

**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: UKONUKALU, GODSPOWEREBAHOR& ORS**

**COURT NO: 6**

**SUIT NO: FCT/HC/PET/76/2012**

**MOTION NO: M/850/2022**

**BETWEEN:**

**MR. ANYANWU CHIDINMA EZENWA.....PETITIONER  
VS**

**MRS. ANYANWU CHIZOBA .E.....RESPONDENT**

**RULING**

By a Motion on Notice with No. M/850/2022 dated and filed on 26/1/2022, brought pursuant to Section 1 of the Child Right Act 2003 and under the inherent jurisdiction of this Hon. Court, the Applicant pray the court for;

1. **A DECLARATION** that the Petitioner/Respondent's continued deprivation and denial of the Respondent/Applicant, the unfettered and unrestrained access to their mother is - unlawful, unfair, dishonest, unconstitutional and constitutes a veritable violation of the Child's Right of the Applicant's Right to the dignity of the Child as guaranteed under Section II of the Child's Rights Act 2003.
2. **A DECLARATION** that the Petitioner/Respondent's continued deprivation and denial of the Applicants the unfettered and

unrestrained access of their mother is - unlawful, unfair, dishonest, unconstitutional and constitutes a veritable violation of the Child's Right of the Applicant's Right to parental care, protection and maintenance as guaranteed under Section 14 of the Child's Right Act, 2003.

3. **AN ORDER** directing the Petitioner/Respondent to allow the Applicants to freely visit her children in her home, including spending weekends, holidays pending the determination of the Petition.
4. **AND FOR SUCH FURTHER OR OTHER ORDERS** as this Honourable Court may deem fit in the circumstances of this Application to make.

The grounds upon which this application is brought are as follows;

1. That the Petitioner/Respondent is a very dangerous, insensitive, morally bankrupt person and it amounts to a high risk in the manner he exercises dominant custody over the children to the exclusion of their mother, the Applicant/Respondent without a subsisting order of court.
2. That it is risky to the moral, spiritual, social, and physical wellbeing of the children to unduly and without justification deny them access to their mother for them to enjoy and share her company as they grow up as children.
3. That it is most likely that the children are currently being abused silently in the hands of the Petitioner/Respondent, the same way

he sexually, emotionally, and physically abused their Respondent/Applicant and other girls (house-helps) who lived with him in their matrimonial home.

4. That it is in the interest of the children for their mother, the Applicant/Respondent to be in close contact and relations with them despite the pending Petition before this Honourable Court.
5. That the Petitioner/Respondent excludes the children of the marriage from any meaningful and reasonable contact with their mother, the Applicant/Respondent which raises suspicions of secretive abuse and hushed mistreatment of the children of the marriage.
6. That the deprivation and denial of the children of the marriage from having reasonable period of staying with their mother, the Applicant/Respondent, creates a negative psychological and emotional impact that is unhealthy for the children's wellbeing.

In support of the Motion is a 34 Paragraph affidavit with two annexures marked as Exhibit "A1" "A2", sworn to by Respondent. Also filed a Written Address and adopts same in urging the court to grant the reliefs.

With leave of court Petitioner filed a 34 Paragraph Counter affidavit with six Annexures marked as Exhibits "A" "B" "C" "D" "E" and "F" sworn to by the Petitioner/Respondent. Also filed a Written Address in urging the court to refuse the application.

In the Written Address of Respondent/Applicant settled by Frank Tietie Esq. a sole issue was submitted for determination and that is;

“Whether the Honourable Court would grant in the interest of the children of the marriage the reliefs sought in the application therein?

And submits that the Petitioner/Respondent have breach the rights of the children of the marriage as guaranteed by Section 2 (1), 277, 21 of the Child Rights Act. And also deprived them of parental care as which connotes a legal duty as defined in the case of Nigeria Ports Plc Vs Beacham Pharmaceutical (2012) LPELR – 15538 (SC). Respondent/Applicant had been trying to discharge her responsibility to the children, whereas Petitioner/Respondent cared less. Relies on the Provision of Section 14(1) (a) and (2) of the Child Rights Act which guaranteed right to parental care, as well as Section 15 (2) (6) (a) (b) (c) (d), 16 (1) of the Act on the right of children to compulsory and Universal Primary Education and protection respectively.

Submits further that every child has responsibilities towards his family and society and where their welfare and education are neglected they may not give the best to his family and society at large.

Submits finally that the character and disposition of the Petitioner/Respondent clearly negates the interest and wellbeing of the children of the marriage by his continued deprivation of meaningful contact with their mother during the pendency of the Petition. Urge court to grant the application.

In the same vein, Petitioner/Respondent Counsel formulated a single issue for determination in their Written Address, that is;

“Whether the Respondent/Applicant is entitled to the relief sought?”

