The Fallacy of Mark v. Eke[1]

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Introduction

Recently the Supreme Court of Nigeria made one of the most profound decisions in ***Mark v. Eke***,[2] which has impacted on the manner in which companies and corporations are served processes of court. Although the decision of the Supreme Court in the above case is not limited to service of processes of court on a company or corporation, it would appear that it is that aspect of the judgement that has generated the most controversy.

According to the Supreme Court, by virtue of Section 78 of the Companies and Allied Matters Act, 1990,[3] the process of the court is served on a company in the manner provided by the Rules of Court. Service on a company, it further held:

> *Must be at the registered office of the company and it is bad and ineffective if it is done at a branch office of the company. The procedure is by giving the process to any Director, Trustee, Secretary or other Principal Officers at the* ***registered office*** *of the Company or by leaving the process at its office. In this regard, there is no need to make an order of substituted service on a company.*[4]

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1. (2004) 5 NWLR (pt. 865) 54. See also Kraus Thompson Limited v. University of Calabar (2004) 9 NWLR (pt. 879) 631, where the Supreme Court, it would appear has deepened its position relating to service on companies or corporation; it must be at the registered office.
2. Supra
3. Now CAP C30 Laws of the Federation of Nigeria, 2004
4. Mark v. Eke (Supra) P. 78-79 para G-D

According to the most eminent court:

> *The need for substituted service would arise where personal service cannot be effected and since personal service can only be effected on natural or juristic persons, the procedure for substituted service is not applicable to a company. In the instant case, the affidavit of service sworn to by the Bailiff showing that service was effected on the 2nd appellant by posting cannot be sufficient proof of service.*[5]

To fully appreciate the decision of the Supreme Court, a consideration of the facts becomes imperative.

Facts of the Case

The respondent sued the appellants in the High Court of Abia State, Aba claiming the sum of N1, 992,255.16k being money had and received by the appellants for a consideration that had failed. The respondent then applied to have the suit placed on the undefended list and his application was granted by the trial court.

By an *ex parte* application, the respondent obtained leave of the trial court to serve the writ of summons and all other relevant court processes on the appellants by substituted means. Further to the said order, a bailiff of the High Court, Aba deposed to an affidavit of service stating that he posted the court processes at the address of the appellants at No. 102, School Road, Aba, on November 23rd, 1993. On December 16th, 1993, the respondent moved the court for judgement and his application was granted. The respondent subsequently applied for the execution of the judgement and indeed execution was levied on the appellants' properties on January 7th, 1984.

After the execution, the appellants filed an application at the trial court seeking to set aside the judgement and the execution, claiming that they were never served with the court processes and that they only became aware of the suit when the Writ of Fifa was served on them. The affidavit in support of the motion was sworn to by the 1st appellant to the effect that the appellants were not served with the originating processes, and that there was no posting of the writ of summons at their office at any time. The respondent filed a counter-affidavit to the application and annexed the affidavit of service sworn to by the bailiff.

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5. P. 85 para A-C

After taking arguments from counsel to the parties, the trial court in a considered ruling dismissed the application, holding that a judgement obtained in a suit placed under the undefended list is a judgement on the merits and can only be set aside on appeal.

Being dissatisfied with the judgement of the trial court, the appellants appealed against it to the Court of Appeal, contending that the trial court ought to have called evidence to resolve the conflict arising from the issue of service and that a judgement under the undefended list can be set aside by the trial court if it is shown to be a nullity. The Court of Appeal dismissed the appeal, holding that a judgement obtained under the undefended list procedure cannot be set aside except on appeal; that permitting litigants to challenge affidavits of service by a bailiff or other officers of the court would open up a floodgate of cases and that the trial court had sufficient materials before it to resolve the conflict in relation to service without calling oral evidence.

