

# THE LEGAL IMPORTANCE OF CONSIDERING THE CHILD'S VIEWS AS A CONDITION FOR THE AWARD OF CUSTODY IN NIGERIA

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## ABSTRACT

This study examined a child's views in the award of child custody in Nigeria. The article intends to bring to fore the importance of giving consideration to the views of a child by the court during divorce proceedings in Nigeria. The study found that the guiding principle for the award of child custody in Nigeria is the "best interest" of the child. The opinion of a child whose interest is to be protected is not always heard. Rather it is the conflicting interests of parents that usually override the views of the child. The study concluded that the views of a child is a relevant consideration in the award of child custody during divorce proceedings in Nigeria.

**Keywords: Child; Custody; Importance; Legal; Views**

## 1.0. INTRODUCTION

Child custody in divorce proceedings dates back to the common law era. This has been demonstrated in numerous cases in America during the period. For instance, this was the position in Illinois in 1849.<sup>1</sup> Child custody could refer to a situation where a parent or guardian has legal and practical rights, obligations, and responsibility towards his child as a result of divorce or separation.<sup>2</sup> It has to do with decision-making power, physical control over the child's upbringing and welfare.<sup>3</sup> According to Jay,<sup>4</sup> fathers have natural right of custody over children of marriage in America. In *Hunt v Hunt*, it was held thus:

"When a divorce is decreed, the court may make such order in relation to the children as shall be right and proper, the court will not exercise its discretionary power to change the regular course of law but will award the custody of the children to the father, unless he labours under a moral or natural disability disqualifying him from having custody."

The court would usually not interfere in the father's right of custody unless it was established that he was unfit in conduct to have custody of the child.<sup>5</sup> The only circumstance where the

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<sup>1</sup> J. Einhorn (1986) Child Custody in Historical Perspective: A Case Changing Social Perceptions of Divorce and Child Custody in Anglo-American Law. *Journal of Behavioural Sciences and Law* 4 (2) 119-135.

<sup>2</sup> W. Diriwari; D. K. Deri, (2023) Protecting the Best Interests of Children: A Critical Analysis of Child Custody and Divorce Proceedings in Nigeria under the Child Rights Act 2003 *International Journal of Social Science, Management and Economics Research*. Vol. 1 Issue 4 retrieved online at <<https://www.ijssmer.com>> accessed 15 August.

<sup>3</sup> Op cit J. Einhorn (n 1)

<sup>4</sup> S. M. Cretney; M. A. Masson, (1997) *Principles of Family Law* 6<sup>th</sup> ed. (London Sweet & Maxwell) 717.

<sup>5</sup> A.B. Kasumu; J.W. Salacuse, (1966) *Nigerian Family Law* (Butterworths London) 253.

court interfered with the complete power of a father to custody of his child was where he had abandoned the child or where he lacked the means to maintain the child. This right of custody existed only where the child in question was an infant. That is, if the child was below 21 years of age.<sup>6</sup> The father's authority over custody of his child prevailed even after his death as he had power to choose a guardian for his minor upon his death.<sup>7</sup> The principle which states that a father always has right to custody of his child was observed strictly to the extent that any agreement whereby he consented to the mother having custody was regarded as void.<sup>8</sup>

There have been numerous statutes in England which deal with child custody. The first statutory interference with the father's statutory right of child custody was the Custody of Infants Act 1893 which empowered the court to give care of an infant under age seven to the mother.<sup>9</sup> Subsequent research and body of theory on the development of infants attachment to the mother equally influenced the support for maternal preference in child custody matters at divorce.<sup>10</sup> Further research which indicated that infants formed meaningful attachments to both parents by the middle of a child's first year coupled with constitutional concerns for equal protection, feminist movement and the entry of large numbers of women into the work force weakened the concept of primary maternal caretaker. This development prompted many states to abandon the maternal presumption in the mid-1970s in favour of gender-neutral laws.<sup>11</sup> This provided support to paternal claims for joint custody.<sup>12</sup>

The Uniform Marriage and Divorce Act enacted in 1970s provided for the best interest standard and it was adopted in varying forms by most states.<sup>13</sup> For the first time, custody decisions were to be based on consideration of the needs and welfare of the child rather than on gender or parents' rights.<sup>14</sup>

