

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/M/8607/2018

BETWEEN:

MRS. JACINTA MASELI - ADOPTER/APPLICANT

AND

MISS MARY EDOH - MOTHER/RESPONDENT

JUDGMENT

By a Notice of Motion No. M/8607/18 undated but filed on the 06th day of September 2018, the Applicant sought the order of this court granting her custody of baby Zara.

The Respondent filed a counter affidavit but before the court could hear the application, the Respondent and the Applicant signed Terms of Settlement and an affidavit adopting the Terms.

When the case came up for hearing on the 13/06/19 counsel to the Respondent expressed dissatisfaction at the turn of events regarding the manner the terms of settlement were executed.

The court sought to hear from the Respondent who informed the

court off record that she is now willing to leave everything to God as she cannot take care of the baby. She therefore wants the Applicant to adopt the baby. Since that application was opposed by a counter affidavit and the fact that the Applicant engaged the service of a new counsel, the new counsel filed another process titled Originating Summons, with No. CV/2210/19.

The processes earlier filed together with all the counter processes were all withdrawn and struck out.

This originating summons for child adoption with No: CV/2210/19 dated and filed on the 18th of June 2019 was brought by Applicant wherein she prays the court for the following relief(s):

1. An order of this Honourable Court granting the Applicant, **Mrs. Jacinta Maseli** right to adopt Baby **Ehi**.
2. An order of this Honourable Court granting custody of the said baby Ehi to the Applicant.
3. An order of this Honourable Court resting on the Applicant (**Mrs. Jacintha Maseli**) all the rights, duties and obligations applicable to the mother of the adoptee (Baby Eli) in relation to the future custody, maintenance, supervision and education of the adoptee.
4. And for such further Order(s) as the Honourable Court may deem fit to make in the circumstance of this case.

The application is supported by a 16 paragraphed affidavit, dated 18th of June 2019 and deposed to by the Applicant herself wherein she states:

That she is a Nigerian, and an indigene of Imo State, born on the 17th of December 1967.

That she is married to **Mr. Danid Edigheji Maseli** and they have 3 biological children: **Orevaoghene Maseli, Oghenekome Maseli, and Oghenetega Maseli.**

Attached as Exhibits JESSE 1 and JESSE 2 respectively are a copy of an affidavit of consent from **Mr. David Edigheji Maseli** and a Marriage Certificate of **David Edigheji Maseli** and **Jacintha Chinyere Okwarah.**

Deponent avers that she is a staff of the ECOWAS Commission. A copy of her letter of offer of appointment from ECOWAS is attached and marked as Exhibit JESSE 3.

Deponent also attached a copy of her ECOWA International Passport with No A05386275, her Certificate of State Origin and birth certificate which are all marked as Exhibits JESSE 4, JESSE 5 and JESSE 6 respectively.

Deponent states that, the child she wishes to adopt baby **Ehi**, was born on the 22nd September 2016 to the Respondent, **Mary Edo** who conceived the said baby **Ehi** as a result of rape and at the time of the

incidence, was an accounting student of the Federal Polytechnic, Zaria, Kaduna State.

Deponent avers further that the Respondent, **Mary Edoh** wishes to give up the baby **Ehi** to Applicant to raise and that she (deponent) shall assume full parental responsibilities over the baby by training and bringing her up in the way of the Lord and to be responsible for her wellbeing and education in Nigeria and abroad should this application be granted.

Deponent states that she is financially capable and medically fit to take care of baby **Ehi** and that she has the consent of baby **Ehi's** biological mother, the Respondent in this suit to adopt her.

Attached also are copies of a Medical Certificate of fitness, affidavit of consent deposed to by the Respondent. Deponent also attached her two recent passport photographs marked as Exhibits JESSE 8, JESSE 9 and JESSE 10 respectively.

The Respondent did not file any counter affidavit having withdrawn the counter affidavit earlier filed in motion No. M/8607/18, leaving this suit uncontested.

Also attached to the application is a written address of counsel on behalf of the Applicant, wherein a sole issue for determination was raised thus:

Whether from the circumstances of this application and all facts disclosed in support of same, this Honourable Court can, in the interest of justice grant this application.

The Adopter/Applicant referred the court to Section 126 of the Child's Right Act 2003 and submits that she has complied with the requirement for adoption as can be gleaned from the affidavit in support of the application and Exhibits attached.

Applicant relying on Section 1 of the Child's Rights Act 2003 further submits that in every action concerning a child.....the best interest of the child shall be the primary consideration and there is no legal impediment limiting the power of the Honourable Court to grant this order as the best interest and welfare of the child will be guaranteed by a grant of this application.

Applicant relied on all the averments of their affidavit and exhibits, adopted their written address as their oral submissions and prayed the court to grant their application.

While addressing the court, counsel on behalf of Respondent informed the court that after perusing through a copy of the notice made by the Applicant to the social welfare indicating interest in adopting baby **Ehi**, there will be no objection to the application.

