

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**BEFORE HIS LORDSHIP: HON. JUSTICE V.V.M VENDA.**  
**ON THURSDAY 16<sup>TH</sup> DAY OF MAY, 2019**

**SUIT NO FCT/HC/PET/206/2014**

**BETWEEN:**

**CELESTINA OZUZOMA AKANDE - PETITIONER**

**AND**

**DEXTER KENNETH AKANDE - RESPONDENT**

**JUDGMENT**

The Petitioner, by an amended notice of petition No. PET/206/14 dated 12<sup>th</sup> and filed on the 13<sup>th</sup> of April 2016 petitions the Honourable Court for a decree of dissolution of marriage on the ground that same has irretrievably broken down based on cruelty and desertion, upon which the Petitioner prays for:

1. A decree of dissolution of marriage on the ground that the marriage has broken down irretrievably.
2. An Order granting custody of the children of the marriage to the Petitioner.
3. An Order directing the Respondent to make monthly payment for the maintenance of the children and to always

pay for their education and make provision for their healthcare, as detailed in paragraph H.

4. And for further Order(s) that this Honourable Court may deem fit to make in the circumstance.

The facts and evidence before the court in this case are that the Petitioner and Respondent got married on the 1<sup>st</sup> of September 2001 at the Ikeja Registry, Lagos State and the marriage is blessed with 2 children; **Abraham Akande** (M) 10 years old and **Bruno Akande** (M) Eight years old.

Petitioner states that soon after she married the Respondent, he abandoned his responsibilities to the house-hold to her. That he is a pathological, insensitive and cruel person who often perpetrates his cunning and inhuman treatment and enjoys deserting the Petitioner at the flimsiest excuse.

That sometime in 2003, the Respondent deserted their Matrimonial Home and Petitioner discovered that within this period, the Respondent had put a lady named **Funmi Alo** in the family way. That the said **Funmi Alo** has 2 children for the Respondent.

That the Respondent returned to their Matrimonial Home in 2005 and stayed for some time but finally left again to marry another lady named **Pat Oguma in Igarra**, Edo State who now has a child for him.

It is Petitioner's further evidence that she discovered that the Respondent, who she fixed up at United African Company of Nigeria (UPDC) through the help of a colleague, resigned his appointment with the said Company in the same 2005.

That the Respondent resorts to emotional and physical abuse of the Petitioner during slight misunderstanding. To expatiate on this, Petitioner states that 28 days after the birth of their 1<sup>st</sup> child in 2008, the Respondent physical assaulted the petitioner, in the presence of the Petitioner's colleagues in the official quarter and in 2010, he did the same in the presence of the Petitioner's brother and sister.

That the Respondent has always been hostile and rude to the Petitioner's family, in contrast to the welcoming and warm attitude of the Petitioner to the Respondent's family.

That the Respondent abandoned the Petitioner in the hospital after the birth of their first child in 2003 consequent upon which the Petitioner sent for her younger brother when their second child was to come, but the Respondent asked the said Petitioner's brother to leave the house (the official quarters allocated to the Petitioner) because the said Petitioners brother caught the Respondent being intimate with a strange woman at their Matrimonial Home.

That the Respondent spends money on unimportant thing and has paid two months' rent only in the 13 years of their marriage. Petitioner also states that the Respondent does not give the Petitioner money for the upkeep of the house and has just recently known the school classes of the 2 sons of the marriage.

That the Respondent has often threatened the Petitioner saying "I will surprise the world concerning you." The Petitioner therefore the Petitioner lives in constant fear for her life.

Wherefore the Petitioner prays for the decree dissolving the said marriage.

The Petitioner testified and tendered the following documents in evidence:

1. A marriage Certificate No. AVCC/311/2001 dated 1/9/2001 bearing the names of Dexter **Kenneth Akande** and **Celestina Ozozoma Ashi Sana** admitted and marked as Exhibit A.
2. Receipts of payment of school fees in respect of **Abraham Ken-Akande** and **Bruno Ken-Akande** admitted and marked as Exhibit B1-25.
3. Birth Certificate in respect of **Abraham Abiola Ken-Akande**
4. and **Stephen Bruno Ken-Akande** admitted and marked as exhibit C and C1 respectively.

