

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH GUDU - ABUJA
ON WEDNESDAY THE 13TH DAY OF APRIL 2022.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO -ADEBIYI

SUIT NO. PET/512/2020

BETWEEN

MRS STELLA-RITA AWELLE ASOGWA -----PETITIONER
AND
MR. IYKE KELVIN ASOGWA -----RESPONDENT

JUDGMENT

The Petitioner by an amended Petition filed 12/10/2021 against the Respondent claims the following:

- a. A DECREE of the Honourable Court for the dissolution of marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably in that the parties (Petitioner and Respondent) have lived apart for a continuous period of one (1) year and two months preceding the presentation of this petition. The parties (petitioner and respondent) have lived apart since July 2019.
- b. AN ORDER directing the Respondent to always pay the school fees of the children of the marriage and other school requirements as and at when due until they graduate from university and to always furnish the Petitioner with the requisite receipts for each payment in this regard.
- c. AN ORDER for the custody of the children of the marriage ((King, Isabella and Arianna) to be granted to the Petitioner until they attain the age of 18 years and would be able to decide where to stay.
- d. AN ORDER directing the Respondent to continuously pay the sum of NI,000,000 (One Million) Naira monthly to support the petitioner on the welfare of the daily needs of the kids' upkeep which includes and not limited to feeding, healthcare, clothing and general maintenance of the children until they attain the age of 18 years, car maintenance, house repairs and maintenance, driver and maid salaries.

e. An order of court directing the Respondent to buy a Terrace Duplex apartment at Mabuchi where the Petitioner presently resides and which the Petitioner has discussed with the Respondent (which property goes for about N115,000,000.00) only as part of her settlement from the marriage to enable her and the children to live a comfortable life permanently free from Landlord(s) harassment and same to be bought in the Petitioner's name.

f. AN ORDER of the Honorable Court directing the Respondent to provide and maintain two (2) functioning cars (preferably a Range and a Mercedes Benz) for the Petitioner and the kid's use.

g. AN ORDER of Court directing the Respondent to pay for the yearly summer or winter vacation (including accommodation, feeding and shopping) for the kids and I including my (the Petitioner's) flight ticket and travel itinerary as their accompanying adult.

h. AN ORDER of Court directing the Respondent to pay for the yearly summer or winter vacation (including accommodation, feeding and shopping) for the kids and I including my (the Petitioner's) flight ticket and travel itinerary as their accompanying adult.

i. An Order of court directing the Respondent to create time for occasional outings between him, the kids and I so that the kids will not suffer psychological and emotional trauma as a result of this separation.

j. AND any other Orders as the Honourable court may deem fit to make in the circumstances of this case.

In support of the Petition, the Petitioner filed verifying affidavit and witness statement on oath.

Upon being served with the amended Petition, the Respondent by the leave of court filed an amended answer and cross Petition dated 25/11/2021, wherein the Respondent/cross petitioner is seeking for the following:

1. A DECREE of Dissolution of the marriage between the Respondent/Cross Petitioner and the Petitioner/Respondent on the ground that the marriage has broken down irretrievably; the Petitioner/Respondent having deserted the Marriage for a continuous period of over one years and eight months immediately preceding the presentation of this Petition.
2. AN ORDER of this Honourable Court granting joint custody of their children be given to the Respondent/Cross Petitioner and the Petitioner/Respondent. In every month the children will spend

one week with the Cross Petitioner and also at least one week in every vacation.

3. AND SUCH FURTHER orders as the Honourable Court may deem fit to grant in the effectuation of the above prayers in the circumstances of this Petition.

The facts relied upon by the Cross Petitioner as constituting the grounds for the dissolution of their marriage are: -

- a. The Respondent/Cross Petitioner and the Petitioner/Cross Respondent have immediately before the presentation of this Petition lived apart for a continuous period of one year and eight months.
- b. That the Petitioner/Cross Respondent has behaved in such a way that the Respondent/Cross Petitioner cannot reasonably be expected to live with the Petitioner/Respondent.

The Petitioner/Cross Respondent filed a reply to Respondent/Cross Petitioner's answer for Petition for dissolution of marriage with witness statement on oath dated 7/7/2021. The Respondent/Cross Petitioner also filed a reply after which the Court set down the matter for hearing.

