

**IN THE CUSTOMARY COURT OF APPEAL
IN THE FEDERAL CAPITAL TERRITORY
HOLDEN AT UTAKO DISTRICT, ABUJA**

CORAM:

- | | |
|---|------------------------|
| 1. HON. JUSTICE ISTIFANUS GANDU | PRESIDING JUDGE |
| 2. HON. JUSTICE YUNUSA IDRIS KUTIGI | JUDGE |
| 3. HON. JUSTICE UNWANA SAM UBOM | JUDGE |
| 4. HON. JUSTICE MOHAMMED BOYI MARAFA | JUDGE |

THIS 25TH DAY OF FEBRUARY, 2026

SUIT NO: FCT/CC/JIK/CV/033/2024

APPEAL NO: FCT/CCA/CVA/14/2025

BETWEEN

MR. DYIKAT KELVIN PIWUNA - APPELLANT

AND

MRS TEYANG ISTIFANUS ZABADI PIWUNA - RESPONDENT

JUDGMENT

(DELIVERED BY HON. JUSTICE ISTIFANUS GANDU, JCCA)

This is an interlocutory appeal against the Ruling of Jikwoyi Customary Court, FCT, Abuja, delivered by Hon. Thelma Baba; Hon. Aishatu Salisu Halidu and Hon. Oluwatoyin Taiye – Ojo on the 4th day of June, 2025.

The Respondent in this Appeal was the Petitioner at the Customary Court, Jikwoyi, FCT, Abuja, wherein she petitioned the Appellant via a civil

summons dated 15th day of July, 2024 with suit No, FCT/CC/JIK/033/2024, for the following;

- (i) for dissolution of marriage,
- (ii) for the return of the bride price,
- (iii) for custody of the only child of the marriage,
- (iv) for maintenance and general upbringing of the child,
- (v) an order granting the Respondent reasonable free access to the child but upon 48hrs notice, an order restraining the Respondent from any manner of trailing or visit to the abode or workplace of the petitioner, except upon express invitation from the petitioner personally, and also the cost of this action.

The Appellant who was the Respondent in the lower court filed his answer to the petition and subsequently proceeded to file a cross petition with Suit No; FCT/CC/JIK/CV/03/24 dated the 14th day of October 2024 seeking;

- (i) full custody of the child of the marriage,
- (ii) an order dismissing the claims of the petitioner,
- (iii) an order directing that the petitioner full visitation rights and unhindered access to the child of the marriage, an order that the child of the marriage shall not be taken outside the shores of the Federal Republic of Nigeria without mutual agreement, which must be written, signed by both parties and also the commissioner for oath,
- (iv) An order directing the parties to bear their respective cost.

The cross petitioner also filed a preliminary objection via a Motion on Notice dated the 12th day of January 2025 and filed on the 17th day of January 2025 challenging the jurisdiction of the Court with an affidavit in support. The Respondent filed a counter affidavit to the motion.

After hearing the motion, the trial Court refused the Application on the 4th day of June 2025. Aggrieved by the Ruling, the Appellant filed a notice of Appeal dated 10th day of June, 2024 on the following grounds and reliefs:

“GROUNDS OF APPEAL

GROUND1

The honourable trial court erred in law and thereby occasioned a miscarriage of Justice when the court held at page 6 of the folio of the ruling as follows:

“to my mind, the only way a party can choose not to submit is if the court is assuming Jurisdiction in excess of its powers given by the enabling statute. The intendment of the section 14(1) of the Act is not to leave submission to court at the discretion of the parties but recognition of the parties’ right to object to jurisdiction based on the fact that the applicable customary law to be administered by the court does not apply”

PARTICULARS OF ERROR

- (a) It is on record that the Appellant resides and works at Kaduna, Kaduna State and the civil summons in this suit was served on him by substituted means at No.23 Usman Jibril, Narayi High Cost, Barnawa, Kaduna, Kaduna state.
- (b) The trial court in its ruling confirms that the Appellant is not within its territorial limits when it stated in the ruling that indeed the court

issued the order for substituted service and in fact, the respondent applied that the applicant be served by substituted means outside the jurisdiction of this court.

- (c) Section 14 (1) of the Federal Capital Territory Customary Court Act, 2007, provides that customary court shall have and exercise jurisdiction over all persons within the territorial limits of the federal capital Territory, Abuja, who submit to the jurisdiction of the court
- (d) The court only has jurisdiction to adjudicate over those persons within the territorial limits of the federal capital Territory, Abuja, who submit to the jurisdiction of the court.
- (e) The Appellant is not within the Territorial Jurisdiction of the federal capital territory, Abuja and could not have submitted to the jurisdiction of the court.
- (f) The provision of Section 14(1) of the federal capital territory customary Act, 2007, is plain simple and should be interpreted literally.
- (g) It is settled that where the words of a statute are clear, simple and unambiguous, the courts in construing them must give them their plain, ordinary and natural meaning.

GROUND 2

The Honourable Trial Court erred in Law and thereby occasioned a miscarriage of justice when the court held at page 6 of the folio of the Ruling as follows

“Once it is settled that the court has jurisdiction in respect of the substantive suit, liberty to submit or not to submit is ruled out and we so hold”

PARTICULAR OF ERROR

- (a) The Jurisdiction of this court is categorize into two namely: Jurisdiction over persons, section 14(1) of the Federal Capital Territory Customary Court Act, 2007, on the one hand and Jurisdiction over subject matter, Section 14 (2) of the same Act, of the same Act, on the other hand.
- (b) It is on record that the Appellant resides and work at Kaduna, Kaduna State and the Civil Summons in this suit was served on him by substituted means at No.23, Usman Jibril, Narayi High Cost, Barnawa, Kaduna, Kaduna State.
- (c) The Trial Court in its ruling confirms that the Appellant is not within its territorial limits when it stated in the ruling that indeed the court issued the order for substituted service and in fact, the Respondent applied that the applicant be served by substituted means outside the Jurisdiction of this court.
- (d) Section 14 (1) of the Federal Capital Territory Customary Court Act, 2007 provides that customary court shall have and exercise Jurisdiction over all persons within the territorial limits of the Federal Capital Territory, Abuja, who submit to the jurisdiction of the court.
- (e) The court only has jurisdiction to adjudicate over those persons within the territorial limits of the federal capital Territory, Abuja, who submit to the jurisdiction of the court.
- (f) The Appellant is not within the territorial jurisdiction of the federal capital territory Abuja and could not have submitted to the jurisdiction of the court.

