

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

THIS 31st DAY OF MARCH, 2021

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

SUIT NO: PET/561/2020

BETWEEN:

MRS. JULIANA NNEKA ANIEKWENA-----PETITIONER
(NEE OGBUOKEBE)

AND

MR. LINUS TOCHUKWU ANIEKWEN-----RESPONDENT

JUDGMENT

The Petitioner on the 18th day of November 2020 filed this suit against the Respondent claiming the following.

- i. A decree for the dissolution of marriage between the petitioner and Respondent on the grounds that since the marriage, the Respondent has behaved in such a way that

the petitioner could not reasonably be expected to live with the respondent and hence the marriage has broken down irretrievably

- ii. An order restraining the Respond from harassing, intimidating and threatening the petitioner.
- iii. An order of this Honorable court granting the custody of the child to the petitioner.

In support of the petition, petitioner filed a certificate of reconciliation and marriage certificate.

Upon been served with the petition, the respondent filed an answer dated 10-01-2021 and filed on the 19th day of January 2021. Wherein respondent admitted paragraphs 1,2,3,4 and 5 of the facts contained in the petition. Respondent denied paragraph 7(a) of the petition to the extent that he has never been oppressive emotionally distant and negligent of his fatherly responsibilities to the petitioner. He admitted the fact that he left the house in 2015 because of the petitioner's attitude towards him; she was making life unbearable for him. The respondent admitted the fact that the marriage has not been consummated for over a period of 5 years. That he-respondent- left home for greener pastures. He left home when the insult by the petitioner was too much for him. The respondent did not object to the petition for dissolution of marriage.

Respondent said he would rather leave the issue of custody of the only child of the marriage to the discretion of the

court. The petitioner did not file any reply to the respondent's answer.

FACTS AND GROUNDS FOR DISSOLUTION OF MARRIAGE

1. That Since the marriage, the Respondent has been behaving in such a manner that petitioner find it in tolerable and oppressive to continue to live with the Respondent, as the Respondent has been oppressive , emotionally distant and negligent of his husband and fatherly responsibilities to the petitioner since the inception of the marriage .
2. The Respondent has earlier deserted the petitioner in July 2015 and never returned till date.
3. The Respondent then deserted the petitioner and had since abandoned the petitioner with their only child till date with the excuse that he was fed up with the marriage.
4. That the petitioner and the Respondent have live apart for more than five (5) years prior to the presentation of this petition.
5. That the Respondents had on several occasion, physically assaulted the petitioner by beating her both publicly and their matrimonial home without any provocation.
6. That the Respondent had sometime in August demanded the refund of bride price paid to the petitioner's family.

7. That the Respondent had sometime in August demanded the refund of bride price paid to the petitioner's family.
8. That since immediately after giving birth to their child on the 3rd of November, 2013 the petitioner with the assistance of her family has been the ones providing both financial and parental care of their child till date.
9. That the Respondent has refused to engage in sexual relationship with the petitioner even after series of request by the petitioner.
10. That the Respondent has continuously and intentionally deprived the Respondent of her conjugal rights for over a period of six (6) years date.
11. That the Respondent blocked the petitioner from reaching him on phone.

At the hearing of the petition, the petitioner testified as the sole witness in proof of the case. The summary of the case of the petitioner is that she and the respondent got married on the 1st of January 2013 shortly after they got married; she was pregnant and was delivered of a baby on 3rd of November 2013. Sometimes in February 2014 the respondent has issues at his place of work, he was sacked. Things became difficult; he could no longer pay his rent. Respondent had a discussion with his friend to come to Abuja; he got a job in Abuja, married another woman and would not come home. The petitioner visited the respondent; he refused any sexual relationship that all efforts for them to remain as husband and wife proved

abortive. That the respondent and the petitioner have lived apart from February 2014 and the respondent never paid attention to both herself and her child physical and emotional needs nor does he show love and always deceitful to the petitioner.

The petitioner tendered Exhibit LJ- the marriage certificate which was conducted at Most Holy Name of Mary Catholic Church Abatete dated 1st of January 2013. In evidence the petitioner urged the court to dissolve the marriage, to grant custody of the only child of the marriage to her.

Learned Counsel to the petitioner informed the court that will be the case of the petitioner. Case was adjourned to the 1st of March 2021 to enable the respondent cross-examine the petitioner. On the 1st of March 2021 the respondent and his legal counsel failed to appear in court despite the hearing notice served on them informing them of the proceedings.

Pursuant to the oral application of learned counsel to the petitioner the respondent was foreclosed from cross examining the petitioner and case was further adjourned to 10th of March 2021 for Defence. The respondent was absent defence was closed. In line with the order of this Hon Court. Learned counsel for the petitioner adopted his written address in open court and this case was set down for judgment. The petitioner's written address was dated the 18th day of March, 2021 and filed on the 19th day of March 2021

The learned counsel to the petitioner did not file a witness statement on Oath as part of the processes accompanying the notice of petitioner. However at the hearing on the 10th day of February 2020 the petitioner herself Mrs. N Juliana was sworn on oath and gave her oral testimony.

Upon being served with the petition the Respondent filed an answer dated the 10th of January 2021 and filed on 19th day of January 2021 in paragraph 14 of the said answer the Respondent started that "*he does not object the petition for the dissolution of marriage*".

And with regards to the custody of the child, the respondent leaves that to the discretion of the court.

At the close of the case, learned counsel to the petition filed a written address dated the 18th day of, March 2021 and filed on the 19th day of March 2021.

The Respondent did not file a final written address.

