

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER : HIGH COURT NO. 14**

**CASE NUMBER : PETITION NO.: PET/68/2018**

**DATE: : MONDAY THE 16<sup>TH</sup> MAY, 2022**

**BETWEEN:**

**MRS. STELLA OKECHALU ..... PETITIONER**

**AND**

**MR. EMMANUEL OKECHALU .... RESPONDENT**

## **JUDGMENT**

By a notice of Petition for the decree of dissolution of marriage dated 20<sup>th</sup> December, 2018 and filed same day, Petitioner approached this court for the following:-

- a. An Order of the Court for a decree of dissolution of marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably.
- b. An Order of the court granting custody of the only child of the marriage Master Emmanuel Okechalu (J) born on 17<sup>th</sup> of June, 2007 to the Petitioner especially since the child is still in his formative years needs lots of maternal care and attention until he is sixteen (16) years.

- c. An Order of the court that the child spends alternative holidays with both parents, upon a week's notice, the child should be allowed to spend time with the Respondent provided that this shall be mutually agreed upon by the parties.
- d. The sum of N1,000,000.00 as damages for the loss of youthful age and time of the Petitioner wasted in waiting, yearning and taking all necessary steps to consummate the marriage with her husband whereas the Respondent had since moved on with his life.
- e. The sum of N1,000,000.00 as damages for the emotional and psychological trauma the Respondent caused the Petitioner, her son and her family as well as the social stigma that was caused by the Respondents desertion and

inability to fulfill his conjugal responsibility to the marriage.

The grounds upon which the Petition is brought are as follows:-

- i. That the Respondent has since the marriage behaved in such a way that the Petitioner cannot reasonably be expected to live with him.
- ii. The Respondent has deserted the Petitioner for a continuous period of at least 11 (Eleven) years preceding the presentation of the Petition.
- iii. The parties have lived apart for a continuous period of 10 (ten) years immediately preceding presentation of the petition and the Respondent does not object to dissolution of the marriage.

iv. The marriage has not been consummated for a continuous period of 10 (ten) years preceding the presentation of the Petition.

The Petitioner made the following proposed arrangements for the children;

That the Petitioner is to have custody of the only child of the marriage master Emmanuel Okechalu.

That the child spends alternation holidays with both parents, upon a week's notice, the child should be allowed to spend time with the Respondent provided that this shall be mutually agreed upon by the parties.

That the Respondent is to pay the Petitioner as follows:-

1. The sum of N100,000.00 monthly for the maintenance and up keep of the child subject to upward review of same occasioned by inflation and economic evaluation.
2. The Sum of N500,000.00 only for house rent and accommodation of the Petitioner and their son annually subject to periodic review according to the prevailing market trend.
3. The sum of N150,000.00 termly as fees for the child presently in JSS 1 at Solid Rock International School Lugbe.

Upon service of the said Petition on the Respondent, the Respondent filed answer and cross petition dated the 19<sup>th</sup> March, 2019 and filed on same day. His response to the Respondent's cross petition, the Petitioner filed a reply.

When issues when properly joined, the Petition was set down for hearing on the 23<sup>rd</sup> June, 2021.

The Petitioner adopted her witness statement on oath and tendered the following in evidence and was admitted:-

1. Marriage Certificate Exhibit “A”
2. Picture photograph attached to the Certificate of Compliance Exhibit “B”
3. Medical Report from Limi – Multi Specialist Hospital Exhibit “C”
4. Medical Report from Limi – Multi Specialist Hospital dated 8<sup>th</sup> May, 2019 Exhibit “D”.
5. Catena International School fees cash receipts (6) Exhibit “E”

6. Solid Rock International School fees cash receipts (7 attached together) Exhibit “F”.
7. Solid Rock International School first term report card Exhibit “G”.
8. Anglican Diocese of Lafia (Testimonial) Exhibit “H”
9. McPherson Academy Official student receipt Exhibit “I”.
10. University of Abuja receipt dated 19<sup>th</sup> November, 2018 Exhibit “J”.
11. Documents together titled correct session Exhibit “K”.
12. University of Abuja, payment of school fees for Ms.c Exhibit “L”.



