

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

THIS THURSDAY, THE 17<sup>TH</sup> DAY OF MARCH, 2022.

BEFORE HIS LORDSHIP:

HONOURABLE JUSTICE JUDE O. ONWUEGBUZIE - JUDGE

**JUDGMENT**

**BETWEEN:**

VICTOR EBIBOTEI BOMI -----PETITIONER

AND

CHICHEBEM NKEMDIRIM BOMI-----RESPONDENT

Vide a petition dated 23<sup>rd</sup> day of February,2021 and filed the same day, the petitioner who was lawfully married to the respondent on 11<sup>th</sup> day of January,2019 at Federal Marriage Registry Ikoyi Lagos, sought for the dissolution of their marriage on the ground that the marriage has broken-down irretrievably. The factual grounds upon which the petitioner predicated his petition are contained in paragraph 8 of the petition.

Consequently, the petitioner prayed this court for the following order:-

- a. A decree of dissolution of the marriage between the petitioner and the respondent on the ground that the marriage has broken down irretrievably.
- b. An order for the declaration that the petitioner revert to her maiden name of Miss Chichebem Nkemdirim Aguocha.
- c. An order that the Respondent immediately cease and desist from slandering the petitioners name and assassinating his character.

- d. An order that the respondent provide a written apology to the petitioner for every act of slander of his name and assassination of his character, that the respondent immediately proceed to remove every such published slanderous words and secure the removal of any such slanderous words published by third parties, that the respondent immediately publish and cause to be published a written apology and retraction of every such slanderous word and/or write up on every website, social media platform and any other place that same has been published, and immediately cease and desist from any such actions going forward.
- e. An order that the Respondent return all of the valuable items of the petitioner, including but not limited to:
  - i. The Diamond Engagement Ring, being a lady's 14Kw. 75 pear Cluster Set I-II Engagement Ring.
  - ii. A Letterman Jacket with the petitioner's name on it.
  - iii. Any and all other personal property of the petitioner in the Respondent's possession.

Upon being served the petition and other originating processes on the respondent. The Respondent/Cross-Petitioner filed her Answer and Cross petition and witness statement on oath dated 6<sup>th</sup> day of October,2021 and filed the same day.

At the close of processes, the petition was adjourned for hearing three consecutive times, on the 21<sup>st</sup> day of September,2021, 20<sup>th</sup> day of October,2021 and 1<sup>st</sup> November,2021 and on all the three occasions the petitioner was absent and unrepresented, despite being served with hearing notices. Consequently, this court granted the respondent's counsel's application and foreclosed the petitioner from opening his petition and order the respondent to proceed with her cross petition.

In proving her cross petition, the Cross Petitioner as DW1 adopted her witness statement on oath dated 5<sup>th</sup> day of August,2021. It is the testimony of the Respondent/Cross-Petitioner as DW1 that she got married to the petitioner on 11<sup>th</sup> January,2019 at Federal Marriage Registry Ikoyi Lagos and she also tendered the marriage certificate and this was admitted as exhibit DW1. The Respondent also testified that her face, was battered by the petitioner and tendered pictures to this effect and this was admitted as Exhibit DW1B. The Respondent also tendered a flash drive to prove that the petitioner has a mistress and other documents.

After the respondent/cross petitioner's testimony, this case was adjourned to the 6<sup>th</sup> day of December,2021 for Cross Examination of DW1. On the 6<sup>th</sup> day of December,2021, the Respondent/Cross-Petitioner was cross-examined on her evidence and discharged and this case was adjourned to the 13<sup>th</sup> day of January,2022 for adoption of written addresses.

