

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO
ON MONDAY THE 26TH DAY OF OCTOBER, 2026.

SUIT NO. B/300S/2023

BETWEEN:

1. MR. VICTOR ASEMWOTA
2. MR. IMAFIDON JOSEPH ASEMWOTA
3. MRS. VIOLET OMOSIGHO ASEMWOTA
4. MRS. MERCY EHINWENMA ESEZOBOR CLAIMANTS
(Suing for themselves and on behalf of the
beneficiaries of the Estate of Late Michael E. Asemwota)

AND

1. TONIA EBHOHIMEN
2. MR. SHREDRACK (Other names unknown)
3. MR. SHAIBU (Other names unknown)
4. MR. CLEMENT (Other names unknown)
5. AGENT NELSON (Other names unknown) DEFENDANTS
6. – 10. UNKNOWN PERSONS

AND BETWEEN:

MRS. EVELYN ODIGIE..... CLAIMANT/INTERPLEADER/APPLICANT
AND

1. MR. VICTOR ASEMWOTA
2. MR. IMAFIDON JOSEPH ASEMWOTA
3. MRS. VIOLET OMOSIGHO ASEMWOTA
4. MRS. MERCY EHINWENMA ESEZOBOR----DEFENDANTS/JUDGMENT
CREDITORS/RESPONDENTS

(Suing for themselves and on behalf of the beneficiaries of the Estate of Late
Michael E. Asemwota)

**5. THE SHERIFF OF COURT, HIGH COURT OF JUSTICE, BENIN CITY,
EDO STATE..... RESPONDENT**

RULING

This is a Ruling on an Interpleader Summons dated 20th April, 2026 brought by the Claimant/Interpleader/Applicant, Mrs. Evelyn Odigie (hereinafter referred to as "the Applicant"), pursuant to **Section 27 of the Sheriffs and Civil Process Law and Order 6 of the Judgment (Enforcement) Rules, Cap. 151, Laws of Bendel State of Nigeria, as applicable to Edo State.**

By the Interpleader Summons, the Applicant claims as follows:

"The plot of land measuring approximately 50 feet by 200 feet AND the building and property of the Claimant which she acquired from the person granted rights of ownership by Oba of Benin under Benin Customary Law lying and situate in Benin City, Edo State which was taken in execution Order Process issued out of this Honourable Court and also from the 1st – 4th Defendants/Judgment Creditors/Respondents. The sum of N500,000,000.00 (Five Hundred Million Naira) only for damages arising out of the said execution and embarrassment of the Claimant/Interpleader/Applicant and the disruption of her quite enjoyment which has spanned over 22 years."

The particulars of the property claimed are stated in the Summons as follows:

"Mrs. Evelyn Odigie, the Claimant/Interpleader/Applicant herein bought the land where she built her house from one Joseph Osayowabor on 3rd December, 2003 and surveyed same in her own name on 4th July 2006 and her building plan was duly approved by the appropriate authority on 18th September 2008."

The Summons sets out seventeen grounds for the claim. The gist of the grounds is that on the 3rd of November, 2023, this Court delivered Judgment in this Suit No. B/30OS/2023 and on the 2nd of June, 2025 signed an Order of Possession, which was wrongly executed on the 26th of June, 2025 on the Applicant's property; that the Applicant is the bona fide owner of the property, which is separate and distinct from the property of late Michael E. Asemwota, the Claimant in Suit No. B/538/1996; that she does not know the Defendants in Suit No. B/538/1996; that she became aware of the proceedings only on the 26th of June, 2025 when her tenants raised an alarm; that her right to fair hearing was

trampled upon and that the Court lacked jurisdiction to entertain the action of the 1st – 4th Defendants/Judgment Creditors/Respondents; and that she is challenging the said Judgment and Order of Possession as a nullity on the ground that they were obtained behind her back.

THE APPLICANT'S AFFIDAVIT

The Interpleader Summons is supported by an affidavit of forty-five paragraphs deposed to by one Roseline Iredia, who described herself as the elder sister of the Applicant, and who stated that she had the consent and authority of the Applicant, who resides in Spain, to depose to the affidavit on her behalf. Attached to the affidavit are the Judgments and the Order of Possession (Exhibits "A", "A1" and "B"); a Deed of Transfer, a Survey Plan, an approved Building Plan and a payment receipt (Exhibits "C", "D", "E" and "F" respectively); and photographs (Exhibits "G", "G1" and "G2").

