

Conceptions and Misconceptions in Suing Persons unknown; Commencing Action Vide Originating Summons in Land Litigation in Nigeria

Omodele, Adeyemi Oyedele*

Abstract

Litigants and legal practitioners did face challenges in instituting suits against unknown trespassers on their land. The development had made suits being filed thrown out of law courts due to incompetence of parties sued. Some counsel did file suits against persons unknown primarily to unravel the name(s) of the actual trespasser(s) upon service of the originating court processes on the property in dispute. A lot of cases were wrongly filed vide originating summons which later turned to be contentious cases that could not be rightly prosecuted vide originating summons. This research discussed the legality of instituting a suit against unknown persons, commencement of suits vides originating summons in Nigeria. The options available for a claimant who might not know the name(s) of person(s) to be sued when his right on his landed property is violated are discussed. The research is divided into segments to wit: introduction which gave brief genesis to the topic, parties in commencement of an action, suitability of suits filed against persons unknown, strategies of instituting suits against squatters in land cases, suitability of contentious cases commenced vide originating summons, conclusion and recommendations. The Lagos State High Court (Civil Procedure) Rules, 2019 is used as the reference rules regarding the topic while decided cases were referred to in the work to shield light to the discuss. Order 57 of the stated rules of court is analysed and evaluated. The theory of identity which dealt with identification of parties and cause of action is adopted for this work.

Keywords: Litigants, Originating Summons, Persons Unknown

* LLB (Hons Ado-Ekiti), BL, LLM (OAU, Ile-Ife), PhD Student, College of Postgraduate Studies, Department of Political Science & Public Administration (Law & Diplomacy), Babcock University, Nigeria., Tell:08035738545; E-mail: yemiomodelaws@yahoo.com, omodele0200@pg.babcock.edu.ng

1. Introduction

In Nigeria legal system, it is a known fact that litigants and / or claimants in some cases do find it difficult to know the identity of the person(s) to be sued in respect of their prospective claims before a court of law while on the other hand persons to be sued are clearly known. A situation where the names, addresses and / or contacts of the persons to be sued is known is referred to as known defendant(s) and as such it is easy for the claimant(s) to institute an action in court without delay. Identity of a defendant(s) is always known in contractual transactions, enforcement of fundamental rights suits, criminal cases, recovery of debts, breach of contract, family and probate cases, maritime cases just to mention a few.

In land litigations in Nigeria, situation do arise wherein identity of a trespasser(s) to a land is unknown. This situation does put the owner of the land in a state of helplessness to seek redress in court. He would only see workmen on the land but the person whom they are working for is unknown. It does happen where a trespasser or a squatter entered into a land, built houses within a short period and zoom off and his identity not known. The problem becomes more complex and intricate where the cause of action is time bound. The action may become statute barred by limitation of time if the claimant / plaintiff is unable to file his suit because he is trying to unravel the identity of the defendant. In the legal parlance, the law aids the vigilant; it does not aid those who sleep. This dilemma has made many claimants / plaintiffs to file suits against “persons unknown and / or unknow defendants.” Some dubious litigants have used the guise of unknown persons to fraudulently taken over persons legitimate land / property from them. This paper intends to discuss the legality of instituting a suit against known defendant and the unknown persons under Nigerian law. The options available for a claimant who do not know the person to be sued. The theory of identity is adopted for this work.

2. Parties in Commencement of an Action in Court of Law

When disputes on land arise, the first questions that come to the mind of a claimant and his counsel is who is to be sued? What is the cause of action against the supposed defendant? What are the likely claims against the defendant? Is there any possible success in the intended suit? Any room for settlement of the issues now or in the nearest future? After answering the questions affirmatively or negatively, the suit may be filed. Suits may be commenced vide a

writ of summons, originating summons, originating application, motion on notice, petition, ex-parte application, information and a host of others which must have a claimant and a defendant; applicant(s) and a respondents(s); a petitioner and a respondent(s); prosecution and a defendant(s) as the case may be. The entire civil and criminal proceedings are based on this principle¹. It is essential that the names of every claimant and defendant whom it is proposed to make parties to the action should be set out at the head of the writ, petition, charge / information, originating motion, motion on notice¹. In short, the originating processes and subsequent court processes in the suit must reflect the names of the parties.² Any error in this regard may affect the competency of the action³.

