

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION**

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 31

CASE NUMBER: SUIT NO. FCT/HC/PET/265/2020

DATE: 12 APRIL, 2022

BETWEEN:

ADESOLA TEMITOPE OSIPITAN SOSU.....PETITIONER

AND

FEYISETAN DOMINIC SOSU.....RESPONDENT

APPEARANCE:

O.V. Archibong Esq for the Petitioner.

Temitayo Lasaki Esq for the Respondent.

R. Okotie-Eboh Esq (Lead Counsel) for the Petitioner.

Petitioner is in Court.

JUDGMENT

The Petitioner filed this Petition on the 14th day of May 2020, seeking for the following reliefs:-

- a) A decree of dissolution of the marriage on the ground that the marriage has broken down irretrievably and the Petitioner cannot reasonably be expected to live with the Respondent.
- b) An order granting custody of the child of the marriage (Oluwafeyifunmi Isaac Sosu) to the Petitioner.

- c) An order granting supervisory visitation rights of the child of the marriage within reasonable time in a public place in the presence of a 3rd party at such time that this Honourable Court may deem fit.

The facts grounding this Petition are as follows:-

- a) That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent, as the Respondent continually assaulted and beat the Petitioner.
- b) The Respondent has failed and refused to perform his marital responsibilities since January, 2018.
- c) The Respondent has not provided any support or upkeep for the Petitioner since 2017.
- d) The Petitioner has paid and continues to pay for upkeep and rent of the House/apartment at Plot 516 Olayiwola Abiose Street, Mabushi, Abuja from 2017 till date.
- e) The Respondent has on several occasions threatened to kill the only child of the marriage in order to spite the Petitioner.
- f) On several occasions, the Respondent has violently snatched the child of the marriage Oluwafeyifunmi Isaac Sosu from the Petitioner while feeding with threat to drop him to spite the Petitioner.
- g) The Respondent solicits for and receives nude pictures from women despite being married to the Petitioner.
- h) The Respondent has informed the Petitioner and other family members that he has been involved in adulterous and extra marital affairs with several women.
- i) The Petitioner states that she has been responsible for the upkeep and maintenance of the only child of the marriage from birth till date.
- j) The Petitioner states that she paid the Hospital bills in United States of America for the birth of the said child and all other expenses.
- k) The Petitioner states that the Respondent though working informed the Petitioner that his monthly income is being attached by a commercial bank for debt incurred as a result of gambling.

- l) The Petitioner has continued to suffer emotional and psychological abuse from the Respondent.
- m) The Respondent has acted in a wicked and selfish manner to the Petitioner and their son.
- n) The Respondent is involved in acts of scamming and deceiving people which has become unhealthy to the Petitioner.
- o) The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to continue the marriage with the Respondent.
- p) The Petitioner states the Respondent does pornographic videos and explosive sex videos with women despite being married to the Petitioner.
- q) The Petitioner has made several entreaties to the Respondent to change his ways and actions but all her efforts have proved abortive.

Upon being duly served the Petition Respondent herein through his Counsel Chikasolu Ojukwu Esq, filed an answer to the Petition on the 2nd day of July, 2020. Same is supported by the Respondent's verifying Affidavit of 7 paragraphs sworn to on the 29th day of July 2020.

Parties herein filed their respective witness statements on Oath.

The Petitioner's witness statement on Oath is dated 29th day of March 2021, filed same day.

While Respondent's witness statement on Oath is dated 26th day of March 2021 filed on the same day.

It should be recalled that on 29/3/2021 Learned Respondent's Counsel Chika Osolu Ojukwu Esq, informed this Court that appeal had been entered against the Ruling of this Honourable Court delivered on the 27th day of November, 2020 seeking order of this Court striking out this Petition.

Mr. Ojukwu gave the appeal NO. As **CA/ABJ/CV/73/2021**, and applied for a date to file and move a Motion for stay of proceedings.

The Court adjourned the matter to 10/6/2021 for hearing of the said Motion. A copy of the record of Appeal was equally served on the Court.

However, on the 5th day of July 2021 Learned Respondent's Counsel C. F. Odinuru Esq advised Learned Petitioner's Counsel Olajide Okusote Esq not to respond to their application for stay of proceedings since they intend to withdraw the Appeal filed before the Court of Appeal.

