

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,  
IN THE ABUJA JUDICIAL DIVISION,  
HOLDEN AT COURT NO. 8 BWARI, ABUJA.**

**BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

**SUIT NO: FCT/HC/BW/PET/06/2021**

**BETWEEN:**

DR. (MRS) ELIZABETH SABO                      ----                      PETITIONER

**AND**

DR. JOHN SABO                                      ----                      RESPONDENT

**RULING**

**DELIVERED ON THE 13<sup>TH</sup> JULY, 2021**

By motion on notice dated 12<sup>th</sup> day of April, 2021 and filed on the 17<sup>th</sup> day of June, 2021 praying for the following Orders Via:

1. An Order of this Honourable Court extending time to the Respondent/Applicant within which to apply to set aside the Order(s) of this Honourable Court made on the 29<sup>th</sup> March, 2021.
2. An Order of this Honourable Court to set aside the Order(s) of this Honourable Court made on the 29<sup>th</sup> March, 2021 by this Honourable Court at the instance of the petitioner for misrepresentation deceit and want of jurisdiction.

And alternative prayer

3. An Order of this Honourable Court to vary the Order (s) this Honourable Court made on the 29<sup>th</sup> March, 2021 to Wit:
  - i. Granting the Respondent access to the children of the marriage, Sophia Wundoidi Sabo (female and 13years old)

and Michelle Ayosi Sabo (female and 11years old) on weekend during school session and festive period pending the determination of the substantive suit.

- ii. Granting the Respondent access to the children during holidays by allowing the children to spend part of the holidays with the Respondent pending the determination of the substantive suit.
- iii. Granting the Respondent right to visit the children during school session for purpose of ascertaining the state of the children and performing/engaging in the children's social activities in school as required of a father.

The motion on notice is supported by 18 paragraphs affidavit and 7 annexured marked as Exhibit JS i, ii, iii, iv, v, vi and vii and also a written address in compliance to Rules of this court: in which the Respondent/Applicant counsel formulate two (2) issues for determination via:

- 1. Whether this Honourable court can enlarge or extent the time to the Respondent/Applicant to apply to set aside the exparte orders of this Honourable court made on the 29<sup>th</sup> March, 2021 at instance of the petitioner.**
- 2. Whether the Order(s) made by this Honourable court on the 29<sup>th</sup> March, 2021 on the basis of motion exparte dated 26<sup>th</sup> March, 2021 are competent and invalid as**

**having been made without Jurisdiction and premised on misrepresentation and deceit”**

The counsel to the Applicant argued this motion extensively and buttress his argument with plethora of cases urging the court to grant this application as prayed.

On the other hand the Petitioner/Respondent file 48 paragraphs counter affidavit dated and filed on the 29<sup>th</sup> June, 2021 and annexed to the counter affidavit are 4 exhibit 1A, 1B, 1C and DES2. Also in compliance to the Rules of this court a written address was proffer by Kelechi Amaliri Esq. of counsel to the Petitioner/Respondent where he formulate two (2) issues for determination via:

- (a) “whether having regard to the provisions of Order XIV, part 4 Rule 2, 3, (3) 4a, b and c of the Matrimonial Causes Rules, if it can be argued that the Order of this court made on the 29<sup>th</sup> day of February, 2021 was made without Jurisdiction”.**
- (b) Whether having regard to S.117(4) of the Evidence Act 2011, whether the Respondent’s Motion on Notice is not incompetent.**

Learned counsel to the Respondent made a brilliant submission in support of his argument and also buttress his argument with numerous cases and statutory provision.

Having carefully perused all the process for and against this application and also listened to both counsel adumbrations, I will like to adopt the applicant issue for determination. Same is adopted.

