

**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/ PET/215/2021**

**MOTION NO. M/14688/2024**

**MOTION NO. M/734/2025**

**DELIVERED ON THE 15/01/2025**

**BETWEEN:**

**DR. PAUL O. ACHUGBU.....PETITIONER/APPLICANT/RESPONDENT**

**AND**

**MRS. CHIMAOGA C. ACHUGBU.....RESPONDENT/RESPONDENT/APPLICANT**

**CONSOLIDATED RULING**

This is a Consolidated Rulings pursuant to Motion brought by the Petitioner/Applicant and that of the Respondent/Applicant.

In his Motion dated 25/10/2024 and filed 28/10/2024, the Petitioner/Applicant pray the Court for the following:

- (1) *An Order varying the order of this Hon. Court earlier made on 14/03/2024, allowing the two male children of the marriage namely Achugbu Paul Chibuikem (11 years) and Achugbu Paul Chibudom (13 years) to fully resume as boarding student at Federal Government College, Garki, Abuja pending the hearing and determination of the petition.*
- (2) *An Order allowing both parents have access to the two children named above, during their visiting days in*

*alternate days, and to continue observing temporary custody and access to the children as earlier ordered by the Court during holidays.*

*(3) And for such further order(s) as this Hon. Court may deem fit in the circumstance.*

The Petitioner/Applicant deposed to an affidavit of 13 paragraphs in support of the application and annexed Exhibits **A1, A2, A3, B, B1, C** and **C1** to the affidavit.

From the affidavit, the applicant avers that the Court had earlier granted him temporary custody of the four children of the Marriage and that he realized that the two children are so distracted in their present schools, and because he had a common understanding with the Respondent that both of them shall resume in a Government Secondary School as boarding students when they come of age, he decided to put them in a boarding school and this was communicated to the Respondent.

The applicant stated further that there is an arrangement for both parents and other siblings to visit them on their visiting day.

That he has paid all the necessary and applicable fees for the school, bought all materials for them and the necessary items for their school.

The Respondent upon been served with the Motion under consideration filed a counter affidavit of 43 paragraph wherein the Respondent stated that the petitioner does not have the capacity to retain custody of the children and give them good care and attention as they required as a Chief Medical Director of a Federal Medical

Center, he does not have the time which he may devote to the care of the children.

That the children are too young to be with the Petitioner as he is hardly at home due to his work schedule.

It is further the deposition of the Respondent that the news of happening in boarding school abound on the internet and social media space and it always been their joint decision that the children will never go to boarding school.

That removing the children to boarding school will amount to injustice to the younger children as the separating the older two from the younger two will bring severe hardship.

That the applicant only seeks to foist *a fait accompli* on the Court by concluding an act before seeking the approval of Court therefore.

Learned Counsel filed a written address wherein three issues were formulated for determination to wit;

- (1) Whether varying the order of the Court made the 14/03/2024 to send Achugbu Paul Chibuikem (11 years) and Achugbu Paul Chibudom (13 years) to a Boarding School will serve the best interest of the four children of the marriage at this time.**
- (2) Whether depriving the Respondent the title right granted by the Court two days in a month visitation rights is not injustice to the Respondent in the circumstance.**

**(3) Whether a party can tie the arms of the Court to rubber stamp an action which he has completed without a prior approval of the Court.**

Learned Counsel argued the aforesaid issues citing relevant cases in urging the Court to dismiss the application.

With respect to Motion No. **M/14688/24** filed by the Respondent/Applicant. The Respondent seeks for an order of this Court directing the petitioner in this case to release the children of the marriage, to wit; Achugbu Paul Chibuikem, Achugbu Paul Chibudom, Okechukwu Paul Achugbu and Nnemoma Achugbu to the Respondent/Applicant from the 23/12/2024 to 06/01/2025 to attend the burial of the Applicant's father at Isuochi village in Abia State scheduled to hold from the 02/01/2025 to 05/01/2025.

In support of the application is an affidavit of 12 paragraphs deposed to by the Respondent/Applicant herself.

It is her deposition that her father died on the 27/08/2024 and the burial ceremony is slated for 02/01/2025 to 05/01/2025 at Isuochi village of Abia State and it is required under the Ngodo Isuochi of Abia State custom and tradition for all children and grand children to attend the burial of their father and grand father to pay their last respect.

That both her and the petitioner hails from Isuochi village of Abia State and that the children has also express their desires to attend the burial.

A written address was filed wherein the issue “**whether from the affidavit evidence, the applicant has made a case to warrant the grant of the relief sought.**”

Learned Counsel argued the above issue in urging the Court to grant the application.

The Petitioner/Respondent filed a counter to the said Motion and stated that, there is no such culture in their locality that mandates children and grandchildren to attend their grand father’s funeral as both of them are from the same village.

That even if there is any such culture/tradition, it is not safe for the children to travel to the village at this time, due to high insecurity which is prevalent in the entire South-East region.

Upon service of the counter affidavit on the Respondent/Applicant, a further and better affidavit was filed where the applicant stated that insecurity cut across all region and people are leaving normal lives.

The Court was urged to grant the application in the interest of justice.

