

IN THE COURT OF APPEAL
IN THE ABUJA DIVISION
HOLDEN AT ABUJA
ON WEDNESDAY THE 16TH DAY OF JULY, 2025

BEFORE THEIR LORDSHIPS

ALI ABUBAKAR BABANDI GUMEL - JUSTICE, COURT OF APPEAL
UGOCHUKWU ANTHONY OGAKWU -JUSTICE, COURT OF APPEAL
MOHAMMED DANJUMA - - - JUSTICE, COURT OF APPEAL
APPEAL NO: CA/ABJ/CV/1348/2022

BETWEEN:

ONWAH JOHN AJIROGHENE **APPELLANT**

AND

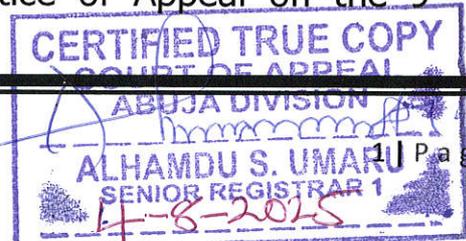
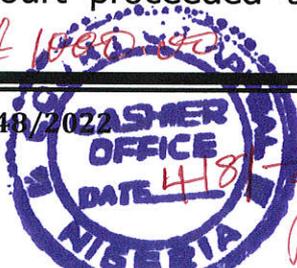
MAUREEN ACHONU **RESPONDENT**

JUDGMENT

DELIVERED BY ALI ABUBAKAR BABANDI GUMEL (JCA)

This is an appeal arising from the POST JUDGMENT ORDER of the High Court of the Federal Capital Territory delivered on the 11th day of October, 2021. The matter was instituted by the Appellant at the lower court vide an Originating Summons dated and filed on the 16th of December, 2020. The Appellant, being dissatisfied with the decision of the lower court proceeded to file a Notice of Appeal on the 9th of

CA/ABJ/CV/1348/2022



November, 2022, containing a sole ground of appeal. The said Notice of Appeal is reflected on pages 279 to 282 of the Record of Appeal.

SUMMARY OF FACTS RELEVANT TO THIS APPEAL

The Appellant, by way of an Originating Summons dated and filed 16th December, 2020 commenced an action at the lower court against the Respondent for the determination of certain questions. See pages 1 to 45 of the Records of Appeal which reflects the said process. The action of the Appellant was predicated on questions of law and seeking for the following reliefs. They are:-

- 1. A DECLARATION that it is in the best interest of ONWAH EMAMUZO CHUKWUEBUKA OBIIM JUDE for the Appellant to be granted unfettered access to him.***
- 2. A DECLARATION that the Appellant is the biological father of ONWAH EMAMUZO CHUKWUEBUKA OBIIM JUDE, having proven his paternity through a scientific test result dated 3rd day of February, 2014.***
- 3. AN ORDER granting the Appellant shared custody rights to his child- ONWAH EMAMUZO CHUKWUEBUKA OBIIM JUDE, such custody rights to be granted to him particularly during school holidays and public holidays, having proven to have continually carried out his parental responsibilities regarding his child.***

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4. AN ORDER granting the Appellant unfettered visitation rights to his child, ONWAH EMAMUZO CHUKWUEBUKA OBIIM JUDE on weekends, particularly Saturdays and Sundays.

5. AN ORDER of this Honourable Court perpetually restraining the Defendant/Respondent from taking their child, ONWAH EMAMUZO CHUKWUEBUKA OBIIM JUDE out of the jurisdiction of the Honourable Court for any reason, without the consent of the Appellant first sought and obtained.

6. AN ORDER of this Honourable Court directing the Respondent to make a monthly contribution of a certain sum of money towards the upkeep of ONWAH EMAMUZO CHUKWUEBUKA OBIIM JUDE, such amount of money as it deems proper, having regard to the Defendant/Respondent's position as a senior Civil Servant.

7. AND FOR SUCH FURTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstances.

In support of the Originating Summons, the Appellant filed a 48-paragraph Affidavit with four (4) Exhibits marked A-D and a Written Address. On the 8th day of March, 2021, the Respondent filed a Notice of Preliminary Objection, challenging the jurisdiction of the lower court to hear the matter on the ground of the court's composition/constitution and the mode of commencement of the action, together with a counter

affidavit and a Written Address to the Originating Summons. The Respondent's Notice of Preliminary Objection is reflected at pages 62-90, while the Counter Affidavit and Written Address are contained in pages 91-117 of the Record of Appeal respectively.

