

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**HOLDEN AT JABI ABUJA**

DATE: 16<sup>TH</sup> DAY OF JULY, 2020  
BEFORE: HON. JUSTICE M. A. NASIR  
COURT NO: 10  
SUIT NO: PET/184/2019

**BETWEEN:**

MR. MATHEW NWADIUGWU ----- PETITIONER/RESPONDENT

**AND**

MRS. PATRICIA NWADIUGWU ----- RESPONDENT/APPLICANT

**RULING**

The Petitioner Mr. Mathew Nwadiugwu filed a Notice of Petition on the 18/03/2019 against the Respondents Mrs. Patricia Nwadiugwu seeking for decree of dissolution of marriage and custody of the two children of the marriage. Upon receipt of the Notice of Petition the Respondent filed an Answer under Protest pursuant to the provisions of Order VII Rule 3(1) of the Matrimonial Causes Act. The Respondent objects to the jurisdiction of this Court on the grounds that:

1. That the Petition is an abuse of Court as a similar petition/suit i.e. Suit No: BD/5142HD/18 is pending at the High Court of Lagos State, Badagry division between the same parties and in respect of the same subject matter.
2. Pleadings in suit No: BD/5142HD/18 has closed and the suit is slated for hearing.
3. Both the Petitioner and the Respondent are not resident in the Federal Capital Territory, Abuja hence the filing of the present suit is forum shopping and an attempt to frustrate the Respondent.

The Respondent therefore prayed the Court for the following reliefs:

1. An order dismissing/striking out this petition for being a gross abuse of process of the Court.
2. An order of the Court declining jurisdiction to entertain the present petition as it is an abuse of

Court process targeted at forum shopping and frustrating the Respondent.

3. Cost of N500,000.00 (Five Hundred Thousand Naira) only being the cost of prosecuting this litigation.

4. Any other or further order(s) as this Court may deem fit to make in the circumstances as to meet the justice of the case.

In support of the application is an affidavit of 9 paragraphs deposed to by one Duduyemi Durotoluwa, litigation secretary in the law firm of Femi Motojesi & Co, the firm representing the Respondent. Attached are two annexures marked Exhibit BD1 and BD2. Also in support is a written address dated 16/10/2019 wherein learned counsel to the Respondent **Femi Motojesi Esq** raised two issues for determination. The issues are:

*“1. Whether the Petitioner is entitled to bring this action when Suit No. BD/5142HD/18 is pending before the High Court of Lagos State sitting at*

*Badagry between the same parties on the same subject matter and same issues.*

*2. Whether it is in the interest of justice to try this suit in a jurisdiction where none of the parties resides.”*

Learned counsel submitted that there is no justification whatsoever that warranted the filing of this present suit in this Court rather than to inconvenience the applicant, hence the resort to forum shopping, as such acts amount to gross abuse of Court process. He added that both the Petitioner, Respondent and the children of the marriage are all resident in Lagos and it will do justice if this case is transferred back to Lagos State. He urged the Court to decline jurisdiction and transfer the case file to Lagos State High Court. He cited several authorities in support of his position.

In opposition, the Petitioner filed a counter affidavit of 5 paragraphs on the 26/06/2020. Attached is the order of Court striking out suit No. BD/5142HD/2018 before the Lagos State High Court, marked as Exhibit A

and a written address which was duly adopted by her counsel H.E. Leonard Esq. Two issues were formulated by counsel for determination as follows:

*“1. Whether this Petition as presently constituted amount to an abuse of Court process.*

*2. Whether this Court has the jurisdiction to entertain this Petition.”*

Learned counsel submitted that abuse of Court process is so serious and fundamental that it goes to the jurisdiction of the Court. The initial suit filed in Lagos state has been struck out and non-existent therefore this Petition is not an abuse of Court process. Counsel further submitted that the Petitioner is resident in Abuja and what is required by law before filing a Petition is the domicile of the Petitioner and not the residence. That the rules of Court do not give the Court power to transfer to another Court of coordinate jurisdiction. He concluded by submitting that the interest of justice as clamored for by the Respondent/applicant should be all encompassing. It

should be the interest of the Respondent and Petitioner as well as the Court. He urged the Court to refuse the application. Counsel made reference to several authorities.

The Respondent/applicant filed a further affidavit and a reply on points of law dated 1/7/2020.

It is trite to point out that the earlier suit No. BD/5142HD/18 filed at the High of Lagos State Badagry division is no longer existing following the order striking the suit out i.e. Exhibit A attached to the counter affidavit filed by the Petitioner. The suit was struck out on the 4/3/2019 while this suit was filed on the 18/3/2019. In the circumstance, and in the absence of any other pending suit, this present petition as constituted is not an abuse of Court process.

