

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU ABUJA**  
**THIS TUESDAY, THE 19<sup>TH</sup> DAY OF FEBRUARY, 2019**  
**BEFORE HIS LORDSHIP: HON. JUSTICE A. B. MOHAMMED**

**SUIT NO: FCT/HC/CV/1799/18**

**BETWEEN:**

MRS. FAITH ONYEDIKACHI FADIPE - APPLICANT

**AND**

MR. FELIX SIYANBOLA FADIPE - RESPONDENT

**JUDGMENT**  
**DELIVERED BY HON. A. B. MOHAMMED**

By an Originating Motion on Notice dated 30<sup>th</sup> day of April, 2018, filed on 10<sup>th</sup> of May, 2018 and brought pursuant to Sections 1, 3(1)(a) and 55 of the Matrimonial Causes Act, Cap. M7 Laws of the Federation of Nigeria, 2004 and the inherent jurisdiction of this Honourable Court, the Applicant, Mrs. Faith Onyedikachi Fadipe, prayed the Court for the following reliefs:

1. **AN ORDER** of this Honourable Court that the marriage between the Applicant and the Respondent is void, null and of no effect in accordance with Section 1, 3 (1) (a) and 55 of the Matrimonial Causes Act, Cap M7 LFN 2004.

2. **AN FOR SUCH FURTHER OR OTHER ORDERS** as this Honourable Court may deem fit to make in the circumstances.

The application was supported by a 16 paragraph affidavit deposed to by the Applicant. The contents of the supporting affidavit were to the effect that the Applicant met the Respondent Mr. Felix Siyanbola Fadipe, who hails from Osun State, in Abuja sometimes in February, 2013 and he proposed to marry her (the Applicant) if she was willing and ready to marry him. That following the Respondent's proposal to marry the Applicant, she wholeheartedly accepted and they started courting until sometime in April, 2013 when they decided to get married and consequently had their traditional marriage in April, 2013 in Jos, Plateau State at the residence of the Applicant's parents, although she hails from Okwe in Ikwuano Local Government Area of Abia State.

The Applicant further deposed that upon the successful traditional marriage between her and the Respondent which was witnessed by members of her family and mainly by his friends, they got married at the Jos North Marriage Registry on the 29<sup>th</sup> of June, 2013 and were subsequently issued with Certificate of Marriage No. 88991/LGREG, Code No. 3105A, dated 29<sup>th</sup> June, 2013 which was attached to the affidavit and marked as Exhibit 'A'.

The Applicant also averred that they returned to Abuja after marriage and thereafter lived as husband and wife. She stated that they lived together for barely two years and during the period the Respondent always travelled every month and stayed away for two months and hardly answered the Applicant's calls

while away. The Applicant averred that her marriage to the Respondent was not blessed with any child and they did not adopt any child.

The Applicant further averred that sometime in August, 2015 a lady who identified herself as Mrs. Linda Fadipe came to the Applicant's apartment in Abuja with a child of about four years old and requested to see the Respondent (the Applicant's husband) but the Applicant informed the said Linda Fadipe that the Respondent travelled to Lagos on a business trip. The said lady broke down in tears and started narrating to the Applicant how she got married to the Respondent in 2010 at the Catholic Church in Lagos and have been happily married ever since. The lady (Mrs. Linda Fadipe) showed the Applicant pictures of her traditional marriage and the Church solemnization with the Respondent including a certificate of marriage issued to them by the Church.

The Applicant averred that she was shocked as a result of this revelation as she was never aware that the Respondent was married to anyone else before his marriage to her (the Applicant) and could not recognize the particular Parish the marriage between the Respondent and Mrs. Linda Fadipe was solemnized. Thereafter the Applicant called the Respondent who quickly switched off his phone when he heard the lady's voice and subsequently stopped answering Applicant's calls. The Applicant averred that all efforts to reach the Respondent after that day in August 2015 have proved abortive and he had neither visited nor called the Applicant and that she had also contacted some of the Respondent's relations who were known to her and who confirmed the position of the said Mrs.

Linda Fadipe as the wife of the Respondent. She urged the Court to grant the application in the interest of Justice.

The originating processes were served on the Respondent by the Bailiff of this Court as per the order of this Court dated 2<sup>nd</sup> July, 2018 for substituted service by pasting the processes on the entrance door of Block 5, Flat 5 Sunny Vale Estate Gudu Junction, Abuja being the last known address of the Respondent. A Certificate of Service was filed by the Bailiff showing that he effected the service on the Respondent on the 10<sup>th</sup> of September, 2018. Despite such service however, the Respondent was absent and unrepresented and did not file any process throughout this proceedings.

