

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 27TH DAY OF APRIL, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/PET/540/2020

BETWEEN:

PEACE ASUQUO AKPAN

PETITIONER

AND

WISDOM EKENE AKPAN

RESPONDENT

JUDGMENT

By way of a Petition for the Decree of Dissolution of Marriage, the Petitioner instituted this action seeking for the following reliefs:-

1. *A Decree of Dissolution of Marriage on the ground that the marriage has broken down irretrievably in that:*
 - a. *That the Petitioner and the Respondent have lived apart for a continuous period of at least two years immediately preceding the presentation of this Petition.*
 - b. *That the intolerable conduct of the Respondent has caused the Petitioner to live in constructive desertion, notwithstanding that the Petitioner never intended to live separately from 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.*
- 2. An Order of Perpetual Injunction restraining the Respondent from further acts of violence against the Petitioner including abusing, threatening to abuse, molesting, harassing, entering into the premises of the Petitioner's dwelling and or disturbing the peace of the Petitioner in any way or manner whatsoever.*
- 3. And for such further and/or other Orders as the Honourable Court may deem fit to make in the circumstances.*

The Petition was accompanied with all the statutorily required processes including the Witness Statement on Oath of the Petitioner which elaborated the facts upon which the Petition was founded. In addition to the Witness Statement on Oath of the Petitioner, two additional Witness Statements on Oath of one Mrs Joy Odoh and one Kelvin WomboMvendaga were also filed along with the originating processes.

On the 17th of March, 2021, the Petitioner was affirmed and proceeded to adopt her Witness Statement on Oath as her evidence in support of her Petition. In her evidence, the Petitioner averred that she went through a ceremony of marriage at the Marriage Registry of the Abuja Municipal Area

Council, Abuja on the 5th day of April, 2018. The marriage, she further stated, was celebrated at the Kingdom Hall of the Jehovah Witnesses, Garki, Abuja on the 7th of April, 2018. After the marriage, the parties cohabited at Efetobore Robert Compound, opposite Celestial Church, by Omega Power Ministry, Ogorode Road, Amukpe, Sapele, Delta State. Cohabitation between the parties, the Petitioner swore, ceased on the 10th of October, 2018 when the intolerable conduct of the Respondent impelled her to leave the matrimonial home.

Testifying to the facts which constituted the intolerable conduct of the Respondent, the Petitioner averred that shortly after the marriage, the Respondent became aggressive towards her, was given to uncontrollable temper and violent behavior and was physically abusing the Petitioner. He deprived the Petitioner of the use of her vehicle, lied about his age, his status at First Bank of Nigeria Limited where he worked and his position in the Church where they worshipped. She also swore that the Respondent was disrespectful to her family and was making unauthorized withdrawals from her bank account domiciled with First Bank of Nigeria Limited where he worked.

According to the Petitioner, the Respondent was adulterous, a chronic drunkard, an irresponsible husband, a nag and a violent person. She stated that some time in July, 2018, the Respondent beat her up, forcing her to

escape for her life. According to her, it took the intervention of the elders of the Church to persuade her to return to her matrimonial home. Notwithstanding this intervention, the Respondent continued to brutalise the Petitioner, thereby making her to return to Abuja.

The Petitioner swore that the Respondent followed her to Abuja and continued to molest her. She added that the intervention of her neighbours saved her from further abuse and gave her the space to report the incident to the Durumi Division of the Nigerian Police Force where they were advised to resolve their differences amicably. Yet, even when she returned to her matrimonial home, the Respondent continued in his old ways and even threatened to kill the Petitioner. On the 7th of October, 2018, according to the Petitioner, the Respondent, without any provocation, beat the Petitioner, inflicted bodily injuries on her, bit her, and attempted to strangle her with a rope. She added that she was saved because neighbours intervened. Alarmed, she returned to Abuja on the 10th of October, 2018; but, before then, she had reported the incident at the Sapele Division of the Nigerian Police where she was advised to go for comprehensive medical examination and treatment. Following detailed investigation by the Police, the Respondent was ordered to enter into an undertaking that he would not molest or physically abuse the Petitioner while the Petitioner informed the Police that the case file be kept open pending resolution of the issues between her and the Respondent.

According to the Petitioner, the Respondent, pretending to have lost his job, enticed her to visit him in Delta State. Upon her visit on the 6th of December, 2018, she swore, the Respondent ordered her to withdraw her petition at the Police Station. When she refused, the Respondent threatened to kill her and went as far as employing unknown persons to monitor her movements. On the 13th of December, 2018, she wrote a petition to First Bank of Nigeria alleging acts of violence and fraud against the Respondent. Upon her petition, the bank investigated the allegation and terminated the employment of the Respondent.

The Petitioner also averred that the Respondent on the 21st day of March, 2019, instituted an action for the dissolution of their marriage but withdrew same on the 16th of March, 2020. She swore that she had tried to save the marriage but the Respondent frustrated all her efforts with his intolerable lifestyle. She further swore that she and the Respondent have been living apart for more than two years. She therefore urged the Court to issue the Decree of Dissolution of the Marriage between them.

