

**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. 24
CASE NUMBER: SUIT NO. FCT/HC/PET/97/2018
DATE: 31ST MAY, 2022

BETWEEN:

MRS. PRETTY ONYEJIAKU.....PETITIONER

AND

MR. CHIKA ONYEJIAKU.....RESPONDENT

APPEARANCES:

Chukwuka Emesi Esq for the Petitioner.
Respondent is absent and unrepresented.

JUDGMENT

The Petitioner herein filed this Petition on 31st January, 2018 seeking the following Orders to wit:-

- “(i). A decree of dissolution of the marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably.***
- (ii). The custody of the children of the marriage.***
- (iii). The Respondent to have a right of visitation to the children of the marriage only once a month after booking an appointment at least one week earlier provided the visitation***

shall take place at the Petitioner's lawyer's office or any location chosen by the Petitioner.

- (iv). A monthly N100, 000.00 for monthly allowance for the feeding, medicals and clothing of the children of the marriage.**

The petition is supported by a Verifying Affidavit as well as an Affidavit of evidence deposed to by the Petitioner herself.

The grounds predicated the Petition are as follows: -

- “(a). The Petitioner is a Journalist and lives at No. 97, 1st Avenue Efab Estate, Lokogoma Abuja.**
- (b). The Respondent is a businessman and stays at No. 97, 1st Avenue, Efab Estate, Lokogoma Abuja, whenever he is in Nigeria.**
- (c). The parties to this marriage have lived apart for about 10 years preceding the presentation of this Petition in that they only lived together for two years after their marriage.**
- (d). That the Respondent stopped showing affection and love towards the Petitioner and the children in that:**
- i. The Respondent does not meet up with his responsibilities as a father and husband.**
 - ii. The Respondent is involved in illegal internet business, commonly referred to as ‘yahoo’.**
 - iii. The Respondent never cares about the Petitioner's last pregnancy.**
- (e). The Respondent has consistently failed in the payment of his children's tuition fee, leaving the sole responsibility of the school fees to the Petitioner.**

- (f). The Respondent has never paid the house rent of the apartment where the Petitioner lives with the children.**
- (g). It is rumored that the Respondent has another wife and children in Togo, but he has often denied it.**
- (h). The family of the Petitioner has made every effort, all to no avail, to reconcile the Petitioner and the Respondent.**
- (i) The Respondent's mother supports the Respondent's bad behaviour and rather picks quarrel with the Petitioner at the slightest opportunity.**
- (j). Whenever the Respondent occasionally visits Abuja, he would compel the Petitioner to give him transport money to go back.**
- (m). The Petitioner shall at the trial rely on the Marriage Certificate dated 13th May, 2006 issued by the Marriage Registry Ikoyi, but with the stamp of the Catholic Church were the marriage was conducted."**

This matter commenced De-novo on the 11th October, 2021 after the Respondent was duly served with the hearing notice against the hearing of the proceedings. Likewise, despite being duly served with subsequent hearing notices throughout these proceedings, the Respondent did not file any answer to the Petition and never appeared nor caused any appearance to be made on his behalf.

On the 31st March, 2022 the Petitioner adopted her Affidavit of evidence and tendered the parties marriage certificate which was admitted in evidence and marked as Exhibit A.

Upon failure of the Respondent to appear for cross-examination as well as defence, the Court foreclosed the right to cross examine the Petitioner as well as defence on 24th January, 2022 and 17th March, 2022 respectively.

In the Petitioner's final Written Address a sole issue for determination was formulated thus:-

“Whether the Petitioner has proved her case to be entitled to the reliefs sought.”

Learned Counsel submitted that the Petitioner has filed this Petition on the ground that the marriage has broken down irretrievably. And that although it is the nature of the Court to always grant dissolution reluctantly, where it is demonstrated that the marriage has indeed broken down irretrievably, then the Court has no alternative than to dissolve the marriage.

Counsel relied on the case of ***UGBAH V UGBAH (2009) 3 NWLR (Pt. 1127) 108.***

Learned Counsel submitted that from the Petitioner’s evidence, it is shown that it is impossible for her to continue to live with the Respondent because his behaviour is so negative and grave towards the Petitioner to the point it has caused the Petitioner mental and psychological breakdown. As such this will make their further cohabitation virtually impossible, and in any case unhealthy. Reference was also made to paragraph 8 C – J of the facts as stated in the Petition.

Learned Counsel further submitted that the Respondent has failed to file any answer to the Petition despite all opportunities granted to him by the Honourable Court.

On the issue of custody of the children of the marriage, learned Counsel submitted that the marriage is blessed with two children of the marriage David Onyejiaku and Kaima Onyejiaku presently residing with the Petitioner.

Learned Counsel referred to the Petitioner’s evidence wherein it is stated thus:

- “a. That the Respondent stopped showing affection and love towards me and the children in that:***
- b. The Respondent does not meet up with his responsibilities as a father and husband.***
- c. The Respondent beats me and the children.***
- d. The Respondent never cares about my last pregnancy.***

- e. ***The Respondent has consistently failed in the payment of the children's tuition fee, leaving the sole responsibility of the school fees to the Petitioner.***
- f. ***The Respondent has never paid the house rent of the apartment where I live with the children."***

Consequently, learned Counsel submitted that the above pieces of evidence goes to show that the interest of the children will be served more if they remain with the Petitioner who has been taking care of them alone.

