

# **Refusal of Judge to recuse himself in a trial against a HIV+ positive after betrayal of prejudice.**

07/29/2017

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## **Afolabi v. Afolabi**

### Facts of the Case

The case borders on petition for dissolution of marriage filed by Mr. Afolabi (Petitioner) against his wife. In the petition, the petitioner sought the dissolution of the marriage and custody of the child of the marriage owing to his Wife HIV status.

In the course of hearing, the Judge made remarks concerning the HIV status of the Respondent and the effect it would have on the child of the marriage when the child grows up and he is told that his mother (Respondent) is HIV positive.

The statement led the Respondent applying the Judge recuse himself from the trial owing to his bias. He declined and insisted on proceeding with trial.

Lawyers Alert were contacted to take up the matter, wherein we filed a motion praying the Judge to disqualify himself from entertaining the case, as the Respondent had lost confidence in the Judge. The Judge, who had already prepared his final judgment, struck out the motion and delivered judgement predictably against the wife. Lawyers Alert filed a Notice of Appeal on 12th May 2017 against the Judgment. The ground of the appeal borders on lack of fair hearing.

### **Issues for Determination**

The issues Lawyers Alert will be formulating for the Court of Appeal to determine include: a. Whether the trial court Judge was right in proceeding to deliver judgment when a motion on Notice challenging his jurisdiction was before him.

b. Whether the Judge's remark on the HIV status of the Respondent does not amount to bias, lack of fair hearing, and thus disqualify the Judge from further entertaining the case.

Presently, the High Court Registry, Ibadan, where this case was heard, is compiling the records of appeal for transmission to the Court of Appeal, Ibadan, where the appeal will be heard.

We will keep you informed as the Appeal progresses. Lawyers Alert is partnering with PLAN Ibadan in seeking justice for Mrs Afolabi.