- (g) The provision of section 14 of the Federal Capital Territory customary court Act, 2007, is plain simple and should be interpreted literally.

GROUND 3

The honourable Trial court erred in law when it refused to make a specific finding and conclusion on the effect of the Appellant not living within the territorial limits of the Federal Capital Territory and thereby occasioned a miscarriage of Justice.

PARTICULARS OF ERRORS

- (a) The trial court in its ruling reproduced the arguments of the Applicant and the Respondent on this point but refused to make specific finding and resolution on the effect of Appellant living in Kaduna, outside the territorial limits of the jurisdiction of the court.
- (b) The position of law raised on the Appellant not living within the territorial limits of the Federal Capital Territory goes to the root of the jurisdiction of this court.
- (c) The jurisdiction of this court is categorize into two namely, Jurisdiction over persons, section 14 (1) of the federal Capital territory customary court Act 2007, on the one hand and jurisdiction over subject matter, section 14 (2) of the same Act, on the other hand
- (d) It is on record that the Appellant resides and work at Kaduna, Kaduna state and the civil summons in this suit was served on him by substituted means at No. 23 Usman Jibril, Narayi High Court, Barnawa, Kaduna, Kaduna State.

- (e) The trial court in its Ruling Confirms that the Appellant is not within the territorial limits when it stated that the court issued the order for substituted and in fact, the Respondent applied that the applicant be served by substituted means outside the jurisdiction of this court
- (f) The trial court never considered and resolve this issue of the person of the Appellant living outside the territorial limit of the Federal Capital Territory, Abuja before it proceeded to deliver its ruling and held that it has jurisdiction to entertain the substantive suit
- (g) The trial court has a duty to resolve all issues raised before it one way or the other,
- (h) Only the Apex court has the discretion to leave issues raised by counsel unresolved if it does not consider the resolution germane to the life issues before it.

GROUND 4

The Honourable Trial Court erred in law and thereby occasioned a miscarriage of justice when the court held at page 6 of the folio of the Ruling as follows:

“The Applicant called the Attention of the court to the Definition of Christian marriage in the Criminal Code as a marriage which is recognized by the law of the place where it is contracted as the voluntary union for life of one man and one woman to the exclusion of all others. He urged the court to take cognizance of the definition rather than the definition in the marriage Act, meanwhile, the Appellant did not provide the definition of a Christian marriage in the marriage Act and in the course of my research, I did not come across a definition of a Christian marriage in the marriage Act”

PARTICULARS OF ERROR

- (a)** Section 14 (2) of the federal Capital Territory Customary Court Act, 2007 provides that a customary Court shall have and exercise jurisdiction over causes and matters set out in the schedule in this Act.
- (b)** The 1st schedule to the Federal Capital Territory Customary Court Act, 2007 provides the causes and matters as follows: Matrimonial Causes and matters between persons married under customary law or arising from or connected with a Christian marriage or Marriage under the Islamic law as defined in Section 1 of the Criminal Code Act.
- (c)** Christian Marriage is defined by the Criminal Code Act as follows: Christian marriage means a marriage which is recognized by the law of the place where it is contracted as the voluntary union for life of one man and one woman to the exclusion of all others.
- (d)** The customary Court Act did not refer to the Marriage Act for the purpose of defining a Christian marriage in order to confer jurisdiction on this court
- (e)** The trial court ignored the definition of Christian marriage as defined by the Criminal Code Act and embarked on a voyage of discovery for the same definition in the marriage Act which has no application to the subject before the court.
- (f)** The provision of section 14 of the Federal Capital Territory Customary Court Act, 2007, is plain simple and should be interpreted literally.

GROUND 5

The Honourable trial court erred in law and thereby occasioned a miscarriage of justice when the court held at page 7 of the folio of the Ruling as follows:

“In Nigeria, there are basically two types of marriage recognized under the Marriage Act, the statutory marriage, a marriage between a man and a woman to the exclusion of all others and the customary law marriage, which is essentially polygamous in nature. An Islamic law marriage may be categorized under the customary law marriage because it is equally polygamous in nature. Some may argue that is the third type of marriage but that is not the issue before the court right now. The Applicant dwelt so much on the fact a Christian marriage is one between a man and a woman for life and that fact alone excludes this court from exercising jurisdiction on any causes and matter arising from it. Does the fact that a marriage is between only one man and only one woman makes such a marriage a statutory marriage? Let’s try to answer these questions. A Christian marriage as envisaged by the scheduled to the Act is one that has gone through the forms and process of a valid statutory marriage and outlines the procedure. It is when a Christian has complied with the forms and a valid certificate in form E issued at the point of celebration that can be said to be a Christian marriage that excludes the jurisdiction of this court. One other requirement is that the marriage must have been celebrated in a licensed place of worship”

PARTICULARS OF ERRORS

- (a) The customary court of the FCT, does not derive its jurisdiction from the Marriage Act, its Jurisdiction is conferred upon it by Federal Capital Customary Court Act, 2007.
- (b) The Marriage is not superior to the establishment Act of Federal Capital Territory Customary Court Act, 2007.
- (c) Section 14 (2) of the Federal Capital Territory Customary court Act, 2007 provides that a customary court shall have and exercise jurisdiction over causes and matters set out in the schedule to this Act,
- (d) The 1st schedule to the Federal Capital Territory Customary Court Act, 2007 provides the causes and matters as follows: Matrimonial causes and matters between persons married under customary law or arising from or connected with a union contracted under customary law other than those arising from or connected with a Christian marriage or marriage under Islamic law as defined in section 1 of the criminal code Act.
- (e) Christian marriage as defined by the criminal Code Act is as follows: Christian marriage means a marriage which is recognized by the law of the place where it is contracted as the voluntary union for life of one man and one woman to the exclusion of all others.
- (f) It is on record before the trial court that the Appellant and the Respondent celebrated their marriage at church of Christ in nation (COCIN), Rayfield, Jos, which is recognized by the law of the place

as the voluntary union for life between one man and one woman to the exclusion of all others in accordance with the

