

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE LAFIA JUDICIAL DIVISION

HOLDEN AT LAFIA

ON TUESDAY, THE 4TH DAY OF FEBRUARY, 2025

BEFORE HIS LORDSHIP, HON. JUSTICE M.O. OLAJUWON

JUDGE

SUIT NO: FHC/LF/FHR/48/2024

BETWEEN:

1. OLUMIDE BABALOLA, ESQ. APPLICANT

AND

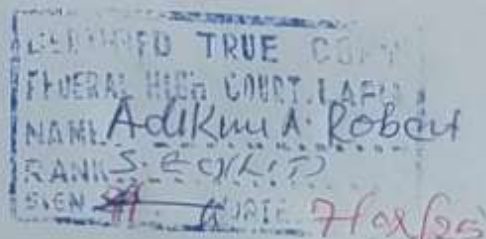
1. ATTORNEY GENERAL OF THE FEDERATION... RESPONDENT

JUDGMENT

By an Originating Summons dated the 22nd July, 2024, but filed on the 23rd July, 2024, the Applicant formulated the following questions for determination:

1. Whether or not the provisions of Section 370 of the Criminal Code; Section 387 of the Penal Code (Northern States) and Section 384 of the Penal Code Act criminalizing bigamy interfere

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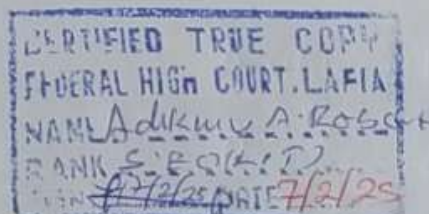
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with the right to privacy of Nigerian citizens contrary to Section 37 of the Constitution of the Federal Republic of Nigeria, 1999?

2. Whether or not the provisions of Section 370 of the Criminal Code; Section 387 of the Penal Code (Northern States) and Section 384 of the Penal Code Act criminalizing bigamy are justifiable in a democratic setting like Nigeria's under Section 45 of the Constitution of the Federal Republic of Nigeria, 1999?

Upon the favourable determination of the above questions, the Applicant seeks the following reliefs:

1. A **DECLARATION** that Section 370 of the Criminal Code, criminalizing bigamy, unjustifiably interferes with the right to privacy of Nigerian citizens contrary to Sections 37 and 45 of the Constitution of the Federal Republic of Nigeria, 1999 and is thereby unconstitutional, null and void.
2. A **DECLARATION** that Section 387 of the Penal Code (Northern States) criminalizing bigamy, unjustifiably interferes with the right to privacy of Nigerian citizens contrary to Sections 37 and 45 of the Constitution of the Federal Republic of Nigeria, 1999 and is thereby unconstitutional, null and void.
3. A **DECLARATION** that Section 384 of the Penal Code Act, criminalizing bigamy, unjustifiably interferes with the right to privacy of Nigerian citizens contrary to Sections 37 and 45 of the

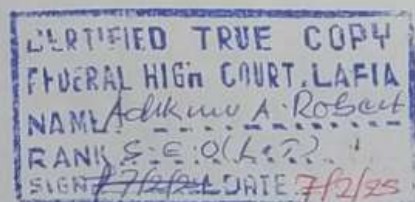


Constitution of the Federal Republic of Nigeria, 1999 and is thereby unconstitutional, null and void.

4. **AN ORDER** striking out the provisions of Section 370 of the Criminal Code; Section 387 of the Penal Code (Northern States) and Section 384 of the Penal Code Act for being unconstitutional, null and void.
5. **CONSEQUENTIAL ORDER(S)** as this Honourable Court may deem fit to make in the circumstance.

In support of the Originating Summons is a 13-paragraph Affidavit deposed to on the 23rd day of July, 2024, by one Joseph Stephen Esson, a Litigation Secretary in the law firm representing the Applicant. Attached to the Affidavit are three documents marked as **EXHIBITS 1-3**. Also filed are the Written Address of Applicant's Counsel dated 22nd July, 2024 but filed on 23rd July, 2024 and a Statement containing the name and descriptions of the Applicant, the reliefs sought and grounds for the reliefs.

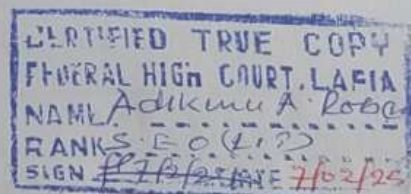
Responding to the Originating Summons, the Respondent filed a 5 paragraph Counter Affidavit, deposed to on the 4th day of November, 2024, by one Thomas Etah, a Litigation Officer in the Civil Litigation and Public Law Department, Federal Ministry of Justice. In support is a Written Address of Learned Counsel to the Respondent, dated 1st November, 2024, but filed on the 4th of November, 2024.