According to Justice Aguda Taiwo, child custody refers to a situation where the responsibility of bringing up a child is legally given to a relative, usually one of the parents in a divorce or separation proceedings to a responsible adult.<sup>15</sup> It could be legal custody (decision-making authority) or physical custody (care-giving authority).<sup>16</sup> Sometimes, the court grant joint custody to parents, this is an arrangement whereby both parents share the responsibility and authority over the child at all times.<sup>17</sup>

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<sup>6</sup> N. Lowe; G. Douglas ((2014) *Family Law* 11<sup>th</sup> ed. Oxford University Press Great Britain 296.

<sup>7</sup> Ibid at 309.

<sup>8</sup> Op cit S. M. Cretney (n 4).

<sup>9</sup> Op cit S. M. Cretney (n 4).

<sup>10</sup> P. M. Bromley; N. V. Lowe, (1992) *Family Law* 8<sup>th</sup> ed. (London Butterworths) 297.

<sup>11</sup> Ibid.

<sup>12</sup> J. Dewar; S. Parker, (1992) *Law and the Family* (London Butterworths) 316.

<sup>13</sup> Op cit P. M Bromley (n 10).

<sup>14</sup> Op cit J. Dewar (n 12).

<sup>15</sup> F. Aguda-Taiwo, (2019) Guardianship and Custody of Children. A paper delivered at the refresher course for judges and kadis by the President of the Customary Court of Appeal Ondo State on 11 March 2019 <<https://www.nji.gov>> accessed 14 August 2024.

<sup>16</sup> Ibid.

<sup>17</sup> M. C. Onokah (2012) *Family Law* (Spectrum Law Publishers Ibadan) 178.

Child custody in Nigeria has become a topic that has caught attention of the general public recently because of the high rate of divorce. Statistics revealed that the rate of divorce in Nigeria rose by 14% in 2018.<sup>18</sup> A report published in 2018 revealed that a total of 3,000 cases of divorce were recorded in Badagry Lagos State that same year.<sup>19</sup> Another report revealed that about 20 to 30 cases of divorce are recorded daily at office of the Social Development Secretariat, Federal Capital Development Authority Abuja. Also, as at February 2020, records at the High Courts of the Federal Capital Territory (FCT) revealed that over 2,000 cases of divorce were filed.<sup>20</sup>

Child custody is the legal term used in family law to explain the care, control and maintenance of a child awarded by a court to one of the parents after divorce.<sup>21</sup> Residence and contact issues usually arise in divorce proceedings where the marriage is blessed with children. In all jurisdictions including Nigeria, the issue of which of the parents would be entitled to have custody of the child is determined in accordance with the welfare principle. The welfare principle which emphasises protection of the child's best interest suggests that all legal decisions made to accommodate the child are made with the aim of ensuring the child's happiness, security and overall well-being. Among the factors the court consider in determining what would be in the best interest of the child are the emotional attachment of the child to either parent, age of the child, gender of the child, financial power of a parent to care for the child, and some other factors the court may deem fit to consider in the circumstance. The views of the child appear not to be a factor that is given enough attention by the court when awarding custody to parents during divorce proceedings. This article would consider the essence of considering the views of a child in divorce proceedings by the court before awarding custody to any of the parents.

## 2.0 DIVORCE PROCEEDINGS

Divorce is the termination of a marital union which dissolves the bond of matrimony between couples under the rule of law of the particular country or state in question. Divorce proceedings in Nigeria are governed by both customary and statutory laws, depending on the religious and ethnic background of the parties involved.<sup>22</sup> The primary legislation governing divorce in Nigeria is the Matrimonial Causes Act (MCA) which provides the legal framework for divorce throughout the country. The law governing divorce proceedings in Nigeria is the MCA which was enacted in 1970. This Act governs the procedure and grounds for dissolution of marriage.

