

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 20, GUDU-ABUJA
ON TUESDAY THE 15TH DAY OF FEBRUARY 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE R. OSHO- ADEBIYI
PETITION NO: PET/395/2020

BETWEEN:

JENNIFERCLARE NNENNA EZEKWEM=====PETITIONER/RESPONDENT

AND

LAWRENCE AFAMEFUNA EZEKWEM=====RESPONDENT/APPLICANT

RULING

The Applicant by a Motion on Notice brought pursuant to Section 11 of the Matrimonial Causes Act, Order VII Rule III of the Matrimonial Causes Rule and under the inherent jurisdiction of this Honourable Court prayed the Court for the following reliefs;

1. **A DECLARATON** that Petitioner's instant petition does not contain the ground on which a petition for a decree of dissolution of marriage may be presented to the Court.
2. **A DECLARATION** that Petitioner's instant petition is incompetent.
3. **AN ORDER** of this Honourable Court striking out Petitioner's instant petition for reason of want of jurisdiction of this Court over Petitioner's said petition.

The grounds which the application is brought are;

1. That Petitioner's instant petition does not contain the ground recognized in law on which a petition for a decree of dissolution of marriage may be presented to the Court.

2. That Petitioner's instant petition is incompetent.
3. That this Honourable Court therefore lacks jurisdiction to entertain Petitioner's instant petition.

Attached to the application is an affidavit of seven (7) paragraphs deposed to by the Applicant as well as a written submission by Applicant's Counsel wherein Counsel raised the following issues:-

1. Whether the only ground upon which a petition under the Matrimonial Causes Act can be presented to the Court for a decree of dissolution of marriage, which is that the marriage has broken down irretrievably, is contained in Petitioner's instant petition.
2. Whether Petitioner's instant petition is competent.
3. Whether this Court has jurisdiction to entertain this petition.

Counsel arguing the above issues with an array of authorities, submitted that Petitioner's petition is fundamentally and substantially not in compliance with Section 15 of the Matrimonial Causes Act and this court lacks jurisdiction to entertain the instant petition and urged the Court to strike out the petition with cost for being incompetent.

In opposing the motion, the Petitioner filed a counter affidavit of 6 paragraph deposed to by the Petitioner. Also filed is a written address wherein Counsel raised a sole issue thus; "whether the Petitioner complied substantially with the relevant provisions of the Matrimonial Causes Act/Rules in presenting this petition.

Counsel submitted that the Petitioner's petition met the requirement of law before its presentation before this Court and urged the Court to dismiss the Applicant's application with substantial cost.

I have considered the application of the Applicant as well as the counter affidavit together with the written submission of respective Counsel and it is my view that this Preliminary Objection cannot be effectively determined without going into the substance of the main suit. Applicant is in essence, seeking the Court to determine whether or not petition as filed, is brought under the main ground for dissolution of marriage. To hold in the affirmative would have predetermined the Petition and likewise to hold in the negative would need the Court to evaluate the evidence before the Court as well as examine the sole ground vis-à-vis the facts in support of same. The Supreme Court has warned on the danger of determining a matter or making a pronouncement that would prejudice a matter at an interlocutory stage. See the case of ADELEKE VS. LAWAL (2014) 3 NWLR pt.1393, Pg. 1 at 21 para G-H. Consequently, this Court would take the preliminary objection along with the substantive matter.

Although it is procedural that an issue of jurisdiction should be resolved first, however, it can be taken along with arguments on the substantive suit provided that in delivering its judgment, the Court first determines the issue of jurisdiction before considering the merits of the case.

Consequently, this Court will hold off determining this motion and will incorporate and determine same in the body of the judgment after hearing of the substantive suit.

Parties: Parties absent.

Appearances: No legal representation.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
15/02/2022