

IN THE HIGH COURT OF JUSTICE, OGUN STATE OF NIGERIA
IN THE SAGAMU JUDICIAL DIVISION
HOLDEN AT SAGAMU

BEFORE THE HONOURABLE JUSTICE TAJUDEEN A. OKUNSOKAN – JUDGE
ON WEDNESDAY, 27TH DAY OF JULY, 2022.

SUIT NO: HCS/50/2021

BETWEEN:

MR. SUNNY OLADEPO ALUKO]
(Formerly known as MR. SUNDAY] PETITIONER/RESPONDENT
OLADEPO ALUKO)]

AND

MRS. MARY MODUPEOLA ALUKO]
RESPONDENT/CROSS-
PETITIONER/APPLICANT

RULING

By a Motion on Notice dated the 18th day of January, 2022 and filed on the 19th day of January, 2022, the Respondent/Applicant prayed for the following reliefs:

- 1) An order of this Honourable Court transferring the Petition for Decree of Dissolution of marriage instituted by the Petitioner/Respondent (“the Petitioner”) against the Applicant on 29 January 2021, from the High Court of Ogun State, Sagamu Judicial Division to the High Court of Oyo State, Ibadan Judicial Division.
- 2) And for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

The Application which is accompanied by a 13 paragraphed Affidavit in Support deposed to on 19th January 2022 by one Precious Lawalson, a Legal Practitioner and a Written Address dated 18th of January, 2022, is premised on the following nine grounds:



- 1) That although this Honourable Court undoubtedly has jurisdiction to hear and determine the Petition by reason of the Matrimonial Causes Act, the High Court of Oyo State also has jurisdiction to hear and determine the Petition.
- 2) That it is in the interest of justice for the High Court of Oyo State to hear and determine the Petition.
- 3) That both parties and the children are resident in Ibadan, Oyo State and the strain, stress, health, and financial inconveniences involved in going to Sagamu particularly with the ill-health status of the Respondent/Applicant, it will be better that the cause be heard in the High Court of Oyo State.
- 4) That the schooling and welfare of the children being minors would be disturbed if the Respondent would have to be travelling to Sagamu to defend the suit.
- 5) That it will be difficult for the Respondent/Applicant to leave her duty post at the University College Hospital for two days to be at the High Court in Sagamu to defend the suit as her employer have issued her with a final warning for attending the last Court Session and if she leaves her job to attend subsequent proceedings, the Respondent will lose her job.
- 6) That the roads from Sagamu are bad and insecure due to the menace of the Fulani herdsmen and kidnappers, therefore in the interest of protecting the life of the Respondent/Applicant as well as that of the Petitioner, it would be better to hear the Petition at the High court of Oyo State;
- 7) That as a salary earner, the Respondent cannot afford to lodge herself and her Attorney in a hotel every time she needs to attend the Court proceeding in Sagamu as continuing to do so would affect the upkeep of the children and as a mother, she would not want anything to affect the upkeep of the children. Again, the financial implication of paying her Attorney who would be coming from Ibadan transport fares to Sagamu would drain her meagre salary.
- 8) That the transfer would lead to avoidance of unnecessary expenses and delay to the parties involved and granting the transfer will not prejudice the Petitioner in any form;
- 9) That the Honourable Court has jurisdiction under the Matrimonial Causes Act to transfer this Petition to the High Court of Oyo State for determination.

In response to the said Application, the Petitioner/Respondent caused one Kuburat Bolanle Ajayi, a Legal Practitioner in the Law Firm of Tomjay



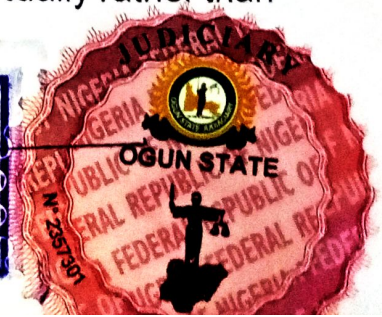
Partners, the Petitioner/Respondent's Counsel, to depose on 2nd March 2022 to a 14 paragraphed Counter-Affidavit along with which a Written Address dated 2nd March, 2022 was filed. And as a reaction thereto, the Respondent/Applicant caused the said Precious Lawalson to depose, on 3rd March 2022, to a 7 paragraphed Further Affidavit along with which a Reply on Point of Law captioned "Additional Written Address" and dated 3rd March, 2022 was filed.