From the facts contained in the supporting affidavit, the Applicant's case is that she bought the land on which she built her house from one Joseph Osayowabor on the 3rd of December, 2003; that she surveyed the land in her own name on the 4th of July, 2006; and that her building plan was approved on the 18th of September, 2008. According to her, when she laid the foundation of her building, late Michael E. Asemwota, who was her neighbour, was present and prayed for her; he was a constant visitor to her house until his death about three years ago; and the survey beacons of her land and that of Michael E. Asemwota are separate and distinct. She further deposed that a tree planted by late Michael Asemwota marked the boundary between the two parcels, that a fence demarcating her land has stood since 2006, and that she has been in undisputed possession of the property for over twenty-two years.

She alleged that the Claimants in Suit No. B/30OS/2023 "mischievously deceived the court officers" into embarrassing her tenants in a property which has no nexus with the judgment in Suit No. B/538/1996 delivered by Hon. Justice A. Edodo-Eruaga in 2015; that the affidavit in support of the Originating Summons failed to link her with any of the Defendants in Suit No. B/538/1996; that the appellation "unknown person" does not refer to her; that the affidavit of service was never served on her as she resides overseas; and that the execution carried out vide Exhibit "B" exceeded the land of late Michael Asemwota. She also deposed that, during the pendency of this application, the Judgment Creditors sold their father's land to a new owner, who has since surveyed it,

removed the old boundary and cut down the boundary tree (Exhibits "G1" and "G2").

In paragraph 39 of the affidavit, the Applicant stated her readiness to give such security for the prosecution of the Summons as the Court may direct, and in paragraph 42 she undertook to pay compensation to the Judgment Creditors in the event that the Court was misled into granting the application.

THE JUDGMENT CREDITORS' COUNTER-AFFIDAVIT

In opposition to the Summons, the 1st – 4th Defendants/Judgment Creditors/Respondents (hereinafter referred to as "the Respondents") filed a Counter-Affidavit of sixteen paragraphs dated 5th of May, 2026, deposed to by the 4th Respondent, Mrs. Mercy Ehinwenma Esezobor, with the consent and permission of the other Respondents and beneficiaries of the Estate of late Michael E. Asemwota. Attached to it are the affidavit of service and the photographs of service (Exhibits "EO1", "EO2" and "EO3") and the certificate of execution (Exhibit "EO4").

From the facts disclosed in the Counter-Affidavit, the Respondents' case is that the Applicant is not a stranger to this action as she seeks to portray herself. According to them, the Applicant was one of the occupiers on the land in dispute and was sued as "unknown person No. 6"; upon the order of this Court for service, the originating processes were served by pasting on a conspicuous part of the structure occupied by her; and the Court Bailiff took photographs showing the building with the processes pasted on it (Exhibits "EO1", "EO2" and "EO3"). They averred that, by reason of that service, the Applicant had due notice of the pendency of the action but deliberately refused to enter appearance, seek joinder, file a defence or otherwise challenge the proceedings.

The Respondents denied that the Applicant's property is separate and distinct from the property of late Michael E. Asemwota, and averred that her property is inside their father's land. They described the land recovered as the landed property of the Estate of late Michael E. Asemwota measuring 200 feet by 250 feet, lying and situate at Ward 43B, Oghede Ivbioba/Ugbighoko Area, Benin City, originally granted to late Michael E. Asemwota and covered by Survey Plan No. OSA/308/BD77, the area adjudged in Suit No. B/538/1996 being further shown in the Amended Litigation Survey Plan No. KEP 4230A dated 30th March, 2004. They denied that late Michael E. Asemwota prayed for the

Applicant at the foundation of her building or was a constant visitor to her house, and averred that their father had sued in 1996 the privies of the Applicant, who wrongly let her into possession without his consent.

They further averred that the Applicant is a privy of the Defendants in Suit No. B/538/1996 and a trespasser; that whoever she derived title or possession from could not confer on her a better title than they had; that her alleged transfer in 2003 was made during the pendency of Suit No. B/538/1996 and was subject to its outcome; that her Deed of Transfer and Survey Plan were hastily concocted after the execution; that her building plan and revenue receipt are not conclusive evidence of title; and that she has not exhibited any superimposition, composite survey, surveyor's report, EDOGIS plotting or other technical evidence to show that her parcel lies outside the land covered by the Judgment and the Amended Litigation Survey Plan No. KEP 4230A.