On the 14<sup>th</sup> of January, 2019, after being satisfied that a hearing notice was served on the Respondent as ordered by the Court, the learned Counsel for the Applicant proceeded to move the application and adopt his written address and urge the Court to grant the Applicant's reliefs.

In his written address in support of the originating Motion on Notice, dated 30<sup>th</sup> April, 2018 the learned Counsel to the Applicant, S. O. Omekedo Esq., raised the sole issue for determination thus:

Whether this Honourable Court ought to exercise its discretion in allowing the relief sought in this application.

Arguing the lone issue, learned Counsel submitted that, this Court is seized of the Powers not only to entertain the present application but to allow the reliefs sought. Counsel referred the Court to Section 2 of the Matrimonial Causes Act, Cap M7 LFN 2004, and submitted that parties married under the Matrimonial Causes Act are governed by the Act, and the jurisdiction of the Court to determine matters under the Act is governed by the domicile and residence of the husband. He argued that by operation of law, a married woman takes on the domicile of her husband. He cited **KUKU v KUKU 1999) 8 NWLR (pt. 616) 672; and OMOTUNDE v OMOTUNDE 1 SMC, P. 255, ratio 15.**

Learned Counsel referred the Court to Section 3(1)(a) of the Matrimonial Causes Act Cap. M7 LFN 2004, as well as to the affidavit in support of the application where the Applicant had deposed that unknown to her, the Respondent was lawfully married to another woman before the marriage and that the first marriage was blessed with a baby boy. He submitted that it is clear that the Applicant was not aware of the circumstance and could not have known if the Respondent's wife had not approached the Applicant. Citing Section 55 of the Matrimonial Causes Act, Cap. M7 LFN 2004, learned Counsel submitted that the Section enjoins the Court to make appropriate order or decree as the case maybe where it is satisfied of the existence of any ground in respect of which relief is sought.

Learned Counsel argued that there is no circumstance in the instant case that has created any doubt or difficulty as to the proper application of the words used by the relevant sections of the Matrimonial Causes Act to warrant any departure

from their natural and literal meaning. He drew the Court's attention to **UNION BANK OF NIG. LTD. v OZIGI (1994) 3 NWLR (pt. 333) 385 at 404**, where the Supreme Court, per Adio, JSC emphasized the need for the Court to give unambiguous words in a statute or instrument their plain and common meaning. He urged the Court to grant the Applicant's reliefs.

I have carefully considered the Originating Motion together with the affidavit in support and the exhibit attached thereto as well as the submissions of the learned Counsel for the Applicant. The sole issue for determination in this case is whether in the circumstance of this case, this Court has the jurisdiction to proceed and grant the Applicant the relief he sought in this application.

The Applicant herein who seeks for the annulment of her marriage to the Respondent has commenced this suit by way of an originating motion supported by an affidavit, relying on Sections 1, 3(1)(a) and 55 of the Matrimonial Causes Act, Cap. M7, LFN, 2004. In his Written Address which I have summarized above, the learned Counsel for the Applicant relied on the supporting affidavit of the Applicant and highlighted the jurisdiction conferred on the High Court of any State of the Federation in matrimonial causes by Section 2(1) & (2) of the Act, as well as the powers granted to the High Court by Section 55 of the Act to make any decree upon being satisfied of the existence of any ground upon which a relief is sought.

The learned Counsel who filed this suit however had failed to avert his attention to the mandatory mode for instituting matrimonial proceedings stipulated in

Section 54 of the Matrimonial Causes Act, Cap. M7, LFN, 2004. For the avoidance of doubt, Section 54 of the said Act provides:

- 54(1) Subject to the next succeeding subsection, a matrimonial cases of a kind referred to in paragraph (a) or (b) of the definition of “matrimonial cause” in section 114(1) of this Act shall be instituted by petition.
- (2) A respondent may, in the answer to the petition, seek any decree or declaration that the respondent could have sought in a petition.
- (3) Proceedings of a kind referred to in paragraph (c) of the definition of “matrimonial cause” in section 114(1) of this Act that are in relation to proceedings under this Act for a decree of a kind referred to in paragraph (a) or (b) of that definition –
- (a) may be instituted by the same petition as that by which the proceedings for that decree or declaration are instituted; and
  - (b) except as permitted by the rules or by leave of the Court, shall not be instituted in any other manner.
- (4) The Court shall, so far as is practicable, hear and determine at the same time all proceedings instituted by the one petition.

It is trite that a court can only have jurisdiction to hear and determine a matter where the matter is commended through the due process of law. In the locus

classic case of **MADUKOLU v NKEMDILIM (1962) LPELR-24023(SC); (1962) 2 SCNLR 341**, the Supreme Court stated the features that must be present before a court could be competent and have jurisdiction over a matter. His lordship, Bairamian, F.J. held as follows:

Before discussing those portions of the record, I shall make some observations on jurisdiction and the competence of a court. Put briefly, a court is competent when

(1) it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and

(2) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction: and

(3) the case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication.

