

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA-ABUJA
ON MONDAY THE 23RD OCTOBER, 2023.**

**SUIT NO: FCT/HC/GWD/PET/25/2021
MOTION NO: FCT/HC/M/4996/2023**

**BEFORE HIS LORDSHIP: HON. JUSTICE A. I. AKOBI
BETWEEN:**

KAYODE TAIWO OMOTAYO.....PETITIONER/RESPONDENT

AND

KAYODE OJUOLAPE OLADOTU.....RESPONDENT/APPLICANT

**IN THE MATTER OF THE APPLICATION TO COMMIT MRS KAYODE TAIWO
OMOTAYO FOR CONTEMPT OF DISOBEDIENCE OF COURT ORDER.**

**MRS. KAYODE TAIWO OMOTAYO.....PARTY SOUGHT TO BE COMMITTED
PETITIONER/CROSS RESPONDENT**

JUDGMENT/RULING

This court heard a motion on notice filed by the Respondent/Applicant, delivered ruling on the 06/06/2022 and granted inter alia to the respondent/applicant divided custody of the two children (Fifelomo Nathania Kayode and Oluwafioreyimika Semira Kayode) of the marriage during public holidays, festive season and school vacation pending the determination of the main suit.

Consequently, the respondent filed a motion for committal, after service of form 48 and 49 in line with SCPA. The motion was ripe for hearing and was heard on the 09/03/23 after the court heard and granted application for extension of time for the petitioner to file counter affidavit and written address in response to the respondent's motion for committal. The motion for committal is motion no: 4996/23 brought pursuant to Order 47 Rule 10(3)(a) & (c) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018, Sheriffs and Civil Process Act Cap 407 LFN 1990 and under the inherent jurisdiction of the court. It is premised on grounds (i) – (viii) with a supporting affidavit of 29 paragraphs deposed to by the respondent/applicant, attached with some exhibits and a written address, wherein, It is alleged that the petitioner/respondent disobeyed the order of this Honourable Court made on the 6th day of June, 2022, granting divided custody of the children of the marriage, hence, the reason for this motion for committal of the petitioner/respondent for the disobedience of the order of the court made on the 6th day of June, 2022.

The motion seeks the following reliefs:

- 1. An Order** for committal to prison against the parties sought to be committed:
 - a.** For being in contempt of this Honourable Court having disobeyed the court orders made on 6th June 2022.
 - b.** For being in contempt of this Honourable Court having subjected the pending matrimonial proceedings to a

parallel public trial to undermine the integrity of the court and the rights of the applicant.

And for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

On being served with the motion, the party sought to be committed (petitioner/respondent filed a counter affidavit of 29 paragraphs deposed to by the petitioner; annexed with exhibits and a written address. In reaction to the counter affidavit, the Respondent/applicant filed a further affidavit of 24 paragraphs in support of his motion.

The issue formulated for the determination of the application is:

“Whether disobedience of a court order and undermining the integrity of a court amounts to contempt of court for which an order of committal for contempt should be granted?”

In arguing the issue, the learned counsel representing the Respondent/applicant Oluwaseun Ajasa Esq, answered the issue in the affirmative and placed reliance in the case of **Oko Vs. Aganyi (2012) LPELR-19704 (CA)**, where it is held per Garba JCA as follows:

“By way of a general statement, it is indeed difficult to give an exact definition of what amounts to or what contempt of court is in all cases, since the facts and circumstances vary from one case to another. As a result, contempt or what may amount to contempt of court

would depend on the peculiar facts and circumstances on each case. However, contempt of court has been defined to mean and include, any act or conduct which is calculated and tends to bring into disrespect, scorn, or disrepute, the authority of the court and administration of justice. An act which is done to embarrass, hinder, or obstruct the court in the administration of justice, or which is calculated to lessen its authority or dignity, either in the face of the court or outside of the court. See *Awobokun Vs. Adeyemi* (1968) NMLR 289, *Ezeji Vs. Ike* (1996)1 NLR 173; *Re: G.M. Boyo* (1970)1 All NLR, 111, *Ejembe V. A.G Benue State* (2003)16 NWLR (846) 337."

