

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 32

CASE NUMBER: SUIT NO: FCT/HC/PET/40/2018

MOTION NO: M/11859/2020

DATE: 24th FEBRUARY, 2021

BETWEEN:

KELECHI CHIBUNNA BON- NWAKANMA.....PETITIONER/APPLICANT

AND

MARGERATE MARY NDIDIAMAKA BON NWAKANMA RESPONDENT

APPEARANCES:

Grace Benson Esq for the Petitioner.

Abubakar Anugbogi Esq for the Respondent.

RULING

By a motion on notice with motion number **M/11859/2020** dated 11th day of October 2020 and filed on the 12th day of November 2020 brought pursuant to Section 109 of the Matrimonial Causes Act and Order III Rule (1) Sub Rule (a) (b); 2(a) –(D) (3) (5) and under the inherent jurisdiction of this Honorable Court.

The Petitioner/Applicant herein prayed this Honorable Court for the following orders:

- 1. AN ORDER of interlocutory injunction restraining the respondent from publishing and /or further publishing any video, article, transcript or anything whatsoever in any newspaper, TV and Particularly any social media through any handle or domain against the petitioner/applicant pending the determination of this petition.**
- 2. AN ORDER directing the Respondent to grant access to the Petitioner/Applicant to Miss Abigail Bon-Nwakanma, the only surviving child of the marriage pending the determination of this petition.**
- 3. AN ORDER compelling the Respondent to tender apology to the Petitioner/Applicant through her social media handles for imputations which lowered the reputation of the petitioner/Applicant in the eyes of the general public.**
- 4. AND for such further or orders as the honorable court may deem fit to make in the circumstance.**

In support of the motion on notice is a 22 paragraphed affidavit deposed to by Kelechi Chibunna Bo- Nwakanma, the petitioner/Applicant in this case. Attached to the supporting affidavit is an annexure marked as Exhibit KC1. Equally filed in support of the motion on notice is a written address dated 11th day of November 2020. In the said written address, it's the contention of the applicant's counsel that in applying for an interlocutory injunction, a party must satisfy the court that;

- i. That there is serious issue to be tried by the court
- ii. That the balance of convenience is on his side;
- iii. That damages cannot adequately compensate him;

- iv. That his conduct is not reprehensible i.e. that he is not guilty of delay and;
- v. He must make an undertaking as to damages –**IGWE V KALU (1993)4 NWLR PT285 AT PT1.**

Counsel argued that, the main purpose of the injunction is to maintain and preserve the position of parties to the petition. The position to be preserved is that which existed before the controversy or dispute or suit or action commenced as well as the position before the complaint and action of the respondent. That the position which the court, by granting the interlocutory injunction, can maintain is the restoration of the parties to the position they were before the commencement of the action of the respondent. Counsel cited the case of **AKAPO V HAKEEM (1992)7 SCJN 11@ 140**

He further argued that the order for injunction is to restrain the respondent from the repetition or the continuation of the wrongful act or breach complained of. That, an order of interlocutory injunction lies to protect a legal right that inures in favor of the applicant especially where the legal right is threatened and that the affidavit in support of the motion reveals enough legal right that exist in favor of the applicant/petitioner. Accordingly, the right sought to be protected is guaranteed under the Constitution of the Federal Republic of Nigeria 1999 for the human dignity of the applicant, that the right of the petitioner is being threatened by the respondent in the public domain and the petitioner stands the risk of being attacked by any fundamentalist and sympathizers of the respondent. The life of the petitioner as guaranteed by Section 33 of the Constitution is at risk. That the respondent seems to believe in getting jungle justice than subjecting herself to the jurisdiction of this court which has

granted parties fair hearing as gifted by section 36 of the constitution.

Citing the case of **AKAPO V. HAKEEM – HABEEB & ORS, 1992, 7 SCMR PP 120 @PP 123**. Counsel argued that the applicant is entitled to an order of interlocutory injunction as prayed. Counsel urged the court to hold that the petitioner has legal right to his daughter.

In another argument, counsel stated that the Applicant has substantial issue to be tried at the hearing and that the Petitioner /Applicant will suffer a great inconvenience as he would never have the opportunity of getting his image back from friends and the general public, counsel further argued that, the respondent will not lose anything if the injunction is granted as parties would be afforded the opportunity of ventilating their rights in accordance with the due process of the law. He added that the petitioner/applicant will lose more if the respondent is not restrained and order is maintained till the determination of the matter.

Finally, counsel stated that, monetary compensation will not adequately compensate for the damage or wrong done to the applicant by the publication of the respondent. That his reputation will suffer irreparable damage if the respondent's acts are not restrained, such cannot be compensated in damages. Counsel therefore, urged the court to grant the order of interlocutory injunction sought.