In reaction to the Notice of Preliminary Objection, the Appellant filed his Counter-Affidavit and written address on the 23rd of March, 2021, reflected on pages 155-158 of the Record of Appeal while his further affidavit and reply on points of law in opposition to the Respondent's counter-affidavit and address to the originating summons is reflected at pages 169-187 of the Record of Appeal.

On the 30th of June, 2021, the lower court heard the Applications of both parties and dismissed the Preliminary Objection of the Respondent. The court thereafter proceeded to deliver its judgment on the substantive matter, where, after considering the facts before it, the lower court refused to grant reliefs 1, 3 and 4 but in view of the fact that the Appellant is the biological father to ONWAH EMAMUZO CHUKWUEBUKA OBIIM JUDE, ordered that the Appellant should have access to his son, "such access to be arranged and mutually agreed upon by both parties within 30 days from the date the judgment was delivered".

Since the parties could not agree within the 30-day period as provided by the lower court, the Appellant informed the court vide a letter dated 24th August, 2021 of what had transpired within the 30-day period and applied for a fresh date for the court to rule on the sole issue. The letter is reflected on pages 236-237 of the Record of Appeal. On the 11th day of October, 2021, the lower court delivered its Ruling

where it affirmed that it had jurisdiction to make the Post-Judgment orders but declined to make a determination on the outstanding issue of the exercise of the access rights to the child by the Appellant on the ground that the Appellant's lead Counsel was perceived by the court to have challenged the jurisdiction of the court to reconvene parties after delivery of judgment.

The Appellant, dissatisfied with the Post-Judgment order delivered by the lower court has now proceeded to appeal against it vide a Notice of Appeal filed on the 9th day of November, 2022 before this court for the determination of the outstanding issue of the access rights of the Appellant to his son and praying for this court to invoke its powers under Section 15 of the Court of Appeal Act so as to give effect to the order made by the Lower Court in its judgment delivered on the 30th June, 2021.

ISSUE FOR DETERMINATION

In the Appellant's Brief of Argument filed on 20th January, 2023, the Appellant through his Counsel Mr. Damilola Odesola, submitted a sole issue for determination before this court, to wit:

Whether the lower court was right in law to have refused/declined to adjudicate on or determine the outstanding issue of access rights of the Appellant to his son, ONWAH EMAMUZO CHUKWUEBUKA OBIIM JUDE despite the indication of the lower court in the judgment delivered on 30th June, 2021 that the said issue

***would be determined one way or the other.
(Distilled from Ground 1).***

In arguing the sole issue for the determination of this Court, learned counsel to the Appellant submitted that the decision of the lower Court to decline or refuse to adjudicate on or determine the access rights to the Appellant to his son despite having acknowledged its powers and jurisdiction to do so was erroneous in law and this has occasioned a miscarriage of justice. Counsel to the Appellant submitted that it is trite that a Court of law has a duty to consider and determine all applications and questions before it.

Counsel to the Appellant further submitted that the lower court in its judgment directed parties to mutually agree on the subject of the exercise of the rights of the Appellant to their son within 30 days and while handing down the judgment, the court stated that the failure of the parties to make a mutual and definitive agreement on the issue would invite the court to make a consequential determination after 30 days. That the Appellant, in furtherance of the above instruction wrote to the Respondent through her counsel, the letters dated 8th July, 2021, 19th July, 2021, 27th July, 2021 and 31st July, 2021 respectively with the lower court in copy.

It was submitted that as a result of the parties' failure to resolve the outstanding issue within the period prescribed by the lower court in one way or the other, the Appellant gave a report to the court vide a letter dated 24th August, 2021, requesting for a fresh date when the court would make an order on the unresolved issue. That at the proceedings of 5th October, 2021, the lead counsel of the Appellant viva

voce asked for direction on the court's power to conduct hearing after having delivered judgment and the basis of this was the listing of the matter for "hearing" on the cause list of the day. Counsel to the Appellant stated that the lower court thereafter adjourned to the 11th of October, 2021, to rule on the issue raised and on the said date, the lower court declared that it had the inherent jurisdiction pursuant to Section 69 (4) of the Child Rights Act, 2003 and Order 39 Rule 4 of the High Court (Civil Procedure) Rules of the Federal Capital Territory 2018. That however, the lower court having held that it had the requisite powers and jurisdiction deliberately refused to determine the issue.

