

IN THE COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUJE

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

ON 25TH OCTOBER, 2021

SUIT NO: FCT/HC/ PET/555/2020

BETWEEN

FEYISAYO ELIZABETH AKANO.....

PETITIONER

AND

OLALEKAN NATHANIEL AKANO.....

RESPONDENT

JUDGMENT

The petitioner by a notice of petition NO FCT/HC/PET/555/2020 dated and filed on the 16th November, 2020. Prays this court for decree of dissolution of marriage on the ground that same has broken down irretrievably based upon which the petitioner prays for:

- 1) An order of this court dissolving the marriage between the petitioner and Respondent on the ground that the marriage has broken down irretrievably.
- 2) An order of this court granting to the petitioner the custody of the child of the marriage namely Jayden Akano.

3) An order of this court granting reasonable supervised access to the respondent to the child of the marriage between the hours of 7am- 7pm.

By verifying affidavit deposed to by the petitioner herself of 44 paragraph, witness statement on oath and one annexure the facts as averred by the petitioner inter alia. Petitioner avers that she married the respondent on 5th of August, 2013 at the Jos north marriage registry plateau state.

That things deteriorated with the couple after the Respondent lost his job and the petitioner became the bread winner

That the Respondent started accusing the Petitioner of having extra marital affairs in 2016

The petition stated in two occasions where the respondent physically assaulted her. One incidence in which she grabbed a knife to defend herself against him but he pushed the knife from her hand and beat her in the presence of their 2years old son and the Childs nanny.

That the house gate was locked to her preventing entry into the house at the instance of the Respondent.

That so many physical and verbal abuses from the respondent made her move out of the matrimonial home on the 29th May, 2018 as she could and longer tolerate the Respondent behavior.

That ever since she left their matrimonial home she has been the sole provider bearing all the responsibilities of the child of the

marriage until September, 2020 when the respondent sent N20,000.00 for the Childs school fees

That the Respondent has behaved intolerably and petitioner cannot reasonably be expected to live with him

The Respondent filed an answer to the petition dated 3rd March, 2021 wherein he admitted paragraph 1-7 and 35 of the petition and denied paragraph 8-34,36 and 37 of the petition.

Respondent contends that things degenerated between them when they both lost their jobs because the petitioner became recalcitrant to every piece of advice of the Respondent.

That the Respondent and the petitioner has agreed to move back to Jos because of the high cost of living in Abuja when suddenly the petitioner collected money from her mother and rented an apartment which the Respondent disapproved, Respondent states that the petitioner was never the bread winner and that he was never idle as he contributed for the up keep of the house.

That he worked with his friend who had an ongoing building construction projects to enable him provide for his family that when the Respondent was solely responsible for the up keep and welfare of the house there was no trouble in the house until the petitioner got the present employment then she become Cody, insolent and disrespectful to the Respondent.

That the petitioner once told him that she loves men who have white collar jobs and men in suit that the petitioner was loving when they lived in Jos but ever since they moved to Abuja and the

Respondent lost his Job petitioner attitude has changed. That the Respondent was taking care of the child, picking him from school while petitioner was at work. That the petitioner was keeping late night. That the petitioner refused to tell the Respondent her schedule of duty. The petitioner's boss gave her phone, car, laptop and procured an international passport for her in her maiden name. that on the 29th May, 2018 the petitioner packed her belongings and the child of the marriage and deserted the marriage despite the insistence of the Respondent that the petitioner should not desert her matrimonial home. That the Respondent requested for the petitioner's account number so he could send some money but the petitioner refused and opted for cash and that Respondent has been doing the much he can. Respondent propose that custody of the child be given to him so as to enable the Respondent take care of the child within his own means and capacity. The Respondent is not adverse to access of the child of the marriage by the petitioner but such access should be allowed during a reasonable time of the day. That in the event custody of the child is granted to the petitioner Respondent can only afford N10,000 a month for the welfare of the child. That the choice of the school the child will attend shall be that of the Respondent that the Respondent still loves the petitioner and does not want the marriage to be dissolved Respondent prays the court to dismiss the petitioner petition in its entirety as being frivolous the petitioner filed a reply to the Respondent answer stating the Respondent contributed to the up keep of his house at his convenience that the couple have had incompatible issue from the get go. That the chain of behavior as stated by the Respondent on her part was as a result of her being