Being further dissatisfied with the judgement of the Court of Appeal, the appellants appealed against it to the Supreme Court, which while unanimously allowing the appeal, held *inter alia* that:

> *By virtue of section 78 of the Companies and Allied Matters Act, 1990, the process of the court is served on a company in the manner provided by the rules of court. Service on a company* ***must be at the registered office of the company and it is bad and ineffective if it is done at a branch office of the company. The procedure is by giving the process to any Director, Trustee, Secretary or other Principal Officers at the registered office of the company or by leaving the process at its office. In this regard, there is no need to make an order of substituted service on a company.*** *The need for substituted service would arise where personal service cannot be effected and since personal service can only be effected on natural or juristic persons, the procedure for substituted service is not applicable to a company. In the instant case, the affidavit of service sworn to by the bailiff showing that service was effected on the 2nd appellant by posting cannot be sufficient proof of service.*[6]

Some Pertinent Issues Raised by Mark V. Eke

Some pertinent issues raised and seemingly determined by ***Mark v. Eke***,[7] which are germane to this discourse are:

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6. pp. 78-79, paras G-D and 85, paras A-C.
7. (Supra)

i) That a company cannot be served at any other place except at its registered office, service at its branch office therefore is bad and ineffective.[8]
ii) That a company cannot be served by substituted means, as service as provided for by Section 78 of the Companies and Allied Matters Act, 1990[9] and the various rules of court, that is leaving the processes at the registered office of the company with a principal officer of the company, is in itself akin to substituted service.

It is useful for our purposes to contrast this provision with Section 36 of the repealed Companies Act 1968, which provides that: "a document may be served on a company by leaving it at or, sending it by post to the registered office of the company".

A comparison of Section 36 of the 1968 Companies Act and Section 78 of Companies and Allied Matters Act[10] clearly shows that whilst Section 36 of the 1968 Act had a blanket provision for the service of all documents, be it a court process or not, on the registered office or head office of the company; Section 78 of the Companies and Allied Matters Act[11] introduced classes of documents and how each may be served on the company:

a) Court processes- to be served on a company in the manner prescribed by the Rules of Court.
b) Any other document- to be served by leaving it or, sending it by post to the registered office or head office of the company.

Kolawole Mayomi[12] asserts that Section 78 of the Companies and Allied Matters Act is not a replication or restatement of the blanket provision of Section 36 of the 1968 Act, but has created an improved legal order in which different modes of service are prescribed for different types of documents. The rationale for this change in the law was painstakingly explained in the case of ***First Bank of Nigeria Plc v. Njoku***:[13]

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8. Thus effectively putting to rest the decision of the Court of Appeal, Kaduna Division, in Alhaji Shehu Bello v. National Bank of Nigeria Limited (2002) 6 NWLR (pt. 246) 206 @ 215, to the effect that "office of the corporation or company", in this context, in my view, means any office of the corporation or company which need not be restricted to the registered office. To hold otherwise is to introduce words outside the unambiguous provisions of the enacted statutory provision.
9. Now Cap C30 Laws of the Federation of Nigeria, 2004
10. Now Cap C30 Laws of the Federation of Nigeria, 2004
11. Now Cap C30 Laws of the Federation of Nigeria, 2004
12. Mayomi, K., "The Proper Place of Service of Originating Processes: Registered Office or Branch Office? Kraus Thompson Limited v. University of Calabar in Perspective", in Bolodeoku, I.O. (Ed.) The Appellate Review (Lagos: Justice Emmanuel Ayoola Foundation, 2011) p. 20
13. (1995) 3 NWLR (pt. 384) 457

Under the 1968 Act, all services of court process and other documents can only be validly effected by delivering or serving same on the Registered office of the Corporation or Company. The intendment of Section 78 Companies and Allied Matters Act 1990 is to improve and facilitate service of court process on Corporations or Companies which under the 1968 Act were cumbersome and dilatory. The factors which the 1990 Act took into considerations are, the forum convenience for trial, the comparative costs and convenience of service...

