

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 FRIDAY 28TH DAY OF JUNE, 2019

SUIT NO FCT/HC/PET/208/2017

BETWEEN:

IBUKUN GRACE EDJEKOHWO - PETITIONER

AND

PRINCE USINEDE EDJEKOHWO - RESPONDENT

JUDGMENT

This petition No Pet/208/17 dated and filed the 2nd day of May, 2017, seeks the following reliefs from this Honourable Court.

- (1) A decree of the dissolution of the marriage between the Petitioner and the Respondent on the grounds that the marriage has broken down irretrievably.
- (2) Any further Order or Orders as this Honourable Court may deem fit to make in the circumstances.

In the course of the trial, Petitioner's counsel informed the court the Petitioner relocated to London, got a Job and is also school there. It will therefore be difficult to get her down here to testify. She neither cross examined the Respondent nor filed an Answer to the cross petition. She merely filed the petition without more.

After a series of adjournments without Petitioner, the court came to the conclusion that Petitioner has abandoned her case. The court thereafter foreclosed Petitioner from continuing with her case and ordered that the cross petition be heard on the merit.

The Respondent's Answer and cross petition is dated the 28th day of September, 2017 and filed the 13th of October, 2017. The cross petition seeks the following reliefs thus:-

- (1) A decree of dissolution of marriage on the grounds that the marriage has broken down irretrievably.
- (2) And for such further order(s) as the Honourable Court may deem fit to make in the circumstances of this case.

In the Answer and his testimony before the court which Respondent/Cross Petitioner adopted as his evidence in this case, he denied most of the allegations contained in the petition but made clarifications to some. He stated that contrary to Petitioner's assertion that he could not procreate, the parties by mutual agreement resolved upon their marriage to stay away from child bearing for a period of two years. Despite this arrangement, Petitioner serially abused Respondent and accused him of being sterile, impotent and unable to impregnate her, and also wrongly accused him of several escapades of adultery.

That the several quarrels, fight and disagreements that led to turbulence in the marriage was due to the unbearable and

abusive attitude of the Petitioner towards the Respondent. The Petitioner was a serial alcoholic, who after indulging in alcoholic binges gets into fits of anger and unleashes violence on Respondent, and has attacked and injured him on several occasions whilst drunk.

Consequently, Petitioner was always aggressive and disrespectful to the Respondent.

It is Respondent's further testimony that Petitioner mounted unbearable pressure on him to go for a medical check up which he succumbed to, where the medical Doctor at Nisa Premier Hospital Jabi found that he was not sterile, and further counselled the parties as to the various options available to them as they seek childbirth, including in - vitro fertilization (IVF).

Despite all these, Petitioner refused to change but instead got worse and continued in her quest for blood at the slightest provocation.

She frustrated every move at reconciliation and threatened to stab herself and Respondent to death if she does not quit the marriage on or before September 2016.

Respondent concluded that rather than Petitioner, it is him that has suffered so much pain and ridicule in the marriage and also, admits that the marriage has broken down irretrievably.

The Respondent/Cross Petitioner's final written address is dated and filed 18th of May, 2018. He formulated a sole issue for determination thus:

Whether from the available facts and circumstances as presented before this Honourable Court, the marriage of the Cross Petitioner to the Petitioner has broken down irretrievably to warrant an order of dissolution of marriage from this Honourable Court.

Arguing the sole issue, counsel submitted that the marriage between the Cross Petitioner and the Petitioner has broken down irretrievably on the ground that since the marriage, the Cross Respondent has behaved in such a way that the Cross Petitioner cannot reasonably be expected to live with her. Secondly, the Cross Respondent has deserted the Cross Petitioner for a continuous period of two years immediately preceding the presentation of the petition. He cited section 15 (2) (c) of the Matrimonial Causes Act. He also cited paragraph 8 (e) of the Cross Petitioner and paragraph 12 of the cross Petitioner's witness statement on oath. He argued that the incidents in the above cited paragraphs are fearful, as it involves threat to life, and no human being is expected to live in constant fear of his or her life especially with a spouse who has shown tendencies to inflict grievous bodily harm or even kill.

He further cited the case of **DAMULAK VS DAMULAK (2004) 8 NWLR (pt. 874) 151**, and the case of **ATTIOGBEY VS ATTIOGBEY (1986) 1 QLRN 61**.

Further, counsel submitted that it is trite law that where evidence given by one 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 proceedings to act on the unchallenged evidence before it. He argued that the evidence of the Cross Petitioner which is unchallenged and uncontroverted is deemed admitted, and the court is bound to act on it. He cited and relied on the cases of **UMOH VS TITA & CO. (1999) 12 NWLR (pt. 631) 427 at 434**. **AIGBODON VS STATE (2000) 7 NWLR (pt. 666) 686 at 702 – 703**.