In the course of her evidence, the Petitioner tendered a number of documentary evidence. Those documents were admitted as exhibits by this Honourable Court and marked as follows: Certificate of Marriage, Enrollment Order of the Abudu High Court dated 16th March, 2020, letter from the Petitioner to First Bank of Nigeria Plc dated 13th December, 2018, DHL receipt,

letter from the Petitioner to First Bank of Nigeria Limited dated 1st February, 2019 withdrawing the Petition of 13th December, 2018, receipt from West Side Pharmacy issued on the 23rd October, 2018, letter from the Petitioner to the Christian Congregation of Jehovah's Witnesses dated 27th May, 2020, eight pictures showing injuries inflicted on the Petitioner allegedly by the Respondent, WhatsApp conversation between the Petitioner and the Respondent, another set of WhatsApp conversation between the Petitioner and the Respondent, pictures with the Petitioner's ex-lover and Certificate of Compliance respectively marked as **Exhibits A, A2, A3, A4, A5, A6, A7, B1 – B8, C1 – C6, D1 – D5, E1 – E5 and F1 – F2.**

During the cross-examination of the Petitioner by the Counsel for the Respondent on the 5th of October, 2021, she confirmed that she met the Respondent online, specifically, on Facebook. She admitted that she and the Respondent got married thereafter without courtship. She affirmed that she was an Abuja-based businesswoman and that the Respondent was a banker working and residing in Sapele, Delta State.

She acknowledged that she wrote a petition to the employers of the Respondent wherein she alleged that the Respondent was fraudulent. In response to a question to that effect, she avowed that she could not recall the last time she saw the Respondent. When she was shown the pictures she

tendered in evidence and which the Court admitted in evidence and asked if she could see any indication of place, date and time on them, she admitted that those information were not on the pictures. She also conceded that it was only a medical practitioner that could prescribe drugs. When she was shown **Exhibit A6**, that is, the receipt from the pharmacy dated 23rd October, 2018, she admitted that the document did not contain the prescription.

On further questioning, she owned up to the fact that she did not have any document that showed that the Respondent was ever investigated for attempted murder. She accepted that **Exhibit A6** was issued in Abuja whereas the factual situation that made it necessary occurred in Sapele, Delta State. when she was confronted with two apparently conflicting affidavits from one Mrs Joy Odoh who was her neighbour and who claimed she was present when the Respondent was maltreating the Petitioner, the Petitioner begged the Court to accept the earlier affidavit and discountenance the latter.

On the 11th of January, 2022, the Respondent gave evidence in defence of the Petition of the Petitioner. He proceeded to adopt his Witness Statement on Oath after he had been affirmed. In his Witness Statement on Oath, the Respondent admitted paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12.1, 12.3, 12.35, and 13 of the Petitioner's Petition and denied paragraphs 12.2, 12.4, 12.5, 12.6, 12.7, 12.8, 12.9, 12.10, 12.11, 12.12, 12.13, 12.14, 12.15, 12.16,

12.17, 12.18, 12.19, 12.20, 12.21, 12.22, 12.23, 12.24, 12.25, 12.26, 12.27, 12.28, 12.29, 12.30, 12.31, 12.32, 12.33, 12.34, and 12.35 of the same Petition.

According to the Respondent, the trouble in their matrimonial home started when the Petitioner began to travel to Abuja without his consent. He added that the Petitioner rejected his plea to relocate her business to Sapele, Delta State, insisting that he should resign and join her in Abuja. He claimed that the Petitioner left the matrimonial home on the 19th of July, 2018 without informing him. He added that it was not until the 20th of July, 2018 that the Petitioner informed him that she was not interested in staying in Sapele again. He swore that he came to Abuja as part of his efforts towards saving the marriage.

The Respondent further averred that the Petitioner lied severally concerning a lot of fundamental issues such as living alone but telling him that she was living with her elder sister. He also claimed that the Petitioner left Sapele with his credentials and that when he came to Abuja to retrieve the credentials from her, she handed same to her gateman and ordered him to hide it. when the matter got to the Police Station, the officer on duty advised her to withdraw the case and apologise to him. He added that the Petitioner returned his credentials to him only upon the intervention of her father.

The Respondent claimed that the sum of ₦1,000,000.00 (One Million Naira) only which he gave the Petitioner to deposit into his Zenith Bank account was a gift he got from some Chevron contractors whom he linked with a Bureau de change dealer. He also claimed he was funding the Petitioner's business even when the said business was not breaking even. He swore he informed the Petitioner about himself and his family background and never lied to the Petitioner about his employment. He insisted he never withdrew any money from the Petitioner's bank account without her authorisation, adding that the ₦20,000.00 (Twenty Thousand Naira) only which he withdrew on the 29th of January, 2018 and the sum of ₦2,000.00 (Two Thousand Naira) only which he withdrew on the 24th of February, 2018 were authorised by the Petitioner who issued the withdrawal slips, adding that the monies were payments for the photographer who covered their bride price ceremony.

The Respondent also denied abusing and assaulting the Respondent. He also denied ever engaging in any adultery. He stated that the grouse of the Petitioner with him was his insistence that she repay the loan she took from him to finance her business. He added that the injury the Petitioner sustained was from a fall and not from any act of violence from him as she alleged. He claimed that he paid the sum of ₦90,000.00 (Ninety Thousand Naira) only which the Petitioner claimed at the Police Station to her because he was due to travel to Lagos the following day and wanted his dispute with the Petitioner

to be resolved immediately. He added that he also wrote the undertaking for the same reason.