13. General Cash Receipt from National Open University of Nigeria Exhibit “M”.
14. 10 Zenith Bank Deposits slip as fees payment for NOUN Exhibit “N”.
15. 5 student sub receipts for University of Abuja Exhibit “O”.
16. University of Abuja academic clearance certificate Exhibit “P”.

After the cross – examination, the Petition was adjourned for defence. The Respondent was led in evidence on the 22<sup>nd</sup> of September, 2021 to adopt his witness statement on oath.

It is the answer of the Respondent that the faith alleged by the Petitioner in support of her petition for dissolution of marriage, on the ground that the

marriage has broken down irretrievably, are flimsy, inadequate and do not constitute reprehensive or intolerable behaviours on his part.

That the petition does not come within the precise provisions of the Matrimonial Causes Act as to the form of a petition and as such is invalid and cannot sustain the petition.

That contrary to the assertion of the petition, it is the Petitioner that deserted and abandoned him after he had a ghastly motor accident that almost claimed his life.

That on the 31<sup>st</sup> day of March, 2013, he attended one of the reconciliation meetings initiated by Dr. Pastor Funsho at his church and he proceeded to see his son and the Petitioner. His son enjoyed his company so much that he pleaded that he spent the night with

them but the Petitioner refused. Every attempt to persuade her fell on deaf ears.

That before his accident, he was committed to catering for the needs of the Petitioner and their son until December, 2017 when she (Petitioner) packed out of the matrimonial home in Chika.

That on the 8<sup>th</sup> day of May, 2012, 27<sup>th</sup> July, 2012, 2<sup>nd</sup> October, 2012, 15<sup>th</sup> October, 2012 and 1<sup>st</sup> November, 2012 he issued various cheques in favour of the Petitioner for her upkeep and their son in the sum of N392,000.00.

That at a time he gave his Automated Teller Machine (ATM) Card to the Petitioner and the Petitioner at different times withdrew money from his account to cater for herself and their son. Majority of these withdrawals were done by the

Petitioner on the ATM situate at Petitioner's office (Immigration Office) and other ATM in town).

That due to his medical condition and considering the new apartment of the Petitioner, Pastor Solomon Yero further pleaded with the Petitioner to allow him move in with them rather than abandoning him in this critical stage of his life. The Petitioner agreed and allowed him to move in with her and their son sometime in August, 2014 after the marriage was rededicated.

That immediately he moved in with the Petitioner, the Petitioner refused to allow him consummate the marriage and left the bedroom for him and his son while she was sleeping in the parlour. This development continued until December, 2017 when

the Petitioner packed out of the matrimonial house at Chika.

That he has been responsible for the educational, medical and other upkeep for his son Emmanuel Okechalu (Jr.), the only child of the marriage. When he and the Petitioner were cohabiting together at Chika, he was responsible for the school fees of junior when it was Twenty – Five Thousand Naira (N25,000.00) per term at catena international Academy, Chika, Airport Road, Abuja.

The above fee is what he can presently afford within the limit of his earning.

That the allegation that he refused to cohabit or consummate the marriage is false and cannot be substantiated. After packing out from the matrimonial home in Chika, the Petitioner has

denied him access to their son despite several pleas from friends and family members.

That he denies paragraph 13(i)(ii)(iii) and maintain that the Petitioner is not entitled to any damages either for loss of youthful age or emotional and psychological trauma. That he contributed significantly to the educational pursuit of the Petitioner both at Degree level and masters levels and that the Petitioner lost nothing during the marriage. On the contrary, he is the one that almost lost his life and now uses crutches about and has greatly suffered untold hardship and mental for time in the hand of the Petitioner.

Respondent tendered the following documents on the 22<sup>nd</sup> day of September, 2012 which were admitted in evidence by the court.

1. Letter for appointment dated 11<sup>th</sup> November, 2011
2. Assumption of duty certificate
3. Garki Hospital card
4. 3 Hospital receipts
5. Letter dated 8<sup>th</sup> April, 2013 signed by Dr. Charles.
6. Statement of account with First Bank of Nigeria Plc.
7. Certification ship of Zuma Heath Trust
8. Surgery forms, NK Hospital Rehabilitation Hospital.

The Respondent/Cross Petitioner, proposed the following arrangement for the child of the marriage.

