

Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; and absorption or swallowing up so as to involve a loss of identity and individuality. In legal contexts, the principle of merger generally refers to the absorption of a lesser interest or claim by a greater one, causing the lesser to cease to exist. This concept appears in various areas of law, including civil procedure, criminal law, property law, and trust law, each with its own specific application - for the application of the principle see the cases of Kodesoh Vs Aro (1972) All NLR 394, Owoniboye Technical Services Ltd Vs Union Bank of Nigeria Plc (2003) 15 NWLR (Pt 844) 545, Dangote Industries Ltd Vs The Steamship Mutual Underwriting Association (Bermuda) Ltd (2016) LPELR 50501(CA). Explaining the principle of merger as it relates to estates in property law, the Court in Jagaba Vs Umar (2016) LPELR 40466(CA), said that it postulates that: "where a person takes or acquires an estate of a higher nature in legal valuation than one he already possesses, the person merges and extinguishes his legal remedies upon the inferior estate and the inferior estate ceases to be of any relevance. In other words, where for example a person holds a yearly tenancy in a property and subsequently acquires a lease for a term of years in the same property, the yearly tenancy merges into the lease which is an estate of higher valuation and ceases to exist." Applying the above stated principles to the instant case, the first Appellant and the Respondent had a customary marriage, a Christian marriage and capped it up with a Statutory marriage. By reason of the statutory marriage, the first Appellant's right to

maintenance against the Respondent crystalized and became fused in and circumscribed by the provisions on right of maintenance contained in the Matrimonial Causes Act, 1970, and she possessed no enforceable independent right of maintenance outside the provisions of the Matrimonial Causes Act. Therefore, the contention of Counsel to the Appellants that the right of a wife of a statutory marriage to maintenance against the husband is independent of the provisions for maintenance contained in the Matrimonial Causes Act is fallacious and misconceived. Going to the rights of the children of a marriage, it is universally agreed, irrespective of the mode of marriage, and even where the parents are not married, that the father has the primary duty and responsibility to provide for his children's basic needs like food, shelter, and clothing, while also offering emotional support, guidance, and discipline; this is a core obligation of the father. The father also has the duty to provide a safe and secure environment for his children and this includes creating a safe and stable home environment, whether he lives with them or not. The basic duties of a father are to protect his children from harm, to provide them with food, clothing and a place to live, to financially support his children, provide safety, supervision and control, to provide medical care and to provide an education. The right of children to maintenance is a fundamental right which all children all over the world are entitled to enjoy because they are young and are unable to provide for themselves and therefore depend on others for survival. This right is independent of, and is not intertwined with, the right of the mother for maintenance from the father of the child and it also

independent of the right of a child to maintenance provided under the Matrimonial Causes Act, 1970. Legal action can be taken to enforce a father's duties to his children and this can involve seeking Court orders for child support. It is the duty of a man at common law to take care of his family - *Tabansi Vs Tabansi* (2008) LPELR 4365(CA). This right of the child was reiterated in Section 301 of the Criminal Code Law of Lagos State, Cap C 17, Laws of Lagos State, 2003 and its breach was criminalized by Section 339 thereof to underscore its mandatoriness. This was criminal law applicable in Lagos State in 2006 when this action was filed. Section 205 read: "It is the duty of every person who, as head of a family, has charge of a child under the age of fourteen years, being a member of his household, to provide the necessaries of life for such child and he is held to have caused any consequences which result to the life and health of the child by reason of any omission to perform that duty, whether the child is helpless or not. Section 339 read: "Any person who, being charged with the duty of providing for another the necessaries of life, without lawful excuse fails to do so, whereby the life of that other person is or likely to be endangered, or his health is or likely to be permanently injured is guilty of a felony, and is liable to imprisonment for three years."

Per **HABEEB ADEWALE OLUMUYIWA ABIRU ,JSC** (Pp. 21-32, paras. E-D)

[READ IN CONTEXT](#)

[VIEW ANALYTICS](#)

MATRIMONIAL CAUSES - MAINTENANCE -

Whether a wife can claim maintenance without instituting a matrimonial cause

"The second question that arises in this appeal is - whether a wife of a statutory marriage, like the first Appellant in this appeal, can file a stand-alone action for maintenance for herself and the children of the marriage without needing to include it with other primary claims like divorce, nullity of marriage, judicial separation and/or jactitation of marriage. A review of the case law authorities on this issue shows that apart from the decision in the case of Okpagu Vs Okpagu (1947) 12 W.A.C.A. 137 and that of the Court of Appeal in the present case, the consensus of the other case law authorities is that the answer to the question posed is in the affirmative; i.e. that a wife can file a stand-alone action for maintenance for herself and the children of the marriage without including with it other primary claims like divorce, nullity of marriage, etc. - see the cases of Ekisola Vs Ekisola (1961) L.L.R. 8, the unreported judgment of the Court of Appeal in Appeal No CA/C/99/81 - Etim Effiong Nakanda Vs Alice Uzoamaka Nakanda delivered on 17th of June, 1988, Kpilah Vs Ngwu (2018) LPELR 45395(CA). In Obajimi Vs Obajimi (2011) LPELR 4665(CA), the Court made point thus: "Maintenance of a wife may be claimed by her from the husband even if there is no suit for divorce or separation. in other words, the wife of a marriage under the Matrimonial Causes Act (M.C.A) is entitled to claim maintenance in the High Court, if her husband willfully neglected to maintain her without instituting matrimonial case..." In the case of Anene Chikezie Vs Ifeoma Anene (2017) Esut Law Reports (ESLR) 190 at 207-208, a husband argued that he had no obligation to maintain the

children of the marriage, and that, at that time, he was living separately from them and he contended that the Court could not make an order for such maintenance by him, as there was, at the time, no petition for dissolution of the marriage, Nnamani, J., of the Customary Court of Appeal, Enugu, in the lead judgment queried thus: ' ... does a man have an obligation to provide for his child or children whether or not there is a petition for the dissolution of his marriage to the mother of the child or children?' His Lordship answered the question in the affirmative and stated that "a man has both moral and legal obligations to provide for his child or children. The moral obligation stems from a code of paternity which is written by the creator with the ink of love in the hearts of men, which incidentally, most animals, though bereft of the quality of humanity, observe. Legislation is not needed for the observance of this code" and "the duty is not affected by the existence or otherwise of a petition for the dissolution of the marital union from which the child resulted. For a child, who did not ask to be brought to the world in the first place, maintenance is a right, and this is so whether the parents love or hate, whether they embrace or wrestle, or whether they kiss or bite each other." His Lordship asserted that: "To argue, as the appellant's counsel did, that a Court cannot order an abdicative father to pay for arrears of due and unpaid maintenance allowance for the simple reason that, at the time they accrued, there was no pending divorce petition, would amount to saying that a man has no obligation to fend for his child. It is an incorrect legal proposition which, if bought, can reduce a man to the paternal rascality of the billy goat, which gleefully mounts the