

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.**

BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.

SUIT NO.FCT/HC/PET/06/2019

BETWEEN:

MRS. CHINDA CHARITY ----- PETITIONER

AND

MR. CHINDA BRIGHT ----- RESPONDENT

JUDGMENT

DELIVERED ON THE 5TH FEBRUARY 2021

This is a petition for the dissolution of marriage between the petitioner and the respondent the petitioner filed this petition on the 13th February, 2020 in which the petitioner is praying the court for the following Orders:

1. A DECREE OF DISSOLUTION OF MARRIAGE on the ground that the marriage has broken down irretrievably by reason of the fact that the parties to the marriage have lived apart for a continuous period of 5 (five) years immediately preceding the presentation of this Petition.
2. A DECREE OF CUSTODY OF THE CHILD OF THE MARRIAGE to wit; Master Chinda Bright Ihechukwu.
3. AN ORDER compelling the Respondent to be responsible for the education of the child of the marriage from the date of judgment until University level.
4. AN ORDER directing the Respondent to pay the Petitioner the sum of N 133,916.63 (One Hundred and Thirty-Three Thousand, Nine Hundred and Sixteen Naira, Sixty-Three Kobo) monthly, for the

maintenance of the child of the marriage from date of judgment until he attains the age of 25 years

The petitioner served the respondent with the petition but the Respondent upon being served failed to file an answer to the petition. This petition was therefore heard as an undefended petition. In proof of the petition, the petitioner gave evidence as PW1. She adopted her written address statement on oath as her oral evidence. She also tendered Exhibits.

The Respondent counsel informed the court that respondent has given him clear instruction not to cross-examine the petitioner and not to oppose the claim of the petitioner. To this therefore, the petitioner close her case and applied for judgment.

I have carefully peruse the processes filed in this petition as well as the Exhibits tendered in evidence. In the cause of proving her case the petitioner informed the court as PW1, that the Respondent and herself were married under the marriage Ad in Ukwa west local Government marriage Registry at Okeipe in Abia state on 28th August, 2012. She tendered the marriage certificate as Exhibit P1. She further told the court that cohabitation commence after the marriage.

Cohabitation between the parties cease on the 14th January, 2014 since then the parties has been leaving apart for a continuous period of at least five years immediately before the presentation of this petition. The law is well settle that the ground upon which the court can make a decree of dissolution of a marriage cited under the Act is if and only if the marriage has broken down irretrievably see section 15 (1) and **Innocent Ugwmba Eluwan Vs. Florence Ogadinma Eluwa**

(2013) LPELR 22120 C.A. a court will hold that a marriage has broken down irretrievable if the petitioner proves the existence of only one of the several conditions spelt out in section 15(2) of the M.C.A.

The petitioner will succeed if it proves one or more of the conditions set out in S. 15(2) of the M.C.A. he need not prove all the conditions. In the present case the petitioner has given evidence that the parties have lived apart for a continues period of at least five years immediately preceding the presentation of this petition. S. 15(2) (f) of the M.C.A enjoins the court to hold that a marriage has broken down irretrievable if the parties have live apart for a period of at least 3 years continuously before the petition was presented.

For this provision to avail the petitioner, the three or more years must have been continuous and it must have occurred immediately before the presentation of the petition. See the case of *Agunwa V Agunwa* (1972) 2 ECSR 41. This provision is mandatory and allows the court no discretion to exercise. The provision has the factor of absence of fault element characteristic of other matrimonial offences.

Jurisprudentially, as far as section 15(2)(F) is concerned, the law is not interested in right or wrong, or the guilt or innocence of the parties. Once the parties have lived apart for the stipulated time, i.e a continuous period of at least three years immediately preceding the presentation of the petition, the court is bound to grant a decree.

On the forgoing, see **Omotunde V Omotunde (2001) 9 NWLR (Pt 718) 250 at 284.** In the instant case there is ample uncontroverted evidence that the parties have lived apart for a continuous period of at least three years before presentation of the petition. From the evidence

adduce from the petitioner cohabitation between the parties ceased on 14th January, 2014 and since then they have not live with each other again. I have hold that on this fact the marriage between the parties has broken down irretrievably.

What is left is to see what arrangement there is for the child of the marriage. The evidence of the PW1 is that the marriage between the petitioner and the Respondent produce a child master Chinda Bright Ihechukwu who was born on 10th August, 2012 from the date of birth it is obvious that the child of the marriage is an infant, the petitioner has claim that custody of the child of the marriage be granted to her while access to the child of the marriage be granted to the Respondent.

The Respondent has not oppose this head of relief and I have no difficulty in granting same. It is the law that the welfare of the child is paramount and the sole consideration which the court will dwell on in issue relating to custody of the child.

From the evidence of PW1 and the exhibits tendered, it is clear that the petitioner has been solely responsible for the welfare and upkeep of the child of the marriage. She has prayed this Honourable court to compel the Respondent to be responsible for the education of the child and to direct the Respondent to pay to the petitioner the sum of ₦133,916.63 monthly for the maintenance of the child. As I have held elsewhere in this judgment the welfare of the child is paramount.

However, the Responsibility of bringing up the child is that of both parents. In other word, it is the responsibility of both parents to contribute jointly to the financial upbringing, the social upbringing, the

moral upbringing and the spiritual welfare of the children of the marriage.

To this end therefore, I am inclined to grant the Orders sought by the petitioner in the followings:

1. The parties are to jointly cater for the welfare, education, accommodation and maintenance of the child.
2. The Respondent shall pay half of the school fees per term of the child.
3. The Respondent shall pay ₦1,000.00 per day for the daily feeding of the child.
4. The Respondent shall pay ₦15,000.00 per month to the petitioner for clothing accessories and transportation of the child.
5. The Respondent shall pay the sum of ₦150,000.00 annum to the petitioner as rent for the accommodation of the child.

I must say the rate at which marriage are been broken is not only disturbing but alarming. Unfortunately, the law is a little beat mechanical in its handling of matrimonial issues. The effect of broken marriages in the society is not far fetch as the evil thereof are found residence in various forms of criminality and decadence behavior. Alas that is the position of the law today but the society will be better if couple will consider the effect of their action on the innocent children in the course of managing their matrimonial problem.

Matrimonial home should not be a theater for war of attrition. Rather couples should endeavor to explore the blessing that spew out from holy matrimony. I shall say no more. I however Make an Order that the

marriage between the petitioner and the Respondent which took place at the marriage registry Ukwu West Local Government at okeikpe Abia state
Be and is hereby dissolve.

APPEARANCE

C. E. C. Njoku Esq. for the petitioner.

Sign
Hon. Judge
05/02/2021