

EXAMINING THE LEGAL AND SOCIAL IMPLICATIONS OF CHILD CUSTODY DISPUTES IN CASES OF DOMESTIC VIOLENCE IN NIGERIA

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ABSTRACT

The disputes over who takes custody of a child or children in the event of domestic violence or divorce are a common feature in the matrimonial matters in Nigeria. Litigation abounds on this subject, and in some cases, police action ensues over domestic violence and the custody of children in domestic violence situations in a home. There are several pieces of legislation, judicial pronouncements on child custody, which is the focus of this paper. The objective of this paper is to examine various considerations for the award of child custody in a situation of domestic violence, examining the efficacy of welfare of the child in child custody disputes, and making recommendations towards the efficient resolution of disputes of a child custody-related nature. This paper adopts doctrinal methodologies involving statutes, law reports, case laws, textbooks, and internet sources, and so on. The paper finds that children suffer emotional and psychological trauma in the event of domestic violence or divorce of their parents, which leaves the child at the mercy of customs and tradition, and the court has to intervene to safeguard the child's interest and welfare in the immediate and the long run. The paper recommends the establishment of a family court that will specialize only in child custody. It further recommends the establishment of welfare support centres for the child pending adjudication of custody. It also recommends a specialized court only for child welfare and custody matters for the speedy handling of custody disputes, putting the interest of the child at the utmost priority.

Keywords: Child support centre, Child custody, Domestic violence, Custody Order, family court

1. Introduction to the family

Black's Law Dictionary¹ defines "Custody" as the care, control, and maintenance of a child, which may be awarded by a court to one of the parents as in a divorce or separation proceeding. Similarly, the court in the case of *Otti v Otti*² defined custody thus: "essentially concerns control, and the preservation and care of the child's person, physically, mentally, and morally; responsibility for a child regarding his needs, food, clothing, instruction, and the like³." The two sources of law captured above gave no doubt definition or illustration of custody as it pertains to a child. A child at any point, so long as he remains a child, needs care and must be

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¹ Bryan A. Garner (ed), *Black's Law Dictionary* (9th edn, Thomson Reuters 2009)

² *Otti v Otti* [1992] 7 NWLR (Pt. 252) 187, 210 (E-F)

³ Kolawole Azeez Oyediran and Uche C Isiugo-Abanihe, 'Perceptions of Nigerian Women on Domestic Violence: Evidence from 2003 Nigeria Demographic and Health Survey' (2005) *African Journal of Reproductive Health* 38.

under the custody of someone, be it his mother, father, grandparents, or guardian⁴. The child can't fend for himself or herself and remains dependent on someone for sustenance. That being the situation, whenever there arise a dispute or divorce or domestic violence arises in the home, the child must be protected against harm or torture or any form of abuse or deprivation. When either or both parents turn violent, and safety is threatened or a dissolution of the union occurs, this is where the issue of custody arises. Who takes custody of the child is a question that must be answered⁵. The court comes in to settle the issue of custody, putting the rights of the parents into consideration while balancing the interests and welfare of the child whose parents have gone haywire in the home⁶.

In most legal jurisprudence, when the custody question arises, the court prioritizes the child's welfare. The rights of the parents to access and custody are also put in place. Where the belligerent parents cannot provide a safe and balanced environment for the child, the court in this situation considers the safety and well-being of the child over and above those other factors⁷. The various statutes and precedents affecting child custody are invoked to determine custody. The court, in its statutory and equitable wisdom, must consider the psychological and emotional needs of the child in making findings and pronouncements in custody adjudication. Aside from legal considerations, the social implications of domestic violence are enormous⁸. The victims of domestic violence are traumatized, debased, and unstable. Social and economic implications are heavy on the victims of domestic violence⁹. The victim may suffer financial instability, social stigma, and psychological deviated. The child who comes at the centre of the crisis will surely need support to carry on well in life, because domestic violence experiences in the home has along term effect on the children who witness the tensed atmosphere in their home; hence an expert support is needed for the child because of the anticipated long-term effect on the child¹⁰.

