

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 7 APO, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

MOTION NO. FCT/HC/M/11081/2020

BETWEEN:

ONYEKA UMEUGO

(Suing for himself and on behalf of His Children;

Master Chisimdi Umeugo (16 Years Old) and

Miss Chinecherem Umeugo (11 Years Old)) **APPLICANT**

AND

1. ADAOBI UMEUGO

2. IKECHUKWU EZEIKE **RESPONDENTS**

JUDGMENT

DELIVERED ON 3RD NOVEMBER, 2021

By an Originating Motion on Notice dated the 23rd day of October, 2020 and filed on the same day and brought pursuant to Sections 37, constitution of the federal republic of Nigeria 1999 (as amended): Sections 3, 8, 14, & 15 of the child's right act 2003; articles xi (1) xviii (3), xiv (1) & (2) of the African Charter on the Rights and Welfare of the Child; Order 2 of the Fundamental Right Enforcement Procedure Rules 2009 and under the inherent jurisdiction of this Honourable court, the Applicant [suing for himself and on

behalf of his children; Master Chisimdi Umeugo (16 years old) and Miss Chinecherem Umeugo (11 years old)] commenced this action against the Respondents claiming the under-listed reliefs:

1. A DECLARATION that the abduction and forceful taking away of Master Chisimdi Umeugo (16 years) and Miss Chinecherem Umeugo (11 years) by the 1st and 2nd Respondents from their place of abode without knowledge and consent of their father and against their wish, is an infringement of their fundamental rights to private and family life.

2. A DECLARATION that the continuous abduction and detention of Master Chisimdi Umeugo (16 years) by the 1st and 2nd respondents without giving him opportunity to resume his school at Stella Maris College {Senior Secondary School One (SS1) Area 1 Garki, Abuja is a breach of his right to compulsory education.

3. A DECLARATION that the continuous abduction and detention of Miss Chinecherem Umeugo (11 years) by the 1st and 2nd respondents without giving her opportunity to resume her school at Premier Academy {Junior Secondary School One

(JS1)} Lugbe, Abuja is a breach of her rights to compulsory education.

4. A DECLARATION that the present and continuous abduction and separation of Master Chisimdi Umeugo (16 years) and Miss Chinecherem Umeugo (11 years) Without adequate parental care from their father and opportunity to go to school is a breach of their rights as children to parental care, protection, and maintenance.

5. AN ORDER of the Court ordering the immediate return of Master Chisimdi Umeugo (16 years) and Miss Chinecherem Umeugo to their home at House 2 Hillcrest Garden, Mabushi, Abuja and resumption to their respective schools.

6. The cost of One Million Naira (1,000,000.00) only against the 1st and 2nd respondents jointly and severally for instigating the 1st respondent to abscond with Master Chisimdi Umeugo (16 years) and Miss Chinecherem Umeugo without the consent and knowledge of their father.

The grounds upon which the application is premised are itemized below:

a) The 1st Respondent is the wife of the Applicant, who has been a violent person and destroyed properties and beats

up people at any slightest provocation. Due to some misunderstanding with the Applicant, she at the instigation of her brother; the 2nd Respondent arranged upon false and fabricated allegations got the applicant arrested and detained at National Agency for the Prohibition of Trafficking in Persons (NAPTIP).

- b) While the Applicant was clearing his name and establishing the allegations was total false, sometimes in September 2020, the 1st Respondent at the Instigation and aid of the 2nd Respondent abducted and absconded with Master Chisimdi Umeugo (16 years) and Miss Chinecherem Umeugo (11 years) without their consent, the knowledge of the Applicant, and total disregard and concern for their welfare, education, and well-being from their home. Same which amounts to the breach of their fundamental rights as children to private and family life.
- c) When the Applicant got released from NAPTIP's custody, he realized that his children are nowhere to be found and have been forcefully deprived of their fatherly care, love, and adequate maintenance. Same which amounts to breach of their rights to parental care, protection and maintenance.