On the competence of the Summons, the Respondents averred that the Applicant is not a neutral stakeholder entitled to invoke the interpleader procedure; that the procedure contemplated by law is for a claim to attached property to be made to the Sheriff or Bailiff, who then applies for the interpleader summons, and that the Applicant has not shown that this was done; and that her proper course was to seek leave to appear and defend, to apply to be joined, or to apply to set aside the judgment on recognised grounds. They averred that the Order of Possession was duly executed on the 20th of June, 2025 (Exhibit "EO4"), and that the Applicant surfaced only after the execution, with the aim of preventing them from enjoying the fruits of a judgment obtained in litigation begun twenty-nine years ago. They urged the Court to strike out or dismiss the Summons with substantial costs.

THE APPLICANT'S FURTHER AFFIDAVIT

Upon receipt of the Counter-Affidavit, the Applicant filed a Further Affidavit/Reply to the Counter-Affidavit of thirteen paragraphs, sworn to by the same Roseline Iredia on the 13th of May, 2026. In it, she denied all the depositions in the Counter-Affidavit as "patently incorrect being absolute falsehood propelled to malice and insatiable greed." She deposed that the Applicant's land, as delineated in her survey plan, is separate and distinct from that of late Michael E. Asemota; that the Applicant's title dates back to 1972 when her predecessor-in-title was granted the land by the Oba of Benin (Deed of Transfer and the Oba's Approval, Exhibits "DOO1" and "DOO2"); that her

predecessor-in-title was in possession before Michael Asemota was granted the adjoining land in 1973; that a composite plan is otiose because the two parcels share a boundary and do not overlap; that it is contrary to common sense to describe a living house as "unknown"; and that the questions of service and of the form of the Interpleader Summons are immaterial to the just determination of the Summons.

THE PROCEEDINGS IN THE EXECUTED SUIT

For a proper appreciation of this application, it is necessary to state briefly the background facts as they appear from the processes before me. On the 23rd of November, 2015, Hon. Justice A. Edodo-Eruaga delivered Judgment in Suit No. B/538/1996 between Michael Asemota as Claimant and Nosa Erhumwuse, John Obakpolor and Lucky Igbinovia as Defendants, in favour of the said Michael Asemota. Thereafter, the children of late Michael Asemota, who are the 1st – 4th Respondents herein, commenced Suit No. B/30OS/2023 by Originating Summons against the 1st – 5th Defendants named therein and five unknown persons, for the recovery of possession of the land pursuant to the Judgment in Suit No. B/538/1996. On the 3rd of November, 2023, this Court granted the reliefs sought and, on the 2nd of June, 2025, an Order of Possession was signed. By the certificate of execution (Exhibit "EO4"), the Order was executed on the 20th of June, 2025. The Applicant, for her part, deposed that she became aware of the execution on the 26th of June, 2025. It is in the course of that execution that the Applicant claims that her house was wrongly taken.

THE APPLICANT'S WRITTEN ADDRESS

In his written address in support of the Interpleader Summons, the learned counsel for the Applicant, ***Chief Dan Ose Okoh SAN***, formulated a sole issue for determination as follows:

"Whether the execution carried out by the Respondents on Claimant/Interpleader/Applicant's land is wrongful having regard to the oral and documentary evidence and same be set aside in respect of her land."

Arguing the sole issue, the learned counsel submitted that the Summons was brought pursuant to ***Section 34 of the Sheriffs and Civil Process Act and Order 44 of the Edo State High Court (Civil Procedure) Rules, 2018***, both of which

he reproduced. He submitted that relief by way of interpleader is at the behest of a person who claims that his property has been wrongly attached in execution of a judgment, and that interpleader proceedings are initiated when the property of a person not named in a writ of possession is attached in respect of a judgment in which he is neither a party nor a privy to the judgment debtor. He relied on the cases of *Dawood Global International Co. Ltd v. Gajere* (2017) LPELR-48368(CA); *Obumseli v. Uwakwe* (2019) 11 NWLR (Pt.1683) 205; *Kala v. Potiskum* (1998) 3 NWLR (Pt.540) 1; *Ramada International and Pharmaceutical Ltd v. Ezeonu* (2016) 14 NWLR (Pt.1533) 339; and *Olatunde v. O.A.U.* (1998) 5 NWLR (Pt.549) 178, for the propositions that the claimant in interpleader proceedings is deemed to be the plaintiff and the judgment creditor the defendant, and that the onus is on the claimant to establish title to the property claimed.

