

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ABUJA
ON 2ND DAY OF DECEMBER, 2021

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI
PRESIDING JUDGE

SUIT NO: FCT/HC/PET/158/2017

BETWEEN:

GOLD NYONG

.....

PETITIONER

AND

JERRY NYONG

.....

RESPONDENT

APPEARANCES:

PETITIONER IN COURT.

RESPONDENT ABSENT AND UNREPRESENTED.

FESTUS O. UGOH ESQ. HOLDING THE BRIEF OF NNAMDI MBA OKORO KELVIN ESQ FOR THE PETITIONER.

JUDGMENT

By a Notice of Petition filed on 14th March 2017 the Petitioner seeks:-

- 1. A Decree of dissolution of the marriage contracted between herself and the Respondent on the 15th July 2004 at the AMAC Registry, Abuja on the ground that the marriage has broken down irretrievably.***
- 2. An Order of Court directing the Respondent to stay away from the Petitioner and return the original offer letter of the Petitioner's house situate at No 11 Broad Street, Minfa Estate 2, Lokogoma District, Abuja, to the Petitioner.***
- 3. Legal Custody of the only child of the marriage who is a minor with reasonable access to the Respondent.***

The Respondent filed an Answer to the Petitioner on 3rd March 2019 wherein he pleaded in paragraph 5 as follows:-

"That the Respondent consent (sic) as follows;

- i. An Order of the Honourable Court for the dissolution of the marriage contracted between the Petitioner and the Respondent on the 15/7/2004 at the AMAC Registry FCT Abuja on grounds that the marriage has broken down irretrievably.***
- ii. That the Respondent consent (sic) to the joint ownership of their property situated at No 11 Broad Street, Minfa Estate 2, Lokogoma District, Abuja as stated in the consent judgment of both parties in an earlier suit as to the said property.***
- iii. Joint custody of their only child of the marriage who should be put in a boarding school and on holidays the Petitioner and the Respondent shall have access to the child at 50:50 basis before her school resumes."***

On 6th March 2019, the Petitioner testified upon affirmation, in proof of her case. She stated inter alia that she is a civil servant and lives at No 11 Broad Street, Minfa Estate 2, Lokogoma District, Abuja. That she and the Respondent got married in July 2004 at AMAC Registry Area 10, Abuja and were issued a marriage certificate – Exhibit P1.

The couple have one child – a daughter, Persis Jerry Nyong born on 14th December 2004.

That after the birth of their said daughter the Petitioner suffered many miscarriages.

In search of a solution to her predicament, she underwent medical tests at the hospital which revealed that she was HIV negative whereas her husband, the Respondent, was HIV positive.

The hospital thus advised that the parties should practice protected sexual intercourse by using condoms, which advise the Respondent refused to adhere to. This created serious problems in the marriage and the Respondent began to fight her.

Further that the Respondent moved out of the matrimonial home at No 11 Broad Street, Minfa Estate 2, Lokogoma District, Abuja, taking with him the original papers of the house. The Respondent returned one night in March 2017 to threaten her life.

She obtained a court judgment against the Respondent wherein the Respondent was ordered not to threaten her life and the property No 11 Broad Street was shared between herself and the Respondent.

The Petitioner further stated that she has been solely responsible for the child of the marriage with occasional help from the Respondent.

She urged the court to dissolve her marriage with the Respondent as her life is in danger and to grant her custody of her daughter.

She tendered the following documents in evidence:-

- Original Marriage Certificate – Exhibit P1
- Medical Report from Diff Hospital – Exhibit P2
- Certified True Copy of Consent Judgement of Grade 1 Area Court Kubwa, FCT Abuja – Exhibit P3
- Statement of Account – Exhibit P4
- Certificate of Compliance thereof – Exhibit P4A
- Photocopy of Offer of Mortgage – Exhibit P5

She was cross-examined and discharged.

The Respondent upon affirmation, testified in his defence on 5th October 2021.

He stated that his name is Jerry Nyong and he stays at 11 Broad Street Minfa 2 Estate, Lokogoma, Abuja. He is into real estate management.

He tendered receipts for building materials for their property – Exhibit D1.

He consented to:-

- 1) The dissolution of the marriage
- 2) The joint ownership of the 2 bedroom semi-detached bungalow at Minfa 2 Estate Lokogoma as stated in the consent judgment.
- 3) Joint custody of their only child on 50:50 basis. That the Petitioner will have part of the vacation and he will have part of the vacation with their daughter.

Counsel to the Petitioner did not cross-examine the Respondent.

Mr Kelvin for the Petitioner and Mr Sule for the Respondent both waived their rights to address the court and urged the court to proceed to judgment.