- a. The Cross Petitioner undertake to bear the educational and medical bills of master Emmanuel Okechalu (Jr) within his earnings which is currently Six Hundred and Seventy Seven Thousand, Seven Hundred and Four Naira (N677,704) and not at any other rate of One Hundred and Fifty Thousand Naira (N150,000.00) per term which is aimed at embarrassing him and to further cause him emotional trauma.
- b. Cross Petitioner stated that he has always maintained an average of N10,000.00 for the upkeep and maintenance of Master Emmanuel Okechalu and still willing to continue that amount.

The Cross Petition sought the following Orders:-



- i. An Order of this Honourable Court granting Custody of the child of the marriage namely Emmanuel Okechalu (Jr), male (Twelve Years old) to the Respondent with parental access to the Petitioner during vacation.

Or alternatively,

2. An Order of this Honourable Court granting custody of the child of the marriage namely Emmanuel Okechalu (Jr), male (Twelve years old) to the Respondent during all vacation with parental access to the Petitioner.

The Petitioner (Respondent in the Cross Petition) filed a reply to Respondent's answer to the petition and answer to Cross – Petition dated 27<sup>th</sup> May, 2019

and filed on same day. Petitioner denied almost all that Respondent said in its cross – petition.

The Petitioner states that she stayed and took good care of the Respondent by feeding him, washing him up whenever he defecates on his body while in the hospital despite the fact that they were separated and living apart.

The Petitioner further states that she was beaten up on several occasion by the Respondent and rendered her whole body and face swollen up.

Petitioner and Respondent/Cross - Petitioner filed their respective written addresses and adopted same as legal argument in support of their respective cases.

Learned counsel for Respondent/Cross Petitioner, final address was filed wherein a sole issue was formulated for determination to wit;

*Whether having regard to the admission of Adultery by the Petitioner during the subsistence of this marriage, the interest of justice will best be served to give custody of Emmanuel Okechahu (Jr.) to the Petitioner and whether the Petitioner has proved that she is entitled to damages and other sundry monetary reliefs against the Respondent.*

Learned counsel in his submission stated that the Respondent is not opposed to the dissolution of the marriage. The Respondent concedes that the only ground on which the marriage may be dissolved is that the marriage has broken down irretrievably.

What the Respondent is opposed to is for a grant of custody to the Petitioner and other sundry monetary damages sought by the Petitioner.

Counsel urged the court to hold that the Petitioner is an adulterer, a cheat, an unfaithful woman, a dishonest woman and a woman with low moral character. Thus, the character of the Petitioner ought to deprive her of the custody of the only child of this marriage. The father of Emmanuel Okechalu junior will be in serious jeopardy if he is allowed to live with a promiscuous woman like the Petitioner.

Counsel further submits that the Petitioner has consistently denied the Respondent the opportunity of seeing his son, Emmanuel Okechalu junior since 2017 till the 23<sup>rd</sup> day of October, 2019 when my lord late justice Jude O. Okeke ordered the Petitioner to

produce the son in court on the 18<sup>th</sup> day of November, 2019.

It is the submission of counsel that the failure of the Petitioner to state the date, time and year the Respondents allegedly beats her up is not only evasive but vague. The implication is that nothing can be proved from this type of vague allegations.

***AKANDE VS ADISA & ANOR (2012) LPELR 7807 Paragraphs D – E;***

***MANA VS PDP (2012) 13 NWLR (Pt. 1318) 579 at 610 paragraphs F – G. were cited.***

Counsel submits that the monetary claims by the Petitioner against the Respondent are beyond the earning of the Respondent which is currently at N83,000.00 with a take home of N45,000.00. To grant any of the reliefs sought by the Petitioner ill

automatically impoverished the Respondent who is still looking for N1,000,000.00 to carryout a surgery of hip replacement.

In the light of the above submission, counsel urged the court to grant custody of Emmanuel Okechalu junior to the Respondent with the right of access to the Petitioner during holidays or at such other times that are expedient and also dismiss the monetary claims of the Petitioner as incompetent.