On Issue

**Whether this Honourable court can enlarge or extent the time to the Respondent/Applicant to apply to set aside the exparte orders of this Honourable court made on the 29<sup>th</sup> March, 2021 at instance of the petitioner.**

The both counsel address this issue very well. I have considered the submission of the parties, it is a trite law that for an application for extention of time to succeed he must provide convincing reason for the delay which will enable the court exercise its Judicial discretion in his favour see the case of OROEGBU Vs. OKWORDU (1990) 6 NWLR PT. 154 pg 6433 at 658- 660. WILLIAMS VS HOPE RISING VOUTARY SOCIETY (1982) 2 SC 145 and EZECHUKWU VS. ONWUKA (2005) LPELR 6115 (CA). From the authorities stated above and this case at hand the Respondent/Applicant deposition in paragraphs 13, 14 and 15 of the supporting affidavit in which he stated the reason for not responding on time is, and issue that I have to take Judicial notice of it that is the Easter break and JUSUN strike on this not issue is resolve in favour of the Respondent/Applicant the extention of time is hereby granted to the Respondent/Applicant. I so hold.

Issue Two

**Whether the Order(s) made by this Honourable court on the 29<sup>th</sup> March, 2021 on the basis of motion exparte dated 26<sup>th</sup> March, 2021 are competent and invalid as having been made without Jurisdiction and premised on misrepresentation and deceit”**

In resolving this issue I will adopt the submission of learned counsel to the Petitioner/Respondent in paragraphs 2.4, 2.5 and 2.6 abc see order Xiv 23 (2)(3), 4(a)(b)(c) of matrimonial causes Rules L. F. N and also the locus classicule case of MADUKOLU Vs. NKEMDILIM (1962) 2 SCNLR 341 and case of ALHAHI ABBA TUKAR Vs GOVERNMENT OF GONGOLA STATE (1989) 4 NWLR Pt 117 at pg 517. UGBOMAH Vs. ALLANAH & ORS (2018) LPELR 44832 (CA) Ratio 2. From the above authorities cited above this court have requisite Jurisdiction to grant the Petitioner/Respondent earlier application granted on the 29<sup>th</sup> March, 2021 this issue resolved is in favour of the Petitioner/Respondent against the Respondent/Applicant.

At this juncture the Respondent/Applicant application fails party and the prayers sought on the face of the motion prayer 1 and 3(i) (ii) (iii) is hereby granted.

The earlier order granted on the 29<sup>th</sup> March, 2021 stand modified as follows:

1. That the Respondent whether by himself, agents, privies or whomsoever purports to act in his behalf are restrained from taking away the 2 children of the marriage namely: Sophia Wundoidi Sabo (Female) 13 years, and Emily-Michelle Sabo (Female) 11 years from the petitioner without her written consent pending the determination of the substantive petition with No. FCT/HX/BUV/PET/6/21 pending before this Honorable court.
2. That the Respondent whether by himself or his agents, privies or whomsoever purports to act on his behalf are restrained from withdrawing the two children Sophia Wundoidi Sabo, and Emily-Michelle Sabo from their current School namely: SOS Hermann Gmeimer Secondary School at Akinsanya Street, Phase II, Gwagwalada, Abuja pending the determination of the substantive suit.
3. That the Respondent whether by himself or agents, privies, or whomsoever purports to act on his behalf are restrained from further visiting the petitioner in her place of work, namely University of Abuja Teaching Hospital Gwagwalada except upon express invitation by the Applicant, or from interfering with the job of the applicant.

An Order of this Honourable Court to vary the Order (s) this Honourable Court made on the 29<sup>th</sup> March, 2021 to Wit:

4. That the Respondent is granted access to the children of the marriage, Sophia Wundoidi Sabo (female and 13years old) and Michelle Ayosi Sabo (female and 11years old) on weekend during school session and festive period pending the determination of the substantive suit.
5. That the Respondent is granted access to the children during holidays by allowing the children to spend part of the holidays with the Respondent pending the determination of the substantive suit.
6. That the Respondent is given the right to visit the children during school session for purpose of ascertaining the state of the children and performing/engaging in the children's social activities in school as required of a father.

I so hold.

This is the ruling of this court.

**APPEARANCE**

K.A. Amaliri Esq.                                }   for the Petitioner/Respondent.

Fabian King Ohaegbu Esq.}                                }

G.A. Idiagbonya Esq.}                                }

L.J. Ashaku Esq.                                }   for the Respondent/Applicant.

Sign

Hon. Judge

13/07/2021

