IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISON
HOLDEN AT HIGH COURT MAITAMA – ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE SAMIRAH UMAR BATURE

COURT CLERKS:	**JAMILA OMEKE & ORS**
COURT NUMBER:	**HIGH COURT NO. 25**
CASE NUMBER:	**SUIT NO. FCT/HC/PET/308/20**
DATE:	**12TH OCTOBER, 2021**

BETWEEN:

PATRICIA PATRICK.....PETITIONER

AND

AGBE PATRICK AGBE.....RESPONDENT

APPEARANCES:

U. A. Ojiabo Esq for the Petitioner/Respondent

Max Ogar Esq for the Respondent/Applicant

RULING

This ruling is in respect of two motions filed by the Respondent/Applicant herein.

The first is Motion No: M/12840/2020 dated 8th December, 2020 but filed on the 9th day of December 2020.

While the 2nd motion is Motion No: M/3583/2021 dated 16th day of June, 2021 but filed on the 18th day of June, 2021.

With regards to Motion No. M/12840/2020. The Respondent/Applicant prayed the Court for the following: -

> ***"(1). An Order setting aside forthwith, the Order made on 1st December 2020, (in Motion No: 10400/2020) for want of jurisdiction to entertain the originating petition.***
>
> ***(2). An Order staying the execution of the Order made on 1st December 2020 pending the hearing and determination of the Respondent/Applicant's Notice of Preliminary Objection filed and served on 30th November, 2020.***

The grounds upon which the application is founded are as follows: -

> ***"(i). The jurisdiction of the Honourable Court is in issue by virtue of the pending Notice of Preliminary Objection.***
>
> ***(ii). The Honourable Court ought to have resolved the issue of jurisdiction raised in the pending Notice of Preliminary Objection which is in the records of the Court; and***
>
> ***(iii). The issue of jurisdiction whenever raised must be resolved before any further step is taken.***

In support of the Motion on Notice is an Affidavit of 8 paragraphs deposed by Patrick Agbe, the Respondent/Applicant himself, an annexure marked Exhibit A as well as a Written Address.

Meanwhile, in opposition to this application, the Petitioner/Respondent filed a Counter Affidavit of 17 paragraphs deposed to by Mrs. Patricia Patrick the Petitioner/Respondent in this suit. Also in support is a Written Address.

In addition, the Respondent/Applicant filed a Response to Petitioner/ Respondent's Counter Affidavit on 29th June 2021.

In the Applicant's Written Address, learned Applicant's Counsel Max Ogar Esq, formulated recondite issue for determination to wit:-

> ***"Whether this Honourable Court had the requisite jurisdiction to make the Order made on 1st December 2020?".***

In arguing the issue, learned Counsel submitted that this Honourable Court had no jurisdiction to make the Orders it did make on the 1st of December 2020.

On the competency of the Court, learned Counsel cited the cases of ***MADUKOLUM V NKEMDILIM (1962) 1 ALL NLR (Pt. 4) 587; SKEN CONSULT V UKEY (1981) 1 SC 6; COTECNA INTERNATIONAL NIG. LTD V I.M. B LTD (2006) 9 NWLR (Pt. 985).***

Submitted, that in the face of the pending Notice of Preliminary Objection, this Court ought not to have made the Order it made.

That jurisdiction is the hallmark of adjudication. Its power or authority of a Court to adjudicate over a particular subject matter. That where a Court lacks jurisdiction, the entire process would amount to an exercise in futility and that is why the Court should first determine same before taking any other step.

That issue of jurisdiction can be raised at anytime and in any manner howsoever. Reliance was placed on the cases of ***ODEDO V I.N.E.C (2008) 17 NWLR (Pt.1117) 554 at 595; GAFAR V GOVT. OF KWARA STATE (2007) 4 NWLR (Pt. 1024) 375 at 403; AWOYEMI V FASUAN (2006) 13 NWLR (Pt. 996) 86 at 117 – 120; DOROTHY MATO V HERMAN HEMBE & ORS (2017) LPELR-45-46; ILOABUCHI V EBIGBO.***

In conclusion, learned Counsel cited the dictum of Lord Denning MR in Macfory V United Africa Co. Ltd (1961) 3 ALL ELR 1169, in support of his submissions that there's a procedural irregularity as shown in this case which should be resolved in Applicant's favour.

