

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
27TH DAY OF SEPTEMBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/PET/226/2018

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

KOWACHI CHIAMAKA DIKE PETITIONER

AND

**SOMTOCHUKWU EMMANUEL DIKE
RESPONDENT**

JUDGMENT

The Petitioner's Petition is dated and filed on the 9th day of May 2018. It prays for the following reliefs:

- (1) A Decree of Dissolution of the marriage between the Petitioner and the Respondent on the ground that since the marriage, the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent.

That the Respondent has behaved in such a way that the Petitioner cannot be reasonably expected to live with the Respondent.

- (2) Custody of the only child of the marriage, Blossom Ifeyinwa Dike as she is only 3 years old and cannot live with the Respondent due to her age and the factors complained of particularly as regards the Respondent's habits.
- (3) The sum of ₦350,000.00 monthly as maintenance fee for the Petitioner and the child of the marriage.
- (4) An Order for the payment off annual rent for a house for the Petitioner and the child.
- (5) An Order mandating the Respondent to pay for medical expenses and education of the child.

The Respondent was served with the Petition and all other processes. The Respondent entered appearance vide Chuks Ogbuani, Esq. with a Memorandum of Appearance dated 2nd July 2018.

The Respondent's Counsel filed an Answer and a Cross-Petition which was regularized on the 02/12/2019. The Respondent and Counsel thereafter abandoned the case.

Hearing was ordered and the Petitioner gave evidence for herself. She is Kowachi Dike, a business woman/fashion designer. She lives in Durumi, Abuja.

That the Respondent is her husband. That she married him on 14/03/2014. It was celebrated in Enugu. The Marriage Certificate is Exhibit A.

After the marriage, they lived at Efab Estate, Lokogoma and Trademore Estate, Lugbe. The marriage was abusive and toxic. He was always breaking and throwing things. He is

also usually disappearing from the house. There are also cases of infidelity on his part.

That on 06/06/2017, when she came from the Church, he asked where she went to. She said she went for Mass. He got annoyed and started throwing their things out. She lives at Durumi alone with her daughter. She is paying rent. She has lived apart with her husband for three (3) years.

On 06/05/2018, the family mediated. They went back to the matrimonial home but the abuse continued. He brought an armed man to throw her sister out of the house. He insisted her sister must leave their matrimonial home. He claimed to be a Policeman.

She followed her sister out of the matrimonial home. She does not know where the Respondent is now. That his family members said he has moved to the USA. He did not tell her he was travelling. She does not know when he will be returning.

She does not know if he is still working with Nigerian Communication Commission (NCC). That there were several attempts to settle the matter but the Respondent did not attend any of the meetings.

There is a child of the marriage. She is Ifeyinwa Dike, 6 years old, female. That she stays with her. That she has been responsible for her upkeep since she left the matrimonial home.

She is a business woman. She does government contract. She is also a fashion designer. She can never go back to him. That the marriage has broken down irretrievably.

She has not condoned or connived. She does not want school fees maintenance, etc.

That she adopts her written Statement on Oath. In her Oath, she said that the Respondent/Cross-Petitioner conducted himself unreasonably in that he is a habitual drunk. He

indulges in the consumption of hard drugs and attempted to cause injury on her and her daughter.

That he displays aggressive and violent tendencies towards the Petitioner. That he has attempted to attack her even at public functions. That he exhibits violent outbursts on daily basis.

That Cross-Petitioner/Respondent called her prostitute in public to the hearing of family members and mutual friends. He accused her of extra marital affairs and even doubted the paternity of their daughter. That the above accusations are utterly false.

That she left the matrimonial home on 06/05/2018. She seeks for an Order for the Respondent to pay the cost of education of the child.

The Respondent's Counsel was given all the opportunities to cross-examine the Petitioner's witness and enter his defence. He failed to do so hence, he was foreclosed.

The Petitioner's Counsel adopted his Final Written Address filed on 04/03/2022. The issue for determination is:

Whether the marriage herein has broken down irretrievably as contended by the Petitioner so as to enable the Court grant a decree of dissolution of marriage.

Learned Counsel to the Petitioner submits that there is a subsisting marriage between the Petitioner and the Respondent by virtue of Exhibit A – the Marriage Certificate.

He urges the Court to hold that the conduct of the Respondent both during the marriage amount to cruel conduct that is capable of endangering the Petitioner's life, health and mental state.

That the evidence of the Petitioner remains unchallenged. That civil matters are decided on the preponderance of evidence. The Cross-Petition is not supported by evidence.

That having failed to adduce evidence, the Cross-Petitioner has failed woefully to prove his Cross-Petition and as such the claims contained therein should fail.

That the law is that where there is failure to lead evidence in support of a pleading, the pleading is deemed abandoned.

The Petitioner by her uncontroverted evidence before this Court has satisfied the Court that the marriage has broken down irretrievably and as such is entitled to a Decree of Dissolution of Marriage and the reliefs sought in the Petition.

In relation to custody of the child of the marriage, Learned Petitioner's Counsel submits that the child is of tender age. Refers to Section 71 (1) of the Matrimonial Causes Act and urges the Court to grant the reliefs.

