

**IN THE CUSTOMARY COURT OF APPEAL
IN THE FEDERAL CAPITAL TERRITORY
HOLDEN AT UTAKO, ABUJA.**

CORAM:

1. HON.JUSTICE ISTIFANUS GANDU ----- PRESIDING JUDGE
2. HON. JUSTICE YUNUSA IDRIS KUTIGI ----- JUDGE
3. HON. JUSTICE UNWANA SAM UBOM ----- JUDGE
4. HON. JUSTICE MOHAMMED BOYI MARAFA ----- JUDGE

**DATED THIS 25th FEBRUARY, 2026
APPEAL NO.FCT/CCA/CVA/20/2025**

SUIT NO. FCT/CCID/CV/24/2019

BETWEEN:

MR. AGBO PHILIP ONYEMAECHI----- APPELLANT

AND

MRS. AGBO EMILA ECHAN-----RESPONDENT

JUDGMENT

DELIVERED BY HON. JUSTICE MOHAMMED BOYI MARAFA

This is an appeal against the Judgment of the FCT – customary court, sitting at Idu, Abuja delivered on 2nd day of July, 2025. The Petitioner/Respondent instituted an action at the lower court seeking the following reliefs;

- a) An Order for the Dissolution of the subsisting customary marriage between both party.
- b) An Order granting Custody of all the children to the Petitioner.

- c) An Order directing the Respondent to handover, with immediate effect, the child which he holds illegal custody of, to the petitioner.
- d) An Order directing the Respondent to pay the sum of #200,000.00 monthly upkeep for the children.
- e) An Order directing the Respondent to be responsible for the school and medical fees of the children.
- f) An Order mandating the Respondent to pay Two million Naira damages to the petitioner for the beatings/harassment he use to give to the Petitioner and for wasting her time and damaging her future since she graduated from school.
- g) Any Other Orders that this Honourable court may deem fit to make in the circumstances.

In response, Respondent (who is now the Appellant at the Appeal court) filed a Answer to Petition/Counter Petition on the 22th January, 2025 and dated the same date. prayed for the following reliefs:

- (i) An Order of this Honourable court directing the Petitioner/ Respondent to return the bride price paid by the family of the Respondent/Counter Claimant to the family of the Petitioner/ Respondent for the purpose of the customary marriage.
- (ii) An order of this Honourable Court dissolving the subsisting marriage between the Respondent/Counter Claimant and the Petitioner/ Respondent.
- (iii) An order of this Honourable Court granting full custody over Philip Dominic Chukwunonso to the Respondent/Counter Claimant.
- (iv) An order of this Honourable Court granting full custody of Philip Rita Chinecherem to the Petitioner/ Respondent.
- (v) An order of this Honourable Court directing the Respondent/Counter Claimant to be solely responsible for the upkeep, feeding and shelter of

Philip Dominic Chukwunonso.

- (vi) An order of this Honourable Court directing the Petitioner/Counter Respondent to be solely responsible for the upkeep, feeding and shelter of Philip Rita Chinecherem.
- (vii) An order of this Honourable Court directing the Respondent/Counter Claimant to be responsible for the clothing, medical bills and school fees of the two children of the marriage (i.e Philip Dominic Chukwunonso and Philip Rita Chinecherem), provided that the school fees of the children of the marriage shall be mutually agreed by the Respondent/Counter Claimant and the Petitioner/ Respondent.
- (viii) An order of this Honourable Court directing that the Petitioner/Counter Respondent shall be allowed access to Philip Dominic Chukwunonso on any day of the Petitioner/Counter Respondent's choice, provided the Petitioner/Counter Respondent shall give the Respondent/Counter Petitioner reasonable notice of the Petitioner/Counter Respondent's intention to visit and provided that same shall be within reasonable hours of the day and in a public place
- (ix) An order of this Honourable Court directing that the Respondent/Counter Claimant shall be allowed access to Philip Rita Chinecherem on any day of the Respondent/Counter Claimant's choice, provided the Respondent/Counter Claimant shall give the Petitioner/ Respondent reasonable notice of the Respondent/Counter Claimant's intention to visit and provided that same shall be within reasonable hours of the day and in a public place.
- (x) And for such further order(s) that this Honourable Court may deem fit in the circumstance.

The lower court upon hearing both parties delivered Judgment on 2nd day of July, 2025. Thus held as follows:

1. Therefore the customary marriage between Mrs. Emilia Agbo and Mr. Philip Agbo is hereby dissolved. (page 172 of the lower Court judgment)
2. Thus this court grants full custody of Chukwunonso Philip Agbo and Rita Philip Agbo to the Petitioner/Cross Respondent in this matter. This takes effect immediately. The Respondent/Cross Petitioner, Mr. Philip Agbo is hereby given visitation rights to the two children by having them at his house at the weekend from Friday 6pm to Sunday 4pm when he will take the children back to their mother. He can have them during the school holidays. The father cannot travel out of Abuja with the children without express consent of the mother who has full custody of them. The mother on her part cannot leave Abuja to live elsewhere without providing their father with an address and phone number where he can reach his children. (page 172 - 173 of the lower Court judgment)
3. The Respondent/Cross Petitioner will pay the school fees of both children when due.
4. The Respondent/Cross Petitioner will pay the medical bills of both children when due.
5. The Respondent/Cross Petitioner will buy clothes, shoes, sweaters etc for the children whenever the need arises and all other school supplies needed.
6. The first child of the marriage Chukwunonso will remain in his present school until the end of the term when both parents will agree on whether he should remain there or be put in a school nearer to his domicile which will be easier for his mother to drop him off everyday.
7. The Respondent/Cross Petitioner will give the Petitioner transport fare to take the child Chukwunonso to and from school.
8. The Respondent/Cross Petitioner will pay the sum of Twenty-five Thousand Naira (25,000.00) monthly for the upkeep and maintenance of both children through the Court Registrar for onward transmission to the petitioner/Cross

Respondent and payment starts from 31st June, 2025. See pages 173 – 174 of the lower Court Judgment.

