

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE SAMIRAH UMAR BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 32
CASE NUMBER:	SUIT NO. FCT/HC/PET/95/2018
DATE:	5/7/2021

BETWEEN:

JULIANA TOBECHI UMEOJIAKU.....PETITIONER

AND

AMBROSE OKECHUKWU UMEOJIAKU.....RESPONDENT

APPEARANCES:

Oluwole Aladedoye Esq with Nelson Ahue Esq for the Petitioner

JUDGMENT

The Petitioner Juliana Tobechi Umeojiaku filed this Petition seeking a decree of judicial separation of her marriage to the Respondent Ambrose Okechukwu Umeojiaku.

The Petition dated 29th day of January 2018 was filed on the same day and settled by Oluwole Aladedoye Esq, legal practitioner for the Petitioner.

In support of the Petition is a Verifying Affidavit of 8 paragraphs deposed to by the Petitioner herself, as well as her Witness Statement on Oath deposed on 6th June 2018.

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

- “(a). The marriage between the Petitioner and the Respondent has been plagued with unending crisis from its inception. The Respondent demonstrated and has behaved in a manner making it absolutely impossible for the Petitioner to continue living with the Respondent.***
- (b). The Respondent lied to the Petitioner that he attended Senior Seminary (Biggard, Ikot Ekpene, Akwa Ibom State) and obtained Masters Degree. This made the Petitioner as a Catholic to hold the Respondent in high esteem and agreed to marry him. The Petitioner found out after their wedding that the Respondent deceived her.***
- (c). The Petitioner also found out after their wedding that the Respondent had earlier married, but failed to disclose this fact to the Petitioner.***
- (d). The Petitioner has endured serious frustration and bondage occasioned by the Respondent’s conducts for the past 17 years of their marriage. There is a deep disaffection between the parties arising from their incompatibility. The Petitioner has worked so hard over the years to overcome this disaffection without success.***
- (e). The Petitioner has been solely responsible for the upkeep of their home from the inception of their marriage. The Petitioner single-handedly bore the financial burden of the family, to wit: feeding, payment of house rents, school/fees, books, purchase of clothes, payment of bills (electricity, water etc) without appreciation from the Respondent.***
- (f). The Respondent stays idle watching films while every progressive human being struggles to eke a living. The Respondent is comfortable staying at home to monitor the Petitioner.***

- (g). *Before the Petitioner married the Respondent, the Respondent was into the business of sale of Motor parts, which business was unsuccessful and eventually collapsed. The Petitioner all the same got married to the Respondent with the hope that both of them could struggle and build back the Respondent's business since the Petitioner's aim for the marriage was not solely driven by money.*
- (h). *The Petitioner had spent millions of Naira in establishing three different businesses for the Respondent at various times. None of these businesses succeeded. Firstly, the Petitioner funded the importation of wares from Dubai for the Respondent. This business collapsed. Secondly, the Petitioner purchased a Tipper vehicle for haulage business for the Respondent. This also failed. Thirdly, the Petitioner funded the importation of motorcycle and electronic parts from the United Kingdom for the Respondent, which equally failed.*
- (i). *That the Petitioner spent all her savings, obtained loans in a bid to make the Respondent financially stable, all to no avail. The Respondent, in a most damning manner, refused to render account of all the monies the Petitioner gave to him insisting that he would not render account to a woman.*
- (j). *Apart from three businesses the Petitioner had set up for the Respondent, all of which collapsed, the Petitioner have built a duplex in the Respondent's home town, Igboukwu in Anambra State, which is presently at 90% completion.*
- (k). *It was financially difficult for the Petitioner, who has practically been spending all her earnings on the Respondent, to build this structure. The Petitioner nonetheless erected this structure with the hope that peace would reign in the family and the Respondent would be propelled to work. This however did not happen.*

