

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/PET/19/2016**

**BETWEEN:**

**MR. TONY ASORO.....PETITIONER**

**VS**

**MRS JENNIFER ASORO.....RESPONDENT**

**JUDGMENT**

By a Notice of Petition filed on 10/11/2016, the Petitioner – Mr. Tony Asoro is seeking for the reliefs as follows:-

- (a) A Decree of Dissolution of Marriage between the Petitioner and Respondent contracted at the Abuja Municipal Area Council, Marriage Registry on the 22<sup>nd</sup> day of December, 1998 on the grounds that the marriage has broken down irretrievably by reason of the fact that the Respondent has behaved unreasonably in such a way as not to be expected to continue to live with the Petitioner.
- (b) An Order for the custody of the children of the marriage to wit: Arie Emmanuel Asoro born on 2<sup>nd</sup> June, 2021 presently

admitted to the University of Benin, Edo; Peter Eseoghene Asoro born on 3<sup>rd</sup> February, 2005; Paul Eserovwe Asoro born on 3<sup>rd</sup> February, 2005 respectively both students of the Federal Government Boy's College, Apo, Abuja.

- (c) An Order forthwith directing the Respondent to drop the Petitioner's surname (Asoro) and revert to her maiden name (Oboh).

The grounds upon which the Petition is predicated are as stated in Paragraph 8 of the Petition, (a – p).

The Petition was served on the Respondent and in response, on 27/3/2017, filed her Answer and Cross-Petition.

In the said Cross-Petition, the Respondent/Cross-Petitioner sought for the following reliefs:-

- (a) An Order for Dissolution of Marriage on the grounds that the marriage has broken down irretrievably as the Petitioner has committed adultery and behaved in such a way that the Respondent cannot reasonably lives with him.
- (b) An Order for the custody of the children of the marriage; Arie Emmanuel Asoro born on 2<sup>nd</sup> day of June, 2001, a student of Benson Idahosa University, Benin, Edo State; Peter EseogheneAsoro and Paul Eserovwe Asoro both born on the 3<sup>rd</sup> day of February, 2005 and students of Dunamis Foundation School, Benin-City, Edo State.

- (c) An Order granting right of reasonable access thrice a year under supervision of the Respondent and the Police to the Petitioner and for the Petitioner to participate in the upbringing and development of the children.
- (d) An Order that the Petitioner pay the school fees of the children and also a monthly upkeep sum to be determined by this Honourable Court.
- (e) Any other order(s) the court may deem fit to make in the circumstance.

The facts relied upon by the Respondent for the Cross-Petition are as set out in Paragraphs 5<sup>(1 - 14)</sup>.

- 5. The facts relied on by the Respondent as constituting the grounds specified above are as follows:-
  - 1. Sometime in 2009, a lady by name Ufuoma Isiara called, threatening to embarrass Respondent's family, kill her and kidnap the children if her husband, the Petitioner failed to pay the money he promised her.
  - 2. The situation was so bad that she sent an assassin after Respondent and she had no option but to compel the Petitioner to report the matter to the Police.
  - 3. Upon the arrest of the said lady, during interrogation, in

the presence of the Petitioner, the Respondent, the Investigate Police Officer, the Divisional Police Officer and other persons, the lady admitted that she has been having sexual relationship with the Petitioner. That they had even progressed to a level where Petitioner sleeps with herself and her friend and gives them as much as N400,000.00.

4. That the words the lady was using to describe her sexual relationship with the Petitioner in the station was so profane that the Respondent and others become sick.
5. The Petitioner did not deny the sexual relationship with the ladies but begged for forgiveness from the Respondent.
6. While the Respondent was thinking of what to do in the situation, the Petitioner continued his adulterous activities and was even proud to tell Respondent of other ladies he had slept with and would not imagine himself sleeping with Respondent again.
7. The Petitioner has not had any intercourse with Respondent since the birth of their twin kids who are about 12 years now.
8. The Petitioner is not only mean towards Respondent but to the children of the marriage.

