IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA

ON WEDNESDAY, 8TH DAY OF JUNE, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/PET/221/2021

BETWEEN

CHINENYE LYNDA OGBONNAYA --- PETITIONER

AND

CHIKERE DAVID IKEGWU --- RESPONDENT

JUDGMENT

The petitioner filed her Notice of Petition for dissolution of marriage on 1/7/2021. In paragraph 10 of her petition, the petitioner seeks these following reliefs:

a) A decree of dissolution of the marriage on the grounds that the marriage has broken down irretrievably.

b) An order of Court granting custody of the two children of the marriage to the petitioner.

c) An order for the maintenance of the children of the marriage in the following terms:

[i]Feeding per month	-	30,000
[ii]Transportation per term	-	30,000
[iii]School fees for Ihenna per term	-	85,000
[iv]School fees and Therapy for Ohajimnaetochukwu per term	-	200,000
[v]Clothing per annum	-	100,000

d) Any further order or orders as the Honourable Court may deem fit in the circumstances.

In proof of the petition, the petitioner testified as the PW1. She adopted her statement on oath filed on 1/7/2021 and tendered Exhibit 1 [i.e. the Marriage Certificate].PW1 was cross examined by counsel for the respondent [S. O. S. Napoleon Esq.]. At the close of the petitioner's case on 15/2/2022, Mr. Napoleon informed the Court that: *"We do not intend to put up any defence."*

The evidence of the petitioner is that she is the lawful wife of the respondent as indicated in the Marriage Certificate [Exhibit 1].Since the marriage, the respondent has refused and/or neglected to carry out his duties *"as the man of the house"*. He has not made adequate arrangements for the education and upkeep of the children and does not show any love to her. Their second son had some medical difficulties after birthwhich require constant medical attention; but the respondent has failed to make any meaningful contribution

in that regard. Therespondent has been telling lies about himself and his business activities and she cannot conveniently vouch that he engages in lawful activities. The respondent is always given to violence. After an occasion when he physically abused her, he kept making subtle threats to further manhandleher.

The petitioner further stated that *"matters came to a head"* when she saw a text message in the respondent's phone confirming that he has been having extra marital affairs with 5 other women simultaneously.When confronted, the respondent did not deny same but threatened to deal withher if she complained. These constant threats continued to the extent that she had to make a formal complaint to the Police andrespondent was requested to write an undertaking to guarantee her wellbeing. Things got worse that she,being afraid for her life and that of her 2 little children, moved out of the matrimonial home sometime in October2012.As a result of the bad behaviour of the respondent, shefiled a matrimonial cause in 2013 with *No.: PET/194/2013* which was abandoned in 2016 following the reconciliation of the parties.

After the reconciliation, parties started living together from 2018 till March 2021 when the respondent once again moved out of the house. His stay in the house *"has been hellish"* as he does nothing but to complain, bully her and make side remarks that she is feeling big because she owns the house.Matters got to a breaking point when he started smoking marijuana in the compound

behind the room where the teenage boys were staying. The respondent keeps several women outside of the marriage to the extent that he had infected her with STDs. The respondent has been scheming to abandon her and the children to move to any of his 5 mistresses with financial means to take care of him.

The further evidence of PW1 is that the respondent has never behaved like aresponsible father and husband.He has frustrated all moves at reconciliation both by friends and family members leaving her with no other option than to finally move on with her life. This state of affairs has greatly frustrated her and has adversely affected her socially and psychologically. She cannot reasonably be expected to live with a *"violent and irresponsible man"*. The respondent had told her via telephone chat that he has started making arrangements to marry another wife and that she will be invited to the wedding.

During cross examination of PW1 on 15/2/2022, she stated that the school fees for her children for this term have been paid by respondent. The respondent paid their school fees for the past 2 terms. Before then, her second son was at home because his school fees were not paid; he was at home for about 1 year before the fees were paid. On Friday, 11/2/2022, the respondent brought food items and provisions for the kids. She and the respondent buy clothes for the children. Her first son is about 14 years. As a responsible mother, she will not celebrate if the Court grants her request for divorce; but that is the last resort.

