

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 10, AREA 11, GARKI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

FCT/HC/PET/452/2022

BETWEEN

INNOCENT C. EJIOFOR

}

PETITIONER

AND

CATHERINE U. EJIOFOR

}

RESPONDENT

R U L I N G

The Respondent/Applicant vide a Motion on Notice No. M/3757/2022 dated and filed 24th January, 2023 praying this Court for the following orders:

1. An Order granting further custody of the four children of the marriage between the parties, namely: (a) Adanna Geraldine Ejiofor born on 25th September, 2006 (b) Henry Chidi Ejiofor born on 3rd September, 2008, (c) Gerald Chinemerem Ejiofor born on 27th June, 2013 and (d) Juliet Amarachi born on 9th October, 2017

- to the Respondent/Applicant pending the hearing and determination of this petition.
2. An Order for the Petitioner to pay the sum of N800,000.00 (Eight Hundred Thousand Naira) per month as maintenance and feeding for the Respondent and the four children of the marriage pending the determination of this Petition.
 3. An Order for the Petitioner to pay the school fees of the four children of the marriage.
 4. An order of injunction restraining the Petitioner from continuously harassing the Respondent and the children of the marriage.
 5. Such further order(s) as the Honourable Court may deem fit to make in the circumstances.

The application is brought pursuant to **OrderXIV Rules 15(1) and 22(2) of the Matrimonial Causes Rules, Section 69(1) of the Child's Right Act, 2003, Sections 70(2), 71(1) and 73(i)(a) and (b) of the Matrimonial Causes Act, Cap M7 Laws of the Federation of Nigeria** and under the inherent jurisdiction of the Honourable Court.

It is premised on 7 grounds to wit:

- (a) The children of the marriage are minors and need to be under the care and guidance of their mother (the Respondent/Applicant).
- (b) The Respondent/Applicant is equal to the task of taking good care of the children. She has been doing that for close to 17 years now and the children are doing very well and lack nothing.
- (c) The Petitioner/Respondent is emotionally, physically unstable and incapable of taking care of the children of the marriage.
- (d) The Petitioner/Respondent has on different occasion visited the Respondent/Applicant late at night to harass and emotionally assault her.
- (e) The Respondent/Applicant and the children need the financial support of the Petitioner/Respondent for their maintenance, shelter and general wellbeing.
- (f) The Petitioner/Respondent has a duty to be financially responsible for the education of the children and general

welfare of the Respondent/Applicant and the children suitable to his economic and social standing.

- (g) The Petitioner/Respondent is a public servant with good monthly income and he is taking care of only himself.

In support is a 27 paragraphed affidavit deposed to by the Applicant herself, Mrs. Catherine U. Ejiofor and also a written address is attached.

In moving the application in Court, the Learned Counsel to the Applicant submitted that they filed a reply on point of law to the Counter Affidavit filed by the Respondent. He relied on all the processes filed and urged the Court to grant the application.

On the other hand, the Petitioner's Counsel (Respondent) submitted that they have filed a 10 paragraphed counter affidavit and a written address.

While adopting the written address as his arguments, he submitted orally in Court that the reliefs being prayed for here are the same reliefs they are praying for in the main suit for dissolution of marriage.

He further submitted that the prayers they are asking for are not the kind that can be granted at interlocutory stage. He said the reason being that if the reliefs in this Motion on Notice is granted, it means the Court

would have delivered its judgment at interlocutory stage. And that all they are asking for in their Cross Petition is one and the same with what this Motion on Notice is asking for. He urged the Court to dismiss this application and in lieu order accelerated hearing of this suit.

I have considered this application. I have also considered the arguments and submissions of both Learned Counsel for and against the grant of this application.

To start with, what are the reliefs sought by the Petitioner in the main suit? They are as follows:

- a) A decree of dissolution of the marriage contracted between the Petitioner and Respondent on the ground that the marriage has broken down irretrievably.
- b) That since the marriage the Respondent has behaved in such a way that the Petitioner finds intolerable and cannot reasonably be expected to live with the Respondent on the grounds state in (a) above.
- c) Custody of the four children of the marriage.
- d) An Order that all personal properties of the Petitioner shall not be shared between the Petitioner and the Respondent as same

were acquired by the Petitioner in his personal capacity and efforts without the help of the Respondent.

- e) An Order of this Court compelling the Respondent to hand over all the original copies of the Petitioner's properties in her possession to the Petitioner.
- f) Such further order or orders as the Court may deem fit to make in the circumstance.

The Respondent/Applicant in her answer and Cross Petition to the Petition filed by the Respondent seek the following reliefs;

- (i) A decree of Judicial separation of the parties on the ground that the parties have not been living harmoniously due to hostile conduct of the Petitioner, exhibited in constant aggression, physical and emotional violence meted to the Respondent and the children of the marriage.
- (ii) An Order of this Honourable Court granting sole custody of the children of the marriage to the Respondent with access to the Petitioner at such time as this Honourable Court may deem fit and preferably once a month at a designated play ground or park within Abuja.

- (iii) An Order of this Honourable Court that the Petitioner shall be responsible for the education of the children of the marriage as pleaded in his petition.
- (iv) An Order of this Honourable Court that the Petitioner should pay sum of ~~N~~800,000.00 (Eight Hundred Thousand Naira) only, monthly for maintenance of the children of the marriage, which includes their feeding, welfare, medications and clothing.
- (v) An Order of this Honourable Court that the Respondent and the children of the marriage be accommodated in the parties' property located at No. 6, Dr. Fabian Street, Blue Fountain Properties, Efab Metropolis Estate, Karsana, Abuja where the children of the marriage were living before the Petitioner drove them away.
- (vi) An order of this Honourable Court mandating that the under listed properties in paragraph 9 (i-xii) acquired by the parties in the course of the marriage be shared equally between the parties in this petition.

- (vii) An Order of this Honourable Court that the Petitioner pays the sum of ~~N~~25,000,000.00 (Twenty-Five Million Naira) annually to the Respondent for maintenance.
- (viii) An Order of this Honourable Court mandating the Petitioner to release the Respondent and children of the marriage International Passports.
- (ix) Perpetual injunction restraining the Petitioner from harassing the Respondent.
- (x) And for such further order(s) as this Honourable Court may deem fit to make in the circumstances.

Looking at the reliefs sought by this application carefully and comparing them with the ones sought in the main suit by the Petitioner/Respondent together with the ones contained in the answer and Cross Petition of the Applicant, one would observe that they are substantially the same.

It is trite law, that a Court should not make a pronouncement at the interlocutory stage such as in the instant application that will touch on substantive suit before it.

In the case of **AGWU & ORS. v. JULIUS BERGER (NIG.) PLC (2019) L.P.E.L.R. – 47625 (SC)** where it was held thus:

“...Since the interlocutory applications are usually dealt with before the substantive suit, the law is that a Court should not say anything at that stage of the proceedings that would jeopardize the just and proper determination of the suit after the trial. Simply put, the Court must not determine substantive issues at the interlocutory stage of the proceedings...”

In the instant application, the issue of custody of children is central as it forms part of the reliefs sought by both parties. Any pronouncement on such a relief at this stage will amount to nothing but dealing with substantive issue at the interlocutory stage.

For the above reason, I pitch my tent with the Learned Counsel to the Respondent that in the interest of justice, what is required is the accelerated hearing of this suit.

I therefore refuse this application for lacking in merit and I order the accelerated hearing of this case.

.....
S. B. Belgore
(Judge) 31-3-2023