For a suit to be competent, it must be instituted by a competent claimant / plaintiff; if the claimant's competency is challenged, then the onus is on him to prove that he has the legal capacity (*locus standi*) to institute the action. It is essential that the parties to the suit must be legal persons. If it is shown that any of the parties to the suit is not a legal person that party should be struck out of the suit. If such a party is the claimant, then the entire suit should be struck out. If a non-juristic party is sued as a defendant/respondent, the party should be struck out⁴.

In the case of *Agbonmagbe Bank Ltd. vs G. B. Ollivant Ltd. & Anor.*⁵, it was held that since "General Manager G. B. Ollivant Ltd" was not a juristic person, that defendant could not be made a party to the action and should be struck out from the proceeding. The following cases are also relevant in this regard: *Martins vs. Federal Administrator General & Anor.*⁶; and *University of Jos & Anor. vs Carlen (Nigeria) Ltd.*⁷

Similarly, in the case of *Federal Government of Nigeria & 2ors vs. Shobu Nigeria Ltd. & Anor.*⁸, the Court of Appeal, sitting in Ibadan, held that: "In the present circumstances, the 2nd Appellant, the Federal Ministry of Works was wrongly joined, and is struck out from this appeal not being a juristic personality".

¹ Chairman L.E.D.B. vs Onimole & ors (1940) 6 WACA, 96 at 983.

² Aguda: Practice and Procedure of the Supreme Court, Court of Appeal and High Courts of Nigeria, 2nd Edition, par.12.03, p.90.

³ Quo Vadis Hotel vs Commissioner for Lands (1973) 5 S.C.71; John Holt Ltd. vs Leonard Ezeafulukwe (1990) 2 NWLR 520. 9 SUI NO. FCT/HC/CV/2511/2012

⁴ Okechukwu & Sons vs Ndah (1976) NMLR 368 at 370.

⁵ (1961) All NLR 116.

⁶ (1963) LLR 65.

⁷ (1992) 5 NWLR 352.

⁸ (2013) LPELR-21457(CA).

As a general rule of practice, only natural persons, such as, human beings and juristic or artificial persons like corporate bodies are competent to sue and be sued before any law court. No action can be brought against any party other than a natural person or persons unless such party has been given by statute expressly or impliedly or by common law either a legal capacity under the name by which it sues or is sued or a right to sue or be sued by that name⁹. A law suit is in essence, the determination of legal rights and obligations in any given situation. Only such natural and juristic persons in whom the rights and obligations can be vested as capable of being proper parties to law suit before courts of law. Where either of the parties to a suit is not a legal person capable of exercising legal rights and obligations under the law, the other party may raise this fact as a preliminary objection which if upheld, normally leads or results in the action being struck out¹⁰.

In the case of *Ndoma-Egba vs. Government of Cross River State*¹¹, Niki Tobi J.C.A. (as he then was) reiterated thus:

Only a natural or juristic person can be joined as a party.

Thus, the same rules apply in respect of the original parties in the action, either plaintiff or defendants.

Similarly, in *C.O.P. Ondo State vs. Obolo*¹², Salami J.C.A. held as follows:

The only life issue it, seems to me, is the propriety of suing the “Divisional Police Officer” Okitipupa who is not known to law. It is only a legal person that can sue and be sued.

Based on the decisions of the high courts, persons unknown or unknown defendant is difficult to classify such a nebulous entity as a juristic person with the competence to sue and be sued. In the case of *Trust Fund Pensions Plc & 2ors vs. Pensions, Names Unknown* (unreported)¹³ the court held:

For them to be persons unknown? This will best be answered in the substantial. This could only be determined by the court and the plaintiff / respondent

⁹ Fawehinmi vs N.B.A (No2) 1989 2 NWLR (pt. 105) 558 at 595.

¹⁰ Shittu vs Ligali (1941) 16 NLR 21; Olu of Warri vs. Essia & Anor. (1958) 3 FSC 94

¹¹ (1991) 4NWLR (Pt.188) 773 at 787.

¹² (1989) 5 NWLR (Pt.120) 130 at 141.

¹³ Suit NO. FCT/HC/CV/2511/2012.

has a duty to furnish the Court with the real names of the occupants of the premises in question and their identities and I so hold. As general rule only natural persons, that is to say, human beings and juristic or artificial persons such as bodies corporate, are competent to sue and be sued before any law court.

