

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE GWGWALADA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13 GWAGWAGLADA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THIS 15TH DAY OF APRIL 2024**

**FCT/HC/PET/477/2023
MOTION NO: M/2765/2024**

BETWEEN

CHIKELUE NNANYELU OKONKWO -----PETITIONER/RESPONDENT

AND

OGECHI CHINYERE OKONKWO -----RESPONDNT/APPLICANT

CHRISTOPHER ILOKA for the Petitioner/Respondent.

R. O. OLAIFA for the Respondent/Applicant.

RULING

By a Notice of Preliminary Objection brought pursuant to Section 9 (1) and (2) of the Matrimonial Causes Act Cap M7 Laws of the Federation of Nigeria, 2004 and under the inherent jurisdiction of this Court, the Respondent/Applicant prayed the Court for the following:

- a. An order of this Honourable Court dismissing this suit for being incompetent, frivolous and an abuse of Court process or any order of the striking out this suit for want of jurisdiction.
- b. An order of this Court granting the applicant punitive cost of N2,000,000 (Two Million Naira) awarded against the Petitioner/Respondent for filing such a vexatious suit.

IN THE ALTERNATIVE

- c. An order of this court staying any further proceeding in this suit pending the determination of the Divorce Petition already filed by the Respondent/Applicant in the United Kingdom which predates this current Petition.
- d. And for such further order(s) which this Honourable Court may deem fit to make in the circumstance.

The grounds upon which the application is brought are;

1. That there is a Petition for dissolution of marriage between the same parties before this court earlier initiated by the Respondent/Applicant in this case with case number 1687-2899-5898-2743 pending in the United Kingdom.
2. That the filing of the Petition while the earlier petition is still pending between the same parties, robs this Honourable Court of the jurisdiction to entertain this Petition.
3. This instant Petition is incompetent, misconceived, vexation and equally laced with fabricated lies and stories to deceive the Honorable Court.
4. The grant of this application will not prejudice the Petitioner/Respondent who has been duly notified of the pendency of the petition in the United Kingdom, has filed a response to the petition and would be given fair hearing.
5. It is in the interest of substantial justice and the smooth administration of justice for this application to be granted.

Application is supported by a 4 paragraph affidavit deposed to by one Alexernder Tsokwe Esq, an associate counsel with Titanium Shield Legal Consult Office of Counsel to the Respondent/Applicant herein with documents annexed and marked as Exhibits A – G respectively. According to the Rules, the Applicant’s Counsel also filed a written submission. The main gist in the facts in support of the application as contained in paragraphs 31-t according to the deponent is that on the 21st of June, 2023, she commenced a divorce proceeding which she submitted a divorce application in the United Kingdom at the HM Courts & Tribunal Services with case number 1687-2899-5898-2743, the application is Exhibit D. And that on the 25th day of June, 2023 she contacted the Petitioner/Respondent and informed him about the petition for divorce and equally forwarded a copy of same to him via his two email addresses – chikeokonkwo@gmail.com and chikeokonkwo@hotmail.com. A copy of the mail to the Petitioner/Respondent on the 25th of June, 2023 is marked as Exhibit E. And that on 11th of July, 2023 the HM Courts & Tribunal Services equally issued notice of divorce proceedings with case number 1687-2899-5898-2743 to the Petitioner/Respondent vide Exhibit F. That the Petitioner/Respondent acknowledged service of the divorce application and accordingly submitted his response to the Divorce, Dissolution Or (Judicial) Separation Application vide Exhibit G. That on the face of the response filed by the Petitioner/Respondent submitted to the United Kingdom Court (Exhibit G), the Petitioner/Respondent mischievously, erroneously and knowingly notified the UK Court that hearing in the Nigerian Petition had commenced. And on 5th January,

2024, a proceeding was conducted on the Applicant's application at the UK Court and the Court made an order directing the parties to file written statements of truth for consideration and decision on the issues raised by the Petitioner/Respondent therein. Copy of the hearing notice served on both parties to the petition and this current petition is attached as Exhibit H. That despite the Petitioner/Respondent's knowledge of the Applicant's divorce application in the United Kingdom, he contemptuously and defiantly filed for same divorce of their marriage before this Court which the Applicant was not made aware of until he forwarded copies of his petition to her email on the 28/07/2023.

The Applicant's Counsel in his written submission, submitted two issues for determination to wit:

- 1. Whether based on the facts elicited in the affidavit in support of the preliminary objection, this Honourable Court has the jurisdiction to entertain the Petitioner/Respondent's petition.*
- 2. Whether this instant instituted petition by the Petitioner/Respondent does not amount to an abuse of Court process liable to be dismissed.*

In response to the preliminary objection the Petitioner/Respondent filed a thirty eight (38) paragraph counter-affidavit wherein he averred that the instant Petition No. PET/477/2023 was duly commenced before this court on 5th July, 2023, and was quite taken aback when subsequent to the commencement of this petition the Respondent/Applicant proceeded to commence another petition before the United Kingdom (UK) on 11th