5. Letter of offer of temporary appointment marked as Exhibit D and letter of legalisation of appointment of Mrs. Celestina O. Akande marked as Exhibit D1.

PW1 also informed the court that in 2014 when the Respondent heard that she was approaching the court for a dissolution of marriage, he asked for her account details and sent N100,000.00 and promised their children that he (Respondent) will be responsible for their school fees from then, but never did as promised.

She urged the court to grant her prayers.

There was no cross-examination.

The Respondent also failed, refused or neglected to put up a defence.

However, on the resumed hearing on the 1th of February 2017, one **Ojelunde Oluwaseyi** entered appearance for the Respondent and suggested an out of court settlement which inherently failed.

Wherefore, parties were granted leave to file their final written addresses.

The Respondent did not file any written address.

The Petitioners final written address is dated 13/1210. A sole issue for determination was raised thus:

Whether the Petitioner has proved her case to be entitled to the reliefs sought before this Honourable Court.

Counsel on behalf of the Petitioner submitted that the Petitioner has indeed proved her case as it was not in dispute from the totality of evidence adduced before the court by the Petitioner that there was loss of love and in compatibility between the parties. The Respondent having been served several processes and Hearing Notice, yet failed to react or respond has firmly consented to the dissolution of the marriage indicating that both parties are ad-idem on the dissolution of the marriage.

Counsel submitted also that where the Respondent, as in the instant case, did not object to the dissolution of the marriage, the need for further proof that the marriage has broken down irretrievably will therefore be super fluous as was held in the case of **OKORO VS OKORO (2011) ALL FWLR (PT 572) PG 1749 @ 1776.**

He further submitted that it takes two to marry and where parties have agreed that the marriage between them has broken down irretrievably, the court hearing such petition should grant the desires of the parties. Counsel cited **NWANYA VS NWANYA (1966-1979) VOL 5 OPUTA LR PG 74 @ 80 LA** and urged the court to dissolve the marriage.

On custody of the children, counsel on behalf of the Petitioner submits that the overriding consideration is the welfare of the children as stated in Section 71 (i) Matrimonial Causes Act and a party seeking custody of children must satisfy the court of the necessary arrangements which are in the best interest of the children such as welfare, education and proper upbringing of the children as eloquently stated in **WILLIAMS VS WILLIAMS (1987) NWLR (PT 54) @ 66.**

Counsel submits that the Petitioner has placed before this Honourable Court cogent and positive evidence of the arrangement for the welfare of the children. That the Petitioner has an employment that pays well, the children are in school, all of which the Petitioner has presented evidence before the court and all of these evidence were never denied nor discredited by the Respondent, nor contradicted.

He submitted that it is trite that where facts are cogent positive and uncontroverted, they are said to be proof. Counsel cited **WAEC VS OSHIONEBO (2007) ALL FWLR (PT 370) 1501 @ 1516** paragraph C and M/V **GONGOLA HOPEE VS SMURFIT CASES LTD (2007) 15 NWLR 189 OR ALL FWLR (PT 388) 1005 @ 1026**, paragraph C – H.

Counsel argued that the Petitioners evidence that the Respondent deserted her and their children, had 2 children with **Funmi Aio** and

married **Pat Ogumu** with whom they had a daughter was never challenged, or controverted.

He contended that he who asserts or alleges must prove and that the Petitioner has proved her case.

Counsel urged the Honourable Court in granting custody to consider the ages of the children of the marriage, stating that the children are tender and so the court should grant custody to the Petitioner, their mother. He cited relied on the cases of **ALABI VS ALABI (2008) ALL FWLR (PT 418) 245 A 257 – 258 PG 292** paragraph C – E and **ODOGWU VS ODOGWU (1992) NWLR PT. 215.**

Finally it is counsel's submission that the Petitioner has established her case and the Respondent who was severally afforded the opportunities to present his case to the adjudicating authority without let or hindrance from the beginning to the end but refused, failed or neglected to do so, cannot complain of lack of fair hearing.

He urged the court to rely on the evidence and testimony of the Petitioner and enter judgement for the Petitioner.

In Section 15 (2) (d) of MCA it is provided:

The court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the Petitioner satisfies the court of one or more of the following facts.