There are multifaceted angles to child custody disputes. The vulnerability of the child interplays with the parental responsibilities towards the child, which calls for more concerted action in custody disputes¹¹. Several professionals like legal practitioners, health experts, sociologists, religious bodies, psychologists, and rehabilitation therapists have shed varying views on custody issues, especially where domestic violence is in the offing. All said as it were, the court, through the judicial officer, has given varying pronouncements, and there has also been a policy statement of late to stem the rising tide of custody disputes in Nigeria, and

⁴ Gbenga Ogunkeye, 'The Impact of Child Custody on Children's Welfare in Nigeria' (2024) SSRN <https://ssrn.com/abstract=4912906>.

⁵ Iheanacho Chukwuemeka Metuonu, 'Paternity Fraud in Nigeria: Ethical, Legal, Cultural, and Social Dimensions' (2025) 2(2) Faculty of Natural and Applied Sciences Journal of Basic and Environmental Research 101.

⁶ Okoro Sunday Asangausung, Ebere James Okorie, and Udom Sunday Daniel, 'Paternity Disputes and Delinquent Behaviour Among Street Children in Major Towns in Akwa Ibom State, Nigeria' (2025) 2(1) Academic Journal of National Issues (AJNI).

⁷ Victoria Banke Olagbegi-Oloba, 'The Impact of Court-Connected Alternative Dispute Resolution on the Dispensation of Civil Justice in Nigeria: A Comparison with South Africa and the United States of America' (Stellenbosch University 2024).

⁸ Wilson Diriwari and Damfebo K Derri, 'Protecting the Best Interests of Children: A Critical Analysis of Child Custody and Divorce Proceedings in Nigeria under the Child Rights Act 2003' (2023) 1(4) International Journal of Social Science, Management and Economics Research 42.

⁹ Peter G Jaffe and Robert Geffner, *Child Custody Disputes and Domestic Violence: Critical Issues for Mental Health, Social Service, and Legal Professionals* (American Psychological Association 1998).

¹⁰ Sharon K Araj, 'Domestic Violence, Contested Custody, and the Courts: A Review of Findings from Five Studies with Accompanying Documentary' (2012) 55(1) Sociological Perspectives 3.

¹¹ Ibid

it is ongoing¹². This article examines the legal framework on child custody during domestic violence, highlights the needs of the child in custody, and also the challenges during litigation in custody disputes to improve the child custody system as it currently stands. The discussion and research, when concluded, will transform the custody system and make Nigeria the cynosure of Africa in custody dispute resolution¹³.

2. Legal Framework for Child Custody Disputes in Cases of Domestic Violence in Nigeria

The child lives in the same home with his parents. The child is affected emotionally and psychologically, bearing in mind that the child is a vulnerable species when domestic violence ensues in the home. This realization led to the passage of national law protecting the child in case of domestic violence or divorce. Flowing from this, international law by way of international also exists to prescribe protective measures aimed at shielding the child against abusive relationships in the home, especially during domestic violence. In their wisdom, the court applies these laws in the child's best interest, issuing protective orders and restraining orders where appropriate, balancing the child's interest with those of the warring parents.

Now we will explore the national and international laws or instruments upon which the child custody and welfare hinge, drawing inference on protective and restraining orders in the situation of domestic violence.

3. Domestic and International Laws Governing Child Custody in Nigeria

Child custody in Nigeria is largely governed by statutory and customary laws, which vary across different regions based on religious and ethnic considerations. The key legal instruments include:

*The Matrimonial Causes Act*¹⁴, as far as the provision of the Act is concerned, the court is enjoined to weigh the critical options in determining who takes custody of the child in any custody dispute. The court must emphasize the financial capacity, moral standing, and emotional well-being of the father and the mother in granting custody, especially physical custody. In the overall provision, the best interest of the child is the principal consideration before the court¹⁵. *The Child Rights Act*¹⁶, this Act can be termed a major revolution in the custody law in Nigeria. This Act, as the legal framework, places a cardinal point on the overall best interest of the child in awarding custody to either of the parents of the child. Incidentally, the Child Rights Act is a federal legislation that operates in Abuja, the Nigerian capital. Some states have localised it as part of their laws on custody affairs, while some states are yet to adopt it, leading to a situation of varying legal application on child custody matters across the federation of Nigeria.