Learned counsel for the Petitioner filed written address wherein three issues were formulated for determination to wit;

- a. **Whether the Petitioner has proved that the marriage between her and the Respondent has broken down irretrievably to warrant an Order of dissolution by this Honourable Court.**

- b. *Whether the Petitioner is not entitled to the custody of the son of the marriage in view of the circumstances of this suit.*
- c. *Whether the Respondent have plead facts and evidence to melt the strict condition of Order XIV Rule 4(1), (2), (4), (7) and (8) of the Matrimonial Causes Rules for maintenance.*

On issue 1, Counsel submits that from the evidence of the Petitioner and further admitted in the Respondents answer to the petition in a letter part of paragraphs 3, 5, 7 and 8, it is clear that the Respondent behaved in a manner that is intolerable and unreasonable such that the Petitioner cannot reasonably be expected to bear him or continue to live with him.

On issues 2 and 3

**Whether the Petitioner is not entitled to the custody of the son of the marriage in view of the circumstances of this suit.**

**Whether the Respondent have plead facts and evidence to meet the strict conditions of Order XIV Rule 4 (1), (2), (4), (7) and (8) of the Matrimonial Causes Rules for maintenance.**

Counsel submits that, in determining the issue of custody of a child or children of a marriage which has been dissolved by the Honourable Court, the Court is required to look at the best interest of the child (or children) as the ultimate consideration. This is because the welfare of the child is the primary concern in such situation and nothing more.

***See the case of MENEKAYA VS. MENEKAYA (1996) 9 NWLR (Pt. 472) at Page 256;***



***ANYASO VS. ANYASO (1998) 9 NWLR (Pt. 564)  
at page 158 – 159;***

***NANNA VS NANNA (2006) 3 NWLR (Pt. 966) at  
page 13 – 15 were cited.***

Counsel submits further that if Emmanuel Okechalu Jnr. was to grow up with the Respondent, he would be denied the moral, spiritual, educational solid upbringing as the Respondent has been proven to be abusive and aggressive which is not a conducive environment for the young mind of the child. See the case of ***OKOBI VS. OKOBI (2020) 1 NWLR (Pt. 1705) 301 at 341 Paragraphs E – G.;***

***WILLIAMS VS. WILLIAMS (1987) 2 NWLR (Pt. 54) at 89;***

***ODOGWU VS.ODOGWU (1992) 2 NWLR (Pt. 225) at 539.***

Counsel submits that Master Emmanuel Okechalu is quite tender should best be with the parent he is used to (in this case the Petitioner) unless it can be shown that such parent is of irresponsible behavior and which behavior is likely to affect the upbringing and well – being of the child. Counsel contends, that the Petitioner has not been shown to be irresponsible in this case.

Counsel posits that the position of the law is trite, a Defendant who fails to cross – examine a witness on a material issue raised by the Plaintiff will not be allowed to call evidence on the matter after the Plaintiff has closed his case. The Respondent is hereby estopped to their conduct to raise a fresh issue by way of an address no matter how beautifully couched. See *TABANSI VS. TABANSI*

***(2018) 18 NWLR (Pt. 1651) S.C 279 Page 295  
Paragraphs A – B).***

Learned counsel submits that in considering the best interest and welfare of the child or children of the marriage, various issues must be taken into account by the court ranging from psychological, physical, and moral development of the child as well as things that can promote his or her happiness and security especially when at a tender age. ***WILLIAMS VS WILLIAMS (1987) 2 NWLR (Pt. 54) at 89;***

***ODOGWU VS ODOGWU (1992) 2 NWLR (Pt. 54) at 539 were cited.***

On the whole, counsel urged the court to hold that the marriage between Petitioner and the Respondent has broken down irretrievably within the meaning of section 15(2) (c) of the Matrimonial Causes Act.

Counsel urged the court again to grant custody of the only child of the marriage to the Petitioner but grant the Respondent access for monthly visitation.

On its part, Respondent filed reply on point of law.

