

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : PETITION NO: PET/414/2021

DATE: : THURSDAY 10TH FEBRUARY, 2022

BETWEEN:

**DR. LILIAN OZUGBO } PETITIONER
/APPLICANT**

AND

**MR. KINGSLEY CHUKWUEMEKA }
OZUGBO } RESPONDENT**

RULING

This ruling is predicated upon Motion on Notice dated the 13th day of October, 2021 and filed the same date. Wherein the Petitioner/Applicant sought for the following:-

1. An Interlocutory Order granting the Petitioner/Applicant custody of the four (4) children of the marriage, namely;
 - a. Miss. OnyinyechiOzugbo, female, born on 28th day of August, 2008.
 - b. Miss. ChidiamaraOzugbo, female, born on 27th the April, 2011.
 - c. Master ChukwuebukaOzugbo, male born on 5th April, 2015.

- d. Master KenechukwuOzugbo, male, born on 19th September, 2020, pending the determination of the substantive petition for dissolution of marriage before this Honourable Court.
2. An Interlocutory Order restraining the Respondent/Respondent from disturbing, harassing, accosting, approaching, intimidating, inviting, talking to, going close to, trailing, stalking, following or visiting the Petitioner/Applicant pending the hearing and determination of the substantive petition for dissolution of marriage before this Honourable Court.

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

In support of the motion is a 17 paragraph affidavit deposed to by Dr. Lillian Ozugbo, the Applicant herself.

It is the deposition of the Applicant that she filed a petition for dissolution of marriage on the 13th of October, 2021 between the Respondent and her before this Honourable Court in order to relieve her of the obligation of further cohabiting with the Respondent on account of his cruelty towards her, thereby saving her life from his Hands.

That she has moved out of the Respondent's house with the four (4) children of the marriage for her safety, mental, psychological, physical and

emotional health as well as that of the children of the marriage.

That the Respondent has been harassing her at her place of work, demanding, subjecting her to embarrassment before her patients who come to her hospital for treatment thereby chasing her patients away and affecting her medical practice.

That he carried his fetish practice to Azriel hospital premises, her business and workplace, where the security personnel caught the Respondent making incantation within the hospital environment around 9:30pm and informed her of the fetish act of the Respondent.

That the Respondent on several occasions has disrespected her mother who has been taking care of all the children of the marriage for 11 years now, to

enable her and the Respondent concentrate on their respective business and career.

That the Respondent would not be prejudiced in anyway by the grant of this application.

In compliance with the Rules of this court, a written address was filed wherein a sole issue was formulated for determination to wit;

“Whether this Honourable Court can grant the reliefs sought.”

Arguing on the sole issue, learned counsel for the Applicant submits that this Honourable court has the discretionary power to grant this application as prayed by the Petitioner/Applicant by virtue of the provisions of Order 14 Rule 22 (1) of the Matrimonial Causes Rules.

Counsel submits further that it is trite and well settled law that both parents of a child have equal rights to the custody of a child, however, in considering the custody of a child, the court is enjoined to consider what will be in the best interest of the child. ***NWOSU VS NWOSU (2011) LPELR – 4654 (CA);***

WILLIAMS VS WILLIAMS (1987) LPELR – 8050;

TABANSI VS TABANSI (2009) 12 NWLR (Pt. 1155) (CA) and section 71(1) of the Matrimonial Causes Act, 1970 were cited.

On the issue of injunction, learned counsel submits that it is a trite law that an Order of Interlocutory Injunction can be brought by an Applicant where there is extreme urgency required for the

preservation of the res or the maintenance of status quo ante bellum. ***KOTOYE VS CENTRAL BANK OF NIGERIA (1989) 1 NWLR (Pt. 98) 419 was cited.***

On the whole, counsel submits that it is not part of the court's function to go into the merits of the case at this stage, though it is encouraged to take a cursory look at the whole case. Counsel therefore urged the court to so hold and grant the application of the Petitioner/Applicant.

Upon service, the Respondent filed a counter affidavit to the Petitioner's motion which was deposed to by Mr. Kingsley ChukwuemekaOzugbo.e the Respondent himself.