9. The Petitioner has given birth to two children as a result of this Customary marriage. Therefore, the relief sought of refunding the bride price paid is hereby denied. No dowry will be refunded to the Respondent/Counter Claimant. See page 175 of the lower Court judgment.
10. Order 9 Rule (7) of the FCT Customary Court (Civil Procedure) Rules as Amended in 2023 provides that **”Subject to particular Rules, the Court may in all actions make any order which the circumstances of the action justify and which it considers necessary for doing justice, whether such order has been expressly asked for by the person entitled to the benefit of the order or not”**

Based on the above provision of the law the Court Orders that the Respondent/Counter Claimant pays the sum of Two Hundred Thousand Naira only (200,000.00) to the Petitioner/Cross Respondent as compensation for monies spent to take care of Rita Philip their second child who the father abandoned with the mother. On or before 25th of June, 2026. (in page 175 – 176 of the lower Court judgment).

The Respondent/Applicant now the Appellant being dissatisfied with the Judgment of the lower court filed his Notice of Appeal on 28th day of July, 2025. The grounds of notice of appeal, particulars of errors and the relief sought read thus;

GROUND ONE.

The trial Court misdirected itself and erred in law and fact when the trial Court held that it was established that the Appellant lives in a 1 (one) room apartment and the Respondent lives in a 2 (two) bedroom apartment.

PARTICULARS

- a. **The Respondent in paragraph 5 of her petition before the trial Court stated that after leaving the house of the Appellant, the Respondent**

moved into the apartment of her brother in Gyadna village, Abuja Municipal Area Council.

- b. On 14th November 2024 when the Respondent testified in Chief, the Respondent again stated that the Respondent still lives in Gyadna village known as Akaraka, a village after Idu.
- c. That the Respondent never for once, in her petition or examination-in-chief, give evidence as to the nature of the said house or the size of it or the conducive nature of the apartment the Respondent lives in.
- d. That the first time the nature of a house which the Respondent lives in was stated throughout the trial was during cross-examination of the Appellant where counsel to the Respondent asked the Appellant if he was aware that the Respondent lives in a 2 (two) bedroom apartment and the Appellant answered "NO."
- e. That the Respondent did not present a rebuttal evidence to that response, neither did the Respondent make any further attempt to lead evidence as to the size, or nature of the house the Respondent lives in.
- f. That the trial Court ought not to have relied solely on the question asked by counsel to the Respondent as evidence to come to the conclusion that it had been established that the Respondent lives in a 2 (two) bedroom apartment, while the Appellant lives in a 1 (one) room apartment.
- g. That the law is trite that evidence of counsel is not good evidence to any court, and inclusive of the trial Court, should rely upon for the proof or establishment of facts before it.

GROUND TWO

The learned trial judge erred in law and in fact when, in deciding the question of custody of Philip Dominic Chukwunonso (the first child of the marriage), the learned trial judge failed to consider the existing custody arrangement, the emotional wellbeing and the paramount interest of the child, but rather relied solely on a rebuttable presumption of 'tender age', and despite evidence

showing the Appellant had active custody of the child and that the child was being properly taken care of by the Appellant.

PARTICULARS

- a. The Appellant tendered in evidence Exhibits C1 – C4 (Original School fees receipt), Exhibits E1 – E11 (photocopies of school fees receipt), Exhibits F1 AND F2 (School certificates), Exhibit G (IQ Test Certificate) and Exhibits H1, H2, H3 and H4 (Pictures of Philip Chukwunonso Dominic) to prove the parental role of the Appellant in the life of the first child of the marriage, since the time the child had been in the custody of the Appellant.
- b. The purpose of the above exhibits was to prove the nature of school Philip Chukwunonso Dominic attends, the academic performance of Philip Chukwunonso Dominic and the quality of outdoor exposure and recreational time Philip Chukwunonso Dominic enjoys in the parental custody of the Appellant, proving existence of a bonding relationship between the Appellant and the child.
- c. It was even from the totality of the above that the trial Court reached the conclusion that Philip Chukwunonso Dominic was being properly taken care of by the Appellant and that there was a good and affectionate relationship between the Appellant and Philip Chukwunonso Dominic.
- d. Further, it was in the evidence of the Appellant and Respondent that Philip Chukwunonso Dominic had lived with the Appellant since age one to present age, therefore being in the active care, custody, protection and affection of the Appellant since age one.
- e. The Respondent did not present any evidence to prove that within the period Philip Chukwunonso Dominic lived with the Appellant that Philip Chukwunonso Dominic was not well-taken care of or subjected to unfair treatment.
- f. The trial Court, without evaluating evidence before it properly, failed to consider the psychological effect of pulling a child out of the custody of the

Appellant (his father), with whom the child had lived for over 7 (seven) years, totalling almost the entire life time of the child.

- g. The failure of the trial court to consider the above but to solely rely on the rebuttal presumption of tender age, amounts to a decision reached not in the best interest of the first child of the marriage but a decision to massage the motherly ego of the Respondent.
- h. The trial Court even held that after the current school term, the school of Philip Chukwunonso Dominic should be changed from Holy Rosary International Nursery/Primary School, Wuse Zone 2 to a school close to the Respondent. The said decision of the trial Court was inconsiderate to the psychological, emotional and academic effect the said removal may cause to Philip Chukwunonso Dominic, as a child.
- i. Further, when ordering immediate custody and that the Appellant should pay transport fare for the transportation of Philip Chukwunonso Dominic till the end of the term, the trial Court failed to avert its mind to the risk, physical and emotional stress it would cause the child to move and transport from Gyadna village near Idu to Wuse Zone 2 daily, until the conclusion of the term.
- j. On a whole, the trial Court did not consider the best interest of the child in awarding immediate custody to the Respondent.

GROUND THREE

The learned trial Judge erred in law and in fact, when the trial Court found solely on the Petition of the Respondent that was filed in the year 2024, that the child of the marriage, at the time of giving the judgment in 2025, is seven years old, and therefore of “tender age”.

PARTICULARS

- a. In paragraph 4 of the Respondent’s petition filed on 26th September, 2024, the Respondent stated that Philip Chukwunonso Dominic was “7 years

plus” at the time.

