MRS. VERONICA NNEKA UGBAH
CHUKWUEMEKA GREGORY PATRICK
(Infant, suing by his Guardian/next fruend,Mrs. Veronica Nneka Uggbah)
IFECHUKWUDE BRENDA PATRICK
(Infant, suing by his Guardian/next fruend,Mrs. Veronica Nneka Uggbah)

V.

MR. PATRICK IWEBONOR UGBAH

IN THE SUPREME COURT OF NIGERIA
HOLDEN IN ABUJA

SC/334/2008

JOHN INYANG OKORO
TIJJANI ABUBAKAR

HABEEB ADEWALE. 0. ABIRU

JAMILU YAMMAMA TUKAR

MOHAMMED BABA IDRIS

FRIDAY, 4TH JULY, 2025

Court: Rules of procedure - whether aid to the Court and not masters of the court - the principle in U. T. C (Nig.) Ltd. Vs. Pamotei (1989)2 NWLR (PT. 103)244 at 298

Court: Approach to procedural irregularities - whether an action cannot be set aside for procedural irregularities unless there is a miscarriage of justice - the principle in Taiwo vs. Federal Republic of Nigeria (2022)13 NWLR (Pt. 1846)61

Court: Reliance and technicalities - whether the spirit of justice does not reside in forms and formalities - the principle in Bello vs. AG, Oyo State (1986)5 NWLR (Pt.45)828 at 886 F-G

Court: Primary duty - whether it is the primary duty of courts to do justice - the principle in Obakpolor vs. State (1991) LPELR -2148(SC)
Court: Where procedure adopted was not shown to have occasioned miscarriage of justice - whether it will be misconceived for court to strike out action on the basis of improper procedure
Legislation: Criminal Code Law of Lagos State, 2006 - sec.205 thereof - provisions thereto
Legislation: Criminal Code Law of Lagos State - sec. 339 thereof - failure to provide necessaries and support to a child
Matrimonial causes: Marriage - meaning thereof

Matrimonial causes: Marriage - types thereof - whether there are four types of marriage in Nigeria
Matrimonial causes: Statutory marriage - nature and purport thereof
Matrimonial causes: Christian marriage - nature thereof - whether it does not necessarily mean statutory marriage
Matrimonial causes: Christian marriage - rights of a woman thereto - whether derived from common law - the principles in Erhahon vs. Erhahon (1997)6 NWLR (pt.510)667 at 713 and Baker vs. Sampson (1863)14 CBNS 385
Matrimonial causes: Customary Law marriages - right of married women thereto - whether the husband has a duty to maintain her life under Customary Law
Matrimonial causes: Islamic Law marriage - right of a married woman thereto - whether has absolute rights to maintenance by her husband
Matrimonial causes: Christian and Islamic marriages - right of maintenance of a married woman thereto - whether entitled to maintenance by her husband
Matrimonial causes: Christian and Islamic marriages - right of a married woman thereto who subsequently celebrates statutory marriage
Matrimonial causes: Christian and Islamic marriages - effect of subsummation in statutory marriage - whether it leads to merger
Matrimonial causes: Merger - meaning and application thereto
Matrimonial causes: Christian marriage - right of a married woman thereto who later celebrated statutory marriage - whether right of maintenance has been merged in the statutory marriage
Matrimonial causes: Rights of children of marriage to maintenance - whether it is a fundamental right irrespective of type or nature of marriage
Matrimonial causes: Right of maintenance of a child - whether independent of the right of the mother to maintenance under Matrimonial Causes Act, 1970
Practice and Procedure: Action for maintenance - whether a wife of statutory marriage can file an action for maintenance without including a claim for divorce
Practice and Procedure: Action for maintenance - whether can be filed without including a claim for divorce - the principle in Anene Chikezie vs. Ifeoma Anene(2017) Esut Law Reports (ESLR) 190 at 207-208
Practice and Procedure: Action for maintenance - whether can stand alone without a claim for divorce under Matrimonial Causes Act - rationale
Practice and Procedure: Court proceedings - reliance on technicality - whether does not take cognizance of justice or merits of the case - the principle in Yusuf vs. Adegoke (2007) LPELR 3534(SC)
Practice and Procedure: Where a wrong procedure is adopted - whether it does not defeat the claim where the issue in contention is in focus - the principle in Federal Government of Nigeria vs. Zebra Energy Ltd. (2002) LPELR -3172(SC)
Property Law: Merger - meaning thereof - the principle in Jagaba vs. Umar (2016) LPELR - 40466(CA)

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.

Facts:

The Claimants/ Appellants filed an action against the Defendant/Respondent at the High Court of Lagos State by way of writ of summons and statement of claim pursuant to the Civil Procedure Rules of the High Court of Lagos State.

The action of the Appellants was in respect of maintenance allowances, education, expenses, rent accommodations and general upkeep of the Appellants by the Defendant/ Respondent. The 1st Appellant/Applicant and Defendant/Respondent were married under Igbo Native Law and Custom and subsequently at St. Dominic Catholic Church Yaba. The 2nd and 3rd Appellants were children of the marriage. The Respondent sent the 1st 2nd and 3rd Appellants out of the matrimonial home but failed in the promise to send maintenance allowances for their upkeep. Thus, the Appellants commenced this action against the Defendant/Respondent.

However, counsel to the Respondent filed a preliminary objection challenging the competence of the action on ground, action for maintenance can only be commenced under the Matrimonial Causes Act and not by way of writ of summons, statement of claim under the Civil Procedure Rules of High Court of Lagos State.

The trial High Court dismissed the preliminary objection.

Dissatisfied, the Defendant/Respondent successfully appealed to the Court of Appeal Lagos Division, hence this further appeal to the Supreme Court.

1. *On meaning of marriage-*

   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.

2. *On types of marriage in Nigeria-*

   There are four recognized types of marriage 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).

