

**IN THE GRADE "B" CUSTOMARY COURT OF THE FCT
IN THE BWARI JUDICIAL DIVISION
HOLDEN AT DAWAKI**

BEFORE THEIR HONOURS:

HON. ADLIN UCHE ACHORU..... PRESIDING

HON. OLOWO OJO AJIBOYE.....JUDGE I

HON. STEPHEN OLUMIDE AGBEDE.....JUDGE II

SUIT NO: FCT/CC/CV/DK/M/03/2025

BETWEEN:-

JOHN OLATUNDE AYENI.....PETITIONER

AND

ADAOBI JENNIFER ALAGWU.....RESPONDENT

THIS 11th DAY OF MARCH, 2025.

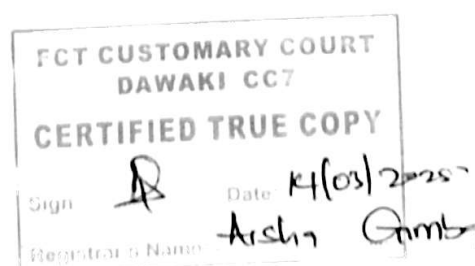
PARTIES: Petitioner present while the Respondent absent in court.

APPEARANCE: Silas Joseph Onu for the Petitioner and Maryann Ekwe for the Respondent.

**RULING DELIVERED BY
HONOURABLE ADLIN UCHE ACHORU
PRESIDING JUDGE**

This Preliminary objection is dated 26/02/2025 and was filed on 28/02/2025.

It was brought pursuant to S.6 (6) (b) of the Constitution of the Federal



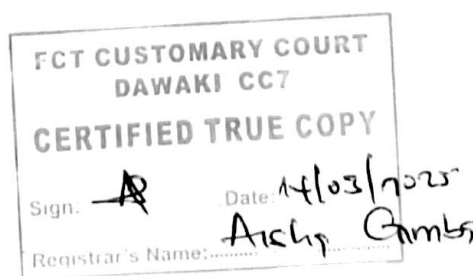
Republic of Nigeria 1999 (12 Amended), Or 4 R 4(1) & (2) of the FCT Customary Court Civil Procedure Rules 2023, S. 35 of the Matrimonial Causes Act, S.384 of the Penal Code and under the interest jurisdiction of the Honourable Court.

The Preliminary objection prayed for the following:

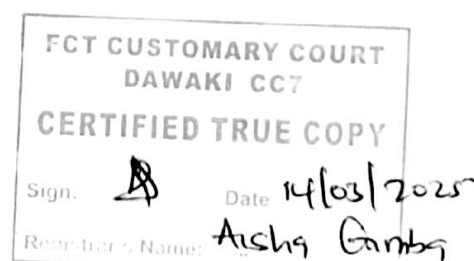
1. AN ORDER declaring that, this Honourable Court has no jurisdiction and /or should not exercise further jurisdiction and/or further entertain this complaint.
2. AN ORDER striking out and /or dismissing this complaint
3. The Omnibus prayer.

The Applicant stated the grounds for which the preliminary objection is predicated as:

1. By a civil summons dated 07/01/2025, the complainant instituted this action alleging he paid dowry to marry the Respondent/Applicant under native law and custom sometime in 2022.

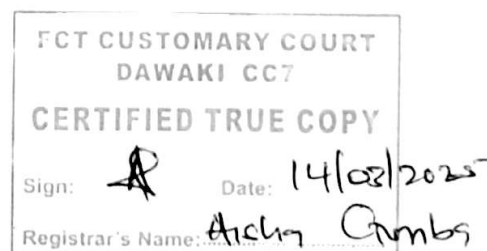


2. The Applicant had believed that the complainant who was already married was polygamous in standing and thus could legally marry her
3. The Applicant's dowry was therefore paid by the Complainant/Respondent with the consent of her family but same has been returned.
4. The Complainant/Respondent therefore brought this action for a formal legal declaration that the said customary law marriage has been duly dissolved.
5. However, on the 17th Day of February, 2025, the complainant testified before this court that he was already married under the Act to Mrs. Abiola Ayeni since 1994 or thereabout. He further tendered marriage certificate No. 233/94 which was admitted in evidence and marked Exhibit 1.
6. It is trite that the customary marriage purportedly contracted by the Complainant with the Respondent during the subsistence of his ordinance marriage is a criminal offence and a felony for which the Complainant alone is liable to imprisonment of 5years pursuant to the



