

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE V.V.M VENDA.
ON FRIDAY 5TH DAY OF JULY, 2019

SUIT NO FCT/HC/PET/383/2017

BETWEEN:

JEROME ADAMA ----- PETITIONER

AND

BLESSING ADAMA ----- RESPONDENT

JUDGMENT

The Petitioner, by a Notice of Petition No: PET/383/17 dated and filed the 15th of September 2017 prays this Honourable Court for the decree of dissolution of marriage on the ground that the marriage has broken down irretrievably, in that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot be expected to live with the Respondent.

Based upon which the Petitioner also prays for:

An Order for shared custody of the only child of the marriage; as follows: the Respondent shall have the custody of the child during the time when her school is in session and the Petitioner shall have the custody during school holidays and public holidays.

The facts and evidence of the case as presented to the court by in the Petitioner via his written evidence dated 6/3/18 and filed on the 7/3/18 which he adopted as his oral evidence while testifying as PW1, are that:

Both parties in this suit married at the Kaduna North Local Government Marriage Registry on the 21st May 2011 and that since then, the marriage has been characterized by acrimony and strife, so much that love and care do not exist between the parties anymore.

That the Respondent deserted the Petitioner in 2013 and the couple have lived apart since then.

That the couple have one child **Sheila Aduku** (F), born on the 26th of March 2012. Petitioner states that he has been responsible for the said **Sheila Aduku's** upkeep, school fees and medical expenses despite his unthriving business at the moment.

Wherefore the Petitioner prays for the decree dissolving the said marriage.

Petitioner also prayed the court to adopt his reply to Respondents written evidence dated and filed on the 13/4/18 as his oral evidence before the court wherein he states that the Respondent left their Matrimonial Home to her parent's house in October 2012 only for her to return in 2013 and pack her belongings

including some of Petitioner's property to a place she rented in Saburi, Dei Dei, Abuja and never returned to their Matrimonial Home.

He states further that he moved his personal belonging to Kubwa, and not the family, because the Respondent no longer lived with him and the Respondent only agreed to bring their daughter for short visits after much persuasion.

That when the Respondent was making life miserable for the Petitioner, he had to run away from his apartment in Kubwa and that was when the Respondent moved his property to her place at Gbazango, Kubwa.

That since he moved back to Kubwa, Respondent and her siblings have been making a lot of trouble with him and his siblings to the extent of threatening his life.

He tendered the Marriage Certificate as exhibit 1 and prayed the court to grant his prayers.

Under cross examination, PW1 states that his daughter's name is **Sheila Adukwu** she is 6 years and 3 months old and that **Tamara Adukwu** and **David Adukwu** are his brother's children. That his daughter is presently with the Respondent.

He states that he does not know or cannot remember **Comfort Ekpah** and that the Respondent's maiden name is **Blessing**

Ekpah. That he knows the Respondent's siblings but he does not know **Comfort Ekpah** and she never resided in their house neither does he know Carline whom he is just being informed, is Comfort's friend.

PW1 states that he would be surprised to hear that Caroline birthed two children for him (**Tamara Adukwu** and **David Adukwu**) and he does not know if **Sheila** is older than them because they are not his children.

There was no re-examination of PW1.

The Respondent filed an Answer to the petition dated 27th of November 2017 and filed on the 30th of November 2017 praying the court for dissolution of the marriage on the ground that same has broken down irretrievably, due, largely to the attitude and behaviour of the Petitioner. She also filed her evidence on oath, wherein she states that the marriage has broken down irretrievably as they have been living apart for more than two years without conjugal relationship.

Wherefore, Respondent prays the court to grant the petition of the Petitioner for dissolution of marriage but dismiss the relief of custody of the child of the marriage, **Sheila Aduku**, and grant her (Respondent) custody of the child.

