

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**HOLDEN AT ABUJA**

**ON FRIDAY 24TH FEBRUARY, 2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI**

**SITTING AT COURT NO. 8, MAITAMA, ABUJA**

SUIT NO: FCT/HC/CV/1080/2020

**BETWEEN:**

MR. MARTINS ASUQUO. .... CLAIMANT

**AND**

MRS. EMEM ASUQUO ..... DEFENDANT

**JUDGMENT**

The Claimant is a civil servant with the News Agency of Nigeria and the husband of the Defendant. Their marriage has somewhat become estranged. The Claimant alleges that on the 5th of June 2019, the Defendant, without his prior consent or approval, abducted and unlawfully took the two female children of their marriage to an unknown place which action he claims has inflicted wounds on his psyche as a responsible father. He further contends that although efforts to locate the exact whereabouts of his daughters since the 5<sup>th</sup> of June, 2019 proved abortive, he however succeeded in tracking the vicinity they were taken to by the Defendant. The Claimant further claims that

since the time the Defendant abducted the children from the matrimonial home, all his efforts to secure their return have proved abortive.

It is on the basis of these salient facts, which the Claimant alleges as contravening the provisions of the **Child Rights Act, 2003**, that he has commenced this suit vide an Originating Summons filed in this Court on 11/02/2020, wherein he seeks for the determination of the following questions:

- 1. Whether the Respondent has the right and authority to take away or abduct the children of the marriage between herself and the Applicant to Lagos or anywhere else without the full consent and authority of the Applicant or a valid Court Order contrary to the provisions of the Child Rights Act 2003?**
- 2. Whether the Respondent should on any ground be allowed to take away or keep the children of the marriage: Victory Asuquo and Vida-Maris Asuquo without the consent or approval of the Applicant against the welfare of the children who since 5th of June 2019 had been out of school and suffer serious malnutrition owing to lack of care and proper welfare by the Respondent.**
- 3. Whether the Applicant who had all along been providing for the general welfare, education and other necessities of the children ought to be allowed to have the children in his custody to enable him continue to provide for the**

**upkeep, accommodation, and education of the children of the marriage.**

Upon the determination of these questions, the Applicant prayed the Court to grant the following reliefs:

- 1. A declaration that the taking away and/or abduction of Victory Asuquo and Vida-Maris Asuquo by the Respondent on 5th June 2019 to unknown places without the consent or approval of the Applicant is unconstitutional, null and void and a violation of the provisions of the Childs Right Act.**
- 2. A declaration that the Applicant as the legitimate father and the sole breadwinner of the family ought to be entitled to have the custody of his children Victory Asuquo and Vida-Maris Asuquo so as to enable him provide for the general welfare and good upbringing as required by law.**
- 3. An Order directing the Respondent to release the children of the marriage to the Applicant for their good, general welfare, education, upkeep and moral upbringing in the interest of the children.**
- 4. An injunction restraining the Respondent by herself or through anyone acting on her behalf from further keeping the children of the marriage as mentioned above without a valid Court Order for her to do so.**

**5. AND FOR SUCH FURTHER ORDER OR ORDERS as the Court may deem fit to grant in the circumstances.**

The Defendant failed to respond to the Originating Summons even though it is borne by the records that she was duly served with the originating processes and hearing notices for the scheduled hearing date, by substitution, at her last known address, as ordered by the Court.

I am mindful that the Claimant prayed this Court for two (2) substantive declaratory reliefs. This presupposes, as it is trite, that in order for the Claimant to establish his entitlement to the said. declaratory reliefs, it would not matter that the Defendant did not defend the action. It also would not matter that the Defendant had technically admitted the Claimant's case. This is so because in an action in which the Claimant claims declaratory reliefs, he has a bounden duty to lead credible evidence in proof of the declaration sought from the Court. The implication is therefore that, whether or not the Defendant filed a defence, the focus of the Court will be on the evidence adduced by the Claimant in support of his claim and that the Claimant will only be permitted to take advantage of the weakness in the Defendant's case, only where such weakness supports his case. See Gambo Vs. Turdam [1993] 6 NWLR (Pt. 300) 500; Uchendu Vs. Ogbuni [1999] 1 NWLR (Pt. 603) 337; Dumez Nigeria Ltd. Vs. Nwakhoba [2009] All FWLR (Pt. 461) 842.

Proceeding to determine the suit on the afore-restated legally established principle, it is the case of the Claimant that he got married under the Marriage Act to the Respondent on 31 October, 2013, at the

Marriage Registry, Uyo, Akwa Ibom State. He exhibited copy of his marriage certificate to the Affidavit in support of the Originating Summons. He further alleges that since their marriage, the Respondent had always been contentious, engaging in all manners of feud with him; that he had been the one single-handedly taking care of the two children of their marriage, **Victory Martins Asuquo** and **Vida Martins Asuquo**, both females.

