

**IN THE HIGH COURT OF JUSTICE OF THE
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/427/2020

MOTION: M/1350/2020

BETWEEN:

**MRS JOY EFE.....PETITIONER
VS**

MR. EFE AYOMANOR.....RESPONDENT

RULING

By a Motion on Notice with No. M/1350/2020 dated 8/2/2022 and filed same day, brought pursuant to Sections 55 and 109 and Order xiv Rule 22 of the Matrimonial Causes Act and Rules 1990 And under the inherent jurisdiction of the Court for the following order(s);

- (1) An Order of this Hon Court granting the Petitioner/Applicant custody of the children of the marriage; Jayden Efe and Jovanna Efe who are of tender age, pending the disposal of the proceedings for dissolution of marriage before this Hon .Court.
- (2) And for such or further order(s) as this Hon. Court may deem fit to make in the circumstances of this case.

The grounds upon which this application is sought are;

- (a) The Respondent has failed and refused to make any enquiry about the tender children of the marriage since the Petitioner/Applicant moved out of their matrimonial home and the Respondent has abandoned the responsibilities and welfare of the children to the Petitioner/Applicant.

In support of the Motion is a 12 Paragraphs affidavit sworn to by the Petitioner/Applicant. Filed a Written Address, adopts the Address, in urging the court to grant the relief sought.

The Respondent was served with the Motion but did not file a Counter-Affidavit or any process in response.

In the Written Address of Petitioner/Applicant settled by Barth Omozokpia, a sole issue was submitted for determination and that is:

“Whether it is fair, proper and equitable for this Hon. Court to grant the reliefs sought by the Applicant”.

And submits that Applicant in her affidavit has stated that since 27th of August, 2019, the Respondent has been absent from the lives of the children and has not taken any steps to be present in their lives. That Applicant has also stated that the Respondent before now threatened to remove the children with force from her care and place them in the care of his mother. That such a scenario an anathema moreso she, the children’s mother is alive and well. That Applicant only seek interim legal powers to continue with the situation that currently prevails because since 27th of August 2019 the children have been in the physical custody of Applicant

who has provided for their care, schooling, medical, feeding, clothing and taken decision with respect to their well-being in the absence of Respondent. That the reliefs sought is for the benefits of the children so as to continue to provide care and succor to them pending the determination of this Petition without any disruptions from Respondent. Also submits that the discretion to grant the relief sought by Applicant rest solely with the court and seeks that the court exercise its discretion in favour of Applicant. In all commended the court to Section 71 (1) of Matrimonial Causes Act, Order xiv Rule 22 of Matrimonial Causes Rules and several judicial authorities; Williams Vs Williams (1987) LPELR – 8050 (CA). Nwosu Vs Nwosu (2011) LPELR 4654 (CA); Tabansi Vs Tabansi (2009) 12 NWLR PT 1155 at 415 and Oni Vs Fayemi (2008) 7 NWLR PT 1089, 400.

Having considered the affidavit evidence of Applicant, the submission of learned counsel and the authorities cited, the court find that the only issue that calls for determination in this application is;

“Whether this court can grant the relief sought by the Applicant in the circumstances of this case”.

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

In the instant application, the Applicant seeks the custody of the children of the marriage pending the determination of the Petition.

Now, this is an Interlocutory application and the law is well settled that the court hearing an Interlocutory application, 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 or refrain from making any findings or determination which may prejudice the substantive matter. See Adeleke Vs Lawal (2104) ALL FWLR PT 710 1226 at 1228. See also Ugwu Vs Julius Berger (Nig) Plc (2019) LPELR – 47626 (CA).

Granted that this is the position of the law, that a court should avoid making a pronouncement at interlocutory stage of issues for main trial, in this instant, the grant or otherwise is at the discretion of the court, which has to be done based on facts before it. The Applicant has by Paragraph 3 – 9 of supporting affidavit stated facts to support the grant of this application. The primary consideration is the interest of the children that is paramount. I have carefully given a careful consideration of the facts contained in the support affidavit and find that it would be in the interest of justice to grant this application in the interim pending the determination of the substantive case, especially as the Respondent failed to react.

In conclusion, this application has merit and is allowed. The Relief 1 is hereby granted as prayed.

HON. JUSTICE C. O. AGBAZA

Presiding Judge.

17/6/2022

APPEARANCE:

FRANKLIN I. ALIUNA ESQ WITH V.U. ENDWELL ESQ FOR THE
PETITIONER/APPLICANT

NO REPRESENTATION FOR THE RESPONDENT