Respondent prays the court for the following reliefs:

1. An order that the Petitioner shall have access to the child, **Sheila Adukwu** at any reasonable hours of the day during her school holidays.
2. An Order that the Petitioner provide an accommodation for the Respondent and her child, **Sheila Aduku**.
3. An Order that the Petitioner pay the sum of N150,000.00 Monthly for maintenance of both the Respondent and Sheila into an account that will be opened in the name of **Sheila Aduku**.

Respondent testified as DW1 and prayed the court to adopt her Respondents written evidence dated and filed on the 28th of March 2018 as her oral evidence before the Honourable Court.

The facts as stated in the Respondents written evidence are that the Petitioner and the Respondent married and have one child **Sheila Aduku** (F) and since the marriage, the parties have lived together until sometime in 2015 when the Petitioner relocated the Respondent and their child from Gwarinpa Abuja to Kubwa Abuja.

That sometime in 2012 Respondent went to visit her parents for a month and on her return; Petitioner had moved her personal belongings out of his house so Respondent got another accommodation at Saburi, Abuja.

That parties reconciled and started living together again in 2013, but in 2015 after relocating the Respondent and their child from Gwarinpa to Kubwa, Petitioner stopped living with them and refused to renew the rent after its expiration in 2016.

Respondent states that she never deserted the Petitioner but had to get another accommodation after Petitioner refused to renew their rent. Respondent conceded further that the Petitioner pays their daughter's school fees only after she pressurizes him and that the Petitioner is not concerned with their child's accommodation or providing for her welfare and when Petitioner takes their daughter for outings during holidays he does not bring her back at the agreed time and on several occasions has brought their daughter back sick.

That the Petitioner cannot take care of their daughter as his life in different locations with various women is not healthy for a little girl.

She further states that they have been living apart for more than two years without conjugal relationship and urged the court to dissolve the marriage between herself and the Petitioner and grant her custody of their daughter.

Under cross examination Respondent as DW1 states that she is into buying and selling but just recently got a job with FCMB. DW1 states that the duty of a man in a home is to take care of the child and

educate her and that she is not aware that the Petitioner wants joint custody of their daughter.

DW1 states further that the Petitioner told her that if she doesn't allow him see their daughter he will not pay the school fees nor send her feeding money, and since the Petitioner has been responsible for payment of their daughter's fees he comes to visit their daughter at the Respondents house whenever he wants.

DW1 states further that the Petitioner is into land and properties and she is unaware that same is also a student.

There was no re-examination of the witness.

The Petitioner filed a reply to the Respondents written evidence dated 13/4/18 admitting only paragraph 4 and denying paragraphs 5, 7 to 10 and 13 to 17, wherein Petitioner states that Respondent left to her parent's house in 2012 only to come back and pack her belongings including his' property in 2013 to a place she rented in Saburi, Abuja.

That when he moved to Kubwa, the Respondent was not living with him but was living in Saburi and agreed to bring their daughter for short visits. That the Respondent was making Petitioner's life unbearable so Petitioner ran away and left his property in the Kubwa house when Respondent later moved to her new place in Kubwa.

Petitioner states that he has been responsible for the welfare, health and feedings of their daughter and that same has never been sick as a result of the visits with the Petitioner. He stated further that because of the threat to his life he has refused to disclose his present address to the Respondent due to the violence metted on him by the Respondent and her siblings.

Petitioner prayed the court to grant him shared custody of their daughter so that Respondent shall have her during school sessions and Petitioner shall have her during the school holidays.

Parties filed their final written addresses.

In the Respondents final written address, dated 8/10/18, one issue was formulated for determination viz:

Whether joint custody of the child be granted to both parties.

In his argument, counsel on behalf of Respondent submits that the only child of the marriage has lived with and still lives with the Respondent whom she is more familiar with and that the Respondent, has, on her own, given access to the Petitioner to visit and take the child for outings.