Mr. Damilola Odesola, Esq; of counsel argued that this is at variance with the position of the law, fairness and justice since the lower court, by its decision, has left the Appellant uncertain as to his rights and the extent of the exercise of same. Reliance was placed on several judicial authorities.

Learned counsel to the Appellant further argued that a Court has a duty to make a determination on all issues before it. He stated that the subject of the jurisdiction is a matter of the law vis-à-vis the Constitution of the Federal Republic of Nigeria, the enabling Law and the rules of the Court. That the conduct or argument of counsel before a court cannot oust the jurisdiction of a court in the same manner that their conduct cannot increase or confer jurisdiction on a court. Counsel to the Appellant maintained that a court of law must determine issues one way or the other and not refuse to exercise its recognized powers solely because an observation was made, rightly or wrongly. He cited inter alia, the case of **NWOKORO V. ONUMA (1990) 3 NWLR (Pt. 136) 22**, where the Supreme Court held that:

"It is the primary obligation of every court to hear and determine issues in controversy before it, and as presented to it by the Litigants".

Learned counsel to the Appellant argued that the court does not have the liberty to choose what issues to pronounce upon and what issues to decline to make a finding on particularly material issues which the court agrees to their materiality. He argued that the lower court was expected to have ruled one way or the other on the entire issues raised and presented before it and the failure of the Court to do so in the instant matter amounted to a breach of the Appellant's right to fair hearing. The cases of **MFA V. INONGHA (2014) 4 NWLR (Pt. 1397) 343 and SYLVESTER OGBANA V. GABRIEL OTTI & ORS (2000) 8 NWLR (PT. 670) 582 AT 590**, were referred to.

It was contended that even if it is assumed that the counsel to the Appellant "challenged" the jurisdiction of the court to reopen the hearing or grant consequential orders as it was perceived by the lower court, it would be manifest injustice to visit the errors of counsel on the Appellant. Learned Counsel went to cite and rely on the case of **OKAFOR V. BENDEL NEWSPAPERS CORP. (1991) 7 NWLR (Pt. 206) 651 at 666, Para. C**, where the Supreme Court stated thus:

"But it has been recognized by our system of administration of justice that mistakes or even blunders of counsel may occur time to time; but that is wrong to deny a litigant the right to have his case decided on its merits because of the blunder, mistake or negligence of his counsel".

Learned Counsel Mr. Adesola stated that the lower court, in failing to consider all the issues placed before it and make a determination of the outstanding issue which it acknowledges as outstanding, deprived the Appellant of his fundamental right to fair hearing which is in contravention of Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). That any proceeding conducted in breach of a party's right to fair hearing, no matter how beautifully conducted amounts to a nullity.

Learned Counsel to the Appellant submitted that this Court has the powers and the requisite jurisdiction to make a determination on the issue. That for this court to make a determination, there would be no need for further evidence. Counsel to the Appellant urged this court to invoke its powers pursuant to Section 15 of the Court of Appeal Act to consider and determine the outstanding, unresolved issue in controversy between the parties as canvassed by the Appellant in his Notice of Appeal.

In response, the Respondent filed her Brief of Argument on 25th October, 2023. In the said Respondent's Brief, Mr. Ogechi Abu, learned Counsel for the Respondent raised the following lone issue for the determination of this Court:

Whether considering the entire facts of this case and the Appellant's conduct, the Appellant did not knowingly preclude the lower court from conclusively resolving the issue of the Appellant's access rights to his son. (Ground 1).

Making submissions on the lone issue submitted for determination of this appeal, learned counsel to the Respondent argued that the Appellant by his conduct knowingly precluded the lower court from conclusively resolving the issue of access to his son. He submitted that after re-convening, the lower court for the purpose of stipulating the terms upon which the Appellant will exercise his right of access to his son, the said Appellant turned around to challenge the jurisdiction of the lower court to stipulate the said terms but now, the same Appellant is lamenting that the lower court left him uncertain as to his rights and the extent of the exercise of same. Counsel to the Respondent argued that contrary to this submission, the Appellant by his own actions left himself uncertain as to his right of access to his son for the simple reason that he was not interested in a relationship with his son. That it defies logic that a man will run to a court of law to assist him see his child then turn around to also preclude the same court from granting him the same help.