Resort to the Rules of Court is itself imbued with problems of its own, as, for example, Order 6 Rule 8 of the Federal High Court (Civil Procedure) Rules 2009 is to the effect that:

Where the suit is against a corporation or a company authorised to sue and be sued in its name or in the name of an officer or trustee, the writ or other document may be served, subject to the enactment establishing that corporation or company or under which the company is registered as the case may be, by giving the writ or document any ***director, secretary or other principal officer, or by leaving it at the office of the corporation or company.***[14]

From the above provision, two distinct modes of service of originating processes can be discerned; first, it could be served on any director, the secretary, or other principal officer of the company, or, secondly it could be left at the office of the corporation. According to Kolawole Mayomi,[15] the perennial question that has arisen in connection with the second mode of service is this: should "office" of the corporation be restricted to the registered/head office or, any office of the corporation? He goes ahead to postulate that the phrase "office of the corporation" has severally come up for judicial interpretation, with the courts, particularly the Court of Appeal, holding the consistent view that the word "office" as used in the rules, is sufficiently wide enough to embrace any office, be it the registered or head office, or the branch office of a corporation.[16]

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14. We are going to use the Federal High Court Rules as a model rule. As it is of uniform application through Nigeria. Moreover, its provision is replicated in the individual High Court Civil Procedure Rules of majority of the States of Nigeria. However, it must be noted that in some other States, the applicable Civil Procedure Rules expressly provides that court processes may be served at the "registered principal or advertised office or place of business of the organisation within the jurisdiction."
15. Mayomi, Op. Cit. p. 21
16. Ibid. p. 21-22

Perhaps the interpretational dilemma occasioned by the use of the word "office" in the Rules would be better understood with the examination of a few cases in that regards.[17]

In ***Alhaji Shehu Bello v. National Bank Limited,***[18] the Plaintiff commenced an action against the Defendant bank in the Kaduna State High Court, and served the originating processes at the Defendant's branch office at Zaria, Kaduna State. The Defendant objected to this service, and prayed that the writ be set aside on the ground that the court process should have been served at its registered office in Lagos. The Trial Judge accepted this argument and the originating process were accordingly struck out. The Plaintiff appealed against this ruling. In its judgment, the Court of Appeal, sitting in Kaduna, held that:

> *The combined effect of section 78 of the 1990 Companies Act and Order 12 Rule 8 of the High Court of Kaduna State (Civil Procedure) Rules is that service of a court process in contradiction to service of any other document can be effected by leaving it at the office of the corporation or company. The wordings of Section 78 of the 1990 Act and Order 12 Rule 8 reproduced above are clear and unambiguous. They must be accorded their literal meaning. "Office of the corporation or company" in this context, in my view, means any office of the corporation or company which need not be restricted to the registered office. To hold otherwise is to introduce words outside the unambiguous provisions of the enacted statutory provision.*[19]

The facts of ***Texaco Nigeria Plc v. Lukoko,***[20] are slightly unusual. In this case, the Respondent issued a writ of summons against the Appellant at the High Court, Warri. No address for service was endorsed on the writ, but it was nonetheless served on the Appellant at its Warri branch office. The appellant's preliminary challenge to this service was dismissed at the trial court, and the matter went on appeal. The major issues raised in the appeal devolved on whether the service of the deficient writ on the Appellant's branch office was proper. In its judgment, the Court of Appeal sitting in Benin, leaned in favour of substantial justice by holding that, a *fortiori,* since no address for service was provided, the writ should have been struck out because the lower court was put into a position wherein it would not

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17. See aslo Palm Breach Insurance Limited v. Bruhns (1997) 9 NWLR (pt. 519) 80. Savannah Bank Limited v. Kyantu (1998) 2 NWLR (pt. 536) 41; UBN v. Orharhuge (2002) 2 NWLR (pt. 645) 495
18. (Supra)
19. See p. 215 thereof.
20. (1997) 6 NWLR (pt. 510) 651 @ 662-665

have been able to determine if it has jurisdiction over the matter. However, the uncontroverted evidence before the Court that the Appellant had been served at its office within jurisdiction saved the case.