Counsel cited Section 71 of the Matrimonial Causes Act 1970 and the case of **NANNA VS NANNA (2006) 3 NWLR (pt 966) 1 at 35 – 36** paragraphs G – B and submits that the Petitioner proposed that the

Respondent be given custody of the child during school sessions and Petitioner keeps her during holidays and public holidays which will amount to the child spending only her study days with her mother whereas, holiday time when children bond more with their parents and are taught the necessary chores and morals will be spent with the Petitioner, which is not totally good for the child as her will learn no chores nor morals but play.

Counsel cited **ONWOCHEI ODOGWU VS OTEMEOKU ODOGWU (1992) LPELR – 2229 (SC)** and submits that the presumption that the child will be happier and at her best with her mother lies in favour of the Respondent and there is no evidence before this Honourable Court to discredit the Respondent and rebut the presumption in her favour.

Counsel submitted that by the doctrine of stare decisis the court should hold that the presumption that the child will be happier with the Respondent has not been rebutted by the Petitioner. He prayed the court to grant the custody of the child based on the courts discretion which should be exercised judicially and judiciously.

In the Petitioners final written address dated 1/11/18, one issue was raised for deliberation viz:

Whether the Petitioner merits the grant of the reliefs sought in this petition.

Counsel on behalf of the Petitioner submits that the parties have lived apart for a continuous period of at least 2 years immediately preceding the presentation of this petition and the Respondent does not object to the decree of dissolution being granted. Counsel cited Section 15 (2) (d) and (e) Matrimonial Causes Act and prays the court to grant the order for dissolution of the marriage as same has broken down irretrievably.

On custody of the child, counsel on behalf of the Petitioner submits that in the course of giving evidence before the court, Respondent admitted that the child is used to visiting the Petitioner during holidays and that has been the practice so far. That the Petitioner is only asking the Honourable Court for the continuation of this arrangement which will ensure the child's enjoyment of having access and spending time with her father. Counsel cited Section 71 (1) Matrimonial Causes Act 1970 and **ADEPARUSI VS ADEPARUSI (2015) 14 WRN 94** and urged the court to grant the order of shared custody as prayed by the Petitioner.

On maintenance, counsel submits that under cross examination Respondent admits that Petitioner has been a responsible father taking care of the child's education, health and general welfare, that Respondent also admits to being a staff of FCMB and the Petitioner in his evidence stated that his business is not doing very well and that he is presently a student at Nassarawa State University. He

submits that the Respondents intention to ask the Honourable Court for the sum of N150,000.00 as maintenance from the Petitioner is to punish him and further impoverish him. Counsel cited Section 70 (1) Matrimonial Causes Act 1970 and **DOHERTY VS DOHERTY (2009) 30 WRN 96** and urged the court not to allow any party turn the outcome of proceedings of this nature to a money making venture by asking for punitive damages in the name of maintenance.

Counsel prayed the court to grant all the reliefs of the Petitioner and discountenance those of the Respondent.

Section 15 (2) (e) provides:

The court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the Petitioner satisfies the court of one or more of the following facts:

(e) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent does not object to a decree being granted.

It does appear from this section of the Act that once there is a living apart for a continuous period of two years immediately preceding the presentation of the petition and the Respondent is not objecting

to the dissolution of the marriage, the fact of irretrievable breakdown has been established.

In the instant case, the Respondent gave evidence to the effect that in addition to the living apart, conjugal relationship has ceased for the number of years they lived apart.

In matrimonial relationship, parties will be considered as living apart except they are living in the same household.

I find that this marriage has broken down irretrievably.

I hereby grant a decree nisi dissolving the marriage between **JEROME ADAMA AND BLESSING ADAMA** contracted at the KNLG Marriage Registry on the 21st day of May 2011.

The decree shall be made absolute three months from the date of this judgment.

Now to the issue of the custody of the only child of the marriage.

Section 1 of the Child Right Act stipulates that in all proceedings where a child is the subject, the best interest of that child is of paramount consideration.

Every child has a right to parental care and protection.

The law provides therefore that no child shall be separated from his parents against the wish of the child except for the purpose of his

education (as in circumstances of his being in boarding school, among others.)