A suit instituted against an unknown person is defective because an unknown person is a nebulous entity without any clear-cut features of juristic personality. It will be difficult to ascertain the legal status of such an entity. Is the person a natural person or an artificial person?

3. Suitability of Suits Filed against Persons Unknown

It is no longer news in Nigerian law courts seeing suits filed against unknown persons and / or trespassers. The claimants and / or the plaintiffs do have some difficulties with discovering the true identities of the alleged trespassers or defendant. In a desperate bid to unravel the identities of such trespassers, they are constrained to file the action against persons unknown. The first problem being encountered after filing is how to effect service of the court processes on the unknown and unnamed defendant. They attempt to surmount this hurdle by effecting service by substituted service usually by pasting the court processes on the land in dispute. It is their believe that when the trespasser sees the court processes, he would come before the court to defend it. In some cases, the unknown trespasser do show up in court to response to the suit by seeking for the services of a counsel who will put up appearance for him. However, in most cases the unknown trespasser will never show up. The claim will thus be stuck with a fictitious suit. This may result in a legal absurdity if the court proceeds to hearing and delivers judgment in the circumstance. This may be tantamount to an abuse of court process. The judicial process should not be used for such extra judicial procedures. In the case of *Amaefule vs. The State*¹⁴, the court held thus:

Abuse of process can also mean abuse of legal procedure or improper use of legal process...

¹⁴ (1988) 2 NWLR (Pt.200) 659

It is the duty of the claimant and / or his counsel to privately to find out the identity of the defendant/trespasser before filing the suit. The enquiries may not even involve any law enforcement agents to avoid infringing on innocent citizens' fundamental human rights. The claimant can gather relevant information by asking discreet questions from workmen on the site or neighbours in the area. It is even more reasonable to sue a known workman on the site than to sue an unknown person. If the claimant files a suit against the workman, he will surely disclose the identity of the person who hired him. The claimant can thereafter join the actual defendant in the suit. The originating court processes can be amended to reflect the names of the actual defendant and discontinue against the person initially sued. The practice of filing the suit in order to identify the defendant is to put the cart before the horse. Some rules of courts in Nigeria have made provisions for some special procedures to institute suits against persons unknown in actions for possession of land.

4. Strategies of Instituting Suits against Squatters in Land Cases

Legal practitioners and litigants do find it difficult in knowing the identities of the person(s) who occupy their landed property without their consent and knowledge. At times they see persons working as workmen without being able to identify the actual person(s) who contracted work to them; trespass on the property. These situations do put lawyers and litigants in a state of confusion to the extent that their landed property may be illegally and / or forcefully taken over by persons not known to them. In another way, some persons may occupy their landed property who are not in any way known to the owner of the property. This do occur when the legitimate owner of the property travels for a longer time and / or did not visit the said property at interval; subsequent visit to the land he sees persons not known to him occupying the land. Some might have built houses on the land and rented it out to tenants. When this arises, to challenge them becomes an issue.

However, in addressing this issue of squatters, some jurisdictions of the court in Nigeria, make provisions under the high court civil procedure rules for a distinct procedure to eject squatters from land being illegally occupied¹⁵.

The procedure is clear and unambiguous. It is an exception to the rule against filing a suit against an unknown or unnamed defendant.

¹⁵ Order 57 of the High Court of Lagos State (Civil Procedure) Rules, 2019 and Order 53 High Court of Ogun State (Civil Procedure) Rules, 2014.

High Court of Lagos State (Civil Procedure) Rules, 2019 as an example, the procedure is enshrined in Order 57 of the rules which provides as follows: **“ORDER 57**

1. Application of this Order

- (1) This Order shall not apply where the person in occupation of land is:
 - (a) a tenant; or
 - (b) a tenant holding over after termination of his tenancy; or
 - (c) a licensee of the owner or person entitled to possession; or
 - (d) a person who had the consent of the predecessor-in-title of the person who is entitled to possession.

(2) Proceedings to be brought by Originating Summons.

- (1) Where a person claims possession of land which he alleges is occupied solely by a person not listed in Rule 1 of this Order, proceedings may be brought by Originating Summons be in accordance with the provisions of this Order.
- (2) The Originating Summons shall be in Form 38 and no acknowledgement of service shall required.

