

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13 GWAGWALADA ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
DATE: 16TH NOVEMBER, 2022.

SUIT NO: FCT/HC/PET/271/2019

BETWEEN:

KOLADE CHINYEREUGO LINDA.....PETITIONER/RESPONDENT

AND

KOLADE OLAYIDE ROTIMI.....RESPONDENT/APPLICANT

Godwin N. Chigbu for the petitioner/respondent

V.I. Miduador for the respondent/applicant

RULING

The respondent/applicant in an application dated 17th September 2019 and filed on 21st September 2019 seeks for the following order(s)

1. An Order of this Honourable Court directing the petitioner/respondent to grant the respondent/applicant access to the visitation of his children –Chinaezerem Jadem Kolade and Chimeremugoeze Jesse Kolade pending the determination of this suit.
2. An Order of this Honourable Court directing the petitioner/respondent to allow that the respondent/applicant may speak to his children Chinaezerem Jadem Kolade and Chimeremugoeze Jesse Kolade at least 2(two) or 3(Three) times a week via audios or video calls between the hours of 5 pm -

7pm on weeks days and the hour of 12 pm -6pm on weekends pending the determination of the suit

3. An Order of interlocutory injunction restraining the petitioner/respondent, her agents, servants and privies howsoever described from denying the respondent/applicant access to visit his children, pending the determination of this suit.
4. An order of interlocutory injunction ordering the petitioner/respondent to maintain status quo of the parental relationship between the respondent /applicant and his children pending the determination of this suit.
5. An Order of interlocutory injunction ordering the petitioner/respondent to keep the children within the jurisdiction and seek consent from the respondent/applicant in the event that the children need to leave the jurisdiction which the respondent/applicant will not unreasonably deny pending the determination of this suit.
6. Any further Order or Order(s) as this Honourable court may deem fit to make in the circumstances of this matter.

The ground upon which the application is brought are as follows

1. That the petitioner/respondent has been in custody of the children since before the suit began.
2. That the petitioner/respondent has refused the respondent/applicant access to see or hear from his children since before the suit began,
3. That the petitioner/respondent has also blocked all the contacts and means possible for the respondent/applicant to have any form of access to his children since the suit began.
4. That the status quo has to be returned to the original state of affairs with regard to access to the children in order for the respondent/applicant to carry out his fatherly and parental

responsibilities necessary for the balanced psychological growth of his children, as well as to occupy the father presence they need as young children pending the final determination of all issues before this court.

5. That it's been almost 4 years that the respondent/applicant has not been allowed to see his children.
6. That the balance of convenience is in favour of the applicant/respondent hence the need for the applicant to return the parental relationship back to status quo.

In the supporting affidavit, the respondent/applicant averred that before this petition was instituted in 2019, the petitioner/respondent had denied him access to the children. That he saw the children last on the 12th day of August 2017 and since then the petitioner/respondent has blocked all access to reach his children. That he has been paying for the financial upkeep of the children till date into the account of the petitioner/respondent. He attached the copies of the payments of monthly upkeep for Six month as Exhibit A. that The is ready to hand over to his children through the petitioner/respondent, a device for communication e.g. (an android phone) and a registered sim card, and that he is also ready to make available internet data connection for the device when need for such communication arises.

In reply to the averments of the respondent/applicant, the petitioner filed a 22 paragraph counter affidavit she claimed that it was the applicant that denied himself the access to the children by voluntarily packing his properties and deserted her and the children since 5th August 2017. And that the absence of the respondent in the children's life is good for their mental and psychological health, developmental well-being. That the children do not require his presence for the following reasons;

That sometime about November, 2016, the respondent attempted to use her or the first son f the parties(Chinaezerem Jadem) for money ritual and that the respondent was physically assaulting the children while he was living with her and the children before he deserted the matrimonial home, and that if granted access to her and the children, there is high likelihood that he will assault her or the children. That the fact that the respondent frequently physically assaulted her and the children traumatized the children and they began to fear the respondent and feel very unsafe in his company. That it is not safe to grant the respondent physical access to her and the children until the children become of age. She stated that the respondent has her bank account details and he has refused or neglected to provide for the upkeep of the children. That the first child is in primary 4(Four) while the second is in primary 1(One) That the respondent has never provided for their school fees, transportation to school, health needs, clothing, accommodation, leisure, recreation etc. and that since Four years that the respondent deserted her and the children, it was only about the last six months when the respondent started nursing the intention of bringing this application that he started paying N30,000 per month Into her bank account purportedly for the monthly upkeep of the children. This translates to N15,000.00 per child per month and N500(Five Hundred Naira) for daily upkeep of each child. That the money being paid in the 1st Six month allegedly for the upkeep of the children were not paid in good faith, that they are paid as a means to sway the court into granting the respondent's access to the children. That the option suggested in paragraphs 13 and 14 of the affidavit of the respondent 's motion is a ploy to make such a phone spiritual contact to her and the children. That it is a great risk to ask her or the children to accept any physical object from the respondent which he could use as a point of contact to have a spiritual or ritualistic access to her and the children. That if the court

is minded to grant the respondent access, to the children, it should not be a physical access. And that if the court is minded to grant the respondent access to the children via phone calls, it will serve the interest of justice to direct the respondent to pay the money into her bank account so that she can buy the phone and sim card by herself, that she will send the phone number to the respondent. That the injury the respondent is complaining about in this application is self imposed, as he has consciously committed the atrocities stated in the affidavit and voluntarily terminated his right of access to the children by packing out of the matrimonial home and deserted her and the children since Four years.

