

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU’AZU

SUIT NO: FCT/HC/CV/796/2022  
MOTION NO: FCT/HC/M/4124/2024  
Date: 10/05/2024

BETWEEN:

MISS TIMIPRE WOLO.....COMPLAINANT/RESPONDENT

AND

- 1. MR. GODSTIME PENDER..... } DEFENDANTS/APPLICANTS
- 2. MRS. JOYCE PENDER } DEFENDANTS/APPLICANTS
- 3. THE ABIA STATE GOVERNMENT } DEFENDANTS/RESPONDENTS
- 4. THE HON. ATTORNEY-GENERAL, ABIA STATE } DEFENDANTS/RESPONDENTS

**Appearance:**

*Bamidele A. Jacobs, Esq, for the Complainant/Respondent.*

*Nella Andem-Ewa Rabana, SAN, with Jude .A. Daniel, esq,  
For the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants.*

*E.C. Mba, Esq, for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents.*

**RULING/JUDGMENT**

By a motion on notice brought pursuant to sections 153, 162 Child Right Act; sections 156, 165 the Abia state Child's Rights Law,; Order 13 rule 4 Child Right Act (enforcement procedure) Rules,; Order 27 rule

8 of the High court of the Federal Capital Territory, Abuja Civil Procedure Rules 2018; section 2 (2) Constitution of the Federal Republic of Nigeria and under the inherent jurisdiction of this honourable court, 1st and 2nd Defendants/Applicants prayed this Honourable Court for:

1. **LEAVE** to file and argue this instant Motion as a threshold application, same having raised grave jurisdictional issues, not earlier filed along with the 1st and 2nd Defendants/Applicants' Defence as required by the rules.
2. **AN ORDER SETTING ASIDE** all previous proceedings and subsisting Orders made by this Honourable Court in this Suit, same having been made without jurisdiction.
3. **CONSEQUENTIAL ORDER** entrusting custody and best care of Miss Jada to the 3rd Defendant/Respondent, at the expenses of the Applicant, subject to and pending the 3rd Defendant/Respondent's review of Miss Jada's adoption by the 3rd Defendant/Respondent.

4. **AN ORDER STRIKING OUT** *this Suit for want of jurisdiction.*
5. **AND** *for such further or ORDER(S) as this Honourable Court may deem fit to make in the circumstance.*

The grounds upon which this objection is brought in addition to those contained in the accompanying affidavit are as follows:

- a) The Plaintiff/Respondent has no *locus standi* to institute/maintain this Suit.
- b) The High Court of the Federal Capital Territory lacks the jurisdiction to annul, review or sit on appeal over the decision of an Abia State court of law.
- c) The Abia State's Courts duly constituted/empanelled under the Child Right Act, 2003 and the Abia State Child Right Law, 2006 had and still have the exclusive jurisdiction (territorially) to determine the case of baby Jada Pender.

- d) This Honourable Court, has jurisdiction, at any stage and by any form to entertain addresses on threshold issues that can affect the entirety of a Suit.

In support of the Application, the Applicants filed an affidavit of 22 paragraphs deposed to by one Racheal Zakariya Allahmagani, Female, Christian, Nigerian of No. 5 Yedseram Street, Maitama, Abuja-FCT. The deponent stated inter- alia thus:

3. The 1st and 2nd Defendants/Applicants are husband and wife (couple) and the adoptive parents of Miss Jada Pender (the child in question) in this Suit.
4. The 1st and 2nd Defendants/Applicants alternate their residence between the United States of America and Abia State of Nigeria.
5. Adoption Order was granted to the couple in respect of Miss Jada Pender on July 14, 2020 by the Family Court, in Abia State of Nigeria.
6. Baby Jada was born in Abia State where she was raised briefly before she was left at **Chims Motherless Babies Home**, still in Abia State;; before the Adoption Order over her was sought and

obtained by Mr. Godstime and Mrs Joyce Pender, under the provisions of **Abia State Child's Rights** Law.

7. The application for Jada's adoption by Mr. Godstime and Mrs Joyce Pender was filed and argued by the social welfare officials of Abia State Government, as provided for by Abia State Child's Rights Law, and that explains in part why the 3rd and 4th Respondents are parties in the case.

The certified copy of the enrolled Order of the Abia State Magistrate Court, before His Worship, C.E. Nwankpa, Esq. (Chief Magistrate Grade II), sitting as a Family Court in Umuahia, Abia State, in relation to the adoption of Miss Jada was attached and marked as **Exhibit 1**.