Where it becomes necessary to separate a child from his parent against his wish in any other way, as in the instant case, the court has a duty to look at the circumstances surrounding the reason for his being separated from his parents and the facts and evidence before him and take a decision in the best interest of the child.

Paramount among the factors considered by the court is the welfare of the child. It will therefore be wrong to grant custody to a parent or deny the other as a punitive measure or reward for good conduct. See the cases of **ODOGWU VS ODOGWU (1992) 2 NWLR (pt. 255) 539; ALABI VS ALABI (2007) 9 NWLR (pt. 1039) 297** and **DAMULAK VS DAMULAK (2004) 8 NWLR (pt. 874) 151**.

In **OLOWOFOYEKUN VS OLOWOFOYEKUN (2010) LPELR-11865 (CA)**, the court held:

In considering the welfare of the children of a broken marriage efforts must be made to ensure that such children are not denied the love, care, and affection of either parent. Where one of the parents deliberately placed obstacle towards the attainment of such parental love and affection, he will be in violation of the right of the child...

Bearing these in mind therefore, the first thing worthy of note is the fact that at the time the parties started living apart the child was only one year old, having been born in March 2012.

By 2015 she was 3 and now she is 7 years.

Throughout her life, she has been in the custody of the Respondent, but spends holidays with her father. At her age the best she knows is that Petitioner is her father, who treats her well.

She definitely is old enough to know when Daddy buys her a dress or shoes. Her emotional attachment to the Petitioner is limited to that of a loving father which I think is good. Her attachment to the Respondent is that of a mother, reliable, trustworthy and dependable friend, her care giver and need meeter. It will therefore be traumatic for this child to detach her from her mother at this time, especially as she is a female child of a tender age who can hardly give herself a clean bath. She is better off in the care of her mother than in that of a nanny or house help (if custody is given to the father) some of these nannies usually poke fingers in female children's private body parts. Throughout the proceedings the Petitioner did not tell the court who bathes the child and washes her clothes and pants whenever she is on holidays at his place.

It will therefore be in the best interest of this child to grant her custody to the Respondent who is also her biological mother; who

will be glad to wash the child's clothes and bathe her properly until she is of age to wash herself and her clothes then she can start spending holidays with her father.

I hereby grant the custody of the child **Sheila Aduku** to the Respondent with the following rights and duties for each party.

The Petitioner has right of access to the child as follows:

1. Any weekend the Petitioner wishes to visit his daughter, he shall give the Respondent 48 hours notice. This is to enable her present the child for his company and not to be met absent.
2. During holidays the Petitioner shall take the child out and spend time with her but bring her back by 7.00 pm of same day.
3. The Respondent shall not unduly deny the Petitioner this right.
4. It shall be in the interest of the child for parties never to exchange uncomplimentary words at each other in her presence. Therefore parties are enjoined to be courteous to each other throughout the time of the Petitioner's visit.
5. Petitioner shall be responsible for the child's education in terms of school fees, and an allowance for her maintenance in the sum of N50,000.00 per month for the maintenance and the welfare of the child.
6. Respondent shall provide for all other needs of the child, except where medical bills exceed N20,000.00 when parties

shall be expected to bear 50%/50% of the bills. (I pray this does not happen).

7. The child shall be allowed to choose who to live with, as between the Petitioner and Respondent on attainment of age 18, but should the Respondent decides to remarry any time before this girl is 18 years the custody of this child automatically reverts to her father the Petitioner

This is the Judgment.

