

# UNDERSTANDING CHILD CUSTODY IN NIGERIA: KEY PRINCIPLES AND CONSIDERATIONS



## INTRODUCTION

Matrimonial proceedings in Nigeria are governed by the Matrimonial Causes Act of 1970. Typically, when a marriage between a couple is dissolved, several key issues or considerations may arise as a result of the dissolution. These considerations, often referred to as "ancillary reliefs," include the settlement of matrimonial property, jointly owned assets, and, significantly, custody of the children from the marriage. In the case of *Eigbe v. Eigbe*<sup>1</sup>, the court held that "custody of children of a marriage is ancillary to the issue of dissolution of marriage, and a High Court empowered to determine matrimonial causes is therefore competent to also consider the issue of custody of children of a marriage dissolved as an ancillary relief." Furthermore, the Matrimonial Causes Rules makes it clear that ancillary reliefs, such as custody of children, can be sought after the principal relief of dissolution has been initiated. Thus, upon the dissolution of a marriage where the estranged couple may be forced to live separately and, in some cases, in different jurisdictions, the court may need to exercise discretion to determine, as an ancillary relief, who will have custody of the child(ren) and their maintenance. This article provides an overview of how to navigate child custody in Nigeria, including the guiding principles and considerations.<sup>2</sup>



## MEANING OF CHILD CUSTODY

There is no definition for the term "custody" in the Matrimonial Causes Act (MCA) or the Children's Rights Act (CRA). According to the Black's Law Dictionary, custody is defined as "the care, control, and maintenance of a child awarded by a court to a responsible adult. Custody involves legal custody (decision-making authority) and physical custody (care-giving authority), and an order of custody usually grants both rights."<sup>3</sup>

Fundamentally, custody encompasses the rights parents have over their children. This includes the right to make key decisions affecting the child, such as those regarding education, religion, and medical treatment. The parent who has the right to exercise care and control over the child is known as the "custodial parent." The parent who does not have this right is known as the "non-custodial parent." Despite not having care and control rights, the non-custodial parent is usually granted access to the child. The custodial parent has the duty to ensure, protect, and promote the child's best interests. Notably, under relevant laws, the custodial parent is not obliged to seek the non-custodial parent's opinion on major decisions affecting the child.

1 (2013) JELR 35955 (CA).

2 Order XIV Rule 22(1) of the Matrimonial Causes Rules.

3 (8th Ed., 2004).

## TYPES OF CUSTODY

- **Physical Custody:** This refers to the parent with whom the child primarily resides and spends most of their time.
- **Legal Custody:** This entails the right to make decisions about the child's upbringing, such as education, health care, and religious instruction. A parent with legal custody has the authority to make significant decisions affecting the child's life.
- **Sole Custody:** Also known as full custody, this term refers to one parent having both physical and legal custody of the child. To obtain sole custody, a parent must demonstrate that the other parent is unfit and incapable.
- **Joint Custody:** This involves both parents sharing physical and legal custody of the child. Both parents participate in making decisions about the child's upbringing and share responsibilities for the child's care. In joint custody arrangements, parents must agree to a parenting plan that allows the child to spend time with each parent.

## POWER OF THE COURT TO ENTERTAIN CHILD CUSTODY DISPUTES

In Nigeria, the dissolution of marriage, custody matters, and child maintenance are fundamentally governed by the Matrimonial Causes Act and the Children's Rights Act of 2003. These laws mandate that the child's best interests must be considered when determining custody. Specifically, Part IV of the Matrimonial Causes Act (MCA) addresses maintenance, custody, and settlements. It explicitly grants jurisdiction to every High Court in each state and the Federal Capital Territory over child custody issues arising from matrimonial causes. Additionally, it empowers the Courts to issue various orders concerning the husband, wife, and children involved in the marriage.<sup>4</sup>

