

**IN THE HIGH COURT OF JUSTICE, EDO STATE - NIGERIA**

**IN THE BENIN JUDICIAL DIVISION**

**HOLDEN AT BENIN CITY**

**BEFORE HIS LORDSHIP: HON. JUSTICE J.O. OKEAYA-INNEH, (JUDGE)**

**DELIVERED ON THURSDAY THE 9<sup>TH</sup> DAY OF JUNE, 2016**

**BETWEEN:**

**SUIT NO. B/356D/2013**

MR. ALEX EHIGIATOR

...

PETITIONER

AND

MRS. JOY EHIGIATOR

...

RESPONDENT

**J U D G M E N T**

This is a petition filed on behalf of the Petitioner for a Decree of Judicial separation of the marriage contracted at Oredo Local Government Registry, Benin City, Edo State on the 5<sup>th</sup> of May, 2001 between the Petitioner and Respondent.

The Petitioner filed the petition and Respondent filed an answer and cross-petition and the Petitioner also filed a reply to Cross-Petition.

The Petitioner testified by stating that his name is Alex Ehigiator. He is a businessman and lives at No 8, Izekor Street, Benin City. He knows the Respondent and they got married on the 5<sup>th</sup> day of May, 2001 at the Oredo Marriage Registry.

In the cause of trial a Certified Copy of the Marriage Certificate was tendered in evidence and marked as Exhibit A. Petitioner further stated that they had three children namely:

- (1) Stevenson Ehigiator 12 years
- (2) Celebrity Ehigiator 10 years
- (3) Pearl Ehigiator 8 years

The grounds for the dissolution of the marriage are as stated in paragraph 9 of his petition:-

Paragraph 9 of the Petition is reproduced hereunder:-

### **GROUND**

The marriage between the Petitioner and the Respondent has broken down irretrievably on the following grounds:

- i. That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with her.
- ii. A particular man was always calling the Respondent at night, when asked who the caller was she would say doesn't know the person.
- iii. That the Respondent had always denied the Petitioner sex for a long time and Petitioner reported to her family her infidelity act was also reported to the family members, Okaegbe and the family members mediated but Respondent told them that she is no longer interested in the marriage that she had rented house three months earlier, and that they should beg the Petitioner to allow her pack her property, that she is no longer interested in the marriage.

- iv. The Petitioner says that the Respondent was always in the habit of telling Petitioner that she Respondent sees him dead in her dreams.
- v. That Respondent is always suspecting and harassing the Petitioner a public places e.g Respondent fought Petitioner at Idia College in a social function, alleging that he was having affair with one woman at the function.
- vi. She was always threatened to leave the Petitioner because he does not have money. Respondent has always told Petitioners younger junior brother Dr. Japheth Ehigiator and Blessing that she was going to leave and Petitioner. Respondent actuality packed out everything in the house.
- vii. The Respondent has also deserted the Petitioner for a continuous period of two and half years from November, 2010.
- viii. Petitioner no longer trust Respondent.
- ix. Petitioner confronted Respondent on the issue her infidelity, she said that she did it.

Petitioner stated that presently the children are residing with the Respondent and he still provides for them. Petitioner stated that he wants the Court to dissolve the Marriage and grant him custody of the three children. Under Cross-Examination, the Petitioner stated he used to trust his wife the Respondent but that after a while he could not trust her anymore. He admitted he loved her. Petitioner stated that he is not 100% sure that he is the biological father of the three children. Petitioner stated that he would want to have custody of the children he is not sure are his children. Petitioner stated that he did not see anyone having intercourse with his wife

but suspect that she was dating another man. Petitioner stated based on his impression about the Respondent he asked her to take an oath and she refused stating that she is a Christian. Petitioner further identifies Exhibit A. Petitioner also stated that they did the traditional marriage of Native Law & Custom, and that he a Christian, he will be willing to present himself to take any oath. Petitioner also stated that he will be willing to call Mr. Ehigiator and one Blessing Uwaifo to testify before the Court. Petitioner was referred to paragraph II of his statement. Petitioner confirmed that the statement is true. He also confirmed that the children are presently with him.

Petitioner further stated that he has given the Respondent money for her upkeep and that the said money is given to the Respondent through one Blessing Uwaifo and Isreal Ikponwonoba.

THERE WAS NO RE-EXAMINATION.