Divorce process in Nigeria begins with one party called the petitioner filing a petition at the appropriate court. The petitioner must be able to establish the fact that the marriage has

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<sup>18</sup> J.K. Ajayi; M.K. Olakunle; J.A. Ahmed; A.O. Abegunrin, (2022) Child Custody in Nigeria: A Fallout of Irretrievable Breakdown of Marriages. (*International Journal of Innovative Psychology and Social Development*) 9(3): 1-7 <<http://www.seaahipaaaj.org>> accessed 10 October 2024.

<sup>19</sup> A. Akingbola (2021) *Dissolution of Marriage in Nigeria* <<http://www.mondaq.com>> 10 October 2024

<sup>20</sup> Ibid.

<sup>21</sup> A.B. Garner (2019) *Black's Law Dictionary* 11<sup>th</sup> ed. (Thomson Reuters, USA) 1764.

<sup>22</sup> W. Diriwari; D.K. Derri (2023) Protecting the Best Interests of Children: A Critical Analysis of Child Custody and Divorce Proceedings in Nigeria under the Child Rights Act 2003 (*International Journal of Social Science, Management and Economics Research*) Vol. 1 Issue 4 retrieved online at <https://www.ijssmer.com>.

broken down irretrievably.<sup>23</sup> Divorce order determines the marital status previously existing between parties, and thereafter, neither party has the legal right or owes legal duties of a spouse.<sup>24</sup> The rights of the parties thereafter flow from court's orders and not from the parties agreement or from the fact that they used to be spouses.<sup>25</sup> The statutory time limitation for the commencement of divorce proceedings in Nigeria is two years.<sup>26</sup> The MCA provided that proceedings for dissolution of marriage shall not be initiated within two years after the date of celebration of marriage except by leave of court. Exception to this general rule is based on the grounds prescribed by s. 15 of the MCA.

By virtue of s. 15, the court will consider a marriage to have broken down irretrievably if (a) the respondent has willfully and persistently refused to consummate the marriage; (b) if since the marriage, the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent. These and other intolerable acts of the respondent must be established before it can be concluded that the marriage has broken down irretrievably.

### **3.0 THEORY OF CHILD CUSTODY**

There are different theories that support child custody, and some of these theories will be considered to show the importance of proper custody of a child. One of such is the theory propounded by Sigmund Freud, Goldstein, and Solnit. This theory is referred to as the Freudian-Goldstein-Solnit theory.<sup>27</sup>

#### **3.1 Freudian-Goldstein-Solnit Theory**

This theory is firmly rooted in psychoanalysis. The implication of this is that their work is derivative of psychoanalytical view of human existence.<sup>28</sup> According to the proponents, courts are to preserve the affection between a child and his psychological parent in order to sustain normal development which is dependent upon the continuity of such relationship.<sup>29</sup> In the opinion of the proponents, to protect the best interest of a child, the law must ensure that each minor is associated with a home. The home environment is viewed as essential zone of privacy which serves as the protective surrounding making possible for the existence of positive developmental experience.<sup>30</sup> The theory established that the law must maximise a child's opportunity to associate with a home where he is wanted, receives affection continuously, learns how to give affection, and is taught how to cope with his aggressive impulses.<sup>31</sup> Disruption of continuity of relationship is perceived as being detrimental to a child's psychological growth and the damages that result from disruption of continuity vary depending on his age. The younger the age of the child, the more risk he is exposed to.

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<sup>23</sup> Matrimonial Causes Act (1971) s 25.

<sup>24</sup> R. v Nottingham County Court ex. P. Byersa (1985) 1 WLR 403.

<sup>25</sup> *De Lasala v Delasala* (1980) AC 546 PC.

<sup>26</sup> Matrimonial Causes Act (MCA) 1970 s. 30 (1)

<sup>27</sup> G. Joseph, (1975) *The Hampstead Child-Therapy Clinic and Legal Education and Study in Child Psychoanalysis: Pure and Applied. The Scientific Proceeding of the 20<sup>th</sup> Anniversary Celebration of the Hampstead Child Therapy Course and Clinic by Members of the Staff* 15.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> H. K. Bevan, (1989) *Child Law* (London Butterworths) 89.