3. Affidavit

The claimant shall file in support of the originating summons, an affidavit stating:

- a) his interest in the land;
- (b) the circumstances in which the land has been occupied without license or consent and in which his claim to possession arises; and
- (c) that he does not know the name of any person occupying the and who is not named in the summons

4. Service of Originating Summons.

- (1) Where any person in occupation of the land is named in the Originating Summons, the Summons together with a copy of the affidavit shall be served on him:
 - (a) personally, or in accordance with Order 8 Rule 4; or
 - (b) by leaving a copy of the Summons and of the Affidavit, or sending them to him at the premises; or
 - (c) in such other manner as the Judge may direct.
- (2) The summons may, in addition to being served on the named Defendants, if any, in accordance

with sub-rule 1 of this Rule, be served, unless the Judge otherwise directs, by:

- (a) affixing a copy of the Summons and a copy of the Affidavit to the main door or other conspicuous part of the premises; and if practicable, inserting through the letter box at the premises, a copy of the Summons and a copy of the Affidavit enclosed in a sealed envelope addressed to "the occupiers".
- (b) Placing stakes in the ground at conspicuous parts of the occupiers land, to which shall be affixed a sealed transparent envelope addressed to "the occupiers" and containing a copy of the Summons and the Affidavit.
- (3) Every copy of an Originating Summons for service under sub-rule 1 or 2 of this Rule shall be sealed with the seal of the Court issuing the Summons.

5. Application by occupier to be made a party.

Without prejudice to rule 16 of Order 15, any person who is in occupation of the land but not named as a Defendant, who desires to be heard on whether an order for possession should be made, may apply at any stage of the proceedings to be joined as a Defendant.

6. Order for Possession

- (1) An order for possession in proceedings under this Order shall be in Form 39 with such variations as circumstances may require.
- (2) The Judge may immediately order a Writ of possession to issue.
- (3) Nothing in this Order shall prevent the Judge from exercising any power which could have been exercised if possession had been claimed in an action commenced by Writ or ordering possession to be given on a specific date,

7. Writ of Possession.

- (1) No Writ of possession to enforce an Order for possession under this Order shall be issued after the expiration of three months from the date of the Order without the leave of the Judge.
- (2) The application for leave may be made ex-parte unless the Judge otherwise directs.

8. **Setting aside of Order.**

- (1) The Judge may, on such terms as he deems fit, set aside or vary any Order made in the proceedings under this Order.
- (2) In this Order, "landed property" means land with or without building on it."

Further, the only claim applicable to Order 57 of the High Court of Lagos State (Civil Procedure) Rules, 2019 is for recovery of possession of land being occupied by squatters. By the decision in *Emeka Okoli & ors. vs. Alhaji Ibrahim Gadan*¹⁶ the Court of Appeal explained the application of this special procedure thus:

The provisions of Order 50 [High Court of Kaduna Civil Procedure Rules, 2007] are similar to the provisions of Order 113 Rule 1 of the Supreme Court Practice of England and the provisions of Order 59 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules 1994 and Order 53 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules, 2014 [which is *impari materia* with the provisions of Order 53 of the extant Lagos High Court (Civil Procedure) Rules, 2012]. In proceedings under this order, the only claim that can be made in originating process is for recovery of possession of land; no other cause of action can be joined with such a claim in such proceedings, whether for payment of money, such as rent, mesne profits, damages for use and occupation or other claim or damages or for injunction or declaration or otherwise. The Order is narrowly confined to the particular remedy described in Rule 1. No order for costs can be made except there is a named defendant...

The provision in the High Court of Lagos State (Civil Procedure) Rules, 2019 which has been adopted and implemented by some state high courts in Nigeria in their civil procedure rules enables a land owner whose land is occupied by a squatter(s) or a person(s) occupying the land without his / her consent to commence a legal proceedings against the squatter for possession of his land. The procedure offers a claimant/plaintiff the opportunity to recover possession of land wrongfully occupied by unknown or unauthorised

¹⁶ (2014) LPELR-23067 (CA). per Abiru, JCA at pages 28-30, Paras E-A

persons. This is contrary to the normal procedures where the person in illegal possession should be identified and named as a defendant so that he can be bound by the order of the court in the suit. Order 57 of High Court of Lagos State (Civil Procedure) Rules, 2019 is in line with Order 113 Rule 1 of the Supreme Court of England. This special provision is only available to possession in land matters and nothing more and this provision can only be commenced through originating summons.