The Petitioner/Cross Respondent testified as the sole witness in proof of her case and adopted her witness statements on oath dated 7/7/2021 and 12/10/2021 respectively. From the facts as stated by the Petitioner, the summary of the case of the Petitioner is that she and the Respondent got married at the Holy Trinity Catholic Church, Aguiyi Ironsi Street, Maitama, Abuja, FCT. on the 26th day of April, 2003. That there are three (3) children of the marriage namely:

- a. King Asogwa 17 years old was born on the 3rd September, 2003 (a boy)
- b. Isabella Asogwa 14 years old was born on 19 October, 2006 (a girl)
- c. Arianna Asogwa 11 years old was born on 29th March, 2009 (a girl)

That the Petitioner and the Respondent have lived apart from July 2019 till date. That the marriage has gone sour due to the irreconcilable differences arising from the Respondent's continuous violence, deceit and quarrelsome attitude towards her as she constantly receives general physical assaults from him. That since the marriage was contracted, the Respondent cultivated the habit of always beating her up at the slightest misunderstanding with dangerous objects and equally assaulted her to the extent that she became unconscious at a time and was rushed to the hospital. That the Respondent womanizes a lot, bringing women into their matrimonial home and they usually sleep on their matrimonial bed, which resulted in him having a daughter outside their marriage by name Eden. That in the 1st year of their marriage the Respondent striped her naked in

the middle of the street at Area 1, Abuja and he also disgraces and embarrasses her endlessly by throwing bottles and cups at her in public. That the Respondent sends her out of their house late at night and locks her and their children outside the gate without justification. That the Respondent has taken everything they had together including her Mercedes Benz and Avalanche truck which she uses to run her business. That the Respondent does not respect her let alone carry her along in any of their family issues. That she and the Respondent built the property known as Plot 1271 Maitama Cadastral Zone A05 FCT-Abuja where the Respondent presently lives alone and that she contributed immensely from its foundation to completion to wit:- financially, spiritually, time (through supervision on Site, purchases of furniture, beddings and other materials) took risk to travel to several places for the purchases just to ensure they had a place of our own. That she is one of the Directors/Shareholders of MESSRS. FIRST AUCTIONS NIGERIA LIMITED which company was used in the purchase of the land at Maitama upon which their family house was built. That sometime in June, 2018, she wrote a Complaint to the Human Rights Commission, Abuja about the state of insecurity in their home. That where she presently lives with the children is a rented apartment. That the Respondent gives them N500, 000. 00 (Five Hundred Thousand Naira) only for their monthly upkeep outside the servicing of the Generator, purchase of Diesel for same, settlement of AEDC bills, subscription of the DSTV Cable TV and other miscellaneous which he does himself. That having suffered so much with the Respondent and God has blessed him this much but he now wants to throw her out of his life for good she needs to be adequately compensated by him in measurable terms. That the respondent has various properties in Banana Island and different areas in Lagos and Abuja. That almost seven (7) years out of their marriage when the Respondent was financially incapacitated, she was solely responsible for the care and feeding of the entire family, paying her driver and all domestic staff, paying for trips both Local and international for herself and their three kids including payment for their visas. That she wants the Respondent to buy her the Terrace Duplex apartment at Mabushi where she presently resides which she has discussed with the Respondent (which property goes for about N115, 000, 000. 00) only as part of her settlement from the marriage to enable her and the children to live a comfortable life permanently free from Landlord(s) harassment. In evidence four (4) exhibits were tendered as follows:

- i. Certificate of marriage between parties dated 26/4/2003 at Holy Trinity Catholic Church Maitama admitted and marked Exhibit A.
- ii. Letter titled "Insecurity in my home" admitted and marked Exhibit B.

- iii. Status report of First Auctions Nigeria Limited admitted and marked Exhibit C.
- iv. Offer of terms of grant/conveyance of Approval, acceptance of offer of grant of right of occupancy within the FCT, Abuja, power of attorney between Josephine Osuji & Messrs First Auctions Nigeria Limited marked REJECTED.