July, 2023, the divorce petition is attached as Exhibit A. That without conceding to the veracity of the deposition therein, the Respondent/Applicant by paragraph 3(i) of the affidavit in support of the preliminary objection has admitted that she merely submitted an application on the 21st of June, 2023 via mail. That the Respondent/Applicant by paragraph 3(n) of the affidavit in support of the preliminary objection has admitted that the proceedings commenced in the UK was formally issued on 11th of July, 2023 long after the commencement of the instant suit before this Honourable Court on 5th July, 2023. And that further to the above and contrary to paragraph 3(l) of the affidavit in support of the objection that he is aware having been advised by his counsel in the UK that proceedings are only commenced in the UK upon the issuance of an application of an applicant by the relevant officer of the Court. A copy of the relevant provision of the UK Family Court Procedure Rules is attached as Exhibit B. That the date of the commencement of proceedings in the UK Court is the date on which it was issued by the relevant officer of the Court. That such application by the applicant to commence proceedings in the UK Court does not amount to commencement of proceedings as same can be accepted or rejected. That contrary to the deposition in paragraph 3(m) and (r) of the affidavit in support of the objection, he only became aware of the pendency of the petition commenced by the Respondent/Applicant on 1st August, 2023 when he received the said petition served on him through DHL mail with waybill number 8601611502. The proof of service of the

Respondent/Applicant's petition dated 1st August, 2023 is marked as Exhibit C.

The Respondent's Counsel also formulated two issues for determination to wit:

- 1. Whether the Respondent/Applicant's Preliminary Objection challenging the jurisdiction of this Honourable Court is competent.*
- 2. Whether in the peculiar circumstances of the instant petition, this Honourable Court lacks the jurisdiction to hear and determine same for being an abuse of court process.*

I have carefully reviewed all the facts in support of the preliminary objection and the counter-affidavit of the respondent. I have also gone through the further and better affidavit filed by the Respondent/Applicant and the attached documents. To answer the posed question on whether the instant petition is an abuse of court process, it is important to note that the following facts emerged from the affidavit in support of the preliminary objection, counter-affidavit and the documents annexed to their processes by the respective parties thus:

On the 21st June 2023, the Respondent/Applicant commenced a divorce proceeding with the filing and submission of an application in the United Kingdom HM Court & Tribunal Services. Also on 25th June 2023, the Respondent/Applicant contacted the Petitioner/Respondent and informed him about the petition and equally forwarded same to him via email. In addition on 11/7/2023 the HM Courts and Tribunal Services issued notice of divorce proceedings to the Petitioner/Respondent and on

5/1/2024, a proceeding was conducted on the applicant's application at the UK Court. And on 28/7/2023, the Nigerian petition from the Petitioner/Respondent was received by the Respondent/Applicant vide her email.

From the Petitioner's counter-affidavit, the instant petition was filed on 5/7/2023, a notice of petition dated 11/7/2023 was served on the Petitioner/Respondent and on 1/8/2023 the Petitioner/Respondent became aware of the pendency of the petition commenced by the Respondent/Applicant. It is apparent that from the averments contained in paragraph 23 and 24 of the Petitioner's counter-affidavit the Petitioner did not deny being communicated or informed by the Respondent that she had filed an application for their divorce at the United Kingdom Court, however the contention of the Petitioner/Respondent is that proceedings are said to be commenced upon the issuance of an application by relevant officer of the court. That the date of commencement of proceedings in the United Kingdom is the date it was issued by the court officer. That an application to commence proceedings in the United Kingdom Court does not amount to commencement of proceeding as same can be accepted or rejected.

I do not endorse the position of the Petitioner/Respondent. Divorce proceedings in the United Kingdom is initiated with the filing of an application by an intending party (parties). Once an application is submitted, the procedure or steps for the divorce proceedings are deemed to have commenced. Exhibit B, which the Petitioner relies on is

needed “Part 5 forms start of proceedings and communication with the court.” In the document “Application” is listed as number on the list of items on steps to be taken. In other words, filing of the application is an integral part of the divorce proceeding in the United Kingdom Court. In fact it is the foundation upon which other procedures are anchored. The Petitioner/Respondent appears to me to have confused or ignored procedure/steps taken and which lead to the divorce proceedings.

Furthermore on Exhibit A, titled Notice of Divorce Proceedings which the Petitioner/Respondent argued begins on the commencement of the divorce proceedings states inter alia;

“Issue Date 11th July, 2023.

Dear Chikelue Okonkwo, your wife Ogechi Okonkwo has applied for divorce. A copy of their application is included with this letter... ..”

I found that before the issuance of Exhibit A dated 11/7/2023, the Petitioner was duly informed by the Respondent/Applicant on 25/6/2023 vide email of the pendency of divorce application. There is therefore no doubt that the instant suit was filed after the Respondent/Applicant had kick-started the procedure for divorce proceedings with the filing of an application on the 25/6/2023. The notice of divorce proceedings Exhibit A dated 11th July, 2023 which the Petitioner/Respondent claimed was brought to his notice on 1/8/2023 is not an entirely new process or procedure but a continuation of the divorce procedure highlighted in Exhibit B. What the Petitioner/Respondent ought to have done was to wait for the outcome of the application for divorce filed by the

Respondent/Applicant before initiating the instant divorce proceeding on 5/7/2023.

The proceedings commenced by the Petitioner/Respondent is malicious, mischievous and intended to overreach the Respondent/Applicant. It is an abuse of the Court process. I therefore resolve in favour of the Respondent/Applicant that the instant suit is incompetent and it is hereby struck out.

SIGN

HON. JUDGE

15/4/2024