- (g) The customary court Act specifically used the word Christian marriage and did not use the word statutory marriage or make reference to the marriage Act for the purpose of defining Christian marriage to confer jurisdiction on this court.
- (h) The definition of Christian marriage in accordance with section 1 of the Criminal code Act is a statutory provision binding on the trial court to apply.
- (i) The provision of section 14 (2) of the Federal Capital Territory customary court Act 2007, is plain simple and should be interpreted literally
- (j) The introduction of the provisions of the marriage Act, 2024 and the replacement of the Christian Marriage with statutory Marriage by the trial court is diversionary and totally unrelated to the issue before this court because the provisions of the marriage Act is not a ground of the objection

GROUND 5

The honourable court erred in law and thereby occasioned a miscarriage of justice when the court held at page 7 of the folio of the Ruling as follows;

“In Nigeria, there are basically two types of marriage recognized under the Marriage Act, the statutory marriage, a marriage between a man and a woman to the exclusion of all others and the customary law marriage which is essentially polygamous in nature. An Islamic law marriage may be categorized under a customary law marriage because it is also polygamous in nature, some

may argue that it is the third type of marriage but that is not the issue before the court right now. The Applicant dwelt so much on the fact that a Christian marriage is one between a man and a woman for life and that fact alone excludes this court from exercising jurisdiction on any causes and matter arising . does the fact a marriage was conducted in a church in the instant case, COCIN confer on it the status of a statutory marriage? Let's try and answer these questions, a Christian marriage is envisaged by the scheduled to the Act is one that has gone through the forms and process of a valid statutory marriage. The Marriage Act governs the celebration of statutory marriage and outlines the procedure. It is when a Christian marriage has complied with the forms and a valid certificate in form E issued at the point of celebration that it can be said to be a Christian marriage that excludes the jurisdiction of this court. One other requirement is that the marriage must have been celebrated in a licensed place of worship”

PARTICULARS OF ERROR

- (a) The customary court of the FCT, does not derive its jurisdiction from the marriage Act, its jurisdiction is conferred upon it by Federal Capital Territory customary Court Act, 2007,
- (b) The Marriage Act is not superior to the establishment Act of Federal Capital Territory Customary Court Act, 200S7
- (c) Section 14 (2) of the Federal Capital Territory Court Act, 2007 provides that a customary court shall have and exercise jurisdiction over causes and matters set out in the schedule to this Act.
- (d) The 1st schedule to the Federal Capital Territory Customary Court Act, 2007 provides the causes and matters as follows; matrimonial causes and matters between person married under customary law other than those

arising from or connected with Christian marriage or marriage under Islamic law as defined in section 1 of the criminal code Act.

- (e) Christian marriage as defined by the Criminal code Act is as follows; Christian marriage means a marriage which is recognized by the law of the place where it is contracted as the voluntary union for life of one man and one woman to the exclusion of all others'
- (f) It is on record before the trial court that the Appellant and the Respondent celebrated their marriage at church of Christ in Nation (COCIN), Rayfield, Jos which is recognized by the law of the place as the voluntary union for life between one man and one woman to the exclusion of all others in accordance with the
- (g) The customary court Act specifically used the word Christian marriage and did not use the word statutory Marriage or make reference to the marriage Act for the purpose of defining Christian Marriage to confer jurisdiction on this court.
- (h) The Definition of Christian Marriage in accordance with Section 1 of the Criminal Code Act is a statutory provision binding on the trial Court to apply
- (i) The provision of section 14 (2) of the Federal Capital Territory Customary Court Act, 2007, is plain simple and should be interpreted literally.
- (j) The introduction of the provisions of the Marriage Act, 2024 and the replacement of the word Christian Marriage with Statutory Marriage by the Trial Court is diversionary and totally unrelated to the issue before this court because the provisions of the Marriage Act is not a ground of the objection.

GROUND 6

The Honourable Trial court erred in law and thereby occasioned a miscarriage of justice when the Court held at page 7 of the folio of the Ruling as follows:

"In the instant case, it was established that the marriage was celebrated in COCIN, a place of Worship, but at the time this marriage was contracted was it a licensed place of worship for all intent and purposes of the marriage Act? The marriage certificate that was issued, does it comply with Form E of the Marriage Act? If these questions are answered in the Affirmative, then it means that this Court has no jurisdiction over the Christian marriage between the parties in this suit. However, the marriage certificate presented before this Court does not conform with Form E, neither is there any evidence that the COCIN, Rayfield, Jos, Plateau State was a licensed place of worship when the marriage was celebrated"

PARTICULARS OF ERRORS

- a) Section 14(2) of the Federal Capital Territory Customary Court Act, 2007, provides that a Customary Court shall have and exercise jurisdiction over causes and matters set out in the Schedule to this Act.
- b) The 1st Schedule to the Federal Capital Territory Customary Court Act, 2007, provides the causes and matters as follows: Matrimonial Causes and matters between persons married under customary law or arising from or connected with a union contracted under customary law other than those arising from or connected with a Christian marriage or marriage under Islamic law as defined in Section I of the Criminal Code Act.

c) Christian Marriage as defined by the Criminal Code Act is as follows: Christian Marriage means a marriage which is recognized by the law of the place where it is contracted as the voluntary union for life of one man and one woman to the exclusion of all others.

d) It is on record before the trial court that the Appellant and the Respondent celebrated their Marriage at Church of Christ in Nations (COCIN), Rayfield, Jos, Plateau State, and the law of the place of the celebration of the marriage recognized the marriage as the voluntary union for life between one man and one woman to the exclusion of all others.

e) The Customary Court Act did not refer to the Marriage Act subject its provision to the Marriage Act for the purpose of defining Christian Marriage to confer Jurisdiction on this Court.

f) The provision of Section 14(2) of the Federal Capital Territory Customary Court Act, 2007 is plain simple and should be interpreted literally.

g) The Federal Capital Territory Customary Court Act, 2007 or the Criminal Code Act did not provide that the Marriage Certificate to be issued in respect of a Christian Marriage must comply with FORM E as provided by the Marriage Act.

h) The application of the provisions of the Marriage Act, 2024 by the trial Court is diversionary and totally unrelated to the issue before this Court.