In opposition to the motion on notice, the respondent filed a counter affidavit of 12 paragraphs deposed by Margaret Bon-Nwakanma, the respondent herein. Attached to the counter affidavit is a letter marked as Exhibit A, also filed in opposition is a written address dated 23rd day of November 2020.

In the said written address, learned counsel to the Respondent formulated three issues for determination, to wit:

1. Whether this honorable court has jurisdiction to entertain reliefs 1 and 3 in the applicant's motion predicated on alleged defamation or whether the said reliefs are competent considering the nature of the matter before the court.
2. Assuming but not conceding this honorable court has jurisdiction to grant reliefs 1 and 3, whether the applicant has established entitlement to the reliefs.
3. Whether from the facts and circumstances of this case, it is in the interest of justice for the applicant to be allowed access to the daughter of the marriage between the parties pending the determination of this action.

In arguing the issues, counsel submitted on issue one that, this honorable court does not have the jurisdiction to grant reliefs 1 and 3 in the petitioner's application because they border on alleged defamation which is a tortuous action of libel. That, the jurisdiction of this honorable court with respect to the present action is limited to matrimonial causes. Counsel cited Section 114 of the Matrimonial Causes Act and argued that the jurisdiction of the court in matrimonial causes proceedings do not extend outside the definition of a matrimonial causes as provided in Section 114 of the Matrimonial Causes Act and that any claim not founded on any of the sub heads provided in section 114 of the Matrimonial Causes Act including interlocutory reliefs cannot be maintained in matrimonial causes. Counsel cited the case of **SOBOWALE V SOBOWALE (1969) 1 NWLR 278** and **OKOCHA v OKOCHA (1980) PLR VOL. 155. 61.**

Counsel also submitted that based on the provisions of section 114 of the Act and the cases cited above, the reliefs with respect to defamation cannot be maintained together, that interlocutory applications must be related to the subject matter of a matrimonial cause to be cognizable by this honorable court. In another submission, counsel argued that, no court has jurisdiction to make a decision on alleged defamation in an interlocutory application. The reliefs sought can only be granted after a trial in a defamatory action has been explored. Counsel urged the Court to hold that it has no jurisdiction to entertain such reliefs and prayed that the application be struck out.

In arguing issue two, counsel submitted that, the discretionary powers of the court can only be exercised infavor of a party who has fulfilled the requisite conditions, that the court of law cannot exercise discretion based on speculation and inadmissible evidence. Counsel cited **DANGOTE V CIVIL SERVICE COMMISSION V PLATEAU STATE (2001) 9 NWLR (PT 717) P. 132 @ 161-162**. Relying on the above case, counsel argued that the said reliefs cannot properly be accommodated in an interlocutory application without proof in a libel suit. Furthermore, counsel argued that, the only evidence before the honorable court is a computer generated document, that the allegation was published on social media which can only be accessed via a computer in a manner defined by law.

Reliance was placed on **Section 84(1)(2) of the Evidence Act** and the cases of **DICKSON V SYLA & ORS (2016) LPELR -41257 (SC)**, **KUBOR & ANOR V DICKSON & ORS (2012) LPELR -15364 (CA)**, consequently, counsel submitted that the petitioner has failed to measure up to the provisions of the Evidence Act and cannot do that except in a proper proceeding on the alleged defamation.

On issue three, counsel argued that, it is not in the interest of justice for the applicant to be allowed access to the daughter of the marriage pending the determination of the suit. Relying on the case of **AYEMOBA V AYEMOBA (2018) LPELR 45385, EZIAKU V EZIAKU (2018) LPELR – 46373(CA),, BUWAHOT V BUWAHOT (2011) FWLR PT 566 PP 552 @ 563. ODUSOTE V ODUSOTE (2012) 3 NWLR PT 1288PP 478 PT 487, LAFUN V LAFUN (1967) NMLR P 401** and the respondent's averments in paragraphs 6 to 12 of the respondent's counter affidavit, Counsel argued that, it is in the interest of the child for all contending issues to be determined at trial before the court can decide the issue of custody and visitation rights. Counsel urged the court to refuse that prayer. The respondent also urged this honorable court to refuse the petitioner's application with substantial cost.

I have carefully gone through the motion on notice, the reliefs sought, the supporting affidavit and the annexures attached together with the written address in support. I have equally gone through the counter affidavit in opposition, the exhibit attached therewith and the written address in support of the counter affidavit. Having done all these, it is my humble view that the issue for determination is;

Whether the applicant is entitled to the grant of this interlocutory injunction as prayed?

The main crux of this matter according to the Petitioner/Applicant, is to restrain the respondent from the continuous attack on his person on social media. In paragraph 2- 4 of the applicant/ petitioner's affidavit, he averred and made reference to an offensive video being circulated by the respondent, according to him, the respondent used abusive and derogatory words describing him as a sexual pervert, a pedophile and a kidnapper to her audience. In paragraph 7, the applicant/ petitioner averred that the respondent further released the

transcript of the video on the 7th day of November 2020 on her Instagram and WhatsApp statuses respectively. The applicant averred in his supporting affidavit that the printout of the transcribed video which is marked as marked as Exhibit KC1.

