

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Chamberlin Onuoha (Applicant)

Irene Onuoha (Respondent)

BEFORE: Justice L. Madsen

COUNSEL: Gloria Antwi, for the Applicant Father, Mr. Onuoha

Gloria Ichim, for the Respondent Mother, Ms.
Onuoha

HEARD: In Chambers

ENDORSEMENT -- COVID 19 PROTOCOL

[1] **AS A RESULT OF COVID-19**, this determination of urgency is made pursuant to the Notice to the Profession of the Chief Justice of Ontario, available at <https://www.ontariocourts.ca/scj/covid-19-suspension-fam/> [“the Chief’s Notice”]. Under that Notice, the regular operations of the Ontario Superior Court of Justice have been suspended since March 15, 2020, until further notice.

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[2] This is a matter in which the father seeks the return to Nigeria of his two daughters. They were brought to Ontario by the mother in October 2019. The father says he did not consent to the mother bringing the children to Ontario. He has used both the Nigerian and Ontario courts in an effort to have his children returned.

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[3] The matter came before me on several occasions before the suspension of court operations and the motion was to be heard by me. I had found that this required a long motion, given the nature of the issues, and as both parties had filed voluminous materials in the court record. The matter was to return to court on March 25, 2020 for a “to be spoken to,” in part to determine the status of a Voice of the Child report which the court had requested from the Office of the Children’s Lawyer.

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[4] By operation of the Chief’s Notice, this matter was adjourned until further notice. By operation of a Notice to the Profession in Central South Region, dated March 17, 2020 [the “Regional Notice”], this matter was adjourned to be spoken to on June 2, 2020 at 10:00 a.m.

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[5] By email to the Kitchener court on March 18, 2020, the father's counsel requested that this matter go forward at this time on the basis that it is an international kidnapping. She states that adjourning to June 2, 2020 to be spoken to would greatly prejudice the father's case.

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[6] By responding email to the courthouse and by Form 14C confirmation, the mother's counsel states that the matter is not urgent and should remain adjourned until June 2, 2020 as contemplated by the Regional Notice. She notes the suspension of the court and the travel restrictions presently in effect. She also indicates that the parties are awaiting the report of the Office of the Children's Lawyer. Further, counsel states that she personally is experiencing symptoms of COVID-19 and is awaiting a test. In view of the complications in the case she argues that she, rather than an agent, should ultimately argue the matter.

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[7] At first blush, this case would appear to fall within the understanding of an "urgent" matter as set out in the Chief's Notice as it is a matter "relating to the wrongful removal or retention of a child," (at least from the perspective of the father).

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[8] However, I am unable to find that the matter is urgent at this time. The children are currently residing with their mother in Kitchener-Waterloo, Ontario. There is currently a global pandemic underway which has resulted in wide-spread travel restrictions, including the current international Travel Advisory of the Government of Canada, which today reads as follows: "Official Global Travel Advisory: Avoid non-essential travel outside of Canada until further notice." The Advisory continues:

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"To limit the spread of COVID-19 many countries have put in place travel or border restrictions and other measures such as movement restrictions and quarantines. Many airlines are suspending flights. Many airports are closing, preventing flights from leaving. Exit bans are becoming more frequent. New restrictions may be imposed with little warning. Your travel plans may be severely disrupted..."

[9] I attach to this endorsement a copy of the Travel Advisory. It could not be more clear.

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[10] This is not the time to hear a motion on the return of children to another jurisdiction. Indeed, were the father to be successful, any order would likely not be capable of being implemented for weeks or even months. It would be foolhardy to expose the children to international travel in the face of the Travel Advisory, risking the restrictions and complications adverted to therein. Considering the language of the Chief's Notice, the children's "safety" and "well-being" are protected, for the time being, by remaining where they are in the care of their mother in Ontario. While the matter is very important to the parties, it is not in my view currently "urgent".

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[11] I understand that the father is anxious to proceed with the motion because he misses his children. He is no doubt worried about what he might see as an unfavourable *status quo*. It is clear from the materials already before the court that the father has taken many steps to have the children returned to Nigeria. He should want them to be returned at a time when it is safe to travel, not currently. There should be no question that the fact of the motion not being heard presently is occasioned by the pandemic and through no fault of the father. This would be a consideration on the eventual hearing of the motion. This is not a *status quo* arising from a lack of diligence on the father's part.

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[12] It would be my expectation that that the mother make every reasonable effort to ensure that the children are able to speak regularly with the father by Skype, FaceTime, telephone or other means, if she is not already doing so.

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[13] I am advised that, as a result of a miscommunication, counsel were incorrectly advised by court staff that the matter would be heard on an urgent basis. This endorsement, however, governs the matter.

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[14] A few comments about the summary process under the Chief's Notice as it applies to this case:

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(a) The determination of urgency is intended to be simple and expeditious. It is not intended to create a motion unto itself. In this case, I have made the determination regarding urgency based on the emails of counsel, and with knowledge of the file from several appearances before me. Given the volume of urgent family matters coming before the courts at this unprecedented time, this is the only practical way forward.

(b) This determination is without prejudice to either party on the substance of the motion when heard. That I have determined the matter to not presently be urgent is not in any way to prejudge the strength or weakness of either party's case on the motion itself. The father may very well have a good case for the return of the children to Nigeria, but now, in the middle of a global pandemic with extensive travel restrictions, is not the time for that argument.

(c) The process for hearing urgent motions contemplates limited materials before the court, recognizing that judges do not presently have access to the physical files and that there is as yet no electronic storage of family court files. The Chief's Notice states that "The Court expects parties will submit only brief materials to allow for a fair, timely, and summary disposition. Emailed filings cannot exceed 10MB. ... Every effort must be made... to limit filed materials to 10 MB." This is not a simple case. Both parties have filed extensive materials. In my view it is preferable that the judge hearing the matter have the benefit of *all* of the materials filed to date, and full argument, rather than a summary process in the manner contemplated. The stakes are high for both parties, and for the children.

[15] On the basis of the foregoing, I find that this matter is not urgent at this time.

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[16] The request to have the motion heard *may* be renewed when international travel advisory is lifted. However, as indicated, it would be preferable that the matter not be heard through a summary process, but as a long motion on the fulsome materials filed by the parties. At the "to be spoken to" on June 2, 2020, if the motion has not already been heard, I would direct that this matter be heard promptly and as a matter of priority.

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Madsen J.

DATE: March 24, 2020