

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 ----- APPLICANT

AND

OFFURUM SONIA CHIDINMA ----- RESPONDENT

JUDGMENT

In this Suit the Application is seeking for the custody of his son – Master Obi Kelvin Chiagoziem who was born under wedlock in a customary marriage between the Applicant and the Respondent – Offurum Sonia Chidinma.

According to the Applicant he got married to the said Chidinma Sonia Offurum sometime in 2011 at Ezeogbo Emekuku in Owerri, Imo State under native Law and customs. And on the 12th May, 2012 the said child, Obi Kelvin Chiagoziem was born. That he had catered for the child and the Respondent ever since. He bought her a car and changed the apartment where she was living with the

child. That he established a big clothing retail business for her at Bannex Plaza in Abuja and sent money frequently.

That notwithstanding all these the Respondent disappeared, cut him off and stopped all communication with him. That he made several efforts and entreaties to see whether the Respondent will communicate to him and allow him access to the child but all were to no avail. That he contacted the family of the Respondent, friends and other extended families. But all proved abortive. He wrote letter through his Counsel seeking/demanding for the Respondent to allow him access to the child but all proved abortive. Left with no other option, he came back and realized that the Respondent has eloped with another man and had Children for the man. That the Respondent's new lover is now laying claim to the child as if it is his own. Having no option, he instituted this action claiming the following Reliefs:

- (1) An Order of this Honourable Court granting full custody of Obi Kelvin Chiagoziem (Minor) to the biological father Mr. Obi Kenny Chukwuemeka, the Applicant, with the Respondent having access to her son on holidays and any weekend of her choice.

OR IN THE ALTERNATIVE

- (2) An Order of this Honourable Court granting full and unconditional parental rights and responsibilities to the Applicant Mr. Obi Kenny Chukwuemeka including but not limited to the rights to visit, AND free from any form of physical or verbal assault, intimidation and harassment by the Respondent.

- (3) An Order of this Honourable Court granting the Applicant unfettered access to his son Obi Kelvin Chiagoziem (Minor) during weekends and holidays of his choice for bonding and provisions of necessities.
- (4) An Order of this Honourable Court directing the Respondent to make all decisions pertaining to the welfare, health, maintenance, education, growth and development of Obi Kelvin Chiagoziem (Minor) jointly with the Applicant.
- (5) The cost of ₦10, 000,000.00 (Ten Million Naira) only as General Damages for the psychological and emotional trauma suffered by the Applicant as a result of the constant denial of access to his son Obi Kelvin Chiagoziem (Minor) by the Respondent.
- (6) And for such further Order or Orders as this Honourable Court may deem fit to make in the circumstance.

The grounds are as follows:

- (1) The Applicant is entitled under the Child Rights Act to have full access and parenting of his child.
- (2) The Respondent have no power under the Constitution of the Federal Republic of Nigeria, 1999 (as amended), nor under the Child Rights Act of 2003 to deny the Applicant unfettered access to his son Obi Kelvin Chiagoziem.
- (3) The unlawful act of the Repondent by illegally denying the Applicant access to Obi Kelvin Chiagoziem since 2013 has

resulted to the Applicant's mental and psychological health being disrupted as a result of being oblivious to the health, welfare and wellbeing of his son and has further subjected his son Obi Kelvin Chiagoziem to great pain, anguish, as a result of being denied by the Respondent the opportunity to meet and bond with his father (the Applicant).

The action is supported by an Affidavit of 42 paragraphs. He attached pictures of the child and those of the car he bought for the Respondent, copy of the letter from his Counsel to the Respondent to allow him access to the child among other things.

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

“Whether given the facts and circumstances surrounding this Application he is entitled to the Reliefs sought.”

He submitted that he is entitled to the Reliefs sought. That by Child Rights Act **CAP C50 LFN 2010. Article 11 of the African Charter on Right & Welfare of the Child** the said child is under 18 years and is still a child. He referred to **S. 60 of the Child Rights Act** too which is on right of access to a child in the absence of custody. That in this case the application is on the best interest of the child. He referred to **S/ 1 of the Child Rights Act, Article 4 of African Charter on Right and Welfare of the Child.** He referred to **S. 14 of the Child Rights Act** which entitles a child to maintenance.

That he has a constitutional guaranteed Right to unfettered, unrestrained and unconditional access to the child. That the Respondent continuous denying him access to the child has caused him a lot of trauma. That her action is a breach of his Right as guaranteed under the Child Rights Act. He referred to the averment in paragraph 4 – 44 of his Affidavit in support of the Application. He referred to the letter – **EXH D** dated 6th December, 2021. That the said letter showed that the Respondent rebuffed all attempts and solicitations to allow him access to the child, hence denying the child the right of fatherly love, attention and care, an act which offends the provision of the Child Rights Act. That he is entitled to the Reliefs sought.

