

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 14
CASE NUMBER : SUIT NO: PET/448/20
DATE: : FRIDAY 3RD DECEMBER, 2021

BETWEEN:

MRS. RAKIATOU KORIE BENNETH...PETITIONER

AND

MR. KORIE BENNETH RESPONDENT

JUDGMENT

By a Notice of Petition for the decree of dissolution of statutory marriage dated 15th September, 2020 and filed same day, Petitioner approached this Honourable Court for the following:-

1. An Order of the Court for a decree nisi for the dissolution of the marriage between the parties on the ground that cohabitation under marriage has broken down irretrievably.
2. An Order of the Court granting full custody of the two children of the marriage, mentioned herein before.
3. And any such Order or other Orders as this Honourable Court may deem fit to make in this circumstance.

The grounds upon which the petition is brought are as follows:-

- a. Since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him.
- b. The Respondent has deserted the petitioner for a constant period of at least one year immediately preceding the presentation of the petition and as such, the Petitioner finds it intolerable to live with the Respondent.
- c. The parties to this marriage have lived apart for a constant period of a minimum of 2 years immediately preceding the presentation of this petition.
- d. Since the early years of the marriage, the Respondent has repeatedly discriminated against

the Petitioner on grounds of tribal differences, lack of care, affection and family time.

- e. The petitioner has reasonable cause to believe that the Respondent is cheating and committing adultery in that the Respondent does stay away from their matrimonial home for a period of 18 months at a stretch under the pretext of traveling to the Eastern part of Nigeria for business. On many occasions, the Petitioner will discover to her chagrin that the Respondent is lodging at a hotel here in Abuja with another woman.
- f. The Petitioner is a director and shareholder in Empire Energy Limited, RC No:715495, a company she owns jointly with the Respondent. However, the Respondent illegally and maliciously forged her signature and removed

her from the directorship and transferred her shares to himself.

- g. The attitudes of the Respondent are imminent threat to the moral upbringing of the children of the marriage and peaceful cohabitation.
- h. The Respondent has no committed care for the children of the marriage in that; he does not care nor treat them with love as is expected of a father and very reluctant about family outings and general welfare.

The petitioner made the following proposed arrangements for the children;

That the Petitioner is to have custody of the two children of the marriage.

That the Respondent is to pay the petitioner as follows:

- a. The sum of N2Million Naira only (subject to periodic upward review) for Roseline Layla Korie's tuition fee per session from Nursery to Secondary School at White Plain British School, Abuja FCT.
- b. The sum of N5Million Naira only (subject to periodic upward review) for Roseline Layla Korie's tuition fee per session for her University Education anywhere in Nigeria and/or elsewhere.
- c. N4Million per month for the upkeep of the children.
- d. Sum of N2 Million Naira only (subject to periodic upward review) for Anna Queen

Korie's tuition fee per session from Nursery to Secondary School at White Plan British School, Abuja, FCT.

- e. The sum of N5Million Naira only (subject to periodic upward review) for Anna Queen Korie's tuition fee per session for her University Education anywhere in Nigeria and/or elsewhere.

Upon service of the said petition on the Respondent, the Respondent filed answer and amended cross petition dated 24th March, 2021 and filed on same day. In response to the Respondent's cross petition, the Petitioner filed a reply.

When issues were properly joined, the Petition was set down for hearing on the 27th October, 2020.

The Petitioner adopted her witness statement on oath and tendered the following in evidence and was admitted.

She tendered marriage certificate (certified true copy) marked as Exhibit 'A'.

After the cross examination, the petition was adjourned for defence. The Respondent was led in evidence on the 23rd September, 2021, to adopt his witness statement on oath.

It is the answer of the Respondent that the Petitioner caused the break-down of the marriage and denies the grounds as put forward by the petition. The Respondent denies paragraphs 8,A,B,C,D,E,F,G,H, I,J,K and L of the fact contained in the petition and puts the petitioner to the strictest proof thereof.

That the Petitioner is a woman given to Ostentatious living and a spendthrift, a life style which puts enormous pressure on the Respondent's finances. In response to paragraph 8a, of the petition, the Respondent says that he had never behaved in an awkward manner towards the petitioner and or her stream of family members who have always found his residence as a safe and comfortable haven befitting of their lifestyle and that the allegation of the Respondent behaving in a way the petitioner cannot be reasonably be expected to live with him is a deliberate concoction of the petitioner to unnecessarily weep up sentiments against him.

That the Petitioner is the one who has been in desertion to her native country Niger Republic with the children of the marriage, a repeated action which had in great measure impacted negatively on the

Children's education, and has made the Respondent unable to foster a warm relationship with the Petitioner.

In response to paragraph 8(c) and (d) of the petition, the Respondent says he is a loving husband to the Petitioner and her daughter brought into the marriage from her previous marriage and her wish has always been his command, but that the Petitioner since after the marriage has been unruly disdainful about his people and tribe and rather chose to spend more time in Niger Republic even at a great expense to the Respondent and has always resisted every attempt of the Respondent to have her settle down amongst his people. That the Petitioner maintains a double nationality and carries both Nigeria and Niger's International passport enabling her to come

and go, as and when desirable at great expense to both his marriage and finances.

