

restitution of conjugal rights and jactitation of marriage. Counsel stated that these could not have been the intention of the framers of either the Matrimonial Causes Act, 1970 or the Matrimonial Causes Rules of 1983. Counsel stated that the proper procedure in these circumstances is for the actions to be commenced by a Writ of Summons under the relevant High Court Civil Procedure Rules.

Counsel stated that under Family law, a man is under a duty to maintain his wife and cater for the welfare and upkeep and education of his children and that a breach of this duty of care was actionable and he referred to the cases of Hyman Vs Hyman (1929) AC 601 and Falobi Vs Falobi (1976) 9-10 SC 147. Counsel stated that Section 36 of the Constitution of the Federal Republic of Nigeria and Section 14 of the Child Rights Act, 2003 also guarantee the rights of the

Appellants to

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maintenance and education and welfare and which said rights are embedded in the Right to Life. Counsel stated that the law is that where there is a right, there must be a remedy, as expressed in the Latin maxim, "Ubi jus ibi remedium" and he referred to the case of Bello Vs AG of Oyo State (1986) 5 NWLR (Pt 45) 828 in adumbration of the maxim. Counsel urged the Court to resolve the issue for determination in favour of the Appellants and to allow the appeal and set aside the judgment of the Court of Appeal.

On his part, Counsel to the Respondent also formulated the issue as the second issue for

determination in the brief of arguments thus:

Whether, having regards to the facts and circumstances of this case at the time it was decided, a wife and children of a marriage can maintain an action for maintenance, welfare and education against their husband/father by way of a Writ of Summons, outside the provisions of the Matrimonial Causes Act/Rules when the marriage is still subsisting.

In arguing the issue for determination, Counsel to the Respondent noted that Counsel to the Appellants conceded that under the provisions of the Matrimonial Causes Act,



1970 and/or the Matrimonial Causes Rules of 1983 the use of a writ of summons to initiate an action claiming for a principal or ancillary relief is expressly limited or outrightly impermissible and that such an action must be commenced by a petition. Counsel noted that the contention of the Counsel to the Appellant is that the action commenced by the Appellants in the High Court was not commenced pursuant to the provisions of either the Matrimonial Causes Act, 1970 or the Matrimonial Causes Rules of 1983, but independent of those provisions and it was for the enforcement of the right of the wife to maintenance and the rights of the children of the marriage to education and welfare, and were not tied to a prayer for dissolution of marriage, or nullity of marriage. Counsel noted that Counsel to the Appellant stated that the action was

brought under the general jurisdiction of the High Court to entertain complaints for a civil wrong or of breach of a civil right and the action was thus properly commenced under the High Court of Lagos State (Civil Procedure) Rules.

Counsel stated that the contentions of Counsel to the Appellants were flawed because as at 2006



when the action was commenced in the High Court of Lagos State, the Child Rights Law of Lagos State was yet to be passed into Law and the Family Court had not been created and there was no other legal framework in place to accommodate a claim