The case of the Applicant, who is a married man and a Legal Practitioner, is that the specified provisions of the Criminal Code, Penal Code (Northern States) and Penal Code Act, which make bigamy an offence, violate or infringe the right to private and family life as provided for by Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (hereinafter called "The Constitution") and are not justifiable in a democratic setting like Nigeria.

According to the Applicant, marriage is a basic civic right, personal choice and a private affair, but the provisions of the stated Criminal Code, Penal Code (Northern States) and Penal Code Act interfere with the said right to make such choices or decisions, especially in relation to the number of spouses one may decide to marry. According to the Applicant, the said provisions interfere with his right to make personal choices about his family and relationships. Applicant believes that those provisions are not justifiable in a democratic setting like Nigeria because Nigeria is a traditionally polygamous country and that Lagos State and some other African countries such as Chad, DR. Congo and Egypt have decriminalised bigamy.

In the Written Address of the Counsel to the Applicant, the two questions for determination were raised as the issues to be considered by this Court in determining this suit. The questions are:

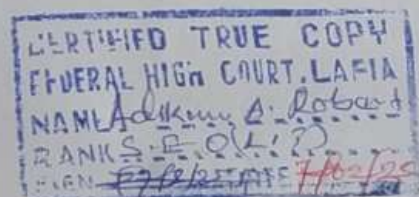


1. Whether or not the provisions of Section 370 of the Criminal Code; Section 387 of the Penal Code (Northern States) and Section 384 of the Penal Code Act criminalizing bigamy interfere with the right to privacy of Nigerian citizens contrary to Section 37 of the Constitution of the Federal Republic of Nigeria, 1999?
2. Whether or not the provisions of Section 370 of the Criminal Code; Section 387 of the Penal Code (Northern States) and Section 384 of the Penal Code Act criminalizing bigamy are justifiable in a democratic setting like Nigeria's under Section 45 of the Constitution of the Federal Republic of Nigeria, 1999?

Under Issue 1, Counsel defined Bigamy as getting married as a result of adultery while still in a contract of marriage with another person, the crime of marrying someone while already married to another person, or marrying another during the subsistence of a marriage. Counsel relied on the case of **FATIMA ADEOYE V. MUFUTAU ADEOYE (2024) LPELR-CA** and the **Compact Oxford English Dictionary** (third edition, 2005).

Furthermore, Counsel gave the definition of the right to privacy, as stated by the Supreme Court in the case of **MEDICAL DENTAL PRACTITIONERS DISCIPLINARY TRIBUNAL V. DR. JOHN OKONKWO (2001) 7 NWLR (PT. 711) 206**, thus:

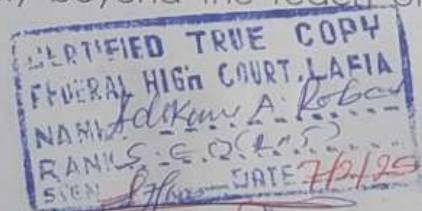
"The right to privacy implies a right to protect one's thought, conscience or religious belief and practice from coercive and



unjustified intrusion; and, one's body from unauthorized invasion. ...The sum total of the rights of privacy and of freedom of thought, conscience or religion which an individual has, put in a nutshell, is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary."

Learned Counsel also relied on the case of **NWALI V. EBONYI STATE INDEPENDENT ELECTORAL COMMISSION (EBSIEC) & ORS (2014) LPELR-23682** on the definition of privacy of citizens, and argued that from all the definitions, the right to privacy embodies an individual's right to make choices on relationships, life partner or spouse(s). He referred this Court to the English case of **PLANNED PARENTHOOD OF SOUTHEASTERN PA V. CASEY, 505 U.S. 833 (1992)**, where the Supreme Court held that:

"Throughout this century, this Court also has held that the fundamental right of privacy protects citizens against governmental intrusion in such intimate family matters as procreation, childrearing, marriage, and contraceptive choice. See ante, at 847-849. These cases embody the principle that personal decisions that profoundly affect bodily integrity, identity, and destiny should be largely beyond the reach of government."



Counsel supplied the provisions of Article 8 of the European Convention on Human Rights and Article 18 of the African Charter on Human and Peoples Rights which both guarantee the right to privacy, thus:

Article 8:

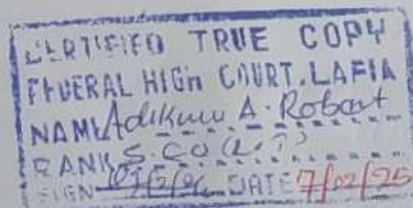
"Everyone has the right to respect for his private and family life, his home and his correspondence."

Article 18:

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community"

Counsel contended that polygamous family is known to the African traditional societies, and it is covered under family life, and that criminalizing bigamy interferes with the right to privacy.