Now, the grounds on which the Application is predicated which grounds have been reproduced earlier in this Ruling, adequately represent the case of the Applicant such that it is not necessary to summarise the facts in the Affidavit in Support thereof again.

It is only necessary to add that the Letter of Warning mentioned in Ground 4 is the Letter dated 14th January 2022 written by the College of Medicine, University of Ibadan and attached as Exhibit A to the Affidavit in Support of the Application and that it is also the case of the Respondent/Applicant that if this Court is inclined to hear this Petition, she would need to lodge her Attorney and witnesses in a hotel a day before each Court proceeding to be punctual in Court but that as a salary earner she cannot afford that.

The Respondent/Applicant added in her Further Affidavit that the Petitioner has unrestricted access to the children of the marriage; that she is not a threat to the Petitioner as they have unfettered communication because of the children; that she has no power or influence over any Court in Nigeria; that anytime the Petitioner is in Nigeria, he stays at the matrimonial home and that the witnesses in this suit including the Petitioner and the Respondent shall be coming from Oyo State.

On the other hand, from the Counter-Affidavit, the case of the Petitioner/Respondent in this Application, briefly stated, is that he is resident in London, United Kingdom from where he said he would be coming to testify in this case and not No 6, Alasoro Street, Agberu Area, Elebu, Oluyole, Ibadan, Oyo State; that the children of the marriage are in a boarding school and cannot hinder the Respondent's appearance in Court; that the Respondent took away the children of the marriage and did not allow him to have access to them, that the Respondent boasted and vowed to manipulate and maneuver the assignment of the case to a Court in Oyo State where she would have control over the entire matter in her favour through her contact within the Oyo State Judiciary, that the Respondent/Applicant cannot lose her job in respect of the case that she instituted against the Petitioner/Respondent and at worse, the Court can order parties to file Written Statement on Oath and permit the trial to be done virtually rather than



physically; that the Respondent/Applicant can afford to prosecute her case and that the Sagamu Division is a neutral forum and a convenient forum for both parties.

At the hearing of the Application, Respondent/Applicant's Counsel, Omoniyi Odeyemi Esq, adopted his Written Address dated 18th January, 2022 and Reply on Point of Law dated 3rd day of March, 2022 and prayed the Court to grant the Motion while T. O. Ajayi Esq, for the Petitioner/Respondent, adopted his Written Address dated 2nd March 2022 and urged the Court to dismiss the Application.

I have given a thorough consideration to the entire affidavit evidence before this Court in respect of the Application as well as the written submissions of Counsel on both sides in respect thereof. However, I do not think it is necessary to reproduce their submissions in all their details but I will, as may be necessary, refer to same in the course of this Ruling.

A good starting point is the submission of the Petitioner/Respondent's Counsel in his Written Address that paragraph 11 of the Affidavit in Support of the Application offends the provisions of Section 115 of the Evidence Act, 2011. Paragraph 11 of the Affidavit in Support reads thus:

"That the Honourable Court has jurisdiction under the Matrimonial Causes Act to transfer this Petition to the High Court of Oyo State for determination."

I have examined the said paragraph of the Affidavit and I am in agreement with the Petitioner/Respondent's Counsel that the deposition amounts to a legal argument and/or conclusion for which reason I hold that it offends the provisions of Section 115(2) of the Evidence Act 2011 and accordingly it is hereby discountenanced. See **Josien Holdings Ltd. & Ors. v. Lornamead Ltd.** (1995) 1 SCNJ 133 at 141. However, notwithstanding the above finding, it is not the case of any of the parties that this Honourable Court lacks the jurisdiction to entertain this case.

In any event, having regard to provisions of Section 2(1) of the Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004 which provides thus:

"Subject to this Act, a person may institute a matrimonial cause under this Act in the High Court of any State of the Federation; and for that purpose the High Court of each State of the Federation shall have jurisdiction to hear and determine



- (a) matrimonial causes instituted under this Act; and
- (b) matrimonial causes (not being matrimonial causes to which section 101 of this Act applies) continued in accordance with the provisions of Part IX of this Act, so however that jurisdiction under this Act in respect of matrimonial causes within this paragraph shall be restricted to the Court in which the matrimonial cause was instituted,

and in any case where maintenance is ordered in proceedings in a High Court, a court of summary jurisdiction in any State shall have jurisdiction to enforce payment in summary manner.”

I hold that this Court has jurisdiction to hear and determine this Petition.