9. Sometime in the middle of last year, one of their twin kids informed Respondent that he thought of jumping out of the Petitioner's moving car as he was bringing them home, when he thought of the pains Respondent would be put if he changed his mind.
10. The children of the marriage are almost pushed to suicidal point because of the manner the Petitioner relates with them and the Respondent.
11. The Petitioner is not verbally and psychologically abusive, he is a physical brute who has bullied and hurt the children and the Respondent.
12. That at the age of 8, one of the twins had informed the Respondent that after the close of school he felt like going home with one of his classmate as he was frightened of the Petitioner.
13. That the children of the marriage should not be given to the Petitioner who has never cared for them. The 1<sup>st</sup> child has sickle cell anemia and required special care and nutrition which the Petitioner cannot give him. The other children are too young and frightened of the Petitioner due to the physical, verbal and psychological abuse the Petitioner has dished out to them.

14. That the Respondent presently pays the fees of the children and is responsible for their daily upkeep. This situation can be helped by the Petitioner's contribution as the Petitioner does business and owns houses from which he takes rent which can help the situation of the Respondent and the children of the marriage.

The Petitioner/Respondent filed a Reply/Answer to the Cross-Petitioner Petition on 25/4/2017.

In proof of his case, the Petitioner testified and called no witness, while the Respondent/Cross-Petitioner, testified and called no witness.

On 16<sup>th</sup> January, 2018, the Petitioner as PW1, testified and adopted his Witness Statement on Oath of 22 Paragraphs, filed on 16/11/2016. He wants this court to dissolve the marriage based on the facts stated and grant all the reliefs sought. During the Examination-In-Chief, PW1 tendered the Certified True Copy of the Marriage Certificate of the Marriage, celebrated on 22/12/1998 at the Abuja Municipal Area Council, Registry – Abuja and was admitted as Exhibit "A".

Cross-examined by Respondent Counsel, the PW1- Petitioner confirmed that the sole grounds for the seeking the dissolution of this marriage is hinged on desertion and no more. He also stated that he filed this Petition on 24/8/2014. He stated that he performed his conjugal rights occasionally after the discovery of the status of the first son on doctor's medical advice. He admitted contacting the first son in school through a third party. He confirmed paying school fees and medical bills for the first

son and maintenance upkeep monies for the twins are paid into first sons account. He confirmed paying the school fees of the twins directly to the school. He maintained that he has cardinal relationship with the children of the marriage. He confirmed that judgment was entered in a case between himself and Respondent as Defendant and one Ufoma Isarah and admitted in evidence as Exhibit "B". He stated he was not in any intimate relationship with the said Ufome Isarah.

The Respondent/Cross-Petitioner, testifying as DW1 on 15/4/2019, adopted her witness deposition of 6 Paragraphs. She confirmed Exhibit "A" and denied all the allegation made out against her by the Petitioner as reasons for the dissolution of the marriage, and stated the reason for the dissolution, which she is conceding to and the reliefs sought. This facts are contained in Paragraph 2 - 6 of the Oath.

Cross-examined by the Petitioner's counsel, she admitted leaving the matrimonial home on 24/8/2016 on her own violation. She stated that it is not correct that the Petitioner bought a car and shop for her rather it was by contribution on both sides. She admitted paying the fees of the children in Edo State, until the intervention of the Petitioner's sister, then the Petitioner took up the responsibility. She stated that the Ufoma Isarah is a mistress to the Petitioner, who threatened to kill her and kidnap her children. A bundle of school fees receipt confirmed by the Respondent/Cross-Petitioner in proof of payment of fees by the Petitioner were admitted in evidence as Exhibit "C<sup>1 - 33</sup>". She confirmed that the children of the marriage are age, 20 years, for the first and 16 years for the twins.

At the close of trial, the case proceeded to Filing and Adoption of Final Written Addresses. The parties filed and exchanged their Final Written Address.

