

*Action for Maintenance, Welfare and Education – Whether can be Commenced without
Petition for Divorce*

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 4th day of July, 2025

Before Their Lordships
John Inyang Okoro
Tijjani Abubakar
Habeeb Adewale Olumuyiwa Abiru
Jamilu Yammama Tukur
Mohammed Baba Idris
Justices, Supreme Court

SC/334/2008

Between

- 1. Mrs. Veronica Nneka Ugbah**
- 2. Chukwuemeka Gregory Patrick**
(Infant, suing by his Guardian/next friend,
Mrs. Veronica Nneka Ugbah)
- 3. Ifechukwude Brenda Patrick**
(Infant, suing by her Guardian/next friend,
Mrs. Veronica Nneka Ugbah)

APPELLANTS

And

Mr. Patrick Iwebunor Ugbah

RESPONDENT

(Lead judgement delivered by Honourable Habeeb Adewale Olumuyiwa Abiru, JSC)

Facts

1st Appellant and the Respondent were married under Igbo Native Law and Custom and subsequently contracted a statutory marriage. The 2nd and 3rd Appellants are children of the marriage. The Appellants alleged that the Respondent subjected them to intolerable conduct, including physical and emotional abuse, despite several interventions by members of the Respondent's family aimed at resolving the disputes between the parties.

It was alleged further that the Respondent sent the Appellants out of the matrimonial home, while undertaking to provide financial support for their welfare and maintenance. The Respondent subsequently failed to fulfil this undertaking. The 1st Appellant made several complaints to the Respondent's family, his employers at the Lagos University Teaching Hospital, the Lagos State Child Development and Welfare Agency, the Lagos Office of the Public Defender, the Parish Priest of St. Dominic Catholic Church, the Catholic Marriage Tribunal, and the Lagos State Chapter of the International Federation of Women Lawyers (FIDA). The Appellants contended that the Respondent ignored all attempts at settlement and reconciliation, leaving the 1st Appellant solely responsible for the welfare and upkeep of herself and the children. Consequently, the Appellants commenced an action against the Respondent at the High Court of Lagos State by way of a Writ of Summons and Statement of Claim pursuant to the High Court of Lagos State (Civil Procedure) Rules.

Upon being served with the originating processes, the Respondent filed a Notice of Preliminary Objection challenging the jurisdiction of the court on the ground that the suit had not been commenced by due process. The Respondent argued that since the claims related to maintenance and welfare arising from a marital relationship and paternal obligations, the action ought to have been commenced pursuant to the Matrimonial Causes Act by way of Petition, rather than by Writ of Summons under the High Court (Civil Procedure) Rules. The trial court dismissed the preliminary objection, holding that the claims before it did not constitute matrimonial causes within the meaning of Section 114 of the Matrimonial Causes Act (MCA), as the 1st Appellant was not seeking dissolution of the marriage or any other matrimonial relief contemplated under the Act. The court held further that the Appellants were entitled, under the Constitution and the Child Rights Act, to approach the court for reliefs relating to maintenance and welfare, and that the action was therefore properly commenced.

Dissatisfied with the ruling, the Respondent appealed to the Court of Appeal, which allowed the appeal, holding that the claims for maintenance, education, and welfare are reliefs contemplated under the MCA and the Matrimonial Causes Rules (MCR), and that such proceedings ought to have been commenced by Petition. Aggrieved by the decision of the Court of Appeal, the Appellants appealed to the Supreme Court.

Issues for Determination

The Supreme Court formulated a sole issue for determination of the appeal: to wit

Whether indeed, during the subsistence of a marriage, a wife and the children of the marriage possesses enforceable rights to maintenance, welfare, upkeep and education against their husband/father, outside the rights to maintenance, welfare and education granted them under Matrimonial Causes Act, 1970.

Arguments

Arguing the sole issue, the Appellants submitted that the reliefs sought by the Appellants for maintenance, welfare and education did not fall within the definition of “matrimonial causes” under Section 114(1) of the MCA, 1970. They argued that there was no pending, concluded or concurrent proceedings between the 1st Appellant and the Respondent for the dissolution of the marriage, nullity, judicial separation, restitution of conjugal rights, or jactitation of marriage. Consequently, the present action could not properly have been commenced by Petition under the MCA and MCR, but rather by Writ of Summons pursuant to the applicable High Court (Civil Procedure) Rules. The Appellants referred extensively to Section 114(1)(a)–(e) of the MCA, 1970 and Order XIV of the MCR 1983, which classify dissolution of marriage, nullity, judicial separation, restitution of conjugal rights and jactitation of marriage as principal reliefs, while maintenance of a wife and the welfare, advancement and education of children are classified as ancillary reliefs. Counsel argued that claims for maintenance, welfare and education would only qualify as matrimonial causes where they are ancillary to proceedings for dissolution, nullity, judicial separation, restitution of conjugal rights or jactitation of marriage. In such circumstances, the proceedings would necessarily be commenced by Petition. However, in the present case, the appellants sought maintenance, welfare and education as substantive and independent reliefs, and not as ancillary claims. They posited that these rights arose as civil rights guaranteed under the Constitution of the Federal Republic of Nigeria and the Child Rights Act 2003, and by Order 3 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules, 2004, actions seeking reliefs or remedies for civil wrongs or breaches of duty, whether contractual, statutory or otherwise, shall be commenced by Writ of Summons, subject to any contrary statutory provision. The Appellants maintained that neither the MCA nor the MCR prohibits a wife or children from independently instituting an action against a husband or father for maintenance, welfare and education *simpliciter* by way of Writ of Summons. That under family law, a husband owes a legal duty to maintain his wife and provide for the welfare, upkeep and education of his children, and breach of that duty is actionable.