- b. In the Appellant’s Answer to Petition and Counter Petition filed on 22nd January 2025, the Appellant stated that Philip Chukwunonso Dominic is eight years old.
- c. That in the absence of a birth certificate tendered by either the Appellant or the Respondent to know the exact month of birth of Philip Chukwunonso Dominic, it is only normal for the trial Court to presume that if in 2024, the time of filing the Respondent’s Petition, Philip Chukwunonso Dominic was seven years plus, then in 2025, the time of filing the Appellant’s Counter Petition, Philip Chukwunonso Dominic normally ought to be 8 years old.
- d. That the above would not have amounted to speculation but an obvious resolution of the disparity in the ages stated in the Petition of the Respondent and the Answer to Petition and Counter Petition of the Appellant, as if in 2024 the child of the marriage was 7 years plus, then in 2025 he should be eight years old, as mentioned in the Answer to Petition and Counter Claim of the Appellant.
- e. If the trial Court had averted its mind to the above fact, then the trial Court in deciding on the question of ‘tender age’, would have followed strictly the judicial precedence laid by the Court of Appeal in the case of **OTTI V. OTTI (1992) 7 NWLR (PT. 252) 187 (P.210, PARAS. A-C)**, Where the Court of appeal held that **“It is right to regard as a general principle that a boy of eight years is, on the whole, ceteris paribus better off with his father.”**

GROUND FOUR

The trial Court erred in law and misdirected itself when the trial Court refused to order the refund of the bride price paid by the Respondent, on the ground that the marriage had produced children and that such a refund would be repugnant to natural justice, equity and good conscience, and further held that the Appellant was disentitled to such relief because the Appellant filed a counter-petition, despite the fact that the dissolution of the marriage was initiated by the Respondent and the return of bride price is a recognized element of customary

divorce.

PARTICULARS

- a. It is a notorious fact that bride price in Nigeria under African native law and custom is a symbol of marriage, and the return of same is a symbol of dissolution of the marriage. This was the position stated in the cases of **THORPE v. AKINWUNMI (1973) NNLR 52**, **ZUBAIRU v. MOHAMMED (1993) 3 NWLR (PT. 283) 566 (CA)** and the case of **BAMGBOSE v. DANIEL (1954) 14 WACA 116**.
- b. In fact, in **EZIAKU v. OKONKWO (2012) 4 NWLR (PT. 1291) 529 PP. 557, paras D-E**, the Supreme Court held that a customary marriage is not dissolved until the bride price is refunded.
- c. Both the Respondent and the Appellant admitted that the sum of #150,000.00 (One Hundred and Fifty Thousand Naira) was paid by the Appellant to the family of the Respondent as bride price for the marriage between the Respondent and the Appellant.
- d. The Appellant, in his Answer to Petition and Counter Claim and even in his oral evidence, asserted and the Respondent did not deny that the said #150,000.00 (One Hundred and Fifty Thousand Naira) paid as bride price by the Appellant had not been refunded to him as a symbol of dissolution of the marriage.
- e. The Respondent did not lead traditional evidence to justify whether under Beecheve native law and custom or under Igbo native law and custom, the Respondent ought not to return bride price to the Appellant where a dissolution is after child bearing or under any other circumstance. It was rather the trial Court that suo motu made such far-reaching presumption.
- f. It is the law that a custom will be said to be repugnant to natural justice, equity and good conscience when it is offensive to equity and natural justice and when it is contrary to public policy. Collection and return of bride price is a renowned customary practice that does not offend any

public policy, and has been repeatedly endorsed by our Courts as good customary practice.

- g. Also, on the second leg of the refusal of the trial Court, the trial Court failed to evaluate the facts before it properly, as the suit of the Appellant was only in furtherance of the suit of the Respondent.
- h. There is no law that a man who seeks dissolution of marriage cannot claim for return of bride price, especially when the dissolution is in a counter-claim and not an initiating petition.
- i. The trial Court did not confine itself to evidence of the Parties but fished for principles of law that were not proven to be existent in the native laws and customs of the Appellant and the Respondent or even in the English laws applicable in Nigeria.

GROUND FIVE

The trial Court erred in law when the trial Court awarded the sum of #200,000.00 as compensation to the Respondent for alleged care of Philip Rita Chinecherem (the second child of the marriage) in the custody of the Respondent, despite the fact that such relief was neither claimed in the Petition of the Respondent nor supported by credible and uncontroverted evidence, thereby occasioning a miscarriage of justice.

PARTICULARS

- a. The Respondent in her Petition did not claim or pray the trial Court for compensation.
- b. The trial Court suo motu proceeded to make an order for compensation and damages, a relief not sought by the Respondent.
- c. Be that as it may, the Appellant tendered **Exhibit A (Original receipt of medical bill)**, **Exhibit B (Photocopy of receipt of medical bill)** and **Exhibits D1, D2 and D3 (Receipts for clothes)** to prove that the Appellant had been paying for the medical bills and purchasing clothes for Philip Rita

Chinecherem. The Appellant also tendered **Exhibit I (Text messages)** to prove that the Appellant made efforts to enrol Rita Philip in school, but the Respondent refused on grounds of her dreams. This fact was restated by the trial Court in its judgment.

- d. In **Exhibit J (Photocopies of Tellers)**, the Appellant established that the Appellant had on many occasions sent money to the Respondent for Rita Philip, during times of emergency. The trial Court took note of the said fact.
- e. In fact, the Appellant during his oral testimony and in his Answer to Petition and Counter Petition, clearly admitted that the Appellant was ready to pay school fees, medical bills and clothing for the child of the marriage going forward and prayed the court to order so.
- f. **It was a misdirection for the trial Court to, after noting the above, proceed** to make an order of compensation and damages on grounds of neglect, a relief that was never established, claimed or prayed for in the Petition of the Respondent.

RELIEFS SOUGHT BY THE APPELLANT:

- i. **An Order** allowing the appeal.
- ii. **An Order** setting aside the decision of the Customary Court sitting in Idu, Federal Capital Territory, Abuja delivered on the 2nd day of July, 2025 granting the claims of the Respondent and refusing the claims of the Appellant.
- iii. **An Order** entering judgment in favour of the Appellant and granting custody over Philip Dominic Chukwunonso to the Appellant and setting aside all consequential orders relating to custody.
- iv. **An Order** entering judgment in favour of the Appellants in terms of the Appellant's prayers (i) – (x) as contained in the Appellant's Answer to Petition and Counter Petition dated 22nd January, 2025.
- v. **SUCH FURTHER ORDERS** as this Honourable Court may deem fit and just to

make in the circumstance of this Appeal.

