

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**

HOLDEN AT: COURT 9 JABI – ABUJA  
DATE: 17<sup>TH</sup> OF NOVEMBER, 2020  
BEFORE: HON. JUSTICE M.A. NASIR  
SUIT NO: PET/186/2020

**BETWEEN**

MR. IGWECHUKWU KINGSLEY ----- PETITIONER/RESPONDENT

**AND**

EDITH IGWECHUKWU (NEE ANI) ----- RESPONDENT/APPLICANT

**RULING**

Before this Court is a motion on notice dated 23/03/2020 and brought pursuant to Section 30(1) of the Matrimonial Causes Act, and Order III Rule 4 of the Matrimonial Causes Rules. The application is praying for an order dismissing the petition for want of jurisdiction. The application is premised on two grounds i.e. that the Petition was filed without leave of Court having been filed less than two years after the marriage, and the petition did not disclose any cause of action. Grounds of the application are thus:

1. The Petition for a Decree of Judicial Separation of marriage was instituted less than two years after the parties got married and the Petitioner/respondent failed to obtain the leave of this Court before instituting the petition.
2. The Petition for a decree of judicial separation of marriage filed by the Petitioner/respondent did not disclose any cause of action as the facts pleaded in the said petition did not disclose the existence of any of the set of facts provided for in Section 15(2) of the Matrimonial Causes Act.

The application is supported by 6 paragraphs affidavit and a written address duly adopted by **Amaka Eke Esq.** Two issues were raised therein for determination as follows:

*“1. Whether the Petition filed by the Petitioner/Respondent is competent for failure to comply with the condition precedent required before the institution of the Petition.*

*2. Whether the Petition filed by the Petitioner/respondent is competent for failure to disclose any cause of action.”*

The Petitioner/respondent filed a 7 paragraphs counter affidavit dated 14/9/2020 supported by a written address duly adopted by I.N. Nwosu Esq. A single issue was raised for determination which is:

*“Whether the application of the Respondent/applicant is meritorious.”*

The issue in controversy by this application is straight forward. Learned counsel to the applicant has submitted that the Matrimonial Causes Act requires a party to seek the leave of Court before filing a petition where the marriage is less than two years. He therefore urged the Court to dismiss the petition for being grossly incompetent and robs the Court of jurisdiction.

On his part, learned counsel to the Petitioner/respondent argued that the applicant has equally filed a Cross Petition in this suit and parties have joined

issues. That this amounted to an admission of fact. That the provisions of Section 30(1) of the Matrimonial Causes Act do not apply in this case.

It is apposite to reproduce the provision of Section 30(1) of the Matrimonial Causes Act. It provides:

*“Subject to this Section, Proceedings for a decree of dissolution of marriage shall not be instituted within two years after the date of the marriage except by leave of Court.”*

The above provision is explicit and no ambiguity abide therein. Where leave of

The crux of the averment of the Petitioner/respondent is that Section 30 of the Matrimonial Causes Act does not apply in a suit for judicial separation. To this line of thought it is trite to refer to Section 40 of the Matrimonial Causes Act. It provides:

*“The provisions of Sections 18 to 24 and Sections 26 to 32 of this Act shall apply to and in relation to a decree of judicial separation and proceedings for such a decree and, for the purposes of those provisions as so applying, a reference in those provisions to a decree of dissolution of marriage shall be read as a reference to a decree of judicial separation.”*

By virtue of the above provision, I dare say that the provisions of Section 30 of the Matrimonial Causes Act is applicable in this case. Section 40 has made it mandatory to apply Section 30 along with other sections stated therein in an action for judicial separation having used the word shall. Section 30 also used the word ‘shall’ making it a mandatory provision to seek the leave of Court before instituting an action where a marriage is less than two years.

It is trite that where a statute uses the word ‘shall’ in a provision it connotes a mandatory compliance and there is no discretion or loose interpretation to accommodate any

party. The objection of any interpretation is to discover the intention of the law maker which can be deduced from the language used. The duty of the Court is to interpret and to give adequate and as close as possible accurate and ordinary meaning to the words used. Once the words used are straight forward and unambiguous, the Court will give a literal interpretation to them. In other words, the meaning of legislation must be collected from the plain and unambiguous expressions used in the provision rather than from any notions which may be entertained as to what is just and expedient. In the interpretation of statutes which encroach on the rights of the subject, whether tangible or intangible, whether as regards persons or property, they are construed strictly in favour of the subject particularly any statute which imposes a disability ought to be interpreted strictly. The Courts are mindful of their position as Courts of law and will not in the course of interpretation venture into re-writing the law as a result of which the intention of the law maker is thrown overboard or lost. See National Inland

Waterways Authority vs. Governing Council of the Industrial Training Fund & anor (2007) LPELR - 8885 (CA), Awuse vs. Odili (2003) 14 NWLR (part 841) 446.

It is the law that any statute that seeks to ouster the jurisdiction of the Court or restrict the right of access to the Court must be strictly construed. See Bello vs. Diocesan Synod of Lagos & others (1973) 1 All NLR (part 1) at 247.

Section 30 of the Matrimonial Causes Act is a condition precedent where the marriage is less than two years. Being a condition precedent to the exercise of jurisdiction, any failure to comply with such condition deprives the Court of its jurisdiction. Where any proceedings are begun other than as provided by the rules such proceedings are incompetent. See A.G. Anambra State vs. A.G. Federation (1993) 6 NWLR (part 302) page 692, Saleh vs. Monguno (2003) 1 NWLR (part 801) page 221.

The question here is, has there been any breach of Section 30(1) in this instance? Upon perusal of the Notice of

Petition, it is obvious that parties got married on the 23/3/2019 as per the marriage certificate attached therein. This petition was filed on the 17/2/2020. This clearly is a period of less than one year after the date of marriage. There is a clear violation of the provision of Section 30(1) of the Matrimonial Causes Act in this instance.

Eventhough the Petition is not competent before the Court, it is noted that the Respondent has filed a Cross Petition. By the provisions of Section 30(2) of the Matrimonial Causes Act, it states:

*“Nothing in this section shall apply to the institution of proceedings based on any of the matters specified in Section 15(2)(a or (b) or 16(1) of this Act, or to the institution of proceedings for a decree of dissolution of marriage by way of cross proceedings.”*

Therefore in this situation, though the Cross Petition for dissolution of the marriage was filed within two years of date of marriage, leave of Court shall not be necessary. The



Cross Petition is therefore competent while the Petition for judicial separation is struck out for being incompetent.

Signed  
Honourable Judge

**Appearances:**

I.N. Nwosu Esq – for the Petitioner

Amaka Eke Esq – for the Respondent.