Also, Section 2(3) of the said Act states that:

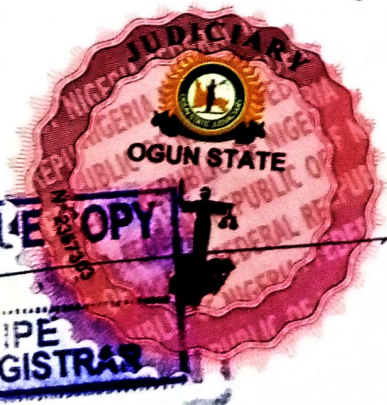
“For the avoidance of doubt it is hereby declared that a person domiciled in any State of the Federation is domiciled in Nigeria for the purposes of this Act and may institute proceedings under this Act in the High Court of any State whether or not he is domiciled in that particular State.”

And in interpreting the above provisions in **Awonusi Omolara Mary v. Awonusi Gbolagade** (2015) LPELR – 25794 (CA), M. A. Danjuma JCA in his Lead Judgment held at pages 23 – 24 paragraphs G – D as follows:

“Section 2(2)(a) of the Matrimonial Causes Act, 1970 confers jurisdiction on every High Court in the country in respect of matrimonial causes and Section 2(3) allows the institution of a cause in any state whether the Petitioner is resident there or not. So, the Petitioner/Respondent herein may go to any State, be it Taraba State, Ondo State or even Enugu State to institute a matrimonial cause. What is important, is the convenience of the parties and the Courts. This is where the “Forum convenience theory” as rightly stated by His Lordship of the Ondo State High Court, Idanre, comes in. The Courts will not allow oppressive proceedings. Interest of justice, reasonableness would play out. Unlike other causes where the power of transfer may not exist, it does exist in Matrimonial causes. See. S.9 of the Act as rightly stated by the trial Court.”

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PRINCIPAL REGISTRAR



It is this issue of Forum Convenience that is to be determined in this Ruling. And in this regard, Section 9(2) of the Matrimonial Causes Act stipulates thus:

“Where it appears to a Court in which matrimonial cause has been instituted under this Act (including a matrimonial cause in relation to which subsection (1) of this section applies) that it is in the interests of justice that the matrimonial cause be dealt with in another Court having jurisdiction to hear and determine that cause, the Court may transfer the matrimonial cause to the other Court.”

And in interpreting the above provisions, the Court of Appeal in **Rosiji v. Rosiji** (2020) LPELR – 51233 (CA) held at pages 10 – 17 inter-alia as follows:

“The above provisions give a Court the discretion to transfer a Matrimonial Cause to another Court where the Judge thinks it is in the interest of justice to so do. The right of a person to institute a Matrimonial Cause where he wishes under Section 2(1)(a) of the Act (supra) is subject to the discretionary powers given to a Court under Section 9(2) (supra). ... “Discretion” is the power to decide what should be done in a particular situation. A Court must however exercise its discretion both judicially and judiciously. A sound exercise of judicial discretion must always meet the ends of justice and must not flow from or be bound by a previous decision of another Court in which discretion was exercised. It must be exercised based on the facts before the Court in the case under consideration. See **Akinyemi vs. Odua Investment Company Limited** (2012) 17 NWLR (Pt. 1329) 209; **Union Bank of Nigeria Plc vs. Astra Builders (W.A) Limited** (2010) 5 NWLR (Pt. 1186) 1; **Oyeyemi vs Irewole Local Government, Ikire** (1993) 1 NWLR (Pt. 270) 462.”

This takes me to the basis of this Application. I will start with the contention of the Respondent/Applicant that the schooling and welfare of the children being minors would be disturbed if she would have to be travelling to Sagamu to defend this suit and that, as a salary earner, she cannot afford to lodge in a hotel every time she needs to attend Court proceedings in Sagamu as continuing to do so would, according to her, affect the upkeep of the children and that as a mother she would not want anything to affect the upkeep of the children.



No doubt, the Court has always been enjoined to give precedence to and protect the interest of the children of the marriage in matrimonial proceedings. See **Kehinde v. Kehinde** (2014) LPELR – 24062 (CA) at page 25 paragraphs A – D. Therefore, the decision of this Court in this Ruling has to be one along this line.

Now, in his response on the issue of the children of the marriage, the Petitioner/Respondent stated in paragraphs 5(c) & (d) of his Counter-Affidavit that the children of the marriage are in the Boarding School in Valencia College, Ibadan, Oyo State being financed by him and that the children can only be with the Respondent/Applicant during School Break.