- (l). *The Petitioner also bought two cars (Honda & Toyota Aventis), which the Respondent had parked in his village. All efforts of the Petitioner to make the Respondent bring these cars to Abuja for commercialization by hiring to Uber services have proved abortive. These cars are deteriorating in the village while the Respondent is in Abuja doing nothing.*
- (m). *In 2010, the Petitioner sought for transfer from Port-Harcourt to Abuja because she could no longer bear the agony of living with an idle and lazy man (the Respondent). The Petitioner suggested to grow his business, the Respondent refused and forcefully relocated to Abuja even when he had nothing to do in Abuja.*
- (n). *Each time the Petitioner confides in the Respondent as a husband, the Respondent uses it against the Petitioner. If the Petitioner had a dream while asleep and tells the Respondent, any day the Respondent is angry, he would say the Petitioner had such dream because of her visitation to native doctors. The Respondent is always full of suspicion and distrust for the Petitioner. Whenever the Petitioner travelled for training from his place of work, after showing the Respondent her Course Nomination Letter, the Respondent would tell the children that the Petitioner lied to him and that the Petitioner had travelled to her village. The Respondent is fond of maligning the Petitioner before the children.*
- (o). *The Respondent derives pleasure in telling lies against the Petitioner. Most times, the Respondent fabricates mind-bugling allegations against the Petitioner just to heat up the family and put her on the defensive and under unnecessary pressure.*
- (p). *The Respondent continues to trouble the Petitioner at every turn of event. At any little misunderstanding, the Respondent threatens the Petitioner's life. The Respondent has made several threats to the life of the Petitioner to the extent that the Petitioner always gets*

scared of going home after work. Whenever the Petitioner remembers that the Respondent is at home, her heart skips and would wish that she had elsewhere to go. As a result of this apprehension, the Petitioner has developed high blood pressure which she has been treating since 2010. The medical report to this effect shall be relied upon at the trial.

- (q). The Petitioner has also developed ulcer. In fact, the Petitioner's health has generally deteriorated and is still deteriorating. The Petitioner is always in an out of hospital. As a point, CT Scan was carried out on the Petitioner because of her constant headache. On two other occasions, the Petitioner was taken to the United Kingdom for treatment, but nothing was diagnosed. The most recent was in 2017 where the doctor informed the Petitioner that she was depressed and that her life was under threat. After one month of intensive care as an out-patient, the Petitioner's hair was completely scrapped as a result of her constant headache. The doctor counselled that the Petitioner should avoid anything that could give her stress for the sake of her health and life. When the Petitioner came back and told the Respondent, the Respondent mocked her.**
- (r). The Respondent consistently tells the Petitioner that she will never be well or healthy unless she accepts things the way they are. According to the Respondent, the Petitioner must live according to his dictates and lifestyle. This had made the Petitioner develop so much phobia for the Respondent. The Petitioner becomes frightened and irritated each time she sees the Respondent.**
- (s). The only time the Respondent shows happiness is when the Petitioner gives him money. Each time the Petitioner complains about the Respondent's behaviour and lack of attention for the Petitioner, the Respondent would respond that his unhappiness is as a result of his difficult situation. For the past 17 years of their marriage, the Petitioner has been under serious pressure trying to support the**

Respondent financially to enable him become happy and turn a new leaf, all to no avail.

- (t). The Respondent always maintains that the Petitioner is his property and that he owns everything the Petitioner has. The Respondent always boasts that whatever money that came through the Petitioner is his 'God's given gift'.***
- (u). The Respondent has demonstrated disdain for the Petitioner's relatives by threatening to kill any of the Petitioner's family members who stands on his way and kill himself in turn. The Respondent does not want to see any of the Petitioner's siblings come to their home. The Respondent abuses the Petitioner's mother and labelled her a witch. The Respondent told their daughter that the Petitioner's mother bewitched her in a bid to painting the Petitioner's mother in bad light before the children.***
- (v). When the Petitioner left Port-Harcourt for Abuja, she took her mother with her to help with the care of the children, who were still very young at the time. The Petitioner's mother had assisted in taking care of the children for six years. When the Respondent's insult became unbearable for the Petitioner's mother, she had to leave the Petitioner's home.***
- (w). The Respondent had tried on several occasions to surreptitiously change the ownership of the property owned by the Petitioner in Port-Harcourt, which property was bought at the time the Petitioner was still a spinster (before their marriage). The Respondent engaged a lawyer to write a letter addressed to the Commissioner for Lands in Rivers State claiming that the Petitioner has by virtue of their marriage become the Respondent's property and the title documents should be changed to his name. The letter of Uche G. Chilaka & Associates is hereby pleaded.***
- (x). The Respondent lease the Petitioner's Port-Harcourt property and has been collecting rent from the property without disclosing this to the Petitioner. The Respondent***

once boasted that he could sell the property without any consequence.