Section 15(1) of the Matrimonial Causes Act Cap 220, provides that:-

“A petition under this Act by a party to a marriage for a decree of dissolution of marriage may be presented to the court by either party to the marriage upon the ground that the marriage has broken down irretrievably.”

Section 15(2) provides facts one or more of which the Petitioner must prove to satisfy the court that the marriage has broken down irretrievably.

The Petitioner it appears relies on Section 15(2)(c):-

“That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.”

It is the undisputed evidence of the Petitioner that since the Respondent was diagnosed as being HIV positive and given the medical advice that parties practice protected sex by using a condom, that the Respondent has refused to adhere to the medical advise, thereby putting the Petitioner’s life in danger. Not only that, the Respondent has physically threatened the Petitioner’s life and has fought the Respondent on account thereof.

The court will take judicial notice of the fact that HIV is a serious and infectious disease for which there is no known cure. It will therefore be unreasonable for the Respondent to refuse to heed medical advice to practice safe sex – by using a condom so as not to infect the Petitioner with the dreaded disease and endanger her life.

I am satisfied that the above undisputed facts stated by the Petitioner are such acts of the Respondent that the Petitioner cannot reasonably be expected to live with the Respondent.

Furthermore the Respondent himself consents to a dissolution of the marriage. It is therefore abundantly clear that this marriage has broken down irretrievably on account of the Respondent’s conduct and I so hold.

Accordingly, I grant a decree nisi dissolving the marriage contracted between the Petitioner and the Respondent at AMACRegistry Abuja on 15th July 2004.

The Decree nisi shall become absolute in 3 months except the court orders otherwise.

Before the court is Exhibit P3 – The consent judgement of the Grade 1 Area Court Kubwa FCT Abuja between the parties to this petition.

I do not know what the initial complaint before the Area Court was but by the consent judgement of the court in Exhibit P3, the parties agreed inter alia:-

“1. That the Complainant and the Defendant shall share the matrimonial home situate at No 11 Broad Street, Minfa 2 Estate, Lokogoma, Abuja FCT as follows:-

a) The Complainant shall own the main House all that Two (2) Bedroom Flat, while

b) The Defendant shall own the Two (2) Bedroom Boys Quarters.

5. That the Defendant shall return to the Complainant immediately after the adoption of these Terms all the original Title papers of the matrimonial home for safe keeping”

The Complainant therein was the Petitioner and the Defendant therein was the Respondent.

There is nothing before this court to show that the said consent judgement has been appealed against, much less set aside on appeal. Indeed from all indications the judgement is still valid and subsisting and therefore binding on the parties.

In granting the Petitioner’s prayer 2, I therefore order the Respondent to stay away from the Petitioner and her portion of their property, No 11 Broad Street, Minfa Estate 2, Lokogoma District, Abuja and to return the original offer letter of the said property to the Petitioner.

ON CUSTODY

With reference to the issue of custody at hand, Section 71(1) of the Matrimonial Causes Act provides:-

“(1)In proceedings with respect to custody, guardianship, welfare, advancement or education of the children 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 those matters it thinks proper.”

By Order V Rule 5 of the Matrimonial Cause Rules, for the purposes of custody, a child of the marriage is one under 21 years of age.

It is correct that what constitutes the interest of a child is not capable of a precise definition. It is however not limited to material possessions but includes those things which assist the psychological, physical and moral development of the child. Things that would promote the happiness and security of the child.

See ODOGWU V ODOGWU (1992) LPELR – 2229 (SC); Matrimonial Causes in Nigeria Law and Practice by NasiruTijani page 125. ODUSOTE V ODUSOTE (2011) LPELR – 9056 (CA).

In the instant case, the only child of the marriage, Persis Jerry Nyong, born on 14th December 2004 is now about 17 years old. It is the undisputed evidence of the Petitioner that she has been taking care of the child.

Being a female child and fast maturing into a young woman, I think it is proper that she remains in the custody of the Petitioner, her mother, who has been taking care of her since her birth.

There is nothing to indicate the child will not thrive in the care and custody of the Petitioner.

Accordingly, I grant legal custody of the only child of the marriage, Persis Jerry Nyong to her mother, the Petitioner, until she attains the age of 21 years.

It is important that the child maintains a close relationship with her father for her rounded upbringing.

The Respondent shall have access to the child in daytime upon reasonable notice to the Petitioner.

The child shall spend half of her school vacations with the Respondent, as both parties shall agree.

The Petitioner as pleaded shall be responsible for the maintenance/welfare of the child with contributions from the Respondent.

Parties shall bear their own costs.

Hon. Judge