

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT:28

DATE: 15th FEBRUARY, 2022

FCT/HC/PET/043/21

BETWEEN:

OBINNA HENRY OKAMKPA -----

PETITIONER

AND

ADAORA ASABE ORAGUDOSI-----

RESPONDENT

JUDGMENT

The Petitioner brought this notice of petition PET/043/2021 dated and filed on the 1st February, 2021 praying for the following:-

1. A decree of dissolution of marriage on the grounds that the marriage has broken down irretrievably.
2. An order of the Court granting full custody and maintenance of the sole child of the marriage, Somtochukwu Joshua Okamkpa and other condition as proposed by the petitioner in the proposed arrangement for the sole child of the marriage.
3. An order compelling the Respondent to hand over all personal effects of the petitioner namely; bags and luggage, clothing, international passport and books, in custody of the Respondent.

Attached to the application is a verifying affidavit and a copy of a marriage certificate. The facts as verified by the petitioner are as follows:-

1. That the parties in this petition got married statutorily on the 12th January 2013 at the Holy Trinity Catholic Church, Maitama, Abuja.
2. That since the marriage, the respondent has behaved in such a way that the petitioner finds it intolerable to live with the Respondent.
3. That the parties to the marriage have lived apart for a continuous period of at least 3 years immediately preceding the presentation of the petition and the Respondent does not object to a decree being granted.
4. That the petitioner avers that he has suffered allegations of infidelity from the Respondent which often morphs into outburst of violence from the Respondent.
5. That the Petitioner found out that the Respondent has secretly been dipping her hands into the profit of the boutique business they both owned without the knowledge of the petitioner, and when accosted by the Petitioner, she rushed to accused the petitioner of having extra marital affairs with the sales girl of the boutique.
6. The Petitioner further avers that the Respondent has threatened to kill the Petitioner with poison. She has also, on three occasions, brandished a knife, threatening to stab the petitioner to death on such occasion the petitioner has had to leave his matrimonial home to seek refuge at a friend's house and hotels for fear of his life.
7. That the Respondent has once showed up at his church where she called the petitioner names, and tore the Petitioners clothes accusing him of using the church as guise to meet his girl friend's, all in the presence of the church priest and other church members.
8. That the petitioner later got a better paying job and was posted to Port Harcourt from Abuja, and has tried to reconcile severally with the Respondent, all to no avail.

9. That the petitioner has once invited the Respondent to Port Harcourt so they could spend some time together, but the Respondents ended up making trouble, accusing the Petitioner of infidelity, tearing his clothes and smashing his laptop against the wall.
10. The incident at the hotel got to the knowledge of the management which reported to the petitioner's work place.
11. That once in 2015, the Petitioner had travelled to Abuja to see the Respondent and their son where another altercation broke out between them leading to a car accident where the vehicle had to be towed and has now become irreparable.
12. That the Respondent told the Petitioner that she was tired of the marriage, and blocked all social media accounts of the Petitioners.
13. That the Petitioner has approached the FCT Welfare Board in order to apply for access of their son, who in turn tried to invite the Respondent in order to discuss about the welfare and upkeep of the said son, but she refused to honour the invitation.
14. The Petitioner avers that he presently does not know the whereabouts of the Respondent or their son since 2015.

Respondent filed an answer to the petition by way of a 99 paragraphs document. The facts stated among others are as follows:-

1. That the Respondent has never accused the petitioner of infidelity nor threatened the life of the petitioner but has been on the receiving end of beatings and threats to life.
2. That the petitioner developed a strong hatred against her immediately after their marriage.
3. That the Respondent was traumatized during her pregnancy as a result of emotional and physical abuse from the Petitioner owing to

his self acclaimed anger outbursts since childhood which he always brags about.

4. That the Respondent never went into any form of business partnership with the petitioner as claimed and that it was her brother who contributed financially towards her business.
5. That the petitioner offered to manage her business so as to keep busy while searching for a job but the petitioner ran down the business, and also withdraws money from the salary account of the Respondent.
6. That she started missing items from her boutique and one day saw her sales girl wearing one of the clothes that were missing, of which the sales girl said the Respondent should question the Petitioner. After taking stock of her goods, she realized that the Petitioner had been stealing from the shop.
7. The Respondent states in all these, she never threatened the petitioner no brandished a knife.
8. That the Petitioner would brag about hitting her and killing her. He also punches her head at the slightest provocation.
9. That the Petitioner pushed her while she was pregnant and almost lost the pregnancy.
10. That she never fought the petitioner at his church or anywhere.
11. That after getting a job and moving to Port Harcourt, the Petitioner stopped picking calls from the Respondent and has vowed to make her suffer for the rest of her life.
12. That the Petitioner was made to invite the Respondent and their son to Port – Harcourt which she reluctantly accepted which was where she found out her husband was sending nudes to someone which led to an altercation in the hotel.
13. The Respondent further states that Petitioner does not care about the child as she once called him when the child was sick and

was told by the petitioner not to bother him and he never called or checked on the child.