(d) that the Respondent has deserted the Petitioner for a continuous, period of at least one year immediately preceding the presentation of the petition.

The evidence before the court is that the parties to this suit got married on the 1<sup>st</sup> of September 2001. That sometime in 2003 the Respondent deserted the Matrimonial Home and had two children with another woman by name **Funmi Alo**.

That again in 2010 the Respondent married another woman by name **Pat Oguma** and this union has produced one child.

It is also in evidence that the Respondent does not pay for the children school fees nor cater for their welfare and wellbeing.

Petitioner further testified that the Respondent uses such harsh words on her that she lives in fear of the Respondent as in most cases the words are threats to her life.

That the Respondent does not provide for upkeep money in the house and refuses to eat food in the house at the slightest provocation. He does not pay the rent for the family house. With much treat from the Respondent, one day, when he said he was going to surprise the world concerning the Petitioner, she became more afraid of the Respondent and moved out of the Matrimonial House.

None of these facts have been contradicted by the Respondent, who, in any case, has not contested the petition.

To prove the allegation of desertion as a matrimonial Offence the Petitioner must prove that:

- (a) There was real physical separation
- (b) A manifest intention to remain permanently separated.
- (c) Lack of just cause for withdrawal of co-habitation.
- (d) Absence of consent of the deserted party.

It has also been held that desertion does not necessarily mean that the parties must be living apart. It is sufficient to establish that the deserting party had vowed never to have any relationship with the remaining party.

Thus, there are two ways from where desertion could occur-one is simple desertion and the other constructive. Simple desertion is the one known to all; where a party abandons his Matrimonial Home leaving the deserted party alone. Constructive desertion, on the other hand, occurs when the spouse remains in the Matrimonial Home but has abdicated all forms of responsibilities in the home to the Petitioner until he/she is forced out of the home ie is to say runs away. All these have to be proved by credible evidence. See the cases of **NWANKWO VS NWANKWO (2014) LPELR-24396 (CA)** and

**NWOSU VS NWOSU (2011) LPEPR-465 (CA) and ANIOKE VS ANIOKE (2011) LPELR- 3774 (CA).**

Petitioner states that sometime in 2003, the Respondent deserted the Matrimonial Home and the Petitioner discovered that within that period, the Respondent had put a lady, named Funmi Alo, in a family way who later gave birth to a child for the Respondent. However in 2005 the Respondent returned home.

Again in 2010, the Respondent got married to another woman by name Pat Oguma in Igrra Edo State and that the Respondent presently lives with the said Pat who has also given birth to a baby girl for the Respondent.

That even while living with the Respondent, she, Petitioner, was living like a single mother as the Respondent constantly refused to do anything for, or with, the Petitioner and the children. That the Respondent is unapproachable, making life uncomfortable for her and the children whenever he is present.

It is Petitioner's further evidence that when she gave birth to their first child the Respondent neglected her in the hospital constantly told her that she is not the first woman to give birth therefore should not expect any good treatment from him.

These are all evidence that need to be contradicted which was not,

thus leaving evidence before the court uncontradicted, controverted and unchallenged came does not appear incredible either.

It is trite law that a court is entitled to rely and act on unchallenged evidence as such evidence should be accepted as proof of the fact or issue of which the evidence is given. See the cases of **MAIDAWA & ORS VS DANLADI (2015) LPELR-25923 (CA)**, **KAYILI VS YILBUK & ORS (2015) LPELR-24323 (SC)** and **IRIRI & ORS VS ERHURHOBARA & ANOR (1991) LPELR-1536 (SC)**.

The evidence before the court is such that if false, ought to have prompted the Respondent to react one way or the other. For instance the Petitioner refers to the Respondent as insensitive, cruel and cunning. These processes were served on the Respondent yet he did not refute these adjectives used in describing him.

It is also in evidence that as soon as the Respondent knew that the Petitioner is approaching the court for redress, he quickly requested for the Petitioner's Account number and entered N100,000.00 therein and also promised the children that he would start paying their school fees, which according to the Petitioner, he never did.

There is some element of being cunning in this, regard even as stated by the Petitioner.

This piece of evidence too is not contradicted.

