

A Critical Analysis of Ugbah v Ugbah (2025) LPELR-81732(SC): Substantive and Procedural Dimensions of Maintenance Actions under Nigerian Family Law

ABSTRACT

This article presents a comprehensive critical analysis of the Supreme Court's decision in *Ugbah & Ors v Ugbah*¹, focusing on its substantive and procedural dimensions within Nigerian family law. The judgment represents a defining moment in the development of matrimonial law, particularly regarding the enforcement of maintenance rights and the flexibility of procedural rules in achieving substantive justice. The Supreme Court, per Abiru JSC, clarified three important questions: whether maintenance can be claimed independently during the subsistence of a statutory marriage; whether a wife may institute such an action without concurrently seeking dissolution; and whether the use of a writ of summons, instead of a matrimonial petition, invalidates such claim. The Court's resolution of these questions consolidates the jurisprudential movement away from rigid procedural formalism, towards a purposive justice model, grounded in access to relief for dependents. This essay situates the Supreme Court's judgment within the continuum of Nigerian family law evolution, analysing its implications for the interplay between substantive entitlements and procedural mechanisms.

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¹ *Ugbah & Ors v Ugbah* [2025] LPELR-81732(SC).

1.0. INTRODUCTION

The Supreme Court judgment in *Ugbah & Ors v Ugbah* addresses one of the most persistent ambiguities in Nigerian matrimonial law, which is the enforceability of maintenance rights during the subsistence of a marriage and the procedural form for instituting such claims. This case tested the boundaries of the Matrimonial Causes Act (MCA)² the Matrimonial Causes Rules (MCR)³, the Child Rights Act (CRA)⁴ and associated legislations, challenging the conventional understanding that maintenance orders are exclusively ancillary to dissolution proceedings. It also raised broader questions about access to justice, judicial discretion, and the balance between form and substance in family law adjudication.

For decades, Nigerian courts have grappled with the relationship between substantive rights and procedural propriety. The debate intensified in family law because of the MCA's strict procedural prescriptions, which require petitions for principal and ancillary reliefs. Yet, everyday realities often compel spouses, particularly women and children, to seek maintenance without dissolving the marriage. Prior to this decision, case law reflected inconsistent approaches. Some courts, such as in *Okpagu v Okpagu*⁵, adopted a narrow interpretation, confining maintenance to proceedings initiated by petition. Others, like *Ekisola v Ekisola*⁶, recognised independent actions for maintenance. The Supreme Court's intervention in this judgment was thus not only timely but necessary to unify the law.

The facts presented a straightforward yet legally complex scenario. Mrs. Veronica Nneka Ugbah and her children, driven out of her matrimonial home, sued for maintenance under the Family Court of Lagos State (Civil Procedure) Rules 2012 which is governed by the High Court of Lagos (Civil Procedure) Rules⁷ rather than through a matrimonial petition.⁸

This essay argues that the above decision, represents a jurisprudential correction, aligning Nigerian family law with its social realities. It reaffirms the judiciary's role

² Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria, 2004.

³ Matrimonial Causes Rules, 1983.

⁴ Child Rights Act, 2003

⁵ *Okpagu v Okpagu* [1947] 12 WACA 137.

⁶ *Ekisola v Ekisola* [1961] LLR 8.

⁷ Lagos High Court (Civil Procedure) Rules, 2004.

⁸ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria, 2004, s. 70.

as a vehicle of substantive justice while acknowledging that unregulated procedural flexibility can generate interpretive uncertainty.

2.0. BACKGROUND AND FACTS

The dispute in this judgment arose from a deteriorated marital relationship that tested the reach of the matrimonial legal framework in Nigeria. The appellant, Mrs. Veronica Nneka Ugbah, had been married to the respondent under the Marriage Act⁹. After years of marital cohabitation, the relationship broke down irretrievably, culminating in the respondent expelling the appellant and their two minor children from the matrimonial home. The appellant, left without financial support or shelter and initiated an action at the High Court of Lagos State, seeking maintenance for herself and her children.

This action was commenced by writ of summons, supported by a statement of claim, detailing the respondent's neglect and failure to provide sustenance. The reliefs sought included:

- i. An order for monthly maintenance for herself and the children;
- ii. An order for educational and medical expenses;
- iii. An injunction restraining the respondent from further acts of harassment.

The respondent, in his statement of defence, raised a preliminary objection that the High Court lacked jurisdiction, because the suit was not initiated by way of petition under the Matrimonial Causes Rules 1983. He argued that maintenance claims were ancillary to matrimonial proceedings and could not stand alone.

At trial, the appellant's counsel argued that the claim was founded on a statutory duty of maintenance, independent of divorce or separation, and that the High Court's civil jurisdiction covered such disputes. Reliance was placed on the inherent jurisdiction of the court and on precedents, recognising a parent's duty of maintenance under both civil and criminal law.

The High Court dismissed the preliminary objection, and held that the essence of the claim was to secure maintenance, not dissolution, and that the procedural rule requiring petitions, applied only to matrimonial causes properly so called. The

⁹ Marriage Act, Cap M6, Laws of the Federation of Nigeria 2004

judge drew attention to Section 70 of the Matrimonial Causes Act¹⁰, which confers discretion on the court to make maintenance orders, noting that nothing in the Act expressly forbids independent proceedings where dissolution is not sought.

The respondent however, appealed to the Lagos Division of the Court of Appeal. The Court of Appeal, in allowing the appeal, held that the High Court's decision was misconceived because the Matrimonial Causes Act provides an exclusive procedural framework for all matters which touch on marital relationships. The appellate court reasoned that once parties are married under statute, any dispute concerning marital rights, including maintenance, must be brought by petition in accordance with the Matrimonial Causes Rules. The court therefore struck out the suit for want of jurisdiction.

Dissatisfied, the appellant appealed to the Supreme Court. The core of her argument was that the Court of Appeal erred in construing the MCA as a statute which excluded the High Court's general jurisdiction. Counsel argued that maintenance obligations, particularly concerning children, are not purely matrimonial but also civil and moral duties recognised under Nigerian law. The respondent maintained that the statutory procedure was mandatory, and deviation rendered the proceedings a nullity.