It is the averment of the Respondent that save and except as hereinafter expressly admitted, the

Respondent denies each and every allegation of fact contained in the affidavit in support of Motion on Notice as if the same were herein set out and traversed seriatim.

That the Respondent denied paragraph 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the affidavit in support of the Applicant's Motion on Notice.

That he has never raised his hands on his wife neither did he abandoned her.

That the respondent admitted paragraph 12 to the extent that the Applicant mischievously laid false allegation on him in order to put him off from her life but thank God that the police could not find anything incriminating against him and he was let go.

That the Respondent further denied paragraphs 13 and state that the woman whom he housed for good 11 years, how else could one proof his respect to one who is not Biological mother than this?

In line with the law, a written address was filed wherein two issues were raised for determination to wit;

- i. *Whether or not the Petitioner has made out a case that will warrant the grant of the prayer in favour of the Petitioner.*
- ii. *Whether the balance of convenience is in favour of the Petitioner.*

Learned counsel to the Respondent submits that in determining an application of this nature, the court is bound to consider the balance of convenience between the parties.

***AFRICAN CONTINENTAL BANK LIMITED VS
AWOGBORO (1991) 2 NWLR (Pt. 176) 711;***

***DR. EGWUATU VS EGWUATU (1988) 3 NWLR
(Pt. 83) 417 were cited.***

Counsel submits that from the Respondent counter affidavit, the court can affirm in the paragraphs of the Respondent's counter affidavit which shows that the respondent has used his useful years to invest in the Applicant. Therefore, granting this application will cause more inconvenience and irreparable damage to the Respondent.

Counsel humbly urged the court to dismiss this application as it is not only lacking in merit but is an attempt to inflict harm on the Respondent.

On their part, Petitioner/Applicant filed a further affidavit in response to Respondent's counter affidavit deposed to by Abigail Manassch.

That it will be in the interest of justice if the Petitioner/Applicant's application is granted.

COURT:-

After a very careful review of the affidavit in support of the application for Interlocutory Order on one hand, and the response of the Respondent/Respondent who is vehemently opposed to the grant of the said relief of Interlocutory Order, on the other hand, I have formulated an issue for consideration, i.e. **whether there is any legal right to be protected or preserved?**

The following condition must be met by Applicant for a court approached for an order of interlocutory injunction to grant same:-

- (a) Applicant must have a legal right in the subject matter which he seeks to prevent by the conduct of the Defendant to violate.
- (b) There must existing serious or substantial issue or case to be tried.
- (c) The presentation of the res which is the subject matter of the suit.
- (d) Balance of convenience, the opposite of balance of inconvenience.
- (e) The Applicant must show by evidence question of real urgency and not caricature of it.

(f) The gravity of injury and the fact that the loss is irreparable.

See *UNIVERSAL TRUST BANK LTD AND ANOTHER VS DOLMERCH PHARMACY (NIG) LTD (2007) ALL FWLR (pt. 385) 434 at 454 – 455 paragraph H - D (S C).*

Interlocutory Order is a stop – gap measure. It is granted usually at an early but critical stage in the life and pendency of the substantive cause before the court has had opportunity to fully hear and weigh the evidence and determine one way or another the case of parties.

It is similarly important to note that the jurisdiction of court to grant Interlocutory Order is equitable, the manner of the exercise of the discretion depends upon the precise nature of the particular rights which

is sought to be protected and upon all the materials and circumstances. This is so because relief for Interlocutory Order, like most other reliefs, is punitive and therefore should be granted after due process of the law which involves given parties fair hearing, as done in this case.

See ***RANSTON PROPERTIES LTD VS F.B.N PLC. (2007) ALL FWLR (Pt. 392) 1954 at 1965 – 1986 C – D.***

When an application for an interlocutory order to restrain a Respondent from doing acts alleged to violation of Petitioner/Applicant's legal right is made upon contested facts, the decision whether or not to grant an interlocutory order has to be taken at a time when hypothetically, the existence of the right or the violation of it is or both are uncertain until

final judgment is given in the action. The practice of granting the Petitioner/Applicant's relief by way of interlocutory order arose to mitigate the risk of injustice to him or her during the period the uncertainty could be resolved.