The Supreme Court, in the case of **OGUNYADE VS OSHUNKEYE & ANOR (2007) LPELR-2355 (SC)** thus:

The law, in my view, settled that where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always open to the court seised of the proceeding to act on the unchallenged evidence before it.

**ODULAJA VS HADDAD (1973) 11 SC 357, NIGERIAN MARITIME SERVICES LTD VS ALHAJI BELLO AFOLABI (1978) 2 SC 79.**

Unchallenged and uncontradicted evidence ought to be accepted by the court as establishing the facts therein contained.

The Court of Appeal in a plethora of cases have follows this position of the law and therefore held same in **PLATEAU STATE GOVERNMENT VS CREST HOTEL & GARDEN LTD (2012) LPELR-9794 (CA)**, where the court held:

The law is trite and very explicit on the evidential value explicit on the evidential value of an unchallenged evidence which the court is enjoining to always accept as established. The court in otherwords is bound by the unchallenged evidence of Plaintiff/Respondent no matter how minimal. The following cases of **TANAREWA (NIG) LTD. VS ARZAI (2005) 5 NWLR (pt. 919) 539 at 634, DODO VS SALANKE (2006) 9 NWLR (pt. 986)**

**p. 447 at 472 and GEGE VS NANDE (2006) 10 NWLR (pt. 988) p. 256 at 290** are all relevant in support.

Having had no contrary evidence the evidence before the court and seeing same not incredible, I believe it and do hereby act on it in arriving at this decision of irrevocable breakdown of this marriage.

In the circumstance I hereby grant a decree nisi dissolving the marriage between **MR. DEXTER KENNETH AKANDE** and **CELESTININA OZOZOMA ASISHANA** contracted at the Archbishop Vining Memorial Cathedral Ikeja, Lagos on the 1<sup>st</sup> day of September 2001, which shall be mad absolute after 3 months.

Now to the children of the marriage.

The Child's Rights Act provides in Section 1 thereto thus:

In every action concerning a child, whether undertaken by an individual, private or public body, institutions or service, courts of law, administrative or legislative authority, the best interest of the child shall be primary consideration.

It is in evidence that the two children of this marriage were 10 and 8 years respectively at the time of presenting this petition in 2014. They are therefore fifteen and thirteen respectively by now.

Not much is said about the children and their relationship to either of their parents. The court is not told in whose custody they are; who pays their school fees and feeding.

The Petitioner however prays that the custody of the children be granted to her while the Respondent has not made a similar prayer.

She also prays the court to order the Respondent to make monthly payment for the maintenance of the children and to always pay for the children's education and make provision for their health care.

Although these children are no longer of a tender age, the fact that the Respondent is said to have had other children from other woman, one of whom it is said that he is married to, gives me the impression that these children are better off with their mother, the Petitioner. With two children from **Funmi Alo** and one from **Pat Oguma** I do not see how the Respondent can comfortably take care of these two children Abraham and Bruno who are even more grown up than the Respondent's other three children from other women.

In the circumstance I hereby grant custody of the two children of this marriage – **Abraham Akande** and **Brouno Akande** to the Petitioner.

The Respondent is granted visitation right with 48 hours notice and shall be responsible for the payment of the children's school fees. He shall pay the school fees directly to the school account and give the

Petitioner a copy of the evidence of payment receipt while he keeps the original. Respondent shall also pay 50% of medical bills of the children where such bills exceed N20,000.00.

The Petitioner shall be responsible for all other needs of the children.

In the university however the Respondent shall pay, not only the tuition fees but also accommodation, while the Petitioner cares for the books, handouts and feeding. Both parents shall be responsible for the children's clothing's.

This is the judgment of the court.

*Singed*  
*Hon. Judge*  
*16/05/2019*

### **APPEARANCES**

**T. O. ANAWO ESQ** for Petitioner.

No appearance for Respondent.