On the other hand, learned Petitioner/Respondent's Counsel Uchenna Allyson Ojiabo Esq, formulated two issues for determination in the Written Address in support of their Counter Affidavit to wit: -

> ***"(i). Whether the prayers and issue in this application are not dead and mere academic exercise.***
>
> ***(ii). Whether the Respondent/Applicant is not deliberately abusing the process of this Court to the detriment of the Petitioner."***

In arguing the first issue, learned Counsel submitted that it is trite that when a question has been contended and settled the Court becomes functus officio with respect to that question and has no business re-litigating or sitting on appeal over its decisions.

Submitted that as at 16th February 2021 when the objection raised on the jurisdiction of this Court was finally rested, this application became completely dead with that Ruling.

Submitted moreso, that as at 1st February 2020, there was nothing validly placed before the Court and such cannot assume the potency to truncate the business of the day.

That this Honourable Court had the jurisdiction to make the Order of 1st December 2020 and has also confirmed its jurisdiction by the Ruling of 30th March 2021.

Learned Counsel argued that this application therefore is targeted to retry the issue of jurisdiction or to raise a second Notice of Preliminary Objection in a different guise.

Learned Counsel cited the case of ***LAWSON V OKORONKWO (2018) 12 SCM (Pt. 2)*** in support of her argument.

In citing LAWSON V OKORONKWO (supra) Counsel submitted that the Court held in that case that the duty of the Court is to determine live issues and not on dead issues as judicial time is too precious to waste on dead issues.

On issue two, learned Counsel submitted that the Supreme Court was emphatic in the case of ***OGUNSEINDE V SOCIETE GENERALE BANK LTD (2018) 7 SCM, 109,*** when it held that maintaining an application which the Court has no jurisdiction to entertain would amount to an abuse of Court process. Reliance was also placed on the case of ***NWEKE V FRN (2019) 9 SCM 106 @ 126,*** in arguing that the Court has held that abuse of Court process entails pervasion of the system by the use of lawful procedure to attain unlawful means.

Although Counsel concedes that jurisdiction being a threshold issue can be raised at anytime, but that a party is not allowed to raise it multiple times in

the proceedings just to stall the process of Court, to harass and intimidate, in this case, the Petitioner.

Submitted moreso, that the Applicant has refused to comply with the Order of Court made on 1st December 2020. That there's no appeal against the Order. That Applicant is aware that his application for stay is predicated on nothing and abates with that order of dismissal of the Preliminary Objection as such there is even no valid motion before the Court. That a deliberate and calculated attempt to move this Court to embark on a futile endeavour is the very height of abuse.

Submitted moreso, that a stay of execution must be premised on a valid appeal or a Notice of Objection. Reliance was made on Order 61 of the Rules of this Court, which application thereunder is regarded as urgent matter to be heard within 28 days of it being filed, hence it abates.

In support of submissions in that regard, learned Counsel referred the Court to the case of ***TSA INDUSTRY NIG. LTD V FIRST BANK OF NIGERIA PLC (2012) 14 NWLR (Pt. 1320) 372.***

Consequently therefore, learned Counsel argued that since there is no pending appeal the Court is urged to dismiss the motion with substantial cost.

In response to Petitioner/Respondent's Counter Affidavit, it is submitted in Applicant's response filed on 29th June 2021 that the depositions in paragraphs 3,4,6,7,8,11, 13, 14 and 16 of the Petitioner's Counter Affidavit should be discountenanced for offending Section 115 of the Evidence Act; and the Court is urged to strike them out, leaving the Petitioner's Counter Affidavit bare, naked and worthless.

It is submitted in response to the learned Petitioner's Counsel's argument that when the Notice of Preliminary Objection came up it was not Ripe for hearing, Counsel argued further that the position of the law is that where there is a challenge to the jurisdiction of a Court, the Court must first assume jurisdiction to consider whether it has or lacks jurisdiction. Learned Counsel cited the cases of ***AJAYI V ADESIYI & ORS (2012) LPELR-781 (SC); DOROTHY MATO V HERMAN HEMBE & ORS (supra).***

Learned Counsel urged the Court to discountenance the opposition by the Petitioner and set aside the Interlocutory Order made on 1st December 2020, while Respondent's Preliminary Objection was pending.

