

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 32
CASE NUMBER: SUIT NO. FCT/HC/PET/318/19
DATE: 16TH JUNE, 2021

BETWEEN:

MR. EBIDISE BOMODI.....PETITIONER

AND

MRS. DORCAS BOMODI.....RESPONDENT

APPEARANCE

Kelechi Anwu Esq for the Petitioner.

JUDGEMENT

By an amended Petition dated 5th day of December, 2019 and filed same date, the Petitioner Mr. Ebidise Bomodi Petitions the Court for dissolution of his marriage to the Respondent his wife Mrs. Dorcas Bomodi.

The said Petition was settled by Kelechi Anwu Esq, on behalf of the Petitioner, accompanied by a verifying Affidavit of 5 paragraphs deposed to by the Petitioner himself, as well as an Affidavit in support of the Petition, also deposed to by the Petitioner containing 23 paragraphs.

The facts relied upon by the Petitioner as constituting the grounds predicating this Petition are as follows:-

- i. Inordinate and irresponsible behaviour of the Respondent.
- ii. Persistent and consistent threats of the Petitioner's life by the Respondent.
- iii. By reasons of the matters aforesaid, the Petitioner has lost love, trust and affection for the Respondent.
- iv. Petitioner and Respondent staying apart for over 2 years preceding this Petition.
- v. The only daughter of the marriage was born on the 14th April, 2017.
- vi. The Petitioner and the Respondent have lived apart since November, 2015.
- vii. Since the Petitioner and Respondent's marriage it has been troubles e.g fighting, quarreling, at times the Respondent will use bottles and knives chasing the Petitioner.
- viii. The Respondent maltreated the Petitioner and finally deserted the Petitioner.

The orders sought for are:-

- a. A Decree of Dissolution of marriage between the Petitioner and the Respondent on the grounds that the marriage aforesaid has broken down irretrievably and that the parties to the marriage no longer have love and affection for each other.

From the Court's records, the Respondent was duly served with all the processes in this Petition as well as several hearing Notices in that regard. However, the Respondent despite all that, has not challenged this Petition in anyway.

The Petitioner during trial testified on Oath and adopted his Affidavit in support of the Petition. The following Exhibits were tendered and admitted in evidence through the Petitioner as follows:-

- 1) CTC of marriage certificate, marked Exhibit A.
- 2) Two Receipts issued by God is able Montessori Academy marked Exhibits B and B1 respectively.

The Petitioner prayed the Court to dissolve the marriage and grant him custody of his child.

In the Petitioner's final written address, two issues were formulated for the determination of the Court namely:-

- i. Whether the Petitioner has proved his case for the grant of dissolution of marriage
- ii. Whether the Petitioner has proved his case to be entitled to custody of the child of the marriage.

In arguing the two issues, the Learned Counsel submitted that the Petitioner by his evidence before this Court has proved the grounds predicated in this Petition that the marriage has broken down irretrievably. Counsel placed reliance on Section 15 of the Matrimonial Causes Act and the case of **PRINCE AMAH V VICTORIA AMAH (2016) LPELR-41087 (CA)**.

That the facts in this case were never controverted or opposed in anyway by the Respondent and same is deemed in law as an admission. Counsel referred to the case of **AKINSETE V AKINDUTIRE (1996) 1 ANLR P. 147**.

On the issue of custody of the child of the marriage , Counsel referred the Court to Section 71 of the Matrimonial Causes Act and the cases of **WILLIAMS V WILLIAMS (1987) LPELR-8050 (SC); NWOSU V NWOSU (2012) 8 NWLR (PT. 1301)** and **ODOGWU V ODOGWU (1992) 2 NWLR (PT. 225) 539**, to argue that where the actions of the supposed mother is not favourable to the child, the Court must consider awarding custody to the father who has shown to have the interest of the child.

Learned Counsel submitted that the Petitioner has shown that he is a reputable and responsible member of the society, a good husband and a caring father. That the Petitioner has since been fulfilling his fatherly responsibilities to the child of the marriage by providing the needs of the child even when the Respondent deserted the child and the Petitioner. Reference made to Exhibits B and B1 Receipts Evidencing payments of School Fees.