On the other hand, in defence and in support of his Cross Petition and his reply to the Petitioner/Respondent's reply to answer, Respondent testified as a sole witness adopting his witness statements oath dated 13/07/2021 and 25/11/2021 respectively. He confirms Exhibit A already admitted in evidence as his marriage certificate. The Respondent/CrossPetitioner vehemently denies paragraph 10 of the Petition which is also in line with the Petitioners witness statement on oath. It is the case of the Respondent/Cross petitioner that the marriage between him and the Petitioner/Respondent has broken down irretrievably due to the irresponsible conduct of the Petitioner/Respondent That he has never engaged in any violent conduct such as beating the Petitioner/Respondent as he is a staunch advocate for women protection against domestic and gender-based violence. That he has never engaged in any adulterous relationship with any woman outside his marriage and further deny the existence or paternity of any child called Eden. That he loved the Petitioner/Respondent and would never debase to the lowest ebb of stripping her naked in public and denies locking the Petitioner/Respondent and their children out of the house. That he is a loving, caring and providing father/husband to the Petitioner and their children. That the Petitioner's love was only attached to his financial status. That he is not a sadist and that the Petitioner/Respondent unilaterally moved her things out of the matrimonial home solely because he ran into financial crises and can no longer afford to give the Petitioner/Respondent the luxury, extravagant and materialistic life she used to get from him. That the Petitioner/Respondent rebuffed every plea to come back home and gave unreasonable and unrealistic conditions which must be met before she returns. That there is no house known to him that was built by him and the Petitioner or that belongs to the Company called First Auctions Nigeria Ltd and that where he lives does not belong to him or any Company called First Auctions Nigeria Ltd. That the Petitioner/Respondent was ill-advised and misguided to write a complaint to the Human Rights Commission and when the said Commission considered the complaint, it found that same was frivolous, preposterous and laughable and the Commission dismissed the said complaint. That he has always cared and provided for not only the Petitioner and the children but also her entire family members. That the

desertion of the marriage is as a result of his current financial condition and his inability to sustain the Petitioner/Respondent's extravagant and materialistic life style, lack of love and affection for him by the Petitioner/Respondent. That the action of the Petitioner/Respondent towards him has led him to constantly visit the hospital which in most cases would require him to be admitted and have suffered psychological and emotional trauma as a result of the Petitioner/Respondent's behaviours towards him and his family members. That he has no property in Banana Island or any area of Lagos or Abuja to share with the Petitioner. That he has given the Petitioner more than enough which includes a G Wagon Mercedes Benz and shop worth N88,000,000.00 (Eighty-eight Million Naira) in Wuse 2 Abuja. That all the expenses in the house have been shouldered by him.

The Petitioner/Cross Respondent and Respondent/Cross Petitioner were both cross examined by the respective counsel. At the close of the case, respective Counsel filed their written addresses.

The Respondent/Cross petitioner's Counsel in the written address raised two issues for determination thus:-

- a. Whether this Honourable Court can grant the decree for the dissolution of marriage based on the evidence of the Petitioner before this Court.
- b. Whether based on the totality of the evidence adduced by the Cross Petitioner, the Cross Petition does not deserve to succeed and to ground the decree for the dissolution of marriage.

Learned Counsel in arguing both issues submitted that the Court having wrongly admitted Exhibit B (letter dated 7/06/18) a photocopy with no foundation led, the said exhibit will be expunged for offending **Section 89 of the Evidence Act**. Counsel submitted that it is trite and settled that for a Petitioner or Cross Petitioner seeking for a dissolution of marriage under the Matrimonial Causes Act to succeed, she must of importance prove that the marriage has broken down irretrievably in accordance with **Section 15(1) & (2) of the matrimonial causes Act**. Counsel also submitted that the Petitioner having admitted moving out of the house by herself, was the person who deserted the Cross Petitioner and that facts admitted needs no further prove. He submitted that the particulars of the financial earnings of the Cross Petitioner was never pleaded nor proved before this court,

likewise the particulars of the earnings of the Company which she is one of the directors are not before the Court neither did she tender any asset of the Company before this Court. Counsel submitted that the Petitioner has not been able to prove this Petition and it must be dismissed and the Cross Petition granted. Counsel relied on the following authorities amongst others:

- i. **Multi Choice Nig. Ltd. Vs M.C.S.N Ltd/Gte (2020) 13 NWLR, pr. 1742.**
- ii. **Harriman V. Harriman (1989) 5 NWLR (Pt. 119) at 6**
- iii. **Omega Maritime & Energy Ltd. V. Prodos Ltd. (2020) 6 NWLR, Pt. 1720**
- iv. **Anyawu V. P.D.P (2020) 3 NWLR, PT. 1710**
- v. **Bibleri V Bibilari (2011) 13 NWLR, pr. 1264**
- vi. **Section 133 of the Evidence Act**
- vii. **Section 82 of the Matrimonial Causes Act and Order XIV Rule 4(4) of the Matrimonial Causes Rules.**

The Petitioner/Cross Respondent's counsel also filed his written address and raised a sole issue for determination to wit: -

“Whether the Petitioner/Respondent has on the strength of her evidence against that of the Respondent/Cross Petitioner made out a case to necessitate the grant of the reliefs sought by her.”

Learned counsel submitted that the Petitioner/Respondent has met the legal requirements for the grant of the reliefs sought in her Petition as against the evidence of the Respondent/Cross Petitioner. Counsel submitted that the Respondent/Cross Petitioner in his Cross Petition having not objected to the dissolution of the marriage, the need for further proof of any of the grounds raised by the Petitioner/Respondent or defending and countering the assertions of the Respondent/Cross Petitioner is immaterial and superfluous. Counsel submitted that admissibility of a document is not only dependent on its originality or proper foundation of same been laid but on its relevance in the interest of justice as this Honourable Court has the unfettered powers to look at its record in the interest of justice so as to ensure that justice at the end of the day is not only done but seen to have been done. Counsel further submitted that the most paramount consideration to Court after dissolution of the marriage is the interest of the children of the marriage and the maintenance of them

and the spouse and no more. Counsel urged this Honourable Court to discountenance the Respondent/Cross Petitioner's defence same being frivolous and calculated at attracting the Court's sympathy. Counsel cited the following authorities amongst others in proof of his case:

- i. Section 15 (1) (2) (b), (c), (d) and 71 of the Matrimonial Causes Act
- ii. HARRIMAN v. HARRIMAN (1989) 5 NWLR (pt. 119) at 15
- iii. OKORO v. OKORO All FWLR (pt.572) 1749 at 1776.
- iv. OBOH MONDAY OSALUMHENSE v. PETER AGBORO (2005) 16 NWLR (Pt. 951) 204.
- v. AKUBUIRO v. MOBIL OIL NIGERIA PLC (2012) 14 NWLR (pt. 1319) at 42
- vi. UZOCHUKWU v. UROCHUKWU (2014) LPELR 24139 (CA)

Having carefully considered the pleadings, evidence and the submission of both counsel, the court finds that the issues for determination are:

1. Whether parties are entitled to a decree of dissolution of Marriage.
2. Whether Petitioner has proved that she is entitled to her prayers in her Petition.

In the Marriage Act, it is competent for a marriage to be dissolved, once a court is convinced that the marriage has broken down irretrievably and to arrive at that conclusion that a marriage has broken down irretrievably the Petitioner must satisfy the court of any of the facts as prescribed for dissolution of marriage, under Section 15 (2) of the Matrimonial Causes Act, categorized under paragraphs A – H. It states:

"(2) The court hearing a petition for a decree of dissolution of 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-

(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 presentation 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 a decree being granted;

(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;

(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 restitution of conjugal rights made under this Act;

(h) that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

Therefore, upon proof of any of the factors stated in **Section 15(2) (a-h) of the Matrimonial Causes Act**, to persuade the Court that the marriage has broken down irretrievably, the Court shall grant a decree of dissolution of the marriage if it is satisfied on all the evidence adduced as held in **UZOCHUKWU V. UZOCHUKWU (2014) LPELR-24139 (CA)**.