9. Miss Jada only got into the hands of the Ms Timipre Wolo, whilst in transit to join her adoptive parents abroad, due to Covid-19 restrictions which at that time became more stringent and extended across the globe.
10. Specifically, a caregiver duly authorized by Mr. Godstime and Mrs. Joyce Pender, and recognized by the Court, was directed to put Miss Jada in care of the Complainant/Respondent, on trust,

pending when Covid-19 emergency is normalized and the couple is able to come for their daughter.

12. I believe for the purposes of her adoption, Ms. Jada is a child in Abia State, whose adoption started and ended in Abia State under the Abia State Child's Rights Law, and is only in Abuja on transit to her parents in Texas, the United States of America. **Abia State Child's Rights Law, 2006** was attached
13. I am aware the couple had made series of passionate request to Ms. Timipre Wolo for the release of their daughter to them, but the Complainant/Respondent who fell out with them, has now become attached to the baby so much that she has continued to hold on to the child, without the consent of Mr. Godstime and Mrs Joyce Pender.
19. By my knowledge as a lawyer, I believe in is inappropriate and an abuse of court processes to seek for the annulment of a decision of a Court, instead of commencing Judicial Review or filing an Appeal against same.
20. I hereby undertake to make available to this Honourable Court the complete copy of the **Abia State Child's Rights Law, 2006** on

which the 1st and 2nd Defendants/Applicants rely, among other laws and rules, for this instant motion challenging the competence of the Complainant/Respondent's Suit.

In the 1st and 2nd Defendants/Applicants written address in support of the motion on notice, learned counsel formulated a sole issue for determination, **“whether the application before this honourable court is meritorious and one to be allowed.”**

Learned counsel argued the issue in urging the court to grant the reliefs sought.

In response, the complainant filed a counter affidavit of 5 paragraphs deposed to by one **Ayomide Joshua**, Adult, Female, Christian, and a Nigeria Citizen of No. 21B, Democracy Crescent, Gaduwa Estate, Gudu District, Abuja, Nigeria. Relevant facts in paragraph 3 of the affidavit are thus:

- A. *She has seen and read the affidavit in support of the 1st and 2nd Respondents/Applicants' motion dated 16th day of February, 2024 and all the facts stated therein are untrue and misrepresented.*

- B. *That contrary to the disposition in paragraph 4 of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents/Applicants' affidavit in support, the Respondents/Applicants falsely misrepresented that they also reside in Abia State as they never visited nor lived nor resided in Abia State.*
- C. She knows that 1<sup>st</sup> and 2<sup>nd</sup> Respondents/Applicants lives or resides in the United States of America and only visit Abuja and Delta State (their home town) when they come to Nigeria.
- D. *That contrary to the disposition in paragraph 5,6,7 and 8 of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents/Applicants' affidavit in support of motion on Notice, no Adoption Order was granted to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent in respect of Miss Jada Pender on July 14, 2020 or at any other date by the family Court in Abia State..*
- E. *That prior to December 2020, the 2<sup>nd</sup> Respondent/Applicant had only visited Nigeria once in her entire lifetime in 2012 and was accommodated by the Complainant/Respondent at*

*her then Residence in Maitama, Abuja, alongside the 1<sup>st</sup> Respondent and their son.*

- F. That contrary to the disposition in paragraph 9 of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents/Applicants' affidavit in support of motion on Notice, Miss Jada Pender was never at any time in transit to join the 1<sup>st</sup> and 2<sup>nd</sup> Defendant/Applicants abroad either during Covid-19 nor any other time and she received the custody of Miss Jada Pender on March 26, 2020 when the purported adoption process and order was made on 20th July, 2020.*
- G. That contrary to the disposition in paragraph 10 of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents/Applicants' affidavit in support of motion on Notice, the Complainant/Respondent never received Miss Jada Pender from any Caregiver recognised by the Court on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.*
- H. That contrary to the disposition in paragraph 11 and 12 of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents/Applicants' affidavit in support of motion on Notice, Miss Jada Pender is not on transit to Texas, United States of America but has been living with the*

*Complainant/Respondent at Abuja since March,2020 till date.*

- I. That contrary to the disposition in paragraph 17 and 18 of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents/Applicants' affidavit in support of motion on Notice, this suit as presently instituted is not an abuse of court process.*
- J. That contrary to the disposition in paragraph 18 of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents/Applicants' affidavit in support of motion on Notice,*
- K. That due facts which are already before this court for the determination of the substantive issues and owing to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' insistence on yanking Jada away from the Complainant/Respondent to be handed over to another person and also due to incessant threats via phone calls, emails and other communication medium to the Complainant/Respondent that the said Complainant/Respondent decided to initiate this suit on the 9th of March, 2022.*

In support of the counter affidavit, the Complainant/Respondent filed a written address wherein counsel raised a sole issue for determination, to wit: **“Whether the Respondents/Applicants are entitled to the reliefs sought”**.

