IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,

IN THE ABUJA JUDICIAL DIVISION,

HOLDEN AT COURT NO. 11 BWARI, ABUJA.

BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.

SUIT NO. FCT/HC/PET/03/2017

BETWEEN:

FUNMILOLA YEMISI NWANI ..... **PETITIONER**

AND

1. MATTHEW ONYEISI NWANI..... **RESPONDENT**
2. JOY CHINELO NWANI ..... **CO-RESPONDENT**

JUDGMENT

DELIVERED ON THE 5TH FEBRUARY, 2021

By a Petition dated 20th November, 2017 for a Decree of Dissolution of Marriage entered into on the 24th day of June, 2011 as between herself and the Respondent, the Petitioner prayed the Court for these reliefs:

1. AN ORDER for a Decree Nisi of Dissolution of the Marriage contracted on the 24th day of June, 2011 at the Federal Marriage Registry, AMAC, Abuja, FCT, between the Petitioner/Applicant and the Respondent herein on the grounds of Adultery, Cruelty/Intolerable behaviours, irreconcilable differences and failure of respondent to perform his conjugal maintenance duties to his first family.

2. AN ORDER of this Honourable Court granting custody of the two children of the marriage to wit: 1) Master Samuel Nwani, 'M' 5 years and ii) Miss Queen Esther Nwani, 'F' 3 years, to the Petitioner/Applicant in the overriding interest, security and welfare of the children.

3. AN ORDER for general damages in favour of the petitioner against the respondents and co-respondents jointly or severally in the sum of N5, 000, 000. 00 (Five Million Naira) only being psychological, physiological, mental trauma and torture, general loss of face and economic and financial deprivation.

4. 2% interest on the judgment sum every month up to the judgment and thereafter until the judgment debt is liquidated.

5. ANY OTHER ORDER or further and better orders as this Honourable Court may deem fit to make in the circumstances.

I note that the Petition is accompanied by the Petitioner's witness statement on oath of 25 paragraphs, Certificate relating to Reconciliation, Certificate of Marriage, a Marriage Picture and some exhibits. The 1st Respondent filed his Answer to the Petition.

I have decided not to recount the facts of this case and deliberately so. I bear in mind that the judgments of the

Courts are like a history book read far and wide and preserved for all ages. The constitutive facts are disturbing, unfortunate and rather regrettable and should not be celebrated especially as there are children of the marriage whom the law has imposed even a greater duty on me of ensuring that their interest is paramount in arriving at decisions in proceedings like the instant one. The interest of the children which the law considers does not only include their present interest but also their future wellbeing and interest which includes that they should not be made to face scandal and or such other social hostilities arising from the facts of their parents' divorce proceedings in which they contributed nothing but are mere victims. In any event, the facts as pleaded and relied on by the both parties are part of the indestructible records of this Court and may only be alluded to towards efficient disposal of the narrow issues as I have been called upon to resolve by the contending parties. The principal relief of the petition has been stated at the beginning of this Judgment. From the processes filed in this Court, pieces of evidence led and more particularly from the submission of the Counsel for the Respondent in the proceedings of 22nd January, 2020, the Respondent is not opposed to the relief for the Order Nisi dissolving the Marriage. **In these circumstances, The Order for a**

Decree Nisi of Dissolution of the Marriage contracted on the 24th day of June, 2011 at the Federal Marriage Registry, AMAC, Abuja, FCT, between the Petitioner/Applicant and the Respondent herein is hereby granted by me.

The both parties in this proceedings have laid claim to the exclusive custody of the children of the marriage. What principles has the law laid down which guide the Courts in determining where the pendulum will swing in custody proceedings as between the father and mother of the children. From my intimate study and exhaustive research (from scholarly works) on the ancestry of paramountcy of child's welfare in deciding custody issues, we have been sufficiently informed that the Court is to cast the net really very wide in looking at all surrounding circumstances and peculiar facts of each case in deciding how custody is to be awarded. In their scholarly work titled: NOTES ON THE PRINCIPLE "**BEST INTEREST OF THE CHILD": MEANING, HISTORY AND ITS PLACE UNDER ETHIOPIAN LAW** (downloaded from file:///C:/Users/Admin/Downloads/145487-Article%20Text-384735-1-10-20161008.pdf), the Learned Authors: **Aron Degol and Shimelis Dinku** brilliantly shed light on the paternity of this legal principle and its evolution over time thus:

In early times, fathers were given custody of their children in case of divorce. For instance, in feudal Europe, the father used to have a paramount right to have custody of his children as children were considered to be part of his patrimony. In countries like Holland, the father was given this paternal preference as he was thought to be capable of properly raising children. Hence, during these periods, the father had a right to have custody of his children unless the wife proves that he is unfit. The unfitness, however, was to be proved under stringent conditions. The mother, in most jurisdictions, had to show that the father was insane or for any other reason was incapable of taking care of the children. In 1839, the British parliament modified this paternal preference by the 'tender years doctrine'. This doctrine holds that children under seven years of age should not be separated from their mothers. This was based on the premise that mothers are very

important for younger children due to the special natural bond existing between them and due to the fact that young children are often looked after by their mothers. In the 1900s, another standard was developed through case laws in the common law countries, especially in the U.S.A. This standard favors the mother as the primary care provider and it was based on the significant place mothers have in the child's mind due to their intimate interaction and the special natural bond which exists between them. This standard differs from the initial paternal predominance in feudal Europe because it prefers mothers by giving due consideration to what is best for the child rather than paternal preference. In fact, the application of the best interest standard is 'gender neutral', and it has currently won recognition in both the common law as well as in the civil law systems, amongst which the U.K., U.S.A. and France may be cited. The best

interest of the child in the 1924 Geneva Declaration of the Rights of the Child The first organized effort in the process of recognizing the rights of the child came in 1924 with the adoption of the Geneva Declaration of the Rights of the Child by the League of Nations. In the context of the Declaration, the rights of children were primarily seen as measures to be taken against slavery, child labor, child trafficking and prostitution of children. This Declaration significantly reflected the concerns related to the rights of children that were grossly violated during WWI and its aftermath. The declaration emphasized children's material needs and proclaimed that children must have the requisite means for their formal development. This included food for the hungry, nursing for the sick, due attention for the handicapped and shelter and support-both physical and emotional- for the orphans.18 The Geneva Declaration of the Rights of the Child was based on the principle

that "mankind owes to the child the best it has to give". In fact, this principle was embodied not in the main body of the declaration, but in its preamble. It reads as follows: By the present declaration of the rights of the child, men and women of all nations, recognizing that mankind owe to the child the best that it has to give, declare and accept as their duty … The phrase "mankind owes to the child the best it has to give" clearly underlines our duties towards children, and it entitles them for the best that mankind can give. This implies that the interest of the child should be given primary consideration in actions involving children. 1.3. The best interest of the child in the 1959 UN Declaration of the Rights of the Child As pointed out earlier, the process of the recognition and enunciation of human rights of children was first initiated in an organized manner by the League of Nations with the adoption of the Geneva Declaration of the Rights of the Child in 1924. This step was

carried further by the United Nations 1959 Declaration of the Rights of the Child and the 1989 Convention of the Rights of the Child. The 1959 Declaration of the Rights of the Child affirmed the principle that "mankind owe to the child the best it has to give" which was the principle recognized in the 1924 Geneva Declaration of the Rights of the Child. It particularly emphasized on the need for special safeguards and care of the child. The third paragraph of the preamble of the declaration states that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth." The Declaration expressly recognizes the principle of the best interest of the child. Article 2 of the declaration provides that: The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally,

spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interest of the child shall be the paramount considerations." The principle of the best interest of the child is also embodied under Article 7 of the Declaration which states that "best interests of the child shall be the guiding principle of those responsible for his education and guidance ..." The text of Article 2 of the 1959 Declaration has, in particular, two important notable features. The first is that the principle, far from being restricted to child custody arrangements, is of very a wide-ranging application as it was intended to enable the child "to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity." The second is that the child's best interests were not to be one among several factors to be

considered, but rather were to be 'the paramount consideration'.

In the proceedings before me, Learned Counsel for the Petitioner, at paragraph 2.1 of his written address on custody, has referred me to **Section 71(1) of the Matrimonial Causes Act** which has made sufficient provision identical to the propositions projected by the Learned Authors I just cited which in their aggregate simply confirms and demands that in proceedings with respect to the custody, guardianship, welfare, advancement of education of children of a marriage, the Court shall regard the interest of those children as the paramount consideration; and subject thereto, the court may make an order in respect of those matters as it thinks fit. In the same vein, the both parties in this hostile proceedings have referred me to and relied on the pronouncement of Lord Davies in **O (INFANTS) (1972) 2 ALL ER 744** where the Lord Justice propounded:

There is no rule that little children should be with their mother, any more that there is a rule that boys approaching adolescence should be with their fathers. It depends on what is proper in each individual's case for children of such tender age obviously the care and

supervision of a mother or father who is out at work can give a very important factor.