As parties were trying to settle the matter amicably, on request of the parties, the Court further adjourned to 27/9/2021 for report of settlement.

However, regrettably, when parties failed to settle as settlement had broken down according to Learned Petitioner's Counsel R. Okotie-Eboh Esq on the 1/3/2022, the Court adjourned the matter for the Petitioner to open her case.

At trial, the Petitioner adopted her witness statement on Oath and tendered several Exhibits which were admitted in evidence and marked as follows:-

- “(1) A marriage Certificate of the Petitioner and Respondent celebrated at the Federal Marriage Registry, Ikoy, Lagos dated 7th November 2017 marked Exhibit A.
- (2) A Certificate of Birth of Oluwafeyfunwmi Isaac Sosu, marked Exhibit A1.
- (3) A Lufthansa Flight itenary marked Exhibit A2
- (4) A letter written by Joseph Onu addressed to Ms. Adesola Osipitan dated 8th May 2020, along with Receipts for rent paid dated 6/3/2018, 20/2/2017, 13/3/2019, 3/3/2020 are marked exhibits A3, A4, A5, A6 and A7 respectively.
- (5) A bundle of 7 Receipts for purchase of children's items are marked Exhibits A8, A9, A10, A11, A12, A13 and A14 Respectively.

- (6) A paypal payment transaction details of 2 pages and a Receipt issued by United States Department of state Receipt for passport services as well as an Individual application information and payment of \$100 Dollars Receipt marked Exhibits B, B1, B2, and B3 respectively.
- (7) A Credit card payment Receipt from US Anesthesia partners dated 10/12/2019 marked Exhibit B4.
- (8) A letter written by Liliana Castillo, financial Counselor HCA Houston healthcare addressed to Osipitan Adesola T dated October, 2021 marked Exhibit C.
- (9) A Pediatric Medical group letter containing payment summary and payment options addressed to Adesola T. Osipitan dated 11/12/2019, page 27 payment details, photocopy of a receipt dated 25th September 2019, 2 payment details issued by memorial Herman Medical group, issued by Dr. Niclolas Xydas women's Centre, and a North Houston Pathology Association payment details marked Exhibits C1-C8 respectively.
- (10) 3 page document addressed to Osipitan on payment transaction of instamed are marked Exhibits C9, C10 and C11 respectively.
- (11) 3 page flight Itenary of Revelinks travels for Lufthansa flight dated Thursday 12 September 2019 marked Exhibit C12, C13 respectively.
- (12) Photocopy of Lufthansa flight Itenary for Thursday 21 November and 22 November 2019 marked Exhibit C15.
- (13) Two certificates of compliance pursuant to Section 84 of the Evidence Act filed on 30/6/2020 and 25/02/2021 marked Exhibits C16 and C17 respectively.

On the same day being the 1st day of March 2022 the Petitioner was duly Cross-examined by Temitayo Lasaki Esq, Learned Respondent's Counsel.

Mr. Lasaki Esq also informed the Court that the Respondent will not be calling any witnesses.

The Petitioner subsequently filed her final written address on the 7th day of March 2022 which was adopted by Learned Petitioner's Counsel R. Okotie-Eboh Esq on the 8th day of March 2020.

Mr. Lasaki Esq Respondent's Counsel informed the Court that they would not file any address but urged the Court to grant the proposed terms.

The Court then adjourned the matter for Judgment.

In the Petitioner's final written address, a sole issue for determination was formulated thus:-

"Whether the Petitioner has proved her case in the circumstances of this suit so as to entitle her to the grant of the reliefs sought?"

In arguing the issue, Learned Counsel referred the Court to the provision of Section 15 (1) of the Matrimonial Causes Act CAP M7, Laws of the Federation of Nigeria 2004 and submitted that the Petitioner married the Respondent under the Act as shown in Exhibit A. reliance was equally placed on Section 137 (1) of the Evidence Act as well as the cases of **TOWOENI V TOWOENI (2007) ALL FWLR (PT. 122) PG 170; ALAO V KORE (2000) ALL FWLR (PT. 6889); GARBA V ZARIA (2005) ALL FWLR (PT. 283) 25 (CA) PG 35-36, PARAS G-B.**

Learned Counsel submitted that from the evidence led by the Petitioner, being the sole witness in this case, the Petitioner has fully discharged the Onus of burden of proof placed on her. That Petitioner having given her evidence on Oath has supported the grounds predicating the Petition.