It is the contention of the applicant that they have sufficient facts in their affidavit to show that the party sought to be committed in this suit have enough notice of the order(s) made by this Honourable Court but willfully disobeyed and has remained in disobedience till date by doing acts that undermines the integrity of the Court; aimed at bringing into disrespect, scorn or disrepute the authority of the court and administration of justice as well as geared towards embarrassing, hindering, or obstructing the court, calculated to lessen its authority or dignity; when that happens, that the court has the duty to enforce its dignity and authority. Cited ***Amaechi Vs. INEC*** and ***Denton-west Vs. Muoma*** (2008)6 NWLR (PT. 1083) 418 at 451. Reference is also made to Order 47 Rule 10(3)(a) & (c) of the

High Court of the Federal Capital Territory (Civil Procedure) Rules 2018, and it provide as follows:

Rule10 (1): In case where this rule applies, the procedure in application for contempt of court shall so far as may be applicable apply to order for judicial review under order 44.

(2): The notice of motion shall be personally served unless the judge dispenses with such service.

(3): This rule applies to cases where the contempt is committed:

- a. In connection with proceedings to which this order relates.
- b. In connection with criminal proceedings.
- c. Subject to the provisions of the Sheriff and Civil Process Act, any proceedings in the High Court, or where contempt consists of disobedience to an order of the court.
- d. In connection with proceedings in any inferior court; but this rule shall not apply where the contempt is committed in facie curiae."

It is their contention that this Honourable Court has the power to grant this application and I am urged to so hold.

The petitioner/respondent also in his written address formulate sole issue for the determination of the Court: **Whether from the aggregate**

facts put forward by the petitioner/respondent showing compliance with the order of this court, the petitioner/respondent can be said to have been in contempt of the Honourable Court. The petitioner/respondent denied ever being in contempt of the order of this Honourable Court. Judicial authorities are cited as to what amounts to contempt, inter alia: **Abbas & Ors V. Solomon & Ords (2001) LPELR – 23, Atake V. A.G of the Federation & Anor (1982) LPELR -586 (SC).** They argued that from the aggregate position of the cited authorities, it could amount to contempt in the instance case, if there is failure on the part of petitioner/respondent to comply with the order for divided custody granted on the 6th day of June, 2022. They submitted how their counter affidavit and exhibits show sufficient evidence that the petitioner/respondent is not in disobedience of the court order. They argued further that the need for compliance with the order of divided custody became operative only twice since the day the order was made in June 2022. They narrated and I agree with them how the first period was during the long school vacation between July 2022 to September, 2022; while the second period was during the Christmas and New Year. As regards to the first period, they referred the court to paragraph 9 of their counter affidavit and exhibits A & B to show their compliance.

Para 9: In compliance with the court Order for divided custody, I released the children to the Respondent/Applicant on the 17th day of July, 2022 immediately after their third term vacation and they all traveled down to Lagos where the children spent the entire vacation

before returning back to Abuja on the 17th August. Exhibit 'A' is WhatsApps chat between the parties wherein the respondent/applicant acknowledged he and the children arrived in Lagos after picking them from the respondent.

With regard to the second period, it is stated that the petitioner/respondent contacted the respondent/applicant sometimes in December, 2022 to communicate her plans for the kids during the festive and requested the respondent/applicant to pick the children for Christmas while she will have the children during the New Year period. I am referred to exhibit 'C' (WhatsApp chat). In the final analysis, the petitioner/respondent submitted that in view of the facts averred in her counter affidavit and all the exhibits relied on that she is not in disobedience of the court order.

Having considered the entire affidavit, counter affidavit, further affidavit and all the exhibits attached therein by the parties and after listening to their arguments and submissions, the basic and first question to be considered is: **whether disobedience of a court order amounts to contempt of court?** The answer to this question is provided for in section 72 of Sheriffs and Civil Process Act thus:

“If any person refuses or neglects to comply with an order made against him other than for payment of money, the court, instead of dealing with him as a judgment debtor guilty of the misconduct defined in paragraph (f) of section 66 of Act, may order that he be committed to

prison and detained in custody until he has obeyed the order in all things that are to be immediately performed and given such security as the court thinks fit to obey the other parts of the order, if any, at future times thereby appointed, or in case of his no longer having power to obey the order then until he has been imprisoned for such time or until he has paid such fine as the court directs". See the case of **Sheriff & Anor Vs. PDP (2017) LPELR – 41805 (CA)**, where the Court of Appeal held thus: "It is settled that orders of the Court are to be respected and obeyed. The dignity and honour of Court cannot be maintained if its orders are treated disdainfully and scornfully without due respect..."