GROUND 7

The Honourable trial court erred in law and thereby occasioned a miscarriage of justice when the Court held at page 8 of the folio of the Ruling as follows:

"This Court cannot infer from the totality of evidence before it that the Christian marriage between the parties is such that would oust the Jurisdiction of this Court on the substantive suit and we cannot hold otherwise. Thus the preliminary objection against the jurisdiction of this Court fails, this Court has jurisdiction to hear the substantive suit between the Petitioner and the Respondent and we so hold"

PARTICULARS OF ERROR

a) Section 14(2) of the Federal Capital Territory Customary Court Act, 2007, provides that a Customary Court shall have and exercise jurisdiction over causes and matters set out in the Schedule to this Act.

b) The 1st Schedule to the Federal Capital Territory Customary Court Act, 2007, provides the causes and matters as follows: Matrimonial Causes and matters between persons married under customary law or arising from or connected with a union contracted under customary law other than those arising from or connected with a Christian marriage or marriage under Islamic law as defined in Section I of the Criminal Code Act.

c) Christian Marriage as defined by the Criminal Code Act is as follows: Christian Marriage means a marriage which is recognized by the law of the place where it is contracted as the voluntary union for life of one man and one woman to the exclusion of all others.

d) The Customary Court Act did not refer to the Marriage Act or subject its provisions to the Marriage Act for the purpose of defining Christian Marriage to confer Jurisdiction on this Court.

e) The provision of Section 14(2) of the Federal Capital Territory Customary

Court Act, 2007, is plain simple and should be interpreted literally.

f) The provisions of the Marriage Act, 2024 is diversionary and totally unrelated to the issue before this Court.

GROUND 8

The Honourable Trial Court erred in law when it refused to make a specific resolution on the effect of the definition of Christian Marriage as defined by Section I of the Criminal Code Act set out in the 1st Schedule to the Federal Capital Territory Customary Court Act, 2007 and thereby occasioned a miscarriage of justice.

PARTICULARS OF ERRORS

a) The trial court in its Ruling reproduced the arguments of the Appellant and the Respondents on this point but refused to make a specific resolution on the effect of the definition of Christian Marriage as defined by Section I of the Criminal Code Act to confer jurisdiction of the Court

b) The position of law raised by the Appellant on the definition of the Christian Marriage as defined by Section I of the Criminal Code Act as set out in the 1st Schedule to the Federal Capital Territory Customary Court Act, 2007, goes to the root of the jurisdiction of this Court.

c) The Jurisdiction of this Court is categorized into two namely: Jurisdiction over persons on the one hand and jurisdiction over subject matter on the other hand.

- d) It is on record that the Appellant celebrated Christian marriage as defined by Section I of the Criminal Code Act, set out in the 1st Schedule to the Customary Court Act.
- e) The Customary Court Act did not rely on or subject its provisions to the Marriage Act for the purpose of defining Christian Marriage in order to confer Jurisdiction on this Court.
- f) The provision of Section 14(2) of the Federal Capital Territory Customary Court Act, 2007, is plain simple and should be interpreted literally.
- g) The court never resolved the issue of the definition of Christian Marriage by Section I of the Criminal Code Act before it proceeded to deliver its ruling and held that it has jurisdiction to entertain the substantive suit.
- h) The court has a duty to resolve all issues raised before it one way or the other.
- i) Only the Apex Court has the discretion to leave issues raised by counsel unresolved if it does not consider the resolution germane to the life issues before it.

4. RELIEFS SOUGHT AT THE CUSTOMARY COURT OF APPEAL

- a. AN ORDER of the Court allowing the appeal.
- b. AN ORDER of this Honourable Court setting aside the Ruling of the trial Court, sitting at Jikwoyi, Abuja-FCT delivered on 4th June, 2025.
- c. AN ORDER of this Honourable Court invoking the inherent jurisdiction of this Court to hear and determine the matter on its merit based on the records

before the Court pursuant to Section 49(1) of the Federal Capital Territory Customary Court Act, 2007.

d. And for such further orders as this Court may deem fit to make in the circumstances.

The Appellant counsel filed the Appellant brief of argument on the 22nd day of July 2025 and also filed a reply brief on the 25th day of August 2025 in reply to the Respondent's brief of argument which was filed on the 12th day of August 2025. On the 2nd day of December 2025, both counsels adopted their brief of Argument.

The Appellant in his brief of argument formulated two issues for determination. The said issues are as follows;

1. Whether by virtue of section 14 (1) of the Federal Capital Territory Customary Court of Appeal Act, 2007, the Trial court has jurisdiction over the Appellant, who works and resides in Kaduna, Kaduna State, A place outside the territorial limit of the Federal Capital Territory, Abuja.
2. Whether by virtue of the schedule to section 14 (2) of the Federal Capital Territory Customary Court Act, 2007, the trial Court has jurisdiction over Christian marriage as defined by section 1 of the Criminal Code Act.

The Respondent on the other end raised two issues for determination stated as follow;

1. Whether this Appeal, Appeal No. FCT/CCA/CVA/14/2025: Mr Dyikat Kelvin Piwuna V Mrs Teyang Istifanus Zabadi-

Piwuna is competent as constituted and brought before this Honourable court?

2. Whether, assuming without conceding that this appeal is competent, the appeal has any merit for it not to be dismissed by the Honourable court?

Both parties have canvassed arguments in support of their issues raised. Learned counsel to the Appellant, Emmanuel O Abang ESQ on issue 1, whether by virtue of S.14 (1) of the Federal Capital Territory Act, 2007, the trial court has jurisdiction over the Appellant who works and reside in Kaduna, Kaduna state, a place outside the territorial limit of Federal Capital Territory Abuja, argued in the main, that paragraph 2 of the amended particulars of the petition clearly averred that the Respondent work with Tertiary Education Trust fund (TETFUND), Kaduna office. Learned counsel further referred this court to the fact that the Appellant was served with the Petition by substituted means at no. 23, Usman Jibrin Narayi High Cost Kaduna, Kaduna State. Learned counsel referred to paragraph 6 of the affidavit in support of the preliminary objection where all the facts are averred which has not been controverted by the respondent in his paragraph 10 of the counter affidavit. Learned counsel referred this court to pages 168, 170, 189 and 192 of the trial court's records.