Reference was made to Section 15 (2) of the Matrimonial Causes Act as well as the case of EKREBE V EKREBE (1999) 3 NWLR (PT. 596) 514, CA.

It is submitted moreso that the Petitioner's evidence is unchallenged and uncontradicted, that the Petitioner has satisfied not one but two of the provisions of Section 15 (2) of the Matrimonial Causes Act i.e Section 15 (2) (b) and (c) respectively.

Learned Counsel further relying on the evidence of the Petitioner, particularly paragraphs 13, 14, 15 of her evidence on Oath, state that the facts alleged have been satisfactorily proved by the Petitioner.

It is further submitted that the Respondent has failed to provide for the needs of the Petitioner and that of the child of the marriage, and Petitioner is responsible for the accommodation of the child of the marriage. Reliance was placed on Exhibits A3-A7.

Learned Counsel further argued that the Respondent has lost every desire to continue with the marriage to the petitioner as he clearly stated he was no longer defending the said Petition before this Honourable Court.

It is equally submitted in that regard that the marriage in this case has broken down irretrievably as the parties have been living apart. Reference was made to paragraphs 34-63 of Petitioner's evidence on Oath.

Submitted moreso that the Respondent in his answer to the Petition also clearly affirmed that the Petitioner has been paying for the welfare of the child of the marriage and the upkeep of the household before the Respondent was advised to move out of the Matrimonial home by the Police in order to maintain peace and order.

Reference was made to paragraphs D and J of the Respondent's answer to the Petition, and that uncontroverted evidence of fact in legal proceedings is deemed admitted.

That the Respondent has not contradicted the evidence proffered by the Petitioner and has flagrantly failed to defend the said Petition.

Reliance was placed on **GARBA V ZARIA (Supra) and OYETAYO V MOSOSO (1997)10 NWLR (PT. 526) 627; GATAH (NIG) LTD V ABU (2005) ALL FWLR (PT. 278) 2286 (CA)**, to argue that a Court can rely on unchallenged and uncontroverted evidence and it is at liberty to act on it.

On the issue of custody, the Court is urged to consider the evidence of the Petitioner that she has been solely responsible for the upkeep and Education of the child of the marriage and Respondent usually left her with no means of support.

Moreover that due to the age of the only child of the marriage Oluwafeyfunmi Isaac Sosu, custody should lie with the Petitioner. Reliance was placed on Exhibit A1, the Birth Certificate of the child of the marriage.

Submitted that during Cross-Examination, the Petitioner affirmed that she does not have any objection to the Respondent having visitation Rights to the child of the marriage.

That the Respondent does not have any objection whatsoever to the Petitioner having custody of the child marriage and the fact that Respondent would contribute ₦40,000 (Forty Thousand Naira) monthly as upkeep of the child, which was affirmed by Petitioner during Cross-Examination.

Learned Counsel then urged the Court to make orders in that regard and to adopt the proposals reached by the parties except where such would jeopardize the well being of the child. And that the orders sought for in this case will not jeopardize the child in the absence of any evidence proffered by the Respondent. Learned Counsel urged the Court to grant custody to the Petitioner since the child has been living with the Petitioner in a conducive atmosphere and suitable accommodation.

Now, under and by virtue of Section 15 (2) of the Matrimonial Causes Act, CAP M7 LFN 2004, the Court hearing a Petition for dissolution of the marriage shall hold the marriage to have broken down irretrievably if and

only if the petitioner satisfies the Court of at least one of the grounds highlighted under subsection 15 (2) (a)-(h), thereof, even if the divorce is desired by the parties.

I refer to the case of **IKE V IKE & ANOR (2018) LPELR-44782 (CA) per EKPE, J. C. A** at pages 10-16, paragraphs C-A, as follows:-

"For a Petition for the Dissolution of marriage to succeed, the Petitioner has to prove at least one of the ingredients contained in Section 15 (2) of the Matrimonial Causes Act, even if the divorce is desired by both parties".