<sup>31</sup> *Ibid.*

The concept of psychological parent stresses the presence of attachment which is viewed as being essential to normal psychological development.<sup>32</sup> Freud and his co-proponents opined that relationship between a child and his psychological parent is paramount and its integrity should be preserved by law. In *Ellenwood v Ellenwood*,<sup>33</sup> the court emphasised the essence of continuity in the friendship between a child and the psychological parent by stating thus:

It (trial court gave substantial weight to the fact that the children have always been in the mother's care. Their psychological attachment to her as the only parent figure they have known is a strong reason for the trial court's decision, and after balancing the applicable factors, we come to the conclusion the trial court did. What registers in children's mind is the day-to-day-interchanges with the adults who take care of them, and who on the strength of these become the parent figures to whom they are attached.

The above dictum of the court is good because removing a child from a parent to whom he is psychologically attached creates a vacuum in his life and such could affect the child's academic performance and social relations negatively.

### **3.2 Family System Theory**

This theory emphasises the effect of intimacy that has been developed with the child by relatives over time.<sup>34</sup> According to the theory, a family includes individuals who share or seek to share intimate relationship with each other. Family includes non-biological parents of the child even if they had little contact with the child, so long as they seek to relate with the child intimately. Parents in this context also includes foster parents and step-parents as well as certain neighbours or friends provided, they truly relate intimately with the child.<sup>35</sup>

Going by this theory, an individual could be understood fully by looking at him in the context of his family. This would reflect the kind of home he came from. Its attention is on the nature of human relationship and their contexts.<sup>36</sup> The concept of shared responsibility goes to the heart of the family systems perspective. In as much as it places responsibility on all members of the family for observed behaviour, irrespective of which member of the family exhibits the behaviour. The family support theory which emphasise the effect of intimacy on a child as a result of keeping interpersonal relationship with the child over years is important. This is because it helps in preserving ties between the child and both parent.

The Freudian -Goldstein's theory and Family Support Systems theory both emphasise the importance of the effect of intimate relationship with a child on the emotional and social development of a child. This in essence determines the personality trait a child would develop as he attains adulthood.

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<sup>32</sup> Ibid.

<sup>33</sup> (1975) Or.Ct. App. 532 P. 2d. 259; *Painter v Bannister* (1966) Iowa 140 N.W. 2d. 152.

<sup>34</sup> L. B. Susan (1996) Family Systems Paradigm for Legal Decision-Making Affecting Child Custody (*Journal of Law and Public Policy*) 6 (1) 221-235.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid

According to Justice Aguda-Taiwo, child custody refers to a situation where the responsibility of bringing up a child is legally given to a relative, usually one of the parents in a divorce or separation proceedings to a responsible adult.<sup>37</sup> It could be legal custody (decision-making authority) or physical custody (care-giving authority).<sup>38</sup> Sometimes, the court grant joint custody to parents, this is an arrangement whereby both parents share the responsibility and authority over the child at all times.<sup>39</sup>

#### 4.0 TYPES OF CHILD CUSTODY

Child custody is in different forms depending on what type of arrangement parties choose. The court can also use its discretion to award a type of custody that would protect the best interest of the child considering the facts of the case. There is physical custody, legal custody, joint custody and sole custody.

**Physical custody:** Physical custody has to do with the parent with whom the child would reside. In some cases, one of the parents may be awarded physical custody while in some other cases, both parents may be given joint physical custody of the child.<sup>40</sup>

**Legal Custody:** This refers to the authority to make decisions on behalf of the child in respect of education, healthcare, religion and the overall well-being of the child. Legal custody can be awarded to one parent exclusively and it may be shared jointly by both parents.<sup>41</sup>

**Joint Custody:** This refers to a situation where both parents have rights and responsibilities towards the legal and physical care of their child. The primary goal of this type of arrangement is to ensure that both parents participate in the training of their child. Joint custody requires effective communication and cooperation between the child's parents. Both parents have to agree on decision-making and they both prioritise the child's well-being.<sup>42</sup>

**Sole Custody:** This refers to a situation where one of the parents is awarded physical custody of the child while the other party is given right of visitation. This type of arrangement is recommended when one of the parents is considered unfit for reasons like neglect and abuse. It may also be considered when the court is of the view that limited contact with one of the parents would be in the best interests of the child.<sup>43</sup>