The Claimant has alleged, fundamentally, that on 5th June, 2019, the Defendant abducted his two daughters to an unknown location; that ever since, he has been unable to trace their whereabouts; that sometime thereafter, he tracked them through telephone conversation to the vicinity where the Respondent took the children, somewhere in Lages, but that he could not trace their exact location.

The Claimant further lamented that by the Respondent's action, the school attendance of the children had been disrupted, in that the Respondent abducted them in the middle of their third term in school; and that he could not vouch if the Respondent had enrolled them in another school.

The Claimant further deposed that sometime after the children were abducted, he received a call from a woman who claimed she called from an orphanage in Lagos, to inform him that his daughters were in Lagos but failed to disclose their exact location to him, despite his passionate pleas.

The Claimant also stated that, in an attempt to blackmail him, the Respondent wrote a Petition against him in September, 2019, to the **National Human Rights Commission (NHRC)**, after which the **Commission** invited him to respond thereto, which he did; that the **Commission** subsequently invited the Respondent to come forward to substantiate her Petition, but she failed to turn up; that he equally filed a Petition against the Respondent with the NHRC on 10 September, 2019, which the Respondent failed to respond to when called upon to.

The Claimant further claimed that the Respondent wrote another Petition against him to the **Federal Ministry of Women Affairs**, in December, 2019, that upon invitation, he reported to the Ministry on 11th December, 2019, where, for the first time since 5th June, 2019, he met the Respondent and the children; that at the said meeting, the Respondent demanded that he paid some money to her for the children's maintenance; and that he, on the other hand, demanded that the Respondent should return to the matrimonial home with the children; that another meeting was held at the same Ministry on 21st January, 2020, where he renewed his demands for the Respondent and the children to return home; that the efforts of the Ministry officials to resolve the issues between him and the Respondent did not yield any fruitful results.

It is on the basis of these facts that the Claimant has approached this Court for the enforcement of his rights under the **Child Rights Act**.

It is gathered from the gamut of documents attached to the Affidavit in support that the two children subject of the instant action, were aged six

(6) and four (4) respectively as at 2020, when the instant action was instituted.

Now, even though the Respondent did not formally respond to the present action, it turns out that more details of what transpired between the parties, prior to the filing of the present action, were revealed in the documents attached by the Claimant to the Affidavit in support. For instance, the reasons and circumstances under which the Respondent vacated the matrimonial home on 5th June, 2019, were narrated in one of such documents, being the letter dated 24th July, 2019, written by the Respondent to the **Executive Secretary, National Human Rights Commission, captioned LETTER FOR ASSISTANCE**. In the letter, the Respondent narrated the graphic details of the awful and dehumanizing treatments meted out to her by the Claimant, who she described as having serious anger issues, since they got married in November, 2013. She further narrated in the letter the circumstances that led to her packing out of the matrimonial home; that it was at the insistence of the Claimant that she left with her children, when he began to threaten to butcher her if she did not leave. In the said letter, the Respondent stated further:

**"On that day (5th of June, 2019) after he molested me as usual and I knew my life was at stake, I started packing my things and the children's things. He saw me packing and his anger was satisfied. He took his bath and drove out. So, I left with my children."**

In the said letter, the Respondent further explained that it was because of the Claimant's pedophilic tendencies that she would not allow her two daughters to stay with him, narrating circumstances of how the Claimant had molested their house maid and attempted to video-record the nakedness of his niece in the past.

In his response to the said Petition under reference, written against him to the **NHRC** by the Respondent, also attached as exhibit to the Affidavit in support, the Claimant, surprisingly admitted a number of the Respondent's allegations, but only attempted to justify his actions. Although he denied being a pedophilic character and that he could never have any such sexual feelings towards his own children.

In his response, the Claimant denied sending the Respondent out of the house but that she packed out on her own volition before he returned from work on the date in question; and that all his attempts to make her return home had proved abortive.

Now, in his arguments, the Claimant's learned counsel had hinged the present action on the provision of **s. 27(1)** of the **Child Rights Act**, which states as follows:

**"No person shall remove or take a child out of the custody or protection of his father or mother, guardian or such other person having lawful care or charge of the child against the will of the father, mother, guardian or other person."**



(Underlined portion for emphasis)

The question that readily comes to the mind of the court is whether the Respondent who is the mother of the children required any form of approval or authorization from the Applicant in the absence of an existing court-ordered custody in place before she can remove them from a seemingly toxic environment. Furthermore, is the Respondent's failure to so obtain the purported "**approval**" from the Claimant amounted to abduction, removal and transfer of her own children from lawful custody?

Naturally, custody of children resides with the parents which in the instant case, the Respondent is a co parent. It is my view that the provision of **Child's Rights Act**, cited supra, applies only to persons other than those mentioned in the provision, that is a child's father, mother, guardian, such other person having lawful care or charge of the child. In other words, no other persons can take custody of a child against the will of the persons mentioned in the provision.