Applying those principles, counsel submitted that the Applicant has discharged the burden of proof on the preponderance of evidence by her depositions in paragraphs 4 – 9 of the supporting affidavit and the title documents exhibited; that her parcel of land is distinct and separate from that of the Respondents' father; and that since she did not derive her title from any of the Defendants in Suit No. B/538/1996, the attachment is "patently wrongful, illegal and unconstitutional" and ought to be set aside.

THE RESPONDENTS' WRITTEN ADDRESS

In opposition to the application, the learned counsel for the Respondents, *Osamudiamen Anthony Osula Esq.*, formulated three issues for determination as follows:

"1. Whether this Honourable Court can entertain the Applicant's Interpleader Summons, same being incompetent for having been commenced by a person asserting beneficial ownership, contrary to Order 44 of the Edo State High Court Rules and Section 34 of the Sheriffs and Civil Process Act/Section 27 of the Sheriffs and Civil Process Law of Bendel State.

2. Whether the Applicant have successful proved that they were unaware of the proceedings of Suit No: B/30OS/2023 when records of court show that Applicant was served in her house by pasting and there is proof of evidence to same.

3. Whether the Applicant, who was duly served as the 6th Defendant but chose to abstain from the trial, can now rely on an unempirical plotted Survey Plan and an after-the-fact Deed of Transfer to defeat the judgment of this Court anchored on the Litigation Survey Plan No. KEP 4230A."

At the outset, counsel submitted that the Applicant had initially filed a motion to set aside the Judgment, which the Respondents opposed, and that the Applicant had now switched to an Interpleader Summons recycling the same facts, which, he contended, was an admission of the incompetence of the earlier process.

ISSUE ONE:

On the first issue, the learned counsel submitted that the Summons is incompetent in limine. He argued that an interpleader is a special statutory procedure for the protection of a stakeholder who does not claim the property but holds it and faces rival claims; that by ***Order 44 Rule 2 of the Rules*** of this Court, an applicant for interpleader relief must satisfy the Judge that he claims no interest in the subject matter other than for charges or costs, does not collude with any of the claimants, and is willing to pay or transfer the subject matter into Court; and that the Applicant, who asserts personal ownership, is "the very antithesis of an interpleader applicant". He relied on the case of ***WAWU v. Abdullahi (2018) LPELR-45382(CA)***.

Counsel further submitted that where the complaint arises from execution, the proviso to ***Order 44 Rule 1 directs that Section 34 of the Sheriffs and Civil Process Act*** shall apply; that by ***Section 34(1)***, which he said is in pari materia with ***Section 27(1) of the Sheriffs and Civil Process Law of Bendel State***, the summons is issued by the registrar "upon the application of the sheriff"; and that by ***Order VI Rules 1 – 4 of the Judgments (Enforcement) Rules***, a claim to attached property is first made to the bailiff or sheriff, notice is given to the judgment creditor, and only if the judgment creditor disputes the claim does the sheriff apply for the issue of an interpleader summons. He contended that under ***Order 44*** the Applicant is the wrong kind of applicant because she claims beneficial title, while under the Sheriffs and Civil Process legislation she is the wrong person to initiate the process.

Counsel submitted that the proper remedies of an occupier affected by possession proceedings lie elsewhere, namely, ***Order 9 Rule 7 of the Rules*** (a

person not named as a defendant in an action for recovery of land may, with leave, appear and defend upon showing that he is in possession) and **Order 54 Rules 5 and 8** (joinder of a person in occupation at any stage, and the power of the Court to set aside or vary any order made in such proceedings). He referred to the cases of *Taiwo v. Adegboro & Ors* (2011) 11 NWLR (Pt.1259) 562 at 577-578 and *Mudasiru & Ors v. Onyearu & Ors* (2013) 7 NWLR (Pt.1354) 419 at 446-447, but submitted that those authorities support joinder and intervention by leave and do not validate a self-initiated interpleader. He urged the Court to strike out the Summons.