The refusal to obey or comply with an order of court is contemptuous. In the case of **Uwazuruike & Ors Vs. A.G Federation (2013) LPELR-20392 (SC)**, the Supreme held that: "..... anyone who is served with, or becomes aware of a valid Order of Court should ensure that he obeys it in full. Failure to obey a valid Court order may amount to willful breach of it which could lead to contempt proceedings with serious consequences. See **Mobil Oil Nig. Ltd. v. Assan 1995 8 NWLR pt. 412 p. 129.**"

From the above cited statutory and judicial authorities, it is undisputable that disobedience of a court order amounts to contempt of court. On that note, the answer to the above question on whether **disobedience of a court order amounts to contempt of**

court is in the affirmative. Having come to the conclusion that disobedience of a court order amounts to contempt; the next question which is the basic issue here is: **whether considering the facts placed before the court, the petitioner/respondent is in contempt of the court order?**

It is not disputed that this Honourable Court made an order for divided custody of the children of the marriage on the 6th day of June, 2022. It is that order of the court that the respondent/applicant had alleged of its disobedience and had filed committal proceedings against the petitioner/contemnor. The respondent/applicant has asserted in several paragraphs of his affidavit in support of his motion, that following the order of the court for divided custody during public holidays, festive seasons and school vacations, he made attempt to have the children with him in Lagos for the Christmas and new year vacation, in 2022, but that he was denied of the children by the petitioner/respondent. To prove this fact he attached the WhatsApps messages marked as exhibit **DOT1** and a letter written by his counsel on his instruction to the petitioner/respondent sent via her counsel email notifying her that he will be in Abuja on 14 December 2022 to pick the children for the Christmas vacation marked as exhibit **DOT2**. For ease of reference I reproduced part of Exhibits DOT1 and DOT2 thus:

DOT1: Hello Taiwo

This is to notify you that I have bought the plane tickets to pick the children up from Abuja on the 14th of December 2022. They close on the 9th of December. Please assist to get them ready for the trip to spend the holidays with me, as mandated by the court. Thank you very much.

Response: Hello Dotun, that's not possible. You had them for the holidays last year. I have the kids for the holidays this time. If you have a problem with that, take it up with my lawyer. Thank you very much.

- Please confirm that I can come in to pick the children on the 14th of December. Thank you.
- Like I said I have also made plans with my children for the new year. Thank you.

DOT2: This is a letter from **Abraham, Thompsons & Co**, dated 24th November 2022, address to Law Corridor, Pelumi Olajengbesi, Esq.

Dear Sir,

RE: PETITION NO. GWD/PET/25/21 – KAYODE TAIWO OMOTAYO V. KAYODE OJUOLAPE OLADOTUN – PETITIONER'S NON-COMPLIANCE WITH THE ORDER OF COURT FOR DIVIDED CUSTODY.

The caption refers,

We remain solicitors to the respondent ('our client') in the captioned suit.

Recall that upon our client's application dated 22nd February 2022, the Honourable Court made, among others an order allowing our client to have custody of the children during their school vacations pending the determination of the suit.

This is to notify you that our client intends to come pick the children in Abuja on 14th December 2022 and we request that you notify your client of this development accordingly and that proper arrangements are made for our client to have access to travel with the children.

Please accept the assurances of our professional regards.

(sgd).

It is averred that the respondent/applicant actually got to the house of the petitioner/respondent on the 14/12/2022 to pick the children but was informed by the child minder whom he met at home that the petitioner/respondent had travelled with the children few days earlier. The applicant placed call to the respondent and wanted to know where they were so that he can pick the children but that the petitioner/respondent brazenly refused to give him the direction even though they were in Lagos.

The petitioner/respondent in response to the allegation averred in her counter affidavit that she never disobeyed the order of this court; instead, that on the 17th day of July, 2022, immediately after the vacation of the children, she released them to the

respondent/applicant where they all travelled to Lagos and stay with him until 17th August 2022 when they returned to Abuja. As a proof to releasing the children to the respondent/applicant she attached exhibit 'A' – a whatsapp chats where the respondent acknowledged picking up the children. She however alleged that while in Lagos, the respondent/applicant flaunted pictures of the children on several social media platforms exposing the children to the perversion of pedophiles. In support of this assertion, the petitioner attached the said pictures of the children and marked same as exhibit B.

