

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT GARKI, ABUJA - FCT**

**CLERK: CHARITY ONUZULIKE  
COURT NO. 9**

**SUIT NO: FCT/HC/PET/200/2022  
DATE: 22/10/2024**

**BETWEEN:**

**FAGBEMIRO OLAYINKA ABIODUN.....PETITIONER**

**AND:**

**FAGBEMIRO EMMANUEL YEMI.....RESPONDENT**

**RULING**

**(DELIVERED BY HON. JUSTICE SULEIMAN B. BELGORE)**

The Petitioner/Applicant vide a Motion on Notice with Motion Number M/3420/2024 dated and filed the 2<sup>nd</sup> day of February, 2024 praying for the following orders;

1. **An Order** of this Honourable Court granting Leave to the Petitioner/Applicant to call one Additional Witness to wit: Mrs. Folashade Omotomilola Olaniyi (Nee Adeoye) of National Mathematics Centre (NMC), Abaji, Abuja and to file a Witness Statement on Oath for the Additional Witness.
  
2. **An Order** of this Honourable Court that the first two children of the marriage between the Petitioner/Applicant and the Respondent/Respondent to wit: FAGBEMIRO Oluwajomiloju Mfo-God, Female, born on the 08/01/2006; and FAGBEMIRO Oluwalogbon Gina, Female, born on the 10/01/2008 who are both presently in school at Babcock University Ilishan, Ogun State be privately interviewed virtually by His Lordship sitting alone in Chambers.

3. **An Order** of this Honourable Court that the last child of the marriage between the Petitioner/Applicant and the Respondent/Respondent to wit: FAGBEMIRO Emmanuel Pipeoluwa, Male, born on the 12/01/2010 who schools at Premiere Academy Lugbe, Abuja be brought by the Petitioner/Applicant from school to this Honourable Court to be privately interviewed by His Lordship sitting alone in Chambers.
4. **An Order** of this Honourable Court deeming as having been properly filed and served the Witness Statement on Oath of Mrs. Folasade Omotomilola Olaniyi (Nee Adeoye) already separately filed and served.

The application is brought pursuant to Order 32 Rule 11 (1) and (2), Order 43 Rule 1 of the Rules of this Court and Section 103 (1) and (2) and section 104 of the Matrimonial Causes Act. It is premised on the following grounds. They are as follows:

1. That on the 7<sup>th</sup> of April, 2022, the Petitioner/Applicant filed her Petition for the dissolution of the marriage between her and the Respondent/Respondent in this suit.
2. That on the 31<sup>st</sup> of May, 2023 a Notice of Change of Counsel was filed in this suit whereby the Firm of Firstrate Attorneys led by Mrs. Ogechi Abu, FCI Arb. took over the conduct of this case on behalf of the Petitioner/Applicant.
3. That upon careful perusal and review of the entire case file and the processes filed by both parties in this suit, Mrs. Abu discovered that there is need to call an additional witness for the Petitioner/ Applicant and that the children of the marriage between the Petitioner/Applicant and the Respondent/Respondent be privately interviewed by this Honourable Court.

4. That there is a requirement to seek the Leave of this Honourable Court to call an Additional Witness and Orders directing that the children of the marriage be privately interviewed by His Lordship in Chambers via zoom or whatsapp video call or any other virtual platform for the 2 older children in school outside Abuja and physically for the last child schooling in Abuja.
5. That both parties in this suit made copious assertions of the impact of their marriage on the children and their suitability to be awarded custody of the children. Hence, a private interview of the children by His Lordship sitting alone in Chambers is crucial for the purposes of determining the real questions and issues in controversy between the parties in this suit especially as it relates to the award of custody of the children.
6. That the children of the marriage between the Petitioner/Applicant and the Respondent are presently aged between 14 – 18 years old and are sufficiently intelligent to express themselves.
7. That the virtual interview for the children schooling in Ogun State is necessary to avoid undue delay in this matter and travel expenses in the current economic situation in the country and security concerns with travelling.
8. That it is in the overriding interest of justice and effectual determination of the critical issues in this matter to grant this application as prayed.

