

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 24TH DAY OF NOVEMBER, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: CV/2170/21

IN THE MATTER OF AN ORIGINATING MOTION BY MR. JOHN CARL – FREDRIK GANDEBORN AND MISS. MIKE AGU SANDRA CHICHI SEEKING FOR PATERNITY AFFIRMATION AND JOINT CUSTODY IN RESPECT OF MASTER GANDERBORN CHIDOZIE CARL (MINOR) PURSUANT TO SECTIONS 1,4,9(1), 14(1), 68(1)(b) OF THE CHILD’S RIGHTS ACT, 2003 AND ORDER 43(1) AND (2) OF THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY (CIVIL PROCEDURE) RULES 2018 AND UNDER THE INHERENT JURISDICTION OF THE COURT.

1. MR. JOHN CARL – FREDERIK GANDEBORN

2. MISS MIKE AGU SANDRA CHICHI

APPLICANTS

RULING

Before this Court is an Originating Motion dated 31/8/2021. The applicants are praying this Court for the following:

1. An order of this Court affirming the Paternity of Master Gandeborn Chidozie Carl to Mr. John Carl –

Frederik Gandeborn pursuant to the DNA Test Result dated 16/2/2018

2. An order of this Court granting joint custody and access of Master Gandeborn Chidozie Carl to the Applicants.

3. Omnibus prayer.

In support of the application is a 13 paragraphs affidavit deposed to by the 1st applicant and a statement of truth verifying the process and documents attached to the application. A written address was filed by **Chukwunonso Akah Esq.** Learned counsel submitted that the paramount consideration in this application is the best interest of the child which is more of his/her happiness and psychological development. He added that the 1st applicant conducted a DNA paternity test vide Exhibit GC3 attached to the application which confirms the child to be his child and he requires the order of paternity affirmation to enable him apply for Swedish citizenship for the child.

Learned counsel further submitted that a careful analysis of the application will reveal that the essence of the application is to foster the child's development and ensure that his welfare is guaranteed. That this application is necessary given the fact that the applicants are not legally married. That the Swedish citizenship will afford the child the opportunity to move freely between Nigeria and Sweden subject to the control of his parents in fulfillment of Section 9(1) of the Child's Right Act, 2003. Reference was made to Section 68(1)(b) of the Act to submit that the child will certainly enjoy the dividends of the dual citizenship.

It is trite that by Section 1 of the Child's Rights Act, 2003, in every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, Court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration.

Section 4 of the Child's Rights Act provides that *"every child has the right to survival and development."* The priority of the Court in proceedings relating to children is to ensure and promote the development and survival of the children while protecting their best interest.

The applicants are praying this Court for an order affirming the paternity of Master Gandeborn Chidozie Carl to the 1st applicant. The applicants attached a DNA test showing probability of paternity to be 99.999%. Both applicants are the biological parents of the child eventhough they were not married. The 1st applicant has averred in the supporting affidavit that he has been consensually maintaining, caring and protecting the child from his birth, till date, and he has been maintaining the 2nd applicant till date as well. He also said the physical appearance of the child further confirms that he is the father.

This application is borne out of the application for Swedish Citizenship in favour of the child. In paragraphs 9,10, 12 and 13 of the supporting affidavit, the applicant stated that:

“9. That the application of Swedish Citizenship is in the overall best interest of our child and to inter alia guarantee him freedom of movement and access to his paternal family at any given time and without restriction.

10. That I have been taking care of our child and his mother since his birth till date and further undertake to continue to handle their welfare.

12. That by a mutual agreement, we have been in joint custody of our child and wish to maintain status quo in his overall interest and welfare.

13. That it will be in the interest of justice and the overall welfare of our child to grant this application as no

person will be prejudiced by the grant of this application.”

Both applicants have written a letter, consenting to the grant of this application. Considering the best interest of the child, this Court is inclined to grant this application.

The applicants have also prayed for joint custody and access to the child. Custody of a child connotes not only the control of the child, but carries with it the concomitant implication of the preservation and adequate care of the child’s personality, physically, mentally and morally. In other words, this responsibility includes his/her needs in terms of food, shelter, clothing and the like. See Alabi vs. Alabi (2008) All FWLR (part 418) page 245, Odogwu vs. Odogwu (1992) 2 SCNJ page 357.

By the provision of Order 22 Rule 1 of the Child’s Rights (Enforcement Procedure) Rules, 2013;

“Where the father and mother of a child were not married at the time of the birth of the child, the father or mother of the child may apply to the Court for parental responsibility for the child, or the father and mother may agree to have joint parental responsibility under a parental responsibility agreement...”

See also Section 68(1)(b) of the Child’s Right Act, 2003.

The child Master Gandeborn Chidozie Carl from the evidence is now 3 years plus. The paramount consideration in award of custody is the interest of the child. Both parents are desirous and appear to be equal to the task of maintaining the child and ready to give affection and proper guidance for the child. It is my considered view that this application is apt and I hold that the interest of the child will be best safeguarded by making an order for his joint custody.

Consequent upon the above and the consent reached by the applicants; I hereby make an order affirming the paternity of Master Gandeborn Chidozie Carl to Mr. John Carl- Fredrik Gandeborn pursuant to the DNA Test Result dated 16/2/2018

- An order is made for the joint custody of the child Master Gandeborn Chidozie Carl to the applicants.
- There shall be equal right of access to the child by both parents since access is a basic right of the child rather than that of the parents.

Signed

Honourable Judge

Appearances:

C.E. Akah Esq – for the applicant