Despite pleading with the Petitioner not to destroy his career, the Petitioner wrote a petition to his employers which resulted in the termination of his appointment.

During cross-examination, the Respondent informed this Court that he was born on the 6th of March, 1986 and that his father abandoned him and his two sisters when they were young and was never seen for more than twenty years. He admitted that he told the Petitioner that his father was dead.

He confirmed that the Petitioner wrote a letter to his employers, FirstBank of Nigeria Limited which led to his dismissal from employment. He admitted that he was not happy over his loss of employment. He conceded that he paid ₦90,000.00 (Ninety Thousand Naira) only to the Petitioner as damages before the Petitioner would withdraw the case she lodged at the Police Station in Sapele, Delta State and continue with the marriage. He acceded to the fact that he, indeed, wrote an undertaking at the Police Station that he would not beat or otherwise engage in physical fight with the Petitioner. In conclusion, he declared that he never used any bad word on the Petitioner.

The Petitioner filed a Reply to the Respondent's Answer. She also filed a Witness Statement on Oath in support of the Reply to the Answer to the

Petition. Earlier, she had adopted this Witness Statement on Oath in support of the Reply to the Answer to the Petition on the 17th of March, 2021 when she gave her evidence-in-chief. After denying paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of the Answer to the Petition, she insisted that she left her matrimonial home as a result of the domestic violence she suffered at the hands of the Respondent. She insisted she already had a flourishing business before she married the Respondent.

She further claimed that the Respondent never came to Abuja to see her for the purpose of reconciliation, but, rather to compel her to return to Sapele and that upon her refusal, he resorted to physical molestation, an act which attracted the attention and subsequent intervention of her neighbours. She averred that it was the Respondent who seized her credentials and not the other way round. She also denied ever demanding for and receiving the sum of ₦90,000.00 (Ninety Thousand Naira) only at the Police Station. She also denied ever informing the Respondent that she was engaged to another man. She insisted that the pictures he exhibited were pictures he downloaded from her Google drive account and were taken between November, 2016 and April, 2017.

The Petition was thereafter adjourned to the 15th of February, 2022 for parties through their Counsel to adopt their final written addresses. On the 15th of February, 2022, both Counsel adopted their Final Written Addresses.

In the Final Written Address of the Respondent, learned Counsel for the Respondent formulated the following issue: “*Whether having regard to the pleading and evidence adduced the Petitioner has established her entitlement to the reliefs sought on the preponderance of evidence*”. In his argument on this sole issue, Counsel drew the attention of the Court to the fact that cohabitation between the parties ceased since October, 2018. Referring to section 123 of the Evidence Act and relying on the cases of ***NBC v. Chief Uzoma Ubani (2014) 4 NWLR (Pt. 1398) 421 Ratio 11 at 434*** and ***N.I.P.C. Ltd v. Thompson Organisation (1969) 1 S.C.N.L.R. 279***, he maintained that the parties had admitted this fact and, therefore, it need not to be proved.

Making copious reference to section 15(1) and (2)(e) of the Matrimonial Causes Act, learned Counsel contended that the Court was at liberty to hold that a marriage has broken down irretrievably if any of the parties established 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.*”

In his submission on the allegations of attempted murder, physical abuse and threats which the Petitioner asserted in her Petition, Counsel pointed out that those were criminal offences provided for under section 268 of the Penal Code and the punishment for same prescribed under section 230 of the same Code. He submitted that by virtue of section 135(1) of the Evidence Act, the standard of proof required therefor was proof beyond reasonable doubt. He maintained that the evidence adduced by the Petitioner did not meet the standard required under the law.

He pointed out, for instance, that the pictures used to support the allegation of attempted murder and physical abuse had no probative value as there was no indication as to time, date and place where they were taken. He argued that the probative value of the pictures was further diminished by the fact that there was no medical report to support the claim and, further, the treatment was done in Abuja whereas the incident took place in Sapele, Delta State. Relying on the case of ***Amico Construction Limited v. Actec International Ltd (2015) 17 NWLR (Pt. 1487) 146***, he urged the Court to reject the evidence adduced by the Petitioner in support of the allegation of attempted murder and physical abuse.

In his submission on the relief of perpetual injunction sought by the Petitioner, learned Counsel submitted that since the Petitioner was not able to prove the

allegations of attempted murder and physical abuse, the relief for perpetual injunction should not be granted. Besides, learned Counsel posited, since it had been established in the evidence of both the Petitioner and the Respondent that the parties have been living apart since 2018 with the Petitioner in Abuja and the Respondent in Sapele, Delta State, it would be superfluous for the Court to make an order of perpetual injunction.

In support of his submission on this point, he cited and relied on the cases of ***Dr ImodoKubor & Anor v. Hon. Seriake Henry Dickson & Ors (2013) 4 NWLR (Pt. 1345) 534 Ratio 17 at 551 – 552, Omotunde v. Omotunde (2001) 9 NWLR (Pt. 718) 525, Harriman v. Harriman (1989) 1 NWLR (Pt. 1196) and Ibrahim v. Ibrahim (2007) 1 NWLR (Pt. 1015) 383.*** He therefore urged the Court to dissolve the marriage between the parties only on the ground that the parties have lived apart for a continual period of time exceeding two years.