In his own adopted written address dated 11<sup>th</sup> day of January,2022 and filed the same day, learned counsel to the petitioner **Chinedu Nnadi Esq** Distilled/Formulated the following two issues for the determination of this court;

1. Whether or not from the totality of evidence adduced the respondent/Cross-Petitioner has sufficiently proved her case to be entitled to the reliefs for the dissolution of the marriage between her and the Petitioner/Respondent and or whether the ingenious reliefs other than the relief for the dissolution of the marriage sought by the Cross-petitioner are grantable under a petition for the dissolution of marriage particularly reliefs (b) (under maintenance and settlement of property), (d), (e) and (f) claimed in this suit?
2. Whether exhibit DWC tendered and admitted by this court contrary to section 84 (2), (4) and (5) of the Evidence Act, 2011 cannot be expunged

by this court more so where it was dumped on the court without the court taking cognizance of the content and DWD.

Conversely, learned counsel to the Respondent/Cross- Petitioner, *Alex Akoja Esq* and *Charity C. Ibezim Esq.* in their own written address dated 20<sup>th</sup> day of December,2021 and filed on the 22<sup>nd</sup> day of December,2021 formulated a sole issue for determination.

Whether by the position of facts, circumstances and evidence led/pleaded in support of this case, the respondent/cross petitioner has not proven by credible and uncontroverted evidence her case to be entitled to a decree of dissolution of the marriage between she and the petitioner and all the reliefs sought by her in her Answer/Cross Petition.

I have carefully examined the facts of this petition and the legal submissions of learned counsel on both sides and I am of the considered view that the only issue that call for determination is whether the ***Respondent/Cross-Petitioner has proved that her marriage to the petitioner has broken-down irretrievably to be entitled to the relief she seeks?***

In the instant petition, the grounds upon which the Respondent/Cross-Petitioner predicated her cross-petition are two of the eight (8) factual grounds provided in the Matrimonial Causes Act.

1. That since the marriage the Petitioner/Respondent has behaved in such a way that the Respondent/Cross-Petitioner is not reasonably expected to live with him.
2. That the petitioner has deserted the Respondent/Cross-Petitioner a continuous period of at least one year immediately preceding the presentation of this petition.

Arguing extensively on the relief for damages and cost, learned counsel to the petitioner insisted that a claim in special damages must be proved by arithmetic

calculation and that it is only where this is done and the burden of prove discharged that the party will be entitled to actual loses incurred. Learned counsel added that the court cannot give more under the head of a claim in the nature of special damages. He cited *U.T.B.V Ozoemena (2007) All 1014 at 1049, Eluwewe V. Elder Dempster agencies ltd (1976) 6WLR (pt.11) 225, Neka B.B.B Manufacturing co. Ltd V. A.C.B Ltd (2004)*

On the issue of the respondent/cross petitioner's relief for an order that the petitioner should pay the sum of Five Hundred Thousand Naira only.

The petitioner's counsel submitted that this court is not equipped by law or fact or by evidence presented before it to make orders granting this relief.

Learned counsel argued that the court as presently constituted as a matrimonial court cannot by any stretch of good will to the cross petitioner grant these order as the cross petitioner has failed to lead credible evidence in support of her case.

Learned counsel strenuously argued that the invoices tendered by the cross-petitioner does not amount to receipt. He cited *N.B.A. V. Nyoro (2019)*

Counsel added that invoices tendered by the cross petitioner without correspondent receipt does not substantiate the cross-petitioner's claims.

Counsel also cited *Oteki V. A.G. Bendel State (1986) 2NWHR (Pt-24) 648 at 668 E.E.C. Limited V. Justice Baba Saye Guba (2017) LPELR 43275.*

Learned counsel further submitted that the total amount contained in the invoices tendered does not amount to the sum of Five Hundred Thousand Naira, which the cross petitioner claims as special damages and urged the court to hold that the relief is not proved with credible evidence.

On the second monetary claim for the sum of four million naira for hardship, domestic violence, emotional and psychological trauma, desertion and purported abuse of the Respondent/ cross-petitioner alleged fundamental human

rights and also a claim for an injunctive relief, including another damages of five million naira for aggravated damages.

Learned counsel submitted that reliefs d and e and part of relief b are all relief proper before a court in a matter of enforcement of the fundamental human right and not in a divorce proceedings.