3. *On nature of statutory marriage-*

   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.

4. *On nature of christian marriage-*

This Court will commence this discourse with a consideration of the right of a wife to maintenance against her husband under these types of rnarriage.

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 *fortlor t* confer statutory flavour" on the marriage.

5. *On right of a woman under christian 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 necessaries 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, *i.e*. 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 necessaries 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).

6. *On rights of a married woman to maintainance under customary law-*
   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.

7. *On right of a married woman to maintenance under Islamic Law-*

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 financial3tanding. 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 – **Tarnbuwal 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.

8. *On rights of a married woman under christian and islamic law-*

   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.

9. *On nature of right of maintenance of a married woman under christian/ isalmic marriages who subsequently celebrates statutory 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 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.

10. *On effect of subsummation of christian and islamic marriages in statutory marriage-*

    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 the necessary consequence of the principle of merger.

11. *On meaning and application of merger-*

Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; and absorption or swallowing up so as to involve a loss of identity and individuality. In legal contexts, the principle of merger generally refers to the absorption of a lesser interest or claim by a greater one, causing the lesser to cease to exist. This concept appears in various areas of law, including civil procedure, criminal law, property law, and trust law, each with its own specific application – *for* the application of the principle see the cases of **Kodesoh Vs Aro** (1972) All NLR 394, **Owoniboys Technical Services Ltd Vs Union Bank of Nigeria Plc** (2003) 15 NWLR (Pt 844) 545, **Dangote Industries Ltd Vs The Steamship Mutual Underwriting Association (Bermuda) Ltd** (2016) LPELR 50501 (CA).

12. *On meaning of merger in property law-*

    Explaining the principle of merger as it relates to estates in property law, the Court in **Jagaba Vs Umar** (2016) LPELR 40466(CA), said that it postulates that:

    "where a person takes or acquires an estate of a higher nature in legal valuation than one he already possesses, the person merges and

extinguishes his legal remedies upon the inferior estate and the inferior estate ceases to be of any relevance. In other words, where for example a person holds a yearly tenancy in a property and subsequently acquires a lease for a term of years in the same property, the yearly tenancy merges into the lease which is an estate of higher valuation and ceases to exist."

13. *On rights of maintenance of a woman under christian marriage who subsequently celebrated statutory marriage-*

Applying the above stated principles to the instant case, the first Appellant and the Respondent had a customary marriage, a Christian marriage and capped it up with a Statutory marriage. By reason of the statutory marriage, the first Appellant's right to maintenance against the Respondent crystalized and became fused in and circumscribed by the provisions on right of maintenance contained in the Matrimonial Causes Act, 1970, and she possessed no enforceable independent right of maintenance outside the provisions of the Matrimonial Causes Act. Therefore, the contentiOn of Counsel to the Appellants that the right of a wife of a statutory marriage to maintenance against the husband is independent of the provisions for maintenance contained in the Matrimonial Causes Act is fallacious and misconceived.

14. *On rights of children to maintenance-*

Going to the rights of the children of a marriage, it is universally agreed, irrespective of the mode of marriage, and even where the parents are not married, that the father has the primary duty and responsibility to provide *for* his children's basic needs like food, shelter, and clothing, while also offering emotional support, guidance, and discipline; this is a core obligation of the father. The father also has the duty to provide a *safe* and secure environment for his children and this includes creating a *safe* and stable home environment, whether he lives with them or not. The basic duties of a father are to protect his children from harm, to provide them with *food*, clothing and a place to live, to financially support his children, provide safety, supervision and control, to provide medical care and to provide an education. The right of children to maintenance is a fundamental right which all children all over the world are entitled to enjoy

because they are young and are unable to provide *for* themselves and therefore depend on others for survival.

15. *On whether right of a child to maintenance is independent of Matrimonial Causes Act (1970)-*

    This right is independent of, and is not intertwined with, the right of the mother *for* maintenance from the father of the child and it's also independent of the right of a child to maintenance provided under the Matrimonial Causes Act, 1970. Legal action can be taken to enforce a father's duties to his children and this can involve seeking court orders for child support. It is the duty of a man at common law to take care of his family – **Tabansi Vs Tabansi** (2008) LPELR 4365(CA). This right of the child was reiterated in Section 301 of the Criminal Code Law of Lagos State, Cap C17, Laws of Lagos State, 2003 and its breach was criminalized by Section 339 thereof to underscore its mandatoriness. This was criminal law applicable in Lagos State in 2006 when this action was filed.

16. *On provision of section 205 of Criminal Law of Lagos State, 2006 –*

    Section 205 read:

    "It is the duty of every person who, as head of a family, has charge of a child under the age of fourteen yrears, being a member of his household, to provide the necessaries of life for such child and he is held to have caused any consequences which result to the life and health of the child by reason of any omission to perform that duty, whether the child is helpless or not.

17. *On nature of section 339 of Criminal Law of Lagos State 2006-*

    Section 339 read:

    "Any person who, being charged with the duty of providing for another the necessaries of life, without lawful excuse fails to do so, whereby the life of that other person is or likely to be endangered, or his health is or likely to be permanently injured is guilty of a felony, and is liable to irnprisonment for three years.

It was this right of a child that was codified and reinforced in the Child Rights Act of 2003, and which was domesticated in Lagos State as Child Rights Law of 2007. The right was not given to a child by these Laws.