Learned counsel further argued that the trial court found as fact that the Appellant lives and work in Kaduna and referred this court to pages 5 of the Ruling of the trial court delivered on 4th June, 2025 at page 213 of the Trial court's record. Learned counsel cited s.14 (1) Federal Capital Territory, Act, 2007 which provides that a customary court shall have and exercise jurisdiction over all person within the territorial limits of the FCT who submits

to Jurisdiction of the court. Learned counsel argued that the provision of the Act provides for two condition precedence for a customary court to assume jurisdiction over any person thus;

- (i) the person must be resident and within the territorial limits of FCT, Abuja; and
- (ii) the person submits to the jurisdiction of the court.

Counsel referred this court to the case of MADUKOLU VS NKEMDILIM (1962) 2 NSCC 374 at 375. On the need to meet condition precedence before a court can assume jurisdiction. Learned counsel further referred this court to the case of CALABAR COOPERATIVE LTD & ORS VS EKPO (2008) 1-2SC 229, all to the effect that unambiguous statutory provision must be interpreted literally and given their plain, ordinary and natural meaning. Learned counsel argued further that the lower court failed to resolve whether the first condition has been fulfilled and erroneously concentrated on the submission to the jurisdiction of the court which is not what is envisaged in the enabling law Section 14 (1) which clearly requires that for the court to assume jurisdiction parties must be within the territorial limits of the court. Counsel referred this court to the case of BRAWAL SHIPPING LTD VS ONWADIKE CO LTD (2000) 6 SCNJ 508 at 512 to the effect that a court must as a general rule, pronounce on all issues duly placed before it for determination otherwise a miscarriage of justice and breach of right to fair hearing. Learned counsel finally urged this court to resolve issue 1 in favour of the Appellant.

On issue 2, whether by virtue of the schedule to S.14 (2) of FCT Customary court Act, 2007, the trial has jurisdiction over Christian marriages as defined by section 1, Criminal Code Act, learned counsel to the Appellant referred this

court to Section 14(2) of the FCT Customary Court Act, 2007 which provides as follows;

“A customary court shall have and exercise jurisdiction over causes and matters set out in the schedule to this Act”

Learned counsel set out item 1 of the schedule which provides as follows;

“Matrimonial causes and matters between persons married under customary law or arising from or connected with a union contracted under customary law other than those arising from or connected with Christian or marriage under Islamic law s define in section 1 of criminal code Act”

Counsel argued that it is on record that the marriage between the parties was contracted on 16/4/2016 at COCIN, Rayfield, Jos plateau state. The Appellant referred to paragraph 3, 4, and 5 of the affidavit in support of the preliminary objection, the Appellant also annexed Exhibit “A” (COCIN bylaws) and exhibit “B” (COCIN Hand Book) which recognize the Marriage between the parties as union for life of one man and one woman in accordance with the definition in the Criminal Code Act.

Counsel argued further that the trial court was in error when it used the Christian marriage and the Marriage under the Act inter-changeably and laboured under the impression that the Christian marriage must be like the statutory marriage in FORM E in the marriage Act. Counsel cited page 7 of the Ruling of trial on page 215 of the record of proceeding.

Learned counsel to the Appellant further submitted that the customary courts of the FCT do not derive their jurisdiction from the Marriage Act and that the

trial court was therefore in error to abandon the clear provisions of the customary court Act, 2007 and relied on the provision of the marriage Act to arrive at its decision. Learned counsel submitted further that the provision of the customary court Act are plain and unambiguous and should be interpreted literally. Learned counsel submitted further that the provision of the customary court Act are plain and unambiguous and should be interpreted literally. Learned counsel cited the case of CALABAR COOPERATIVE LTD & 2ORS VS EKPO (2008) 1- 2 SC 229 and submitted that the trial court was in error when it failed to make specific resolution on the effect of the definition of Christian marriage recognized by S.14 (2) of the customary court Act. Counsel urged this court to resolve this issue in favour of the Appellant, allow the appeal entirely in favour of the Appellant.

The Respondent counsel in contra, on the two issues submitted for the consideration of this court by the Respondent's Counsel, whether this Appeal is competent as constituted and brought before this Honourable court, learned counsel argued that the appeal is grossly and irredeemably incompetent because the Appellant never sought leave to appeal because the appeal is based on grounds of appeal of mixed law and facts and it is also an interlocutory appeal. The Respondent counsel referred this court to the cases of EKEMEZIE VS IFEANACHO & ORS (2019) LPELR, 46518 (SC), ENG. C PETERSON & ORS VS MRS ALICE TEENA IDUFUEKO (2024) LPELR 6246 1 CA .The respondent further cited the case of GILBERT VS OPIA & ORS (2002) LPELR 56913 CA to the effect that leave of court which is required is a condition precedent to the exercise of Right of Appeal. The Respondent argued further that there is nowhere in the record of this Appeal that the Appellant sought for and obtained leave to appeal and therefore the appeal has been

initiated without fulfillment of condition precedent. Counsel referred this court to the cases of MUSA VS SIKON SYNERGIES LTD & ORS (2016) LPELR 41150 CA; A.G LAGOS STATE VS AG FEDERATION & OR (2014) LPELR 2270 all to the effect that courts lack jurisdiction to entertain incompetent claims. The Respondent's counsel further cited the cases ALAGBENRO & ORS VS OLAYEWOLA & ORS (2014) LPELR 22597 CS, ILORIN SOUTH LOCAL GOVT. VS SAMAD PAPER CONVERTING CO. LTD 2008 51 WRN 132, 149 and ARIBISA VS AMCON (2025) LPELR 80536 SC all to the effect that an incompetent originating process breeds an incompetent action and therefore null and void and of no legal effect. Learned Counsel therefore urge this court to strike out this appeal.

Again, on this issue the Respondent argued that it is trite law that a party who has voluntarily submitted to the jurisdiction of a court cannot later withdraw that submission half way through the proceedings after taking steps like filing processes. Learned counsel relied on the case of AKEGBEJO VS TAGA (1998) 1 NWLR (PART 543) 459. Learned counsel referred to the fact the appellant took part in the proceeding until when he was called upon his defense. Learned Counsel to the Respondent urge this court to dismiss the Appeal.