The petitioner's counsel in his written address raised the following issues for determination:-

1. Whether the petitioner has been able to establish the act of desertion against the Respondent to prove that the marriage has broken down irretrievably?
2. Whether the petitioner is entitled to her reliefs sought?

Counsel in arguing issue number one submitted that Desertion is the separation from one spouse by the other with an intention on the part of the deserting spouse to

bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse. Learned counsel cited the Following cases:

1. Oghenevbed Vs Oghenevbede (1973) 3 UILR 104,
2. Towoem Vs Towoem (2001)12 NWLR (PT727)445

On issue number two (2), learned counsel to the petitioner submitted that the petitioner has successfully established the act of desertion with respect to section 15 (2) (d) of the matrimonial causes Act.

Learned counsel to the petitioner submitted that the court should restrain the Respondent from harassing, intimidating and threatening the petitioner counsel cited the case of Nwankwo Vs Nwankwo (2014)LPER- 24396(CA).

On the custody of the child counsel argued that the Respondent has only lived with the child for about 1 one year and six month out of the over 7 years of his life. He urged the court that it would be the best interest of the child if the custody of the child is granted to the petitioner who is not only a nurse but also a staff of Nisa Prema Hospital Abuja And that the Respondent in their answer are not claiming custody. He cited the case of Odugwu Vs Odogwu (1992) 2 NWLR (PT 225) Per Belgore JSC as he then was.

“If the parents are separated and the child of the union is of tender age, its presume that the child will be happier with the mother and no order will be made against presumption

unless it is abundantly where the contrary is the situation for example immorality of the mother, infection disease on the mother, insanity on her cruelty to the child"

Finally, the learned counsel to the petitioner submitted that the fact that parties are living apart is uncontroverted and unchallenged, he cited the case of Nnanna Vs Nnanna (2006) 3 NWLR (Pt 966) page 1 at 32.

From the evidence before me, the issues for determination are:

1. Whether parties are entitle to a decree of dissolution of marriage?
2. Which of the parties has satisfied the court to be awarded the custody and maintenance of the only child of marriage Aniekwena Kamsiyochukwu Michael?

On the first issue for determination, both parties are not opposed to the court granting a decree for dissolution of their marriage. The Petitioner in her oral testimony and the Respondent in his answer to the petition both alluded to the fact that they both find it intolerable to live with each other .It's in evidence that the petitioner have been living separately from the Respondent for more than five 5 years preceding the filing of this petition .

Regarding the relief of dissolution of marriage the law is settled that no marriage will be dissolved merely because the parties have agreed that it be dissolved as marriage is a very important institution and it is the foundation of a stable

society. The policy of law therefore is to preserve the institution of marriage. That is why marriage will not be dissolved on agreement of the parties to it. A Decree for the dissolution of marriage would therefore only be granted if the petitioner finds it intolerable to live with Respondent .See section 15 of the Matrimonial Causes Act Damulak Vs Damulak (2008) 8 NPELR(PT874) P. 651, Olabiwonu Vs Olabiwonu (2014)LPELR-24065. Hence, by the provision of section 15 (2) of the Matrimonial Causes Act. The petitioner at the hearing must satisfy the court by evidence of the allegation put forward by the petition.

By virtue of the provision of section 15 (2) (e) of the Act, the parties as it has been firmly established that they have lived apart for a continuous period of more than five years preceding the presentation of this petition and I therefore hold that the marriage in the entire circumstances of this case have broken down irretrievable and the marriage ought to be dissolved and it is hereby dissolved.

On the second issue : the custody of the only child of the marriage who is 7 years old as at the time of filing this petition in November 2020.

At this juncture, the question is what constitutes interest of children?

There is no hard and fast definition but the circumstances of each case would determine where the mind of the court would tilt in the case of Williams Vs Williams (1987)All N.L.R. 253, KARIBI WHITE JSC Observed :

“The determination of the welfare of a child is composite of many factors. Consideration such as the emotional attachment to a parent, mother or father, the inadequacy of the facilities such as educational, religious or Opportunities for proper upbringing are matters which may affect determination of who should have custody”.

In considering whose custody would be in the best interest of Aniekwena Kamsiyochukwu Michael. I have considered the fact that the petitioner in her oral evidence stated that she has been the one taking care of the emotional, physical and Educational needs of Michael. I have also considered the fact that the Respondent is not contesting custody; he instead stated in his answer that *“he wishes to leave the issue of custody of the child to the discretion of the court”*. This does not show he is willing to have the Child in his custody. I am therefore of the firm view that the petitioner would be a better parent to get custody of the Child and I therefore award the custody of Aniekwena Kamsiyochukwu to the petitioner as I believe it's in the best interest of the Child. However the Respondent is hereby awarded visiting rights to Aniekwena Kamsiyochukwu Michael during school vacations.

Consequently, it is HEREBY ORDERED AS FOLLOWS:

1. I hereby pronounce a decree nisi dissolving the marriage celebrated between the petitioner and Respondent with certificate number 2521 at the Most Holy Name Of Mary Catholic Church Abatete held on

the 1st day of January 2013 on the grounds that the marriage has broken down irretrievably and both parties find it intolerable to live with each other. The decree nisi shall be made absolute after a period of three months from the date of this pronouncement, unless sufficient cause is shown to the Court why the decree nisi should not be made absolute.

2. Custody of the only Child of the Marriage Aniekwena Kamisiyochukwu Michael is hereby awarded to the Petitioner, however, the Respondent is hereby granted unfettered access to the Child during school vacations until he attains the age of 21 and decide whom he choose to live with.

Appearances:

Parties Absent.

O.I Ogbuokebe for the petitioner.

Counsel for the Respondent absent.

Signed
Hon. Presiding Judge
30th/03/2021