

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/M/393/2019
DATE: 14TH JANUARY, 2020**

BETWEEN:

CHINEDU A. ONYEWUENYI - CROSS-PETITIONER/RESPONDENT

AND

CHIEMELIE A. ONYEWUENYI - CROSS-RESPONDENT/APPLICANT

Parties absent.

Godwin Edim appearing with C.B. Alero for the Cross-Petitioner/Respondent.

Olajide Adekanye appearing with M. Alhassan for Cross-Respondent/Applicant.

Cross Petitioner/Respondent's Counsel – The matter is for ruling.

R U L I N G

This ruling is predicated on an application on notice dated 24/10/2019 brought pursuant to Section 70(2) and 73(1) (A) (F) (G) of the Matrimonial Causes Act and Order 43 Rule 1 of the Rules of this Court 2018 and under the inherent jurisdiction of this court.

In the application, the Cross-Respondent/Applicant seeks for the following:

1. An Order of this Honourable Court directing the Cross-Petitioner/Respondent to pay the Cross Respondent/Applicant the sum of N200,000.00 (Two Hundred

Thousand Naira) only as maintenance, upkeep and welfare of the two children of the marriage, monthly, pending the determination of this suit.

2. An Order of this Honourable Court directing the Cross Petitioner/Respondent to cater for the school fees and advancement of the education of the two children of the marriage and enrol the children at any school of the Cross Petitioner's choice, within a reasonable proximity to the Cross Respondent/Applicant in Abuja, pending the determination of this suit.

IN THE ALTERNATIVE TO PRAYER 2 ABOVE MY LORD

3. An Order of this Honourable Court directing the Cross Petitioner/Respondent to cater for the education of the two children of the marriage and pay the Cross Respondent/Applicant annually, an equivalent of the school fees of Uzoamaka Kamsiyochukwu Onyewuenyi's at Karry Field International School, Utako, Abuja, in the sum of N269,000.00 (Two Hundred and Sixty Nine Thousand Naira) per term, for each of the children, provided that this figure shall be varied from time to time depending on the inflationary rate, purchasing power of the Naira and promotion of the children to higher classes, pending the determination of this suit.
4. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

In support of this application is a 16-point supporting affidavit dated 24/10/2019 deposed to by the Cross Respondent/Applicant

herself. Attached thereto are documents marked Exhibits A¹ – A⁸ respectively. Reliance is placed on all the points of the said affidavit.

Learned counsel also filed a written address of 3-opage dated 24/10/2019 wherein counsel submitted an issue for determination, thus:

“Whether it is just in the circumstances of this case to exercise discretion in favour of the Cross-Respondent/Applicant and allow same”

On this sole issue, it is the submission that the Honourable Court is seized of the jurisdiction to allow an application of this nature. Court is referred to Section 70(2) and 73 (1) (a) and (b) of the Matrimonial Causes Act.

It is submitted that Section 70(a) Matrimonial Causes Act gives the court the discretionary power to order and assess maintenance of a party and to make an order that it deems proper for the maintenance of a party to the marriage, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstance. In the instant case, the Cross Respondent/Applicant has averred all the circumstances and facts that will entitle the grant of this application. See THE CASE OF Impeller V Mueller (2008) 6 NWLR (Pt 977) 629.

It is the submission that it will be in the interest of justice to grant this application.

In opposition to this application, the Cross Petitioner/Respondent did not file any counter affidavit. However,, learned counsel to

the Cross Petitioner/Respondent filed a written reply on points of law dated 30/10/2019 wherein counsel submitted an issue for determination, thus:

“Whether this court should grant the first and third prayers sought by the Applicant having regard to the fact they form part of the main substantive action before the court?”

On this issue, it is the submission that the first relief sought on the motion paper is exactly the same relief in paragraph 33 and 42(vi) of the main action; likewise the alternative relief on the motion paper is the same relief which is sought by the Applicant in the main action in paragraph 30 in the answer to the petition.

It is submitted that the reliefs being sought touches on the substantive suit and courts are enjoined not to determine substantive issues at preliminary stages. See UNIVERSITY PRESS LTD v I.K. MARTINS (NIG) LTD (2000) 4 NWLR (Pt 654) 584 at 595 Paras E.

It is the law that while Section 73(1) in Matrimonial Causes Act gives this court the powers to do any of the following, Order for payment etc, it is worthy to note that the same Section ends with ***“having regard to the conduct of the parties...”***

In the instant action, the conduct of the Applicant as Cross Respondent is still in issue and is one of the legs upon which the Cross Petitioner filed this suit as the Respondent to the application has not seen or been allowed to see his children despite the fact they both live in Abuja.

It is contended that this conduct which is the subject of the main action cannot be decided upon at this stage by an application, as it forms the basis upon which the court is called to invoke

Section 70 (2) Matrimonial Causes Act. Court is urged to dismiss this application.

I have carefully considered the processes filed and submission of learned counsel on both sides, as right pointed out by the Cross Petitioner/Respondent's Counsel, the first relief sought on the motion paper is exactly the same relief in paragraph 30 and 42 (vi) of the Answer to the Cross Petitioner's petition (the substantive suit). In the Supreme Court case of UNIVERSITY PRESS LTD v I.K. MARTINS (NIG) LTD (Supra), the court held as follows:

“This court has counselled for caution, times without number, that trial courts as well as intermediate appellate courts should desist from making positive pronouncements touching on the substantive issue while they are engaged in determination of interlocutory matters before them. Surely, this practice is unacceptable because it prejudices the real matter in controversy even before arguments by the learned counsel have been marshalled on the substantive issue”.

In the light of the above Supreme Court position, I am of the considered view that Prayer 1 and the alternative prayers on the face of the motion paper is premature at this stage; it is accordingly refused. However, from the submission of learned counsel to the Cross Petitioner/Respondent, they have no issue with Prayer 2 and more so the Cross Petitioner/Respondent is in no way in denial of being the father of the two children.

In the light of what I just stated above, I am of the considered view that Prayer 2 on the face of the motion paper be granted. Accordingly, it is hereby granted.

I order as follows:

1. The Cross Petitioner/Respondent is directed to cater for the school fees and advancement of the education of the two children of the marriage and enrol the children at any school of his choice within a reasonable proximity to the Cross Respondent/Applicant in Abuja pending the determination of this suit.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
14/01/2020

Respondent/Applicant's Counsel – We are grateful for the ruling.

Cross Petitioner/Respondent's Counsel – We are also grateful for the ruling.

We ask for a date for continuation of hearing of the matter.

Court – Case adjourned to 11/2/2020 for continuation of hearing.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
14/01/2020