Customary and Religious Laws, Customary law is one of the primary sources of law in Nigeria; hence, its contribution to child custody cannot be overlooked in the Nigerian legal climate, including custody disputes. Islamic law is also an aspect of customary law recognized in Nigeria. Courts usually balance social and religious factors in child custody where the marriage that produced the child was contracted under the native law and custom or Islamic

¹² Ibid

¹³ Ibid

¹⁴ Laws of the Federation of Nigeria 2004, Matrimonial Causes Act, Cap M7.

¹⁵ Ibid section 71

¹⁶ Law of the federation of Nigeria 2003

tenets. Under the Nigerian customary law, the child is presumed to belong to the man's family; hence, custody favours the husband, especially if the child, the subject of the dispute, is a male. Islam, on the other hand, grants custody to the mother if the children are younger, while the husband takes financial and material responsibilities and has access to his children.

3.1 International law on child custody and domestic violence

Several international instruments are available touching on child welfare, including custody matters at divorce or domestic violence situations. Nigeria, incidentally, is a signatory to these international instruments, which we are going to enumerate shortly. The United Nations Convention on the Rights of the Child (1989), is the head instrument on the rights of the child. It emphasizes on the best interest of the child in any situation where custody is in issue.¹⁷ Nigeria has ratified this instrument via the Child Rights Act 2003, a federal legislation which several federating states of Nigeria have also domesticated. African Charter on the Rights and Welfare of the Child (1990)¹⁸, this is another regional international instrument touching on the welfare and protection of the child in all circumstances, stressing the safety of the child and guaranteeing the right of the child to parental care. Nigeria has adopted the provisions of the charter.

The Hague Convention on the Civil Aspects of International Child Abduction (1980)¹⁹, This is another international instrument touching on the welfare and protection of the child with a global coloration. Although Nigeria has not formally acceded to it; nevertheless, it is an instrument that Nigeria can refer to in relocation matters involving domestic violence for which the well-being of the child may be affected. Nigeria may not have acceded to it probably because most of its provisions were similar to those of the United Nations Convention on the Rights of the Child (1989) and the African Charter on the Rights and Welfare of the Child (1990).

4. How Courts Approach Domestic Violence in Custody Decisions in Nigeria

Nigeria's courts adopt the attitude of calling for evidence to establish domestic violence in making any determination, among such evidence includes²⁰

- i. Medical reports documenting injuries
- ii. Witness testimonies from family members, social workers, or law enforcement
- iii. Police reports and complaints filed by the victim
- iv. Psychological evaluations demonstrating harm to the child or victimized parent

It therefore follows that victims of domestic violence, or better still, a claimant under domestic violence, must adduce substantial proof of domestic violence to enable the court to make an appropriate order bordering on custody in a domestic violence situation.

4.1 Determining the best interest of the child

¹⁷ United Nations Convention on the Rights of the Child 1989, Article 3

¹⁸ African Charter on the Rights and Welfare of the Child 1990

¹⁹ The Hague Convention on the Civil Aspects of International Child Abduction ,1980

²⁰ *Nwosu v Nwosu* (2012) 8 NWLR (pt 1301) 1, p 32, paras F-G.

The principle of the best interests of the child under the Matrimonial Causes Act **and** Child Rights Act serves as the foundation for custody rulings. When domestic violence is involved, courts assess whether granting custody to the abusive parent could endanger the child. Considerations include:

- 1) Whether the child has witnessed or experienced domestic abuse
- 2) The emotional and psychological well-being of the child
- 3) The ability of the non-abusive parent to provide a stable and safe home environment

It is a known fact that the court in Nigeria grants custody more often than not to the father when a customary marriage is involved. It is a different situation where a marriage was contracted under the statute. Nevertheless, the court nowadays considers the best interest of the child in custody disputes, emphasizing the protection of children from abusive environments.

i. What is the position of custody in Domestic violence cases?

