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 MONDAY 30TH DAY OF SEPTEMBER, 2019
SUIT NO FCT/HC/PET/107/2014

BETWEEN:
MR. NKEMDIRIM CHARLES ISIKAKU----------PETITIONER

AND

MRS. NKEMDIRIM NGOZI NDAWI----------RESPONDENT

JUDGMENT

By a petition dated and filed the 7th day of April, 2014, the Petitioner seeks the following relief from this Honourable Court:-

A Decree of Dissolution of marriage between the Petitioner and the Respondent on the grounds that the marriage has broken down irretrievably.

The grounds upon which the petition is brought are as follows:

(a) The Respondent and Petitioner have lived apart for a cumulative period of 4 years and 6 Months since September, 2009.
(b) The Petitioner and Respondent have irreconcilable

differences which has led to a stressful relationship for both parties.

(c) By reason of the aforesaid, Petitioner has lost all love, trust and affection for Respondent.

The facts of the case are that the Petitioner and the Respondent got married on 10th December, 2004 at the Federal Marriage Registry, Abuja where they were issued a Marriage Certificate and immediately cohabited at No. 69 Gaborone Street, Wuse Zone 2, Abuja. He tendered the CTC of a Marriage Certificate issued from the Federal Marriage Registry dated 10/12/2004 bearing the names of **Charles Isikaku Nkemdirim** and **Ngozi Ndawi Obichere** as exhibit 1.

That sometime in 2006 while he was managing a bakery owned by both parties, Respondent mooted the idea that they travel abroad in order for her to pursue her master's degree. Against his wish, and after a series of persuasions by Respondent, he relocated to the U.K with Respondent. There in the United Kingdom, cracks began to develop in the marriage as there were constant disagreements and irreconcilable differences which degenerated when Respondent left the United Kingdom and returned to Nigeria in 2008, leaving the Petitioner in the U.K. That the distance between them eventually led to a total collapse of the marriage.

He stated that before the marriage, he had attempted travelling to the U.K but actually travelled after the traditional marriage and came back for the court marriage. He lived together with Respondent for a few months before going back to UK, while the Respondent joined him afterwards. His purpose for travelling was purely for education and he travelled as a student for a Diploma course in I.T. he did not return to Nigeria immediately after the programme. This was because his mother was also in London. He lived with Respondent at Ennis Road, London before things degenerated, which prompted Respondent to return to Nigeria and abandoned the Petitioner in the UK.

That since 2009, he has not cohabited with Respondent as husband and wife. There are no children from the marriage and that he has lost all love and affection for her.

He stated further that he had, sometime in 2011, presented a petition for Dissolution of Marriage between the parties which was discontinued and struck out. He did not give particulars of that case. He states that on his request, the Respondent returned all his properties in her custody and that it has been over five years since they cohabited as husband and wife, and that he does not know her whereabouts. He prays the court to grant his reliefs as contained in the petition, as the marriage between him and Respondent has broken down irretrievably.

Under cross examination, witness said his attempt to travel out of the country before he met his wife was solely his idea. After the traditional marriage he travelled out again but came back before the court marriage, but that they had lived together for a few months after the traditional marriage before he travelled. That he travelled as a visitor so he did not travel with his wife. That he went as a student and his wife joined him later.

Witness also stated that his initial reason for not returning to Nigeria immediately after his first programme was because his wife was still in the UK.

On question whether he knows 53 Moringhton Road London, witness answered in the affirmative and said he lived on 53 Moringhton Road, but that he and his wife lived on Ennis Road from where his wife later left for Nigeria.

Witness denied ever attending a fertility clinic but admitted visiting only his G.P who was different from his wife's G.P, and that it is not correct to say that after the visit to the G.P he was given any medical advice.

On the question:-

> "Your wife has shown you love support and everything but you have continued to make life impossible for her."

The witness said.

"That is false."

Asked why he did not institute this action earlier, he said, his hands were full. That he was a student, his mother was sick and he was also working.

Witness said although he had the means to pay his fees, his wife paid because she wanted him to stay with her in UK. That after his studies, he did not return to Nigeria immediately because his mother was sick and there was nobody else to look after her.

In answer to another question put to him, witness stated that since the marriage, he has gone to see his wife's father to express his intention not to continue with the marriage. His Uncle also went to see his father-in-law on the same issue, he therefore has not disrespected tradition in anyway. When it was put to him that he was the one who made the Matrimonial Home impossible for the Respondent, he answered in the negative.

He countered that initially, they had a good marriage, and supported her and equally showered her love but that, all that is now in the past as the marriage has broken down irretrievably, due to irreconcilable differences.

There was no re-examination.

The Respondent filed Answer to the petition, to which the Petitioner responded.

On the 13th of June 2017, Respondent opened her defence and testifies as DW1 after which she failed to show up for cross examination. Her counsel also became evasive and would not endeavour to get a colleague to hold his brief.

After several adjournments, counsel to the Petitioner moved the court to expunge Respondent's evidence from the court's records and foreclose her from defending the case same which was granted and her evidence expunged.

Parties were then ordered to file their final written addresses.