The procedure was introduced to avoid injustice and hardship on the part of claimants who are unable to proceed against unknown trespassers because of their inability to identify and serve them as defendants in the suit. The case of *Nnodi vs. Thanks Investment Ltd.*¹⁷ is apposite in this regard. The order applies where the occupier has entered into occupation without license, consent and/or authorisation of the person in possession or of any predecessor of his as decided in the case of *County & City Bricks Development Company Ltd. vs. UACN Property Development Company Ltd.*¹⁸ In *Bristol Corporation vs. Persons Unknown*¹⁹ the court held that the procedure also applies to a person who has entered into possession of land with a license but has remained in occupation without a license.

However, in *Ganiyat Buraimoh vs. Persons Unknown & Anor.*²⁰, the court held that the procedure is not intended to dispossess a known person who claims to be in possession of property as a tenant or to shut out persons whose right of occupation needs to be determined. It is to be noted that under the rules, "landed property" means land with or without building thereon²¹. The property that can be subject to the procedure is not limited to undeveloped land but also include developed property. The claimant shall commence the action by originating summons, without any requirement of acknowledgment of service of the summons by the person unlawfully occupying the land. In *Persons, Names Unknown vs. Sahris Int'l Ltd.*²², the Court held that an aggrieved person whose land is occupied by persons unknown should file in support of his originating summons an affidavit stating the following facts:

¹⁷ (2005) 11 NWLR (Pt.935) 29.

¹⁸ (2008) BLR (Pt.1) p.423.

¹⁹ (1974) 1 WLR 365 18 (1974)

²⁰ Suit No: ID / 536M / 2005 (unreported)

²¹ See Order 51 Rule 8(2) High Court of Lagos State (Civil Procedure) Rules, 2019.

²² (2006) 8 NWLR (Pt. 982) Pg 255

- (a) his interest in the land;
- (b) the circumstances in which the land has been occupied without license or consent and in which his claim to possession arises; and
- (c) that he does not know the name of any person occupying the land who is not named in the summons.

However, where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit shall be served on him in the manner prescribed under the rules.

Despite the provisions of the order, it is true that in civil cases, the burden of proof is on the party who asserts a fact to prove same, for he who asserts must prove; where the suit is uncontested, the claimant still has the onus to prove the claim²³. The standard of proof required is on a preponderance of evidence and balance of probabilities.²⁴

In civil cases the onus of proving an allegation is on the plaintiff / claimant and the onus does not shift until he has proved his claim on the preponderance of evidence and balance of probabilities. Parties in civil suits must prove their cases on preponderance of evidence and on balance of probabilities. It is after the burden of proving the case has been discharged in accordance with the above principle of law that the burden shifts and continues to shift. But where a party fails to discharge this burden then, the opponent need not prove any fact and the party alleging cannot rely on the opponent's case. A party must prove its case on credible evidence of its witnesses and is not at liberty in law to make a case or rely on the weakness of its opposite party in order to succeed. Thus, the onus of proof is not static as it shifts from time to time. In a given civil case tried on pleadings of the parties, the court has to critically look at the pleadings to discover where the onus of proof lies.²⁵

In *Olumuyiwa Odejayi & Anor. vs. Person Unknown*²⁶ the court held that the burden is of such minimum proof as is sufficient

²³ Mrs. Betty Darego vs. A.G. Leventis (Nigeria) Ltd & 3ors LER [2015] CA/L/481/2011 and S. 131 (1) of the Evidence Act, 2011.

²⁴ Longe vs. FBN PLC (2006) 3 NWLR (pt. 967) pg. 228, Daodu vs. NNPC (1998) 2NWLR (pt. 538) pg. 355.

²⁵ Iman vs. Sheriff (2005) 4 NWLR (pt. 914) 80, Elias vs. Omo-Bare (1982) 5 SC 25, Agbi vs. Ogbeh (2006) 11 NWLR (pt. 990) 65.