- provisions of S.47 of the Marriage Act M6 Laws of the Federation of Nigeria (Marriage Act) and up to 7years imprisonment pursuant to S.384 of the Penal Code and S.370 of the Criminal Code Respectively.
7. By virtue of S.35 of the Marriage Act, the complainant is statutorily incapable of contracting any marriage howsoever described with any other person during the subsistence of his marriage ordinance evidenced by Exhibit1 which is the marriage certificate.
 8. Since no marriage whatsoever exists between the Complainant and the Respondent/Applicant, there is nothing to activate the jurisdiction of the court.
 9. There is nothing to be pronounced upon by this Honourable Court as the much touted marriage is illegal and void ab initio.
 10. This suit is an abuse of process and waste of time of the court.

In support of the Preliminary objection were a 7 paragraph affidavit deposed to by Emeka Ike, a Litigation manager in the law firm of Indemnity Partners and a written address in support of the Preliminary objection. In the written address, the Applicant raised one issue for determination:

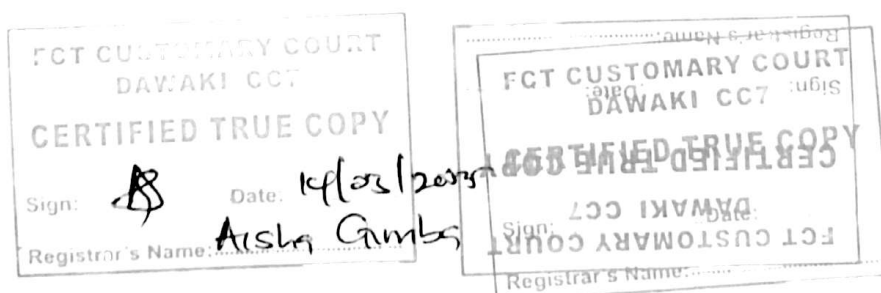


"Whether in the light of the testimony of the complainant to wit; being married under Marriage Act to Mrs. Abiola Ayeni in 1994 and having regards to the Marriage certificate No. 233/94 tendered as exhibit 1, does this court have the jurisdiction to hear and or continue to assume jurisdiction to entertain this suit."

He submitted that the capacity to marry polygamously was not available to the complainant by virtue of the Marriage Act because of his pre-existing marriage. On this, he referred the court to *AWOBUDU V AWOBUDU* (1979) 2 LRN 339 and *ONWUDINJO V ONWUDINJO* (1957---58) 11 ERLR 1.

She further submitted that S.370 of the Criminal Code Act establishes the offence of Bigamy which is a felony and liable to 7years imprisonment. He relied on *JABRE V JABRE* (1999) 3 NWLR pt 596 606.

According to the Applicant, courts are creatures of statutes and their jurisdiction is confirmed by the statutes creating them see *ALAMIEYESEIGHA V IGONIWARI* (No.2) (2007) 11 NWLR pt 1034 524, *OBI V INEC* (2007) 11 NWLR pt 1046 436. The Applicant went further to tell the court that it will be labouring in vain if it continues further consideration of this action. As

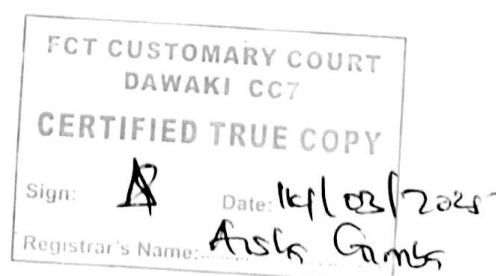


jurisdiction whenever raised has to be dealt with timeously. See MADUKOLU V NKEMDLIM (1962) 2 SC NLR, YARADUA V YANDOMA (2015) 4 NWLR pt 1448 125 (SC) AWUSE V ODILI (2003) 18 NWLR (pt 851) 116.