On the ground of desertion, it is in evidence that the Petitioner relocated to London and has not returned till date.

This piece of evidence which is provided for under section 15 (2) (d) of the Matrimonial Causes Act is uncontradicted.

Counsel to the Petitioner corroborated this fact when he informed the court during trial that it would be difficult for him to get Petitioner to come here to testify. He cited the Black's Law Dictionary (Ninth Edition) which defines desertion as:

“The wilful and unjustified abandonment of a person's duties or obligation.”

He urged the court to hold that the Petitioner has indeed abandoned the Cross Petitioner for a continuous period of at least one year immediately preceding the presentation of this petition.

In conclusion, he submitted that having regard to the evidence of the Cross Petitioner before this court which was not rebutted or countered by Cross Respondent, the marriage between the parties has broken down irretrievably, and that the Cross Petitioner by his evidence has satisfied the provision of section 15 (2) (c) and (d) of the Matrimonial Causes Act. He urged the court to so hold.

The facts and evidence in this case, before this court are simple and straight forward. The Petitioner, after filing this petition abandoned same and the court is told that she has re-located to London and it will be difficult to get her to come and testify in this case, wherefore the case is tried on the facts presented to the court by the Respondent/Cross Petitioner.

It is in evidence that the Petitioner and the Cross Petitioner agreed not to have children from the early stage of the marriage till about two years into the marriage.

When the Cross Petitioner discovered that the Petitioner wants babies earlier than they had agreed the cross Petitioner ought to have reconsidered their position earlier agreed upon and given it a better attention seeing that it was affecting his marriage negatively.

In my considered opinion, the Cross Petitioner has not told the court the truth when he said that he is capable of impregnating a woman but did not do so on agreement with the Petitioner.

According to the evidence before the court, the Petitioner has deserted the Cross Petitioner and there is no hope of their reconciliation. I am of the firm view that the Cross Petitioner is incapable of impregnating a woman, naturally, which has led to the irretrievable break down of this marriage and the eventual desertion of the marriage by the Petitioner.

In the circumstance I hereby order a Decree Nisi dissolving the marriage contracted between **Prince Usinefe Edjekohwo** and **Ibukun Grace Fashanu** at the Diocese of Akoko-Edo (Anglican Communion) Edo State on the 06-06-2013. The decree nisi shall be made absolute three months from the date of judgment.

Singed
Hon. Judge
28/06/19

APPEARANCES

- 1. ALOZIE MERENGWA ESQ** for the Petitioner.
- 2. CHUKWUMA NWACHUKWU** for the Respondent.

AUTHORITIES

- 1. DAMU DAMULAK VS DAMULAK (2004) 8 NWLR (pt. 874) 151.**
- 2. ATTIOGBEY VS ATTIOGBEY (1986) 1 QLRN 61.**
- 3. UMOH VS TITA & CO. (1999) 12 NWLR (pt. 631) 427 at 434.**
- 4. AIGBODON VS STATE (2000) 7 NWLR (pt. 666) 686 at 702 – 703.**

RULING/JUDGMENT

Upon being granted leave to go on with the case learned counsel to the 1st 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 2nd and 3rd 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 1st Respondent in the above mentioned case whereas the Applicant in the instant suit is claiming N10,000,000.00 against the 1st 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 2nd and 3rd 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 1st 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 1st Respondent/Applicant which ought to have filed 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 1st 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 1st Respondent shall be considered first.

We have earlier on stated the prayer of the 1st 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 1st 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 2nd and 3rd Respondent to release her car Honda Accord with registration number Abuja BV 645 RSH which was detained upon the instigation by the 1st Respondent and Ten Million Naira (10,000,000.00) against the 1st 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 views 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 base 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 1st 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, 29th 2010 by the 2nd and 3rd Respondents on a false allegation and instigation of the 1st Respondent is unlawful unwarranted and contrary to section 44 of the constitution of the Federal Republic of Nigeria.

An order directing the 2nd and 3rd 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 1st 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 1st Respondent and her sister. Marked Exhibit A.
- (ii) Two pictures of the traditional wedding ceremony between the 1st 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 1st 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 2nd and 3rd 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 1st 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 1st 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 2nd and 3rd 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 1st 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 2nd page the name of the 1st Respondent/Applicant appears at the column of Exporter /Importer. Counsel then submitted that the 1st 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 3rd relief ieN10,000,00k exemplary damages sought by the Applicant/Respondent against 1st Respondent, counsel further submit that the 1st 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 2nd and 3rd Respondent also informed the Court that they opposed the 1st relief sought by the Applicant/Respondent against the 2nd and 3rd 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 2nd and 3rd Respondent having filed also adopted his written address where it contended that up till that day, 1st 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 2nd and 3rd Respondent but conceded to the 2nd relief and stated that the 3rd relief do not affect them.