18. *On whether a wife of a statutory marriage can claim maintenance without including a claim for divorce-*

The second question that arises in this appeal is – whether a wife of a statutory marriage, like the first Appellant in this appeal, can file a stand-alone action *for* maintenance *for* herself and the children of the marriage without needing to include it with other primary claims like divorce, nullity *of* marriage, judicial separation and/or jactitation of marriage. A review of the case law authorities on this issue shows that apart from the decision in the case of **Okpagu Vs Okpagu** (1947) 12 W.A.C.A. 137 and that of the Court of Appeal in the present case, the consensus of the other case law authorities is that the answer to the question posed is in the affirmative; *i.e*. that a wife can file a stand-alone action for maintenance *for* herself and the children of the marriage without including with it other primary claims like divorce, nullity of marriage, *etc*. – *see* the cases of **Ekisola Vs Ekisola** (1961) L.L.R. 8, the unreported judgment of the Court of Appeal in Appeal No CA/C/99/81 - **Etim Effiong Nakanda Vs Alice Uzoamaka Nakanda** delivered on 17th of June, 1988, **Kpilah Vs Ngwu** (2018) LPELR 45395(CA). In **Obajimi Vs Obajimi** (2011) LPELR: 4665(CA), the Court made point thus:

> **"Maintenance of a wife may be claimed by her from the husband even if there is no suit for divorce or separation. in other words, the wife of a marriage under the Matrimonial Causes Act (MC.A) is entit ted to claim maintenance in the High Court, if her husband willfully neglected to maintain her without instituting a matrimonial case**

19. *On whether an action for maintenance can be filed without a claim for divorce –*

In the case of **Anene Chikezie Vs Ifeoma Arlene** (2017) Esut Law Reports (ESLFR) 190 at 207-208, a husband argued that he had no obligation to maintain the children of the marriage, and that, at that time, he was living separately from them and he contended that the court could not make an order for such maintenance by him, as there was, at the time, no petition *for* dissolution of the marriage. Nnamani, J., of the Customary Coun of Appeal, Enugu, in the lead judgment queried thus: " ... does a man have an obligation to provide *for* his child or children whether or not there is a petition *for* the

dissolution of his marriage to the mother of the child or children?" His Lordship answered the question in the affirrnative and stated that “a man has both moral and legal obligations to provide for his child or children. The moral obligation stems from a code of paternity which is written by the creator with the ink of love in the hearts of men, which incidentally, most animals, though bereft of the quality of humanity, observe. Legislation is not needed *for* the observance of this code" and ’the duty is not affected by the existence or otherwise of a petition for the dissolution of the marital union from which the child resulted. For a child, who did not ask to be brought to the world in the first place, maintenance is a right, and this is so whether the parents love or hate, whether they embrace or wrestle, or whetlrer they kiss or bite each other.’

His Lordship asserted that:

> 'To argue, as the appellant’s counsel did, that a court cannot order an abdicative father to pay for arrears of due and unpaid maintenance atlowance for the simple reason that, at the time they accrued, there was no pending divorce petition, would amount to saying that a man has no obligation to fend for his child. It is an incorrect legal proposition which, if bought, can reduce a man to the paternal rascality of the billy goat, which gleefully nrounts the nanny goat for copulation but runs away as soon as the deed is done, and is never held a'ccountab le *for* the Fesponsibility of rearing the resultant kid.”

20. *On whether action for maintenance by a woman and her children can stand alone without a claim for divorce –*

This Court aligns with the view expressed by the consensus of the other case law authorities. Firstly, there is no provision in the Matrimonial Causes Act that prohibits such a stand-alone action. And secondly, to maintain otherwise would mean that an action cannot be maintained for and on behalf of the children of a marriage by a guardian or best friend against an irresponsible father who fails to provide them with upkeep and maintenance as the children cannot seek *for* dissolution of his parent's marriage, nullity of the marriage, judicial separation and/or jactitation of the marriage. This will be injustice and could not have been the intention *of* the framers of the Matrimonial Causes Act. The findings of the

Court of Appeal in this case that the first Appellant could not file a stand-alone action *for* maintenance *for* herself and the children of the marriage, and could only make such claims ancillary to a principal relief for dissolution *of* marriage, nullity of marriage, judicial separation and/or jactitation of marrlage, are erroneous.

21. *On whether reliance on technicality does not take cognizance of justice* – The third and final question calling for resolution in this appeal is whether, where a wife of a statutory marriage decides to file a stand-alone action *for* maintenance for herself and the children of the marriage, the action should be commenced by a petition under the Matrimonial Causes Rules or by a writ of summons under the High Court Civil Procedure Rules.

It is the view of this Court that the answer to this question is neither here nor there as it borders plainly on technicality; it is a question as to form (procedure) of the presentation of the claims and not the substance of the claims. ln **Yusuf Vs Adegoke** (2007) LPELR 3534(SC), Tobi, JSC, speaking on technicality, commented thus:

". A technicality in a matter could arise if a party is relyingjn abstract or inordinate legatism to becloud or drown the merits of a case. A technicality arises if a party quickly takes an immediately available opportunity, however infinitesirnal it may be, to work against the merits of the opponent's case. In other words, he holds and relies tenaciously unto the rules of court with little or no regard to the justice of the matter. As far as he is concerned, the rules must be followed to the last sentences, the last words and the last letters without much ado, and with little or no regard to the injustice that will be caused the opponent."

22. *On effect where procedure brings out the issue in contension in focus* – The truth is that it mattered not whether the Appellants commenced the action by a petition under the Matrimonial Causes Rules or by a writ of summons under the High Court Civil Procedure Rules. This is particularly more so as the claims were simply *for* maintenance and welfare of wife and children of a marriage, and were

not co-joined with a claim *for* dissolution of marriage or nullity of marriage. In **Tabansi Vs Tabansi** (2008) LPELR 4365(CA), the Court stated that the clairns dealing with the education, maintenance and upkeep of a child are serious and sensitive matters which should not be hamstrung by technicalities.

What was important, in these circumstances, was whether the mode of commencement brought out the issues in contention between the parties. This Court has severally held that once the procedure used in a matter brings the issues in contention into focus, it will not be of no moment that the procedure used was wrong. In **Federal Government of Nigeria Vs Zebra Energy Ltd** (2002) LPELR-3172(SC), Belgore JSC (as he then was), at page 33D stated thus:

> "Procedure is a guide to smoothen passage of suit; to direct the parties what to do and to guide the court to arrive at the justice of a case ... The court shall never be shackled by procedure; case is not made for procedure, it is the other way round. Once the procedure employed has brought into focus the issues the parties contest and there is no miscarriage of justice it will not matter that the procedure is not the correct one."