However, the petitioner/respondent made an alternative argument to the effect that assuming though not conceding, that she is in contempt of court as alleged by the Respondent/Applicant, and she is expected to purge herself of the contempt when the notice of disobedience was served vide Form 48; she is contending that the contempt proceedings was initiated at a time when it will be practically impossible for the Petitioner/Respondent to purge herself of the contempt. This is because that the children as at that time had resumed school and not a period of vacation or festive season when the order of the court could have been operative. They submitted that if the respondent/applicant wants to further their contempt proceedings, they have to wait till the next period within which their order shall become operative.

On allegation by the respondent/applicant that aside from the brazen disobedience of the court order, that the

petitioner/respondent also subject the divorce petition to public trial. In reaction to this, the petitioner/respondent denied ever either by herself or lawyer subjected the divorce petition before this Honourable Court to any media trail; instead, she linked it to one DSP Ubali who spoke about it to news reporter. This fact is deposed to in paragraph 20 of the counter affidavit and is said to be in page 2, paragraph 4 of Exhibit **DOT3** attached to the respondent/applicant's affidavit in support of motion for contempt. She submitted that all she did was to exercise her constitutional right by instructing her lawyer to write a petition against the respondent/applicant for invasion of her house on the 14/12/2022. More so, that the matter published is in relation to the criminal petition and not the content of the suit before this court. It is therefore concluded on behalf of the petitioner/respondent that the allegation of media trial against her is speculative, unsubstantiated and should be dismissed. In general, they considered the respondent/applicant's motion for contempt as unfounded and that it is an attempt to mislead this Honourable Court to commit the petitioner/respondent to prison unjustly. The court is therefore called by the petitioner/respondent to discountenance the said motion for contempt as it is lacking in merit.

After having considered the affidavit of both parties, their respective exhibits, arguments and submission and having arrived at the conclusion that disobedience of court order is contempt; it is now apt to answer the question/issue as to: **whether considering the facts**

placed before me the petitioner/respondent is in contempt of the court order?

The petitioner/respondent had submitted that there is no express order of this Honourable Court against her as such she could not be held or committed for being in contempt of a non-existing order of court. To know if there is an order or not against the petitioner/respondent; the basic question to ask is what an order of court is. A Court order is a direction issued by a Court requiring a person to do a thing or restraining a person from doing a thing. It is the pronouncement of the Court on any issue before it. It can come as a directive or as a pronouncement. It is binding on all parties until it is set aside either by way of appeal or by the same Court that made the order See **Mohammed & anor. Vs. Ekasa & Ors (2022) LPELR-57133 (CA)**. In the instant case, this court on the 6th day of June 2022 made an order upon an application by the respondent/applicant which the court directed that the parties should have divided custody of the children of the marriage that were then in sole custody of the petitioner/respondent. By the order of the court, the respondent/applicant should have custody of the children during public holidays, festive seasons and school vacation. That means outside the aforementioned period, the custody of the children remains with the petitioner/respondent. The decision/directive of the court made on the 06/06/2022 for divided custody is binding on both parties. I hold therefore that the disobedience of same suffices as contempt.

Before the order of the court made on the 6th June 2022, it can be deduced that the children of the marriage have been all through the season during their squabble under the sole custody of the petitioner/respondent. The Order was therefore directed at the petitioner/respondent to allow the respondent/applicant to have divided custody with her during the aforesaid period. I agree with the petitioner/respondent's narrative that from June 2022 when the order was made to December 2022, the divided custody order became operative only twice. The first phase was during the long school vacation between July 2022, to September 2022. While the second phase was during the Christmas period. The record of the court with no denial shows compliance with the first phase. In other words, the petitioner/respondent released the children in obedience of the court order to the applicant during the first phase. However, the petitioner/respondent refused to release the children to the respondent/applicant even on demand during the second phase which comes within Christmas season of 2022.

The Court arrived at that above conclusion based on exhibit **DOT1** reproduced above wherein the petitioner/respondent told the respondent/applicant that she will not let him have the children because she too has plans for the children. Though, the petitioner/respondent attached exhibit C to show that she chatted with the applicant on her willingness to let the children be with him for the Christmas period but with her for the New Year. The petitioner/respondent action by virtue of exhibit C amounts to

variation of the order of court without resorting back to the court. Even when she decided to vary the order of court by letting the children be with the applicant according to the chat during Christmas and with her during the new year; she still did not allow the applicant to have the children during the Christmas. Instead, it is in evidence that when the applicant came for the children on the 14/12/2022, she had left with the children few days before the arrival of the applicant despite having sufficient notice of the coming of the respondent/applicant to pick the children for the Christmas.