Learned Counsel to the Respondent argued that contrary to the Appellant's contention, the lower court did not abdicate its judicial duty and obligation as the court considered all the issues submitted to it for consideration and did not in any way deny the Appellant fair hearing.

It was submitted that when the lower court convened to grant the terms upon which the Appellant will exercise his already granted right of access to the child, the Appellant confronted the lower court with a challenge to its jurisdiction to act. So, it was stated that the Appellant was not interested in exercising the said right of access granted him by the lower court. According to Respondent's counsel, Appellant is not permitted to blow hot and cold at the same time. That there is no

reason why the Appellant would prevent the lower court from stipulating terms of his access to his child by a challenge of the court's jurisdiction only to now run to this Honourable Appellate Court for the same relief.

Learned Counsel Mr. Abu urged this Court to dismiss this appeal with substantial costs against the Appellant. That however, should this Court find merit in the appeal and is disposed to invoke its powers under Section 15 of the Court of Appeal Act (as amended), the court should stipulate the terms upon which the Appellant shall exercise his right of access to his son. Counsel to the Respondent cited as a guide the earlier decision of the lower Court that having given birth to Obiim, the Appellant had the responsibility to maintain Obiim with his feeding, paying his school fees, making provision for him, paying annually for his accommodation until he is 16 years, paying Obiim's annual holiday abroad and or in Nigeria and any other role a father should provide. That apart from Obiim's feeding school fees, accommodation and holidays, Appellant must also desist from doing anything that threatens Obiim's safety. Counsel to the Respondent then proposed the following terms of settlement in case this court find merit in this Appeal:

ACCESS

1. The Respondent has sole custody of OnwahEmamuzoChukwuebukaObiim Jude ("Obiim") and Obiim shall continue to reside with the Respondent until he attains adulthood while the Appellant shall have access to Obiim on the stipulated days.

2. Obiim shall not sleepover at the Appellant's home until he attains the age of 16 years in line with the judgment of the lower court. Furthermore, in accordance with the subsisting judgment of the lower court regarding the safety of Obiim, the Appellant shall spend his agreed visitation days being Saturdays and Sundays of every other week with Obiim at any public place (which shall be duly communicated to the Respondent) suitable for children and shall not be at the Appellant's home.

3. On his visiting days, the Appellant shall pick Obiim from the Respondent's residence from 10am-6pm on Saturdays and 1pm-5pm on Sundays in view of Church and school the next day, provided that the access period shall not disrupt Obiim's lessons and catechism classes. The Appellant shall guarantee Obiim's well-being and safety at all times that the child is in the Appellant's care.

EDUCATION

4. The Appellant shall be fully responsible for Obiim's school fees up to tertiary level. In addition, the Appellant shall set up an Education Trust Fund with FBN Quest Trustees in Obiim's name in the sum of One Hundred Million Naira

(~~₦~~100,000,000.00) to cover Obiim's education in the event of unforeseen circumstances.

5. The Appellant shall provide a functional car and driver for Obiim transportation to school and general movement.

6. The Respondent shall keep the Appellant informed of all developments in Obiim's learning.

MAINTENANCE/TRAVEL

7. The Appellant shall provide the sum of Three Hundred Thousand Naira (~~₦~~300,000.00) only as monthly upkeep for Obiim as the current sum of One Hundred and Fifty thousand Naira (~~₦~~150,000.00) which the Appellant commenced paying a few years ago but does not pay consistently, has become grossly inadequate in the face of prevailing high inflation in the country that has washed away the purchasing power of the Naira. This sum of Three Hundred Thousand Naira (~~₦~~300,000.00) shall be subject to review as inflation and Obiim's growing needs warrant.

8. The Appellant shall be responsible for Obiim's annual/summer holiday and shall provide the sum of Twelve Thousand United State Dollars (\$12,000.00) per annum to cover the travel expenses including flight tickets, accommodation, feeding, transportation within the US, shopping, etc.

9. The Appellant shall not travel with Obiim until he attains the age of 18 years. Hence, Obiim's travel documents shall at all times be in the custody of the Respondent in line with her right of custody.

ACCOMODATION

10. The Appellant shall be responsible for 50% of Obiim's annual accommodation rent which is presently the sum of Two Million Seven Hundred and Fifty Thousand Naira (₦2,750,000.00) of a current annual rent of Five Million, Five Hundred Thousand Naira (₦5,500,000.00). The Appellant 50% contribution shall be paid on or before the 5th of August annually and will increase the current amount of contribution as the rent is upwardly reviewed provided it shall always be 50% of the total rent.

