

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON MONDAY THE 12TH DAY OF SEPTEMBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/PET/179/2020

BETWEEN:

MR. ABRAHAM LUBEM ABADO ----- PETITIONER

AND

MRS. JOSEPHINE BEIRUT ABADO ----- RESPONDENT

JUDGMENT

On the 13th of February, 2020 the Petitioner – Mr. Abraham Lubem Abado filed this Petition for the dissolution of the marriage between him and the Respondent – Mrs. Josephine Beirut Abado stating that the marriage contracted on 3rd of July, 2015 between them has broken down irretrievably and he is no longer ready to continue with the marriage. That the Respondent has refused to consummate the marriage for over one (1) year preceding the filing of this Petition. That the Respondent abandoned him in hospital for four (4) months when he had a Road Traffic Accident. That the Respondent does not take care of

the Children of the marriage. That he had also provided for the family without any support from the Respondent despite that she earns “fat salary” in a job he facilitated in getting for the Respondent. He said he never colluded, connived or condoned in presenting this Petition. He sought for the following Orders:

Dissolution of the marriage as the Respondent had behaved in such a way that he is not expected to continue to live with her. That she has been in desertion for over one (1) year preceding the filing of this Petition.

He also wants custody of the Two (2) Children of the marriage.

In alternative to custody, he wants when the Children are of age, they can decide to chose between the parents whom they shall reside with at the end of their Secondary School education. He attached copy of the Marriage Certificate **No: 121/2015 Marriage Registry Makurdi.**

Upon receipt of the Petition, the Respondent filed an Answer of 24 paragraphs. In it she urged the Court to dismiss the Petition and Order that the Petitioner continue to pay the school fees and welfare of the two (2) Children of the marriage. Pay for two (2) Bedroom flat for them at Union Homes Kuje and Fifty Thousand Naira (₦50, 000.00) per month as family upkeep Allowance. She denied denying sex to the Petitioner. That she only did when the Petitioner had Road Traffic Accident and when she had miscarriage. That the Petitioner sends only Ten Thousand Naira (₦10,

000.00) and not Thirty Thousand Naira (N30, 000.00) monthly. That she takes care of the Children. That she has been taking care of the Children since the Petitioner travelled out of the country on study leave. She urged Court to discountenance the Petitioner and averment in paragraph 14 of the Petition. She attached her Statement of Account and Pay Slip for June, July and August 2020. The document was not certified.

The Petitioner filed a 23 paragraphs Reply to the Answer to the Petition denying all the Respondent said about sexual intercourse with him, the Ten Thousand Naira (N10, 000.00) allowance instead of Thirty Thousand Naira (N30, 000.00) he pays to Respondent every month and her denial about desertion. He attached his Statement of Account from 4th of October, 2019 – 28th February, 2021. He also attached Receipt of Hospital and other Medical Bills paid for Road Traffic Accident, Letter for Study Leave and Surgery from Federal Ministry of Education, Letter from the Leeds Teaching Hospital, his picture in clutches, his Pay Slip, Letter of Appeal for Medical Assistance.

Upon close of cases, the Respondent filed her Final Written Address. The Respondent filed her Final Written Address on the 28th day of March, 2022. In it she raised 2 Issues for determination which are:

- (1) “Whether the failure of the Petitioner and his Counsel to sign the Petition robbed the Court of the jurisdiction to entertain the Suit?”**

(2) Whether the Petitioner is entitled to the custody of the 2 Children of the marriage?”

On Issue No. 1, she submitted that the Court lacks jurisdiction to entertain the Petition because of non-signing of the Petition by the Petitioner and his Counsel. That they received the CTC of the Petition on 13th of January, 2022 and it was not signed by the Petitioner or his Counsel. That based on that, the Court lacks jurisdiction to entertain the Suit. She relied on the cases of:

**Madukolu V. Nkemdilim
(1962) 3 NSCC 374 @ 879**

**Bobade V. Adebayo & Ors
(2019) LPELR – 48023 (CA)**

**Ibeziako V Ibeziako
(2020) LCN 14454 (CA)**

That since the Petition was not signed it should be dismissed.

That if the Court holds that it has jurisdiction and that the Petition is competent, the Court should hold that Respondent is not entitled to the custody of the Children of the marriage and to be paid maintenance too which is the second Issue.

In it she submitted that the Children are infants aged 3 – 5 years. That only trial neither immorality or insecurity or

infectious disease was established against the Respondent to deny her custody as decided in the case of:

Alabi V. Alabi

(2007) 9 NWLR (PT. 1039) 297 (CA)

That the Children of the marriage are presently in the Petitioner's custody but that the Petitioner is on Study Leave Abroad. That the Petitioner has wherewithal to take care of the Children since he is a Civil Servant. She urged the Court to dismiss the Petition.