On the second issue whether this appeal has merits, learned counsel to the Respondent argue that all the submission made in the Appellant's brief are wild and inapplicable to the facts of this Appeal. Learned counsel to the Respondent argued that the Appellant obviously does not appreciate the application of section 14 (1) of the Customary court Act, 2007. ;learned counsel referred this court to the dictum of Tsammani JCA, as he then was, in the case of LEMIT ENGINEERING LTD VS RCC LTD (2017) LPELR

42550 CA to the effect that territorial jurisdiction may mean (a) Jurisdiction over cases arising in or involving persons residing within a define territory or (b) Territory over which a court or sub division has jurisdiction. Learned counsel further referred to the cases of AGABA VS FRN (2021) 55667 CA on the meaning and definition of Territorial Jurisdiction.

Learned counsel to the Respondent referred this court to the particulars of the petition wherein the address for service is Borno court, Block B, middle Floor, Gaduwa Estate FCT, Abuja and argued that there was no any prove that the Respondent resides in Kaduna.

Learned counsel to the Respondent further argued that assuming without conceding that the Respondent resides in Kaduna and outside the jurisdiction of the trial court, that fact would not rob the court with jurisdiction to hear the substantive matter. The learned counsel cited AGABA VS FRN (supra) if it is shown that the matter arose within Jurisdiction. Learned counsel referred this court to paragraph 7 of the cross petitioners witness statement on oath where the Appellant positively deposed to an address within jurisdiction of the trial court in which he and the Respondent lived. Accordingly learned counsel, the claim that the Appellant work and resides in Kaduna is designed to defeat the trial Court's jurisdiction to hear the matter. Counsel urged this court to dismiss the Appeal.

On the Appellant's contention that the marriage contracted by the Respondent and the Appellant is a Christian marriage, learned counsel submitted that this is the substantive issue in the petition and cross petition which this trial court is not allowed in law to try at interlocutory stage, Counsel referred this court to

the case of AMCON VS ASTONE QUARRIES TD & ORS (202 1) LPELR 54146.

Learned counsel argued further that if the trial court or this court will take it at this stage, we submit that the Appellant did not place any evidence before the trial court or before this court that the marriage was a Christian marriage.

Learned counsel to the Respondent referred this court to paragraph 6 and 7 of the affidavit in opposition to the preliminary objection to the effect the marriage between the parties was a church blessing and therefore still remains a traditional marriage, which fact the Appellant did not deny in his further and better affidavit. Counsel referred this court to the cases of STATE VS COMMISSIONER OF BOUNDARIES (1996) 37 LRCN 603 and AJIMOLE VS YADUAT (NO2) (1991) LRCN 950 all to the effect that uncontroverted facts should be taken by the court as established. Learned counsel to Respondent further argued that the Exhibit P1, (Statutory Declaration of marriage) annexed to the preliminary objection is not capable of proving a Christian marriage.

Learned counsel to the Respondent finally referred this court to the case of AGBAKOBA VS A.G FEDERATION & ANOR. (2010) 18 NWLR (PART 1224) 1 SC at 86 – 87 to the effect that Christian marriage like Islamic Marriage is grouped under customary law and urged this court to uphold the decision of the trial.

In response to the Respondent's Brief, the Appellant's counsel in his Reply Brief argued that the Respondent's contention that the appellant was suppose to seek leave before filing this appeal is a misconception of section 48 (1) (2) and (3) of the customary court Act, 2007 order 21 of the Federal Capital

Customary Court (civil procedure) Rules, 2023, as amended and order 8 of the FCT, Abuja, Customary Court of Appeal Rules, as amended 2023. Learned counsel argued that the only situation in the Customary Court of Appeal where leave is required is when a party is out of time to appeal and not when the grounds of appeal are mixed law and facts. Learned counsel to the Appellant argued that the respondent did not cite any authority to this effect. At any rate, the Appellant counsel argued further that all the grounds of Appeal in this appeal are on law alone. Counsel further argued that the cases relied on by the Respondent are only relevant to Appeals initiated at High Court and Federal High Court based on provisions of sections 241, 242 and 243 of the 1999 constitution of FRN which are irrelevant to this Appeal.

Learned counsel to the Appellant further contended that the Respondent challenge to the Jurisdiction of the Trial court without a cross Appeal or a Respondent Notice is not sustainable and cited OGUMA VS I. B. W. A (1988) NWLR (PART 73) 658 and Order 9 Rules 11 & 20 of the FCT Customary Court Appeal Rules, 2023

Learned Counsel to the Appellant argued further that the case of AGBAKOBA VS A.G FEDERATION & ANOR (supra) is not applicable in situation where the statute establishing the trial's court jurisdiction define what constitutes a Christian marriage from its jurisdiction. Section 14 (2) of the FCT Customary Court Act 2007 excludes specifically Christian marriage from the jurisdiction of customary courts of the FCT. Counsel finally urged this court to allow the Appeal.

I have gone through all the issues raised by both counsel, I wish to preliminary state straight away that it is elementary law of brief writing that issues arising

for the consideration on appeal are raised primarily by the Appellant's Brief. See order 6 Rule 2. The primary responsibility of the Respondent on Appeal is to answer all material points of substance contained in the Appellant Brief (order 6 rule 3 (2)). Where a Respondent wishes to raise issues different from the issues raised by Appellant he must do so drawn from the grounds files by the Appellant, except where he has filed a cross appeal or Respondent's Notice.

I also find that the Respondent did not file a respondent Notice and a ground of Appeal that the judgment or decision of the trial court be affirmed on a ground that that the Appellant had submitted to the jurisdiction of the trial court by filing answer to the petition and cross petition, The result is that argument on submission of the Appellant to the trial court is hereby discountenanced.

Again a Respondent who wishes to rely on objection on the hearing of Appeal must file a notice giving the Appellant seven (7) clear days after service thereof before the hearing, setting out the grounds of objection. See order 8 Rule 17 (1) Customary Court of Appeal Rules 2023.