- d) Worst still is that, upon the resumption of schools within the Federal Capital Territory, Abuja the Applicant realized that the two children have not been attending their schools because the 1st and 2nd Respondent are hiding them from one place to another without any concern for their education, same which is a fundamental breach of their rights to education.
- e) The continuous abduction of Master Chisimdi Umeugo (16 years) and Miss Chinecherem Umeugo (11 years) against their wish and consent by the 1st and 2nd Respondents depriving them adequate parental care, welfare, protection, maintenance, and education and access to their father are all in breach of Section 37 Constitution of the Federal Republic of Nigeria 1999 (Amended); Sections 3, 8, 14, & 15 of the Child's Right Act 2003 Articles Xi (1), Xviii (3). Xiv (1) & (2) of the African Charter on the Rights and Welfare of the Child.

The Originating Motion on Notice is supported by an affidavit of twenty- five (25) paragraphs deposed to by the Applicant himself to which is attached Exhibit A (evidence of school fees receipt). Pursuant to Order 2, a Statement in support and a

written address in support also accompanied the Originating Motion on Notice.

In opposition to the weighty averments contained in the Applicant's affidavit evidence, the 1st and 2nd Respondents [who are both siblings] filed a joint counter-affidavit of thirty-one (31) paragraphs to which is attached several documentary exhibits serialized and marked as Exhibits A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, [all exhibits showing 1st Respondent's brutalization by the Applicant] and Exhibit A11, Charge No: CR/1024/2020 Between Federal Republic of Nigeria VS. Onyeka Umeugo], Exhibit A12, A13, A14, A15, A16 and A17 [copies of the Common Entrance Exam papers. The Respondents filed a written address in opposition to the Originating Motion on Notice. In a nutshell, the averments of the 1st and 2nd Respondents are laced with outright denials of the allegations levied against them by the Applicant. In contradiction to the case being made out against the Respondents, the Respondents alleged violence by the Applicant against the 1st Respondent. Some of the excerpts from their joint counter-affidavit serving as an example in buttressing their stand are captured at some paragraphs of their counter-affidavit thusly:

14. *The Applicant has severally assaulted me and he has threatened to molest my only daughter whom I love so much, and boasted that he will continue to raise his hands on me and he also threatened that nothing will stop him from killing me. That he will very soon kill me and take me to Gudu cemetery and pay them the sum of N10, 000.00 for me to be buried and be forgotten and no members of my family can question him, he boasted and even showed me the phone numbers of some of his friends that he has already planned with at Gudu cemetery Apo under the Federal Capital Territory Abuja. The video evidence of his threats and the way I was beaten mercilessly is hereby attached as Exhibit 'A10'.*

17. *At every little misunderstanding, he will collect my car key and start beating me, disgracing me before our neighbours. On several occasions without any problem or quarrel, he*

will come to my shop and frustrate my business. He invited his lawyer to our house early this year and told the lawyer to file for divorce if not he will continue to maltreat me and force me out of the house. He tried everything to teach my children bad things and make them to lack parental upbringing which I insisted because I love my children so much and wanting the best for them.

18. Contrary to paragraphs 2, 3, 4, 5, 6, 8 and 9 of Applicant's affidavit in support of the Originating Motion, that I did not take my children to an unknown destination, I am a well educated personality and want my children to get a quality education in life and due to the violent act of the Applicant and his irresponsible way of bringing the children up in an incident manner, I took my children to my parent's house at No. 1 Ezechukwu Street, Abakpa Nike, Enugu: State. It is a house well

known in the city of Enugu and not an unknown destination. The Applicant himself knows the said house very well and he has lived there with me before, being a house of my own biological parents so the house is not an unknown destination.

