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What constitutes proper service of court documents on a lawyer?

A: Introduction

A person who intends to sue another person can go to court and file the case herself. She can also hire a lawyer to handle the case on her behalf. But if the person who is suing (called “the plaintiff”) or defending the

case (called “the defendant”) is a company, then the company cannot handle the case by itself. The case must be handled by a lawyer¹. Where a lawyer represents any person in a court case, the documents that are filed in the case must be served on the lawyer, with a few exceptions². Serving court documents is a very important element in the judicial process. This is so because, where a party in a court case is not served with a court document, any step or decision that will be taken by the judge in the case will be nullified³.

This article discusses what constitutes proper service of a court document (also called a ‘court process’) on a lawyer who is representing a party in a case. In particular, the article discusses the recent Supreme Court decision in the case of *Sunbeltic Company Limited v Tema Development Corporation & 2 Others*⁴. The article concludes that, when court documents are to be served on lawyers who are handling cases for their clients, care must be taken to ensure that, the documents are given to, and received by, the authorized representatives or employees of the law firm.

*Wigatap Limited*⁶, the Supreme Court held that, serving a court document, such as a hearing notice, on a lawyer handling a case is proper service.

The Supreme Court gave a similar decision in *Alliance Marine Services v MV Jamestown Owners & Another*⁷. In that case, a firm of lawyers filed a Notice of Appeal on behalf of their client. But when the Form 6 was served on the law firm, they objected to the service on the grounds that they had no instructions from their client, who was based in Lagos, Nigeria, to receive court documents on its behalf. The Supreme Court ruled that, once the law firm stated its office address in the Notice of Appeal as the appellant’s address for service, the service of the court document on the law firm was proper service.

Court documents can also be served on law clerks of the parties’ lawyers. In the case of *The Trustees, Synagogue Church of all Nations v Agyemang*⁸, the Supreme Court held that, a court document served on the law clerk of a law firm is proper service. Therefore, the lawyers in the firm could not turn around and say that, they were not served.

As was stated in *Sappor v Wigatap Limited*⁹, the persons who can be served with court documents on behalf of a law firm includes a front-desk executive or secretary at the law firm, a law clerk, an administrator, or a lawyer who is a member of the law firm at which the lawyer of record works.

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FOOTNOTES:

1. Order 4 rule 1 (2) of the High Court (Civil Procedure) Rules, 2004 (C.I. 47)
2. Court documents and processes such as writ of summons and statement of claim, entry of judgment, notice of appeal, etc. must be served personally on the party concerned, and not his lawyer
3. For a detailed discussion on the effect of non-service of court documents and processes in a pending case, see: *Republic v High Court, Accra; Ex parte Allgate Co. Ltd (Amalgamated Bank Ltd Interested Party)* [2007-2008] SCGLR 1041, dictum of Date-Bah, JSC
4. Civil Appeal No. J4/04/2020 judgment dated 14th April, 2021, SC (unreported). The “2 Others” were Sethi Brothers and Sethi Realty Company Limited. It is these two companies that filed the appeal before the Supreme Court
5. Such as the District Court (C.I. 59), High Court (C.I. 47), Court of Appeal (C.I. 19) and Supreme Court (C.I. 16) Rules [2007-2008] SCGLR 676
6. Civil Motion No. J8/3/2015 ruling dated 14th November, 2014 (by Benin, JSC sitting as a single judge of the Supreme Court) (unreported)
7. [2010] SCGLR 717
8. Civil Appeal No. J4/04/2020 judgment dated 14th April, 2021, SC (unreported), see: dictum of Kulendi, JSC
9. Footnote 6 above

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B: Service of court documents on a party’s lawyer

The position of the law is that, every document that is filed in a case in which lawyers represent the parties must be served on the lawyers on behalf of their clients. This is to ensure that, the lawyers who are given the responsibility to handle their clients’ cases receive court documents on time. This will in turn allow the lawyers to attend to court documents quickly to meet the timelines set in the rules⁵ of court and thus, avoid unnecessary delays. So, for instance, in the case of *Sappor v*

The question now is this: Is serving a court document on a law firm itself in the law firm's name proper service? The Supreme Court has held that, the answer to the question is, no. A court document cannot be served on the law firm in its own name. This was the decision in *Sunbeltic Company Limited v Tema Development Corporation & 2 Others*. We will now proceed to discuss the case in detail.