In the case of **BIBILARI V BIBILARI (2011) LPELR-4443, the Supreme Court, per Galinje J. S. C**, held at pp 33-34, paragraph C-A, as follows:-

"In a Petition for dissolution of marriage, the Petitioner must plead and prove that the marriage has broken down irretrievably. In doing this, the Petitioner must be able bring himself within one or more of the facts enumerated in Section 15 (2) (a-h) of the Matrimonial Causes Act Cap 220 LFN, 1990 before he can succeed in the Petition....."

It is clear from the facts grounding this Petition (earlier reproduced) that the main grounds predicating this Petition are adultery and intolerable behavior.

Section 15 (2) (b) and (c) of the Matrimonial Causes Act (Supra) provide thus:-

"(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."

In her witness statement on Oath, Petitioner deposed among other things Particularly in paragraph 21 thereof that after the parties honeymoon, the Petitioner was diagnosed with a sexually transmitted infection, hypes to be precise. That when she confronted the Respondent about this, she stated the Respondent confessed and became apologetic. Petitioner deposed in paragraph 21 (c) thus:-

"The Respondent confessed to me that he has been taking women to his mother's house in Asokoro to have sex with them while his mother was away in Lagos and the Respondent stated he would change."

In the subsequent paragraphs Petitioner further deposed that she forgave him and the couple decided to move on from Respondent's infidelity.

But that when she got pregnant and was diagnosed with polycystic ovary syndrome which was a tedious process to treat, all through the treatment, the Respondent was not supportive.

That he became aggressive, would leave the house in the evening would not come back till morning next day smelling of female perfume, alcohol and have lipstick on his shirt.

That when the parties decided to opt for IVF procedure, the Respondent told the Petitioner that he will donate his sperm and not his money.

That luckily before the IVF was to commence Petitioner said she found out that she was pregnant, but still Respondent failed to support her, even though the pregnancy was problematic and a difficult one.

Petitioner further deposed in paragraph 21 (s) that she was later diagnosed again with a sexually transmitted disease during her pregnancy.

According to the Petitioner when she confronted the Respondent he initially denied having sexual relationships outside the marriage, but later confessed that he had sex with a lady after his outing in the club and profusely apologized.

That when the parties reconciled and tried to move on, they both decided to have their baby in the United States, but that Respondent refused to fund the trip, and Petitioner still went ahead on her own to fund the trip and delivery of their child among other incidental expences. That during the said period Respondent even refused to pick her calls. And that when Respondent finally joined the Petitioner in the United States as he was required to sign all documents in respect of their baby as the father, the Respondent went on a spending spree, by buying Iphones, clothes for himself and alcoholic drinks.

That the Petitioner bought all the baby clothes, paid for their upkeep in the United States and Respondent did not give the Petitioner any money as promised by his mother.

That at a point when the respondent requested for a loan from Petitioner's friend who was accommodating them in the United States, the Respondent lost his temper and threatened to beat up the Petitioner because she confronted him about the loan. That it took the intervention of her friend to prevent him from beating her just some weeks after she delivered their child through Caesarian Section.

Petitioner deposed, that when she requested for ticket for their baby to return to Nigeria, the Respondent blatantly told her that he has spent all his money and that he was leaving United States as his flight was an earlier date.

That she had to call her parents for financial assistance to enable her bring their baby back to Nigeria.

The Petitioner further states in paragraph 27 and 28 thereof, that upon her return to Nigeria, Respondent's behavior of keeping late nights and clubbing became worse as well as his drinking habit coupled with gambling a fact which respondent admitted to the Petitioner when he gambled off his car in a Casino.

That one Chima a colleague of the Respondent called the Petitioner and informed her that the Respondent had taken out a loan of ₦1,000,000.00 and when he demanded for the loan, Respondent told him that the Petitioner had refused to sign the cheque of the joint account which was not true as the parties did not operate a joint account.

That Petitioner states in paragraph 32 thereof, that anytime she complained about his attitude of leaving the house and not returning till next day, the Respondent would resort to violence, and at one instance, he grabbed their baby who was then barely few months old and shook him violently in fits of rage.

In paragraphs 34 and 35, 37, 39, 40, 41, 42, 43, 44, 46, 47, 49, 51, 52, 53, 54, 55, 58, 59, 61, 62, 63, and 64 thereof Petitioner deposed as follows:-

"34: That on 1st of May 2020, I was at home, I received a message via e-mail which was sent as video from an unverifiable email address, though prior to that, I have been receiving calls that the Respondent is into pornography and severally people had also called me to demand for payment of money the Respondent borrowed from them.

