

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

ON MONDAY 14TH OF FEBRUARY 2022

BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI

SITTING AT COURT NO. 8 MAITAMA - ABUJA

SUIT NO: PET/156/2019

BETWEEN:

TREASURE PATIENCE OCHAPA PETITIONER

AND

GODWIN ACHADU OCHAPA... .. RESPONDENT

JUDGEMENT

Marriage between the Petitioner and the Respondent was solemnized at the Abuja **Municipal Area Council Marriage Registry, Abuja, on 22nd March, 2007**. The marriage is blessed with two children.

However, the Petitioner presented the instant Petition before this Court on 28/07/2019, on the ground that the marriage has broken down irretrievably in that both parties of the marriage had lived apart for a continuous period of at least three (3) years immediately preceding the presentation of the Petition; and that since the marriage the Respondent has behaved in such a way that the Petitioner cannot be reasonable expected to continue to live with him.

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

- 1. A decree of dissolution of the marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably, in that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent, and that the parties have lived apart for a period exceeding 3 years.**
- 2. An order giving custody of the children, Emmanuella (11 years) and Daniella (8 years) to the petitioner until they both attain the age of 18 years respectively.**
- 3. An order directing the Respondent to train the Children to at least a university degree level or its equivalent and to, for that purpose, send the children school fees to the Petitioner upon request in any form either written or verbal, whether by text message, e-mail or any other form of communication before the resumption of schools for any academic term or session as the case may be.**
- 4. An order directing the Respondent to pay the sum of N50,000.00 per month to the Petitioner for the upkeep of the children.**

Even though the records of the Court bear out that he was duly served with the originating processes in this suit and hearing notice, the

Respondent was never present throughout the proceedings; neither was he represented by counsel or file any processes.

At the trial, the Petitioner testified in line with facts pleaded in the Petition. She tendered in evidence as **Exhibit P1**, original marriage certificate issued to her and the Respondent upon the solemnization of the marriage between them at the Abuja Municipal Area Council Marriage Registry, Abuja, on 22nd March, 2007. The Petitioner testified that, cohabitation between her and the Respondent ceased sometime in May, 2012, when the petitioner and her children were thrown out of their matrimonial home at Mangal Court, Zone 1, Abuja.

The Petitioner further testified that her marriage to the Respondent is blessed with two children, namely **Emmanuella Ochapa**, born on **08/08/2007**; and **Daniella Ochapa**, born on **19/10/2010**.

The Petitioner further testified that since she and the Respondent separated, the children have continued to live with her and she has been solely responsible for their upkeep and welfare.

At the close of her case, and since the Respondent did not defend the Petition, the Petitioner's learned counsel addressed the Court orally and urged the Court to grant the Petitioner in line with the provisions of **s. 15(2) (e)** of the **Matrimonial Causes Act** and the reliefs claimed by the Petitioner.

Firstly, the fact of marriage between 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 Abuja Municipal Area Council Marriage Registry, Abuja, on 22nd March, 2007.

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.

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.

Learned counsel for the Petitioner while making his final submissions has relied on the Petitioner's unchallenged evidence and the ground as set out in **s. 15(2)(f)** of the **Matrimonial Causes Act**, as the basis of the grant of the instant Petition.

The evidence before the Court is that cohabitation between the two parties ceased since May, 2012 and ever since have continued to live apart. The instant Petition was filed on 28/02/2019. This implies that from the date cohabitation between the parties ceased and the date of the presentation of the present Petition; is a period of over three (3) years.

On the basis of the evidence on record, therefore, the Court has no difficulty in holding and hereby holds 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 (3) years immediately preceding the presentation of the instant Petition.

With respect to the issue of custody of the children of the marriage, the uncontroverted evidence before the Court is that the Petitioner has been solely responsible for their shelter, upkeep and welfare since she was separated from the Respondent in 2012.

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 the children, as the circumstances of every case dictate. The paramount consideration however, being the interests of the children, particularly as relating to their welfare, education and advancement.

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.

In the instant Petition, the Court is satisfied that the Petitioner is entitled to sole custody of the two children of the marriage, as claimed, having demonstrated, by her evidence, her capability to accord them shelter

and motherly care, a responsibility she demonstrated to have shouldered since both parties separated in 2012.

Accordingly, the Court hereby grants sole custody of the two children of the marriage, **Emmanuella Ochapa** and **Daniella Ochapa**, to the Petitioner.

On the issue of access, the Court will usually refrain from making orders it cannot effectively supervise. Accordingly Court hereby orders that both parties shall continue to work out a mutually acceptable arrangement for the Respondent to have reasonable access to his children.

With respect to the prayer that the Respondent trains the children of the marriage at least to university level, this is a relief consequential to the order for dissolution of the marriage and custody of the children of the marriage. It is imminent and proper that the Petitioner be entitled to this relief as prayed for in the Petition.

The Petitioner also prayed the Court to order the Respondent to pay her the sum of **N50,000.00** per month, for the maintenance of the two children of the marriage.

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).

In this case, it is my view that the amount of **N50,000.00** per month for the two children of the marriage, prayed for by the Petitioner as maintenance for the two children of the marriage is moderate, regardless that the financial status of the Respondent is not disclosed by evidence.

It remains the Respondent's duty and responsibility to ensure that his children are properly catered for, regardless that the marriage between him and the Respondent has broken down irretrievably.

In the circumstances, hereby grant the relief for maintenance as claimed.

In the final analysis, I have been mindful of the timeless injunction circumstances 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 three (3) years immediately preceding the presentation of this Petition; I hereby grant decree nisi, dissolving the marriage celebrated between the

Petitioner and the Respondent, in accordance with the **Marriage Act**, at the **Federal Marriage Registry, Abuja Municipal Area Council, FCT, Abuja, on 22nd March, 2007**. 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.

I further grant to the Petitioner, full and sole custody of the two children of the marriage, by name, **Emmanuella Ochapa**, born on **08/08/2007**; and **Daniella Ochapa**, born on **19/10/2010**; with a proviso that the Respondent shall have reasonable access to them, upon terms and conditions to be mutually agreed by both parties as occasions demand.

It is hereby further ordered that the Respondent shall pay to the Petitioner, the sum of **N50,000.00 (Fifty Thousand Naira)** only, as monthly maintenance allowance for the two children of the marriage.

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

I make no orders as to costs.

OLUKAYODE A. ADÉNIYI

(Presiding Judge)

14/02/2022

Legal representation:

Pereboh Sanami, Esq. (with R. K. Okhuba, Esq. & E. O.

Okonkwo-Abutu (Miss)- for the Petitioner

Respondent unrepresented by counsel