Learned counsel argued the issue in urging the court to refuse the application.

The Applicants in response to the counter affidavit and address of the Complainant filed a Further affidavit and Address on points of law. The Applicants Annexed as exhibits a copy of the enrolled Order and a copy of the Abia State Child Rights Law, 2006.

**COURT:**

I have carefully considered all the processes filed by parties, particularly the averments in the affidavits and arguments canvassed in their defence.

The issue **“whether the 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendants/Applicants have made out a case to entitles them to the reliefs sought”** is to my mind up for determination.

It is the contention of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants that the Complainant here lacks the Legal standi to sue the Legal parent that is the Applicants on the custody of Jada the subject Child. It is the argument of the Applicants that by the Adoption Order in Exhibit 1 (the Order of the Family Court in Umuahia, Abia State), a parent/Child relationship has been established and the Complainant is not a parent and cannot sue for custody.

Another argument of the Applicants is that the adoption of the subject Child is one created in Abia State and still subsist. The High Court of the Federal Capital Territory cannot sit to review, set-aside, entertain appeal or exercise supervisory role over the order of a competent Court in Abia State.

Finally, Applicants argued that the principal reliefs of the Complainant/Respondent, which seeks to annul decisions/orders of the Family Court in Abia State amounts to an abuse of Court process, being a deliberate wrongful deployment of the Court processes.

In conclusion, Applicants applied that the Child, if the Court decline jurisdiction should be kept in custody of the Abia State Government.

In response, Learned Counsel for the Complainant contended that by the provisions of Child Rights Act 2003 and the Child Rights Act (enforcement procedure) Rules 2015 any one acting on behalf or in the interest of any Child can sue.

On the issue of territorial jurisdiction Counsel argued that the Child has been in the custody of the Complainant for about two years before the filing of this matter on the 22/03/2023. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are away in the US. Learned Counsel argued that is enough reason to file and maintain the action within this jurisdiction.

As earlier stated I have carefully considered the facts of this case as put forward in the affidavits. I have also considered the arguments on the issue of locus standi. I find Order 10 Rules 1 & 2(b) of the Child Right Act (enforcement procedure) Rules 2015 instructive. The Rule provides thus:

1. ***“The Court should encourage and welcome public interest litigations in Child rights proceedings and no case relating to***

***Child rights shall be dismissed or struck out for want of Locus Standi.....”***

2. ***In Child Rights litigations the parties may includes any of the following.***

***(a) .....***

***(b) Any one acting on behalf or in the interest of any Child”.***

From the above provisions it is clear to me that question of Locus Standi will not avail the Applicant here. The Complainant has locus Standi and I so hold.

This brings me to the questions of territorial jurisdiction and Abuse of Court process which I shall deal with together.

From the endorsement on the Complainants Suit, the Principal reliefs seek to annul decision/order of the Magistrate Court, sitting as Family Court in Abia State. The Question is, can the High Court of the Federal Capital Territory which is limited to issues within the Federal Capital Territory sit over the Complaint of the Complainant. Although there are other reliefs, but their success is predicted on the success of the relief requiring this Court to annul/sustain the order of a Court in Abia State.

It is my considered view without further Ado, that this Court lacks the power/jurisdiction to review, set aside, annul or sit on appeal or an order made in another jurisdiction. The matter ought to be heard in Abia State. And I so rule.

See MADUKOLU V. NKEMDILIM (1962) ALL NLR 587 at 595, DALHATU V. TURAKI (2003) 15 NWLR (PART 843) 310 AT 338 – 340. The Order of the Family Court Abia is subsisting and cannot be reviewed by this Court. The challenge to jurisdiction of this Court succeeds.

The matter is accordingly struck out. And the custody of the subject is granted to Abia State Government. Transfer of custody to be handled by the Social Welfare Office of the Federal Capital Territory and Abia State Governments.

Signed  
Hon. Judge  
10/05/2024.