Responding to the submissions, the Respondent argued that at the time the action was commenced in 2006, the Child Rights Law of Lagos State was not in existence and the Family Court had not been established. There was therefore no legal framework outside

the MCA and the MCR under which claims for maintenance, welfare and education of children arising from a marriage could be maintained. He referred to Order 3 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules, 2004, which prescribes commencement of actions by Writ of Summons, and argued that the provision expressly recognises exceptions where another applicable law prescribes a different mode of commencement. He submitted that the only legal avenue available to the Appellants in 2006 for claims relating to maintenance, welfare and education was under the MCA and MCR, and only as ancillary reliefs to proceedings for dissolution of marriage, nullity, judicial separation, restitution of conjugal rights or jactitation of marriage. And such proceedings ought to have been commenced by Petition. He posited that failure of the Appellants to commence the action through the procedure specifically prescribed by statute was not a mere procedural irregularity, but a fundamental defect affecting the jurisdiction of the High Court to entertain the suit. While he conceded that Section 14 of the Child Rights Act, 2003 imposes obligations on parents to provide for the welfare, upkeep and education of their children, he contended that the Act only became operative in Lagos State upon its domestication through the Child Rights Law of Lagos State, 2007, together with the establishment of the Family Court. Counsel pointed out that these developments occurred after the institution of the present action.

Court's Judgement and Rationale

In resolving the appeal, the Supreme Court identified the different types of marriages under Nigerian law and the rights applicable to the parties under the marriage. The Court identified that Christian marriage and Islamic marriage guarantees a spouse a right to maintenance by her husband and it is a right that is enforceable. The situation is not clear for customary marriages. *The right of a wife of a Christian marriage or Islamic marriage to be maintained by her husband is independent of the right to maintenance provided under the provisions of the MCA. Where a wife of a Christian marriage and/or of an Islamic marriage proceeds thereafter to conduct a statutory marriage under the MCA, this independent right of maintenance ceases and becomes subsumed in the right of maintenance provided for a wife of a statutory marriage in the provisions of the Act.* The 1st Appellant and the Respondent having contracted a subsequent statutory marriage became subsumed within the statutory framework of the MCA. The court therefore rejected the Appellants' contention that the 1st Appellant retained an enforceable independent right to maintenance outside the Act.

Regarding the rights of the children of the marriage, the apex court held that the rights of children to maintenance, welfare and education is a fundamental right which all children all over the world are entitled to enjoy. It is constant, irrespective of the nature of the marriage between the parents, or even where no marriage exists. A father bears a primary

legal and moral obligation to provide for the welfare, upkeep, education and protection of his children. The child's right to maintenance is independent of both the mother's right to maintenance and the statutory provisions contained in the MCA.

The Supreme Court emphasised that the obligation of the head of the family had long been recognised under Nigerian criminal law, specifically Sections 205 and 339 of the Criminal Code Law of Lagos State, 2003, which imposed criminal liability on persons who failed to provide necessities of life for children under their care. The subsequent enactment of the Child Rights Act, 2003 and its domestication in Lagos State merely reinforced and codified pre-existing rights rather than creating new rights.

Judicial precedents firmly establish that *a wife can file a stand-alone action for maintenance for herself and the children of the marriage without including with it other primary claims like divorce*. The Supreme Court relied on the decision in **OBAJIMI v OBAJIMI (2011) LPELR 4665 (CA)**, to the effect that *maintenance of a wife may be claimed by her from the husband even if there is no suit for divorce or separation. In other words, the wife of a marriage under the Matrimonial Causes Act is entitled to claim maintenance in the High Court, if her husband wilfully neglected to maintain her without instituting a matrimonial case. There is no provision in the MCA that prohibits a stand-alone action for maintenance*. The court reasoned that requiring maintenance claims to be tied to divorce or other matrimonial reliefs would effectively deny children the ability to seek support from an irresponsible parent, since children themselves cannot institute proceedings for dissolution or nullity of marriage. Their Lordships accordingly determined that the Court of Appeal erred in holding that the Appellants' claims could only be sustained as ancillary reliefs to matrimonial proceedings.

Regarding the question as to whether a wife of a statutory marriage can file a stand-alone action for maintenance for herself and the children of the marriage *via* Writ of Summons under the High Court (Civil Procedure) Rules or by a Petition under the MCA, the Supreme Court held that this is a matter of technicality. It is an issue as to procedure for presentation of the claims and not the substance of the claims. It does not matter that the Appellants commenced this action under the High Civil Procedure Rules because a claim for education, maintenance and upkeep of a child are serious and sensitive matter which should not be hamstrung by technicalities. Relying on its previous decisions, the Supreme Court held that *once the procedure used in a matter brings the issues in contention into focus, it will be of no moment that the procedure used was wrong*. It was not the complaint of the Respondent at the High Court and at the Court of Appeal that the use of a Writ of Summons instead of a Petition occasioned a miscarriage of justice to him. Thus, the Court

of Appeal placed undue emphasis on technicality in holding that the action was incompetent merely because it was commenced by Writ of Summons rather than by Petition.

The Supreme Court, accordingly, found merit in the appeal. The judgement of the Court of Appeal was set aside, and the ruling of the High Court of Lagos State was restored.

Appeal Allowed.

Representation

Mgbereoma Wayo for the Appellant.

Bolu Agbaje Akadri with Johnpraise Okudare for the Respondents.

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