That the Petitioner through a member of Empire Energy Limited voluntarily resigned membership of the company and in return was adequately funded by way of compensation running into millions of naira to enable her run an independent business venture which the Petitioner runs till date without success.

The Respondent says that the Petitioner was neither forced out of Empire Energy Limited nor her signature forged, but rather resigned voluntarily and that even a painstaking Police investigation failed to align with the Petitioner's allegation of forgery.

The Respondent also answers that he has always been a loving father to his two lovely daughters, Roseline Layla Korie, 6 years and Anna Queen

Korie, 2½ years, and gives them adequate love, care and attention befitting of a loving and caring father. That he is solely responsible for the upkeep of the children as the petitioner is a woman of limited means and a house wife fully dependent on him. The Respondent therefore asks the Court to dismiss the petition of the Petitioner as it is incompetent.

The Respondent adopted his witness statement on oath and tendered the following in evidence, and same were admitted:-

1. Flight Tickets
2. Photograph of Petitioner's Daughter
3. Letter of Authority
4. Print-out of Flight Ticket for Mrs. Aliyu Idi Hong

5. Invitation Card for Wedding Ceremony.

The Respondent in his amended cross petition states further that he was deceived into accepting the Respondent's daughter from her previous marriage, Nadia, as his daughter. The Respondent caused the cross Petitioner to give his name to Nadia and to procure a Nigerian passport for her as his daughter. She presently answers Nadia Korie, and the cross Petitioner has been responsible for her education and welfare ever since.

The Respondent did not show any evidence of the divorce between her and her Nigerean husband and the Cross Petitioner has now discovered that her former husband was not unavailable as she alleged, but lives in Niamey, Niger Republic and that they were not divorced. The Respondent has continued to

be with her Nigerean husband every time she travelled to her home Country, Niger Republic and for this reason has not allowed the Cross Petitioner to travel with her to Niger Republic. Nadia has continued to be with her father whenever she travelled to Niger Republic with the Respondent.

The cross Petitioner states that the Respondent is guilty of desertion which has lasted for more than one year immediately preceding the presentation of this cross petition, having failed, refused and/or neglected to return to her matrimonial home upon her return from Niger Republic in 2019 so as to join the cross Petitioner in his abode at House No. 10. 7th Avenue Opposite Medimax Hospital, Gwarimpa Abuja FCT, where they lived together. Sometime in August, 2019, the Respondent left her matrimonial home and travelled to Niamey, Niger Republic with

the cross Petitioner's two children Roseline and Anna who are infants. The cross Petitioner believing that the Respondent wanted to visit and celebrate Sallah Holidays with her mother, paid the air fare for the Respondent and her three daughters and a maid, Blessing Nansat Alfred. The cross Petitioner did not know that the Respondent had an ulterior motive for taking his daughters on the trip to Niamey, Niger Republic. After she arrived Niamey, Niger Republic, she kept her daughters with her mother without informing the cross Petitioner or making adequate arrangements for the comfort of the children, returned to Nigeria and checked into a hotel, instead of returning to their matrimonial home. She later moved into an apartment at Wuye District, Abuja, provided for her by a man. The Respondent later arranged for the maid, Blessing Nansat Alfred who

had travelled with the children, to return to Nigeria by road without informing the cross Petitioner despite the fact that the cross Petitioner had paid for each person's return ticket by air.

The cross Petitioner further states that the Respondent led the cross Petitioner through an Islamic marriage in Niger Republic and also deceived the Cross Petitioner by giving him a new name claiming that her culture requires the man to take a new name for the purpose of the marriage ceremony. The wedding invitation card printed and circulated by the Respondent which gave his name as M. Abdul-malikBennethKorie. The cross Petitioner adds that he was not given a copy of the wedding invitation card and did not know that he was given a new name by the Respondent until about three years after the wedding ceremony when

he stumbled on the card in the house. Immediately after the marriage to the Respondent, she went to High Court Registry Abuja, on 18th September, 2013 and swore to a statutory Declaration of Age wherein she stated that she was born in Dosso-Niamey, Niger Republic. However, less than one week thereafter, on 24th September, 2013, she obtained a Nigerian passport wherein she stated that she was born at Illela, Sokoto State, Nigeria.

The Respondent does not take care of the children herself but only wants to use them as a means to extort and extract money from him regularly. Every time she is in need of money, she will cause the first daughter to call him and start crying on the phone. The daughter will then tell the Cross Petitioner that they want money. In December, 2020, the Respondent used the same ploy to make him buy a

new car, an expensive telephone of her choice and pay for a trip to Dubai for her and his daughters but the Respondent took her mother and brother on the trip at the Cross Petitioner's expense. These cost the Cross Petitioner more than N20,000,000.00 (Twenty Million Naira) yet he did not receive any word of gratitude from the Respondent.

The cross Petitioner, proposed the following arrangement for the children of the marriage:

- a. The cross Petitioner requests custody of the two children of the marriage Roseline Layla Korie 6years and Anna Queen Korie 2½ years both shall live with him at his residence at House No. 10, 7th Avenue, Opposite Madimax Hospital, Gwarimpa, Abuja; where they had lived before the Respondent shall have unhindered visitation

rights every day and at any time she wants for as long as her visits do not interfere with the academic work of the children. The Respondent's former bedroom shall be reserved and maintained for her use and comfort during her visits.