- (y). The rent collected by the Respondent on the Petitioner's Port-Harcourt property has been spent solely by the Respondent. The Respondent does not contribute in any way to the upkeep of the family.**
- (z). The Petitioner had woken up several times to see the Respondent standing above her head starring at her. This has put serious fear of strangulation on the Petitioner based on the numerous threats made by the Respondent. This has also contributed to the sleeplessness experienced by the Petitioner, which has adversely affected her physical, mental and emotional well being. The Petitioner now takes sleeping tablets to enable her sleep.**
- (aa). The Petitioner's employers had invited the Petitioner to a meeting to explain their concern about her low performance occasioned by her lack of concentration, stress and unhappy disposition, all as a result of the Respondent's conduct at home.**
- (bb). The Respondent knowing fully well that the Petitioner is managing high blood pressure and ulcer secretly puts salt and pepper into the Petitioner's food, ingredients which are capable of aggravating these ailments.**
- (cc). The Petitioner moved out of No. 17 Aguata Street, Garki II, Abuja with the children in January 2018 when it became obvious that her life and job (which is the only means of the family survival) were on the line as a result of the conducts of the Respondent.**
- (dd). The Petitioner, who has solely been responsible for the feeding, education and upkeep of the children, cannot afford to leave them for the Respondent, who has no means of livelihood.**

- (ee). The Respondent insults and threatens any of the Petitioner's brothers who ventures to wade into this problem, claiming that no one should interfere in his family. The Respondent accuses the Petitioner's family members of making efforts to take the Petitioner's money and thereby preventing him from getting his 'God-given bonanza.**
- (ff). The Petitioner's family members, who the Respondent so much despise, are the same people that have encouraged the Petitioner to help set up businesses and build a house for the Respondent. The Petitioner's mother personally advised the Petitioner to sponsor the Respondent's niece (who lived with them) to the University for a degree programme, which the Petitioner is presently undertaking. Despite all these, the Respondent still misbehaves to the Petitioner and her family.**
- (gg). On an occasion, the Respondent informed their daughter that he would shock the Petitioner and everyone after their daughter had gone back to school. Their daughter was apprehensive and informed the Petitioner. The Petitioner decided to report this incident at the nearest Police Station since she was no longer feeling safe. The Police assigned a Marriage Counselor to accompany the Petitioner home to counsel the Respondent. The Respondent had held this against the Petitioner since then till date.**
- (hh). The Petitioner and the Respondent have not been having sex as husband and wife as they no longer have feeling for each other. At a point, they spent five years without sex. The Petitioner no longer has any love for the Respondent.**

While the Orders sought for are as follows:

- “(a). A decree of judicial separation of the marriage on the grounds:**
- (i). That the conduct of the Respondent constitute just cause for the Petitioner to live separately.**

- (b). Perpetual Injunction restraining the Respondent from exercising any right or authority over the property and/or chattel owned by the Petitioner.**
- (c). Such further or other Order(s) relief(s) as the Court may deem fit to make in the circumstances.**

This matter commenced de-novo on 4th February 2021 after the Petition and all other processes were duly served on the Respondent, including hearing notice.

But, the Respondent was absent and unrepresented on that day and all through the trial despite service of several hearing notices on him.

The Petitioner testified same day and adopted her Witness Statement on Oath.

Their marriage certificate was tendered in evidence and marked Exhibit A.

Likewise, a photocopy of a Medical Report, and a photocopy of a Brain CT Scan were also admitted in evidence and marked Exhibits B and C respectively.

In addition, a photocopy of Certificate of Occupancy and a letter addressed to Hon. Commissioner of Lands Rivers State Secretariat Port Harcourt were equally admitted in evidence and marked as Exhibits D and E respectively.

This Petition is undefended.

On the 16th March 2021, learned Petitioner's Counsel Olowole Aladedoye Esq, adopted the Petitioner's final Written Address.

In the said Written Address learned Petitioner's Counsel formulated a sole issue for determination to wit:

“Whether the Petitioner has proved her case in the circumstances of this suit so as to entitle her to the grant of the reliefs sought.”

