

**IN THE HIGH COURT OF THE FEDERAL CAPITAL
TERRITORY
HOLDEN AT ABUJA
ON MONDAY 6TH DAY OF JUNE 2022
BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 8 MAITAMA – ABUJA**

SUIT NO: PET/196/2019

BETWEEN:

MR. UCHEIHEANACHO... ..PETITIONER

AND

MRS. ADAEZENZELUIHEANACHORESPONDENT

JUDGMENT

Marriage between the Petitioner and Respondent was solemnized at the ***Gwagwalada Marriage Registry, Abuja, on 4th January, 2008.*** The marriage is blessed with two children.

However, the Petitioner presented the instant Petition before this Court on 23/02/2019, and an Amended Notice of Petition filed 18/02/2022, on the ground that the marriage has broken down irretrievably in that both parties of the marriage had lived apart for a continuous period of at least three (3) years immediately preceding the presentation of the Petition.

Specifically, the Petitioner prayed this Court for the reliefs set out as follows:

- 1. A decree of dissolution of the marriage celebrated between the parties at the Gwagwalada Marriage Registry, on the 4th day of January, 2008.***
- 2. An order of this Honourable Court granting joint custody of the two Children of the marriage, now living with the Respondent to both parties.***

Although the Respondent filed an Answer to the Petition on 14/11/2019, she however failed to turn up to give evidence in support of the same, thereby abandoning her defence to the Petition.

The Petitioner testified in line with facts pleaded in the Petition. He tendered in evidence as **Exhibit P1**, original marriage certificate issued to him and the Respondent upon the solemnization of the marriage between the two parties at the *Gwagwalada Marriage Registry, Abuja, on 4th January, 2008*. The Petitioner testified, crucially, that cohabitation between her and the Respondent ceased sometime in October, 2015, the day the Petitioner took the Respondent out of their matrimonial home at *Plot 113, R close, Federal Housing, Lugbe, Abuja*, and back to her family house.

The Petitioner further testified that her marriage to the Respondent is blessed with two children, namely **Chimdalu Harmony Emmanuelle Iheanacho(female)**, born on **09/06/2011**; and **Chimamanda Naomi Iheanacho(female)**, born on **10/02/2014**.

The Petitioner also testified that apart from seeking dissolution of marriage, the Petitioner also seeks joint custody of the two children and to have unrestricted access to them whilst they live with the Respondent.

The Petitioner testified that prior to the institution of the present Petition, he had previously filed a Petition on 24/02/2017 in Petition **No. PET/137/17** at the High Court of FCT, which was struck out for want of diligent prosecution.

The Petitioner also testified that he has been responsible for the upkeep, school fees, feeding,

accommodation and medical expenses of the children and was willing to continue to be responsible in the same manner.

Under cross examination, the Petitioner testified that he took the Respondent back to her father's house with the Children since 28/10/2015, and that he has had unrestricted access to the children ever since.

As I had stated earlier on, the Respondent filed an Answer but failed to turn up in Court to lead evidence in support of the same. Indeed, her learned counsel informed the Court that the Respondent has abandoned her defence and in effect, her Answer to the Petition.

Learned counsel for the respective parties proceeded to render their final addresses and summaries orally on 30/03/2022.

To start with, the fact of marriage of the two parties in accordance with the provisions of s. **24** of the **Marriage Act** is not in dispute. The Petitioner clearly established this fact by tendering in evidence as **Exhibit P1**, copy of the Certificate of Marriage issued to the parties upon the celebration of the said marriage at the *Gwagwalada Marriage Registry, Abuja*, on 4th January, 2008.

As it is well known, by the provision of **section 15(1)** of the **Matrimonial Causes Act**, there is only one ground upon which a party may present a Petition for dissolution of marriage; which is that the marriage has broken down irretrievably. See *Hamman Vs. Hamman* [1989] 5 NWLR (Pt. 119) 6; *Anagbado Vs. Anagbado* [1992] 1 NWLR (Pt. 216) 207.

