

Principles Guiding the Award of an order for Maintenance in Divorce Proceedings in Nigeria



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Introduction

Any casual observer of the cause lists of the Courts in the Family Division of the Lagos State High Court would notice that there is a significant increase in the rate of divorce proceedings in Lagos State High Courts. Whilst the primary goal of most Petitioners in divorce proceedings is to seek an order dissolving their marriages, it is however not unusual for the parties to seek the Court's pronouncement on the amount of maintenance, which would be paid by the husband to an estranged wife.

In point of fact, a review of the case law on divorce has shown that parties to divorce proceedings are usually engaged in a hot contest on the issue of maintenance. See the cases of *Negbenebor v. Negbenebor*¹, *Olu-Ibukun & Anor v. Olu-Ibukun*², *Anyaso v. Anyaso*³, *Hayes v. Hayes*⁴, *Damulak v. Damulak*⁵, *Mr. Adeleke Adejumo v. Mrs. Toyin Adejumo*⁶, *Nanna v. Nanna*⁷ and *Mueller v. Mueller*⁸

The aim of this paper is to discuss the principles guiding the award of an order for maintenance in divorce proceedings with a view to ensuring that Counsel, parties, or potential parties to divorce proceedings understand the factors, which a Court would take into consideration when granting an order for maintenance.

Meaning of Maintenance

The term, maintenance (also known as alimony in some jurisdictions), means the provision made by a man for a woman who was formerly his wife. See: *Hayes v. Hayes*⁹. Maintenance of a wife is however intended to provide for the basic needs of the wife and not to punish the husband or mark disapproval of the husband's conduct. See: *Anyaso v Anyaso*¹⁰.

It should be noted that the Matrimonial Causes Act has done away with the term, alimony, and substituted it with maintenance. Therefore, whilst the term, alimony, is used in certain jurisdictions, the appropriate term in the Nigerian legal context is, maintenance.

The Court has the power to grant an order for maintenance during the pendency of a petition for divorce and after the conclusion of the divorce proceedings. The purpose of granting an order for maintenance during the pendency of the divorce proceedings is to ensure that adequate provision is made for the wife and the children in the course of the proceedings, as it is not unusual for some husbands to deny their wives' maintenance after a petition for divorce has been filed.



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Statutory Provisions on Maintenance

The power of the Court to grant an order for maintenance is contained in [Section 70 \(1\) of the Matrimonial Causes Act](#), which provides thus:

“(1) 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 regards to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.”

The effect of the provision of [Section 70 \(1\) of the Matrimonial Causes Act](#) is that, in granting an order for maintenance, the Court must always have regard to the means, earning capacity, the conduct of the parties to the marriage and other relevant circumstances as it affects parties to the proceedings. It is instructive to note that the Court, in [Damulak v. Damulak](#)¹¹, has interpreted the means of parties to mean the capital assets of the parties including contingent and respective assets.

Therefore, a husband who has several assets would be precluded from challenging his wife’s application for maintenance on the ground that his salary would not be sufficient to cover his wife’s claim for maintenance.

In the case of [Mr. Adeleke Adejumo v. Mrs. Toyin Adejumo](#)¹², the Respondent claimed he earns N31,277.86 (Thirty one thousand, two hundred and seventy-seven naira, eighty-six kobo) as his monthly net salary, but notwithstanding this fact, the Court ordered him to pay the sum of N31,666.7 (Thirty one thousand, six hundred and sixty-six naira and seven kobo) monthly to the Petitioner and her child as maintenance cost. It is instructive to note that the Court premised its order of maintenance on the fact that the evidence on record showed that the Respondent owned two houses, but he deliberately refused to disclose the rental income he generates from one of the houses to the Court.

Judicial Attitude to Claims for Maintenance

Although [Section 70 of the Matrimonial Causes Act](#) gives the Court the discretionary power to order and assess maintenance for a party, an Applicant (wife) for maintenance must be able to establish to the Court that the sum, which she is seeking as maintenance, is commensurate with the sum, which she was being paid by her husband before the dissolution of the marriage or before the filing of the petition for the dissolution of the marriage. In some cases, it could be a sum that replaces a service the husband does for the wife, which she will now have to pay for. An example is where the husband provided a means of transportation for the wife.

In the case of [Nanna v. Nanna](#)¹³, the Court of Appeal reduced the maintenance, which was awarded to the Respondent by the High Court from N75,000.00 (Seventy-five thousand naira) to N50,000.00 (Fifty-thousand naira) on the ground that the maintenance was excessive since the Petitioner could not afford same based on his monthly income of N115,947.35 (One hundred and fifteen thousand, nine hundred and forty-seven naira, thirty-five kobo).

In [Mueller v. Mueller](#)¹⁴, the Court of Appeal upheld the judgment of the trial Judge refusing the Appellant’s claim of N500,000.00 (Five hundred thousand naira) as maintenance based on her failure to lead any iota of evidence on her entitlement to same. The Court of Appeal further held that the Appellant was not entitled to receive N500,000.00 (Five hundred thousand naira) as maintenance since she admitted in evidence that she makes up to N20,000.00 (Twenty thousand naira) per day from the family’s business.



Furthermore, in **Lawrence Olu-Ibukun & Anor v. Adesola A. Olu-Ibukun**¹⁵ the Supreme Court set aside the order of maintenance, which was granted by the trial Court on the ground that the trial Court took extraneous facts into consideration

when it ordered that the sum of N1,200.00 (One thousand two hundred naira) per annum be paid as maintenance pending suit to the Petitioner.

Conclusion

Whilst it is settled that the Courts have the discretion to grant an order for the maintenance of a wife in all divorce proceedings, it is important for parties to divorce proceedings to note that an order for maintenance would only be based on the evidence, which was presented or available to the Court in respect of the earning capacity of the parties, and not based on the oral and unsupported evidence of the parties.

Therefore, a wife who intends to succeed in her claim for a significant sum as order for maintenance must be able to provide credible evidence showing that her husband's income and assets would sufficiently cover her claim for maintenance.

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¹ (1971) ANLR 213

² (1974) 2 S.C. 35

³ (1998) 9 NWLR (Pt. 564) 150

⁴ (2000) 3 NWLR (Pt. 648) 276

⁵ (2004) 8 NWLR (Pt. 874) 157

⁶ (2010) LPELR-3602

⁷ (2006) 3 NWLR (Pt. 966) 1

⁸ (2006) 6 NWLR (Pt. 977) 629

⁹ (2000) 3 NWLR (Pt. 648) 276 at 293-294

¹⁰ Supra

¹¹ (2004) 8 NWLR (Pt. 874) 157 at 171-172

¹² Supra

¹³ Supra

¹⁴ Supra

¹⁵ Supra

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