On how criminalizing bigamy interferes with the right to privacy, learned Counsel reproduced Sections 370 of the Criminal Code, 387 (1) of the Penal Code (Northern States) and 384 (1) of the Penal Code Act as follows:



Section 370 of the Criminal Code:

"Any person who, having a husband or wife living, marries in any case in which such marriage is void by reason its taking place during the life of such husband or wife, is guilty of a felony and is liable to imprisonment for seven years."

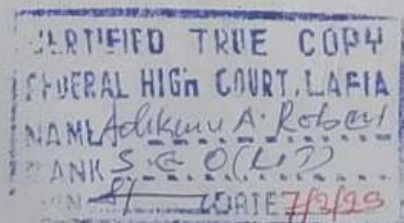
Section 387 (1) of the Penal Code (Northern States):

"Any person who, having a husband or wife living, marries in any case in which such marriage is void by reason of its having been contracted during the life of such husband or wife shall be guilty of an offence and shall be punished with imprisonment for a term which may extend to seven years." (This is a wrong quote)

Section 384 (1) of the Penal Code Act provides:

"Whoever having a husband or wife living marries in a case in which that marriage is void by reason of its taking place during the life of that husband or wife, shall be punished with imprisonment for a term which may.."

Counsel argued that the unifying factor in all the provisions stated above is the prohibition of marriage during the existence of another one, and in trying to establish how these provisions interfere with privacy, Counsel cited the Court of Appeal case of **AVOP PLC V. AG,**



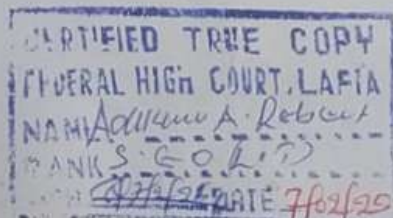
ENUGU STATE (2000) FWLR (PT. 8) 255, where the term "interfere" was defined to mean:

"(1) To meddle; (2) To get in the way of; (3) Hinder; (4) Come into collision or opposition; (5) Intervene; (6) Take part",

Counsel contended that the notion of privacy covers the decision to marry more than one spouse and that those provisions of the laws meddle with one's personal choices in relation to the number of spouses one may wish to marry.

Counsel cited the American case of **OBERGEFELL V. HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH (2015) 576 U. S.**, where the Supreme Court of the United States held that:

"It would be contradictory "to recognise a right of privacy with respect to other matters of family life and not with respect to the decision to enter the relationship that is the foundation of the family in our society." Choices about marriage shape an individual's destiny. As the Supreme Judicial Court of Massachusetts has explained, because "it fulfils yearnings for security, safe haven, and connection that express our common humanity, civil marriage is an esteemed institution, and the decision whether and whom to marry is among life's momentous acts of self-definition." The majority suggests that "there are other, more instructive precedents" informing the right to marry. Although not entirely clear, this reference seems to correspond to a line of cases discussing an implied fundamental "right of



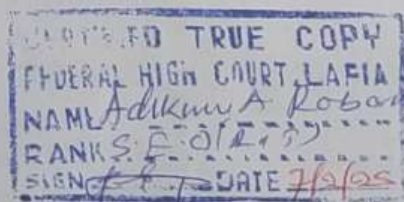
privacy."...The freedom to marry or not marry resides with the individual and cannot be infringed by the State ...A second principle in this Court's jurisprudence is that the right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals."

Counsel concluded on issue one by submitting that since privacy confers the right to decide who to marry, any provision that stands in the way of this decision, by prescribing a penalty for such a decision, constitutes an interference with the right to autonomy in personal relationships, intimate choices as contemplated under Section 37 of the Constitution, cultural and religious practices and freedom from government intrusion.

On Issue 2, Counsel submitted that the Sections of the Criminal Code, Penal Code (Northern States) and Penal Code Act, referred to above, forbid polygamous marriages in any guise, especially since the Marriage Act voids such marriages.

Learned Counsel referred to Section 45 (1) of The Constitution which provides that:

"(1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society



(a) in the interest of defence, public safety, public order, public morality or public health; or

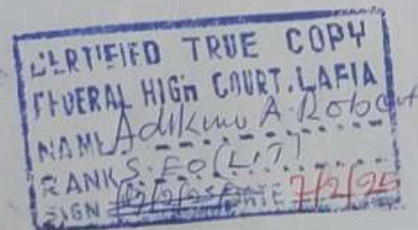
(b) for the purpose of protecting the rights and freedom or other persons.

Counsel argued that bigamy or polygamy is not against public morality in Nigeria and that the offence of bigamy is outdated and does not serve any practical purpose in the current Nigerian reality. He relied on the case of **SIMEON KUFORJI V. V.Y.B. NIGERIA LIMITED (1981) LPELR-1716 (SC)**, where the Supreme Court held that:

"Although it appears to be a dead letter, the offence of bigamy is still in our statute book and it is the law that not only must the legal marriage and the unlawful marriage be strictly proved, the burden of proof of the offence alleged in this civil proceedings must be discharged in a manner no less than is required to convict in criminal trials."