He finally submitted that on the authority of ALH UMARU ABBA TUKUR V GONGOLA STATE (1989) 4 NWLR (pt 117 517 @547) the issue of jurisdiction raised in any suit is most fundamental and urged the court to resolve the sole issue in favour of the complainant.

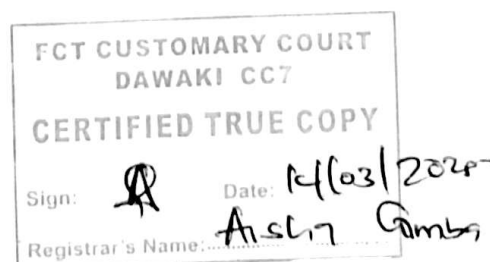
When moving the Preliminary objection on 04/03/2025, counsel to the Applicant, T.G Okechukwu moved in terms of the notice for Preliminary objection and urged the court to grant the prayers sought.

Responding Joseph Onu Silas Esq. informed the court that the Application is unfounded and misplaced as this court is established by law and derives its jurisdiction from the law. According to him, parties who submit themselves to this court have submitted themselves to the jurisdiction of the court. He referred the court to S.14 (1) of the FCT Customary Court Act, 2007. Counsel went further to submit that the matter before this court is not the determination of a statutory marriage between the Petitioner and his wife



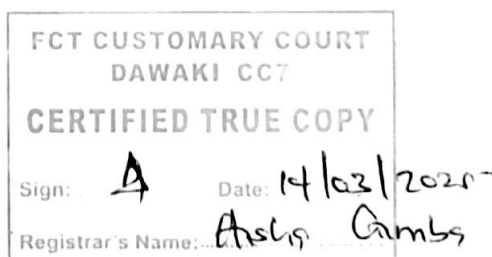
but rather on invitation by the Petitioner for the court to declare that upon the refund of the dowry paid by the Respondent, no marriage ever existed between them.

He referred the court to its record where the Petitioner indicated that he without knowledge of Igbo law and customs paid the money that turned out to be dowry and based on that, the Respondent clearly in her defence painted a picture that a marriage existed between her and the Petitioner in the first paragraph of her defence. He went further to say that in their statement of defence, the Applicant/Respondent deliberately and carefully avoided any reference as to refund of dowry. According to him, the Applicant filed a further statement instead of a Preliminary objection after the Petitioner gave evidence and tendered exhibit 1 pursuant to Or 5 R8 of the Rules of this Honourable Court. He urged the court to make pronouncement on the supposed belief of the Applicant that she is in fact married to the Petitioner for which she has continued to subject him to series of blackmail after the child she claimed was his was not and he had in October 2024 discontinued her monthly allowance of ₦5 million and requested for the ₦400 million property he bought in Jabi and put her as a trustee.



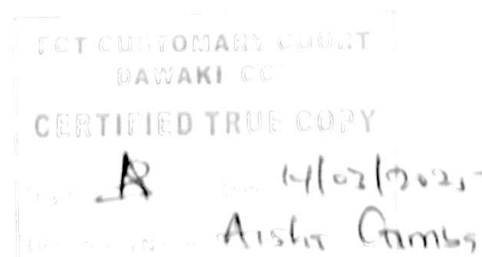
Counsel alleged that the application is a ploy to ensure that the court does not make a pronouncement on the existence of any marriage whatsoever between the parties and order the Applicant to discontinue with her social media blackmail. He insisted that by the provisions of S. 14 (1) & (2) of the FCT Customary Court Act 2007, it is clear that parties have submitted themselves to the jurisdiction of the court and this court is competent to proceed and make pronouncement one way or the other on the existence or validity any marriage between the parties based on the evidence already presented. On the issue of bigamy, he said the wife of the Petitioner is the only competent person to raise it if it even exists and alleged that the Application is a delay tactics aimed in at a continuous dramatization of the matter on social media and urged the court to refuse the application and proceed with the business of the day which is definite defence.

