

SUPREME COURT OF NIGERIA
TUESDAY 2ND JULY, 1996. SC. 157/1995
CORAM:- S. M. A. BELGORE, I. L. KUTIGI,
U. MOHAMMED, S. U. ONU, Y. O. ADIO, JJSC

SUNIL KISHINCHAND BHOJWANI PETITIONER/APPELLANT

AND

NITU SUNIL BHOJWANI

..... RESPONDENT

COURTS - *Issues - Courts are to determine live issues - Not mere academic once*

MATRIMONIAL CAUSES - *Jurisdiction - Where a decree nisi has been entered before the English Court - Supreme Court lacks jurisdiction.*

MATRIMONIAL CAUSES - *Decree nisi - Where already obtained before the English court by one spouse - The issue of jurisdiction or domicile is no longer relevant.*

FACTS

The petitioner/appellant filed a petition for divorce in the High Court of Lagos against his wife, the respondent. Jurisdiction of the High Court was challenged by the respondent on the ground that the appellant was not domiciled in Nigeria. The trial court ruled that it has jurisdiction which ruling was set aside by the Court of Appeal on the ground that the Appellant was domiciled in Singapore and not Nigeria.

Meanwhile, the respondent commenced another proceeding for divorce against the appellant before the English court, which granted a decree nisi. Appellant being dissatisfied with the Court of Appeal's decision has appealed to the Supreme Court on the issue of jurisdiction and domicile.

HELD (Unanimously dismissing the appeal per lead judgment of **BELGORE JSC**)

Jurisdiction

1. The petition before the English Court has been heard and determined and a decree nisi entered for the dissolution of the marriage. This Court has no jurisdiction to stop an English Court from hearing a petition neither can we decree a stay of proceedings extra-territorially against a foreign Court. The best thing for the appellant would have been to seek his remedies in the English Courts. (p. 1316 E)

Decree nisi

2. It is not denied that his wife has successfully obtained a decree nisi for the dissolution of their marriage before the English Court, he has not appealed against that decision. Faced with the fact of the decision of the English Court, what use is our discourse further into this preliminary issue of jurisdiction and domicile? We shall be flogging a dead horse. The appellant's remedies are not here but in the English Courts. (p. 1316 F)

Courts to determine live issues

3. Our Courts are to determine issues that are live. To now delve into the issue of domicile and the consequent jurisdiction of Nigerian Courts will merely be academic. This Court will not indulge in that. If the decree nisi granted in England is to be challenged, this Court is not the forum. It is true mere is possibility of some moves against the registration of the English Court's judgment (Foreign judgments (Reciprocal Enforcement) Act Cap. 152, Laws of Federation of Nigeria 1990). For the moment this Court is not seized with that issue. This appeal therefore is overtaken by events because it is not possible to send the lower Courts on adventure of attempting any more decree on the petition for the dissolution of the marriage already made elsewhere, albeit out of this country's territory. (p. 1316 H)

NOTABLE POINTS OF INTEREST

KUTIGI JSC

1. Divorce proceedings - Petitioner must be domiciled in Nigeria

The Appellant needed to be domiciled in this country before he could institute divorce proceedings here. It is common ground that the appellant has since been divorced by the respondent in another petition in England. There is therefore at least for the time being, no more marriage to be dissolved in this country, domicile or no domicile. The Appellant's appeal would therefore clearly appear to have been overtaken by the events in England. (p. 1317 C)

ONU JSC

2. Parallel divorce proceedings in two sovereign countries

It is clear that where similar or parallel divorce proceedings are maintained by two spouses in two sovereign and independent countries, neither of which in law is subordinated to the other, the very fact that one of the spouses succeeds in first obtaining a decree nisi in one country, while the other spouse is still engaged in the preliminary "skirmishes" of founding jurisdiction to pursue divorce proceedings in the other country vide England and

Nigeria respectively, it is enough, in my view, to opine that the best option for such a spouse against whom the decree nisi is made, in order to prevent it being made absolute, is to appeal against the decree nisi in the country if divorce proceedings have been pursued to near finality. (p. 1318 A)