The Respondent/Cross-Petitioner Final Written Address is dated 8/9/2021 and filed on 9/9/2021.

The Petitioner/Respondent's Final Written Address is dated 15/9/2021 and filed the same day.

In the Final Written Address of the Respondent/Cross-Petitioner settled by Udu Diegbe Esq, two issues were formulated for determination:-

- (1) Whether the Petitioner has established a ground under Section 15 of the Matrimonial Causes Act to entitle him to a grant of the relief sought.
- (2) Whether the Cross-Petitioner has on the strength of her evidence made out a case as to warrant a grant of the relief she seeks.

And urge the court to grant the reliefs of the Respondent/Cross-Petitioner.

On the other hand, Petitioner/Cross Respondent in their Final Written Address settled by Nelson Adogah ESq, formulated two (2) issues for determination;

- (a) Whether the Petitioner/Respondent has on the strength of his evidence against that of the Respondent/Cross-Petitioner made out a case to necessitate the grant of the reliefs sought by him.

- (b) Whether in consideration of the evidence before this Hon. Court, the Respondent/Cross-Petitioner has made out a case to warrant the grant of the reliefs she seeks.

And urged the court to grant the reliefs sought by the Petitioner as per his reliefs as set out in the Petition.

I have given an insightful consideration to the pleadings as well as the testimonial evidence and written submission of Learned Counsel for the both parties and find that only one (1) issue calls for determination of this case, which is;

“Whether or not the Petitioner/Respondent to the Cross-Petition has made out grounds sufficient to support the reliefs sought. If not, whether the Respondent/Cross-Petitioner has proved her case to be entitled to the reliefs sought in her Cross-Petition”

It is not in doubt that, for a court to find and hold that a marriage has broken down irretrievably, in line with Section 15 (1) of Matrimonial Causes Act, the party seeking for the dissolution of marriage must satisfy the court of any of the facts prescribed under Section 15 (2) (a – h); 82 (1) of Matrimonial Causes Act, which provides for the standard proof required from the party to the reasonable satisfaction of the court. The interpretation of what standard of proof is required was stated in the case of Egbuna Vs Egbuna (1982) Federal Republic of Nigeria 62 as;

“The proof required by the Matrimonial Causes Act, 1970, is proof by oral evidence of witness at the trial in open court”.

It does not therefore matter whether a Respondent files an Answer or not. It is still the duty of the Petitioner to satisfy the court by evidence providing the various grounds on which the Petition is based. If the Petitioner fails to do this, the Petition will be dismissed not minding the fact that the Respondent failed to file an Answer.

In this instant case, both the Petitioner/Cross-Respondent and Respondent/Cross-Petitioner are conceding to the dissolution of the marriage, alleged to have broken down irretrievably, in doing so placed reliance on Section 15 (2) (c) & (d) of the Matrimonial Causes Act respectively. It is therefore most appropriate to take the two together, to determine if the ground is proved by any of them to warrant the grant of the reliefs sought before considering other reliefs.

Section 15 (2) (c) reads;

“That since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent”.

Section 15 (2) (d) reads:-

“That the Respondent has deserted the Petitioner for a continue period of at least one year immediately preceding the presentation of the Petition”.

To succeed under Section 15 (2) (c) of the Matrimonial Causes Act, parties relying must lead sufficient and credible evidence to the satisfaction of the court of fact which will warrant the grant of the reliefs sought.

In the case of Ibrahim Vs Ibrahim (2007) ALL FWLR (PT.346) Pg 478 @ 489 – 490 Para H – B; Court stated what constitutes conduct or behaviour the Petitioner finds cannot reasonably be expected to live with, must be weighty and grave in nature to make further co-habitation virtually impossible. See case of Katz Vs Katz (1972) ALL E.R 219.

From the evidence of the Petitioner and careful perusal of the pleadings, it appears that the Petitioner abandoned reliance on this Section 15 (2) (c) of Matrimonial Causes Act, rather relied heavily on the Section 15 (2) (d). This fact was evidence by his response to cross-examination by Respondent Counsel.

