

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 15TH DAY OF MARCH, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/04/2023

BETWEEN:

MR. OBI KENNY CHUKWUEMEKA ----- CLAIMANT

AND

OFFURUM SONIA CHIDINMA ----- DEFENDANT

RULING

In the main Suit in this case the Applicant wanted custody of the child of the marriage. The Applicant had alleged that he was married to the Respondent – Offurum Sonia Chidinma. The child is Obi Kelvin Chiagoziem, born on 12th May, 2012. The marriage was contracted in 2011.

This Court had in a Motion filed by the Respondent, which was dismissed, made Order in which the Respondent challenged the jurisdiction of the Court. The Court had in the Order ordered that the Applicant should have video telephonic access to the child on weekends since he, the Applicant, lives outside Nigeria. The Respondent was given

every opportunity to be heard but she ignored and blatantly refused to do so. Hence, she has no one to blame. The Court refers to the well considered Ruling delivered on 23rd May, 2022.

The matter was adjourned for Hearing. But the Respondent instead of filing a Counter filed another Motion. The Respondent who did not file any Counter in defence of the main Suit went further to file a Notice of Appeal after filing the Motion to Set Aside the Ruling of 23rd May, 2022. Because there was no Appeal entered and there was no Record of Appeal transmitted to the Court of Appeal, this Court dismissed the Motion in yet another well considered Ruling. The Court refers to the said Ruling delivered on the 14th November, 2022.

The matter was adjourned for Hearing of the main Originating Motion which was ripe for Hearing since early 2022. The Applicant's Counsel was in Court ready to open and move their application. But the Respondent and the Respondent's Counsel were absent though the Respondent's Counsel was in Court the day the matter was adjourned. The Court in exercise of its discretion adjourned the matter further. Meanwhile, Chijioke Okeke Esq. was in Court and he announced appearance for the Respondent on that 14th November, 2022. The Court adjourned the matter to 24th November, 2022. But Court did not sit that day as the Judge attended an official function. The matter was further adjourned to 23rd March, 2023 in the interest of fair hearing and to give the Respondent extra time at Court's discretion. The next return date was 14th June, 2023. The Court

ensured that the Respondent's Counsel was served Hearing Notice.

Rather than file a Counter as required, the Respondent's Counsel filed another application. This time, a Motion for Recusal. He had based his Motion on the ground that the Respondent was never served the Application but contrary to that, the Respondent was served with copy of the Application. That was why she had Counsel representation in this case. See the Bailiff's Affidavit of Service of the Originating Process. The Counsel even entered appearance by filing the Memorandum of Appearance. See that in the case file. The Court refers to the Endorsement and Return of both the Originating Motion and the Motion on Notice filed by the Applicant and served on the Respondent personally which she also acknowledged. See also the Interlocutory Application – Motion on Notice served personally on the said Respondent – Sonia Chidinma Offurum on 27th February, 2022 at 1:46 pm. So the claim that the Respondent was not served with the Originating Process is misleading, false, deceitful and highly misconceived as well as unsubstantiated.

The Respondent was afforded all the judicial leverages, and right but she refused, ignored and failed to respond. The Ruling was well considered too. The Court refers to the Ruling both in the Motion to Set Aside and Interlocutory Injunction in which the Court stated that the telephonic video – WhatsApp calls should be pending the final determination of the main Suit. This Court refers to the Ruling.

It is most unfortunate that a Counsel should blatantly lie against the Court all in a bid to impress his client. Well, the Counsel is not a party in the Suit and he knows that the Court never threatened him and had no cause to threaten him as he lyingly stated in the 5th ground of this Motion.

The Respondent was not in Court on the day the Ruling was delivered. So the whole story about threat and insult heaped on her lawyer and the threat to award **₦1, 000,000.00 (One Million Naira)** Punitive Cost against the Counsel to the Respondent personally are all hearsay and highly unsubstantiated and are without iota of proof. They are all there as fabricated by them all in a bid to delay the case and twist justice for reason best known to the Respondent who claimed and her Counsel who drafted and filed this Motion.

The issue of no Counter filed by the Applicant is of no monument because the Applicant had responded on Points of Law orally as Court allowed. Besides, the Court had given its reason for dismissing the Motion. See the Ruling.

The Respondent supported the Motion for Recusal with an Affidavit of 6 paragraphs. She attached a copy of Request for the Transfer of the Case to another Court. The application was dated 15th November, 2022 and marked as **EXH A**.

In the Written Address the Respondent raised an Issue for determination which is:

“Whether given the circumstance of this case the learned Judge should recuse herself from the Suit.”

