

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 10

SUIT NO: FCT/HC/PET/232/2017

BETWEEN:

NGUUMBUR LAMI ORITSEJAFOR.....PETITIONER

VS

EYITUOYO OMAGBEMI ORITSEJAFOR.....RESPONDENT

JUDGMENT

This Petition for dissolution of marriage filed on 17/1/17 by Nguumbur Lami Oritsejafor (hereinafter called the Petitioner) for the relief set out in Paragraph 10 of the Petition as;

- (a) A Decree of Dissolution of the Marriage between the Petitioner and the Respondent on the grounds that the marriage has broken down irretrievably in that the parties have lived apart from each other for a period of over 3 years preceding this Petition.
- (b) Custody of the only child of the marriage Oritsejemine Ofeoritse Hadassah IyuadoooOritsejafor, female born on 27th May 2006.

- (c) That the Respondent continues to pay the school fees, maintenance and upkeep of the said Oritsejemine Ofeoritse Hadassah Iyuadooo Oritsejafor.

The facts relied upon by the Petitioner as constituting grounds for the dissolution of the marriage are those facts contained in Section 15 (2) (f) of the Matrimonial Causes Act that is; that the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the Petition.

The Petition was served on the Respondent along with other court processes vide substituted means by Order of Court made on 1/2/18. On the other hand, Respondent did not file an Answer to the Petition, was not represented by counsel and was absent throughout trial despite repeated service of Hearing Notices. The Petition thus proceeded as undefended.

Petitioner testified as PW1, she told the court that the parties got married on 25/2/2006 and domiciled in Nigeria at No. 13 Abah Kyari Crescent Asokoro Abuja, that co-habitation between the couple ceased in March 2010 and since then they have lived apart.

Testifying further, PW1 – the Petitioner informed the court that the marriage produced a child called Oritsejemine Ofeoritse Hadassah Iyuadooo Oritsajafor born on 27/5/2006 who attends Bright Arc Montessory Lugbe Abuja and under her care. PW1 told the court that she is responsible for the education of the child so far and prefer to have custody of the child. PW1 also inform court of the arrangement proposed for the child if granted

custody and ask for the support of the Respondent for the maintenance, school fees upkeep and welfare of the said child of the marriage.

PW1 finally told the court that she prays the court to grant the relief for dissolution of marriage.

During the examination-in-chief of PW1, the marriage certificate No. 33/2006 evidencing marriage celebrated at All Saints Military Church, Abuja under the marriage Act, between the Petitioner and the Respondent admitted as Exhibit "A".

At the close of the evidence of the Petitioner, the case was adjourned for Address and the court ordered that Hearing Notice be served on the Respondent.

On 4/11/2020, Anthony Oka Esq Petitioner's counsel adopted the Final Written Address dated 7/10/2020, filed for the Petitioner, as oral argument in support of the Petition. In the said Address, Petitioner's counsel submitted 3 (three) issues for court to determine that is;

- (1) Whether from the state of pleadings, evidence and the law, the Petitioner is entitled to a decree of dissolution of marriage as sought?
- (2) Is the Petitioner entitled to the custody of Oritsejemine Ofeoritse Hadassah Iyuadoo Oritsajafor, female and the only child of the marriage born on 27th May 2006?

- (3) Whether the Petitioner is entitled to an order of court directing the Respondent to be responsible financially for the education and maintenance of the education and maintenance of the only child of the marriage.

On issue one above submits that the Petitioner relies on the grounds of Section 15 (2) (f) of the Matrimonial Causes Act and has proved this ground by her evidence that the parties have lived apart for a period of more than 3 years preceding the presentation of the Petition. Refer to the case of Omotunde Vs Omotunde (2001) 9 NWLR (PT. 714) 252. That by the uncontroverted evidence of the Petitioner court ought to grant a decree of dissolution of the marriage.

On issue two and three, submits that the only child of the marriage has lived with the Petitioner since her birth and has not lived with the Respondent since the parties went their separate ways. Petitioner also led evidence that she has been responsible for upkeep of the child of the marriage. Submit further that from the evidence and pleadings before the court the best interest of the child will be served by granting custody to the Petitioner. Refer to Section 71 (1) of the Matrimonial Causes Act and the case of Nnana Vs Nnana (2006) 3 NWLR (PT.966)1.

Submits that, the Petitioner ask for an order on the Respondent to be responsible for the cost of education of the child of the marriage that fairness and justice demands that an order be made on the Respondent to continue to be responsible financially for the education of the child,

Petitioner having been paying for the cost of school fees for the child. Refer to Order V Rule 8 of the Matrimonial Causes Act.

Finally urge the court to grant the prayers of the Petitioner.

Having carefully considered the unchallenged evidence of PW1 – the Petitioner, the submission of counsel and the judicial authorities cited, the court finds that only one (1) issue call for determination, that is;

“Whether the Petitioner has successfully made out a case to warrant the grant of the reliefs sought”.

