

**IN THE HIGH COURT OF JUSTICE 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. 24

CASE NUMBER: SUIT NO. FCT/HC/PET/290/2017

DATE: 7/12/2022

BETWEEN:

MRS. EDNA .C. ANOKWU.....PETITIONER

AND

MR. PASCAL ANOKWU.....RESPONDENT

APPEARANCE:

UgoNwoforEsq for the Petitioner.

Jenifer BenAgandeEsq for the Respondent.

RULING

By a Motion on Notice,with Motion No. M/11535/2022, brought pursuant to order 43 Rule 1 of the F. C. T High Court (Civil Procedure) rules 2018 and Section 1, 2(1), 9, 12, and 14(1) of the Child rights Act, 2003, the Petitioner/Applicant prayed the Court for the following orders to wit:-

1. An interim order of this Honourable Court granting leave to the Applicant/Petitioner, to take her daughter KelechukwuDaniella to the United Kingdom, particularly to Birmingham City University in Birmingham, Britain/United Kingdom for the singular benefit and educational interest of

her said daughter KelechukwuDaniella, to study BSc Nursing in the College of Medical Sciences wherein she has applied and is being admitted into.

2. An Order of this Honourable Court granting leave to the Petitioner to take her daughter, KelechukwuDaniella to the British Embassy for her to start processing her student visa urgently so as not to miss out on the admission window of January 2023 into Birmingham University.

3. An Order of this Honourable Court over-riding any consent of the Respondent in the best interest of the academics and education of the child KelechukwuDaniella to study BSc Nursing in the College of medical sciences Birmingham City University, United Kingdom.

The grounds predicating the Application are:-

1. The best interest of KelechukwuDaniella who intends to study Nursing in the United Kingdom in the best affordable environment, is paramount.

2. The Respondent had written to the UK Embassy against the travelling of the three children of the marriage.

3. The Petitioner is financially capable, and will solely sponsor the child to continue studying Nursing at Birmingham City University.

4. The processing of student's Visa to Britain takes at least two months, and the admission is in January 2023.

In support of the Application is an Affidavit of 29 paragraphs deposed to by Edina Anokwu the Petitioner/Applicant, several Exhibits as well as a written address.

Meanwhile, in opposition to the Motion on Notice, the Respondent herein filed a Counter Affidavit of 27 paragraphs deposed to by one Ruth Gift, a Secretary in the law firm of Counsel representing the Respondent, as well as a written address.

In response to same, the Petitioner/Applicant herein filed a further Affidavit in support of the Motion on Notice on 21/10/2022, comprising of 9 paragraphs deposed by the Petitioner herself.

It is the case of the Applicant as distilled in her Affidavit in support that KelechukwuDaniella is her first daughter, who is currently 17 years old who

has been aspiring to study Nursing in the United Kingdom, and be a professional Nurse licensed to practice anywhere around the world.

That since the institution of this suit, the Petitioner avers that she has been personally and solely taking care of KelechukwuDaniella and right from when she was in junior Secondary School.

According to the Petitioner Applicant in paragraphs 5-17 of the supporting Affidavit, deposed among other things, that though her daughter gained admission on a temporary basis at AfeBabalola University, School of Medical Sciences where she is currently studying Nursing, she has applied and has got acceptance from Birmingham City University United Kingdom. The Applicant annexed Exhibits A1, A2, A3, A4 and 45 in that regard.

Further averred that as a princess from a Royal home who has inheritance and assets from her family, and landed properties, in the Federal Capital Territory Abuja and Abia State, in addition to being a Chief Administrative officer on grade level 14 in the National Assembly, Petitioner/Applicant states that she has the financial means and is capable to cater solely for and take care of the Education of her daughter KelechukwuDaniella at Birmingham City University.

Further deposed that prior to this time, she had opened a Trust Account for her three kids domiciled with F.C. M. B.

That the Birmingham City University fee is £15,000.00 Pounds Sterling (about ₦7,000,000.00) which Applicant averred she is capable of paying the sessions that KelechukwuDaniella would be studying Nursing for the next three years.

That Petitioner/Applicant does not have any other gains or intention except for the best interest of her daughter to get the best of Education in her chosen career.

However, the Applicant deposed in her paragraph 18, that the Respondent had officially written to the British Embassy against granting visa to her kids, KelechukwuDaniella, Nneoma Natasha and Obinna, pursuant to which visas were denied the little children for holidays. But, that Kelechukwu is

travelling for her Education and academics in line with her aspirations and dreams.