At the end of the trial, learned counsel for the petitioner, AlozieNmerengwaEsq., filed the petitioner's final written address on 28/2/2022, which was served on the respondent on 4/3/2022. The respondent did not file his final written address. On 23/3/2022, AlozieNmerengwaEsq. adopted the petitioner's final written address.

Submissions of Learned Counsel for the Petitioner:

Mr. AlozieNmerengwa formulated two issues for determination, to wit:

1. Whether or not the petitioner has made out a case to be entitled to an order of dissolution of the marriage.
2. Whether or not the petitioner is entitled to be granted custody of the two children of the Marriage and if the Respondent is liable to pay maintenance for the children of the marriage.

On Issue 1, learned counsel for the petitioner referred to section 15[2][a] & [c] of the Matrimonial Causes Act, which provide:

> *[2] The court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts:*
>
> *[a] That the respondent has wilfully and persistently refused to consummate the marriage;*

[c] That since the marriage the respondent has behaved in such a way that the petitioner cannot be expected to live with the respondent.

Mr. AlozieNmerengwa stated that it is in evidence that the respondent has abandoned the matrimonial home since March, 2021 and as such, could not possibly be consummating the marriage. Also, the respondent's attitude of maltreating the petitioner, not providing for the family and all the hardship the petitioner has suffered in the marriage are not what any reasonable wife could be expected to tolerate and live with. It is in evidence thatthe respondent is given to violence and had in the past infected the petitioner with sexually transmitted disease [STD].

He pointed out that *"our media space is awash with gory news of parties who commit suicide or kill each other over domestic quarrels and misunderstandings."* It was therefore submitted that where adults who had lived together as man and wife come to court seeking the dissolution of the marriage, our courts should grant same as no court can order parties to remain married against their wishes. He concluded that it is manifestly clear that the marriage between the petitioner and the respondent has broken down irretrievably.

In respect of Issue 2, the petitioner's counsel referred to section 71[1] of the Matrimonial Causes Act to support the view that the interest of the children is most paramount on the issue of custody. He also relied on**Alabi v Alabi [2008] 11 WRN 87**on the factors a court will consider in determining the

welfare of a child, one of which is that in the case of a child of tender age, custody should be awarded to the mother unless other considerations make it undesirable. He submitted that only the petitioner deserves to be awarded the custody of the children of the marriage i.e.IhennaChimezurumIkegwu[14 years] and OhajimnaetochukwuIkegwu[12 years] who have been with the petitioner who caters for their needs and cannot afford to have them separated from her.

Finally, AlozieNmerengwaEsq. referred to the claims of the petitioner for the financial contribution to be made by the respondent for the upkeep, welfare and education of the children. He urged the Court to hold that in the light of the current inflationary trend in Nigeria, the sums claimed by the petitioner are very fair.

Decision of the Court:

Theevidence of the petitioner was not challenged or controverted by the respondent. Be that as it may, the petitioner has a duty to adduce evidence to prove that she is entitled to the decree of dissolution of marriage. Section 15[1] &[2] of the Matrimonial Causes Act provide:

> *[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.*

[2] The court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts:

The facts upon which the Court hearing a petition for a decree of dissolution of a marriage shall hold that the marriage has broken down irretrievably are set out in section 15[2][a]-[h]of theMatrimonial Causes Act, which include:

[c] That since the marriage the respondent has behaved in such a way that the petitioner cannot be expected to live with the respondent.

The Court is of the view that the petitioner has adduced evidence to prove that since the marriage, the respondent has behaved in such a way that she cannot be expected to live with him. For example, the petitioner gave evidence that the respondent: [i] is violent; [ii] has constantly threatened to manhandle her; [iii]has been having extra marital affairs with 5 other women simultaneously; and [iv] had infected her with STDs.

As I said before, the respondent did not challenge or controvert these pieces of evidence. In the circumstance, the Court holds that the petitioner has satisfied it that her marriage with the respondent has broken down irretrievably. The petitioner is entitled to relief [a] for a decree of dissolution of her marriage with the respondent celebrated on 20/3/2009.