### **AUTHORITIES**

- 1. OKORO VS OKORO (2011) ALL FWLR (pt. 572) pg 1749 @ 1776.**
- 2. NWANYA VS NWANYA (1960-1976) Vol. 5 OPUTA L.R. 74 @ 80.**



3. **WILLIAMS VS WILLIAMS (1987) NWLR (pt. 54) 66.**
4. **WAEC VS OSHIONEBO (2007) ALL FWLR (pt. 370) 1501.**
5. **MV. GONGOLA HOPEE VS SMURFIT CASES LTD (2007) 15 NWLR 189.**
6. **ALABI VS ALABI (2008) ALL FWLR (pt. 418) 245.**
7. **ODOGWU VS ODOGWU (1992) NWLR (pt. 215).**
8. **NWANKWO VS NWANKWO (2014) LPELR 24396 (CA).**
9. **NWONSU VS NWOSU (2011) LPELR – 465 (CA).**
10. **ANIOKE VS ANIOKE (2011) LPELR-3774 (CA).**
11. **MAIDAWA & ORS VS DANLADI (2015) LPELR 25923 (CA).**
12. **KAYILI VS YILBUK & ORS (2015) LPELR-24323 (SC).**
13. **IRIRI & ORS VS ERHURHOBARA & ANOR (1991) LPELR 1536 (SC).**
14. **OGUNYADE VS OSHUNKEYE & ANOR (2007) LPELR – 2355 (SC).**
15. **PLATEAU STATE GOVT. VS CREST HOTEL & GARDEN LTD (2012) LPELR – 9794 (CA)**
16. **TANAREWA (NIG) LTD. VS ARZAI (2005) 5 NWLR (pt. 919) 539.**

**17. DODO VS SALANKE (2006) 9 NWLR (pt. 986) 447 @ 472.**

**18. GEGE VS NANDE (2006) 10 NWLR (pt. 988) 256 at 290.**

**STATUTE**

**1. SECTION 15 (2) (DO OF MATRIMONIAL CAUSES ACT.**

**2. SECTION 1, CHILD RIGHT ACT.**

## **RULING/JUDGMENT**

Upon being granted leave to go on with the case learned counsel to the 1<sup>st</sup> Respondent/Applicant informed the Court of their intention to move their motion dated and filed on the 11/05/2011 which was brought pursuant to the inherent jurisdiction of the Court as provided for by section 6 (6) of the 1999 constitution of the Federal Republic of Nigeria. Praying for the following orders:

An order of this Court dismissing the sustentative suit on the ground that this Court lacks the jurisdiction to entertain same.

And for such further orders as the Court may deem fit to make in the circumstance and the grounds upon which the application was brought were that:

There is an earlier suit on the same subject matter pending before Justice Kutigi of High Court 29 Wuse Zone 5, Abuja with motion No. M/4331/11 dated 21/03/2011 and filed on 22/03/2011.

Following this present suit to continue will amount to abuse of Court process.

Counsel further submitted that they have also filed and will relied on all the averment in their paragraphs affidavit in support of the motion on notice deposed to by one Doris Eze a litigation secretary in their firm and a certify true copy of processes filed in Justice Kutigi's Court motion number: M/4331/11 between Dr. Ikenna Ihezub Vs Inspector General police & 3 Ors annexed and marked as exhibit 'A' that they also filed a written address and same was adopted as their oral argument in this suit.

Finally counsel urge the Court to dismiss the suit. Because the Respondent/Applicant in this suit is also the Applicant in the case before Justice Kutigi's Court while 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in this suit were also Respondent with two others. And same were the subject matter of these two suits pending before Courts of co-ordinate jurisdiction at the same time.

Counsel submit that this amount to an abuse of Court process and referred the Court to the case of Onalaja Vs Oshinubi Cited in his written address.

Applicant/Respondent counsel did not file a counter affidavit but respond on point of law by opposing the said application and submitted that it is a ploy to delay hearing of their application which rules of Court frown at. He further submitted that the parties subject matter, and reliefs sought were not the same and referred the Court to page 12 of the annexure under the heading 1 preliminary statement where the car registration number: is JHMCM 56894-CO 35926 whereas in the application before this Court the car Reg. No. is BV 645 RSH.

Learned counsel to the Applicant/Respondent further stated that in the suit before Court 29 of the High Court of FCT. N1,000,000.00k damages was claimed against all the Respondents and Applicant in this suit who the 1<sup>st</sup> Respondent in the above mentioned case whereas the Applicant in the instant suit is claiming N10,000,000.00 against the 1<sup>st</sup> Respondent alone. Learned counsel to the Applicant/Respondent cited the case of Ubeng Vs Usua (2006) 12 NWLR (pt 994) 244 at pg 255 Paragraph E – H Ratio 1 and urge the Court to dismiss the application because there is no evidence that the Applicant/Respondent in this suit has instituted several suits against the Respondents.

