

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 28 GUDU - ABUJA
ON TUESDAY THE 13TH DAY OF OCTOBER 2020.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO -ADEBIYI

SUIT NO. PET/270/2020

BETWEEN

EZEUGO NTOMCHUKWU OGUEBIE -----PETITIONER/APPLICANT

AND

CHIDIOGO IFEYINWA OGUEBIE-----RESPONDENT

RULING

The Petitioner on the 10th of June 2020, filed a petition before this Court for the dissolution of the marriage with the Respondent on the grounds that the marriage has broken down irretrievably. Along with the Petition, the Petitioner filed a Motion on Notice with motion no. M/7513/2020 brought pursuant to Section 1,2,8,9,14(1) of the Child Rights Act and Order XIV Rule 22 of the Matrimonial Causes Rules and under the inherent jurisdiction of this Court praying for the following Orders:-

1. An Order of the Honourable Court granting temporary custody of the only child of the marriage; Joshua Zioraifechukwu Oguebie to the Petitioner/Applicant pending the final determination of this Petition; with visitation rights to the Respondent at reasonable times as the Honourable Court may direct.
2. Any such order(s) as the Honourable Court may deem fit to make in the circumstances.

The summary of the grounds upon which the Petitioner filed this application are that the Respondent has been making attempts at relocating to the United States with child of the marriage and that prior to the institution of this suit the

Petitioner has been responsible for the education, maintenance and care of the child before he was taken away from the custody of the Petitioner. That the child needs to attend school for proper upbringing and development within a conducive environment which the child is currently being deprived having moved out of the conducive environment created by the Petitioner to an unknown place and environment.

In support of the application, the Petitioner filed a 27-paragraph affidavit and 3 Exhibits being the marriage certificate as Exhibit 1, Academic Credentials Verification form as Exhibit 2, Request for Licence/Registration Verification form Exhibit 2a and an Application form for Physical Therapy permit as Exhibit 3. Also attached is a written address wherein Petitioner's Counsel urged the Court to grant the Petitioner's relief as the Petitioner has by his evidence and written submission, successfully placed before this court, reasonable grounds to warrant the grant of the relief sought.

The Respondent in opposing the application, filed a counter affidavit of 47 paragraphs and attached photographs of broken door and scars from injuries sustained by the Respondent from the Petitioner and Medical Report dated 21st May 2020 as Exhibits C1 and C2 respectively. Respondent Counsel as argument in support of the counter affidavit, filed a written address and urged this court to refuse the Applicants application in the interest of justice considering the child is still of tender age.

The Petitioner filed a further and better affidavit of 17 paragraphs and attached AA to FF and a written address in support of the facts averred in the further affidavit wherein Counsel urged the Court to hold in favour of the Petitioner as from the facts and documents attached, the Respondent's aim is not for custody but to gain independence while benefiting from the provisions to be made by the Petitioner for their child.

I have thoroughly examined the application and further affidavit of the Petitioner as well as the counter affidavit and argument of the Respondent. The prayer sought in this application is one of the prayers sought in the substantive

application. This Court would be mindful of the facts raised in this application, as to make any detailed pronouncement thereon will be prejudicial to the substantive issues to be resolved in the substantive trial of the petition.

The issue to be determine at this point, is the interim custody of the child.

Section 69 of the Child Rights Act gives the Court Powers to make order in respect to custody or rights of access to a child. The section provides as follows;

69 (1) The Court may-

(a) on the application of the father or mother of a child make such order as it may deem fit with respect to the custody of the child and the right of access to the child of either parent, having regard to-

(i) the welfare of the child and the conduct of the parent; and

(ii) the wishes of the mother and Father of the child,

The law is trite that the Court regards the interest of children as the paramount consideration in the award of custody of children to a party. The fact is not disputed that the child of the marriage is a toddler and is less than three years, presently in custody of the Respondent, his mother. There is no evidence before me that the child is in imminent danger, therefore, parties shall maintain status quo, pending the determination of the substantive suit. However, to allay the fears of the Petitioner that the Respondent would not leave the country with their child, which is the main aim of his application, the Respondent shall deposit both the Nigerian and American passports of the child of the marriage before this Court pending the determination of this suit. This case will henceforth be given accelerated hearing.

Parties: Parties are Present.

Appearances: Ebuka Aneke Agu, Esq, holding brief of Kingsley Chima, Esq., for Respondent. Simeon P. Sodo, Esq., for Petitioner.

HON. JUSTICE M. R. OSHO-ADEBIYI

JUDGE

7TH OCTOBER 2020