Domestic violence influences custody decisions in legal disputes. It is often noticed that abusive fathers seek sole custody more frequently than non-abusive fathers. Abuse is not easy to prove because abuse is not just physical²¹. It could be verbal, psychological abuse, or even mere stalking. In custody cases, it was found that domestic violence constitutes twenty-five percent. Abusive may not be physical, as noted earlier, and so a mother may find it difficult to establish domestic violence in a custody dispute due to non-physical evidence to back up her claim²². This has led to a situation where an abusive father may get custody.²³ It determining custody in domestic violence, the safety of the child is a priority, but the court must consider the interest of the non-abusive parent viz a viz the abusive parent's rights. Failure to prove abuse may work against the party alleging abuse because abuse is not only physical but also non-physical. In *Odogwu v. Odogwu*²⁴ The Supreme Court ruled that the welfare of the child should take precedence over parental rights. The court awarded custody to the mother, citing concerns about the father's abusive behaviour and its potential impact on the child's well-being.

ii. **Societal Expectations and Biases**

Sometimes, cultural background is a factor to consider in custody arrangements. In *Jones v. Jones* (1996)²⁵ The court considered the cultural background of the parents in determining custody. In many instances in the African environment, it is presumed that the mother is more capable of giving care to the child while is the traditional breadwinner. In modern civilization, the reverse may be the case, where the mother is the breadwinner while the father may be a better caregiver²⁶. Racial, ethnic, and cultural biases often influence custody decisions.²⁷ There

²¹ Joan S Meier, 'Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions' (2002) 11 American University Journal of Gender, Social Policy & the Law 657.

²² Bolaji Owasanoye, 'The Regulation of Child Custody and Access in Nigeria' (2005) 39(2) Family Law Quarterly 405.

²³ Allison C Morrill et al, 'Child Custody and Visitation Decisions When the Father Has Perpetrated Violence Against the Mother' (2005) 11(8) Violence Against Women 1076, published by Sage Publications..

²⁴ (1992) 2 NWLR (Pt. 225) 539 (SC)

²⁵ *Jones v Jones* 1996 SD 2, 542 NW 2d 119, 1996 SD Lexis 6

²⁶ Emmanuela Enweonwu, International Law and the End of Child Marriage: A Case Study of Nigeria (Birmingham City University 2024).

²⁷ Maldonado S, 'Bias in the Family: Race, Ethnicity, and Culture in Custody Disputes' (2017) 55(2) *Family Court Review* 213–242 <https://doi.org/10.1111/fcre.12274>

is also biases on the part of the lawyer and judges when an argument is made in a custody dispute

4.2 Limited or supervised visitation

When it is obvious that the child may face trauma in an abusive family, the court awards custody to the less abusive parent and grants supervised visitation to the other parent of the child. The court may do so by ordering court-supervised visitation so that the child still gets contact from the abusive parent in a supervised manner, such that the situation will include:

- i. Court-monitored visits
- ii. No overnight stays
- iii. Attendance in anger management or therapy sessions

Family court or custody court had rarely ordered supervised visitation due to limited resources available to the court and perhaps cultural inhibitions in the Nigerian environment. Nevertheless, restricted visits are ordered when the threat of domestic violence is imminent to the child's well-being.

4.3 Protective Orders and Restraining Orders under the Domestic Violence Law in Nigeria

It is a known fact that Nigeria has several laws on domestic violence, including the federal capital territory, Abuja, with the Violence Against Persons (Prohibition) Act (VAPP) in the Federal Capital Territory (FCT),²⁸ applicable only in the FCT. The FCT law provides for ways of seeking redress in the face of domestic violence and provides for protective orders and restraining orders in favour of a child traumatized by domestic violence. These protective orders and restraining orders: interim protective, usually granted in a temporary period pending full court session on the matter, while the restraining is meant to prohibit the abusive parent from having contact with the child for a short duration of time. There is also the permanent restraining order, in which case the abusive parent is kept away from the child for a longer period as the court may deem fit to make in the circumstances²⁹. For the court to make a permanent restraining order, there must be available evidence pointing to the child being at risk if the order is not made. Good as these orders may seem, they face challenges in enforcement; the reasons being that the victim and even the law enforcement agents are not informed about the existence of these orders. Where ignorance is the problem, action cannot be taken, and the court cannot give that sought or brought to its attention³⁰. Victims of domestic violence, for example the mother of the child may, for fear of stigmatization and cultural consideration fail or refused to seek court intervention, and where no court intervention is sought, no restraining or protective order can be made; order, no matter their nature cannot be made in a vacuum. Even if the court makes these orders, monitoring compliance is weak due to the laissez-faire attitude of the Nigerian law enforcement agents and endemic corruption in Nigeria. Strengthening enforcement mechanisms and increasing awareness of protective laws are essential steps in ensuring safety for victims and children affected by domestic violence³¹.

