

nanny goat for copulation but runs away as soon as the deed is done, and is never held accountable for the responsibility of rearing the resultant kid." ?This Court aligns with the view expressed by the consensus of the other case law authorities. Firstly, there is no provision in the Matrimonial Causes Act that prohibits such a stand-alone action. And secondly, to maintain otherwise would mean that an action cannot be maintained for and on behalf of the children of a marriage by a guardian or best friend against an irresponsible father who fails to provide them with upkeep and maintenance as the children cannot seek for dissolution of his parent's marriage, nullity of the marriage, judicial separation and/or jactitation of the marriage. This will be an injustice and could not have been the intention of the framers of the Matrimonial Causes Act. The findings of the Court of Appeal in this case that the first Appellant could not file a stand-alone action for maintenance for herself and the children of the marriage, and could only make such claims ancillary to a principal relief for dissolution of marriage, nullity of marriage, judicial separation and/or jactitation of marriage, are erroneous."

Per **HABEEB ADEWALE OLUMUYIWA ABIRU ,JSC** (Pp. 32-36, paras. F-E)

READ IN CONTEXT

VIEW ANALYTICS

ACTION - COMMENCEMENT OF ACTION - How to commence an action for maintenance of spouse and children of a statutory marriage

"The third and final question calling for resolution in

this appeal is whether, where a wife of a statutory marriage decides to file a stand-alone action for maintenance for herself and the children of the marriage, the action should be commenced by a petition under the Matrimonial Causes Rules or by a writ of summons under the High Court Civil Procedure Rules. It is the view of this Court that the answer to this question is neither here nor there as it borders plainly on technicality; it is a question as to form (procedure) of the presentation of the claims and not the substance of the aims. In *Yusuf Vs Adegoke* (2007) LPELR 3534(SC), Tobi, JSC, speaking on technicality, commented thus: ".. A technicality in a matter could arise if a party is relying on abstract or inordinate legalism to becloud or drown the merits of a case. A technicality arises if a party quickly takes an immediately available opportunity, however infinitesimal it may be, to work against the merits of the opponent's case. In other words, he holds and relies tenaciously unto the rules of Court with little or no regard to the justice of the matter. As far as he is concerned, the rules must be followed to the last sentence, the last words and the last letters without much ado, and with little or no regard to the injustice that will be caused the opponent." The truth is that it mattered not whether the Appellants commenced the action by a petition under the Matrimonial Causes Rules or by a writ of summons under the High Court Civil Procedure Rules. This is particularly more so as the claims were simply for maintenance and welfare of wife and children of a marriage, and were not co-joined with a claim for dissolution of marriage or nullity of marriage. In *Tabansi Vs Tabansi* (2008) LPELR 4365(CA), the Court stated that the claims dealing

with the education, maintenance and upkeep of a child are serious and sensitive matters which should not be hamstrung by technicalities. What was important, in these circumstances, was whether the mode of commencement brought out the issues in contention between the parties. This Court has severally held that once the procedure used in a matter brings the issues in contention into focus, it will not be of no moment that the procedure used was wrong. In *Federal Government of Nigeria Vs Zebra Energy Ltd* (2002) LPELR-3172(SC), Belgore JSC (as he then was), at page 33D stated thus: "Procedure is a guide to smoothen passage of suit; to direct the parties what to do and to guide the Court to arrive at the justice of a case... The Court shall never be shackled by procedure; case is not made for procedure, it is the other way round. Once the procedure employed has brought into focus the issues the parties contest and there is no miscarriage of justice it will not matter that the procedure is not the correct one." In *U.T.C. (Nig) Ltd Vs Pamotei* (1989) 2 NWLR (Pt 103) 244 at 298 it was held by this Court that "rules of procedure are made for the convenience and orderly hearing of cases in Court. They are made to help the cause of Justice and not to defeat justice. The rules are therefore aids to the Court and not masters of the Court. For Courts to read rules in the absolute without recourse to the Justice of the cause, to me will be making the Courts slavish of the cause. This is certainly not the *raison detre* of the rules of Court" Also, in *Nwosu Vs Imo State Environmental Sanitation Authority* (1990) 2 NWLR (Pt. 135) 688 at 717, Nnaemeka Agu, J.S.C said: "As we have stated several times the days when the parties pick their

way in the Court through naked technical rules of procedure the breach of which does not occasion a miscarriage of justice are fast sinking into the limbo of forgotten things." In *Taiwo Vs Federal Republic of Nigeria* (2022) 13 NWLR (Pt 1846) 61, this Court held that a procedural irregularity is not a factor that would justify the setting aside of a verdict or decision unless a miscarriage of justice is established as propelling that decision of the Court. This Court has maintained over the years that the sole purpose of a Court to do substantial justice between the parties that come before it for adjudication of disputes and not to adhere to technical issues that becloud the justice of a matter as such adherence to technicalities to the detriment of substantial justice inevitable leads to injustice - *State Vs Gwonto* (1983) 1 SCNLR 142, *Marine Management Associates Inc Vs National Maritime Authority* (2012) 18 NWLR (Pt 1333) 506, *Uwazuruike Vs Attorney General, Federation* (2013) 10 NWLR (Pt 1361) 105, *Mfa Vs Inongha* (2014) 4 NWLR (Pt 1397) 343, *Frozen Foods Nigeria Limited Vs The Estate of Oba John Agboola Ojomo* (2022) LPELR 57815(5C), *Koko Vs Koko* (2023) 13 NWLR (Pt 1901) 249. In the immortal words of my Noble Lord, Oputa, JSC, in *Bello Vs Attorney General, Oyo State* (1986) 5 NWLR (Pt 45) 828 at 886 F-G: "The picture of law and its technical rules triumphant and justice prostrate may no doubt have its admirers. But the spirit of justice does not reside in forms and formalities nor in technicalities nor is the triumph at the administration of justice to be found in successfully picking one's way between pitfalls of technicality. Law and its technical rules ought to be a handmaid of justice and legal inflexibility may, if strictly

followed, only serve to render justice grotesque or even lead to outright injustice. The Court will not endure that mere form or fiction of law, introduced for the sake of justice, should work a wrong, contrary to the real truth and substance of the case before it ..." Again, in the case of *Obakpolor Vs State* (1991) LPELR- 2148 (SC), the Supreme Court per Akpata, JSC observed as follows: "... It is the paramount duty of Courts to do justice and not cling to technicalities that will defeat the ends of justice. It is immaterial that they are technicalities arising from statutory provisions, or technicalities inherent in rules of Court. So long as the law or rule has been substantially complied with and the object of the provisions of the statute or rule is not defeated, and failure to comply fully has not occasioned a miscarriage of justice, the proceedings will not be nullified." It was not the complaint of the Respondent either in the High Court or in the Court of Appeal that the commencement of the action by the use of a writ of summons, instead of by a petition, occasioned him a miscarriage of justice. The holding of the Court of Appeal that the Appellants could only commence their action for maintenance by way of a petition under the Matrimonial Causes Rules, 1983 and not by a writ of summons under the High Court of Lagos (Civil Procedure) Rules 2004, and concluding therefrom that the action was incompetent, was, with respect, misconceived."

Per **HABEEB ADEWALE OLUMUYIWA ABIRU, JSC** (Pp. 36-42, paras. F-E)

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