

**APPLICATION OF THE LAW OF MAINTENANCE UNDER SECTION 70
OF THE MATRIMONIAL CAUSES ACT, CAP M7, LFN 2004***

Abstract

Under section 70 of the Matrimonial Causes Act, the Courts have powers to make order for the maintenance of the parties to a marriage, including the children of the marriage. This paper examines the application of section 70 of the Matrimonial Causes Act, 2004 on issues relating to the maintenance of a spouse and children of a marriage. The paper states that, the provision of the said section, places the husband and the wife on the same pedestal in terms of the right to seek for maintenance. But that the spirit of the common law continues to influence our courts as if the maintenance position under the common law is still applicable in Nigeria. The researcher adopted the doctrinal research method. The paper concludes that, the applicable law on maintenance in Nigeria is section 70 of the Matrimonial Causes Act. Therefore, it is right for our courts to apply the current law on maintenance in Nigeria.

Keywords: Maintenance, Powers, Court, Order, Marriage, Spouse, Children.

1. Introduction

The provision that deals with financial reliefs, which has to do with maintenance of spouses and children are contained in part iv of the Matrimonial Causes Act. Section 70 of the Matrimonial Causes Act makes provision for the wide discretionary powers given to the court. Section 70(1) states that:

Subject to this section the court may in proceedings with respect to the maintenance of a party to a marriage or of children of the marriage, other than proceedings for an order for maintenance pending the disposal of proceedings, make such order as it thinks proper having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

While section 70(2) contains the same provisions in relation to proceeding for an order of maintenance depending on the disposal of proceedings for principal relief, for example dissolution of marriage, nullity of marriage or judicial separation. Both subsections provide for different types of maintenance. Subsection (1) makes provision for maintenance where there is no other proceedings or when proceedings had been completed. While subsection (2) makes provision for maintenance while other proceedings are pending. Under section 70 of the Matrimonial Causes Act, there is no distinction between the husband and the wife with regards to who will maintain the other. This is quite different from the common law position, where it was the husband's common law duty to maintain his wife and children. Therefore, a husband can successfully claim maintenance from his wife under Nigerian law. Thus, it can be stated that, the law appears to have assimilated the positions of the husband and that of the wife. However, it will be a shame for a man or a husband to bring an action for maintenance against his wife in Nigeria. This is because, men are rated superior to women and it will be shameful for a man to ask for maintenance from his wife. Moreover, the common law position, that the husband must be the person to whom the wife should rely on for maintenance for herself and the children influences the thinking of some of our Judges. One of such instance is the case of *Oni v. Oni*,¹ where Johnson J. referred to the duty of the husband at common law to maintain his wife, as if such law was still applicable in Nigeria. The judge in this case, did not refer to the provisions of Part IV of the Matrimonial Causes Act. It must be noted however with due respect that, most of the judges who assume that the husband is duty bound to maintain his wife in this current dispensation, may not have studied family law during their undergraduate days and may not have had the opportunity of knowing the current position of the law. Such judges, are usually concerned with the factors to be considered in determining whether maintenance should be awarded or not and if it is to be awarded, how such amount to be awarded would be assessed. In some cases, the judges forget the fact that the distinction between husbands and wives with respect to maintenance, no longer exist under Nigerian law. Thus, the Court of Appeal in the case of *Erhahon v. Erhahon*,² stated that:

A man has a common law duty to maintain his wife and such a wife then has a right to be maintained. The right of a wife to maintenance against her husband is not contractual in nature. The husband is obliged to maintain his wife and may by law be compelled to find her necessaries as meat, drink, clothes, etc., suitable to her husband's estate or circumstances.

Thus, husband and wife are entitled to maintenance under the Matrimonial Causes Act³, although husband in Nigeria have not started taking advantage of the provisions, may be because of pride on the part of men. But with

* **By B. O. ALLOH, PhD**, Acting Head, Department of Jurisprudence and International Law, Faculty of Law, Delta State University Oleh Campus, Oleh, Delta State, Nigeria.

