

for maintenance, welfare and education of the children of a marriage other than that created under the Matrimonial Causes Act, 1970 and the Matrimonial Causes Rules of 1983. Counsel reproduced the provisions of Order 2 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules of 2004 on mode of commencement of action and stated that general mode of commencing an action stipulated therein, writ of summons, was subject to an expressed exception - where any other applicable law prescribes a different mode of initiating a particular proceeding. Counsel stated that the only means opened to the Appellants to have made a claim for maintenance, welfare and education as at the date they commenced the present action was under the Matrimonial Causes Act, 1970 and the Matrimonial Causes Rules of 1983 and only as an ancillary relief to a claim for dissolution of marriage, nullity of marriage,

judicial separation, restitution of



conjugal rights or jactitation of marriage and that such an action must be commenced by a petition.

Counsel stated that the failure of the Appellants to commence their action via the appropriate procedure was not a mere procedural irregularity but a fundamental defect that struck at the very root of the jurisdiction of the High Court to entertain the action of the Appellants. Counsel conceded that Section 14 of the Child Rights Act 2003 imposes obligations on the parents to cater for the welfare, upkeep and education of a child, but stated that the

provisions of the Act only became law in Lagos State when same was domesticated by the Child Rights Law of Lagos State 2007 and the Family Court was created, and that this was after the Appellants had commenced the present action. Counsel stated the provisions of the Child Rights Act did not nullify the procedural requirements for commencing an action stipulated in the Matrimonial Causes Act. Counsel thereafter reiterated his arguments on the failure to commence an action in the particular manner stipulated by a statute on the jurisdiction of the Court and he referred to many case law authorities. Counsel urged



determination in favour of the Respondent and to dismiss the appeal as lacking in merit.

This appeal turns on a narrow issue. The Appellants erected their case on the assertions that a wife in a marriage possesses a right to maintenance against the husband and that children of a marriage possess the rights to welfare, upkeep and education against their father, outside the rights to maintenance, welfare and education granted them under Matrimonial Causes Act, 1970. The Appellants maintained that these rights are such that can be enforced against the husband/father as civil rights and obligations under the general jurisdiction of the High Court even while the marriage still subsists, and without the necessity of proceeding under the Matrimonial Causes Act and adopting the procedure provided for under the

Matrimonial Cause Rules of 1983.

The starting point for the resolution of this appeal is the determination of the question of whether indeed, during the subsistence of a marriage, a wife and the children of the marriage possess enforceable rights to maintenance, welfare, upkeep and education against their



husband/father, outside the rights to maintenance, welfare and education granted them under Matrimonial Causes Act, 1970. Now, marriage is a legally and socially sanctioned union, typically between two people, that establishes a special relationship with associated rights and