Further more learned counsel to the Applicant/Respondent adopted the argument of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents counsel where they assert that the parties, subject matter and the reliefs sought in the two different suits before the two different Courts pending at the same time were not the same. He submitted that the authorities relied upon by the 1<sup>st</sup> Respondent do not apply in this suit and referred the Court to the case of Ette Vs Edoho (2009) 8 NWLR (pt 114) 601 at 603 Ratio 3.

Again learned counsel to the Applicant/Respondent argued that the Court can hear his application that day even as the 1<sup>st</sup> Respondent/Applicant which ought to have file a counter affidavit by that time is yet to do same. Also referred the Court to order 8 rule 4 of the Fundamental Human Right Enforcement procedure rules and the case of Abia State University Vs Chima Anya Ibe (1996) 1 NWLR (pt 439) 646 at 660.

Finally, learned counsel urged the Court to dismiss the preliminary objection of the 1<sup>st</sup> Respondent/Applicant and grant their reliefs as contained in the Applicant motion on notice dated 24/03/11 and filed the same date.

Going through the processes filed by all the parties and their oral submission on point of law, it is trite principle of law that once an issue of jurisdiction is raised that the Court should first decide on it first. This is because if at the end, it is found out that Court acted without jurisdiction all the proceedings shall be rendered null and void see the case of Madukolu Vs Nkemdilim (1962) 2 SCNLR R 341 and Arowolo Vs Adsina (2011) 2 NWLR (pt 1231) 315. It is on that strength that the issue of jurisdiction as raised by the 1<sup>st</sup> Respondent shall be considered first.

We have earlier on stated the prayer of the 1<sup>st</sup> Respondent/Applicant in his motion to dismiss suit for lack of jurisdiction on the ground that the suit is an abuse of judicial process that there is a similar suit between the parties pending before Justice Kutigi's Court in High Court 29.

This been the contention of the 1<sup>st</sup> Respondent/Applicant, thus the term abuse of Judicial process has been Judicially defined to mean that the process of the Court has not been used bonafide and properly. It also connotes the employment of judicial process by a party in improper use to the irritation and annoyance of his opponent and the efficient and effective administration of Justice see the case of Umeh Vs Iwu (2008) 8 NWLR (pt 1089) 225. In order to sustain a charge of abuse of process there must Co-exhibit inter alia

- (a) A multiplicity of suits
- (b) Between the same opponents,
- (c) On the same subject matter, and
- (d) On the same issues.

It is against this backdrop of these laid down condition that there arises the need to glance through the aforesaid suits No: M/4611/11: Miss Chika Ogu Vs

Dr. Ikenna Ihezvo & 2 Ors and suit No: M/4331/11 Dr. Ikenna Ihezvo Vs I.G.P & 3 Ors. It is obvious from the faces of the two suit that the parties are not the same as a result both parties are entitled to initiate and air their grievance at the law Courts as when there is a right, there must be a remedy.

On the question of the same subject matter in both aforesaid suits. The instance suit No: M/4611/11 has been instituted for a relief against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to release her car Honda Accord with registration number Abuja BV 645 RSH which was detained upon the instigation by the 1<sup>st</sup> Respondent and Ten Million Naira (10,000,000.00) against the 1<sup>st</sup> Respondent as exemplary damages for the unwarranted and malicious infringement of the Applicant's Fundamental Rights. Whereas suit No: M/4331/11 on the other hand is a declaration against the Inspector General of Police and 3 Ors that the continuous detention of the Applicant's vehicle, a red 2004 Honda Accord with Vehicle identification number JHMCM 56894 CO35926 by the Respondents is illegal, unconstitutional, oppressive and a gross violation of the Applicant's Fundamental Rights as guaranteed by section 44 (1) of the constitution of the FRN 1999; an order releasing the said Applicant's vehicle being detained by the Respondents, and an order awarding the sum of One Million Naira (N1,000,000.00) only against the Respondents jointly and severally being general damages for the violation of the Applicant's Fundamental Rights.