¹ High Court of Western State, per Johnson J., Suit No. M/52/70 delivered on 27/1/71

² (1997) 6 NWLR (Pt. 510) 667 at P. 713

³ Section 70(1) of the Matrimonial Causes Act, Cap M7, Laws of the Federal of Nigeria 2004.

time, husband will take advantage of the said provisions and file for maintenance from their wives based on the fact that many wives are today more financial empowered than their husbands. Thus, it was stated in the case of *Mueller v. Mueller*,⁴ that:

husband and wife, given the changes sweeping across our society today, in so far as the rights and duties to make financial provisions are concerned albeit in theory, are gradually moving towards equal footing base. Many wives are today more financially empowered than their husbands and so the Courts are fast moving away from the old rule whereby virtually ordered financial provisions in favour of the wife. Law, to be useful must always reflect the norms and developmental stages reached in a society where it will apply, while I will say that it seems useful purpose to apply, in full force, the pronouncements of Courts of other jurisdiction, in particular decisions of Courts of very advanced country in deciding cases of similar nation in developing countries; we must allow such decisions to provide only a guide without prejudice to keeping in mind the stage of our own development...it seems to me that given the state of civilization we have reached in the country today and bearing in mind the emancipation of the women folks into the sold orbit of financial empire in this country today, it seems to be that the sum, if any to be awarded for the maintenance of a party to a matrimonial proceeding or even child or children of the marriage should be determined by among facts:

- (a) The stations in life of the parties and their life styles
- (b) Their respective means
- (c) The existence or non-existence of child or children of the marriage
- (d) The conduct of the parties.

Flowing from the above, it is clear that the common law concept of maintenance is obsolete and inapplicable in Nigeria today. Although, the common law concept still appears to influence the thinking of our Courts. Therefore, this paper examines the factors to be taken into consideration by the Courts before making an order of maintenance and the application of the law of maintenance in Nigeria.

2. Factors Taken into Consideration before Making an Order of Maintenance

The Matrimonial Causes Act did not define the factors to be taken into consideration before an award of maintenance can be made by the Court. However, these factors have been described by the courts in some relevant cases.⁵ In the case of *Nanna v. Nanna*,⁶ the Court stated that, in assessing maintenance to which parties and children are entitled, the Court will have regard to what is fair and equitable based on the evidence adduced by the parties at the trial. Also, to be considered is the economic trends and the standard of life which the parties to the marriage previously maintained before the proceeding in which the order of maintenance is sought. Moreover, the Court of Appeal in the case of *Nakanda v. Nakanda*,⁷ laid down a comprehensive guideline regarding what the Court should or should not take not consideration when making an order for financial relief and any other type of maintenance order. Thus, it was stated by Court that a Judge is bound by the provision of Section 70 of the Matrimonial Causes Act to the following into consideration before making an order of maintenance:

- i. The means of the parties;
- ii. Earning capacity of the parties;
- iii. The conduct of the parties; and
- iv. All other relevant circumstances.

The Means of the Parties

Means has been said to be that, through which or by the help of which, an end is attained.⁸ In the case of maintenance, may therefore be defined as that, through which the wealth of parties to a marriage is attained. Means has also been defined by Black's Law dictionary,⁹ as available resources especially for payment of debt, income, or something that helps to attain an end etc. In the case of *Rogers v. Rogers*,¹⁰ the Supreme Court of New South Wales defined means to be the respective capital assets of the parties including content and prospective assets. Therefore, it is important for a petitioner to show, in his or her petition for an award of maintenance, the means

⁴ (2006) 6 NWLR (Pt. 977) 627 at 645-646.

⁵ *Mueller v. Mueller* (2006) 6 NWLR (Pt. 977) 627 at 645-646; *Nanna v. Nanna* (2006) 3 NWLR (Pt. 966) at 41; Esua (per George, J.) Unreported Suit No M/63/70 of 3rd July, 1970.