Now, I have carefully considered this Motion on Notice, the Reliefs sought, the Supporting Affidavit, the Exhibit Annexed as Exhibit A, as well as the Written Address. I've also considered the Respondent's Counter Affidavit and the Written Address.

In the same vein, I've given due consideration to Applicant's Response to the said Counter Affidavit.

Therefore, it is my humble view, that the issue for determination in Motion No: M/12840/2020, is whether the Applicant has satisfied the Court to be entitled to the grant of the application?

Before, I delve into the substance of the application, I will first of all consider a preliminary issue raised by learned Applicant's Counsel on some paragraphs of Petitioner's Counter-Affidavit.

It is the learned Counsel's argument that paragraphs 3,4,6,7,8,11,13,14 and 16 thereof offend the provision of Section 115 of the Evidence Act 2011.

Section 115 provides: -

> ***"(a). Every Affidavit used in the Court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.***
>
> ***(b). An Affidavit shall not contain extraneous matter, by way of objection, or prayer, or legal argument or conclusion.***
>
> ***(c). When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.***

(d). When such belief is derived from information received from another person, the home of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information."

Therefore having carefully looked at the said paragraphs, it is my view that paragraphs 3 and 4 of Petitioner/Respondent's Counter-Affidavit are in line with Section 115(a, b, c, d) of the Evidence Act (supra) reproduced above, as they are within the personal knowledge of the Petitioner/Respondent. Therefore, learned Counsel's argument on these paragraphs is hereby discountenanced.

However, having considered paragraphs 6,7, 8, 11, 13 and 14 of the said Counter-Affidavit, it is my observation that the said paragraphs contain legal arguments and conclusions which clearly offend the provisions of Section 115(a, b, c, d) of the Evidence Act (supra).

Consequently therefore, paragraphs 6, 7, 8, 11, 13,14 and 16 of the Respondent's Counter Affidavit are hereby struck out.

Now, coming back to the issue at hand, it is observed that the ground predicating this Motion on Notice as gleaned from Applicant's Supporting Affidavit and learned Counsel's Address, is that this Court lacked jurisdiction to make the Order it made in respect of Motion No: M/10400/2020 on the 1st of December, 2020.

It is learned Counsel's contention that the Court ought to have heard and considered the Preliminary Objection before considering the said Motion on Notice.

Therefore, since that is the case, and the issue of jurisdiction is fundamental and a threshold issue, the Order made on 1st of December, 2020 was made without jurisdiction, hence this application to set aside the said Order, and also stay execution of same.

On this I refer to paragraph 6(ix) of Applicant's Affidavit and where it is averred thus: -

"That even when he was not present when the case was called, the existence of the Notice of Objection in the case file raising a jurisdictional question, ought to have alerted the Court to the need to first resolve the jurisdictional question."

Exhibit A, is a copy of the enrolled Order of this Court made on 1st of December, 2020.

Now, on the Petitioner/Respondent's part, it is averred in paragraphs 10 and 12 thereof as follows: -

"Para 10: that I am not in a position to respond to paragraphs 6iv to 6x as those are matters within the purview of Applicant alone but in any case paragraph 6xi is completely false as his Notice of Objection not being Ripe for hearing on 1st December 2020, proceedings could not have been suspended to wait for it to become Ripe. The Honourable Court rightly proceeded with the business of the day and granted the Order of Interlocutory Injunction, which the Applicant has refused to obey."

Paragraph 12: ***"that paragraph 7 as well as all the purport of the present application has been overtaken by events. The prayers are contained in the Notice of Preliminary Objection."***

This court no doubt has taken judicial notice of the proceedings in this suit emanating from a petition filed on 24th of June 2020.

Indeed, it is noteworthy to point out that whenever the issue of jurisdiction of the Court is raised, it is expedient that the Court treat it first before taking any further steps. On this, I refer to the case of ***FAMOROJI V FRN & ORS (2013) LPELR-22064 (CA), PETRO JESSICA ENTERPRISES LTD & ANOR V LEVENTIS TECHNICAL CO. LTD (1992) LPELR-2915 (SC) per Belgore JSC (PP: 23-24, Paras E – C); KOLO V NPF & ORS (2018) LPELR-43635 (CA).***

Therefore, to this extent, I am in agreement with learned Applicant's Counsel in his submissions that this Court ought to have treated the issue of jurisdiction first before delving into Motion No. M/10400/2020.