ISSUE TWO:

On the second issue, counsel submitted that the Applicant's assertion that she was unaware of the proceedings is false. He contended that the Applicant's property was captured, in the build-up to the suit, as one of the properties occupying the Respondents' father's land; that **Order 13 Rule 9 of the Rules** permits a claimant in a land matter who is unable to identify a defendant to describe him as a "person unknown"; that the Court ordered service by pasting on the occupied structures; and that the bailiff pasted the processes on the Applicant's bungalow, as shown in Exhibit "EO2" (see also Exhibits "EO1" and "EO3"). Relying on **Section 168(1) of the Evidence Act, 2011** and on the decisions in the cases of *Idisi v. Ecodril (Nig.) Ltd & Ors* (2016) LPELR-40438(SC); *Mgbenwelu v. Olumba* (2016) LPELR-42811(SC); *Dimasa Property Ltd v. Yusuf* (2009) LPELR-8144(CA); and *NIC Oil Network Services (Nig.) Ltd & Ors v. Bamod Oil (Nig.) Ltd* (2014) LPELR-24629(CA), he submitted that an affidavit of service by a bailiff is prima facie proof of service, which can only be rebutted by a counter-affidavit containing credible facts, and that the Applicant had not done so.

ISSUE THREE:

On the third issue, counsel submitted that the Applicant's Survey Plan (Exhibit "D") and Deed of Transfer are an afterthought; that the Applicant had not shown that Exhibit "D" is a registered survey plan, nor demonstrated by plotting on the Edo State Geographic Information Service (EDOGIS) that it falls outside the Litigation Survey Plan No. KEP 4230A dated 30th March, 2004 attached to the Judgment in Suit No. B/538/1996; and that, without a composite plan, superimposition or other technical evidence, the Applicant's assertion that her parcel lies outside the land recovered remains speculative. He relied on the

cases of *Mulima & Anor v. Gonimi* (2021) LPELR-56157(CA); *Ogboru v. Uduaghan* (2011) 2 NWLR (Pt.1232) 538 at 580-581; and *Frontline Holdings Ltd & Anor v. Wema Bank Plc & Ors* (2017) LPELR-50020(CA), for the proposition that a court will not relate documents to a party's case on its own, nor go outside the facts placed before it.

Counsel further submitted that, having been served as the 6th Defendant, the Applicant chose not to defend the action and cannot now complain of a denial of fair hearing. He relied on cases of *Magna Maritime Services Ltd & Anor v. Oteju & Anor* (2005) LPELR-1817(SC); *Ezeigwe v. Nwawulu & Ors* (2010) LPELR-1201(SC); *Inakoju & Ors v. Adeleke & Ors* (2007) LPELR-1510(SC); and on *INEC v. Advanced Congress of Democrats (ACD) & Ors* and on the maxim that *equity aids the vigilant*.

He also submitted that the Applicant's depositions in paragraphs 4 – 12 and 25 – 37 of her affidavit invite the Court to sit on appeal over its own decision, contrary to the decisions in *Akovoyon & Ors v. Badagry Local Government Chieftaincy Committee & Ors* (2023) LPELR-60411(CA) and *Auta & Ors v. Azards Farm Ltd* (2016) LPELR-42934(CA); and that if the Applicant's acquisition took place during the pendency of Suit No. B/538/1996, it would be subject to the outcome of that suit.

In conclusion, counsel urged the Court to strike out the Interpleader Summons as incompetent or, in the alternative, to dismiss it for lacking merit, with substantial costs in favour of the Respondents.

THE APPLICANT'S REPLY

In the written address in support of the Further Affidavit, the learned counsel for the Applicant submitted that the Applicant's predecessor-in-title was in possession before Michael Asemota was granted the adjoining land, so that the Applicant's title is earlier in time; that describing an inhabited house as "unknown" is cynical; and that, in the peculiar facts of this case, the question of service is immaterial. He submitted that interpleader applies not only to debts, money, goods or chattels but also to property in respect of which judgment has been executed, relying on the case of *W.A. Cotton Ltd v. Maiwada* (2008) All FWLR (Pt.405) 1784 at 1793.

He further submitted that, since the property was in the possession of the Applicant at the time of the attachment, the burden of proof shifted to the Respondents, relying on the dictum of *Iguh, JSC* in *Kala v. Potiskum (supra)* at 17-18. Finally, relying on the case of *Obumseli v. Uwakwe (supra)* at 220, per *Okoro, JSC*, and on *Bamigboye v. State (2026) 6 NWLR (Pt.2040) 417 at 461-462*, he submitted that a defect in the form of an interpleader summons is immaterial where the application is meritorious, as the days of technicalities are over. He urged the Court to discountenance the Counter-Affidavit and the Respondents' Written Address.