23. *On effect of heavy reliance on technicality –*

In **U.T.C. (Nig) Ltd Vs Pamotei** (1989) 2 NWLR (Pt 103) 244 at 298 it was held by this Court that "rules of procedure are made for the convenience and orderly hearing of cases in court. They are made to help the cause of justice and not to defeat justice. The rules are therefore aids to the court and not masters of the court. For courts to read rules in the absolute without recourse to the justice of the cause, to me will be making the courts slavish of the cause. This is certainly not the *ralson detr e* of the rules *of* court." Also, in **Nwosu Vs Imo State Environmental Sanitation Authority** (1990) 2 NWLR (Pt. 135) 688 at 717, Nnaemeka Agu, *J.S.C* said:

> "As we have stated several times the days when the parties pick their way in the court through naked technical rules of procedure the breach of which does not occasion a miscarriage of justice are fast sinking into the limbo of forgotten things."

24. *On approach of court to procedural irregulries –*

In **Taiwo Vs Federal Republic of Nigeria** (2022) 13 NWLR (Pt 1846) 61, this Court held that a procedural irregularity is not a factor that would justify the setting aside of a verdict or decision unless a miscarriage of justice is established as propelling that decision of the court.

This Court has maintained over the years that the sole purpose of a Court is to do substantial justice between the parties that come before it for adjudication of disputes and not to adhere to technical issues that becloud the justice of a matter as such adherence to technicalities to the detriment of substantial justice inevitable leads to injustice – **State Vs Gwonto** (1983) 1 SCNLR 142, **Marine Management Associates Inc Vs National Maritime Authority** (2012) 18 NWLFI (Pt 1333) 506, **Uwazuruike Vs Attorney General**, **Federation** (2013) IO NWLR (Pt 1361) 105, **Mfa Vs Inongha** (2014) 4 NWLFI (Pt 1397) 343, **Frozen Foods Nigeria Limited Vs** The Estate of **Oba** John Agboola Ojomo (2022) LPELR 57815(SC), Koko **Vs Koko** (2023) 13 NWLR (Pt 1901) 249.

25. *On effect of reliance on technicalities* –
    In the immortal words of my Noble Lord, Oputa, JSC, in **Bello Vs Attorney General**, **Oyo State** (1986) 5 NWLR (Pt 45) 828 at 886 F-G:
    ''The pitrure of law and its technical rules triumphant and justice prostrate may no doubt have its adrnirers. But the spirit of justice does not reside in forms and formalities nor in technicalities nor is the triumph of 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 ...”

26. *On whether it is the primary duty of courts to do justice* –
    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 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."

27. *On effect where procedure adopted was not shown to occasion miscarriage of justice* –

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.

Supreme Court:

Names of Justices who sat on the appeal: JOHN INYANG OKORO, TIJJANI ABUBAKAR, HABEEB ADEWALE. 0. ABIRU, JAMILU YAMMAMA TUKAR, MOHAMMED BABA IDRIS

Appeal No. SC/334/2008

Date of Judgment: Friday, 4th July, 2025

Names of Counsels: Mgbereoma Wayo for the Appellant; Bolu Agbaje Akadri with Johnpraise Okudare for the Respondent.

The issue in this appeal revolves around the mode of comrnencement of an action claiming for sums of money for

maintenance of wife and *for* education and welfare of children arising from a matrimonial relationship and whether such an action can be maintained without the necessity of filing a petition *for* the dissolution of the matrimonial relationship. The Appellants were the claimants in the action taken out in the High Court of Lagos StaB–against the Respondent, as defendant, ara-They commenced the action by a Writ of Summons and Statement of Claim filed on the 9th *of* June, 2006 pursuant to the Civil Procedure Rules of the High Court of Lagos State praying *for* the following orders:

i. An order that at the Respondent's expense, the second and third Appellant should continue their education in Nigeria or abroad up to University level and/or adequate professional level, as their capacItIes rnay permit.
ii. An order compelling the Respondent to pay N50,000.00 each to the first Appellant and second and third Appellants every month each comprising the monthly maintenance allowance for the said first Appellant and monthly welfare/upkeep *for* the second and third Appellants respectively.
iii. An order directing the Respondent to get an alternative accommodation *for* the Appellants and/or pay the sum of N250,000.00 every year to 'the Appellants to enable them get a proper accornmodation.
iv. An order condemning the Respondent in the costs of the suit.

The averments in the statement of claim revealed that the first Appellant and the Respondent were married and that they married under the Igbo Native Law and Custom on the 26th of December, 2000 and subsequently at St Dominic Catholic Church, Yaba, Lagos State on the 12th of May 2001 were issued with a marriage certificate. The averments revealed that the second and third Appellants were the children of the marriage and the second Appellant was born on the iSth of May, 2001 while the third Appellant was born on the 9th of September, 2002. The averments contained allegations on intolerable behavior exhibited by the Respondent towards the first Appellant, including physical and emotional abuse the attempts made by members of the-Respondent's family to resolve complaints of the first Appellant against the actions of the Respondent. The averments asserted that the Respondent sent the first Appellant and

the two children of the marriage, the second and third Appellants, out of the matrirnonial home on the 19th of September, 2002 with an undertaking to constantly send them money for their welfare and malntenance.