35: That upon receipt of the said video, I opened the video and I was shocked when I saw the Respondent (My husband) engaging in sexual act with an unidentified female. I wept profusely; I was distraught considering the fact that I was home alone with our baby."

37: That the Respondent came back at about 3:00am on 2nd of May, 2020 and I confronted him about the video, as I was very hurt, the Respondent pushed me and my head hit the bedroom door and the door broke and the Respondent stated that I should get out of his life and that he was tired of the marriage.

39: That I picked our crying baby and the Respondent dragged my son by the arm and threatened to kill him stating that I had developed too much confidence because of the child.

40: That the respondent kept shouting and kept dragging the baby's arm and the baby kept screaming of which I started pleading that the Respondent should release the baby's arm as the baby was fragile and he could break the arm of the baby.

41: That at that point, I started pleading profusely with the Respondent to release the arm of the baby, at this point my phone rang and this distracted the Respondent which led to the Respondent loosening his grip on the baby's arm.

42: That upon the release of the grip of the baby's arm, I fully grabbed the baby and ran out of the house as I was afraid for my life and that of the baby.

43: That I ran out into the early darkness of morning and I had nothing on but a night wear. While was running with the baby, I saw a patrol van, as I was crying profusely, the officers in the van approached me as they were worried because I was with a baby and in my night wear as well.

44: That upon being questioned by the police officers in the patrol van, I informed them of what happened and the officers in the patrol van decided to follow me back home

and when the police officers knocked on the door, the Respondent yelled thinking I was the one knocking and the Respondent shouted from inside that he had warned me to get out of his life and never return and further shouted "you are back right? I will kill you if you come into this house."

46: That the officers kept knocking and finally shouted that they were officers of the Nigerian Police Force and then the Respondent opened the door and the officers introduced themselves to the Respondent.

46: That upon this, the officers took the Respondent and I to the SARS office, it was then I discovered that the officers in the patrol van were from SARS.

47: That at the SARS office, I called a friend of mine who is a lawyer to come to SARS office, at the SARS office the police officers stated that it was their duty to maintain law and order. The Respondent at the SARS office admitted to infidelity and stated that he was tired of the marriage and he wanted me out of the house.

49: That in view of the above, and to maintain peace and order, the police officers stated that since I was paying the rent and that there was already violence in the marriage, the Respondent should move to Asokoro to prevent further violence which is the Respondent's mother's house.

51: That since I was the one paying the rent, the Respondent was advised to move to his mother's house in Asokoro away from me to avoid further violence which he did.

52: That further to the Above, the Respondent gave an undertaking at the police station that he would not come near me and would avoid any confrontation with me pending any decision taken by the parties.

53: That furtherance to paragraph 52 above, the Respondent moved out of the house but after moving out, he kept sending threatening messages to me, in some of the messages he had threatened he would take my son from me forever and he would kill my son as that would take away my source of happiness.

54: That as a result of the said threat, I had to move out of the apartment and moved to a new house in which I set up cameras and I got a nanny as well, for the safety of my son and I.

55: That I know as a fact that there are several messages via whatsapp wherein the Respondent admitted to this intolerable behavior and I also know that the marriage has broken down irretrievably.

58: That on several occasions I have had to pay debts which the Respondent accrued in the cause of gambling.

59: That I had received anonymous message saying that the Respondent was a chronic gambler and was into pornography which he does for money.

61: That the Respondent has acted in the manner that I cannot continue to live with him and the Respondent has abused me physically and emotionally.

62: That I do not feel safe being in the company of the Respondent and the safety of the child of the marriage after the several threats by the Respondent is of great concern to me.

63: That the marriage to the Respondent has broken down irretrievably.

64: That I therefore pray this Honourable Court to dissolve the marriage and grant all the reliefs sought as per my petition."

The Respondent on his part, has denied all the above facts in his answer to the Petition.

Respondent particularly in paragraph 5 thereof, denied ever physically assaulting the Petitioner at anytime during the marriage, that he has fulfilled his marital obligations including but not limited to conjugal rights and financial support to the Petitioner and their child to the best of his ability from the beginning of the marriage till April, 2020. That he paid the first rent on their property in 2017 and the Petitioner opted to pay subsequent rents since she earns a significantly higher income. And that the Respondent always contributed part payment in cash which Petitioner has never complained about.

