

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

THIS 16TH DAY OF JULY, 2021

BEFORE HIS LORDSHIP: THE HON. JUSTICE A.A FASHOLA

SUIT NO: PET/622/2020

BETWEEN:

MRS UGOCHI CYNTHIA ABAZIE ABANG -----PETITIONER

AND

MR FORTUNE ABANG -----RESPONDENT

RULING

The petitioner on 18th day of December 2020 filed this Suit against the Respondent claiming the following:

- A. A decree of dissolution of marriage
- B. Full custody of her daughter joan chinemenma Onenu Abang (hereinafter joan) , be granted to the petitioner.
- C. The Respondent to take the following responsibilities for joan:

- i. Pay her school fees in such as may be required to be paid by the school per term and such other fees imposed on her for her education.
- ii. Provisions , toiletries, food and Clothes in the sum of N50,000 ,00 Monthly
- iii. Pay for her medical care in the event of illness.
- iv. Visiting rights every Wednesday from 12pm- 6pm: and every Saturday from 9am-6pm.
- v. Access to the petitioner to remove her clothes, shoes, books and work related journals from the respondent's house.
- vi. And such further or others this Honorable court deems fit to make in the circumstances.

In support of the petition, the petitioner filed a verifying affidavit and did not file a witness statement on Oath; the petitioner also listed the following documents to be tendered at the trial of this case

- 1. Petitioner's marriage certificate**
- 2. Petitioner's Hospital cards**
- 3. Petitioner's medical test results**
- 4. Petitioner's medical record**

The petitioner relied on only one witness to prove her case. However, from the facts stated by the petitioner. In summary in that since the marriage was contracted at the living faith church Abuja on 14th day of September 2013. The marriage was blessed with only one child namely:

A. Joan Chinnemenma Onenu Abang born on 4th April 201, 3 years

That the petitioner and the respondent have lived apart for a period of over three (3) years from the 10th day of May 2017 and that the respondent never paid attention to both her physical and emotional needs, and the respondent does not show love and he's always quarrelsome, despite the fact that Respondent is on a monthly salary working with the News Agency of Nigeria, he left almost the entire responsibility of providing for the both of them including but not limited to buying of food and paying accrued bills to her ,being the petitioner a bread winner of their home throughout her marriage to the respondent, she had to endure emotional violence, verbal and emotional abuse from the respondent, the petitioner urged the court to dissolve the marriage and to grant custody to her.

Upon being served with the petition the Respondent on the 8th day of March 2021 which is the day set for hearing of this suit both parties were present before the court.

At the hearing N.T Azai Esq. appeared for the petitioner, while the respondent was not represented by learned

counsel to the petitioner informed the court that he is ready to go on. He called Cynthia Abazie Abang the petitioner herself as Pw 1 a legal practitioner on her Evidence in-chief she informed the court that she filed this process for dissolution of marriage based on the emotional and verbal abuse that she underwent while the petitioner was married to the respondent when they were still living together.

The marriage was contracted on September 14th 2013, In the course of that marriage the respondent behave in such a manner that made it impossible to continually co-habit with him despite the fact that we were both starting life as a fresh couple we were both working but he made things very difficult for me ,in the sense that, aside from assuming the role of a primary bread winner I had no peace, I was exposed to emotional and verbal truma while I did not mind taking care of myself, things got worse while I got pregnant I had to assume responsibility for the unborn baby because the Respondent did not take up responsibility of the unborn baby, for any time I approached him for financial or to provide any form of assistance through the duration of my pregnancy he consistently and technically dodged, He neglected me as a pregnant woman, I had to source income to take care of myself and the unborn baby, due to the stress on me I was admitted at private hospital kubwa in order to stop bleeding on this issue the Respondent did not make any contribution regarding the bill of the Hospital I have to pay everything for myself, still in the cause of delivering of the baby I went to the Hospital where I paid for

everything with my money, that is how he left me and my baby without anything even food I had to source money for it and the assistance of my mother that I am staying with since 2017 till date, from the duration of my marriage from 2013 I had tried my best as a wife to support Respondent and be a good help to him but all my action has been met with resistance and the Respondent negligence.

At the closure of the petitioner's case, the Respondent who was present in court took it upon himself to cross-examine the petitioner since he is not represented by counsel. And he sought to tender the communication between him and the petitioner while she was in Australia studying. Learned Counsel to the petitioner vehemently opposed the tendering and admissibility of the said document on the basis that proper foundation has not been laid for the tendering of same.

Under cross – examination, Respondent asked :did I at several points communicate with you via phone , text on this note ,the petitioner answered to this question yes he always saying he had no funds, bearing that the respondent seek to tender the proof of conversation with the petitioner while she was at Australia,

The learned counsel to the petitioner object to it on ground that being the first time of seeing the document and he don't know if the document is rebuttal her answers to question during examination in-chief ,considering that no

answer was filed against the petition the learned counsel apply that the document be rejected.

This ruling is thus predicated on the admissibility of the document sought to be tendered by the Respondent in this suit.

On the principles guiding admissibility of evidence, the superior courts have held in litany of cases that admissibility of evidence in judicial proceedings is governed by its relevancy to the facts in issue or dispute between the parties in a case so that once a piece of evidence is relevant, it is admissible in evidence. However being an issue of pure law, the admissibility of a piece of evidence does not simply depend entirely on relevancy alone, but some other factors which may render it inadmissible under the law even if otherwise relevant. See **VESE Vs WAIFEM (2018) 2 NWLR (PT. 1603) C.A** See also **ESSIEN Vs ESSIEN (2009) 9 NWLR (PT. 1146)**

The three main criteria governing admissibility of a document in evidence are:-

1. Whether the facts relating to the evidence have been pleaded
2. Whether it is relevant
3. Whether it is admissible in law See **ANAJA Vs U.B.A. PLC (2011)15 NWLR (PT. 1270) 377.C.A** See also **DUNIYA Vs JIMOH (1994) 3 NWLR (PT. 334) 609**

It is therefore my considered legal view that for a document to be tendered and admitted in evidence before a court of law, guiding principles of law and proper foundation must be laid. The document 'Conversation" between the petitioner and Respondent was not pleaded same is hereby rejected. I so HOLD.

Appearances: Parties absent.

Okpe Bernard Adeefei for the Respondent

Signed
Hon. Presiding Judge
16th/07/2021