However, it is also noteworthy to point out that even going by the averments in the Applicant's Affidavit, and the records of this Court, learned Applicant's Counsel was not in Court on the day slated for hearing of Motion No: M/10400/2020, subject of this application. It is also on record that Applicant's Counsel was duly served with the motion as well as hearing notice. Therefore, Counsel could have appeared to defend the motion.

It is even averred in Applicant's Supporting Affidavit that on the day in question Counsel and one David Utibe used the lift with the presiding Judge of this Honourable Court, therefore Counsel knew the Court would sit on that date and time.

However as stated earlier, Counsel was absent in Court, and therefore having filed and served his Preliminary Objection, merely dumped same on this Honourable Court without any correspondence to either the Court or his learned friend.

The Court could not have continued to wait for Counsel since the said Motion was ripe for hearing and proceeded to hear same and grant the Orders sought.

Furthermore, it is instructive to note that the said Preliminary Objection has since been heard and ruling in respect of same was delivered on 30th March 2021 where the Court dismissed it for lacking in merit.

Be that as it may, the question to ask here is whether the order of this Court made on 1st of December, 2020 was made without jurisdiction and whether it should be set aside?

No doubt jurisdiction is a threshold issue and lack of same renders the proceedings or any Order made, no matter how well made, a nullity.

On this premise, I refer to the case of Petro Jessica Enterprises Ltd & Anor V Leventis Technical Co. Ltd (supra); ***MARTINS V NICANNAH FOOD CO. LTD & ANOR (1988) LPELR-1844 (SC) per, NNAMANI, JSC at PP: 15-16, Paras G –A; UMEH V EJIKE (2013) LPELR – 23506 (CA).***

However, it is trite law that whenever the issue of jurisdiction is raised such as in this case, a distinction has to be made on whether the irregularity is substantive irregularity or procedural irregularity.

On substantive jurisdiction of Court and competency of the Court to adjudicate on any matter, I too commend the decision of the Court in the locus classicus of ***MADUKOLUM V NKEMDILIM (supra)*** cited by Applicant's Counsel, whereof the three criteria set out are as follows: -

(a). It is properly constituted with regards to number and qualification of members of the bench and no member is disqualified for one reason or another;

(b). The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction; and

(c). The case came to the Court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Therefore, I dare say that this Honourable Court has met the three criteria enumerated above. Any objection with regards to (c) above i.e on condition of precedent to the exercise of the Court's jurisdiction has been effectively dealt with in its Ruling sequel to the Preliminary Objection ie the Ruling delivered in respect of same on 30th of March 2021.

Therefore, since this Court is properly constituted and the subjected matter of the case, being matrimonial cause is within the Court's jurisdiction this Honourable Court's substantive jurisdiction is firmly settled and established. I so hold.

Learned Applicant's Counsel himself has indirectly conceded this point when he submitted in paragraph 4:3 of the address in support of this motion thus: -

> ***"The entire Order of 1st December 2020, is bedeviled by a procedural irregularity which is an irredeemable breach. This affects its foundation and, as it is written; when the foundations are faulty, there is nothing the righteous can do."***

I shall pose here to ask the question, "does a procedural irregularity rob a Court of its jurisdiction to entertain a matter in which it has substantive jurisdiction?

It is trite that there's a world of difference between substantive irregularity and procedural irregularity. Therefore, to answer the question above, I humble refer to the case of ***KHALID V ISMAIL & ANOR (2013) LPELR-22325 (CA)*** where the Court held as follows: -

> ***"With respect to Counsel, his submission was an open display of ignorance of the concept of jurisdiction of a Court to entertain a matter. It is a carry-over of the general confusion that has been introduced by some case law authorities into the understanding of the concept of jurisdiction of Courts.***
>
> ***There is a whole world of difference between procedural irregularity and the substantive jurisdiction of a Court to hear a matter and procedural irregularity does not qualify as an issue of jurisdiction that can be raised at anytime and which if resolved against a party renders the entire proceedings a nullity. An irregularity in the exercise of jurisdiction should, and must not be confused with total lack of jurisdiction which takes cognizance of the general meaning of the word "jurisdiction" as the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision.***
>
> ***Procedure for invoking the jurisdiction of Court should not be confused with the authority of the Court to decide matters which on the face of the proceedings have been presented in the formal way for its decision and which are within its jurisdiction. It is generally accepted that matters (including facts) which define the rights and obligations of the parties in controversy are matters of substance defined by substantive law, whereas matters which are mere vehicles which assist the Court or tribunal in going into matters before it are matters of procedure regulated by procedural rules, it is matters of substantive jurisdiction that can be raised at anytime and which if resolved against a party renders the entire proceedings a nullity, not***

matters of procedural irregularity…" per ABIRV, J.C.A (PP: 30 - 33) Paras C – D.