In arguing the issues learned Counsel submitted that the Petitioner having tendered Exhibit A, the marriage certificate is no doubt qualified to bring this Petition.

That in judicial separation (under Section 39(1) of the Matrimonial Causes Act “pleadings” include the Petition, the Answer/or amendment thereto. Reliance was placed on the cases of ***TOWOENI V TOWOENI (2007) ALL FWLR (Pt. 122) Pg. 170 and DANJUMA V S.C.C. (NIG) LTD (2017) 6 NWLR (Pt. 1561) 189 (CA)*** on onus of proof.

Submitted, that the standard of proof is clearly entrenched in Section 15(2) of the Matrimonial Causes Act. Counsel also cited the case of ***EKEREBE V EKEREBE (1999) 3 NWLR (pt. 596) 514, (CA) Pg. 525, A – B.***

Submitted further that from the facts and evidence adduced in this case, the Petitioner has satisfied one of the provisions of Section 15(2) of the Matrimonial Causes Act, namely Section 15(2)(c), to prove that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent and the Petitioner finds it intolerable to live with him. That the crisis in the marriage has made it absolutely impossible for the Petitioner to continue living with the Respondent.

Submitted that by his conduct the Respondent has shown that he does not object to a decree being granted by his flagrant neglect and refusal to file an Answer to the Petition or challenge the Petition in any form or manner.

Learned Counsel argued that as long as the Petitioner has discharged the burden of proof placed on her by law, the Respondent’s failure to act shall not deprive her of the fruits of the judgment.

Reliance was placed on the cases of ***ELEWA V GUFFANTI (NIG) LTD (2017) 2 NWLR (Pt. 1549) 238 (CA); OYETAYO V MOSORO (1997) 10 NWLR (Pt. 526) 627; GATAH (NIG) LTD V ABU (2005) ALL FWLR (Pt. 278) 2286 (CA) per Nzeakor, J.C.A.***

On the relief for perpetual injunction, learned Counsel submitted that the Court is empowered under the law to grant this relief.

Counsel relied on Section 109 of the Matrimonial Causes Act, Cap M9, LFN, 2004; as well as paragraph 9(iv), (x) and (y) of the Petition, as well as Exhibit E, where Respondent through his solicitors referred to the Petitioner as his “property” in relation to the Petitioner’s property in Port-Harcourt.

Submitted that the Petitioner has established her legal right over the property in issue to warrant the grant of this injunctive relief. Reference was made to Exhibit D (Certificate of Occupancy) as well as the case of **AKAPO V HAKEEM-HABEEB (1992) 6 NWLR (Pt. 247) 266 at 289, para E.**

In conclusion, learned Counsel urged the Court to hold that the Petitioner has successfully discharged the burden on her and to grant the decree of judicial separation of the marriage.

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

I humbly refer to the case of **BIBILARI V BIBILARI (2011) LPELR – 4443, (SC) per Galinje JSC, at PP: 33-34**, where it held: -

“In a Petition for dissolution of marriage, the Petitioner must plead and prove that the marriage has broken down irretrievably.

In doing this, the Petitioner must be able to bring himself within one or more facts enumerated in Section 15(2) a – h of the Matrimonial Causes Act Cap 220 LFN, 1990 before he can succeed in the petition.”

The Petitioner herein seeks a decree of judicial separation of her marriage to the Petitioner.

The Petitioner alleges intolerability constituting same under Section 15(2)(c) of the Act. The two facts to be proved are:

“(a). The sickening and detestable or condemnable conduct of the Respondent.

(b). That the petitioner finds it intolerable to live with the Respondent.”

One of the grounds listed in Order V Rule 12(2) in reference to facts specified in 15(2) of the Act, in first column of the table therein namely, paragraph c, is cruelty.

Please see also a Guide to Matrimonial proceedings 2nd Ed, by Ikechukwu D. Uzo Esq, Page 576.

See also the definition of cruelty in the Black’s Law Dictionary 9th Edition at Page 434.

From the said definition therefore, cruelty means the intentional and malicious infliction of physical and mental suffering upon living creatures, particularly human beings, or as applied to the latter, the wanton, malicious and unnecessary infliction of pain upon the body, or the feelings and emotions; abusive treatment, inhumanity, outrage, chiefly used in law of divorce.