In relief [b], the petitioner seeks an ordergranting custody of the 2 children of the marriage, that isIhennaChimezurumIkegwu and OhajimnaetochukwuIkegwu to her.

Section 71[1] of the Matrimonial Causes Act provides:

> *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.*

The position of the law is that in deciding which of the parties is to have custody of the child or children of the marriage, the interest of the child or children is the paramount consideration. The evidence before the Court is that the 2 children have lived with the petitioner. In **Alabi v. Alabi [supra]; [2007] LPELR-8203 [CA],** it was held that one of the considerations in determining the custody of a child of the marriage is the degree of familiarity of the child with each of the parents. Besides, the respondent did not adduce any evidence to warrant the refusal of this order. The Court holds that the petitioner is entitled to have custody of the 2 children of the marriage.

In granting the order for custody of the 2 children of the marriage in favour of the petitioner, the Court has taken into consideration the fact that the said childrenare entitled to stay where they choose upon attaining the age of 18 years.

The Court has also taken into account the need to make an order for the respondent to have access to the children of the marriage pursuant to section 71[4] of the Matrimonial Causes Act, which provides:

> *Where the court makes an order placing a child of a marriage in the custody of a party to the marriage, or of a person other than a party to the marriage, it may include in the order such provision as it thinks proper for access to the child by the other party to the marriage, or by the parties or a party to the marriage, as the case may be.*

I hereby grant an order that the respondent shall have access to the 2 children of the marriage at least 2 times each month at such times as may be convenient to the petitioner.

In relief [c], the respondent claims several sums of money for maintenance of the children of the marriage i.e. for feeding, transportation, school fees and clothing. The common law principle is that a man has a responsibility to provide for his wife and children. However, the respondent is required to give evidence in support of her claim for maintenance.Unfortunately, the petitioner did not plead any fact or adduce any evidence on how she arrived at the sums claimed in order to enable the Court reach a decision in this regard. Also, I have considered the provision of section 70[1] of the Matrimonial Causes Act that:

> *"Subject to this section, the court may, in proceedings in 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."*

By this provision, evidence ofthe *"earning capacity"* of the respondent is necessary in order for the Court to determine the issue of maintenance of the 2 children of the marriage. The petitioner did not give any evidence with respect to the earning capacity of the respondent. There is also no evidence of the means of livelihood of the respondent. In fact, the testimony of the petitioner that the respondent *"has been scheming to abandon me and the children to move to any of his five mistresses with financial means to take care of him"* suggests that the respondent is not a man of means.

In the absence of:[i] evidence to show how the petitioner arrived at the sums claimed for maintenance of the children of the marriage; [ii] evidence of the earning capacity of the respondent; and [iii] evidence that the respondent has the means to pay the sums claimed, there is no legal basis to grant the relief.

Conclusion:

In conclusion, the Courtgrantsthe following orders:

1. A decree *nisi* for the dissolution of the marriage between the petitioner and the respondent celebrated at AMAC Marriage Registry, Abuja on 20/3/2009. The decree *nisi* shall become absolute after three [3] months from today.

2. The petitioner shall have custody of the two [2] children of the marriage namely: IhennaChimezurumIkegwu and OhajimnaetochukwuIkegwu until each of them attains the age of 18 years. For the avoidance of doubt, each of the said children shall be at liberty to decide where to stay upon attaining the age of 18 years.

3. The respondent shall have access to the two [2] children of the marriage at least two [2] times each month at such times as may be convenient to the petitioner.

1. An order of certiorari quashing the proceedings and orders of the Grade 1 Area Court Dei-Dei, Abuja presided over by the 3rd respondent in *Case No. CR/23/2021* togetherwith the Direct Criminal Complaint issued and pending before the Honourable Judge for want of jurisdiction.
2. An order of prohibition stopping the 3rd respondent, Grade 1 Area Court Dei-Dei, Abuja from further entertaining and/or hearing *Case No. CR/23/2021* between the 1st& 2nd respondents and the applicants for want of jurisdiction.

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HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Counsel:

A. J. Joseph Esq. for the petitioner.