

**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/01/2017

BETWEEN:

OTOMIEFEKOKOGHO.....PETITIONER

VS

LUCY KOKOGHO.....RESPONDENT

JUDGMENT

By a Notice of Petition filed on 9/1/17, the Petitioner – OtomiefeKokogho, seeks the following reliefs;

- (1) A Decree of Dissolution of Marriage between the Petitioner and the Respondent on the grounds that the marriage has broken down irretrievably.
- (2) Custody of the children of the marriage.
- (3) The Respondent be granted access to the children at all reasonable times or may be determined.

The grounds upon which the Petitioner is predicated for dissolution of the marriage is as contained in Para 5 of the Petition.

The facts relied upon by the Petitioner as constituting ground for a decree for the dissolution of the marriage as the marriage has broken down irretrievably as specified above are as follows:

- (1) That the Respondent has willfully and persistently refused to consummate the marriage. The last time the Respondent had any form of sexual intimacy with the Petitioner was January, 2013.
- (2) That the marriage started breaking down when the Respondent refused the Petitioner any form of conjugal rights.
- (3) That the Petitioner first moved out of their matrimonial home in 2010 with their children to Gwarimpa. When the Petitioner asked the Respondent why she moved out in the first place, the Respondent replied that she had fallen out of love with the Respondent. The Respondent resided in Gwarimpa until July, 2013 when the Petitioner upon the advise of friends and relatives pleaded with her to return which she did.
- (4) That the Petitioner in a bid to re-ignite the Respondent's sexual desire arranged several dinner dates and outings but the Respondent always turned down such request and dates.
- (5) That the Petitioner has done everything within his human capacity to show love and re-ignite the Respondent's sexual desire. However same as yielded negative results from the Respondent.

- (6) That in the past four years the Respondent has refused to consummate the marriage which the Petitioner due to the Respondent's lack of sexual urge, desire and care for the Petitioner.
- (7) That the Respondent again moved out of their matrimonial home in September, 2015 with their children and has since then refused to come back.
- (8) That the Respondent manages the canteen in ECOWAS Secretariat, Asokoro, Abuja.
- (9) That as a result of the Respondent's very busy schedule, the children are left without care when they return from school and during weekends.
- (10) That the Respondent hired the services of a male lesson teacher to teach the children twice every week which is unacceptable to the Petitioner as the children who are females can be taken undue advantage of by such male teacher as there is no parental supervision. The Petitioner has complained against this to the Respondent persistently but the Respondent refused.
- (11) That as a result of lack of care and love for the children by the Respondent, the Petitioner took custody of the children and are currently in a boarding house in a secondary school within Abuja.
- (12) That the marriage has been broken down irretrievably.

- (13) By reason of the aforesaid, the Petitioner has lost all love, trust and affection for the Respondent that he may have had during the marriage and has contacted his Solicitors to initiate divorce proceedings on his behalf upon making all efforts to reconcile with the Respondent without success.

The Petition was served on the Respondent on 9/1/2019, and in response the Respondent filed on 18/1/2017 an Answer and Cross-Petition, and sought the following reliefs as follows;

- (a) A Decree of Dissolution of Marriage on the grounds that the marriage has broken down irretrievably.
- (b) Custody of the children of the marriage.

After several Interlocutory taken and determined by the court, the case went into full blown trial. On 10/1/2022, the Petitioner open his case and testified as PW1, adopted his witness deposition of 26 Paragraphs. In course of his evidence, the marriage certificate was admitted in evidence as Exhibit "A". The PW1 gave a catalogue of facts leading to the breakdown of the marriage, all contained witness deposition.

Concluding his evidence, the PW1 stated that they have filed Terms of Settlement in respect of the custody of the Children of the marriage, and urge the court in granting the reliefs on dissolution of marriage on grounds relied, also prays that the Terms of Settlement be entered as Consent Judgment in respect of custody of the children.

Under Cross – examination, the PW1 confirmed that desertion by the Respondent and other reasons stated were the grounds of the Petition for dissolution.

In the same vein, the Respondent opened her case on the same, testified as DW1 and adopted her witness deposition of 12 Paragraphs, and testified of the conduct of the Petitioner necessitating this Cross-Petition for dissolution and prayed the court to grant the relief and also prayed the court to enter the Terms of Settlement in respect of custody as Judgment of Court.