The apex court thus allowed the appeal. In doing so, it restored the High Court's decision, and held that the form of commencement, while irregular, did not affect the jurisdiction of the court. The Supreme Court emphasised that the purpose of a legal procedure is to aid justice and not to impede it. It also reiterated that a procedure must never be allowed to "enslave justice"¹¹.

In reaching its conclusion, the Supreme Court analysed the content and objectives of the MCA. The Court held that while Section 2 of the Act designates certain proceedings as matrimonial causes, including dissolution and separation, it does not preclude other actions based on ancillary obligations. The Court observed that "the duty to maintain wife and children is as old as society itself; it is neither conferred nor extinguished by the form of the marriage." The Court further declared that where the substance of a claim discloses a justiciable civil right, the mode of initiation cannot override the merits of the dispute.

The Supreme Court's reasoning rested on three principal findings:

¹⁰ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria, 2004, s. 70.

¹¹ *FGN v Zebra Energy Ltd* [2002] LPELR 3172(SC).

- i. Maintenance rights remain enforceable, independent of a petition, provided the claims concern subsistence obligations, as opposed to issues of dissolution or custody disputes.
- ii. The High Court's general jurisdiction extends to such matters, especially where no specific matrimonial cause is pleaded.
- iii. Procedural irregularity in the mode of commencement of an action, does not divest the court of jurisdiction, where substantial justice has been served.

The judgment thereby reversed the Court of Appeal's technical interpretation, and reinstated a more equitable approach that prioritises justice for dependents. This decision also reaffirmed the judiciary's long-standing stance that technical lapses should not override the substantive determination of rights, particularly in sensitive areas such as family law.

3.0. LEGAL ISSUES

This judgment distilled several legal questions that defined both the substantive and procedural dimensions of the matter. These issues, drawn from the grounds of appeal and the court's final determination, reflect the existing broader tensions within Nigerian family law, between statutory procedure, judicial discretion, and equitable relief. The Court identified three principal legal issues:

- i. Whether during the subsistence of a statutory marriage, a wife and children possess enforceable rights to maintenance, independent of the MCA.
- ii. Whether a wife may initiate a stand-alone action for maintenance, for herself and her children, without first instituting a petition for dissolution or judicial separation.
- iii. Whether the use of a writ of summons, instead of a matrimonial petition, renders such proceedings incompetent.

Each of these questions implicate both substantive entitlements and procedural authority. The court's treatment of these issues have therefore reshaped the conceptual boundaries of matrimonial law in Nigeria. As follows:

3.1. Whether Maintenance Rights Exist Independent of the Matrimonial Causes Act

At the heart of this judgment was the question of whether a statutory marriage extinguishes or limits pre-existing moral and legal obligations of maintenance. The respondent argued that once parties marry under statute, their rights and obligations are governed exclusively by the MCA, to the exclusion of all other laws. The Supreme Court rejected this argument, holding that maintenance rights exist independent of and prior to statutory codification.

Per Abiru JSC:

“The duty of a husband to maintain his wife and children is not a creature of the Matrimonial Causes Act. It is a moral and legal responsibility which predates statutory marriage and survives it. The fact that the Matrimonial Causes Act provides a structured mechanism for the enforcement of this duty does not mean it is the only avenue through which the duty may be enforced.”¹²

This dictum situates maintenance within the broader contexts of Nigerian family law. The Court recognised that while the MCA provides the formal mechanism for ancillary reliefs, maintenance is grounded in equitable and moral duties. A similar position was advanced in *Erhahon v Erhahon*¹³, where the Court of Appeal held that a husband’s obligation to maintain his wife remains enforceable even where no petition for dissolution is filed. In affirming that reasoning, the Supreme Court strengthened the view that the MCA supplements rather than replaces existing duties of support.

The Court’s interpretation aligns with the traditional judicial philosophy articulated in *Nanna v Nanna*¹⁴, where it was held that a spouse’s duty of maintenance continues during marriage unless legally dissolved. This position of the law was further expanded in the case of *Akparanta v. Akparanta*,¹⁵ where the court held the modern trend is that a husband’s duty to maintain his wife ends, once a decree of dissolution is granted. Abiru JSC’s formulation extends this logic by recognising the court’s civil jurisdiction over such claims, thereby integrating common law, statutory, and equitable doctrines.

¹² *Ugbah v Ugbah* [2025] LPELR-81732(SC), per Abiru JSC, at p. 37, para. D–F.

¹³ *Erhahon v Erhahon* [1997] 6 NWLR (Pt 510) 667.

¹⁴ *Nanna v Nanna* [2006] 3 NWLR (Pt 966) 1.

¹⁵ [1972] 2 ECSLR 779; *Akuwudike v. Akuwudike* [1963] 7 ENLR 5.

3.2. Whether Maintenance May Be Claimed without a Petition

The second issue concerned the procedural form of maintenance actions. The respondent's argument was based on Sections 2 and 69 of the Matrimonial Causes Act¹⁶ and Order V of the Matrimonial Causes Rules¹⁷, which prescribe petitions as the exclusive method for commencing matrimonial causes. Abiru JSC, while acknowledging the general rule, clarified that maintenance may also be claimed independently, provided the claim does not challenge marital status.

The Court stated:

“Where a party merely seeks enforcement of subsisting obligations of maintenance, and not dissolution or alteration of marital status, there is no logical reason why such a claim cannot be entertained under the High Court’s civil jurisdiction. The court’s function in such a matter is to compel performance of an existing duty, not to dissolve or vary the marriage.”¹⁸

This reasoning draws from the principles of *Tabansi v Tabansi*¹⁹, where the court of Appeal recognised a mother's independent right to seek maintenance for her children under the general civil procedure. By affirming this approach, the Supreme Court resolved the uncertainty that had plagued lower courts over whether a wife must first petition for dissolution before claiming maintenance.

The court's position aligns with the principle that the form of an action, must reflect its substance. Since the appellant's claim related solely to maintenance, it fell within the High Court's civil jurisdiction. This reasoning demonstrates the court's interpretive shift from a rigid textualist reading of the MCA to a purposive interpretation that promotes access to justice.