11. The Appellant shall reimburse the Respondent the sum of Ten Million, Seven Hundred and Fifty Thousand Naira (₦10,750,000.00) only being 50% contribution of 5 years rent arrears from 2019-2023 at the rate of 50% contribution of ₦2,000,000.00 for 2019-2022; and ₦2,750,000.00 for 2023 as the rent was reviewed from ₦4,000,000.00 per annum to ₦5,500,000.00. The Respondent waives the Appellant's contribution for the earlier years which were not paid. This

reimbursement shall be paid into the Respondent's bank account (to be advised) within 30 days from the date of judgment in this appeal.

HEALTH

12. The Respondent shall be responsible for Obiim's health matters covered under his official health insurance scheme which the all medical issues not covered by the scheme shall be provided by the Appellant.

COMMUNICATION

13. The Respondent shall provide a dedicated telephone number on which the Appellant can speak to Obiim at will.

14. The Appellant and Respondent shall be civil in their interaction and shall not disparage each other before Obiim.

LEGAL FEES

15. The Appellant shall reimburse the Respondent the sum of Nine Million Naira (₦9,000,000.00) being the total cost of legal fees the Appellant has caused the Respondent to incur from the Family Court at the Magistrate level, the Family Court at the High Court level and to this

Honourable Appeal Court for no justification whatsoever.

Mr. Ogechi Abu, of counsel urged this Court to dismiss this appeal in its entirety with a cost of Four Million Naira (₦4,000,000.00) against the Appellant or alternatively, where this court finds merit in this appeal and is deposed to invoke its powers under Section 15 of the Court of Appeal Act (as amended), the court should exercise its powers on the terms proposed by the Respondent.

In response, Appellant filed Reply Brief on 9th November, 2023. In the Reply Brief, Appellant, responding to Respondent's submission in paragraph 2.7 of her Brief of Argument, stated that the facts and arguments as presented by the Respondent are completely misleading and do not flow from the Record of Appeal. That stating the Appellant abandoned his duties as a father towards his son, ObiiEmamuzoOnwah and never refunded to the Respondent the costs channeled towards his birth in the United States of America is a complete pack of lies because the records which say otherwise are before the court.

In response to paragraphs 2.9 and 2.10 of the Respondent's brief, the Appellant states that he has at all material times been financially available for his son and referred this court to the Records of Appeal at pages 20 and 21, of the Record.

In response to paragraph 2.21 and 2.22 of the Respondent's Brief of Argument, Appellant submitted that no party has the power to restrain a Court of competent jurisdiction from carrying out its obligations to completely resolve all matters validly brought before it.

Finally, in response to the issue for determination raised in the Respondent's Brief of Argument, Appellant opined that the Respondent has failed to present a competent brief before this court, as the issue for determination does not flow or emanate from the Ground of Appeal as formulated by the Appellant in his Notice of Appeal.

RESOLUTION OF THE APPEAL

I have carefully read and considered the elaborate arguments and submissions of respective learned Counsel in their filed and exchanged briefs of argument together with the judgment of the lower Court and the single ground of appeal. Having done so, I believe that issue for determination formulated on behalf of the Appellant suffices in the circumstance and I will therefore proceed to determine the appeal upon that sole issue. It is:

Whether the lower court was right in law to have refused/declined to adjudicate on or determine the outstanding issue of access rights of the Appellant to his son, ONWAH EMAMUZO CHUKWUEBUKA OBIIM JUDE despite the indication of the lower court in the judgment delivered on 30th June, 2021 that the said issue would be determined one way or the other. (Distilled from Ground 1).

In the case of **OKEKE-OBA V. OKOYE (1994) 8 NWLR (Pt. 364) 605 at P. 616 Para. A**, the Supreme Court held as follows:

"A judge has a duty to pronounce specifically on an application or issue properly sought or raised by

the parties at the trial and failure to decide one way or the other is a serious error”.

Similarly, in the case of **L.G.C LTD V. STANBIC IBTC PLC (NO. 1) (2022) 14 NWLR (Pt. 1851) 505 PP. 537 Paras. D-H**, the Supreme Court considered the failure of a Court to consider all issues before it to be tantamount to and as a spectrum of the denial of a fair hearing. The Court, Per ABOKI, JSC, held thus:

“All courts, except the Supreme Court are duty bound to consider all issues raised before it. That is, a court, in deciding a case must consider all issues presented before it by all the parties. Where a court refuses to consider a germane issue raised by any of the parties towards the determination of a case before it, the court would have been said to have denied that party fair hearing though not within the context of not allowing the party to present its case”.