- b. That the children of the marriage, Roseline Layla Korie, 6 years and Anna Queen Korie 2½ years, while in custody of the cross Petitioner shall not travel to Niger Republic or anywhere outside Nigeria with the Respondent or anyone related to her nor acquire Niger Republic International Passport without the consent of the cross Petitioner. The children of the marriage, Roseline Layla Korie, 6 years and Anna Queen Korie 2½ years, shall not travel out of Abuja with the Respondent or any one related to her

without the written consent of the cross Petitioner.

- c. That the cross Petitioner shall provide the following services at his residence for the utmost welfare and benefit of the two children at all times while they are in his custody;
 1. A trained nurse
 2. A professional teacher
 3. A professional cook
 4. A trained nanny or child minder
 5. A car and driver dedicated to the children
 6. A laundry man
 7. A conducive environment for the upbringing and education of the children.

d. The cross petitioner shall be responsible for the education of his two daughters up to the level of doctorate degree in any good school or University whether in Nigeria or abroad.

The cross Petitioner shall continue to pay the children's school fees at their present school at White Plain British School Abuja or any other suitable school and shall present copies of payment receipts to the Respondent for her information.

The cross Petitioner sought the following Orders:

- i. An Order dismissing the petition for being incompetent.
- ii. An Order granting the cross Petitioner
 - a. A Decree of nullity of marriage or in the alternative.

- b. A Decree for the dissolution of the marriage.
- iii. An Order restraining the Respondent from using the cross Petitioner's name, KorieBenneth, henceforth.
- iv. An Order directing the Respondent to surrender the Nigerian passport bearing his name, to the Nigeria Immigration Service.
- v. An Order directing Nadia Korie to surrender the Nigerian passport bearing his name, to the Nigeria Immigration Service.
- vi. An Order that the children of the marriage, Roseline Layla Korie, 6 years and Anna Queen Korie 2 ½ years, shall not travel out of Abuja or out of Nigeria with the Respondent or any one related to her without the written consent of the cross Petitioner.

vii. Any other Order or Orders as this Honourable Court may deem fit to make.

The Petitioner (Respondent in the cross petition) filed a consequential amended reply to Respondent's answer to the petition and answer to cross-petition dated 25th June, 2021 and filed on same day.

The Petitioner states that the Respondent chased them out of the house following altercation with one Miss Blessing, a house help that the Respondent regularly had adulterous and amorous relationship with, and she had never been unruly or disdainful about his people or tribe and that it was the Respondent that procured the Nigerian passport and obtained all documents needed for that.

The Petitioner also states that she had at no time resigned from Empire Energy Limited. Also, the Petitioner's signature was forged to force her out of Empire Energy Limited and Police investigations linked the Respondent with the forgery which led to the filing of criminal charges against the Respondent preparatory to his arraignment on the 5th April, 2021.

The Petitioner/Respondent further states in her answer to cross petition, that the cross petitioner misled the Respondent to change the surname of Nadia from Omar Seyni to his name Korie on the pretext that it will ease international trips and to avoid interrogation from the immigration officer of the Federal Republic of Nigeria and at sometimes, he even fruitlessly persuaded her to inform his relations that Nadia was his daughter, they had her years ago.

The Petitioner/Respondent argues that she does not use her children to extort money from him, the children call him because they miss their father like normal children do. The car and phones he claimed to buy and the payment for the Dubai trip was the cross-petitioner's ploy to dissuade the Petitioner from pressing charges of forgery against him as regards his dubious maneuvering in Empire Energy Limited.

Petitioner and Respondent/Cross Petitioner filed their respective written addresses and adopted same as legal arguments in support of their respective cases.

Learned counsel for Respondent/Cross Petitioner, final address was filed wherein two issues were formulated for determination to wit;

- 1. Whether the Petition for dissolution of marriage filed by the Petitioner is competent?*
- 2. Whether Respondent has proved his Cross Petition to be entitled to Judgment in his favour.*

On issue one, *whether the Petition for dissolution of marriage filed by the Petitioner is competent.*

Learned counsel submits that the Petitioner's averment in one paragraph cannot be taken as verifying the statements of fact contained in paragraphs 1,2,3,4,5,6,7,8 a – p of the petition as required by Order V. Rule 10(1) of the Matrimonial Causes Rules. This is because by the said provision, it is mandatory that every statement of fact averred to or presented by the Petitioner must be strictly and specifically verified as to the truth of the averments.

See ***UMEAKUANA VS. UMEKUANA (2009) 3 NWLR (Pt. 1129) 598*** was cited.

Failure of the Petitioner to properly verify her petition in the case is fatal. It means that her petition is fundamentally defective and as such, this Honourable Court lacks the power to consider or grant the reliefs sought. The defect goes to the foundation of the petition as the filing of a proper verifying affidavit is a condition precedent to this court assuming jurisdiction to entertain this petition. It is now trite that a court will lack the jurisdiction to entertain a matter if a condition precedent to the Court's jurisdiction has not been satisfied.

NWAOGWUGU VS PRESIDENT, FEDERAL REPUBLIC OF NIGERIA (2007) 6 NWLR (Pt. 1030) 237.

