

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

ON FRIDAY 4TH OF FEBRUARY 2022

BEFORE HIS HON JUSTICE O. A. ADENIYI

SITTING AT COURT NO. 8 MAITAMA - ABUJA

SUIT NO: PET/114/2019

BETWEEN:

OLAIDE ABOSEDE ADEMOLA PETITIONER

AND

ADESOJI MOUSHIBAHOU ADEMOLA.....RESPONDENT

JUDGMENT

1. Marriage between the Respondent was solemnized at the **Oke Ado Baptist Church, Ibadan, Oyo State, on 7th September, 2013**, in accordance with the Marriage Act. The marriage is blessed with one child.
2. However, the Petitioner presented the instant Petition before this Court on 01/02/2019, on the ground that the marriage between her and the Respondent has broken down irretrievably in that both parties of the marriage had lived apart for a continuous

period of at least two (2) years immediately preceding the presentation of the Petition.

3. Specifically, the Petitioner prayed this Court for the reliefs set out as follows:

1. A decree of dissolution of the marriage contracted on the 7th day of September, 2013, between the Petitioner and the Respondent on the ground:

i. That since the marriage the Respondent has been uncaring and forgiving towards the Petitioner and the Respondent has behaved in such a way that the Petitioner cannot

4. The Respondent filed a Reply to the Petition on 28/02/2020; whilst the Petitioner filed a Reply to the Respondent's Reply on 12/10/2020.

5. The Respondent, again, on 27/01/2021, filed what is termed as the "Respondent's Further Answer to the Petitioner's Reply." As noted by the Petitioner's learned counsel, this process is unknown to the **Matrimonial Causes Rules**. This apart, the same. was filed without leave of Court. Accordingly, the Court shall discountenance the process in the determination of the instant Petition.

6. At the plenary trial, both parties testified and called no additional witness(es). On her part, the Petitioner tendered a number of documents in evidence as exhibits.

7. Upon conclusion of trial, parties, through their respective learned counsel, orally addressed the Court in final summation of their respective cases.
8. The case of the Petitioner, who claimed to be a civil servant employed in the service of the Federal Government of Nigeria in the Federal Ministry of Finance, in line with her pleadings before the Court, is that she was married to the Respondent at the Oke-Ado Baptist Church, Liberty Stadium Road, Ibadan, on 7th September, 2013. She tendered in evidence as **Exhibit P1**, the original Marriage Certificate issued to the parties, in accordance with the provisions of **s. 24** of the **Marriage Act**. The Petitioner's case is further that, upon the solemnization of the marriage between them, the parties cohabited at the premises known as Block A21, Games Village, Abuja, from September, 2013 to December, 2015; and that from December, 2015 to October, 2016, parties cohabited in a premises situate at Gold City Estate, Lugbe, Abuja.
9. The case of the Petitioner is further that cohabitation between the parties ceased on 21st October, 2016, when she was constrained to leave the matrimonial home after having disagreements with the Respondent, who insisted that she must undergo certain traditional rites for reasons of having their infant child outside the shores of Nigeria against the Respondent's family customs; that since the said 21st October, 2016, parties have lived apart, up until 01/02/2019, when she presented the Petition.

10. The Petitioner further testified that her marriage to the Respondent is blessed with a female child, by name, **Ade Oluwasemilanu Ademola**, born on **10/07/2016**, at Houston Methodist Sugar Land Hospital, Texas, USA.
11. The Petitioner also testified that since her birth, the child has been living with her since her birth and that the child attends Premier International School, Wuse 2, Abuja.
12. The Petitioner testified that the Respondent paid the child's tuition fees up to the amount of **N200,000.00** and that any amount spent for the child's schooling above the stated sum was being borne personally by her; that the Respondent started to pay her the sum of **N50,000.00** as monthly upkeep for the child as from January, 2017, till date.
13. The Petitioner tendered in evidence as **Exhibits P2-P2B** respectively, invoices issued by Premier International School, Wuse 2, Abuja, with respect to the child's schooling expenses. She also tendered in evidence five (5) official receipts issued by the same school for fees and other school expenses incurred on the child of the marriage, as respectively. **Exhibits P3, P3A-P3D**
14. The Petitioner further testified that she claims custody of the only child of the marriage on the ground that since her birth, she has been living with her; and that the Respondent be allowed reasonable access to the child during school holiday seasons but with prior notice to her.

15. The Petitioner further states that she claims from the Respondent the sum of **N300,000.00** as monthly maintenance for the only child of the marriage.
16. The Respondent equally testified for himself. He claims to be a project officer. He admitted the significant aspect of the Petitioner's case that both parties had lived apart since 21st October, 2016. He equally admitted that he had continued to pay tuition fees for the child of the marriage and that he gave the Petitioner the sum of **N50,000.00** as monthly upkeep for the child of the marriage since she was six (6) months old.
17. The Respondent does not also deny the Petitioner's prayer for custody of the only child of the marriage but with a caveat that he has unrestricted access to her.
18. I have also noted that the evidence adduced by the two parties in the course of being cross examined by the respective learned counsel, related largely to matters which were not covered by their pleadings on record. The effect is apparent. Such evidence will go to no issue. I shall return to this anon.

