, null and void and of no effect for service on the defendant.

It is imperative to categorical state that, the lifespan of a writ of summons as contemplated by the various Rules of High Courts in Nigeria is for a maximum period of twelve (12) months. **Order 6 Rule 7;** provides that "A Judge may order two renewals in each case strictly for good cause and upon prompt reapplication, provided that no originating process shall be in force for longer than a total of 12 months. ..."; **Order 6 Rule 7;** stipulates that "A Judge may order two renewals in each case strictly for good cause and upon prompt application, provided that no originating process shall be in force for longer than a total of 12 months. ..."; **Order 4 Rule 16 (2);** states that "Where a writ has not been served on a defendant, a Court may by Order extent the validity of the writ from time to time for such period, not exceeding twelve months at any time, beginning from the day following the anniversary or expiry, as specified in the Order, if an application for extension is made to a Court before that day or such later day as the Court may allow"(emphasis supplied); and similar provisions are contained in all other Rules of High Courts in the Federation of Nigeria.[Emphasis supplied]

### **IV. Renewal Of A Writ Of Summons:**

Renewal is defined by the Supreme Court in *Kolawole vs Alberto* per Craig JSC; "The Dictionary meaning of the word "renew" is to resuscitate; revivify; regenerate; reinforce and begin anew." Renewal in plain language is the process or act of bringing a dormant and ineffective document (writ of summons) in this case back to life for competent, valid and efficient service on the defendant as stipulated by Rules of Court. It is an act of rejuvenation of voidable writ. The numerous High Courts Rules in Nigeria provide twice renewal of a writ of summons which shall be within the lifespan of the writ.

As espoused above, the High Court Rules in Nigeria provide for only two times renewal of a writ summons which seemingly appears to have contemplated *strictocensu* within the lifespan of the writ and not otherwise. Accordingly, the Bayelsa State High Court Rules, 2010 provides:

**”If a Judge is satisfied that it has proved impossible to serve an originating process on any defendant within its life span and a claimant applies before its expiration for renewal of the process, the Judge may renew the original or concurrent process for 3 months from the date of such renewal. A renewed originating process shall be in Form 6 with such modifications or variations as the circumstances may require”.**(Emphasis supplied).

Similarly, the same High Court Rules, at Order 6 rule 7 states:

**”A Judge may order two renewals in each case strictly for good cause and upon prompt reapplication, ....The Registrar shall state the fact, date and duration of renewal on every renewed originating process”**(Emphasis supplied).

The Federal High Court (Civil Procedure) Rules, 2009; for instance provides:

**”A Judge may order two renewals in each case strictly for good cause and upon prompt application, ....The Registrar shall state the fact, date and duration of renewal on every renewed originating process”.**

The High Court of Lagos State (Civil Procedure) Rules, 2004; stipulates that:

**”If a Judge is satisfied that it has proved impossible to serve an originating process on any defendant within its life span and a claimant applies before its expiration for renewal of the process, the Judge may renew the original or concurrent process for 3 months from the date of such renewal. A renewed originating process shall be in Form 6 with such modifications or variations as the circumstances may require”.**(Emphasis supplied).

The same High Court Rules, at Order 6 rule 7 states as follows:

**”A Judge may order two renewals in each case strictly for good cause and upon prompt application,...The Registrar shall state the fact, date and duration of renewal on every renewed originating process”.** (Emphasis supplied).

Indeed, the High Court Rules in the Federation of Nigeria actually made deliberate attempt for renewal of writ of summons to be twice only within the purview of the life expectancy of the issued writ of summons and thereafter service of same on the defendant becomes void, invalid and incompetent. Howbeit, due to the structural arrangement of courts in Nigeria where the superior courts play a pseudo and real supervisory role on the lower courts, that intendment of the High Court Rules with the status of subsidiary legislation seems to have been thwarted by the apex court. In **Ansa vs Cross Lines Ltd**; the court held:

**”A writ of summons may not be served later than 12 months from the date of issuance. However failure to serve within 12 months of its issuance does not render the writ of summons void. It remains in abeyance until renewed”** see, [Ayalogu vs Agu (2002) 3 NWLR (Part 753) 168].