3.3. Whether Commencement by Writ of Summons Renders the Suit Incompetent

The procedural dimension of this judgment hinged on whether the action, commenced by writ of summons, was fundamentally defective. While the Court of Appeal held that the form of commencement invalidated the suit because matrimonial matters must be commenced by petition, the Supreme Court rejected this decision, distinguishing between irregularity and nullity.

¹⁶ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria, 2004, s. 2, 69.

¹⁷ Matrimonial Causes Rules 1983, Order V.

¹⁸ *Ugbah v Ugbah* [2025] LPELR-81732(SC), at p. 45, para. A–C.

¹⁹ *Tabansi v Tabansi* [2008] LPELR 4365(CA).

Per Abiru JSC:

“The form of commencement is a matter of procedure, not jurisdiction. Jurisdiction is conferred by the subject matter of the claim, not by the form used to present it. Once the claim discloses a justiciable civil right, the court is seised with authority to adjudicate. A procedural misstep cannot defeat a claim founded on justice and equity.”²⁰

The Court reinforced this position by citing *Yusuf v Adegoke*²¹, where it was held that technicalities should never triumph over substantive justice. It also referenced *Bello v Attorney-General of Oyo State*²², emphasising that courts exist to dispense justice, not to punish procedural missteps.

This judgment illustrates a doctrinal refinement of the test for procedural irregularity. The Supreme Court drew a clear line between procedural defects that affect competence and those that merely offend formality. According to Abiru JSC:

“Only where the irregularity occasions a miscarriage of justice or deprives the respondent of fair hearing will it be fatal. Otherwise, it is curable and does not affect the foundation of the case.”²³

This statement effectively repositions Nigerian procedural law within a more pragmatic framework. It confirms that access to justice remains the guiding principle of judicial administration, particularly in matters involving vulnerable dependents.

3.4. Summary of the Court’s Determinations

The Supreme Court resolved the three legal issues as follows:

- i. Maintenance obligations survive the subsistence of marriage and are enforceable as independent rights.
- ii. Actions for maintenance may be brought independently by writ of summons under the High Court’s civil jurisdiction.

²⁰ *Ugbah v Ugbah* [2025] LPELR-81732(SC), at p. 51, para. D–F.

²¹ *Yusuf v Adegoke* [2007] LPELR 3534(SC).

²² *Bello v Attorney-General of Oyo State* [1986] 5 NWLR (Pt 45) 828.

²³ *Ugbah v Ugbah* [2025] LPELR-81732(SC), at p. 53, para. B–C.

- iii. The use of a writ, though irregular, does not render an action incompetent where no miscarriage of justice occurs.

The combined effect of these findings is a doctrinal clarification that situates maintenance within both statutory and equitable frameworks. The judgment expands the scope of enforceable family obligations in Nigeria, thereby reinforcing the judiciary's duty to ensure substantive justice in family relations.

4.0. PRINCIPLES RELIED UPON BY THE TRIAL COURT

In the judgment of the Court of Appeal,²⁴ the principles relied upon by the trial court were enumerated. The trial judge relied mainly on three interrelated propositions of law:

4.1. That the Claim Was Not a Matrimonial Cause

The trial court held that since the 1st claimant (the wife) was not seeking a divorce, nullity, or separation, but only maintenance and welfare of herself and the children, the claim did not fall under the Matrimonial Causes Act.

Trial court's reasoning for this was stated thus:

"The 1st claimant herein is not seeking a dissolution of her marriage or any of the reliefs in section 114(1)(a) or (b) of the Matrimonial Causes Act. What she and her children seek is an order for maintenance, which they cannot be filed under the Matrimonial Causes Act since they do not have concurrent, pending, or completed proceedings under that Act."²⁵

From the forgoing the court reiterated the principle that actions seeking only maintenance, and child welfare, need not be tied to dissolution proceedings and may therefore, fall outside the exclusive scope of the MCA.

4.2. That the High Court Retains Residual Jurisdiction

The trial court reasoned that the High Court of Lagos State, being a court of unlimited jurisdiction in civil matters, could hear the matter as an ordinary civil claim, provided the claim concerned the legal duty of support owed by a husband to his wife and children. It therefore treated the suit as a civil claim for family

²⁴ *Ugbah v. Ugbah* [2009] 3 NWLR (Pt. 1127) 108.

²⁵ *Ibid*, at p. 120-121 para H-A.

maintenance, capable of being initiated by writ of summons under the High Court of Lagos State (Civil Procedure) Rules, 2004 now High Court of Lagos State (Civil Procedure) Rules 2019.

The Trial court's reasoning in support of this was quoted thus:

“The claimants were properly before this court,” and “it is not a Matrimonial Cause in section 114 of the Matrimonial Causes Act.”²⁶

From the foregoing the court applied the principle that where a marriage subsists, and no matrimonial petition is pending, the High Court can exercise its inherent or equitable jurisdiction to enforce family obligations, particularly with respect to the maintenance and education of children, under ordinary civil procedure.

4.3. That Constitutional and Child Rights Provisions Created an Independent Right of Action

The trial judge also relied on the Constitution and the Child Rights Act, 2003 as sources of authority which permits such maintenance and welfare claims. The court stated that the Constitution, as well as the Child Rights Act permit the claimants to come before it to seek the reliefs they seek.²⁷

The right to the maintenance and education of children is a constitutional and statutory welfare right which is enforceable by action, even where no matrimonial petition exists. Hence, the Child Rights Act and Constitutional provisions on family, welfare provides a separate cause of action, independent of the Matrimonial Causes Act.

4.4. Liberal Interpretation in Favour of Welfare

Though not expressly stated, the trial court's approach reflected a welfare-based judicial philosophy, preferring to entertain the matter substantively rather than strike it out on procedural grounds. Procedural rules should not defeat substantive justice in matters touching on the welfare of children and the maintenance of one's spouse. This is hinged on the provision of the Child Rights Act on 'Best interest of a Child to be of paramount consideration in all actions'. This provision states that in every action concerning a child, whether undertaken by an individual, public or

²⁶ *Ugbah v. Ugbah* [2009] 3 NWLR (Pt. 1127) 108) at P. 121 para B.

