

**IN THE HIGH COURT OF JUSTICE OF THE  
CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/PET/87/2012**

**BETWEEN:**

**MR. GABRIEL IKECHUKWU OHA.....PETITIONER**

**VS**

**MRS. BERNADETTE OHA.....RESPONDENT**

**JUDGMENT**

By a Notice of Petition dated 7/12/2012 and filed same day, the Petitioner Mr. Gabriel Ikechukwu Oha filed a Petition seeking for the following:-

- (1) A decree of dissolution of the Petitioner's marriage contracted on 2006 at Abuja Municipal Area Council Marriage Registry with the Respondent on the following grounds:-
  - (i) Since contracting this marriage, the Respondent has engaged in acts of infidelity, and this the Petitioner finds intolerable to live with.
  - (ii) The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with.
  - (iii) And that deep seated hatred and malice have developed

between the Petitioner and the Respondent which may bring fatal consequences should they be forced to continue with the marriage.

- (2) An Order granting the Petitioner full custody of the three (3) children of the marriage now living with the Respondent. The children are
  - (i) Miss Favour Oha
  - (ii) Master Victor Oha
  - (iii) Miss blessing Oha
- (3) An Order limiting the Respondent access to the children only school holidays and under the supervision of a chairperson.
- (4) An Order restraining the Respondent from harassing molesting, assaulting or in any way and manner either by her or her hired agents, tugs, assassins, kidnappers threaten the life and career of the Petitioner and the children.
- (5) And for such further order or order(s) this Honourable Court may deem just to make in the circumstances of this case.

The grounds upon which the Petition is predicated are as stated in Paragraph 7 of the Petition:-

### **7 GROUNDS FOR PETITION**

The facts relied on the Petition as constituting the grounds specific above are as follows:-

**(a) ACTS OF INFIDELITY**

- (i) The Respondent has continuously and habitually engaged in acts of infidelity to a level which the Petitioner is no longer able to condone.
- (ii) The Respondent sworn never to be submissive to the Petitioner, claimed superiority over the Petitioner and exhibiting it by bringing in all sorts of men into the matrimonial home against the Petitioner's approval.

**(b) ACTS OF CRUELTY, PHYSICAL ASSAULT, DEGRADING, AND INHUMAN TREATMENT**

- (i) The Petitioner on one occasion in March 2011 very narrowly escape being stabbed with a kitchen knife by the Respondent for no actual offence, an act that inflicted great shock to the Petitioner and his little children.
- (ii) The Respondent often engages the services of her Police friends, cultist and people of questionable characters to harass, intimidate, assault, threatens and blackmail the Petitioner both at home and in his working place in order to have things her way.
- (iii) The Respondent has on April 2011 took practical steps to pour petrol on the Petitioner and set him ablaze unless he pays her certain amount of money.

- (iv) The Respondent is overbearing, very desperate, excessively and dangerously greedy, always living far above the Petitioner's income.
- (v) The Respondent is an oppressor and extortionist and has oppressed the Petitioner all through the Years they lived together, resorting most often to use the children of the union as instruments of blackmail and extortion.
- (vi) The Respondent is a habitual fighter, very quarrelsome, aggressive, constantly fighting the Petitioner, relations, and neighbours, lacks respect for everybody and only calms down her devilish rage when she has destroyed household properties.
- (vii) The Petitioner is a highly principled gentleman who has a very strong policy not to beat his wife or any other women and has courageously kept and lived by this principle inspite of unbearable provocations by the Respondent who often physically molests, slaps and drag him around even in the presence of the children, hence he can no longer live with the Respondent as man and wife.

**(c) THE RESPONDENT HAS BEHAVED IN SUCH A WAY THAT THE PETITIONER CAN NOT BE REASONABLY EXPECTED TO LIVE WITH**

- i. On several occasion, the Respondent had resorted to

“force imprisonment” of the Petitioner by locking him up for the whole day, even on working days, thereby preventing him from carrying out his official assignments. This has often resulted to reprimands and other disciplinary actions against the Petitioner by his employers.