#### **Application For Renewal Of Writ Of Summons After 12 Months, Before The Decision In Kolawole’s Case:**

As a matter of practice and procedure application for renewal of writ of summons is by way of motion ex-parte. It appears that earlier applications, decisions and rulings on renewal of writ of summons were all in the negative. The attitudes of trial courts as well that of the Court of Appeal, seemed to have been clouded, engrossed, enslaved and bedeviled by the superfluous provisions of the various High Court Rules of each State of the Federation of Nigeria. By implication, this position implies that all applications for renewal of writ of summons were struck out and dismissed at the trial court level and were upheld by the penultimate Court on appeal thereto prior to the Supreme Court decision in **Michael Kolawole vs Pezzani Alberto**.

The numerous High Court Rules in the Federation of Nigeria as innocuously and succinctly given the exposition hereinabove revealed that the lifespan of writ of summons is twelve (12) months and any renewal must be done within the twelve months period and any application after and outside the twelve months was considered to be a misnomer, sacrilege and perhaps gross abuse of court process. A retrospective incursion into some early cases decided in that direction shall shade more light to the above postulation:

In **Buraimoh Alao vs Adelola Omoniyi**; in that case a writ of summons was issued on December 30, 1964 and was not served on the defendant till December 30, 1965; whereupon the plaintiff applied for an enlargement of time for renewal of the expired writ of summons outside the prescribed twelve months period. The court per **Lambo, J.**, on May 16, 1966; held:

”... that on the 30<sup>th</sup> December 1965 the writ in this suit became void. No application for its renewal was made between the 30<sup>th</sup> December 1964 and the 30<sup>th</sup> December 1965 as laid down by the Rules. It is only during this current period that the Court can exercise its discretionary power. In the circumstances I hold that the writ is an incurable nullity, dead and buried and for it, there can be no resurrection. The motion is misconceived and accordingly dismissed.”[Underlining mine].

In, **O. M. Sagay & 2 Ors vs Dolmestch Pharmacy Nigeria Limited**; in that case a writ of summons was issued for service on February 21, 1997; the plaintiff was unable to serve the writ within the period stipulated by the Rules of Court, wherein on June 19, 1998; the plaintiff applied vide a motion ex-parte for extension of time for renewal of the issued writ for onward service on the defendant. The ex-parte motion was granted as prayed on June 22, 1998; consequently the renewed writ of summons was served on the defendant on June 24, 1998.

Upon the service of the renewed writ of summons on the defendant, the defendant’s counsel Mrs. Chukwurah, filed an application on July 7, 1998; seeking an order of court to set aside the ruling of the Honourable Court of June 22, 1998; for enlargement of time for renewal of an expired writ of summons and the writ served on the defendant. Contending strongly that the lifespan of a writ of summons as stipulated by the rules of court is twelve months and that any application for renewal of the writ after and outside of twelve months of issued is void, dead, inchoate and incompetent for service.

The plaintiff’s counsel Mr Yoroh, in his reply on point of law argued vehemently that the court has the unbridled and uninhibited discretionary power to grant an application for renewal of writ of summons outside the twelve months of its issuance. He further submitted that Order 2 Rule 5 must be read in conjunction with Order 12 Rule 3; (now Order 3 Rule 15 (1) and Order 48 Rule 4 of the Federal High Court of Nigeria (Civil Procedure) Rules, 2009) respectively, which gave the court unrestrained power to extend time to do any act either before or after the expiration of the time allowed by the rules of court, he also relied on Kolawole vs Alberto.