²⁷ *Ibid*, at P. 121 para A-B.

private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration.²⁸

5.0. SUBSTANTIVE LEGAL REASONING: MAINTENANCE RIGHTS AND ENFORCEABILITY

The Supreme Court's judgment provides one of the most comprehensive articulations of the scope of maintenance obligations, under Nigerian law. In addressing the substantive question, the Court examined the moral, statutory, and equitable foundations of the duty of maintenance and reconciled divergent authorities that had previously fragmented the doctrine. This judgment demonstrates the court's commitment to a humanistic and justice-driven approach to matrimonial relations, by recognising maintenance as both a personal duty and a social responsibility.

5.1. The Court's Restatement of Maintenance Obligations as a Policy Court

In his leading judgment, Abiru JSC declared unequivocally that maintenance is not a mere ancillary relief, but an enforceable civil obligation. He held that the duty of a husband to maintain his wife and children is rooted in long-standing moral and legal principles, which the Matrimonial Causes Act merely codifies rather than creates. He held:

*"A husband who expels his wife and children from the matrimonial home without reasonable provision for their sustenance breaches not only moral duty but legal responsibility. The law does not permit the repudiation of family obligations by procedural convenience. Maintenance, whether under statutory or customary frameworks, remains a legal right enforceable in court."*²⁹

This declaration integrates moral and legal reasoning in a manner consistent with the philosophy underlying *Erhahon v Erhahon*, where the Court affirmed that maintenance obligations flow from the institution of marriage itself, and continue while the marriage subsists. In both decisions, the courts recognised maintenance as a corollary of marital cohabitation and a reflection of the husband's role as a provider under Nigerian law.

The judgment also reflects continuity with *Nanna v Nanna*, in which the Supreme Court reiterated that the existence of a statutory marriage does not negate the

²⁸ Child Rights Act, 2003, s. 1.

²⁹ *Ugbah v Ugbah* [2025] LPELR-81732(SC), per Abiru JSC, at p. 60, para. E–G.

moral and legal responsibility of support. The court harmonised these principles by holding that the right to maintenance, arises automatically from the marriage contract and may be judicially enforced through civil proceedings even without a dissolution petition.

5.2. Merger Doctrine and the Statutory Framework

A significant contribution of the Court's reasoning lies in its treatment of the merger doctrine. The court clarified that once a customary or religious marriage is converted into a statutory one, the parties' rights and obligations merge into the statutory regime. This however, does not extinguish the right to maintenance but merely changes the governing framework.³⁰

This interpretation thus prevents procedural rigidity from eroding substantive rights. It also aligns with *Kodesoh v Aro*³¹, which recognised that where a superior legal framework governs a subject matter, pre-existing obligations are absorbed but not annulled. By applying this reasoning, the Supreme Court preserved the continuity of maintenance obligations across the plural legal systems in Nigeria.

The court's analysis implicitly harmonises the Matrimonial Causes Act with the Lagos State Child Rights Law³². Both statutes impose obligations on parents to provide for their children. The Court therefore, reinforced the proposition that statutory marriage cannot be used as a shield to escape responsibility for dependents.

5.3. Maintenance for Children as an Independent Right

Perhaps the most progressive aspect of this decision, is its recognition of children's independent right to maintenance. The court separated spousal maintenance, which arises from contract and companionship, from child maintenance, which derives from parenthood. The court emphasised that the duty to maintain one's children is absolute, regardless of marital status or the legitimacy of the child.³³

The court referenced *Tabansi v Tabansi* and *Anene Chikezie v Ifeoma Anene*³⁴, both of which established that the welfare and maintenance of children constitute matters of overriding judicial concern. The court further invoked Section 14 of the

³⁰ *Ugbah v Ugbah* [2025] LPELR-81732 (SC), at p. 65, para. A–C.

³¹ *Kodesoh v Aro* [1972] All NLR 394.

³² Lagos State Child Rights Law, 2015.

³³ *Ugbah v Ugbah* [2025] LPELR-81732(SC), at p. 70, para. D–F.

³⁴ *Anene Chikezie v Ifeoma Anene* [2017] ESLR 190.

Child Rights Act³⁵, which mandates parental duties of care and maintenance, integrating this statutory duty into the general law.

The court also endorsed the dictum of Nnamani J in *Anene Chikezie*, who described maintenance as a duty “written by the creator with the ink of love in the hearts of men.” This eloquent restatement underscores the normative foundation of maintenance as a universal moral principle, given legal form.

5.4. The Interplay between the Matrimonial Causes Act and Other Statutes

In evaluating the statutory framework, the Supreme Court noted that the MCA, while comprehensive, is not exhaustive. It must be read in harmony with other laws governing family responsibilities. The Court particularly highlighted the relevance of the Child Rights Act³⁶ and the Criminal Code Law of Lagos State³⁷ which criminalises failure to provide the necessities of life for dependents.

By interpreting these provisions conjointly, the court avoided a narrow construction that would limit the enforcement of maintenance, to the procedural confines of the MCA. This interpretive approach, affirms a holistic conception of family justice that transcends technical classification.

Furthermore, the court’s reasoning aligns with Section 6(6)(b) of the Constitution³⁸, which vests judicial powers in the courts to determine civil rights and obligations. Maintenance, being a civil right, falls squarely within this constitutional guarantees. This judgment, thus anchors family law obligations within the framework of constitutional justice.

5.5. Analysis of Quantum and Judicial Discretion

Although the case did not directly address the computation of maintenance, the court reaffirmed that judicial discretion governs the quantum of maintenance, guided by equity, means, and needs. The court reiterated that maintenance awards must balance fairness to both parties with the welfare of the children³⁹. This principle ensures that maintenance serves its intended function of preserving dignity and preventing destitution.

³⁵ Child Rights Act 2003, s. 14.

³⁶ Child Rights Act 2003, s. 28.

³⁷ Criminal Code Law of Lagos State, s. 301.

³⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 6(6)(b).

³⁹ *Tambuwal v Tambuwal* [2021] LPELR 55025(CA).

The court noted that the trial court retains the latitude to determine reasonable amounts based on evidence of means, standard of living, and moral obligation. He observed that maintenance must reflect both economic capacity and the social realities of the family, thus reinforcing the equitable nature of matrimonial reliefs.