The case of ***Cross River Basin Rural Authority v. Sule***[21] illustrates the watchful balance that the courts must maintain in permitting service of processes at a branch office, and the need to firmly shut the door against obvious instances of abuses. In the appeal, the determinative issue was whether the processes in the suit that was served on a project construction site of the appellant company, which had no connection at all with the claim, could be said to have been properly served as to warrant proceedings at the lower court to proceed to judgment. Addressing the appellant's threshold contention that court processes could only be served at the registered office of a corporation, the Court of Appeal, sitting in Calabar, held that:

> *The appellant is a body corporate created and governed by the River Basin Development Authority Act Cap 396 Laws of the Federation of Nigeria 1990. The enabling Cap 396 made no special provision for service of the processes on the appellant, therefore resort has to be had to Order 12 Rule 8 of the High Court Rules... It is to be borne in mind that Order 12 Rule 8 of the High Court Rules does not limit such service to the principal office or principal place of business or the registered office of the corporation. It merely talks of "the office of the corporation or company". A contrary view expressed by learned counsel to the Appellant is misconceived. According to the cannons of interpretation of statutes, words used in a statute are given their ordinary and plain meanings. Words are not to be imported into the statute, which are obviously not there.*[22]

Turning to the specific issue of whether the appellant's project site at Obudu where the writ was served qualifies as an "office" as prescribed by Order 12 Rule 8, the Court of Appeal defined an *"office"* as *"a place for the regular transaction of business or performance of a particular service"*.[23] On the facts of the appeal, the court found that the project site in Obudu was subordinate to an Area Office in Ogoja; that the respondent was resident in Ogoja within the Ogoja judicial division of the High Court; the construction job, subject of the contract

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21. (2001) 1NWLR (pt. 708) 194
22. See p. 208-209 thereof.
23. See Black, Op. Cit. p. 1083

between parties, was in Ogoja; and that the respondent had been in the habit of routing correspondence to the appellant's headquarters in Calabar through Ogoja office. The Court then frankly, and correctly, held that:

> *The pertinent question to ask is why should the respondent go, as it were, on "forum shopping" to Obudu in another Judicial Division to commence his action and serve relevant processes there. No explanation was given for such a course. In my candid view, the inference is irresistible that the aim of the respondent was to steal a march on the appellant by clandestinely instituting the action and obtaining judgment at the back of the appellant to its utter embarrassment. There can be no other rational explanation than that. It is my view that the appellant's construction site at Obudu if it was an office at all was not such an office in which the appellant carried out regular transaction of its business.*[24]

In addition to the above, there seem be a conflict as to who a principal officer of the company is and whether indeed the processes must be left with the principal officer. In ***Ben Thomas Hotels v. Sebi Furniture***,[25] the court in construing Order 5 Rule 8 (2) of the High Court of Kwara State (Civil Procedure) Rules, 1975, held that there is no provision for the writ of summons or other documents to be delivered to a named official of a defendant company. It is merely to be left at the registered office of the company and no more. The court contended that consequently, once the writ of summons is shown to be left in the premises of the registered office, the provisions of Order 5 Rule 8(2) would have been complied with even though the name of the official of the company to whom the document was delivered to was not stated.[26]

The above position, we must say is quite extreme as the Supreme Court has had cause to reason, and rightly too, in ***United Nigeria Press v. Adebanjo***,[27] that the object of all types of service is to ensure that the party might be aware of and be able to resist that which is brought against him. This, we are afraid, may not be attained by just leaving the process at the office of the company or corporation, but not on any known or named officer. No wonder in ***N.A.C.B. Limited v. O.F. Development Company Nigeria Limited***,[28] the court held that

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24. p. 209, para E-G
25. (1989)5 NWLR (pt. 123) 523
26. See p. 528, paragraphs O-F.
27. (1969) 1 All NLR 431 @ 432
28. (2006) NWLR (pt. 985) 323

...service of process on a company required that a document is duly left at the registered office of a company and this is done when it is handed in at that office and its receipt is duly acknowledged by any one ostensibly authorised to receive documents in that office.

In ***MTN Nigeria Communication Limited v. Bolingo Hotels Limited,***[29] the respondent instituted an action against the appellant at the High Court under the Undefended List, on 31 October, 2003, claiming the sum of N11, 961,714.00 being cost of services rendered to the appellant and interest at the rate of 10% on the said amount. On the return date which was 11 November, 2003, the appellant was said to have been served and, being absent, the respondent applied that judgement be entered in its favour. Consequently, the trial court granted the application and entered judgement for the respondent in respect to the reliefs claimed.

