

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONUKALU&GODSPOWEREBAHOR

COURT NO: 6

SUIT NO: FCT/HC/PET/103/2019

BETWEEN:

SHULAMITEILODIGWE.....PETITIONER

VS

TITUS OKOYEUKAGWU.....RESPONDENT

RULING

By an Answer under protest to Petition Suit No: PET/103/2019, brought pursuant to Order VII Rule 3 (1) of the Matrimonial Causes Rules (1983) dated 11/3/2021 but filed on 17/6/21, Respondent objects to the jurisdiction of court upon the following grounds;

“The cause of action in this Petition is not a Matrimonial Causes as contemplated envisaged and defined under the Matrimonial Causes Act (CAP M7) Laws of the Federation of Nigeria 2004, of which this Honourable Court has jurisdiction to hear and determine”

The Respondent therefore asks for an Order of this Honourable Court striking out this Petition because.

“The marriage between the parties in this Petition celebrated on the 10th day of December, 2016 at the Wesley Methodist Cathedral

Church Umuahia Abia State is not a statutory marriage contracted under the Marriage Act (CAP M6) Laws of the Federation of Nigeria 2004”

In support of the Answer under protest is a 13 Paragraph affidavit deposed to by the Respondent/Applicant. Also filed a Written Address and adopts same as oral argument in urging the court to grant the application.

Responding, Petitioner/Respondent filed a 38 (Thirty Eight) Paragraph Counter-Affidavit with leave of court granted on 26/1/2022. And also a Written Address, which Petitioner/Respondent’s Counsel adopts as oral submission in urging the court to refuse the application.

In the Written Address of the Respondent/Applicant Raymond Azinye Esq. of Counsel formulated two issues for determination namely;

- (1) Whether the marriage between the Petitioner and the Respondent in this Petition is a statutory marriage?
- (2) If the answer to Issue 1 above is in the negative, whether this Honourable Court has jurisdiction to hear and determine this Petition.

On Issue (1) above submits that a statutory marriage is a marriage conducted in accordance with the Provisions of the Marriage Act. Refer to the case of ChukwumaVsChukwuma (1996) 1 NWLR (PT. 426) 543. And for a marriage to be valid, same must be conducted in compliance with the Provisions of Section 7, 10, 11(1), 12, 21, 25, 26, 30(1) and 32 of the Marriage Act. Submit that the mere production of Marriage Certificate

purporting to be in the prescribed form E, would by itself ordinarily be sufficient evidence to prove a statutory marriage, however where the validity of a statutory marriage is challenged, the validity of the marriage will necessarily rest on the couple proving that they duly complied with the Preliminary steps contained in the above mentioned Sections of the Matrimonial Causes Act, before celebrating their marriage. Refer to ChukwumaVsChukwuma (Supra) AnyaegbunamVsAnyaegbunam (1973) 4 SC 121.

Submits further that any marriage certificate presented in proof of the marriage between the parties in this Petition does not merely by itself prove that the marriage between the Petitioner and Applicant is a valid statutory marriage based on the strength on the statutory and judicial authorities referred to as well as the depositions in Paragraph 7(a-e) and 8 of the affidavit in support of the application. Therefore urge court to resolve the issue in favour of the Respondent/Applicant.

On the Issue (ii) above; submits that for this court to have jurisdiction to entertain and determine a Matrimonial Causes, the marriage must have been validly celebrated in accordance with the Provisions of the Marriage Act. Refer to Section 114 of the Matrimonial Causes Act.

Relying on Sections 1(1) and 2(1) of the Matrimonial Causes Act submits that the type of Matrimonial Causes that can be instituted in this court are only matrimonial causes arising from marriage validly contracted under the marriage act therefore, the Matrimonial Causes arising from the marriage between the parties in this Petition which was not validly celebrated under

the statute cannot be instituted in this Honourable Court. Urge court to resolve this issue in favour of the Respondent/Applicant.

Finally relying of the authorities of *LitiVsOnoyiwe* (1991) 1 SCN 125 @ 49, *GXT Investment Ltd Vs Witt & Bush Ltd* (2011) 8 NWLR (PT. 1250) 500 @ 538 (Para B and *MadukoluVsNkemdilim*) (1961) NSCC (Vol. 2) 374 @ 379 submits that this Petition is incompetent as its subject matters are not within the statutory jurisdiction of this Honorable Court to entertain and determine.

