

**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/462/2020

DATE: 14TH MARCH, 2022

BETWEEN:

YEMISI JOSEPHINE CHUKWUJI.....PETITIONER

AND

PHILIP UZONDU CHUKWUJI.....RESPONDENT

APPEARANCES:

Ifechi Aleche Esq for the Petitioner.

Respondent absent and unrepresented.

JUDGMENT

The Petitioner filed this Petition on the 22nd September, 2020 seeking for the following reliefs: -

- “(1). A DECREE OF DISSOLUTION OF MARRIAGE between the Petitioner and the Respondent contracted on the 19th July, 2008 on the ground that the marriage has broken irretrievably.***
- (2). AN ORDER of Court granting absolute custody of the children of the marriage namely CHINONYEREM TEMILOLUWA CHUKWUJI, GIFT AYOMIDE CHUKWUJI, and***

DAVID BOLUWATIFE CHUKWUJI, to the Petitioner with visiting right to the Respondent.

- (3). AN ORDER of Court directing the Respondent to contribute towards the maintenance and welfare and education of the children of the marriage in the sum of N100, 000.00 (One Hundred Thousand Naira) only per month.**
- (4). AND for such further or other Order(s) as this Honourable Court may deem fit to make in the circumstances of this suit.”**

The Petition which was settled by M. A. Awuru Esq of Kolawole Olowookere & Co, on behalf of the Petitioner, is accompanied by an exhibit marked Exhibit A as well as a Verifying Affidavit deposed to by the Petitioner herself.

The records of this Honourable Court show that the Respondent was duly served with the notice of Petition along with several hearing notices. But has not put up any appearance nor filed any response or answer to this petition.

In effect therefore, this is an unchallenged Petition.

Nonetheless, in a bid to prove her case, the Petitioner testified as Pw1 on the 30th June 2021 whereof two Exhibits were tendered and admitted in evidence as follows: -

- (1). Certified true copy of the marriage certificate in respect of the parties in this petition marked Exhibit A.
- (2). A handwritten letter addressed to “Dear mummy” from Chinonye Chukwuji dated 10th May 2018 marked Exhibit B.

In her testimony before the Court Pw1 (the Petitioner) stated that she got married to the Respondent on 18th July, 2008.

She testified that the main aim of filing this petition is necessitated by the persistent violence in the marriage. That she has been beaten over and over again by the Respondent in front of the three children of the marriage.

Pw1 states that she can recall being beaten in 2013 while she was pregnant and she even passed out only to wake up and see herself in the hospital.

According to the Petitioner, Respondent even denied being the father of the child. That he even refused to visit the Petitioner when she delivered the baby through caesarian section. She states further that Respondent refused to see the child until the child was a year old when he heard that it was a male child and then began to plead with the Petitioner. Seeing that the Respondent had charged Petitioner said she decided to return to him.

But that when she went back to the Respondent, the beating and assault continued. That all her efforts to practice her noble profession as a nurse proved abortive. That anytime she mentioned it she was beaten by the Respondent. Pw1 said she then resolved in her mind that if she couldn't work then she should at least be treated like a wife and not a slave, so she decided to stop working, so that peace will reign. According to Pw1, it didn't stop the problem.

She further testified that the Respondent never provided for the family, for her or the children, that she had to call her friends and family to support her.

That in 2018 after beating the Petitioner, the Respondent pushed her out of the house and kept the children with him and said she should go.

Petitioner informed the Court that she cannot leave her children with that kind of man because he beats her and beats the kids as well in a cruel manner. That all her efforts to see her kids have proved abortive.

That her daughter wrote a letter and passed it to the Petitioner through the class teacher saying mummy please don't leave us behind, come for your children. According to the Petitioner, she felt the need to get her children back since there must be a reason why her daughter wrote that letter to her in the first place, hence her reason to fight this case in Court when she filed this Petition in 2019 so she can get access to her children. That unknowing to her, the Respondent withdrew the children and took them to his village in Abia State, until this Court ordered last year in November that the children be brought back to Abuja.

That upon their return, she observed that they looking unkept, and therefore resolves that as long as she's alive will not leave her kids to be looking like they are motherless.

Pw1 pleaded with the Court to grant her reliefs as stated in the Petition.

Upon failure of the Respondent to appear and cross-examine the Petitioner, the right of cross-examination was foreclosed on 5th October, 2021 and subsequently on 18th October 2021 right of defence of the Respondent was also foreclosed on the application of learned Petitioner's Counsel.

The Petitioner's final Written Address was adopted on 24th January, 2022.

In the said Written Address, learned Petitioner's Counsel formulated a lone issue for determination to wit: -

“From the totality of evidence before the Court, whether the Petitioner is not entitled to the dissolution of her marriage with the Respondent and a grant of all the reliefs sought in the application.”