Dissatisfied with the decision of the trial court, the appellant appealed to the Court of Appeal contending that there was no service of the originating processes and or hearing notice on the appellant as required by law. The Court of Appeal in determining the appeal considered the provisions of S. 78 of the Companies and Allied Matters Act, 1990[30] and Order 12 Rule 8 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 1989. S. 78 of the Companies and Allied Matters Act, 2004 provides as follows:

> *A court process shall be served on the company in the manner provided by the Rules of Court and any other document may be served on the company by leaving it at or sending it by post to, the registered office or head office of the company.*

Order 12 Rule 8 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 1989, in turn provides that:

> *Where a suit is against a corporation or a company authorised to sue and be sued in its name or in the name of an officer or trustee, the writ or other document may be served subject to the enactment establishing that corporation or company under which it is registered, as the case may be, by giving the writ or document to*

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29. (2004)13 NWLR (pt. 889) 117
30. Now Cap C30 Laws of the Federation of Nigeria, 2004

any director, secretary, or other principal officer, or by leaving it at the office of the corporation or company.[31]

The Court unanimously held allowing the appeal, inter alia, that by virtue of S. 78 of the Companies and Allied Matters Act, 1990, a court process must be served on a company in the manner provided for by the Rules of Court and any other document may be served on the company by leaving it at, or sending it by post to the registered head office of the company.

Furthermore, that by virtue of Order 12 Rule 8 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 1989 when a suit is against a corporation or a company authorised to sue and be sued in its name or in the name of an officer or trustee, the writ or other document may be served subject to the enactment establishing that corporation or company under which it is registered, as the case may be, by giving the writ or document to any director, secretary or other principal officer or by leaving it at the registered office of the corporation or company.[32]

From the above judicial attitude, it can be surmised that service on the company may be effected at the registered office by either giving the processes to a named principal officer of the company or by leaving it at the office of the corporation or company. The phrase *leaving it at the office of the corporation or company* has been construed to mean the document is handed in at the office of the company or corporation and is duly acknowledged by an officer assigned the task of receiving such document,[33] as opposed to a principal officer of the company. Although no such requirement was set down in ***Ben Thomas Hotels v. Sebi***[34] Furniture, it would appear that service on a security guard would not satisfy the condition of leaving it at the office of the corporation or company.[35]

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31. These provisions are in pari-materia with the provisions of Order 12 Rule 8 of the Plateau State High Court (Civil Procedure) Rules, 1987. Note the innovation in the new High Court of the Federal Capital Territory Abuja (Civil Procedure Rules) 2004, Order 11 Rule 8 thereof where service on the company can be effected as above or by also leaving the processes at the corporate office of the company.
32. See also Daniels v. Insight Eng. Co. Ltd. (2002)10 NWLR (pt. 775) 231, where a similar decision was arrived at in construing Order 12 Rule 8 of the Kwara State High Court (Civil Procedure) Rules, 1994.See also Kenfrank Nigeria Limited v. U. B. N. Plc. (2002)15 NWLR (pt. 789) in respect to Order 12 Rule 8 of the Imo State High Court (Civil Procedure) Rules. Note however that under the new Rules, that is, High Court of the Federal Capital Territory Abuja (Civil Procedure Rules) 2004, Order 11 Rule 8 thereof, service on the company can be effected as above or by also leaving the processes at the corporate office of the company.
33. N. A. C. B. Ltd. v. O. F. Dev. Co. Nigeria Ltd. (Supra)
34. Supra
35. MTN Communication Ltd. v. Bolingo Hotel Ltd. (Supra). See also United Nigeria Press v. Adebanjo (Supra)

The second pertinent issue worthy of note in the decision of the Supreme Court in ***Mark v. Eke***[36] is that to the effect that a company must be served at its registered office, presupposing that all principal officers of the company, must as of necessity, work at the registered office. From the practical stand point and the demands of business, companies, especially large commercial multinational subsidiaries such as banks, breweries, telecommunication concerns operate mostly from regional or zonal offices, where we have regional or zonal managers and several other high ranking officers. It is suggested that service on any of them should be considered good service, if it is effected through any of their regional or zonal offices. The insistence of the apex court in ***Mark v. Eke***[37] that service on the company to be effected at the registered office of the company is not proactive, and will have effect of further delaying proceedings, and contributing to the erosion of the public's confidence in the courts ability not only to adjudicate and dispense justice effectively but timeously.