Both parties testified and were Cross-examined. Their respective Counsel filed Final Written Addresses.

In the Final Written Address by the Petitioner he raised 2 Issues for determination which are:

- (1) “Whether the failure of the Petitioner or his Counsel to sign the Petition robbed the Court the jurisdiction to entertain the Petition?”**

- (2) Whether the Petitioner is entitled to custody of the 2 Children of the marriage?”**

On Issue No. 1, he submitted that the Petition was filed in total compliance with **Order 5 Rule 9 & 10 of the Matrimonial Causes Rules**. That the Petitioner and his Counsel signed the Petition as appropriate at pages 7, 10 & 11 respectively. That Petitions are Suin Gevens and with its own Rules unlike ordinary proceedings. That the contention

of the Respondent's Counsel in this regard should be discountenanced and dismissed. He referred to the case of:

**Oguntonyibo V. Oguntonyibo
(2017) LPELR – 42174 (CA)**

That the Respondent's Counsel claimed that the Petition was unsigned while he could not tender any copy of the Petition that he claimed to be unsigned and as such failed to prove his allegation. He did not present any authority that authorizes a Petition to be dismissed because it was not signed as he claims. He referred to **Order 5 Rule 10 of the Matrimonial Causes Rules** which the Respondent's Counsel omitted to refer to. That there is a verifying Affidavit by the Petitioner sworn before a Commissioner for Oath. That by the signature in the Affidavit, the signature of the Registrar, Notice of Address, Certificate of Reconciliation and Pre-action, that all those thing qualified the Petition and makes it to be in compliance with **Order 5 Rule 9 (3) of the Matrimonial Causes Rules**. He urged Court to dismiss Issue No. 1 raised by the Respondent in her Final Written Address and hold that the Court has jurisdiction to entertain the Petition as it did.

On Issue No. 2 – whether the Petitioner is entitled to custody of the 2 Children of the marriage, he submitted that he is entitled to the custody of the 2 Children of the marriage. That the Respondent had demonstrated in her life and during her testimony in Court that she is incapable of taking care of the Children of the marriage as she is

never around to care for the Children due to her immoral ways of life. That when Court gave an Order on 14th of December, 2021 for her to see the Children in December, that she went to see them on 30th January, 2022 instead. She gave flimsy reason for not going that day. That the inconsistencies in her testimony shows that she is not entrusted with the care of the Children of the marriage as she is not morally sound and capable to take care of the Children of the marriage. That she was wayward while she was living with the Petitioner and that she left the matrimonial home and the Children when they were tender. That the Respondent has no custody arrangement/plan for the upkeep of the Children.

He urged Court to determine the Issue No. 2 in his favour and hold that there is merit in his Petition and grant all his claims. He relied on the cases of:

Davidson V. Davidson
(2021) LPELR – 5610 (CA)

Alabi V. Alabi
(2007) 9 NWLR (PT. 1039) 297 (CA)

COURT

It is the law that once any of the parties to a marriage contracted under the Matrimonial Causes Act/Matrimonial Causes Rules can establish that such marriage has broken down irretrievably, the Court has no power to force such person to continue in the marriage. In that case, once the

person has filed a Notice of Dissolution of the Marriage, the Court has no power to stop him or her. That means that it is incumbent on such person commonly called the Petitioner to show that there was a marriage contracted with the person he/she is suing on a given date at the Marriage Registry. Such person does that by attaching copy of the Marriage Certificate issued by such Registry evidencing that the marriage actually took place. The person has to attach all other relevant documents he/she feels will support its claim.

Once the Respondent is served and he/she files an Answer or Cross-Petition and serve the Petitioner, the Petitioner can reply if need be the matter is set for Hearing. The Petitioner must come before the Court to testify and to be Cross-examined by the Respondent or his/her Counsel. After that, the Respondent will do same and will be Cross-examined too, supporting his/her Answer with documents too as the case may be.

That is exactly what the parties in this Suit had done. The crux of the matter is that the marriage has broken down irretrievably and the Petitioner finds it difficult to continue to live with the Respondent. Again, that there is also cruelty, desertion, denial of sex to Petitioner – Severance of Conjugal Right for no reason for over one year preceding the filing of this Petition and lack of care for the 2 Children of the marriage.

The Respondent denied all that stating that she only denied sex to the Petitioner when he was sick – had Road Traffic Accident and after she had miscarriage. But it is very obvious that denying the Petitioner sex for over one year was really out of the way too long a time to deny the Petitioner his conjugal right.