In the Final Written Address of the Petitioner, learned Counsel for the Petitioner, after iterating the reliefs sought, the facts of the case, and the evidence led, formulated this issue for determination: *“Whether the Petitioner is entitled to Judgment having regard to the compelling evidence adduced before this Honourable Court and the admission of the Respondent that the parties have lived apart for a continuous period of two years immediately*

preceding the presentation of this petition and that the marriage has broken down irretrievably.”

Arguing this sole issue, Counsel contended that the Petitioner had adduced compelling evidence that would entitle her to Judgment, particularly as the Respondent had confirmed the facts as presented by the Petitioner. Citing the cases of ***Eluwa v. Eluwa (2013) LPELR-22120 (CA)***, ***Ilodigiwe v. State (2012) LPELR-9342 (SC)***, ***Iyen v. FRN (2018) LPELR-49863 (CA)***, Counsel submitted that the Petitioner did not need to assemble a host of witnesses before her case would be deemed proved.

Submitting specifically on the requirement under section 15(2)(e), learned Counsel argued that once it was established that the parties had lived apart for more than two years, the consequence envisaged under that ground becomes mandatory. He relied on the cases of ***Omotunde v. Omotunde (2000) LPELR-10194 (CA)*** and ***Oguntoyinbo v. Oguntoyinbo (2017) LPELR-42174 (CA)***. Counsel contended that the Petitioner had been able to discharge the burden of proof placed on her by the law and is, therefore, entitled to the reliefs sought thereby. He pointed out to the Court that the relationship between the parties had deteriorated irredeemably as could be seen from the Petitioner returning the dowry to the Respondent. He cited the case of ***Ezeaku v. Okonkwo (2012) 4 NWLR (Pt. 1291) 558 paras G-H, 550 paras A-B***.

On whether the Petitioner was entitled to the Order of Perpetual Injunction, learned Counsel highlighted an extract from **Exhibits D1 – D5** and **Exhibits C1 – C6** and urged the Court to find that the extract was sinister and threatening and should not be ignored. He also drew the attention of the Court to the fact that the Respondent actually paid ₦90,000.00 (Ninety Thousand Naira) only to the Petitioner for the hurt he inflicted on her and also wrote an undertaking not to visit harm on the Petitioner. In conclusion, learned Counsel urged this Court to hold that the marriage has broken down irretrievably and grant all the reliefs sought in the Petition.

The above is the synopsis of the cases of both the Petitioner and the Respondent. The question before this Court is whether the marriage between the Petitioner and the Respondent contracted on the 5th of April, 2018 at the Marriage Registry of the Abuja Municipal Area Council, Abuja and celebrated on the 7th of April, 2018 at the Kingdom Hall of Jehovah Witnesses, Garki, Abuja has not broken down irretrievably to justify the grant of the Order of Decree of Dissolution of Marriage?

The *terminus a quo* in resolving this question is section 15 of the Matrimonial Causes Act. I have taken the liberty to reproduce the entire provisions of that section so that this Court can juxtaposition the factual situation which the parties have presented before this Court with the position of the law on the

subject and arrive at a determination of whether the marriage has broken down irretrievably. The said section provides thus:

Section 15:

(1) A petition under this Act 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 upon the ground that the marriage has broken down irretrievably.

(2) The Court hearing a petition for a decree of dissolution of a 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 of 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.

(3) For the purpose of subsection (2) (e) and (f) of this section the parties to a marriage shall be treated as living apart unless they are living with each other in the same household.

Adumbrating on what constitute a behavior from the Respondent that is capable of giving the Petitioner reasonable reason not to live with the Respondent under section 15(2)(c), section 16 (1) provides that:

“Without prejudice to the generality of section 15(2)(c) of this Act, the Court hearing a petition for a decree of dissolution of marriage shall hold that the petitioner has satisfied the court of the fact mentioned in the said section 15(2) (c) of this Act if the petitioner satisfies the court that-

(a) Since the marriage, the respondent has committed rape, sodomy, or bestiality; or

(b) Since the marriage, the respondent has, for a period of not less than two years-

(i) Been a habitual drunkard, or

(ii) habitually been intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug or preparation,

Or has, for a part or parts of such a period, been a habitual drunkard and has, for the other part or parts of the period, habitually been so intoxicated; or

(c) since the marriage, the respondent has within a period not exceeding five years-

(i) suffered frequent convictions for crime in respect of which the respondent has been sentenced in the aggregate to imprisonment for not less than three years, and

(ii) habitually left the petitioner without reasonable means of support; or

(d) since the marriage, the respondent has been in prison for a period of not less than three years after conviction for an offence punishable by death or imprisonment for life or for a period of five years or more, and is still in prison at the date of the petition; or

(e) since the marriage and within a period of one year immediately preceding the date of the petition, the respondent has been convicted of-

(i) having attempted to murder or unlawfully to kill the petitioner, or

(ii) having committed an offence involving the intentional infliction of grievous harm or grievous hurt on the petitioner or the intent to inflict grievous harm or grievous hurt on the petitioner; or

(f) the respondent has habitually and willfully failed, throughout the period of two years immediately preceding the date of the petition, to pay maintenance for the petitioner-

(i) ordered to be paid under an order of, or an order registered in, a Court in the Federation, or

(ii) agreed to be paid under an agreement between the parties to the marriage providing for their separation; or

(g) the respondent-

(i) is, at the date of the petition, of unsound mind and unlikely to recover, and

(ii) since the marriage and within the period of six years immediately preceding the date of the petition, has been confined for a period of, or for periods aggregating, not less than five years in an institution where persons may be confined for unsoundness of mind in accordance with law, or in more than one such institution.”