²⁸ Violence Against Persons (Prohibition) Act 2015 (Nigeria); Edwin I Nwogugu, *Family Law in Nigeria* (Hebn Publishers 2014).

²⁹ Isangha Stanley Oloji and others, 'Intimate Partner Violence: A Qualitative Study of Male Victims' Experiences With Their Natal and In-Law Families' (2025) *Families in Society* 10443894251322846.

³⁰ Richard A Aborisade, 'COVID-19 and Gender-Based Violence: Investigating the "Shadow Pandemic" of Sexual Violence During Crisis Lockdown in Nigeria' (2025) 69(6-7) *International Journal of Offender Therapy and Comparative Criminology* 659.

³¹ Robin P Chapdelaine, 'E-motional Landscapes: Marriage and Custody Litigation in Nigeria, 1940s–1960s' (2024) 10(3) *Journal of Migration History* 340.

5. Judicial Challenges in Custody Cases in Nigeria

There is no doubt that the court will intervene when called upon to determine the issue of domestic violence, just as in any other matter brought before it. In determining the question of domestic violence, the court considers societal expectation, the best interest of the child principle, which has been an age-long common law principle³². The law places the burden of proving domestic violence lies on the person who alleges domestic violence, usually the claimant or Plaintiff. The Evidence Act of Nigeria is clear on this burden placed on the alleging party in the suit.³³ Under the civil proceedings, the burden of proof is on a balance of probability, which the Claimant must tell a story that has a higher likelihood of being true than the one told by the defendant. In domestic violence suits, many claimants are reluctant to come forward to prove a case of domestic violence against their spouses for fear of stigma and cultural abhorrence of reporting one's spouse or a relationship with the police. Many a time, there is no physical evidence to support cases of domestic violence. Domestic violence is not only physical abuse, but could also be emotional, verbal, or mere stalking. Many people consider domestic violence to be a family affair and are reluctant to report to the court or the police authorities³⁴.

In Nigeria, the court places priority on the best interests of the child while adjudicating on domestic violence. It is not a must that the mother of the child should receive custody in a domestic violence case, especially where the mother is the abusive parent. The extent of abuse the child may be exposed to in the hands of either parent must be considered by the court. This was why in the case of *Odogwu v. Odogwu*³⁵ the court reiterated the welfare of the child as paramount. It has been argued that adjudication should be a more victim-centered approach, including the use of expert testimony and psychological evaluations to assess the impact of domestic violence on the child and the custodial parent.

5.1 Social and cultural influence on judicial decisions in custody cases

Customarily speaking, custody favours the male gender, in this case, the father or husband. The judges are also Nigerians, and in a way, they are also influenced by the norms of the society³⁶. Sometimes in a domestic violence case, the court may be swayed to award custody to a party that may not be in the best interest of the child, contrary to the established principle of the best interest of the child. In *Obahaya v. Obahaya*,³⁷ the court reiterated that the welfare of the child is the paramount consideration in custody disputes. However, evidence abounds where the custody has been granted based on other considerations as economic considerations or simply based on the gender of the child. Child rights advocates have called for retraining the judges on the child rights of 2003, and such training on judges should extend to child psychology. This suggestion is in line with international best practices advocated by the United Nations Convention on the Rights of the Child, which emphasizes the welfare of the child.

³² Clive Akpotaire, Examining Nigeria's Existing Domestic and International Legal Framework for Combating Trafficking in Children (TIC) (University of Leicester 2024).

³³ Section 1319(1) 2011

³⁴ Ibrahim Bello, 'Best Interest of the Child Principle in Divorce Proceedings under the Matrimonial Causes Act in Nigeria' (2024) SSRN <https://ssrn.com/abstract=4914793>.

³⁵ (1992) 2 NWLR (Pt. 225) 539

³⁶ Nicola Taylor and others, 'International Models of Child Participation in Family Law Proceedings Following Parental Separation/Divorce' (2012) 20(4) International Journal of Children's Rights 645.