Above was stated by **PETER ODILI JCA**(as he then was) in the case of **STALLION (NIG.) LTD. VS EFCC (2008) 7 NWLR (Pt. 1087) 461 at 473 paragraph A- C.**

In granting an interlocutory order, the scope usually is limited to the actual res in the suit.

It is usually based on specific claims or reliefs sought in the substantive suit.

See the case **NWANNEWNINE VS NWANNEWNINE(2007) NWLR (Pt. 1059) 1 at 13 Paragraphs B – C.**

I wish to state reiteratedly that Petitioner/Applicant's real prospect of success in the right claimed must, at the outset, be satisfied that the Petitioner/Applicant's claim is not frivolous or vexations and that there is a serious question to be tried at the substantive suit. Where Petitioner/Applicant fails to satisfy these requirements, it will in effect automatically bring to an end and defeat his application.

See page 18 paragraphs B – D in *FALOMO VS BANIGBE & ORS (1998) 6 S. C 141*.

The Power to grant or refuse an interlocutory order is discretionary but as discretionary as it is to a Judge, it must be exercised judicially and judiciously, bearing in mind the competing interest of parties and the circumstances of each case.

It has been decided in plethora of cases that all an Applicant needs to prove in an application for an interlocutory order is the existence of a legal right which ought to be protected.

Petitioner/Applicant stated in her affidavit in support of the motion that she has moved out of the Respondent's house with the four (4) children of the marriage for her safety, mental, psychological, physical and emotional health as well as that of the children of the marriage

What then constitute legal right in law?

Legal right was defined by SC in *A-G LAGOS STATE VS AG FED. (2004)18NWLR (Pt. 9041) 1 per Niki Tobi JSC* (as he then was) to mean *“a right recognized in law. It means a right recognized by*

law and capable of being enforced by the Petitioner/Applicant.”

It is a right of a party recognized and protected by the Rule of law, the violation of which would be a legal wrong done to the interest of the Petitioner/Applicant, even though no action is taken.

The determination of the legal right is not whether the action will succeed at the trial but whether the action donates such a right by reference to the enabling law in respect of the commencement of the action.

It is instructive to note the trite position of law that, the essence of interlocutory order is to restrain a party from taking special step. It is often made before the actual trial of a case and is granted to keep matters in status quo until trial. See

***ANTHONY VS SURVEYOR GENERAL, OGUN
STATE (2007) ALL FWLR (Pt. 354) 370 at 390
paragraphs E-F.***

I shall for the purpose of law and posterity preserve the right of the Petitioner/Applicant in the event of breakdown of the marriage, threat or fear of violence and maintaining status quo ante bellum pending matrimonial proceedings. Court of law must avoid delving into the facts of cases at the stage of considering interlocutory application.

On the whole, after a careful study of both the affidavit in support of the motion on notice and counter affidavit, and upon a sound reasoning, I have come to a conclusion that the Petitioner/Applicant has establish a case for an order of interlocutory order to be granted.

I however must observe that the children in question are product of the marriage between the Petitioner and Respondent.

I am also minded to state that Petitioner/Applicant never mentioned any form of cruelty on the part of the Respondent towards his children.

I shall therefore order as follows;

That the custody of the four children pending the hearing and determination of the petition.

Is hereby granted Petitioner, as follows;

1(a).Miss. OnyinyechiOzugbo, female, born on 28th day of August, 2008.

b. Miss. ChidiamaraOzugbo, female, born on 27thApril, 2011.

- c. Master ChukwuebukaOzugbo, male, born on 5th April, 2015.
 - d. Master KenechukwuOzugbo, male, born on 19th September, 2020. Pending the determination of the substantive petition.
2. Petitioner/Applicant shall allow Respondent (father) unhindered access to see his children.
 3. Respondent shall not take away any of the four children from the Petitioner's temporary custody.
 4. An Order is hereby made, restraining Respondent from harassing, trailing, intimidating the Petitioner pending the determination of the Petition.

This is the Ruling of this Court.

Justice Y. Halilu
Hon. Judge
10th February, 2022

APPEARANCES

E.C Egwuatu, Esq. – for the Petitioner/Applicant.

G.E Ejekela, Esq. – for the Respondent.