

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT 1, GUDU - ABUJA**  
**DELIVERED ON WEDNESDAY THE 4<sup>TH</sup> DAY OF DECEMBER 2024.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI**  
**SUIT NO.FCT/HC/CV/2651/2024**

**IN THE MATTER OF AN APPLICATION FOR CUSTODY OF A CHILD BROUGHT  
UNDER THE CHILD RIGHTS ACT 2003**

BETWEEN

ESTHER LADE YAKUBU=====APPLICANT

AND

OLUWAFEMI FAYOMBO=====RESPONDENT

**JUDGMENT**

The Applicant on the 30<sup>th</sup> day of May 2024, filed this suit pursuant to Sections 1, 68 (1)(i), 69, 70, 71, and 162 of the Childs Rights Act, 2003, Order 21 of the Childs Right Act (Enforcement Procedure) Rules, 2015 praying this Court for the following reliefs:

1. An Order of this Court granting joint parental responsibility of Rhema Kinfeosioluwa Oluwafemi and Agape Teniolaoluwa Oluwafemi, children of both the Applicant and the Respondent to the Applicant and Respondent.
2. An Order of this Court granting Custody of Rhema Kinfeosioluwa Oluwafemi and Agape Teniolaoluwa Oluwafemi to the Applicant.
3. Such Further or Other Orders this Court may deem fit to make in the circumstances of this case.

The grounds upon which the applicant brought this application are:

1. That this Honourable court has jurisdiction to grant an order for custody under Section 69 of the Child Rights Act 2003.
2. That this Court is empowered under Section 68 and 162 of the Childs Right Act to grant sole responsibility of a child to either of the parents praying the Court for that.
3. That this Court is empowered by Sections 69, 70, and 71 of the Childs Right Act to grant custody of a child to either of the parents.
4. That it is in the best interest of the children to grant this application.

5. That the present situation of the children warrants they are under the custody of the Applicant.

Attached to the application is a 27-paragraph affidavit deposed to by the Applicant with three documents attached and marked as follows: Applicant's Promotion letter as Exhibit AA1, two copies of age declaration as Exhibit AA2 and AA3 Respectively, and a copy of the marriage certificate of parties as Exhibit AA4.

Also filed is a written address, wherein Counsel to the Applicant raised a sole issue for determination as follows: Whether the Applicant has placed sufficient facts before this court to warrant the grant of this Application by this Honourable Court.

Arguing the sole issue, Counsel for the Applicant, Thomas Ogbebor, Esq., submitted that the grant of this application will be in the best interest of the child and the Respondent will not be prejudiced as he will have unfiltered access to the child. Counsel urged the Court to grant the prayers sought in the interest of justice. Counsel relied on the following cases;

1. Bello & Ors V. Odofin & Ors (2021) LPELR-55941(CA)
2. Mgbodi V. Vgiagbe (2022) LPELR-58003(CA)
3. Osalade V. Osalade (2020) LPELR-51165(CA) AND
4. Ugadu V. Ugadu (2020) LPELR-50849(CA)

The Defendant was served with the application as well as the hearing notice on the 2<sup>nd</sup> of September 2024 with the proof of service and certificate of service before this Court. Defendant personally acknowledged service of originating summons. However, but chose not to file a response. The law is trite that when a party to an action has been given an opportunity to be heard, he cannot later complain of lack of fair hearing where he has failed or neglected or refused to utilize same. See the case of NEWSWATCH COMMUNICATIONS LTD V. ATTA (2006) LPELR-1986(SC) (Pp. 25 paras. D). Thus, the failure of the Respondent to file a counter affidavit, in a case fought on affidavit evidence, he is therefore deemed to have accepted the facts stated therein as true and this Court is bound to act on it. See Per EDOZIE, J.S.C in HONDA PLACE LTD V. GLOBE MOTOR HOLDINGS (NIG) LTD (2005) LPELR-3180(SC) (Pp. 33 paras. B)

*"The position of the law is that when in a situation in which facts are provable by affidavit, one of the parties deposes to*

*certain facts, his adversary has a duty to swear to an affidavit to the contrary, if he disputes the facts. Where such a party fails to swear to an affidavit to controvert such facts, they may be regarded as duly established see Agbaje v. Ibru Sea Foods (1972) 5 SC 50 at 55; Alagbe v. Abimbola (1978) 2 SC 39 at 40; Ajomale v. Yaduat (No.1) (1991) 5 NWLR (Pt. 191) 266."*

This Court will therefore deal with the case of the Applicant as uncontroverted and adopt the issue raised by the Applicant's Counsel which is "**Whether the Applicant has placed sufficient facts before this court to warrant the grant of this Application by this Honourable Court**".