She answered in the positive. She referred to **S. 36(4) of the 1999 Constitution of the Federal Republic of Nigeria** (as

amended) which provides that a Litigant is entitled to fair hearing within a reasonable time by the Court. That the Respondent submits that she will not receive fair hearing from this Court and submit that the Judge should recuse herself. She referred to an old case of 1968:

**Mohammed V. Kano Native Authority
(1968) ANLR 424 @ 426**

That the Respondent has placed sufficient fact before the Court to establish good reason why the Court need to recuse herself from hearing the Suit.

The Applicant/Respondent filed a Counter Affidavit of 12 paragraphs in which they denied paragraph 4 (i) – (x) of the Affidavit in support of the Motion for Recusal. That the Respondent was served and represented by a Counsel during cause of trial of the Suit but failed to file any Defence. Yet it brought frivolous applications against the Applicant. That the first time the matter came up the Respondent was represented by a Counsel from the E.I. Okani & Associates Law Firm. That she was accorded all judicial opportunities to defend herself but she refused. But had filed different applications and used different tactics to frustrate the case. That evidence of the Endorsement and Return shows that the Respondent was served personally and she acknowledged receipt too. That Court granted Order for renewal of the Application in May 2022 and adjourned to 11th November, 2022. That the Respondent's Counsel was in Court when Court made the Order and he raised no objection and the Respondent never complied with the Order of Court. That he served the Applicant's Counsel Motion to

Set Aside an Order which he never complied with after the life span of the Order has expired and it was renewed in Court in the presence of the Respondent's Counsel. There was nothing to be vacated.

That the allegation of **₦1, 000,000.00 (One Million Naira)** Punitive Cost is conjured and not true. That this application is all in a bid to arrest the Judgment of the Court scheduled for 16th June, 2023. But the Respondent's Counsel served the Court and the Applicant's Counsel on 14th June, 2023. That the application is an abuse of Court Process and an attempt to arrest the Judgment of the Court. That the Suit in the main remains unopposed.

Having not filed anything, it is obvious that the Respondent has nothing in defence of the Suit. That it will be in the interest of justice to dismiss the Motion and enter Judgment in favour of Obi Kenny Chukwuemeka as the application for Recusal is a ploy to arrest the Judgment of this Court.

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From all the foregoing, can it be said that the Court did not give the Respondent chance to be heard, that she was not served the Originating Process as she claimed and as such the Court should recuse itself and the matter transferred to another Court as the Respondent agitatingly stated, bearing in mind that the Judge does not assign case to himself and did not assign this case to itself and has not received any instruction from the assigning authority – the Chief Judge to return the case for reassignment and that evidence about that the Respondent was given all the leverages,

opportunities and time to respond but did not file even a single paragraph of Counter Affidavit in challenge of the Suit while she had filed several other applications in this Suit all of which were dismissed for being unmeritorious and frivolous? Or given what has transpired in this case as set up above, should the Court recuse itself as sought?

It is the humble view of this Court that the Court should not recuse itself. The Court holds that the Respondent was served with the Originating Motion but failed to file any Counter bearing in mind that unchallenged facts are deemed admitted. The Respondent, having not challenged the Suit in the main, has herself to blame and therefore cannot cry wolf and Court ensured that her right to be heard was NOT INFRINGED as alleged lyingly. The evidence of Endorsement and Return is there in the case file where she acknowledged receipt.

The allegation of threat was not established. The Respondent has Counsel representation from inception. The Counsel filed several frivolous applications all of which were dismissed. The Court refers to the Rulings. The Respondent filed Notice of Appeal and never transmitted Record as required to Court of Appeal. It was dismissed in accordance with the law. See the said Ruling.

The Court has not been given any Order to return the case for reassignment till date. So it has the right to hear the matter. The allegation of **₦1, 000,000.00 (One Million Naira)** Punitive Cost are all hearsay and has no substance and not proved by the Respondent. The Order of Court has not been vacated too.

All in all, this Court has the right to hear this case. It has stated in its earlier Ruling that it has the jurisdiction both territorial and subject matter jurisdiction to entertain this case.

The Court has not shown any bias against the Respondent and the Respondent has not established that the Court is bias against her. Mere mention of bias does not suffice. It must be proved. The Respondent/Applicant has failed to establish that fact. She was given all chance but she slept on her right based on a reason best known to her.

The Court had adjourned the case on several occasions at the instance of the Respondent even when it was obvious that they were at fault.

This Court therefore holds that there is no cogent reason why it should recuse itself. The Court therefore dismisses the application for Recusal for lacking in merit.

This application is therefore DISMISSED.

The Court will go on to deliver the Judgment as scheduled.

This is the Ruling of this Court.

Delivered today the ____ day of _____ 2024 by me.

K.N. OGBONNAYA

HON. JUDGE