The averments in the statement of claim revealed that the Respondent failed to send the Appellants money *for* their welfare and rnaintenance as promised and that the first Appellant made reports of this fact to the family of the Respondent, the employers of the Respondent, Lagos University Teaching Hospital, the Lagos State Child Development and Welfare Agency, the Lagos Office of the Public Defender. to the Parish Priest of St Dominic's Catholic Church, to the Catholic Marriage Tribunal and to the Lagos State Chapter of the International Federation of Women Lawyers (FIDA). The averments asserted that the Respondent rebuffed all the attempts by these persons and agencies to resolve the matter and that the first Appellant had single handedly been catering *for* the welfare and maintenance of herself and of the second and third Appellants and that it became burdensome for her to continue to do same due to the fact that she lost her job and at which point her mother took over catering for the welfare of the second and third Appelf ants. It was by reason of these averments that the Appellants commenced the action against the Respondent.

Upon being served with the court processes, Counsel to the Respondent filed a notice of preliminary objection challenging the jurisdiction of the High Court to hear the matter as constituted by the Appellants on the ground that it was not commenced by due process and was thus not properly before the Court. The notice of preliminary objection contended that since the claims of the Appellants were for maintenance and welfare on the grounds of a marital relationship and paternal obligation, the action could only be commenced under the Matrimonial Causes Act and not by a writ of summons and statement of-&laim taken out under the Civil Procedure Rules of High Court of Lagos State. The High Court heard the preliminary objection on the merits and it ruled dismissing same thus:

> **"Defendant's Counsel has objected to this suit on the ground that the reliefs sought in this suit is based on a marital relationship and should have been commenced under the Matrimonial Causes Act and not by Writ of Summons**

as the Claimants have done. The Matrimonial Causes Act is very specific as to which cases come under its ambit. Matrimonial Causes are defined in Section 114 (1) and they include proceedings for: (i) dissolution of marriage, (ii) nullity, (iii) judicial separation, (iv) restitution of conjuga[rights, (v) jactitation, among others. With regards to rnaintenance which this suit seeks, proceedings must relate to concurrent pending or concluded proceedings in the above listed matrimonial causes.

The 1ST Claimant herein is not seeking a dissolution of her marriage or any of the reliefs in Section 114 (1) (a) or (b), what she and her children seek is an order *for* maintenance which they cannot file under the Matrimonial Causes Act since they do not have concurrent pending or completed proceedings under that Act. The Constitution as well as the Child Rights Act allows the Claimants to come before this Court to seek the reliefs they seek. It is not a matrimonial cause within the definition of matrimonial causes in Section 114 of the Matrimonial Causes Act, they are properly before this Court. The preliminary objection therefore fails and is hereby dismissed."

The Respondent was dissatisfied with the Ruling of the High Court and he caused his Co-unsel to file an appeal against it to the Court of Appeal sitting in Lagos by a notice of appeal dated the 9th of October, 2006 containing one ground of appeal. The Court of Appeal heard the appeal on the merits and it delivered a considered judgment wherein it deliberated thus:

"On my consideration of the submission in the two briefs on the lone issue, the first point to note is the concession of the respondents that under the b-rovisions of both the Matrimonial Causes Act and the Matrimonial Causes Rules ... the use of a writ of summons to commence proceedings in Matrimonial Causes (for both principal and ancillary reliefs) is limited (or not permitted) and the proper way to commence such proceedings is by a petition as prescribed by the said Rules. By this concession, it is therefore not in dispute that the present action by the respondents at the lower Court which was commenced by a writ of summons in which they are seekihg for the reliefs of rnaintenance, education and welfare which are similar to those mentioned in the definition section of the Matrimonial

Causes Act 1970 *Li.e.* section 174 (1) (c) and Rules of Procedure made thereunder in 1983 Order XIV thereof) was not properly commenced or was contrary to or in breach of the said Rules. The respondents however assert that their present action before the lower Court was not brought under or pursuant to the Matrimonial Causes Act and was therefore an independent and normal claim of their right to maintenance (as a wife), education and welfare (as children of the marriage) which was properly brought or cornmenced by the issuance of a writ of summons as prescribed under Order 3 of the High Court Civil Procedure Rules 2004."

The Court of Appeal reproduced the provision of Order 3 Rule (1) of the High Court of Lagos State (Civil Procedure) Rules of 2004 which read that "subject to the provisions of these rules or any other applicable law requiring any proceeding to be begun otherwise than by writ, a writ of summons shall be the form of commencing all proceedings where a claimant claims any relief or remedy *for* any civil wrong". The CourT of Appeal thereafter continued its deliberation thus:

“From the express words in the ... above rule it is clear that the use of the writ of summons in commencing civil proceedings in the High Court of Lagos State is not allowed or permitted subject inter alia to any other applicable Law. Thus, where any other applicable law provides for the use of any other process instead of the writ in commencing a proceeding before the High Court, such would be complied with. Failure–-to comply with the rules as to the commencement of action iS fatal to the plaintiff’s case and should be sanctioned by the Court, which will strike out such a defective or incompetent process.

It is an inherent jurisdiction and duty of the Court to ensure compliance with the relevant rules of Court, which are required to be prima facie obeyed. In the instant case, from the earlier reproduced provision of the Matrimonial Causes Act and the Rules made thereunder, it is the clear intention of the framers of the two legislations *(i. e*. the principal and subsidiary legislation) that the reliefs of maintenance of a wife (or family) as well education and welfare of children of the marriage cannot stand by themselves or are not independent but must be incidental or ancillary to the main relief claimed for dissolution of marriage, nultity, judicial separation or restitution of conjugal

rights or jactitation of marriage ... It is also trite that all reliefs claimabte under the Matrimonial Causes Act or Rules are to be by way of a petition rather than a writ of summons ..."

The Court of Appeal proceeded to deliberate further thus:

"In my humble view the present suit or action by a wife against her husband for her maintenance and the welfare and education of the children of the marriage can only be commenced or instituted under the Matrimonial Causes Act and should be ancillary or incidental to a pending or concluded main relief as adumbrated above. Thus such ancillary reliefs as sought by the respondents cannot or should not be brought independently or in a regular way (;a by writ of summons) when the marriage is still subsisting between the spouses. The aim and purport of this prohibition is in the need to preserve the sanctity of the marriage institution and to avoid its possible breakdown or cause any disaffection between or amongst the members of the family during the subsistence of the marrlage. ...

