

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI- ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/PET/309/2020

MOTION NO: M/4638/2021

BETWEEN:

CHIAMAKA NNENA ORIZU.....PETITIONER

VS

MICHAEL CHUKWUBIKE ORIZU.....RESPONDENT

RULING

By a Motion on Notice dated 15/7/2021 filed on 16/7/2021 with Motion No. M/4638/2021, brought pursuant to Section 6(6) of the 1999 Constitution (As Amended) Section 70(2) and Order XIV (20) Rule 20, 22 (1); Order 43 Rule (1) (1), (9) Rule 1 of the Matrimonial Causes Act and Rules of court respectively and under the inherent jurisdiction of court, the Petitioner/Applicant seeks the court the following prayers;

- (a) An Order of this Honourable Court granting leave to the Petitioner/Applicant to amend her/Applicant's Petition and all the accompanied processes as set out in Exhibit "AB" attached to the affidavit in support of this application.

- (b) An Order of the Honourable Court deeming the amended Petition already filed and served as properly filed and served appropriate filing fees having been paid.
- (c) An Order of this Honourable Court restraining the Respondent whether by himself or through his agents, servants or privies or persons acting for the Respondent however call or refers to from removing either forcibly or otherwise and or taking forceful custody of the children of the marriage to wit Orizu Kobichukwu Michael Arthur (male) born on the 28/06/2015 (5 yrs) and Orizu Iyorachukwu Irana (female) born on the 29/01/2017 (3 years) presently in custody of the Petitioner pending the final determination of the substantive suit in this case.
- (d) And the omnibus relief.

The Motion is supported by a 43 Paragraph affidavit deposed to by the Applicant with Exhibits attached and marked "A1" "A2" "A3" "A4" and "A5". Also filed a Written Address and adopt same in urging the court to grant the reliefs.

The Motion was served on the Respondent, who upon receipt filed a counter-affidavit of 21 Paragraph deposed to by the Respondent. Also filed a Written Address in urging the court to refuse the application.

Petitioner/Applicant through her Counsel filed a Reply on points of law on 25/10/2021 and a further affidavit in support of Applicant's Motion.

In the Written Address of the Applicant, M.S. Aremo Esq. of Counsel formulated a sole issue for determination that is;

“Whether the Petitioner/Applicant has placed material facts before this Honorable Court to be entitled to the reliefs sought”

Submits that Order VII Rule I(10) of the Matrimonial Causes Rules provide for amendment of pleadings and the basic principle to guide the grant of application for amendment have been stated in the cases of *Adeyemi Vs A-G Ekiti State* (2002) 2 NWLR (PT. 751) 474 @ 507 Para G-H, *Bank of Baroda Vs Iaylabani Co. Ltd* (2002) NWLR (PT. 785) 579 – 580 Para F – A.

Submits further that the deposition in Paragraphs 2 – 13 of the affidavit in support of the application brings before the court the reasons for the amendment sought as the amendment will help to bring out the issues in dispute between the parties. Refer to the case of *Khalifa Vs Onotu & Anor* (2016) LPELR – 41163. Urge court to hold that Applicant has placed before the court material facts to enable it grant the reliefs for amendment.

On the claim for interim injunction submits that order XIV Rule 22 (1) of the Matrimonial Causes Rules empowers the court to grant the relief and the facts deposed in Paragraph 1 to 39 as well as Exhibits attached to the affidavit in support of the Motion is compelling enough.

Submits further that the court frowns at abduction of children of the marriage and that the Paramount consideration that will guide the court in the determination of this application is the interest of the children who are five (5) and three (3) years of age respectively. Refer to *Odogun Vs Odogun* (1991) 8 NWLR (PT. 228) 23; *African Continental Bank Ltd Vs*

Awogboro (1991) 2 NWLR (PT. 176) 711 and Nwangana Vs Military Governor of Imo State (1081) 3 NWLR (PT. 59) 187 urge court to grant the application.

In their reply on points of law submits that the Respondent have admitted to the claim of the Applicant, is therefore bound by his admission. Submits also that the amendment sought does not to change the nature of the main claim urge court to disregard the counter-affidavit as well as the argument of the Respondent.

In the same vein, Respondent Counsel I.C Nworgu Esq. formulated a sole issue for determination that is;

“Whether the Petitioner has placed all necessary material facts before this Honourable Court to be entitled to the reliefs sought”

Submits that, immaterial amendment is useless and Applicant did not place new facts or material facts before the court to warrant the court to exercise its discretion in the circumstance. Refer to Awachie Vs Chime (1990) 5 NWLR 302 @ 308 – 309 and Oyenuga & Ors Vs University of Ife (1996) NWLR 9. Submits further that the amendment sought is to change the nature of this claim urge court not to grant the amendment refer to Jessica Vs Bendel Insurance Company (1993) 1 SCNJ 240. And where an amendment sought is brought to prejudice the right of the opposite party, also where to intent of the application is doubtful, the court is urge to refuse same. Refer to Weldon Vs Neal (1887) 19 QDB 394 @ 395 George & Ors Vs Dominion Flour Mills Ltd (1963) 1 All NLR 71 and FNB Nig Plc Vs M.O. Kanu & Sons Co. (1999) 9 NWLR (PT. 619) 484.

