

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

BEFORE HIS LORDSHIP :HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : MOTION NO: M/1902/19

DATE: :THURSDAY 11TH NOVEMBER, 2021

BETWEEN

UDEAGWU CHINASA CAROLYN APPLICANT

AND

TREMAINE ISAAC MILLERRESPONDENT

RULING

The Applicant vide a Motion on Notice approached this Honourable Court for the following:-

- a. An Order of this Honourable Court granting custody of baby UdeagwuKobichime Dmitri to UdeagwuChinasa Carolyn.
- b. An Order of this Honourable Court vesting on the Applicant (UdeagwuChinasa Carolyn) all rights, duties and obligation in relation to the custody, maintenance, supervision and education of UdeagwuKobichime Dmitri.
- c. An Order of this Honourable Court vesting on the Applicant (UdeagwuChinasa Carolyn) all rights as apparent and to train, educate and treat baby UdeagwuKobichime Dmitri as her child.

d. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstance of this case.

In support of the application is a 35 paragraph affidavit deposed to by UdeagwuChinasa Carolyn.

It is the deposition of the Applicant that she was never lawfully married to the Respondent but that she met the Respondent in 2015 summer at the United State of America (USA) and started discussing marriage in 2016 but finally broke up in January, 2018, without ever entering into marriage.

That in January, 2018, she got pregnant for the respondent, who did not show any support for the pregnancy until the child of the relationship was born in September, 2018.

That the relationship of the Respondent and hers completely broke up in January, 2018, after the Respondent staunchly informed her that he was no longer interested in the relationship and that he doubts the paternity of the child of the relationship and therefore he was not interested in the child.

That since the birth of her son, she has single handedly been taking care of her son including paying his school fees and medical bills as every effort made to get the Respondent to support her in the upbringing of the child fell on deaf ears.

It is further the deposition of the Applicant that the respondent has never contributed to the upkeep and welfare of Udeagwu Kobichime Dmitri and has never expressed interest in that regard.

That by the nature of her job and her monthly income, she can comfortably take care of her son UdeagwuKobichime Dmitri. That granting the custody of her son UdeagwuKobichime Dmitri shall not prejudice the Respondent.

A written address was filed wherein a sole issue was formulated for determination, to wit;

“Whether from the circumstances canvassed in the affidavit in support of this application, this Honourable Court can in the interest of justice grant this application.”

Learned counsel contended that the Applicant through the affidavit in support of the application submitted that she gave birth to baby UdeagwuKobichime Dmitri outside wedlock with the Respondent. That she has been in full custody of

the child since his birth without any form of assistance and care from the Respondent whatsoever. Counsel submits that Applicant is very capable and willing to provide care, welfare, upkeep and support to baby UdeagwuKobichime Dmitri if the application is granted.

Learned counsel urge the court to grant the application, as the Applicant through the issues canvassed has shown why the application should be granted.

COURT:-

I have read the paragraphs of the affidavit in support of the reliefs seeking custody of the named child.

I have equally read the written legal argument of counsel filed in support of the application in issue.

I need to mention at this juncture that the Respondent who was sufficiently notified of the pendency of this application by service of same on him and subsequent hearing notice, failed and or refused to join issues with the Applicant by filing counter affidavit to debunk the averments contained in the affidavit in support of the application in view which bothers on custody of a child.

The Courts, through plethora of judicial decisions have put to rest the issue of uncountered affidavit.

Averments/depositions not having been specifically denied or challenged are deemed as accepted and unchallenged facts and the Court can act on them.

See ***FALOBI VS. FALOBI (1976) SC 1.***

UGUAWYI VS. NICON INSURANCE PLC. (2013)

LPELR – 2009 (SC)

NWANKWO VS. KAY KAY CONSTRUCTION LTD. – (2014) LPELR – 24336 CA.

Applicant clearly stated in paragraphs 4,5,6,7,8,11 and 12 of the affidavit in support of the application that she is a Nigerian Citizen born in Katsina State; and that Respondent is a Citizen of United States of America who lives in 242, East Woodlawn Road, Charlotte, North Carolina 28217, and that she was never married to the Respondent even though they were discussing marriage before she got pregnant in 2018 and gave birth to her son whom Respondent has disowned.

Applicant equally averred that she is solely responsible for the feeding, school fees and upkeep of her child. The whatsapp chats between Applicant and Respondent wherein Respondent disowned the

child was Exhibited as “D1”, “D2” and “D3”, whereas bank statement of account of Applicant and receipt of payment of school fees of the child (UdeagwuKobichime Dmitri) were Exhibited as “E”, “F” and “G” respectively.

Applicant for the reasons contained in the affidavit further stated that with her income which is over N300,000.00 monthly, she is able to take care of her son and prays for the said Order of custody and that Respondent would not be prejudiced

Above averments were not challenged by the Respondent despite all opportunity.

Indeed, the custody of a child born out of wedlock, as in the instant case, follows that of his mother in the absence of any person claiming custody of the child on the basis of being the natural father of the

child. This is very important because a child is a special gift and must belong to a family and should not be abandoned and left to be ridiculed, abandoned and left homeless for a situation he did not create for himself.

See *ENWONWU VS. SPIRA (1965) 2 ALL NWLR 233;*

MUOJEKWU VS. EJIKEME (2000) 5 NWLR (Pt. 657) 402;

ANODE VS. NNEKA (2008) 10 NWLR (Pt. 1094) 1 at 18, Paras F – G.

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 otherwords, this responsibility includes his/her needs in term of food, shelter, clothing and the live. See *ALABI VS ALABI (2008) ALL FWLR (Pt. 418) 245 at 257 Page 296 Paragraph C. (CA)*.

Section 22(1) of the Child Rights Act (Enforcement Procedure) Rules 2015 speaks loud on this. For the purpose of clarity, same is hereby reproduced, as follows:-

“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 responsibility under a parental responsibility agreement, as specified in form 10 of the schedule to these rules.”

From the uncountered paragraphs of affidavit and the whatsapp chats exchanged between Applicant and Respondent, I am morethan satisfied that Respondent clearly has not indicated any interest in fathering the child in issue.

Applicant who bore the pain of child birth and nursing and who is not a woman of straw, has shown enough capacity to take care of her child.

Above position has been fortified by the receipt of payment of her child's school fees and her bank statement.

This is an appropriate and convenient situation for me to grant the said application bothering on the custody.

Application No. **M/1902/19** being meritoriously argued is hereby granted and accordingly the following Orders are consequently hereby made, as follows:-

1. An Order of this Honourable Court granting custody of Baby UdeagwuKobichime Dmitri to UdeagwuChinasa Carolyn is **hereby granted**.
2. An Order of this Honourable Court vesting on the Applicant (UdeagwuChinasa Carolyn) all rights, duties and obligations in relation to the custody, maintenance, supervision and education of UdeagwuKobichime Dmitri is **hereby granted**.
3. An Order of this Honourable Court vesting on the Applicant (UdeagwuChinasa Carolyn) all rights as a parent and to train, educate and treat

Baby UdeagwuKobichime Dmitri as her child
is **hereby granted.**

Above is my Ruling.

Justice. Y. Halilu
Hon. Judge
11th November, 2021

APPEARANCES

W.I Okereke, Esq. with E.K Elom, Esq, we hold
the brief of Chukwudi N., Esq. for the Applicant.