In arguing the sole issue, learned Counsel submitted that by the incontrovertible evidence led by the Petitioner in this case, she has satisfied the requirement of the law and has proven the facts relied upon in support of the grounds for the dissolution of the marriage in this case, same being predicated on the ground that the parties have lived apart for more than two years and that same has broken down irretrievably.

Learned Counsel referred to Section 15(2)(c) of the Matrimonial Causes Act as well as Exhibits A and B in support of her submissions.

Learned Counsel also cited the cases of ***GAJI & ORS V PAYE (2003) LPELR-1300 (SC), Per Edozie, JSC at Page 20, paras. B-C; and EMIRATE AIRLINE V MEKWUNYE (2014) LPELR-22658, per Iyizoba at page 27, paras A –B.***

On unchallenged evidence of a party learned Counsel cited the cases of ***UMOH V TITA & CO. (1999) 12 NWLR (PT. 631) 427 at 434.***

See also: ***IJEBU-ODE L.G. VS. ADEDJI (1991) LPELR-SC.22/1989; CHIEF SUNDAY OGUNYADE VS. SOLOMON OLUYEMI OSHUNKEYE &***

ANOR (2007) 7 NWLR (PT.11) 60; and ODULAJA VS. HADDAD (1973) 11 SC 357; NIGERIAN MARITIME SERVICES LTD VS. AFOLABI (1978) 2 SC 79.

Learned Counsel further cited the case of **WOKOMA V WOKOMA (2020) LPELR-49882 (CA)** in support of the Petitioner's ground for filing this Petition as regards Section 15(2)(c) of the Act (supra).

In paragraph 5.14 of the Address learned Counsel also relied on Section 16(1) of the Matrimonial Causes Act to argue that the Respondent habitually left the Petitioner without reasonable means of support, therefore, Petitioner has satisfied the statutory requirement of Section 15(2)(c) and Section 16 of the Matrimonial Causes Act, and urged the Court to so hold, and to grant the Petitioner's reliefs.

It is observed that the facts as stated by the Petitioner in her evidence-in-chief are well captured in grounds a – ff contained in the Notice of Petition.

Now, under and by virtue of Section 15(2) of the Matrimonial Causes Act Cap M7 LFN, 2004, the Court hearing a Petition for dissolution of a marriage, shall hold the marriage to have broken down irretrievably, if and only if the Petitioner satisfies the Court of at least one of the grounds enumerated under Section 15(2) a – h thereof.

I refer to the case of **BIBILARI V BIBILARI (2011) LPELR – 4443, (SC) per Galinje JSC, at PP: 33-34; IKE V IKE & ANOR (2018) LPELR-44782 (CA) per EKPE, J. C. A** at pages 10-16, paragraphs C-A, where the Court held as follows:-

“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 Causes Act, even if the divorce is desired by both parties”.

In the instant case, the Petitioner alleges intolerable behaviour on the part of the Respondent. Constant beatings and maltreatment even in the presence of their three children.

It is also the Petitioner's evidence among others that she was abandoned by the Respondent without any communication whatsoever for more than a year when she delivered one of their children and subsequently throwing

her out of the matrimonial home and depriving her of access to her children.

Now beating is no doubt a cruel, violent and barbaric act which violates the fundamental human rights of the Petitioner. These rights are contained and preserved under Section 34(1a) of the CFRN 1999 (as amended).

The Section provides:

“34(1a). No person shall be subject to torture or to inhuman or degrading treatment.”

Therefore, beating as a cruel act is no doubt weighty in nature and one deserving consideration of the Court in Petition of this nature.

The Court gave the meaning of cruelty in the case of **ADARAMAJA V ADARAMAJA (1962) 1 SCNLR, 376** the Court held thus:

Cruelty in relation to matrimonial proceedings, is a conduct which is grave and weighty as to make cohabitation of the parties to the marriage virtually impossible coupled with injury or a reasonable apprehension of injury, whether physical or mental. The accumulation of minor acts of ill-treatment causing or likely to cause the suffering spouse to break down under strain therefore constitutes cruelty.”

See also in the case of **WILLIAMS V WILLIAMS (1984) 2 NWLR (PT.54) 66.**

Therefore on this issue, it is the duty of the Court to determine whether the behaviour of the Respondent is sufficiently grave that the particular Petitioner cannot reasonably be expected to live with the particular Respondent.

IBRAHIM V IBRAHIM (2007) 1 NWLR (PT.1015) 383, it has also be held that whilst a single act may not constitute intolerable behaviour, several such acts, may cumulatively constitute it. On this, I refer to the case of ***OBAYEMI V OBAYEMI (1967) NWLR 2112.***

Moreso, one of the grounds enumerated under Section 16(1) of the Act, in proof of intolerable behavior under Section 15(2)(c) of the Matrimonial

Causes Act is ground 16(c)(ii) where the Petitioner (such as in this case) alleges that Respondent has habitually left the Petitioner without reasonable means of support.

