

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

PETITION NO: /329/2023

BETWEEN:

CHIAMAKA ADAKU KALU UCHE PETITIONER/APPLICANT

AND

MR. UCHE KALU UCHE RESPONDENT

MOTION ON NOTICE

**BROUGHT PURSUANT ORDER 34 RULE 29 AND ORDER 43 RULE 1
OF THE HIGH COURT OF FCT (CIVIL PROCEDURE) RULES 2018
AND UNDER THE INHERENT JURISDICTION OF THIS
HONOURABLE COURT.**

TAKE NOTICE that this Honorable Court shall be moved on the day of....., 2023 at the hour of 9.00am O'clock in the forenoon or so soon thereafter as counsel on behalf of the Petitioners/Applicants may be heard praying the Court for the following:

1. **AN ORDER OF THIS HONOURABLE COURT** permitting the proceedings relating to the evidence, tendering of documents, cross examination and re-examination of the Petitioner/Applicant **CHIAMAKA ADAKU KALU UCHE** to be carried out virtually by Live Video Link Evidence (Zoom) or any other remote/virtual hearing platform as may be allowed by the Court.
2. **AND FOR SUCH FURTHER/OTHER ORDER (S)** as the Honorable Court may deem fit to make in the circumstance.

THE GROUNDS UPON WHICH THE APPLICATION IS BROUGHT

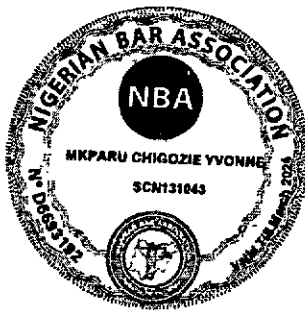
1. The proposed witness is the Petitioner herself, she resides and work in Canada, by virtue of this she will not be able to physically attend proceedings to give evidence before this Honorable Court due to distance and cost.

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3. That it will be practically impossible for the witness to come to this Court to give evidence considering the location, distance and coupled with the nature of her job.
4. That the nature of evidence sought to be given is material and important to the fact in issue and will guarantee a fair trial.
5. That the testimony of the proposed witness is vital and necessary in proving the case of the Petitioner/Applicant.

Dated this day of, 2023.



.....
Benedicta Ako Esq
Oyeniya Elvis Adekunle Esq
✓ Chigozie Y. Mkpuru Esq

Whose address for service is:
IFEANYI NJOKU & CO,
Blk 63, Flat 17, Mambolo Street,
Wuse Zone 2, Abuja. FCT
08033602052

FOR SERVICE ON:

The Respondent
UCHE KALU UCHE
29, Ahmed Musa Crescent,
Jabi, Abuja.
FCT
08033832446

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**



PETITION NO: /329/2023

BETWEEN:

CHIAMAKA ADAKU KALU UCHE PETITIONER/APPLICANT

AND

MR. UCHE KALU UCHE RESPONDENT

AFFIDAVIT IN SUPPORT OF MOTION

I, BENEDICTA AKO, Female, Christian, Nigerian Citizen Blk 63, Flat 17, Mambolo Street, Wuse Zone 2, Abuja do hereby make oath and state as follows: -

1. That I am a counsel in the law firm of **Ifeanyi Njoku & Co.** and by virtue of which I am conversant with the facts deposed herein.
2. That I have the authority of the Petitioner/Applicant as well as Legal Counsel representing the Petitioner in this matter to depose to this affidavit.
3. That by virtue of my position in this matter and in the firm generally, I have personal knowledge of the facts contained herein, which facts I verily believe to be true as follows: -
 - i. That the Petitioner instituted this matter against the Respondent for a Decree for Dissolution of Marriage between her and the Respondent.
 - ii. That the Petitioner is ready and willing to give evidence in this case without having to personally come to Court from Canada where she is currently living and working due to distance and cost.
 - iii. That the Petitioner will incur heavy cost coming from Canada to give evidence considering that she resides in Canada, where she is residing and works.

- iv. That the nature of evidence sought to be given is material and important to the fact in issue and will guarantee a fair trial.
 - v. That the testimony of the proposed witness is vital and necessary in this matter.
 - vi. That the Petitioner/Applicant is readily able to arrange video call facilities for the use by the Honorable Court for the conduct of evidential aspects of the proceedings as required.
- 4. That attached is a copy of the witness statement on oath made by the Petitioner/Applicant sought to be used in support of the Petitioner/Applicant's case.
 - 5. That it will be in the interest of Justice if this application is granted, as it will facilitate proceedings of this Court in this matter.
 - 6. That the Respondent will not be prejudiced in any way if this application is granted.
 - 7. That I swear to this oath conscientiously in good faith, believing same to be true and in accordance with the Oaths Act currently in force.