By way of adumbration submits that it is the contention of the Applicant that the parties did not obtain Registrar's Licence before celebrating the marriage. Refer to Paragraph 7 of the affidavit in support of the application submits further that the burden of proof as provided by Section 131 on the party who makes the assertion to prove refer to *CCCTCS Ltd VsEkpo* (2008) 6 NWLR (PT. 1083) 362 @ 395 Para A – C.

Submits that Section 11(1) of the Marriage Act is mandatory and that the assertion in Paragraph 23 of the Counter-Affidavit is a positive assertion. The Registrar's licence is a public document and can only be proved by the production of a Certified True Copy not by assumption.

Submits that Section 126 of the Evidence Act does not apply but to marriage under Islamic Marriages refer to *AsereVsAsere* (1991) 6 NWLR (PT. 197) 316 and Section 11(1) of the Marriage Act is mandatory and cannot be brushed aside. Refer to *CCCTCS Ltd VsEkpo* (Supra) 398 Para B – E. Urge court to dismiss the Petition as prayed.

In the Written Address of Petitioner/Respondent, OkoroNkemakolam Esq. of Counsel adopts the two issues formulated by Counsel for Respondent/Applicant and on Issue I (One) submit that; the marriage between the parties is a statutory marriage. Refer to Section 21, 25, 32 of the Marriage Act.

Agrees with the submission of Respondent's Counsel that mere production of a Marriage Certificate purporting to be in the prescribed Form E, would be sufficient evidence to prove statutory marriage and commend the court to the cases of MotohVsMotoh (2011) 16 NWLR (PT. 1274)IjeomaVsIjeoma (2009) 12 NWLR (PT. 1156) 593. Urge court to involve the Provisions of Section 108 (1) of the Evidence Act 2011 to presume that all necessary prerequisite prior to the issuance of the Marriage Certificate.

Submits that Respondent/Applicant failed to discharge the onus of proof that the marriage was not conducted in accordance with Provision of the Marriage Act. Refer to MamoduVsNulge (1994) 8 NWLR (PT. 362) 336 whereas the Petitioner discharged the burden on her own part by tendering a Certified True Copy of Marriage Certificate issued by the Authority in establishing a valid statutory marriage. Refer to Owners of MVBaco Line VsAdeniji (1993) 2 NWLR (PT. 274) 195 and AdeyemoVsOmobhue (1993) 8 NWLR (PT. 311) 291. And Section 34 of the Marriage Act.

On the basis of the Certified True Copy of the Marriage, Section 168(1) of the Evidence Act as well as Paragraph 22 and 23 of the Counter-Affidavit of the Petitionerurge court to resolve this issue against the Respondent/Applicant.

On the issue two (2), adopts all the submission in issue one in urging the court to hold that this court has the requisite jurisdiction to entertain the Petition.

Submits that having not objected to the tendering of the Certified True Copy of the Marriage Certificate, it is now too late for the Respondent to question the validity of the marriage. The presumption of regularity in Section 168 (1) of the Evidence is in favour of the Petitioner and urge court to invoke the Provisions of Section 167 (d) of the Evidence Act against the Respondent for failure to adduce any evidence to support his assertion. Refer to *Antoun&AnorVsOghene* (2012) LPELR – 85502 (CA).

Finally urge court to resolve issue two against the Respondent and dismiss the Answer under protest.

And by way of adumbration, submits that Respondent having not filed a further affidavit, this court should deem the deposition in the Counter-Affidavit as the true position. Refer to *Henry Steven Eng. Ltd Vs A YakubuNig Ltd* (2009) LPELR1363 (SC) urge court to disregard the Answer under Protest and dismiss same.

Having given an insightful consideration of the affidavit evidence of the parties, the submissions of counsel for and against the grant of the application as well as the judicial authorities cited, the court finds that only one issue calls for jurisdiction that is;

“Whether the court has the jurisdiction to entertain and determine this Petition as presently constituted”

The gravamen of the Answer under protest of the Respondent/Applicant is that some Provisions of the Marriage Act, that is Sections 7, 10, 11, (1), 12, 21, 25, 26, 30 (1) and 32 thereof which grants validity to a statutory marriage where not followed, therefore the marriage between the parties is invalid, and the marriage certificate cannot validate it therefore this court lacks jurisdiction to hear and determine the Petition, on the other hand, Petitioner/Respondent contends that the Certified True Copy of Marriage Certificate already tender as Exhibit in court is proof of marriage and that the presumption of regularity as prescribed by Section 168 (1) of the Evidence Act is in favour of the certificate and the Respondent/Applicant failed to discharge the burden of prove that due process prescribed by the Marriage Act was not followed before the certificate was issued and having failed to do so court should invoke Section 167 (d) of the Evidence Act.