Counsel argued that the word 'dead letter' used by the Apex Court in the above decision presupposes a law that has lost its force or authority and, hence no longer relevant. Counsel submitted that the provisions of the law in question are of no practical use and are also not reasonably justifiable in a polygamic democratic setting like Nigeria.

He urged this Court to resolve the issues in favour of the Applicant.



The position of the Respondent, on the other hand, is that while Sections 370 of the Criminal Code and 384 of the Penal Code make it an offence to marry someone while one has a living spouse from whom no valid divorce has occurred (bigamy), Section 387 of the Penal Code criminalizes adultery. That, by the wordings and structures of Sections 370 of the Criminal Code (CC) and 384 of the Penal Code, particularly the phrase "in any case in which such marriage is void" contained in the Codes, bigamy only occurs in cases where such marriage, i.e. marrying someone while one has a living spouse from whom no valid divorce has occurred, has been declared void. In the words of the Respondent, the phrase "in any case in which such marriage is void" shows that the two provisions regarding Bigamy in both laws are subjective to only cases where such marriage is void. The Respondent added that Section 387 of the Penal Code, which contains a Phrase which reads: "subject to any customary law in which extra-marital sexual intercourse is recognised as a criminal offence", shows that adultery is only applicable to customary law where extra-marital sexual intercourse is considered a crime. That the provisions regarding both bigamy and adultery in the above Sections can only be practiced in line with the religion, belief, culture and thoughts of the society, as marriages in Nigeria are conducted with due regard to religion, culture and tradition.

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FEDERAL HIGH COURT, LAFIA
NAME Adunwa A. Robert
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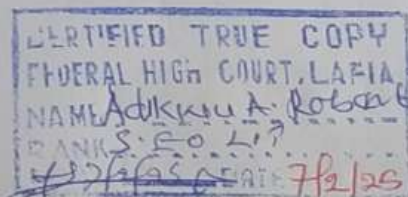
The Respondent stated that Sections 370 of the Criminal Code (CC), 384 and 387 of the Penal Code are not at variance with Sections 37 and 45 of the Constitution, which deal with the right to private and family life in a democratic society like Nigeria, but only apply to couples who voluntarily submit or succumb to religion, culture or thoughts that support the offences of bigamy and adultery.

In the Written Address of the Counsel to the Respondent, the two questions for determination were also adopted as the issues to be resolved. Both issues were argued together.

The learned Counsel to the Respondent also quoted the provisions of the Criminal Code and Penal Codes in issue and Section 37 of The Constitution, which provides that the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications are guaranteed and protected.

Section 387 of the Penal Code (Northern States), which was not correctly quoted by the Applicant's Counsel, provides thus:

"Whoever being a man, subject to any customary law in which extra-marital sexual intercourse is recognised as a criminal offence, has sexual intercourse with a person who is not and whom he knows or has reason to believe is not his wife, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery



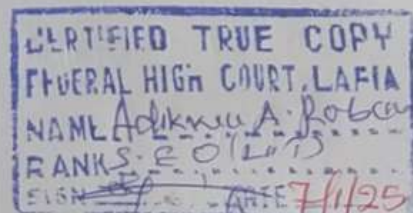
and shall be punished with imprisonment for a term which may extend to two years or with a fine or with both."

Counsel submitted that the phrases "in any case in which such marriage is void" and "subject to any customary law in which extra-marital sexual intercourse is recognised as a criminal offence", contained in the Criminal and Penal Codes, are clear indications that it is only in a community in Nigeria where custom or religion regards bigamy and adultery as offences that Sections 370 of the Criminal Code, 387 and 384 of the Penal Code are applicable.

It is the submission of Counsel that the phrase "in any case in which such marriage is void" contained in both Sections 370 of the Criminal Code and 384 of the Penal Code has created room for placing restrictions on the applicability of the offence of bigamy, while the phrase in Section 387 of the Penal Code which reads "subject to any customary law in which extra-marital sexual intercourse is recognised as a criminal offence" applies to societies in which either custom or belief considers adultery as an offence.

Counsel contended that the above arguments are in line with the right to freedom of thought, conscience and religion provided for in Section 38 of the Constitution, as follows:

"Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his



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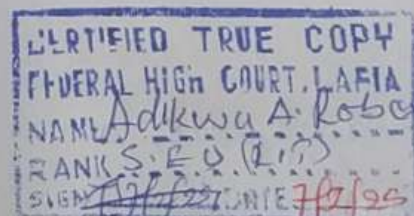
religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance."

Counsel argued that the law is trite that conviction can only lie where offences are clearly defined and punishment prescribed for same in a written law in Nigeria. Counsel referred this Court to Section 36 (12) of the Constitution, which reads:

"Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a law of a state, any subsidiary legislation or instrument under the provision of a law"

Counsel argued that Section 36 of The Constitution stated above validates the position of the Respondent that Sections 370 of the Criminal Code, 384 and 387 of the Penal Code dealing with bigamy and adultery, do not interfere with the right to private and family life of the citizenry, contrary to Applicant's claim that they contravene Section 37 of The Constitution.

