

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. 25  
CASE NUMBER: SUIT NO. FCT/HC/PET/304/20  
DATE: 27<sup>TH</sup> OCTOBER, 2021

BETWEEN:

EMMANUEL OKIEMUTE AGANA.....PETITIONER

AND

IFEYINWA FRANCES AGANA.....RESPONDENT

**APPEARANCES:**

R. Okotie-Eboh Esq with O. V. Arcibong Esq for the Petitioner

**JUDGMENT**

The Petitioner filed this petition on the 23<sup>rd</sup> of June 2020 seeking the following Orders: -

- “(a). A decree of dissolution of the marriage on the ground that the marriage has broken down irretrievably.***
- (b). An Order granting access and visitation rights to the two children of the marriage (Oghenerobor Chiazor Agana and Tobore Obiora Agana) at such time that this Honourable Court may deem fit.”***

The petition was settled by Regina Okotie-Eboh (Miss) a legal practitioner in the law firm of Messrs Ricky Tarfa & Co, Counsel to the Petitioner filed on the 23<sup>rd</sup> day of June, 2020 on behalf of the Petitioner.

In support of the Notice of Petition is a Verifying Affidavit of 3 paragraphs deposed to by Emmanuel Okiemute Agana, i.e. the Petitioner himself, and photocopies of Certificates of Marriage in respect of the Petitioner and the Respondent herein.

During trial, the Petitioner testified as Pw1.

In his examination-in-chief, he testified that he is a civil servant, an Assistant Director working with the National Lottery Regulatory Commission. He informed the Court that he got married to his wife the Respondent Ifeyinwa Frances Agana Nee Okakwegbo on the 5<sup>th</sup> of May 2001 at the Lagos Island east Registry in Lagos. Testified further that the marriage was celebrated at the Arch Bishop Vining Memorial Church, Ikeja Lagos.

Certified true copies of the two certificates were tendered and admitted in evidence and marked as Exhibits A and A1 respectively.

The petitioner gave the particulars of various addresses where the married couple cohabited and the fact that the marriage was blessed with three children.

According to the Petitioner initially the couple had a very good and very happy married until sometime in 2008 when Petitioner's business started suffering a down turn and they started having marital issues.

The Petitioner informed the Court that his relocating to Abuja was the worst decision he made as his wife completely changed. The couple started quarrelling, the Respondent often yelled at him, quoted scriptures that a man he could not take care of his family is worst than an infidel. He testified that it was really a traumatic time for him. That despite making efforts to secure another job which his wife was privy to, she felt the Petitioner was not doing enough.

According to the Petitioner, the couple continued to have issues and at a point Respondent didn't even want to spend Christmas with the Petitioner and opted to stay with her family in Port Harcourt.

That upon her return on 4<sup>th</sup> January 2011 with the children, Respondent became very withdrawn and the couples were barely speaking to each other which made Petitioner to wonder what was actually going on.

That after Respondent's trip to Lagos to see her doctor, she informed the Petitioner that her Doctor advised her to go somewhere where she could rest as her blood pressure was very high and there was likelihood of stroke.

According to the Petitioner, the Respondent told him she was going to stay at him cousin's house since it was empty as her Cousin was moving to the U.K, and also wanted the kids and her mother to come along for emotional support. Petitioner said he asked the Respondent for how long she was staying at her Cousin's place, to which she said a week or thereabout, but that she never came back home.

Petitioner stated that he visited a couple of times within that week and also to check on the kids, but that after the week had run out, the Respondent told the Petitioner that her health was not any better, she didn't want to die and leave her kids without a mother, and that she was not going back.

Petitioner testified that for about a month his family and himself kept appealing, that he even went on his knees in front of the Respondent and her mother begging her to give him another chance but that the Respondent wouldn't budge.

According to the Petitioner, his father advised him to get some money or something to try and win Respondent back since it was obvious that the main cause of their friction was finances.

Petitioner testified that he then decided to go back to Lagos and spent two months there trying to revive old contacts and returned to Abuja in April 2011.

That he went to see the Respondent and the kids but she told him that her mind was made up and she finally moved out of their home in Lugbe in 2011.

That to his greatest surprise, the Respondent even filed a Petition for dissolution of their marriage which she failed to prosecute and same was later struck out in 2012 by Hon. Justice Nasir.

According to the Petitioner he later secured his present appointment picked up on his responsibilities, tried to send money every month to the Respondent for the family's upkeep and also continued trying to convince

the Respondent to give their marriage a second chance. That when Respondent had issues with her Keystone Bank account and didn't provide an alternative account, Petitioner resorted to taking whatever he had for the children whenever he came into Abuja to the Church where Respondent worshipped. That he later perceived that the Pastor one Pastor Monica was not willing to get involved in their issues and he had to stop going to that Church.

