



HABEEB ADEWALE OLUMUYIWA ABIRU,

J.S.C. (Delivering the Lead Judgment): The issue in this appeal revolves around the mode of commencement of an action claiming for sums of money for maintenance of wife and for education and welfare of children arising from a matrimonial relationship and whether such an action can be maintained without the necessity of filing a petition for the dissolution of the matrimonial relationship. The Appellants were the claimants in the action taken out in the High Court of Lagos State against the Respondent, as defendant, and they commenced the action by a Writ of Summons and Statement of Claim filed on the 9th of June, 2006 pursuant to the Civil Procedure Rules of the High Court of Lagos

State praying for the following orders:

- i. An order that at the Respondents expense, the second and third Appellant should continue their education in Nigeria or abroad up to University level and/or adequate professional level, as their capacities may permit.
- ii. An order compelling the Respondent to pay N50,000.00 each to the first Appellant and second and third Appellants every month each comprising the monthly maintenance



allowance for the said first Appellant and monthly welfare/upkeep for the second and third Appellants respectively.

- iii. An order directing the Respondent to get

an alternative accommodation for the Appellants and/or pay the sum of N250,000.00 every year to the Appellants to enable them get a proper accommodation.

iv. An order condemning the Respondent in the costs of the suit.

The averments in the statement of claim revealed that the first Appellant and the Respondent were married and that they married under the Igbo Native Law and Custom on the 26th of December, 2000 and subsequently at St Dominic Catholic Church, Yaba, Lagos State on the 12th of May 2001 were issued with a marriage certificate. The averments revealed that the second and third Appellants were the children of the marriage and the second Appellant was born on the 15th of May, 2001 while the third Appellant was born on the 9th of September, 2002. The averments contained allegations on intolerable behavior exhibited

by the Respondent towards the first Appellant, including physical and emotional abuse, the attempts made by members of the Respondents family to resolve



complaints of the first Appellant against the actions of the Respondent. The averments asserted that the Respondent sent the first Appellant and the two children of the marriage the second and third Appellants, out of the matrimonial home on the 19th of September, 2002 with an undertaking to constantly send them money for their welfare and maintenance.

The averments in the statement of claim revealed that the Respondent failed to send

the Appellants money for their welfare and maintenance as promised and that the first Appellant made reports of this fact to the family of the Respondent, the employers of the Respondent, Lagos University Teaching Hospital, the Lagos State Child Development and Welfare Agency, the Lagos Office of the Public Defender, to the Parish Priest of St Dominic's Catholic Church, to the Catholic Marriage Tribunal and to the Lagos State Chapter of the International Federation of Women Lawyers (FIDA). The averments asserted that the Respondent rebuffed all the attempts by these persons and agencies to resolve the matter and that the first Appellant had single-handedly been catering for the welfare and maintenance of herself and of the