REPRESENTATION

Prof. A.B. Kasunmu, S.A.N. with Tayo Oyetibo Esq.
and Miss O. M. Lewis for the appellant
Prof S.A. Adesanya SAN with P. Amaran Esq.
and I. Ayenoko Esq. for the respondent

CASES REFERRED TO

Oyenye v. Odugbesan (1972)4 S.C. 244
Bakare v. A.C.B. Ltd. (1986)3 NWLR 47
Nzom v. Jinadu (1987)1 NWLR (Part 51) 533 at 537
Overseas Construction Co. (Nig.) Ltd. v. Creek enterprises (Nig) Ltd (1985)
3 NWLR (Part 13)409

LEAD JUDGMENT BY BELGORE JSC

The appellant, a Singaporean, filed a petition for divorce in the High Court of Lagos. Against this petition for the dissolution filed on 6th February 1995. The respondent brought a motion seeking an order that as the appellant was not domiciled in Nigeria the High Court of Lagos or any High Court in Nigeria for that matter had no jurisdiction to hear the petition for the dissolution of the marriage. The marriage between the parties was solemnized in England in accordance with the English Law. The petitioner/appellant was born in Singapore on 27th July 1961. The respondent was born in Lagos Nigeria on 10th May 1963. The petitioner is a company Director in Nigeria and has been directing the family business in Nigeria since 1979. On the motion that there was no jurisdiction to dissolve the marriage in any Court in Nigeria because the petitioner was not domiciled in Nigeria. The trial court ruled it had jurisdiction. Against this ruling the respondent appealed to the Court of Appeal. The Court of Appeal set aside the ruling of the trial court and held that the petitioner was domiciled in Singapore and not in Nigeria as claimed by him.

The Court of Appeal arrived at its decision through a thorough examination of all the facts before the trial court some of which the trial court erroneously disregarded. Among these facts are the affidavits sworn to by the parties when the respondent was before the English Court in London seeking to make her children of the marriage wards of court. The

respondent was taken to Singapore accompanied by the children during the political crisis in Nigeria in 1993. She felt trapped there but she finally found her way to England where her parents were resident: the children she took along with her. Her application was granted for the children to be made wards of English Court. She finally filed her own petition for divorce in an English Court. The petitioner was busy pursuing the issue of jurisdiction in Nigeria and paid little attention to the proceedings in the English Court which assumed jurisdiction to hear the petitioner due to the residence qualification. By the time the Court of Appeal delivered its judgment that the petitioner was not domiciled in Nigeria the English Court proceeded to hear the respondent's petition for divorce and even though served with hearing notice, the petitioner made negative contribution to the hearing. The English Court finally heard the petitioner before it and granted a decree nisi.

The situation in Nigeria as regards this matter is that the hearing of the petitioner has not commenced: it is in the petty skirmishes of trying to find jurisdiction in Nigerian Courts to hear the petition. As a result of the decision of the Court of Appeal and relying on the clear provisions of S. 2(2)(a) Matrimonial Causes Act (Cap. 220, Laws of the Federation of Nigeria 1990) which states:

“(2) *Proceedings for a decree*
 (a) *of a dissolution of marriage:*

.....
may be instituted under this Act only by a person domiciled in Nigeria”.

The case could not go on in the trial court due to the appeal to this court. The petition before the English Court has been heard and determined and a decree nisi entered for the dissolution of the marriage. This court has no jurisdiction to stop an English Court from hearing a petition neither can we decree a stay of proceedings extra-territorially against a foreign court. The best thing for the appellant would have been to seek his remedies in the English Courts. It is not denied that his wife has successfully obtained a decree nisi for the dissolution of their marriage before the English Court, he has not appealed against that decision. Faced with the fact of the decision of the English Court, what use is our discourse further into this preliminary issue of jurisdiction and domicile? We shall be flogging a dead horse. The appellant's remedies are not here but in the English Courts.