The above observation has become pertinent because of ***Kasari Investment v. L.A. Terminal Limited***[38] where it was asserted that service of a writ on a representative or employee of a company who is not shown to be a principal officer of the company whether inside or outside the company's office is improper service and invalidates the said service. however, it may be argued that since ***Mark v. Eke***[39] itself recognises the primacy of the Rules of Court in respect to matters requiring the service of processes on corporations and companies in accordance with the provisions of S. 78 of the Companies and Allied Matters Act, 2004, it is doubtful whether if any Rules of Court provides for service on the company in a manner otherwise than anticipated in ***Mark v. Eke,***[40] such service will be called in aid to challenge the competence of an action. Thus in ***Daily Times Nigeria Plc v. Amaizu,***[41] the appellant published a news report on the 1st day of December, 1995, concerning the 1st respondent who, aggrieved by the publication, took out a writ against the appellant, and 2nd and 3rd respondents. The 2nd and 3rd respondents were served by substituted means in that the court processes were pasted on the doors of their respective houses. The appellant on its own part was served by E.M.S (speed post) rendered by NIPOST at its headquarters situated at Nos. 3, 5, and 7 Kakawa Street, Lagos. Upon being served, the appellant entered a

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36. Supra
37. Supra
38. (2001) 16 NWLR (pt. 739) 406
39. Supra
40. Supra
41. (1999) 12 NWLR (pt. 630) 242

conditional appearance and later filed an application challenging the competency of the court to hear the suit on the ground that it was not and/or had not been served with the originating processes. Alternatively, they contended that where the originating processes were served, which was denied, the service was defective, null and void and of no effect and should be set aside. The trial judge entertained argument on the application and in a considered ruling found appellant's objections unmeritorious, and consequently dismissed the application. Dissatisfied with the ruling, appellant appealed to the Court of Appeal. The Court of Appeal in resolving the appeal considered the provisions of Order 7 Rule 4 (1) (2) of the High Court of Anambra State (Civil Procedure) Rules, 1988 which states that:

> *Order 7 Rule 4*
> *(1) Service on a limited liability company shall be effected as prescribed in the Companies Act; provided that in default of such provision, service may be effected on the Company by registered post addressed to its principal office in the state or by delivery service to the principal officer wherever he may be found in the state, or by delivery at the company's office in the state to any one apparently in charge of such office. Provided further that where the company has no office in the state, service shall be effected by registered post after due compliance with sub-rule 2 of this rule.*
> *(2) Where the process for service is a writ of summons for service outside the state, it shall have an endorsement thereon a notice in the following effect, that is to say: '**This writ of summons is to be served out of Anambra state and ...state**'. The endorsement shall be signed and dated by the issuing Registrar.*

The court held, *inter alia*, that the mode of service on a limited liability company within Anambra State is distinct from service outside Anambra State. Three modes of service have been provided in Order 7 Rule 4(1) of the High Court of Anambra State (Civil Procedure) Rules in respect of service on a limited liability company with an office within Anambra State. The three modes of service are:

a) Service by registered post addressed to its principal office in the State;
b) Service by delivery to the principal officer wherever he may be found in the state; and
c) Service by delivery at the Company's office in the State to anyone apparently in charge of such office.

The court further held that by virtue of Order 7 Rule 4(2), the only mode of service on a limited liability company where service is to be effected at *its office outside Anambra State is by registered post* after the writ sought to be served had been endorsed in the following manner: *"The Writ of Summons is to be served out of Anambra State and in ... State"*, and the endorsement shall be signed and dated by the issuing registrar.