See also the decision of the Supreme Court in **HONEYWELL FLOUR MILL PLC V. ECOBANK (2019) 2 NWLR (PT. 1655) 35, ABIODUN V. C.J. KWARA STATE (2007) 18 NWLR (PT. 1065) 109.**

Furthermore, this Court, while emphasizing the duty of a Court consider all issues presented to it for consideration and determination in **UNITY BANK PLC V. IGALA CONSTRUCTION CO. LTD (2021) 10 NWLR (Pt. 1785) 407 at P. 438, Paras. E-F**, stated thus:

"A court is duty-bound to consider all issues presented to it for consideration and determination".

In the instant matter, the lower court in its judgment, particularly on page 273 of the Record of Appeal, directed parties to mutually agree on the subject of the exercise of the rights of the Appellant to their son within 30 days. While handing down the judgment, the court stated that failure of the parties to make mutual and definitive agreement on the issue would invite the court to make a consequential determination after 30 days.

The parties failed to reach a mutual agreement. However, at the proceedings of 5th October, 2021, the learned counsel to the Appellant viva voce asked for direction on the court's power to conduct hearing after having delivered a judgment. Thereafter the court adjourned to the 11th of October, 2021. On the 11th of October, 2021, the lower court declared that it had the inherent jurisdiction pursuant to Section 69 (4) of the Child Rights Act, 2003 and Order 39 Rule 4 of the High Court (Civil Procedure) Rules of the Federal Capital Territory, 2018. Then the lower court proceeded to hold that:

"I have taken a calm look at the reliefs granted in favour of the complainant as contained in Order 3 and 1 ask myself whether this proceeding initiated by the complainant is praying for the consequential orders to give effect to Order 3 earlier granted in his favour. I am of the view that this court has the power under Section 69 (6) of

the Child Rights Act (SUPRA) and Order 39 Rule 4 (Supra) to make consequential orders to give effect to order 3 granted in favour of the complainant even after judgment is delivered..... Since the complainant is the one to benefit from any order if granted by this proceeding and his counsel is of the opinion that the court has no jurisdiction to make any order herein the court will decline to make the order sought herein”.

The above position has no basis whatsoever. It is at variance with the principle of fairness and justice. Here, the lower Court abdicated its judicial duty and obligation. The failure of the lower court to determine the outstanding issue of the exercise of the access rights of the Appellant to his son is glaring, without doubt. The court in its Post-judgment Ruling failed to consider all the reliefs sought by the Appellant even though it recognized that it remained outstanding and unresolved. The court accepted that Relief 3 needed a consequential order for its effect and enforcement but chose not to make the order. This has the effect of boxing the litigants and the child in issue to a needless state of uncertainty. The lower court does not have the liberty to choose what issues to pronounce upon and what issues to decline to make a finding on particular material issues which the court agrees to their materiality. Even if the counsel to the Appellant “challenged” the jurisdiction of the court to reopen the hearing or grant consequential orders as it was perceived by the learned trial judge, it would be manifest injustice to visit the errors of counsel on the Appellant. in **OKAFOR V. BENDEL NEWSPAPER (SUPRA)**, the Supreme Court stated thus:

"But it has been recognized by our system of administration of justice that mistakes or even blunders of counsel may occur time to time; but that is wrong to deny a litigant the right to have his case decided on its merits because of the blunder, mistake or negligence of his counsel".

A court of law must not descend into a state of anger, no matter the amount of provocation, but must at all times be guided by law. A court is duty bound to exercise its function and duties with great refrain from basing its decisions or actions on emotional reaction to errors or default of counsel. Full dispassionate consideration to all issues raised and canvassed before the court is what should be its concern. In **AKINGBOLA V. FRN (2018) 14 NWLR (Pt. 1640) 395 P. 413 Para. F**, the Supreme Court stated, while speaking on the position laid out in another decision of the Court, thus:

"The above reinforces the need to do substantial justice irrespective of provocation or procedural obstacles hurled on the path of a judge on the highway of justice. The principle of fair hearing as enshrined under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) also leaves the Court with little choice in ensuring fair hearing".