It is instructive to note that the Respondent/Applicant did not respond in her Further Affidavit to the deposition of the Petitioner/Respondent concerning the children of the marriage vis-à-vis the present court action and, as such, the Respondent/Applicant is deemed to have admitted same as being correct. See **Sir. Ikechukwu Okeke v. Governor of Enugu State & Ors.** (2020) LPELR – 49838 (CA) at pages 22 – 23 paragraphs E – A. In the circumstance, I hold that since the children of the marriage are in Boarding School being financed by the Petitioner/Respondent, they will not be detrimentally affected by the hearing and determination of this case in this Court.

The next contention of the Respondent/Applicant is that the matrimonial home of both parties remains No 6, Alasoro Street, Agberu Area, Elebu, Oluyole, Ibadan, Oyo State where, she said, both of them are residing.

No doubt, the Petitioner/Respondent stated that he is resident at Flat 34 Lloyd House, No 20, Tavistock Road, Croydon, London CRO 2AN, United Kingdom, from where, he said, he would be coming to testify before this Court and not at No 6, Alasoro Street, Agberu Area, Elebu, Oluyole, Ibadan, Oyo State. However, relying on the principle of law in **Mrs. Regina Okafor & Ors v. Mrs. Caroline Okafor & Ors.** (2000) FWLR (Part 1) 17 at 25 that a Court is competent to look at documents outside an Applicant's Affidavit but within the casefile to arrive at a just decision in a case, I have examined the opening paragraph of the Petition filed in this case at page 3 of the casefile and discovered therefrom that the Petitioner states his address as No 6 Alasoro Street, Agberu Area, Elebu, Oluyole, Ibadan, Oyo State Nigeria even though he equally stated therein that he now lives at the said London address. My understanding of the said averment in the Petition at this stage is that the Petitioner/Applicant is contending that he is domiciled in Ibadan, Oyo State, Nigeria because for the Petitioner/Respondent to contend that he is domiciled in London, United Kingdom, will mean that by the provisions of



Section 2(3) of the Matrimonial Causes Act, he cannot institute proceedings under the Act in the High Court of any State in Nigeria. In the circumstance, I hold that the permanent residence of both the Petitioner/Respondent and Respondent/Applicant is at No 6, Alasoro Street, Agberu Area, Elebu, Oluyole, Ibadan, Oyo State.

This takes me to the contention of the Respondent/Applicant that the roads from Sagamu are bad and unsecure due to the menace of the Fulani herdsmen and kidnappers for which reason she stated that it is in the interest of protecting her life and that of the Petitioner/Applicant that the Petition be heard at the High Court of Oyo State; that if this Court is inclined to hear this Petition she would have to lodge in a hotel accommodation close to the venue of this Court a day before each Court proceeding to be punctual in Court and that she would also need to lodge her Attorney and her witnesses in a hotel a day before each Court proceeding to be punctual in Court but that as a salary earner she cannot afford to do so.

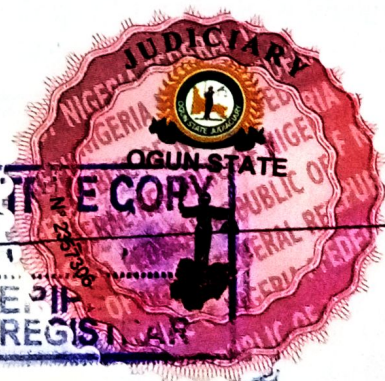
In response to the above, the Petitioner/Respondent stated that the Court can dispense with the presence of the Respondent/Applicant during the preliminary stages of this case for as long as her Counsel is present in the Court; that the Respondent/Applicant is only compulsorily required to attend the Court when she would give evidence for which reason he said, the Respondent/Applicant is not required to be lodging in the hotel because of this case.

Now, the first thing to note is that the contention of the Petitioner/Applicant that the Court can dispense with the presence of the Respondent/Applicant in Court is speculative and speculation has no place in the Courts as neither the parties nor the Court is permitted or entitled to speculate anything. See **Ikenta Best (Nigeria) Limited v. Attorney General of Rivers State** (2008) LPELR -- 1476 (SC) page 51 paragraph D. In fact, the law is settled that Courts cannot base its decision on speculation. See **Kewalram Nigeria Limited v. Olugbenga Rosiji** (2019) LEPLR – 49696 (CA) at page 37 paragraphs A – C.

