

**IN THE HIGH COURT OF JUSTICE OF THE
CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/PET/156/2020

MOTION NO: M/6598/2021

BETWEEN:

BENJAMIN IHECHIKWURU OKOROAFOR.....PETITIONER

VS

MRS. CHRISTIANA NKEM BENJAMIN.....RESPONDENT

RULING

By a Notice of Preliminary Objection with No. M/6598/2021 dated 8/10/21 and filed same day, brought pursuant to Section 11 (1) of the Matrimonial Causes Act and under the inherent jurisdiction of this Honourable Court, the Applicant pray the court for the following;

1. An Order of this Honourable Court referring the Petitioner and the Respondent to the Assemblies of God Nigeria at No. 53 Accra Street, Wuse Zone 5, Abuja FCT, or any other local Assembly of the Assemblies of God Church for the Church to first try to mediate in the issue giving rise to the suit with a view to reconciling the parties in accordance with the Biblical injunction as the Petitioner was a Choir Master in the Church and the Respondent is still a Chorister and a Church Worker.

ALTERNATIVELY,

An Order of this Honorable Court referring the Petitioner and the Respondent to any other Bible believing Church where the Petitioner is worshiping at present for the Church to first try to mediate in the issue giving rise to the suit with a view to reconciling the parties in accordance with the Biblical injunctions.

And if the Petitioner states on Oath that he is not a member of any denomination at the present.

2. An Order of this Honourable Court referring the Petitioner and the Respondent to Christian Association of Nigeria (CAN) Headquarters in Abuja, Federal Capital Territory for the Association to first try to mediate in the issue giving rise to the suit with a view to reconciling the parties in accordance with the Biblical injunction as the Petitioner and the Respondent are Christians and known Gospel Music Ministers.
3. And for such further other Orders as this Honourable Court may deem fit to make in the circumstance.

The grounds upon which the application is brought are as follows;

1. That the Petitioner and the Respondent are practicing Christians who originally are members of the Assemblies of God Nigeria in which Church they tied the nuptial knots under the Biblical injunction that what God has joined together, let no man put asunder – and they are both gospel music ministers.

2. That the Respondent is desirous of living in peace and harmony with the Petitioner who is her husband and would want Ministers of God to try to settle the issues giving rise to the instant suit in accordance with Biblical injunction bearing in mind that God hates divorce according to the Biblical book of Malachi Chapter 2 Verse 16.
3. That under the function of the Holy Spirit, the Ministers of God may be able to bring peace in the home of the Petitioner and the Respondent in the Jesus Christ Name, amen.

In support is 4 Paragraph affidavit sworn to Watchman Oshekun. Filed a written Address dated 8/10/2021 in support, adopts the Address in urging the court to grant the reliefs.

In opposition, Petitioner/Respondent filed a Counter-affidavit dated 3/12/2021 of 25 Paragraph deposed to by Petitioner/Respondent himself. Also filed a Written Address in support. Adopts the said address, in urging the court to refuse the application.

In the Written Address of Applicant settled by Ifeanyi Chukwu Obasi – Nweze, a lone issue was submitted for determination and that is;

“Whether this Hon. Court can grant the reliefs sought on the face of the Motion”

Answered the issue in the affirmative and refer the court to Section 11 (1) of Matrimonial Causes Act. Submits that from the grounds on which the instant application is brought, the parties are practicing Christian bound by

biblical injunction on how to conduct their private Christian and marital lives to which they are admonished not to disobey. That Respondent/Applicant is desirous and willing to salvage her marriage with Petitioner/Respondent and having regard to her attitude for reconciliation, the court has a duty to grant her a possible reconciliation of her marriage as provided by law.

In the Written Address of Petitioner/Respondent, C.H Mackay Esq. of Counsel did not raise any issue for determination but submit that the Section 11 (1) of the Matrimonial Causes Act cited and relied upon by Respondent/Applicant is better appreciated if read in whole and together with submission 2. That from the Provisions, opportunities for reconciliation may be encouraged unless the proceedings are of such a nature that it will not be appropriate to do so, and factors to be considered in determining whether the proceedings are of such a nature or not include, either from the nature of the case, the evidence in the proceedings or attitude of the parties or either of them or of Counsel. That applicant's general attitude in the past 3 years of separation and 2 years of filing the suit is totally at variance, with the application. That Petitioner/Respondent by the averments in the Counter-Affidavit is strongly convinced of insincerity of purpose of the application. Further, that the issues and facts contained in the Petition ought to have elicited more pragmatic personal approach from Applicant if there is any sincerity of purpose to her application.

Having considered the affidavit evidence, the Written Submission and the statutory authority cited, the court found that only one (1) issue calls for determination and that is;

“Whether the court can grant this application considering the facts as stated in the affidavit evidence”

The grant or otherwise of an application of the nature is at the discretion of the court which the court must exercise judicially and judiciously taking into consideration the facts placed before the court.

In the instant application, the Applicant seek an Order of court referring Petitioner and Respondent to Assemblies of God Nigeria or any other Local Assembly of the Assemblies of God Church or in the alternative, any Bible believing Church or Christian Association of Nigeria (CAN) to first try to mediate in the issue giving rise to the suit with a view to reconciling the parties in accordance with biblical injunctions contending that the Applicant is desirous and willing to salvage her marriage with Petitioner/Respondent and having regard to her disposition to reconciliation, the court has a duty to grant her a possible reconciliation. The Petitioner/Respondent, on the other hand, filed a Counter-affidavit in opposition to the application and contend that the application lacks sincerity of purpose considering the general attitude and disposition of Respondent/Applicant.

It is one of the cardinal principles of our judicial system and indeed the law that the court has a duty to encourage amicable settlement of dispute out of court. See the case of Salihu & Ors Vs Ministry of Education, Gombe State & Ors (2015) LPELR – 40626 (CA). Therefore, where either of the parties or both evince a desire for reconciliation or settlement of the disputes between them, the court has a duty to accord the parties the

opportunity for reconciliation. However, where, either of the parties or both are averse to reconciliation, the court cannot compel reconciliation or settlement between the parties.

In this instant case, the Respondent/Applicant seeks reconciliation and settlement of the dispute between her and the Petitioner/Respondent to which Petitioner/Respondent is averse to. It is in view of the disposition of Petitioner/Respondent that I shall refuse to exercise my discretion in favour of the application of Respondent/Applicant. In consequence, this Notice of Preliminary Objection filed by the Respondent/Applicant fails and is hereby dismissed.

Signed
HON. JUSTICE C.O. AGBAZA
Presiding Judge.
23/09/2022

APPEARANCE:

WATCHMAN OSHEKUN ESQ. WITH I.O. ANENE ESQ. – FOR THE
RESPONDENT/ APPLICANT

C.H. MACKAY ESQ. – FOR THE PETITIONER/RESPONDENT