Counsel submitted that whenever a section in any law allegedly contravenes the provision of The Constitution, only the section of the



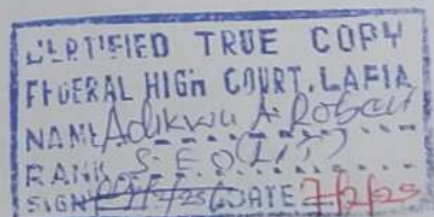
law in contravention and the provision of The Constitution in controversy will be placed side by side to see whether there is controversy as alleged. He referred this Court to the case of **SOLOMON OKEDARA V. ATTORNEY-GENERAL OF THE FEDERATION (2019) LCN 12768 (CA)**, where the Court held that the duty of the Court in this circumstance is to

"lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former.....this court neither approves nor condemns any legislative policy"

Counsel submitted that when Sections 370 of the Criminal Code, 384 and 387 of the Penal Code are placed side by side Sections 37 and 45 of the 1999 Constitution, it will be seen that there is no conflict or controversy created. Counsel further submitted that the relevant sections of the Criminal Code and Penal Code contain phrases of liberality against compulsion, which align with the right to freedom of thought, conscience and religion.

Counsel reproduced Section 45 of the Constitution thus:

(1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society



(a) in the interest of defence, public safety, public order, public morality or public health; or

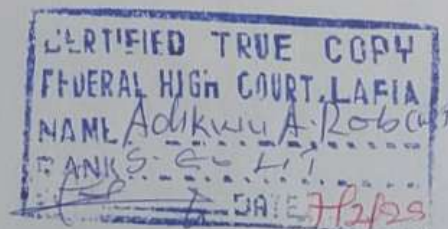
(b) for the purpose of protecting the rights and freedom of other persons

(2) An act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 33 or 35 of this Constitution;

but no such measures shall be taken in pursuance of any such act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency:

Provided that nothing in this section shall authorise any derogation from the provisions of section 33 of this Constitution, except in respect of death resulting from acts of war or authorise any derogation from the provisions of section 36(8) of this Constitution.

(3) In this section, a "period of emergency" means any period during which there is in force a Proclamation of a state of emergency declared by the President in exercise of the powers conferred on him under section 305 of this Constitution."



Counsel contended that Sections 370 of the Criminal Code, 384, and 387 of the Penal Code criminalising bigamy and adultery are reasonably justifiable in a democratic society such as Nigeria, as some communities practising certain beliefs see bigamy and adultery as offences against public morality which must be regulated. Counsel submitted that it is to protect the sanity of those communities and religious beliefs which consider bigamy and adultery as offences that the Nigerian Government made laws in that regard pursuant to its powers to do so.

Counsel submitted that the Government of the Federal Republic of Nigeria derives all its powers and authorities from the Nigerian people to whom sovereignty belongs. He cited section 14 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which states:

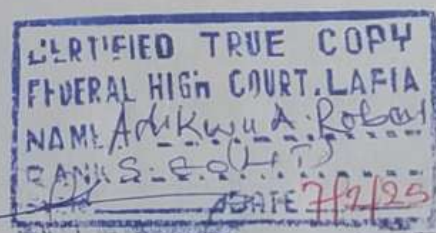
"14. (1) The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice.

(2) It is hereby, accordingly, declared that:

(a) sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority;

(b) the security and welfare of the people shall be the primary purpose of government: and

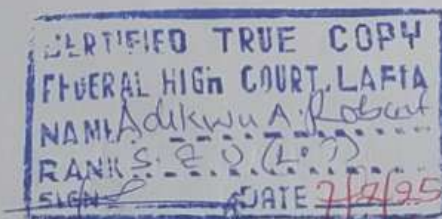
(c) the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution.



(3) The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few State or from a few ethnic or other sectional groups in that Government or in any of its agencies.

(4) The composition of the Government of a State, a local government council, or any of the agencies of such Government or council, and the conduct of the affairs of the Government or council or such agencies shall be carried out in such manner as to recognise the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the people of the Federation.

Counsel argued that pursuant to the foregoing provision of The Constitution, for the Federal Government of Nigeria to operate a state based on principles of democracy and social justice, regard must be had to the principle that governance belongs to the people of Nigeria and is not about an individual's interest which lacks the vires to represent the entire interest of all Nigerians. Counsel added that the applicability of the Criminal and Penal Codes recognises the cultures and beliefs of the people and works towards safeguarding and protecting those beliefs and cultures.

