

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 10**

**SUIT NO: FCT/HC/PET/069/2019**

**BETWEEN:**

**NNEAMAKA ONYEACHONAM.....PETITIONER/RESPONDENT**

**VS**

**IKECHUKWU ONYEACHONAM.....RESPONDENT/APPLICANT**

**RULING**

By a Notice of Preliminary Objection dated 9/1/2020, but filed on 10/1/2020, brought pursuant to Order V Rule 10(1) of the Matrimonial Causes Rules, the Respondent/Applicant challenges the competence of the Petition and urges court to dismiss or strike out the Petition.

The grounds for the objection of the Respondent/Applicant are;

1. The verifying affidavit in support of the Petition was not contained in the same continuous document in the body of the Petition and thereof contrary to the mandatory requirement of Order V Rule 10(1) of the Matrimonial Causes Rules.

2. The verifying affidavit was not sworn to before the Petition was filed contrary to Order V Rule 10(1) of the Matrimonial Causes Rules.
3. The non-compliance with Order V Rule 10(1) of the Matrimonial Causes Rules 2004 robs the court of jurisdiction to entertain the Petition thus rendering the Petition liable to be struck out or dismissed.

The Respondent/Applicant also filed a Written Address in compliance with the Rules of Court and adopts same as oral argument in support of the Preliminary Objection. Also filed a Reply on Points of law on 20/1/2020.

Responding, Petitioner/Respondent through his Counsel filed a Reply to the Respondent's Notice of Preliminary Objection on 14/1/2020, urging the court to dismiss the Preliminary Objection with substantial cost.

In their Written Address, Respondent/Applicant's Counsel formulated a sole issue for determination that is;

“Whether this Petition is not liable to be struck out or dismissed for incompetence arising from the breach or non-compliance with the mandatory Provisions of Order V Rule 10(1) of the Matrimonial Causes Rules 2004”

Submits that the matter in which the Petition was filed is contrary to the mandatory Provision of Order V Rule 10(1) of the Matrimonial Causes Rules and failure to abide by the Rules therein is fatal to the Petition. Refer to Mrs.

Justina Cheneze Unegbe Vs Emmanuel Chike Unegbu (2004) 11 NWLR (PT. 884) 332 @ 357 Para D – F.

Submits further that the validity of the originating process in any proceedings before a court is fundamental and necessary requirement for the competence of the Suit. And since the conditions precedent to the exercise of the court's jurisdiction have not been met, the court be incompetent to hear or determine the Petition. Refer to Braithwaite Vs Skye Bank Plc (2013) 5 NWLR (PT. 1346) 15 @ Para C and Bodunde Vs SCI & C.S LTD (2013) 12 NWLR (PT. 1367) 197 @ 217 – 218.

The Petitioner/Respondent's Counsel did not formulate any issue for determination but submits that the Petition is not defective, Petitioner having substantially complied with Order V Rule 10(1) of the Matrimonial Causes Rules. That even if she did not substantially comply with the said Rules this court by Order XXI (2) and (3) of the Rules is empowered to relieve the Petitioner/Respondent of the burden of non-compliance. Submits further that the decision in Unegbu Vs Unegbu (Supra) heavily relied upon by the Applicant no longer represented the current position of the law as same has been over ruled by a later decision of the same court, where the said decision was reviewed and jettisoned as promoting technicality over substantial justice. Refer to Umuakunana Vs Umuakaana (no citation given), Odusote Vs Odusote (2011) LPELR 9056, (2012) 3 NWLR (PT. 1288) 478, Igwe Vs Igwe Unreported Appeal No CA/E/162/90 delivered on 16/12/1991 and Section 117 of the Evidence Act. Urge court to dismiss the Preliminary Objection with substantial cost.

In her Reply on Point of law submits that the purported Petition ended immediately after it was settled and signed by the Petitioner's Counsel and thereafter, the address for service was imputed which signifies the end of the Petition. Thereafter she started a new/fresh document which is separate from the Petition and worse still the affidavit was not sworn to before the filing of the Petition on the basis of the abnormalities submits further that the Petitioner's verifying affidavit cannot be said to have complied with Order V Rule 10(1) of the Matrimonial Causes Rules.