P.W.I testified by stating that his name is Isreal Ikponwonoba. He lives at No. 9 Edo for Okundaye Street, off Uwasota Street, Ugbowo, Benin City. He was a bikerider now a farmer. He knows the Petitioner and Respondent. The Petitioner is his Brother and that both the Petitioner and Respondent are Husband and wife.

PWI stated that the Petitioner and Respondent had an issue which the Petitioner came to inform the family about. The Petitioner stated before the family that the Respondent is flirting. Due to this the family now called both of them in order to resolve the issue. The family told the Respondent that due to the issue stated by the Petitioner her husband that she the Respondent will have to take an oath by bringing kolanuts and pure water to resolve the issue. The Respondent refused and informed the family that she has already rented a place and was no longer interested in the marriage. The Respondent told the family to help her plead with Petitioner so that she can go and pack her things (properties) in his house. The family informed both of them to go and come back in 7 days time so that they can resolve the issue. PWI stated that he was surprised when his brother came to inform him in his house that the Respondent was in his house packing her properties. She came in the company of one man and her sisters. PWI stated that the Petitioner usually send foodstuff through him to the children. PWI stated that he hardly meets the Respondent at home when he goes to drop the

foodstuff for the children but always meet with her mother and the house help.

### **UNDER CROSS-EXAMINATION**

PWI stated that he is a Christian and will not want any convert to swear any kind of oath (Juju). PWI stated that he was present during the meeting to settle the matter. He is not the Okaegbe (Senior man) in the family. He is not in support of separating the marriage because it is God that brought them together (Petitioner/Respondent).

### **THERE WAS NO-RE-EXAMINATION.**

PW2 testified by stating her name as Blessing Uwaifo. She lives at No. 7 Noghoyeagbon Street, off Upper Lawani Street, Benin City. She is a Civil Servant. She knows the Petitioner/Respondent. They are both married.

PW2 stated she was present in both the Traditional/Court marriage. They have 3 sons. The Petitioner is her Brother and the Respondent is his wife. The marriage was fine until after sometime the Respondent came complaining that she wants to leave my brother. When I asked her why, she said the Petitioner is not trying.

PW2 stated that she told her to be patient. On a particular day the Respondent

came and said I should follow her to Idia College that there was a party there. At that party the Respondent went to fight the Petitioner my Brother. After the incident at Idia college, the Petitioner did not return home because the Respondent embarrassed him.

PW2 further stated that after a while, the Petitioner came to inform her that the Respondent was packing her things. PW2 stated that she asked the Respondent why she was packing her things, she said that the family asked her to swear and that being a Christian her pastor told her not to swear. PW2 informed the Respondent that if she is the one she will swear. PW2 stated that she packed all her things and left. PW2 stated that after the Respondent left, she sent people to monitor the Petitioner. PW2 stated that on several occasions her brother the Petitioner will come and give her money for the Respondent and upkeep of the children to deliver to the Respondent. PW2 stated that presently the children are with the Petitioner and they are very well looked after.

Under Cross Examination, PW2 stated that the Petitioner gives money to her to take to her the Respondent but there is no specific amount. PW2 stated that since the Respondent has packed out of the marriage, she the Respondent should remain out. All she has stated is the truth.

**THERE WAS NO RE-EXAMINATION:**

Respondent testified by stating that her name is Joy Osaro Ehigiator. She lives at No 7 Eben Street, Benin City, but now resides at No 28 Enionabin Street, Oshodi, Lagos State. She is a Civil Servant. She knows the Petitioner who is her husband.

Respondent stated that they were both married on the 4<sup>th</sup> & 5<sup>th</sup> of May, 2001. Respondent stated that before the marriage she had an issue with the mother of the Petitioner. They did Traditional and Registry Marriage. Her name before the marriage was Joy Orabor. +

She was born on 21<sup>st</sup> day of February, 1973. There has not been any previous issue to dissolve the marriage. They both lived at No. 8, Izekor Street off Edo Avenue, Benin City after the Marriage.

Respondent stated that they have three lovely children namely:

- i) Stevenson Ehigiator (M) 11 years
- ii) Cerebrity Ehigiator (M) 9 years
- iii) Pearl Ehigiator (m) 7 years.

Respondent stated that she was never unfaithful to her husband and still remains faithful to him. Respondent stated that she refused to swear based on her belief and Christian faith.

Respondent stated that she took a loan from her office to rent a place.

She stated that she was the one solely responsible for school fees of the children.