According to the Petitioner, he has not seen his kids since January 2013 and that he spoke to them last in 2013, because Respondent had changed her phone number and had moved from her house in Gwarinpa.

Petitioner further testified that he didn't know how to reach the Respondent because he was later informed that she had relocated to the U.K that in 2018 when her mother died, he went to the funeral, Respondent refused to talk to him and her family also shield her. And that because it was a burial, and he didn't want to cause a scene, he met with her Uncles who promised to follow up and call a meeting but they never did. Petitioner testified that he hasn't seen the Respondent up till the date he testified in Court.

Several other documents including e-mail correspondences between Petitioner and the Respondent as well as Bank transfer receipts, a National hospital receipt with Bank PHB receipt, Bank Duplicate copy of transaction, receipts and other Keystone Bank Deposit Slips, A Certificate of Notice of Petition filed at the High Court of the Federal Capital Territory, Abuja, were all tendered, admitted in evidence and marked as Exhibits B, B1 – B10, C, C1, C2, C3, C4, C5, C6, C7, D, E and E1 respectively.

Finally, the Petitioner testified that it has been 10 years and urged the Court to grant his prayers.

The Respondent on her part despite being served (via substituted means) with the Notice of Petition and several hearing notices, did not challenge this Petition at all. Has remained absent throughout and unrepresented. To this end, both right of cross examination of the Petitioner and Respondent's right to be open her defence were subsequently foreclosed.

Thereafter, Petitioner filed his final Written Address on the 24<sup>th</sup> day of June 2021 same is dated 31<sup>st</sup> day of March 2021.

In the Petitioner's final Written Address, learned Petitioner's Counsel Regina Roli Okotie-Eboh (Miss) Esq, formulated a sole issue for determination to wit: -

***“The the Petitioner has proved his case in the circumstances of this suit so as to entitle him to the grant of the reliefs sought?”***

It is submitted for the Petitioner particularly in paragraphs 4:08 – 4:10 of the address, that from the state of pleading, which is the Petition, the evidence proffered by the Petitioner, the sole witness who testified before this Honourable Court, the Petitioner has fully discharged the onus of burden of proof placed on him.

Submitted moreso, that the standard for asserting the burden of proof specifically in divorce petitions is further entrenched in Section 15(2) of the Matrimonial Causes Act. Also, reliance was placed on the case of ***EKEREBE V RKEREBE (1999) 3 NWLR (Pt. 596) CA, Pg. 525, A – B, as well as Section 15(2)(a) –(i) of the Matrimonial Causes Act.***

It is further argued in paragraphs 4:12 – 4:13 thereof, that the evidence of the Petitioner being unchallenged or uncontroverted is deemed admitted.

Also, that in this case, the Petitioner has satisfied not one but five of the provisions of Section 15(2)(a) and (d) respectively of the Matrimonial Causes Act.

Reliance was placed on the uncontroverted evidence of the Petitioner that the Respondent deserted the Petitioner for a period of nine years by moving out of the matrimonial home since April 2011, and that both Petitioner and Respondent have lived separately and apart since then.

It is further submitted on this premise therefore, that the marriage has clearly broken down irretrievably and urged the Court to so hold.

Reliance was also made to the certified true copy of the Notice of Petition and Record of Proceedings admitted and marked as Exhibits E and E1 respectively before this Court.

It is further submitted for the Petitioner particularly in paragraph 4:19 thereof that the Respondent has shown that she does not object to a

decree being granted by her flagrant neglect and refusal to file an Answer to the Petition or challenge same in any form or manner.

On Petitioner's unchallenged evidence, learned Counsel further placed reliance on the case of ***GARBA V ZARIA (2005) ALL FWLR (Pt. 283) 25 (CA) P. 35 -36, G-B as well as the case of OYETAYO V MOSOSO (1997) 10 NWLR (Pt. 526) 627; GATAH (NIG) LTD V ABU (2005) ALL FWLR (Pt. 278) 2286 (CA).***

On the issue of custody, it is submitted in paragraph 4:24 – 4:28 thereof that from the evidence of the Petitioner, since Respondent left her matrimonial home, the children of the marriage have always been in custody of the Respondent has denied the Petitioner access to the children, despite this fact the Petitioner continued making remittances, provision for welfare and upkeep of the children which the Respondent has constantly refused the Petitioner access to, hence Petitioner seeks access and visitation rights to the children of the marriage Keseina Azuka Agana, Oghenerobor Chiazor Agana, and Tobore OBiora Agana who are 18 years, 16 years and 15 years respectively. Even though Keseina is already an adult and not within the purview of custody.

Submitted moreso, that the Respondent's continuous denial of the Petitioner's right to access to his children is unlawful and unfair. That the Petitioner is not seeking an order of this Honourable Court for custody of the children, the Petitioner seeks for access to his children which the Respondent has continued to deny him for the past 9 (nine) years despite repeated demands.

