

children even though are the primary responsibility of the husband, they are or can sometimes be carried out or performed by the wife depending on the individual wealth or means of one or the other of the couple. The Child Right Act (CRA) 2003 ([Section 14](#) thereof) cited and relied upon by the respondents is not properly cited in their brief as they have not pinpointed any of the provisions of the said Act regulating the procedure or venue for the commencement of a maintenance action. .."

The Court of Appeal continued its deliberation thus:

In Nigeria and under our adjectival law, where a statute or rule of practice provides that certain proceedings in respect of a particular cause of action shall be commenced by one method or process, an action or suit by a litigant who initiates it by means of another method or process will be

regarded as irregular or incompetent with the result that such a



non-compliance, as in the present case, will deprive the Court of its jurisdiction to entertain the action or suit as initiated. This is because for the Court to have or exercise jurisdiction, one of the conditions precedent is that the action must be brought by a due process and that the subject matter of the case is within the jurisdiction of the Court, .."

The Court of Appeal concluded that the action of the Appellants was not commenced by due process and that the High Court thus possessed no jurisdiction to

entertain the action and it struck out the case as filed in the High Court. The Appellants were dissatisfied with the judgment of the Court of Appeal and they caused their Counsel to file a notice of appeal dated the 28th of July, 2008 and containing six grounds of appeal against it. In arguing the appeal, Counsel to the Appellants filed a brief of arguments dated the 15th of June, 2009 on the same date while Counsel to the Respondent filed an amended brief of arguments dated the 7th of August, 2022 on the 9th of August, 2022 and the amended brief of arguments was deemed properly filed and served by this Court on the 7th of April, 2025.

At the



hearing of the appeal, this Court queried the continued usefulness of the appeal in view of the time lapse of about nineteen years since 2006 when the action was filed in the High Court and the fact that the second and third Appellants, on whose behalf the claims for education and welfare were made, must be full-fledged adults by now. Counsel to the parties implored the Court to hear the appeal to resolve the issue of whether an action claiming for sums of money for maintenance of wife and for education and welfare of children arising from a matrimonial relationship can be commenced by a writ of summons and maintained without first filing a petition for the dissolution of the matrimonial relationship under the Matrimonial Causes Act. After some deliberations, this Court agreed to hear the appeal solely for this purpose and

consequent on which Counsel to the parties relied on and adopted the arguments contained in their respective briefs of arguments on the issue.

Counsel to the Appellant formulated the issue as the second issue for determination in the brief of arguments thus:

Whether a wife and children of a marriage can maintain an action for



maintenance and welfare and education independently against their husband/father by a writ of summons, when the marriage is still subsisting.

In arguing the issue for determination,