In the present Petition, the Petitioner has sought for dissolution of the marriage between her and the Respondent on the ground that the marriage has broken down irretrievably. To ground her claim that the marriage has broken down irretrievably, the Petitioner alleged that she and the Respondent have been living apart for a continuous period of at least two years immediately preceding

the presentation of the Petition, that the intolerable conduct of the Respondent has caused the Petitioner to live in constructive desertion and that since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. To provide the factual basis of intolerable conduct against the Respondent, she alleged physical assault against her by the Respondent leading to her having to treat herself, adultery by the Respondent, lies from the Respondent, threats to her life and intractable and irreconcilable differences.

I must point out that the Matrimonial Causes Act provides the standard of proof which a Petitioner in a matrimonial cause is required to discharge. Section 82 provides as follows:

(1) “for the purposes of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court.

(2) Where a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the Court is reasonably satisfied of the existence of that ground or fact, or as to that other matter.”

The Courts have explained what “reasonable satisfaction” means. In *Omotunde v. Omotunde (2001) 9 NWLR (Pt. 718) 252 at p. 284 paras B – C*, the Court held that:

“The standard of proof in matrimonial matters is as embodied in section 82(1) of the matrimonial causes Act which requires that for the purposes of the Act, a matter shall be taken to be proved if it is established to the reasonable satisfaction of the Court. What is reasonable satisfaction of Court is difficult to define. There is no kind of blanket description of same either but it must depend on the exercise of judicial powers and discretion of an individual Judge. It however entails adducing all available evidence in support of an assertion before the trial Court”

Has the Petitioner discharged this evidential burden? In proof of this factual basis, the Petitioner tendered a number of documentary exhibits to support her allegation. I have carefully gone through the exhibits and their contents thereof. **Exhibits B1 – B8** are photographs of the Petitioner showing varying degrees of injuries on her body. Specifically, **Exhibits B3 and B4** show markings that were possibly caused by a hard whip. **Exhibits B5, B6 and B7**, on the other hand, reveal marks that are consistent with teeth bites. **Exhibit A6** is the receipt of payment which West Side Pharmacy issued to the

Petitioner for the cost of medication she purchased ostensibly to treat the injuries the Respondent inflicted on her. This is consistent with her averments in paragraphs 14, 16, 22, 23, and 29 of her Witness Statement on Oath.

The Respondent, through his Counsel, attempted to discredit the evidence of the Petitioner when he asked the Petitioner whether it was not correct that the alleged physical abuse took place in Sapele, Delta State whereas **Exhibit A6**, that is, the receipt from West Side Pharmacy, was issued in Abuja. I have considered the testimony of the Petitioner in this regard and the said **Exhibit A6**. In paragraph 29 of the Witness Statement on Oath of the Petitioner, she swore that “... on or about 7th October, 2018, the Respondent in a bid to carry out his threats, severely battered me and inflicted injuries on me including teeth bite wounds. The Respondent also attempted to strangle me with a rope, until I was rescued through the intervention of some well-meaning neighbours. The incident led to my moving out on the 10th of October, 2018 for fear of my life and safety, informing my relocation back to Abuja.” In paragraph 30, she averred that “... on the 8th October, 2018, I filed a complaint at the Sapele Main Police Station, Sapele, Delta State...” **Exhibit A6** was issued on the 23rd of October, 2018. The timeline is reasonable and does not impeach the credibility of the Petitioner. It does not also negate the probative value of her evidence. I so hold.

Besides, the address of West Side Pharmacy is De Bentley Plaza, behind Conoil Filling Station Area 1, Garki, Abuja. The Petitioner lives at Plot 550 Cadastral Zone A02 Durumi, Abuja. It is a fact that Durumi is contiguous to Garki, within the Federal Capital Territory, Abuja. The implication of this fact is that the Petitioner sought medical attention at the earliest opportunity she had when she relocated to Abuja. The drugs she purchased were not for first aid; they were for intensive treatment.