ISSUES FOR DETERMINATION

Upon a careful consideration of all the processes filed in this application, together with the arguments of the learned counsel for the parties, I am of the view that the issues for determination are:

- a) Whether the Interpleader Summons, as constituted, is a competent process by which this Court can adjudicate upon the Applicant's claim; and*
- b) If the answer to issue (a) is in the affirmative, whether the Applicant has established, on the materials before the Court, that the property taken in execution belongs to her and lies outside the land recovered by the Respondents.*

The second and third issues formulated by the learned counsel for the Respondents are subsumed in issue (b). I will now proceed to resolve the issues seriatim.

ISSUE (A):

Whether the Interpleader Summons, as constituted, is a competent process by which this Court can adjudicate upon the Applicant's claim.

Essentially, the issue of jurisdiction is fundamental and pivotal to any proceedings. It has been described as the life blood of any adjudication. It is the fiat, the stamp of authority to adjudicate. See: *Katto vs. C.B.N. (1991) 11-12 S.C. 176*.

A Court can claim to have jurisdiction in respect of a matter if:

- 1. It is properly constituted as regards members and qualifications of the members of the Bench and no member is disqualified for one reason or another;***
- 2. The subject matter of the case is within its jurisdiction and there is no feature of the case which prevents the Court from exercising its jurisdiction; and***
- 3. The case comes up before the Court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of the jurisdiction.***

See: *Madukolu vs. Nkemdilim (1962) 1 All NLR 587*. The challenge of the Respondents in this application touches on the third condition, namely, whether the Applicant's claim has come before the Court by due process of law.

At this juncture, it is apt to examine the nature of interpleader proceedings. There are two distinct kinds of interpleader known to our procedural law. The first is the *stakeholder's interpleader*, by which a person who is under liability for a debt, money, goods or chattels, and who is, or expects to be, sued by two or more persons making adverse claims to them, may call upon the claimants to interplead. That is the relief provided for in *Order 44 Rule 1 of the Edo State High Court (Civil Procedure) Rules, 2018*. The second is the sheriff's interpleader, which arises where a claim is made to property attached in execution of the process of the Court. The *proviso to Order 44 Rule 1*, as reproduced by both counsel, provides that:

"Provided that where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the High Court, the provisions of Section 34 of the Sheriffs and Civil Process Act and the rules made under it shall apply."

I have carefully considered the submission of the learned counsel for the Respondents that the Applicant fails the requirements of *Order 44 Rule 2*, because she claims an interest in the property. With respect, that submission is misconceived. The requirements of *Order 44 Rule 2*, that the applicant claims no interest in the subject matter, does not collude with any of the claimants and is willing to bring the subject matter into Court, are the qualifications of a

stakeholder seeking relief under the main part of **Order 44 Rule 1**. They have no application to a person who comes forward to claim property attached in execution. Such a person is, by the very nature of the proceedings, a claimant to the property, and the law expects her to assert an interest in it.

Her case falls, if at all, within the sheriff's interpleader governed by the Sheriffs and Civil Process legislation, and it is by that yardstick that the competence of the Summons is to be tested.

Section 34 of the Sheriffs and Civil Process Act, which both counsel reproduced, provides as follows:

"(1) If a claim is made to or in respect of any property attached in execution under process of a court, or in respect of the proceeds or value thereof, the registrar may, upon the application of the sheriff, as well before as after any action brought against him, issue a summons calling before the court the party at whose instance the process issued and the party making the claim.

(2) Upon the issue of the summons, any action brought in any court in respect of the claim or of any damage arising out of the execution of the writ shall be stayed.

(3) On the hearing of the summons, the court shall adjudicate upon the claim, and shall also adjudicate between the parties or either of them and the sheriff upon any claim to damages arising or capable of arising out of the execution of the writ by the sheriff, and shall make such order in respect of any such claim and the costs of the proceedings as it thinks fit."

The provisions of **Section 27 of the Sheriffs and Civil Process Law, Cap. 151, Laws of Bendel State of Nigeria, 1976, as applicable in Edo State**, on which the Summons is expressly founded, and which the Respondents' counsel says is in pari materia with **Section 34 of the Act**.

The procedure is further regulated by **Order VI of the Judgments (Enforcement) Rules** made under the **Act, Rules 1 – 4** of which were reproduced by the learned counsel for the Respondents. By those Rules, a claim to attached property is to be made to the bailiff holding the writ or to the sheriff;

the sheriff gives information of the claim to the registrar, who sends notice of the claim to the judgment creditor; if the judgment creditor admits the claim, the sheriff withdraws from possession; and if he does not admit it, the sheriff applies for the issue of the summons under **Section 34**, whereupon the registrar enters interpleader proceedings and issues the interpleader summonses.