²⁶ Suit No. ID / 97M / 2005(unreported)

to establish their entitlement to judgment. Where the court is satisfied that the claimant is entitled to possession, the court may forthwith order a writ of possession to issue and may at its discretion fix a particular date when possession must be handed over by the trespasser in the same manner as the court may order delivery of possession in an action commenced by writ²⁷.

Any order for possession obtained under this procedure must be enforced within a period of three (3) months from the date of issue; failure to enforce same renders it ineffective. Though, the court may extend the time if the leave of court is sought in that regard.²⁸

5. Suitability or Otherwise of Contentious Cases Commenced vide Originating Summons

The law is already trite that, before a proceeding can be commenced by originating summons, the construction of a written law, or instrument made there under or deed or will or contract or other document must be in issue. It means that in any of such cases certain questions must have arisen for determination with reference to such document and it is these questions and the accompanying reliefs or prayers that embody the issues for determination in the action. The Supreme Court in *Oloyo vs. Alegbe*²⁹ stated as follows:

Originating summons should only be applicable in such circumstances as where there is no dispute on question of fact or (even) the likelihood of such dispute.

originating summons is reserved for issues like the determination of short question of construction and not matters of such controversy that the justice of the case would demand the settling of Pleadings.³⁰

The first duty of a trial judge, where an action is begun or initiated by means of an originating summons procedure, is to examine the claims before the court, and then to ascertain whether the procedure in originating summons was suitable or appropriate to the action. This first step, is sine qua-non to his assuming jurisdiction on the matter.

²⁷ Order 57 Rule (6)3 Lagos State High Court (Civil Procedure) Rules, 2019.

²⁸ Order 57 Rule (7)1&2 Lagos State High Court (Civil Procedure) Rules, 2019.

²⁹ (1983) 2SC NLR 35 at 67

³⁰ National Bank of Nigeria vs. Alakija & Anor (1978) 2 L.R.N. 78.

In *Keyamo vs. House of Assembly, Lagos State*³¹ (2000) 11 W.R.N. 29 at 40, (2000) 12 NWLR (Pt. 680) 796 at 213 stated as follows:

I must state that the correct position of the law is that originating summons is used to commence an action where the issue involved is one of the construction of a written law or of any instrument made under a written law, or of any deed, contract or other document or some other question of law or where there is unlikely to be any substantial dispute of fact.

The claim before this court which is for the recovery of a piece or parcel of land. By its very nature, cannot be uncontentious or uncontroversial, originating summons cannot be appropriately used, and with the instant appeal, the trial court ought not to have allowed it to be employed. Again in the case of *Obasanya vs. Babafemi*³² it was stated as follows:

Where the facts are controversial or contentious and cannot be ascertained without evidence being adduced, originating summons should not be appropriately used; and if used it should be discountenanced. The provision of Order 3 Rule 2 of the High Court of Lagos State (Civil Procedure) Rules 1994 (supra) quite clearly provides that the originating summons procedure is only suitable for cases where the sole or principle question is one of construction of document. In the construction of such documents law or instruments no evidence is required or adduced. Facts constituting an allegation of fraud by their very nature are controversial.³³

Further, claiming possession of land by filing originating summons may lead to absurdity when the reliefs are granted by the trial court and upon being challenged by an adverse party may be set-aside by the appellate court if there are copious errors made at the lower court. In the case of *Abeeb Ayetobi vs. Olusola Osiade Taiwo*³⁴, it was held thus:

³¹ (2000) 12 NWLR (Pt. 680) 796.

³² (2000) 23 WRN (Pt. 689) 1 at 17.

³³ See N. B. N. & ANOR VS. ALAKIJA (1978) 2 LRN 78 *see also* DOHERTY VS. DOHERTY (1964) N.M.L.R. 144, UNILAG VS. AIGORO (1991) 3 NWLR (Pt.179) 367; ANATOGU VS. ANATOGU (1997) 9.

³⁴ (CA/L/905/09) 2014 NGCA 4 27th February 2014.

