**CHRISTINE ANN ADAMS**

**V.**

**DEREK HUMPHREY ADAMS**

HIGH COURT, LAGOS

29TH MARCH, 1971

SUIT NO. M/196/1970.

**LEX M/196/1970**

**OTHER CITATIONS**

3PLR/1970/75 (HC-E)

**BEFORE:** LAMBO, J.

**REPRESENTATION**

IMPEY (with him ADESINA) - for the Plaintiff

AND

Chief WILLIAMS (with him AKESODE) - for the Defendant

**ISSUES FROM THE CAUSE(S) OF ACTION**

FAMILY LAW –MATRIMONIAL CAUSES:- Custody of infant child – Application by wife who deserted matrimonial and moved in with a lover with whom she carried on adulterous affair – How treated

FAMILY LAW –MATRIMONIAL CAUSES:- Custody proceedings – What applicant must prove to succeed - Good mother – Meaning and implications – Employment, visible source of income, suitable accommodation, immigration status, health and other relevant considerations on which court decides – When court may award custody to husband – How treated

CHILDREN AND WOMEN LAW:- *Women and Justice Administration/Adultery* – Children and *Custody* proceedings – Good mother – Meaning of – Implication for custody proceedings – Whether a mother who properly looks after the children of the marriage but who by her amorous conduct broke up the home thereby denying the children of a biological father-and-mother household is not a good mother – Whether mother whose conduct led to break-up of her matrimonial home cannot as of right demand custody of children against their father – Justification

CHILDREN AND WOMEN LAW:- *Women and Employment* – *Women and Custody proceedings* – Foreigner - Employment status of mother or assured visible source of income – Stability of immigration status within jurisdiction if a foreigner – Suitable accommodation - Implication for petition for custody

EDUCATION AND LAW: Tertiary education teachers – Sexually immoral professors – Effect on image of institutions and justice administration

HEALTHCARE AND LAW:- Matrimonial proceedings relating to custody – physical and mental health of proposed care-givers – Whether relevant considerations

IMMIGRATION LAW:- Determination of suitability for continuing grant of immigration status – Employment status or visible source of income – Suitable accommodation – Lifestyle consistent with laws of the nation especially criminal laws – Relevance

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Plaintiff and the Defendant who are British citizens were married on the 24th May, 1967, at Walton-on-Naze Parish Church in Essex. The only child of the marriage, Deborah, was born on 17th December, 1968 and lived with her parents until the 13th October, 1970 when, in consequence of a disagreement, the wife deserted the matrimonial home and took up residence with a Professor Philip Robert Phillips with whom she was having an adulterous association. The husband, a man of stable means and character, had been looking after the infant child of the marriage since October 1970 with the aid of his mother who is assisted by the child’s Nanny. The wife, on the other hand, has been living in circumstances that are both precarious and uncomfortable, coupled with the somewhat remote possibility of a remarriage to her paramour, a man of “an extremely whimsical disposition”

By this originating summons the Plaintiff, Christine Ann Adams, is praying the Court for an order that custody of her infant child, Deborah, aged 2 years and 3 months, may be committed to her.

ISSUE FOR DETERMINATION

Whether a father/husband who has been deserted by mother/wife through no fault of his shall have no consideration in an application for a grant of custody.

DECISION OF COURT

On the evidence and the affidavits filed in these proceedings, I have not the slightest doubt that in the consideration of the welfare of Deborah, the husband (Derek Humphrey Adams) is by far a more suitable person to have her custody than the wife, a woman of weak character and easy virtue, who had completely ground down to the last indignity the sanctity of her matrimonial home.

**MAIN JUDGMENT**

**LAMBO, J**.: [DELIVERING THE JUDGMENT OF THE COURT]

By this originating summons the Plaintiff, Christine Ann Adams, is praying the Court for an order that custody of her infant child, Deborah, aged 2 years and 3 months, may be committed to her.

The summons was brought under the Law Reform (Miscellaneous Provisions) Act 1949 and the question, whether an application under this Act was competent in this State, was raised in a Defence Motion which was to come before my Lord the Chief Justice on Monday, the 11th January, 1971. Events which, however, followed indicated that the parties were satisfied (for so it seemed to me) that there was undoubted jurisdiction in the Court to entertain the summons.