At the close of evidence, both parties filed Terms of Settlement on 4/10/2021, in respect of custody of the children of the marriage and urged the court to enter it as Consent Judgment, while considering the grounds for dissolution of the marriage. Further the both Counsel filed and exchanged their respective Final Written Address, the Respondent's Final Address filed on 8/2/2022 and the Petitioner's Final Address filed on 9/3/2022.

Having carefully considered the pleadings and evidence of both parties, submission of Counsel, the court finds that one (1) issue calls for determination is;

“Whether the Petitioner and Cross-Petitioner have established the grounds for the dissolution of marriage”

In the determination of a Petition for dissolution of marriage, under Section 15 (1) of 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 the conclusion, the Petitioner and Cross-Petition must prove to the reasonable satisfaction of the court of any of the facts as prescribed by Section 15 (2) of Matrimonial Causes Act categorized in Sub-section 2 (a – h).

In this instant, both parties rely on Section 15 (2) (c) (d) of the Matrimonial Causes Act as grounds for the Petition and Cross-Petition.

In this instant, the evidence is that the Respondent deserted the matrimonial home, since September, 2002 and both have been living apart; hence the prayer amongst other grounds.

The Respondent on the other hand did not deny this fact, and indeed relied on this ground for the said dissolution of the marriage. A simple computation of time, clearly reveals that the parties have lived apart for a continuous period of more than 5yrs; which by itself is sufficient in proof of this ground relied on by both parties.

It is therefore, the holding of this court that these grounds avails both parties, and hold that indeed this marriage has broken down irretrievably and is deserving of a befitting burial by order of dissolution of the marriage.

On the issue of custody the both parties by their own resolution agreed to Terms of Settlement, as contained in the said Term filed on 4/10/2021 and urged the court to enter it as Consent Judgment in respect of the custody of the children of the marriage. Consequent upon, this the court will enter it as Consent Judgment in respect of the custody of the children of the marriage. I so hold.

From all of these and the parties having proven to the reasonable satisfaction of this court, the facts relied upon for the dissolution of the marriage, this Petition and Cross-Petition succeeds and Judgment is accordingly entered in favour of both parties as follows:

- (1) The marriage celebrated on 15/9/2001, at the Marriage Registry, Warri South Local Government Area, Delta State between the Petitioner – OtomiefeKokogho and Respondent/Cross-Petitioner – Lucy Kokogho has broken down irretrievably and hereby pronounce a Decree Nisi dissolving the marriage between the parties.
- (2) The said Decree Nisi shall become absolute after three (3) months from the date of this Judgment.
- (3) In respect of custody of the child, the Terms of Settlement filed on 4/10/2021 is hereby entered as Consent Judgment of the parties

TERM OF SETTLEMENT

The Petitioner filed a Petition on the 9th day of January 2017 seeking the following reliefs:-

- (1) (i) A Decree of Dissolution of the Marriage between the Petitioner and the Respondent on the grounds that the marriage has broken down irretrievably.
- (ii) Custody of the children of the marriage.

- (2) And for any order or further orders as this Honourable Court may deem fit to make in the circumstances.

The parties have in the overriding interest of the two children of the marriage to wit: Omameromu Tiffany Kokogho and Oghovese Lydia Kokogho agreed on the following Terms in respect of their custody, welfare and maintenance.

- (1) The parties shall have shared custody of the two children of the marriage to wit: Omameromu Tiffany Kokogho and Oghovese Lydia Kokogho with the Petitioner having 50% and the Respondent having 50% custody when the children are on holidays.
- (2) The Petitioner shall take responsibility of deciding the school the children would attend at any given time.
- (3) It shall be responsibility of the the Petitioner to pick up the children from school upon vacation and drop them off at school upon resumption for any terms to enable him take stock of the children's academic performance and welfare.
- (4) The Petitioner shall be fully responsible for the educational needs, tuition, hostel fees and all other incidental financial matters in respect of the two children of the marriage in their present school.
- (5) The Petitioner shall be responsible for the school tuition fees and accommodation of the children at a Federal University in

Nigeria which the Petitioner can afford. Provided that in a situation whereby the Respondent insists that the children of the marriage should attend a privately owned University, the Respondent would be responsible for the school fees.

- (6) The Petitioner shall be responsible for the upkeep, clothing, medical bills feeding and sundry expenses in respect of the two children of the marriage.
- (7) The parties are free to visit the children on visiting days at school on the visiting day/open day provided by the school authority.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

31/5/2022

APPEARANCE:

N. S. OKOCHI ESQ. FOR THE PETITIONER.

ESTHER AKUGUE ESQ. FOR THE RESPONDENT/CROSS-PETITIONER