

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.

DECISION/HELD:

The appeal was allowed and the judgment of the Court of Appeal sitting in its Lagos Judicial Division was set aside.

iii

RATIO DECIDENDI

MATRIMONIAL CAUSES - MAINTENANCE - Principles governing the grant of maintenance order in matrimonial causes

"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 obligations. It can be formalized through legal or religious ceremonies and is recognized by the state, conferring various benefits and responsibilities on the individuals involved. There are four recognized

types of marriages in Nigeria and these are faith-based marriages - a Christian marriage and an Islamic marriage; a traditional or customary marriage; and a statutory marriage - *Agbakoba Vs Attorney General, Federation* (2021) LPELR 55906(CA). A statutory marriage is a marriage conducted under the provisions of the Matrimonial Causes Act, 1970 and this comes with attendant rights to maintenance for the wife and rights to welfare, upkeep and education for the children provided for under the Act. A statutory marriage is not the focus here, but the other three types of marriages. This Court will commence this discourse with a consideration of the right of a wife to maintenance against her husband under these types of marriages. A Christian Marriage, also called matrimony, is a sacrament in which a man and a woman publicly declare their love and fidelity by taking marital vows in front of witnesses, a priest or minister and God. It is usually celebrated in Church. The point must be made that a Christian marriage does not necessarily qualify as a statutory marriage under the Marriage Act - *Nwangwa Vs Ubani* (1997) 10 NWLR (Pt 526) 559. In *Ayo Vs State* (2010) All FWLR (Pt 530) 1377 at 1405 the Court made it very clear that the "celebration of a church marriage does not a fortiori confer statutory flavour" on the marriage. In a Christian marriage, a wife generally has the right to seek maintenance from her husband during the marriage and this right is governed by common law rule that obligates a husband to maintain his wife. This is an obligation which arose from the fact of cohabitation and the wife management by the husband. In *Baker Vs Sampson* (1863) 14 CBNS 383 it was held that the duty

involved providing the wife with necessities such as food, clothing, medical expenses, and other basic needs, excluding luxury. Where the man fails to provide his wife maintenance, the wife at common law became an agent of necessity to the husband, ie. the wife was endowed by law to pledge the credit of the husband for these 'necessaries', but cannot pledge the credit to a moneylender for money - *Emery Vs Emery* (1827) 148 English Reports 769, *Hutchison Vs Olajide* (1970) NNLR 31. This principle of common law was assimilated as part of our law under the received English Law and was reiterated by Nsofor, JCA, in *Erhahon Vs Erhahon* (1997) 6 NWLR (Pt 510) 667 at 713, thus: "A man has a common law duty to maintain his wife and such a wife then has a right to be maintained. The right of a wife to maintenance against her husband is not contractual in nature. The husband is obliged to maintain his wife and may by law be compelled to find her necessities as meat, drink, clothes, etc, suitable to her husband estate or circumstances." This position of the law was reiterated by the Courts in the cases of *Nanna Vs Nanna* (2006) 3 NWLR (Pt 966) page 1 at 41 and *Adejumo Vs Adejumo* (2010) LPELR 3602(CA). A customary marriage, also known as traditional or native law and custom marriage, is a union recognized under the specific cultural and traditional laws of a community in Nigeria. It is a union between a man and a woman (or sometimes multiple women, in the case of polygamy) and is governed by the customs and 'traditions of the specific community where it takes place. Under customary law, the husband has a duty to maintain his wife. Thus, where the husband fails, a breach of this customary law duty can ground a reason for

divorce. There are customary practices which confirm that the husband has a duty to maintain his wife. For instance, in the eastern part of Nigeria where a customary law husband forces the wife and her children or his pregnant wife from the matrimonial home to her father's house, whenever the husband desires to have his family back, he is under a customary obligation to pay for the cost of maintaining his wife and his children while they were with the wife's parents. The right to maintenance for a wife is, however, not universally recognized or clearly defined under customary law and while some customary laws or traditions might impose a duty on a husband to maintain his wife, these obligations can be unclear and may not be enforceable. In Islam, marriage (Nikah) is a legal and social contract between a man and a woman, emphasizing mutual consent and commitment. It is considered both a religious and civil union, with specific requirements for validity such as consent of the parties, parental consent, payment of bride price and solemnization. Under Islamic law, a wife has a right to maintenance (Nafaqah) from her husband, which includes food, clothing, and shelter, as long as the marriage is valid. It is a fundamental right conferred on the wife and it is independent of the wife's wealth or financial standing. The husband's obligation to maintain his wife arises from the marriage contract itself and continues until the marriage is terminated. The wife's right to be maintained by her husband is absolute and a husband is bound to maintain his wife of a valid marriage even if there is no agreement in this regard. It is the obligation of the husband to provide proper maintenance to his wife in all circumstances, whether he is in a good

financial condition or not - Tambuwal Vs Tambuwal (2021) LPELR 55025(CA). As sole responsibility of the husband, its sufficiency guarantees the wife's obligation to obey and remain within the bound of the conjugal sphere. In the same vein, the wife's entitlement to demand for separation in the event of the husband's non-compliance is guaranteed as well. It is not permissible for a man to marry until he is financially able to bear the maintenance expenses. The Prophet, peace be upon him, commanded those who cannot afford it to persevere and fast. The deductions that are visibly obvious from the above summations is that a wife of a Christian marriage and/or of an Islamic marriage possesses a right to maintenance by her husband and it is a right that is enforceable, while there is no clarity of the presence of such an enforceable right to maintenance in a wife of a customary marriage. This right of wife of a Christian marriage and/or of an Islamic marriage to maintenance by her husband is independent of and outside the right to maintenance provided for under the provisions of the Matrimonial Causes Act, 1970. The point must, however, be made that where a wife of a Christian marriage and/or of an Islamic marriage proceeds thereafter to conduct a statutory marriage under the Matrimonial Causes Act, 1970, this independent right of maintenance ceases and becomes subsumed in the right of maintenance provided for a wife of a statutory marriage in the provisions of the Act. This subsummation of the independent right to maintenance of a wife of a Christian marriage and/or of an Islamic marriage by the right of maintenance provided for a wife of a statutory marriage in the provisions of the Act is the necessary consequence of the principle of merger.