Though there was no direct evidentiary nexus between **Exhibits B1 – B8** and the Respondent, the Respondent's attempt to explain how the Petitioner sustained those injuries is unsustainable. In paragraph 18 of his Answer to the Petition of the Petitioner, the Respondent stated as follows: "*The Respondent in response to paragraph 12.7 and 12.14 of the Petition states that the real cause was his insistent on the repayment of a loan she took from him for her business, after repaying the loan she ceased all forms of communication with the Respondent and when she was confronted about it, she reported the matter to the elders falsely claiming that the Respondent chased her with a machete. The Respondent was unhappy with this falsehood and an argument ensued. The Petitioner then ran outside and tripped and fell. It was the Respondent that raised her up from the fall and that was when the neighbor intervened by counselling her to enter the house...*" When this statement is viewed against the backdrop of **Exhibits B1 – B8**, it becomes difficult to

believe that the injuries depicted in those pictures were caused by a fall. This Court does not believe that particular evidence. This Court therefore hold that the Petitioner has established that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

The Courts have interpreted the requirements of section 15(2)(c) of the Matrimonial Causes Act and the evidentiary burden incumbent on a Petitioner who seeks to rely on the factual basis envisaged under the said paragraph. In ***Bibilari v. Bibilari (2011) 13 NWLR (Pt. 1264) 207 at 228 paras D –E***, the Court held thus:

“By the wordings of the provisions of the Matrimonial Causes Act, the "behaviour" means more than a state of affairs or a state of mind. It imports action or conduct by one spouse which affects the other. The conduct or act must be such that a reasonable man cannot endure. In considering what is reasonable, the court must consider in totality the matrimonial history.”

Speaking further, the Court expounded at ***Pp. 227, paras. E-F;228, paras. B-C***thus:

“One ground for dissolution of marriage is that the respondent must have behaved in a way that the petitioner cannot reasonably be expected to live with her. Though the Act does

not define the phrase “behaved in such a way” but the respondent’s behaviour must be negative. It must be such that a reasonable man cannot endure it. The conduct must be grave and weighty in nature as to make further cohabitation virtually impossible. The court must be satisfied that the petitioner established a conduct or act before proceeding to look at the effect of that conduct on the petitioner. It involves a consideration not only of the behaviour of the respondent but the character, personality and disposition of the petitioner. A party’s disenchantment and boredom with a marriage will not entitle the court to dissolve a statutory marriage.”

Speaking on this requirement, the Court accorded section 16(1) of the Act its imprimatur when it put it beyond equivocation at ***p. 226, paras. A-D*** that

“In addition to facts under section 15(2) of the Matrimonial Causes Act, section 16(1) thereof stipulates fourteen circumstances or facts, out of which if proved would constitute the fact that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. These facts are the commission of rape, sodomy, or bestiality, habitual drunk, or drug addiction for two years,

frequent convictions for crime coupled with habitually leaving the petitioner without reasonable means of support, attempting to murder the petitioner or inflicting grievous bodily harm or her refusal to comply with a maintenance order, and confinement in a mental institution for five years during the six years period immediately preceding the presentation of the petition. The law requires that every petition for dissolution of marriage must contain specific ground or grounds that will fall within the set out facts under sections 15(2) and 16(1) of the Matrimonial Causes Act.”

This principle has been established in a long line of cases such as *Ibrahim v. Ibrahim* (2007) 1 NWLR (Pt. 1015) 383; *Nanna v. Nanna* (2006) 3 NWLR (Pt. 966) 1; *Harriman v. Harriman* (1989) 5 NWLR (Pt. 119) 6; and *Megwalu v. Megwalu* (1994) 7 NWLR (Pt. 359) 718 among others. In the case of *Ibrahim v. Ibrahim* (2007) 1 NWLR (Pt. 1015) 383 at pp. 403, paras. F-G; 405, paras. B-D, the Court held that the test of what constitutes an intolerable behavior is an objective one and that it is the Court’s ultimate duty to determine. It, however insisted that “***The conduct of a respondent that a petitioner will not be reasonably expected to put up with must be grave and weighty in nature as to make further cohabitation virtually impossible.***” In *Nanna v. Nanna* (2006) 3 NWLR (Pt. 966) 1 at pp. 30 – 31, paras. H-A, the Court held

that ***“The test as to whether a petitioner for the dissolution of a marriage can or cannot be expected to live with the respondent is objective. Consequently, it is not sufficient for a petitioner to merely allege that he or she cannot live with the respondent because of the respondent's behaviour. The behaviour alleged must be such that a reasonable man cannot endure.”***

In ***Damulak v. Damulak (2004) 8 NWLR (Pt. 874) 151p. 166, paras. A-B***, the Court laid down the conditions that must be fulfilled by a Petitioner alleging intolerable behavior as a ground that the marriage has broken down irretrievably. According to the Court,

“Two sets of facts call for proof under section 15(2)(c) of the Matrimonial Causes Act. They are:

***(a)the sickening and detestable behaviour of the respondent;
and***

(b)that the petitioner finds it intolerable to live with the respondent.

These two facts which are deduced from section 15(2)(c) are severable and independent. The petitioner must prove the detestable act and he or she must then proceed to prove that he or she finds it intolerable to live with the respondent.”

