

**THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU'AZU**

SUIT NO. FCT/HC/CV/7656/2023

DATE: 15/07/2024

BETWEEN:

JULCIT HWANDE.....COMPLAINANT/APPLICANT

AND

JOSHUA SESUGH HWANDE.....DEFENDANT/RESPONDENT

RULING

The Complainant (Julcit Hwande) commenced this suit vide an Application for commencement brought pursuant to Order 21 Rules 2 of the Child Rights Act (Enforcement Procedure) Rules 2015, Section 69 and 84 of the Child Rights Act Law No. 26 Laws of the Federation of Nigeria.

In the said Application, the Applicant sought for the following reliefs against the Defendant to wit;

- (1) *An Order of this Honourable Court granting full custody to the Complainant/Applicant in whose care Shiphrah Msurshima Hwande, Varana Sheena Hwande and Mvene Sahmicit Hwande have been since 8/9/2023.*

- (2) *An Order of this Honourable Court granting the Complainant Applicant full custody and exclusive right to file and process as the sole custodian in any application for and on behalf of Shiphrah Msurshima Hwande, Verana Sheena Hwande and Mvene Sahmicit Hwande without requiring to obtain the consent of the Defendant/Respondent where such consent is required.*
- (3) *An Order of this Honourable Court directing the Defendant/Respondent to pay the sum of N4,000,000 (Four Million Naira) per quarter for upkeep, school fees, basic welfare, health care needs and accommodation for Shiphrah Msurshima Hwande, Verana Sheena Hwande and Mvene Sahmicit Hwande.*

Applicant also filed a Motion on Notice bearing motion number M/13484/2023 wherein the Complainant/Applicant seeks for an order of interlocutory injunctions restraining the Defendant and Nigerian Police Force, from threatening or using its machinery to take away the children forcefully from her.

Upon service of the Application on the Defendant, a counter affidavit was filed and a Notice of Preliminary Objection was equally filed. This Ruling therefore, is pursuant to the said interlocutory Application of the Complainant dated 21/09/2023 and Notice of Preliminary Objection dated and filed on the 30/10/2023.

In line with law and procedure I am minded to consider the notice of Preliminary objection first being a threshold issue bordering on the jurisdictional competence of the court to adjudicate over the matter.

The Defendant/Applicant in its Notice of Preliminary Objection, sought for the following:

- (1) *An Order of the Court dismissing in limine the Motion on Notice filed by the Applicant herein in Motion No. M/13484/2023 and the application for commencement with case No. CV/7656/2023 for being incompetent.*
- (2) *An Order of this Court dismissing in limine the Applicant's Motion No. M/13484/2023 and the application for commencement with case No. CV/7656/2023 as the reliefs sought are not grantable by this Court based only on affidavit evidence, thereby constituting a deliberate abuse of Court and depriving this Court of the prerequisite jurisdiction to entertain same.*

The grounds upon which the Application is predicated were endorsed and an affidavit of 31 paragraph deposed to by the Defendant himself was filed.

It is the deposition of the Defendant/Applicant that he is an officer with the Nigerian Custom Service and currently on special leave, following an accident in March, 2020 where he sustained grave injuries from which he is confined to a wheel chair. Defendant/Applicant avers that

he has never abused the complainant/Applicant, nor his children physically, mentally or otherwise. That the Complainant/Applicant is a House wife and has never worked a day in her life for any form of honest wage. And that the Complainant/Applicant's Company *Oaths of Righteous after school Ltd* is a brief case company with its registered address at his domicile.

It is further the deposition of the Defendant/Applicant that as the head of the family, he provided for the complainant and the children everything they wanted. And that the applicant has never raised any issues about abuse of any kind to any member of his family until 7/9/2023 when he informed her parents about his plan to end the marriage.

The Defendant/Applicant further avers that the Complainant/Applicant forcefully abducted the children of the marriage on the 9/9/2023 when school was to resume on the 11/9/2023 and a petition was written against the complainant/Applicant to that effect.

The Defendant/Applicant annexed the following documents to the application:

- (1) Statement of account**
- (2) School Results and accompany items and**
- (3) Petition to DG NAPTIP.**

A written address was filed wherein two issues were distilled for determination, to wit:

- (1) Whether from the surrounding circumstances of this case and the affidavit deposition of the Applicant, this application is competent and if incompetent, whether the Court has the requisite jurisdiction to hear and grant this application via an interlocutory application to wit; Motion No. M/13484/2023.***
- (2) Whether the Applicant is qualified to be granted sole and exclusive custody of the children of their marriage having eloped and desecrated her matrimonial home.***

Learned Counsel argued the above issues citing relevant authorities and statute in urging the Court to grant the application of the applicant.

Upon service, the Complainant/Applicant filed a 43 paragraph counter affidavit deposed to by the Complainant herself.

It is deposition of the Complainant/Respondent that, it was as a result of the physical, mental and emotional abuse meted on her by the Defendant/Applicant that she had to run for her life.

That she has a viable business and have earned a decent leaving ever since the Defendant/Applicant abandoned and abdicated his financial responsibility to her and the children.

That she has worked with Morgan Capital Group as Head Customer Relations and also with GT/Capital Ltd.