See also the case of ***AKAHALL & SONS LTD V NDIC (2017) LPELR – 41984(SC).***

Likewise, in the case of ***ODOM & ORS V P.D.P & ORS (2015) LPELR - 24351 (SC), the Court, per Ogunbiyi, J.S.C, held at P. 56, Para A – B,*** as follows:-

"***Where an irregularity is substantive in nature, it renders a process incompetent, where however, it is procedural, the effect is not to operate for purpose of defeating the course of justice because the Court is set out to do justice".***

In the instant case, therefore the substantive law regulating this proceeding, which is sui generis is the Matrimonial Causes Act & the Matrimonial Causes Rules, which this Honourable Court has jurisdiction to entertain.

Moreso, by the Matrimonial Causes Act, in view of the nature of these proceedings with or without any application, the Court has powers to make any Orders or grant any injunctions it deems fit.

On this I refer to Section 110 of the Matrimonial Causes Act M7 LFN 2004.

To this end therefore, and without further ado since hearing and determination of Motion No: M/10400/2020 before hearing and determining Applicant's Preliminary Objection (Ruling delivered on 30th March 2021) is a mere procedural irregularity, it is my considered opinion that such does not rob the Court of its jurisdiction to entertain Motion No: M/10400/2020 nor make the Order of the Court incompetent, nor invalidate or nullify any subsequent proceedings in that regard. I so hold.

Consequently, therefore, I hereby re-affirm the Orders of this Court made in respect of Motion No: M/10400/2020 made on 1st December 2020.

With respect to non-compliance with the said Order, I have taken judicial notice of same. Such is clear from the records of this Honourable Court going by Forms 48 and 49 served on the Respondent through his Counsel

Mr. Max Ogar Esq i.e. for Notice of Consequences of disobedience of Court Order and Notice to show cause why Order of committal should not be made.

The said Court Order therefore has not been obeyed by the Respondent. I would advise learned Applicant's Counsel by his professional calling to advise his client who has blatantly refused to obey the Orders of this Court, and has in the most unfortunate and disrespectful way shown disregard and indifference to Orders of this Honourable Court, to obey the said Orders or face committal proceedings.

The law has laid down procedures for consequence of disobedience of its Orders and this Court is duty bound to protect its own Orders. I so hold.

The sole issue therefore, is resolved in favour of the Petitioner/Respondent against the Respondent/Applicant. I so hold.

In conclusion therefore, for the reasons given earlier, I find no merit in this application, it is accordingly dismissed its entirety.

This brings me to the 2nd motion which is Motion No: M/3583/2021 dated 16th day of June 2021 and filed on the 18th day of June 2021, brought pursuant to Section 14(1) of the Court of Appeal Act and under the inherent jurisdiction of this Honourable Court, wherein the Respondent/Applicant prayed the Court for the following:-

> ***"(1). Extension of time within which the Respondent/Applicant can apply for leave to appeal.***
>
> ***(2). Leave to appeal against the Ruling delivered on 30th March 2021 dismissing the Respondent/Applicant's Preliminary Objection challenging the jurisdiction of the Honourable Court.***
>
> ***(3). An Order suspending further proceedings in the within petition pending the hearing and determination of this application.***
>
> ***(4). Any other Order(s) as may be deemed necessary."***

In support of this application is an Affidavit of 6 paragraphs deposed to by Joseph Ushie Ade, a litigation Secretary in the law firm of Legalmax Solicitors, the firm representing the Respondent/Applicant herein.

Also in support is a Written Address.

In opposition to the application, the Petitioner/Respondent filed a Counter Affidavit of 8 paragraphs deposed to by Mrs. Patricia Patrick, the petitioner herself, some annexures including a Certificate of Compliance pursuant to Section 84(2), 81(2) of the Evidence Act, and a Written Address.