5.6. Implications of the Substantive Reasoning

The court's substantive reasoning in this decision yields several key implications:

- i. The court reaffirmed the integration of moral and legal responsibilities, ensuring that moral failure attracts legal sanction.
- ii. Nigerian family law is pluralistic, and this judgment harmonises statutory, customary, and moral foundations of maintenance.
- iii. This decision exemplifies a humanistic approach to justice that foregrounds welfare over technicality.
- iv. By linking maintenance to civil rights, the court constitutionalised family obligations, strengthening their enforceability.
- v. The court reinforced continuity between statutory marriage and earlier customary responsibilities, preventing legal manipulation through marital form.

Collectively, these insights position this judgment as a cornerstone of Nigerian family law. It also ensures that substantive justice prevails over procedural rigidity and reinforces the judiciary's protective role in family relations.

6.0. PROCEDURAL REASONING: TECHNICALITY AND JURISDICTION

The procedural dimension of this decision, is as significant as its substantive contribution. The case reaffirmed the judiciary's longstanding position that procedural rules exist to serve justice rather than defeat it. The Supreme Court's reasoning, rooted in decades of precedent, emphasised the prevalence of substantive justice and clarified the boundary between procedural irregularity and jurisdictional incompetence. This was the same path towed by the Supreme Court

in *Yusuf v Adegoke*⁴⁰ and the recent maritime case of *Geepee Industries (Nig.) Ltd. & Anor v MV “Kota Manis” & Ors.*⁴¹

In *Taiwo v Federal Republic of Nigeria*,⁴² the 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. The court has maintained over the years, that the sole purpose of a court is to ensure substantive justice prevails 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.

This section examines the court’s approach to technicality, jurisdiction, and procedural form, situating the decision within the broader framework of Nigerian civil procedure, as the decision aligns with the National Judicial Policy⁴³.

6.1. Technicality versus Substantive Justice

The Supreme Court’s disapproval of procedural technicality reflects a consistent judicial policy that has evolved since the 1980s. Abiru JSC, in delivering the lead judgment, reaffirmed the view that procedural compliance is a means to an end, and not an end in itself.⁴⁴

This pronouncement echoes the principle enunciated in *Bello v Attorney-General of Oyo State*⁴⁵, where the court famously stated that courts exist to dispense justice, not to punish errors of procedure. Similarly, in *Yusuf v Adegoke*⁴⁶, the Supreme Court held that technicalities must never triumph over substantive justice. Abiru JSC invoked both precedents to underscore that the High Court’s use of a writ of summons, although irregular, did not invalidate the proceedings since it did not prejudice the respondent.

The court’s reasoning aligns with Section 6(6)(b) of the Constitution, which vests the judiciary with authority to determine civil rights and obligations. Procedural rules, while essential for order, must yield to this constitutional mandate where their application would frustrate justice.

⁴⁰ [2007] LPELR 3534 (SC)

⁴¹ [2025] LPELR-81075 (SC).

⁴² [2022] 13 NWLR (Pt. 1846) 61

⁴³ National Judicial Council Online. (2025, October 07). National Judicial Policy. From National Judicial Council: <https://njc.gov.ng/national-judicial-policy> accessed 7 October, 2025.

⁴⁴ *Ugbah v Ugbah* [2025] LPELR-81732(SC), per Abiru JSC, at p. 81, para. C–E.

⁴⁵ *Bello v Attorney-General of Oyo State* [1986] 5 NWLR (Pt 45) 828.

⁴⁶ *Yusuf v Adegoke* [2007] LPELR 3534(SC).

6.2. Jurisdiction and the Form of Commencement

A key question in this judgment was whether the use of a writ of summons deprived the trial court of jurisdiction. The Court of Appeal had treated the mode of commencement as jurisdictional, holding that only petitions could validly invoke matrimonial proceedings. Nonetheless, the Supreme Court disagreed, distinguishing between jurisdiction conferred by subject matter and procedural regularity.⁴⁷

This distinction reflects the principles in *U.T.C. (Nig.) Ltd v Pamotei*⁴⁸, where the Supreme Court held that procedural irregularities do not nullify proceedings unless they occasion a miscarriage of justice. Similarly, in *Nwosu v Imo State Environmental Sanitation Authority*⁴⁹, the Court reaffirmed that errors of form do not affect jurisdiction.

By applying these principles, the Supreme Court restored doctrinal clarity to the concept of jurisdiction. The court reaffirmed that while procedural statutes regulate the mode of commencement, jurisdictional competence is determined by the nature of the claim, and the court's constitutional authority. The distinction between irregularity and nullity thus became central to the court's analysis.

6.3. The Doctrine of Irregularity and Nullity

The court's reasoning on procedural defects reflects the doctrine of curable irregularity⁵⁰. This doctrine holds that where a procedural defect does not affect jurisdiction or fair hearing, it is deemed curable.⁵¹

This reasoning aligns with *Obimonure v Erinosh*⁵², where the Supreme Court held that participation in proceedings without objection cures procedural defects. The same principle was reaffirmed in *Okafor v Attorney-General of Anambra State*⁵³.

Abiru JSC's approach modernises this doctrine by integrating it into family law. The court recognised that family law disputes involve delicate human relationships, and the courts must therefore interpret procedural rules flexibly to avoid perpetuating hardship. The court's pragmatic application of the doctrine represents an evolution

⁴⁷ *Ugbah v Ugbah* [2025] LPELR-81732(SC), at p. 84, para. A–C.

⁴⁸ *U.T.C. (Nig.) Ltd v Pamotei* [1989] 2 NWLR (Pt 103) 244.

⁴⁹ *Nwosu v Imo State Environmental Sanitation Authority* [1990] 2 NWLR (Pt 135) 688.

⁵⁰ *Amaechi v INEC* [2008] 5 NWLR (Pt 1080) 227.

⁵¹ *Ugbah v Ugbah* [2025] LPELR-81732(SC), at p. 88, para. D–F.

⁵² *Obimonure v Erinosh* [1966] LPELR 2536(SC).

⁵³ *Okafor v Attorney-General of Anambra State* [1991] 6 NWLR (Pt 200) 659.

in Nigerian law, aligning civil procedure with the constitutional imperative of access to justice.