Issue 1, raised by the Respondent is a specie of objection. The Respondent has not comply with order 8 Rule 17 (1). Apart from the fact that Order 8 Rule (1) is not complied with, I find no any law requiring the Appellant to seek leave of this court before an appeal of this nature can be filed. Consequently, I find issue 1 formulated by the Respondent for the consideration of this court incompetent. The requirement for an Appellant to seek leave to appeal on grounds of mixed law and facts is not applicable in appeals in Customary

Court of Appeal. Issue 1, formulated by the Respondent to contest this Appeal is accordingly hereby struck out

I shall proceed to consider this Appeal on issues 1 and 2 of the Appellant's Brief and issue 2 of the Respondent Brief. Issues 1 and 2 are centered on the import of section 14 (1) and (2) of the Customary Court Act, 2007. This deals with both procedural and substantive jurisdiction of the trial court. Procedural Jurisdiction refers to a court authority to hear a case based on the Rules of procedure, like where a case is filed and substantive jurisdiction is about the court's power to hear a case based on the subject matter. In either case, where a court lacks jurisdiction for want of procedure or want of subject matter, will nullify proceeding however well conducted. See *OSADEBAY VS A.G BENDEL STATE* (1991) 1 NWLR (PART 169) 525. The issue of jurisdiction can be raised at any stage of a case by either party or by the court suo moto. See *BRONIK MOTORS VS WEMA BANK LIMITED* (1983) 1 SCNLR 296.

In law, procedural jurisdiction can be waived in certain circumstance. For example, when parties agree to submit to the jurisdiction of a court which has subject matter jurisdiction, they can waive procedural requirement. Again, failure to raise objection to procedural jurisdiction at the appropriate time can lead to waiver. A court may allow waiver if it serves the interest of justice and does not prejudice the other party. On the contrary, substantive jurisdiction cannot be waived or conferred by parties because, they cannot vest jurisdiction on the court where none exist. SEE *MOBIL PRODUCTION LTD VS MONOKPO* (2004). The terms of the Customary Court Act set out above are very clear and unambiguous. Section 14 (1) provides as follows:

“A Customary Court shall have and exercise jurisdiction over all persons within the territorial limits of the Federal Capital Territory, Abuja, who submit to the jurisdiction of the court”

My understanding of S.14 (1) of the Customary Court Act, 2007 is that the Customary Court of the FCT, Abuja shall have and exercise jurisdiction over all persons within the Territorial limit of FCT, Abuja. This section should not be read in isolation of other sections of the Act. The Act applies to all persons within the FCT, Abuja and this is the clear intention of the legislature. The rider to section which appears to make any person sued at the customary court of the FCT Abuja have a voluntary choice to submit cannot and should not be interpreted as such. Section 14 (1) read along with subsection 14 (2) and sections 17 and 18 of the Act would bring out the real intention of the legislators. Any party who is bound under customary law on causes and matter set out in the 1st schedule to the Act cannot be taken to have a choice of submission, that is not to say that any party irregularly brought to court or not bound by customary law cannot raise such irregularity, that brings us to the thrust of this appeal.

The Appellant on issue one, whether by virtue of S.14 (1) of the Federal Capital Territory Customary Court Act, 2007 the trial court has jurisdiction over the Appellant who works and resides in Kaduna, Kaduna State, outside the territorial limits of the FCT, Abuja, which is the Appellant's complaint in grounds 1, 2, and 3 of the grounds of Appeal. The parties positions on this, already set out in this judgment, in the argument canvassed are straight forward. The Appellant's contention in the main is that he resides and works in Kaduna and therefore not within the territorial limits of FCT, Abuja Customary Courts, particularly, the Customary Court, Jikwoyi, FCT Abuja.

The Appellant further contends that the Appellant must submit to the jurisdiction of the trial court before the court can assume jurisdiction over him. On the part of the Respondent, he contended that the Appellant has waived his right to object to procedural jurisdiction in this matter having submitted to the jurisdiction of the trial court and that the Appellant failed to prove that he was resident outside jurisdiction.

The trial Court in resolving whether the Appellant resides and works in Kaduna, found as a fact that the Appellant lives and resides in Kaduna, Kaduna State. The Respondent in fact applied and the Appellant was served with the petition at Kaduna, (see page 5 of the trial court's Ruling on page 213 of the record of Appeal). This finding by the trial court has not been appealed by the Respondent, it is therefore an established fact that the Appellant lives and works in Kaduna as found by the trial court. the Respondent has not appeal on this findings, it is deemed admitted

In resolving, whether the Appellant has a choice to submit to the jurisdiction of the trial court, the Trial court held that, the only way a party sued can choose not to submit to the jurisdiction is only when the court assumes jurisdiction in excess of powers by the enabling law establishing it. I find no error in the position taken by the trial court. I however find an error where the trial court found as a fact that the Appellant resides and works outside jurisdiction but failed to resolve the effect it has on its jurisdiction. SEE ZACCHEUS ABIODU KOYAVS UBA LTD. (1977) 1NWLR (PART 481) 251

The trial court has a duty to pronounce and resolve all issues tried before it, SEE IFEANYI VS SOLEH BONEH NIG. LTD (2000) 1 SCNQR 469 RATIO 11 In view of the fact that this Application was fought on the basis of

affidavit evidence, this court is on equal footing to evaluate the evidence placed before the trial court as found on the record. From the record of the trial court the petitioner is working with Educational Resource Centre, Wuse Zone 7 Abuja under FCTA, The Respondent married at Mayo Belwa L.G.A. Adamawa state. After the traditional marriage, on the 16/4/2016 the parties wedded at COCIN, Rayfield LCC, Jos Plateau State. Both parties lived at Grace Community, News Engineering, Dawaki, Abuja, FCT. The parties are separated and the Appellant now lives and works in Kaduna. The only child of the marriage lives with the Petitioner, House No A06 Road, Basic Estate Lokogoma, Abuja.

All these clearly goes to show that the Appellant is no longer in FCT, Abuja and the marriage was never contracted in Abuja. The result is that the trial court was in error to assume jurisdiction on a party who is not in territorial limit of the FCT, Abuja contrary to S.14 (1) and I so Hold.