- ii. The Respondent has severally and still threatened to cause the Petitioner to lose his job. On August 2012 she instigated her Police friends to go to the Petitioner’s office and arrest him with handcuffs on false accusations.
- iii. On the 5<sup>th</sup> April 2011, at about 9.45pm, the night before the Petitioner finally left the house, the Respondent with her mouth and in sane and sober condition made a definite statement, vowing that before this date next year, that the petitioner will be dead and six feet below. She went ahead to brandish substances strongly suspected to be a life poison which she has prepared and kept handy. This is apart from concoctions she used to lace the Petitioner’s food which makes him fall sick constantly. This was when the Petitioner, who could not sleep that night for fear of this life decided to leave the house for her and for good come the next day break, and he actually left his house

the following day with nothing except the cloth on him.

- iv. The Respondent has in the course of the marriage grown to become cruel and inhuman, having developed and exhibited deep seated hatred towards the Petitioner, seeing him only as a cash cow to be milked dry and consigned to dustbin, hence the Petitioner can no longer be reasonably expected to live with the behaviour of the Respondent and prays to this court to dissolved the marriage.

The Petition was served on the Respondent and on 29/4/2013, the Respondent's Amended Answer to the Petitioner was deemed filed and served. In the said Answer, the Respondent by way of ancillary relief, that is, Cross-Petition prays for the following reliefs:

Whereof the Respondent seek the following reliefs by way of ancillary reliefs or Cross-Petition.

- (a) An Order of Court dismissing the Petition as frivolous and lacking in merit

**OR IN THE ALTERNATIVE**

- (a) An Order of Court granting the Respondent full custody of the children of the marriage listed hereunder:
  - (i) Favour Chinwendu Oha – born 28<sup>th</sup> June 2006.
  - (ii) Victor Chibuike Oha – born 15<sup>th</sup> April 2008.
  - (iii) Blessing Pha – Born 9<sup>th</sup> August, 2010.

- (b) An Order of Court directing that the Petitioner shall have access to the children of the marriage once every school holiday under the supervision of a welfare officer, after prior notification to the Respondent.
- (c) An Order of Court directing the Petitioner to pay the Respondent the sum of ₦149,000.00 per month as maintenance for herself and the children of the marriage.
- (d) An Order of Court directing the Petitioner to pay such sum as may be necessary for the education of the children of the marriage from primary to Tertiary level as at when due.
- (e) An Order of Court directing the petitioner to rent/provide one bedroom apartment in Kubwa, Abuja for the Respondent and the three children of the marriage, being suitable and reasonable accommodation which reflects his status as a Civil servant working at the Budget Department of the Federal Ministry of Finance of the Presidency.

Pleadings having been concluded, the case went into full blown trial, with the Petitioner testify as PW1 and tendered Exhibit "A", during Examination in Chief and Exhibits "C1 – 3" and "D" tendered under Cross-examination of PW1.

The Respondent testified as DW1 and tendered Exhibits "E", "F<sup>1-3</sup>", "G", "H", "I<sup>1-2</sup>", "J", "K", "L", "M", "N", "O", "P", "Q<sup>1-2</sup>".

In the evidence of PW1, stated that the both parties got married in 2006 at the marriage Registry of the Abuja Municipal Area Council and the marriage is blessed with Three (3) children, Miss Favour Oha, Master Victor Oha and Miss Blessing Oha. He testified that he wants the dissolution of the marriage on the grounds that the marriage has broken down irretrievable, by reason of the grounds upon which stated in Para 7 of the Petition. In proof of this grounds gave a catalogue of evidence on cruelty, alleged Acts of infidelity and behaviour which he cannot reasonably be expected to live with.

Under Cross-Examination, the PW1 admitted living the matrimonial home in September, 2011 because of the unbearable situation, but continued to provide for the children and the Respondent. He maintained that it is true that the Respondent denied the children right to visit the Petitioner family home in the village and that he is not living with any woman.