In paragraph 20, it is deposed that considering the period for Applying and securing a United States Visa, the consulting travelling agent has written to her and Kelechukwu that they must start the process before the end of October 2022, same is annexed as Exhibit. E. equally refers to paragraphs 21, 23, 24, 25, 26, 27 and 28 thereof, of the Applicant's supporting Affidavit which provides as follows:-

- "21 That there is no other alternative for KelechukwuDaniella's academics, as she will be totally disoriented if she doesn't study her dream course in the United Kingdom, also being that I am very desirous and willing to sponsor which she very well knows. Her Nursing program in United Kingdom is for three years with BSc whereas in Nigeria it is five years with internship. Therefore, it is in her best interest to study in the United Kingdom since I can afford to sponsor her properly.***
- 23 That I undertake to always produce KelechukwuDaniella anytime this Honourable Court requires her presence. I shall cater for the flight tickets for such demands.***
- 24. That KelechukwuDaniella will suffer untold hardship, Educational negativity, trauma as well as infraction in her desired goals as a child if this Application is not granted.***
- 25. That KelechukwuDaniella will be highly prejudiced as a child, her trust in the system negativity affected her aspiration deeply wounded if this Application is not granted.***
- 26. That KelechukwuDaniella will not be in school if this Application is not granted.***

27. That this Application is of utmost importance to the welfare, wellbeing and education of KelechukwuDaniella.

28. That it is in the interest of justice, best of KelechukwuDaniella to grant this Application."

Meanwhile, in the written address in support of the motion on notice learned Applicant's Counsel Mr.UgoNwofor Esq formulated a sole issue for determination thus:-

"Whether this Application ought to be granted considering the academic best interest of the child being her fundamental right?"

In arguing the issue learned Counsel relied on the child Right Act as being a constitutional provision being a continuum of part iv of the 1999 Constitution , in urging the court to consider Kelechukwu's Education, as aspiration and academics are constitutionally protected and ought to be properly sustained and adequately protected beyond any consideration. Learned Counsel placed reliance on Sections 2(1) 7, 9 and 14 of the child Rights Act.

Submitted moreso, that the best interest of the child is equally desired from Article 3 of the U. N convention on the Rights of the child, and in such Applications, the best interest of the child shall be a primary consideration.

Counsel urged the Court consider the following factors thus:-

- The child's views and aspirations;
- Academics of the child
- The identity of the child, including age and gender, personal history and background;
- The care, protection and safety of the child;
- The child's well-being interests and expectations
- The family environment, family relations and contact;
- Social contacts of the child with peers and adults;

- Situations of vulnerability, i.e the risks that the child is facing and the sources of protection, resiliency and empowerment;
- The child's skills and evolving capacities'
- The rights and needs with regard to health and education;
- The development of the child and her or his gradual transition into adulthood and an independent life;
- Any other specific needs of the child.

Learned Counsel submits in that regard that the Applicant has laid out materials for this Court to exercising its discretion on the academic interests of the child to travel to the United Kingdom.

In conclusion learned Counsel placed reliance on the Supreme Court decision of **F. R. N V (2ND NAME IS missing) (2003) 15 NWLR (PT.(part equally missing) page 217, per Uwais J.S.C.**

Learned Counsel urged the Court to grant the Application as prayed.

Meanwhile, the Respondent in his Counter Affidavit, particularly in paragraphs 5, 7, 8, 9, 10, 12, made reference to paragraphs 12, 13, and 14 of the Amended Cross-Petition and further avers in paragraphs 7,8,10,12,13,14,15, 16, 21, 22, 23, 24 and 25.

13, 14, 15, 16, 21, 22, 23, 24, 25 and 26 as follows:-

"13. That the deposition in paragraphs 3 and 4 of the Affidavit are not correct; that the first child of the marriage does not stay with any of the parties but live in school. That the Petitioner sneaked and moved the kids from the matrimonial home when the Respondent was at work; that the petitioner is however not the only one communicating with the children, the Respondent also does amidst the Petitioner's cruel desperation to instigate the children against the Respondent, yet the fatherly love and bond between the Respondent, and the children remains eternally tick.

