

**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& ORS.**

**COURT NO: 6**

**SUIT NO: FCT/HC/PET/336/2021**

**BETWEEN:**

**KENNETH IREDIA ODIGIE.....PETITIONER/RESPONDENT**

**VS**

**ADETUTU FUNMILAYO EKUNDAYO.....RESPONDENT/APPLICANT**

**RULING**

This is a Ruling on Respondent's Answer under protest, filed on 29/4/2022, brought pursuant to Order VII Rule 3, Order IV Rule 2 of the Matrimonial Causes Rules 1983 Section 30(1) of the Matrimonial Causes Act and under the inherent Jurisdiction of this court, wherein the Respondent prays the court, the following reliefs;

- (1) An Order striking out this Suit/Petition for being incompetent, and for non-compliance with relevant Statutory Provisions.
- (2) An Order striking out all the processes filed by the Petitioner in this Suit for lack of Jurisdiction.
- (3) And the Omnibus Relief.

The application is supported by a 4 Paragraph affidavit deposed to by the Respondent/Applicant. Also filed a Written Address in urging the court to strike out the suit. On receipt of Petitioner's Counter-Affidavit, in reaction filed Respondent Further/Better Affidavit sworn to by the Respondent filed on 19/9/2012. And did not respond to the Petitioner's reply on points of law.

Responding, Petitioner/Respondent filed a 10 Paragraph Counter-Affidavit sworn to by one Chinaza Joy and a Written Address in urging the court to refuse the application. In response to the Further/Better Affidavit of Respondent/Applicant. Petitioner/Respondent filed a reply on points of Law dated 19/9/2022 urge court to dismiss the application.

In the Written Address of Respondent/Applicant, Oluwafisayomi S. Aina of Counsel formulated a sole issue for determination that is;

“Whether or not the Honourable Court has jurisdiction to hear and determine the Petition which is filed before the Honourable Court without leave, for the dissolution of marriage within two years of the marriage”

And submits that the marriage of the parties is less than two years, therefore this Petition is filed contrary to the Provisions of Section 30(1)(2) of the Matrimonial Causes Act, therefore the Petition is incompetent. Refer to *Elmskip Ltd Vs Exquisite Industries (Nig) Ltd* (2003) 4 NWLR (PT. 809) 88 (a) 118 (2003) 1 SCNJ *Madukolu Vs Nkemdilim* (1962) All NLR (PT. 2) 589, *Prince Atelagbe & Anor Vs Alhaji A. Awune & Ors* (1997) 9 NWLR (PT. 522) 536 1997 1 SCNJ. *Chief Obaka & Ors Vs Military Governor of Kwara*

State & Ors (1994) 4 NWLR (1994) SCNJ 121 (PT.336) 26 and Captain Amadi Vs NNPC (2000) 10 NWLR (PT. 674) 76.

Submits finally that the Petitioner/Respondent failed to seek the leave of court before presenting his Petition contrary to the Provisions of Section 30(1) 2 thus failed to comply a condition precedent urge court to decline jurisdiction and strike out or dismiss the Petition. Refer to the case of Odofin & Anor Vs Chief Agu & Anor (1992) 2 NWLR (PT. 229) 350 @ 375 (1992) 3 SCNJ 161.

In the Written Address of Petitioner/Respondent Victor Nnaji Esq. of Counsel submits that the Petitioner seeks the court to declare the marriage a nullity for lack of consent and under Section 2(2) of the Matrimonial Causes Act it is permissible to commence an action for nullity of marriage. Refer to Section 3 (d) of the Act.

Submits further that under Section 29 of the Matrimonial Causes Act, where both a Petitioner for Decree of Nullity of a marriage and a Petition for Decree of Dissolution of Marriage are before the court, the court shall not make a Decree of Dissolution of Marriage unless it has dismissed the Petitioner for Decree of Nullity.

Submits that Section 30 (1) referred to by the Respondent/Applicant does not mention proceedings for Nullity of Marriage and the requirement for leave does not apply to the Petition for Nullity of Marriage. Urge court to dismiss the Answer under protest.

