

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

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/PET/411/2020**

**BETWEEN:**

**FAVOUR USOR NYIAM.....PETITIONER/RESPONDENT**

**VS**

**PIUS DAVID NYIAM.....RESPONDENT/APPLICANT**

**RULING**

By a Motion on Notice dated 23/9/21 but filed on 12/10/2021, with Motion number M/6690/2021, brought Pursuant to Section 71 (1) Section 109 of the Matrimonial Causes Act, Order III Rule 4 of the Matrimonial Causes Rules and under the inherent jurisdiction of this Honourable Court. The Applicant prays the court for the following reliefs.

- (1) An Order of this Honourable Court directing the Respondent to allow the Applicant an unfettered access and admittance of the children of the marriage i.e. Divine Pius Nyiam and Glory Emmaculate Pius Nyiam onto the Applicant's care for holidays, weekends and for any other day or time as the Applicant may desire to access and relate with the said Divine Nyiam and Glory Nyiam.

- (2) An Order of this Honourable Court directing the Respondent to at all times, disclose to and inform the Applicant of welfare, needs condition and/or state of affairs of the children of the marriage, Divine Pius Nyiam and Glory Emmaculate Pius Nyiam and to seek and obtain the consent of the Petitioner in event that the said two children of the marriage are to leave an/or to be taken outside the jurisdiction of this Honourable Court.
- (3) And the Omnibus relief.

The processes were served on the Cross Petitioner/Respondent by substituted means to wit: by pasting at her last known Address being Block 1 Flat 2 Red Roof Extension Premiere Academy Quarters, Lugbe – Abuja, vide Order of Court made on 24/1/2023. Despite service, the Cross Petitioner/Respondent failed to react to the processes. The implication of this, is that the application before court stands unchallenged and uncontroverted. In *Gana Vs FRN (2012) All FWLR (PT. 617) 793 @ 800* Paras D – E the court held that;

“Where an affidavit does not attract a Counter-Affidavit, the facts deposed to therein have been admitted and must be taken as true”

In the Written Address of the Cross Petitioner/Respondent/Applicant, Odu Onabe Esq. of Counsel formulated a sole issue for determination that is;

“Whether the Applicant has satisfied the necessary conditions to enable the Honorable Court invoke and exercise its equitable jurisdiction in his favour”

Submits that Interlocutory Injunctions are equitable remedies which the courts award in favour of a deserving party in appropriate circumstances to preserve the res before Judgment is entered. Refer to *Kotoye Vs CBN* (1989) 1 NWLR (PT. 98) 419 and *Obeya Memorial Hospital. Vs A.G. Federation* SC 46 @ 63 C-H.

Relying on the guiding principles for the grant or refusal of Interlocutory Injunction stated in the case of *Buhari & Ors Vs Obasanjo & Ors* (2003) 17 NWLR (PT. 850) 587 submits that, the Petitioner/Cross Respondent absconded with the Children of the marriage for more than a year and has blatantly refused to allow the Respondent have access to the Children also prevent the Applicant from communicating with his biological children on phone.

Submits further that if this act of denying the Applicant access to his biological children is allowed to continue the children might feel that they have been abandoned by their beloved biological father and therefore create perpetual enmity with the Applicant (their biological father) the injury created therefore can never be assuaged by any amount of damages.

Urge court to place the highest premium on the welfare and the best interest of the children of the marriage and grant the prayers of the Applicant.

Having given an insightful consideration to the affidavit evidence of the Applicant which remained unchallenged and the judicial authorities cited, I find that only 1 (one) issue calls for determination that is;

“Whether the Applicant has furnished this court with satisfactory facts to enable it exercise its discretion in his favour”

The grant or otherwise of an application of this nature is a discretionary one and in considering it the court must do it judicially and judiciously, taking into cognizance the facts before it. See *Anachebe Vs Ijeoma* (2014) 14 NWLR (PT. 1426) 168 @ 184 Para D – F. See also *Okaoma Vs Okaoma* (2017) All FWLR (PT. 900) 450 @ 471 Para G.

Section 1 of the Child Right Act as well as Section 70 of the Matrimonial Causes Act imposes the welfare of the child as paramount consideration in all actions. Section 69 of the Child Right Act empowers the court to make an Order in respect to access of a child it states;

The Court may;

- (a) On the application of the father or mother of a child, make such order as it may deem fit with respect to the custody of the child and the right of access to the child of either parent having regard to;
  - (i) The welfare of the children and the conduct of the parent and
  - (ii) The wishes of the mother and father of the child.

Thus the court must consider as Paramount the welfare of the children whom the Applicant seek access. However regards must also be made whether access to the children of the marriage constitutes a claim of the parties in the substantive suit as the court have been enjoined not to make pronouncement on matters for the substantive suit at the interlocutory

stage of trial. See CAC Nigeria Ltd Vs Alh Hassan Baba (2005) All FWLR (PT. 242) 515 530 – 531.

I have taken a considered look at the affidavit evidence of the Applicant as well as the pleadings of the parties in the Petition and I find that parties are not joined on the issue of access to the children of the marriage, therefore the court may proceed to make pronouncement on the relief for access to the children of the marriage. Secondly I find that unchallenged depositions of the application is supportive of the relief more so as the welfare, development and wellbeing of a minor requires that both parent play a pivotal role in the life of the children. The court is of the firm view that the welfare and wellbeing of the children be better served if the application is granted.

From all of these having found the depositions of the Applicant supportive and sufficient to grant the application with regards to the Provisions of Section 1, 69 (a) (i)(iii) of the Childs Rights Act and Section 7 of the Matrimonial Causes Act this court hereby holds that the application has merit and should succeed. Consequent the reliefs are granted as prayed, it is hereby ordered;

- (1) An Order of this honorable Court directing the Respondent to allow the Applicant an unfettered access and admittance of the children of the marriage i.e. Divine Pius Nyiam and Glory Emmanculate Pius Nyiam onto the Applicant care for holidays, weekends and for any other day or time as the Applicant may

desire to access and relate with the said Divine Nyiam and Glory Nyiam.

- (2) An Order of this Honourable Court directing the Respondent to at all times disclose to and inform the Applicant of welfare needs, condition and/or state of affairs of the children of the marriage; Divine Pius Nyiam and Glory Emmanuel Puis Nyaim and to seek and obtain the consent of the Petitioner in event that Divine and Glory Pius Nyam are to leave and/or to be taken outside the jurisdiction of the Honourable Court.

Signed

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

6/7/2022

**APPEARANCE:**

ODU ONABE ESQ. FOR THE CROSS-PETITIONER/APPLICANT

NO APPEARANCE FOR THE PETITIONER/CROSS-RESPONDENT/  
RESPONDENT.