Counsel insisted that these approach by the Respondent/cross Petitioner are unknown, strange and not cognizable under Matrimonial causes proceedings. Counsel submitted that divorce proceedings is sui generis.

Counsel further submitted that there is no award damages for hardship, domestic violence under Matrimonial causes because the law presumes the husband and wife as one in a monogamous marriage. He cited *Owners MV Baco Liner 3 Vs. Adejini (1993) 2NWHR (Pt. 274) 206.*

Learned counsel further submitted that if relief b,d,e and f fails, then the relief for general damages must necessarily collapse because the Respondent/cross Petitioner can only be entitled to general damages where it is successful.

He cited *Int'l Ltd V. S.K int'l ltd (2010) 13 NWLR (Pt. 1211) 270 at 296, U.B.N. Plc Vs. Nwankwo (2019) 3 NWLR (PT.1660), Air Liquid Nig. Plc Vs. Nnam (2011) 9 NWLR (PT. 1251) 61.*

Learned counsel further submitted that he who asserts must prove and that award of damages by the court must be predicated on legal evidence of the highest probative value and Weight see. *C. B. N. Vs. Beckiti Construction Ltd. (2011) 5 NWLR Pt. 203; Obere Vs. Board Management of Eku Baptist Hospital (1978) 6-7 SC, 15; Barau Vs. Cubitts (Nig) Ltd. (1990) 5 NWLR Pt. 152, 630; A. G. Oyo State Vs. Fairlakes Hotel Ltd. (No.2) (1989) 5 NWLR Pt. 121, 255; Uwa Printers (Nig.) Ltd. Vs. Investment Trust Company Ltd. (1988) 5 NWLR Pt. 92, 110; Osumosu Vs. A.C.B (1976)11 SC, 55.*

Learned counsel added that evidence must be led on all issues submitted before the court in relation to relief (f), which is a claim for the cost of filing the instant suit. Learned counsel submitted that this claim also can not be granted by this court, because the claim is in the nature of special damages which receipt of filing had to be tendered and admitted in evidence, as it must be specifically pleaded and strictly proved by credible evidence, he cited *Gamuyu Badmus Vs. A.O Abegunde (1999) 71 LRCN, 2912 AT 2925, NCC Ltd V. S. C.O.A (NIG) LTD (1991) 7 NWLR (PT. 201) 80 AT 97.*

Counsel further submitted that it is unethical and unknown to Nigerian legal jurisprudence for a litigant to pass his/her financial burden to another and cited *S.P.D.C Nig V. Okonedo (2008) 9 NWLR (Pt. 1091) 85 at 122, S.P.D.C N Ltd V. Okoh (2018) 17 NWLR Pt. 1649, Ihekwoba V.A.C.B. (1998) 10 NWLR (PT. 571) 590.*

Arguing his issue two, learned counsel submitted that exhibit DWD though tendered and admitted, but that it being a computer-generated evidence woeful (SIC) failed to meet the conditions prescribed by sections 84 of the evidence act 2011. He cited *Kubor V. Dickson (2013) 4 NWLR (PT. 1345) 577—578 Dickson V. Sylva (2017) 8 NWLR pt. 1567, I.G.P. V. Ubah (2015) 11 NWLR (PT. 1471) 445.*

Learned counsel also cited 1 *C.O.P Vs. Ubah (2015)(2015)11 NWLR (Pt. 1471) 445 Fagbuaro Vs. Akinbami (2015) 6NWLR (Pt. 1455) 372.* Counsel finally urged this court to dismiss with substantial cost the claims of the cross-petitioner set out in the first issue for determination. He added that the manner in which the cross-petitioner set out her relief is not only faulty in its entirety, but also offends the principle against double compensation. He cited *Visi (Nig) Ltd. Vs. Trade bank Plc (2013) 8 NWLR (Pt. 1357) 504, Total Nig. Plc Vs. Akinpelu (2004) 17 NWLR. 903 at 526* learned counsel finally urged this court to dismiss the claims of the cross-petitioner particularly reliefs b, d, and f.