Before resolving the contending issues between the parties, the court notes that the Paragraphs 8, 10, 11, 12 and 13 of the affidavit in support of the Answer under protest are in contravention of the Provisions of Section 115 (2) of the Evidence Act which provides that;

An affidavit shall not contain extraneous matter, by way of objection, prayer or legal argument or conclusion.

Having found that those portions of the said affidavit contrary to the above stated Provision of the Evidence Act, this court hereby struck out the said paragraph and shall not consider them in the determination of this application.

It is the fundamental principle of law that before any court of law assumes jurisdiction to determine or adjudicate on the matter before it, the court must be competent and shall be competent when the subject matter of the suit is within its jurisdiction and there is no feature in the matter which prevents it from exercising its jurisdiction and the matter before it is initiated by due process of law upon fulfillment of a condition precedent to the exercise of jurisdiction. See *First Bank PlcVsAkiri* (2014) ALL FWLR (PT. 1150) 1130 @ 1143 Para F – A. The Supreme Court stressed the fundamental nature of the issue of jurisdiction in the case of *ElenuHabeebVs A.G. Federation* (2012) ALL FWLR (PT.629) 1011 @ 1079 Paras G – A when it held;

The issue of jurisdiction lies at the foundation of adjudication by a court of law. It is fundamental and it is the center pin which the entire litigation hinges on.

And in the determination of whether a court has jurisdiction to hear a matter brought before it, it is the Plaintiff's claim (the Petition in this case) that the court will consider. See the case of *AnyanwuVsOgunewe* (2014) ALL FWLR (PT. 738) 1012 @ 1036 Paras B – C. See also *D.C.H.ScontdVsMigfo (Nig) Ltd* 1615 @ 1634 Para E – F.

In the determination of this application, it is therefore necessary for court to consider its record and this the court is empowered to do. See *AgbarehVsMimrah* (2008) ALL FWLR (PT. 409) 559 @ 585 Para D –F. I have taken a look at the record and I find that that the Petitioner/Respondent claims that the parties were lawfully married on 10th

day of December, 2016 at the wisely Cathedral Methodist Church, Umuahia Abia State and attached a copy of the certificate issued upon celebration of the marriage as required by the Rules guiding matrimonial proceedings. Also in the record of the court is a Certified True Copy of the Marriage Certificate evidencing the marriage between the parties admitted as Exhibit "A". And this court had the said Exhibit in conformity with Section 32 of the Marriage Act and proof that the marriage is valid under Section 34 of the Marriage Act, which states;

"All Marriage celebrated under the Act shall be good and valid in law to all intents and purpose"

Now whether or not the Preliminary Processes leading to the issuance of the Certificate was complied with as contended by the Respondent/Applicant is a question the Respondent/Applicant failed to establish, himself being a participant in the procedure. It is trite law that the burden of proof lies with the party who alleged, and having alleged that the Preliminary procedures culminating in the marriage the burden rest on the Respondent/Applicant to prove the allegation under Sections 131 – 134 of the Evidence Act, having failed to lead evidence to discharge that burden the court therefore presume that all act which are prescribed to be executed in a particular way leading to the issuance of the certificate of marriage tendered as Exhibit "A" was duly and rightly done. See Section 168 of the Evidence Act. The Exhibit "A" being a valid evidence of marriage under Sections 32 and 34 of the Marriage Act.

In conclusion, the Answer under protest filed by the Respondent lack merit and should fail moreso as the Respondent failed to discharged the burden of establishing that the Preliminary steps which culminated in the issuance of the marriage certificate now admitted as Exhibit "A" werenot taken and the court presuming on theface of the certificate in line with Section 32 and 34 of the Marriage Act as proof of valid marriage consequently the Answer under protest fails and is accordingly dismissed.

Signed
HON. JUSTICE O. C. AGBAZA
Presiding Judge
9/7/2022

APPEARANCE:

NKEMAKOLAMOKORO ESQ. FOR THE PETITIONER

R.O. AZINYEESQFOR THE RESPONDENT.