It is also a common knowledge that in Nigeria, the duty or responsibility of maintenance, education and welfare of children even though are th_e_primary responsibility of the husband, they_are or can sometimes be carried out or performed by the wife depending on the individual wealth or means of one or the other of the couple. The Child Right Act (CPA) 2003 (section 14 thereof) cited and relied upon by the respondents is not properly cited in their brief as they have not pinpointed any of the provisions of the said Act regulating the procedure or venue for the commencement of a maintenance action. ..."

The Court of Appeal continued its deliberation thus:

"In Nigeria and under our adjectival law, where a statute or rule of practice provides that certain proceedings in respect of a particular cause of action shall be commenced by one method or process, an action or suit by a litigant who initiates it by means of another method or process will be regarded as irregular or incompetent with the result that such a non-compliance, as in the present case, will deprive the court of its jurisdiction to entertain the action or suit as initiated. This is because for the Court to have or exercise jurisdiction, one of the conditions precedent is that the action must be brought by a due process and that the subject matter of the case is within the jurisdiction of the Court. ..."

The Court of Appeal concluded that the action of the Appellants was not commenced by due process and that the High Court thus possessed no jurisdiction to entertain the action and it struck out the case as filed in the High Court. The Appellants were dissatisfied with the judgment of the Court of Appeal and they caused their Counsel to file a notice of appeal dated the 28th of July, 2008 and containing six grounds of appeal against it. In arguing the appeal, Counsel to the Appellants filed a brief of arguments dated the 15th of June, 2009 on the same date while Counsel to the Respondent filed an amended brief of arguments dated the 7th of August, 2022 on the 9th of August, 2022 and the amended brief of arguments was deemed properly filed and served by this Court on the 7th of April, 2025.

At the hearing of the appeal, this Coun queried the continued usefulness of the appeal in view of the time lapse of about nineteen years since 2006 when the action was filed in the High Court and the fact that the second and third Appellants, on whose behalf the claims for education and welfare were made, must be full-fledged adults by now. Counsel to the parties implored the Court to hear the appeal to resolve the issue of whether an action claiming for sums of money for maintenance of wife and for education and welfare of children arising from a matrimonial relationship can be commenced by a writ of summons and maintained without first filing a petition for the dissolution of the matrimonial relationship under the Matrimonial Causes Act. After some deliberations, this Court agreed to hear the appeal solely *for* this purpose and consequent on which Counsel to the parties relied on and adopted the arguments contained in their respective briefs of arguments on the issue.

Counsel to the Appellant formulated the issue as the second issue for determination in the brief of arguments thus:

> **Whether a wife and children of a marriage can maintain an action for maintenance and welfare and education independently against their husband/father by a writ of summons, when the marriage is still subsisting.**

In arguing the issue for determination, Counsel answered the questioned 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 children) against their husband/father *for* maintenance and/or welfare/upkeep and education simpliciter gannot be maintained ndependently and/or that such an action must of necessity be commenced by a Petition under the Matrimonial Causes Rules of 1983, and cannot be comrnenced 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, 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 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, " *Ubl jus tbl remedum*" 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 aclbn was commenced in the High Court of Lagos State, the Child Rights Law of Lagos State was yet to passed into Law and the Family Court had not been created and there was no other legal frarnework in place to accommodate a claim for maintenance, welfare and education of the children of a marriage other than that created under the Matrirnonial Causes Act, 1970 and the Matrimonial Causes Rules of 1983.

Counsel reproduced the provisions of Order 3 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules of 2004 on rnode *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 the Court to resolve the issue for determination in favour of the Respondent and to dismiss the appeal as lacking in merit.

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 rnarriages. 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 *fortlor t* 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 necessaries 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, *i.e*. 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 necessaries 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 financial3tanding. 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 – **Tarnbuwal 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 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 ih the provisions of the Act is he necessary consequence of the principle of merger. Merger in law is defined as the absorption of a thing of lesser

importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; and absorption or swallowing up so as to involve a loss of identity and individuality. In legal contexts, the principle of merger generally refers to the absorption of a lesser interest or claim by a greater one, causing the lesser to cease to exist. This concept appears in various areas of law, including civil procedure, criminal law, property law, and trust law, each with its own specific application – *for* the application of the principle see the cases of **Kodesoh Vs Aro** (1972) All NLR 394, **Owoniboys Technical Services Ltd Vs Union Bank of Nigeria Plc** (2003) 15 NWLR (Pt 844) 545, **Dangote Industries Ltd Vs The Steamship Mutual Underwriting Association (Bermuda) Ltd** (2016) LPELR 50501 (CA). Explaining the principle of merger as it relates to estates in property law, the Court in **Jagaba Vs Umar** (2016) LPELR 40466(CA), said that it postulates that:

> "where a person takes or acquires an estate of a higher nature in legal valuation than one he already possesses, the person merges and extinguishes his legal remedies upon the inferior estate and the inferior estate ceases to be of any relevance. In other words, where for example a person holds a yearly tenancy in a property and subsequently acquires a lease for a term of years in the same property, the yearly tenancy merges into the lease which is an estate of higher valuation and ceases to exist."

Applying the above stated principles to the instant case, the first Appellant and the Respondent had a customary marriage, a Christian marriage and capped it up with a Statutory marriage. By reason of the statutory marriage, the first Appellant's right to maintenance against the Respondent crystalized and became fused in and circumscribed by the provisions on right of maintenance contained in the Matrimonial Causes Act, 1970, and she possessed no enforceable independent right of maintenance outside the provisions of the Matrimonial Causes Act. Therefore, the contentiOn of Counsel to the Appellants that the right of a wife of a statutory marriage to maintenance against the husband is independent of the provisions for maintenance contained in the Matrimonial Causes Act is fallacious and misconceived.