Signed
Hon. Judge
05/07/19

APPEARANCES

1. PRECIOUS TITILAYO SOJE FOR THE PETITIONER.
2. M.O. IDEFOH FOR THE RESPONDENT

AUTHORITIES

1. SECTION 71 OF THE MATRIMONIAL CAUSES ACT 1970.
2. NANNA VS NANNA (2006) 3 NWLR (pt. 966) 1 at 35 – 36 paragraphs G – B.
3. ONWOCHEL ODOGWU VS OTEMEOKU ODOGWU (1992) LPELR – 2229 (SC) 2 NWLR (pt. 255) 539.
4. SECTION 15 (2) (d) and (e) OF THE MATRIMONIAL CAUSES ACT

5. SECTION 71 (1) OF THE MATRIMONIAL CAUSES ACT, 1970.
6. ADEPARUSI VS ADEPARUSI (2015) 14 WRN, 94.
7. SECTION 70 (1) OF THE MATRIMONIAL CAUSES ACT, 1970.
8. DOHERTY VS DOHERTY (2009) 30 WRN 96.
9. ALABI VS ALABI (2007) 9 NWLR (pt. 1039) 297.
10. DAMULAK VS DAMULAK (2004) 8 NWLR (pt. 874) 151.
11. OLOWOFOYEKUN VS OLOWOFOYEKUN (2010) LPELR –
11865 (CA).

RULING/JUDGMENT

Upon being granted leave to goon with the case learned counsel to the 1st Respondent/Applicant informed the Court of their intention to move their motion dated and filed on the 11/05/2011 which was brought pursuant to the inherent jurisdiction of the Court as provided for by section 6 (6) of the 1999 constitution of the Federal Republic of Nigeria. Praying for the following orders:

An order of this Court dismissing the sustentative suit on the ground that this Court lacks the jurisdiction to entertain same.

And for such further orders as the Court may deem fit to make in the circumstance and the grounds upon which the application was brought were that:

There is an earlier suit on the same subject matter pending before Justice Kutigi of High Court 29 Wuse Zone 5, Abuja with motion No. M/4331/11 dated 21/03/2011 and filed on 22/03/2011.

Following this present suit to continue will amount to abuse of Court process.

Counsel further submitted that they have also filed and will relied on all the averment in their paragraphs affidavit in support of the motion on notice deposed to by one Doris Eze a litigation secretary in their firm and a certify true copy of processes filed in Justice Kutigi's Court motion number: M/4331/11 between Dr. Ikenna Ihezub Vs Inspector General police & 3 Ors annexed and marked as exhibit 'A' that they also filed a written address and same was adopted as their oral argument in this suit.

Finally counsel urge the Court to dismiss the suit. Because the Respondent/Applicant in this suit is also the Applicant in the case before

Justice Kutigi's Court while 2nd and 3rd Respondents in this suit were also Respondent with two others. And same were the subject matter of these two suits pending before Courts of co-ordinate jurisdiction at the same time.

Counsel submit that this amount to an abuse of Court process and referred the Court to the case of Onalaja Vs Oshinubi Cited in his written address.

Applicant/Respondent counsel did not file a counter affidavit but respond on point of law by opposing the said application and submitted that it is a ploy to delay hearing of their application which rules of Court frown at. He further submitted that the parties subject matter, and reliefs sought were not the same and referred the Court to page 12 of the annexure under the heading 1 preliminary statement where the car registration number: is JHMCM 56894-CO 35926 whereas in the application before this Court the car Reg. No. is BV 645 RSH.

Learned counsel to the Applicant/Respondent further stated that in the suit before Court 29 of the High Court of FCT. N1,000,000.00k damages was claimed against all the Respondents and Applicant in this suit who the 1st Respondent in the above mentioned case whereas the Applicant in the instant suit is claiming N10,000,000.00 against the 1st Respondent alone. Learned counsel to the Applicant/Respondent cited the case of Ubeng Vs Usua (2006) 12 NWLR (pt 994) 244 at pg 255 Paragraph E – H Ratio 1 and urge the Court to dismiss the application because there is no evidence that the Applicant/Respondent in this suit has instituted several suits against the Respondents.

Further more learned counsel to the Applicant/Respondent adopted the argument of 2nd and 3rd Respondents counsel where they assert that the parties, subject matter and the reliefs sought in the two different suits before the two different Courts pending at the same time were not the same. He submitted that the authorities relied upon by the 1st Respondent do not apply in this suit and referred the Court to the case of Ette Vs Edoho (2009) 8 NWLR (pt 114) 601 at 603 Ratio 3.