In view of the above the subject matter in issue in suit No: M/4611/11 is the releasing of 2004 Honda Accord car with registration number Abuja BV 645 RSH to the Applicant and the particulars were exhibited as per exhibits 'G', 'A', 'J' 'K' in the Applicant's paragraph 32 of her affidavit in support of the motion and N10,000,000.00k exemplary damages. While on the other hand the subject matter in issue in suit No: M/4331/11 is a recovered stolen car from the suspects (Names Unknown) and N1,000,000.00 general damages. It is difficult here to state that both suits were the same to sustain charge of abuse of Court process in addition based on the careful perusal/appraisal of the two suits, the contending issues in both suits are not the same.

It is therefore in the interest of Justice that the application for dismissal of the instant suit is hereby refused since there is no prove to show any abuse of Court process by the 1<sup>st</sup> Respondent/Applicant.

### **SUBSTATIVE CASE**

The Applicant in this suit brought an application dated 24/03/2011 and filed the same day to enforce her Fundamental Human Rights against the Respondents pursuant to sections 44, 46 (1) and (2) of the 1999 constitution of the Federal Republic of Nigeria (as Amended) and order 2, Rules 1,2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009 seeking the following reliefs:

A declaration that the seizure and or detention of the Applicant's Honda Accord car with registration number Abuja, BV 645 RSH since October, 29<sup>th</sup> 2010 by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on a false allegation and instigation of the 1<sup>st</sup> Respondent is unlawful unwarranted and contrary to section 44 of the constitution of the Federal Republic of Nigeria.

An order directing the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to release the said Honda Accord car with registration number Abuja, BV 645 RSH to the Applicant forth with without my conditions whatsoever.

Ten Million Naira (10,000,000.00k) against the 1<sup>st</sup> Respondent as exemplary damages for the unwarranted and malicious infringement of the applicant's Fundamental Rights.

And for such further order or orders as this Honourable Court may deem fit to make in the circumstance.

The Applicant also filed and relied on her statement of fact which was brought pursuant to order 2 Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009, 38 paragraphs in support of the motion on notice deposed to by the Applicant she relied on all the averment and the attached exhibits thereto and marked as follows:-

- (i) A copy of the invitation card to the traditional wedding ceremony between the 1<sup>st</sup> Respondent and her sister. Marked Exhibit A.
- (ii) Two pictures of the traditional wedding ceremony between the 1<sup>st</sup> Respondent and her sister. Marked Exhibits B and B1.
- (iii) A copy of the Applicant's statement of account from United Bank for Africa Plc Domiciliary Account Number 049013000472 showing two transfers of \$4,500 to Salome Chizoba Ogu. Marked Exhibit C.
- (iv) Teller showing deposit of the sum of N140,000 into Zimus Resources Limited account with intercontinental Bank Plc. Marked Exhibit D.
- (v) Teller showing deposit of the sum of N130,000 into Zimus Resources Limited account with Intercontinental Bank Plc. E.
- (vi) A copy of the Applicants statement of account from United Bank for Africa Plc Account Number 049002001874 showing transfer of N47,200 to Callistus Onyenaobi. Marked Exhibit F.
- (vii) Shipping documents given to the Applicant by Fano Shipping Agencies Limited covering the two 2004 Honda Accord vehicles and two other vehicles. Marked Exhibit G.
- (viii) Copies of Vehicle License and proof of Ownership Certificate for Honda Accord with registration number BG 16 GWA. Marked jointly as Exhibit H.
- (ix) Copies of registration papers for Honda Accord with registration number BV 645 RSH (the subject matter of this suit). Marked jointly as Exhibit J.
- (x) Picture showing the 1<sup>st</sup> Respondent and his wife standing in front of the Honda Accord with registration number BV 645 RSH at the family house of the Applicant in Aboh Mbaise, Imo State in April 2010. Marked Exhibit K.

Finally a written address in support of the Applicant's application was equally filed by learned counsel to the Applicant. Formulating one issue for determination '**whether the Respondents have violated the Fundamental Right of the Applicant to own and keep movable property so as to warrant a grant of the reliefs sought by the Applicant**'.