In further response to the petitioner/respondent's counter-affidavit, the applicant /respondent to the petition filed an 19 paragraphs further the better affidavit, wherein he averred that the facts deposed to by the petitioner/respondent in paragraphs 3, 4, 5, 6, 7, 8, 9,10,11,12,13, 14, 15, 16, and 17 of her affidavit are fallacious and vindictive. And that in response to paragraph 4 of the affidavit, he maintained that he was thrown out of the house by the petitioner/respondent sometime in August 2017 after series of mental issues with her, and that he loves his children daily and would never perpetrate or do any act to cause having them. That he has never assaulted any member of his family, but rather the petitioner/respondent has severally dehumanized and assaulted him in the presence of their children. And that he has been doing his best to look after the children since the time of better till date. That the petitioner is alleging financial irresponsibility because he had some business problems some years ago and no longer able to attend to her incessant extravagant. Wants.

And that prior to their marriage, the petitioner threatened to keep the first child away from him if he did not marry her and it is in her character to always use the children to spite him whenever they

have misunderstanding. And that If he is not granted access to the children, the children will grow up to spite him, as the petitioner will continue to fill their young and tender minds with hate towards him.

I have taken curious look at the application for access filed by the applicant/respondent to the petitioner before this court, and I have also evaluated all the facts contained in the counter affidavits of the respondent/petitioner, the further and better affidavit of the applicant/respondent and the further and better affidavit filed by the petitioner/respondent to the application for access. In my assessment of the reasons adduced by the petitioner/respondent in her counter affidavit. Particularly at paragraphs 6,7,8,9, that the respondent/applicant attempted to use the first son for ritual, and allegation of assault are very spurious and unsubstantiated claim. The courts will not countenance mere assertion or claims not substantiated in any form. On the effect of unsubstantiated evidence, the court held in the case of OKUNADE V. OLAWALE (2014) LPELR 22739 CA. that when evidence that should be substantiated is not so substantiated, it remain in the realm of an assertion to be likened to a mere Ipse dixit and cannot be regarded to be credible and worthy of belief. In DEBS VS. CANICO LTD(1986) NWLR(pt.32) 846 @ 853-854, OPUTA JSC. Expanded the law thus “Now IPSE DIXIT literally means he himself said it. It is thus a bare assertion resting on the authority of an individual. There can be no question that a mere Ipse dixit is admissible but it is evidence resting on the assertion of the one who made it where there is need for further proof, a mere Ipse dixit may not be enough. Per UWODE JCA. Pg 91 para C-F See ISHOLA V. ISHOLA (2014) LPELR 23082 CA.

I hold that facts in paragraphs 6, 7, 8, 9 of the petitioner/respondent counter affidavit are baseless and of no merit and benefit in the determination of the instant application. Let me state categorically that unless there is a cogent and convincing reasons to deny access

of a child to either of the parent, none of the parents have the right to cease access of the child of the relationship irrespective of whether the child was born with or without wedlock or holy matrimony by the parents".

By the provisions of Section 89 of the Child Right Acts 2010 Chapter 50 LFN, the court may on the application of the Father or Mother of a child make such Order as it may deem fit with respect to the custody of the child and the right of access to the child of either parent, having regard to (i) Welfare of the child and the conduct of the parent and (ii) Wishes of the mother and father of the child.

(b) Alter vary or discharge an order made under paragraph 6, of this subsection on the application of (i) The Father or Mother of the child or (ii) Guardian of the child, after the death of the Father or Mother of the child and (c) In every case, make such order with respect to costs as it may think just.

The court in granting an application of this nature will consider the welfare of the children, the mental and psychological well being of the children is also of paramount consideration. I agree with the applicant that his absence in the lives of the children will not enable him fulfill his fatherly role for their psychological and emotional development. Consequently I hold that the application succeed as applied for by the applicant.

The applicant shall be allowed access to visit the children at least every forth night at a place and time to be determined by the parties. Furthermore, the applicant shall purchase a phone, and drop into the registry of this court on or before the end of this month. The petitioner should be contacted for a pick-up. And the applicant shall be allowed to speak to his children whose names appears on this application at least three times a week via audio or video calls

between the hour of 5:pm – 7 pm on week days and the hours of 12 pm-6pm on weekend pending the determination of this suit.

The parties should also note that these orders are subject to review by this court, depending on the level of compliance by the parties. The other leg of the interlocutory injunction sought by the applicant are also granted as prayed.

Case is adjourned to 14/12/2022 for definite hearing.

Signed

Hon. Judge

16/11/2022.