tired of the Respondent non support for her job and the frustration that came with it. Petitioner stated that all the document are in her maiden name because when she asked the Respondent to assist her with her change of name after they got married the Respondent was not responsive and so she continued using her name. That the phone, laptop, car were properties of her office even though in her passion. Petitioner states that the Respondent took care of the child but the school bus dropped of the child after school. That petitioner only came back home late if work kept her and that she took up responsibilities at work because she needed money to take care of the home. Petitioner states that she had been a timid person and her course of job help her to build confidence. That the Respondent requested for the bank account on two occasions without putting money in the account so she seized giving him the account details. That the Respondent sent N20,000 four times between July 2020 to December 2020 both parties and their counsel attended a compulsory conference on the 17th April, 2021 and counsel adopted the resolution for the purpose of settlement in relation to the issues arising out of the petition both parties consented to the following resolutions:-

- i. Joint custody of the child of the marriage in the following order;
 - a) The petitioner will have custody of the child for school days (i.e. Monday to Friday) then the Respondent will have the child from Friday evening and drop the child with the petitioner on Sunday evening.
 - b) The petitioner will have the child first and last week of the Childs holiday while the Respondent will have the rest weeks.

- c) Both parties shall have un-impeded access to the child at all times.
- d) The parties agreed to alternate birthdays and public holidays of the child.
- ii. The parties mutually agreed that the child will continued with his present school and the Respondent will contribute (whatever the Respondent can afford) to the school fees of the child.
- iii. The parties have agreed that the Respondent will be paying the sum of N10,000 as up keep for the child of the marriage monthly.
- iv. The parties have agreed that the Respondent will buy a table phone for the child of the marriage which will be subject to the petitioner supervision to enable the Respondent communicate with the child regularly.
- v. The parties agreed that the child of the marriage will only travel abroad with the consent of both parties.

Both parties filed and adopted their final written address. Respondent final written address dated 30th September, 2021 contented that the Respondent was able to prove one of the grants of resolution of the marriage and urged the court to adopt the resolution of parties in the compulsory conference. Petitioner's final written address holds that justice can be done in this case only if the marriage is dissolved and adopt the agreement of parties in the report of compulsory conference dated 9th September, 2021. By section 15 (2) of the MCA states 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 refused to consummate the marriage.
- b) That since the marriage the Respondent has committed adultery.
- c) That the Respondent has deserted the petitioner for a continued period of at least one year.
- d) That the parties to the marriage have lived apart for a continues period of at least two years immediately preceding the presentation of the petition and the Respondent does not object to a decree being granted.
- e) That the parties to the marriage have lived apart for a continues period of at least three years immediately preceding the presentation of the petition.
- f) That the order party to the marriage has for a period of not less than one year failed to comply with a decree or restitution of conjugal right made under this ACT.
- g) That the other to the marriage has been absent from the petitioner for such time and in such circumstance so as provide reasonable grounds for presuming that he or she is dead.

The petitioner in her paragraph 33 of witness statement on oath and Respondent paragraph 38 Respondent answer to petitioner both confirmed that the petitioner moved out of her matrimonial home on the 29th May, 2018 by computation of time means that both couple have been living apart for about 3 years. It is trite that facts admitted need no further proof by evidence **SEE GIDIGORE VS GIDIGORE & ORS (2018) LPELR 46028 (CA) OLAGUNYI VS OYENIRAN (1999) 6 NWLR (PT 453) @ 127.** Petitioner and Respondent both agreed that the petitioner left her matrimonial

home on the 29th May, 2018 thereby giving strength to see 15 (2) (d) and (f) of the MCA.