The court per **Jinadu, J.**, [at page 491 and 492, paras 2 and 3]; on May 12, 1999; held/ruled as follows:

”It will be seen from the provisions of Order 2 rule 5, that at the expiration of 12 months from the date of the issue of the writ of summons the writ automatically becomes void if not served and its lifespan has not been renewed at any time before the expiration of the 12 months. I agreed with the submissions of Mrs. Chukwurah that once the writ has been allowed to become void at the expiration of 12 months then there is nothing that can resuscitate it. The law is that anything that is void is incurably bad and a nullity so that anything on it is also a nullity which cannot stand so it will fall. See *UAC vs Macfoy* (1961) 3 ALL E.R. 1169 and *Sken consult Nig. Ltd vs Ukey* (1981) 12 NSCC 1, 12. I disagreed with the submissions of Mr. Yoroh that the provisions of Order 2 rule 5 should be read together with the provisions of Order 12 rule 3 of the Federal High Court (Civil Procedure) Rules because Order 2 Rule 5 made special provisions which prevail over the general law or rule so held by per De Lestang, F.J. in the *The British Bata Shoes Co. Ltd vs Melikan* (1956) 1 NSCC 91, 97 as follows:

”First, It is well known rule of construction based on the maxim “*generaliaspecialibus, non derogant*” that when two sections are repugnant the one being general and the other being specific the latter usually prevails”

In fact order 2 rule 5 has made specific provisions for renewal of the writ of summons before the expiration of its lifespan therefore failure to comply with the provisions thereof makes the writ of summons void and anything done or any step taken after the said expiration of 12 months is a nullity. Therefore the order made by this court on 22/6/98 is a nullity because as at that time the court lacks the competence and hence the jurisdiction to entertain the plaintiff’s application filed on 19/6/98. Accordingly the order of this court made on 22/6/98 is hereby set aside. So also the writ of summons served on the defendant on 24/6/98 is hereby set aside. The case is accordingly hereby struck out”. [Emphasis supplied].

Furthermore, in **Ansa vs Cross Lines Ltd**; in that case the claimant could not serve the issued writ of summons within time allowed by the rules of court, sequel thereto he applied for extension of time for renewal of the expired writ in the High Court of Cross Rivers State of Nigeria and it was bluntly refused by the trial Judge and further appeal to the Court of Appeal was also refused by the honourable justices; holding that an expired writ of summons cannot be renewed after the expiration period of twelve (12) calendar months as prescribed by the rules of court.

### **Judicial Appraisal Of Kolawole Vs Alberto’s Case And The Impact In The Jurisprudence Of Adjectival Law In Nigeria:**

This case unveiled an era for the emergence and a tilt in the paradigm shift of practice and procedure of the courts in Nigeria, particularly in civil actions where writ of summons remain the most commonly used modes of commencement of actions.

In that case, the Plaintiff/Appellant issued a writ of summons in February 14, 1981 to be served on the defendant. There were indeed very obvious difficulties in serving the writ of summons on the defendant within the time provided by the Rules of Court, wherein by March 29, 1984; the learned counsel **Chief A. Odofin** on behalf of the Plaintiff/Appellant filed a motion ex-parte for an enlargement of time for renewal of the issued writ of summons.

In dismissing the motion ex-parte the learned trial Judge, **Ayorinde, J.**, on May 5, 1984; ruled copiously citing the provisions of Order 5 rule 6, as follow:

**”In this case the writ of summons expired or ceased to be in force on 13/1/82. There was no renewal before its expiration two years have elapsed since its expiration. It is no longer a current writ of summons. The application for renewal must be made before the writ expired. Once it expired or ceased to be in force it cannot be renewed”.**

The appellant being dissatisfied with the ruling of **Ayorinde, J.** of May 5, 1984, through his counsel Chief A. Odofin appealed to the Court of Appeal, Lagos Division, on the grounds that the learned trial Judge erred in law in holding that a writ of summons not served within the statutory period cannot

be renewed after its expiration. Contending with all contumacy that the court has the amplitude discretion to extend the time and renew the writ of summons for another six months period and that the provisions of Order 5 rule 6 and Order 47 rule 3 must be read conjunctively and the provisions of the former is subsumed on the latter and relied finally in the case of **Boots Pure Drugs & Co Nigeria Ltd vs Sankey Estate Nigeria Ltd.** The Court of Appeal held upholding the decision of the trial court, opining that time for renewal of the writ cannot be extended as the provisions of the rules are plain and unambiguous.