Further to that, Respondent states that he has never threatened to kill or otherwise harm his child in any form whatsoever as he loves the child wholeheartedly. That the allegations in paragraph 8 (e) and 8(f) of the Petition are a figment of the Petitioner's imagination.

Respondent further states that he never solicited or received any nude picture (s) from any woman since he got married to the Petitioner and that contrary to Petitioner's paragraph (h) Respondent has never informed the Petitioner or anyone else for that matter that he has been involved in any adulterous relationship, as no such relationship has ever existed.

On the trip to the United States of America for the birth of their child, the Respondent avers that it was the Petitioner's choice to have their baby in the United States of America even when the Respondent enjoined her to undergo the delivery in a competent Hospital within Nigeria. That to his surprise, the Petitioner vehemently refused the Respondent's suggestion and proceeded to inform him that she has the financial means to travel abroad and to take care of all the costs of the delivery and other

associated expences. That Petitioner voluntarily paid the hospital bills and other expences for the birth of their child in the United States.

Respondent also denied the allegation in paragraph 8 (k) and averred that he is not a gambler.

In paragraph 5 (c) (m) and (n) thereof the Respondent avers that contrary to Petitioner's paragraphs 8 (c) and 8 (m) he has not inflicted any emotional or psychological abuse whatsoever on the Petitioner and has never acted in a wicked or selfish manner towards the Petitioner and/or their child.

That contrary to Petitioner's paragraph 8 (m) he is not a scammer but a civil servant and therefore not in the business of scamming or deceiving people.

The Respondent further averred that he emphatically denies that he engages in viewing pornographic or sex videos as alleged in paragraph 8 (p) of the Petition.

In paragraph 6 thereof, Respondent averred thus:-

"The Respondent states, that the facts supporting the Petition are malicious and unfounded."

Now as stated earlier Petitioner has deposed on Oath among other things that she has received and watched a video of the Respondent, her husband, engaging in sexual acts with an unidentified woman, aside from other allegations in her Petition.

Although the Respondent has denied these allegations and has also filed an answer in that regard, the Respondent in my view had the opportunity of presenting his own evidence to contradict or challenge the evidence of the Petitioner.

The Court has taken judicial notice of the Respondent's witness statement on Oath filed on 26/3/2021.

However, since the Respondent has not adopted the said witness statement on Oath, it is deemed as having been abandoned.

On effect of a witness statement on Oath which has not been formally adopted by a prospective or potential witness, the Court of Appeal has held in the case of **OBEYA V OKPOGA MICROFINANCE BANK LTD (2019) LPELR-47615 (CA)**, thus:-

".....A witness deposition of a potential witness cannot be regarded as evidence. It must be adopted in evidence by its deponent otherwise, it is a useless piece of paper....." per EKANEM, J. C. A, p 23 para B-F.

See also the cases of **NWALUTU V NBA & ANOR (2019) LPELR-46916 (SC); ADEBOWALE V ROBINSON (2018) LPELR-44424 (CA)**.

Consequently therefore, the effect of the Respondent not adopting his witness statement on Oath, is that the Petitioner's evidence is unchallenged and uncontroverted.

On the effect of unchallenged and uncontroverted evidence in Matrimonial proceedings I refer to the case of **NANNA V NANNA (2006) 3 NWLR (PT. 966) 1**, where the Court observed that evidence which is not successfully challenged or discredited and which is relevant to the issues in controversy ought to be admitted and relied upon by a trial Court.

The allegations against the Respondent herein are grave and weighty.

On what amounts to intolerable behavior the Court has held in the case of **OGUNTOYINBO V OGUNTOYINBO (2017) LPELR-42174 (CA) at PP 8014, PARA G-A**, as follows:-

"The duty is on the Court to consider whether the alleged behavior is one in which a right thinking person would come to the conclusion that the Respondent has behaved in such a way that the Petitioner could not reasonably be expected to live with him taking into account the whole of the

circumstances, the character, and personalities of the parties."