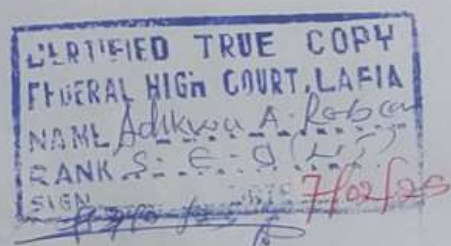


Counsel also touched on the principle of interpretation of the statute, which is that in construing the intention of the legislators in a statute, the gamut of the statute must be considered. Counsel referred this Court to **OLALERE V. OYE & ANOR (2017) LPELR-43262(CA)** and **MTN COMMUNIICATIONS (NIG) LTD V. ABIA STATE GOVERNMENT & ORS (2019) LPELR-46652**

Counsel concluded by submitting that the Applicant's action has failed as there is no conflict between the provisions of Sections 370 of the Criminal Code, 384 and 387 of the Penal Code on bigamy and adultery and Sections 37 and 45 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). He urged this Court to so hold.

I have carefully considered the Originating Summons and the parties' positions in its respect. I shall also adopt the questions put before this Court by the Applicant as the issues for determination. They are:

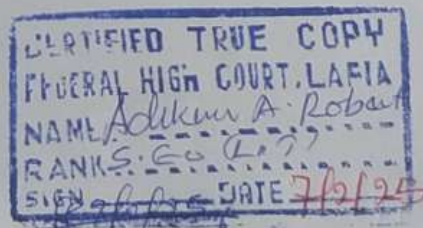
1. Whether or not the provisions of Section 370 of the Criminal Code; Section 387 of the Penal Code (Northern States) and Section 384 of the Penal Code Act criminalizing bigamy interfere with the right to privacy of Nigerian citizens contrary to Section 37 of the Constitution of the Federal Republic of Nigeria, 1999?
2. Whether or not the provisions of Section 370 of the Criminal Code; Section 387 of the Penal Code (Northern States) and Section 384 of the Penal Code Act criminalizing bigamy are



justifiable in a democratic setting like Nigeria under Section 45 of the Constitution of the Federal Republic of Nigeria, 1999?

The Applicant challenges the criminalization of bigamy under Section 370 of the Criminal Code, Section 387 of the Penal Code (Northern States), and Section 384 of the Penal Code Act, arguing that it infringes on the right to privacy guaranteed by Section 37 of the Nigerian Constitution. The Applicant argues that the decision to marry more than one spouse is a personal choice protected by the right to privacy and that criminalizing bigamy interferes with this choice. He contends that privacy includes the right to make personal decisions about marriage without government interference. The Applicant argues that the criminalization of bigamy is not justifiable under Section 45 of the Constitution, which allows for laws that are reasonably justifiable in a democratic society and that the law against bigamy is outdated and irrelevant in the current societal context, citing a Supreme Court case that refers to the law as a 'dead letter'. Applicant has prayed this Court to declare the said Sections unconstitutional, null and void, and strike out same from the laws.

The Respondent contends that the Sections of the Criminal and Penal Codes in issue do not contravene constitutional rights to privacy and family life, as they are applicable only in communities or situations where custom or religion regards bigamy and adultery as offences. The party argues that the relevant sections of the Criminal and Penal



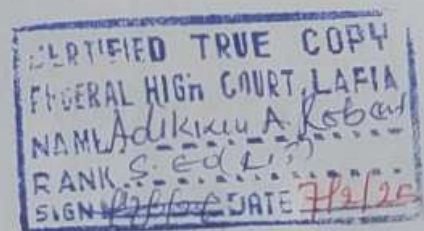
Codes contain phrases of liberality against compulsion, in line with the right to freedom of thought, conscience, and religion. Respondent argues that Sections 370, 384, and 387 of the Criminal and Penal Codes are reasonably justifiable in a democratic society to protect public morality and align with freedom of thought, conscience, and religion. The Respondent submits that the conviction for criminal offences can only occur where such offences are clearly defined and prescribed in written law, as per Section 36(12) of the Constitution and concluded by asserting that there is no conflict between these sections and the constitutional provisions.

To determine the issue, I will reproduce the Sections of the laws referred to for ease of reference.

Section 370 of the Criminal Code:

Any person who, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, is guilty of a felony and is liable to imprisonment for seven years. (Emphasis mine)

This section does not extend to any person whose marriage with such a husband or wife has been dissolved or declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been absent from such person for the space of seven years, and



shall not have been heard of by such person as being alive within that time.

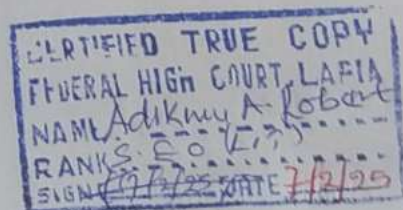
Section 387 (1) of the Penal Code (Northern States):

Whoever being a man subject to any customary law in which extra-marital sexual intercourse is recognized as a criminal offence, has sexual intercourse with a person who is not and whom he knows or has reason to believe is not his wife, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery and shall be punished with imprisonment for a term which may extend to two years or with a fine or with both. (Emphasis mine)

Section 384 (1) of the Penal Code Act provides:

Any person who, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, is guilty of a felony and is liable to imprisonment for seven years. (Emphasis mine)

This section does not extend to any person whose marriage with such a husband or wife has been dissolved or declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time.