Submits that the claim of Petitioner/Respondent's Counsel that Matrimonial Causes Rules of 2004 is a rule of procedure and where there is inconsistency with any Act of Parliament the rule becomes void to the extent of its inconsistency is wrong in view of the decision in the case of *Tabansi Vs Tabansi* (2008)18 NWLR (PT. 1651) 303, *M.V Pan Aromo Bay Vs Olam (Nig) Ltd* (2004) 5 NWLR (PT. 865) 1013 and *Kraus Thompson Ltd Vs NIPS* 2004 17 NWLR (PT. 901) 44 @ 59 G – H.

Submits that the reliance by the Petitioner/Respondent on the case of *Umuakama Vs Umuakama* without any reference cannot avail him and the case of *Oodusote Vs Oodusote Supra* cannot be ground to hold that the decision in the case of *Unegbu Vs Unegbu (Supra)* is no longer applicable.

Submits finally that so far as the Order V Rule 10 of the Rules uses the word shall, it becomes mandatory and Order XX(2) and (3) is inapplicable. Urge court to strike out or dismiss the purported Petition.

Having carefully considered the submission of both Counsel and the judicial authorities cited, I find that the issue which calls for determination is;

“Whether the Respondent/Objector has made out a ground so as to be entitled to the relief sought”

The ground for the Applicant’s Objection to the Petition is that the Petitioner failed to comply to the mandatory Provision of Order V Rule 10(1) of the Matrimonial Causes Rules, which reads;

- (1) A Petitioner shall by an affidavit written on his Petition and sworn to before his Petition filed.
- (2) Verify the facts stated in his Petition of which he has personal knowledge.
- (3) Depose as to his belief in the truth of every other facts stated in his Petition.

On the other hand Petitioner/Respondent contends that his Petition is in substantial compliance with the Provisions of the said Matrimonial Causes Rules and that Order XXI Rule (2) and (3) empowers the court to even overlook non-compliance.

I have considered all the submissions of Counsel for and against their respective positions as summed up in the course of this Ruling. It is my view that the court must take a look at its record to determine whether or not the Petition is in breach of the Order V Rules 10 of the Matrimonial Causes Rules and this the court is empowered to do, see the case of Agbare Vs Mimrah (2008) All FWLR (PT. 409) 559.

A look at the Petition reveals that the verifying affidavit bears the heading of this court and contains depositions that it verifies the facts stated in the Petition and signed by the deponent. This, in my view, amounts to a substantial compliance with the Provision of Order V Rules 10 of the Matrimonial Cause Rule. In any case the Provisions of Order XXI Rule 2 and 3 prescribes that non-compliance with the Matrimonial Causes Rules cannot render proceedings void, striking out or dismissing the Petition on the ground relied on by the Respondent/Objector in my view would amount to allowing issues of mere technicality to defeat the cause of justice. On the purport of Rules and Procedure of court and impropriety of their use as log in wheels of justice the court stated in the case of Akirinen Vs PDP (2012) All FWLR (PT. 617) 689 @ 729, Paras G – H.

“The Rules and Procedure of court are meant to serve the interest of justice as handmaids of the law, to help the parties get the justice enshrined in the substantive law. The Rules cannot therefore be made to operate as a log in the wheels of justice, to be used to deny a litigant the opportunity to be heard on the merit over the Petition he has duly brought before the court”

Having found that the Petition is in substantial compliance with the Provisions of Order V Rules 10 complained of as ground to strike out or dismiss the Petition as canvassed by the Respondent/Objector, and also having the view that this court would not allow technicality to defeat the cause of justice, this court is unable to allow this application, it is hereby refused and accordingly dismissed.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

3/12/2020

**APPEARANCE:**

IKECHUKWU EZECHUKWU (SAN) FOR THE PETITIONER WITH IKECHUKWU  
EZECHUKWU (JNR)

TOCHUKWU ONWUGBUFOR (SAN) WITH ONYE FRANCIS ESQ FOR THE  
RESPONDENT