It is supported by a 18-paragraphs affidavit and a written address. Moving this application in Court, the Applicant's learned Counsel submitted that there is one annexure attached to this application which is marked as Exhibit I. Also, he said that they filed a Reply

affidavit in response to the counter-affidavit filed by the Respondent with a written address. He referred the Court to the case of **MGBODI VS. UGIAGBE (2022) LPELR 58003 CA**. He placed reliance on all the depositions in the supporting affidavits as well as his written address having adopted it as his oral arguments.

He finally moved in terms of the Motion and urged the Court to grant this application.

In a swift response, the respondent's learned Counsel in opposition to the grant of this application submitted that they have filed a counter affidavit of 12-paragraph dated and filed 9/2/2024. He relied on all the depositions in the counter-affidavits and as well adopted his written address as his oral argument. He finally urged me to dismiss this application.

From the written address of both learned Counsel, they submitted a lone issue each for determination of this Court in this application. The issue submitted by the two of them is substantially the same though couched differently. For the purpose of clarity, I reproduce the lone issue as couched by each of them.

For the applicant, the issue for determination is; ***“Whether this Honourable Court has the powers to grant the prayers sought herein by the Petitioner/Applicant?”***

As for the Respondent's learned Counsel, the issue is; ***“Whether the Application of the Petitioner/Cross Respondent/Applicant as constituted is grantable?”***

On the issue of calling additional witness, it is the submissions of the learned Counsel who submitted thus;

***“Order 32 Rule 11 (1) & (2) of the Rules of this Honourable Court clearly allows the Petitioner/Applicant to seek Leave to an additional***

**witness and this Honourable Court has the discretion to grant same based on the facts as stated in the affidavit in support of the application.**

**“The depositions of the additional witness to be called Mrs. Folasade Omotomilola Olaniyi (Nee Adeoye) are within pleaded facts contained in the Petitioner/Applicant’s Petition and Reply to the Respondent’s Answers and cross Petition. The testimony centres around the abuse the Petitioner/Applicant suffered in the marriage and his disposition to the Petitioner/Applicant’s family which are all contentious issues before this Honourable Court. The law is settled that where the depositions of the additional witness are not outside pleaded facts then leave should be granted to call the additional witness. He commend the case of UNITY BANK v. KWARA CHEMICAL CO. LTD & ANOR (2019) LPELR-48468 (CA).**

**“This application will not in anyway ambush it over-reach the Respondent/Respondent as the case of the Petitioner/Applicant is still on-going with opportunity to the Respondent/Respondent to interrogate Mrs. Folasade Omotomilola Olaniyi (Nee Adeoye) and we humbly urge this Honourable Court to so hold.”**

I agree with her entirely on this point and hold that the said Mrs. Folashade Omotomilola Olaniyi (Nee Adeoye) of National Mathematics Centre (NMC), Abaji, Abuja be called to testify in this case. I hereby grant the order 1 and 4 in this application.

On the issue of whether order 2 and 3 are grantable by this Court, the Respondent’s learned Counsel submitted as follows:

**“The Matrimonial Causes Act, Cap. 01 of the Laws of the Federation of Nigeria 2004 and the Matrimonial Causes Rules, 1983 did not make any provision enabling His Lordship with inherent power to sit in chambers alone and to privately interview the children of marriage either virtually or physically.**

**“Section 103(1) and (2) and section 104 of the Matrimonial Causes Act relied upon by the Petitioner/Cross-Respondent/Applicant as the basis for prayers 2 and 3 of her application are inapplicable.**

**“The provisions of sections 103 (1) and (2) and 104 of the Matrimonial Causes Act are as follows:**

**“103 – Hearing to be in open court.**

- (1) Except to the extent to which rules of court make provision for proceedings to be heard in chambers, the jurisdiction of a court under this Act shall, subject to the next succeeding subsection, be exercised in open court.**
  