Section 37 of the 1999 Constitution:

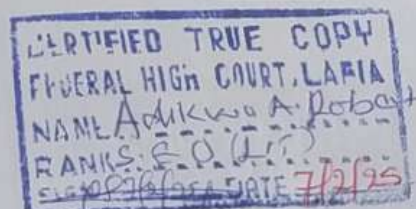
The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

Section 45 of the 1999 Constitution:

(1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society

- (a) in the interest of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedom of other persons

(2) An act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 33 or 35 of this Constitution; but no such measures shall be taken in pursuance of any such act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency:



Provided that nothing in this section shall authorise any derogation from the provisions of section 33 of this Constitution, except in respect of death resulting from acts of war or authorise any derogation from the provisions of section 36 (8) of this Constitution.

(2) In this section, a " period of emergency" means any period during which there is in force a Proclamation of a state of emergency declared by the President in exercise of the powers conferred on him under section 305 of this Constitution.

It is well settled that in the interpretation of the Constitution and Statutes, it is the whole of the Statute that will be considered so as to determine the intention of the legislature. In other words, provisions of legislation or enactments are construed holistically and not subjected to fragmentary interpretation in order to garner or reach the intention of the legislature. Thus, mutually related provisions and sections are married together to glean the lawmaker's intent. See **AYODELE FESTUS ADEYEMI v. FEDERAL REPUBLIC OF NIGERIA (2024) LPELR-62261(CA)**.

I will start with the provision on the Privacy of citizens as contained in Section 37 of The constitution. As held in the case of **BI-COURTNEY AVIATION SERVICES LIMITED v. OLAYIWOLA MUKAILA KELANI (2021) LPELR-56365(CA)**, the meaning of the term "privacy of Citizens" is not



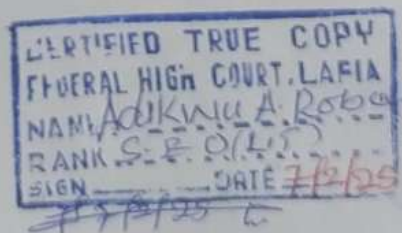
directly obvious on the face of the provision. The specific aspects of citizens' privacy the Section protects have not been specified. A citizen is ordinarily a human being: his body, his life, his person, thoughts, conscience, beliefs, decisions (including plans and choices), desires, health, his relationships, character, possessions, family, etc. So, the term, privacy of the citizen should be understood to include every part of his life, including his marital life.

The Apex Court, following the non-restrictive and liberal approach, interpreted the privacy of citizens as including the privacy of all their constituents as a human being in the case of **Medical and Dental Practitioners Disciplinary Tribunal Vs. Okonkwo (2001) 5 NSCQR 650 at 684 - 685** when it held that "the right to privacy implies a right to protect one's thought, conscience or religious belief and practice from coercive and unjustified intrusion and one's body from unwarranted invasion."

The question then is whether the provisions of the Criminal and Penal codes infringed upon the above-described privacy of citizens. The provisions of the Codes will also, therefore, be interpreted.

The provisions of Section 370 of the Criminal Code and Section 384 (1) of the Penal Code Act are the same, so they would be taken together.

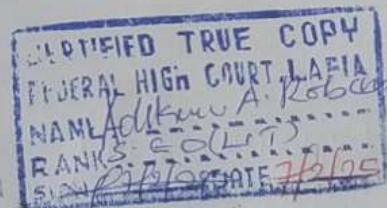
"Any person who, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place



during the life of such husband or wife, is guilty of a felony and is liable to imprisonment for seven years. (Emphasis mine)

This section does not extend to any person whose marriage with such a husband or wife has been dissolved or declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time."

From the above, the provision does not apply to every married person. It applies only to any individual who enters into a marriage while still having a spouse alive, in any case or any situation where that marriage is deemed invalid due to it being conducted during the lifetime of his/her existing spouse. "Any case or any situation", as stated, could be where a person has chosen to marry under a law, a custom, or a condition that stipulates that marrying another person while the spouse is alive is considered an illegality. For instance, someone who has chosen to contract a marriage under the Marriage Act, which Act requires that both parties be single at the time of a marriage ceremony. Where one party was previously married, and that marriage was not dissolved, any new marriage is void. Another example is when someone has married under a custom that considers



another marriage to another person while the spouse is still alive an illegality.

The other part of the sections deal with what is not considered as bigamy and is of no issue.