I have gone through the arguments for and against the Motion filed by the Petitioner/Applicant seeking for an Order varying the order of this Hon. Court allowing the two male children to fully resume as boarding students. I have equally gone through the Motion filed by the Respondent/Applicant seeking for an order of this Court releasing the Children of the marriage to attend the Respondent

father's burial in Isuochi village of Abia State and the counter reaction of the Petitioner/Respondent.

I shall begin with the application of the Petitioner/Applicant seeking to varying my order to allow the children to attend boarding school. Section 1 of the Child Rights Act 2003 provides as 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 the primary consideration.”**

Indeed, the welfare of children of a marriage that has broken down irretrievably is not only of paramount consideration but a condition precedent for the award of custody. In considering the welfare of the children of a broken marriage, effort must be made to ensure that such children are not denied the love, care and affection of either parents. Where one of the parents deliberately placed obstacle towards the attainment of such parental love and affection, he will be in violation of the right of the child. *OLWOOFUYEKU VS. OLWOOFUYEKU (2010) LPELR 11865 (CA)*.

Indeed, it is not in doubt that both parents of the marriage are seeking a dissolution of their marriage. It is also on record that this Court on the 14/03/2024 made an order for temporary custody of the children of the marriage to the Petitioner/Applicant and granted access to the Respondent.

The Petitioner/Applicant now brought this application seeking to send the two children mentioned on the face of the motion to a boarding school.

The applicant stated that, both parents agreed for their children to attend boarding school, but reacting to the assertion, the Respondent denied that they had such discussion and never agreed on the children attending boarding school.

It is the deposition of the Respondent that there are social vices in the boarding school system and that the Petitioner's sole reason of taking them to boarding school was because he cannot handle the responsibility of taking care of the children in his custody and therefore it will be just to grant her temporary custody.

I have seen the letter of provisional admission annexed to the application under consideration which is from the Federal Government Boy's College, Garki, Abuja. I must observe that education of a child is not only learned from the teacher but also from the parents and friend in school.

Having granted the temporary custody of the children to the petitioner, without distorting my order I have seen nothing wrong in allowing the children to attend the boarding school, same being in the heart of the Nations Federal Capital Territory.

I shall grant this application in the interest of justice. Consequently, it is hereby ordered as follows:

- (1) An Order varying the order of this Hon. Court earlier made on 14/03/2024, allowing the two male children of the marriage namely Achugbu Paul Chibuikem (11 years) and Achugbu Paul Chibudom (13 years) to fully resume as boarding student at Federal Government**

**College, Garki, Abuja pending the hearing and determination of the petition, is granted.**

- (2) I further make an Order allowing both parents access to the children, during school visitations and to continue observing temporary custody and access to the children as earlier ordered by the Court during holidays.**

Having granted this Motion, I shall now delve into Motion No. **M/14688/2024** which seeks for an order to release the children of the marriage, to wit; Achugbu Paul Chibuikem, Achugbu Paul Chibudom, Okechukwu Paul Achugbu and Nnemoma Achugbu to the Respondent/Applicant from the 23/12/2024 to 06/01/2025 to attend the burial of the Applicant's late father at Isuochi village in Abia State scheduled to hold from the 02/01/2025 to 05/01/2025.

Indeed, the law permits every child right of freedom of association and peaceful assembly in conformity with the law and in accordance with the necessary guidance and direction of his parents.

However, section 9 (2) of the Child Rights Acts, 2003 provides as thus;

- 2) Nothing in subsection (1) of this section shall affect the right of a parent, and where applicable, a legal guardian or other appropriate authority to exercise control over the movement of the child in the interest of the education, safety and welfare of the child.**

Section 2 of the Child Rights Act provides:

**“Every child is entitled to participate fully in the cultural and artistic activities of the Nigerian, African and World Communities.”**

From the above, it is obvious that the Child Rights Act grants children some right to freedom of association, movement, participation in their culture etc.

The Respondent/Applicant stated in the affidavit in support of this application that both her and the Respondent are from the same village of Isuochi of Abia State and it is required under the Ngodo Isuochi of Abia State custom and tradition for all children and grandchildren to attend the burial of their father and grandfather to pay their last respect and enjoy the opportunity to associate with the larger extended family members.

Reacting to the affidavit, the Petitioner/Respondent stated that there is no such culture in the Isuochi village for the grand children to attend their grandfather’s funeral. Similarly, the Petitioner/Respondent cited insecurity in the South-East region and stated that it is not safe for the Children to travel to South-East.

As stated in the preceding part of this ruling, in a proceeding where the interest of the child is involved, the Court gives precedence to the interest and rights of the Child. The settled position of the Court is that a Court faced with any application with respect to children in a matrimonial matter is enjoined to put, first and uppermost, the best interest of the children of the marriage as paramount consideration.  
***PETER VS. PETER (2024) LPELR 62100 (CA).***

From the above, guided by wisdom and reasoning, it is my Ruling that, the best interest of the children is to refuse this application.

Consequently, Motion number **M/14688/2024** is hereby dismissed.

**SIGNED:**  
**HON. JUDGE**  
**15/01/2025.**

**APPEARANCE:**

*Petitioner is in Court*

*Respondent absent and not represented*