

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 7 APO, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

PETITION NO: FCT/HC/PET/414/2018

MOTION NO: FCT/HC/M/12138/2020

BETWEEN:

MRS. IKWUMMA JENNIFER EDET PETITIONER

AND

MR. MICHAELO EDET RESPONDENT

RULING

DELIVERED ON 9TH FEBRUARY, 2022

By a Motion on Notice dated the 20th day of November, 2020 and filed on the same day and brought pursuant to Order III Rule 4, Order 14 Rule 15 of the Matrimonial Causes Rules, Section 54 (3) of the Matrimonial Causes Act and under the inherent jurisdiction of this Honourable Court seeking the under-listed reliefs:

1. AN ORDER of the Court directing the Respondent to pay the sum of N200, 000.00 (Two Hundred Thousand Naira) being money for house rent of Jikwoyi, Phase 1 Extension, After Yoruba Mosque by Benshop, Abuja, where the Applicant

and the child of the marriage, Unwana Michael Edet are currently residing, pending the determination of this petition.

2. AN ORDER of the Court directing the Respondent to pay the sum of N95, 000.00 (Ninety-Five Thousand Naira) being school fees and School expenses of the child of the marriage; Unwana Michael Edet, from time to time pending the determination of this petition.

3. AN ORDER of the Court directing the Respondent to pay the sum or N100, 000.00 (One Hundred Thousand Naira) being the feeding allowance of the Petitioner and the child of the marriage; Unwana Michael Edet, from time to time pending the determination of this petition.

4. AN ORDER of the Court directing the Respondent to pay the sum of N20, 000.00 (Twenty Thousand Naira) being medical expenses of the child of the marriage; Unwana Michael Edet, from time to time pending the determination of this petition.

5. AN ORDER of the Court restraining the Respondent from disturbing or interfering with the academic pursuit of Unwana Michael Edet at Fountain Academic School, Jikwoyi, pending the determination of this petition.

6. AN ORDER of Court restraining the Respondent from using any forceful means of taking away the only child of the marriage; Unwana Michael Edet, from the custody of the Petitioner/Applicant, pending the final determination of this petition.

7. AN ORDER of Court restraining the Respondent from causing constant fear and apprehension to the Petitioner/Applicant via intimidation, threats, physical and emotional abuse.

8. AND FOR SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application is premised are as follows:

1. The Respondent/Respondent, who is the Father of Unwana Michael Edet and who has willingly and on his own volition, moved out of the matrimonial home and now cohabiting with another woman, has since the marriage and birth of Unwana Michael Edet, failed, refused and neglected to perform his responsibility as a father by providing funds for the general upkeep of the child of the marriage.

2. The Respondent/Respondent, after making payment for only one term of the school fees, has since left the responsibility of the payment of Unwana Michael Edet's school fees to the Petitioner/Applicant.
3. The Petitioner/Applicant has been the one shouldering the responsibility for the payment of house rent where she and the only child of the marriage reside since 2014.
4. The Respondent/Respondent, on some occasions, has attempted to forcefully take the child of the marriage from the custody of the Petitioner/Applicant.

The application is supported by a seventeen (17) paragraphed affidavit deposed to by the Petitioner/Applicant herself to which is attached a total of eight (8) documentary exhibits.

On the 4th February, 2021, this Motion came up before me for hearing. While the Respondent was unrepresented, Tolulope Ogunmefun, Esq. announced appearance for the Petitioner/Applicant. Counsel while identifying the processes filed on behalf of the Petitioner/Applicant, also mentioned that the Motion is supported with a written address. I have searched in vain for the said written address in support. A thorough reading of Order 42 and 43 of the 2018 Rules of this

Court amply reveals that when an application is to be made to the Court, it has to be by way of a Motion which must be supported by an affidavit and a written address. I understand and wish to construe the said as mandatory for a written is crucial in the success of any application.

The importance of a written address in any trial or application made to the Court cannot be overemphasized.

In *OBODO v. OLOMU* (1987) 3 NWLR (Pt. 59) 111, 121 Belgore, JSC, stated that:

"Addresses form part of the case and failure to hear the address of one party, however overwhelming the evidence seems to be on one side vitiates the trial, because in many cases it is after the addresses that one finds the law on the issues fought in favour of the evidence adduced."

Nnamani, JSC stated at page 124 of the report that:

"In the normal course of things the proceedings cannot be said to be complete until both parties have addressed the Court."

In the application before the court, apart from the fact that the filing of a written address is statutorily provided for by the extant Rules of this Court, the authorities are ad idem in viewing the non-filing of a written address (in support of an application) as fatal to the defaulting party's case.

This application must suffer the same fate as ordained by the ancient authorities, *AMOUGH v. ZAKI* (1998) 3 NWLR (Pt. 542) 483, 490. It is my view that the Counsel in this matter ought to take more pains in the fate which this Motion must now suffer, on the state of the law for had he shown more commitment in the preparation and filing of this process; this error and its fatal consequences could have been avoided. This is more so when this Motion was never opposed by the Respondent who was never represented at the hearing of the Motion despite the service of the processes on him as ordered by the Court. For all T have been saying, this Motion is adjudged incompetent, *N.C.C. V, MTN (Nig.) Communications Ltd* (2008) 7 NWLR (PT. 1086) P. 229 and must fail. I hereby strike out this Motion for being incompetent, *WAEC V. Adeyanju* (2008) 9 NWLR (pt. 1092) p. 270. It has been part of our laws that an incompetent process is incapable of activating the jurisdiction of the court to adjudicate on same,

E.B.N. LTD. v. Halilco (Nig.) Ltd (2006) 7 NWLR (PT. 980) P. 568.

The Court considered extensively in the case of OLAGBENRO & ORS V. OLAYIWOLA & ORS (2014) LPELR-22597 (CA) the devastating effect of an action commenced by an incompetent process and held thusly:

"It is now settled principle of law that, a Court is only competent to adjudicate over a matter, when all the conditions precedent for its having jurisdiction have been satisfied. Thus, an action began by an incompetent process will divest the Court of jurisdiction to entertain the matter. In other words, where an originating process or any other process, is found to be incompetent, it cannot be used for any purpose whatsoever in the adjudication process. It is a worthless document and is only good for nothing, being nothing itself.. Where the matter is heard and determined on the incompetent process, the Court would have only engaged in a wasteful judicial exercise, no matter the

effort put in it. The entire proceeding would be void and liable to be set aside."

I will not embark on or engage in a wasteful judicial exercise so that the proceedings of this Court would not be declared void or liable to be set aside. This is because an incompetent process is null and void ab initio, Ministry of Works & Transport, Adamawa State v. Yakubu (2013) 6 NWLR (Pt. 1351) P. 481 @ 496. It cannot even be amended, N.N.B. Plc v. Denclag Ltd. (2005) 4 NWLR (Pt. 916) 549.

This Motion is hereby struck out.

This shall be my Ruling which I reserved earlier on the 9th February, 2022.

APPEARANCE:

Hammed Ogunbiyi, Esq. for the Petitioner

The Respondent is not in court.

Sign
Hon. Judge
09/02/2022