It is the argument of counsel that the Petitioner conceded the issues raised in the Respondents final written address by failing to counter or respond to them. The law is that where a party fails to counter an argument validly canvassed by an opposing party, the defaulting party is deemed to have admitted the argument and the case of the party who made the argument. *FMCT VS EZE (2006) 2 NWLR (Pt. 964) 221 at 241 paragraphs E – G was cited.*

On the contention that the allegation of Adultery was not proved, it was submitted that the Respondent did not prove the allegation of adultery against the

Petitioner. Counsel submits that the Petitioner admitted committing adultery under cross – examination on the 23<sup>rd</sup> day of June, 2021. Relying on the proceedings of this court. Having admitted committing adultery, there was no need for any further proof by the Respondent. The law is settled that facts admitted need no further proof. Section 123 of the Evidence Act; ***BUNGE VS GOVERNOR RIVERS STATE (2006) 12 NWLR (Pt. 995) 573 at 600 were cited.***

Counsel submits further that the address of counsel cannot take the place of evidence. There is no doubt that the address of the Petitioner is replete with submission which tends to take the place of the evidence on record. It is important to state that the address of counsel, no matter how brilliant cannot

take the place of evidence. *ANDREW VS INEC (2018) 9 NWLR (Pt. 1625) SC 507 at 558.*

On the whole, counsel urged the court to discountenance the submissions of the Petitioner as lacking in merit and grant custody of Emmanuel OkechaluJrn. to the respondent who is a trained and disciplined father with rights of access to the Petitioner or in the alternative grant joint custody to both the Petitioner and the Respondent in the interest of justice.

**COURT:-**

Having read and assimilated the main petition for the dissolution of marriage and the custody of child filed vide Petition No. FCT/HC/PET/68/2018, and the cross – petition filed ..... it is clear that both the Petitioner and Respondent seem to have been ad-

idem on the dissolution of the marriage. However, the only issue that seem to be in contention is the custody of the child, product of the marriage.

It is settled that Matrimonial Causes matters are in a league of their own. The procedure for the dissolution of marriage under the Act are provided under the Act; No marriage will be dissolved merely because the parties have agreed that it be dissolved.

Indeed marriage is the foundational relationship for all of society. Good marriages are the bedrock of strong societies, for they are the foundations of strong families.

The position of the law therefore, is to preserve the sanctity of the institution of marriage. Hence the reason for not dissolving the marriage on agreement of the parties to it.

Dissolution of marriage contracted pursuant to our marriage law is guided by matrimonial causes Act, Cap. 220 LFN 1990.

A Decree for the dissolution of marriage would be granted only if the Petitioner has proved that the marriage had broken down irretrievably and that the Petitioner finds it intolerable to live with the Respondent. Section 15 of the Matrimonial Causes Act.

See ***DOMULAK VS DOMULAK (2004) 8 NWLR (Pt. 874) 651.***

The Act stipulates that a petition 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 that the said marriage has broken down irretrievably.



Section 15(2) of the Act enumerates conditions which a petitioner must satisfy, to convince the Court hearing the petition for a decree of dissolution of a marriage to hold the marriage to have broken down irretrievably. The conditions are as follows:-

- a. That the Respondent has willfully and persistently refused to consummate the marriage,
- b. That since the marriage, the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent.
- c. That since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

- d. That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the determination of the petition.
- e. That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent does not object to the decree being granted.
- f. That the parties to the marriage have live apart for a continuous period of at least 3 years immediately preceding the presentation of the petition;
- g. That the other party to the marriage has, for a period of not less than one year failed to comply

with a decree or registration of conjugal rights made under this Act.

- h. That the other party to the marriage has been absent from the petition for such time and in such circumstance as to provide reasonable grounds for presuming that he or she is dead.

Any of the aforementioned conditions under Section 15(2) Matrimonial Causes Act (MCA) is sufficient to enable the Court to hold that the marriage has broken down irretrievably. Making reference to the decision in *HARRIMAN VS. HARRIMAN (1989)5 NWLR (Pt. 119) 6*, UcheOmo, JCA (as he then was) held, that under the matrimonial causes Act, 1970, there is only one ground for the dissolution of marriages, and that is that marriage has broken down

irretrievably, which is provided for under Section 15(1) of the Act.

According to the evidence before this court, both the Petitioner and Respondent have lived apart for a continuous period of 10 (Ten) years immediately preceding presentation of the petition.

Certainly, the foundation of a good marriage starts with having open, honest and ongoing communication about feelings, needs, expectations, goals, interests etc. it is important to put forgiveness at the centre of it all because naturally to err is human. It is easy to take each other for granted when you have been married for a while. As change is constant whether in age, family and or life generally you need to continue to grow together and not apart.