- (2) Where in proceedings under this Act the court is satisfied that there are special circumstances that make it desirable in the interests of the proper administration of justice that the proceedings or any part of the proceedings should not be heard in open court, the court may order that any persons not being parties to the proceedings or their legal advisers shall be excluded during the hearing of the**

**proceedings or the part of the proceedings, as the case may be.**

#### **104 – Proceedings to be heard by the judge alone**

**Proceedings at first instance constituting a matrimonial cause shall be heard and determined by a judge sitting alone at the court”**

**The above provisions of the Act are very clear and explicit.**

**Order 57 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 is perhaps most elaborate on the subject of business or proceedings in chambers. Order 57, Rule 1 draws a list of matters that may be dealt with in chambers. Accordingly.**

**“The business which may be disposed of in chambers by a judge shall consist of the following matters, in addition to the matters under any other written law, that is to say.**

##### **(a) Application**

- (i) To issue or serve a writ or other process out of the jurisdiction;**
- (ii) For substituted service of a writ or other process;**
- (iii) To have cases heard during vacation;**
- (iv) For enlargement of time;**
- (v) For writ of attachment or for a garnishee order;**

- (vi) For payment or transfer to any person of any cash or securities standing to his credit in a cause or matter where there has been a judgment or order declaring the rights or where the title depends only upon proof of identity of the birth, marriage or death of any person;
  - (vii) As to the guardianship and maintenance of advancement of infants;
  - (viii) Connected with the management of property, or
- (b) Any matter relating to the adoption of children; and
  - (c) Such other matters of an interlocutory nature as the judge may think fit to dispose of in chamber”.

**“The law is very well settled, that a judge cannot adopt a method of adjudication that is alien to procedural rules of justice under any guise including exercise of discretion as urged by the Petitioner/Cross-Respondent/Applicant.**

**See:**

- (i) **Bakare v. Apena (1986) 4 NWLR (PT. 33) S.C. 1.**
- (ii) **Igwe v. Ilogbaka (2023) 1 NWLR (Pt. 1865) C.A. 319 at 337, paras. A-C.**

**“The grant of the prayers for private interview of the children of the marriage virtually and physically by Your Lordship sitting alone in chambers will**

**breach the constitutionally guaranteed right of fair hearing of the Respondent/Cross-Petitioner/Respondent pursuant to section 36(3) and 4 (a) of the 1999 Constitution of the Federation Republic of Nigeria (as amended).**

**“The right to fair hearing has judicially been described as a divine principle to which every person must be entitled to before the determination of his legal right and obligation.**

**See: Olatubosun v. N.I.S.E.R Council (1988) 3 NWLR (Pt. 80) 25 S.C. at 49, paras. C-F.**

**“Prayers 2 and 3 of the Petitioner’s/Cross-Respondent’s/Applicant’s application is an affront to the constitution right to fair hearing of the Respondent/Cross-Petitioner/Respondent which seeks the exclusion of the Respondent/Cross-Petitioner/Respondent and his counsel to be present in the proceedings and to hear all the evidence against him in the private proceedings to be held in His Lordship’s chambers as prayed by the Petitioner/Cross-Respondent/Applicant.**

**“The Respondent/Cross-Petitioner/Respondent humbly submit that the grant of the application of the Petitioner/Cross-Respondent/Applicant would negate the hallowed touchstone for the observance of constitutional right of fair hearing.**

**See: Olayioye v. Oyelaran I (2019) 4 NWLR (Pt. 1662) 351 S. C. At 373, paras. A-H.**

I pitch my tent with all the submissions of the learned Counsel to the respondent on the grant of order 2 and 3. I ask the question, what is this prayer for interviewing the children meant to serve?

I do not want to say much. I therefore have no slightest hesitation in refusing order 2 and 3 based on the submissions and arguments of the Respondent's learned Counsel which I uphold.

In effect, therefore, this application succeeds in part and fails in part.

Orders 1 and 4 are hereby granted while orders 2 and 3 are hereby refused.

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**S. B. Belgore**  
(Judge) 22/10/2024