ADULTERY

By the Respondent paragraph 10,13, (1) (11) (111) iv vi the Respondent alleges that the petitioner used to commit adultery going by the provision of sec 32 MCA is Very clear on a person alleged to have committed adultery with a partner in marriage the law mandatorily require he must be joined in the petitioner to afford him the opportunity of defence to such allegation joinder of adulterer is a must requirement Of the law. Where such adulterer are not joined. The petitioner cannot use any legal procedure for dissolution of the marriage on that ground see EIGBE VS EIGBE (2012) LPELR 19609 (CA). If the Respondent was alleging adultery on the part of the petitioner in order to succeed on that ground Respondent would have filed a cross petition joining the alleged person with whom the petitioner is alleged to be cheating with.

CRUELTY

By the petitioner paragraph 19, 24, 29, 30, 31 32 and the general terms of the petitioners witness statement on oath, the petitioner is alleging cruelty on the part of the Respondent cruelty is not one of the grounds set out under sec 15 (2) MCA for divorce, it remains however one of the old grounds for devoice. A court can hold that a marriage has broken down irretrievably on the ground that one spouse has been proved to be guilty of cruelty to the other.

SEE DAMULU VS DAMULU (2004) 8 NWLR (PT 874) CA . In the present case however the petitioner cannot succeed on the

strength of alleging cruelty on the part of the Respondent. Petitioner paragraph 21,22,18,29, of witness statement on oath facts admitted by the Respondent in his paragraph 17, 18, 19, 20, 21, 22, 23, 29, and 30 of Respondent answer. Both petitioner and respondent had minor act of cruelty to each other and the petitioner cannot succeed on that.

TERMS OF SETTLEMENT

By the Report of compulsory conference between the petitioner and Respondent regarding the possibility of reconciliation the custody or guardianship of the child of the marriage, welfare advancement of the child. And access to the child dated 9th September, 2021. The parties are bound by the term of the settlement. Indeed the position of the parties vis-à-vis the form of settlement is akin to a court judgment which cannot be appealed against by any of the parties who have subscribed to it without the leave of the court pursuant to section 241 (2)... constitution of the federal republic of Nigerian 1999, ***SEE OFFOR VS LEADER AND COMPANY LTD (2006) LPELR 6117 (CA)***. In ***CHIEF ADETOYE ADEDEJI VS J.O OLOSO AND ANOR (2007) LPELR -86*** the court held that a consent judgment means where the parties unequivocally agreed on terms of settlement which they mutually refer to the court as basis for the court judgment by the mutual agreement to settle the matter they have given the consent to the end of the litigation that makes it a consent judgment see ***LANVERS IMPORT EXPORT VS***

JOFEBSER INDUSTRIES LTD (1998) 8 NWLR (PT83) 429. Parties must be ad idem as far as the terms of their compromise agreement are concerned and their consent must be free and voluntary. The court has the discretion or jurisdiction to examine the entire circumstance of a case in order to determine whether the alleged terms of settlement which to all intents and purpose are comprise agreement entered into by the parties to a suit should be scrutinized and made an order of court. See ***ARGUZO AND ANOR VS OSOBU AND ORS (2016) LPELR 41286 CA*** .Based on the reason stated above particularly the term of settlement filed in this case as well as the compulsory conference that took place involving the parties directly involved it is a well established principle of law That parties are bound by their terms Consequently I have concluded That the parties who consented to the term of settlement shall considered same as consent judgment. So also in line with sec 15 (3) MCA and the written address filed by both Counsel for and against where each of the counsel expressly agreed that the marriage has broken down irretrievably. Accordingly I hereby dissolve the marriage between the petitioner and the Respondent, this is in line with fact contain on the Petition and the admission of the same fact in answer to the Petition more particularly see 15 (3) MCA made me to so hold.

Hon. Justice M.S Idris
25/10/2021.