Further, the court stated in **AKINGBOLA V. FRN (SUPRA)**, thus:

"A trial Court should not allow emotions or personal feelings as a result of perceived errors,

delays and/or lack of diligence of the prosecution team to determine how it adjudicates and do justice in a case. This is because courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy. In this case, the trial judge allowed his emotions or personal feelings as a result of perceived errors, delays and/or lack of diligence of the prosecution team to determine his decisions. And that was patently wrong and unnecessary”.

I agree that counsel to the Appellant’s approach or conduct left much to be desired but the lower court should not have, out of anger, proceeded to “discipline” the counsel together with the party the counsel in question was representing. That would not be justice but gross injustice. Here, Appellant was denied his fundamental right to a fair hearing which contravenes section 36 of the Constitution of the Federal Republic of Nigeria (as amended).

The Supreme Court in **KOLAWOLE V. FOLUSHO (2009) 8 NWLR (Pt. 1143) 338**, speaking about the general powers of the Court of Appeal stated that:

"The trial Court is duty bound to pronounce on issues raised before it by parties and where it fails so to do, the appellate court is in as good a position as the trial Court to determine such issue, particularly where no further evidence will be

required or where the issues are purely question of law”.

By Section 15 of the Court of Appeal Act, this Court has powers to re-hear the appeal before it and deal with the case in accordance with the powers of the trial Court. For ease of reference, Section 15 of the Court of Appeal Act provides:

“The Court of Appeal may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal... and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as court of first instance...”

The lower court jettisoned the principles of fair hearing of failing to resolve the outstanding issue of the exercise of the access rights of the Appellant, which the court affirmed as outstanding and due for determination. I so hold and resolve the issue in favour of the Appellant and against the Respondent.

In the circumstance, the Appeal is meritorious, same succeeds and it is allowed.

And this court now exercising its powers under Section 15 of the Court of Appeal Act, make the following orders:

1. Relief 1 sought in the Originating summons that the Appellant be granted unfettered access to

ONWAH EMAMUZO CHUKWUEBUKA OBIIM JUDE succeeds, subject to relief 3.

2. Relief 2 in the Originating Summons is hereby granted. A DECLARATION is made that the Complainant/Appellant is the Biological Father to ONWAH EMAMUZO CHUKWUEBUKA OBIIM JUDE, having proving his paternity through scientific test result dated 3^d day of February, 2014.

3. Relief 3 sought in the Originating Summons that the Appellant should have shared custody rights to his child ONWAH EMAMUZO CHUKWUEBUKA OBIIM JUDE, succeeds and is hereby granted.

4. Relief 4 sought in the Originating Summons fails and same is hereby dismissed.

5. Relief 5 in the Originating Summons is granted. AN ORDER of this Honourable Court is made perpetually restraining the Respondent from taking their child, ONWAH EMAMUZO CHUKWUEBUKA OBIIM JUDE out of the jurisdiction of this Honourable Court for any reason, without the consent of the Appellant first sought and obtained.

6. Relief 6 sought in the Originating Summons fails and same is hereby dismissed.

7. No order as to cost.

In view of the inability of the Appellant and the Respondent to agree on the modalities for the implementation of the orders of the lower Court within the 30 days period and their having to come back to it to put in place for them a clear road map and pathway, this Court has found it necessary to consider the possibility of invoking its powers under Section 15 of the Court of Appeal Act (supra). In a dispute, in the nature of a child custody, as in the instant appeal, it is always the interest of the child that should be the paramount consideration. While the Respondent has been given the custody of the child of the marriage between the parties, the Appellant cannot be denied his natural right of access to his child. Under the prevailing circumstance this right is inalienable. Whenever possible, a father should not be denied a reasonable access to his begotten child. The manifest impasse and logjam in this case is unfortunate and must not be allowed to linger anymore.