On 4th December, 2025, the Appellant, through his counsel – Daniel Abah Iduh, Esq, adopted his brief of argument dated the 15th day of August, 2025 and filed on the 15th day of August, 2025 and adopted his Appellant's Reply Brief of Argument dated 17th September, 2025 and filed same date. The Respondent through his counsel – S. I. Oripelaye Esq also on the 4th December, 2025, adopted his brief of argument dated 8th day of September, 2025 and filed on same day.

The Appellant raised four (4) issues for determination to wit:

- 1. Whether the trial Court erred in law and misdirected itself when the trial Court ordered the Respondent not to return the bride price paid by the Appellant to the family of the Respondent in consideration of marriage? Distilled from Ground 4 of the Notice of Appeal.**
- 2. Whether based on proper evaluation of documents before the trial Court and those in the file of the trial Court, the first child of the marriage (Philip Dominic Chukwunonso) is eight years old? Distilled from Ground 3 of the Notice of Appeal.**
- 3. Whether the trial Court erred in law and misdirected itself when the trial Court granted custody over the first child of the marriage (Philip Dominic Chukwunonso) to the Respondent solely on the basis of tender age without consideration to the other necessary factors to be considered in the grant of custody or the evidence before the trial Court? Distilled from Ground 1 and 2 of the Notice of Appeal.**
- 4. Whether the trial Court erred in law and misdirected itself when the trial Court ordered the Appellant to pay the total sum of #200,000.00 to the Respondent as compensation for years of abandonment of the second child of the marriage (Rita) without proper evaluation of evidence and without same being sought by the Respondent in her prayers? Distilled from Ground 5 of the Notice of Appeal.**

On Issue one, the learned counsel to the Appellant argued that the position has

always been sacrosanct that bride price is an integral part of customary marriage in Nigeria and the return of same is paramount for the valid dissolution of customary marriage. Counsel to the Appellant referred this Honourable Court to the case of **EZE V. OMEKE (1977) 1 ANSLR 136.**

Counsel to the Appellant further submitted that relying on the above decision and aligning himself with the intellectual strength of E.I. Nwogugu in his book, Family Law in Nigeria. Counsel to the Appellant Referred this Honourable Court to the case of **EZEAKU V. OKONKWO (2012) 4 NWLR (PT. 1291) 529 (P. 557, paras. D-E) CA.**

Counsel to the Appellant also submitted that the law is trite that except where evidence is manifestly incredible, court of law are bound by evidence which are unchallenged. Counsel to the Appellant relied on the case of **FED. COLLEGE OF EDU. TECHNICAL, POTISKUM V. JOSEPH (2020) 9 NWLR (PT. 1729) 381 (P. 407, para. D) CA.**

Counsel to the Appellant further argued that there is no position of the law, to our knowledge, which is to the effect that a party who seeks dissolution of a marriage cannot claim for bride price. Appellant's counsel relied on the case of **MEKWUNYE V. CARNATION REGISTRARS LTD. (2021) 15 NWLR (PT. 1798) 1 (P. 44, para. A) CA.**

Counsel to the Appellant further Submitted and argued that as bride price is a symbol of marriage, so is it also a pivotal symbol of dissolution of marriage. This is a well- established position of the law in Nigeria. Calling the return of bride price on grounds of delivery of children Repugnant to Natural Justice, Good Conscience and Equity is pushing the repugnancy test too far. Appellant's Counsel Referred this Honourable Court to the case of **OKONKWO V. OKAGBUE (1994) 9 NWLR (PT. 368) 301 (P. 323, Para. A) SC.** And **ONWUCHEKWA V. ONWUCHEKWA (1991) 5 NWLR (PT. 194) 739 (Pp. 752-753, paras.) CA.** Counsel to the Appellant urge this Court to so hold.

On Issue Two, Counsel to the Appellant submitted that the primary duty of a trial Court is to evaluate all documents and evidence placed before it so as to arrive at a just and fair determination of the issues before it. Counsel to the Appellant

referred this Honorable Court to the case of **OTITO V. ODIDI (2011) 7 NWLR (PT. 1245) 108 (P. 126, Paras. B-C) CA.**

Counsel to the Appellant further submitted that in resolving an issue before the trial Court, the trial Court's jurisdiction is not only limited to evidence tendered before it. The Court has the power to look at all documents in its file, including originating processes, to ensure a just and fair determination of an issue. Appellant's Counsel Relied on the case of **AMOBI V. OGIDI UNION NIGERIA (2023) 1 NWLR (PT. 1864) 153 (P. 173, para. B) SC.** And **AKINOLA V. V.C. UNILORIN (2004) 11 NWLR (PT. 885) 616 (P. 650, paras. B-C) CA.**

Counsel to the Appellant further submitted that Court of law are allowed to make inferences where the circumstance permits. Appellant's counsel relied on the case of **ADEDAYO V. P.D.P (2013) 17 NWLR (PT. 1382) 1 (P. 57, paras. G-H) SC** And **DHL INTL NIG. V. EZEZOAMAKA (2020) 16 NWLR (PT. 1751) 445 (P. 493, Paras. A-B) CA.** Counsel to the Appellant also submitted that the entire argument herein is to ensure that the trial Court aligns itself with the judicial precedence laid down by the Appellate Court. Appellant's counsel relied on the case of **OTTI V. OTTI (1992) 7 NWLR (PT. 252) 187 (P. 210, Paras. A-C) CA** and **R.E.A.N LTD. V. ASWANI TEXTILES IND (1991) 2 NWLR (PT. 176) 639 (AT PAGE 672, PARAS. E-G) CA.** Counsel to the Appellant urge this Court to so hold.