Replying on Section 2 (1) of the Child Rights Act, submits that the duty to provide for the protection, care and wellbeing of the child is that of the parent or guardian. Petitioner/Respondent has been committed to that duty since 17/8/2017 when the Respondent/Applicant abandoned the children and the Petitioner. Respondent/Applicant has not demonstrated capacity to fulfill that duty. But admitted that Petitioner, the children are well taken care of and lack nothing. Refer to Paragraph 20 of their Counter Affidavit and the cases of Jegede & Anor Vs INEC & Ors (2021) LPELR – 55481 (SC) Dantata & Sawoe Construction Co. (NIG) Ltd & Anor Vs Ajayi (2013) LPELR – 20492 (CA). And now contradict herself to state that the children are at risk in the custody of the Petitioner. Urge court to apply the doctrine of res Ipsa loquitor as stated in the case of Royal Ade Nig Ltd & Anor Vs N.O.C.M.C.O Plc (2004) LPELR – 2959 (SC) the averments and Exhibits attached to their Counter-Affidavit goes to show that the children are doing perfectly well.

Submits further that Petitioner/Respondent is not in breach of Section 15 (2) & 6 (a) (b) (c) (d) of the Child Right Act and has not denied the Respondent/Applicant access to the children.

Submits finally that the Motion on Notice filed on the 26<sup>th</sup> day of January, 2022 with Suit. No:Pet/76/12 is unknown to this court and therefore incompetent. Refer to PDP Vs Ekeagbara & Ors (2016) LPELR – 40849

(CA). Urge court to discountenance the said Motion as it is incompetent in its entirety as it is misleading and untrue.

Having considered the affidavit evidence of the parties, submission of Counsel for and against the grant of the application as well as the judicial and statutory authorities, I find that the issues which call for determination are;

- (1) Whether the Motion is competent if in the affirmative;
- (2) Whether this court can grant the reliefs sought by the Applicant in the circumstances of this case.

On issue 1, Petitioner/Respondent's Counsel requires the competence of this application drawing the court's attention to the Suit Number stated on the face of the Motion that same is unknown to this court. The necessary adjudication of a competent jurisdiction have been stated in the locus classicus case of *Madukolu Vs Nkemdilim* (1962) 1 All NLR (PT. 4) 587 thus;

- (1) Is the suit property constituted as regards members and qualifications of the members of the Bar and no member is disqualified for one reason or another.
- (2) The subject matter of this is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction.

- (3) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Applying these principles to the instant case, I find that the Petitioner/Respondent's Counsel have not objected to this application on any of the three grounds identified in the said case. I, however, find the Motion in conformity with the three principles considering whether or not an action is competent. In my opinion, the issue raised by the Petitioner/Respondent's Counsel is an error on the part of the Respondent/Applicant's Counsel, granting the order prayed by the Petitioner/Respondent's Counsel would amount to punishing the litigant for the sin of the counsel, further it would mean allowing the emphasis on technicality to defeat the course of justice by not hearing the substance of the Motion. Therefore this court will refuse the application of Petitioner's Counsel and consider the merit of the application I so hold. I now turn to the second issue for determination.

On the grant or otherwise of an application of this nature is at the discretion of the court. And in the exercise of that discretion, the court overtime is enjoined to do so judicially and judiciously taken into consideration the facts before it. See the case of *Ajunwa Vs SPDC Nig Ltd* (2012) All FWLR (PT. 615) 200 @ 219. See also *Tanko Vs State* (2009) 4 NWLR (PT. 1131) 430.

Now this is an Interlocutory application, where the Applicant seeks declaratory reliefs as well as an order for access to the children of the

marriage pending the outcome of the Petition. The law is well settled that court hearing an Interlocutory application has no jurisdiction to make any pronouncement which has the effect of determining any of the matters or issues in the substantive case. In other words a court hearing an Interlocutory application must avoid or refrain from making any finding or determination which may prejudice the substantive matter. See *Adeleke Vs Lawal* (2014) All FWLR (PT. 710) 1226 2 1228. See also *Ugwu Vs Julius Berger (Nig) Plc* (2019) LPELR – 47626 (CA).

Granted that this is the position of the law that a court should avoid making a pronouncement at Interlocutory stage of issues for main trial, more so at the Petitioner seeks custody of the children of the marriage, even though the Respondent is yet to file her Answer. In this instant, the grant or otherwise is at the discretion of the court, which has to be exercised based on facts before it. The Applicant has by her Paragraph 25, 26, 27, 28, 29, 30, 31, 32 and 33 of her supporting affidavit stated facts to support the grant of this application. On the other hand Respondent stated in Paragraph 16, 17, 18, 19, 20, 25, 26, 27, 28 and 29 of his Counter Affidavits facts challenging the application but however stated further in Paragraphs 21, 22, 23, 30 and 31 of same Counter-Affidavit facts that he is not averse to the Respondent having access to the children of the marriage. The primary consideration is the interest of the children which is paramount in an application of this nature. I have carefully given consideration to the facts contained in the affidavit evidence of both parties and I find that it would be in the interest of justice to refuse Respondent/Applicant's relief 1 and 2 which are declaratory reliefs, which



cannot be granted in an Interlocutory application where court is yet to determine with finality the case brought for adjudication and grant relief 3 as prayed, pending the determination of the substantive case.

In conclusion, this application has merit and is allowed in parts. This relief 3 is hereby granted as prayed.

Signed

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

Presiding Judge

7/10/2022

**APPEARANCE:**

FEROMINE TELLIONSE ESQ. FOR THE PETITIONER/RESPONDENT

FRANK TIETIE ESQ FOR THE RESPONDENT/APPLICANT