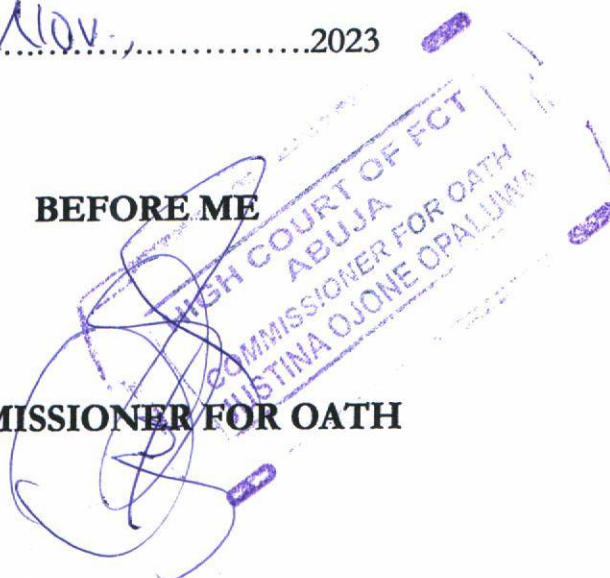

.....
DEPONENT

Sworn to at the Registry of the High Court of FCT, Abuja

This 21st day of Nov.,2023

BEFORE ME

COMMISSIONER FOR OATH



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

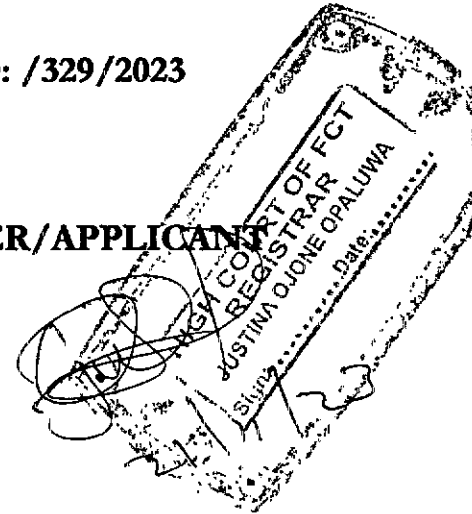
PETITION NO: /329/2023

BETWEEN:

CHIAMAKA ADAKU KALU UCHE PETITIONER/APPLICANT

AND

MR. UCHE KALU UCHE RESPONDENT



WRITTEN ADDRESS IN SUPPORT OF THIS APPLICATION

1.00 INTRODUCTION

1.01 This application is Brought Pursuant to Order 34 Rule 29 and Order 43 of the High Court of FCT (Civil Procedure) Rules 2018 and Under the Inherent Jurisdiction of This Honorable Court praying the court for the following Order: -

a. **AN ORDER OF THIS HONORABLE COURT** permitting the proceedings relating to the evidence, tendering of documents, cross examination and re-examination of the Petitioner/Applicant **CHIAMAKA ADAKU KALU UCHE** to be carried out virtually by Live Video Link Evidence (Zoom)

b. **AND FOR SUCH FURTHER/OTHER ORDER(S)** as the Honorable Court may deem fit to make in the circumstance.

1.02 The application is supported by a 7 paragraphs affidavit deposed to by one **BENEDICTA AKO Esq.** a counsel in the law firm of **IFEANYI NJOKU & CO.** Counsel to the Petitioners/Applicant.

2.00 ISSUES FOR DETERMINATION

2.01 The Petitioner has formulated a sole issue for determination to wit:
In consideration of the circumstance of this case, whether the Petitioner/Applicant is entitled to the relief sought in this application.

3.00 **ARGUMENT**

In consideration of the circumstance of this case, whether the Petitioners/Applicant is entitled to the reliefs sought in this application.

- 3.01 We submit that this Court has the powers to grant the prayers being sought for in other to see that justice is done in the matter. We rely on the case of **Alhaji Mohammed Shettima Bulama V. Federal Republic of Nigeria (2004) 12 NWLR (Pt.888) Page 498 @ P. 500** where the Court of Appeal (Lagos Division) held that;

"A judicial discretion ought to be founded upon the facts and circumstances presented to the Court from which it must draw its conclusion governed by the law....."