On the second issue, whether by virtue of the schedule to section 14 (2) of the Federal Capital Territory Customary Court Act, 2007, the trial court has jurisdiction over Christian marriage as defined by section 1 of the criminal code Act, which issue 1 is drawn from grounds 4, 5, 6, and 7 of the grounds of Appeal, it is important to set out the provision of S.14 (2) and item 1 to the 1st schedule to the Act in its full terms as follows;

“ S.14 (2)

“ A customary Court shall have and exercise jurisdiction over causes and matters set out in the schedule to this Act”

Item 1 of the Schedule is in the following terms;

“Matrimonial causes and matters between persons married under customary law or arising from or connected with a union contracted under customary law other than those arising from connected with a Christian marriage or marriage under Islamic law as defined in section 1 of the Criminal Code act”

Christian marriage is defined by the Criminal Code Act as follows;

“Christian marriage means a marriage which is recognized by the law of the place where it is contracted as the voluntary union for life of one man and one woman to the exclusion of all other”

My understanding of section 14(2) and item 1 in the schedule to the Act and section 1 of the Criminal Code Act is that a Christian marriage is a union of one man and one woman to the exclusion of all others. I find nowhere in this provision that a Christian must comply with the requirement of a marriage under the Act. Item 1, to the schedule to the Act does not require a Christian marriage to be contracted in a license church to qualify as a Christian marriage. The trial court found and agreed with the parties that the marriage between the parties was contracted in COCIN church at local church council Rayfield, Jos, Plateau state. Section 14 (2) item 1 of the schedule to the Act excludes the customary courts of Federal Capital Territory, Abuja from hearing matrimonial causes and matters arising from or connected with a Christian marriage and no more. The requirement of Christian marriage being in a license church is when inquiring into whether such marriage qualifies as a marriage under the marriage Act. For the purpose of application FCT, Customary Court Act, 2007 marriages are 3; Marriage under the Act, Christian marriage and Islamic law marriages. The Act having expressly excludes church

marriage, the trial customary court, Jikwoyi, FCT, Abuja was clearly in error to assume jurisdiction in this matter. And I so hold.

On the whole, the appeal succeeds on all grounds, except grounds 8 which has been abandoned because no issue has been framed on it. The trial court was in error not to decline jurisdiction over Petition and Cross – Petition filed by the parties on the ground that the Respondent/Cross – Petitioner/ Appellant is not within the territorial limit of the FCT, Abuja and that the subject matter of Christian Marriage is not within the jurisdiction of the trial court contrary to section 14 (1) and (2) of the FCT Customary Court Act 2007. Accordingly the Ruling of the trial court dated the 4th day of June, 2025 is hereby set aside and the matter

SUIT NO. FCT/CC/JIK/CV/033/2024 MRS TEYANG ISTIFANUS ZABADI PIWUNA VS DYIKAT KELVIN PIWUNA is hereby struck out.

SGD 25/2/2026

HON. JUSTICE ISTIFANUS GANDU

JCCA

APPEARANCES

Sekop Zuma Esq- - APPELLANT COUNSEL

Emmanuel O Abang Esq – RESPONDENT COUNSEL

I have had the opportunity to read the draft of the judgment just delivered by my learned brother Gandu JCCA. I fully agree with his lordship's position and the conclusion reached. The provision of Section 14 (1) is very clear and should not be subjected to any other interpretation. It is evident from the facts

contained in the record of appeal that the Appellant is no longer in the Federal Capital Territory, Abuja. I also resolve issue one in favour of the Appellant. The trial court erred in assuming jurisdiction over the Appellant, who is not within Abuja.

On the second issue, considering the definition of Marriage as outlined under Section 14 (2) and item 1 of the Schedule to the Act, which further references Section 1 of the Criminal Code Act, once parties enter into a Christian marriage, a common denominator emerges – that they intend the marriage to be between one man and one woman to the exclusion of all others. This is where the boundary is clearly established, designating the marriage as a Christian marriage and effectively removing the jurisdiction of the FCT - Customary Courts. The lower court, even after recognising this denominator, wrongly assumed jurisdiction in this matter. I also resolved issue 2 in favour of the Appellant. This Appeal succeeds. The ruling of the FCT – Customary Court Jikwoyi t dated 4th Day of June, 2025, is hereby set aside.

SGD 25/2/2026

HON. JUSTICE YUNUSA IDRIS KUTIGI

JCCA

I have the privilege and the opportunity in reading in advance the judgment just delivered by my Lord HON. JUSTICE ISTIFANUS GANDU (JCCA) thoroughly and i entirely agree with the finding and the conclusion reached. The facts and issues have extensively been dealt with in the lead judgment.

The provision of Section 14(2), as relied upon by the counsel to the Appellant, is very instructive. The definition of what constitutes Christian marriage is

further defined under **Section 1 of the interpretation section of the Criminal Code Act, 2004**. It is clear to me that the definition of what a Christian marriage is simply marriage between one man and one woman to the exclusion of all others. If the Appellant and the Respondent, as seen through the records, contracted marriage under the native law and custom and further went ahead to conduct another marriage in church, even without the form E, which qualifies the marriage as one under the Act, it means it is the intention of the parties that it should be a marriage of one man and one woman with the exclusion of all others. There is no mention of marriage under the Act in **section 14 (2)** and the schedule thereto and also in section 1 of the interpretation section of the Criminal Code Act.

The Literal interpretation of these laws i have referred to must be adopted. We cannot read any other meaning to it lest it leads to a miscarriage of justice. The plain and literal interpretation of a statute will apply where the words of a statute are plain, clear and unambiguous. See **Abegunde v Ondo State House of Assembly & ors (2015) LPELR**.

However, in respect of this case at hand, i therefore concur with the lead judgment, delivered by **My Lord** and adopt the same as mine that on the whole, the Appeal succeeds on all grounds, the trial court was in error not to decline jurisdiction over petition and cross – petition filed by the parties on the ground that the Respondent/Cross – petition/Appellant is not within the territorial limit of the FCT, Abuja and that the subject matter of Christian Marriage is not within the jurisdiction of the trial court contrary to section 14 (1) and (2) of the FCT Customary Court Act 2007. Accordingly the Ruling of the trial court dated the 4th day of J

June, 2025 is hereby set aside and the matter with Suit No:
FCT/CC/JIK/0033/2024 is hereby struck out.

SGD 25/2/2026

HON. JUSTICE MOHAMMED BOYI MARAFA

JCCA