In the circumstances therefore, having thoroughly considered this Petition, the grounds predicated this Petition, the reliefs sought, most especially the evidence of the Petitioner under Oath, I am satisfied that Petitioner has proved her case that the Respondent since the marriage, Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him. Consequently therefore, Petitioner has satisfied the Court through her uncontroverted, unchallenged evidence, that the marriage between her and the Respondent has broken down irretrievably.

Under Sections 15(2)(c) and 16(2)(ii) of the Matrimonial Causes Act (supra). I so hold.

On relief no. 2 on the face of the Petition, Petitioner seeks custody of the three children of the marriage namely:

1. CHINONYEREM TEMILOLUWA CHUKWUJI
- 2, GIFT AYOMIDE CHUKWUJI
3. DAVID BOLUWATIFE CHUKWUJI

On the issue of custody what the Court must consider first and foremost is the best interest of the children of the marriage. On this I refer to Section 71(1) of the Matrimonial Causes Act which provides thus:

“71(1) MCA: In proceedings with respect to custody, guardianship, welfare, advancement or education of children of a marriage, the Court shall regard the interests of those children as the paramount consideration; and subject thereto, the Court may make such order in respect of those matters as it thinks proper.”

See also the case of **MRS. LYDIA OJUOLA OLOWUN FOYEKU V MR. JAMES OLUSOJI OLOWUNFOYEKU (2011) NWLR (PT. 227) 177** at 203, paragraphs E-F. Where the Court 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 of the marriage shall be the primary considerationcustody 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 the marriage that has broken down irretrievably is not only paramount consideration but a condition precedent for the award of custody.”

I've considered the evidence of the Petitioner that CHINONYEREM TEMILOLUWA CHUKWUJI daughter had at one point written to her mother pleading with her to come for her children, at the time when Respondent had removed Petitioner from the matrimonial home. The said letter was tendered by Petitioner admitted in evidence and marked Exhibit B.

I've had time to peruse the said letter written by CHINONYEREM TEMILOLUWA CHUKWUJI to her mother, and it is such a sad letter from a little girl. The letter starts as follows: -

“Dear Mummy,

I am so sorry that Daddy pushed you out of the house. Where are you staying now? You can come and carry us any of us or if Daddy did not agree you can come any.....Don't forget I love you.”

It further states:

“And one more thing if you finally come if Daddy is talking to you always keep quite so he finish that is when you can talk or smile....Do not leave your children behind carry your children along with you....”

Indeed, on the issue of custody, one of the factors to be considered by the Court when awarding custody is the degree of affection between the parties and child of the marriage.

There's no doubt from Exhibit B that there's a great deal of affection between the children of the marriage and the Petitioner.

Furthermore, this Court has taken judicial notice of Petitioner's application filed on 22nd September, 2020 in Motion No: M/1008/2020 seeking reliefs including restoring the children of the marriage to her custody pending the determination of this petition.

This Court having considered the said motion proceeded to grant the Orders sought on 2nd November, 2020.

Therefore, in the final analysis, it is my considered opinion that since the Petitioner has returned back to work currently employed as a nurse at Nyanya General Hospital and is capable of financially taking care of her children is caring and loving mother she is entitled to relief 2 as prayed. I so hold.

On relief no. 3, which seeks for an award of maintenance of the children of the marriage, the Court is also guided by the provision of Section 70(1) of the Matrimonial Causes Act (supra) which provides:-

“Subject to this section, the Court may, in proceedings with respect to the maintenance of a party to a marriage, or of children of the marriage, other than proceedings for an Order for maintenance pending the disposal of proceedings, make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances”

The Respondent has not responded to this petition, therefore he is deemed to have accepted the reliefs sought by the Petitioner and the Court shall exercise its discretion in that regard.

In view of all these, I hereby Order as follows:-

- (1). The Court hereby grants a Decree Nisi dissolving the marriage between the Petitioner (YEMISI JOSEPHINE CHUKWUJI) and the Respondent (PHILIP UZONDU CHUKWUJI) celebrated at the Kabba/Bunu Local Government Marriage registry and further solemnized at Christ Apostolic Church, Owode, Kabba, Kogi State on

19th day of July, 2009 on the ground that the marriage has broken down irretrievably.

- (2). The Petitioner is granted sole custody of the three children of the marriage namely:
 1. CHINONYEREM TEMILOLUWA CHUKWUJI
 2. GIFT AYOMIDE CHUKWUJI
 3. DAVID BOLUWATIFE CHUKWUJI
- (3). The Respondent is awarded visitation rights to the children of the marriage subject to the convenience of the parties at the time of request.
- (4). N100, 000.00 (One Hundred Thousand Naira) is hereby awarded as maintenance cost for monthly upkeep of the three children of the marriage to be paid by the Respondent.
- (5). Respondent shall pay for the education and medical bills of the children of the marriage.

Signed:

Hon. Justice S. U. Bature
14/3 /2022