On issue two, *whether Respondent has proved his Cross Petition to be entitled to Judgment in his favour.*

Learned counsel submits that in paragraph 15 of the Amended cross petition, the Cross – Petitioner stated that the marriage with the Petitioner/Respondent is a nullity as the Petitioner/Respondent was still married as at the time of the marriage and that he was misled into believing that she was divorced. The particulars of said misrepresentation are contained in paragraphs 15a – e. the Petitioner did not show him any divorce certificate.

The Petitioner has also failed to cross examine the crosspetitioner on this issue. Failure of the Petitioner/Respondent to cross – examine the cross – Petitioner on this issue means that she does not

dispute the allegation. It has been held that where a party fails to contest an issue, he is deemed to have conceded to it.

C.D.C VS SCDA (2007) 6 NWLR (Pt. 1030) 300.

Learned counsel further submits that by the provisions of section 136 (1) of the Evidence Act, the burden of proof is on the party who will lose if no evidence is adduced at all on either side.

UBN VS CHINYERE (2010) 10 NWLR (Pt. 1203) 453 was cited.

Learned counsel emphasizes, that the cross – petitioner has satisfied all of the relevant criteria and has testified of the closeness and affection between him and his two daughters. In a case as this, where the custody and welfare of a child of marriage is in issue, the court must consider the interest and

welfare of the child above the interest of the parties. The interest of the child is the paramount consideration. *ALABI VS ALABI (2007) 9 NWLR (Pt. 1039) 297 at page 347 – 348 D-A was cited.*

It is the conclusion of learned counsel, that this court can act on the facts presented by the cross Petitioner to find that the marriage has broken down irretrievably and that he should be granted custody of his two children until they attain the age of majority.

Learned counsel for the Petitioner filed written address wherein four issues were formulated for determination to wit;

1. Whether the petition for dissolution of marriage filed by the Petitioner is competent.

2. *Whether the Petitioner has succeeded in proving her petition.*
3. *Whether the Respondent/Cross-Petitioner succeeded in proving his cross-petition.*
4. *Whether by the state of evidence adduced before this Honourable Court, who amongst the parties is in a better position to have the custody of the children of the marriage.*

On issue one, *whether the petition for dissolution of marriage filed by the Petitioner is competent.*

Learned counsel stated that, the grouse of the Respondent is that the two paragraphed verified affidavit filed by the petition is too scanty and not weighty enough to verify the statement of facts contained in paragraphs 1,2,3,4,5,6,7,8 a – p of the petition as required under Order V. Rule 10(1) of the

Matrimonial Causes Rules, CAP M7, LFN, 2004. In support of the Respondent's counsel submission, reliance was placed on the Court of Appeal case of ***UMEAKUANA VS. UMEAKUANA (2009)3 NWLR (Pt. 1129) 598***. Learned counsel submits that the proposition of law elucidated in the Court of Appeal case of Umeakuana, was overturned at the Supreme Court and ceases to represent the position of the law under discourse. The relevant position that governs and encapsulates the current position of the law on the subject matter is the Supreme Court case of ***UMEAKUANA VS. UMEAKUANA (2019)14 NWLR (Pt. 1691) 61*** not the Court of Appeal's decision which Respondent alluded so much to in his final written address. The Respondent cannot object to whatever perceived procedural irregularity that might have characterized the

proceedings in this suit, the Respondent having failed to raise the objection timely, but chooses to participate in the proceedings, he can no longer complain.

On issue two, *whether the Petitioner has succeeded in proving her petition.*

Learned counsel submits that in a matrimonial suit, just like in any other suit, the burden of proof is on the person alleging that the other spouse has behaved in such a way that he or she cannot reasonably be expected to live with the Respondent as in the instant case. However, where a party failed to establish by credible evidence his case, the Court will refuse to hold the marriage has broken down irretrievable. *DAMULAK VS. DAMULAK (2004)8 NWLR (Pt. 874) 151.*

Learned counsel argues that the Petitioner was able to discharge this onus of proof to establish the following detestable, sickening and condemnable conducts from the Respondent in her witness statements on oaths.

Learned counsel also argues that the unchallenged evidence of the Petitioner that it was the cross Petitioner who chased her out of the house following the discovery of an amorous relationship between the Respondent and one miss Blessing, remains unimpeachable and this Honourable Court can conveniently act on same.

On issue three, *whether the Respondent/Cross-Petitioner succeeded in proving his cross-petition.*

Learned counsel submits that it is the Respondent that has the sole duty to establish by credible

evidence, that what he alleges at paragraph 15 of his Amended Cross Petition, actually happened. The mere ipsi dixit evidence required under Section 136(1) of the Evidence Act to substantiate the allegation.

Learned counsel urge the Court to take a glean at the fact averred to by the Respondent at the said paragraph 15 of the Amended Cross Petition.

Learned counsel further submits that, the allegation that the Petitioner continued to be with her erstwhile husband each time she travels to her country, is not sufficient proof that the Petitioner was still married to One Omar Seyni, as at the time she married the Respondent. The law is trite that he who alleges the positive is expected to lead evidence in support of his assertion.

PLATEAU STATE VS. A.G (2006)3 NWLR (Pt. 967) 346 at Page 417, Paras D – F and OJO VS. GHARORO (2006) 10 NWLR (Pt. 987) 173 were cited.