⁶ (2002) 3 NWLR (Pt. 966) 1 at 41.

⁷ Unreported Suit No. CA/1/99/81.

⁸ Henry Campbell Black, M.A. (Ed). *Black's Law Dictionary*, (West Publishing Co., 6th Edition, 1991) p. 980.

⁹ Bryan A. Garner (ed), *Black's Law Dictionary*, 9th Edition (West A. Thompson Reuters Business Dallrs USA, 2009). p. 584.

¹⁰ (1962) 3 FLR 398.

of the other party. This is to enable the Court to have a proper consideration such means, in order to make an appropriate award as maintenance.

Earning Capacity of the Parties

According to the Black's Law Dictionary,¹¹ earning capacity of husband and wife for purpose of determining amount of support which he or she may be required to pay spouse, is not that amount which an individual could theoretically earn but is amount which individual could realistically earn under circumstances, including health, age, mental and physical condition and training.¹² In the case of *Roger v. Rogers*,¹³ the Court was of the view that, the earning capacity of a party may be subject to fluctuations and the Court must be sensitive to this in assessing proper maintenance. Generally, most people in business has fluctuating earning capacity depending on the situation of the business at a particular time. Today there is downturn of business as a result of the Coronavirus Pandemic which has cause conflict to hit Nigerian families living under COVID-19 lockdowns on life support.¹⁴ This situation must have caused fluctuation in the earning capacity of most people in business. In the case of *Esua v. Esua*,¹⁵ the wife had got a maintenance order for a lump sum of 20 Pounds for herself, and 56 Pounds per month for the four children who were in her custody. She later applied for variation of that order on the ground that, 56 Pounds per month was insufficient. In her claim for maintenance, she stated that her expenditure was a s follows:

- (1) 60 Pounds per month for feeding the children,
- (2) 10 Pounds per month for buying them clothes,
- (3) 11 Pounds per month as salary for a baby nurse,
- (4) 12 Pounds per month as salary for a servant
- (5) 5 Pounds and 10 shillings per month as salary for a night watchman;
- (6) 8 Pounds and 15 shillings per month as payment for accommodation and
- (7) 16 Pounds per month as cost of petrol used in taking the children to school.

She therefore applied for the maintenance to be increased to 20 Pounds monthly for herself, and 25 Pounds monthly for each child, making it a total of 130 Pounds per month. But she was on a salary of 1,380 Pounds per annum. The husband then established to the satisfaction of the court that, his income is no longer up to the 3000 Pounds per annum it was, when the original order was made. That the wife's income had gone up and that one of the children was no longer with the wife, but was in a boarding school and that he was fully responsible for his expenses there. The court then held that in order to obtain a variation order, increasing the amount payable, the applicant must show that: (i) The circumstances of the respondent have changed by improvement or (ii) That the applicant's circumstances have change in a way that adds to the applicant's expenses. The court further held that, on the contrary, in the case before the court, the applicant's circumstances had been improved, she was no longer responsible for one of the children, and the respondent's circumstances had deteriorated. Thus, the application was accordingly refused. The fact contained in this case has shown that, the earning capacities of parties can actually fluctuate. However, the earning capacity of the parties may also be determined by taking into consideration the salaries and wages and in fact other income from their assets like rent, dividends from shares.

The Conduct of the Parties

Conduct in a case of award of maintenance, means personal behavior, deportment; mode of action and in fact, any positive or negative act of a party to a marriage, that may be considered in order to determine the amount of maintenance to be awarded in maintenance proceedings. Generally, where the misconduct of a party to a marriage amounts to gross misconduct, it may lead a reduction of or the elimination of proper maintenance. However, it could be stated that, the misconduct of a party to a marriage, may not preclude him or her from obtaining a maintenance order. Therefore, the conduct of a wife who is entitled to maintenance cannot be used to deny her maintenance. Moreover, the court cannot award an excessive maintenance against a husband because of his misconduct. Thus, it was stated by the court in the case of *Mueller v. Mueller*,¹⁶ that maintenance is intended to provide for the needs for the wife and not mark of disapproval of the husband's conduct. Moreover, in the case of *Wachtel v. Wachtel*,¹⁷ Lord Denning while interpreting S. 5(1) of the English Matrimonial Proceedings and Property Act 1970, expressed the view that, a court in considering the conduct of the parties is not required to carry out a post mortem or to hear the mutual recriminations of the parties and go into their petty squabbles for