From the foregoing provisions, it is clear that the sheriff's interpleader is designed to protect the sheriff, who has seized property in execution and is faced with a claim to it by a person other than the judgment debtor, and to enable the Court to decide, as between the claimant and the judgment creditor, whether the property attached is liable to be taken in execution.

The adjudication contemplated by **Section 34(3)** is "upon the claim", that is, the claim to the property attached, together with any claim to damages arising out of the execution by the sheriff. In the words of the authorities cited by both counsel, the interpleader summons procedure applies where the property of a person not named in the writ is attached and that person comes forward to claim it. See the cases of: ***Kala v. Potiskum (1998) 3 NWLR (Pt.540) 1, cited by both counsel; and Obumseli v. Uwakwe (2019) 11 NWLR (Pt.1683) 205***, as cited by the learned counsel for the Applicant.

Applying these principles, there are, in my view, three features of the present Summons which go to its competence.

The first is the manner of its initiation. There is nothing before me to show that the Applicant made her claim to the bailiff or to the Sheriff, that notice of the claim was sent to the Respondents, or that the Sheriff, upon the Respondents' refusal to admit the claim, applied for the issue of the Summons. The Respondents specifically averred in paragraph 14(b) of their Counter-Affidavit that the Applicant has not shown that this statutory procedure was followed, and the Applicant's only response, in paragraph 11 of her Further Affidavit, is that the question of the form of the Summons is immaterial. The Sheriff is merely named as the 5th Respondent. The Summons was clearly issued at the instance of the Applicant herself.

The learned counsel for the Applicant has urged the Court, on the authority of ***Obumseli v. Uwakwe (supra)***, that a defect in the procedure is immaterial if the application is meritorious. I have read the dictum of ***Okoro, JSC***, as reproduced by counsel. With respect, the passage relied upon concerned the use of affidavit

evidence to determine an interpleader claim to a chattel which the judgment creditor did not oppose. It did not decide that a person whose claim has never been placed before the Sheriff may bypass the procedure laid down by the statute and the Rules.

In the case of *Obumseli v. Uwakwe (2019) LCN/4809(SC)*, *Okoro JSC* expounded that where the claimant has filed an affidavit with exhibits supporting his claim and the judgment creditor does not oppose, the court may deal with the matter summarily and release the property if satisfied. That in such a situation, even a wrong procedure is no ground for dismissing a meritorious application (citing *Holman Bros v Compass Trading (1992) 1 NWLR (Pt 217) 368* and *Ijewere v Eribo (2014) LPELR-23263 (CA)*).

However, that exposition should be used with care. In that case the Sheriff of the Onitsha High Court had in fact issued the interpleader summons. The issue actually decided was whether the hearing could proceed on affidavit evidence. The case is therefore not direct authority that a claimant may originate an interpleader summons himself. It may however support the Court declining to strike out a meritorious, unopposed claim where the claimant came by the wrong procedure. In the instant case, the claim of the applicant is vehemently opposed by the 1st to 4th Respondents.

The second feature is the status of the Applicant in relation to the Judgment. An interpleader procedure is usually the remedy open to a stranger to the judgment. The Respondents' case is that the Applicant was not a stranger, but was sued and served as the 6th Defendant, one of the "unknown persons" in occupation, by the pasting of the processes on her house pursuant to an order of this Court. This is deposed to in paragraphs 6, 7(g), 9(b) and 11 of the Counter-Affidavit and supported by the affidavit of service and the photographs of service (Exhibits "EO1", "EO2" and "EO3"), Exhibit "EO2" being said to show the Applicant's building with the processes pasted on it.

The Applicant denies that the description "unknown person" refers to her and says the affidavit of service was never served on her, but she has not filed any process specifically controverting the bailiff's affidavit of service, beyond asserting in the Further Affidavit that the question of service is immaterial.