In reply to the counter-affidavit of the 1st and 2nd Respondents, the Applicant filed a further and better affidavit of forty (40) paragraphs essentially dismantling the depositions contained in the joint counter-affidavit of the 1st and 2nd Respondent. By a Ruling delivered on the 4th day of November, 2020, following a Motion Ex-parte dated and filed on the 23rd day of October, 2020, this Court, among others, ordered that the Respondents should not change the school of the children as well as ordering the Inspector-General of Police or any officer of the Nigerian Police Force upon whom the Order may be served to produce the children before the Court on the next adjourned date being 17th November, 2020. On the 1st of March, 2021, this Court entered a Ruling in the application brought by the Respondents whereby they sought for the setting aside of the Ruling of the Court made on 4th day of November, 2020 as earlier alluded to. The Motion on Notice was dated 15th

November, 2020 but filed on the 16th November, 2020. Ruling on the application, this Court ordered that the children shall continue with their studies where they school presently] undisturbed and that their Mother, the 1st Respondent, shall be allowed to visit them in the school whenever she desired to do so but not to move them out of the school without the Order of this Honourable Court. I took oral submissions from the Learned Counsel on both sides who adopted their processes as filed by the parties.

I have patiently waded through the labyrinth of documents and evidence amassed in the present proceedings. I note that the facts which propped the instant case are rather most unfortunate. I have deliberately struggled to avoid reproducing in details all the averments contained in the processes filed by the both parties. The Father that I am, I am aware that doing so may scandalize the children of the marriage when tomorrow they have opportunity or reasons to go through the Rulings or Judgment of this Court in this case. It can also cause them great embarrassment or stigma within their social circles and thrust on them unpleasant psychological trauma that may not easily be erased for the rest of their lives since the judgment of this Court is a public document which anyone can access it's certified true copy. The circumstance that has crystallized is

symptomatic of a failed or failing marriage (even though the parties are not shown to have successfully concluded a divorce proceedings resulting in the dissolution of their matrimonial home). Allegation of abduction of the children of the marriage as levied against the Respondents by the Applicant points a grave situation in the marriage. It would be a grave pronouncement to make which this Court is not prepared to or rather most reluctant to make. I am rather prepared to order, and I believe this should bring the issues in the present proceedings to an end, that the children's education at their current place of study should continue unhindered. They should be spared the traumatic experience of this underlying festering marital battle raging between the Applicant and the 1st Respondent. They Master Chisimdi Umeugo and Miss Chinecherem Umeugo] appear to have been caught in a cross-fire for reasons not of their own making or choosing. I remarkably note that in the affidavit evidence deposed to by the Applicant, it is revealed that House 2 Hillcrest Garden Mabushi, Abuja is the home of the Applicant. Also in their joint counter-affidavit, the 1st Respondent, MRS. ADAOBI UMEUGO, deposed to, on the 16th November, 2020 that her address is House 2, Hillcrest Garden Mabushi, Abuja. This House 2, Hillcrest Garden Mabushi, Abuja being the undisputed home of

the couple and children, I order that the children should not be removed from their parents' established matrimonial home. The couples [I mean the Applicant and the 1st Respondent] have not been shown to have divorced neither was any divorce proceedings pending between the two before any Court was brought to the attention of this Court. In other words, the children must continue in their present school and continue to reside in House 2, Hillcrest Garden Mabushi until they reach the age of majority and decide to choose otherwise by themselves and not by the sheer force of the Respondents.

The 1st Respondent in particular shall have access to see the children both in school and at home but must not be for the purposes of removing them from the Federal Capital Territory, Abuja or removing them from the matrimonial home of the couples which is House 2, Hillcrest Garden Mabushi or for the purpose of violating the terms of this Order in any other way without the Order of this Honourable Court first sought and obtained.

The parties, especially the Applicant and the 1st Respondent, are strongly advised to reconcile and mutually resolve all underlying marital strifes that have all congregated to culminate in this sorry state. This effort must not be delayed

so that the drift is arrested and the situation does not degenerate further. That will be the highest sacrifice they [the Applicant and the 1st Respondent] can make in securing, sincerely, the best interests of Master Chisimdi Umeugo and Miss Chinecherem Umeugo, which the both parties asserted to be securing in their respective processes file before me. Counsel qua advocates on both sides could be of immense support and instrumental in helping the both parties achieve this and Setting them, once again, on the path of peace. In the light of the factual backdrop of this case, the prayer for cost on both sides would fail. I shall not grant any, Parties to bear their own cost.

This shall be the judgment of the court in this case.

APPEARANCE:

Abiodun E. Olusanya, Esq. for the Applicant

Respondents not present in court.

Sign

Hon. Judge

03/11/2021