Deponent states that she is financially capable and medically fit to

take care of baby **Ehi** and that she has the consent of baby **Ehi's** biological mother, the Respondent in this suit, to adopt her.

Applicant prayed the court to rely all the exhibits and the averments in her affidavit and grant all her prayers.

Section 126 of the Child's Right Act provides for the documents that shall accompany an application for adoption of a child.

The instant application is supported by an affidavit of 14 paragraphs to which is attached 10 Exhibits, all marked exhibits 1 to 10.

There is a Marriage Certificate, a Medical Certificate of fitness of the Applicant, a declaration of age of the Applicants and two passport photographs of the Applicant.

Other documents an affidavit of full consent of her husband, allowing the right to adopt the child.

Her evidence of financial ability to take care of the child and photocopy of her International Passport. Her certificate of state indigene and a copy of the affidavit of consent of the Respondent Miss Mary Edoh and the consent of her husband are all evidence that Applicant indeed satisfied the provision and requirement of the law.

I have found no reason to refuse this Application. I therefore rely on all the statutory documents and the two affidavits of consent-one from the biological mother of the child **Ehi, Mary Edoh** and the other

from the lawful husband of the Applicant **Mr. David Maseli**, in considering this application.

It is in evidence that baby **Ehi** was conceived as a result of rape and that after the rape and conception, her own family, neglected her and that she lacked the financial and emotional capacity to cater for and bring up **Baby Ehi**. That she gives her full consent to the adoption of the said baby by **Mr. David Edigheji Maseli** and **Mrs Jacintha Maseli**.

I have also noted that the Applicant deposed that **Baby Ehi** shall be brought up in the fear of the Lord in the Christian way.

Apart from these, I have seen the Respondent who is still very young. By her looks, she does not appear as someone who is able to properly cater for herself, let alone have the baby to herself without any support from a father-head of the baby. The baby is about 2 years and 9 months old. She has since been under the custody of **Mr. David Maseli** and **Mrs. Jacintha Maseli** since her birth. She has been brought up to this stage of her life in a decent environment I may wish to state here that, on one of the days the proceedings in this case were going on, she was brought from school. Her school uniform was still looking clean. She has already bonded with the new mother (Adopter). I could see that all her emotions go for **Mrs. Jacintha Maseli** as any normal baby would do her mother, and it was obvious.

I observed also that, even if the biological mother **Mary Edoh** had prayed the court to give her back her baby, it would have been a sympathetic scene to do so as the said baby was rejecting everybody and is not used to the said biological mother.

Wonderfully enough, the said biological mother has given her full consent for the adoption of the baby.

Mr. and Mrs Maseli (Applicant and her husband) have deposed that they will train the child both in Nigeria and outside the shores of Africa; an opportunity that most Nigerian children do not have and wish to have. With these new parents, **Baby Ehi** will receive the best education within the means of **Mr. and Mrs. Maseli** and the ability of the child to further her education.

It is in view of all these factors which I consider to be in the best interest of the child that I am inclined to granting this application. When I mean “best interest of this child” I mean her wellbeing, happiness, education, upbringing and self-confidence.

In the circumstance judgment is hereby entered in favour of the Applicant in the following terms:

1. The Applicant Mrs. Jacintha Maseil is hereby granted the adoption of Baby Ehi as her daughter; therefore custody of the said Baby Ehi is vested in the couple **Mrs. Jacintha Maseli** and her **husband Mr. David E. Saseli**.

2. The said **Mrs. Jacintha Maseli** is hereby vested with all the rights, duties and obligations applicable to a mother of a child and in this case, the adoptee, **Baby Ehi**, in relation to the future custody, maintenance, supervision and education of the adoptee, **Baby Ehi**;
3. The Applicant **Mrs. Jacintha Maseli**, is therefore, hereby vested with all rights as a parent to train, educate and raise **Baby Ehi** up as a natural child;
4. To this end therefore all the rights of a child under the Child's Rights Act shall apply while the duties responsibilities of a child to the parents shall also apply to **Baby Ehi** in relation to **Mr. David** and **Mrs. Jacintha Maseli**;
5. **Baby Ehi** shall on attaining the age 21, be made to know her biological mother by way of personal introduction;
6. **Baby Ehi** shall regard **Mrs. Jacintha Maseli** and **Mr. David Maseli** as her parents, and the **Maselis** shall in turn regard her a as their daughter.
7. **Baby Ehi** shall give to **Mrs. Jacintha Maseli** and **Mr. David Maseli** due respect and honour that biological children give to their parents.

This is the judgment.

Singed
Hon. Judge
05/07/19

APPEARANCE

(1) MOSES IDEH ESQ FOR APPLICANT.

(2) H. V. CHUKWURE ESQ FOR THE RESPONDENT.

AUTHORITIES

SECTION 126 OF THE CHILD'S RIGHT ACT, 2003.

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 file 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 as 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.