³⁷ (2022) LPELR-57141 (CA)

Nigeria is a secular state permitting several religious beliefs. Traditional beliefs in custody differ from religious beliefs in custody. Christianity and Islam may differ on custody issues during domestic violence. When a custody issue is presented before the court, the court is in a deep sea of the part to toe to ensure the welfare of the child while considering the cultural and religious affiliations of the Parents, especially where the couple are of divergent beliefs. The Child Rights Act 2003 and the Matrimonial Causes Act (MCA) are the cardinal statutes, and they both emphasize the welfare of the child as the paramount factor in custody issues, even I domestic violence suits. The Supreme Court in *Okwueze v. Okwueze*,³⁸ while acknowledging the prominent position of the father in custody matters under the customary practices in Nigeria, it maintained that the child's well-being must be put as a priority, while not ignoring completely the rights of parents to access and provision for the child.

5.2 Psychological impact on a Child and the parents

It has been observed and said that domestic violence traumatizes a child. The child who witnesses domestic violence often may be emotionally distressed, maladjusted, and deviant in behavior³⁹. All these will affect the child's relationships when he grows up, and in the interim, his studies in school will be affected. The child's self-esteem and sense of trust may be diminished paradoxically⁴⁰. No emotionally brutalized person can study effectively. The parents on their part may experience depression, and a sense of pain and anguish during custody disputes, further heightening the depression already built up. Such depression may lead to suicide in an extreme situation. Emotionally, the court may also consider the emotional attachment of the child to either parent, and also consider which of the parents can adequately provide for the needs of the child. This was why the court in *Williams v. Williams*⁴¹ considers the emotional attachment the child has to either parent, thereby balancing its decision.

Lessons from the United States on custody rulings.

The court in the United States maintains the position that welfare is the paramount consideration for custody, and the gender of the parent involved. There are no rules that say that the mother knows better how to care for a child than the father. Race should also not be a factor, as the ability to nurture a child does not depend on race or religion or social status; the Nigerian court should borrow a cue from the American jurisdiction, where the Supreme Court has maintained equivocally that race and gender should not determine who gets custody.⁴²

6 Recommendation

Adjustment to normal life after domestic violence is difficult for the child and the abused parent. It is recommended that victims of domestic violence seek the support of the Mirabel Centre in Lagos provides counselling and legal support to victims of domestic violence, helping them navigate custody disputes. There are similar services in various states of the Federation of Nigeria. These social support services are not readily available to victims, and many victims are not aware of their existence; hence, there is a need for a mass enlightenment campaign to educate potential victims of domestic violence. There is an urgent need to implement the provisions of the Child Rights Act, which provides for the establishment of child welfare

³⁸ (1989) 3 NWLR (Pt. 109) 321

³⁹ Victoria Chinyeaka, 'Critique of the Nigerian Fault-Based Divorce Regime as a Violation of Human Rights' (2024) SSRN <https://ssrn.com/abstract=5174691>.

⁴⁰ Lisa Hajjar, 'Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis' (2004) 29(1) Law & Social Inquiry 1.

⁴¹ 720 SW 2d 246 (1986)

⁴² *Palmore v Sidoti* 466 US 429 (1984)

committees to provide support for the child, especially in cases of domestic violence, which may affect the child directly. The court in *Otti v. Otti*⁴³ acknowledged the need for child welfare support, but like in most laudable suggestions and provisions, realization remains a big setback to full realization of the custody arrangement for the child, where both parents are in a serious war over domestic issues and the custody of the child becomes jeopardized.

A child rights court should be set up in all the states of Nigeria to adjudicate custody and welfare issues of children. This will quickly dispel issues affecting the child. Adequate funds should be budgeted for the welfare of the child from a domestic violence-torn home, but the court takes the final stand on who to grant custody.

7 Conclusion

Child custody disputes could be tense and complex, and at times, the court is also confused about the right position to adopt, prompting adjournment at the instance of the court. Legal reforms and retraining of judges and magistrates should be carried out once a year to keep them up to date of what is expected of them in custody disputes when domestic violence and custody disputes present themselves before the court. The court should bear in mind that, in line with international instruments, the welfare of the child remains the paramount consideration. Gender of either parent should be considered in custody disputes; the mother should not, by right, be granted custody. There should be gender neutrality and custody based on the best interests of the child. This gender neutrality was emphasized by the United States Supreme Court, which ruled equivocally that race and gender should not determine who gets custody; Nigerian court should follow suit.

⁴³ (N 12)