It must therefore be a conduct that is grave and weighty as to make cohabitation of the parties to the marriage virtually impossible coupled with injury or a reasonable apprehension of injury, whether physical or mental.

Please see the cases of **BIBILARI V BIBILARI (2011) LPELR-4443 (CA); ADARAMAJA V ADARAMAJA (1962)1 SCNLR, 376.**

In this case, the Petitioner in the facts grounding this Petition, particularly paragraphs **p, q,r,s,t,u,w,z, z(bb), z(gg) and Z(hh)** among others well captured in Petitioner’s Witness Statement on Oath, has clearly shown that the Respondent has been cruel to her.

She avers that she’s been taking the burden of all the finances in the matrimonial home including upkeep of the children, has developed high blood pressure, which has affected her health. In fact Petitioner avers that the Respondent knowing fully well that Petitioner is managing high blood pressure and ulcer secretly puts salt and pepper into her food, ingredients which are capable of aggravating these ailments.

Petitioner avers in paragraph P of the Statement of Oath that the Respondent threatens her life, which led to apprehensions that developed into the high blood pressure. She relied on the medical report and CT Scan tendered in Court i.e, Exhibits B and C.

Avers also that the Respondent always maintains that she is his property and boasts that he owns everything Petitioner has.

That Respondent has tried several times to change the ownership of her property in Port-Harcourt which she bought before their marriage while she was a spinster.

In addition, Petitioner avers that Respondent's conduct has so much traumatized their daughter affecting her personal life and academic performance, which led her to now repeat JSS 2. That the Respondent abuses her in front of the children.

Avers further that she and the Respondent have not been having sex as husband and wife, at a point even spent five years without sex.

On what amounts to cruelty, the Court held in the case of **ADARAMAJA V ADARAMAJA (1962) LPELR-2501N (SC)**, the Court held that accumulation of minor acts of illtreatment causing or likely to cause the suffering spouse to break down under strain therefore constitutes cruelty.

See also **WILLIAMS V WILLIAMS (1965) SC/339/1965 Jan 14, (1966) (unreported)**.

Generally, on what constitutes intolerable behaviour, the Court has held in the case of **OGUNTOYINBO V OGUNTOYINBO (2017) LPELR-42174 (CA) at PP: 8-14, Para E – A**, as follows: -

“...The duty is on the Court to consider whether the alleged behaviour is one in which a right thinking person would come to the conclusion that the Respondent has behaved in such a way that the Petitioner could not reasonably be expected to live with him taking into account the whole of the circumstances, the characters and personalities of the parties.”

Now, the weightiest of the alleged conducts in this case is threatening the life and health of the Petitioner.

Respondent's conduct in this case is one that can cause danger to the life, health and mental well being of the Petitioner or even a reasonable apprehension of that danger.

Her evidence remains unchallenged and uncontroverted.

There's no doubt that the Constitution of the Federal Republic of Nigeria 1999 (as amended) guaranteed to every citizen of this country the right to life and right not to be subjected to any inhumane and degrading treatment. Please see Sections 33(1) and 34(1) of the CFRN 1999 as amended.

The constitution being the supreme law of the land seeks to protect the sanctity and life of the human being.

The Petitioner therefore deserves to live her life in a peaceful and healthy environment free from any danger to her life, health or general well being. I so hold.

On the whole, I find that the Petitioner has proved that her marriage to the Respondent has broken down irretrievably and is therefore entitled to grant of a decree of judicial separation..

Accordingly, I hereby grant a decree of judicial separation of the marriage in respect of the Petitioner Juliana Tobechei and the Respondent Ambrose O. Omeojiaku celebrated at Christ the King Cathedral, Aba on the 28th day of October 2008.

On the 2nd Relief for Perpetual Injunction, I advise the Petitioner to file a separate suit to recover possession of her property which is outside the jurisdiction of this Court, as this Honourable Court has no powers nor the jurisdiction to make any Orders on the property in question, or any other property which is not within the jurisdiction of this Court. Therefore, Relief No. 2 fails and is accordingly dismissed.

Signed:

***Hon. Justice Samirah Umar Bature.
5/7/2021***