MEGWALU VS. MEGWALU (1994)7 NWLR (Pt. 359) 718 at 733, Paras F – G was cited, to offer an in-depth view on the need for a party in a matrimonial matter to plead facts with precision and particularity.

On issue four, whether by the state of evidence adduced before this Honourable Court, who amongst the parties is in a better position to have the custody of the children of the marriage.

Learned counsel submits that in matrimonial matters, the paramount is the interest of the children; this is of ultimate concern to the Courts. It is a result

of this high premium placed on the care, welfare and maintenance of the children of the marriage that informed the insertion of Section 70(1) of the Matrimonial Causes Act. It is obvious that the evidences led by parties in this suit to enable the court to decipher who amongst the parties is much suited or prepared to take up custody of the children of the marriage.

Learned counsel also submits that it will be a colossal damage to the psychic of the children to be left in the custody of the Respondent. The Respondent lacks the moral etiquette and the requisite fatherhood attributes to nurture the children of the marriage to an enviable and successful growth.

The Respondent on his part filed a reply address on points of law dated 13th of October, 2021 and filed on same day.

In the reply on point of law, learned counsel submits that it is trite law that there are 4 essential elements of desertion to wit;

- i. Physical separation
- ii. Intention to remain permanently separated
- iii. Absence of the other spouse consent
- iv. Absence of any justification.

The 4 elements mentioned above are concomitant and must coexist in the conduct of a party against whom desertion is alleged before the court can find in favour of the party alleging the desertion. It is trite law that he who asserts must prove and in the

absence of hard evidence in proof of desertion in this case, the Petitioner is stopped from laying claim to being deserted. It goes without saying that the Petitioner has not proved the existence of any legal elements constituting desertion. Section 169 of the Evidence Act, 2011 was cited.

Learned counsel further submits, that de facto separation on a permanent basis is now res ipsaliquitor. The Petitioner has been in desertion since September, 2019 culminating in this petition which has sealed any home of the Petitioner returning home.

Learned counsel drew the attention of the Court to the ancillary claim for Maintenance by the Petitioner within the ambit of Section 70(1) and (2) of the Matrimonial Causes Act. The Petitioner has failed to

prove with unassailable evidence her right to maintenance. The Petitioner in evidence in chief via her witness statement on oath only chronicled the orders for maintenance sought in the Petition and added the proposal for maintenance made by the Respondent if given custody and no more. The effect of averments in pleadings in respect of which no evidence is led is deemed to have been abandoned and do not constitute proof of such facts unless such facts are admitted. *IFETA VS. S.P.D.C (NIG) LTD. (2006)8 NWLR (Pt. 983) 585* was cited.

It is pertinent to note that the reliefs sought by the Petitioner under the umbrella of maintenance are one on which grant thereof must be subject to the discretion power of the court and which must be exercised judicially and judiciously.

Learned counsel concludes, that the Petitioner did not and has not shown that the Respondent can meet obligations required. The Petitioner did not lead evidence to show that the Respondent can afford the maintenance claims. Additionally, there are no bills or invoices from the named children's schools, no idea of feeding/upkeep expenses weekly, monthly, yearly or otherwise. There are no details to which the court can satisfy itself. The claim by the Petitioner for monetary maintenance and school fees is speculative and futuristic, and the court cannot act on it in the interest of justice. In the circumstance, this Honourable Court is urged to hold that rather than order the Respondent to give the Petitioner the children's school fees as she wants, the Respondent should be ordered to pay the children's school fees always. Any maintenance award not done in

accordance with the applicable relevant, provisions of the matrimonial causes Act as in the Petitioner's case will be arbitrary.

On the whole, the Respondent on points of law urges this court to hold that the Petitioner has failed to prove her petition and since the Petitioner is the party in desertion, should not be allowed to benefit from her wrong. This Honourable Court is finally urged to act on the facts presented by the cross Petitioner to find that the marriage has broken down irretrievably.

COURT:-

I have read the Petitioner's grouse for seeking dissolution of her marriage, on one hand, and the Respondent/Cross-Petitioner's reasons for conceding to the dissolution of the marriage in his Cross-

Petition, on the other hand.. I will like to state, frontally, that under the Matrimonial Causes Act, a marriage would not be dissolved as a matter of course. The conditions must be present,i.e that same has broken down irretrievably in view of the fact that this class of proceedings is in a world of its own.

It is settled that Matrimonial Causes matters are in a league of their own. The procedure for the dissolution of marriage under the Act are provided under the Act; No marriage will be dissolved merely because the parties have agreed that it be dissolved.

Indeed marriage is the foundational relationship for all of society. Good marriages are the bedrock of strong societies, for they are the foundations of strong families.

The position of the law therefore, is to preserve the sanctity of the institution of marriage. Hence the reason for not dissolving the marriage on agreement of the parties to it.

Dissolution of marriage contracted pursuant to our marriage law is guided by matrimonial causes Act, Cap. 220 LFN 1990.

A Decree for the dissolution of marriage would be granted only if the Petitioner has proved that the marriage had broken down irretrievably and that the Petitioner finds it intolerable to live with the Respondent. Section 15 of the Matrimonial Causes Act.