RESOLUTION

19. To start with, the fact of marriage of the two parties in accordance with the provisions of s. 24 of the Marriage Act is not in dispute. The Petitioner clearly established this fact by tendering in evidence as Exhibit P1, copy of the Certificate of Marriage issued to the parties upon the celebration of the said marriage at the

Oke Ado Baptist Church, Ibadan, Oyo State, on 7th September, 2013.

20.As it is well known, by the provision of s. 15(1) of the Matrimonial Causes Act, there is only one ground upon which a party may present a Petition for dissolution of marriage; which is that the marriage has broken down irretrievably. See Hamman Vs. Hamman [1989] 5 NWLR (Pt. 119) 6; Anagbado Vs. Anagbado [1992] 1 NWLR (Pt. 216) 207.

21.The provision of s. 15(2)(a) - (h) of the Act further sets out the various facts upon which the Court could hold that a marriage has broken down irretrievably. A Petitioner need only to establish any one of those facts as set out in s. 15(2)(a)(h) of the MCA, in order to prove that the marriage has broken down irretrievably. See also Nanna Vs. Nanna [2006] 3 NWLR (Pt. 966)1.

22.Learned counsel for the Petitioner contended that the instant Petition is grounded on facts set out in s. 15(2) (e) of the Act, which provides that:

"15(2) 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)

(b)

(c)

(d)

(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"

23. Learned counsel for the Petitioner further submitted that the uncontroverted evidence before the Court established that the Petitioner and the Respondent had continued to live apart since 21 October, 2016, when the Petitioner was constrained to vacate the matrimonial home; and that from that time up until 1st February, 2019, when the instant Petition was presented before this Court, there was a period of at least two (2) years as prescribed by **s. 15(2)(e)** of the **MCA**.

24. Learned counsel therefore urged the Court, on that ground, to dissolve the marriage.

25. The Respondent, in the answer he filed and in his oral evidence in the course of trial, clearly admitted the fact that both parties lived apart as claimed by the Petitioner. He also did not object to the grant of the Petition on that ground.

26. On the basis of the evidence on record therefore, the Court has no difficulty in holding and hereby holds that that the Petitioner has satisfactorily established that the marriage between her and the Respondent had broken down irretrievably, in that parties had

lived apart for a continuous period of at least two (2) years immediately preceding the presentation of the instant Petition and that the Respondent has no objection to the grant of the divorce.

27. With respect to the issue of custody of the only child of the marriage, the uncontroverted evidence before the Court is that the child had continued to live with the Petitioner since her birth up to date. The Respondent does not object to the grant of custody of the child to the Petitioner. He however desires to have unrestricted access to the child at any reasonable time contrary to the prayer of the Petitioner that access be granted only when the child is on school holidays.

28. Now, the provisions of **s. 71** of the **Matrimonial Causes Act** gives the Court wide discretionary powers to make orders as it thinks appropriate, with respect to the custody of a child, as the circumstances of every case dictate. The paramount consideration however, being the interests of the child, particularly as relating to welfare, education and advancement.

29. The principles governing grant of custody of a child in matrimonial causes have been well laid out in a long line of judicial authorities from time immemorial. See Lafun vs. Lafun [1967] NMLR 401; Afonja Vs. Afonja [1971] UILR 105; Williams Vs. Williams [1987] 2 NWLR (Pt. 54) 66; Odogwu Vs. Odogwu [1992] 2 NWLR (Pt. 225) 539; Alabi Vs. Alabi [2007] 9 NWLR (Pt. 1039) 297.

30. In the instant Petition, the Court is satisfied that the Petitioner is entitled to sole custody of the only child of the marriage, as claimed, having demonstrated, by her evidence, her capability and means to accord her shelter and motherly care, a responsibility she demonstrated to have shouldered since the birth of the child.

31. Accordingly, the Court hereby grants sole custody of the only child of the marriage, **Ade Oluwasemilanu Ademola**, to the Petitioner.

32. On the issue of access, the Court will usually refrain from making orders it cannot effectively supervise. Considering that prior to the presentation of this Petition, both parties have shown good intent and demonstrated maturity in the manner they had handled the issue of access of the Respondent to the child of the marriage, as demonstrated by evidence on record, the Court hereby orders that both parties continue to work out a mutually acceptable arrangement for the Respondent to have reasonable access to his daughter.

33. The Petitioner also prayed the Court to order the Respondent to pay her the sum of **N300,000.00** per month, for the maintenance of the only child of the marriage.