¹¹ Sixth Edition Op.cit. p. 508

¹² Com. exrel. *Malizia v. Malizia*, 229 Pa. Super.108, 324 A. 2d 386, 388

¹³ (1963) 3 FLR 398.

¹⁴ UN News-United Nations 9th June, 2020.

¹⁵ Unreported No. M/202/71, High Court of Lagos.

¹⁶ (2006) 6 NWLR (Pt. 977) 627 at 646.

¹⁷ (1973) Fam. 72.

days on end as was the case under the old law, besides, it is no longer appropriate to talk about an innocent or guilty spouse. He then concluded that:

There will no longer be a residue of cases, where the conduct of one of the parties is in the judges' words 'both obvious and gross' so much so that to order one party to support another whose conduct falls into this category, is repugnant to anyone's sense of justice. In such a case, the court remains free to decline to afford financial support or to reduce the support which it would otherwise have ordered. But short of cases falling into this category the court should not reduce its order for financial provision merely because of what was formerly regarded as guilt or blame. To do so would be to impose a fine for supposed misbehaviour in the course of the unhappy married life.¹⁸

All Other Relevant Circumstances

Consideration of all other relevant circumstances under section 70(1)(2) of the Matrimonial Causes Act may be said to be a wide consideration which shows the wide latitude and discretion given to the court in maintenance proceedings these factors cannot be exhaustive and the consideration to be made by the court will depend on the peculiar circumstances of each case. In the case of *Rogers v. Rogers*,¹⁹ the phrase 'all other relevant circumstances' was described by the court to mean 'so nearly touching the matter in issue as to be such that a judicial mind to be taken into consideration'. As a result, the phrase will include the standard of living of the parties and the financial requirements of the applicant spouse, cost of goods, other economic realities etc. Moreover, in the case of *Nanna v. Nanna*,²⁰ the court took into consideration, the standard of life which the appellant previously maintained before the respondent parted and the economic trend at that time. Another relevant case, is that of *Hayes v. Hayes*,²¹ where the court took into consideration the fact that, the applicant was a qualified lawyer whom the respondent requested to stop practicing law and to become a full-time housewife with an allowance of N20,000.00 for the partial running of the home, less the cost of clothes, shoes, medications and maintenance of their two cars. The court also considered the fact that, the respondent attitude had let the applicant to believe that wealth would continue to flow and that she would continue to live in affluence without practicing her profession as a lawyer.²² In addition to the above, Nwogugu,²³ in his book, *Family Law in Nigeria* identified six factors as constituting 'all other relevant circumstances' as follows:

- (i) The property, income and financial commitments of the claimants;
- (ii) The incapability of the claimant to earn income;
- (iii) The property, income and financial commitments of the spouse of the claimant so far as they are known to the claimant;
- (iv) Any financial arrangements in operation between the claimants and the spouse of the marriage
- (v) Any order of court under which one of the parties to the marriage is liable to make payment to the other;
- (vi) The ownership of the home in which the claimant is residing and the terms and conditions upon which the claimant is occupying or otherwise residing in that home.²⁴