Again learned counsel to the Applicant/Respondent argued that the Court can hear his application that day even as the 1st Respondent/Applicant which ought to have filed a counter affidavit by that time is yet to do same. Also referred the Court to order 8 rule 4 of the Fundamental Human Right Enforcement procedure rules and the case of Abia State University Vs Chima Anya Ibe (1996) 1 NWLR (pt 439) 646 at 660.

Finally, learned counsel urged the Court to dismiss the preliminary objection of the 1st Respondent/Applicant and grant their reliefs as contained in the Applicant motion on notice dated 24/03/11 and filed the same date.

Going through the processes filed by all the parties and their oral submission on point of law, it is trite principle of law that once an issue of jurisdiction is raised that the Court should first decide on it first. This is because if at the end, it is found out that Court acted without jurisdiction all the proceedings shall be rendered null and void see the case of Madukolu Vs Nkemdilim (1962) 2 SCNLR R 341 and Arowolo Vs Adsina (2011) 2 NWLR (pt 1231) 315. It is on that strength that the issue of jurisdiction as raised by the 1st Respondent shall be considered first.

We have earlier on stated the prayer of the 1st Respondent/Applicant in his motion to dismiss suit for lack of jurisdiction on the ground that the suit is an abuse of judicial process that there is a similar suit between the parties pending before Justice Kutigi's Court in High Court 29.

This been the contention of the 1st Respondent/Applicant, thus the term abuse of Judicial process has been Judicially defined to mean that the process of the Court has not been used bonafide and properly. It also connotes the employment of judicial process by a party in improper use to the irritation and annoyance of his opponent and the efficient and effective administration of Justice see the case of Umeh Vs Iwu (2008) 8 NWLR (pt 1089) 225. In order to sustain a charge of abuse of process there must Co-exhibit inter alia

- (a) A multiplicity of suits
- (b) Between the same opponents,

- (c) On the same subject matter, and
- (d) On the same issues.

It is against this backdrop of these laid down condition that there arises the need to glance through the aforesaid suits No: M/4611/11: Miss Chika Ogu Vs Dr. Ikenna Ihezvo & 2 Ors and suit No: M/4331/11 Dr. Ikenna Ihezvo Vs I.G.P & 3 Ors. It is obvious from the faces of the two suit that the parties are not the same as a result both parties are entitled to initiate and air their grievance at the law Courts as when there is a right, there must be a remedy.

On the question of the same subject matter in both aforesaid suits. The instance suit No: M/4611/11 has been instituted for a relief against the 2nd and 3rd Respondent to release her car Honda Accord with registration number Abuja BV 645 RSH which was detained upon the instigation by the 1st Respondent and Ten Million Naira (10,000,000.00) against the 1st Respondent as exemplary damages for the unwarranted and malicious infringement of the Applicant's Fundamental Rights. Whereas suit No: M/4331/11 on the other hand is a declaration against the Inspector General of Police and 3 Ors that the continuous detention of the Applicant's vehicle, a red 2004 Honda Accord with Vehicle identification number JHMCM 56894 CO35926 by the Respondents is illegal, unconstitutional, oppressive and a gross violation of the Applicant's Fundamental Rights as guaranteed by section 44 (1) of the constitution of the FRN 1999; an order releasing the said Applicant's vehicle being detained by the Respondents, and an order awarding the sum of One Million Naira (N1,000,000.00) only against the Respondents jointly and severally being general damages for the violation of the Applicant's Fundamental Rights.