That it is not her responsibility to provide for the children and herself but since the Defendant abdicated in his responsibility she does same as the monies provide for upkeep is not enough.

It is further the counter affidavit of the complainant that she has never had a loverin her life as alleged by the Defendant/Applicant. And that she left the House on the 9/9/2023 because she was taking the children to salon to make their hair and upon getting to the Estate gate, the Security Guards locked the gate on her on the instruction of the Defendant/Applicant. And that she did not eloped with the children to any man's house but to a place of safety with her children.

That she enrolled the children in home school where they attended online classes, this is because of the circumstances she left the house.

That the Defendant have been sending messages in proxies that he want the children back and that her lawyer advised her to do a petition to NAPTIP and Human Rights Commission and same was done.

Complainant avers that after this matter was instituted and interim order granted, the investigator at the National Human Rights Commission, Bridget Robert and IPO Rosemary of Nigerian Police Force reached out to her through family friend threatening that she produce the children. That it will be in the interest of justice to refused this application.

Reacting to the counter affidavit, a further and better affidavit was filed wherein the Defendant/Applicant avers that, the complainant eloped with the children and declined to let the investigating officer Ladan Sani of NAPTIP to investigate the case of violence against him. And that the hair dresser has always come to the house to do their hair contrary to the assertion of the Complainant/Applicant. That it will be in the interest of Justice to grant the application.

COURT

I have gone through the Application brought by the Defendant/Applicant and the annexure therein, I have also gone through the counter affidavit of the Complainant/Respondent in reacting to the Notice of Preliminary Objection of the Defendant/Applicant cum the exhibits therein, I shall therefore be brief but succinct in addressing the issues in the overall interest of justice.

I must observe from the outset that in every action concerning a child, whether undertaken by an individual, public or private body, institutions and administrative or legislative authority, the best interest of the child shall be the primary consideration.

In deciding what is the best interest and welfare of the child, in a situation like this, the Court regard the following factors as relevant; the degree of familiarity between the child and each of the parties.

WILLIAMS VS. WILLIAMS (1987) 2 NWLR (PT. 54) P. 66 SC.

The Complainant is seeking for full custody of the children of the marriage because, according to the Complainant, the action and inactions of the Respondent has caused the Complainant/Applicant

mental and emotional trauma which has adversely affected the well being of the children.

Indeed, it is trite that the emotional and mental well-being of the child should be considered in every decision the Court would make concerning the welfare of a child. Section 11 of the Child Rights Act provides that;

“Every child is entitled to respect for the dignity of his person, and accordingly, no child shall be (a) subjected to physical, mental or emotional injury, abuse, neglect or maltreatment or punishment (c) subjected to attacks upon his honour or reputation; or (d) held in slavery or servitude, while in the care of a parent, legal guardian or school authority or any other person or authority having the care of the child.

It must be borne in mind that the Complainant commenced this action pursuant to **Order 21 of the Child Rights (enforcement procedure) Rules, 2015 and also sections 69 and 84 of the Child Rights Act, 2003.**

A combined reading of the provisions under which the Application was brought will reveal that the interim order for custody as envisaged by the provision of Order 21 of the Child Right enforcement procedure Rules is not granted as a matter of course but in accordance with the relevant provisions as contain in the extant laws especially section 69

of the Act. For avoidance of doubt section 69 of the Child Rights Act 2003 reads thus;

The Court may

(a) On the application of the father and mother of a child, make such order as it may deem fit while respect to the custody of the child and the right of access to the either parent, having regard to

(i) The welfare of the child and the conduct of the parent and

(ii) The wishes of the mother and father of child

From the provision above, could it be said that the application of the Complainant/Applicant for full custody of the children can be granted under Order 21 Rule 2 of the Child Right (enforcement procedure) Rules? For clarity, Order 2 Rule 2 provides thus:

Subject to the provisions of the Act, the Court may, in an application made under this Part, postpone the determination of the application and make an interim order giving custody of the child to the applicant for a period not exceeding two years on such terms and conditions as the Court thinks fit as regards provision for the maintenance, education, supervision and the welfare of the child or otherwise.

From the above it is clear to me that provision of Order 21 Rule 2 of the Child Right (enforcement procedure) Rules cannot be stretched to

include grant of full custody to an Applicant. As the provision state in clear terms, it is for grant of interim Order. On this I agree with the Defendant/Applicant that the first and indeed the second and third reliefs praying for full custody and maintenance, as produced at the beginning of this Ruling, are not grantable in the circumstances of this action.

It is the law that the issue of whether or not a court has the jurisdiction to hear a matter is resolved by looking at the Claimant's or in this case the Complainant's reliefs. It is my finding that the reliefs sought are not grantable rendering the action incompetent thereby robbing the court of the jurisdiction to hear the matter as constituted.

In view of the above finding, the objection succeeds. The Application for Commencement is accordingly hereby struck out
Having struck out the substantive application, I shall not proceed to consider the interlocutory Application which at present stands on nothing. Same is hereby struck out.

Signed
Hon. Judge
15/07/2024.

Appearance:

U.C. Unoh, Esq, for the Complainant/Applicant.

D.L. Saror, Esq, with T.S. Terver – ubra, Esq, for the Defendant/Respondent.