- 14. That the Respondent had personally borne the responsibility of taking care of the children right from conception and birth.**
- 15. That it is not true that the studentship of the first child of the marriage at AfeBabalola University is on a temporary basis as deposed to in paragraph 5 of the Affidavit; that the said child is carrying on with realizing her aspiration of becoming a licensed Nurse as she is currently a Nursing undergraduate at AfeBabalola University; that the design of the Petitioner to disrupt the education in Nigeria of the first child of the marriage at the behest of empty intimacy promises made to the Petitioner by her mystery lover in the UK is very dangerous to the life and academic pursuit of the child; that this Court should not accept to give such nod.**
- 16. That at all fora and at any opportunity afforded the Respondent, it has always been stated that the three children of the marriage remain the Respondent's life treasures on earth and that the Respondent WOULD NEVER trade the children for anything.**
- 21. That the deposition in paragraphs 6 – 10; 12 and 13 of the Affidavit are not true. That it is also part of the bragging of the Petitioner over wealth and inheritances which do not actually exist anywhere. That the public display of account statements is also part of the petitioner's way of life to brag over wealth and acquisitions and not for what is being represented in this Application.**
- 22. That the deposition in paragraphs 16 – 29 of the Affidavit are all false; the Court is urged to discountenance them in their entirety.**

- 23. that having regard to the reliefs sought in the amended Cross-Petition which as at the time this Application was filed had not been challenged in anyway by the Petitioner, granting this Application will completely prejudice the Respondent's case.**
- 24. That in particular, the Respondent has sought an order of joint custody in relief NO. 22(ii) (a)-(c) of the Amended Cross-Petition and also sought in relief No. 22 (iii) of the Cross-Petition thus:-**
- "A Decree to the effect that till the children attain the age of majority, no decision or action whatsoever shall be taken pertaining to the general welfare of the children particularly choice of School; processing of travelling documents to sojourn overseas etc, without a prior notification, and express consent of the children of the marriage."**
- 25. That it is the Respondent's belief that the substantive live issues as set out in the Amended Cross-Petition excerpted above would be prejudiced as against the deposition in paragraph 22 (e) of the Affidavit of the Petitioner.**
- 26. That it is in the interest of fair hearing to dismiss this Application with substantial cost."**

In the written address in support of the Respondent's Counter Affidavit, Learned Counsel C. S. Ebonugwo Esq, formulated issues for determination thus:-

- "(i) Whether the substantive issues of a suit can be delved into at the interlocutory stage.**
- (ii) Whether the Application is not totally tainted with incompetency and amounts to abuse of Court process."**

In arguing the issue 1 learned Counsel submitted by drawing to the averments in paragraphs 3, 11, 12, 13, 14, 16, 17 and 20 of the Amended

Cross-Petition which to argue that touches on the Respondent's reliefs as sought in the Amended Cross-Petition.

It is further argued that the prayers sought in 1st and 2nd Reliefs of this Application as excerpted above, when juxtaposed with the substantive live issues in the main suit in the context of the paragraphs referred to in the Amended Cross-Petition and Reliefs 22 (ii) (a) –(c) and 22 (iii) thereof discloses unequivocally that this Application is inviting this Court to delve into the live issues pending in the substantive suit for same to be determined at an interlocutory stage Counsel relied on the case of **SIRAJUDEEN V. BAMIDELE (2018) LPELR-45702**.

It is further argued among other things in paragraphs 2:02 – 2:03 that there's issue of custody of the children of the marriage in the main suit, and the Court is therefore urged to decide same at this interlocutory stage.

On issue two which is whether this Application is not tainted with incompetency which amounts to abuse of Court process, learned Counsel argued that the first interim order and that it is trite that same is dependent on an interlocutory application and lapses at a given time while an interlocutory order subsists till and pending the determination of the substantive suit.

Reliance was placed on the case of **KUBOR V. DICKSON & ORS (2012) LPELR-9817 (SC) Per Unnoghena JSC,(pp-40 -40) paras D-E**.

Furthermore, Learned Counsel argued in para 2:07, that this Application is incompetent in that there is no Affidavit in support of Motion on notice as what we have in this case is Affidavit in support of originating Summons.

In conclusion learned Counsel urged the Court to dismiss the Application with a cost of **₦200,000.00**.

Now, in a bid to determine this Application, I shall raise a sole issue to wit:

Whether from the facts and circumstances of this case, this Court ought to grant the reliefs sought by the Applicant?

Before I dwell on this issue, let me begin by considering the arguments of learned Respondent Counsel regarding of the Applicant's Affidavit in support.

The heading is as follows:-

"Affidavit in support of originating summons".

It is the learned Counsel's contention that this heading which clearly is erroneous in the circumstances renders the entire Affidavit incompetent, since the suit was commenced by a petition and not on Originating Summons.

Reliance was placed on order 43 Rule (1) of the F.C.T High Court (Civil Procedure) Rules, 2018.