When replying on points of law, T.G Okechukwu Esq referred the court ALH UMARU ABBA TUKUR V GONGOLA STATE (1989) 4 NWLR pt 117 pg 517 @ 547 and urged the court to dismiss to complaint.



After going through the Preliminary objection affidavit in support of the Preliminary objection, written address and argument of parties, this court is of the view that there is only one issue of determination. Whether this court has jurisdiction to handle the matter based on Exhibit 1 tendered before this court. It is a well-established principle of law that a court assumes jurisdiction when all conditions necessary are fulfilled which are:

1. The court has cognizance of the class involved i.e. the subject matter of the case is within the jurisdiction of the court and there is no feature in the case which prevents the court from exercising its jurisdiction.
2. The court is properly constituted as regards the number and qualification of the member is disqualified for one reason or another.
3. The proper parties are present
4. The case comes before the court initiated by due process of the law and upon fulfilment of any condition precedent to the exercise of its jurisdiction.

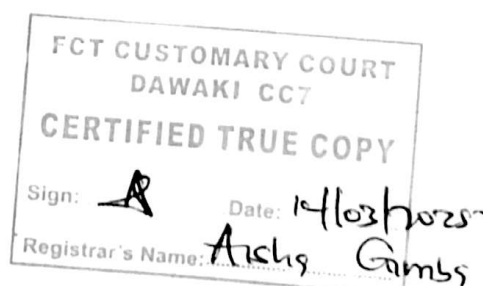


5. The point to be decided is within the power of the courts. See MADUKOLU V NKEMDKIM (1962) ALL NLR 587 @ 595, AYMAN ENTERPRISES LTD V AKUMI INDUSTRIES (2003) 13 NWLR pt 836 pg 22.

Jurisdiction indicates whether or not a court has the power to adjudicate a dispute. It is an established principle of law that courts are a creation of statutes and it is bound by the jurisdiction conferred on it by its establishing statute. Ss 1, 14 and No. 1 of the schedule to the Customary Court Act 2007 provides that the Customary Court of the FCT can only adjudicate on matrimonial causes and matters between persons married under customary law or arising from or connected to with a union contracted under customary law.

In TUKUR V GOVERNMENT OF GONGOLA STATE (SUPRA), the court held that it is settled law that jurisdiction of a court is determined by the plaintiff's writ of summons and statement of claim. See also ORTHOPEDIC HOSPITAL MANAGEMENT BOARD V GARBA (2002) 14 NWLR pt 788 538 @ 563.

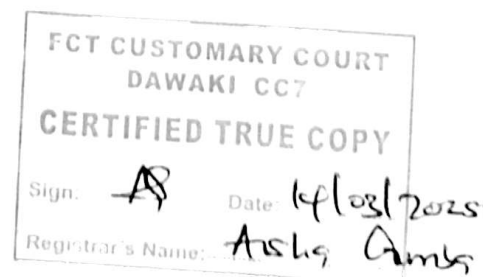
In the complaint made pursuant to Or 2 Rule 2 of the Rules of this court, the only prayer of the Petitioner was:



"An order that upon the refund and acceptance of the customary dowry paid on the Respondent no marriage exists between complaint John Olatunde Ayeni and the Respondent Adaobi Jennifer Alagwu"

The Respondent was silent on the truth or otherwise of this in her statement of defence and counter claim. In the course of trial on 17/02/2025 the Petitioner in his evidence stated.