Respondent stated that the Petitioner sent N45,000 through Blessing Uwaifo to her. In the course of testifying the following receipts for payments of school fees were tendered in evidence and marked Exhibits **B - B13**. Respondent stated that the children are presently with the Petitioner and she does not have access to them.

Respondent stated that she does not want the marriage dissolved and wants the Court to dismiss the petition.

Respondent also wants the Court to Order the Petitioner to allow her have access to her children and also want the Court to Order the Petitioner to repay her back the money she has spent on the children totally over **N700,000.00**. She wants a monthly allowance of N30,000.00. The Respondent further stated that she never ever told Blessing Uwaifo that she wants to leave her marriage.

Under Cross-Examination Respondent stated that they lived together for 9 years as man and wife. They have three children. She stated that he Petitioner took good care of her. She denied ever receiving any phone calls at night. She denied ever beating her mother-in-law. She stated that she is not disobedient and confirmed that the children are now residing with her husband. She never denied her husband having sex with her. She denied taking Ayelala to her office and stated that she packed out of her matrimonial home 5 years ago. She further stated that at no time

did she ever refuse the Court Order to resolve the matter. Respondent stated that all she has stated is the whole truth.

There was No Re-Examination.

Learned Counsel for the Petitioner the Petitioner formulated one issue for determination which is whether on a preponderance of evidence, the petitioner has proved his case to be entitled to judgment.

Counsel submitted that the Petitioner has on a preponderance of evidence proved his case to be entitled to judgment and further submitted that for a Petitioner to succeed in his petition he must prove one of the facts contained in **Section 15(2) (a-e) of the Matrimonial Causes Act, 2004**. Counsel commended the case of **AKINBUWA VS AKINBUWA** reported at page 1 particularly at page 3 R. 1 of vol. 1 of the selected matrimonial cases by Fumilayo Quadri (revised Edition). **SECTION 15(1) OF THE MATRIMONIAL CAUSES ACT 2004** provides as follows:

**"A petition under this Act by a party to o marriage for a decree of dissolution of marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably"**

**Section 15 (2)** provides:-

**the Court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down**

**irretrievably if, but only if, the Petitioner satisfies the Court of one of more of the following facts: -**

- (a) That the Respondent has willfully and persistently refused to consummate the marriage.
- (b) That since the marriage the Respondent has committed adultery and the Petitioner finds it unfavourable to Live with the Respondent.
- (c) That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.
- (d) That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition.
- (e) That the parties to the marriage have Lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent does not object to a decree being granted.
- (f) That the parties to the marriage have lived apart for a continuous period of at Least two years immediately preceding the presentation of the petition.
- (g) That the other party of the marriage has for a period of not less than one year, failed to comply with a decree or restitution of the conjugal rights made under this Act.
- (h) That the other party to the marriage has been absent from the Petitioner for such time and in such

circumstances as to provide reasonable grounds for presuming that he or she is dead.

Counsel submitted that by the testimony of the Petitioner, it is evidently clear that the Petitioner and the Respondent have lived apart for more than two years, they have separated for more than two years and the Respondent has deserted the Petitioner for more than two years preceding the filing of this petition.

Counsel argued that the Petitioner has proved his case as provided for in **Section 15(2) (C, D, E, F) of the Matrimonial Causes Act 2004** and is therefore entitled to judgment. On this, Counsel relied on the case of **AKINBUWA VS AKINBUWA (Supra)**.

Counsel further submitted that the Petitioner has also given evidence of the maintenance for the upkeep and education of the children of the marriage and that the Petitioner gave evidence that the children are with him and he is fully responsible for their education.

It is Counsel's further submission that the Petitioner also testified that the children are in custody of the Petitioner but pray the Court to Order that she has unlimited access to the children. Counsel referred court to the case of **HAYES V. HAYES (1) SMC page 207 Act 210 R. 10; AKINBUWA V. AKINBUWA (Supra)**.

It is Counsel's contention that since the evidence of the Petitioner is unchallenged and uncontroverted, the trial Court ought to accept the testimony as true and act on

it. Counsel placed reliance for this proposition on the case of TOWOENI V. TOWOENI (1) SMC page 173 at 178 R. 8; ODUNI V. BAMJBOLAM (1995) NWLR page 374 page 641; AGUGU VS DAWODU (1990) 7 NWLR (Pt 160) page 49 at 69.

Counsel urged court to give judgment in favour of the Petitioner by dissolving his marriage to the Respondent and Order a decree Nisi against the Respondent.