In the Petitioner's final written address dated the 26th day of June, 2018 and filed on the 27/06/18 a sole issue for determination is raised, to wit:

> Whether the Petitioner is entitled to the relief sought as contained in his petition for dissolution of this marriage.

Counsel on behalf of Petitioner submits that the only ground upon which a petition can be based under the Matrimonial Causes Act is that the marriage has broken down irretrievably, and referred the court to section 15(1) and (2) of the Matrimonial Causes Act where it is provided that a Petitioner must prove at least one of the specified facts therein contained. He argued that in Nigeria, a court cannot dissolve a marriage or declare a marriage to have broken down unless the Petitioner establishes one of the factors listed in the said section.

He refers the court to the case of **MEGWALU VS MEGWALU (1994) 7 NWLR (pt. 359) pg. 730** where the Court of Appeal held that what Petitioner needed to do was to prove that the marriage has broken down irretrievably. He also refers the court to the case of **NANNA VS NANNA (2006) 3 NWLR (pt. 966) pg. 1** and **AKINBUWA VS AKINBUWA (1998) 7 NWLR (pt. 559) pg. 661.**

Secondly, he submits that Petitioner, by his affidavit evidence proved that the marriage has broken down irretrievably and refers to the fact that Petitioner has, before now, presented a petition for dissolution of the same marriage which fact is also not in dispute. As such, the entire gamut of Petitioner's uncontraverted evidence before this Honourable Court points clearly to the fact that the marriage between the parties has broken down irretrievably.

Counsel further argues that since the marriage, Respondent has behaved in such a way that Petitioner cannot reasonably be expected to live with her. As he finds her behaviour intolerable leading to the breakdown of the marriage. He refers the court to and relied on section 15(2) (c) of the Matrimonial Causes Act.

Bringing his arguments to conclusion, counsel submits that the suit was not defended by Respondent even though she was

afforded the opportunity to do so. He urged the court to grant their prayers.

Having read through the processes filed by the Petitioner and also the Respondent/Cross Petitioner it is pertinent to not that in presenting a petition for dissolution of marriage, the Rules of Matrimonial Causes provide for the procedure to be adopted in so doing.

This court has in several cases, declined jurisdiction in line with the decisions of **UMEAKUANA VS UMEAKUANA (2009) 3 NWLR (Pt. 1129) 598 and UNEGBU VS UNEGBU (2004) 11 NWLR (Pt. 884) 332** where the court held that rules of court are meant to be obeyed and especially where the word "shall" is used in the enactment.

In determining the appeal in the UMEAKUANA case (supra), the Court of Appeal considered the provisions of Order V Rule 10 (1) of the Matrimonial Causes Rules which states:-

> A Petitioner shall, by an affidavit, written on his petition and sworn to before his petition is filed-
>
> (a) Verify the facts stated in his petition of which he has personal knowledge; and
>
> (b) Depose as to his belief in the truth of every other fact stated in the petition.

On the meaning of "shall" when used in an enactment, the court held:-

> Whenever the word "shall' is used in an enactment, it is capable of bearing many meanings. It may be implying futurity or implying a mandate or direction or giving permission. Where the word "shall" has been used in a mandatory sense or directory sense the action to be taken must obey or fulfil the mandate exactly. However, if used in a directory sense, then the action to be taken is to obey or fulfil the directive substantially. The word "shall" as used in Order V Rule 10(1) of the Matrimonial Causes Rules imposes obligation on a Petitioner to do or to comply with what is imposed in the rule. The word is used in a mandatory sense requiring strict obedience and fulfilment. Failure to do exactly what is required by the rule could be fatal to the divorce petition. **IFEZUE VS MBADUGHA (1984) 1 SCNLR 427; AMADI VS N.N.P.C (2000) 10 NWLR (pt. 884) 332.**

On duties imposed on a Petitioner in respect of verifying affidavit in support of a divorce petition the court held:

> The duties imposed on a Petitioner by Order V Rule 10(1) of the Matrimonial Causes Rules, 1983 are as follows:
>
> (a) A Petitioner shall write an affidavit on his petition for divorce;

(b) The affidavit shall be sworn to before his petition is filed;

(c) In that affidavit, the Petitioner shall verify the facts stated in his affidavit of which he has personal knowledge; and

(d) In the affidavit, the Petitioner shall depose as to his belief in the truth of every other fact stated in the petition.

The above duties imposed on a Petitioner are mandatory. By the requirement of the rule, the affidavit must be one written on the petition of the Petitioner. In other words, the affidavit and the petition must be contained in the same continuous document without being separated by another document.

The court concluded that where the affidavit is written on the petition, as in the instant case, the 1st requirement has been met. The next requirement would be to verify the facts stated in the petition for divorce. It is the law that the facts contained in the petition must be verified specifically.

Thus, on the effect of failure to so verify the facts stated in a petition the court held:-

> Compliance with the provisions of Order V Rule 10(1) of the Matrimonial Causes Rules is mandatory. Thus, the failure by a Petitioner to verify the facts stated in his petition of which he has personal knowledge, as required

by the said rule, is fundamentally fatal to his petition. The language of the rule is imperative, quite clear and plain, and therefore must be given their ordinary meaning.