- 3.02 In the present Application we have shown to the Court through the deposition in the supporting affidavit that the Petitioner is ready to give evidence in this matter but finds it impossible to come to the court because she resides and work in Canada and relying on the deposition in the affidavit we are urging the Court to grant the Petitioner/Applicant's application

- 3.03 We submit that the Petitioner/Applicant is entitled to the application. It is trite law that in the exercise of Courts discretion, it must be done judicially and judiciously. The Supreme Court held in the case of **General and Aviation Limited V. Captain Paul M. Thahal (2004) 10 NWLR (Pt.880) Page 57** held thus;

"A party who seeks an exercise of discretion by the Court in his favor has the burden of presenting all material facts necessary for the exercise of the discretion by the Court in his favor"

- 3.04 My Lord, it is our humble submission that the Rules of this Honorable Court, empowers the Court to grant our application thus by reason of **Order 34 Rule 29** states as follows;

"Subject to the provisions of the Evidence Act, a judge sitting at trial may admit evidence of a witness through Video Conference or any other electronic device (capable of recording live as if he is personally in attendance in Court) a witness whenever the judge considers it expedient to do so....."

3.05 We submit that the material for the Court to exercise its discretion in favor of the Petitioner is before the Court and urge the Court to so in exercise of its discretion in favor of the Petitioner.

3.06 From the provision of the **Order 34 Rule 29** cited above, it can be gathered that the intention of the draftsman is to provide for, where a witness may not be physically available or present to give evidence and be cross examined in the Court. In such circumstance, the testimony of the witness can be taken via video as prayed by the Petitioner/Applicant. Following the arguments canvassed above, we therefore, humbly urge your lordship to grant this application.

3.07 Also the provision **Evidence Act 2011** is in support of taking video evidence of a witness, specifically **Section 258(1)(b) Evidence Act 2011** which defines document to includes:

“(b) a disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it;

“(a) any film, negatively, tape or other device which no or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it”

3.08 One of the many commendable innovations of the evidence Act 2011 is it provision for video link evidence and its admission by Nigeria Courts. This is the important provision of **Section 258(1) Evidence Act 2011**.

3.09 . It is trite that the Court is the master of the proceedings before it and so discretion exercised in accordance with the law will be commendable

3.10 We most respectfully refer my Lord to the position of Denton-West JCA in the case of **K.S. M. H. V. M.I.E.E (2012) 3 NWLR (Pt.1287) 258 @ 284**. Admission of video evidence is therefore a matter subject to the overriding discretion of the Court. To this effect, several jurisdictions now permit video link evidence in trials. We respectfully refer the Court to the case of **G. V. DPP (1997) 2 Cr App R 78; R V. Hnaton (2005) EWCA Crim 2009; and Rowland V. Buck (2002) 4 All Er 370**.

3.11 My Lord, the provision of Section 258(1) Evidence Act 2011 now expressly or impliedly allows this honorable Court's decision thereon. The scope of application can be deduced by the dictum of the UK in **White V. Ireland (1995) 1 LR 268 @ 272-275** where the Court held thus:

“the trial judge is in complete control of all equipment. He will act in accordance with constitutional and natural justice and will ensure that there are fair procedures. If the accused is defending himself, the judge can decide whether or not to make his image available to his accuser. In those circumstances his voice must personally be transmitted but not necessarily his image if there are any specific dangers arising out of a particular case, counsel for the parties can undoubtedly deal with it and the judge in charge shall also deal with it while the picture can be shut down it seems important that the sound link should not be broken. Thus the parties and the judge should be able, if necessary by ear phone, to hear the conversation between the witness and the user. Such conversation should be recorded and can be played as required. It seems essential that there shall be a constant eavesdropping of what is happening in the room. This is to prevent intentional or unintentional tutoring of the child witness”.

3.12 We humbly urge this Honorable Court to apply the above case cited to the case at hand. The Petitioner/Applicant can give evidence and indeed be cross examined by video link evidence. To ensure that the process is transparent, he can conduct the video (zoom) under the supervision of his lawyer and the Court. The facilities can be set up jointly or by the Court and both Petitioner/Applicant counsel as video call facilities are now common place in Nigeria

3.13 It is our most humbly submission that the Petitioner/applicant is well entitled to the reliefs sought in this application.

3.14 We submit that this application will not prejudice the respondent, it has no tendency of giving undue advantage to the Petitioner/Applicant and it will assist the Honorable Court to hear this matter on the merit and arrive at a just and conclusive determination of the suit.

3.15 We most respectfully urge the Court to grant the application as prayed.

4.00 **CONCLUSION**

4.01 We urge the Court to grant this application, we therefore move in terms of our motion paper.

Dated this day of, 2023.

.....
Benedicta Ako Esq

Oyeniye Elvis Adekunle Esq

✓ Chigozie Y. Mkpuru Esq

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