I have dutifully read all the written submissions of the parties on this seemingly knotty issues which they adopted on the 15th day of October, 2020 in urging the Court to grant their respective prayers. In the January 2020 Indian Supreme Court case **YASHITA SAHU VS THE STATE OF RAJASTHAN& ORS (CLR) NO. 7390 of 2019**, it was observed respecting the consideration of the best interest of the child thus:

"No hard and fast rule can be laid down and each case has to be decided on its own merits. We are also not oblivious of the fact that when two parents are at war with each other, it is impossible to provide a completely peaceful environment to the child. The court has to decide what is in the best interest of the child after weighing in all the pros and cons of both respective parents who claim custody of the child. Obviously, any such order of custody cannot give a perfect environment to the child because that perfect environment would only

be available if both the parents put the interest of the child above their own differences... With the increasing availability of the internet, video-calling is now very common and courts dealing with the issue of custody of children must ensure that the parent who is denied custody of the child should be able to talk to his/her child for 5-10 minutes every day. This will help in maintaining and improving the bond between the child and the parent who is denied custody. If that bond is maintained, the child will have no difficulty in moving from one home to another during vacations or holidays. The purpose of this is if we cannot provide one happy home with two parents to the child, then let the child have the benefit of two happy homes with one parent each...a child has a human right to have the love and affection of both the parents and the courts must pass orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents"

It has equally been held that *just the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other parent. Even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents*, **YASHITA SAHU VS THE STATE OF RAJASTHAN & ORS**(supra).

From a dispassionate consideration of the facts and circumstances which have crystalized in this proceedings, I am satisfied that the it will be in the best interest of the children: Master Samuel Nwani and Miss Queen Esther Nwani that they should continue their education under the custody and guardianship of their mother (the Petitioner) whom I am also satisfied can safely be entrusted to look after them, educate them and attend in every possible way to their upbringing. An interlocutory order of this Court was granted to enable different parties appear before this Court so as to assist this Court in determining the merit or otherwise of the wild allegations and counter-allegations in its truth-searching process but the Respondent made efforts to have this Court

vacate the said order instead of complying with same even though he has consistently denied the accusations levied against him. I will grant visitation rights to the Respondent who shall be unfettered access to the children by the Petitioner at least twice a week at any neutral venue as the Petitioner and the Respondent may agree on from time to time. The Respondent shall be entitled to spend at least an hour and thirty minutes on each of the visitation with the children. The children are to spend their holidays and vacations in equal proportion with the Petitioner and the Respondent. The secondary school and the university the children will attend would be jointly be decided upon by the Petitioner and the Respondent. At no time should the Petitioner take any of the children out of the Federal Capital Territory Abuja or out of Nigeria without the signed consent of the Respondent. Any attempt by the Respondent to take the children out of the Federal Capital Territory Abuja or out of the Federal Republic of Nigeria without the written consent of the Petitioner will automatically reverse the custody order of this Court in favour of the Respondent. Upon attaining the age of 18, each of the children would be at liberty to choose where to stay, with whom to stay as between the Petitioner and the Respondent and how long.

The evidence before me amply shows that the Petitioner is gainfully employed with the Nigerian Security and Civil Defence Corp. Bearing this in mind, I order that the academic advancement of the two children (in terms of school fees) shall be equally sponsored as between the Petitioner and the Respondent. No concrete evidence was established before this Court as to entitle reliefs (2) and (3) sought by the Petitioner to succeed. In consequence, the said two reliefs fail and are dismissed by me.

In signing off this judgment, I am bound to express the view that matrimonial strife leading to judicial separation takes unhealthy toll on the welfare of the children of the marriage. It constitutes an unhealthy drag on their otherwise unimpeded advancement in life. It behooves on the warring parties to step back from the brink, manage their bruised ego and reflect deeply how these separation proceedings will perpetually negative or work against the best interests of the children and possibly make the best efforts to reconcile all their outstanding grievances so as to ward off the making of order absolute. The circumstances culminating in this proceedings leave much to be desired. It is only a sour taste that they leave in the mouth especially of the children. It negatively affects the building of a more cohesive society in general. This is really unfortunate, I must say. The warring

parties must also understand that there is no marriage without its own cracks, ups and down, tear and wear. Counsel in this matter can as well foster peace between their respective Clients and spare the Court of the imminent order absolute. They can achieve it with the co-operation of the Petitioner and the Respondent, if not for anything else, for the best interest of the children. It has been advised by the Supreme Court of India **YASHITA SAHU VS THE STATE OF RAJASTHAN & ORS**(supra). That husband and wife should try to bear the *"ordinary wear and tear of married life for the larger interest of the offspring as the fight adversely affects the mind and psychology of the child… Spouses must come over the temperamental disharmony which usually exists in every marriage, rather than magnifying it with impulsive desires and passions. Parents are not only caretakers, but they are instrumental in the development of their child's social, emotional, cognitive and physical wellbeing and work harmoniously to give their children a happy home to which they are justly entitled… Divorce and custody can become quagmire and it is heart wrenching to see that the innocent child is the*

ultimate sufferer who gets caught up in the legal and psychological battle between the parents".

I choose to say no more.

This shall be the court Judgment which is reserved on the 15th day of October, 2020.

APPEARANCE

James Femowei Esq. for the petitioner.
The defendant not in court and not represented.

Sign
Hon. Judge
05/02/2021