The Plaintiff and the Defendant who are British citizens were married on the 24th May, 1967, at Walton-on-Naze Parish Church in Essex. The only child of the marriage, Deborah, was born on 17th December, 1968 and lived with her parents until the 13th October, 1970 when, in consequence of a disagreement, the wife deserted the matrimonial home and took up residence with a Professor Philip Robert Phillips with whom she was having an adulterous association.

Before the marriage the husband had lived in Lagos; he is Chairman of Allen & Elliott (Nigeria) Ltd., a company with branches in Nigeria, Sierra Leone, Ghana and Gambia. He appears to be in comfortable circumstances and has been looking after the infant child of the marriage since October 1970 with the aid of his mother who is assisted by the child’s Nanny. The wife, on the other hand, has been living in circumstances that are both precarious and uncomfortable, coupled with the somewhat remote possibility of a remarriage to Professor Phillips, her paramour, a man of an extremely whimsical disposition. I will expatiate, later in this judgment, on the despicable trait in the character of Professor Phillips, a trait which must have earned him the odium and contempt of members of the Polo Club to which he belongs. As an acting Dean of a teaching unit in the University of Lagos -see Exhibit G- he has, by his many letters, tendered at the hearing, as well as by his immoral behaviour, demonstrated that he has nothing of the discipline which is required by true scholarship.

By reason of the improper association between Professor Phillips and the Defendant’s wife, the latter committed adultery with the former in the matrimonial home on about three or six occasions when the husband was away from home. It was admitted by the wife that on these occasions the infant child of the marriage was in the matrimonial home and her attitude would appear to be one of indifference. So involved was she in her act of infidelity that, after receiving a cheque for £250, while in England, from Professor Phillips, she abandoned her infant child, Deborah, ostensibly to meet her husband, Derek, in Rome but in fact to meet Professor Phillips. She stayed with Phillips in Rome, Paris and London. When Phillips left for New York she said:

“I left for my sister’s home in Waltham Cross. I then returned to the Defendant’s mother where I stayed for a week with Deborah. I then returned to Lagos, arriving on the 14th September. The Defendant met me at the Airport...”

She confessed to her husband that she had committed adultery with Phillips and handed to him the jewellery which Phillips gave her. As her husband believed that she had repented, he forgave her and thereafter they lived happily together for one month, during which time she referred to Professor Phillips in rather derogatory terms.

On 12th October, the parties returned home from a party at about 9.30 or 10. The husband observed that the wife was upset, and he then asked her what was the matter; she replied:-

“That she didn’t know what to do because she loved me and loved Professor Phillips. I told her she had a choice to stay with my daughter or go to Phillips. She left and went to Professor Phillips’s flat using my car, and returned one hour later saying that Phillips would agree to any terms for a Divorce. I told her she was very foolish and the following morning I consulted a Solicitor for a Divorce.”

When, later in the afternoon of the following day, the parties met Professor Phillips, the husband said he made it quite clear that it was his intention “to keep his daughter under his full care, control and custody” and that both Professor Phillips and his wife agreed that that was the best solution. The husband said they all agreed that in the event that had happened, his wife could no longer live with him in the matrimonial home, and that Professor Phillips should collect her that evening at between 7 and 7.30 p.m. The wife packed up her belongings from the matrimonial home and Professor Phillips collected her that evening. The infant child, Deborah, remained behind: the husband said:

“This was one of the things we spoke of. Deborah was to remain with me permanently... “

When the wife learnt that her husband had taken Deborah to his mother in England, she wrote to her (i.e. her mother-in-law) on the 26th October, inter alia, as follows:-

“... So for her to come to you who loves her so much, and be out of this horrible situation where she was being used as a pawn, seemed the answer”.

But in her evidence in this Court she said:-

“Mrs. Adams, Senior, my mother-in-law is 74 years old and cannot look after Deborah. She has arthritis which makes it very difficult for her to pick up the child. Further she told me the West African climate did not suit her...”

Mrs. Theresa Adams who gave her age as 71 denied her daughter-in-law’s allegation that she is incapable of looking after Deborah. I had Mrs. Adams, senior, before me in the witness box and, after observing her very closely, I am convinced that the wife’s evidence is not only exaggerated but false as well. I think Mrs. Adams, senior, is a woman of great charm and high intelligence who has the comportment of one very much younger than her age. She had been Personal Secretary to both the Minister of Agriculture and the Director of Barclays Bank in Ghana; she afterwards had a spell of two tours in voluntary welfare work in a Children’s Clinic also in Ghana. As regards Deborah, she said:

“I have been looking after Deborah since the trouble between the parties started. I am very fond of her. I feel no strain in looking after her; ... the climate does not bother me; it suits me very well”.

