

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA**

SUIT NO: PET/081/2021

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

ONOBUN FRANSCISCA KANAYO.....PETITIONER

AND

ONOBUN DAVID.....DEFENDANT

RULING

The petitioner/applicant filed this Motion on Notice with No. M/11852/2022 and seeks for the following orders:

1. An order of this court allowing the petitioner to give her evidence in support to this petition via virtual means to wit: online, using hype or zoom or any other online video transmission electronic means that may be permitted by this court.
2. An order of this court deeming the said evidence of the petitioner given virtually as proper, and sufficient in the support and proof of the petition before this court.
3. And for such further order and other orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application is made are contained in paragraphs 1 and 2 of the motion papers. The application is supported by an affidavit of eleven paragraphs and a written address of counsel.

The respondent was served with motion by a substituted means. It is deposed to the fact that the petitioner is currently living and attending to her children's health needs and care in Ekpoma which demands her presence day to day and cannot currently travel to Abuja,

and that the COVID 19 practice direction and the restriction protocols in place in several countries of the world currently allows for the hearing of evidence by virtual means which the Apex Court has held to be constitutional.

It is stated that the reason for this application is for the court to grant leave for the petitioner to give her evidence virtually, and that the said virtual testimony has become necessary considering the fact that the petitioner cannot physically be in court to adopt her witness statement due to health challenges of her child. That with the recent outbreak of the Corona Virus, courts of law have issued a practice direction which has permitted and raised that virtual court hearing is constitutional.

In his written address in support of the application, the counsel to the petitioner submitted that the effect of the health challenges and the nature of the job of the petitioner has gravely impacted on her ability to travel out of her base in Ekpoma despite having their home in Abuja, and that the Supreme Court in the case of **A.G. Lagos V. A.G. Federation & Anor. SC/CV/260/2020** held that as of today virtual sitting is not unconstitutional.

The counsel raised this issue for determination:

Whether the plaintiff/applicant has made out a case for the grant of the orders sought in this instant application?

The counsel asked this question:

Will the justice of the matter be served?

The counsel answered the above question in the affirmative and submitted that the affidavit in support speaks for itself to the effect that the emergence of the pandemic compelled decisive measures to be taken not completely cripple the wheels of justice and indeed life itself when the directive of the Minister of Justice made to the

heads of the court in both Federal and State levels to adopt the virtual court sittings and this was challenged and the Apex Court decided that as of today virtual sitting is most unconstitutional.

The counsel submitted that application of this nature is grantable by the court in exercise of its discretion and such discretion has be exercised judicially and judiciously, and he cited the case of **Loveday V. Comptroller of Prisons, Federal Prison Aba (2013) 18 NWLR (pt 1386) p. 379 at pp. 408 – 409 paras. H-A.**

The counsel also cited the cases of **Okorochoa V. P.D.P (2014) 7 NWLR (pt 1406) p. 213 at 225, paras. B-C.**

The counsel also submitted that in granting an application of this nature a competing interest of the parties must be taken into consideration, and he cited the case of **Lab Plc V. U.M.B. Ltd (citation not properly supplied).** He made reference to the exhibit attached to the affidavit, and urged the court to grant the application.

Let me adopt and re couch the issue for determination in this application, to wit:

Whether the petitioner/applicant is entitled to the relief sought?

It is worthy of note that the applicant did not attach any exhibit to the affidavit contrary to the submission of the counsel. It is the contention of the counsel to the petitioner and the petitioner that the petitioner lives in Ekpoma, within Nigeria and that because of she is attending to her child's sickness she could not be able to come to adopt her witness statement on oath physically relating it with the practice directions of COVID 19, to my mind this is not a god material placed by the applicant to warrant this court to grant such an application. The petitioner has failed to provide enough and good material to which this court will

exercise its discretion in her favour, and to that I am not inclined to grant this application because this court has to be wary so that it will not appear as if the petitioner is given underserved opportunity to present her case. The reason given to this application is not a good material placed to enable this court exercise its discretion.

The application is hereby refused accordingly.

Hon. Judge

Signed

30/5/2024

Appearances:

Parties absent and their counsel too.