The question now is whether the filing of this petition in Abuja amounts to forum shopping. Forum shopping is defined by the learned authors of **Blacks Law Dictionary 8<sup>th</sup> Edition page 680** as “*a suitable forum*” or

*“The Court in which the action is most appropriately brought considering the best interest and circumstances of the parties and witnesses.”*

On the other hand ‘forum non convenience’ means *“unsuitable Court”*. According to the learned authors of the Black’s Law Dictionary (supra) the authors have further written that it is *“The doctrine that an appropriate forum eventhough competent under the law may divest itself of jurisdiction if, for the convenience of the litigants and the witnesses, it appears that the action should proceed in another forum in which the action might also have been properly brought in the first place, – Also termed forum inconvenience”*. See Emeluwa vs. Onuigwe & ors (2011) LPELR – 4029 (CA).

By virtue of Section 2 of the Matrimonial Cause Act, a person may institute a matrimonial cause under the Act in any High Court of the Federation including the FCT, and for that purpose, the High Court of each state of the

federation shall have jurisdiction to hear and determine same.

The Respondent herein is seeking for a transfer of this petition to the High Court of Lagos State. This Court by virtue of Section 9(2) and (3) of the Matrimonial Causes Act, has powers to transfer a matrimonial cause to any High Court of the Federation. The section provides:

*“(2). Where it appears to a Court in which matrimonial causes has been instituted under this Act (including a matrimonial cause in relation to which subsection (1) of this section applies) that it is in the interest of justice that the matrimonial cause be dealt with in another Court having jurisdiction to hear and determine that cause, the Court may transfer the matrimonial cause to the other Court.*



*(3). The Court may exercise its powers under this section at any time and at any stage either on application by any of the parties, or of its own motion.”*

The Respondent/applicant has stated that both parties are resident in Lagos and that the Petitioner lives at No. 25 Peter Inemesi Satellite Town, Lagos. That the children of the marriage are resident in Lagos and are schooling at Rochester Schools, Chevron Road, Satellite Town Lagos. That she is resident in Lagos and she is presently out of business and financially handicapped, and it will be extremely difficult to transport herself and her witnesses to Abuja for trial.

On his part, the Petitioner/respondent averred that he relocated to Abuja and is resident at Plot 73 Yar'Adua Street Federal Housing Authority, Nyanya. That he was advised by his counsel to institute this Petition in Abuja as filing same in Lagos will create additional cost on him. Being that he has not fully settled into his Abuja

residence, his family house address No. 25, Peter Imemesi, Satellite Town, Lagos State was used as his residential address in filing this petition.

Although the transfer of a matrimonial cause is discretionary, this discretion must be exercised judicially and judiciously. Acting judicially means:

- a) Proceeding from or showing sound judgment,
- b) Having or exercising sound judgment.

It also imports the consideration of the interest of both sides and weighing them in order to arrive at a just and fair decision. See Agbor vs.The Polytechnic Calabar (2010) All FWLR (part 533) page 1998 at 2013.

In determining an application of this nature bearing in mind that there are children involved, the interest of the children should be put into consideration. The children herein as noted earlier are schooling in Lagos. are minors and in boarding school. The residential address of the Petitioner/respondent on the face of the Notice of Petition is No. 25, Peter Imemesi, Satellite

Town, Lagos. Though the Petitioner/respondent stated that he is resident in Abuja, nothing was attached to show the Court that indeed the Petitioner has relocated to Abuja or is resident in Abuja. The Respondent/applicant has averred that the Petitioner is a business man and carries on his business in Lagos. Is it convenient to have the parties leave Lagos to come to Abuja to settle their differences before this Court?

Though this Court is competent and has the jurisdiction to handle this petition, it turned out that the parties in the suit from the records are both residing in Lagos, so also the children of the marriage. Considering the financial state of the Respondent/applicant and the difficulty in transporting herself and her witness to Abuja for trial and most especially in the overall interest of the children, it is my considered view that this petition should proceed in Lagos State. This Court has turned out to be the 'forum non convenience' which means 'an unsuitable Court' for trial of this petition.

This Court is at one with the submission of learned counsel to the applicant that there is no justification whatsoever warranting the filing of this petition rather than to inconvenience the applicant and amounted to forum shopping.

In the circumstance, I hold that the forum convenient for trial of this petition shall be the Lagos State High Court. Invoking the provisions under Section 9 of the Matrimonial Causes Act, the case file is hereby respectfully forwarded to the Honourable Chief Judge of the FCT High Court for transfer to the Lagos State High Court for adjudication. The Registrar of this Court shall act appropriately in the instance.

Application is thus granted as prayed and each party shall bear his/her costs.

**Signed**  
**Honourable Judge**

**Appearances:**

H.E. Leonard Esq – for the Petitioner/respondent

Femi Motojesi Esq – for the Respondent/applicant