34. The position of the law is that orders for maintenance, either with respect to a party or children of the marriage in divorce proceedings, is granted by the Court in the exercise of its discretion in accordance with the law and evidence on record. As such, before the Court can make an order for a lump sum under s. **70 and 73(1)(a)** of the **Matrimonial Causes Act (MCA)**,

consideration must be given to factors such as the parties' income, their earning capacity, property, financial resources, financial needs and responsibilities; standard of life before the dissolution of the marriage, their respective ages and the length of time they were together as husband and wife. These factors must be established by evidence led on record; and thus cannot be assumed or presumed or taken for granted by the Court. See Ibeabuchi Vs. Ibeabuchi [2016] LPELR-41268 (CA); Kpilah Vs Ngwu [2018] LPELR-33219 (CA).

35. The testimony of the Petitioner, on record, in line with the averment in paragraph 12(g) of the Petition, is that the Respondent began to pay her the sum of **N50,000.00** monthly as maintenance for the child of the marriage, as from January, 2017, up to date. The Respondent confirmed this testimony in his evidence at trial.

36. However, the Petitioner did not plead any facts in her Petition as the basis of her prayer that the maintenance allowance be increased to **N300,000.00**. The only clue to the status of the Respondent, given by the Petitioner in the Petition, is contained in the opening paragraph of the Petition, where the Respondent is described as an economist. I had also searched through the Answer to the Petition. The Respondent did not also anywhere therein allude to economic or financial status. or disclose his

37. In the circumstances, the Court cannot rely on the evidence adduced by both parties, most of which were elicited under cross-

examination, as to the financial status of either of them. This is because the law is well settled that evidence obtained in cross-examination but on facts not pleaded is inadmissible. See Dina Vs. New Nigerian Newspapers Ltd. [1986] 2 NWLR (Pt. 22) 353; Aguocha Vs. Aguocha [1986] 4 NWLR (Pt. 37) 366.

38. Nevertheless, considering that proceedings relating to custody and maintenance are generally regarded as interlocutory, for the reason that pronouncements made thereon are subject to subsequent revision, modification and suspension by the Court which made the order (see Adesanoye Vs. Adesanoye [1971] LPELR 144(SC)), in the totality of the circumstances of the case, it is considered that granting the Petitioner the sum of **N100,000.00** monthly upkeep and maintenance of the only child of the marriage is appropriate.

39. With respect to payment of school fees and other ancillary and related fees, the Petitioner has clearly made out the case that the Respondent hitherto paid school fees of the only child of the marriage up to **N200,000.00** and that she has been bearing the cost of other ancillary and related expenses for school uniforms, school books and hospital bills. The documents, **Exhibits P2** series and the receipts, **Exhibit P3** series, tendered in evidence by the Petitioner lent credence to her case in this regard. It is therefore also considered appropriate in the circumstances to order the Respondent to henceforth bear those other ancillary costs as they arise.

40. In the final analysis, I have been mindful of the timeless Injunction that Courts, where the circumstances are appropriate, should grant a Petitioner's decree for dissolution of marriage as painlessly as possible. In the present case, this is a solemn duty that this Court must, of necessity, carry out. Having therefore come to the regrettable but inevitable conclusion that the marriage between the Petitioner and the Respondent has broken down irretrievably, in that both parties had lived apart for a continuous period of at least two (2) years immediately preceding the presentation of this Petition and that the Respondent do not object to the grant of the Petition; I hereby grant decree nisi, dissolving the marriage celebrated between the Petitioner and the Respondent, in accordance with the **Marriage Act**, at the **Oke Ado Baptist Church, Ibadan, Oyo State, on 7th September, 2013**. Provided that, pursuant to the provision of **s. 58(1)(a)(i)** of the Matrimonial Causes Act, the decree nisi made hereby shall become absolute after **three (3) months** from today.

41. I further grant to the Petitioner, full and sole custody of the only child of the marriage, by name, **Ade Oluwasemilanu Ademola**, born on **10/07/2016**, until she attains the age of adulthood; with a proviso that the Respondent shall have reasonable access to her, upon terms and conditions to be mutually agreed by both parties as occasions demand.

42. It is hereby further ordered that the Respondent shall pay to the Petitioner, the sum of **N100,000.00 (One Hundred Thousand**

Naira) only, as monthly maintenance allowance for the only child of the marriage.

43. It is hereby further ordered that the Respondent shall continue to bear the costs of the education of the only child of the marriage; and other ancillary fees, up to university first degree level.

OLUKAYODE A. ADENIYI

(Presiding Judge)

04/02/2022

Legal representation:

Enobong Akpan, Esq. (with Ramat Mohammad, Esq.) - for the Petitioner

C. A. Ukauzo, Esq.- for the Respondent