Therefore, the phrase 'all other relevant circumstances' can be said to be omnibus in nature. This is because, the court may consider the education, maintenance, upkeep and welfare of the children as some of the 'all other relevant circumstances' in maintenance proceedings.²⁵ Generally, it is essential for a petitioner to show one or more of the above factors when praying for an order of maintenance. Failure to fulfill either of these requirements could lead the court to refuse to make an order for maintenance or make the court to give a lesser award of maintenance. For instance, the court may refuse to award a petitioner any maintenance and where therein an award of maintenance is made, the amount to be awarded by the court, may be too minimal when compared to a case where the above factors are by evidence made clear to the court for its consideration. In the case of *Erhahon v. Erhahon*,²⁶ the court held that it was not mandatory that the means and earning of the parties should be pleaded before the court could determine what order to make regarding maintenance. According to the court, the relevant circumstances must be gathered by the court itself from the pleading and evidence of the parties at the trial and not in any separate affidavit to be filed by the parties. Therefore, where there is no particulars of the means and

¹⁸ *Supra* at p. 90.

¹⁹ (1962) 3 FLR 398.

²⁰ (2006) 3 NWLR (Pt. 966) 1 at 41.

²¹ (2000) 3 NWLR (Pt. 648) 276.

²² In the Case of *Akinboni v. Akinboni* (2005) 5 NWLR (Pt. 761) 564, a similar decision was reached by the court.

²³ Nwogugu E.I. *Family Law in Nigeria*, HEBN Publishers Plc Revised edition. 1990-2001 reprint, p. 245-246.

²⁴ Nwogugu E.I. Op. cit. pp245-246.

²⁵ As was done in the case of *Tabansi v. Tabansi* (2009) 12 NWLR (Pt. 1155) 415.

²⁶ (1997) NWLR (Pt. 510) 667.

earnings of the parties filed, the court should use the available evidence to determine the amount to be paid by a party to the marriage as maintenance. However, it is best to put in details the means and earning capacity of the parties, to enable the court to get a factual and accurate basis for making an order of maintenance.

3. Application of the Law of Maintenance in Nigeria

In Nigeria, the applicable law of maintenance is the Matrimonial Causes Act.²⁷ Under this law, there is no longer a duty to maintain a wife to the degree of the husband's estate. Thus, it was declared by the Supreme Court in the case of *Olu-Ibukun v. Olu-Ibukun* that, common law rules are no longer applicable to maintenance in Nigeria Matrimonial Causes. Moreover, under the English Act, the factors to be considered by the Court to make order for maintenance applied equally to both husband and wife. Thus, in case of *Calderbank v. Calderbank*,²⁸ the wife was quite affluent and was the owner of the matrimonial home. She supported the family out of her income and was responsible for the maintenance and education of the children of the marriage. She later deserted her husband to live with another man. The husband then petitioned for divorce and asked for maintenance. The wife was then ordered by the court to pay her husband a lump sum of 10,000 Pounds out of the proceeds of the sale of the matrimonial home. The decision of the court was upheld by the court of Appeal when it confirmed that, under the English Act, whether it is a wife or husband seeking financial provision, the factors to be considered applied to both parties equally. In England, the Matrimonial Causes Act²⁹ has provisions similar to section 70(i) and (ii) of the Matrimonial Causes Act,³⁰ and the courts in England have ordered wives to pay maintenance to their husbands based on the law. In Nigeria, there is an increasing proportion of professionally qualified and highly skilled Nigerian women earning high salaries. This is quite different from what it was in the olden days, when most women were said to be full-time house wives and solely relied on their husband for maintenance. Therefore, with the application of section 70 of the Matrimonial Causes Act, there will soon be cases of husbands who will bring actions for maintenance against their wives in Nigeria. Moreover, the idea that the husband is the only person to whom the wife should turn to for maintenance for herself and the children will no longer influence the thinking of our courts. Nigeria courts have shown their awareness of the new and modern trend on maintenance introduced by section 70 of the matrimonial causes Act. Thus, in the case of *Nakanda v. Nakanda*,³¹ the new Principle of maintenance was applied in up-holding the husband appeal against a maintenance order made against him, which was in favour of his wife. In this case, the lower court applied the obsolete and inapplicable common law concept of maintenance, without taking into consideration their respective incomes and earnings. The lower court also disregarded the uncontradicted affidavit of the husband which exposed the considerable means of the wife, while believing and applying the common law duty of the husband to maintain his wife. While rejecting the decision of the lower court, the Court of Appeal held that under the Matrimonial Causes Act, 1970, the position of the husband and wife were assimilated and either is entitled to maintenance from the other, provided conditions in section 70 are taken into consideration. It was then stated by Ademola J.C.A as he then was that 'The old idea that the husband must maintain his wife is repugnant to the idea behind the Matrimonial Causes Act which has put the man and wife on the same pedestal'.