Again, it is very clear that the Respondent had deserted, abandoned, not just the Petitioner but the Children of the marriage for no obvious reason. Her demurer in Court and the obvious inconsistencies in her testimony, all puts no one in doubt that she has for reason best known to her abandoned her marriage and her God-given Children. It is very obvious that she is not ready to marry. Upon all the allegation raised against her, she only was busy denying the sex and claiming that it was because of a miscarriage she had over 4 years earlier that made her to deny her husband sex. Meanwhile, she did not state why she left her matrimonial home in the first place. Besides, this Court gave an Order for the Respondent to see her Children on the 14th of December, 2021. She never did. She did not use the Christmas and New Year holiday to do so. She had no reason not to do so. She obviously flaunted the Order of Court. But a few days before she came to Court – on the next adjourned date, she went to see them. From her testimony in chief and under the fire of Cross-examination it is glaringly clear that the Respondent does not want the hassles of motherhood. She is too pre-occupied, frittering around than staying at home to take care of her Children

even after work as Civil Servant. She never bothered to spend her annual leave with her Children even when her husband travelled out of the country on Study Leave. She was never denied access to the Children by her parent-in-law who are taking care of the Children. She never bothered to check on the Children in Markurdi where they are all these while. There is clear recklessness in the life of the Respondent as could be seen in her testimony which is open for all to see.

From her testimony and even her Final Written Address, it is obvious that that all she wanted is for the Petitioner to be paying her Allowance for the maintenance of the Children since, as she put it in her Final Written Address that,

“it is the duty of the Petitioner to maintain his family and pay for their upkeep. That the Petitioner is a government employee and has the wherewithal to maintain his family.”

Meanwhile, she is also a Federal Government employee with reasonable earning too. It is very strange that the Respondent has no evidence of what she had done for the Children and had no place for their custody if given to her. She is more interested in services she renders to other people than to the Children God had given to her.

It has been held in plethora of cases that where it is very clear that the mother of Children cannot and had not taken care of her Children due to immoral behavior, insanity and infectious disease, that Court should have a rethink before

granting custody to the woman irrespective of the fact that the Children are minors. That means that the welfare and wellbeing of the Children are paramount. Where it is obvious that the Children will be left at the mercies of the housemaid most of who are inexperienced, the Court will not readily give custody to a never-at-home mother who may only be communicating to the Children through whatsapp, where it is obvious that the Children will not have physical interaction and presence of their mother. There is basically no point leaving them with such an uncaring mother. Because, doing so will be like abandoning the Children and making them motherless when they have a mother who had decided to abandon them.

From both the testimony of the parties particularly going by the demurer of the Respondent who from all indication does not miss her Children who are in the custody of her mother-in-law, it is obvious that the Children will be better off staying with the father in this their formative years. Removing them from there will distort their education and affect their psychological well being. The fact that the Respondent disobeyed the Order of Court when Court gave Order that she should see the Children and, if possible, stay or spend the Christmas holiday with them, is shocking to this Court. She did not see them until the last few days in January. That is over a month and 2 weeks after. That action by the Respondent portrays the Respondent as a person who should not have custody of the Children of the

marriage. Entrusting the future of the Children in her care will be catastrophic.

From the testimony of the Petitioner, he had through the documents he has tendered and his testimony both in chief and under Cross-examination shown that he has established his case, that the marriage has broken down irretrievably and that the Respondent has no good moral standard to raise the Children of the marriage who she had abandoned at their tender ages. The Petitioner had ensured that they were properly taken care of even before he left Nigeria and after.

It is imperative to reiterate that morality is not only when it concerns infidelity or promiscuity. Where a woman is never at home or keeps late at night and is never around her Children or does not carter for them. All those are immorality of the first order.

Since both parties are no longer interested in the marriage, this Court has no power under the law to force them to continue to live as husband and wife. Based on that facet and the fact that the Petitioner has established that the marriage has broken down irretrievably, **This Court hereby DISSOLVES the said marriage between the parties which was contracted on the 3rd of July, 2015.**

Again, going by the testimony of the Petitioner, it is obvious that the Children being in the Petitioner's custody will be better and their future secured since it is obvious that the

Respondent has no concrete plan in place for their welfare if custody is granted to her.

This Court therefore, having considered the stances of the parties, hereby GRANTS custody of the two (2) Children of the marriage to the Petitioner who had been taking care of them all the while their mother abandoned them.

The Respondent should have unrestricted access of the Children at all reasonable time but MUST have to notify the Petitioner in advance whenever she wants to visit the Children.

If Ninety (90) days after this Judgment, the parties do not get back as husband and wife, this Order Nisi shall be automatically made absolute.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2022 by me.

K.N. OGBONNAYA
HON. JUDGE