

REPUBLIC OF CAMEROON
IN THE NAME OF THE PEOPLE OF CAMEROON

IN THE HIGH COURT OF MEZAM DIVISION
HOLDEN AT BAMENDA

BEFORE HER LORDSHIP JUSTICE ANNE AFONG
WITH MAITRE TANJA ROMEO AS REGISTRAR IN ATTENDANCE

THIS WEDNESDAY THE 6TH DAY OF NOVEMBER 2013

“RULING”

Suit N° HCMB/350M/2013

BETWEEN

ADELINE MANGHA NDIPISIRI APPLICANT

Vs

GRACE MANKA NKAMAMYANG RESPONDENT

PARTIES:

APPLICANT- present

RESPONDENT - absent

APPEARANCES:

Applicant SAM A. DANIEL ESQ.

This is a motion on notice wherein applicant through counsel is seeking the grant of the following orders:

- 1) An order that the applicant as the mother of the minor child named Ethan Tening Nkamyang is entitled to custody of the child.
- 2) An order that the applicant who is resident in the USA and the mother of the said minor child Ethan Tening Nkamyang (a citizen of the USA) is entitled to take the child from Cameroon to the USA.

- 3) An order that the respondent, Grace Manka Nkamamyang ((grandmother of the minor child) should with immediate effect release the minor child named Ethan Tening Nkamyang to the applicant who is biological mother to the minor child.
- 4) An order that the court ruling should be executed notwithstanding an appeal.

And for such further other orders, as the court may deem fit and proper to make in the circumstances.

The application is predicated upon a 36-paragraph affidavit deposed and sworn to by the applicant. To the application is exhibited annexes A to B1. At the hearing Sama Daniel Esq. of Counsel for the applicant, adopted and relied upon the motion paper, the affidavit and the annexes thereto exhibited. The learned gentleman proceeded to reiterate the salient facts embodied in the affidavit in support of the motion. Expanding on the laws to buttress the prayer sought he stated thus:

That the application is grounded upon the provisions of the Children's Act 1975 in its section 35 subsections 3, wherein the primacy of parental custody is stated. He further referred this court to the provisions of Section 1(1) of the Guardianship of Minor's Act 1973. He concluded by fervently reiterating the urgency of the prayer sought.

The court sought clarity by requesting viva voce evidence from the applicant; the latter in response to the court's question stated that there was no pending order from the state of Virginia where she was resident and domiciled in relation to the child in issue. The issues for determination by this court are:

- a.) The applicable law in relation to the subject in issue
- b.) The hearing of this applicant ex parte
- c.) The domicile of the applicant and the child sought to be adopted

Each aspect herein treated seriatim:

A. THE APPLICABLE LAW IN RELATION TO THE SUBJECT IN ISSUE

The applicable law in relation to the issues herein raised by the applicant is governed by Section 15 of the Southern Cameroon High Court Laws 1945, and Law No. 2006/015 of 19th December 2006 on Judicial Organisation as amended.

B. THE PROCEDURAL LAW THUS:

Family Procedure Rules 2010 of England and Wales:

PRACTICE DIRECTION 12;

PRACTICE DIRECTION RELATING TO FAMILY PROCEEDINGS IN FORCE BEFORE 6TH APRIL 2011 WHICH BEFORE THE FAMILY PROCEDURE RULES 2010;

THE SUBSTANTIVE LAWS

- 1) Matrimonial Causes Act 1973
- 2) The Matrimonial and Family Proceedings Act 1984
- 3) The Family Law Act 1986
- 4) The Children Act 1989
- 5) The 1996 ACT means the Family Law Act 1996

TREATIES

The United Nations Convention on the Rights of the Child which was duly ratified by Cameroon.

The Guardianship of Minor's Act 1973

C. THE HEARING OF THIS APPLICANT EX - PARTE

By dint of the provisions of the Laws afore-cited, the hearing of this application ex-parte is not governed by the provisions of the Supreme Court Civil Procedure Rules CAP 211 1948 in Rule 34 Orders 1-11. It is rather Rule 1.2 of Practice Direction – Practice Directions relating to family proceedings in force before 2011 which supports the Family Procedure Rules 2010. Rule 1.4 of the Practice Direction afore cited vests this court with the powers and duty to manage cases thus: identifying at an early stage the issues; who should be a party to the proceedings; deciding promptly which issues need full investigations and hearing and which do not; and the procedure to be followed in the case.

In the present case the only other party who is legally entitled to the custody of this child is the father. Article 18 of the UN Convention on the Rights of the Child reiterate this fact. Thus, the grandmother does not need to be put on notice in the absence of any court orders in relation to the custody or guardianship of the child. The respondent is not a proper party to contest any orders herein sought. It is stated that the father of the child (the husband of the applicant) is in America. In appreciation of the need for an expedient decision which is predicted on safeguarding the welfare of the child, not forgetting the latter's precarious immigration status in Cameroon, it is apposite to proceed without hearing the father of the child.

THE DOMICILE OF THE APPLICANT AND THE CHILD HEREIN

It is stated and buttressed by the annexes exhibited in the application herein that the applicant and the child are resident in the USA, that the child is an American citizen, thus in consonance with the laws of decent, the custody of the child in issue is governed by the laws of the state of Virginia and the applicable laws in Cameroon. The court takes judicial notice of the fact that the laws of the decent of the child in issue does not permit the child

to be removed from the state by one spouse where the latter are estranged, without either the consent of the other spouse nor a court order.

In consideration of the laws afore-cited, in further consideration of the welfare of the minor child, in application of Article 3, 59 and 18 of the UN Convention on the Rights of the Child, this court makes the following orders:

ORDERS

- 1) The applicant who is the mother of the minor child named Ethan Tening Nkamyang is entitled to her custody;
- 2) The applicant who is resident in the USA and as the mother of the said minor child, Ethan Tening Nkamyang, (a citizen of the USA) is entitled to take the child from Cameroon to USA;
- 3) The respondent, Grace Manka Nkamamyang (grandmother of the minor child) should release the minor child with immediate effect to the applicant who is the biological mother of the minor child;
- 4) That the learned counsel of the state should cause the social worker of the legal department to be present during the execution of this ruling;
- 5) In appreciation of the fact that the child in issue is an American citizen, this ruling shall be executed forthwith irrespective of any challenge;
- 6) That the Registrar in Chief of this court shall serve this ruling on the state counsel Mezam, with immediate effect.

Delivered this 6th day of November 2013.

REGISTRAR-IN-ATTENDANCE

PRESIDENT