Conversely, the learned counsel to Respondent/Cross-petitioner arguing his lone submitted that section 15(1) (2) of the matrimonial causes Act made provisions guiding dissolution of marriage contract under the marriage Act counsel added that the only ground for dissolution of marriage under the Act is that the marriage has broken-down irretrievably by proving one or more of the factual grounds provided for under section 15(2) a-h of the matrimonial causes act he cited *Ekerebe Vs. Ekerebe (1993) 3 NWLR (Pt. 596)*.

Counsel submitted that in the instant petition, the Respondent/Cross Petitioner has succeeded in pleading and proving that the marriage has broken-down irretrievably at the instant of the petitioner/Respondent and gave evidence to this effect and also seek return of the bride price. Counsel cited *Ibrahim Vs. Ibrahim (2007) All FWLR (Pt. 346) 474 at 489-490*. Counsel insisted that the respondent/cross-petitioner has adduced sufficient evidence to prove that the behavior of the petitioner which she finds intolerable to live with and that she is entitled to the relief sought as endorsed in her Answer/Cross petition. He added that the respondent has proved her case on the balance of probabilities through uncontradicted documentary and oral evidence and that she is entitled to damages. Counsel cited *MTN Vs. Corporate Communication Investment Ltd (2019) LPEHR 47042, Bellview Airlines Ltd Vs. Fadahunsi & Ors. (2015) LPELR 25915 CA*. learned counsel added that the award of cost is a matter within the discretionary powers of the court, but added that such discretion should be exercised judicially and judiciously. He cited *Ojiegbe Vs. Ubani (1961) LPELR 25060*. Counsel insisted that admitted facts needs no further proof and cited *Military Governor of Onod State Vs. Kolawole (2000) FWLR (Pt. 3) 395 at 409, Eric Nig. Ltd Vs. Union Bank Plc (2001) 12 SCNY 184, Mba Vs. Mba (2018) 15 NWLR (Pt. 1641)*.

In the instant case, the plank of the Respondent/Cross-Petitioner's case, according to her can be summarized as follow:-



- a. Since the marriage committed adultery and the Respondent/Cross-Petitioner finds it intolerable to live with the Petitioner/Respondent;
- b. Since the marriage behaved in such a way that the Respondent/Cross-Petitioner cannot reasonably be expected to live with the Petitioner/Respondent;
- c. Since deserted the Respondent/Cross-Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;

However, from the evidence before this court, the respondent did not lead any evidence to prove that the petitioner committed adultery with his alleged mistress. Consequently, this ground fails.

The second ground that the petitioner deserted the respondent for a period of one year preceding the presentation of this petition. The evidence before this court is that the parties got married on 11<sup>th</sup> day of January, 2019 and the petitioner left their matrimonial home on 29<sup>th</sup> day of January, 2019, while the petitioner filed his petition 23<sup>rd</sup> day of February, 2021 and the Respondent filed her Answer and cross petition on 4<sup>th</sup> August, 2021. Instructively, none of the parties are objecting to the dissolution of this marriage.

Consequently, this ground succeeds, I therefore hold the view that the Respondent has proved that the parties have been living apart for more than one year preceding the presentation of this petition and the petition/cross respondent is not objecting to the dissolution of the marriage.

I also hold the considered view that it is as clear as daylight that the Respondent/Cross. Petitioner has not proved any of the damages she is claiming while the Petitioner/Respondent abandoned all his claims, having not led any evidence in proof thereto.

On the whole this cross petitioner succeeds. In the light of these a decree nisi is granted in dissolution of the marriage. Solemnized on the 11<sup>th</sup> day of January,

2019 at the Federal marriage Registry Ikoyi Lagos between Bomi Victor Ebibotei and Aguocha Chichebem Nkemderim the decree nisi shall become absolute after three months from today.

*Signed:*  
*Hon. Judge*  
*17<sup>th</sup>/03/2022.*