Firstly, Respondent did not file an Answer to the Petition and did not challenged the evidence of the Petitioner, the implication of this is that this court will deem the unchallenged and uncontroverted evidence of the Petition as true, correct and act on it. See the case of CBN Vs Igwilo (2007) 14 NWLR (PT. 1054) 393 @ 406. In the case of Afribank (Nig) Ltd Vs Moslad Enterprises Ltd (2007) ALL FWLR (PT.421) 879 @ 894 Para E – F. Akaahs JCA (as he then was) had this to say;

“Where a Defendant does not produce evidence or testify, slight or minimum evidence, which can discharge the onus of proof would be required to ground the Plaintiff’s claim”

I am, however, quick to add that, that minimum evidence must be credible enough for court to grant the claim of the Petitioner; See Zeneca Ltd Vs Jagal Pharms Ltd (2007) ALL FWLR (PT.387) 938 @ 950 Para F – G.

Now, in the determination of a Petition for dissolution of marriage, under Section 15 (1) of the Matrimonial Causes Act, it is competent for a

marriage to be dissolved once a court is satisfied that the marriage has broken down irretrievably and to come to that conclusion, the Petitioner must prove to the reasonable satisfaction of court any of the facts as prescribed by Section 15 (2) of the Matrimonial Causes Act categorized in Sub-Section (a) – (h).

In the instant case, the Petitioner place reliance upon the grounds of Section 15 (2) (f) of the Matrimonial Causes Act, as gleaned from the pleadings and evidence adduced before this court. The said Section of the Act read;

“That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the Petition”.

It is trite law that to succeed under this ground, the Petitioner must lead sufficient evidence to the reasonable satisfaction of the court that the parties have lived apart continuously for a period of at least three years preceding the presentation of the Petition and in the consideration of the facts, the court will not be concerned with the determination of who between the parties brought about the separation for that period. And on what may constitute “Living apart”, the court in the case of *Nnana Vs Nnana* (2006) 3 NWLR (PT. 906) 1 @ Ratio 3 stated;

“It is not enough to show that the parties have lived apart for continuous period of two years immediately preceding the presentation of the Petition, but the desertion within Section 15 (2) (e) and (f) must be one where any of the parties have been

abandoned and forsaken without justification thereby renouncing his or her responsibilities and evading its duties.

The evidence of the Petitioner is that co-habitation between the parties ceased sometime in March 2010 and since then the parties never lived together. And the Petitioner has been left to cater for the upkeep of the only child of the marriage ever since. A computation of time between when co-habitation between the parties ceased as alleged and when the Petition was filed on 17/1/17 reveals a period of more than three years, therefore this piece of evidence is sufficient proof of this ground relied upon by the Petitioner for the dissolution of marriage. The court hereby holds that the marriage has broken down irretrievably.

The Petitioner is seeking an order of custody of the only child of the marriage, Oritsejemine Ofeoritse Hadassah Iyuadoo Oritsajafor, female born on 27th May 2006. In her evidence Petitioner stated that the child is presently under her care and she has been responsible for the cost of her education, maintenance and upkeep, she also told the court elaborate arrangement she has made for the child. These facts were never challenged by the Respondent.

The grant or otherwise of custody of the children of the marriage is at the discretion of the court, which it must exercise judicially and judiciously placing reliance on cogent facts and not according to its whims. It is trite that it is the interest of the child that is of paramount consideration see Section 71 (1) of the Matrimonial Causes Act. What a court may consider in the determination of the issue of custody of children of the marriage in

matrimonial cases, the court held in the case of Damulak Vs Damulak (2004) 8 NWLR (PT. 374) 151 @ 156.

“In all matters relating to custody and welfare of the children of the marriage, the dominant issue that calls for careful examination and consideration is absolute interest of that child or children”.

Based on the unchallenged evidence of the Petitioner – PW1, it is the firm view of the court that welfare and interest of the only child of the marriage would be better served if she remains in the custody with the Petitioner.

On the claim for court to order the Respondent to continue to pay the school fees, maintenance and upkeep of the child of the marriage. And on what the court may consider in making an award in that regard, the court said.

“By virtue of Section 70 (2) of the Matrimonial Causes Act, in making an order for maintenance the court must always have regard to the means, earning capacity, other conduct of the parties to the marriage and other relevant circumstances”

See Damulak Vs Damulak (Supra) 157 Ratio 10. In the instance case the Petitioner did not provide court with sufficient evidence to determine the means and earning capacity of the Respondent nevertheless, it is the duty of a father to provide for his child. In this regard the court must exercise the discretion granted it under Section 70(1) of the Matrimonial Causes Act in a manner that will serve the course of justice in the circumstance.

From all of these, the Petition succeeds. Accordingly, Judgment is hereby entered as follows:-

- (1) The marriage celebrated at All Saints Military Church in Abuja under the Marriage Act on 25th February, 2006, between Nguumbur Lami Oritsejafor, the Petitioner and Eyituoyo Omagbemi Oritsejafor- the Respondent has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between them.
- (2) This order shall become absolute after three (3) months from the date of Judgment.
- (3) Custody of OritsejemineOfeoritse Hadassah Iyuadoo Oritsajafor, female born on 27th May 2006 is hereby granted to the Petitioner with access to her at reasonable times.
- (4) The Respondent is hereby ordered to take over payment of the school fees of the said only child of the marriage and pay a monthly sum of ₦30,000.00 for her maintenance and upkeep.

HON. JUSTICE O.C. AGBAZA

Judge

1/2/2021

ANTHONY OKA ESQ - FOR THE PETITIONER

NO REPRESENTATION FOR THE RESPONDENT