On Issue Three, Counsel to the Appellant submitted that in granting custody, what the Court usually considers is the best interest of the children of the marriage. Counsel to the Appellant relied on the case of **PETER V. PETER (2024) LPELR-62100 (Pp. 25-26, paras. F-E) CA.** and **SAMUEL V. SAMUEL (2019) LPELR-48471 (Pp. 41 – 45 Paras F – A) CA.** and **OKWUEZE V. OKWUEZE (1989) 3 NWLR (PT. 109) 321 (P. 335, PARA. A-B).**

Counsel to the Appellant further submitted that the law is trite that Courts of law do not make decisions based on speculation but on facts and that Counsel cannot give evidence. Counsel to the Appellant relied on the case of **ASHIRU V. I.N.E.C. (2020) 16 NWLR (PT. 1751) 416.** And **OKOYA V. SANTILLI (1991) 7 NWLR (PT. 206) 753 (PP. 768, PARAS. A-B)**

Counsel to the Appellant submitted that in deciding the question of custody of a child, it does not matter who among the Appellant or Respondent is guilty of matrimonial offences or who was wrong to the other. It does not matter who left and who chased who. It does not matter who has a mistress and who does not have a lover, or who is married or yet unmarried; what matters most is the interest of the child, Counsel to the Appellant relied on the case of **ALABI V. ALABI (2007) 9 NWLR (PT. 1039) 297 (PP. 346 – 347, Paras. G-C)**, Learned counsel to the Appellant also submitted that it would be unfair of us as counsel and Ministers in the Temple of Justice if we wrap up our arguments on this issue without drawing the attention of this Honourable Court to the case of **ADEPARUSI V. ADEPARUSI (2014) LPELR-41111 (Pp. 32-35, paras D-D) CA.**

Learned Counsel to the Appellant urged this Honourable Court to awarded custody over Philip Dominic Chukwunonso to the Appellant and custody over Philip Rita Chinecherem to the Respondent.

On Issue Four, Counsel to the Appellant submitted that Court of law are not father Christmas and should not grant to litigants reliefs that were never sought for. Counsel relied on the case of **NIDOLCO LTD. V. GBAJABIAMILA (2013) 14 NWLR (PT. 1374) 350 (Pp. 396-397, paras. H-A, 397, paras. D-E) SC.** And **UWAECHINA V. OKEKE (2015) 14 NWLR (PT. 1478) 108 (PT. 1166) 81 (P. 116, paras. B-C) CA.**

Learned Counsel to the Appellant further submitted that in the justification stated by the trial Court, **Order 9 Rule (7) of the Federal Capital Territory Customary Court Civil Procedure Rules as amended in 2023** gives the trial Court the discretionary powers to grant reliefs not sought for by the Respondent. And that discretion of the trial Court must be exercised judiciously and judicially. Counsel to the Appellant relied on the case of **DANIEL V. F.R.N. (2021) 6 NWLR (PT. 1771) 20 CA.**

Learned counsel to the Appellant also submitted that in the exercise of judicial discretion, a trial Court is not to act arbitrarily but in accordance with laid down rules and principles. Counsel to the Appellant referred this Honourable Court to the case of **OBEMBE V. EKELE (2001) 10 NWLR (PT. 722) 677 (P. 692, paras. A-B) CA** and **F.B.N PLC V. AGBARA (2020) 15 NWLR (PT. 1748) 537 (P. 555, paras. F-H)**

SC. Counsel to the Appellant urged this Court to so hold.

In the light of the grounds of appeal filed by the Appellant, the Respondent raise four (4) issues out of the four (4) issues frame by the Appellant for determination of the appeal to wit:

- 1. Whether the Honourable Trial Court was not right to have refused to order the Respondent to return the bride price paid to the family of Respondent by the Appellant who was a Counter/Petitioner at the Honourable trial Court? See ground 4 of the Notice of Appeal.**
- 2. Whether in the circumstances of this case the Honourable trial Court was right to have granted the custody of Mr. Nonso and Miss. Rita to the Respondent? See ground 2 of the Notice of Appeal.**
- 3. Whether based on proper evaluation of documents before the trial Court and those in the file of the Honourable Trial Court, the first child of the marriage (Mr. Nonso) is eight years old? See ground 3 of the Notice of Appeal.**
- 4. Whether the Honourable Trial Court can order the Appellant to pay the total sum of two hundred thousand Naira Only (#200,000.00) to the Respondent as compensation for the year of abandonment of the second child (Miss. Rita)? See ground 5 of the Notice of Appeal.**

Responding to issue one, learned counsel to the Respondent submitted that the attention of this honourable Court should be drawn to the fact that the Appellant did not formulate any issue out of ground one of the Notice of Appeal and did not argue the said ground. In the circumstance, the Appellant has clearly abandoned ground one of his ground of appeal and we pray this honourable Court to so hold. Counsel to the Respondent referred this Honourable Court to the case of **OLUBUKUNOLA INV. LTD. V. U.B.N. PLC (2022) 11 NWLR (PT. 1840) 133 AT Pp. 149-150, paras. H-C. and ADELEKAN V. ECU-LINE NV (2006) 12 NWLR (PT. 993) 33, IYAJI V. EYIGEBE (1987) 3 NWLR (PT. 61) 523 and OBASI V. ONWUKA (1987) 3 NWLR (PT. 61) 364.**

Counsel to the Respondent further Submitted that the Trial Court acted according to the law when the lower Court refused to order the return of the bride price paid by the Appellant to the family of the Respondent. Customary law is one of the sources. Any party who want to rely on customary court to prove the existence and non existence of fact or law, such party must first be ascertained the existence of the said customary law, that is proven by virtue of **section 18(1) & (2) of the Evidence Act** and then it is further subjected to the validity test, that is it must not be repugnant to natural justice, equity and good conscience and it must not be contrary to public policy. This was encoded in **section 18 (3) of the Evidence Act**. The judiciary is responsible for statutory interpretation a power conferred upon them by the constitution of the Federal Republic of Nigeria, 1999 as amended.

Counsel to the Respondent further submitted that the Trial Court in refusing the refund of bride price did not raise the issue *Suo Motu* but court exercise its discretionary power in granting further order as prayed by the Respondent under the Omnibus prayer where it clearly and specifically asked the Trial Court to grant any other the honourable Court may deem fit in the circumstance of the case. Counsel to the Respondent referred this Honourable Court to the case of **AKEREDOLU V. ABRAHAM (2018) 10 NWLR (PT. 1628) 510 SC**.