#### 5.0 THE BEST INTERESTS OF THE CHILD

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<sup>37</sup> F. Aguda-Taiwo, (2019) Guardianship and Custody of Children. A paper delivered at the refresher course for judges and kadis by the President of Customary Court of Appeal Ondo State on 11 March 2019 <<http://www.nji.gov.ng>> accessed 14 August 2024.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> C. A. Nelson (2020) Addressing Child Custody Concerns of Parents with Life-Limiting Illness (*Journal of Palliative Medicine*) 23(8) 1134-1138

<sup>41</sup> Ibid.

<sup>42</sup> Op cit T. A. Nelson (n 40)

<sup>43</sup> Ibid.

The protection of the best interests of the child is the paramount factor to be considered in custody matters.<sup>44</sup> The guiding principle in awarding child custody in divorce proceedings is “the best interests standard.” The best interest standard varies across jurisdictions but there are common elements that are generally considered. Some of the common elements court consider before determining what would constitute the best interests of a child in custody issues that arise from divorce proceedings are: the age of the child, the emotional attachment of the child to either parent, gender of the child, the financial capacity of either parent to cater for the child, other family relationship like existence of siblings, the child’s wishes<sup>45</sup> and other elements the court may deem fit to consider in the circumstance. Often times, the child’s views are subsumed by parental conflict of interest over custody of the child. In *Williams v Williams*<sup>46</sup> for instance, Nigerian culture was considered in awarding custody to the mother. The court explained the term “welfare” thus:

It was a composite of many factors such as emotional attachment to a particular parent, mother or father, the inadequacy of facilities such as educational, religious, or opportunity for proper upbringing, what the court deals in is the lives of human beings and it ought not to be regulated by rigid formulae. All relevant factors ought to be considered and the paramount consideration being the welfare of the child.

The welfare of the child which also refers to the best interest of the child ought to be given paramount consideration in every custody matter. The views of the child is also part of the elements that form the best interest of the child, it ought to also be given consideration in all matters regarding child custody.

## **6.0. LAWS PROTECTING BEST INTERESTS OF THE CHILD**

There are different laws that promote the protection of the interests of children. Some of these laws would be discussed below.

### **6.1 The Child Rights Act 2003**

The Child’s Right Act 2003 is an important legislation in Nigeria aimed at protecting and promoting the rights and welfare of a child. By virtue of the Act, a child is any person below age 18, and it emphasised the essence of protecting and caring for the child during this developmental stage.<sup>47</sup> The Act recognises certain rights of the child such as right to life, survival and development, right to education, right to basic healthcare services, right to identity, and right to freedom of expression and participation.

Section 1 of the Act provides that in all matters affecting a child, the best interests of the child shall be given paramount consideration. In essence, this implies that in every matter that has to do with a child including custody, the main objective should be the protection of the well-being of the child.

Section 7 of the Child Rights Act provides that every child has the right to freedom of thought, conscience and religion. This implies that a child should be allowed to express his

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<sup>44</sup> MC A (1970) s.71; Child Rights Act (2003) s.1

<sup>45</sup> *Alabi v Alabi* (1999) 9 NWLR (Pt 1039) 297 at 347-348.

<sup>46</sup> (1987) 2 NWLR (Pt) 54 66

<sup>47</sup> *Ibid.*

view over any matter that concerns him. This is in tandem with the provision of section 1 of the Act which stated that in every matter concerning a child, the best interest of the child shall be given utmost consideration.

The Act also provides that the provisions of Chapter IV of the Constitution of the Federal Republic of Nigeria shall apply in all matters concerning a child as if those provisions are expressly stated in the Act.<sup>48</sup> Chapter IV of the constitution makes provision regarding fundamental human rights of Nigerian citizens, and these rights include right to fair hearing. In other words, a child has a right to fair hearing in any matter that concerns him just the same way the constitution provides that every Nigerian citizen is entitled to fair hearing.<sup>49</sup> This means that in matters relating to custody of a child, it is expected that a child that is mature enough to understand the nature of the proceedings should be allowed to express his views on who to reside with as his parents go through divorce proceedings. This is good because it would give a child the impression that his well-being is put into consideration.