14. That the child was born with a health challenge but the petitioner known's nothing about it as he has never asked.
15. That on one of the petitioner's visits to Abuja while on their way to Airport, they had an altercation where he screamed at her leading to a car accident, he left them there while the Respondent had to look for help, got the car towed and subsequently fixed.
16. That the Respondent did not honour the invitation by the welfare board as she only got a phone call which she would not verify and later discovered that there was a connivance between the petitioner and the welfare officer who had called her.
17. The respondent states finally, that the Petitioner has not contributed a dime from pregnancy till date and that requesting for custody of their son is simply a mirage.

Respondent went further to seek for the following orders:-

1. In view of the above, the respondent accepts the dissolution of the marriage as to preserve her life and that of the sole child of the marriage.
2. That the respondent be granted full custody of the sole child of the marriage and the Petitioner be granted supervise access.
3. That the petitioner should pay a monthly maintenance of ₦200,000.00 for their son and also contribute another ₦200,000.00 per term as school fees for the only child of the marriage.
4. That in an event that the Petitioner cannot pay what is contained in prayer 3 above, then an order of this Court directing the petitioner to pay back same to the Respondent in the future as it is the duty of a father to be responsible for the well being of his child.

In petitioner's reply to answer to petition, the Petitioner further stresses that the marriage has irretrievably broken down, as is evident in the protracted separation between the parties:-

1. Petitioner states that he has never laid a hand on the Respondent, never assaulted her or even boasted of assaulting anyone as stated by the Respondent.
2. That the Petitioner's money, advice and personal service and sacrifices were instrumental to the business which the Respondent claimed was financed by her brother.
3. That both Petitioner and Respondent managed the business for sometimes and that the business never suffered as alleged.
4. That the upbringing of the sole child of the marriage is in jeopardy if allowed to grow in the custody of the Respondent whose lying, erratic and acrimonious life style is likely to adversely affect the child.

Under cross examination, the petitioner denied the Respondent's alleged fact that the child has a health condition. Even though the Respondent's argument is that the Petitioner is not aware because he does not care and has never asked.

Furthermore, Respondent has stated that the Petitioner has never contributed towards the child's education. However, the Petitioner, under cross examination said the last time he sent money towards the education was in 2016.

In Petitioner's written address, he raises a sole issue for determination thus:-

" Whether the Petitioner has sufficiently proved his case and is entitled to judgment in this suit."

Petitioner also relied on section 137(1) of the Evidence Act 2015 which states that in civil suits the burden of first proving the existence or non- existence of a fact, lies on a party against whom the judgment of a Court will be given, if no evidence is produced on either side, regards being had to any presumption that may arise on the Pleadings. Also referred the Court to ***CID MADUABUM V HON. BENCHUKS NWOSU (2010) 13 NWLR (pt 1212) 623 at 696.***

Petitioner then referred to the Marriage Act for dissolution of marriage that has gone through a protracted separation of parties exceeding two to three years, thereby meeting the requirement. See also ***MRS ETHEL ONYEMAECHI DAVID ORJI V DORJI TEXTILES MILLS (NIG) LTD.***

Regarding the issue of custody, Petitioner has not cited or referred the Court to any statute or case law, rather relied on facts stated by him in his notice of petition.

In respondent's written address, she raised a sole issue for determination, which is

"Whether the petitioner has successfully made out his case to entitle him the relief sought from this Honourable Court."

The Respondent's legal argument is that in determining the issue of determination, it is not in dispute that the marriage has broken down irretrievably, as both parties have given evidence in that regard and neither party objects to the dissolution of the marriage.

Therefore, the main issue and purpose of this action is the custody of the child, his health education and general well being.

The Respondent then referred the Court to the case of **MRS. MAYOWA ADERONKE OJENIRAN V MR. JOSUA FEMI OJENIRAN (2018) LPELR – 45697 (CA)** and **MR. EDMUND IBE ANOLIEFO V MRS. AGATHA NNEKA ANOLIEFO (2019) LPELR – 47238 (CA)**, where it was stated that in considering custody of children that are still minors, the interest, care and welfare of the child is paramount and given priority above every other thing.

Respondent also cited section 71 (1) of the Matrimonial Causes Act which also gives importance to general wellbeing and interest of the child above anything else.

Also referred is the case of **WILLIAMS V WILLIAMS (1987) 2 NWLR (pt 54) 66 at 89** as to what constitute the best interest of a child.