(underlining mine)

Thus, one of the pre-conditions to the exercise of jurisdiction by a court is that the matter must have been commenced by due process of law. See: **SYLVA v. INEC & ORS (2015) LPELR-24447(SC), per Ngwuta, JCA (as he then was) at page 40, paras. A – C; NWORA & ORS v NWABUEZE & ORS (2013) LPELR-20587(SC), per Mohammed, JSC at page 21, paras E – F; SKEN CONSULT v UKEY (1981) 1 SC 5; and TSOKWA MOTORS (NIG.) LTD v UBA PLC (2008) 2 NWLR (Pt. 1071) 347 at 367.**

In the instant case, the Applicant who seeks for the annulment of her marriage to the Respondent has instituted this suit by way of an originating motion on notice supported by an affidavit instead of a petition as stipulated by Section 54 of the Matrimonial Causes Act which I have reproduced above.

It is important to observe that there is a world of difference between a civil action commenced by way of originating motion or summons and one that is commenced by way of a writ of summons or petition. The modes of originating motion or summons are essentially employed where the action is not likely to be contentious and as such same could be adjudged based on affidavit evidence of the parties, thus requiring no oral evidence from witnesses and cross examination of such witnesses. Where the action is contentious, the modes of writ of summons and petition are employed in order to allow for oral evidence of witnesses and cross examination of such witnesses.

The law recognizes that by their nature, matrimonial causes are highly contentious and as such the Matrimonial Causes Act which govern the adjudication of matrimonial causes has stipulated that such actions relating to such causes should be commenced by a petition. In this case where the Applicant came by way of an originating motion supported by an affidavit, this action has clearly not been commenced through the due process of law as stipulated in Section 54 the Matrimonial Causes Act quoted above. As stated in *MADUKOLU v NKEMDILIM* (supra), an action not commenced through the due process of law robs the Court of the requisite jurisdiction to entertain same.

It is trite law that proceedings of a court without jurisdiction is a nullity and it is as if it had never take place. Indeed, even if any judgment had delivered without such jurisdiction it is a nullity and same ought to be set aside. See: **OTU v A.C.B (2008) Vol. 3 M.J.S.C 191, Per Muhammad JSC at page 219 paras. D; and SKENCONSULT NIG. LTD v UKAY (supra).**

It is in the light of the above that I resolve the sole issue in this case in the negative and hold that in the circumstance of this case, the jurisdiction of this Court has not been properly invoked and this Court does not have the jurisdiction to entertain this application since the action has not been commenced through the due process stipulated by the Matrimonial Causes Act, cap. M7, LFN, 2004. It is trite that a Court can only be competent to entertain a matter if it is properly brought before it.

In **WESTERN STEEL WORKS LIMITED & ANOR. v IRON AND STEEL WORKERS UNION OF NIGERIA & ANOR. (1986) LPELR-3479(SC)**, the Supreme Court, per Obaseki, JSC held that:

Any defect in competence is fatal for the proceedings are a nullity however well conducted and decided. The defect is extrinsic to the adjudication. In *Westminster Bank Ltd. v. Edwards* (1942) AC 529 at 536, (1941) 1 All ER. 470 at 474, Lord Wright observed: "Now it is clear that a court is not only entitled but bound to put an end to its proceedings if at any stage and by any means it becomes manifest that they are incompetent. It can do so on its own initiative, even though the parties have consented to the

irregularity, because, as Willes, J. said in London Corporation v. Cox (1867) LR. 2 HL 237 in the course of giving answers of the judges in the House, mere acquiescence do not give jurisdiction." (Page 19, paras. A – D).

It is settled law that where a Court finds that it has no jurisdiction to entertain a matter, the proper order to make is to strike out the matter. See **BAMAK PHARMACY & STORES LTD & ORS. v ABUJA MUNICIPAL AREA COUNCIL (2010) LPELR-3850(CA), per Peter-Odili, JCA (as he then was) at pages 33 – 34, paras G – E; and OKAFOR v HASHIM (2001) 1 NWLR (pt. 693), per Bulkachuwa, JCA (as he then was) at page 192, para. F.**

Having found that this action is incompetent and therefore this Court lacks the jurisdiction to proceed with same, I accordingly hereby strike out this suit. The Applicant is at liberty to properly commence an action using the legally recognized mode stipulated by law for this type of causes of action.

**HON. JUSTICE A. B. MOHAMMED**

JUDGE

19<sup>TH</sup> FEBRUARY, 2019