Counsel to the Respondent also submitted that most times, dissolution of customary law marriage is effected or accompanied by the refund of bride price or dowry paid respect of that marriage. The Appellant and Respondent testified that One Hundred and Fifty Thousand Naira was paid as dowry. Even though, no custom deprives a husband from collecting his bride price, the Courts are sometimes reluctant to order the full refund of dowry especially where; the marriage has lasted for years, the age of the woman, if there are children in the marriage and Considering the service rendered by the wife during the marriage. Counsel referred this Honourable Court to the case of **OKALVAV V. OMAMA (1060) WNLR 149**. In the instance case, the Trial Court considered its record and refused the refund of bride price. Counsel to the Respondent finally submitted that in the light of the above, the honourable Court to resolved issue one in favour of the Respondent and uphold the decision of the Trial Court.

Responding to issue two, Counsel to the Respondent submitted that the Trial Court was right to have granted the custody of Mr. Chukwunonso and Miss. Rita to the Respondent with Appellant's access to the children. In custody proceedings, both parents have equal rights over the child, and such rights and authority shall be exercisable by either party. The first consideration of the court is the interest of the child. **SECTION 1 OF CHILD RIGHT ACT, 2003.** And **SECTION 18 SUBSECTION 2 OF FEDERAL CAPITAL TERRITORY CUSTOMARY COURT ACT, 2007.** 'In any matter relating to the guardianship of a child, the interest and welfare of the child shall be the first and paramount consideration.' The Counsel to the Respondent referred this Honourable Court to the case of **FEBISOLA OKWUEZE V. PAUL OKWUEZE (1989) 3 NWLR PART 109 PAGE 321**, necessity to take evidence in determining who is to have custody in a dissolution proceeding of a customary law marriage.

Counsel to the Respondent further submitted that the law is that when a child is of tender age, it is presumed that the child will be happier with the mother. Counsel relied on the case of **OKWEZE V. OKWEZE (1989) LPELR 2539, (SC).**

Counsel to the Respondent submitted that under customary law, it is the responsibility of the father to cater for the needs, well-being and welfare of his children including sound moral, education, health care, accommodation, feeding, clothing and daily needs. Father has exclusive right which extends and has been capable of transmission to family members and an order of the custody be made without putting into consideration the welfare of the children of the marriage. Counsel to the Respondent relied on the case of **ODOGWU V. ODOGWU (1992) 2SCNJ PT 11 at 357.** Counsel finally submitted that the court to resolve issue two in favour of the Respondent and against the Appellant.

Responding to issue three, Counsel to the Respondent submitted that Mr. Nonso is seven years old at the time of the delivery of judgment. The trial Court is summary court and its evidence are basically on the oral testimonies of the parties. The Respondent's assertion of the age of Mr. Nonso was evidence on Oaths and such evidence carries more weight and supersedes processes filed by the parties in a proceeding. Counsel finally submitted and urged this Honourable Court to

resolve issue three in favour of the Respondent and against the Appellant.

Responding to issue four, Counsel to the Respondent submitted that the trial Court was right to have ordered the Appellant to pay the sum of two hundred thousand Naira only (#200,000.00). it is a trite law cost follow by event. **Order 8 Rule 7 of the Federal Capital Territory Civil procedure as amended in 2023.** Counsel to the Respondent finally submitted that this Honourable Court to resolve all the issues against the Appellant and in favour of the Respondent. Court uphold the decision of the trial Court.

Appellant's Reply Brief of Argument.

Learned counsel to the Appellant, replied to the Respondent Brief of Argument on the argument that the Appellant did not prove the existence of customary practice of returning bride price. Counsel referred to **Section 17 of the Evidence Act** which provides thus: **“a custom may be judicially noticed when it has been adjudicated upon once by a superior court of record”** this position of the law has been affirmed by several superior Courts. Counsel to the Appellant referred this Honourable Court to the case of **TATU V. ESTATE OF LATE ALH. I. ADAMU (2015) 13 NWLR (PT. 1476) 364 (P. 393, para. D) CA.** and **OKO V. NTUKIDEM (1993) 2 NWLR (PT. 274) 124 (P. 135, paras. F-G).**

Learned Counsel to the Appellant replied to the Respondent Brief of Argument that bride price and the practice of receiving or returning bride price is not a strange practice to customary practices, especially marriage in Africa. Counsel to the Appellant referred this Honourable Court to the case of **EZE V. OMEKE (1977) 1 ANSLR 136, EZEAKU V. OKONKWO (2012) 4 NWLR (PT. 1291) 529 (P. 557, paras.D-E) CA.** and **NWIZI V. OKE (2025) 12 NWLR (PT. 2000) 589.**

I have read the arguments and submission of the learned counsel to the Appellant and the Respondent in this appeal. The Learned counsel to the Appellant has formulated four issues for the determination in this appeal. The learned counsel to the Respondent, on the other hand, has formulated four issues for the determination of this honourable court. The four issues for determination of the learned counsel to the Respondent are verbatim quotation with the four issues formulated by the

Appellant.

This Honourable Court is now left with the four issues for determination formulated by the Appellant, which were also reproduced by the learned counsel to the Respondent. I shall adopt the four issues for determination to wit:

1. Whether the trial Court erred in law and misdirected itself when the trial Court ordered the Respondent not to return the bride price paid by the Appellant to the family of the Respondent in consideration of marriage? Distilled from Ground 4 of the Notice of Appeal.
2. Whether based on proper evaluation of documents before the trial Court and those in the file of the trial Court, the first child of the marriage (Philip Dominic Chukwunonso) is eight years old? Distilled from Ground 3 of the Notice of Appeal.
3. Whether the trial Court erred in law and misdirected itself when the trial Court granted custody over the first child of the marriage (Philip Dominic Chukwunonso) to the Respondent solely on the basis of tender age without consideration to the other necessary factors to be considered in the grant of custody or the evidence before the trial Court? Distilled from Ground 1 and 2 of the Notice of Appeal.
4. Whether the trial Court erred in law and misdirected itself when the trial Court ordered the Appellant to pay the total sum of #200,000.00 to the Respondent as compensation for years of abandonment of the second child of the marriage (Rita) without proper evaluation of evidence and without same being sought by the Respondent in her prayers? Distilled from Ground 5 of the Notice of Appeal.

On issue one, determine by this Honourable Court, first, we must understand the meaning of bride price. A bride price must be paid before a customary marriage takes place in Nigeria. Without it, the customary marriage is considered null and void. In fact, the customary marriage doesn't take place at all. That is how important is bride price in customary marriage.