Section 387 (1) of the Penal Code (Northern States) provides that:

"Whoever being a man subject to any customary law in which extra-marital sexual intercourse is recognised as a criminal offence, has sexual intercourse with a person who is not and whom he knows or has reason to believe is not his wife, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery and shall be punished with imprisonment for a term which may extend to two years or with a fine or with both." (Emphasis mine)

This Section also only applies to a man who is subject to a customary law in which extra-marital sexual intercourse is recognised as a crime and not every married man. It follows that if the custom of such a man does not criminalise extra-marital intercourse, he will not be guilty of committing a crime, except it amounts to rape.

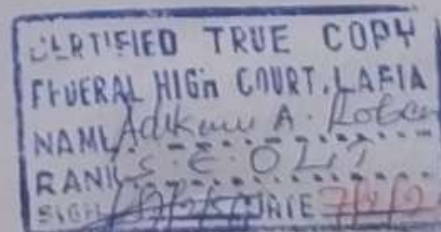
So in all, the phrases 'in any case in which such marriage is void' and 'subject to any customary law in which extra-marital sexual intercourse is recognised as a criminal offence' indicate that these sections apply only in circumstances or communities where custom or religion regards bigamy and adultery as offences.

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FEDERAL HIGH COURT, LAFIA
NAME Adikwu A. Koban
RANK S.E.O.L.
SIGN _____ DATE 7/2/2015

The question then is whether these provisions are inconsistent or in conflict with Sections 37 and 45 of the 1999 Constitution.

Based on the above interpretations, the key focus is understanding privacy within the constitutional context, comparing individual rights with societal standards and legal frameworks. I am of the considered view that the laws (The Codes) honour various cultural and religious beliefs without violating privacy. The Codes balance individual rights and communal values, safeguarding the privacy of individuals while respecting the cultural and religious tenets of communities. The Criminal Code and Penal Codes in question in this suit do not violate citizens' privacy but correspond with the constitutional rights to freedom of thought, conscience, and religion found in Section 38 of the Constitution, and when applied in context, they protect privacy constitutionally while recognising the societal need to uphold public morality.

Consider this analogy: A man who has chosen to marry under the Marriage Act and who cannot marry another wife while his current spouse is still alive since the Marriage Act prohibits such actions, cannot complain of the violation of his right to privacy by the provisions of the Codes. He chose a marriage under the Marriage Act and must abide by the provisions of the Act. it was his choice; once made, he must abide by the Rules. Volenti non-fit injuria applies. Similarly, an individual who has exercised his right to freedom of association cannot later claim he will not follow the rules established

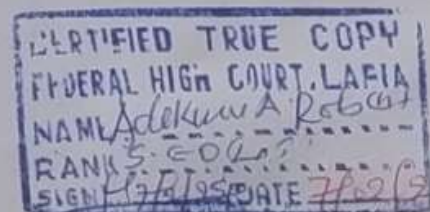


by the association. As stated by the Counsel to the Applicant in paragraph 11 of his address, relying on the case of **Medical Dental Practitioners Disciplinary Tribunal V. Dr. John Okonkwo (Supra)**, the sum total of the rights of privacy and freedom of thought, conscience or religion which an individual has, put in a nutshell, is that an individual should be left alone to choose a course for his life. If he has chosen a marriage under the Marriage Act, which frowns at bigamy, he has chosen a course for his life with the consequence of sticking with the benefits and disbenefits of his choice. The same thing applies to a person who has chosen to be a part of an association, as stated earlier.

I hold therefore that the Criminal and Penal codes in issue have not in any way interfered with the right to privacy.

On issue two, Section 45 of The Constitution has provided that nothing in Sections 37, 38, 39, 40 and 41 of the Constitution shall invalidate any law that is reasonably justifiable in a democratic society, in the interest of defence, public safety, public order, public morality or public health; for the purpose of protecting the rights and freedom of other persons.

The question would then be whether the offence of bigamy is justifiable in a democratic state like Nigeria. Applicant has argued that there is no justification for retaining such provisions in Nigerian laws, more so that Lagos State as well as some other African Countries



have expunged same from their laws. Applicant has even gone ahead to state that the criminalization of bigamy is outdated. I disagree with the Applicant. As I mentioned under issue one, bigamy and adultery, addressed in the Criminal and Penal codes, are seen as justifiable within communities, religions, cultures or thoughts that regard these provisions as essential for upholding public morality. They help sustain societal values and cultural diversity. Consequently, issue two is also resolved against the Applicant even as this Court holds that the provisions of Section 370 of the Criminal Code; Section 387 of the Penal Code (Northern States) and Section 384 of the Penal Code Act criminalizing bigamy are justifiable in a democratic setting like Nigeria under Section 45 of The Constitution.

In view of the foregoing, I hold that the Applicant's Application fails in its entirety and same is dismissed by this Honourable Court.



HON. JUSTICE M.O. OLAJUWON
JUDGE

4TH FEBRUARY, 2025