From the above therefore, the sum total that is deducible is that the originating summons procedure should only be used in cases where the facts are not in dispute or there is no likelihood of their being in dispute. No doubt, the claim for an order to recover possession of a piece or parcel of land, there must be likelihood of facts being in dispute. The fact that the original Appellant tendered exhibit A, the first medical report to justify his absence from court after being served with the originating summons is indicative of his intention to contest the facts in the matter. The controversy surrounding the genuineness of exhibit A notwithstanding, the added procurement of exhibit A1 fortifies that intention to contest the facts in the matter. The attention of the trial court was far off from the position of the law, on the mode of the originating summons procedure. The trial court shifted its attention to the outer part of the issue. The Appellant's failure to respond to the originating summons after being duly served. As a result of this failure, the trial court delivered a default judgment against the Appellant and in favour of the Respondent. The Appellant then took steps to have the trial court set aside the said default judgment. The application to set aside the said default judgment was refused by the trial court. The court fortified itself by the condition set forth for the Applicant to have met in the celebrated decision of *N. A. Williams & Ors vs, Hope Rising Coluntary Funds Society (1980) 1-1 S.C. at page 154*. The court refused the application. It is thus very clear, that the trial court had misled itself from the main substance of the issue before it. The main issue is that, originating summons procedure cannot be an appropriate mode of initiating an action where the parties are desirous to contest the facts or there is the likelihood of that contest which is futuristic. The default of appearance of the Appellant to answer to the originating summon will not be a cure to the fact that, the claim of the Respondent for recovery of land cannot be initiated by originating summons. The very foundation which has affected the entire superstructure of the action remains defective. All the issues of default

to file the counter affidavit to the originating summons, the default of appearance, the efficacies of exhibits A, A1, and the conditions set forth to set aside the default judgment have all become superfluous. In essence therefore, initiating an action on a wrong procedure robs the court of its jurisdiction to adjudicate over such matter. The issue of jurisdiction of a court to adjudicate over a matter before it is a threshold issue that goes to the root or foundation of adjudication. This stems from the trite position of the law, that once it is discovered that a court has no jurisdiction to adjudicate over a matter, any decision/proceedings emanating from such a court regarding that matter, no matter how well rendered or conducted, is a nullity. Further to this is the celebrated dictum of Lord Denning M.R. in *Macfoy VS. U.A.C. Ltd (1962) A.C.152 at 160* "one cannot put something on nothing and expect it to stay there, it will surely collapse."³⁵

6. Recommendations and Conclusion

Considering the positions of the law and rules discussed above, it is recommended that all states of the federation should adopt and practice Order 57 of Lagos State High Court (Civil Procedure) Rules, 2019, litigants and counsel should do a detailed finding about landed property to be bought before payments are made. The rules of courts be amended to include specific mode of service of originating summons/subsequent court processes in a suit commenced against persons unknown taking into consideration litigants who may not disclose details of their case to their counsel.

Land case that are contentious should not be commenced vide originating summons to avoid time, money and energy wasting in the court and a fundamental breach of right to fair hearing of the parties. Action commenced vide writ of summons and statement of claim better address all issues in contentious cases.

The paper has examined the legal implications of filing civil cases against unknown persons. It can safely be stated that the general rule is that such suits are incompetent because an unknown or unnamed defendant is not a person known to law. Where either

³⁵ See *Madukolu & Ors vs. Nkemdilim* (1962) 1 All NLR 581; *Leedo Presidential Motel vs. B.O.N. Ltd & Anor* (1998) 10 NWLR (Pt.570) 353 at 390-391 and *Management Enterprises Ltd vs. Otusanya* (1987) 2 NWLR (Pt.55) 179.

of the parties is not a legal person capable of exercising legal rights and obligations under the law, the affected party may raise a preliminary objection challenging the jurisdiction of the court in entertaining the suit which if succeeds, it leads to the action being struck out.

The exception to this rule is the special procedure for the possession of landed property occupied by squatters or without the owner's consent. The claimants and their counsel should avail themselves of the benefits of this procedure in situations where they are unable to discover the identity of the person(s) in illegal possession of the landed property. It is a principle of law that where a specific procedure is provided for the commencement of an action, a party seeking to use that procedure must bring his case within the ambit of those covered by the said procedure otherwise his action will be incompetent³¹.

The paper has revealed how it is inappropriate to file for possession of land property vide originating summons when the subject of litigation is contentious; when different persons may have vested interest on the land.

³¹ Saleh vs. Monguno (2003) 12 NWLR (Pt.801) 221 at 262; UBA Plc. vs. Ekpo (2003) 12 NWLR (Pt.834) 332 at 342; and Ojong vs. Duke (2003) 14 NWLR (Pt.841) 581 at 618.