The provision of Order 7 Rule 4(2) of the Anambra State High Court (Civil Procedure) Rules, 1988, as reiterated by ***Daily Times Nigeria Plc. v. Amaizu***,[42] is commended. More so that in Nigeria most of the companies incorporated and carrying on business as such do not in the real sense have registered offices in the true sense of the word. Sometimes too the registered offices expressed by the companies are nothing more than the living quarters of their promoters or *alter egos*. Insisting on these companies being served, as supposedly intended by ***Mark v. Eke***,[43] would visit hardship on the adverse party.

Additionally, proponents of the non service of companies by substituted means have also failed to provide for situations where the company in question is no longer a going concern or not operational and as a consequence its corporate/registered offices are deserted and locked up. Insisting in such situations that the court processes be served by leaving same at the registered offices and same be acknowledged by named officials of the company, it is submitted, will be onerous and inequitable. The court, we beg to suggest, should adopt a means by which processes can be served on companies other than as stated by the Rules, as for instance, by posting.[44] Consequently, a return to the liberal service regime created by S. 36 of the Defunct Companies Act, 1968 is hereby suggested.

Alternatively, since ***Mark v. Eke***,[45] itself restates the primacy of the Rules of Court in such matters, nothing stops the various authorities from amending their rules to conform with the decision of ***Daily Times Nigeria Plc. v. Amaizu***,[46] more so that the Supreme Court in ***Capital Bancorp Limited v. S. S. L. Limited***,[47] held that each state of Nigeria has its High Court Rules of practice and procedure which must be adhered to and the Constitution having given each state that power to make its Rules, such Rules which may differ from state to state would govern the State High Court's exercise of its jurisdiction.

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42. Supra
43. Supra
44. See the English case of White v. Land and Water (1883) WN 174 where S. 62 of the old English Companies Act, which is in pari materia with S. 78 of the Companies and Allied Matters Act, 1990, to include writ of summons.
45. Supra
46. Supra
47. (2007)3 NWLR (pt. 1020) 148

Furthermore, it may be argued that since S. 78 CAMA gives primacy to the Rules of Court in respect to service on companies and corporations, service not effected in accordance with the Rules could be viewed as a mere irregularity which can be cured by the Rules of Court[48] as it does not affect the substantive jurisdiction of the Court. The Courts exercise two types of jurisdiction:

a) Jurisdiction over subject matter, which is conferred by statute, and
b) Procedural jurisdiction, which is conferred by the Rules of Court.

While jurisdiction conferred by statute cannot be expanded or compromised, procedural jurisdiction could be waived or acquiesced.[49]

Conclusion

This paper has examined the impact of the decision of the Supreme Court in ***Mark v. Eke*** particularly as it relates to service of processes on companies or corporations. It is noticed that since both S. 78 of the Companies and Allied Matters Act, 1990 and the Supreme Court decision restate the primacy of the Rules of Court in questions involving service of process on companies and/or corporations, service of process not in accordance with the rules should be viewed as a procedural irregularity which can be remedied by the Rules of Court or waived by the offended party since it does not affect the substantive jurisdiction of the court.

It is further suggested that following the decision in ***Mark v. Eke*** will visit hardship on litigations involving companies, thus a return to the position under the 1968 Companies Act will reduce the consequent hardship foisted on litigants by dogmatic and mechanical reading and application of the Supreme Court decision.

Finally, and alternatively, the various state authorities in order to ease the hardship that will be created by the decision, are advised to amend their rules to allow for substituted service on companies and/or corporations as is the position in Anambra State, which has been given judicial approval in ***Daily Times Nigeria Plc. v. Amaizu.***

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48. See Order 2, Plateau State High Court (Civil Procedure) Rules, 1987. See however the case of S.G.B.N. v. Adewunmi (Supra), where the Supreme Court was emphatic that there is no such expression as irregular or bad service; such phrases, it was held by the apex Court, amounted to no service at all.
49. Kossen Nigeria Limited & Ors V. Savannah Bank of Nigeria Limited (1995)9 NWLR (pt. 420) 429. Note that the Supreme Court has moved away from its decisions in the case of Addis Ababa & Ors. V. Adeyemi (1976)12 SC 51, which was set aside by a full court in Nofiu Surakatu v. The Housing Development Company Limited (1981)4 SC 51.