See ***DOMULAK VS DOMULAK (2004) 8 NWLR (Pt. 874) 651.***

The Act stipulates that a petition by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage that the said marriage has broken down irretrievably.

Section 15(2) of the Act enumerates conditions which a petitioner must satisfy, to convince the Court hearing the petition for a decree of dissolution of a marriage to hold the marriage to have broken down irretrievably. The conditions are as follows:-

- a. That the Respondent has willfully and persistently refused to consummate the marriage,
- b. That since the marriage, the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent.

- c. That since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.
- d. That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the determination of the petition.
- 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 the decree being granted.
- f. That the parties to the marriage have live apart for a continuous period of at least 3 years

immediately preceding the presentation of the petition;

- g. That the other party to the marriage has, for a period of not less than one year failed to comply with a decree or registration of conjugal rights made under this Act.
- h. That the other party to the marriage has been absent from the petition for such time and in such circumstance as to provide reasonable grounds for presuming that he or she is dead.

Any of the aforementioned conditions under Section 15(2) Matrimonial Causes Act (MCA) is sufficient to enable the Court to hold that the marriage has broken down irretrievably. Making reference to the decision in *HARRIMAN VS. HARRIMAN (1989)5 NWLR (Pt. 119) 6*, UcheOmo, JCA (as he then was)

held, that under the matrimonial causes Act, 1970, there is only one ground for the dissolution of marriages, and that is that marriage has broken down irretrievably, which is provided for under Section 15(1) of the Act.

From the evidence before this Court both the Petitioner and Respondent have lived apart for a constant period of a minimum of 2 years and it is also in evidence that the Petitioner desertion which has lasted for more than one year immediately preceding the presentation of the cross petition, Petitioner having failed, refused and/or neglected to return to her matrimonial home at House No. 10, 7th Avenue Opposite Medimax Hospital, Gwarimpa Abuja, FCT, where they lived together.

Certainly, the foundation of a good marriage starts with having open, honest and ongoing communication about feelings, needs, expectations, goals, interests etc. it is important to put forgiveness at the centre of it all because naturally to err is human. It is easy to take each other for granted when you have been married for a while. As change is constant whether in age, family and or life generally you need to continue to grow together and not apart.

There are however circumstances where couple would become intolerant and wish to go their separate ways.

The evidence before me clearly reveals that Petitioner and Respondent/Cross-Petitioner are not desirous of staying together as husband and wife. Marriage is a sacred institution which cannot be whimsically put to an end.

The Court of Appeal in *UGBOTOR VS. UGBOTOR LPELR (2007) CA 7612* – re-echoed the case of *TIMMINS VS. TIMMINS (1953) 2 AER 187* where Lord Denning L.J observed at page 191 thus:-

“In considering whether one party has good cause for leaving the other much depends on whether the conduct complained of is of a grave and weighty character or not. Conduct which is of a grave weighty character may sometimes fall short of cruelty because it lacks the element of injury to health... but nevertheless, it may give good cause for leaving... On the other hand, conduct which is not of a grave and weighty character and it is for that reason not cruelty, does not give good cause for leaving.”

Petitioner who has filed for the dissolution of their marriage has given evidence on the fact that the

Respondent/Cross-Petitioner has been having affairs with her house help and that he sometime would claim to have travelled to the East for business and stay for eighteen(18) months and end up being in a hotel with women in Abuja.

One of the reasons that could lead to dissolution of marriage is adultery.

Adultery is essentially an act which can rarely be proved by direct evidence. It is easy to suggest conditions which can leave no doubt that adultery has been committed. Where a husband frequently visits hotels as stated by Petitioner in her evidence, there is a presumption of adultery.

See ***WILLIAMS VS. WILLIAMS (1963) & ADLEL 315.***

Respondent/Cross-Petitioner who was accused by Petitioner of leaving their matrimonial home for a period of eighteen (18) months on the pretext of travelling on business trip to the East only to resort to hotels in Abuja, where his wife stays, has not stated otherwise. He was also seen with women...The evidence that he Respondent/Cross-Petitioner was also caught with his house help in the Petitioner's parlour was not denied.

Petitioner equally gave evidence that when she opted to pack-out of Respondent/Cross-Petitioner's house because of his conduct, she was obliged by Respondent who did not object.

A man who derelicts his wife and matrimonial home for eighteen (18) months, only to be seen in hotels

and with other women, cannot be said to be interested in the marriage.

Respondent who had the whole time to puncture the evidence of the Petitioner, hugely dwelled on the issue of custody of the two (2) Children and also on the fact that he was not a man of straw... there is more to it in Matrimonial Causes Matters.

The evidence of the Petitioner on the reason she requested to leave the Respondent's house remains unshaken and good evidence to be used by this Court.

See *SUSAINAH (TRAWLING VESSEL) VS. ABOGUN (2007) 1 NWLR (Pt. 1016) Page 456.*

It is my Judgment, that the Petitioner could not have been expected to remain with the Respondent in view

of the evidence adduced...she is a human being with feelings.

Petitioner, being Muslim, has clearly stated that Respondent/Cross Petitioner has deceived her on the issue of religion when he said he was a Muslim and bore the name of Abdul-Malik. Respondent in his evidence denied the fact that he was ever a Muslim and that Petitioner gave him the name on the wedding card (Abdul-Malik) without his knowledge and that he was never a Muslim.