It is an established principle of law that every person against, or in respect of whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. This is so even in cases where the person affected by the order believes it to be irregular or even void; so long as the order exists, it must be obeyed to the latter by all parties concerned - **Nigergate Ltd vs. Niger State Government (2008) 13 NWLR (Pt 1103) 111, Ojo Vs Independent National Electoral Commission (2008) 13 NWLR (Pt. 1105) 577 and Balonwu Vs Governor of Anambra State (2008) 16 NWLR (Pt 1113) 236.** It has been held in plethora of cases that the essence of contempt proceedings is not for personal aggrandizement of the judge but to protect the integrity and sanctity of the Court and to ensure effective administration of justice. **See Alechenu vs. A.G Borno State (2011) LPELR-3981(CA), Nwawka vs. Adikamkwu (2015) All FWLR (Pt. 804) 2064, Egbebu vs. IGP & Ors (2016) LPELR-40224 (CA) at Pp. 61 - 63, paras F - A).**

The petitioner/respondent via her counter affidavit paragraphs 17 and 18, alleged that the respondent/applicant invaded her resident on the 14/12/2022 with retinue of police men, assaulted her security personnel, then forcefully broke into the premises and caused damage to her properties while assaulting the occupants in the apartment at the time. This allegation if proved to be true is criminal in nature and not before this court for determination. Hence, I do not intend to dwell much on it. However, it did not make any sense to me why the respondent who had claimed she chatted the applicant through WhatSapp (exhibit DOT1) and a letter from counsel urging the respondent to get the children ready for pick on that 14/12/2022 for the Christmas; couple with the assertion that the respondent via exhibit 'C' had given a go ahead for the applicant to have the children for the Christmas will suddenly invade the resident of the respondent on the same fateful day of 14/12/2022? It is also in evidence that at the time the applicant arrived at the respondent's premise to pick the children; the respondent had left with the children few days before. That is to say the respondent did not witness when policemen were brought as well as the break to her house. Like I say, I do not want to dwell much on that but I found it difficult to believe the story of the respondent as regard the applicant invading her house. I view it as a cooked up story.

It is important to state that there is nothing before the court to show that the petitioner/respondent appeal against the order of court made on the 06/06/2022 neither is there any variation order before

the court. In the absence of order of variation or order setting aside the order of this honourable court, the order of court made on the 6/6/2022 remains subsisting and binding on the parties. It does not matter whether the order is regular or irregular, valid or invalid, it must be obeyed until it is set aside. **Emenike Vs. Orji & Ors (2008) LPELR-4103 (CA).**

The order said to have been disobeyed emanated from this court; in order to clear my doubt, after adjourning the matter for judgment, I called on the parties on 26/06/2023 to address the court on the propriety or otherwise as to whether contempt of court committed ex-facies curiae can be tried by the court whose order is allegedly disobeyed. The parties filed their respective addresses and addressed the court on the issue on the 13/07/2023. I was persuaded by their arguments and some judicial authorities cited I then assumed jurisdiction and adjourned for judgment to 12/10/2023. Unfortunately, the court did not sit on 12/10/23 because I was attending a workshop at the National Judicial Institute.

Considering the entire processes filed, the arguments and submissions of the parties vis-à-vis the various exhibits attached thereto; I am persuaded to hold that the refusal of the petitioner/respondent to release the children to the respondent/applicant for the Christmas and new year season of 2022 (which are vacation and festive season) evidenced by exhibit DOT1 amounts to disobedience of the order of court made on the 06/06/2022 . Having considered that the respondent is no longer in position to obey the order of

court in respect of Christmas vacation and festive season of 2022 , the season having come and gone; I hereby in exercise of my inherent power ordered the petitioner/respondent to pay the sum of N200,000 as a fine for disobeying the order of this court made on the 06/06/2022. It is also to be noted that the order made on the 06/06/2022 is not set aside hence remain subsisting and binding on the parties until vacated or set aside. On failure to pay the fine, within 30 days, the Commissioner of Police FCT command is ordered to commit the petitioner/respondent to Nigerian Correctional Service until compliance or when discharged.

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HON. JUSTICE A.I. AKOBI
23/10/2023

APPEARANCE:

S.A. Adebayo with Blessing Adekoye for the petitioner/respondent
O.T. Omotayo-Ojo for the respondent.