

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU - ABUJA**  
**ON WEDNESDAY THE 20TH DAY OF MAY, 2020.**  
**BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO -ADEBIYI**  
**SUIT NO. PET/359/2019**

**BETWEEN**

**OJIEMOHIN JOY ASHIOMA -----PETITIONER**

**AND**

**OJIEMOHIN ENDURANCE ABRAHAM-----RESPONDENT**

**JUDGMENT**

This petition is brought against the Respondent, Ojiemohin Endurance Abraham, by the petitioner Ojiemohin Joy Ashioma for a decree of dissolution of their marriage entered into on the 22nd of August, 2014 on the grounds of adultery and intolerability, cruelty, separation for three years and desertion. The petitioner claims against the Respondent as follows:

- i. A decree of dissolution of the marriage
- ii. Custody of the only child of the marriage
- iii. Maintenance of the only child of the marriage such as school fees, feeding and the hospital bills while the Petitioner shall be responsible for her accommodation.
- iv. And for such other order or orders as this Honourable Court may deem fit to make in the circumstance of the case.

The Notice of Petition and hearing notice was served on the Respondent personally on the 30th of October, 2019. Despite the service of the Notice of Petition and hearing notice, the Respondent counsel only filed a

memorandum of appearance dated and filed 10/12/19. Counsel to the Respondent on 11/12/2019 informed the Court that “we do not intend to oppose the Petition” thereby making this suit undefended and uncontroverted.

On the 11<sup>th</sup> of December, 2019 when the matter came up for hearing, the Respondent was represented by his counsel Blessing Yusuf who confirmed they have been served. Hence, the Petitioner proceeded to give evidence-in-chief. She tendered four (4) Exhibits which counsel for the Respondent did not object as follows;

1. Picture of Petitioner’s red eyed face admitted as Exhibit A
2. Picture of a green bus admitted as Exhibit B
3. Picture of bruises admitted as Exhibit C
4. Copy of the Marriage Certificate no. 1618 between the parties dated 22<sup>nd</sup> August, 2014 admitted as Exhibit D.

The Petitioner’s second witness Frances Umunna adopted her witness statement on oath as her oral evidence. Counsel to the Respondent did not cross examine the witnesses and the Petitioner closed her case.

The Petitioner in her witness statement on oath deposed that she is lawfully married to the Respondent. That the Respondent started keeping late night and would not return home at times for 3days, that any enquiries about his movement usually results into the beating and punching her with his fists. That sometimes in early 2015, she had to call her family members including one Frances Umunna to intervene when Respondent resulted to domestic violence. That she sustained a lot of bruises on her face and a teeth bite mark on her arm by the Respondent. That her siblings came after they were called and tried to mediate between them but on seeing how violent the Respondent appeared concluded to leave two family members Francis and

Juliet Umunna behind to take care of her that night. That Respondent is an adulterer which culminated into one of his lady “friends” bursting into their home and causing mayhem. That in 2015 when she returned from overseas trip after giving birth to Ojiemohin Kylie their daughter, that the Respondent deserted and packed out from their initial place of residence at Dawaki without her knowledge. That it was after a reconciliatory meeting held by the elders of their church that the Respondent allowed her to move in with him at his new residence. That sometimes in 2015 the Respondent whisked away their daughter Kylie from their house without her consent which caused her emotional stress, trauma and psychological breakdown. That in December 2015, the Respondent locked her out because she could not give him their daughter’s passport hence she called her sister Frances who came and took her to their family house where she passed the night. That in the company of her sister and mother she went to the Respondent’s residence and found that he and his mother had packed her and Kylie’s belongings in a green bus inscribed AMAC outside the compound and they noticed a carpenter changing all the locks and keys to the apartment to prevent her from gaining access to the apartment. Consequently, she packed her belonging which were already packed by the Respondent in the green bus he had already paid for. That since December, 2015 she and the Respondent have been living apart as husband and wife, and that the marriage has broken down irretrievably. The second witness Frances Umunna collaborated the evidence of the Petitioner in her witness statement on oath where she deposed that she is the sister to the Petitioner, that one night in early 2015, the Petitioner made a distress call on their family when the Respondent was beating her with his two fists. That she rushed to their apartment at Dawaki Abuja in company of her siblings

Francis Umunna, Juliet Umunna and Anthonia Umunna. That on their arrival she noticed bruises and injuries on the face of the Petitioner, evidencing serious fist beatings by the Respondent. That after their arrival they tried to mediate between the parties but on seeing how violent the Respondent appeared, they concluded to leave two persons Francis and Juliet Umunna behind to take care of the Petitioner and the situation. That on a Thursday sometimes in December 2015, the Respondent locked the Petitioner out with no place to sleep. That she had to come and take the Petitioner to her residence to pass the night. That the next day she and her mother went with the Petitioner to the Respondent's residence and actually found out that the Respondent and his mother had thrown the Petitioner out of their matrimonial home and had packed the Petitioner's and her daughter's belongings in a green bus inscribed AMAC. That they noticed a carpenter changing all the locks and keys to the apartment which was to prevent the Petitioner from gaining access into the apartment. That since December 2015, the Petitioner and the Respondent has been living apart as husband and wife.