6.4. Substantial Justice and the Purpose of Procedure

The decision in the case in review reinforces the Supreme Court's broader philosophy that procedure serves justice, not vice versa. The court quoted Belgore JSC's dictum in *FGN v Zebra Energy Ltd*⁵⁴ as follows:

“Procedure is a guide to smoothen the passage of a suit. The court shall never be shackled by procedure.”

This quote was adopted as a cornerstone of the court's reasoning. It underscores the judiciary's evolving preference for substantial justice, particularly in cases involving vulnerable litigants⁵⁵. In family law, where social and economic stakes are high, strict procedural enforcement could perpetuate injustice. Moreso, the court's flexible interpretation remains defensible within the constitutional framework in Nigeria. Section 36(1) of the Constitution guarantees the right to fair hearing, which encompasses the right to be heard on the merits rather than dismissed on procedural grounds⁵⁶. The decision thus aligns with the constitutional imperatives of fairness and proportionality.

The court observed that maintenance actions, by their nature, require urgency and compassion. The procedural flexibility endorsed in this decision thus serves both efficiency and equity. The court's rejection of hyper-technical objections ensures that substantive rights, especially of women and children, are not thwarted by procedural missteps.

6.5. Implications for Civil Procedure and Family Justice

The procedural reasoning in this decision has far-reaching implications for Nigerian civil procedure and the administration of family justice:

- i. The decision confirms that jurisdiction depends on the subject matter and not procedural form, thereby simplifying jurisdictional analysis in family disputes.

⁵⁴ *FGN v Zebra Energy Ltd* [2002] LPELR 3172(SC).

⁵⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 17(2)(e).

⁵⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 36(1).

- ii. By de-emphasising technicality, the court enhances access to justice, particularly for indigent or unrepresented litigants.
- iii. This judgment strengthens the trial court's discretion to cure procedural defects in the interest of justice.
- iv. This case harmonises earlier precedents on technicality, reaffirming the judiciary's consistent rejection of procedural rigidity.
- v. This judgment signals the need for procedural reforms, to align the Matrimonial Causes Rules with contemporary realities of family litigation.

6.6. Evaluation of the Court's Procedural Philosophy

The Supreme Court's approach in the decision reflects a shift from legal formalism to procedural realism. It acknowledges that while procedural uniformity promotes predictability, strict adherence without consideration for justice undermines the judiciary's constitutional function. The court's interpretation of jurisdiction and procedural flexibility, bridges the gap between legal doctrine and social justice.

However, this liberal approach carries potential risks. Excessive procedural leniency could erode certainty and encourage irregular litigation. The balance, therefore, lies in ensuring that procedural discretion is exercised judiciously, preserving fairness while preventing abuse. The court's formulation achieves this balance by conditioning curable irregularity, on the absence of prejudice and the presence of good faith.

Essentially, this decision consolidates the Supreme Court's progressive principles on procedural justice. It reaffirms that the ultimate purpose of procedure is to facilitate, not frustrate, the adjudication of rights. This reasoning not only advances family law but also enriches the broader doctrine of procedural justice in Nigerian law.

7.0. OTHER FACTORS TO BE CONSIDERED

7.1. Law and Morality

The law and morals act, as well as react upon, and shape each other. In the name of justice, equity, good faith, and conscience, morals have filtered into the fabrics of law. Moral considerations play a very important role in law making, in

interpreting legal precepts, and in exercising judicial discretion with respect to rewarding or punishing.⁵⁷ Thus, morals perfect the law.

In marriage, so long as love persists, there is little need for the law to rule the relations of the husband and wife, but when love flies out of the window, the solicitor comes in through the door. While the Matrimonial Causes Act provides a formal mechanism for supplementary reliefs, which come with the alteration of one's marital status, maintenance relief is grounded in equitable and moral duty.⁵⁸

In the Nigerian legal system, not every moral issue is legislated upon, mainly because Nigeria has more than 250 ethnic groups with different views on what is morally right. However, the best solution to this problem has been to find moral values that are mostly common to these divergent tribal groups and legislate on them. This view was expressed in *Aoko v. Fagbemi*⁵⁹, where it was held that conviction for adultery was not a criminal offense under written laws in Southern Nigeria, as opposed to Northern Nigeria, under the Sharia Law. Thereby underscoring the position that laws must be based on written statutes and not solely on societal morality, religion or public conscience⁶⁰.

Although moral values may guide the formulation of certain laws, morality in itself does not constitute a source of legally binding rules. Nonetheless, moral principles often evolve into codified norms over time, thereby serving as a vital influence on the development of the law. For instance, traditional values, cultural norms, societal morals and religion were the grundnorm over the years, which predate the extant laws. Section 26(1) of the Laws of Lagos State of Nigeria,⁶¹ provides that the High Court shall observe and enforce every customary law which is applicable and not repugnant to natural justice, equity, and good conscience.

7.2. Gender Equality, Family Welfare and the Inheritance Rights of Women in Nigeria

⁵⁷ Emenike W. C. & Nwanyanwu M. A., 'Legal Analysis of the Relationship of Law, Morality and Religion in Nigeria' (2023) *AELN Journal of Environment & Natural Resources Law*, Vol. 11(1) <https://www.environmentallawyersng.org/wp-content/uploads/2023/11/A18-Wisdom-Chinda-Emenike.pdf> accessed 9 October 2025.

⁵⁸ *Erhahon v Erhahon* [1997] 6 NWLR (Pt 510) 667.

⁵⁹ [1961] 1 All N.L.R. 645.

⁶⁰ *Okonjo-Iweala v. Fawehinmi* [2025] 7 NWLR (Pt. 1988) 1.

⁶¹ Law of Lagos State Cap. 52 Volume III Laws of the Lagos State of Nigeria 1973, s. 26(1).

A key unspoken dimension of this decision is its gendered context. Maintenance actions, predominantly involve women and children as claimants. The court's purposive interpretation, therefore carries strong gender justice implications. By facilitating access to maintenance without requiring dissolution, the court acknowledged the socio-cultural barriers that often deter women from seeking relief under rigid matrimonial procedures.

The court's decision aligns with Nigeria's commitments under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁶², which obliges nations to remove barriers to equality in family relations. While CEDAW is not expressly referenced in the judgment, its influence is discernible in the court's equitable reasoning.

