

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/PET/157/2018

MOTION: M/4083/2018

BETWEEN:

AGATHA ANWULI ISEI.....PETITIONER

VS

1. EMMANUEL ISEI

2. VIVIAN OSE.....RESPONDENTS

RULING

By a Motion on Notice with No. M/4088/18 dated 19/3/2018 and filed on same day, brought pursuant to the inherent jurisdiction of this Hon. Court, the Applicant pray the court for the following;

- (1) An Order granting the Petitioner/Applicant the sole custody of Emmanuella Iriah Isei pending the hearing and determination of the substantive Petition.
- (2) And such further orders as this Hon. Court may deem fit to make in the circumstance.

In support of the Motion is a 37 Paragraphs affidavit sworn to by the Applicant herself with two (2) Exhibits annexed and marked "A" and "B".

Also filed a Written Address and adopts the said Address. Also filed a further/better affidavit on 28/1/2021.

The Respondents were served with the Motion but did not file a counter-affidavit or any process in response.

In the Written Address of Applicant, counsel for Applicant, Oghenovo .O. Otemu formulated a lone issue for determination and that is;

“Whether the Petitioner/Applicant has placed enough facts before this court as to entitle them to the reliefs sought”.

And submit that the essence of this application is to prevent any of the 1st Respondents forcefully abducting the child and facing this Hon. Court with fiat accompli or rendering the final decision of the court nugatory. That Applicant has shown in the affidavit that the 1st Respondent if allowed to be in custody of the child in issue will not be able to care as he does not have the capacity to do so. Submit it is in the best interest of the child to be in custody of the Applicant. Counsel cited the following judicial authorities; Odogwu Vs Odogwu (1992) LPELR – 2229 (SC); Festus Ibadubo Adesanoye Vs Comfort Morolanye Adesanoye (1971) LPELR – 144 (SC).

Having considered the affidavit evidence of the Applicant, the submission of counsel, the authorities cited as well as the Exhibits annexed, the court finds that only one (1) issue calls for determination and that is;

“Whether or not the Petitioner/Applicant has made out a case to warrant the grant of this application”

The grant or otherwise of an application of this nature is at the discretion of court. And in the exercise of that discretion, the court overtime is urged to do so judicial and judiciously taking into cognizance the facts before it. See the case of Ajuwa Vs SPDC Nig Ltd (2012) ALL FWLR PT. 615, 200 at 219 Para H – E. See also Tanko Vs State (2009) 4 NWLR PT 1131 430 at 441.

In this instant application, the Applicant seeks the sole custody of the child of the marriage pending the hearing and determination of the Petition.

It is settled law that the court hearing an interlocutory application, as in the instant, has no jurisdiction to make any pronouncement which has the effect of determining any of the matters or issues in the substantive case. In other words, a court hearing an interlocutory application must avoid making any findings or determination which may prejudice the substantive matter. See the case of Adeleke Vs Lawal (2014) ALL FWLR PT. 710 1226 at 1228. See also Ugwu Vs Julius Berger (Nig) Plc (2019) LPELR – 47625 (SC).

A cursory look at this instant Petition, paragraph 38 thereof clearly shows that the relief sought by the Applicant in this instant interlocutory application is an issue in the substantive Petition of the Petitioner/Applicant which this court will make pronouncement on at the trial of the Suit. And as earlier stated, courts are enjoined to refrain from making pronouncement on matters before it which are subject for the substantive suit and in my view, the application is inviting the court to make pronouncement on issue that are matters for the substantive case. It is on this basis, I shall refuse

this application. I so hold. Rather than seek the relief, the Petitioner/Applicant should press for accelerated hearing of this Petition.

In conclusion, this instant application fails and it is hereby dismissed.

Signed

HON. JUSTICE O. C. AGBAZA

Presiding Judge

28/3/2022

APPEARANCE:

OGHENOVO O. OTEMU – FOR THE PETITIONER/APPLICANT

NO APPEARANCE FOR THE RESPONDENT