It is the case of the Applicant as gleaned from the affidavit evidence before this Court that she is the mother of two children, Rhema Kinfeosioluwa Oluwafemi (born June 14, 2008) and Agape Teniolaoluwa Oluwafemi (born June 14, 2010). That parties were married in July 2007 but have been living apart for over four years, with Agape living with the Applicant and Rhema, with the Respondent.

That Applicant was informed by Rhema that Respondent has subjected Rhema to an unhealthy living environment as Respondent and his mistress frequently quarrel in Rhema's presence, neglect his needs, and have created a distressing atmosphere. That Rhema only eats once a day under the Respondent's care and has expressed a desire to live with the Applicant.

That Rhema has been denied access to his mother and sister, leading to his isolation and decline in mental health. The Respondent's work may soon lead to relocation, which would leave Rhema alone with Respondent's mistress. That it will be in Rhema's well-being, that this application be granted as same is sought in good faith and, in the child's, best interest, without prejudice to the Respondent's access to him.

Sections 1 and 69 of the Child Rights Act 2003 have made provisions guiding the grant of custody of a child. Section 1 of the Child's Right Act 2003 provides thus: -

*"In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, Court of*

*law, or administrative or legislative authority, the best interest of the child shall be primary consideration”.*

Section 69 of the Child Rights Act gives the Court Powers to make order in respect to custody or rights of access to a child. The section provides as follows;

*69 (1) The Court may-*

*(a) 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) the welfare of the child and the conduct of the parent; and*

*(ii) the wishes of the mother and Father of the child”.*

Under the above provisions, the Court is mandated to prioritize the best interest of the child in matters of custody or guardianship and to issue any orders it considers appropriate based on this principle. These provisions grant the Court the authority to make decisions regarding custody or guardianship as long as they are aligned with the child's best interests. In **HAYES V HAYES (2003) 3 NWLR (PT. 648) P. 276 and DAMULAK V DAMULAK (2004) 8 NWLR (PT. 874) P. 154**, the Courts laid down some factors which serve as guides to the Court in determining what will be in the best interest of the child. The factors include: -

- (i). The ages of the children
- (ii). Education.
- (iii). Welfare and general upbringing
- (iv). Arrangements made for accommodation
- (v). the degree of familiarity of the child with each of the parents.
- (vi). The incomes of the parties.

After careful consideration of the uncontroverted facts presented in the affidavit evidence vis a vis the factors to be considered in granting application such as this, it is the duty of this Court to prioritize the best interests of Rhema, which include his emotional, physical, and psychological well-being. Rhema has been separated from his mother for a significant period, which has deprived him of essential maternal love and nurturing. The bond between mother and her child, no matter how old the child is, is crucial for healthy emotional development and support and this is absent in the life of Rhema. Also, Rhema being separated from his sister could also cause further emotional distress. Siblingship cannot be overstated, as they provide companionship, support, and stability as well as friendship, particularly at their teenage age.

From the facts before me, Rhema's needs, both physical and emotional, were not adequately met by the Respondent as the Respondent's preoccupation with his new partner have left Rhema unsupported and isolated.

There is nothing before me to show that the Applicant lacks the capacity to sufficiently cater for Rhema. Applicant is therefore in a better position to provide a stable and nurturing environment for Rhema where he can receive the love and attention necessary for his well-being.

Consequently, it is hereby ordered as follows:

1. Joint parental responsibility of Rhema Kinfesioluwa Oluwafemi and Agape Teniolaoluwa Oluwafemi, children of both the Applicant and the Respondent, is placed on both Applicant and Respondent.
2. Custody of Rhema Kinfesioluwa Oluwafemi and Agape Teniolaoluwa Oluwafemi is hereby granted to the Applicant.
3. The Respondent shall have unfettered access to the children at a venue/location agreed by the parties.
4. Parties are to set aside their personal grievance and have an open communication with respect to issues relating to the well-being, education, health, and overall development of the children.

Parties: Absent

Appearances: Thomas Ogbemor appearing for the Applicant. Respondent is not represented.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI**  
**JUDGE**  
**4<sup>TH</sup> DECEMBER, 2024**