The provision of **section 15(2)(a) - (h)** of the **Act** further sets out the various facts upon which the Court could hold that a marriage has broken down irretrievably. A Petitioner need only to establish any one of those facts as set out in **section 15(2) (a) - (h)** of the **MCA**, in order to prove that the marriage has broken down irretrievably. See also Nanna Vs. Nanna [2006] 3 NWLR (Pt. 966) 1.

In the instant case, the Petitioner has established that the instant Petition is grounded on facts set out in **s. 15(2)(f)** of the **Act**, which provides that:

“15(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-

(f) that the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition

Learned counsel to the Petitioner, therefore urged the Court to grant the Amended Petition since the evidence before the Court is uncontroverted.

The Respondent's learned counsel submitted that the Respondent having not challenged the averments in the Amended Notice of Petition; that the Court should grant the terms as contained in the terms of settlement filed on 19/11/2021, relating to the dissolution of the marriage and arrangements for the children of the marriage.

On the basis of the evidence on record therefore, the Court hereby holds, without any further ado, that the Petitioner has satisfactorily established that the

marriage between him and the Respondent had broken down irretrievably, in that both parties had lived apart for a continuous period of at least three (3) years immediately preceding the presentation of the instant Petition.

With respect to the issue of custody of the children of the marriage, the uncontroverted evidence before the Court is that, since the Petitioner and Respondent started living apart, the two children of the marriage, namely, **Chimdalul Harmony Iheanacho (born 09/06/2011)** and **Chimamanda Naomi Iheanacho (10/02/2014)** have been living with the Respondent, while the Petitioner has been responsible for their shelter, education, upkeep and welfare and has had unrestricted access to the children.

The provisions of **s. 71** of the **Matrimonial Causes Act** gives the Court wide discretionary powers to

make orders as it thinks appropriate, with respect to the custody of the children, as the circumstances of every case dictate. The paramount consideration however, being the interests of the children, particularly as relating to their welfare, education and advancement.

The principles governing grant of custody of a child in matrimonial causes have been well laid out in a long line of judicial authorities from time immemorial. See Lafun vs. Lafun [1967] NMLR 401; Afonja Vs. Afonja [1971] UILR 105; Williams Vs. Williams [1987] 2 NWLR (Pt. 54) 66; Odogwu Vs. Odogwu [1992] 2 NWLR (Pt. 225) 539; Alabi Vs. Alabi [2007] 9 NWLR (Pt. 1039) 297.

In the instant Petition, the Court is satisfied that the Respondent is entitled to full custody of the children until they attain the age of adulthood.

This Court also grants unrestrained access to the children by the Petitioner and the Petitioner shall continue to be fully responsible for the maintenance and upkeep and general welfare of the children.

I note that the purported Terms of Settlement filed by the parties on 19/11/2021 have no place in matrimonial causes. It is accordingly struck out.

In the final analysis, I have been mindful of the injunction that Courts, where the circumstances are appropriate, should grant a Petitioner's decree for dissolution of marriage as painlessly as possible. In the present case, this is a solemn duty that this Court must of necessity, carry out. Having therefore come to the regrettable but inevitable conclusion that the marriage between the Petitioner and the Respondent has broken down irretrievably, I hereby grant decree *nisi*, dissolving the marriage celebrated

between the Petitioner and the Respondent, in accordance with the **Marriage Act**, at the **Gwagwalada Marriage Registry, Abuja, on 4th January, 2008**. Provided that, pursuant to the provision of s. **58(1)(a)(i)** of the **Matrimonial Causes Act**, the decree *nisi* made hereby shall become absolute after **three (3) months** from today.

I further grant to the Respondent, sole physical custody of the two children of the marriage, namely, **Chimdalu Harmony Iheanacho (born 09/06/2011)** and **Chimamanda Naomi Iheanacho (10/02/2014)** both female, until they reach the age of adulthood; with unrestrained and unrestricted access to them by the Petitioner. The Petitioner shall hereby be fully responsible for the education, maintenance, upkeep and welfare of the children.

I make no orders as to costs.

OLUKAYODE A. ADENIYI
(Presiding Judge)
06/06/2022

Legal Representation:

L. I. Akhame, Esq. – *for the Petitioner*

M. I. Ekeka, Esq. – *for the Respondent*