

**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 S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/PET/108/2018

DATE: 22/3/2022

BETWEEN:

TALATU DAHIRU.....PETITIONER

AND

UBONG NELSON UKUT.....RESPONDENT

APPEARANCE:

D. O. Anawo Esq for the Petitioner.

Petitioner is in Court.

JUDGMENT

The petitioner Talatu Dahiru, filed this Petition on the 4/2/2018 praying the Court for the following orders/Reliefs:-

- i. A decree of dissolution of marriage on the ground that the marriage has broken down irretrievably.
- ii. An order granting custody of the child of the marriage.

- iii. An order directing the Respondent to make monthly payment for the maintenance of the child and to always pay for her Education and make provision for her healthcare as detailed in paragraph E of the Notice of Petition. i.e.
 - a) To pay monthly allowance in the sum of ₦30,000 which shall include transportation expences, feeding allowance, clothing and other expences for necessities.
 - b) Provision of Health insurance scheme for the benefit of the child.

The petition is supported by facts grounding the Petition, a verifying Affidavit of 13 paragraphs, as well as the Petitioner's witness statement on Oath both sworn to by the Petitioner herself. Also in support of the Notice of Petition is a photocopy of the parties marriage Certificate dated 17/11/2007.

The matter commenced De-Novo before this Honourable Court on the 27/9/2021, after the Respondent was duly served with hearing notice and relevant processes in that regard.

Despite that, the Respondent never put up appearance nor filed any answer or response to the Petition.

On 21/01/2022, the Petitioner testified and tendered several Exhibit's which were admitted in evidence and marked as follows:-

1. A marriage Certificate in respect of the marriage between the Petitioner and the Respondent dated 17th November, 2007 is marked Exhibit A.
2. Birth Certificate of the child of the marriage Nelson Divine Ubong is marked Exhibit B.

3. An admission letter issued by Kingdom Heritage Model Schools, in respect of the child of the marriage is marked Exhibit C.
4. 7 School Fees receipts issued by Kingdom Heritage Model Schools are marked Exhibit D1 to D7 respectively.
5. 9 School fees receipts issued by Future Sunshine Creche & Montessori, School are marked exhibits D8-D16 respectively.
6. An offer of probationary Appointment, confirmation of Appointment, staff posting and promotion letter in respect of the Petitioner are marked Exhibits E1-E4 respectively.

Petitioner testified before the Court that she is a civil servant and she and the Respondent have one child i.e **Miss. Divine Ubong Nelson** born on 19/5/2011. She informed the Court that the Respondent has deserted her since 2015.

According to the Petitioner since the desertion by the Respondent, she has been solely responsible for paying their daughter's School fees and upkeep. She also informed the Court that Respondent has even remarried another woman and they have a child together.

She finally urged the Court to grant her custody of the child of the marriage and also dissolve the marriage.

The matter was then adjourned to enable Respondent Cross-Examine the Petitioner and to open his defence.

On 2/02/2022 and 10/02/2022 when Respondent failed to appear upon Application by Learned Petitioner's Counsel, Right of Cross-Examination of the Petitioner was foreclosed on 2/2/2022 and Right of defence was equally foreclosed on 10/2/2022.

Learned Petitioner's Counsel dispensed with final written address and urged the Court to enter Judgment for the Petitioner.

Now, under and by virtue of Section 15 (1) (2) of the Matrimonial Causes Act, CAP M7, LFN 2004, a Court hearing a Petition for dissolution of marriage, shall hold that the marriage has broken down irretrievably if, and only if, the Petitioner can satisfy the Court on at least one of the grounds highlighted under Section 15 (2) (a) – (h) thereof.

I also refer to the case of **AKINBUWA V. AKINBUWA (1998)7 NWLR (PT. 559) 661.**

Similarly, in the case of **IKE V. IKE & ANOR (2018) LPELR – 44782 (CA) per Ekpe, J.C.A at PP-10-16, paras A-C,** the Court held thus:-

"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 Cause Act even if the divorce is desired by both parties."

In the instant case Petitioner deposed in her witness statement on Oath particularly paragraphs 9, 10, 12, 13, and 15 thereof as follows:-

- "9. That the marriage has broken down irretrievably and I find it intolerable condoning the cruelty and irresponsibility of the Respondent.***
- 10. That I find it impracticable or reasonable to go back to the Respondent and/or to continue to live with the Respondent.***
- 12. That I and the Respondent got married on the 17th November, 2007 at All Christian Fellowship Maitama,***

Abuja and soon after, the Respondent abandoned his responsibilities to the household. The Respondent, is a Pathological insensitive, cruel person often perpetrate his cunning and inhuman treatment and enjoys deserting me and the baby at flimsiest excuse against me. The Respondent's Attitude towards the marriage is intolerable, cruel and desertion to his matrimonial home and in irresponsibilities which occasioned exceptional hardship and depravity. It degenerated to a point where the Respondent abandoned me and my daughter, being the only child of the marriage and other Responsibilities.