On the grant of Injunction/Restraining order submits that there must be a legal right to be protected for injunction to be granted and both parties are partners as it concerns the children of the marriage except there is exceptional circumstance which must be proved, such rights cannot extinguished. Refer to *Kotoye Vs CBN* (1989) NWLR (PT. 98) 419.

Also submits that Applicant must show Statement of damage to show that it is sufficiently serious to justify the application. Further that the Applicant has not established that the balance of convenience is in her favour. Refer to the case of *Vee Gee Nig Ltd Vs Contact Overseas Ltd* (1992) 9 NWLR (PT. 260) 503 urge court to reject the application.

Having carefully considered the affidavit evidence, the Exhibits attached, submissions of both Counsel for and against the grant of the reliefs of the Applicant as well as the judicial authorities cited the court finds that only one (1) issue calls for determination that is;

“Whether the Petitioner/Applicant has made out a ground so as to entitle to the reliefs sought”

The grant of an application of this nature falls within the discretion of court, which court is enjoined to exercise judiciously and judicially. See *NDIC Vs Globus Ent Ltd* (2011) 3 NWLR (PT. 123) 74 @ 84. The principles which guides the court whether or not to grant the Applicant’s prayer for amendment of the Petition was set out in the case of *Adekanye Vs Grand Service Ltd* (2007) All FWLR (PT. 387) 855 @ 887 Ratio 1 and they include;

- (a) The court must consider the materiality of the amendment sought and will not allow an inconsistent or useless amendment.
- (b) Where the amendment would enable the court to decide the real matter in controversy and without controversy.
- (c) Where the amendment relates to a mere misnomer, it will be granted almost as a matter of course.
- (d) The court will not grant an amendment where it will create a suit where none exist.
- (e) The court will not grant an amendment to change the nature of the claims before the court.
- (f) Leave to amend will not be granted if the amendment would not cure the defect in the proceedings.
- (g) An amendment would be allowed if such an amendment will prevent injustice.

The Applicant states in Paragraphs 2, 4 of the affidavit in support of the application the ground for the application that is, to properly place before the court issues in contention. Respondent on the other hand admitted and denied some of the depositions without a word on how the amendment may affect his case or how it flouts the guidelines for the grant of amendment. I have taken a considered look at the competing depositions of the parties and I come to the conclusion that this amendment sought, in my view, is in line with the guideline stated above, more so when the

Respondent failed to state facts to sway the court that the grant of the application will be overreaching and occasion injustice especially as the parties are yet to open their respective cases. Refusing the application for amendment would be tantamount to denying the parties to properly join issues in the Petition.

On Applicant's prayers for injunctive reliefs, it is the fundamental principle of law that in determining an Interlocutory application, as in the instant, the court should refrain from commenting or determining on any of the issues in the dispute in the substantive case. See *Akinrimisi Vs Maersk Nig Ltd (Ltd)* (2014) All FWLR (PT. 713) 1933 and *Adeleke Vs Lawal* (2014) All FWLR (PT. 710) 1226 @ 1228.

A cursory look of the relief 2 of the instant Petition shows that the reliefs C of the Applicant's Interlocutory application are issues in the substantive Petition of the Petitioner which this court may make pronouncement on at the trial of the Petition. And as earlier stated, courts are enjoined to refrain from making pronouncement on matters before it which are subject for the main trial and in my view this application is inviting the court to make pronouncement on issues that are matters for the substantive suit, which the court is urged to refrain from. It is on this basis I shall refuse the injunctive relief sought in this application.

In all of these I am satisfied that the relief for amendment should have merit and should succeed as I find it is not overreaching or capable of occasioning injustice on the Respondent, as he has the liberty to react to

the amendment. The injunctive relief fails and is accordingly refused. It is hereby ordered as follows;

- (1) Leave is here by granted to the Petitioner/Applicant to amend Applicant's Petition and all the accompanied processes as set out in Exhibit "AB" attached to the affidavit in support of this application.
- (2) An Order of the Honourable Court deeming the amended Petition already filed and as properly filed and served appropriate filing fees having been paid.
- (3) Relief C fails and is accordingly refused.

The Respondent is at liberty to react to the amended Petition served on them within time permitted by the Rules of Court.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

20/1/2022

APPEARANCE:

M.S. AREMO FOR PETITIONER/APPLICANT

I.C. NWORGU FOR THE RESPONDENT