Ques: Are you seeking for divorce on any other ground.

Ans: No.

The Respondent/Cross-Petitioner, on the other hand, gave a catalogue of acts or conduct or behaviour of the Petitioner/Respondent, which she cannot reasonably be expected to live with as contained in Paras 5<sup>(1 – 14)</sup> of the Answer/Cross-Petition and Paras 2 (a – q) of the Statement on Oath.

On this ground relied on by both parties, the Petitioner having failed to rely on it, I shall not labour myself on it, the submission of Petitioner Counsel that the need to prove has been taken over by the conduct of the Respondent conceding to the dissolution, in my firm, view cannot stand in the face of Section 82 (1) of Matrimonial Causes Act, which reads;

“For purposes of this Act, a matter of fact shall be taken to be proved if it is established to the reasonably satisfaction of the court”.

Also on the case of Ebuna Vs Ebuna (Supra).

In the same vein I have carefully considered the fact or ground relied on by the Respondent/Cross-Petitioner on Section 15 (2) (c), and find that, it is not weighty enough to warrant this court to hold that it is sufficient enough to hold that it suffice as a ground for dissolution of the marriage. The Petitioner denied all the allegations made out by the Respondent and even told the court that the children can testify on his favour of his conduct which he alleges are good. Unfortunately, the said children, in particular, the first who is an adult was not called to give that evidence in his favour. This observation of the court also touches on the Respondent. Granted that a party is not under a burden duty to call all witnesses, but to succeed would be required to call all necessary witnesses in proof of his case. This they both failed to do.

On the second grounds relied on by the Petitioner as a ground for dissolution, that is Section 15 (2) (d).

From the evidence of both parties, it is agreed that the Respondent left the matrimonial home of 24<sup>th</sup> of August 2016 and by the Provision of the said of Section 15 (2) (d) of the Matrimonial Causes Act, the act of desertion must be for a continuous period of of at least one year immediately preceding the presentation of the Petition.

By a simple mathematical calculation, from the date to the filing of the Petition is not upto 1 (one) year as required by the said Section 15 (2) (d). In the circumstance, therefore this ground would not avail the Petitioner.

In all of these, the court having found that both parties have failed to support their grounds as stipulated by the law, the court will rely on the authority of Okwueze Vs Okwueze (1989) 5 SC 186 @ Pg 201 Ratio 20, where the court granted the dissolution of marriage between the parties in that case, because the love is not just there between the both parties in their evidence before the court, clearly shows that love between them no longer exist and as consenting adults, to allow them to continue in the marriage, which appears to be dead, at best deserve a befitting burial. It is my firm view therefore to allow this relief for the parties as prayed.

Now, I turn to the consideration of the other reliefs of the parties. This court is not unmindful that there is a cross-Petition and a cross-Petition is like a counter-claim, which by law is an entirely different and independent action from the main claim and as such to succeed, the cross-Petitioner has the onus to discharge the burden of proof of the Cross-Petition.

In this instance, both parties are praying for the same relief in B, that is, custody of the three (3) children of the marriage.

The grant or otherwise of custody of the children of the marriage is at the discretion of the court. It is the interest of the children that is of paramount consideration in the determination of the issue of custody. See Section 71 (1) of the Matrimonial Causes Act and the case of Damulak Vs Damulak (2004) 8 NWLR (PT.874) 151 @ 167 – 168 Para E-F. court held;

“In all matter relating to custody and welfare of the child of the marriage, the dominant issue that calls for careful examination and consideration is the absolute interest of the child or children”

It is in evidence of both parties that since the Respondent left the matrimonial home, the children of the marriage. In this instance, the first child of the marriage is 20 years old and is an adult and that being the case, I shall make no orders as to who should have custody, rather the said child- Arie Emmanuel Asoro being an adult will determine where he desires to live.