In view of the above the subject matter in issue in suit No: M/4611/11 is the releasing of 2004 Honda Accord car with registration number Abuja BV 645 RSH to the Applicant and the particulars were exhibited as per exhibits 'G', 'A', 'J' 'K' in the Applicant's paragraph 32 of her affidavit in support of the motion and N10,000,000.00k exemplary damages. While on the other hand the subject matter in issue in suit No: M/4331/11 is a recovered stolen car from the

suspects (Names Unknown) and N1,000,000.00 general damages. It is difficult here to state that both suits were the same to sustain charge of abuse of Court process in addition base on the careful perusal/appraisal of the two suits, the contending issues in both suits are not the same.

It is therefore in the interest of Justice that the application for dismissal of the instant suit is hereby refused since there is no prove to show any abuse of Court process by the 1st Respondent/Applicant.

SUBSTATIVE CASE

The Applicant in this suit brought an application dated 24/03/2011 and filed the same day to enforce her Fundamental Human Rights against the Respondents pursuant to sections 44, 46 (1) and (2) of the 1999 constitution of the Federal Republic of Nigeria (as Amended) and order 2, Rules 1,2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009 seeking the following reliefs:

A declaration that the seizure and or detention of the Applicant's Honda Accord car with registration number Abuja, BV 645 RSH since October, 29th 2010 by the 2nd and 3rd Respondents on a false allegation and instigation of the 1st Respondent is unlawful unwarranted and contrary to section 44 of the constitution of the Federal Republic of Nigeria.

An order directing the 2nd and 3rd Respondent to release the said Honda Accord car with registration number Abuja, BV 645 RSH to the Applicant forth with without my conditions whatsoever.

Ten Million Naira (10,000,000.00k) against the 1st Respondent as exemplary damages for the unwarranted and malicious infringement of the applicant's Fundamental Rights.

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

The Applicant also filed and relied on her statement of fact which was brought pursuant to order 2 Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009, 38 paragraphs in support of the motion on notice deposed to by the Applicant she relied on all the averment and the attached exhibits thereto and marked as follows:-

- (i) A copy of the invitation card to the traditional wedding ceremony between the 1st Respondent and her sister. Marked Exhibit A.
- (ii) Two pictures of the traditional wedding ceremony between the 1st Respondent and her sister. Marked Exhibits B and B1.
- (iii) A copy of the Applicant's statement of account from United Bank for Africa Plc Domiciliary Account Number 049013000472 showing two transfers of \$4,500 to Salome Chizoba Ogu. Marked Exhibit C.
- (iv) Teller showing deposit of the sum of N140,000 into Zimus Resources Limited account with intercontinental Bank Plc. Marked Exhibit D.
- (v) Teller showing deposit of the sum of N130,000 into Zimus Resources Limited account with Intercontinental Bank Plc. E.
- (vi) A copy of the Applicants statement of account from United Bank for Africa Plc Account Number 049002001874 showing transfer of N47,200 to Callistus Onyenaobi. Marked Exhibit F.
- (vii) Shipping documents given to the Applicant by Fano Shipping Agencies Limited covering the two 2004 Honda Accord vehicles and two other vehicles. Marked Exhibit G.
- (viii) Copies of Vehicle License and proof of Ownership Certificate for Honda Accord with registration number BG 16 GWA. Marked jointly as Exhibit H.
- (ix) Copies of registration papers for Honda Accord with registration number BV 645 RSH (the subject matter of this suit). Marked jointly as Exhibit J.
- (x) Picture showing the 1st Respondent and his wife standing in front of the Honda Accord with registration number BV 645 RSH at the family house of the Applicant in Aboh Mbaise, Imo State in April 2010. Marked Exhibit K.

Finally a written address in support of the Applicant's application was equally filed by learned counsel to the Applicant. Formulating one issue for

determination **‘whether the Respondents have violated the Fundamental Right of the Applicant to own and keep movable property so as to warrant a grant of the reliefs sought by the Applicant’.**

Counsel affirm the lone issue formulated by him and referred the Court to provisions of section 44 (1) of the constitution of the Federal Republic of Nigeria which provides that ‘No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquire compulsorily in any party of Nigeria except in the manner and for the purposes prescribed by a law that, among other things:

- (a) Requires the prompt payment of compensation therefor; and
- (b) Gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a Court of law or tribunal or body having jurisdiction in that part of Nigeria.