On this issue, while addressing the Court on the day the Application was heard, and in response to the submissions of Respondent's Counsel on the issue, UgoNwofor Esq for the Petitioner, submitted that by the Rules of this Court, such error should be treated as an irregularity. Learned Counsel also referred the Court to paragraph 3 of the Applicant's further Affidavit which states thus:-

"That the originating Summons captured in the heading of the Affidavit in support of Originating Summons is a typographical error and a clerical mistake from my counsel's secretariat. So I was informed by my Counsel UgoNwofor on 19th of October, 2022 at Maitama park at about 5:pm, and this I verily believe."

Having considered the arguments proffered on this issue on both sides, it is my opinion that the heading is no doubt a clerical error.

The Rules of this Court clearly provide that such shall be treated as an irregularity which shall not vitiate proceedings.

I refer to order 5 Rule of the F. C. T High Court (Civil Procedure) Rules 2018. Which provides thus:-

"(1)Where in beginning or purporting to begin any proceedings there has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, such failure shall not nullify the proceedings,

(2) Where at any stage in the course of or in connection with any proceedings there has by reason of anything done or left undone been a failure to comply with the requirements as to time place, or manner, or form such failure may be treated as an irregularity. The Court may give any direction as he thinks fit to regularise such steps.

(3) The Court shall not wholly set aside any proceedings or writ or other originating process by which they were begun on the ground that the proceedings were required by any of this Rules to be begun by any originating process other than the one used."

Now coming back to the matter at hand, it is clear that this Application is brought on behalf of Kelechukwu Daniella and pursuant to the child Rights Act, 2003.

Indeed Section 1 of the Act (Supra) provides thus:-

"1. 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."

Likewise Sections 2(1), 7, 9 and 14 of the child Rights Act, 2003 provide thus:-

"1) The provisions in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999, or any successive constitutional provisions relating to Fundamental Rights, shall apply as if those provisions.

7.-(1) Every child has a right to freedom of thought, conscience and religion. ""'. (2) Parents and, where applicable, legal guardians shall provide guidance and direction in the exercise of these rights having regard to the evolving capacities and best interest of the child. " The duty of parents and, where applicable legal guardians to provide

guidance and direction in the enjoyment of the right in subsection (1) of this section by their child or ward shall be respected by all persons, bodies, institutions and authorities." (4) Whenever the fostering, custody, guardianship or adoption of a child is in issue, the right of the child to be brought up in and to practise his religions shall be a paramount consideration.

9.-(1) Every child is entitled to freedom of movement subject to parental control which is not harmful to the child. (2) Nothing in subsection (1) of this section shall affect the right of a parent, and where applicable, It's legal guardian or other appropriate authority to exercise control over the movement of the child in the interest of the. Education, safety and welfare of the child.

14.-{1) Every child has a right to parental care and, protection and accordingly, no child shall be separated from his parents against the wish of the child except- (a) for the purpose of his education and welfare; or (b) in the exercise of a judicial determination in accordance with the provisions of this Act, in the best interest of the child. (2) Every child has the right to maintenance by his parents or guardians in accordance with the extent of their means, and the child has the right, in appropriate circumstances, to enforce this right in the family court.

In this case, the Applicant has averred in her Affidavit in support that it is the aspiration and dreams of the child of the marriage i.e. Kelechukwu Daniella to go and study Nursing her chosen field of study in Birmingham City University UK. The Applicant has equally shown by her depositions in the supporting affidavit as well as the documentary Exhibits annexed, that she is financially and otherwise capable of solely sponsoring the studies of her daughter in Birmingham City University.

This clearly shows that the Applicant is ever ready, able and willing to support and encourage her daughter to fulfill her dreams and aspirations.

On the other hand, it is the deposition of the Applicant in her paragraph 18, that the Respondent who is the biological father of her daughter has officially written to the British Embassy against granting Visa to her kids, the 3 children of the marriage pursuant to which Visas were denied the children for holidays.

And that since Kelechukwu wishes to travel to the United Kingdom to continue with her Education, the Court is urged to consider the best interest of KelechukwuDaniella which supercedes any other issue as far as issues in this suit are concerned.

Also averred in paragraph 21 is that this Honourable Court has the powers to grant leave for Kelechukwu's best interest, since time is of the essence and admission must be by January, 2023. Hence, the Court ought to treat this Application as very urgent.

On his part, the Respondent in this Counter Affidavit, deposed among others that this Application is another ploy of the Applicant among several others to try and relocate with the children of the marriage and also Petitioner's bid to get sole custody of the children.