That apart, it is instructive to note that the Petitioner/Respondent did not controvert the Respondent/Applicant's deposition that the roads from Sagamu are bad and insecure due to the menace of Fulani herdsmen and kidnappers and, as such, the Petitioner/Applicant is deemed to have admitted same. See **Sir Ikechukwu Okeke v. Governor of Enugu State & Ors.** (supra).

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In my view, it is not only in the interest of the parties but also in the interest of the children of the marriage that this case be heard and determined in a place that will not put the life of any of the two parents of the children of the marriage in jeopardy or risk arising from bad roads from Sagamu and insecurity due to the menace of Fulani herdsmen and kidnapers. I so hold.

It is also the case of the Respondent/Applicant that it will be difficult for her to leave her duty post at the University College Hospital for two days to be at the High Court in Sagamu to defend the suit as her employer has issued her with a final warning for attending the last Court session and that she will lose her job if she leaves it to attend subsequent proceedings in this Court.

On the other hand, the Petitioner/Respondent, in response stated that the Respondent/Applicant does not require two days to conduct trial in the Cross-Petition and his own Petition and that, at the worst, the Court can order parties to file Written Statements on Oath and permit the trial to be done virtually rather than physical trial.

Now, it is not within the province of the Petitioner/Respondent to state that the Respondent/Applicant does not need two days to conduct trial in the Petition and her Cross-Petition when it is within the discretion of the Respondent/Applicant to determine how to present her case. Also, the contention of the Petitioner/Respondent that the Court can order parties to file Written Statements on Oath and permit virtual hearing is speculative and, as such, it cannot form the basis of the decision of this Court in this Ruling. See **Procon Group Africa Limited v. Dr. Musa Ayuba** (2020) LPELR – 51189 (CA) at pages 20 – 21 paragraphs F – D. What is more, practice and procedure in matrimonial cases are governed by the Matrimonial Causes Rules which does not permit the filing of Written Statements on Oath.

In any event, before this Court is a letter dated 14th January 2022 attached as Exhibit A to the Affidavit in Support of the Application by which the College of Medicine University of Ibadan gave the first and final warning to the Respondent/Applicant for leaving her duty post on 10th and 11th January 2022 to attend proceedings in this case before this Court as the Respondent/Applicant was present when this case came up on 11th January 2022. In the circumstance, I am in agreement with the Respondent/Applicant that her subsequent presence before this Court to attend proceedings in this case will cost her her job.

Now, having regard to all the findings reached by this Court in this Ruling, it is my view that the Ibadan Judicial Division of the High Court of Oyo State is the convenient forum for the hearing and determination of this case. I so

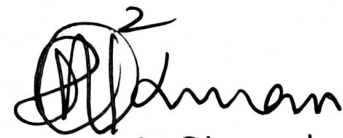


hold. Therefore, it is in the interest of justice that the discretion which this Court has in this matter be exercised in favour of the Respondent/Applicant. In coming to this conclusion, I am not unmindful of the contention of the Petitioner/Respondent that the Respondent/Applicant boasted that she has got contact of a lawyer who would aid her plan to take this matter to Ibadan, Oyo State where she can maneuver the assignment of the case to a Court where she would have control over the entire matter in her favour rather than a neutral Court like the present Court and that the Respondent/Applicant who engaged the service of Folake Ajayi Esq. of Folake Ajayi & Co. has now decided to engage another Counsel in person of O. M. Odeyemi Esq of First Bethel Solicitors in order to perfect her said plan. The Respondent/Applicant denied these allegations in her Further Affidavit. And they cannot be believed without the presentation of specific facts before this Court in proof of same for which reason the allegations are discountenanced.

Flowing from the foregoing, the Application is meritorious and consequently, it is hereby granted. Accordingly, it is hereby ordered as follows:

Ordered as prayed.

The Petition, i.e. Suit No. HCS/50/2021, is hereby transferred to the Ibadan Judicial Division of the High Court of Oyo State for adjudication.



Tajudeen A. Okunsokan
Judge
27th July, 2022

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**HIGH COURT
REGISTRY
DATE: 12/8/2022
SAGAMU**

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**HIGH COURT
REGISTRY
DATE: 12/8/2022
SAGAMU**

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[Signature]
**S. A. KERIPE
PRINCIPAL REGISTRAR**