

CHILD CUSTODY AFTER DISSOLUTION OF MARRIAGE:

IMPORTANT PRINCIPLES AND
CONSIDERATIONS



A marriage that once flourished, nurturing joy, shared experiences, and indelible memories may, in time, be dissolved at the instance of either party. Such dissolution inevitably raises questions regarding the enduring and often irreversible consequences that stem from what was once a harmonious union. In Nigeria, matrimonial proceedings are governed by the Matrimonial Causes Act of 1970, which prescribes the statutory grounds upon which a marriage may be dissolved. These grounds demand strict proof, with the courts adopting an adjudicatory posture aimed at preserving the institution of marriage wherever possible.

When dissolution is ultimately granted, a range of consequential matters commonly referred to as ancillary reliefs arise for determination. Chief among these is the question of custody of the child or children of the marriage. The central inquiry becomes: between the now estranged spouses, who should assume legal and physical custody? This article examines the governing principles and key considerations that inform the court's discretion in resolving such disputes.

MEANING OF CHILD CUSTODY

In jurisprudential terms, child custody encompasses the conferment, by order of a competent court, of the legal authority and correlative responsibility for the care, control, and maintenance of a child. Traditionally, this arises in relation to a child born within the subsistence of a valid marriage that has subsequently been dissolved. However, the ambit of custody extends beyond matrimonial dissolution; questions of custody equally arise in respect of children born outside wedlock, particularly where issues of parental responsibility and welfare require judicial intervention.

Custody operates along two principal axes: physical custody, denoting the provision of a stable residence and the day-to-day care necessary for the child's wellbeing; and legal custody, signifying the decisional authority vested in a parent to determine matters fundamental to the child's development. These determinations typically concern, but are not limited to, the child's religious upbringing, educational pathway, access to healthcare, engagement in extracurricular pursuits, and representation in legal matters.

The parent in whom the court ultimately vests custodial rights is denominated the custodial parent, while the non-custodial parent may be accorded residual rights, including visitation or shared decision-making powers. Importantly, custody is not invariably an exclusive entitlement: judicial discretion permits arrangements such as joint custody, split custody, or other hybrid configurations, provided these serve the paramountcy of the best interests of the child; a guiding principle entrenched both in Nigerian statutory law, such as the Child Rights Act 2003 and the Matrimonial Causes Act 1970, and in international instruments like the Convention on the Rights of the Child.



WHAT THE COURTS CONSIDERS IN DETERMINING THE GRANT OF CUSTODY

Custody matters arising from any statutory marriage can be brought before a High Court or Magistrate Court. Where the marriage is a Customary Marriage or an Islamic marriage, a custody matter can be brought before a Customary Court or Sharia Court, respectively.

What seems to be the paramount consideration in the award of custody of a child is “the best interest of the child”. The courts primarily focus on the child’s well-being, emotional stability and moral upbringing when making custody decisions by virtue of section 71 of the Matrimonial Causes Act which provides to the effect that in any proceeding relating to the custody, guardianship, welfare, advancement or education of a marriage, the court shall regard the interests of those children as the paramount consideration and subject thereto, the Court may make such order in respect of this matters as it thinks proper. Internationally, Article 3(1) of Convention on the rights of the child (CRC) further posits that in all actions concerning children, whether undertaken by public or private social welfare institutions, a court of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

In the celebrated case of *Williams v. Williams* (1987) 2 NWLR (Pt. 54) 66, the Court as an umpire established certain principles in determining the best interest of a child as follows;

Child’s Welfare: The welfare of the child is first and paramount consideration and shall not take into consideration whether from any other point of view the claim of the father in respect of such custody is superior to that of the mother or the claim of the mother is superior to that of the father. The court evaluates whether a party seeking custody has made enough arrangements for the child’s welfare, education, accommodation and upbringing.

Equality of Custodial Right: In regard to the custody or upbringing of a minor, a mother shall have the same rights and authority as the law allows to a father and the rights and authority of mother and father shall be equal and exercisable by either without the other. There is necessarily no rule that mother has a paramount claim as against other relations, at any rate where the father is alive and support the application of those relations. See *Nwosu v Nwosu* (2012) 8 NWLR Pt 1301

Conduct of Parties: The welfare of the infant although the first and paramount consideration is not the sole consideration and the conduct of the parties is a matter to be taken into account. The parent’s moral conduct and ability to provide a moral example for the child is also considered.

Adultery: The adultery of a party is not necessarily reason for depriving that party of custody unless the circumstances of the adultery make it desirable and all the circumstances the must be considered.

Siblings Consideration: The fact and advantages of brotherhood and sisterhood must also be considered when there is more than one child of the family and it is proposed to give custody of one child to one person and another to a different person.

Age: There is settled rule that a child of tender years should remain in the custody of the mother, but obviously the care and supervision that a mother who is not out at work can give to little children is an important factor.

Custody does not remedy grievance: The Court will have regard to the particular circumstances of each case always bearing in mind that the benefit and interest of the child is the paramount consideration and not the punishment of a spouse for misconduct.

Parent's Worthiness: The wishes of an unimpeachable parent stand first. A party seeking custody must demonstrate an impeccable character.

Judicial determinations on the award of child custody in Nigeria are inherently fact-sensitive and vary according to the unique circumstances of each case. The court exercises its discretion within the framework of the best interests of the child principle. This principle mandates a holistic evaluation of factors that bear upon the child's welfare, rather than adherence to rigid presumptions.

In certain cases, where the child has attained sufficient age and maturity to form an intelligent preference, the court may consider the child's expressed wishes. However, such preferences are assessed critically, with due regard to potential external influences, emotional pressure, or inducement that may compromise the autonomy of the choice. Although the sex of the child is occasionally taken into account reflecting traditional notions that male children may benefit from paternal guidance while female children may be better nurtured by their mothers, this consideration is not determinative. Nigerian jurisprudence rejects any immutable rule in this regard, preferring instead to ground decisions in the child's individual needs and circumstances.

A pivotal factor in custody determinations is the history of the child's care. Courts often favour the parent who has consistently acted as the primary caregiver, providing stability, guidance, and emotional support. The degree of parental involvement in the child's daily life ranging from educational oversight to participation in medical decisions frequently weighs heavily in the court's analysis.

Conversely, custody will not be awarded to a parent with a substantiated history of physical or emotional abuse toward the child, or to a parent who actively undermines the child's relationship with the other parent, thereby contravening the child's right to maintain meaningful contact with both parents. Similarly, a parent whose occupational commitments entail erratic schedules or frequent relocation may be deemed ill-suited to meet the child's developmental needs, as such instability may impair the continuity of care essential for the child's welfare.

CONCLUSION

Whether arising from the dissolution of a lawful marriage or from disputes between parents who were never formally married, the judicial approach to custody in Nigeria is anchored firmly on the paramountcy of the child's best interests. The welfare of the child is construed broadly, encompassing not only material well-being but also emotional stability, moral upbringing, and the preservation of meaningful parental bonds.

Importantly, the denial of custodial rights to one parent does not invariably sever the parent-child relationship. Courts frequently craft visitation regimes, including supervised access where necessary, to safeguard the child from potential harm while ensuring the continued presence and influence of both parents in the child's life. Such arrangements reflect a judicial understanding that, except in cases of demonstrable risk, the involvement of both parents can be integral to the holistic development of the child.

In sum, Nigerian custody jurisprudence resists formulaic solutions, instead embracing a flexible, context-driven methodology that seeks to balance parental rights with the overriding imperative of securing the child's present welfare and future prospects.

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