In recognising maintenance as a continuous duty, instead of a contingent relief, the Supreme Court also advanced the welfare principle that underpins the Nigerian family law. This principle, central to both the MCA and the CRA, places the welfare of dependents at the heart of judicial determination. The court's reaffirmation of this principle marks a return to social justice as a guiding ethos in family adjudication, in accordance with section 17(3)(f) of the Constitution⁶³, which obliges the state to provide adequate living conditions for all citizens.

In Nigeria, while the constitution guarantees gender equality⁶⁴ and protects inheritance rights, discriminatory customary laws, particularly in Eastern Nigeria, often deny women their inheritance rights. However, the landmark Supreme Court rulings, as in the *Ukeje v Ukeje*⁶⁵ case, have declared such customs unconstitutional, thereby asserting a woman's legal right to inherit. This landmark judgment affirmed the rights of Nigerian women to inherit from their deceased parents, reinforcing constitutional provisions. The decision solidified a female's entitlement to her late father's estate. Rhodes – Vivour, JSC, in delivering the lead judgment stated:

“No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law which disentitled a female child from partaking in the sharing of her deceased father's estate is in breach of Section 42(1) and (2) of the constitution, a fundamental right provision guaranteed to every Nigerian.

⁶² Convention on the Elimination of All Forms of Discrimination Against Women 1979.

⁶³ Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 17(3)(f).

⁶⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 42(2).

⁶⁵ [2014] LPELR-22724 (SC).

The said discriminatory customary law is void as it conflicts with Section 42(1) and (2) of the constitution.”⁶⁶

Despite these legal advancements, the implementation of these rights, remains a challenge due to lack of awareness, community resistance, and the complex interplay between statutory and customary laws.

Furthermore, the Supreme Court in *Anekwe v. Nweke*⁶⁷ challenged the customary law of male primogeniture which entails the right of succession belonging to the eldest son of the Awka people in Anambra State, Nigeria. The court found that any custom that denies women, particularly widows, their inheritance, is repugnant to natural justice, equity and good conscience, and is thus condemned by the Supreme Court. The repulsive nature of the challenged custom is heightened further in the case where the widow of the deceased is sought to be deprived of the very building where her late husband was buried.⁶⁸

7.3. The Right of a Nigerian (Ex) Husband to Claim Spousal Maintenance and the Court’s Approach to Customs, Values and Traditions.

Under the MCA, a (ex) husband could claim maintenance from his (ex) wife if the marriage was statutory and the legal criteria are met. The court in *Adeyemi v Adeyemi*⁶⁹ stated that, at common law, a spouse has the right to claim maintenance from his or her spouse. However, by statutory provision, the issue of maintenance is a matter within the discretion of the court to either grant or to withhold.

Moreso, the term “(ex) husband/(ex) wife” must be clarified: is the marriage already dissolved? If dissolved, maintenance may still be ordered in divorce settlements as one of the consequential orders. If the marriage is customary or under Islamic law, the (ex) husband may have no right under MCA.

With respect to the court’s approach to customs, values and traditions, courts have generally held that customary law does not oblige (ex) husbands to maintain (ex) wives once the customary marriage is dissolved.

⁶⁶ *Ukeje v Ukeje* (2014) LPELR-22724 (SC), at P. 408, paras. D-E.

⁶⁷ *Anekwe v Nweke* [2014] 9 NWLR (Pt. 1412) 393.

⁶⁸ *Anekwe v Nweke* [2014] 9 NWLR (Pt. 1412) 393.at P. 423, paras. A-C

⁶⁹ [1969] 2 All N.L.R. 161.

7.4. On the Effect of a Celebration of Marriage without a Registrar's Certificate

The court in *Ayo v State*⁷⁰ emphatically stated that the mere celebration of a church wedding does not, by itself, give such marriage statutory flavour. Thus, in *Chukwuma v. Chukwuma*,⁷¹ the Court of Appeal held that a wilful celebration of a purported marriage under the Marriage Act, without the parties first being armed with the registrar's certificate is null and void.

Nonetheless, in a Christian marriage, a wife is generally entitled to request maintenance from her husband, during the subsistence of the marriage, in line with the common law principle which imposes a duty on the husband to support his wife. Regardless, the question of maintenance here is also determined in accordance with the provisions of the statute, which empower the court to decide who is entitled to maintenance and who is not entitled to same.

8.0. POLICY AND DOCTRINAL IMPLICATIONS

This judgment has broad policy and doctrinal implications that extend beyond the immediate context of maintenance actions. It redefines the interface between procedural law, family policy, and constitutional justice, positioning Nigerian family law on a more progressive footing. This section evaluates these implications under five interrelated dimensions: procedural reform, judicial activism, institutional coherence, gender justice, and the harmonisation of the existing plural legal systems under Nigerian family law.

8.1. Procedural Reform and Access to Justice

One of the most direct policy implications of the decision, is the need for procedural reform in matrimonial litigation. The Supreme Court's recognition of writ-based maintenance actions exposes the obsolescence of the Matrimonial Causes Rules. These rules, modelled on colonial English practice, remain rigid and ill-suited to the evolving social conditions in Nigeria. Their insistence on formal petitions, prescribed forms, and multiple affidavits often imposes prohibitive costs and technical burdens on litigants.

By endorsing procedural flexibility, the court implicitly called for a review of these rules to simplify family proceedings. Procedural reform should aim to unify the

⁷⁰ *Ayo v. State* [2010] All FWLR (Pt 530) 1377 at 1405.

⁷¹ [1996] 1 NWLR (Pt. 426) 543.

disparate regimes governing family disputes, integrating maintenance, custody, and welfare actions under a coherent procedural framework. This reform would align with the objectives of the Administration of Civil Justice Reform Committees established in several states, including Lagos and Rivers, which have sought to modernise procedural rules to promote efficiency and accessibility.

The Supreme Court's position also supports the introduction of simplified family court divisions within the High Court system. Such courts, operating under streamlined procedures, could ensure expedited handling of maintenance claims, thereby minimising the procedural obstacles that delay relief.