Reply on points of law, Petitioner/Respondent's Counsel submits that, Paragraph 5, 6 of Respondent/Applicant's Further and Better Affidavit are

contrary to Section 115 (2) of the Evidence Act urge court to expunge same. Refer to Bamaiyi Vs State (2001) 16 WRN @ Pg 20 and Government of Lagos State Vs Ojukwu (2001) 30 WRN 155.

Submits finally that the second relief of the Applicant touches on Consent, which is also a ground on which a marriage may be void abinitio therefore Petitioner has a cause of action. Refer to Falobi Vs Falobi (1976) 1 NWLR 169. Urge court to discountenance this application.

Having given an insightful consideration to the affidavit evidence of the parties, submission of Counsel as well as the judicial authorities cited, the court finds that the sole issue for determination is;

“Whether the Applicant has made out a case to warrant grant of the relief sought”

Applicant seeks the court order striking the Petition for being incompetent and lacking of jurisdiction. It is a 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 condition precedent to the exercise of jurisdiction. See First Bank Plc Vs Akiri (2014) All FWLR (PT.1130) @ 1134 Para F – A. The Supreme Court stressed the fundamental nature of the issue of jurisdiction in the case of Elenu Habeeb Vs A – G Federation (2012) All FWLR (PT. 629) 1011 @ 1079 Paras G – A When it held;

“The issue of jurisdiction hits 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 Petitioner’s claim in this instant that the court will consider. See the case of Anyanwu Vogunewe (2014) All FWLR (PT. 738) 1012 @ 1036 Paras B – C. See also P.C.H.S. Co. Ltd Vs Migfo (Nig) Ltd 1615 @ 1634 Paras E – F.

In the determination of this application it is therefore necessary for the court to consider its record and this the court is empowered to do. See Agbareh Vs Mimra (2008) All FWLR (PT. 409) 559 @ 585 Paras D – F. A look at the record of reveal that the Petitioner/Respondent filed a Petition for dissolution of marriage but pleaded facts relating to lack of consent before marriage, which are not facts for dissolution of marriage under Section 15(2)(a)-(h) of the Matrimonial Causes Act. Also, Petitioner prayed for nullification of marriage, as the main relief and seeks dissolution of marriage as alternative relief. This revelation suggest to the court that the Petitioner has filed this Petition without precise idea of the cause of action, but to engage the court and Respondent’s Counsel to pick and choose the crux of his action. Once Petitioner files for dissolution of marriage the Petition must be in conformity with the Provision of the Matrimonial Causes Act. And as rightly observed by the Respondent/Applicant, the Petition was filed without first obtaining the leave of court as the marriage is less than two years, contrary to the Provision of Section 30 (1) of the Matrimonial Causes Act. And thus in the firm view of the court this Petition was filed

without due process of law as a condition precedent presentation of the Petition was disregarded by the Petitioner. The submission of Petitioner/Respondent's Counsel that since their second relief still borders on consent which is also a ground on which marriage may be voided abinitio cannot avail them as the court have held that.

"Litigation is not a game of chess where players out smart themselves by dexterity of purpose and traps on the contrary, litigation is a context by judicial process where the parties place on the table of justice their different positions clearly, plainly and without tricks"

See the case of Oladeji Vs Inspector General of Police & Anor (2018) LPELR 45141 CA.

From all of these and having failed to initiate this Petition by due process as required by Section 30 (1) of the Matrimonial Causes Act, and having also failed to place on the table of justice clearly and plainly their cause of action, this court holds that this Answer under protest has merit and should succeed. Consequently the Petition for dissolution of marriage filed on 7/9/2021 is hereby struck out for lack of competence. And all processes filed by the Petitioner in this Petition are accordingly struck out for lack of jurisdiction.

Signed

**HON. JUSTICE C.O. AGBAZA**

Presiding Judge.

14/12/2022

**APPEARANCE:**

CHINEDU AKUBUE FOR THE PETITIONER/RESPONDENT

OLUWAFISIAYOMI .S. AINA FOR THE RESPONDENT/APPLICANT.