



second and third Appellants and that it became burdensome for her to continue to do same due to the fact that she lost her job and at which point her mother took over catering for the welfare of the second and third Appellants. It was by reason of these averments that the Appellants commenced the action against the Respondent.

Upon being served with the Court processes, Counsel to the Respondent filed a notice of preliminary objection challenging the jurisdiction of the High Court to hear the matter as constituted by the Appellants on the ground that it was not commenced by due process and was thus not properly before the Court. The notice of preliminary objection contended that since the claims of the Appellants were for maintenance and welfare on the grounds of a marital

relationship and paternal obligation, the action could only be commenced under the Matrimonial Causes Act and not by a writ of summons and statement of claim taken out under the Civil Procedure Rules of High Court of Lagos State. The High Court heard the preliminary objection on the merits and it ruled dismissing same thus:

Defendants Counsel has objected to this suit



on the ground that the reliefs sought in this suit is based on a marital relationship and should have been commenced under the Matrimonial Causes Act and not by writ of Summons as the Claimants have done. The Matrimonial Causes Act is very specific as to which cases come under its ambit.

Matrimonial Causes are defined in [Section 114 \(1\)](#) and they include proceedings for: (i) dissolution of marriage, (ii) nullity, (iii) judicial separation, (iv) restitution of conjugal rights, (v) jactitation, among others: With regards to maintenance which this suit seeks, proceedings must relate to concurrent pending or concluded proceedings in the above listed matrimonial causes.

The 1st Claimant herein is not seeking a dissolution of her marriage or any of the reliefs in [Section 114 \(1\) \(a\)](#) or [\(b\)](#), what she and her children seek is an order for maintenance which they cannot file under the Matrimonial Causes Act since they do not have concurrent pending or completed proceedings under that Act. The Constitution as well as the Child Right Act allows the Claimants to come before this Court to seek the reliefs they seek. It is not a matrimonial cause within the definition of



matrimonial causes in Section 114 of the Matrimonial Causes Act, they are properly before this Court. The preliminary objection therefore fails and is hereby dismissed.

The Respondent was dissatisfied with the ruling of the High Court and he caused his Counsel to file an appeal against it to the Court of Appeal sitting in Lagos by a notice of appeal dated the 9th of October, 2006 containing one ground of appeal. The Court of Appeal heard the appeal on the merits and it delivered a considered judgment wherein it deliberated thus:

On my consideration of the submission in the two briefs on the tone issue, the first

point to note is the concession of the respondents that under the provisions of both the Matrimonial Causes Act and the Matrimonial Causes Rules .. the use of a writ of summons to commence proceedings in Matrimonial Causes (for both principal and ancillary reliefs) is limited (or not permitted) and the proper way to commence such proceedings is by a petition as prescribed by the said Rules. By this concession, it is therefore not in dispute that the present action by the respondents at the lower Court which was commenced by a



writ of summons in which they are seeking for the reliefs of maintenance, education and welfare which are similar to those