On the first issue for determination, the Petitioner adduced evidence to the satisfaction of the Court, that she and the Respondent have lived apart for more than one year immediately preceding the presentation of the petition. This fact is not disputed by the Respondent/Cross-Petitioner as Respondent also adduced evidence in support of the Cross Petition that they have lived apart for more than one year preceding the presentation of the Petition. Thus, by virtue of the combined effect of **Section 15(1) and 15(2)(d) of the Matrimonial Causes Act**, the Court shall hold that a marriage has broken down irretrievably if there is evidence showing desertion for a period of one year immediately preceding the presentation of the petition. In this case, the parties as it has been firmly established have lived apart for a

continuous period of more than one year immediately preceding the presentation of the petition and parties are not willing to reconcile. In the circumstances, I therefore hold that the marriage has broken down irretrievably and the marriage ought to be dissolved and **IT IS ACCORDINGLY DISSOLVED.**

On the issue of custody of the children of the marriage, as at the time of filing this Petition, the ages of the children of this marriage were:

Kingsley Asogwa– 17 years

Isabella Asogwa - 14 years

Arianna Asogwa- 11 years

Petitioner is seeking custody of the children of the marriage till they attain the age of 18 years and then would be able to decide where to stay. However, the Respondent/Cross Petitioner is seeking for joint custody of the children of the marriage. The first child of the marriage Kingsley Asogwa who was born on the 3rd of September, 2003 was 17 years as at the time of filing this suit in the year 2020, however he is above 18 years presently hence is at liberty to decide where to stay as prayed by the Petitioner. The court is guided by the Provision of **Section 71 of the Matrimonial Causes Act and Section 1 of the Child's Right Act 2003**, the Court is bound to have regard to the interest and welfare of the children as the paramount consideration in the grant of this custody of children. The Respondent is seeking for joint custody and from the evidence adduced the last two children (Isabella Asogwa and Arianna Asogwa) are still minors in their formative years and have always been with the Petitioner. It is also not in the best interest of the children to distort their stay with the Petitioner.

The Petitioner in one of her prayers prayed the Court for an order that Respondent buy 2 cars for her preferably a Range Rover and a Mercedes Benz for her use and that of the kids. The Petitioner admitted that Respondent acceded to their prayers during the pendency of this matter and bought the two cars for her and her kids. Parties and their Counsel opted for the Court to mediate as regards the prayers for maintenance and custody of the kids. Parties and their respective lawyers before the Court came to an agreement which they all agreed would be incorporated into the body of this Judgment. Consequently, it is hereby ordered as follows:

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **MRS. STELLA-RITA AWELLE ASOGWA** and the Respondent, **MR. IYKE KELVIN ASOGWA** at the Holy Trinity Catholic Church, Maitama-Abuja on the 26th of April, 2003.
2. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three months from the date of this order, unless sufficient cause is shown to the court why the decree nisi should not be made absolute.
3. An Order of joint custody of the children of the marriage, Isabella Asogwa and Arianna Asogwa is hereby granted to both Petitioner and Respondent. The children would be going for their Christmas vacation with the Respondent in his village every 2 years after due consultation with the Petitioner provided that the children's nanny would accompany the children to the village for Christmas vacation. The children are to live with the Petitioner but the Respondent is free to visit them and also spend weekends with his children in his house after due consultation and agreement with the Petitioner. Such approval not to be unduly withheld by the Petitioner.
4. It is hereby ordered that Respondent pays the sum of N300,000.00 monthly (Three Hundred Thousand Naira) to the Petitioner to support the Petitioner on the welfare of the daily needs of the kids upkeep until they attain the age of 18 years old.
5. It is hereby ordered that the Respondent buys a duplex at Mabuchi where Petitioner presently resides in the name of their first son Kingsley Asogwa to enable Petitioner and the children live a comfortable life free from landlords' harassment.
6. It is hereby ordered that Respondent pay for an annual vacation for the children of the marriage and the Petitioner.
7. It is hereby ordered that Respondent creates time for occasional outing between Respondent, the children and Petitioner so that the kids will not suffer psychological and emotional trauma as a result of separation of their parents.

Parties: Absent

Appearances:N. O. Adoga appearing for the Petitioner/Respondent. Also holding the brief of Ezekiel C. Egbo for the Respondent/Cross Petitioner.

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE**

13TH APRIL, 2022