

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

THIS WEDESDAY, THE 13TH DAY OF APRIL, 2022.

BEFORE: HON. JUSTICE A.I. KUTIGI -- JUDGE

SUIT NO: GWD/PET/11/2020

BETWEEN:

MRS HELEN O. ORUBA-AWORE.....PETITIONER

AND

MR. OLUBANJO ORUBA-AWORE AGBOSSEINA.....RESPONDENT

JUDGMENT

By a notice of petition filed on 13th August, 2020, the Petitioner claims the following Reliefs against Respondent as follows:

- 1. A decree of dissolution of marriage on the ground that the marriage has broken down irretrievably and the Petitioner cannot be expected to live with the Respondent.**
- 2. An order of this Honourable Court mandating the Respondent to pay the Petitioner the sum of N50,000 (Fifty Thousand Naira) Only, as up keep of the children and that the Respondent be responsible for the Education, Health and Clothing of their children.**

On being served with the petition, the Respondent filed an answer and a cross petition against Petitioner for a Degree of Restitution of Conjugal Rights. The Reliefs sought on the cross petition are as follows:

- 1. An order dismissing the petition against the Petitioner. In other words, order refusing grant of dissolution of the marriage.**
- 2. An order for restitution of conjugal rights of the marriage between the parties.**

3. **An order allowing the reliefs sought by the Respondent as per the Cross-Petition**
4. **Should the marriage be dissolved, an order granting custody of the children of the marriage to the Petitioner and granting free access of the Cross-Petitioner to the children.**
5. **An order directing the Petitioner to make available to the Cross-Petitioner, the death certificate of the deceased child.**

The matter was then adjourned for hearing. Counsel on both sides however informed court that parties were discussing how to streamline areas in dispute which would be incorporated into terms that will be presented at trial to narrow down areas of dispute. The court availed parties the opportunity before hearing then commenced.

The Petitioner testified in proof of her case in person as PW1 and the only witness. I will summarise the essence of her evidence. She stated that she knows the Respondent and that they got married on 1st December, 2012 at the Lokoja Marriage Registry, Kogi State. That the marriage is blessed with 3 children but one is deceased.

That due to irreconcilable differences, parties have mutually agreed to have the marriage dissolved without washing their dirty linen in public and that they have agreed on terms allowing the court to dissolve the marriage. Under cross-examined she stated that all issues relating to dissolution of the marriage, custody of the children, access to the children, maintenance and release of birth certificates of the two surviving children and the death certificate of the deceased child were amicably agreed and incorporated into a terms of settlement which was tendered in evidence and marked as **Exhibit P2**. With the evidence of Petitioner, the case of the Petitioner was closed.

The Respondent/Cross Petitioner equally testified as DW1 and the only witness. He stated that parties have amicably agreed that their marriage be dissolved and identified **Exhibit P2** as the document containing the terms or resolution of all issues relating to the marriage. DW1 was not cross-examined by counsel to the Petitioner and with his evidence; the Respondent/Cross Petitioner closed his case.

Counsel on either side agreed to address the court orally and the substances of the address which forms part of the Record of Court is that parties have mutually agreed to have the marriage dissolved and by **Exhibit P2** have mutually settled all issues relating to the marriage which the court was urged to adopt.

Having carefully considered the petition and the evidence led, the narrow issue is **whether the court should grant the petition in the circumstances.**

ISSUE 1

Whether the court should grant the petition in the circumstances.

I had at the beginning of this judgment stated the Reliefs in the petition and the cross petition. I had also situated the unchallenged evidence of both parties alluding to the complete breakdown of the marriage and irreconcilable difference which led to the filing of both the petition and cross petition. I had also alluded to the agreement by parties that to avoid any protracted litigation involving washing their dirty linen in public they have agreed to settle all issues which they incorporated in a terms of settlement which was tendered in evidence vide **Exhibit P2**. Indeed on the evidence, the court was urged to use the said resolution to form the basis of the judgment in this case.

Now in matrimonial proceedings, the burden or standard of proof required in matrimonial proceedings is also now no more than that required in civil proceedings. Indeed **Section 82 (1) and (2) of the Matrimonial Causes Act** (The Act) provide thus:

- 1) For the purposes of this Act, a matter of fact shall be taken to be proved, if it is established to the reasonable satisfaction of the court.**
- 2) Where a provision of this Act requires the court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the court is reasonably satisfied of the existence of that ground or fact, or as to that other matter.**

On the evidence of parties, it is accepted common ground, which I also accept that the marriage has broken down irretrievably which falls within the purview of **Section 15(1) and 15(2) a-h of the Act**, particularly **Section 15(2)(c)**. Indeed in law, any of the facts categorised under **Section 15(2) a-h of the Act** if proved by

evidence is sufficient to ground or found a petition for divorce. The fact that parties on both sides have agreed that they cannot reasonably live together as husband and wife situates a ground for dissolution of marriage within the purview of **Section 15(2)(c) of MCA**.

In this case and on the evidence, as already alluded to, parties have agreed that this marriage exists only in name. If parties to a consensual marriage relationship cannot live any longer in peace and with mutual respect for each other, then it is better they part in peace. This clearly is the earnest desire of parties as encapsulated in **Exhibit P2**. The court will here in the interest of justice defer to the wishes of parties.

In the final analysis and in summation, having carefully evaluated the petition, the cross-petition, the evidence of parties and **Exhibit P2**, the terms of settlement executed by parties and their counsel, I accordingly make the following orders:

1. An order of Decree Nisi is granted dissolving the marriage celebrated between Petitioner and Respondent on 1st December, 2012.

2. CUSTODY

- a. Parties agreed that the custody of the two surviving children, whose names are as follows: **Oluwatofunmi Joy Olubanjo** age 8 years old and **Oluwapamilerin Victory Olubanjo** age 5 years old should remain with the Petitioner (mother)

ACCESS

- a. The parties have agreed that the Respondent (father) shall have access to the two surviving children once in every month in any public place.
- b. The parties agreed that during public holidays, the Respondent shall take the children to his home and return them immediately after such public holiday.
- c. The parties agreed that during school Christmas vacation, the Respondent shall take the children to his home and return them immediately after the vacation to the Petitioner.
- d. The parties agreed that they both shall be responsible in the education of the children and the education bills/school fess of the children from primary to tertiary institution would be shared equally by the both parties.

MAINTAINANCE

The parties agreed that both of them shall be jointly responsible for the upkeep, welfare, shelter and health of the two(2) surviving children and the Respondent shall support the Petitioner with the sum of N20,000(Twenty Thousand Naira) at the beginning of every month as maintenance of both children.

CERTIFICATE

- a. The Petitioner agreed to make available the names of the two surviving children and their Birth Certificates to the Respondent.
- b. The Petitioner has agreed to furnish the Respondent with the death certificate of the deceased child.
- 3. No order as to cost believing that parties will now eschew any bitterness and fully cooperate in bringing up their two children to be responsible citizens they will all be proud of.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. B. Lawrence, Esq., for the Petitioner**
- 2. Abadak, E. Esq., for the Respondent/Cross-Petitioner.**