The plaintiff, still not satisfied with the decision of the Court of Appeal further appealed to the Supreme Court vide his counsel Chief Amawo Odofin, he canvassed similar grounds and submissions in the Brief of Argument filed in Supreme Court. On February 3, 1989; the Supreme Court, coram: Craig JSC, Nnamani JSC, Karibi-Whyte JSC, Belgore JSC and Nnaemeka-Agu; unanimously held:

**“A writ which expires at the end of its twelve months life having not been served is not void for the reason of its expiration, it merely ceases to be in force. The fact that the expression declaring the writ void is absent in the rules and there is still the provision enabling a renewal of the writ shows that the writ merely ceases to have force. It is not void. Accordingly, it remains valid until it is renewed, it lies dormant and ineffective for service awaiting to be reactivated and rendered efficacious in the manner prescribed by the rules of court” [P. 1797 para E-G; P. 1798 para B][emphasis supplied].**

The Supreme Court, per the Law Lord of great fecundity, **Craig, JSC**; in the lead Judgement, particularly at [page 1782 paras E-G] equivocally held:

**“What has presented some difficulty and the real point of this appeal is whether an application can be made outside the twelve months period? Some decisions at first instance have tended to show that once the twelve months have elapsed, no application for extension of time can be made. I do not share that view.**

**I think the whole purpose of the rule is to do substantial justice between the parties. Afterall, the real contest between the parties has not begun; issues have not**

**been joined and the whole suit is at the commencement stage with this background in view, I do not think the court would want to shut out the plaintiff even before his opponent is served and before he has had the opportunity to state his case.**

**A careful examination of the Rule shows that its real purpose is to renew an expired writ [not the one within the 12 months]. The word renewal in itself shows that the idea is to bring alive an expired document. The dictionary meaning of the word “renew” is “to resuscitate; revivify; regenerate; reinforce; begin anew” in the ordinary course of events, no one ever applies to renew a current licence or certificate”.[Emphasis supplied]**

In the concurrent judgement, the erudite Law Lord **Karibi-Whyte JSC.**, at pages [1797-1798 paras H-B] held as follows:

**I am unable to accept the proposition that on the expiration of the period of twelve months prescribed, the writ becomes a nullity. That is to say, the writ of summons should be regarded as void thereafter, and as having never been issued. It is paradoxical to hold that an act once legally valid can be rendered a nullity by subsequent act unrelated to its creation. A nullity results from the effect of a fundamental vice or defect in the constituent elements of legal act rendering that act never to have been**

constituted or come into being. Where an act originally valid is rendered invalid by subsequent act, the invalidity, arising thereby is temporary and is curable, in my view as a mere irregularity [that can be regularized] this appears to be the position in this case”[emphasis supplied]

In the usual charismatic disposition of the Law Lord of acme quality and great profundity, **Karibi-Whyte, JSC.**, at page [1801 paras C-D], further held thus:

**“The rule [Order 47 Rule 3] is specifically designed to govern the computation of time in general and the consequences and effect of such rules of court as a whole. It is therefore applicable to Order 5 rule 6 which has omitted to make provisions for the exercise of discretion to renew writ of summons after the expiration of twelve months period. The conclusion I have reached on the construction of Order 5 rule 6 and Order 47 rule 3, is that if the two rules are read together, and I so read them, the learned trial Judge had jurisdiction to exercise his discretion to decide whether the application of the appellant to renew his writ of summons can be granted or not. This is because the fact that, writ of summons had expired and the defendant yet to be served is not sufficient to conclude that the writ of summons is dead or is a nullity. The learned trial Judge was in error to so hold and the Court of Appeal was also wrong to affirm that Judgement on that ground.”**[Emphasis supplied].

