

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/PET/251/2018

BETWEEN:

FELIX IZUCHUKWU ASUZU.....PETITIONER

VS

SUSAN NNOYELUM ASUZU.....RESPONDENT

RULING

By a Motion on Notice with No M/6385/2021 dated 4/10/2021 and filed same day, brought pursuant to Section 6 (6) of the Constitution of the Federal Republic of Nigeria 1999 and the inherent powers of this Hon. Court, the Applicant pray the court for the following reliefs;

An Order striking out this Petition for being incompetent.

And such further orders as the court may deem fit to make in the circumstances of this case.

Grounds:

- (1) The Petitioner had previously sought the dissolution of the marriage on the same facts/disagreement and this court in FCT/PET/06/07, on 4th October 2010, Coram Affen J., entered a Judgment dismissing the Petition upholding the marriage and

refusing the relief of dissolution; and there was no appeal by the Petitioner against that Judgment.

- (2) The Petitioner disobeyed the order of the court for the restoration of Respondent's conjugal rights and now seeks to set-up the same relief of dissolution of the marriage with the Respondent relying on same disagreement of 2007 and further using his disobedience to court order as part of the facts entitling him to the relief;
- (3) The Judgment of Affen J. in FCT/PET/06/07 as between the Petitioner and Respondent constitutes res judicata on the dissolution of the marriage as presented.
- (4) This Petition is an abuse of process, as it seeks to re-litigate issues that were part of the first Petition and/or were in existence at the time the first Petition was dismissed.
- (5) This court lacks jurisdiction to entertain this Petition and same ought to be struck out.

In support of the motion is an 8 Paragraph affidavit sworn to by the Applicant with one (1) Exhibit annexed marked Exhibit "A". Also filed a Written Address adopts the address, in urging the court to grant the reliefs sought. Also filed reply on point of law dated 14/10/2021.

In response to the Motion, the Petitioner/Respondent filed a Reply on points of law dated 11/10/2021, adopts the Reply and arguments therein, in urging the court to dismiss the application and consider the substantive suit.

In the Written Address of Applicant, Ebuka Nwaeze Esq of counsel formulated a lone issue for determination;

“Whether in the circumstances of this case, this Petition of the Petitioner is not competent, robbing the court of jurisdiction to entertain same?”

And submit, a party to a case has a duty to comply with Order of Court duly made and issued by court of competent jurisdiction and until its set aside on Appeal, where such party is aggrieved, he can only resort to an Appeal and not to refile or reopen the matter for relitigation. That the attempt of Petitioner seeking through a fresh Petition to dissolve the marriage with the Respondent, despite having previously tried and failed, based on same facts which were in existence at the time of the Petition, amounts to abuse of court process. Further that the law allows dissolution of marriage only on ground that it has broken down irretrievably. That this ground has been canvassed by Petitioner in Petition presented in 2007 in FCT/HC/PET/06/07 which was dismissed on merit.

Submit once a matter is heard and determined on the merit, no trial court has jurisdiction to reopen same for consideration. That the issue of dissolution of marriage of the Respondent to Petitioners constituted has been considered and determined on the merit by Hon. Justice P.O. Affen (now JCA) in the judgment delivered on 4th October, 2010 and the only right available, to Petitioner is that of Appeal to Court of Appeal and not to re-presenting the Petition for a new decision. That the dissolution of marriage of Petitioner and Respondent on the facts has become res-

judicata by the operation of the Judgment in FCT/HC/PET/06/2007. Commended the Court to several judicial authorities; Cole Vs Jibunoh (2016) LPELR – 40662 (SC); Alao Vs Akano (1988) LPELR – 410 (SC), NV Scheep Vs M. V. "S Araz" (2001) FWLR PT 34, 589- 590, Dingyadi Vs INEC (No. 2) (2010) 18 NWLR PT 1224, 195 at 207 – 208 Paras A – E.

