

**IN THE FEDERAL HIGH COURT
LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS**

SUIT NO FHC/L/CS/1263/2018

BETWEEN

**SAMSUNG HEAVY INDUSTRIES NIGERIA LIMITED
SHI-MCI FZE**

*(An entity registered within a Free Trade Zone
under the Nigeria Export Processing Zones Act)*

PLAINTIFFS/RESPONDENTS

AND

**GLOBAL RESOURCES MANAGEMENT LIMITED
GLOBAL RESOURCES MANAGEMENT FREE ZONE COMPANY**

*(An entity registered within a Free Trade Zone
under the Nigeria Export Processing Zones Act)*

**GLOBAL RESOURCES MANAGEMENT FREE ZONE COMPANY LIMITED
DEFENDANTS/APPLICANTS**

MOTION ON NOTICE

**BROUGHT PURSUANT TO SECTION 72 OF THE SHERIFFS AND CIVIL
PROCESS ACT 1945; ORDER IX RULE 13 OF THE JUDGMENTS
(ENFORCEMENT) RULES; ORDER 36 RULE 5 OF THE FEDERAL HIGH
COURT (CIVIL PROCEDURE) RULES 2009 AND UNDER THE INHERENT
JURISDICTION OF THE COURT**

TAKE NOTICE THAT the above-named Applicants/ Defendants will apply to the court on the 25th day of September 2018 at the hour of 9 o'clock in the forenoon or as soon thereafter as the business of the court permits for the following reliefs:

1. An Order of the court setting aside the purported Forms 48 and 49 issued on the 3rd and 4th September 2018 respectively by the Plaintiffs/Respondents against inter alia Dr Amy Jadesimi.
2. An Order of the court setting aside the order of this court made on the 13th day of September 2018 directing that the service of the said Forms 48 and 49 by substituted means, namely by newspaper advertisements.
3. An Order setting aside the purported application for a writ of sequestration issued on the 21st day of September 2018 by the Plaintiffs/Respondents.
4. Such further or other orders as the court may deem fit to make in the circumstances.

AND TAKE FURTHER NOTICE THAT the grounds upon which the Defendants/Applicants claim to be entitled to the reliefs sought in this application are in summary as follows:

1. The contempt and sequestration proceedings are grossly incompetent, have been irregularly issued and consequently the court lacks jurisdiction to entertain the same.
2. There is no subsisting order made against the Applicants/Defendants within the meaning of Section 72 or 82 of the Sheriffs and Civil Process Act 1945. The status quo order of 14 August 2018 is directed at both parties and not made against the Applicants/Defendants.
3. The ex parte order of this court made on 31 July 2018 was discharged by this court on 14 August 2018 and would in any event have lapsed pursuant to Order 26 Rule 12 of the Federal High Court (Civil Procedure) Rules 2009. Consequently, it ceased to exist for all purposes and cannot be enforced by any means whatsoever.
4. Order IX Rule 13 of the Judgments (Enforcement) Rules requires that the order of the court sought to be enforced by contempt proceedings be *endorsed* with a notice in Form 48 so that both are inseparable. The status quo order of 14 August 2018 was not *endorsed* with a notice in Form 48, whether as required by Order IX Rule 13 of the Judgments (Enforcement) Rules or at all.
5. Order IX Rule 13 of the Judgments (Enforcement) Rules requires that Form 49 be issued "not less than two clear days after *service* of the *endorsed* copy of the order" on the Form 48 on the Applicants/Defendants.
6. In the present case, the purported Form 48 was issued on 3 September 2018 while the purported Form 49 was issued on 4 September 2018, even before the "status quo" order was purportedly served by substituted means on 19 September 2018. Consequently, the Form 49 was irregularly issued and the entire contempt proceedings are a nullity.
7. The order of this court made on 14 August 2018 requiring the maintenance of status quo did not require the Applicants/Defendants to do or refrain from doing any specific act and is consequently incapable of being enforced by contempt or sequestration proceedings.
8. Service of penal proceedings is fundamental and lack of valid service deprives the court of jurisdiction.
9. Order IX Rule 5(1) of the Judgments (Enforcement) Rules provides that service of Forms 48 and 49 must be personal, not substituted.

10. The service of the incompetent and irregular contempt proceedings by newspaper advertisements is invalid. Substituted service cannot be used to serve contempt proceedings.
11. In any event, the Applicants/Respondents did not violate the status quo order. There is a dispute between the parties regarding the meaning of the status quo order of 14 August 2018.
12. On 31 July 2018 this court refused to grant ex parte, a mandatory order requiring the Applicants/Defendants to renew the Second Plaintiff/Respondent's annual operating licence as a free zone enterprise. The Plaintiffs/Respondents now assert that the "status quo" order of 14 August 2018 was in substance and effect a mandatory order to renew the operating licence.
13. On 14 August 2018 this court granted an order for accelerated hearing of the Originating Summons and directed the Plaintiffs/Respondents to file their brief of argument by 28 August 2018. They have not done so. They are seeking to take refuge in a nebulous status quo order instead of getting the court to determine the parties' rights quickly.

Dated this 24th day of September 2018



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