#### **V. The Impact On Adjectival Law In Nigeria:**

The jurisprudential significance and impact of this case, *Kolawole vs Alberto*, on adjectival or procedural law in Nigeria, specifically Rules of Court is that. They rarely bite but actively provide for orderliness in commencement of actions and conduct of behaviour in the court room. This informed conclusion is reached on the singular premise that, rules of court will make mandatory provision and still provide means of wangling out of that same mandatory provision. In fact the rules are principally meant to do substantial justice by oiling the conduct of parties in an action and not supreme master to parties appearing before it and the Court itself.

For instance, the Rules of Court provide specific time to enter appearance, to answer preliminary objection, to renew a writ of summons, to reply on point of law and the like. The same Rules of Court allow for enlargement of time to do all those acts. In the case we are x-raying, *Kolawole vs Alberto* (supra) at [pages 1800 paras F-G and 1802 para A] the Supreme Court held:

**“It is pertinent to point out that the appellant had applied for the renewal of the writ relying on the provisions of Order 5 Rule 6 and Order 47 Rule 3 of the Lagos State High court Rules. I agree with the submission of counsel for the appellant that although Order 5 Rule 6 is a specific provisions for renewal of writ of summons which is still in force, Order 47 rule 3 provides for the cases where the period of its effectiveness had expired, Order 47 Rule 3 vests in the court the general exercise of discretion to enlarge time in order to avoid injustice to either of the parties”**

Furthermore, in that same case at [pages 1800-1801 paras H-B], the Supreme Court per **Nnamani, JSC.**, held:

**“... the application of Order 47 Rule 3 of the Lagos State High Court Rules dealing with extension of time if applied and the need for the court to do substantial justice give the court the power to revive a writ upon an application not (suomotu) brought after the expiration of the twelve months period”** See further: *Ogiri vs Idu* (1972) 2 ECCLR, 179; *National Bank Ltd Vs Are Brothers* (1977) 6 SC, 97, *Sheldon Vs Brown Bayley’s Steel Work Ltd* (1953) 2 All ER, 382.

The above postulation that Rules of Court rarely bite appears to have been tersely adopted by the Supreme Court, when in *Tsokwo Oil Marketing Co Nig Ltd vs Bank of the North Nig Ltd*, per **Onu, JSC.**, held:

**Thus, the principles of law as to when to file each [process] and non-compliance differ. While non-compliance with the Act is fatal, the non-compliance with the Rules is a mere irregularity.”** See *Nofiu Surakatu vs Nigerian Housing Development Society Limited* (1981) 4 SC 20; *Ekwere vs The State* (1981) 9 SC 4.see also *Ogbomo vs The State* (1985) 1 NWLR (Pt 2) 225, 240 per **Obaseki JSC**, where incompetence and procedural irregularity were distinguished as two different things having different effects on a decision.”[Emphasis supplied].

In the case *Ansa vs Cross Lines Ltd*, the court held:

**”In other words, every mistake or omission in practice and procedure under the rules is now to be treated as an irregularity which the court can cure so long as it can do so without prejudice or on terms.”**

Finally the Supreme Court, in *Auto Import Export Ltd vs J.A.A. Adebayo & 2 Ors*, the Court **Niky-Toby, JSC.** Held:

**“The rules of court provide for the period of time within which a court process should be filed and the rules expect parties to file the process within the period of time stipulated. Because of human failings, exigencies and contingencies, there could be situations where a court process is not filed within the period of time stipulated by the rules.**

**Rules of court anticipate such situations and make provisions for extension of time within which a court process could be filed. ”The rules allow a party in default to file a court process out of time if he seeks leave.”** (Emphasis supplied)

#### **VI. Application For Renewal Of Writ Of Summons After 12 Months In Post Kolawole Vs Alberto’s Era:**

The Nigerian legal system is of common law origin thereby operating stare decisis. Consequently, the Supreme Court decision in Kolawole vs Alberto (supra) marked a new era in the judicial landscape of Nigeria. Sequel thereto within jurisdiction of the Bayelsa State High Court of Justice in, Anthony Anakor vs United Bank for Africa Plc.