Counsel affirm the lone issue formulated by him and referred the Court to provisions of section 44 (1) of the constitution of the Federal Republic of



Nigeria which provides that 'No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquire compulsorily in any party of Nigeria except in the manner and for the purposes prescribed by a law that, among other things:

- (a) Requires the prompt payment of compensation therefor; and
- (b) Gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a Court of law or tribunal or body having jurisdiction in that part of Nigeria.

Learned counsel to the Applicant/Respondent contend that the Applicant has put before the Court evidence to enable the Court hold that the Honda Accord car with registration number BV 645 RSH belongs to the Applicant and she is entitled to a protection of her right to own same. Even though they were not unmindful of the limitation placed by the provisions of section 44(2)(k) of the constitution which provides as follows:

- (2) Nothing in subsection (1) of this section shall be construed as affecting any general law –
- (k) relating to the temporary taking possession of property for the purpose of any examination, investigation or enquiry;

Counsel further urge the Court to hold that the continued seizure and or detention of the Honda Accord car the subject matter of this suit since October 29, 2010 without charging anybody to Court for any offence or releasing the car to the Applicant by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is unreasonable and can no longer qualify as **'temporary taking possession of a property for the purpose of any examination, investigation or enquiry'**. Counsel referred the Court to the case of Nawa Vs A.G. Cross River State (2008) ALL FWLR (pt 401) pg 807 at 840 where it was held that it is the duty of Court to safe guard the Rights and liberties of individual and to protect him from any abuse or misuse of power.

Learned counsel to the Applicant also submitted that the Applicant has made out a case against the 1<sup>st</sup> Respondent through the averment in her affidavit and the documents attached as exhibits for the violation of her right to own and keep movable property by the Respondents and urge the Court to grant all the reliefs sought particularly the relief of Ten Million Naira (N10,000,000.00k) exemplary damages against the 1<sup>st</sup> Respondent. On this counsel referred the Court to the cases of Odogu Vs A.G. Federation & Ors (2000) 2 HRLRA 82 and Jimoh Vs A.G. Federation (1998) 1 HRLRA 513.

Learned counsel to the Applicant/Respondent moved his motion in terms of the motion paper on the 12/05/2011 and further relied on the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent Counter Affidavit especially paragraph 5(iii) and 5(vii) and urge the Court to grant their reliefs as prayed because all their facts and the attached exhibits were unchallenged by the Respondents.

Learned counsel to the 1<sup>st</sup> Respondent/Applicant submitted that they do not file any Counter Affidavit to enable them contradict the Applicant/Respondents position but choose to reply on point of law.

Counsel then referred the Court to Exhibit 'G' where at the 2<sup>nd</sup> page the name of the 1<sup>st</sup> Respondent/Applicant appears at the column of Exporter /Importer. Counsel then submitted that the 1<sup>st</sup> Respondent is the owner of the said vehicle and has not transferred his ownership to the Applicant/Respondent even from the attached exhibits to the motion.

By way of response to the 3<sup>rd</sup> relief ieN10,000,00k exemplary damages sought by the Applicant/Respondent against 1<sup>st</sup> Respondent, counsel further submit that the 1<sup>st</sup> Respondent/Applicant did not violate her Fundamental Human Rights but rather contest the vehicle's ownership with her and that if the Court so hold, it wasn't with malice because there were several letters from him to the police to investigate his stolen car. Counsel urge the Court to be guided by principle of fair play in its ruling.

In another breath learned counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent also informed the Court that they opposed the 1<sup>st</sup> relief sought by the Applicant/Respondent

against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent and in view of their opposition they filed and relied on 8 paragraphs Counter Affidavit deposed to by on Jonah Wutu police officer and litigation clerk in the legal department of the Force C.I.D. Abuja. In further opposition to the said relief one, counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent having filed also adopted his written address where it contended that up till that day, 1<sup>st</sup> Respondent is still contesting the ownership of the said vehicle with the Applicant/Respondent and that their action was not actuated by malafide but promise to handover the car to the true owner when a Court of competent jurisdiction ordered same.

Finally counsel urge the Court to dismiss relief one sought by the Applicant/Respondent against 2<sup>nd</sup> and 3<sup>rd</sup> Respondent but conceded to the 2<sup>nd</sup> relief and stated that the 3<sup>rd</sup> relief do not affect them.



































