I have perused carefully the said Exhibit KC1 attached to the supporting affidavit, it is clear that the exhibit is a computer generated evidence and the law is trite that the pre-condition for admissibility of electronically/computer generated evidence is provided for in section 84(4) of the Evidence Act, 2011. For clarity and ease of reference, I shall reproduce hereunder Section 84(4) of the Evidence Act, 2011, it provides thus;

(4) In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate-

a) Identifying the document containing the statement and describing the manner in which it was produced;

b) Giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer.

c) Dealing with any of the matters to which the conditions mentioned in subsection (2) above related, and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities as the case maybe

Shall be evidence of the matter sated in the certificate; and for the purpose of this subsection it shall be sufficient for a mater to be stated to the best of the knowledge and belief of the person stating it.

Accordingly, I refer to the case of **BRILLA ENERGY LTD V FRN (2018) LPELR-CA/L/658CA/207** where the court held that,

“...main objective of these provisions is to authenticate and validate the reliability of the computer which generated the evidence sought to be tendered...”

From the forgoing, it is clear that the applicant herein has failed to comply with the conditions for admitting in evidence Exhibit KC1 because the applicant has not accompanied same with certificate of compliance as required by law. In the circumstance; refer to the case of **UMAR & ANOR V KWARI & ORS (2019) LPELR – CA/K/599/2019 (P. 34 PARAS D-E)**, Per ABUNDAGA, JCA held that:

“...Exhibit A is a computer generated evidence and by reason of non-compliance with Section 84 of the Evidence Act, 2011, is not admissible in evidence in that it is not accompanied by certificate of compliance. It therefore lacks probative value...”

To this end, the applicant having failed to comply with the requirement of law for the admissibility of **Exhibit KC1** attached to the supporting affidavit, it is my considered opinion that the said **Exhibit KC1** lacks probative value. I so hold.

Be that as it may, the applicant has not adduced admissible evidence in proof of the alleged defamation, to that extent, the relief sought in that respect cannot stand having not adduced credible and admissible evidence to prove same. This is in line with the position of law that court must not speculate but rely on credible and admissible evidence. In support, see the case of **STATE V ALBAMGBE (1988)3 NWLR (PT 84) 548** where the Supreme Court held inter alia thus:

“...when a trial court acts in speculation it has abandoned its proper role...”

See also the case of **IGABALIE V. STATE (2006) NWLR (PT 975) 100 SC**

The Applicant's reliefs 1 and 3 which are anchored on **Exhibit KC1** which the said exhibit lacks probative value, to say the least, cannot see the light of the day. I so hold

Furthermore, with regards to the petitioner/ applicant's prayer requesting for access to the child of the marriage pending the determination of this suit, I must add at this juncture that addressing this prayer will amount to delving into the substantive suit and courts are enjoined to eschew from such. I refer to the case of **ENUNWA V. OBIANUKOR (2005)11 NWLR PT 935 @ P 119 PARA B** where Augie, JCA held thus:

"...courts are enjoined at the state of considering an interlocutory application, to desist from considering issues in substantive matter..."

Nevertheless, considering the circumstances of this case, the nature of this proceeding which is sue generis and the stage of the matter which has already been slated for defence, it will be in the interest of justice for the Court to make an Order pursuant to Sections 108 and 109 of the Matrimonial Causes Act, for the preservation of evidence; other account or particulars of the proceedings.

By Section 108(1) of the Matrimonial Causes Act. Except as provided by the said Section, a person shall not in relation to any proceedings under this Act, print or publish, or cause to be printed or published, any account, of evidence in the proceedings, or any other account or particulars of the proceedings other than those specified in a - d thereof.

108(2) provides further that the Court may, if it thinks fit in any particular proceedings, order that none of the matters referred to in Subsection 1(a) to (d) above shall be printed or published, or that any

matter or part of a matter so referred to shall not be printed or published.

Section 109 of the Act empowers the Court to grant injunctions in any case in which it appears to the Court to be just.

In the circumstances therefore, both parties in this suit are hereby ordered not to print or publish or cause to be printed or published any account of evidence in these proceedings, or any other account or particulars in these proceedings including those referred to in Section 108(1) (a) – (d) thereof or any facts relating to these proceedings in the mainstream, social media or any medium of communication whatsoever, pending the final determination of this petition.

Consequently, therefore it is hereby ordered that henceforth, proceedings in this matter should be heard in camera.

In other words persons other than parties, their respective Counsel and Court officials are excluded from hearing of these proceedings. This Order is made pursuant to Section 103(2) of the Matrimonial Causes Act, in the interest of justice.

Signed

HONORABLE JUSTICE S.U.BATURE

24th/2/2021