In that case a writ of summons issued on March 4, 2011 by the Rules of Court expired on March 3, 2012. The writ was not served on the defendant before its twelve months expiration and the claimant counsel O.I, Derik-Ferdinand applied for renewal of the writ. The ex-parte motion was moved on June 14, 2012; upon moving the motion the presiding Judge B.M. Ugo demanded an additional address in contra to the provisions of Order 6 rule 7. In the additional address filed on July 6, 2012, O.I, Derik-Ferdinand of counsel contended that the court has the unfettered and unrestrained power to grant an application for renewal of writ of summons outside the twelve months of issue and that the provisions of Order 6 rule 7 and Order 44 rule 4 of the Bayelsa State High Court Rules, 2010 must be read in conjunction. He further submitted that the provision of the latter Order supersedes the former and finally relied on Kolawole vs Alberto (supra).

Renewing the writ of summons, **Ugo, J.** held:

**”...the applicant’s counsel has drawn my attention to the case of Kolawole vs Alberto (1989) 2 S.C (Pt. II) 1; (2002) FWLR (Pt. 130) 1761 SC, where the Supreme Court held that a writ which expires at the end of its 12 months life span is not void for that reason, but remains valid and only ceases to be in force and so dormant until it is renewed by a proper application for extension of time to renew it. On the basis of that case, this application is properly made. ... For all the foregoing reasons. I am inclined to grant this application. Accordingly, I hereby extend time for the renewal of this writ of summons in this case. The writ of summons of this suit issued on February 2, 2011; is accordingly renewed for a further three (3) months with effect from today in accordance with Civil Form 6 and Order 6 Rule 6(2) of the Rules of this Court”.**

#### **VII. Conclusion**

The legal jurisprudence of Nigeria is that of stare decisis. It then follows that the decisions, opinions, views and ratios decedendi of higher courts are binding on those of lower hierarchies. The Supreme Court of Nigeria has entered Judgement for renewal of writ of summons after the mandatory twelve (12) months from the date of issue. The Supreme Court of Nigeria is on the peak in echelon of courts in the shores of Nigeria, thus all other courts and judicial tribunals in the land are under obligation and duty to follow same mutandis mutandis.

**In the light of the foregoing, in Ayaloguvs Agu, the Supreme Court held:**

**”It is no longer the law that a writ of summons not served within 12 months of its issuance is ”void” it remain in abeyance until renewed.”**

**Furthermore, in Ansa vs Cross Lines Ltd the court held:**

**”It is now established that service of such expired writ i.e. without an order of court for renewing the same does not now result in nullity of the writ or of the service; it is now treated as an irregularity and as I have shown above, the defendant has the option to waive it by entering an unconditional appearance in the matter and submitting to the jurisdiction of the court or apply in limine to have it set aside ex-dibitojusticiae”**  
See the cases of: Odua Investment Ltd vs Talabi (1997) 10 NWLR (Part 523) 1 per Ogundare, JSC.; Ezeno vs Oyakhire (1985) 1 NWLR (Part 142) 195 and Ben Nwabueze & Anor vs Justice Obi-Okoye (1988) 4 NWLR (Part 91) 664.”

It is therefore our informed conclusion that the law is firmly settled that a writ of summons not served on the defendant within twelve months of issue is not void, not a nullity nor dead and buried as presupposed by

early authorities, but only lies dormant, abeyance and fallow waiting to be made active by the same rules of court. Accordingly, the times have passed when if a writ is not served within twelve months becomes void and nullity and the mechanism of commencing the action starts de-novo. Now, matters that would have been affected by statutes of limitation whereof all rights and duties would have been lost have been reserved in post Kolawole vs Alberto's case (supra), salute to Chief Amowo Odofin for that great zeal and courage.

