

**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: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/PET/442/2020**

**BETWEEN:**

**MRS PEACE RICHARD IBANGA.....PETITIONER**

**VS**

**1. MR RICHARD IMOH IBANGA**

**2. MISS ANELE CHIDERA ISABELLA.....RESPONDENTS**

**RULING**

By a Notice of Preliminary Objection dated 24/3/2021 and filed on 25/3/2021, the 1<sup>st</sup> Respondent/Applicant prays the court for the following reliefs.

- (1) An Order of this Hon. Court dismissing and/or striking out this instant Suit as presently constituted against the 1<sup>st</sup> Respondent/Applicant for lack of requisite jurisdiction on the grounds set out below;
- (2) And for such further order or orders as this Honourable Court may deem fit to make in the circumstances.

Ground upon which the objection is predicated are:-

- (1) The marriage subject of this Suit, was solemnized on the 7<sup>th</sup> day of March, 2020 and is not up to two years.
- (2) Leave of Court is required to enable the Petitioner file this Petition.
- (3) The Petitioner failed, refused and/or neglected to seek leave of court to file the Petition.

In support of the application is a Written Address, urging the court to grant the reliefs.

The Petitioner/Respondent on receipt of the processes, filed on 21/6/2021 in opposition to the application, urged the court to discountenance this application.

Having carefully considered the submission of counsel for and against the grant of this application, and the judicial authorities cited, I find that only one (1) issue calls for determination, which is;

“Whether the court has the jurisdiction to entertain this Petition for dissolution of marriage as presently constituted”.

The issue of jurisdiction is fundamental to a case and when a court lacks jurisdiction to hear a suit any decision reached thereon, no matter how brilliant, would amount to a nullity. See case of International Niger Building Construction Ltd Vs Giwa (2003) 13 NWLR (PT. 836) PT. 69.

In the determination of this issue, whether or not the court has jurisdiction over an action, the court has a duty to look at the Petition, in this instant

case, this the court is empowered to do. See P.C.H.S. Co Ltd Vs Miggo (Nig) Ltd (2012) ALL FWLR (PT. 642) Pg 1605 @ 1614 Ratio 4; Agbareh Vs Mimira (2008) ALL FWLR (PT. 409) 559 @ 588 Para D – F.

In this instant application, the main grounds of the objection by the Applicant, is that this Petition runs fowl of the Provision of Section 30 of the Matrimonial Causes Act, which stipulate;

“(1) Subject to this Section, proceeding for a decree of dissolution of marriage shall not be instituted within two years after the date of the marriage except by leave of court”.

The Applicant contends, that this marriage sought to be dissolved was contracted 7/3/2020 and the Petition filed on 1/9/2020, is not upon to two (2) years and no leave of court was granted to file, hence that failure makes this Petition incompetent.

The Respondent on the other hand, contends that by the Provisions of Section 30 (1) & (2), in particular Section 30 (2), submits that Petition based on the grounds stated, that is Section 15 (2) (a) & (b) and or 16 (1) (a) of Nos Act, oust the need for leave of court to file. Further urge the court to look at the grounds upon which the Petition is predicated and will find that it is in line with the said Provision relied on.

I have carefully perused the Section 30 (1) & (2) of Matrimonial Causes Act and the Sections 15 (2) (a) & (b) and Section 16 (1) (a) of the Matrimonial Causes Act, granted that Section 30 (2) of Matrimonial Causes Act stands out as an except to the Section 30 (1), to the issue of seeking leave to file

a Petition under 2 years. To determine I have had to consider carefully the Provisions Section 30 (2) along with Section 15 (2) (a) & (b) and 16 (1) (a) of Matrimonial Causes Act; and read in conjunction with the grounds upon which the Petition is predicated; and find that whilst the Section 15 (2) (a) & (b) are grounds for dissolution of marriage, it must be read along with Section 16 (1) (a) and in the said Section 16 (1) (a) when read along with the ground upon which the Petition is predicated; the court finds that none of the exception is contained therein to enable this court consider this as a ground upon which leave is not required. Section 16 (1) (a), refers to where the Respondent has committed rape, sodomy or bestiality. In the grounds for the Petition and in the entire Petition are none of these grounds revealed.

In the circumstance, this court holds that this application has merit and should succeed. Accordingly, the Petition is hereby struck out for failure to comply with conditions precedent.

Signed  
**HONOURABLE JUSTICE O.C. AGBAZA**  
(Presiding Judge)  
6/7/2022

**APPEARANCE**

S.A. OMOLE ESQ - FOR THE PETITIONER  
E.O. AGI ESQ - FOR THE RESPONDENT