Moreover, Fakayode, J., in the case of *Adeyemi v. Adeyemi*,³² stated that, at common law, a wife has a right to claim maintenance from her husband, but that by statutory provision, the question of maintenance is now a matter within the discretion of the court to grant or to withhold. It is therefore, clear that, the court has discretion based on the provisions of the statute to make order as to who should be maintain or not. This position of the law was interpreted differently in the case of *Akparanta v. Akparanta*,³³ when it was stated by Agbakoba J. that, the modern trend is that obligation to maintain the wife ceases with a decree of dissolution. In this case, no order of maintenance was in favour of the wife despite the fact that the wife was earning 2,000 Pounds per annum. Considering Agbakoba's J. statement, it can be stated that, there is no need for a wife who has got a divorce from her husband to be maintained by her husband, since marital links between husband and wife is broken by a decree of dissolution of such marriage, there ought not to be any financial link between them. However, a woman who wishes to cut marital link with her husband must also be prepared to cut off financial link with him. We must state that the court went beyond the spirit of the Act in its decision in the case of *Akparanta v. Akparanta*, as there is no provision in the Matrimonial Causes Act supporting the view that a woman who wishes to cut marital link with her husband, must also be prepared to cut all financial link with him. Moreover, the parties to a dissolved marriage do not owe themselves any marital obligations, which exclude them from the obligation to maintain each other.

²⁷ 2004, particularly, section 10-75.

²⁸ (1975) 3 WLR, 586.

²⁹ Unreported. Supreme Court of Nigeria Decision of 8 February, 1974; Itse Sagay, *Nigeria Family Law*, (1999) Lagos, Mathouse Press Limited), P. 484.

³⁰ 1973, Section 23 and 24.

³¹ Unreported Court of Appeal, Suit No. CA/L/99/81.

³² Unreported Suit No. 1/1981/70 delivered on 29/10/71

³³ Unreported Suit No. E/14D/70.

Once a marriage is dissolved, there should be complete dissolution. Where there exist financial bonds and obligations, then, there is no complete dissolution, because a complete dissolution of a marriage must include the dissolution of all erstwhile financial bonds and obligations. In the case of *Achugbue v. Achugbue*,³⁴ while applying section 73(1)(J)(1) of the Matrimonial Causes Decree Ogbobine, J. awarded the wife/petitioner a nominal amount of 2 Pounds per month and stated that its payment was to cease: (i) If the petitioner remarried, (ii) Lived with any other man or (iii) Had a child by any other man

Under section 70(3),³⁵ the court may make a maintenance order in favour of a party notwithstanding that a decree has been made against him in the principal action. Under this provision, the party who may have been guilty of gross misconduct might nevertheless be awarded maintenance. Therefore, the right to ask for maintenance is not limited to divorce, but is extended to all other matrimonial proceedings under the Matrimonial Causes Act, 2004. Section 73, deals with the mode of award of maintenance and makes provision for weekly, monthly or yearly payments, or a lump sum award. Lump sum award can only be made for the maintenance of the beneficiary. A lump sum award made for extraneous reason that is not within the contemplation of the law will be set aside by the court. Thus, in the case of *Ibeabuchi v. Ibeabuchi*,³⁶ a lump sum award of N10,000.00 (Ten Thousand Naira) was made in favour of the wife/petitioner for her to improve her educational status and to better her life. Olatawura, J.C.A, gave the lead judgment of the Federal Court of Appeal, and described the award as almost amounting to an award of scholarship and held that such an award was not within the contemplation of the law. The award was then set aside. Tobi J.C.A, in the case of *Manakaya v. Manakaya*,³⁷ stated that lump sum means a single payment of money in lieu of several, that it is a once and for all payment, made by one of the parties to the other. According to him, 'By the payment the doors and books of account are finally closed. The advantage of lump sum order is that it removes in some way the bitterness which is often attended on periodical payments. By lump sum payment, the parties no more have financial problems to resolve as far as the legal position is concerned'. The court therefore concluded that, it was appropriate to order lump sum payment in this case. A lump sum payment of N500,000 (Five Hundred Thousand Naira) was therefore made. It is important to state that, the court takes certain factors into consideration before awarding maintenance. While awarding a lump sum payment in the case of *Manakaya v. Manakaya*, supra, the court took the following factors into consideration:

1. The ability of the husband to pay such sum. For the purpose, the financial state of the husband or wife, particularly in terms of his capital assets is taken into consideration.
2. Where there is evidence that an award of a lump sum will cripple the earning power of the husband or wife the court should not make it.
3. Where however the husband is in good financial standing, the court will make the order as it will enable the wife invest the money and live on its proceeds.
4. In making the award the court will take into consideration the standard of living of the wife when she was with the husband.
5. It is proper to treat a wife as potentially entitled to some benefits from the husband's capital assets. It is therefore reasonable for a lump sum to reflect such a benefit.³⁸

In the case of *Ehrahon v. Erhahon*,³⁹ the court of Appeal in upholding an order of the trial court that the husband should pay N2000 to the wife as maintenance per month, took the following factors into consideration:

- i. The husband was a hotelier and a business man.
- ii. He had two houses, one each at Lagos and Benin City.
- iii. He had two other concubines and four children outside his marriage.

In this case, the court also took into consideration the following factors:

- i. The fact that the wife, by mutual agreement of the couple, stayed at home as a full-time housewife to rear their children and
- ii. She had also helped to nurture a fledging business which the husband had established.

4. Conclusion

This paper has examined the application of section 70 of the Matrimonial Causes Act, 2004. It has been stated in this paper that, the provisions of section 70 give Nigerian Courts to make order for the maintenance of the parties to a marriage and also for the maintenance of the children of the marriage. It has also been revealed in this paper,

³⁴ Unreported Suit No. UHC/21/70 of 26/11/71.

³⁵ Unreported Suit, FAC (6/5/82).

³⁶ MCA, 2004

³⁷ (1996) 9. NWLR (Pt. 474) 25bat 302-3

³⁸ Tobi J.C.A in *Manakaya v. Manakaya* Supreme Court Pp. 303

³⁹ (1997) NWLR (pt., 510) 667.

that husband and wives has been placed in the same pedestal in respect of the right to apply for maintenance under the matrimonial causes Act, 2004; and that despite that fact, the spirit of the common law continue to influence the thinking of our Judges when deciding on issues relating to maintenance in Nigeria. However, it must be stated that the applicable law on maintenance in Nigeria, is section 70 of the Matrimonial Causes Act, 2004. To support this fact, the Court of Appeal in the case of *Nakanda v. Nakanda*,⁴⁰ rejected the decision of the lower court and held that, under the Matrimonial Causes Act, the position of the husband and the wife were assimilated and either party is entitled to maintenance from the other provided the conditions in section 70 are taken into consideration and that the old idea that the husband must maintain the wife is repugnant to the idea behind the Matrimonial Causes Act which has now put the man and his wife on the same footing. Thus, it was erroneous on the part of the court, to state in the case of *Tabansi v. Tabansi*,⁴¹ that 'at common law it is the responsibility of the man to take care of his family...'

⁴⁰ (2009) 12 NWLR (Pt. 1155) P. 427 at 430

⁴¹ Suit No. CA/1/99/81 delivered on the 17th day of June, 1988.