Going to the rights of the children of a marriage, it is universally agreed, irrespective of the mode of marriage, and even where the parents are not married, that the father has the primary duty and responsibility to provide *for* his children's basic needs like food, shelter, and clothing, while also offering emotional support, guidance, and discipline; this is a core obligation of the father, The father also has the duty to provide a *safe* and secure environment for his children and this includes creating a *safe* and stable home environment, whether he lives with them or not. The basic duties of a father are to protect his children from harm, to provide them with *food*, clothing and a place to live, to financially support his children, provide safety, supervision and control, to provide medical care and to provide an education. The right of children to maintenance is a fundamental right which all children all over the world are entitled to enjoy because they are young and are unable to provide *for* themselves and therefore depend on others for survival. This right is independent of, and is not intertwined with, the right of the mother *for* maintenance from the father of the child and it also independent of the right of a child to maintenance provided under the Matrimonial Causes Act, 1970. Legal action can be taken to enforce a father's duties to his children and this can involve seeking court orders for child support. It is the duty of a man at common law to take care of his family – **Tabansi Vs Tabansi** (2008) LPELR 4365(CA). This right of the child was reiterated in Section 301 of the Criminal Code Law of Lagos State, Cap C17, Laws of Lagos State, 2003 and its breach was criminalized by Section 339 thereof to underscore its mandatoriness. This was criminal law applicable in Lagos State in 2006 when this action was filed.

Section 205 read:

> ***"It is the duty of every person who, as head of a family, has charge of a child under the age of fourteen4rears, being a member of his household, to provide the necessaries of life for such child and he is held to have caused any consequences which result to the life and health of the child by reason of any omission to perform that duty, whether the child is helpless or not.***

Section 339 read:

> ***"Any person who, being charged with the duty of providing for another the necessaries of life, without lawful excuse fails to do so, whereby the life of that other person is or likely to be endangered, or his health is or likely to be permanently injured is guilty of a felony, and is liable to irnprisonment for three years.***

It was this right of a child that was codified and reinforced in the Child Rights Act of 2003, and which was domesticated in Lagos State as Child Rights Law of 2007. The right was not given to a child by these Laws.

The second question that arises in this appeal is – whether a wife of a statutory marriage, like the first Appellant in this appeal, can file a standalone action *for* maintenance *for* herself and the children of the marriage without needing to include it with other primary claims like divorce, nullity *of* marriage, judicial separation and/or jactitation of marriage. A review of the case law authorities on this issue shows that apart from the decision in the case of **Okpagu Vs Okpagu** (1 947) 12 W.A.C.A. 137 and that of the Court of Appeal in the present case, the consensus of the other case law authorities is that the answer to the question posed is in the affirmative; *i.e*. that a wife can file a stand-alone action for maintenance *for* herself and the children of the marriage without including with it other primary claims like divorce, nullity of marriage, *etc*. – *see* the cases of **Ekisola Vs Ekisola** (1961) L.L.R. 8, the unreported judgment of the Court of Appeal in Appeal No CA/C/99/81 - **Etim Effiong Nakanda Vs Alice Uzoamaka Nakanda** delivered on 17th of June, 1988, **Kpilah Vs Ngwu** (2018) LPELR 45395(CA). n **Obajimi Vs Obajimi** (2011) LPELR: 4665(CA), the Court made point thus:

> **"Maintenance of a wife may tLellaimed by her from the husband even if there is no suit for divorce or separation. in other words, the wife of a marriage under the Matrimonial Causes Act (MC.A) is entit ted to claim maintenance in the High Court, if her husband willfully neglected to maintain her without instituting a matrimonial case**

In the case of **Anene Chikezie Vs Ifeoma Arlene** (2017) Esut Law Reports (ESLFR) 190 at 207-208, a husband argued that he had no obligation to maintain the children of the marriage, and that, at that time, he was living separately from them and

he contended that the court could not make an order for such maintenance by him, as there was, at the time, no petition *for* dissolution of the marriage. Nnamani, J., of the Customary Coun of Appeal, Enugu, in the lead judgment queried thus: " ... does a man have an obligation to provide *for* his child or children whether or not there is a petition *for* the dissolution of his marriage to the mother of the child or children?" His Lordship answered the question in the affirrnative and stated that “a man has both moral and legal obligations to provide for his child or children. The moral obligation stems from a code of paternity which is written by the creator with the ink of love in the hearts of men, which incidentally, most animals, though bereft of the quality of humanity, observe. Legislation is not needed *for* the observance of this code" and ’the duty is not affected by the existence or otherwise of a petition for the dissolution of the marital union from which the child resulted. For a child, who did not ask to be brought to the world in the first place, maintenance is a right, and this is so whether the parents love or hate, whether they embrace or wrestle, or whetlrer they kiss or bite each other.’

His Lordship asserted that:

> 'To argue, as the appellant’s counsel did, that a court cannot order an abdicative father to pay for arrears of due and unpaid maintenance atlowance for the simple reason that, at the time they accrued, there was no pending divorce petition, would amount to saying that a man has no obligation to fend for his child. It is an incorrect legal proposition which, if bought, can reduce a man to the paternal rascality of the billy goat, which gleefully nrounts the nanny goat for copulation but runs away as soon as the deed is done, and is never held a'ccountab le *for* the Fesponsibility of rearing the resultant kid.”

This Court aligns with the view expressed by the consensus of the other case law authorities. Firstly, there is no provision in the Matrimonial Causes Act that prohibits such a stand-alone action. And secondly, to maintain otherwise would mean that an action cannot be maintained for and on behalf of the children of a marriage by a guardian or best friend against an irresponsible father who fails to provide them with upkeep and maintenance as the children cannot seek *for* dissolution of his parent's marriage, nullity of the marriage, judicial separation and/or jactitation of the marriage.