In the instant case it has been proved by the Petitioner that the Respondent engages in adulterous relationships with women, views and engages in pornography, which in my view cannot be an unhealthy sexual orientation and one that is capable of endangering the health and life of the Petitioner. It would therefore be clear to any right thinking person that the Respondent herein has behaved in such a way that the Petitioner herein cannot reasonably be expected to live with him.

Consequently therefore, it is my humble view that the Petitioner has proved the two grounds for dissolution of the marriage under Section 15 (2) (B) and (c) of the Matrimonial Causes Act.

I am therefore satisfied that the marriage between the Petitioner and the Respondent has broken down irretrievably. I so hold.

On the issue of custody I have considered the evidence led by the Petitioner, the Exhibits annexed as well as the submissions of the Learned Petitioner's Counsel in that regard.

I have equally considered the response of the Petitioner to questions put to her during Cross-Examination regarding visitation rights and ₦40,000.00 for monthly upkeep of the child of the marriage.

Having said that, the Court shall be guided by the paramount consideration which is the best interest of the child.

On this premise, I refer to Section 71 (1) of the Matrimonial Causes act, which provides:-

"(1) In proceedings with respect to the custody, guardianship, welfare, advancement and education of children of a marriage the Court shall regard the interest of those children as the paramount consideration and subject

thereto the Court may make such order in respect of those matters as it thinks proper."

Similarly, it was held in the case of **LYDIA OJOULA OLOWUNFOYEKUN V MR OLUSOJI OLOWUNFOYEKUN (2011), 8 NWLR (PT. 1227) 177 at 203, paras A-E thus:-**

".....Custody is never awarded for good conduct, nor is it ever denied as punishment for the guilty party in Matrimonial offences. The welfare of the child of a marriage that has broken down irretrievably is not only paramount consideration but a condition precedent for the award of custody....."

See also the case of **ODUSOTE VS ODUSOTE (2012) 3 NWLR (PT. 1288) 478; WILLIAMS V WILLIAMS SC 197/1985.**

On the Criteria laid down to be considered by the Court with regard to the welfare and interest of the child of the marriage, the Court set out such criteria the case of **ALABI V ALABI (2007) LPELR- 8230 (CA), per Agube J.C. A at pp 47-49 paras E-D, as follows:-**

- 1)The degree of familiarity of the child with each of the parents (parties).***
- 2)The amount of affection by the child for each of the parents and vice-versa.***
- 3)The Respective incomes of the parties.***
- 4)The Education of the child.***
- 5)The fact that one of the parties now lives with a third party as either man or woman, and.***

6)The fact that in the case of children of tender ages, custody should normally be awarded to the mother unless other considerations makes it undesirable etc.”

In the instant case from the evidence adduced by the Petitioner I am of the view that it will be in the best interest of the child if custody is awarded to the Petitioner. Master **OLUWAFEYIFUNMI ISAAC SOSU** deserves to be brought up in a safe, secure and healthy environment most especially considering his tender age.

Likewise, the Petitioner has satisfied the Court that she is fit and capable of taking care of Educational, financial and other needs of the child of the marriage.

In considering maintenance of the child, the Court shall consider the proposal made by both the Petitioner and the Respondent, in the best interest of the child.

Consequently, it is hereby ordered as follows:-

- 1) I hereby grant a Decree Nisi dissolving the marriage between the Petitioner **ADESOLA TEMITOPE OSIPITAN SOSU** and the Respondent **FEYISETAN DOMINIC SOSU**, celebrated at the Federal Marriage Registry Ikoyi, Lagos, Lagos State of Nigeria on the 7th day of November 2017. The decree shall become absolute if nothing intervenes within three months from this date.
- 2) The Petitioner **ADESOLA TEMITOPE OSIPITAN SOSU** is awarded sole custody of child of the marriage, **OLUWAFEYIFUNMI ISAAC SOSU**.
- 3) The Respondent FEYISETAN DOMINIC SOSU is awarded visitation Rights subject to convenience of the parties at the time of request.
- 4) The Respondent **FEYISETAN DOMINIC SOSU** is hereby ordered to pay the sum of **₦40,000.00 (Forty Thousand Naira)** monthly

to the Petitioner for the upkeep/welfare of the child of the marriage **OLUWAFEYIFUNMI ISAAC SOSU.**

Signed:

***Hon. Justice S. U. Bature
12/04/2022.***