C: The case of *Sunbeltic Company Limited v Tema Development Corporation & 2 Others*¹⁰

Facts: The facts of the case are that, Sunbeltic filed an appeal at the Court of Appeal against the High Court's judgment against TDC and two other companies. The parties filed their written submissions and the appeal was fixed for hearing. Hearing notices were issued and served on the parties to attend court on a certain date. But when the case was called on that day, the lawyer for Sunbeltic was absent. There was also no representative from Sunbeltic in court. As a result, the Court of Appeal struck out the appeal for want of prosecution.

Procedure: Later, Sunbeltic's lawyer applied for the case to be re-listed on the grounds that, he was not served with any hearing notice to attend court on the day the appeal was struck out. Sunbeltic argued further that, an official search revealed that, the hearing notice was served "on Oseawuo Chambers personally at M.O. Oseawuo at Tema Com. 8." But there was no individual called "Oseawuo Chambers" or "M.O. Oseawuo." Thus, the failure of the process server (bailiff) to state the name of an individual on the Affidavit of Service made it, at least, controversial and it was unreliable.

The lawyer for the other two companies (Sethi Brothers and Sethi Realty Company Limited) opposed the application and argued that, there was an Affidavit of Service showing that, the hearing notice was served "on Oseawuo Chambers personally at M.O. Oseawuo at Tema Com. 8." Therefore, Sunbeltic's lawyer had been properly served.

The Court of Appeal, after hearing both arguments, granted Sunbeltic's application for re-

listment for the appeal to be fully heard as the evidence that hearing notice had been served on Sunbeltic's lawyer was controversial.

The lawyer for Sethi Brothers and Sethi Realty Company Limited was not happy with the Court of Appeal's decision to re-list the appeal so he filed an appeal against it at the Supreme Court. The lawyers re-argued their respective points before the Supreme Court.

Supreme Court's decision: The Supreme Court held that, the Court of Appeal was right in allowing the appeal to be re-listed. The apex Court reasoned that, legal persons or entities such as law firms and law chambers are not natural persons and they can only act through human beings who qualify to act on their behalf. Therefore, to constitute proper service on a law firm or chambers, the proof or affidavit of service must name the person who was personally served on behalf of the law firm or chambers. Since the Affidavit of Service did not mention the particular individual who received the hearing notice on behalf of Sunbeltic's lawyer's firm, one could not say that the hearing notice was duly served.

D: Conclusion

The moral of the story is that, whenever a bailiff or process server is to serve a court document on a law firm or chambers, he or she should make sure that, the document is served on an individual, a human being. Secondly, the individual served with the court document must have authority to receive the document on behalf of the law firm or chambers. Thirdly, the proof or affidavit of service must mention the name of the person who actually received the document on behalf of the law firm or chambers. If these steps are not followed, it will lead to delays and also increase the cost of litigation.

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FOOTNOTE:

10. Civil Appeal No. J4/04/2020 judgment dated 14th April, 2021, SC (unreported), see: dictum of Kulendi, JSC

For instance, but for the controversial service of the hearing notice, the appeal in the *Sunbeltic* case would have been heard in November, 2018. Due to the re-listing and appeal against it that ended at the Supreme Court in April, 2021, the appeal was delayed by about two and half years. Furthermore, Sunbeltic had to pay costs of GH¢5,000 before its appeal was re-listed before the Court of Appeal. This is not to mention the costs of filing for re-listment, transportation

costs, etc. All these could have been avoided if the hearing notice for the appeal had been properly served and proof of service adequately prepared.

Thus, *Sunbeltic Company Limited v Tema Development Corporation & 2 Others* is a very important case that must be made known to all lawyers and parties and, particularly, bailiffs and process servers who work with the court registries.

The End



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