Bride price, also known as dowry, is a payment made by the groom's family to the family of the bride. This payment serves as a symbol of respect and appreciation towards the bride's family.

Bride price, bride – dowry, bride – wealth, bride service or bride token, is money, property, or other form of wealth paid by a groom or his family to the woman or the family of the woman he will be marrying.

In the instant case, the Appellant, then a bachelor, was lawfully married to the Respondent, then a spinster, under the Becheve Native law and Custom sometimes in the year 2016, with bride price of #150,000.00 duly paid by the family of the Appellant to the family of the Respondent. Despite the fact that the Appellant is a native of Ikpu-Iga village in Igbo North Local Government Area of Enugu State, and the Respondent is a native of Obudu Cattle Range in Obanliku Local Government Area of Cross River State.

However, provided that both parties admitted that bride price was paid by the Appellant to the Respondent and it is one of the purposes of a valid customary marriage. Thus, the refund of bride price is a successful dissolution of customary marriage.

The law is trite that the return of bride price is a condition precedent for the dissolution of a customary marriage. This was the position of the law in the cases of **THORPE V. AKINWUNMI (1973) NNLR 52**, **ZUBAIRU V. MOHAMMED (1993) 3 NWLR (Pt.283) 566 (CA)** and **BAMGBOSE V. DANIEL (1954) 14 WACA 116**.

During examination-in-chief, the Respondent admitted that the said #150,000.00 was paid to her uncle, as her bride price. The Respondent testified that both the Appellant and the Respondent got married in August 27th 2016 traditionally according to Becheve culture of the people of Cross River State, Obanliku Local Government Area. He paid One Hundred and Fifty Thousand Naira (#150,000.00) He paid to my Uncle Mr. Robert Okoh as bride price. (Page 116 of record of Appeal).

"The law is trite that there are two essentials of a valid customary marriage. These are (1) payment of bride price and handing over of the bride to the groom." See the case of **MRS. VERONICA U. OBI & ORS v. MADAM BLESSING BOSAH & ORS (2019) LPELR-47243(CA)**

"How is customary marriage proved? The Court in *Agbeja v. Agbeja* (1985) 3 NWLR (Pt 11) Pg.11 held that: "While the evidence of the Head of the family who received the money is desirable, what is essential is an eyewitness account of the transaction. For a marriage under native law and custom to be valid, there must be on the one side the ceremony of the giving of the bride for a marriage under native law and custom." It is trite that the most common feature of customary marriages in Nigeria is the payment of bride price and handing over of the bride to the groom. These are the least and basic requirements of any Nigerian customary marriage. Thus the proof of an existing customary marriage must contain the two." See the case of **OKOLONWAMU & ANOR V. OKOLONWAMU & ORS (2014) LPELR-22631(CA)**

Thus, as a symbol and successful dissolution of customary marriage between the Appellant and the Respondent in this case. The Customary Marriage conducted between the Appellant and the Respondent is no longer in existence, the Respondent is to return or refund the bride price to the Appellant. However, it will make the Respondent free to remarry to any man of her choices and not to remarry with another man's bride price on her head. Accordingly, I hereby resolve issue one in favour of the Appellant and against the Respondent.

On issue two, it is the Duty of Court to consider documents placed before it "Documents tendered before a trial Court are certainly meant for scrutiny or examination by the Court. They are not tendered merely for sake of tendering but for purpose of examination and evaluation. A trial Court has the onerous duty of considering all documents placed before it in the interest of justice. It has a duty to closely examine documentary evidence placed before it in the course of its evaluation and comment or act on it." See the case of **MOHAMMED V. ABDULKADIR & ORS (2007) LPELR-8994(CA)**

In the instant case, I see no reasons why the Appellant is so concerned about the age of the first child been 8 years, is of no issue. What will he benefit from the age of the child.? Based on the Respondent i.e. the Petitioner at the lower court filed her writ of civil summons on the 26th September, 2024. And stated the age of the two children; Philip Chukwunonso Dominic is 7 years plus and Philip Rita Chinecherem is 6 years old at the time of filing her Petition (see page 9 of the Records of Appeal). While In the Appellant's Answer to Petition and Counter Petition filed on 22nd January 2025, the Appellant stated that Philip Chukwunonso Dominic is 8 years old. (see page 37 of the Records of Appeal). Here, the difference is clear the Respondent (the Petitioner at the lower court) testified at the lower court that; we have two children namely;

- a. Philip Dominic Nonso Male 7 years
- b. Philip Rita Chinecherem Female 6 years (page 116 of Record of Appeal)

The Appellant was there, when the Respondent gave her testimony about the age of Philip Dominic Nonso and Philip Rita Chinecherem, the Appellant did not challenge the age of their two children. There is no any evidence or birth certificate of the first child too, tendered before the Court.

However, the issue of age of the first child or children does not matter i.e. 7 years or 8 years are still minor and been of tender age, I hereby resolve issue two in favour of the Respondent and against the Appellant.

On issue three, The first consideration of the court is the interest of the child. Section 18 subsection 2 of federal capital territory Customary Court Act, 2007 provides that; **"in any matter relating to the guardianship of a child, the interest and welfare of the child shall be the first and paramount consideration"**

The age of the child matters in law before determining the question of custody. The law is trite that when a child is of tender age, it is presumed that the child will be happier with the mother. "If the parents are separated and the child is of tender age, it is presumed the child will be happier with the mother and no order will be made against this presumption unless it is abundantly clear the contrary is the situation e.g. immorality of the mother, infectious disease of the mother,

insanity, and or her cruelty to the child." See the case of **OMOTOLANI V. BABALOLA (2021) LPELR-56369(CA)**

"In practice, a young child who is yet to be weaned is generally awarded to the mother but when the child has attained the age of maturity, the child is generally awarded to the father as he (the father) under Customary law the father has absolute right to the custody of the children but this absolute right will not be enforced where it will be detrimental to the child's welfare as the principle of paramountcy of children's interest and welfare super cedes any local custom and has overriding consideration." "The superior courts have consistently applied the principle of recognizing the child's interest and welfare as paramount in cases arising under customary Law. See the case of **FEBISOLA OKWUEZE v. PAUL OKWUEZE (1989) LPELR-2539(SC)**

In the instant case, the Respondent (mother of the two children) is not involved in immorality, infectious disease, insanity and cruelty. The custody of the two children, i.e. Mr. Chukwunoso Philip, 7 years and Miss. Rita Philip, 6 years old should be given to the Respondent because she is their biological mother and no one can take care of the children better than the mother.