It is pertinent to observe, at this stage, that ever since the 8th December, 1970, when my Lord the Chief Justice granted access to the wife, she has not complained of inadequate care of the infant child either by her husband or her mother-in-law. I am, therefore, constrained to observe that on the alleged incapacity of her mother-in-law to look after the child, her evidence is by no means accurate or dependable, or, even, in matters of truth, particularly scrupulous. In my judgment Mrs. Theresa Adams is a very capable person in every respect and can, therefore, be safely entrusted with the custody of Deborah. In this exercise she is assisted by the child’s Nanny and a steward who has been in the husband’s employment for about 5 years. The husband’s plans for Deborah’s education are that she attends St. Saviour’s School, Ikoyi, an English speaking school, and, afterwards, a Girls’ School in England.

There was absolutely nothing said in evidence about any plans which the wife has for Deborah. This is hardly surprising, as it seems to me that her passionate desire for Professor Phillips transcends any such consideration. At the height of her infatuation with Professor Phillips, she deserted the matrimonial home and abandoned the infant child to the care of her husband; while on holiday in England, she lied to her mother-in-law and went on an adulterous spree to Rome to meet Professor Phillips, leaving the infant child behind in England in the care of her mother-in-law; she accompanied the Professor from Rome to Paris where they also lived together. They finally arrived in England from where Phillips left for New York.

It is clear to me that the wife had staked the happiness of her matrimonial home in the mad pursuit of fancy, for, I think, after satisfying his carnal instinct to the fullest, Professor Phillips would, in his characteristic way, attempt to stifle down their incipient attachment. This is borne out by a passionate appeal to her in a letter, Exhibit C, at page 4 in which, in September, 1970, he urged her to go back and reconcile with her husband. In the same month, in fact a day before she played the truant from her mother-in-law’s home in Kent, to join Phillips in Rome, the latter was writing a passionate love letter to Mrs. Sheilla Browne. In the letter, Exhibit A, of 1st September, 1970, Professor Phillips in his concluding paragraph wrote as follows:-

“S. I do love you No matter what. You will be the thought-the promise-the everything”.

In late September 1968, Mrs. Sheilla Ann Browne, a friend of Mrs. Christine Ann Adams, met Professor Phillips and became his mistress.

Professor Phillips then asked Mrs. Browne to marry him; the witness said:-

“When I agreed to marry him I told my husband and we went together to see Professor Phillips. It was agreed I would let my husband have custody of John and during the holiday John would come to me and Professor Phillips ... Professor Phillips shook my husband’s hands and about two weeks later he suggested to me that I should tell everybody we were no longer going to get married and that I would stay with my husband in order to avoid any further embarrassment or scandal”.

This is the same man whom the wife, in the present application, portrayed to her mother-in-law, in her letter (Exhibit B) of the 26th September, 1970, as “a very good and kind man ... and a respected member of this community”. Further in the letter she said:-

“Derek and I can never live together again; the hurt I have caused him and others especially you is something I shall never quite be able to come to terms with...”

It is true that nothing she could say or do would suffice to plaster the wound she had so deeply inflicted on her husband by totally breaking up the matrimonial home so as to follow, as learned Counsel for the husband puts it, “the pleasures of her own heart”.

The question now is-Who of the parties should have the custody of Deborah? The principles on which the Court acts in resolving this question are set out by the learned author of Halsbury’s Laws of England 3rd Edition volume 21 paragraph 429 at page 194 as follows:-

“The court, in making orders as to custody or access, will have regard to the conduct of the parents and to the wishes as well of the mother as of the father. It will exercise its jurisdiction to interfere in the interests of a child on account of the father’s conduct, if it is satisfied that he has so conducted himself, or has shown himself to be a person of such a description or is placed in such a position as to render it practically essential to the safety or welfare of the child that the father’s right should be treated as lost or suspended and should be superseded or interfered with. Interference will be justified by actual cruelty of the father either to his wife or child, by his avowal, and adoption of principles of an irreligious and immoral character, by marital misconduct or by lack of means. Other things being equal, it is preferable that a child of tender years should be with its mother. If the infant is of an age to exercise a choice, the court will take his wishes into consideration. . . “

On the evidence and the affidavits filed in these proceedings, I have not the slightest doubt that in the consideration of the welfare of Deborah, the husband (Derek Humphrey Adams) is by far a more suitable person to have her custody than the wife, a woman of weak character and easy virtue, who had completely ground down to the last indignity the sanctity of her matrimonial home. She herself said in her letter, Exhibit B, :-

“I have been very sick over the last ten days. I have had a form of meningitis which affected the back of my head and spine; my first day up was Saturday when Derek arrived back so full of bitterness, for which I cannot blame him. I blame myself for this horrible mess...”