Learned Counsel for the Respondent formulated one issue for determination which is whether this divorce petition is properly constituted before this Honourable Court to entitle the petitioner to get judgment in his favour.

Counsel submitted that this divorce petition as presently constituted did not comply with **Order V Rule 10(1) Of The Matrimonial Causes Rules** with reference to the mode of stating the verifying affidavit which is a continuation of the main divorce petition and does not require a new heading and as such should be dismissed.

Counsel argued that the verifying affidavit of the Petitioner bears the title or heading as:

**"IN THE HIGH COURT OF JUSTICE OF EDO STATE  
IN THE BENIN JUDICIAL DIVISION  
HOLDEN AT BENIN CITY"**

Counsel stated that this is contrary to the law and that Matrimonial Causes are in a class of their own and the rules thereof must be complied with. The verifying affidavit is a continuation of the main petition and as such does not bear a separate heading or title and must not be in a separate sheet of paper as though it is another document. Counsel stated that failure to comply with this rule is fatal to the petition. **Order V Rule 10(1) of the Matrimonial causes Rules** provides that

the petitioner shall, by an affidavit written on his petition and sworn to before his petition is filed

- (a) Verify the facts stated in his petition of which he has  
- personal knowledge; and
- (b) depose as to his belief in the truth of every other fact stated in his petition.+

Counsel stated that this principle was clearly stated by the Court of Appeal in the case of **ODUSOTE VS. ODUSOTE (2012) 3 NWLR (PT 1288) 478 at 497** where Garba JCA held at 497 to 498 thus:

**“Filing a verifying affidavit with a petition... is a condition precedent to the filing of the petition in the sense that the affidavit must be sworn by the Petitioner before the Petitioner is filed. The Petition must contain the affidavit sworn to by the Petitioner before it is or can be properly .... The use of the word "shall" in a statute ordinarily means that the provisions are mandatory because the word is used to**

**express a command or directive which does not admit of discretion”**

It is Counsel's contention that in the instant case, the verifying affidavit is not only on a separate paper but also bears the title or heading with the suit number of the petition which clearly shows that it is a separate document. Counsel submitted that this is an affront on the principle of law as adumbrated above.

Counsel referred court to the decision of this court in **MRS. FLORENCE OMONGBALE V. MR. JULIUS OMONGBALE** (unreported), where this Honourable Court held upon similar facts that the petition was incompetent and therefore non suited the petitioner.

Counsel argued that the verifying affidavit is the heart and Soul of the divorce Petition and that in it, the facts as relied on by the Petitioner must be clearly verified. Counsel further stated that by the verifying affidavit in this divorce petition which is on a separate sheet of paper, there is no fact stated and verified. The affidavit contains only three paragraphs, non of which states any facts to be verified. The truth of all facts stated in the petition is left unverified. The affidavit in itself is defective and incompetent. Counsel contended that this Honourable Court cannot rely on such facts and incompetent affidavit to give judgment in favour of the Petitioner. It is Counsel's contention that **Order 5 Rule 10(1) of the Matrimonial Causes Rules of 1990** is mandatory and as a consequence the Petition should therefore be dismissed in its entirety.

Replying on points of law, Learned Counsel for the Petitioner submitted that the issue raised by Learned Counsel for the Respondent has no basis in law because the Supreme Court in **SAUDE VS. ABDULLAHI (1989) 4 NWLR (PT 116) AT PAGE 405 PARAGRAPH E – F** held as follows:-

**"It has since been established by a plethora of authorities that the appropriate time at which a party to proceedings should raise an objection based on procedural irregularity is at the commencement of the proceedings or at the time when the irregularity arises. If the party sleeps on that right and allows the proceedings to continue on the irregularity to finality, then the party cannot be heard to complain, at the concluding stage of the proceedings or on appeal thereafter that there was a procedural irregularity which vitiated the proceedings... The only exception to this general rule is that the party would be allowed to complain on appeal if it can show that it had suffered a miscarriage of justice by reason of the procedural irregularity."**

Counsel submitted that even if the Verifying Affidavit is incompetent which is not conceded, counsel to the Respondent did not raise the defect timeously at the earliest or at the commencement of this proceedings and that Counsel cannot say that the defect in the Verifying Affidavit is incompetent at the end of the trial. Counsel further submitted that the Respondent has therefore waived his right to raise the irregularity. Counsel also contended that assuming but not conceding

that the Affidavit is defective, **Section 113 of the Evidence Act 2011** provides as follows:

**“The Court may permit an affidavit to be used, notwithstanding that it is defective in form according to this Act, if the court is satisfied that it has been sworn before a person duly authorized.”**

Counsel further submitted that by virtue of **Order 5 Rule 10(2)** which is an exception to **Order 5 Rule 10 (1) of the Matrimonial Causes Rules**, the Petitioner was in total compliance with **Order 5 Rule 10(1)** which does not vitiate the Petition and that the Verifying Affidavit is competent by virtue of the decision in **SAUDE VS. ABDULLAHI (SUPRA)** where it was further held as follows:-

**“It is well settled law that a breach of a rule of practice can only render a proceeding an irregularity and not a nullity. Such irregular proceeding can only be set aside if the party affected acted timeously and before taking a fresh step since discovering the irregularity.”**

Counsel further argue that in the instant case, the Respondent has not suffered any miscarriage of justice by reason of the procedural irregularity in the Verifying Affidavit and it has been held that the defect in the Verifying Affidavit does not vitiate the statements in the petition. Counsel contended that what Learned Counsel for the Respondent is contesting is as to the form of the Verifying Affidavit and not as to its contents. Counsel stated that if the court is

satisfied that the Verifying Affidavit has been sworn before a person duly authorized, it should rely on it.

Counsel urged court to discountenance the objection raised by Learned Counsel for the Respondent as to the competence of the petition. Placing reliance on the case of **NIGER-BENUE TRANSPORT CO. LTD V. NARUMAL & SONS LTD (1986) 4 NWLR (PT. 33) 117** Counsel submitted that it is well settled law that a breach of rule of practice can only render proceedings an irregularity and not a nullity.

Counsel urged court to discountenance the objection and enter judgment in favour of the Petitioner

I have carefully considered the written submissions of both counsel. The Respondent's Counsel's issue for determination takes precedence because same being in the realm of an objection and by implication has questioned the Jurisdiction of this court to determine the merit or otherwise of the Petitioner's Petition. I will proceed to address the objection raised by the Respondent's Counsel presently.

The nub of Respondent Counsel's objection is based on the filing of the Petitioner's Verifying Affidavit as provided for in **ORDER 5 RULE (10)(1), MATRIMONIAL CAUSES ACT, CAP 220, L.F.N 2004.** Which states thus:-

**10(1) A Petitioner shall, by an affidavit written on his Petition and sworn to before his Petition is filed**

**a) Verify the facts stated in his petition of which he has personal knowledge; and**

**b) Depose as to his belief in the truth of every other facts stated in his Petition.**

On the import of the above statutory provision, My Lord Mohammed, J.C.A, in

**UNEGBU V UNEGBU (2004) SUPRA** reasoned thus:-

**“The requirement of the rule in Order 6(3) of the English Matrimonial Causes Rules (applicable in Nigeria) and similar to Order 5 Rule (10)(1) of the Matrimonial Causes Rules, Cap 220, Laws of the Federation that a Verifying Affidavit shall be contained in the same document as the Petition and shall follow at the foot of or end thereof is mandatory. The operative word are “shall be contained in the same document and shall follows at the foot or end thereof.”. The intendment of the rules is that the affidavit must follow immediately at the foot of the petition and that both the petition and the said affidavit must be contained in the same document in the sense that the affidavit document must be continuous document to the Petition. This is also the requirement**

contained in Order V Rule 10(1) of the Matrimonial Causes Rules, 1983. Thus where, as in the instant case, the verifying affidavit in support of the Petition is contained in a separate document, clearly headed with the suit number inserted, the fact of its having been sworn to on the same date of filing of the Petition notwithstanding, the Petition will be incompetent for non-compliance with the mandatory provisions of the Rules.....”

On the construction of the word 'shall' in Rules and Statutory provisions, the apex court per My Lord, Mukhtar, J.S.C, J.C.N (RTD) in TABIK INVESTMENT LTD. & ANOR v. GUARANTY TRUST BANK PLC (2011) LPELR-3131(SC) stated thus:-

"The word 'shall' connote mandatory discharge of a duty or obligation, and when the word is used in respect of a provision of the law that requirement must be met”.