8.2. Judicial Activism and the Recalibration of Doctrinal Boundaries

This judgment illustrates a measured form of judicial activism, which is consistent with the constitutional framework in Nigeria. The Court's readiness to interpret the MCA, purposively reflects a recognition that strict literalism can perpetuate injustice. This approach follows the pattern of transformative adjudication seen in decisions like *A.G. Lagos State v A.G. Federation*⁷², where the Supreme Court employed a purposive interpretation to advance federalism and constitutional justice.

However, this activism remains disciplined. The court did not displace the legislative framework but supplemented it, by invoking constitutional and equitable principles. This balance reinforces the judiciary's legitimacy as an interpreter, not a creator, of law. By situating its reasoning within established precedents on technicality and jurisdiction, the court avoided accusations of overreach.

Doctrinally, this decision recalibrates the boundaries between matrimonial and civil jurisdiction. It affirms that while matrimonial causes are a distinct category, the High Court's inherent civil jurisdiction encompasses ancillary matters like maintenance. This doctrinal repositioning ensures that litigants are not stranded between procedural categories, and that courts can exercise full remedial authority without procedural constraint.

8.3. Institutional Coherence and Legal Pluralism

The family law system in Nigeria, operates within a plural framework comprising statutory, customary, and religious elements. This decision promotes institutional

⁷² A.G. Lagos State v A.G. Federation [2014] 9 NWLR (Pt 1412) 217.

coherence by harmonising these strands. The court's reliance on both statutory and moral foundations of maintenance, demonstrates that legal pluralism need not result in fragmentation.

By recognising that obligations under customary or religious marriage merge, rather than disappear upon statutory formalisation, the court created doctrinal continuity. This approach reduces jurisdictional conflict, and ensures consistent protection for dependents, regardless of the form of the marriage. It also acknowledges social diversity which exist in the Nigerian society, while preserving a unified standard of justice.

From an institutional perspective, this judgment strengthens the role of the High Courts as forums of last resort for family disputes. It confirms that State High Courts possess general jurisdiction to adjudicate family obligations, even where matrimonial petitions are not filed. This clarification mitigates any confusion over jurisdictional competence, and streamlines case management within the judicial hierarchy.

8.4. The Harmonisation of Legal Frameworks

This decision underscores the need to harmonise the MCA, the CRA, and the Criminal Code in a coherent legislative framework. At present, these statutes operate in parallel, creating overlaps and inconsistencies. For instance, while the MCA provides civil remedies for maintenance, the Criminal Code criminalises neglect without offering direct enforcement mechanisms for dependents. The court's integrative approach calls for legislative revision to eliminate such fragmentation.

One reform proposal is the adoption of a comprehensive Family Law Code, incorporating maintenance, custody, adoption, and domestic violence provisions under one statute. Such codification would bring Nigeria in line with modern jurisdictions like South Africa and Kenya, where unified family law statutes have improved clarity and enforcement.

8.5. Broader Systemic Impact

The ripple effects of this decision will likely extend beyond family law. The court's rejection of rigid proceduralism, provides a model for other areas of civil litigation. It reinforces the need for courts to interpret procedural rules in light of constitutional objectives, ensuring that justice is not sacrificed to formality. The

decision thus contributes to the judiciary's broader institutional reform, thereby strengthening public confidence in the legal system.

Additionally, the case sets a precedent for proactive judicial engagement with socio-economic issues. By emphasising access to justice, the Court reaffirmed the judiciary's role in advancing social welfare through interpretive innovation.

8.6. Final Reflections on Policy and Doctrinal Consequences

In conclusion, this judgment is both a doctrinal and policy milestone. It reaffirms the judiciary's role as a catalyst for legal evolution and social justice. The decision encourages procedural reform, strengthens institutional coherence, advances gender equality, and integrates existing multiple legal statutes into a unified law. Its long-term legacy lies in demonstrating that the law, when interpreted with empathy and pragmatism, can adapt to the needs of society without sacrificing doctrinal integrity.

9.0 CONCLUSION

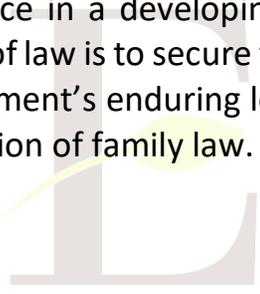
The Supreme Court's decision in the matter stands as a landmark in Nigerian family law. It bridges the long-standing gap between procedural formalism and substantive justice in matrimonial law, by reaffirming the judiciary's duty to prioritise equity over technicality. The judgment redefined the enforcement of maintenance obligations, ensuring that the rights of dependents are not hindered by rigid procedural forms.

Abiru JSC's holding demonstrates judicial awareness of the existing socio-legal realities. The recognition that maintenance is a continuous civil obligation, enforceable outside matrimonial petitions, aligns law with social justice. The court harmonised statutory and moral duties, integrating the MCA with the provisions of the constitution, and complementary statutes like the CRA and Criminal Code Law of Lagos State. This synthesis secures coherence across the extant legal landscape.

Procedurally, the court reaffirmed the constitutional primacy of access to justice. Its rejection of procedural rigidity and elevation of substantial justice over technical form, mark a maturation of the Nigerian legal system. The decision's insistence that jurisdiction flows from subject matter and not procedural format, provides clarity and stability in judicial interpretation. By distinguishing between curable

irregularity and jurisdictional nullity, the Court refined the doctrine of procedural justice. Additionally, it expands the concept of family law beyond matrimonial petitions. It situates maintenance within the broader framework of civil obligations, thus opening new avenues for enforcement and protection of family rights. The decision further illustrates a balance between judicial activism and restraint. That is, purposive interpretation guided by constitutional values, but anchored in statutory text.

From a policy standpoint, the judgment advances access to justice, gender equality, and social welfare. It urges procedural reform and institutional coherence, thereby highlighting the need to modernise the Matrimonial Causes statutes and harmonise the family law framework. The court's decision reflects a shift towards people-centred justice that foregrounds the lived experiences of parties to such claims. Lastly, the decision is not merely a procedural precedent, it is a jurisprudential statement on the nature of justice in a developing legal system. It reminds the courts that the ultimate purpose of law is to secure fairness, compassion, and order in human relationships. This judgment's enduring legacy will be its contribution to a more humane and equitable vision of family law.



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