

triumphant and justice prostrate may no doubt have its admirers. But the spirit of justice does not reside in forms and formalities nor in technicalities nor is the triumph at the administration of justice to be found in successfully picking one's way between pitfalls of technicality. Law and its technical rules ought to be a handmaid of justice and legal inflexibility may, if strictly followed, only serve to render justice grotesque or even lead to outright injustice. The Court will not endure that mere form or fiction of law, introduced for the sake of justice, should work a wrong, contrary to the real truth and substance of the case before it

Again, in the case of **Obakpolor Vs State (1991) LPELR- 2148 (SC)** , the Supreme Court per Akpata, JSC observed as follows:

It is the paramount duty of Courts to do justice and not cling to technicalities that will defeat the ends of justice. It is

immaterial that

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they are technicalities arising from statutory provisions, or technicalities inherent in rules of Court. So long as the law or rule has been substantially complied with and the object of the provisions of the statute or rule is not defeated, and failure to comply fully has not occasioned a miscarriage of justice, the proceedings will not be nullified."

It was not the complaint of the Respondent either in the High Court or in the Court of Appeal that the commencement of the action by the use of a writ of summons, instead of by a petition, occasioned him a miscarriage of justice. The holding of the Court of Appeal that the Appellants could

only commence their action for maintenance by way of a petition under the Matrimonial Causes Rules, 1983 and not by a writ of summons under the High Court of Lagos (Civil Procedure) Rules 2004, and concluding therefrom that the action was incompetent, was, with respect, misconceived .

The necessary conclusion derivable from the above findings is that there is merit in this appeal. The appeal is hereby allowed and the judgment of the Court of Appeal sitting in its Lagos Judicial Division delivered in Appeal No



CA/L/800/2006 on the 14th of July, 2008 is set aside, and the Ruling of the High Court

of Lagos State delivered in Suit No LD/929/2006 on the 9th of October, 2006 is restored. The parties shall bear their respective costs of the appeal.

JOHN INYANG OKORO, J.S.C. : I have been privileged to read before now the judgment just delivered by my learned brother, HABEEB ADEWALE OLUMUYIWA ABIRU, JSC. I absolutely concur with his very balanced reasoning and conclusion arrived thereat. I also allow the appeal and I abide by the consequential orders made in the lead judgment.

Appeal allowed.

TIJJANI ABUBAKAR, J.S.C. : My lord and learned brother, HABEEEB ADEWALE O. ABIRU, JSC, granted me the privilege of reading in draft the comprehensive leading judgment prepared and rendered in this appeal. I endorse the reasoning and

conclusion and adopt the judgment as mine, I have nothing extra to add.

I join my learned brother in holding that the Appellants appeal is richly meritorious. The appeal therefore deserves to be and is hereby allowed.

Appeal allowed.

JAMILU YAMMAMA TUKUR, J.S.C. : I had the advantage of reading before now, the lead



judgment just delivered by my learned brother, HABEEB ADEWALE OLUMUYIWA ABIRU JSC, and I agree with the reasoning and the conclusion arrived at in the judgment.