Professor Phillips, in fairness to him, recognises the husband as a man of good character; he has this to say of him in his letter, Exhibit C:-

“And as we have both said Derek is really a fine person... You do basically love Derek. Christine, even I could feel that. I too think Derek is one of the better people in this world. He has character and is a gentleman-more than I can say about myself at this point”.

In Re L (INFANTS) [1962] 3 All E.R.1, the father and mother married in 1955, and there were two children of the marriage, both daughters, aged, in 1962, four and six respectively. Both parties were comfortably off and the mother provided the matrimonial home from her own resources. In 1960, the mother committed adultery with a married man; she subsequently confessed and her husband forgave her. In 1961, the mother, taking the children with her, left the husband and went to live near the man. The father retook the children, and at the date of the proceedings they were looked after by an unmarried sister of the husband in a house provided by him which was quite suitable for the family. The break-up of the home was in no way due to the father’s conduct. The mother refused to return, but advanced no reason for her refusal other than her fancy or passion for the other man, and appeared to have little consciousness of duties to her husband and her children to maintain a home for them. The children having been made wards of court by virtue of a summons taken out by the father, an order was made committing their care and control to the mother. The father appealed. Allowing the appeal, the Court held that in the circumstances of the case, the care and control of the two young girls should be committed to the father, who is able to provide suitable surroundings. Lord Denning, M.R., said (at page 3):-

“In this case whilst no doubt the mother is a good mother in one sense of the word, in that she looks after the children well, giving them love and, as far as she can, security, one must remember that to be a good mother involves not only looking after the children, but making and keeping a home for them with their father, bringing up the two children in the love and security of the home with both parents. In so far as she herself by her conduct broke up the home, she is not a good mother”.

I am far from being convinced that if granted the custody of Deborah the Plaintiff/wife would be able to give her that rare and attention which children of Deborah’s age so much need. The statement of James, the husband’s steward and that of Deborah’s nanny, exhibited to the further Affidavit of the 16th January, 1971, showed that the wife was in the habit of leaving the matrimonial home from about 8 p.m. till about 2 a.m. of the following morning. It cannot, therefore, be said that a woman who so thoroughly enjoyed gallivanting about and leaving an infant child of Deborah’s age behind is the sort of woman who can bring up a child in the love and security of a home. Harman, L.J., in the case cited, supra, said at page 4 as follows:-

“It is not the law, and it never has been, that no consideration shall be given to the spouse who has been deserted, whose home has been blasted, whose matrimonial felicity has been ended through no fault of his. If a wife chooses to leave her husband, for no ground which she chooses to put forward, but because she has a fancy or passion for another man, as this woman has, she must be prepared to take the consequences”.

And Lord Denning further observes at page 4 of the same judgment as follows:-

“It seems to me that a mother must realise that if she leaves and breaks up her home in this way, she cannot as of right demand to take the children from the father. If the mother in this case were to be entitled to the children, it would follow that every guilty mother (who was otherwise a good mother) would always be entitled to them...”

Even in the remote possibility of Professor Phillips marrying the Plaintiff/wife, I would still hesitate to award custody of Deborah to her as, I think, she is eminently unsuitable to have such custody.

At the present time, the wife has no work or any assured visible source of income-an unhappy situation for anyone to be under the Criminal Code of our land; her claim to the prospects of an appointment under Mrs. Amachree’s Delta Designs of Lagos is, to my mind, illusory; she did not produce at the hearing any Service Agreement between her and the company; she has nothing she can call a home, save that, from what appears to be the patronizing benignity of John Henry Day of The United Nigeria Insurance Company, she enjoys the precarious tenancy of the Company’s property on Victoria Island. The effect of all this is, that she occupies a position in the community which the Immigration laws of this country seriously frown at. And in the circumstances, I cannot conceive of any situation more absurd than to accede to her application to have custody of Deborah granted to her.

In the result, I would dismiss the Plaintiff’s application and grant custody of the infant child, Deborah, to the Defendant, her father.

Application dismissed.