Our Courts are to determine issues that are live. To now delve into the issue of domicile and the consequent jurisdiction of Nigerian Courts will merely be academic. This court will not indulge in that. If the decree nisi granted in England is to be challenged, this court is not the forum. It is true

there is possibility of some moves against the registration of the English Court's judgment (Foreign Judgments (Reciprocal Enforcement) Act Cap 152 Laws of Federation of Nigeria 1990). For the moment this court is not seised with that issue. This appeal therefore is overtaken by events because it is not possible to send the lower courts on adventure of attempting any more decree on the petition for the dissolution of the marriage already made elsewhere albeit out of this country's territory. B

I therefore strike out this appeal with no order as to costs.

KUTIGI JSC

I read before now the ruling just delivered by my learned brother Belgore, J.S.C. with which I agree. The appellant needed to be domiciled in this country before he could institute divorce proceedings here. It is common ground that the appellant has since been divorced by the respondent in another petition in England. There is therefore at least for the time being no more marriage to be dissolved in this country domicile or no domicile. D The appellant's appeal would therefore clearly appear to have been overtaken by the events in England. I will also strike out the appeal with no order as to costs.

MOHAMMED JSC

I entirely agree that the issue in this appeal has been overtaken by events in England. Since the respondent has already obtained a decree nisi in an English Court a decision on this appeal which concerns the appellant's petition for divorce in the High Court of Lagos State of Nigeria will be an academic exercise. I therefore agree with my learned brother. Belgore, J.S.C., F that the proper remedies open to the appellant are in the English Courts. The proceedings for registration of the judgment of the English court in this country under the provisions of Foreign Judgments (Reciprocal Enforcement) Act, Cap.152, Laws of the Federation of Nigeria 1990 are yet to G take off since the respondent has not applied to register the judgment she obtained in England.

Accordingly, I too hereby strike out this appeal. Parties to bear own costs.

ONU JSC

I have had the privilege of a preview of the judgment of my learned brother Belgore, J.S.C. just delivered and I entirely agree with him that this appeal be and is accordingly struck out.

I wish to add a few words of comment of mine to the lucid judg-

ment.

It is clear that where similar or parallel divorce proceedings are maintained by two spouses in two sovereign and independent countries neither of which in law is subordinated to the other, the very fact that one of the spouses succeeds in first obtaining a decree nisi in one country, while the other spouse is still engaged in the preliminary “skirmishes” of founding jurisdiction to pursue divorce proceedings in the other country vide England and Nigeria respectively, it is enough, in my view, to opine that the best option for such a spouse against whom the decree nisi is made, in order to prevent it being made absolute, is to appeal against the decree nisi in the country where such divorce proceedings have been pursued to near finality. This is because, as learned Senior Advocate for the respondent in the instant case (Professor Adesanya) has rightly submitted, there is only one status of marriage between the spouses and failure on the part of the appellant to appeal against the decision obtained in England which the learned Senior Advocate (Professor Adesanya) further contends is a probability and not a possibility, deciding the question of jurisdiction before us becomes purely academic. This court has held times without number that it would not engage or indulge in academic exercise. See *Oyeneye v. Odugbesan* (1972) 4 S.C. 244; *Bakare v. A.C.B. Ltd* (1986) 3 NWLR (Pt.26) 47; *Nzom v. Jinadu* (1987) 1 NWLR (Pt.51) 533 at 537 and *Overseas Construction Co. (Nig.) Ltd. v. Creek Enterprises (Nig) Ltd.* (1985) 3 NWLR (Pt. 13) 409. Thus, when learned Senior Advocate for the appellant (Professor Kasunmu), rejected this court’s proposal of a possible adjournment to enable the appellant exhaust all his rights in the case in England place outside the purview of this court where the decree nisi had already been granted in favour of the respondent the academic colouration of embarking on an adventure of sending the case herein down through the hierarchy of our courts to enable them impose more decrees on the petition for the dissolution of the same marriage became pronounced. It is to be likened to going on a wild goose chase.

It is for these reasons and the fuller ones contained in the judgment of my learned brother Belgore, J.S.C. that I too make the same order striking out this appeal.

ADIO JSC

I have had the benefit of reading in draft the judgment just delivered by my learned brother Belgore, J.S.C. I agree with his reasonings and conclusion which I adopt as mine. I therefore, strike out the appeal and make no order as to costs.