- 13. That sometime 2007 after his marriage to me that Respondent got a job with the CBN and was posted to Lagos Office, upon which he practically deserted his matrimonial home, an action which made me out of curiosity to discover to my dismay that the Respondent was dating a lady in his office named Sandra Ejome whom he later put in family way giving birth to a baby girl for him.***
- 15. That we met and got married in Abuja, the Respondent has never taken me to his village that his only address known to me is the family house at Area 1 Ajegunle Street behind Old NEPA Office Now Millennium Pharmacy Mpape Abuja."***

Now Section (15) (2) (d) of the Matrimonial Causes Act (Supra) provides:-

"That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition."

The Petitioner herein alleges among other things that the Respondent has deserted her and the child of the marriage since 2015 and conjugal rights ceased since then.

Now from the records of the Court, this petition was filed on the 7th day of February 2018, while according to the Petitioner desertion by Respondent occurred since 2015.

Therefore, it means that the Respondent has indeed deserted the Petitioner for at least 2 years immediately preceding the presentation of the Petition, far more than the period of one year contemplated by Section 15 (2) (d) of the Matrimonial Causes Act (Supra). See also the case of **EZIAKU V. EZIAKU (2018) LPELR-16373 (CA)**.

Therefore, the Court is satisfied that the Petitioner has proved at least one ground for dissolution of the marriage and has further proved to the satisfaction of the Court that the marriage in this case has broken down irretrievably. I so hold.

On the issue of custody and maintenance of the child of the marriage the Court shall be guided by the provisions of Section 70, 71 (1) of the Matrimonial Causes Act (Supra).

See the case of **Mrs. LYDIA OJUOLA OLOWUN FOYEKU V. MR. JAMES OLUWUN FOYEKUN (2011) 10 NWLR (Pt. 1227) Pg. 177 @ 203 Paras E-F** where the Court of Appeal held thus:-

"In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, Court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration.....custody is never awarded for good conduct, nor is it ever denied as punishment for the guilty party in matrimonial offences. The welfare of the child of a marriage that has broken down irretrievably is not only paramount consideration but a condition precedent for award of custody."

See also the case of **ODUSOTE V. ODUSOTE (2012) 3 NWLR (PT. 12)**

In **ALABI V ALABI (2007) LPELR- 8230 (CA)**, per **Agube J.C. A** at **pp 47-49 paras E-D**, the Court held as follows:-

"Award of custody of children of a marriage that has broken down irretrievably as in this case is governed by Section 71 (1) of the Matrimonial Causes Act 1990, which enjoins the Court in proceedings relating to custody, guardianship, welfare, advancement or education of children of the marriage, to take the interest of the children as paramount consideration and the Courts in this regard are given wide discretionary powers which they can exercise according to the peculiar circumstances of each case....."

I've considered the evidence presented by the Petitioner that she's been solely responsible for the upkeep and general welfare and Education of the child of the marriage.

I am therefore satisfied that she's a responsible parent who has her daughter's best interest at heart.

Therefore, in the absence of any evidence to the contrary since her evidence is unchallenged and uncontroverted, it is my candid opinion that Petitioner has satisfied the Court to be entitled to the reliefs/orders sought.

Accordingly it is hereby ordered as follows:-

1. The Court hereby grants a decree Nisi dissolving the marriage between the Petitioner **TALATU DAHIRU** and the Respondent **UBONG NELSON UKUT** celebrated at All Christian Fellowship, Maitama, Abuja, FCT on the 17th day of November, 2007. The Decree shall become Absolute if nothing intervenes within a period of 3 months from this date.
2. The Petitioner is granted sole custody of **MISS. DIVINE NELSON UKUT** (the sole child of the marriage). While the Respondent is awarded visitation rights on convenient times acceptable by the parties at the time of request.
3. The Respondent is to pay the sum of **₦30,000.00** as monthly allowance for upkeep of the child of the marriage which shall include transportation, feeding allowances, clothing and other necessary expenses.
4. The Respondent is ordered to pay the School Fees of the Child of the marriage up till University. Payment of School fees and other Educational expenses shall be paid by the Respondent within two weeks of receipt of invoice from the School the child attends.
5. The Respondent shall enroll the child of the marriage in a Health Insurance Scheme for the benefit of the child of the marriage Miss. **Divine Nelson Ukut.**

Signed:

***Hon. Justice S. U. Bature
22/3/2022.***