There are however circumstances where couple would become intolerant and wish to go their separate ways.

The Petitioner claims that the Respondent deserted the marriage for a continuous period of at least 11 (Eleven) years preceding the presentation of the Petition. On the other hand, the Respondent claims that it is the Petitioner that deserted him after he had a ghastly motor accident that almost claimed his life. The Petitioner now seeks dissolution of the marriage and custody of the child.

It has crystallized that the marriage between the Petitioner and Respondent/Cross – Petitioner has indeed broken down irretrievably which by my observation was all caused due to the selfishness of the Petitioner and Respondent who have both

neglected to nurture and honor the bond of marriage in the interest of the children.

Marriage is a sacred institution which cannot be whimsically put to an end.

The Court of Appeal in ***UGBOTOR VS. UGBOTOR LPELR (2007) CA 7612*** – re-echoed the case of ***TIMMINS VS. TIMMINS (1953) 2 AER 187*** where Lord Denning L.J observed at page 191 thus:-

*“In considering whether one party has good cause for leaving the other much depends on whether the conduct complained of is of a grave and weighty character or not. Conduct which is of a grave weighty character may sometimes fall short of cruelty because it lacks the element of injury to health... but nevertheless, it may give good cause for leaving... On the other hand,*

*conduct which is not of a grave and weighty character and it is for that reason not cruelty, does not give good cause for leaving.”*

Petitioner who has filed for the dissolution of their marriage has given evidence on the fact that the Respondent/Cross-Petitioner has physically abused the Petitioner on several occasions.

One of the reasons that could lead to dissolution of marriage is domestic violence.

Petitioner equally gave evidence that when she opted to pack-out of Respondent/Cross-Petitioner's house because of his conduct, she was obliged by Respondent who did not object.

Respondent who had the whole time to puncture the evidence of the Petitioner, hugely dwelled on the

issue of custody of the child, there is more to it in Matrimonial Causes Matters.

The evidence of the Petitioner on the reason she requested to leave the Respondent's house remains unshaken and good evidence to be used by this Court.

See *SUSAINAH (TRAWLING VESSEL) VS. ABOGUN (2007) 1 NWLR (Pt. 1016) Page 456.*

It is my Judgment, that the Petitioner could not have been expected to remain with the Respondent in view of the evidence adduced...she is a human being with feelings.

It is my conclusion that the said marriage between the Petitioner and Respondent evidenced by certificate at the marriage registry, Holy Trinity C. Church, Lokoja, Kogi State on the 22<sup>nd</sup> April, 2006



having broken down, a case for the dissolution of the said marriage would have been established.

Accordingly, by the power conferred on me as a judge of the High Court of the Federal Capital Territory, Abuja, I hereby issue a decree Nisi for the dissolution of that marriage between Petitioner and Respondent/Cross – Petitioner duly registered at Marriage Registry, Holy Trinity C. Church, Lokoja, Kogi State on the 22<sup>nd</sup> April, 2006.

May God Almighty bear me witness.. Amen.

I will now gravitate towards the issue of custody of the child.

In matrimonial causes, great importance is placed on the care, welfare and maintenance of the child(ren)

of the marriage. See Section 70(1) of the Matrimonial Causes Act.

In other words, this responsibility includes his/her needs in terms of food, shelter, clothing and the life.

***ALABI VS. ALABI (2008) ALL FWLR (Pt. 418) 254 at 257 Page 296 Paragraph C (CA).***

It is instructive to note that it is not the law that a party who succeeds in the proceedings shall always be awarded the custody of the child(ren) of the marriage.

It is the evidence of the Petitioner in the petition that the child of the marriage, Master Emmanuel Okechalu (Jr.) has been in her custody since the desertion due to the Respondent behaved in such a way that the Petitioner cannot reasonably be expected to live with him.

It is further the evidence of the Petitioner that the child is still in his formative years needs lots of maternal care and attention until he is sixteen (16) years.

Petitioner prayed the court for the following;

That the Respondent is to pay the Petitioner;

1. The sum of N100,000.00 monthly for the maintenance and up keep of the child subject to upward review of same occasioned by inflation and economic evaluation.
2. The Sum of N500,000.00 only for house rent and accommodation of the Petitioner and their son annually subject to periodic review according to the prevailing market trend.