Section 15 of the Matrimonial Causes Act Cap M7 Laws of the Federation of Nigeria 2004 states that:-

"(1) A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably."

Both parties have agreed and shown evidence that the marriage has broken down irretrievably, thus this is not in dispute,

Subsection 2 of the same section further provides that the Court shall hold that the marriage has broken down irretrievably only if the petitioner has satisfied the Court on one or more facts, among some of which are:-

15(2) © - "That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent"

This can be seen in paragraphs in the petition where the petitioner has stated that the Respondent has had outburst of violence towards the Petitioner and has threatened his life.

Respondent has also been said to have constantly accused the petitioner of stealing, has embarrassed him, tore his clothes etc.

15(2) (e) and (f)- That the Parties to the marriage have lived apart for a continuous period of at least two years (or three) immediately preceding the presentation of the petition and the Respondent does not object to a decree being granted.

Both parties have averred that they have not lived together for beyond a period of 3 years since the Petitioner moved to Part Harcourt for work. Furthermore, the respondent does not object to a decree being granted as stated in both her answer to petition and her written address.

On the issue of custody, section 71 (1) of the Matrimonial Causes Act is the cynosure, and determines who should be granted custody. It states:-

"In proceedings with respect to the 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.”

Furthermore, the power of the Court to make an order in respect of custody or rights to access of a child is enshrined in section 69(1) (a-c) of the Child Right Act which states:-

69 (1) the Court may:-

- a) On application of the father or mother of a child make such order as it may deem fit with respect to the custody of the child and the right of access to the child of either parent having regards to:-
 - i) The welfare of the child and the conduct of the parent and
 - ii) The wishes of the mother and father of the child
- B. Alter, vary or discharge an order made under paragraph (a) of his subsection on the Applicant of
 - i) The father or mother of the child or
 - ii) The guardian of the child after the death of the father or mother of the child.
- iii) In every case make such order with respect to costs as it may think just.

In the case of ***ALABI V ALABI (2007) LPELR – 8203 (CA)***, it was stated that in deciding what the welfare of a child is factors which have been considered relevant by the Court include

- i. The degree of familiarity of the child with each of the parents or parties
- ii. The amount of affection by the child for each of the parents or vice versa.
- iii. The respective incomes of the parties
- iv. That facts that one of the party now lives with a third party as either man or woman.

- v. The fact that in the case of children of the tender ages, custody should normally be awarded to the mother unless other consideration makes it undesirable.

Also in ***WILLIAMS V WILLIAMS (1987)***, as relied upon by respondents, it was stated that relevant factors must be considered, and they must be centered on the welfare of the child.

To my mind, respectfully, the dissolution of the marriage should be granted as the parties both do not object to it, and the circumstances surrounding the marriage have satisfied the grounds stated in the Matrimonial Causes Act.

On the issue of custody it would seem that it would be in the best interest of the child if custody is given to the mother, considering the child right Act provisions and the case of ***ALABI V ALABI, and others***. I would like to add issue of custody of the children would include their welfare education, security and overall well being and development see ***ODUSOLE VS O*** *suit No C/A/A/95/2008*. Also cited in ***(2012)3 NWLR (Pt. 1155) 415***. Although there is no rule of law which says that female child or a child of tender age should remain in the custody of the mother when a marriage is dissolved, however it cannot also be seriously disputed that children who are female and in their growing or formative years are better cared for and looked after by the mother except the contrary is shown by credible evidence. It is generally presumed that such children would be happier and more at peace because of the closeness and intimacy which breed affection and familiarity with the mother who most of the time, was there for them. See ***ODUSOLE VS ODUSOLE (supra)*** see also ***TABANSI VS TABANSI (2009) 12 NWLR (pt 1155) 415***. In custody proceedings unless it is abundantly clear that the mother suffers from moral conduct infectious disease, insanity, lack of reasonable means

or is cruel to the children etc. children of tender age male or female are ordinarily better off in terms of welfare and upbringing with the mother of course there may be few exception that are far apart where the father may be better than some mother in the upbringing of the children. There is always that rebuttable presumption in favour of the mother. In the consideration or broken down marriage see ***ODUSOLE VS ODUSOLE (supra) ODUGWU ODUGWU (1992) 2 NWLR (pt 225) 539.***

In conclusion the marriage between the Petitioner and the Respondent conducted at Abuja Municipal Area Council (AMAC) Marriage Registry Abuja on the 6th day of July, 2012 is hereby dissolved. Custody of the only child of the marriage is granted to the mother (Respondent) with a monthly maintenance fee of ₦50,000.00 granted against the Petitioner.

However the Respondent shall have unrestricted access to the child. The accessibility shall be given within a reasonable time to be mutually agreed by the petitioner and the Respondent.

HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)
15/02/2022