In his Reply on point of law, counsel for Petitioner/Respondent, B.O. Nafaga Esq also formulated a lone issue for determination;

"Whether once a Petition is dismissed pursuant to the Matrimonial Causes Act, the petitioner is precluded throughout the subsistence of the marriage from ever bringing another Petition in his lifetime"

Answered the question in the negative and submit that if a Petition is dismissed under the Act, Petitioner is at liberty in the future to present another Petition if the Respondent by her conduct infracts other Sections of the Act. Submit Respondents did not Exhibit the earlier Petition FCT/PET/06/07 in order to know whether the facts are the same as the present one that he who assert must prove. That in any event, the court set out the grounds for the Petition at page 1 of the Judgment, that is the Exhibit "A", also at page 12, gave a summary of the grounds of the Petition. That the fact shows that the facts upon which Pet/06/07 was predicated is different from the present one. That while Petition No. FCT/PET/06/07 was predicated on Section 15 (2) (b & c) of the Act, the present one is predicated on Section 15 (2) (f & g). That Matrimonial Causes being sui generis, the dismissal of a Petition will not bar same

spouse from presenting another Petition. In all, commended the court to some judicial authorities; *Onyedebelu Vs Nwaneri* (2009) ALL FWLR PT 543 1264 at 1292, *Famfa Oil Ltd Vs AG, of Federation* (2003) FWLR PT 184, 195.

Having considered the submission of counsel in this application, the judicial authorities cited as well as the annexed Exhibit, the court finds that only one (1) issue calls for determination and that is;

“Whether or not the Respondent/Applicant has made out a case to warrant the grant of the reliefs sought”.

The gravamen of the Applicant, mainly, is that this instant Petition is an abuse of process because Petitioner had previously sought dissolution of the marriage on same facts in this court in FCT/PET/06/07 which Petition was dismissed on 4th October, 2010 and there was no Appeal against that Judgment. That the Judgment in FCT/PET/06/07 as between Petitioner and Respondent constitute *res judicata* on the dissolution of marriage as presented and this court lacks jurisdiction to entertain this Petition and same ought to be struck out.

The Respondent, on the other hand, contend that the facts upon which Petition No. FCT/PET/06/07 was predicated is different from the instant Petition. That whole Petition No. FCT/PET/06/07 was predicated on Section 15 (2) (b & c) of the Matrimonial Causes Act, the instant Petition is predicated on Section 15 (2) (f & g).

In determining these contending issues of the parties, the court will have to look at the records and this the court is empowered to do. See the case of Agbareh Vs Mimra (2008) ALL FWLR PT 409 559 at 589. First it is noted that the Applicant did not Exhibit copy of the said Petition No. FCT/PET/06/07 relied upon. However, recourse is had to the Exhibit "A" annexed to Applicant's Motion, that is the Judgment of the court in Petition No. FCT/PET/06/07. At Page 1 of the said Judgment, the grounds for the Petition in Petition No. FCT/PET/06/07 were clearly stated. And at Page 12, the court gave a summary of the grounds for the Petition. From the said Judgment of court, that is the Exhibit "A", the grounds upon which Petition No. FCT/PET/06/07 was predicated was on cruelty, domestic violence, adultery and intolerable behaviour while this instant Petition No. FCT/PET/251/18 is on ground that the parties have lived apart for a period of 11 years preceding the presentation of this Petition. Clearly, it cannot be said that the grounds upon which Petition No. FCT/PET/06/07 was predicated is same as this instant Petition to make the instant Petition as abuse of process of court or to invoke the principle of res judicata against same. And the fact that the Petition No. FCT/PET/06/07 was dismissed under the Matrimonial Causes Act will not preclude the Petitioner from filing another Petition in prove of any other ground as prescribed under Section 15 (20 A – H of the Matrimonial Causes Act for dissolution of Marriage.

From all of these, it is the firm view of court that this application by the Respondent/Applicant lacks merit and it is hereby dismissed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

12/5/2022

Appearance

EBUKA NWAEZE ESQ - FOR THE RESPONDENT/APPLICANT

B.O. NAFAGHA WITH A.I. AMUPITAN - FOR THE
PETITIONER/RESPONDENT