In *Nwosu v. Nwosu*, it was held that both parents have equal rights to custody until the court makes a decision. However, according to the Matrimonial Causes Act, the court may assign custody to either parent as deemed appropriate.<sup>5</sup>

## FACTORS THAT INFLUENCE THE GRANT OF CHILD CUSTODY

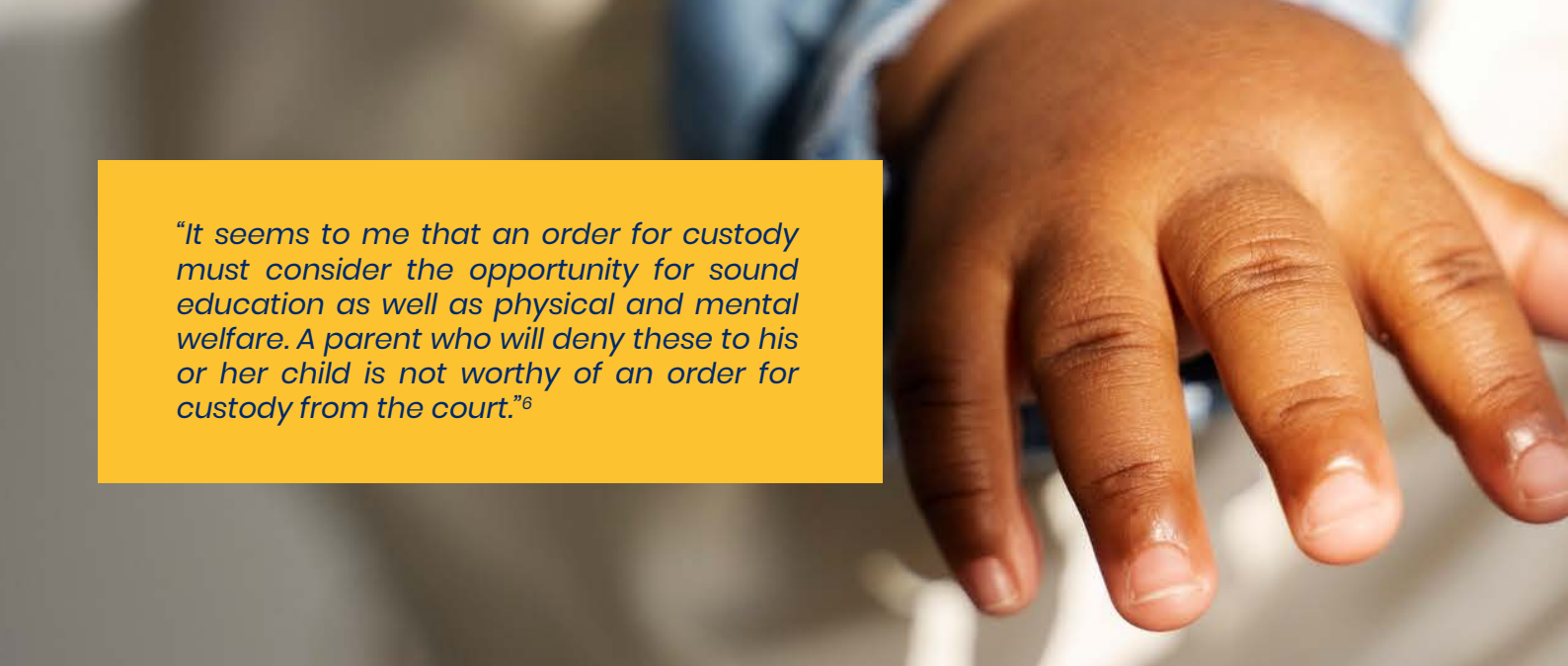
The primary consideration for granting custody is the **welfare and best interests of the child**. If either of the divorced parties can prove to the court that custody should not be granted in the child's best interests, the court will take this into account. The evidence presented will influence the court's decision in custody cases. The court has wide discretion in child custody matters and will make decisions as it deems fit.