In the Written Address in Support of this application, learned Applicant's Counsel Max Ogar Esq formulated a singular issue for determination to wit:-

> ***"Whether this Honourable Court has the jurisdiction and the vires to grant the Applicant leave to appeal against its Interlocutory decision?"***

Counsel answered in the affirmative and submitted that leave is required in this instant going by section 14(1) of the Court of Appeal Act; learned Counsel also relied on the case of ***PALPINA WORLD TRANSPORT HOLDING AG V JEIDOC LIMITED (2011) LPELR-CA/L/522/2009, per pemu, J.CA.***

On the mandatory nature of the word "shall" in a statute, reliance was placed on the case of ***HON. DINO MELAYE & ANOR V YUSUF AYO TAJUDEEN & 4 ORS (2012) 15 NWLR (Pt. 1323) 315 at 337,*** it also submitting that it is within the powers of this Court to grant leave in situations such as the one presented by the Applicant as well as the power to extend time in deserving cases.

Learned Counsel finally urged the Court to exercise its discretion in favour of the Applicant herein.

Meanwhile, in the Petitioner/Respondent's Written Address, learned petitioner's Counsel Uchenna Allyson Ojiabo, Esq, also formulated a sole issue for determination to wit: -

"Whether this Honourable Court has the jurisdiction to entertain this application."

It is submitted in that regard that this Court lacks the jurisdiction to entertain this application. That a Court is vested with jurisdiction and power to adjudicate on an issue when, amongst other things, the matter is brought before it in accordance with both substantive and procedural law. Reference was made to the cases of ***ONYEKWULUJE V ANIMASHAWN (2019) 8 SCM, 152; MADUKOLU V NKEMDILIM*** cited and adopted in the case of ***NWACHUKWU V NWACHUKWU (2018) 8 SCM 123 @ page 140 (SC).***

Learned Counsel submitted that a Respondent who wishes to be heard in this proceeding must come proper before the Court. Reference was made to Order V Rule 28 of the Matrimonial Causes Rules, in arguing that the persistent failure to comply with the Rules by the Respondent robs the Court of the jurisdiction to further grant him audience, as he has no right of audience in this proceeding.

It is submitted further, that leave to appeal is never granted as a matter of course. That the Applicant must show an arguable appeal by exhibiting his proposed notice of such. Reliance was placed in the case of ***UKWU V BUNGE (1991) 3 NWLR (Pt. 182) 677.***

Learned Counsel submitted moreso that for stay of proceedings to be granted, there must be a competent appeal and where there is no competent appeal, there is both in law and fact nothing to stay.

On this premise, reliance was placed on the case of ***ISA INDUSTRIES LTD V FBN PLC (2012) 14 NWLR (Pt. 1320) 372.***

Submitted moreso that the Respondent may argue that his application for leave to appeal must first be determined before he can file an appeal, that then is he asking the Court to stay proceedings for?

According to the learned Counsel, Respondent has continued to boast that this matter will never be heard and that his series of frivolous applications are steps well orchestrated to achieve that aim. Learned Counsel respectfully implored the Court to discountenance and dismiss this application for lacking in merit.

Now, I have carefully considered this application, the Reliefs sought, the Supporting Affidavit and the Written Address.

Likewise, I've also considered the Petitioner/Respondent's Counter Affidavit and the exhibit annexed as well as the Written Address in opposition to this application.

The issue for determination in my humble view is whether the Applicant has satisfied the Court to be entitled to the grant of this application?

It is quite obvious from the averments contained in the Applicant's Supporting Affidavit that time to appeal the Ruling of this Honourable Court delivered on 30th of March 2021 has since elapsed, which was supposed to have been made within 14 days after the delivery of the Ruling sought to be appealed against.

Of course the Court has taken judicial notice of the reason given for failure to seek leave within the stipulated time which Applicant in paragraph 3vi and vii of the Supporting Affidavit, attributes to the JUSUN strike which lasted 63 days and led to shutting down of judicial activities due to the said strike.