This will be injustice and could not have been the intention *of* the framers of the Matrimonial Causes Act. The findings of the Court of Appeal in this case that the first Appellant could not file a stand-alone action *for* maintenance *for* herself and the children of the marriage, and could only make such claims ancillary to a principal relief for dissolution

> *of* marriage, nullity of marriage, judicial separation and/or jactitation of marrlage, are erroneous.

The third and final question calling for resolution in this appeal is whether, where a wife of a statutory marriage decides to file a stand-alone action *for* maintenance for herself and the children of the marriage, the action should be commenced by a petition under the Matrimonial Causes Rules or by a writ of summons under the High Court Civil Procedure Rules.

It is the view of this Court that the answer to this question is neither here nor there as it borders plainly on technicality; it is a question as to form (procedure) of the presentation of the claims and not the substance of the claims. In **Yusuf Vs Adegoke** (2007) LPELR 3534(SC), Tobi, JSC, speaking on technicality, commented thus:

> **". A technicality in a matter could arise if a party is relyingjn abstract or inordinate legatism to becloud or drown the merits of a case. A technicality arises if a party quickly takes an immediately available opportunity, however infinitesirnal it may be, to work against the merits of the opponent's case. In other words, he holds and relies tenaciously unto the rules of court with little or no regard to the justice of the matter. As far as he is concerned, the rules must be followed to the last sentences, the last words and the last letters without much ado, and with little or no regard to the injustice that will be caused the opponent."**

The truth is that it mattered not whether the Appellants commenced the action by a petition under the Matrimonial Causes Rules or by a writ of summons under the High Court Civil Procedure Rules. This is particularly more so as the claims were simply *for* maintenance and welfare of wife and children of a marriage, and were not co-joined with a claim *for* dissolution of marriage or nullity of marriage. In **Tabansi Vs Tabansi** (2008)

LPELR 4365(CA), the Court stated that the clairns dealing with the education, maintenance and upkeep of a child are serious and sensitive matters which should not be hamstrung by technicalities.

What was important, in these circumstances, was whether the mode of commencement brought out the issues in contention between the parties. This Court has severally held that once the procedure used in a matter brings the issues in contention into focus, it will not be of no moment that the procedure used was wrong. In **Federal Government of Nigeria Vs Zebra Energy Ltd** (2002) LPELR-3172(SC), Belgore JSC (as he then was), at page 33D stated thus:

> "Procedure is a guide to smoothen passage of suit; to direct the parties what to do and to guide the court to arrive at the justice of a case ... The court shall never be shackled by procedure; case is not made for procedure, it is the other way round. Once the procedure employed has brought into focus the issues the parties contest and there is no miscarriage of justice it will not matter that the procedure is not the correct one."

In **U.T.C. (Nig) Ltd Vs Pamotei** (1989) 2 NWLR (Pt 103) 244 at 298 it was held by this Court that "rules of procedure are made for the convenience and orderly hearing of cases in court. They are made to help the cause of justice and not to defeat justice. The rules are therefore aids to the court and not masters of the court. For courts to read rules in the absolute without recourse to the justice of the cause, to me will be making the courts slavish of the cause. This is certainly not the *ralson detr e* of the rules *of* court." Also, in **Nwosu Vs Imo State Environmental Sanitation Authority** (1990) 2 NWLR (Pt. 135) 688 at 717, Nnaemeka Agu, *J.S.C* said:

> "As we have stated several times the days when the parties pick their way in the court through naked technical rules of procedure the breach of which does not occasion a miscarriage of justice are fast sinking into the limbo of forgotten things."

In **Taiwo Vs Federal Republic of Nigeria** (2022) 13 NWLR (Pt 1846) 61, this Court held that a procedural irregularity is not a factor that would justify the setting aside of a

verdict or decision unless a miscarriage of justice is established as propelling that decision of the court.

This Court has maintained over the years that the sole purpose of a Court is to do substantial justice between the parties that come before it for adjudication of disputes and not to adhere to technical issues that becloud the justice of a matter as such adherence to technicalities to the detriment of substantial justice inevitable leads to injustice – **State Vs Gwonto** (1983) 1 SCNLR 142, **Marine Management Associates Inc Vs National Maritime Authority** (2012) 18 NWLR (Pt 1333) 506, **Uwazuruike Vs Attorney General**, **Federation** (2013) IO NWLR (Pt 1361) 105, **Mfa Vs Inongha** (2014) 4 NWLR (Pt 1397) 343, **Frozen Foods Nigeria Limited Vs** The Estate of **Oba** John Agboola Ojomo (2022) LPELR 57815(SC), Koko **Vs Koko** (2023) 13 NWLR (Pt 1901) 249.

In the immortal words of my Noble Lord, Oputa, JSC, in **Bello Vs Attorney General**, **Oyo State** (1 986) 5 NWLR (Pt 45) 828 at 886 F-G:

> ''The pitrure of law and its technical rules triumphant and justice prostrate may no doubt have its adrnirers. But the spirit of justice does not reside in forms and formalities nor in technicalities nor is the triumph of 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 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 CouO 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.

: 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.

I adopt the judgment as mine with nothing further to add.

I had a preview of the judgment delivered by my learned brother, Lord Justice **Habeeb Adewale Olumuyima Abiru**, **JSC**. I completely agree with the reasoning, conclusions, decisions and orders therein.

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 ver balanced reasoning and conclusion arrived thereat. I also allow the appeal and 'I abide by the consequential order made in the lead judgrnent.
Appeal Allowed.

My lord and learned brother, HABEEEB ADEWALE **O**. **ABIRU**, **JSC**, granted me the privilege of reading in draft the comprehensive leading judgement prepared and rendered in this appeal. I endorse the reasoning and conclusion and adopt the judgement as mine, I have nothing extra to add.

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

Appeal allowed.