At the close of PW1 – Petitioner’s evidence, the Respondent opened his case and testified that both parties resided at different places in Abuja after the marriage and they lived peacefully until sometime in 2008, when the mother-in-law came to visit after the birth of the 3<sup>rd</sup> child, then the Petitioner began to exhibit strange behaviour, like keeping late nights travelling out without the knowledge of the Respondent. That this conduct and behaviour of the Petition contained until 11<sup>th</sup> August, 2010, the Petitioner went to work and did not return to the matrimonial home, abandoning the Respondent and the (3) three children. She stated that in December, 2010, upon being informed of the Petitioner sickness, went to see the Petitioner at the Young Hospital, Kubwa and took care of him and



he eventually after discharged came back to the matrimonial home, until January, 2011 when he finally abandoned them to unknown destination. The Respondent stated that attempts were made for reconciliation by close family friends and the Priest, but all efforts failed. She alleged that the Petitioner was engaged with several women and in all failed to discharge his matrimonial obligation. She stated that the Petitioner only made minimal contribution towards the Respondent and the children despite his earning capacity and other source of income. That consequent upon this, the Respondent was left with efforts only of maintaining the children and herself, rent through assistance from her church, friends and her meager salary.

Under Cross-examination, she maintained that it was the mother-in-law whose presence cause the major problems that led to the unhappy home of the parties. She maintained that the Petitioner is a very promiscuous, and mentioned some names of women associated with the Petitioner. She deemed ever attempting to jeopardizes the work of the Petitioner at any time. She admitted that the Petitioner paid the sum close to ₦200,000 as rent.

At the close of trial, both counsel filed and exchanged their respective final Addresses and was adopted on 17/3/2022.

In the written submission of the Respondent, settled by M.U. Ohaka Esq, formulated four (4) issues for determination, which are;

- (1) Whether, considering the grounds specified in the Petitioner's Petition filed on 7/12/2012 and the Provision of Section 15 (1)

of the Matrimonial Causes Act, the Petitioner is entitled to his relief No. 1 for a decree of dissolution of the marriage between him and the Respondent.

- (2) From the evidence before the court, which of the parties is entitled to the custody of the children of the marriage.
- (3) Whether the Respondent is entitled to orders of maintenance for herself and the children and for the education, welfare, and upkeep of the children of the marriage.
- (4) Whether by virtue of the evidence before this Honourable Court, the Petitioner is entitled to a restraining order of injunction against the Respondent from harassing, molesting, assaulting or in any way and manner either by her or her hired agents, thugs, assigns, kidnappers threatening the Petitioner.

On the other hand, Charles Nwabueze Esq, counsel for the Petitioner filed the Petitioner Final Written address on 16/3/2022 and formulated Two (Two) issues for determination;

- (1) Whether from the evidence of the parties, the marriage between them have broken down irretrievably.
- (2) Whether or not the Petitioner is entitled to custody of the children of the marriage.

Having carefully considered the evidence of the parties, the submission of counsel and the judicial authorities cited as well as the Exhibits tendered

and admitted, the court finds that two (2) issues calls for determination, which are:-

- (1) Whether the Petitioner has established his case to entitled him to a decree of dissolution of marriage between and the Respondent.
- (2) Whether the Respondent has proven her case to be entitled to the reliefs sought her Cross-Petition.

These two (2) issues encapsulates the issues submitted by the parties in their respective written submission before the court.

In the determination of a Petition of marriage under Section 15 (1) of the Matrimonial Causes Act, it is competent for a marriage to be dissolved once a court is satisfied that the marriage has broken down irretrievably. And to come to that conclusion, the Petitioner must prove to the satisfaction of court any of the facts prescribed by Section 15 (2) of the Matrimonial Causes Act, categorized under sub-section A – H.

In this instant, the Petitioner relies on facts contained in Section 15 (2) (b) (c) and (d).

To succeed under Section 15 (2) (b) of the Matrimonial Causes Ac, a party relying on this grounds, must firstly join that party alleged to have committed the said adultery in line with Section 32 (1) of the Matrimonial Causes Act. In this instant the Petitioner did not join the said party alleged.