The Court is duty bound to take into consideration (being seised of the opportunity to see the parties, and their witnesses in Court and observes their demeanour) some very vital factors in respect of their respective moral, financial, religious, occupational, professional standing, and indeed their temperamental disposition. A Court will not grant the custody of children of the marriage to an undeserving spouse. In arriving at its conclusion, being faced with the bare facts, the Court must strive to do justice not only judicially but judiciously." See the case of **BELJE & ANOR V. UCHECHUKWU & ANOR (2022) LPELR-58449(CA)** Thus the children in question are still tender age i.e. be it 7 or 8 years for Mr. Chukwunoso Philip and 6 or 7 years for Miss. Rita Philip. However, the Respondent was not caught in the act of committing adultery or any other offences that will affect the children. I hereby resolve issue three in favour of the Respondent by awarding custody of the two children to the Respondent and against the Appellant.

On issue four, "The law is settled as to when an appellate Court can properly

embark on evaluation of evidence. An appellate Court is competent to do this when a trial Judge abdicates the sacred duty of evaluation of evidence and approbation of weight thereto, or when he demonstrates that he had not taken proper advantage of his having heard and seen a witness testify. In such a situation an appellate Court is as good in a position as the trial Court to evaluate the evidence provided the exercise does not involve the credibility of the witnesses who testified at the trial. See the case of **AHMADU ALI v. AHMADU SALIHU & ORS (2010) LPELR-3744(CA)**

"The law is settled that whenever there is a complaint that the trial Court did not properly evaluate the pieces of evidence placed before it and made findings based on such evidence, the appellate Court is in as good a position as the trial Court to see whether the trial Court made perverse findings as here alleged by the Appellant. See the case of **SADIQ V. BALARABE (2020) LPELR-52114(CA)**

Even though, the lower court should use its discretionary power to adjudicate this matter must be exercised judicially and judiciously.

"The conduct of the appellants throughout, does not commend them for exercise of a discretionary power in their favour. It should be remembered always as I now do that the power is discretionary one which must be exercised judicially and judiciously." See the case of **I.F.A. INT'L LTD & ANOR V. LIBERTY MERCHANT BANK PLC (2004) LPELR-11154(CA)**.

Court should also note that the position of the law is that a party should never be granted relief which it has not asked for. See the case of **HRH EZE UZOMBA KALU OKAM & ORS v. AKU IGWE & ANOR (2018) LPELR-43685(CA)**

The lower court gives orders that the Respondent did not ask for, in any of their reliefs sought. Held that 'The lower Court Orders that the Respondent/Counter Claimant pays the sum of Two Hundred Thousand Naira only (200,000.00) to the Petitioner/Cross Respondent as compensation for monies spent to take care of Rita Philip their second child who the father abandoned with the mother. On or before 25th of June 2026'. (In page 175 – 176 of the lower Court judgment).

In the instant case, the lower court went too far by giving these Orders that were not asked for by the Respondent. The Respondent did not ask in her relief sought

the sum of #200,000.00 for the Respondent's Compensation for the year of abandonment of the second child (Miss Rita). There is no evidence to show cause that the Respondent was abandoned with the second child. I hereby resolve issue four in favour of the Appellant and against the Respondent.

On the whole, the four issues for determination adopted by this Honorable Court, issues one and four, are hereby resolved in favour of the Appellant. While issues two and three are hereby resolved in favour of the Respondent. Thus, issues one and four before Customary Court Idu, Abuja, are hereby set aside. This appeal succeeds on issues one & four and fail on issues two & three. I make no order as to cost.

APPEARANCES;

DANIEL ABAH IDUH, ESQ – APPELLANT COUNSEL.

S. I. ORIPELAYE, ESQ – RESPONDENT COUNSEL.

SGD

**HON. JUSTICE MOHAMMED BOYI MARAFA
JCCA.**

I read before now the draft of the judgment just delivered by my Lord, M.B Marafa JCCA. My Lord has set out in extenso the chronology of all facts, grounds, issues and summary of arguments of counsel in this Appeal. I agree with the treatment of all the issues raised for consideration of this Court. Based on the detailed reasons given in the judgment, I abide by my Lord's orders. I further affirm the decision of the trial Court set out in Paragraph 1 – 8. Reliefs 3 and 4 sought by the Appellant are hereby refused.

SGD

**HON. JUSTICE ISTIFANUS GANDU
JCCA.**

I have had the opportunity of reading the draft of the judgment just delivered by

my learned brother, Marafa JCCA. I agree with his lordship's reasoning and the conclusion reached. I will, however, add a few comments.

The return of the bride price serves several purposes in customary law. It signifies the complete severance of the marital ties and the Restoration of the woman to her family, often allowing her to remarry without impediment. It also acknowledges the initial investment made by the husband's family in the marriage. The lower court was wrong to have held, on page 174 of the record of appeal, that because the Respondent had two children for the Appellant and that it was the Appellant who asked for divorce, the request for refund of the bride price by the Appellant was invalid due to the children of the marriage and the divorce petition initiated by the Appellant. I too resolve issue one in favour of the Appellant.

On issue two, the supporting affidavits of the Appellant and the Respondent at the trial court are *res ipsa loquitur*. The Court is bound by the document placed before. I align myself with the submission of my learned brother, and I too resolve issue two in favour of the Respondent.

On issue three, the provision of Section 18 (2) of the FCT – Customary Court Act is such that the interest of the Child is the paramount factor. It is placed before anything else. In the absence of other factors that would have denied the Respondent right of custody, such as insanity, proof of cruelty to the children and adultery, I see no reason why this Court should not grant the Custody of the children to the Respondent. This issue is also resolved in favour of the Respondent.

On Issue four, it seems to me that the trial court did not base its decision on concrete evidence, as can be seen on page 175 of the record of appeal, when it awarded the sum of N200, 000 against the Appellant as compensation for funds used in taking care of Rita Philip and for this reason, I too resolve this issue in favour of the Appellant.

I so hold.

SGD
HON. JUSTICE YUNUSA IDRIS KUTIGI
JCCA.