As succinctly canvassed above an expired writ can be served on the defendant and such service constitute voidable service. The defendant has the election of submitting to jurisdiction by entering unconditional appearance or applied for the writ to be set aside for not been renewed before service was effected.

Finally we must commend the extra-ordinary courage and resilience of Chief Amowo Odofin, the legal representative of Mr Michael Kolawole who believed in his conviction after being turned down in the trial Court and the Court of Appeal still was courageous and went upstairs and today the table of our civil practice and procedure have been reset courtesy of one man. We humbly enjoin every practicing legal practitioner to believe in himself in pursuance of cause of justice in Nigeria and beyond.

### Reference

- [1]. BSc.(Hons), M.A; (PhD in view) Pioneer National Publicity Secretary Society for Peace Studies and Practice Nigeria, (SPSP), A Fellow of Strategic Institute for Natural Resources and Human Development, Lectures at the Department of Political Science, Faculty of the Social Sciences, Niger Delta University, Wilberforce Island, Bayelsa State, Nigeria.
- [2]. LLB, BL, Legal Practitioner and Chartered Arbitrator, Egele & Egele Attorneys-at-Law, (Daniel Chambers) 24 INEC Road Kpansia-Epie, Yenagoa, Bayelsa State of Nigeria and Lecturer, Department of Law, Bayelsa State College of Arts and Science, Elebele-Ogbia P.M.B 168, Bayelsa State.s
- [3]. Afolabi vs Olaniyan (1983) 14 NSCC 398; JAMP vs Nkerika (No. 1) [2007] ALL FWLR (Part 38) 1753 CA [1760 para D], where the opined, "There is no doubt about it that rules of court are meant to be obeyed and shall be obeyed."
- [4]. Bryan A Garner, (Editor-in-Chief), Black's Law Dictionary, Seventh (7<sup>th</sup>) Edition (1999, St Paul West Group MINN USA), at page 1605. A Writ of summons is a means by which under the Judicature Acts of 1873-1875 all actions are commenced.
- [5]. W.S. Holdsworth, Sources and Literature of English Law Vol. 20 (1925).
- [6]. Bryan A Garner, (Editor-in-Chief), Black's Law Dictionary, Seventh (7<sup>th</sup>) Edition (1999, St Paul West Group MINN USA), at page 1602.
- [7]. Stroud's Judicial Dictionary of Words and Phrases, Sixth Edition Volume 3 Q-Z, Sweet & Maxwell 2000, page 2960.
- [8]. Bryan A. Garner, (Editor-in-Chief), Black's Law Dictionary, Seventh (7<sup>th</sup>) Edition (1999, St Pauls West Group MINN USA), at page 1449.
- [9]. Ansavs Cross Lines Ltd [2006] ALL FWLR (Part 321) 1271 CA.
- [10]. Sheriffs and Civil Process Act, Cap S6 Vol. 14 Laws of the Federation of Nigeria (LFN) 2004
- [11]. Bryan A. Garner, (Editor-in-Chief), Black's Law Dictionary, Seventh (7<sup>th</sup>) Edition (1999, St Paul West Group MINN USA), at page 1602.
- [12]. Civil Form 1, General Form of Writ of Summons, Order 3 Rule 3, Bayelsa State High Court Rules, 2010.
- [13]. The Appendix; Civil Procedure Form 1, General Form of Writ of Summons, Order 4 Rules 1 and 8, High Court of the Federal Capital Territory (FCT), Abuja (Civil Procedure) Rules, 2004.
- [14]. Appendix 6; Civil Procedure Form 1, General Form of Writ of Summons, Order 3 Rule 4 The Federal High Court of Nigeria (FHC) (Civil Procedure) Rules, 2009.
- [15]. The Appendix; Form 1, General Form of Writ of Summons, Order 3 Rule 3, High Court of Lagos State (Civil Procedure) Rules, 2004.
- [16]. Section 99, Sheriffs and Civil Process Act, Cap S 6 Vol. 14 Laws of the Federation of Nigeria (LFN) 2004.
- [17]. "Order 3 Rule 17; ofcit." A Judge may order two renewals in each case strictly for good cause and upon prompt application, provided that no originating process shall be in force for longer than a total of two years. ...". This is indeed an exception to all the general guiding rules and principles of court with respect to renewal of writ of summons in Nigeria.
- [18]. Bayelsa State High Court Rules, 2010.
- [19]. The High Court of Lagos State (Civil Procedure) Rules, 2004.
- [20]. High Court of the Federal Capital Territory (FCT), Abuja (Civil Procedure) Rules, 2004. [1989] 20 NSCC (Part 1) 213; [2002] FWLR (Part 130) 1761 SC.
- [21]. Order 6 Rule 6 (2)
- [22]. Bayelsa State High Court Rules, 2010.
- [23]. Civil Form 6, Order 3 Rule 17.
- [24]. Order 6 Rule 6 (2).
- [25]. The High Court of Lagos State (Civil Procedure) Rules, 2004.
- [26]. (2006) ALL FWLR (Part 321) 1271 CA, 1285 paras G-H.
- [27]. (1989) 20 NSCC (Part 1) 167; [2002] FWLR (Part 130) 1761 SC.
- [28]. (1966) NMLR 161.
- [29]. [1999] 1 F.H.C.L.R 486.
- [30]. Federal High Court of Nigeria (Civil Procedure) Rules Cap. 134 Laws of the Federation of Nigeria (LFN), 1990.
- [31]. Ibidem.
- [32]. (1989) 20 NSCC (Part 1) 167; [2002] FWLR (Part 130) 1761 S.C.
- [33]. The High Court of Lagos State (Civil Procedure) Rules, 1972.
- [34]. Ibidem.
- [35]. Ibidem.
- [36]. been served with a copy thereof, the plaintiff may before the expiration of the twelve months, apply to the Court or the Judge in Chambers for leave to renew the writ: ..."
- [37]. Ibidem.
- [38]. [2006] ALL FWLR (Part 321) 1271 CA.