In the present case, the Respondent is the biological mother of the young children. There is no evidence that the marriage between the two parties have been dissolved. There is also no evidence that there is a Court order preventing the Respondent from having custody of the children, particularly considering the toxic circumstances under which she vacated the matrimonial home.

I am also unable to agree with the Claimant that the Respondent abducted her own children. If this were to be so, she would not have brought them to the meetings held between the parties under the

auspices of the **Federal Ministry of Women Affairs** on the two occasions they met, as shown by evidence presented by the Claimant.

The online Oxford Law Dictionary provides the legal meaning of the word - **abduction** - as "**the illegal removal of a child from its parents or guardian.**" In the present case, the Respondent is shown to be the biological mother of the little children. As such, going by the legal meaning of the word - **abduction** - it will be wrong to have alleged that she abducted her own children. I so hold.

Looking more critically at the wording of provision of **s. 27(1)** of the **Act** relied upon by the Claimant's learned counsel, it is seen that the provisions used the words "**father or mother, guardian or such other person...**" disjunctively. This implies, in my view, that the provision envisages the possibility that a child could reside with any of the options provided therein, whether the father or the mother or the guardian or any other person having lawful care or charge of the child, depending on the child's prevailing circumstances.

In Nwaogwugwu Vs. President, FRN [2007] All FWLR (Pt. 358) 1151 @ 1171 Paras.G H (CA), the Court of Appeal reasoned the implication of the use of the word "or" in a statute and held, per **Adekeye, JCA** (as he then was), as follows:

**"The use of the word 'or' in a statute connotes disjunctive participle used to express an alternative or to give a choice of one among two or more things. The word always bears a disjunctive meaning in an enactment. It separates the provision preceding it from the provision coming after it.**

**Its role is to show that the provisions in which it is appearing are distinct and separate one from the other. See Abia State University Vs. Anyaibe [1996] 3 NWLR (Pt. 439) 646."**

In other words, there is nothing in the provision of **s. 27(1)** of the **Act** that suggests that a child must always be in the custody of his/her father and mother at the same time. The provision only applies to situations where a child is taken from the custody of either parent against their respective wills. In the present case, the two children of the marriage are in the lawful custody of their mother. Even though, their father, the Claimant, is aggrieved by this state of affairs, the law cited has not however precluded the Respondent from having lawful custody of her children, more so when the prevailing circumstances demanded so.

As gleaned from documents attached by the Claimant in support of the present action, it cannot be said that the Respondent vacated the matrimonial home with the two children under normal circumstances. As I had noted earlier on, the picture painted by the Claimant, from the documents attached to support the action, presented a toxic environment, a marriage characterized by verbal, emotional and physical abuse; a situation which may not be very conducive for his children to thrive. I do not suppose that a married woman would ordinarily choose to leave her matrimonial home with her children if the atmosphere in the home is conducive and clement for them. By my firm reckoning, a home where a married couple directly and indirectly admitted to being abusive is not ideal for their children to be raised.

The Claimant has not produced any concrete evidence that since the Respondent took custody of the children from the matrimonial home, their lives have been endangered in any way so as to make it imperative that they be removed from their mother. As always, the best interest of the children, not the wish of a parent, is paramount in arriving at a decision in a matter of this nature, which is a composite of many factors. In the instant case, the children, who are both females, are between the ages of 3 and 5 as at 2019, which I consider tender and still within their formative years. As such, it is natural to hold the view that, in the circumstances, they are best left with their mother, if both parents have to live separate from each other.

Again, one must wonder what exactly the Claimant wanted from the Defendant. I consider that it is irresponsible of the Claimant to state, in one breath, that the Defendant deliberately got pregnant for him in order to trap him into marrying her; yet turned around to crave custody of the child he was trapped to have.

I must also add that the materials placed before the Court have not shown the Defendant to have violated the provision of **Article XIV** of the **OAU Charter on Rights and Welfare of the Child**, also relied upon by the Claimant's learned counsel.

In totality, I am not clearly satisfied that the claimant has demonstrated, by credible evidence, his entitlement to the declaratory and other reliefs he sought by the present action. Rather than seeking remedy from the

Court, the Claimant must show remorse and seek reconciliation with the Defendant.

Besides, not having custody of the children ought not to prevent or preclude him from being responsible for their education and upkeep. These are the Claimant's parental responsibilities to his daughters whether he has their custody or not.

In the final analyses, I hereby resolve all the questions sought to be determined by the Claimant against him. in their entirety. In consequence, the judgment of the Court is that the instant action is lacking in merit and in substance. It shall be and it is hereby accordingly dismissed.

**OLUKAYODE A. ADENIYI**

**(Presiding Judge)**

**24/02/2022**

**Legal representation:**

**Adetola Olulenu, Esq. (with Ikechukwu Odozor, Esq.) - for the Claimant**

Defendant unrepresented by counsel.