The learned Counsel for the Respondent informed the Court that the Respondent rest his case on that of the petitioner. Thereafter, the matter was adjourned to the 30th of January, 2020 for adoption of final written addresses.

On the return date when the Petitioner's final written address was adopted, the learned Counsel for the Respondent reiterated that the Respondent rest his case on that of the petitioner. In her adopted final written address, learned Counsel for the Petitioner, Adams Ochuagu Esq., raised a sole issue for determination, which is:

“Whether the marriage has broken down irretrievably to warrant the decree of dissolution”.

Learned Counsel submitted that from the unchallenged and uncontroverted sworn evidence of PW1 and corroborated by PW2, it is obvious parties have been living apart since December 2015, which is up to three years preceding the presentation of this petition as provided in **15 (2) (f) Matrimonial Causes Act**. Counsel submitted that based on paragraph 10 of the Petitioner’s witness statement on oath which shows that the Respondent committed adultery and the Petitioner finds it intolerable to live with the Respondent, it is a ground to prove that the marriage has broken down irretrievably according to **section 15 (2)(b) of the Matrimonial Causes Act** . Counsel also submitted that with reference to the unchallenged and uncontroverted evidence in paragraphs 4, 5 and 6 of the witness statement on oath of the Petitioner no reasonable person will be expected to continue in a marriage with a Respondent of such behaviour. Counsel further submitted that for the Respondent to rest his case on that of the Petitioner proves that the Respondent has no defence to the evidence led by the Petitioner and that it is trite law that any unchallenged and uncontroverted fact in an affidavit remains undisputed and is deemed admitted by the adversary and the court will so hold. He urged the Court to hold that the Petitioner has proved her case and to grant the dissolution of the marriage accordingly with consequential orders for custody and the sum of N2, 000,000 per annum paid by the Respondent to the Petitioner as money for maintenance, hospital and school fees of the only child of the marriage till she is of age. Counsel relied on the following authorities;

1. **SECTION 15(2) (b) (c) (d) (e) and (f) of the Matrimonial Causes Act.**
2. **AJIBADE V. STATE (2012) 52 NSCQR (PT1) at 18 pg 25**

3. **MAGAJI V. NIGERIAN ARMY (2008) 3 NCL 490**
4. **IGELE V. STATE (2005) 1 NCC 59**
5. **ARUM V. NWOBODO (2013) 54 NSCQR (PT2) 866 Pg. 910**

As I had mentioned in the earlier part of this judgment, the Respondent who had filed a memorandum of appearance dated 10th December, 2019 and filed same day, did not file an answer to the Petition. Hence the issue for determination is;

“Whether the Petitioner has proved to the satisfaction of the Court that she is entitled to a decree of dissolution of the marriage”.

It is significant to observe that in cases such as this where a Defendant or Respondent has not led any evidence to challenge or controvert that led by the Plaintiff or Petitioner, the evidential burden will be discharged on a minimal proof because there is no contrary evidence from the opposite side with which same could be matched and assessed. See: **ASAFA FOODS FACTORY LTD. v ALRAINE NIGERIA LTD. & ANOR. (2002) LPELR-570(SC); EASTERN BREWERIES PLC, AWO OMAMMA & ORS. v NWOKORO (2012) LPELR-7949(CA), Per Aji, JCA at page 27, paras. D-F; UBA PLC. v MUSTAPHA (2003) LPELR-6203(CA).**

The Petitioner’s case was based on the grounds of adultery and intolerable behaviour, cruelty, separation for three years and desertion as provided in paragraphs (b) (c) (d) and (f) of Section 15(2) of the Matrimonial Causes Act. With regard to intolerable conduct under paragraph (c) of Section 15(2), the Court of Appeal had, in considering what constitutes intolerable behaviour as a ground for dissolution of marriage held that the behaviour must be negative, and such that a reasonable man cannot endure. That it must be grave and weighty as to make cohabitation virtually impossible. See in