Secondly, that party alleging adultery has the burden duty to prove to act of adultery pursuant to Section 131 of the Evidence Act and Section 82 (1) of Matrimonial Causes Act. In this instant, the evidence of the PW1, was merely that the Respondent has committed acts of adultery, though mentioned a name but did not join that party. Granted that he sorts to have a DNA test done on the children to test their paternity, the court in a considered Ruling refused the application, this thus leaves the Petitioner without any proof of allegation of adultery. In the light of all these, I hold that this 1<sup>st</sup> leg of the relief, that is Section 15 (2) (b) of the Matrimonial Causes Act, does not avail the Petitioner.

On the 2<sup>nd</sup> leg of his Relief, Section 15 (2) (c) of the Matrimonial Causes Act.

To succeed the party relying on it must lead credible and sufficient evidence to the satisfaction of the court of acts or conducts which will warrant the court to grant the reliefs sought. See case of Ibrahim Vs Ibrahim (2007) ALL FWLR (PT. 346) 474 490 Para H – B.

On what constitute conduct or behaviour, the Petitioner finds cannot reasonably be expected to live with, it has been held in Ibrahim Vs Ibrahim (Supra) that the conduct or behaviour of the Respondent must be weighty and grave in nature to make further co-habitation virtually impossible. See the English Case of Katz Vs Katz (1972) ALL E.R 219.

In this instant, the Petitioner gave evidence of catalogue of acts of cruelty, physical, assaults, degrading and inhuman treatment.

Granted that cruelty has been held to suffice to satisfy acts which are grave and weighty, but the onus is still on the party to prove. See Nnana Vs Nnana (2006) 3 NWLR (PT 966) 1 @ 30 Para F – G @ Pg. 44 Para A – C.

A careful perusal of the evidence of the Petitioner as contained, that court finds that the Petitioner has failed to prove this grounds of Section 15 (2) (c), therefore does not avail him.

On the Section 15 (2) (d) relied on, that the parties have lived apart for a continuous period of two (2) years immediately preceding the presentation of the Petition.

In this instant, the Petitioner stated in evidence, that he moved out of the matrimonial home in January, 2011 and since that time have not returned with justification for constructively abandoning the matrimonial home. The Respondent in her evidence confirmed this fact and that all attempts for settlement has failed and further asking Respondent not opposing the dissolution of the marriage. A computation of time from January, 2011 when the Petitioner abandonment the matrimonial home is sufficient to hold that this ground avails the Petitioner. I so hold.

On the issue 2, whether the Respondent has proven her case to entitled to the reliefs sought in her Cross-Petition.

A Cross-Petition is like a Counter-Claim and settled law that being an independent action that party to succeed has the onus to discharge the burden of proof.

In this instant case, a careful perusal of the evidence of the Respondent, the Respondent is merely urging the court to dismiss the Relief 1 of the Petitioner for dissolution of the marriage for lacking in sufficient evidence, but placed reliance heavily on the Relief (b), an order of full custody of the three (3) children of the marriage, Relief c, d, e and f.

On the Relief (b) award of custody, the evidence of the Respondent which remained unchallenged is that she has been in custody of the children since the Petitioner abandoned the matrimonial home, responsible for their upkeep with little contribution from the Petitioner.

On the issue of custody, what is of paramount consideration is the interest and welfare of the children. See Section 71 of Matrimonial Causes Act.

“In the proceedings with respect to the custody, guardianship, welfare, advancement or education of children of marriage, the court shall have regard to the interest of those children as paramount consideration and subject thereto, the court may make such order in respect of those matters as it thinks proper”.

See Nnana Vs Nnana (Supra) @ Pg 13; William Vs Williams (1987) 2 NWLR (PT.262) 187.

The Section 71 of the Act, mentioned above place a wide discretion on the court in consideration of the issue of custody of a child or children of the marriage. In the exercise of that discretion, the court must act on facts and not on sentiments. Having carefully considered the entire evidence on both sides, I find that the interest and welfare of the children of the

marriage would better be served if the children remain with the Respondent with access to be granted.