The effect is that a verifying affidavit which is only three or four paragraphs is not likely to verify all the facts contained in the petition as it is not enough to say "I verify all the facts contained in my petition." Worse still, where a Petitioner states in his affidavit that the statements set forth in his petition are true and correct to the best of his knowledge, information and belief. It becomes necessary for the Petitioner to state the facts that came to his information which he believes, thereby complying with Section 115 of the Evidence Act 2011.

In the **UMEAKUANA** case, the verifying affidavit reads thus:-

JOHN UMEAKUANA, the Petitioner in the above mentioned petition of No. 11, Niger Street, Fegge, Onitsha, citizen of the Federal Republic of Nigeria, make oath and state as follows:

1. That I am the Petitioner in the above mentioned petition.
2. That the statements contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of this petitions are true.
3. That the statements contained in paragraph (sic) 1-11 of this petition are true to the best of my knowledge, information and belief.

In the instant case the verifying affidavit of the Petitioner reads:-

I, **Mr. NKEMDIRIM CHARLSE ISIKAKU,** Adult, male, Christian, Nigeria Citizen, of No. 38 Usuma Street, Maitama, Abuja – FCT, do hereby make oath and state as follows:

1. That I am the Petitioner in this petition.
2. That I verify the facts stated in my petition by vitue of my personal knowledge of same.
3. That the statements set forth in my petition are true and correct to the best of my knowledge, information and belief.
4. That I swear to this affidavit honestly and conscientiously believing same to be true to the best of my knowledge, information and belief in accordance with the Oath act 1990.

The court, making pronouncement in the **Umeakuana** case on these types of affidavit, held:

> This affidavit is scanty and looking at it there is nothing in both paragraphs 2 and 3 of that affidavit verifying the facts stated in the Respondent's petition of which he has personal knowledge. In other words, the Respondent in his affidavit has not disclosed which of the facts stated in his petition were derived from his own personal knowledge, which is a distinct requirement.

It is therefore clear that the Petitioner's affidavit has not met the requirement of Order V Rule 10 (1) of the Matrimonial Causes Rules. This none compliance robbs the court of the requisite jurisdiction to

adjudicate over this case as held in the case of **MADUKOLU VS NKEMDILIM (1962) 2 ALL NLR 581 @ 583.**

In ratio 5 of the said decision in the UMEAKUANA case (supra) the court held:-

> Rules of court, particularly in divorce proceedings are highly technical in nature and are meant to be and must be obeyed.

In **GEBI VS DAHIRU & ORS (2011) LPELR-9234 (CA)** the court held:

> It is indeed a trite fundamental principle, that the well cherished time tested doctrine of judicial precedent, otherwise popularly known in latin as stare decisis requires all courts of law of subordinate hierarchical jurisdiction to follow and apply the decisions of Superior Courts of records even where these decisions are obviously wrong, having been predicated upon a false premise... The doctrine of stare decisis (precedent) makes it imperative, as alluded to above, for an inferior court to follow earlier judicial pronouncements (decisions) of Superior Courts of records, when the same points arise again in litigation.

The issue before the court is on all fours same as the case in Umeakuana (supra). It is only both legal and logical that this court be consistent in arriving at a decision that accords with the position of the law in previously decided cases.

In the circumstance I hold the failure of the Petitioner in the instant case, to verify the petition, fatal to the case and hereby decline jurisdiction to make pronouncement on issues in same.

Petition is hereby struck out for want of jurisdiction.

Signed
Hon. Judge
30/09/19

APPEARANCES

BARTH OMOZOKPIA FOR THE PETITIONER.

NO APPEARANCE FOR THE RESPONDENT.

AUTHORITIES

(1) SECTION 15 (1) AND (2) OF THE MATRIMONIAL CAUSES ACT;

(2) MEGWALU VS MEGWALU (1994) 7 NWLR (PT. 359) PG. 730.

(3) NANNA VS NANNA (2006) 3 NWLR (PT. 966) PG. 1.

(4) AKINBUWA VS AKINBUWA (1998) 7 NWLR (PT. 559) PG. 661.

(5) SECTION 15 (2) (C) OF THE MATRIMONIAL CAUSES ACT

(6) UMEAKUANA VS UMEAKUANA (2009) 3 NWLR (PT. 1129) PG 598.

(7) IFEZUE VS MBADUGHA (1984) 1 SCNLR.

(8) AMADI VS N.N.PC (2000) 10 NWLR (PT. 884) 332.

(9) ORDER VS RULE 10 (1) OF THE MATRIMONIAL CAUSES RULES.

(10) SECTION 115 OF THE EVIDENCE ACT, 2011.

(11) MADUKOLU VS NKEMDILIM (1962) 2 ALL NLR 581 AT 583.

(12) GEBI VS DAHIRU & ORS (2011) LPELR – 9234 (CA).

RULING/JUDGMENT

Upon being granted leave to goon 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 annexture 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.

Furthermore 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 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 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 as 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 bonefide 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 initate and air their grievance at the law Courts as when there is a right, their 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.