In addition to **Exhibits A6 and B1 – B8**, the Petitioner tendered and the Court admitted a series of text messages exchanged between her and the Respondent. These are marked as **Exhibits D1 – D5**. In **Exhibit D2**, the Respondent sent a message to the Petitioner: *“You have burn (sic) down ALL bridges of reconciliation between us. If you ever had a child for any man, that child will bear my name as long as this union remain valid by law. All future correspondence should be sent to my lawyers as they represent me being out of sight.”* In **Exhibit D3** he wrote *inter alia* *“I know you are possessed, I know you practice Spiritism. You and your parents...I know you are diabolical and possessed with wicked spirits... File divorce and serve me a copy. I will make it easy for you to get...”* And in **Exhibit D5** he sent this ominous text message to the Petitioner: *“You don’t know jam. Nobody has monopoly of wickedness. Am (sic) a Warri boy. An Uvwie boy! I lower guard for you, you return me back to street. I go chop you like shawarma! E go soon reach that time(sic).”* This Court will not wait till that time. It is my considered opinion, and I so hold, that the marriage has broken down irretrievably. On the combined effect of section 15(2)(c) and section 16(1)(e)(ii) of the Matrimonial Causes Act, this Court hereby finds that the Petitioner has established that since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

The other factual situation which the Petitioner wants the Court to hold on to in determining that the marriage contracted on the 5th of April, 2018 has broken down irretrievably is that the Petitioner and the Respondent 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. Paragraph 7 of the Petition for the Decree of Dissolution of Marriage states that *“The date and circumstances in which the cohabitation between the Petitioner and Respondent ceased (or last ceased) are as follows: on 10th October 2018, the Petitioner was forced to leave the matrimonial home on account of intolerable behaviour of the Respondent and cohabitation ceased between the parties from that date.”* In paragraph 29 of the Witness Statement on Oath of the Petitioner, the Petitioner averred that *“...on or about 7th October 2018, the Respondent in a bid to carry out his threats, severely battered me and inflicted injuries on me including teeth bite wounds. The Respondent also attempted to strangle me with a rope, until I was rescued through the intervention of some well-meaning neighbours. The incident led to my moving out on the 10th of October, 2018 for fear of my life and safety, informing my relocation back to Abuja.”*

The Respondent agrees with the Petitioner that cohabitation between them ceased on the 10th of October, 2018. In paragraph 2 of the Respondent’s Answer, it is stated that *“The Respondent admits paragraph (sic) 1, 2, 3, 4, 5,*

6, 7...”. Having admitted the facts contained in paragraph 7 of the Petition for the Decree of Dissolution of Marriage, the burden of proving desertion – actual and desertion – incumbent on the Petitioner is alleviated. Section 123 of the Evidence Act provides that **“No fact needs to be proved in any civil proceeding which the parties to the proceeding or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”**

In ***C.B.N. v. Dinneh (2021) 15 NWLR (Pt. 1798) 91***, the Supreme Court, speaking through Okoro, JSC, held at ***pp. 121. para. D, 123, para. H*** that **“Facts admitted need not be proved or need no further proof. In this case, the facts pleaded by the respondent on when the appellant can dismiss him from employment under the terms and conditions of respondent's employment are deemed admitted by the appellant. In the circumstances, the facts admitted needed no further proof.”** This trite principle of law has been applied in a plethora of authorities such as ***Abimbola v. State (2021) 17 NWLR (Pt. 1806) 399 at 431 para A; Mekwunye v. Carnation Registrars Limited (2021) 15 NWLR (Pt. 1798) 1 at 33 paras F – G; Ori v. State (2022) 5 NWLR (1824) 441 at 464 paras D – E; U.N.I.C. Ltd. v. U.C.I.C. Ltd. (1999)***

3 NWLR (Pt. 593) 17; Honica Sawmill v. Hoff (1994) 2 NWLR (Pt. 326) 252; Economides v. Thomopoulos (1956) 1 FSC 7; Ejiogu v. NDIC (2001) 3 NWLR (Pt. 699) 1 among others.

The Courts have pronounced on the purport of section 15(2)(e) of the Matrimonial Causes Act. In **Nanna v. Nanna (2006) 3 NWLR (Pt. 966) 1 at p. 32, paras. G-H**, the Court held that,

“In a petition for dissolution of marriage, the fact that the parties have lived apart for a continuous period of two years immediately preceding the presentation of the petition is not by itself conclusive proof upon which the divorce can be granted on the ground that the marriage has broken down irretrievably. Desertion within the meaning of section 15(2)(e) of the matrimonial causes Act must be one where any of the parties abandons and forsakes without any justification, thus renouncing his or her responsibilities and evading its duties.”

Though desertion involves a party to a marriage abandoning their responsibilities and abdicating from the matrimonial home, the Matrimonial Causes Act recognizes constructive desertion. Section 18 provides that ***“A married person whose conduct constitutes just cause or excuse for the other party to the marriage to live separately or apart, and occasions that***

other party to live separately or apart, shall be deemed to have willfully deserted that other party without just cause or excuse, notwithstanding that that person may not in fact have intended the conduct to occasion that other party to live separately or apart.” See Nanna v. Nanna (2006) supra at P. 46, paras. D-H.

Between 10th of October, 2018 when cohabitation between the parties herein ceased and 9th of November, 2020 when this Petition was brought is two years and one month. This Court therefore finds that the parties have lived apart for a period of at least two years immediately preceding the presentation of this Petition. The Respondent having admitted that, indeed, cohabitation between him and the Petitioner ceased on the 10th of October, 2018, the Respondent is deemed not to object to a decree being granted.