Finally, learned Counsel placed reliance on Section 82(i) of the Matrimonial Causes Act in urging the Court to uphold the argument of the Petitioner and grant all the reliefs sought.

Now, under and by virtue of Section 15(2) of the Matrimonial Causes Act Cap M7 LFN, 2004, a Court hearing a Petition for dissolution of marriage shall hold the marriage to have broken down irretrievably, if and only if the Petitioner satisfies the Court on any of the grounds enumerated under Section 15(2)(a) – (h) thereof.

On this premise, 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*** where the Court held 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”.

See also the cases of ***IBRAHIM V IBRAHIM (2007)1 NWLR PT 1015 @ (Pg. 405 Paras F-H); BIBILARI V BIBILARI (2011) LPELR – 4443, (SC) per Galinje JSC, at PP: 33-34.***

Now, aside from the other grounds predicating this Petition, Petitioner in ground 8(c) of the facts grounding this Petition states that the parties to this marriage have lived apart for about 10 years preceding the presentation of this Petition in that they only lived together for two years after their marriage. Same is clearly captured in paragraph 7 of the Petitioner's Affidavit of evidence.

I have equally noted all the other facts grounding the Petition which the Petitioner relies on in proof of her case encapsulated in the Affidavit of evidence.

Now, living apart is one of the grounds for dissolution of marriage under Section 15(2) of the Act.

In the Notice of Petition, on the dates and circumstances in which cohabitation ceased between the parties, it is stated in b, c, and d thereof that the Petitioner and Respondent married in Lagos in 2006, and lived together in Lome, Togo for 2 years. However, since 2008, the Petitioner moved to Abuja, while the Respondent remained in Togo, and only making occasional visits.

That the Petitioner and the Respondent are not living together as husband and wife and have lived apart since 2008.

Now, Section 15(2)(f) of the Matrimonial Causes Act (supra) provides thus:-

“15(2)(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.”

In the circumstances, therefore having carefully considered the evidence led by the Petitioner, the parties Marriage Certificate i.e. Exhibit A, as well as the date this Petition was filed being the 31st January, 2018, I am satisfied that the Petitioner has proved ground (f) of Section 15(2) of the Matrimonial Causes Act (supra) I so hold.

Consequently, therefore since the Respondent has not challenged this Petition, and the evidence of the Petitioner is unchallenged and uncontroverted, I am satisfied that the marriage herein has broken down irretrievably.

On the issue of custody and maintenance of the children of the marriage, the Court shall consider the best interests of the children of the marriage in line with the provision of Section 71(1) of the Matrimonial Causes Act (supra). The section provides: -

“In proceedings with respect to the custody, guardianship, welfare, advancement or education of children of a marriage, the

Court shall regard the interests 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.”

Likewise, in the case of **MRS. LYDIA OJUOLA OLOWUNFOYEKU V MR. JAMES OLUSOJI OLOWUNFOYEKU (2011) NWLR (PT. 227) 177** at 203, paragraphs E-F. Where the Court held thus: -

“In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, Court of Law, or administrative or legislative authority, the best interest of the child of the marriage shall be the primary considerationcustody 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 the 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 **NANNA V. NANNA (2006) 3 NWLR (Pt. 966) P1.**

The Petitioner has stated in her Petition particularly her Affidavit of evidence that the Respondent has failed to take responsibility for paying the school fees of the children, the house rent of their apartment and that he has stopped showing love and affection towards the children of the marriage, in addition to the averments that Respondent beats her and the children.

The Petitioner therefore made the following proposed arrangement for the children thus:-

- “(i). That the Petitioner proposes that the children remain in her custody.***
- (ii). The Respondent to have a right of visitation to the children of the marriage only once a month after booking an appointment at least one week earlier provided the visitation shall take place at the Petitioner’s lawyer’s office or any location chosen by the Petitioner.”***

Therefore I have considered the fact that the Respondent has not been responsible for the upkeep of his children, has neglected his duties as a father by not paying his children's school fees or showing love and affection to his children and is abusive. And since the children deserve a loving, stable and secure environment, coupled with the fact that they reside with the Petitioner, it is my humble view that in the best interest of the children of the marriage, custody should be awarded to the Petitioner. After all, it is deposed in the Petitioner's Supporting Affidavit in paragraph 9 that the Respondent lives in Togo.

In the circumstances therefore, and without further ado, I find that the Petitioner has proved her case to be entitled to the reliefs sought. I so hold.

Consequently, I hereby make the following Orders:-

- (1). I hereby grant a Decree of Nisi dissolving the marriage between the Petitioner MRS. PRETTY ONYEJIAKU and the Respondent MR. CHIKA ONYEJIAKU celebrated at St. Charles Catholic Church, Olodi Apapa Lagos on the 13th day of May, 2006. The decree shall become absolute if nothing intervenes within a period of three months from this date.
- (2). The Petitioner is awarded full custody of the children of the marriage
 - (a). **David Onyejiaku**
 - (b). **Kaima Onyejiaku.**
- (3). The Respondent is awarded visitation rights on reasonable notice to the Petitioner. The visit shall be at the Petitioner's house or any child friendly environment such as a park.
4. The Respondent is ordered to pay the monthly sum of **₦100, 000.00** monthly allowance for the feeding, medicals and clothing of the children of the marriage.

Signed:

Hon. Justice S. U. Bature
31/5/2022.