

Counsel answered the question posed in the issue for determination in the affirmative. Counsel stated that the reliefs of maintenance, welfare and education sought by the Appellants in the action did not come with the meaning of matrimonial causes as defined in Section 114 (1) of the Matrimonial Causes Act, 1970. Counsel stated that there was no concurrent, pending or concluded proceedings between the first Appellant and the Respondent for dissolution of marriage, nullity of marriage, judicial separation, restitution of conjugal rights and jactitation of marriage and that the present action could thus not have been commenced by way of Petition under Matrimonial Causes Act/Rules and that the appropriate procedure for commencing the action was by way of writ of summons under the relevant High Court (Civil Procedure) Rules.

Counsel reproduced the provisions of Section 114 (1) (a) to (e) of the Matrimonial Causes Act, 1970 and Order XIV of the Matrimonial Causes Rules of 1983



which classified dissolution of marriage, nullity of marriage, judicial separation, restitution of conjugal rights and jactitation of marriage as principal reliefs and claims for maintenance of wife, maintenance, welfare, advancement and education of children of a marriage as ancillary reliefs. Counsel contended that the claims of the Appellants in the present case for maintenance, welfare and education of a wife and children of a marriage would qualify as matrimonial causes that should be

brought within the Matrimonial Causes Act, 1970 and the Matrimonial Causes Rules of 1983 only if they were claimed as ancillary reliefs pursuant to proceedings between the first Appellant and the Respondent for dissolution of marriage, nullity of marriage, judicial separation, restitution of conjugal rights and jactitation of marriage and which would have necessitated the action being commenced by a Petition, rather than by a Writ of Summons.

Counsel stated that the Appellants claimed the reliefs they sought in this case as principal reliefs, and not as ancillary reliefs, and that the claims enured to the Appellants as a civil right under the Constitution of the



Federal Republic of Nigeria and under the Child Rights Act, 2003. Counsel reproduced the provisions of Order 3 (1) of the High Court of Lagos State (Civil Procedure) Rules of 2004 which says that subject to the provisions of the Rules or any applicable law, an action claiming for any relief or remedy for any civil wrong or damages for breach of duty, whether contractual, statutory or otherwise shall be commenced by writ of summons. Counsel stated that there is no provision in the Matrimonial Causes Act, 1970 and the Matrimonial Causes Rules of 1983 that says an action by a wife or child(ren) against their husband/father for maintenance and/or welfare/upkeep and education simpliciter cannot be maintained independently and/or that such an action must of necessity be commenced by a Petition under the Matrimonial Causes Rules of 1983, and

cannot be commenced by a Writ of Summons under the High Court Rules.

Counsel stated that to insist otherwise, as done by the Court of Appeal, is tantamount to forcing a wife who seeks for maintenance from her husband to sue for dissolution of marriage, nullity of marriage, judicial separation, restitution of conjugal rights



and jactitation of marriage against her will. Counsel stated that such a stance would also foreclose the children of a marriage from seeking for welfare/upkeep and education maintenance from their father as they cannot sue for dissolution of marriage, nullity of marriage, judicial separation,