Having found that the marriage has broken down irretrievably, I shall turn my mind to the second relief sought in this Petition. The Petitioner has sought for *“An Order of perpetual injunction restraining the Respondent from further acts of violence against the Petitioner including abusing, threatening to abuse, molesting, harassing, entering into the premises of the Petitioner’s dwelling and or disturbing the peace of the Petitioner in any way or manner whatsoever.”* In his Final Written Address, the Respondent through his

Counsel argues that the Petitioner did not establish her allegations of violence against him and, therefore, is not entitled to an Order of Perpetual Injunction.

The Courts have laid down the principles guiding the grant of perpetual injunction. In *F.C.D.A. v. Unique Future Leaders Int'l Ltd. (2014) 17 NWLR (Pt. 1436) 213*, the Court of Appeal held at *P. 243, paras. E-G* that,

“Perpetual injunction is based on final determination of the rights of parties, and it is intended to prevent permanent infringement of those rights and obviate the necessity of bringing action after action in respect of every such infringement.”

In *Adekunjo v. Hussain (2021) 11 NWLR (Pt. 1788) 434*, the Supreme Court explained at *p. 455, paras. A-D* that,

“A perpetual injunction is a post-trial relief meant to protect a right established at the trial. Because of its nature of finality, it can only be granted if the claimant has established his case on the balance of probability on the preponderance of evidence. Its aim is to protect established rights.”

Having found that the marriage has broken down irretrievably on the ground of constructive desertion of the Petitioner by the Respondent and the intolerable behavior of the Respondent, this Court will be abdicating its solemn judicial responsibility if it fails to make an Order of Perpetual Injunction against the

Respondent. This Order is particularly inevitable considering the totality of the evidence adduced in the course of hearing of this Petition. There was evidence before this Court that the Respondent travelled to Abuja to meet the Petitioner some time in July, 2018 the first time the Petitioner left their matrimonial home at Sapele, Delta State following her assault by the Respondent. It is important this Court forestall a recurrence of such ugly incident in future. An Order of Perpetual Injunction is, therefore, apposite at this material time. The Court's duty is made all the more bearable by the absence of any child of the marriage that could have been a common and justifiable ground for the parties herein to keep in touch.

I stated earlier that the Petitioner filed two other Witness Statements on Oath deposed to by one Kelvin WomboMvendaga and one Mrs Joy Odoh. The deponents did not adopt those Witness Statements on Oath; therefore, they are not evidence before this Honourable Court. The law is that such depositions are deemed abandoned.

I am also not unaware of the Affidavit of Rebuttal deposed to by the same Mrs Joy Odoh which the Respondent attached to his Answer. Though, learned Counsel to the Respondent sought to impeach the credibility of the Petitioner during cross-examination by drawing her attention to the conflicting facts in the two affidavits, the law is settled that such conflicts can be resolved only by

resort to oral evidence. Section 116 of the Evidence Act, 2011 provides that: ***“When there are before a Court, affidavits that are irreconcilably in conflict on crucial facts, the Court shall for the purpose of resolving the conflict arising from the affidavit evidence, ask the parties to proffer oral evidence as to such facts, and shall hear any such oral evidence of the deponents.”*** Since Mrs Joy Odoh was not called to testify in this Petition, her Affidavit of Rebuttal,deposed to on the 1st day of February, 2021, in view of her Witness Statement on Oath deposed to on the 9th of November, 2020, goes to no moment. Accordingly, this Court, in evaluating the evidence before it, accordingly discountenanced the questions which learned Counsel for the Respondent asked the Petitioner seeking to discredit the testimony of the Petitioner on the basis of the said affidavit.

For the reasons stated above and the findings of this Honourable Court, I hold that the Petitioner has established to the reasonable satisfaction of this Honourable Court that the marriage between the Petitioner and the Respondent contracted on the 5th of April, 2018 at the Marriage Registry of the Abuja Municipal Area Council, Area 10, Garki, Abuja and celebrated on the 7th of April, 2018 at the Kingdom Hall of Jehovah Witnesses, Airwaves Garden, Gilead Hall B, Area 3, Garki, Abuja, has broken irretrievably. Accordingly, this Court hereby makes the following orders:

1. That a Decree Nisi is hereby granted dissolving the marriage between the Petitioner and the Respondent contracted on the 5th of April, 2018 at the Marriage Registry of the Abuja Municipal Area Council, Area 10, Garki, Abuja and celebrated on the 7th of April, 2018 at the Kingdom Hall of Jehovah Witnesses, Airwaves Garden, Gilead Hall B, Area 3, Garki, Abuja.
2. That an Order of Perpetual Injunction is hereby made restraining the Respondent from further abusing, threatening to abuse, molesting, harassing, or otherwise physically and emotionally abusing the Petitioner, entering the Petitioner's dwelling and or disturbing the peace of the Petitioner in any way or manner whatsoever.

This is the Judgment of this Honourable Court delivered today, the 27th of April, 2022.

HON. JUSTICE A. H. MUSA
JUDGE
27/04/2022

APPEARANCE:

For the Petitioner:

Mase D. Acho-Asani (Mrs)

C. L. EmeafuEsq.

Anthony OduleEsq.

For the Respondent:

O. R. AdisaEsq.