I have read the evidence and considered the Written Address of Counsel. The issue for determination as borne out from the Learned Counsel to the Petitioner's Written Address is: ***Whether the marriage between the***

Petitioner and the Respondent has broken down irretrievably.

Learned Counsel to the Petitioner relied on Section 15 (c) as the grounds upon which he relies to reach the said conclusion.

Section 15 (1) and (2) (c) of the Matrimonial Causes Act states:

"A Petitioner 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:

(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."

The Petitioner's evidence is that the marriage has been abusive and toxic. That Respondent has always been breaking and throwing things.

That he disappears from the matrimonial home often. That the Respondent is a habitual drunkard. He also indulges in hard drugs. That he displays aggressive and violent tendencies. That he exhibits violent outbursts in daily basis. He called her a prostitute. That she left the matrimonial home on 06/05/2018.

In addition to Section 15 (2) of the Matrimonial Causes Act, Section 16 (1) of the Act stipulates fourteen other facts, any 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.

The facts are: (1) Commission of rape (2) Sodomy (3) Bestiality by the Respondent (4) Habitual drunk (5) Drug addiction for two (2) years (6) Frequent convictions for crimes coupled with habitually leaving the Petitioner without reasonable means of support (9) Attempting to murder the Petitioner or inflicting grievous bodily harm on her.

The test of intolerable behavior is objective. The behaviour must be such that a reasonable man cannot endure it. The Court must consider the totality of the matrimonial history. Allowance must be given for ordinary wear and tear of the marriage.

I have earlier reproduced the evidence of the Petitioner. Part of her evidence is that the Respondent is a habitual drunk. That he takes narcotics. That he displays aggressive and violent tendencies. That he calls her a prostitute to the hearing of family members. That he breaks and throws things frequently.

The Respondent failed to controvert the above facts despite all the opportunities afforded him. The conduct of the Respondent in my view are grave and weighty in nature as to make further cohabitation virtually impossible.

See **IBRAHIM vs. IBRAHIM (2007) 1 NWLR (PT. 1015) 383.**

Inhuman and degrading treatment could constitute an intolerable behaviour.

In the circumstance of this case, and in the absence of any evidence controverting the facts, it is my view and I so hold that the marriage between the Petitioner and the Respondent has broken down irretrievably on the ground 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 Petitioner further claims for custody and maintenance for herself and the child of the marriage. I shall refer to Sections 70 – 75 of the Matrimonial Causes Act.

The Court is enjoined to take into consideration the following facts: (1) Parties' income (2) Earning capacity (3) Financial needs and responsibilities (4) Standard of life of the parties before the dissolution of the marriage (5) Their respective ages and the length of time they were husband and wife.

See **NNANA vs. NNANA (2006) 3 NWLR (PT. 966) 1.**

On the other hand, the award of custody of a child as in this case is governed by Section 71 (1) of the Matrimonial Causes Act. The interest of the child is paramount. The welfare of the infant child is not only a paramount consideration but a condition precedent to the award of custody. The care of the child's person morally, physically and mentally. The welfare and interest of the child is of paramount importance.

In deciding welfare of the child, I am enjoined by law to take into consideration the following factors:

- (1) The degree of familiarity between the child and the parties.
- (2) The amount of affection between the child and the parties.

- (3) The respective income and position in life of parties.
- (4) The respective accommodation of parties.
- (5) The arrangement made by parties for the education of the child.
- (6) In case of children of tender age, custody should be awarded normally to the mother.

See **ALABI vs. ALABI (2007) 9 NWLR (PT. 1039) 297.**

The Petitioner says she stays with the child of the marriage. That she has been responsible for her upkeep. She is a business woman. She also does government contract. She is also a fashion designer. She summersaulted saying she does not want school fees, maintenance, etc. from the Respondent.

The Petitioner's Petition contains the financial standing of the Respondent but failed to give evidence in that regard. She also did not give evidence of any house rent. She further stated that the Respondent has left the country to the United States of America.

Therefore in the interest of the child, custody should be awarded to the Petitioner.

The whereabouts of the Respondent is not known. His present financial status is also unknown. The Petitioner had said she does not need any school fees or maintenance from the Respondent. Consequently, prayers 3, 4 & 5 fail and they are refused.

The Respondent filed a Cross-Petition. He failed to give evidence in support of same. The Petitioner filed Petitioner's Reply and Answer to Cross-Petition. The Cross-Petition is not supported by evidence. It is accordingly dismissed.

Judgment is entered in favour of the Petitioner against the Respondent as follows:

1. The marriage between KOWACHI CHIAMAKA DIKE the Petitioner and SOMTOCHUKWU EMMANUEL DIKE the Respondent, celebrated on 28/02/2014 at the Enugu East Local Government Council, Enugu is hereby dissolved by an Order of Decree Nisi.

2. The Order Nisi shall become absolute after three (3) months.
3. The custody of the child of the marriage, IFEYINWA DIKE is hereby awarded to the mother, the Petitioner.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
27/09/2022

Petitioner present.

Respondent absent.

Kanu Oko Alabi, Esq. for the Petitioner.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

27/09/2022