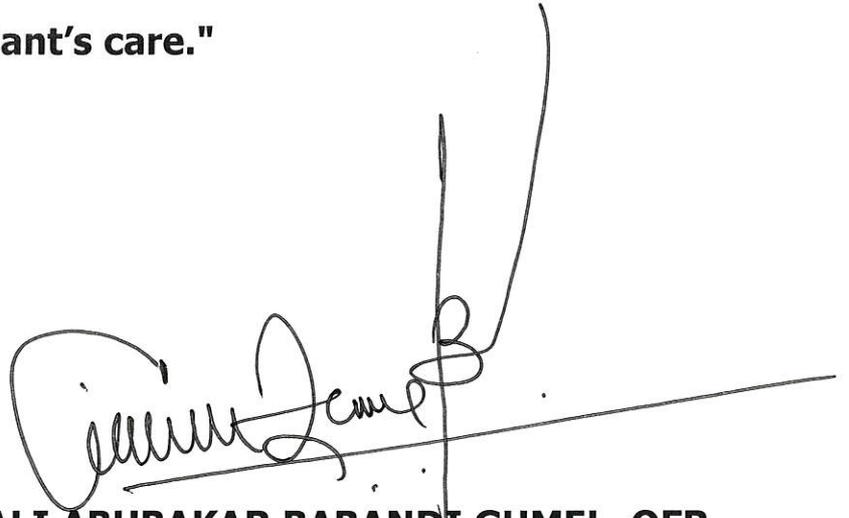
In consequence of the foregoing, and for peace to reign, the interest of the welfare, wellbeing, moral and proper upbringing of the child of the parties herein, it is hereby ordered thus:-

"ACCESS

- 1. The Respondent has sole custody of Onwah Emamuzo Chukwuebuka Obiim Jude ("Obiim") and Obiim shall continue to reside with the Respondent until he attains adulthood while the Appellant shall have access to Obiim on the stipulated days.**
- 2. Obiim shall not sleepover at the Appellant's home until he attains the age of 16 years in line with the judgment of the lower court. Furthermore, in accordance with the subsisting judgment of the**

lower court regarding the safety of Obiim, the Appellant shall spend his agreed visitation days being Saturdays and Sundays of every other week with Obiim at any public place (which shall be duly communicated to the Respondent) suitable for children and shall not be at the Appellant's home.

3. On his visiting days, the Appellant shall pick Obiim from the Respondent's residence from 10am-6pm on Saturdays and 1pm-5pm on Sundays in view of Church and school the next day, provided that the access period shall not disrupt Obiim's lessons and catechism classes. The Appellant shall guarantee Obiim's well-being and safety at all times that the child is in the Appellant's care."

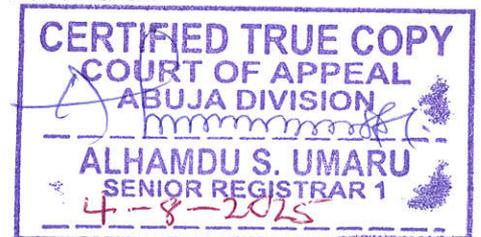


**ALI ABUBAKAR BABANDI GUMEL, OFR
JUSTICE, COURT OF APPEAL**

APPEARANCE OF COUNSEL

Damilola Odesola, Esq; for Appellant

Ogechi Abu, FCI Arb; for Respondent



CA/ABJ/CV/1348/2022

{UGOCHUKWU ANTHONY OGAKWU, JCA}

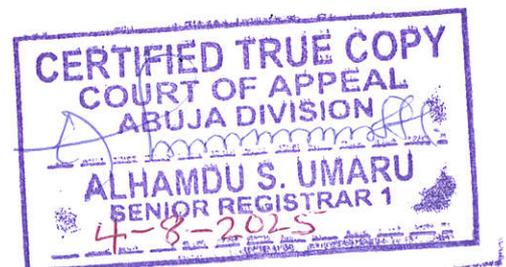
I read before now the leading judgment of my learned brother, *Ali Abubakar Babandi Gumel, JCA*, which has just been delivered.

Having also read the Records of Appeal and the briefs of argument filed and exchanged by the parties, I find that the reasoning and conclusion in the leading judgment on the sole issue distilled for determination is in accord with my views.

Accordingly, it is based on the said reasoning that I equally arrive at the conclusion that the appeal has merit. I therefore join in allowing the appeal and on the same terms as set out in the leading judgment.



**UGOCHUKWU ANTHONY OGAKWU
JUSTICE, COURT OF APPEAL**



APPEAL NO.: CA/ABJ/CV/1348/2022
MOHAMMED DANJUMA, JCA

I have had the privilege of reading in draft, the lead judgment of my learned brother **Ali A. B. Gumel, JCA**. I agree with the reasoning and conclusion that this appeal is meritorious, it succeed and is hereby allowed. I abide by all the consequential orders in the lead judgment.



HON. JUSTICE MOHAMMED DANJUMA
JUSTICE, COURT OF APPEAL