Learned counsel to the Applicant/Respondent contend that the Applicant has put before the Court evidence to enable the Court hold that the Honda Accord car with registration number BV 645 RSH belongs to the Applicant and she is entitled to a protection of her right to own same. Even though they were not unmindful of the limitation placed by the provisions of section 44(2)(k) of the constitution which provides as follows:

- (2) Nothing in subsection (1) of this section shall be construed as affecting any general law –
- (k) relating to the temporary taking possession of property for the purpose of any examination, investigation or enquiry;

Counsel further urge the Court to hold that the continued seizure and or detention of the Honda Accord car the subject matter of this suit since October 29, 2010 without charging anybody to Court for any offence or releasing the car to the Applicant by the 2nd and 3rd Respondents is unreasonable and can no longer qualify as **‘temporary taking possession of a property for the purpose**

of any examination, investigation or enquiry’. Counsel referred the Court to the case of Nawa Vs A.G. Cross River State (2008) ALL FWLR (pt 401) pg 807 at 840 where it was held that it is the duty of Court to safe guard the Rights and liberties of individual and to protect him from any abuse or misuse of power.

Learned counsel to the Applicant also submitted that the Applicant has made out a case against the 1st Respondent through the averment in her affidavit and the documents attached as exhibits for the violation of her right to own and keep movable property by the Respondents and urge the Court to grant all the reliefs sought particularly the relief of Ten Million Naira (N10,000,000.00k) exemplary damages against the 1st Respondent. On this counsel referred the Court to the cases of Odogu Vs A.G. Federation & Ors (2000) 2 HRLRA 82 and Jimoh Vs A.G. Federation (1998) 1 HRLRA 513.

Learned counsel to the Applicant/Respondent moved his motion in terms of the motion paper on the 12/05/2011 and further relied on the 2nd and 3rd Respondent Counter Affidavit especially paragraph 5(iii) and 5(vii) and urge the Court to grant their reliefs as prayed because all their facts and the attached exhibits were unchallenged by the Respondents.

Learned counsel to the 1st Respondent/Applicant submitted that they do not file any Counter Affidavit to enable them contradict the Applicant/Respondents position but choose to reply on point of law.

Counsel then referred the Court to Exhibit ‘G’ where at the 2nd page the name of the 1st Respondent/Applicant appears at the column of Exporter /Importer. Counsel then submitted that the 1st Respondent is the owner of the said vehicle and has not transferred his ownership to the Applicant/Respondent even from the attached exhibits to the motion.

By way of response to the 3rd relief ieN10,000,00k exemplary damages sought by the Applicant/Respondent against 1st Respondent, counsel further submit that the 1st Respondent/Applicant did not violate her Fundamental Human Rights but rather contest the vehicle’s ownership with her and that if the Court so hold, it wasn’t with malice because there were several letters from him to

the police to investigate his stolen car. Counsel urge the Court to be guided by principle of fair play in its ruling.

In another breath learned counsel to the 2nd and 3rd Respondent also informed the Court that they opposed the 1st relief sought by the Applicant/Respondent against the 2nd and 3rd Respondent and in view of their opposition they filed and relied on 8 paragraphs Counter Affidavit deposed to by on Jonah Wutu police officer and litigation clerk in the legal department of the Force C.I.D. Abuja. In further opposition to the said relief one, counsel to the 2nd and 3rd Respondent having filed also adopted his written address where it contended that up till that day, 1st Respondent is still contesting the ownership of the said vehicle with the Applicant/Respondent and that their action was not actuated by malafide but promise to handover the car to the true owner when a Court of competent jurisdiction ordered same.

Finally counsel urge the Court to dismiss relief one sought by the Applicant/Respondent against 2nd and 3rd Respondent but conceded to the 2nd relief and stated that the 3rd relief do not affect them.