**BIBILARI v BIBILARI (2011) LPELR-4443(CA); IBRAHIM v IBRAHIM (2007) 1 NWLR (Pt. 1015) 383, per Ariwoola, JCA (as he then was).** Therefore, the Petitioner has the burden of establishing the sickening and detestable behaviour of the Respondent and the fact that she finds it intolerable to live with the Respondent. See: **NANNA v NANNA (2005) LPELR-7485(CA) and DAMULAK v DAMULAK (2004) 8 NWLR (Pt. 874) 151.** In the instant case, the Petitioner's uncontroverted testimony was to the effect that the Respondent started keeping late night, sometimes he would not return home for 3days and physically assaulted Petitioner which led her to sustain a lot of bruises on her face and a teeth bite mark on her arm by the Respondent. In support of this she tendered Exhibit "A" and "C". First and foremost, Exhibit C is allegedly a picture of the injury inflicted on the Petitioner's arm from the Respondent's bite after viewing the said picture, this court has decided that the said picture carries no probative value, reason being that it is simply picture of a bruised arm without showing the face attached to the arm and in line with the decision of the Apex Court **Per NIKI TOBI in NWABUOKU VS ONWORDI (2006) AFWLR (Pt. 331) 1236 @ 1252, Paras C-F,** this court will hereby disregard the said Exhibit C and discountenanced same. Niki Tobi JSC had held that where a document earlier admitted does not carry any probative value, the judge can expunge the document or disregard it in the course of evaluating the totality of the evidence to enable him arrive at a proper decision. Hence the Court has the powers to disregard evidence which has no probative value and I so do.

It is trite that to establish cruelty or intolerable behaviour, it is not necessary that there should be violence. It will suffice to show that the

conduct of the Respondent is such as could cause apprehension of or actually caused physical or mental bodily injury.

From the Petitioner's uncontroverted testimony of the Respondent's violent conduct, I am satisfied that the Petitioner has established her allegation of cruelty and intolerable behaviour against the Respondent. I so find and hold.

With regard to the Petitioner's allegation of separation for three years and desertion, it is also the unchallenged evidence of the Petitioner that since December, 2015 both parties have been living apart. By **Section 15(2) (d) of the Matrimonial Causes Act**, an allegation of desertion is regarded as established where a Petitioner has established physical separation from the Respondent for at least one year immediately preceding the presentation of the Petition; an avowed intention on the part of the Respondent to remain physically separated; an absence of consent to the separation by the Petitioner; and the absence of a justifiable cause to such separation. **See: ANIOKE v. ANIOKE (2011) LPELR-3774(CA), per Oredola, JCA at pages 27 – 28, paras. D – A.** In the instant case, the Petitioner has established that the Respondent packed her belongings and that of her daughter Kylie in a green bus in order to sever the marriage between both. That he changed all the locks to the apartment and has refused to give her the new keys till date. This is more than the period of one year required under the Act for desertion and more than two (2) and three (3) years as provided under section 15 (2) (e) & (f) of the Matrimonial Causes Act . I therefore have no hesitation in holding that the Petitioner has also established her allegation of desertion and separation against the Respondent. By Section 15(2) of the Matrimonial Causes Act, the Court considering a petition for dissolution of marriage shall hold the marriage to have broken down



irretrievably once the Petitioner has proved any one or more of the allegations listed in paragraphs (a) to (h) of that Subsection. In the instant case I have found and HOLD that the Petitioner has proved to the satisfaction of the Court her allegations of cruelty and intolerable conduct; allegation of separation and desertion against the Respondent as contained in paragraphs (c) to (f) of the Subsection. Accordingly, I hereby enter judgment for the Petitioner.

This marriage should therefore, in my opinion be dissolved in order to release the petitioner having satisfied the requirement of the **Matrimonial Causes Act, 2004 in Section 15 (2) (c) to (f)**. In view of that, the prayer of the petitioner Ojiemohin Joy Ashioma, for decree of dissolution of her marriage with the Respondent Ojiemohin Endurance Abraham is hereby granted accordingly by this Court. I so hold and I dissolve the marriage. It is hereby ordered as follows;

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, OJIEMOHIN JOY ASHIOMA, and the Respondent, OJIEMOHIN ENDURANCE ABRAHAM at the marriage Registry, Abuja Municipal Area Council on the 22<sup>nd</sup> day of August 2014 and I hereby pronounce that the decree nisi shall become absolute upon the expiration of three months from the date of this order, unless sufficient cause is shown to the court why the decree nisi should not be made absolute.
2. The only child of the marriage (Kylie Ojiemohin) shall be in the custody of the Petitioner Ojiemohin Joy Ashioma with the Respondent having supervised visiting rights to the child.
3. The Respondent shall pay the sum of N150, 000.00 (One Hundred and Fifty Thousand Naira) per month to the Petitioner as money for

maintenance, hospital and school fees of the only child of the marriage (Kylie Ojiemohin) till she becomes an adult in the face of the Law.

**Parties:** Petitioner is Present. Respondent is Absent.

**Appearances:** O. Adams Ochuagu for the Petitioner. Blessing Timothy appearing with Mercy Eze for the Respondent.

**HON. JUSTICE M. OSHO-ADEBIYI  
JUDGE  
20<sup>TH</sup> MAY, 2020**