Meanwhile, the Petitioner/Respondent averred in her Counter Affidavit particularly in paragraphs 4,5b, 5d, 5e, 5f, 6 and 7 thereof as follows:-

> ***"4: That the Respondent's Motion No: M/3583/2021 is brought malafide with intention to permanently deprive me access to my children's life by perpetually stalling the proceedings before this Honourable Court.***
>
> ***5b. That the Applicant is in defiance of the Matrimonial Causes Rules and has also refused to comply with the conditions set out in law for bringing an application for leave to appeal or seeking for a stay of proceeding.***
>
> ***5d. That there is nothing placed before this Honourable Court to spur a favourable exercise of jurisdiction.***

5e. That there is no evidence of arguable appeal as Applicant has refused to present his proposed appeal before this Honourable Court.

5f. That the Respondent/Applicant has equally refused to file an answer or cross petition to my petition in this suit hence he has no right of audience whatsoever in this matter.

6. That I know of the fact the Respondent/Applicant has boasted that this matter will never be heard. Extracts of his messages insulting and threatening my Counsel that the case will never be heard together with Certificate of Identification is attached as Exhibit A.

7. That it is in the interest of justice to deny this application as to do otherwise will be to my detriment".

I have had time to go through the Exhibit annexed to the Petitioner/Respondent's Counter Affidavit which are said to be text messages by Applicant to Petitioner's Counsel. The messages are very unpleasant and frankly quite shocking. I shall reproduce the first two hereunder where Applicant states thus: -

"See how shameful you went home with your Court Order, you want custody come and take them.

You keep your type as a lawyer who can't advice you. See how dirty looking"

This in my view is unacceptable. No one has the right to insult and ridicule anyone and most especially not a Petitioner's lawyer or any other lawyer for that matter.

This clearly shows the attitude of the Respondent/Applicant herein, who as stated earlier has clearly refused to comply with Orders of this Court and has continued till date to show disrespect to this Court.

Having said that, Petitioner's Counsel is also advised to henceforth avoid communicating directly with the opposing litigant and leave same to the Registry and Bailiff of this Court.

Now, despite all that, it is not the intension of the Court to shut out any litigant who is aggrieved with the Ruling of the Court including this one, this is a right which is clearly contained in Order 14(1) of the Court of Appeal Act which provides thus: -

> ***"Where in the exercise by the High Court of a State, or, as the case may be, the Federal High Court of its original jurisdiction, an Interlocutory Order is made in the course of any suit or matter, an appeal shall, by leave of that Court or of the Court of Appeal, lie to the Court of Appeal…"***

See also the cases of ***DIAPLONG V DARIYE (2007) 8 NWLR (Pt. 1036) page 239; UBN PLC V SOGUNRO (2006) 16 NWLR (Pt. 1006) Page 505.***

Ordinarily this application is one that this Honourable Court ought to consider. But, I quite agree with learned Petitioner's Counsel in the address where Counsel argued that there is no Notice of Appeal or anything before the Court to warrant a grant of stay of proceedings.

I align myself with this argument and hereby hold that prayer no. 3 on the face of the motion paper is rather premature since there's no notice of appeal before the Court. I so hold.

With regard to prayers 1 and 2, let me refer to the records of this Court, the Respondent/Applicant who has refused to obey Orders of this Court made on 1st December 2020 and this Court has already issued and served Forms 48 and 49 on Respondent through his Counsel Mr. Max Ogar. Forms 48 and 49 are Notice of Consequences of Disobedience of Order of Court and Notice to Show Cause why Order of Committal should not be made. Therefore, the Respondent/Applicant is well aware of these two notices and has chosen to continue disrespecting this Honourable Court.

It is therefore ironic that this same party i.e this Applicant has seen it fit and proper to now approach this Honourable Court seeking the reliefs as contained in this motion.

Well, it is trite that he who comes to equity must come with clean hands.

The applicant has approached this Honourable Court with very unclean hands as such this Honourable Court is of the view that he's not entitled to any of the reliefs sought. I so hold.

Consequently therefore, I resolve the sole issue for determination in favour of the Petitioner/Respondent against the Respondent/Applicant, and accordingly hold that this application lacks merit and it is hereby dismissed.

Learned Counsel who is a minister in the temple of justice should not be seen to aid his client in showing disrespect to this Honourable Court.

I see it fit in the circumstances to award cost. In view of this therefore, I award cost of N100, 000.00 against the Respondent/Applicant for filing this application (which I see as an abuse of Court process) while showing contempt to this Honourable Court. The cost is to be paid on or before the next adjourned date.

Signed:

Hon. Justice Samirah Umar Bature
12/10/2021