That the Petitioner, despite this continued denial of access still provides for the upkeep of the children until the Respondent out of malice of a broken marriage started rejecting the payments.

Finally learned Counsel urged the Court to consider the totality of evidence before the Court and to hold that the Petitioner has proved his case in the circumstances of this suit so as to be entitled to the grant of the reliefs. To grant the decree of dissolution of marriage between the Petitioner and the Respondent as well as the access and visitation rights to the two children of the marriage.

Now, under and by virtue of Section 15(2) of the Matrimonial Causes Act Cap M. 7 Laws of the Federation of Nigeria, 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**. In **IKE V IKE & ANOR (2018) LPELR-44782 (CA) per Ekpe J.C.A, held at Page 10 – 18, 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 thoroughly considered the evidence adduced by the Petitioner and the consequence have distilled at least two grounds worthy of note as clearly highlighted by learned Counsel in the Written Address. The two grounds fall under Section 15(2)(d) and (f) of the Act. For ease of reference, I shall reproduce them hereunder: -

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

***“15(2)(f): That the parties have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition.”***

In his unchallenged evidence before the Court the Petitioner informed the Court that the Respondent had moved out of their matrimonial home in 2011, and in essence had deserted the Petitioner. Moreso, from his evidence Petitioner had stated that since the said desertion, the parties have continuously lived apart since 2011, which is well over the three years contemplated in section 15(2)(f) reproduced above,

Therefore, since this petition is unchallenged, I am satisfied that the Petitioner has successfully proved the said two grounds earlier reproduced

and hence I hold the considered view that in the instant case, this marriage has broken down irretrievably.

On the issue of custody, I've noted that the Petitioner herein does not seek custody of the children of the marriage as rightly submitted by Counsel in the Written Address, but rather, Petitioner seeks order of Court for access and visitation rights to the children of the marriage, who he says are living in the United Kingdom with their mother the Respondent.

Now, it is trite law that Section 69(1)(9) and (2) of the Child Rights Act. 2003 guarantees the right of every parent to have access to their child. Section 69(1)(2) read thus:-

***“The Court may:***

- (a). On application of the father or mother of a child, make such orders as it deems fit with respect to the custody of the child and the right to access to the child of either parent having regard to:***
  - i. The welfare of the child and the conduct of the parent.***
  - ii. The wishes of the mother and the father of the child.***
- (2). The power of the Court under subsection (1) of this Section to make access to the child may be exercised notwithstanding that the mother of the child is at the time not residing with the father of the child.”***

On the right of access to children of the marriage as well as visitation rights, the law is trite law that no child should be deprived of the right to associate with their parents. It is a Fundamental Human Right guaranteed and preserved under Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Moreso, Section 14(1) of the Child Right's Act provides that no child shall be separated from his parents against the wish of the child except in certain circumstances.



In the instant case, the Petitioner through his unchallenged and uncontroverted testimony and through several exhibits tendered, including Bank receipts has shown that he is a doting husband and father who have always tried hard to take care of his family.

He has shown the efforts he had made unsuccessfully to get his family back together, to take care all to no avail.

This is through no fault of his as he fell into hard times. There's no evidence before this Court to suggest that the Petitioner is not a responsible father and husband.

Therefore I agree with the learned Petitioner's Counsel that denying him access to his children for over 10 years now without any just cause is unjust and unfair.

In my humble view the Respondent in this case, by her conduct has shown that she is a selfish, cruel and inconsiderate woman. If she wanted to leave the marriage so be it, but why deny the Petitioner right of access to his children for over 10 years now. I dare day again, it is mot inconsiderate!

On the whole, I find that the Petitioner has proved his case in the circumstances to be entitled to the reliefs sought. I accordingly Order as follows:

- (1). I hereby grant a Decree Nisi Dissolving the marriage between the Petitioner Emmanuel Okiemute Agana and the Respondent Ifeyinwa Francis Agana contracted at the Lagos Island East Registry and celebrated in the ARCH BISHOP VINING MEMORIAL CATHEDRAL, IKEJA, NIGERIA, on the 5<sup>th</sup> day of May, 2001. The Decree shall become absolute if nothing intervenes within a period of three months from this date.
- (2). The Petitioner shall have access and rights of visitation to the two children of the marriage (Oghenerobor Chiazor Agana and Tobore Obiora Agana) as soon as the Petitioner liaises with the appropriate Nigerian and United Kingdom Authorities to investigate their whereabouts and to facilitate the Court's Order regarding right to access as well as visitation rights.

- (3). The visitation rights should be in accordance with the laws of the country where the two children of the marriage reside with their mother the Respondent.

***Signed:***

***Hon. Justice Samirah Umar Bature  
27/10/2021.***