

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 10TH DAY OF NOVEMBER, 2020
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 9
SUIT NO: PET/273/2017

BETWEEN:

FIDELIS OKECHUKWU OGBOUZOBE ----- PETITIONER/RESPONDENT

AND

1. BIBIAN OGOCHUKWU OGBUZOBE ----- RESPONDENT/APPLICANT

2. FIDELIS UGUOBOR ----- CO RESPONDENT

RULING

Before this Court is a motion on notice dated 10/3/2020 brought pursuant to the provisions of Order 25 Rule 6 of the High Court of FCT (Civil Procedure) Rules, 2018 and under the inherent jurisdiction of this Court. The 1st Respondent/applicant is praying this Court to strike out the Petitioners suit in its entirety. The grounds of the application as set out on the face of the motion paper are as follows:

1. That the amended notice of Petition does not contain the mandatory endorsement as stipulated by the rules of Court under Order 25 Rule 6 of the High Court civil Procedure Rules, 2018.
2. That the amended petition filed before this Court on the 20/1/2017 and another filed on the 27/4/2018 amounts to abuse of Court process.

The application is supported by 16 paragraphs affidavit and two annexures attached as Exhibit A and B. Also in support is a written address duly adopted by Oni Alexander Esq of counsel to the 1st Respondent/applicant. He formulated a sole issue for determination. The issue is:

“Whether the applicant has made out a case for the grant of the reliefs sought in the application.”

Counsel submitted that the word ‘shall’ used in Order 25 Rule 6 of the rules of Court imports mandatoriness and compulsion. He added that the tripods upon which the

jurisdiction of a Court of law rests is that the suit must be brought before the Court by due process of law and upon the fulfillment of any condition precedent to the exercise of jurisdiction. Reference was made to Agip (Nig) Ltd vs. Agip Petroli International (2010) 5 NWLR (part 1187) 348 at 419, Inakoju vs. Adeleke (2007) 4 NWLR (part 1025) 423, Madukolu vs. Nkemdilim (1962) 2 SCNLR 341. He urged the Court to grant the application.

The Petitioner/respondent did not file any process in opposition to the application, and was not in Court when the application was moved despite being aware of the date. **Moses B. Bature Esq** of counsel to the 2nd Respondent did not object to the application being granted.

It is trite that Rules of Court are part of the machinery of justice made by the Courts to regulate their proceedings and they are designed to assist in obtaining justice with ease, certainty and dispatch. They partake of the nature of subsidiary legislation by virtue of Section 18 (1) of the

Interpretation Act and consequently have the force of law and, accordingly, must be obeyed by litigants and are binding on all the parties before the Court. See Rukuje vs. Deba (2018) LPELR – 44422 (CA), Aromolaran Vs Oladele (1990) 7 NWLR (part 162) 359, Duke Vs Akpabuyo Local Government (2005) 19 NWLR (part 959) 130, Owners of the MV "Arabella" Vs Nigeria Agricultural Insurance Corp (2008) 11 NWLR (part 1097) 182, Agip (Nig) Ltd Vs Agip Petroli International & Ors (2010) 5 NWLR (part 1187) 348.

Having said that, it is pertinent to state that this is a Petition for dissolution of marriage filed under the Matrimonial Causes Act. The position of the law is clear that proceedings under the Matrimonial Causes Act are sui generis in that the Matrimonial Causes Act has its own set of rules, the Matrimonial Causes Rules. See Ezeabagbulem vs. Ezeabagbulem (2019) LPELR – 47558 (CA).

In Adeparusi vs. Adeparusi (2014) LPELR – 41111 (CA) the Court held that:–

"Divorce Proceedings are considered sui generis because they are not governed by the general rules of practice in pleadings but by the Matrimonial Causes Act and Rules specifically enacted to regulate them."

The salient aspect to be noticed in the Matrimonial Causes Rules is under Order XXI Rule 2 on the liberal attitude to non compliance with the Rules which non compliance is not to render the proceedings void. Rules 3(a) and (b) are to the same effect and provide as follows:

(a) A Court may at any time, upon such terms as the Court thinks fit, relieve a party from the consequences of non-compliance with these Rules, with a rule of practice and procedure of the Court applicable to the proceedings or with an order made by the Court;

(b) A Court may, upon such terms as the Court thinks fit, dispense with the need for compliance by a party with any provision of these Rules."

Now the provisions of Order 25 Rule 6 of the Rules of this Court 2018 states thus:

"Whenever any endorsement or pleading is amended, it shall be marked in the following manner:

*"Amended..... day of
pursuant to Order of (name of Judge) dated
the..... day of..... "*

Order 5 Rule 1 (1 and 2) of the said Rules further states that in the event of non compliance with the Rules, the failure to comply shall not nullify the proceedings and the Court is at liberty to give directions as it thinks fit.

The contention of the applicant is that the Amended Notice of Petition is an abuse of Court process for non compliance. The defect was that there was no endorsement that the pleading was amended as required by the Rules of Court

The pertinent question to ask is whether the non compliance with the Rules of Court will occasion any miscarriage of justice to the applicants. The applicant herein has not shown that the failure to endorse on the petition that it was Amended by order of Court caused him any disadvantage or prejudiced his right to Answer to the Petition. In INEC vs. Mbawike (2017) LPELR – 41623 (CA) the Court held:

"We have stated, several times, that the Rules of Court are to be obeyed, but that the Court cannot be enslaved by its Rules to act against the dictates of reason, justice and fair play, as the interest of substantial justice must be enthroned above the

rules of technicalities, which work injustice and oppression.”

Similarly in ACN vs. Lamido (2011) LPELR – 9174 (CA), where the Court held that:

“Where a strict adherence to the rules of Court or practice directions will constitute an albatross along the terrain of dispensing substantial justice, the Courts are mandated, by judicial authorities, to tilt towards the path of justice. The provisions of rules of Courts, afortiori practice directions, cannot be employed by the Courts to choke, annihilate, asphyxiate and strangle justice, which is man's greatest interest in the passing earth.”

See also UTC Nig. Ltd. vs. Pamotei (1989) 2 NWLR (part 103) 244, Duke Vs Akpabuyo LG (2005) 9 NWLR (part 959) 130; Dingyadi vs INEC (No.1) (2010) 18 NWLR (part 1224) 1.

In my considered view to insist on compliance with the provision of Order 25 Rule 6 of the Rules of Court in a matrimonial proceeding which is governed by the Matrimonial Causes Rules is to insist on a mere technicality which should not be allowed to defeat the cause of justice. See Amaechi vs. INEC (No. 3) (2007) 18 NWLR (part 1065). The overall aim/objective of the provision of Order XXI Rules 2 and 3 (cited supra) dealing with non compliance with the Rules is to ensure that substantial and practical justice is done devoid of technicalities. See Tabansi vs. Tabansi (2008) LPELR – 4365 (CA).

Accordingly, this Court is of the considered view that non compliance with provisions of Order 25 Rule 6 which do not govern proceedings under the Matrimonial Causes Act having not occasioned any miscarriage of justice to the Respondent is not an abuse of process of this Court. I hold that the application has no merit and it is hereby dismissed.

Signed
Honourable Judge

Appearances:

Ashi Michale Ashi Esq – for the Petitioner

Oni Alexander Esq – for the 1st Respondent

Moses B. Bature Esq – for the 2nd Respondent