This is most revealing and catastrophic.

Marriage and relationships generally, is rooted in Confidence and Trust.

The evidence before me is clearly that of a wrecked-boat that is at the verge of been sunk...to avoid people drowning to death, it is better to evacuate

both Petitioner, Respondent and their Children and allow the boat to sink empty..

A Decree for the dissolution of marriage would therefore only be granted if the petitioner has proved that the marriage had broken down irretrievably and that the petitioner finds it intolerable to live with the Respondent. See section 15 of the Matrimonial Causes Act. See also the case of *DOMULAK VS DOMULAK (2004) 8 NWLR (Pt. 874) 651*.

Under the said Act, specifically section 15(1), a Petition by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage that the said marriage has broken down irretrievably.

Under section 15(2) of the Act, the court hearing a petition for a decree of dissolution of a marriage

shall hold the marriage to have broken down irretrievably if, but only if, the Petitioner satisfies the court of one or more of the following facts:-

- a. That the Respondent has willfully and persistently refused to consummate the marriage,
- b. That since the marriage the Respondent has committed adultery and the Petition finds it intolerable to live with the Respondent.
- c. That since the marriage the Respondent has behaved in such a way that the Petition cannot reasonably be expected to live with the Respondent.
- d. That the Respondent has deserted the Petition for a continuous period of at least one year

immediately preceding the determination of the petition.

- 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 the decree being granted.
- f. That the parties to the marriage have lived apart for a continuous period of at least 3 years immediately preceding the presentation of the petition.
- g. That the other party to the marriage has, for a period of not less than one year failed to comply with a decree or registration of conjugal rights made under this Act,

h. That the other party to the marriage has been absent from the petition for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

For emphasis, one or more of the conditions enumerated under section 15(2) Matrimonial Causes Act (MCA) suffice to hold the marriage has broken down irretrievably.

In *HARRIMAN VS HARRIMAN (1989) 5 NWLR (Pt. 119) 6 UCHE OMO, JCA (as he then was)* held that under the matrimonial causes Act, 1970, there is only one ground for the dissolution of marriages, and that is that the marriage has broken down irretrievably, which is provided for under Section 15(1) of the Act.

From the evidence led by the Petitioner, a case of adultery has been made out against the Respondent/Cross-Petitioner; both of them have also lived apart for a period of at least two (2) years immediately preceding the presentation of this petition and Respondent is not also opposed to the dissolution of the marriage.

Suffices to say that three (3) of the conditions have been met, which is morethan enough to dissolve the marriage between Petitioner and Respondent.

I have no difficulty holding that Petitioner has clearly established the fact that this marriage has broken down irretrievably.

It is my conclusion and Judgment that a case for the dissolution of the marriage between Petitioner and Respondent, evidenced by certificate at the FCT

Marriage Registry, Area 10 on the 13th of September, 2013, having broken down, has been established.

In consequence whereof, and by the Power conferred on me as Judge of the High Court of the Federal Capital Territory, Abuja, I hereby issue a Decree Nisi for the dissolution of that marriage between Petitioner and Respondent/Cross Petitioner duly registered at the FCT Marriage Registry, Area 10, on the 13th of September, 2013.

May God Almighty bear me witness.. Amen.

With the dissolution of the marriage, I will now gravitate towards the issue of custody of the two children.

In matrimonial causes, great importance is placed on the care, welfare and maintenance of the children of

the marriage. See Section 70(1) of the Matrimonial Causes Act.

In other words, this responsibility includes his/her needs in terms of food, shelter, clothing and the life.

ALABI VS. ALABI (2008) ALL FWLR (Pt. 418) 254 at 257 Page 296 Paragraph C (CA).

It is instructive to note that it is not the law that a party who succeeds in the proceedings shall always be awarded the custody of the children of the marriage.

It is the evidence of the Petitioner that the two children of the marriage, Roseline Layla Korie (F) aged 6 years old and Anna Queen Korie (F) aged 2 ½ years old have been in her custody since the time she took them to Niger and came back to Nigeria but not to the home that they shared with the

Respondent due to lack of care, affection and family ties exhibited by the Respondent/Cross Petitioner. It is further the evidence of the Petitioner that she has good accommodation and shall try her best in catering for the children emotionally and psychologically.

Petitioner prayed the Court for the sum of N2 Million Naira only (subject to periodic upward review) for Roseline Layla Korie's tuition fee per session from Nursery to Secondary School at White Plan British School, Abuja FCT.

The sum of N5 Million Naira only (subject to periodic upward review) for Roseline Layla Korie's tuition fee per session for her university Education anywhere in Nigeria and/or elsewhere.

N4 Million per month for the upkeep of the children.

The sum of N2 Million Naira only (subject to periodic upward review) for Anna Queen Korie's tuition fee per session from Nursery to Secondary School at White Plain British School, Abuja, FCT.

The sum of N5 Million Naira only (subject to periodic upward review) for Anna Queen Korie's tuition fee per session for her University Education anywhere in Nigeria and/or elsewhere.

