

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY**
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI
ON THE 2ND DAY OF FEBRUARY 2021
**BEFORE HIS LORDSHIP HON. JUSTICE J. ENOBIE
OBANOR**
SUIT NO: FCT/HC/ PET/060/2021

BETWEEN

ANTHONY IKWUOCHE OMAIYEPETITIONER

AND

BARBARA OGLI OMAIYERESPONDENT

JUDGMENT

By a petition dated the 10th day of February 2021 and filed same date, the petitioner seeks the following reliefs from this honourable court.

1. A decree of dissolution of marriage contracted on the 16th day of may, 2014 between the petitioner and the respondent on the ground that the marriage has broken down irretrievably.

2. A decree of dissolution of marriage between the petitioner and respondent on the grounds of cruelty and or desertion for at least one year and that the parties to the marriage have lived apart for a continuous period of at least 2 years immediately preceding the presentation of this petition, and the respondent does not object to a decree being granted.
3. Custody of the only child of the marriage be awarded to the petitioner with visiting right to respondent.
4. Alternatively, joint custody of the only child of the marriage until the child is 8 years old when it shall be reverted to the petitioner.
5. A perpetual injunction against the respondent from removing the child of this marriage from jurisdiction without prior notice and approval of the petitioner.
6. Any order and such other reliefs the court may deem fit to make in the circumstance.

The grounds upon which these reliefs are sought are;

- a. Cruelty.
- b. Desertion for at least one year immediately preceding the presentation of this petition.

- c. That the parties to the marriage have lived apart for a continuous period of at least 2 years immediately preceding the presentation of this petition, and the respondent does not object to a decree being granted.
- d. The parties have lived apart for a continuous period of at least 3 years immediately preceding the presentation of this petition.

In support of the petition is a 7 paragraph affidavit deposed to by Anthony Ikwuoche Omaiye, the petitioner himself.

He deposed that he married the respondent on the 6th of May, 2014 at Federal Marriage Registry, Abuja which marriage has broken down irretrievably, where upon he instructed his lawyers to file all the necessary papers including a petition for dissolution of marriage, and that the assertions made in paragraphs 1 to 14 of the petition are true and facts within his personal knowledge.

In response to the petition, the respondent filed an answer and cross petition dated the 2nd day of November. 2021.

She contended that the petitioner is entitled to the dissolution of the marriage but not on the grounds so alleged. Rather, on the ground that since the

marriage, parties have lived apart for a continuous period of 3 years immediately preceding the presentation of the petition.

The respondent further asserted that since the marriage, she has endured torture, neglect, physical and emotional abuse from the petitioner as the petitioner has continued to exhibit strange and inhuman behaviours towards her.

That the petitioner orchestrated persistent acts of battery against respondent which resulted in the loss of 7 pregnancies during the time of cohabitation with the petitioner, and that a particular act of battery meted on respondent by petitioner almost resulted in the loss of the eight pregnancy before a friend took her to the hospital in order to save her life and that of the baby, which eventually led to the separation.

Further, she avers that because of the previous pregnancies she lost as a result of petitioner's brutality, respondent underwent IVF treatment fully sponsored by her to get pregnant for the eight time before suffering these mindless acts of cruelty from the petitioner.

In all, she denies the petition and states that the entire paragraphs of the petition are lies fabricated by

the petitioner to give respondent a bad name to enable him secure dissolution of their marriage.

On the 4th of October, 2021, petitioner opened his case and testified as pw1. His name is Omaiye Anthony Ikwuoche, a business man who lives at No. 6, G2 Street, CITEC Estate, FCT, Abuja. He stated that he filed a petition before this Honourable court and adopted it as his oral evidence in this case. He stated further that he got married to Respondent on the 6th of may, 2014 and was issued a marriage certificate. He tendered a CTC of the said certificate dated 6th of may, 2014 which was admitted as exhibit A. He also stated that the marriage produced one child. He does not know the name or age of the child. All he knows is that people call the child ukondu, and that respondent was pregnant when she left the house in 2017 for an unknown destination.

Under cross examination, he admitted that he still stays in their matrimonial apartment till date. To a question, he denied the fact that respondent warned people not to disclose her location to him but admitted that on one occasion, respondent approached him with a knife which is still in the house, but that he could not remember whether he reported the matter to the authorities or not.

To a question, he answered that as a responsible husband and loving father, he knows his responsibilities towards his child but that he neither sent money to the child for feeding nor knew the school the child attended because of the surrounding circumstances in which the child was born.

The first respondent witness is Barbara Omaiye, the respondent / cross petitioner herself. She filed a witness statement on oath dated the 3rd day of November, 2021 which she adopted as her oral evidence in this case.