Courts have also established criteria for determining what is in the child's best interests. In *Williams v. Williams*, paragraph, Obaseki JSC held that:

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<sup>4</sup> Sections 2(1) and 114(1) of the Matrimonial Causes Act 1970.

<sup>5</sup> Section 7(1).



*“It seems to me that an order for custody must consider the opportunity for sound education as well as physical and mental welfare. A parent who will deny these to his or her child is not worthy of an order for custody from the court.”<sup>6</sup>*

This means that the court will grant custody to a party who can demonstrate the ability to provide for the child’s physical and mental well-being and sound education. The party seeking custody must also show the other party’s inability to meet these needs.

The conduct of the party seeking custody is another significant factor. In *Williams v. Williams* (supra), the court held that while the welfare of the child is paramount, it is not the only consideration; the conduct of the parties is also relevant. To strengthen their claim, the party seeking custody must demonstrate an impeccable character and show misconduct on the part of the opposing party. Although proving the other party’s bad character may be sufficient, it is preferable if the claiming party can show a record of impeccable character.

The age of the child is also considered in custody decisions. It is established that a child's tender age does not automatically result in custody being awarded to the mother. In *Otti v. Otti*, the court held that:

*“In considering the child’s interest as paramount, there are several well-settled factors. For instance, there is no strict rule that a child of tender years should remain in the custody of the mother.”<sup>7</sup>*

The court may grant custody to the mother if it serves the child's best interests, but this is not mandated by specific legal rules. Decisions are based on the unique circumstances of each case. Concerning the sex of the child, while there is a common belief that the custody of a girl will be vested in the mother and that of a boy to the father, there is however no law enforcing this. Custody decisions are based on the circumstances of each case.


The court also considers the child's wishes when determining custody. Judges may inquire about the child's preferences, especially if the child is old enough to express them. However, courts approach this carefully to ensure the child's wishes are not unduly influenced by age or parental pressure.

Additionally, the court evaluates whether the party seeking custody has made adequate arrangements for the child's welfare, education, accommodation, and upbringing. While a spouse’s financial status alone does not guarantee custody, a party with superior financial resources and a better living environment may be favored. Ultimately, the party providing the best living conditions for the child might be given preference.

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<sup>6</sup> (1987) 2 NWLR (Part 54) 66, page 74.

<sup>7</sup> (1992) 7 NWLR (Pt. 252) 187, at 210.



The court also addresses custody issues for children born out of wedlock. In *Muojekwu v. Ejikeme*, the Court of Appeal provided guidance on custody for such children. It was held that custody of a child born out of wedlock generally rests with the mother unless another party claims custody as the natural father. The child's welfare is the primary consideration. If no evidence disqualifies any parties from custody, the court will award joint custody.<sup>8</sup> This principle was reaffirmed by Obaseki JSC in *Williams v. Williams* (Supra), page 77, paragraphs F-H. According to the facts of the case, granting joint custody with care and control to the appellant and responsibility for education to the respondent would be the most appropriate resolution. This arrangement will serve the interests of justice and ensure the child's welfare is adequately addressed.<sup>7</sup>

The court may grant visitation rights to the opposing party if custody is denied to that party.<sup>9</sup> The court may also place the child in the custody of a person other than a party to the marriage in situations where neither parent is capable of retaining custody of the child.<sup>10</sup>

## CONCLUSION

The principles and considerations guiding child custody awards in Nigeria are commendable, with the primary focus being the welfare and best interests of the child. Notably, the law excludes factors such as tribe and religion from custody decisions. In addition to awarding custody to the parents, the court can also place the child in the care of another party if it serves the child's best interests. This legal framework effectively protects the child's welfare.

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8 (2000) 5 NWLR (Pt. 657) 402, at page 426, paragraphs A-B.

9 Section 71(4) of the MCA.

10 Section 71 (3) of the MCA.

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