On the Relief (c), consequent upon the grant of relief (b) above, awarding custody of the children to the Respondent, it is hereby ordered that the Petitioner shall have unrestricted access to the children of the marriage, during school holidays after prior notice to the Respondent which must not ordinarily be refused.

On the Relief (d), an Order for payment of the sum of ₦149,000.00 per month as maintenance of the children and the Respondent.

On the issue of maintenance, it is trite law, that the court has power to make an order of maintenance of a party and children of the marriage, but that exercise shall be subject to the factors enunciated in the case of *Adejumo Vs Adejumo* (2010) LPELR 35602 and the Provisions of Section 70 (1) of the Matrimonial Causes Act which reads:-

“Subject to this Section the court may in the 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 disposal of proceedings, make such order as it thinks proper, having regards to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances”

In this instant case, it is the evidence of the Respondent that she has been principally responsible for the upkeep and maintenance, school fees of the children, through her meager salary and support from family, friends and

her church, with Exhibit "E<sup>1 - 9</sup>", in proof. It is also her evidence under Cross-examination, that the Petitioner in some occasions take responsibility for payment for the welfare and school fees of the children. The Petitioner on the other hand claimed to pay fees but did not tendered any receipts. Respondent also gave evidence of the extra source of income of the Petitioner through private business and these pieces of evidence was not denied by the Petitioner.

Granted, that the Petitioner led evidence of his earnings, it is a notorious fact that at Common Law, a man has a duty to maintain his wife and children. See case of Nnana vs Nnana (Supra) Pg 41 Para B – C. Clearly, from all of these pieces of evidence before the court, I shall exercise that discretion in the grant of an order of maintenance in this Judgment as appropriate.

On Relief (e), an order of court directing the Petitioner to pay such sum as may be necessary for the education of the children of the marriage from primary to tertiary level as at when due.

In this instant case, there is evidence on both sides that the Respondent pay for the school fees of the children of the marriage, and the Petitioner alleged payment of fees, but not backed by any documentary evidence. Consequence, I shall allow this relief.

On the Relief (f), an order directing the Petitioner to pay the rent and/or provide accommodation for the Respondent and the children in a one-bedroom apartment in Kubwa, Abuja. Having carefully considered the Relief (d) above, it is the court firm view that on this Relief (f) be



subsumed under Relief d; where this court has held that it the Common Law duty of a man to maintain his family. In consequence, I shall allow this Relief.

From all of these, Petitioner Reliefs succeed in part, whilst the Respondent/Cross-Petitioner, reliefs succeeds in its entirety. Accordingly, Judgment is hereby entered as follows:-

- (1) The marriage between the Petitioner – Mr. Gabriel Ikechukwu Oha and the Respondent – Mrs Bernadette Oha, celebrated in 2006 at the Marriage Registry at Abuja Municipal Area Council (AMAC) Abuja has broken down irretrievably and I hereby pronounce a decree Nisi dissolving the marriage between the parties. The said order Nisi shall become absolute after three (3) months from the date of this Judgment.
- (2) Custody of the three (3) children of the marriage (1) Miss Favour Oha (2) Master Victor Oha and (3) Miss Blessing Oha, is hereby granted to the Respondent, with unrestricted access to the children of the marriage to the Petitioner, during school holidays after prior notice to the Respondent, which should not be ordinarily refused.
- (3) It is hereby ordered that the Petitioner shall pay the sum of ₦90,000.00 (Ninety Thousand Naira) only to the Respondent monthly as maintenance of the children.
- (4) It is also ordered that the Petitioner shall pay the school fees of the children of the marriage up to their tertiary level.

- (5) It is also ordered that the Petitioner pay and or provide a suitable accommodation for the Respondent and the children in a reasonable area within the FCT and within his means.

This is the Judgment of this court.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

23/6/2022

**APPEARANCE**

CHARLES NWABUEZE ESQ FOR THE PETITIONER

M.U. OHAKA ESQ FOR THE RESPONDENT