3. The sum of N150,000.00 termly as fees for the child presently in JSS 1 at Solid Rock International School Lugbe.

On the part of the Respondent/Cross – Petitioner, it is his answer and evidence to the petition that he has been responsible for the educational, medical and other upkeep for his son Emmanuel Okechalu (Jr), the only child of the marriage.

The cross – Petitioner undertakes to continue with the above arrangement of catering for his child within his earnings which is currently Six Hundred and Seventy Seven Thousand, Seven Hundred and Four Naira (N677, 704) and not at any other rate of One Hundred and Fifty Thousand Naira (N150,000.00) per term and he has always maintained an average of N10,000.00 for the

upkeep and maintenance of Master Emmanuel Okechalu and still willing to continue that amount.

Cross – Petitioner then sought the following orders;

- i. An Order of this Honourable Court granting Custody of the child of the marriage namely Emmanuel Okechalu (Jr), male (Twelve Years old) to the Respondent with parental access to the Petitioner during vacation.

Or alternatively,

2. An Order of this Honourable Court granting custody of the child of the marriage namely Emmanuel Okechalu (Jr), male (Twelve years old) to the Respondent during all vacation with parental access to the Petitioner.

The judicial discretion of a Judge is what is often called into play when the issue of custody of children is dragged by parties i.e mother and father or other stake holders.

If two adults refuse to perform whatever compromises necessary to continue to cohabit and co-parent, then they are required to live in a barbell shaped situation. An efficient situation for each parent on the ends of the space for the children. The children are not shuttled back and forth for the convenience of the adults. They stay in their safe space and both parents remain on their toes day and night to be able to meet the needs of the children.

The age of the children, education, welfare, general upbringing and the arrangement for their accommodation, the conduct of the parties to the

marriage are the factors always borne in mind by the Judge in his determining who to have custody.

***ODUCHE VS.ODUCHE (2005) LPELR 5076 (CA).***

I have perused and assimilated the documentary and oral evidence adduced by Petitioner in support of her petition on one hand, and the answer of Respondent/Cross-Petitioner by way of response on the other hand. I have also considered the Cross Petition of Respondent and the answer of Petitioner/Respondent to Cross Petition wholly.

Respondent is neither married nor have a woman who would assume the figure of a mother at home. No evidence has been led to show that the Respondent is capable of catering for the child of the marriage adequately financially and psychologically.

Keeping in mind the health challenges of the Respondent, why then should the child be subjected to a most probably flawed upbringing by a parent when his mother is very much alive and up to the task?

The child is very young and in this era of child abuse, cannot be left in the care of an ailing parent. This is the time to mold the character of the child... child care is not measured by the volume of money, but attention, social and emotional care.

My take-off point and answer simplicita, therefore is that the Petitioner who is the mother of the child is most suited to take care of her son who is still very young in age.

Guided by wisdom and reason, and considering the fact that the child is a minor; it is my Judgment that



the mother, at this point in time shall keep him in her custody.

I shall not leave the child of the marriage in the care of the Respondent/Cross-Petitioner, to take care of the child, whilst he himself requires adequate care due to his ill-health and financial restraints.

On the whole, Petitioner's petition succeeds...

Respondent/Cross-Petitioner having failed to show any good reason as to why custody shall be granted him of the child shall have his Cross-Petition on custody of the Child refused and dismissed. Same is refused and dismissed.

The Respondent shall provide food, clothing, fees as follows;

1. The sum of N25,000.00 monthly for the maintenance and up keep of the child subject to upward review of same occasioned by inflation and economic evaluation.
2. The sum of N150,000.00 termly as fees for the child presently in JSS 1 at Solid Rock International School Lugbe.
3. The Sum of N250,000.00 only for house rent and accommodation of the Petitioner and their son annually subject to periodic review according to the prevailing market trend. Both the Petitioner and Respondent shall split the house rent.

The father shall always provide food, clothing, school fees and all needs for the child, and shall have unfettered access to his child at any time he desires.

*Justice Y. Halilu*  
*Hon. Judge*  
*16<sup>th</sup> May, 2020*

**APPEARANCE**

John O., Esq. – for the Respondent.

Petitioner not in court and not represented.