It is settled law that an affidavit of service deposed to by a bailiff is prima facie evidence of service. There is a presumption of validity of judicial or official acts. See: ***Section 168(1) of the Evidence Act, 2011.***

Furthermore, from the Court records, there is an order for substituted service of the originating processes and the bailiff's affidavit of service. The Court may take judicial notice of its own records. See ***Section 122(2)(m) of the Evidence Act, 2011.***

In this application, the bailiff's affidavit stood unchallenged as prima facie evidence of service of the processes in question on the applicant. In all cases where service of any writ or document has been effected by a bailiff or other officer of the Court below, an affidavit of service sworn to by the bailiff or other officer shall, on production, without proof of signature, be prima facie evidence of service. See the cases of ***Emeka v. Okoroafor and Ors. (2017) 11 NWLR (pt. 1577) 410 at 469 where the Supreme Court held per the lead judgment prepared by his Lordship, Kekere-Ekun, J.S.C., following the cases of Schroder v. Major (1989) 2 NWLR (pt. 101) 3 at 11, Okoye v. Centre Point Merchant Bank Ltd. (2008) 15 NWLR (pt. 1110) 335, Estate of Late Chief H.I.S. Idisi v. Ecodril (Nig.) Ltd (2016) 12 NWLR (pt. 1527) 355*** to the effect that an affidavit of service deposed to by the bailiff shall be prima facie proof of service and is protected by the presumption of regularity of official acts under ***Section 168(1) of the Evidence Act*** until challenged by affidavit denying service detailing specific facts showing non service and the Court determines whether or not the party complaining was indeed not served before the bailiff's affidavit of service would yield ground. There was no such affidavit challenging the bailiff's affidavit of service therefore the presumption that the applicant was served the originating process by prima facie evidence of the affidavit of service established that she was indeed served the originating process. There is accordingly no substance in this complaint. See the case of ***WEST AFRICAN OILFIELD SERVICES LTD V. GREGORY (2019) LPELR-47292(CA)(PP. 22-23 PARAS. B).***

The third, and in my view the most fundamental, feature is the substance of the relief sought. A careful reading of the grounds of the Summons, particularly grounds 12 to 15, and of paragraphs 14 to 17, 20 to 22 and 30 to 34 of the supporting affidavit, shows that the real complaint of the Applicant is not merely that her property was wrongly taken in execution, but that the Judgment

of this Court delivered on the 3rd of November, 2023 and the Order of Possession of the 2nd of June, 2025 are a nullity, because they were obtained behind her back in breach of her right to fair hearing and because the Court lacked jurisdiction to entertain the action. Indeed, paragraph 16 of the supporting affidavit states that the Applicant "has shown good cause why the Judgment delivered on 3rd November, 2023 in Suit No. B/300S/2023 and the Order of possession of 2nd June 2025 should be set aside". The learned counsel for the Respondents has also stated, without contradiction, that the Applicant had earlier filed a motion to set aside the Judgment on the same facts.

I wish to observe that the adjudication contemplated *by Section 34(3) of the Sheriffs and Civil Process Act* is confined to the claim to the property attached and to damages arising out of the execution. The interpleader proceedings presuppose a valid judgment, and the only question is whether a particular property is liable to be taken in execution of it. The validity of the Judgment itself, the question of service of the originating process, and the jurisdiction of the Court to entertain the action are not matters for determination in interpleader proceedings. They can only be raised in a proper application to set aside the Judgment, or by way of appeal. To decide them here would amount to this Court sitting on appeal over its own decision through the window of an interpleader summons, which it cannot do. See the decisions cited by the learned counsel for the Respondents: *Akovoyon & Ors v. Badagry Local Government Chieftaincy Committee & Ors (2023) LPELR-60411(CA)*; and *Auta & Ors v. Azards Farm Ltd (2016) LPELR-42934(CA)*.

Sequel to the foregoing, I am of the view that the Interpleader Summons is not a competent procedure for the claims of the Applicant. It was not initiated in the manner prescribed by *Section 34(1) of the Sheriffs and Civil Process Act and Order VI of the Judgments (Enforcement) Rules*. More fundamentally, the substance of the Applicant's complaint is a challenge to the validity of the Judgment of this Court and of the Order of Possession on the grounds of want of service, want of fair hearing and want of jurisdiction. Those complaints cannot be ventilated in interpleader proceedings. It is not for the Court, at this stage, to determine the merits of any such application.

In the circumstance, issue (a) is resolved in favour of the Respondents. Having so held, it is unnecessary to consider issue (b).

In the event, the Interpleader Summons is incompetent and it is accordingly struck out with N100,000.00 (One Hundred Thousand Naira) costs in favour of the 1st – 4th Defendants/Judgment Creditors/Respondents.

P.A. AKHIHIERO
JUDGE
26/10/2026

COUNSEL:

Chief Dan Ose Okoh, SAN-----Claimant/Interpleader/Applicant.

Osamudiamen Anthony Osula Esq.-----1st – 4th Defendants/Judgment Creditors/Respondents.

Unrepresented-----5th Respondent (Sheriff).