In respect of the twins – Peter Eseoghene Asoro and Paul Eserovwe Asoro, both 16 years old. The court will in line with the law that, it is the interest of the child or children that is of paramount importance on the issue of custody and the case of *Odusote Vs Odusote* (2012) 3 NWLR (PT.1288) Pg 478 @ 504 resolve this issue of custody of the two children, twins in favour of the Respondent/Cross-Petitioner.

On the issue of access, reliefs (iii) of the Respondent, though not prayed for by the Petitioner save for full custody.

It is the court's firm view that parenting is the responsibility of both parents, therefore, it would be inappropriate not to allow access to the other party not having full custody.

It is in this light, that I order that the Petitioner/Respondent be granted access to the two children – Twins – Peter and Paul Asoro at agreed date and time and place by the parties.

On the relief IV of the Respondent/Petitioner on the issue of payment of school fees, maintenance and upkeep of the children.

In the consideration of this, the court is guided by the set guidelines under Section 70 of the Matrimonial Causes Act and Plethora of Judicial authorities. See Nanna Vs Nanna (2006) 3 NWLR (PT.966) Pg 1. The court stated;

“In assessing the maintenance, to which the wife and children in a marriage are entitled, the court will have regards to what is fair and equitable based on evidence adduced by the parties at the trial”.

By the Provisions of Section 70 of Matrimonial Causes Act, the exercise is a discretionary one, but to do so, the court will have course to factors, such as the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances; such relevant circumstances must be gathered by the court from the proceedings and evidence of the parties at trial.

In this instance, the Petitioner gave evidence of purchase of two shops for the Respondent, which was denied by the Respondent, the Petitioner also claimed to be paying fees for the children even after the Respondent left the matrimonial home. This fact was evidence by Exhibit “C<sup>1-33</sup>” not disputed by the Respondent.

That notwithstanding, the Respondent did not place before the court the earning capacity of the Petitioner to enable the court to assess. However, it is trite that a man has a common law duty to maintain his wife and children. See Nanna Vs Nanna (Supra) @ Pg 12.

Having carefully considered the pieces of evidence of the parties, in exercise of that discretion, I hereby order that the Petitioner pay the school fees of the children of the marriage through their University Education.

On the issue of monthly upkeep, I order the Petitioner to pay the sum of ₦100,000.00 (One Hundred Thousand Naira) only.

On the issue of relief (c) of the Petitioner and Relief (iv) of the Respondent – An Order directing the Respondent to revert to her maiden name.

In this instance, the Petitioner failed to furnish the court with any law which permits the court to so do. However, it is the court's firm view that once a marriage is dissolved, the need for the party to continue to hold on to the marital name would not be necessary unless agreed by the parties. Accordingly, I shall refuse to make that order, rather leave it a decision of the Respondent to so do.

From all of these, the reliefs of the parties succeed in part. Accordingly, Judgment is hereby entered as follows:-

- (1) The marriage celebrated between the Petitioner – Mr. Tony Asoro and the Respondent – Jennifer Asoro on 22<sup>nd</sup> day of December, 1998 at Abuja Municipal Area Council, Abuja in accordance with the Marriage Act has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between the parties.
- (2) The custody of the twins' children Peter Eseoghene Asoro and Paul Eserovwe Asoro born on 3<sup>rd</sup> day of February, 2005 are

hereby granted to the Respondent, with unrestricted access to the children at agreed time and place by the parties. The first child – Arie Emmanuel Asoro being an Adult is at liberty to decide for himself on the issue of custody.

- (3) It is hereby ordered that the Petitioner pay the sum of ₦100,000.00 (One Hundred Thousand Naira) only as monthly upkeep for the children's upkeep to the University level of education. Also to pay the children school fees.

This is the judgment of the court.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

19/1/2022

Appearances:

NELSON ADOGAH – FOR THE PETITIONER/CROSS-RESPONDENT

UDU DIEGBE – FOR THE RESPONDENT/CROSS-PETITIONER