In paragraph 14 and 15 the Respondent avers thus:-

"That the Respondent had personally borne the Responsibility of taking care of the children right from conception and birth."

"That it is not true that the studentship of the first child of the marriage at AfeBabalola University is on a temporary basis as deposed to in paragraph 5 of the Affidavit; that the said child is carrying on with realizing her aspiration of becoming a licensed nurse as she is currently a Nursing undergraduate at AfeBabalola University; that the design of the Petitioner to disrupt the education in Nigeria of the first child of the marriage at the behest of empty intimacy promises made to the petitioner by her mystery lover in the UK is very dangerous to the life and academic pursuit of the said child; that this Court should not accept to give such nod."

However, the Applicant has countered this fact in paragraph 8 of her further Affidavit where she states thus:-

"That I know as a fact that going to Birmingham City University to continue studying Nursing is in the best interest of KelechukwuDaniella as this is her aspiration and dream for life at this stage of her life and age".

Now having considered the averments contained in Applicant's supporting Affidavit, the annexures and written address, and also having considered Respondent's Counter Affidavit, and written address as well as the Applicant's further Affidavit, I have in the best interest of KelechukwuDaniella critically looked at the provisions of the child Rights Act in addition to those reproduced earlier, which no doubt will serve as the best guide to the Court in reaching its decision in this case.

No doubt, in every action concerning the Education, welfare maintenance of a child the paramount consideration is the best interest of the child.

Every parent has the duty and responsibility of encouraging their child to achieve their dreams and aspiration, in accordance with their means.

It is clear in this case that it is the Applicant who wishes to finance, solely, the Education of KelechukwuDaniella to study in the U.K.

However, the Respondent has shown in his Counter Affidavit that this part of the Applicant's deposition is false as she is already studying in AfeBabalola University.

Now, Section 20 of the child Right Act 2003 provides thus:-

"20 Every parent guardian, institution responsible for the Education, training, socialization, employment and rehabilitation of a child has the duty to provide the necessary guidance, discipline, education and training for the child in his or its care, such as will equip the child to secure his assimilation, appreciation and observance of the responsibilities set out in this part of the Act."

(under lining mine)

Now, in my humble view while it is disheartening to deny a child a life changing opportunity such as the one sought by Miss KelechukwuDaniella, it is clear from Section 20 of the Child Rights Act, that in matters relating to education, training, socialization etc of the child, these duties are on the parents to provide necessary guidance to that child, in that regard.

It must also be borne in mind that both parents of a child have equal rights on any decision that may affect their child regardless of the means of each parent.

In situations such as this there must be consensus between the parties regarding Education of their child since KelechukwuDaniella is 17 years old and a minor, regrettably in the instant case, as seen from the facts and circumstance on the issue, there is no meeting of minds or consensus on the issue.

I have equally observed that the Respondent has not denied the Petitioner's averments in paragraph 18 of her supporting Affidavit, that the Respondent has officially written to the British Embassy refusing consent for the three children of the marriage to travel to the U.K with their mother the Petitioner/Applicant for holiday, which led to VISAS being denied.

Now, since the Respondent has denied his consent and it is averred in Applicant's supporting Affidavit that KelechukwuDaniella is currently attending studies at AfeBabalola University, it means the child is continuing with her Education.

I am not unmindful of the Constitutional provisions and the provisions of the child Rights Act, on the need for a child's Fundamental Rights to be protected.

However, in this case, there's no denial of Right of Education, but there's denial of a life changing opportunity for KelechukwuDaniella to follow her dreams and aspirations of furthering her Education in Birmingham City University, United Kingdom.

Consequently therefore, the Respondent being the biological father of KelechukwuDaniella, has the legal right to give or not to give consent for

his child to travel to the U.K for her University Education since she's 17 yearsold now.KelechukwuDaniella will soon be an adult.

It is still hoped that one day she will fulfil those dreams and aspirations that she so craves.

However, in the meantime, and for the reasons given earlier, regrettably this Court cannot grant this Application. I so hold.

However, before I conclude let me state that I find it rather strange that in such an Application,in this proceeding which is sui generis, and which is brought for the benefitof the child of the marriage Miss. KelechukwuDaniella, that the Respondent will deem it fit to ask for ₦200,000.00 cost, regardless of what is between the Petitioner/Applicant and the Respondent. It is sad and unfortunate.

Therefore, I make no order as to cost.

Signed

Hon. Justice Samirah Umar Bature.

7/12/2022.