From the provisions of **ORDER 5 RULE 10 (1)** of the **Matrimonial Causes Rules**, certain duties are imposed on a Petitioner, that is, The Petitioner shall write an affidavit on his Petition, the affidavit shall be sworn before it is filed, the Petitioner shall verify the facts stated in the affidavit of which is has personal knowledge, and finally the Petitioner shall depose in that affidavit as to his belief in the truth of every

other fact stated in the Petition. A careful perusal of the Petition shows that indeed the verifying affidavit was started on a fresh page which shows that the verifying affidavit is a completely separate document distinct from the Petition. It is important to note that the Rules of Court particularly in divorce proceedings are highly technical in nature and are meant to be and must be obeyed.

One the authority of the above cited cases, can it be said that a court of law can proceed and adjudicate on a matter founded on an incompetent application? I shall call in aid the decision in the case of W.A.E.C. V. ADEYANJU (2008) 4 S.C. 27 AT 51 - 53 LINES 20 – 15 where My Lord, Mohammed J.S.C opined thus:-

**"The competence of any court to exercise jurisdiction in hearing and determination of any action before it, depends on a number of conditions which Bairamian, FJ., (as he then was) set out in the leading case on the subject of jurisdiction and competence of court to adjudicate in MADUKOLU & ORS. V. NKEMDILIM & ORS. (1962) 2 SCNLR 341; also reported in (1962) 1 All NLR 587 at 595, where His Lordship stated the position as follows: 'Before discussing those portions of the record, I shall make some observations on jurisdiction and the competence of a court. Put briefly, a court is competent when: 1. It is properly constituted as regard numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and 2. the subject matter of the case is within jurisdiction, and there is no feature in the case which prevents the court**

**from exercising its jurisdiction; and 3. the case comes before the court initiated by due process of the law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.'**

It is trite and it is also my considered opinion flowing from the decisions in the above cited cases that a court of law cannot proceed to determine a suit on a faulty application. It goes to the jurisdiction of the court and as My Lord, Otisi, J.C.A opined in the case of **MULTICHOICE NIGERIA LIMITED v. HON. JERRY AKPAN (2014) LPELR-22681(CA)** :-

**“Jurisdiction is always a threshold issue. It is well settled law that the question of the jurisdiction of the court touches on the competence of the court to hear and determine a cause or matter before it. It is fundamental to the adjudication and determination of the cause before the court. The existence or absence of jurisdiction in the court goes to the root of the matter and sustains or nullifies the decision of the court in respect of the relevant subject matter”.**

This Court is mindful of the fact that evidence was led in this suit and is guided by the words of Uwaifo, JSC (as he then was) in the case of **AKINGBEHIN TINUBU V. KHALIL & DIBBO TRANSPORT LTD (2000) LPELR-3249(SC)** where My Lord reasoned thus:-

**“It must be said that it is unusual to strike out a civil case which has been heard to conclusion by a trial court. Such a case should be decided upon the evidence available and the applicable law. The known exception to this is where the court later found that it has no jurisdiction to hear and determine the case after it had been concluded. The only order that can then be made is one striking out the case: see Okoye v. Nigerian Cons. & Furniture Co. Ltd. (1991) 6 NWLR (Pt. 199) 501; Esuku v. Leko (1994) 4 NWLR (Pt.340) 625; Gombe v. P. W. (Nig.) Ltd. (1995) 6 NWLR (Pt.402) 402”**

In the final analysis, I am of the view that the objection raised by Respondent Counsel must succeed on the grounds that the verifying affidavit filed by the Petitioner is not in compliance with the clear provisions of **ORDER 5 RULE 10(1) OF THE MATRIMONIAL CAUSES RULES**. I also hold same to be incompetent and as a consequence, the jurisdiction of this court is thereby ousted. The law is indeed well settled that where a court finds that it has no jurisdiction to entertain a matter, as I have just noted, the proper order to make is one striking out the matter. See **ATTORNEY GENERAL OF LAGOS STATE v. ATTORNEY GENERAL OF THE FEDERATION & ORS (2014) LPELR-22701(SC)**

Consequently, the Petition filed by the Petitioner on the 1st day of July, 2013 is hereby struck out same being incompetent and touching on the Jurisdiction of this Court to determine same.

This is the judgment of this Court.

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**HON. JUSTICE J.O. OKEAYA-INNEH**  
**JUDGE**  
**9/6/2016**

**COUNSELS:-**

- (1) G. Ofuonye Esq. ... .. Counsel for the Petitioner.  
(2) G. I. K. Jikenghan ... .. Counsel for Respondent.