- [39]. (1989) 20 NSCC (Part 1) 167; [2002] FWLR (Part 130) 1761 S.C.
- [40]. The High Court of Lagos State (Civil Procedure) Rules, 1972; ofciti:
- [41]. "No original writ of summons shall be in force for more than twelve months from the day fo the date thereof, including the day of such date, but if any Defendant therein named shall not have
- [42]. The High Court of Lagos State (Civil Procedure) Rules, 1972.
- [43]. Ibidem, ofciti: "The court may as often as it thinks fit, and before or after the expiration of time appointed by these rules, or by any judgement order, or rule of the court, extend or adjourn the time for doing any act or taking proceeding."
- [44]. (1976) 6 CCHCJ 1751, 1754.
- [45]. (1989) 20 NSCC (Part 1) 167;[2002] FWLR (Part 130) 1761 SC.
- [46]. (2002) 5 S.C (Part II) 9 [18 & 19 paras 40-10].
- [47]. [2002] ALL FWLR (Part 321) 1271 CA, [1286 para F].
- [48]. (2002) 12 S.C (Part I) 158, [171 paras 30-40].
- [49]. (2012) unreported case in the Bayelsa State High Court, Yenagoa Judicial Division Suit No: YHC/25/2011 delivered under the hands and seal of His Lordship Justice B. M, Ugo on July 31, 2012.
- [50]. The Bayelsa State High Court Rules, 2010, which presupposes that no issued writ of summons shall be in force more than twelve months from the date of issue.
- [51]. Civil Form 6, Form of Memorandum for Renewed Originating Process, Order 6 Rule 6(2), Bayelsa State High Court Rules, 2010.
- [52]. The Bayelsa State High Court Rules, 2010.
- [53]. [2002] 3 NWLR (Part 753) 168.
- [54]. [2006] ALL FWLR (Part 321) 1271 CA, [1285 paras B-D]