On the part of the Respondent/Cross Petitioner, it is his answer and evidence to the petition that he is capable of financing the school fees of his children to anywhere and any level they may aspire. He is also willing to reserve and maintain the Respondent's former bedroom for her use and comfort and that Petitioner shall have unhindered visit to the children.

Respondent then sought for Order in his Cross-Petitioner for the custody of the children.

The judicial discretion of a Judge is what is often called into play when the issue of custody of children is dragged by parties i.e mother and father or other stake holders.

If two adults refuse to perform whatever compromises necessary to continue to cohabit and co-parent, then they are required to live in a barbell shaped situation. An efficient situation for each parent on the ends of the space for the children. The children are not shuttled back and forth for the convenience of the adults. They stay in their safe space and both parents remain on their toes day and night to be able to meet the needs of the children.

The age of the children, education, welfare, general upbringing and the arrangement for their accommodation, the conduct of the parties to the marriage are the factors always borne in mind by the Judge in his determining who to have custody.

ODUCHE VS. ODUCHÉ (2005) LPELR 5076 (CA).

I have perused and assimilated the documentary and oral evidence adduced by Petitioner in support of her petition on one hand, and the answer of Respondent/Cross-Petitioner by way of response on the other hand. I have also considered the Cross Petition of Respondent and the answer of Petitioner/Respondent to Cross Petition wholly.

Respondent is neither married nor have a woman who would assume the figure of a mother at home.

No evidence has been led to show that the Respondent is capable of catering for the two children of the marriage emotionally and psychologically, except that he is financially buoyant to engage the services of “professionals” to take care of his children seeing that he frequently travels thus, barely around. Why then should the two children be subjected to a most probably flawed upbringing by strangers when their mother is very much alive and up to the task?

The two (2) female children are very young and in this era of child abuse, cannot be left in the care of strangers. This is the time to mold the character of the children... child care is not measured by the volume of money, but attention, social and emotional care.

My take-off point and answer simpliciter, therefore is that the Petitioner who is the mother of the two children is most suited to take care of her female children who are still very young in age even though the gender of the children of the marriage is not often put into consideration in making the decision to grant custody but in some cases, the court will normally hand over female children to the mothers. The decision in ***TABANSI VS. TABANSI (2009) 12 NWLR (Pt. 115) 415 Paras F – G***, encapsulates the though not settled law but very essential point that ***“sentiment apart, children who are female and in their growing or formative years are better cared for and looked after by their mother except the contrary is shown by credible evidence. It is generally presumed that such children would be happier and more at peace because of the closeness***

and intimacy, which breed affection and familiarity with the mother, who most of the times, was there for them”.

Guided by wisdom and reason, and considering the fact that the children are minors, two females; it is my Judgment that the mother, at this point in time shall keep them in her custody.

I shall not leave the two (2) female minors in the care of the Respondent/Cross-Petitioner who only has the money to get professionals without more, to take care of the children, whilst he goes about his business of looking for money without any care of what becomes of the children’s parental affection.

On the whole, Petitioner’s petition succeeds...

Respondent/Cross-Petitioner having failed to show any good reason as to why custody shall be granted

him of the two (2) female children shall have his Cross-Petition on custody of the Children refused and dismissed. Same is refused and dismissed.

Next is the issue of the Nigerian passport in possession of the Petitioner. I will like to observe that the circumstances under which Petitioner was issued the Nigerian passport is squarely an emigration matter which I am certain the said Petitioner was screened before being issued with the passport. I shall not make any Order compelling Petitioner to surrender the said passport issued her by Nigerian Immigration Service.

The daughter of the Petitioner (though not a child of the marriage; named Nadia Korie) shall change her name to that of her biological father since the issue of the International Passport of the said Nadia

remains an Immigration issue which I am certain screened the said Nadia before issuing her the said passport.

I however, hereby further Order that the Petitioner shall henceforth not use the Respondent's name "KorieBenneth", and that the children of the marriage, Roseline Layla Korie, 6 ½ years and Anna Queen Korie 3 years, inform Respondent whenever they desire to travel out of Nigeria with the Petitioner.

Cross petition succeed in part...

The Respondent on his part shall provide food, clothing, fees as follows;

1. Sum of N2 Million Naira only (subject to periodic upward review) for Roseline Layla Korie's tuition fee per session from Nursery to

Secondary School at White Plain & British School, Abuja, FCT.

2. Sum of N5Million Naira only (subject to periodic upward review) Roseline Layla Korie's tuition fee per session for her University Education anywhere in Nigeria and/or elsewhere.
3. Sum of N2 Million Naira per month for the upkeep of the children.
4. Sum of N2 Million Naira only (subject to periodic upward review) for Anna Queen Korie's tuition fee per session from Nursery to Secondary School at White Plan British School, Abuja, FCT.
5. Sum of N5 Million Naira only (subject to periodic upward review) for Anna Queen

Korie's tuition fee per session for her University Education anywhere in Nigeria and/or elsewhere.

The fathershall always provide food, clothing, school fees and all children needs for the two children, and shall have unfettered access of his children any time he desires.

Justice Y. Halilu
Hon. Judge
3rd December, 2021

APPEARANCES

Praise Akiaba, Esq. – for the Petitioner.

A.O Oje Esq. with Godwin O., Esq. – for the Respondent.