The second respondent witness is Christabel E. Ogli lyanyan. She also filed a witness statement on oath dated the 3rd day of November, 2021 which she adopted as her oral evidence in this case.

The third respondent witness is Deborah John who also filed a witness statement dated the 3rd day of November, 2021 which she adopted as her oral evidence in this case. Thereafter, respondent tendered a total of 6 documents which were marked and admitted as exhibits.

I have seen the witness statements and read same.

At the trial, respondent/cross petitioner urged the court to refuse the petition for lack of merit and grant all the reliefs in the cross petition. Thereafter, the

matter was adjourned for adoption of final written addresses.

The respondents final written address is dated the 19th day of November 2021 and filed same date. Counsel for the respondent raised two issues for determination which are;

1. Whether the petitioner has proved his case as required by law to entitle him to his claims before this honourable court.
2. Considering the facts, circumstances and state of pleadings before this court, whether the cross petitioner is entitled to the grant of the reliefs as contained in the cross petition.

On issue one, counsel submitted that petitioner has not proved his case before this honourable court, as he did not present credible evidence to prove the facts and allegations contained in his petition. He referred the court to **Section 137 of the Evidence Act Cap 112, Laws of the Federation and the case of JEJE VS UBA PLC [2007] ALL FWLR PT.381 at 1783**. He urged the Honourable court to so hold.

On issue two, counsel submitted that the cross petitioner has proved that her marriage to cross

respondent has broken down irretrievably, as she testified to intolerable behaviour of beating, violence and torture, both physically and emotionally by the cross respondent whose testimony were not countered in any way. Further, the testimony of two other witnesses who testified for cross respondent were not also countered. He referred the court to the case of **HARRIMAN VS HARRIMAN [1989] 5 NWLR PT. 119.**

The petitioner's final written address is dated 5/01/22. He raised 3 issues for determination which are centred on whether the marriage has not broken down irretrievably, whether the petitioner is not entitled to fatherly right over the child of the marriage and whether cross petitioner is entitled to the reliefs sought.

Cross petitioner filed a reply to petitioner's final written address dated 7/01/ 22 wherein she adopted all the averments and depositions contained in her cross petition.

In the considering the petition and cross petition before this court, regard must be made to the Matrimonial Causes Act which is the enabling law that governs matrimonial causes.

The grounds upon which petitioner seeks dissolution of this marriage are cruelty and desertion among other things. The facts are that respondent deserted petitioner for an unknown destination, and that parties have lived apart for a continuous period of 2 years immediately preceding the presentation of the petition.

The law is, he who asserts must prove. The standard of proof is settled by **Section 82 [1] of the Matrimonial Causes Act, 2004** which states that any alleged fact must be proved. **See Nwankwo vs Nwankwo [2004] LPELR 24396 [CA]**

In my view, petitioner's alleged facts of cruelty and desertion falls short of the standard of proof required.

On the other hand, respondent led credible evidence during the trial and tendered several documents as exhibits to show that it was in fact petitioner's acts of cruelty, torture and inhuman treatment that drove respondent out of the matrimonial home.

On the issue whether the marriage has broken dawn irretrievably, it was held in **IBRAHIM VS IBRAHIM [2006] LPELR 7670 [CA]** that the court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken dawn irretrievably if but only if the petitioner satisfies the court that the parties have lived apart for a continuous period of at

least two years immediately preceding the presentation of the petition. **See Section 15 [2] [e] of the Matrimonial Causes Act, 2004.**

As it is, both parties agree on this issue which further validates the position of the law. In the end, the petition fails, and the cross petition succeeds.

For avoidance of doubt this court orders as follows:

1. It is hereby declared that the marriage contracted on 6th May 2014 between the Respondent/Cross Petitioner and Petitioner/Cross Respondent at Federal Marriage Registry, Abuja has broken down irretrievably on the ground as stated in Section 15(2) (e) of the Matrimonial Causes Act and a Decree Nisi is hereby granted in dissolution of the marriage. The Decree Nisi shall become absolute after three months from today.
2. Custody of the only child of the marriage being Master Ekundu Omaiye is granted to the Respondent/Cross Petitioner with right of supervised access given to the Petitioner/Cross Respondent three (3) times in a year(April, August and December) in a public place as may be agreed by the parties pending the time the child attains majority and decides of his free volition which of the parents to live with, if any at all.

3. Petitioner/Cross Respondent is ordered not to interfere or attempt to forcefully take Master Ekundu Omaiye the only child of the marriage from the Respondent/Cross Petitioner either by himself, agents or privies.

LEGAL REPRESENTATIONS:

1. Eko Ejembi Esq for the Petitioner/Cross Respondent
2. Dennis Abu Esq for the Respondent/Cross Petitioner

Signed
Hon. Judge
2/2/2022