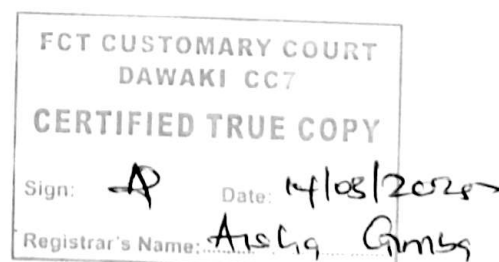
".....The father claimed to be a Chief in his community and his daughter had told him about me a year earlier and she has told him that she is pregnant for me and according to Igbo tradition, there must be money paid on her for the child not to bear his name but my name. That as a traditional Chief, it was important for me to kindly do it so as to avoid shame to him and his family and also for me to avoid traditional consequences. I agreed to do it but it was not for marriage because I explained myself that I am married under the Act so cannot conduct any other legal union.



He then tendered his marriage certificate to Abiola Abosede Ayeni (Nee Oduyemi) dated 15/12/1994 conducted at the Marriage Registry Ikotun in Alimosho Local Government Area of Lagos State with certificate number 233/94.

It was as a result of this that the Respondent filed a Preliminary objection urging the court to strike out or dismiss the complaint as this court has no jurisdiction to entertain the complaint.

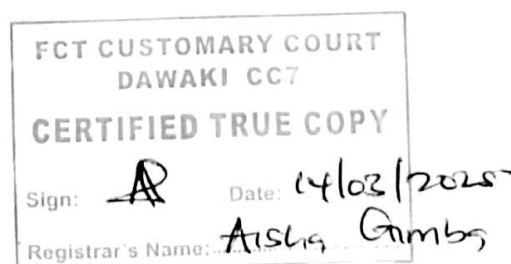
The only prayer of the Petitioner was admitted by the Respondent in paragraph 3 of the grounds on which the Preliminary Objection is predicated. In it, she accepted that the dowry was paid by the Complainant with the consent of her family and same has been returned. It is trite law that facts admitted need no further proof as no person would admit to a fact that could work against her interest. See *UNIVERSAL PROPERTIES V PINNACLE COMMERCIAL BANK & 4 ORS* (SC332/2008). From this, it is safe to say that Exhibit 1 as well as the admission by the Respondent in her Preliminary objection has conclusively determined the case of the Petitioner.



On the issue of forms E, the matter before us is between John Olatunde Ayeni and Jennifer Adaobi Alagwu and not John Olatunde Ayeni and Abiola Ayeni. The relief also sought is a declaration that no customary law marriage exists between John Ayeni and Adaobi Jennifer Alagwu. This exhibit shows that no marriage can exist between the parties before us as the purported customary law marriage of parties before us is illegal ab-initio. The only thing the court can do at this junction is to make a declaration that there never was and never has been any marriage between the parties.

By the provision of S.33(1) of the marriage Act, the only party here who can sue for bigamy is Mrs. Abiola Abosede Ayeni.

Now having ruled that parties were never married under customary and line with No.1 of the schedule to the FCT Customary Court Act, 2007, this court has no power whatsoever to entertain the reliefs sought by the Applicant/Respondent in this suit as it is trite law that you can't place something on nothing and expect it to stand see. MACFOY v UAC (1961) 3 ALLER 1169 @ 1172. This suit only succeeds to the extent that no marriage exists between parties before us. That's the ruling of this court.



RIGHT OF APPEAL

Any party aggrieved with any part or whole of this ruling is at liberty to appeal to the FCT Customary Court of Appeal within 14 days from today being the 11th Day of March, 2025.

SIGD

HON. A.U. ACHORU

PRESIDING

11/03/2025

SIGD

HON. O.O. AJIBOYE

JUDGE I

11/03/2025

SIGD

HON. S.O. AGBEDE

JUDGE II

11/03/2025