## **6.2. The African Charter on the Rights and Welfare of the Child**

The African Charter on the Rights and Welfare of a Child also emphasise the fact that in matters concerning a child, the utmost objective should be the protection of the best interests of the child.<sup>50</sup> The Charter further provided that in all matters affecting a child, he should be given the opportunity to express his views.<sup>51</sup> This is to ensure that a child who is mature enough to understand the nature of the proceedings also contributes to the factors that would influence the court's final decision on the matter. This is good because there could be certain information that only the child involved in such circumstance would be able to supply.

## **7.0 EFFECT OF DIVORCE ON A CHILD**

### **Low Self-Esteem**

Generally, the effect of divorce on a child are numerous and they are majorly adverse in nature. Children are usually the ones that mostly suffer the impact of divorce. Some of these children exhibit low self-esteem. Self-esteem is an emotional thought that includes the aspect of a child's feeling about himself.<sup>52</sup> It refers to a situation where someone generally has negative opinion about himself, and as a result, places negative value on himself.<sup>53</sup> Children from broken homes have tendency of internalising their problems. That is, they blame themselves for every bad thing that happens to them.

### **Making Wrong Friendship**

In most cases, children from divorce parents make friends with the wrong people in a bid to make themselves happy. This has landed some of them in serious trouble such as being caught in criminal acts such as stealing.

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<sup>48</sup> Child Rights Act 2003 s. 3.

<sup>49</sup> Constitution of the Federal Republic of Nigeria (CFRN) (1999) s.36

<sup>50</sup> African Charter on the Right and Welfare of the Child (ACRWC) (1990) art 4.

<sup>51</sup> ACRWC art 7; 14 (2).

<sup>52</sup> Y. S. A. Meisa (2019) The Impacts of Self-Esteem Development on Children from Broken Home Family. *Advances in Social Science (Education and Humanities Research)* 372 retrieved online at <<http://www.researchgate.net>> accessed 20 August 2024.

<sup>53</sup> Ibid.

## 8.0 FACTORS AFFECTING THE AWARD OF CUSTODY

### Cultural Factors

Nigeria is a country with diverse cultural groups. Different cultures have different perspectives on child custody and this can lead to conflicting beliefs and practices which could affect divorce proceedings. This could eventually impact negatively on the outcome of proceedings affecting the custody of a child. Also, most Nigerian culture believe that a child belongs to the father particularly male children, and this sometimes influences the court's judgment.<sup>54</sup> For instance, in *Oyelowo v Oyelowo*,<sup>55</sup> the Court of Appeal made the following comment while granting custody of two male children of a marriage to the father/petitioner thus:

As male children, their rightful and natural place is their father's home. It does not matter how long they stayed away from it, I think it will be in their interest if they get familiar with the localities and environment of their father's home before it is too late for them to be regarded as part of the family of their own father. I think they should be allowed to grow in their father's house so that they may not in future be regarded as strangers there.

The above comment by the Court of Appeal is an instance of how culture influences the decision-making powers of judges.

Another case that supports the fact that Nigerian cultural belief that a child generally belongs to his father influences the judgment of the court is *Adigun v Adigun*.<sup>56</sup> In that case, the wife/petitioner was awarded a decree of divorce on ground that the husband suffered mental illness. Nevertheless, the court granted custody of the older child to the husband/respondent who was represented by his brother in court. The younger child was allowed to stay with the mother temporarily until she attained age three or five.

### Poor Monitoring and Enforcement Mechanisms

The effectiveness of law is dependent on its enforcement. Inadequate monitoring and enforcement mechanisms may hinder its implementation. Without proper oversight, parties may disregard compliance with custody orders and this will eventually have an adverse effect on the child whose interest is to be protected.

The views of a child whose interest is to be protected is necessary for the court to be able to arrive at a fair decision. In most cases, the child's view is not considered

### 8.1. Relevance of a Child's Views

Child views in custody matters is important because it would enable the court to consider the possible effects of its decision on the child. Child's preference in custody matters is one of the factors to be considered in determining what would be in the child's best interest. The

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<sup>54</sup> Op cit W. Diwariri (n 2)

<sup>55</sup> (1987) 2 NWLR Pt 36.

