

mentioned in the definition section of the Matrimonial Causes Act 1970 (i.e. Section 114 (1) (c) and Rules of Procedure made thereunder in 1983 Order XIV thereof) was not properly commenced or was contrary to or in breach of the said Rules. The respondents however assert that their present action before the lower Court was not brought under or pursuant to the Matrimonial Causes Act and was therefore an independent and normal claim of their right to maintenance (as a wife), education and welfare (as children of the marriage) which was properly brought or commenced by the issuance of a writ of summons as prescribed under Order 3 of the High Court Civil Procedure Rules 2004."

The Court of Appeal reproduced the provision of Order 3 Rule (1) of the High Court of Lagos State (Civil Procedure) Rules of 2004 which read that "subject to the

provisions of these rules or any other applicable law requiring any proceeding to be begun otherwise than by writ, a writ of summons shall be the form of commencing all proceedings where a claimant claims



any relief or remedy for any civil wrong". The Court of Appeal thereafter continued its deliberation thus:

"From the express words in the above rule it is clear that the use of the writ of summons in commencing civil proceedings in the High Court of Lagos State is not allowed or permitted subject inter alia to any other applicable Law. Thus, where any other applicable law provides for the use of any other process instead of the writ in

commencing a proceeding before the High Court, such would be complied with. Failure to comply with the rules as to the commencement of action is fatal to the plaintiff's case and should be sanctioned by the Court, which will strike out such a defective or incompetent process.

It is an inherent jurisdiction and duty of the Court to ensure compliance with the relevant rules of Court, which are required to be prima facie obeyed. In the instant case, from the earlier reproduced provision of the Matrimonial Causes Act and the Rules made thereunder, it is the clear intention of the framers of the two legislations (i.e. the principal and subsidiary legislation) that the reliefs of maintenance of a wife (or family) as well



education and welfare of children of the marriage cannot stand by themselves or are not independent but must be incidental or ancillary to the main relief claimed for dissolution of marriage, nullity, judicial separation or restitution of conjugal rights or jactitation of marriage It is also trite that all reliefs claimable under the Matrimonial Causes Act or Rules are to be by way of a petition rather than a writ of summons

The Court of Appeal proceeded to deliberate further thus:

"In my humble view the present suit or action by a wife against her husband for her maintenance and the welfare and education of the children of the marriage can only be commenced or instituted under the Matrimonial Causes Act and should be ancillary or incidental to a pending or

concluded main relief as adumbrated above. Thus such ancillary reliefs as sought by the respondents cannot or should not be brought independently or in a regular way (i.e. by writ of summons) when the marriage is still subsisting between the spouses. The aim and purport of this prohibition is in the need to preserve the sanctity of the marriage institution and to avoid its possible



breakdown or cause any disaffection between or amongst the members of the family during the subsistence of the marriage.

It is also a common knowledge that in Nigeria, the duty or responsibility of maintenance, education and welfare of