That by **S. 17 of the Constitution of the Federal Republic of Nigeria, 1999** (as amended) the government has obligation to ensure that Children are adequately protected from exploitation, moral and material neglect for the overall interest of the child. He referred to the case of:

Buwanhot V. Buwanhot
(2011) FWLR (PT. 566) 522 @ 563

That by the grant of the Reliefs sought the overall interest of the child shall be taken care of as he is ready to provide all the needs of the child as he has done before he was denied access by the Respondent. He referred to the case of:

Oduote V. Oduote
(2012) 3 NWLR (PT. 1288) 478 @ 487 R. 15

That the overall welfare of the child is paramount. That the Respondent having married another man who she had Children for, will not be able to carter for the said Kelvin. He urged Court to grant his Reliefs as sought.

The Respondent was served with the Application. She was also served with the Motion on Notice in which the Court had delivered a well considered Ruling. The Respondent did not file a Counter to challenge the Application. She only filed a Motion to Set Aside the said Ruling delivered by this Court on the ground that she has filed a Notice of Appeal. This Court dismissed the Motion since there was no Appeal entered in this Suit. There was also no transmission of Record of Appeal too. So the Court DISMISSED the Motion. The same Respondent did not file any Counter to the Originating Motion – the main Suit. She filed a Motion for Recusal. This Court had earlier today DISMISSED the Recusal because it has no merit. Hence, this Judgment is based on the Process filed by the Applicant.

COURT

It is the law and has been held in plethora of cases in all the levels of our Courts that unchallenged application/fact/Suit is deemed admitted. In this case as already stated the Respondent did not file a single paragraph of a Counter in defence of this Suit. This Court therefore holds that this Suit is unchallenged; the facts raised in the Affidavit in support are also unchallenged, uncontroverted and therefore admitted. So this Court holds.

All the facts were not challenged. The Court ensured that the Respondent was served with the document – Originating Process. She did not challenge the Suit. She had time to file the Motion to Set Aside the Ruling of Court which was dismissed. She also had time to file a Motion for Recusal. That was dismissed too. There is no demurer proceeding in our jurisdictional clime since 2004.

The Applicant had proved his case by the facts in the Affidavit which was not challenged by the Respondent. The Applicant tendered documents – **Exhibits 1 – 5**. Those Exhibits like the facts were not challenged by the Respondent. He proved that the Respondent had denied him and continues to deny him access to their child. He had attached picture of the child, the Respondent and picture when he was with the Respondent and family friends. The Respondent did not deny that too. She was given all the judicial leverages to exercise her right to be heard but she refused to do so. She only filed the several applications earlier mentioned which were dismissed by this Court.

It is the law as contained in the extant provision of both the Child Rights Act and the African Charter on Right and Welfare of the Child that where issue come before the Court on custody of a child that the Court should consider what is best for the child. See **S. 1 of the Child Rights Act. Article IV of the African Charter on Right and Welfare of the Child.**

Every child is entitled to parental care. And all parents are entitled to access to their child. See **S. 69 of the Child Rights Act. CAP C50 LFN 2010.**

Again every child is entitled to maintenance by his parents as shown in **S. 14 of the Child Rights Act** and **Article XVIII (3) of the African Charter on Right and Welfare of the Child** which provides that no child shall be deprived of maintenance by parents maintenance status. Besides, it is the duty/obligation of the government which includes the Court to ensure that every child is adequately protected from exploitation, moral and material neglect which includes the deprivation of access and maintenance from either of the parents for overall interest of the child. Those are fundamental considerations in an application for custody of or access to a child. The welfare of a child in terms of peace of mind and body, happiness, general welfare, education and freedom to co-exist are primary condition which must be considered by all especially the Court in grant of custody or access. It must include the child's well-being, security and proper development. See the following cases:

Buwanhot V. Buwanhot Supra

Oduote V. Oduote Supra

In this case the Applicant has in the facts in the 44 paragraphs Affidavit in support of the Application as well as the documents he had attached all of which were not challenged by the Respondent, shown and vividly and

detailedly established that he deserved to be granted the Reliefs sought which remains unchallenged.

This Court, having detailedly summarized the stance of the Applicant, holds that there is merit in this Application and the Reliefs are therefore granted to wit:

That since the child is less than 18 years old and the Respondent is now happily living with another man, this Court grants the prayer No. 2 until the child is aged 16 years.

Prayer No. 3 is also granted.

Prayer No. 4 is also granted as prayed.

Prayer No. 5 not granted.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2024 by me.

K.N. OGBONNAYA
HON. JUDGE

APPEARANCE:

CLAIMANT COUNSEL: MAXWELL EKEKA HOLDING THE
BRIEF OF IFEANYI MAMOH COSMOS ESQ.

DEFENDANT COUNSEL: EMMANUEL I. OKANI ESQ.
WITH JENNIFER UGWOKE (MRS.).