<sup>56</sup> (1989) CC, delivered April 14 1989 16.

following points validate the fact that the views of a child is relevant in determining custody arrangement for him.

**Acquisition of adequate information by the court:** Giving consideration to the views of a child in custody matters would create an avenue for the court to get adequate information that would make the final court judgment to be in favour of the best interest of the child. In the case of *White v White*<sup>57</sup> an 11-year-old girl indicated that she would like to speak with the court officials privately. The view of the girl afforded the court the opportunity of getting additional information that influenced the final judgment.

**Assurance of Protection of a Child's Interests:** Permitting a child to give his view in custody matters during divorce proceedings has the tendency of giving the child assurance that court proceedings is centered on protection of the child's interest. This prepares the child's mind ahead of his future expectations and it enables him to adjust better in his new living conditions. This is because the child participated in the process.

**Prevention of Bad Behaviour:** One of the relevance of consideration of child views in custody matters is that it would save such child from imbibing bad behaviour from peer pressure. This is because when a child's preference is considered, in most cases, such a child would probably live a happy life. Part of the reason most young people and children associate with wrong people is because they are not happy and they try to make friends that would keep them happy. In a bid to doing that, they enter into wrong association unknowingly.

**Protection of a Child's Best Interest:** Allowing a child to express his views in custody matters during divorce proceedings would generally contribute to the protection of the best interests of the child, thereby building up reliable confident and strong adult in future.

## **9.0 CONCLUSION**

The study examined the legal importance of consideration of a child's views as a condition for awarding custody by courts in Nigeria. The study found that the guiding principle in the award of child custody in divorce proceedings in Nigeria is the consideration of the best interest standard. The common elements usually considered in determining what is in the best interest of a child during divorce proceedings are the age of the child, the emotional attachment of a child to any of the parent, the financial capacity of any of the parent, the gender of the child, the environment where the parents live, and some other elements the court deems fit to consider in the circumstance. However, the views of the child whose interest is to be considered is not always considered, rather it is the conflicting interests of parents that usually subsumes the opinion of the child.

## **10.0 RECOMMENDATIONS**

Considering the fact that the views of a child is important before a custody award should be made, in order to protect the best interest of a child, it is hereby recommended as follows:

**Allowing a child to give his preference of custody:** A child should be given the chance to express his views on his choice of preference. This will enable the child to adjust better in his

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<sup>57</sup> (1995) Mass. App. Ct. 132

new living condition. This is because he has been involved in the process that resulted in his new living arrangement.

**Proper Structure for Enforcement of Custody Orders:** It is pertinent to note that the essence of the law is to forestall peace and orderliness in the society. In the light of this, in order to avoid situations whereby parties to custody matters would disregard custody orders at will, proper structures for the enforcement of custody orders on concerned parties should be put in place.

**Strengthening Enforcement Mechanisms:** To ensure that orders given in respect of child custody are effectively implemented, Nigeria should strengthen enforcement mechanisms. This may involve developing systems for monitoring compliance, imposing penalties for non-compliance and establishing dedicated units within law enforcement agencies responsible for enforcing child custody orders. Laying emphasis on the importance of adherence to court orders will maintain stability and protect the best interests of the child.

**Establishment of Specialised Family Courts:** Establishment of courts that are dedicated to handling child custody matters can help streamline the legal process and ensure consistency and expertise in decision-making. These courts would have judges that are trained specially and are familiar with the special issues surrounding child custody. The courts would understand the importance and relevance of considering the opinion of a child before awarding child custody to any of the parent during divorce proceedings. They would also have access to adequate resources and support services necessary for dealing with such cases. If these recommendations are considered and implemented, Nigeria can strive towards a more adequate and equitable resolution of cases of child custody in divorce proceedings. It will promote the protection of the best interest of the child thereby preventing the child from being unnecessarily exposed to risks that he may likely face, if he comes under custody of a party that is against his wish.