Learned Counsel further submitted that in considering custody of a child, the living condition of the child must be considered and that it would be appropriate to give the child a better life.

It is submitted that the locality of Mpappe where the child is held presently is a dirty neighbourhood with high Crime rate and abuse of children. That in this case, the child has been isolated from the loving care of her father and neither is she enjoying that of the mother who deserted her and is presently out of the Country without trace.

That the Respondent in this case has deserted the Petitioner for a period of over 2 years, abandoned the only child of the marriage and left Nigeria without responsibility to the child.

In all, Learned Counsel submitted that the Petitioner has proved that he deserves the reliefs sought in this Petition against the Respondent and urged the Court to grant the reliefs sought by the Petitioner.

Now, under and by virtue of Section 15 (1) of the Matrimonial Causes Cap M7 LFN, 2004, the Court hearing a Petition for dissolution of a marriage shall hold that the marriage has broken down irretrievably if and only if the Petitioner satisfies the Court of at least one of the grounds enumerated under Section 15 (2) (a-h) of the Act.

On this premise I refer to the case of **AKINBUWA V AKINBUWA (1998) 7 NWLR (PT. 559) 661. IKE V IKE & ANOR (2018) LPELR-44782 (CA) per EKPE, J. C. A** at pages 10-16, paragraphs C-A, as follows:-

“For a Petition for the Dissolution of marriage to succeed, the Petitioner has to prove at least one of the ingredients contained in Section 15 (2) of the Matrimonial Causes Act, even if the divorce is desired by both parties”.

In the instant case I've considered the two grounds predicating this Petition which includes the fact that the Respondent has deserted the petitioner and that the parties have lived apart since November, 2015.

These two grounds fall under Section 15 (2) (d) and (e) of the MC Act (Supra) which provides thus:-

“15 (2) (d):- That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding presentation of the Petition.

15 (2) (e):- That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent does not object to a decree being granted.”

The Evidence of the Petitioner shows that the parties have been living separately since November, 2015 without having sexual relationship since the Respondent deserted the Petitioner. That according to the Petitioner, the Respondent has conducted herself in such a manner that he cannot reasonably be expected to condone since the present status of being husband and wife without marital obligations will impose exceptional hardship on the Petitioner.

Now since the Respondent has deserted the Petitioner and parties have lived apart since November, 2015, and the initial Petition was filed on 4th of July 2019, it is my humble opinion that the Petitioner has proved the grounds for dissolution of his marriage to the Respondent, enumerated under Section 15 (1) (2) (d) and (e) of the MC Act, as such I'm satisfied that the marriage in this case has broken down irretrievably.

On the issue of custody of the only child of the marriage Miss. Angel Bomodi, what the Court has to consider first and foremost is the best interest of the child.

I refer to Section 71 (1) of the Matrimonial Causes Act (Supra) in the case of:- **WILLIAMS V WILLIAMS (Supra)**

In the instant case, the Petitioner has shown that he is a caring and responsible father and is quite capable of taking care of his daughter if granted custody.

He has also tendered receipts showing that he has been paying his child's School Fees. I refer to Exhibits B and B1.

In any case, the parents of a child are considered the primary custodians of a child.

However, in the instant case, even though the child of the marriage is of tender age, (two years plus) the Respondent deserted the child and is even out of the country.

Therefore, it is my considered opinion that it will be in the best interest of the child if her father, one of her primary custodians is granted custody to be able to show her fatherly love, provide food, shelter, security, Education and all the basic necessities of life, as it is in her best interest.

Consequently therefore, it is hereby ordered as follows:-

1. I hereby grant a decree Nisi dissolving the marriage between the Petitioner Mr. Ebidise Bomodi and the Respondent Mrs. Dorcas Bomodi celebrated at the Etsako West Local Government Registry, at Auchu Rivers State on the 31st day of

May, 2014. The decree shall become absolute if nothing intervenes within a period of three months from this date.

2. The Petitioner shall have sole custody of the child of the marriage Miss. Angel Bomodi.
3. The Respondent shall have unrestricted access to her daughter Miss. Angel Bomodi, subject to reasonable Notice given to the Petitioner before hand, and convenience of both parties at the time of request.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

16/06/2021