

**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/079/2021

DATE: 6/7/2022

BETWEEN:

EDIDIONG DONDANIELS OTU.....PETITIONER

AND

DONDANIELS INYANG SAM OTU.....RESPONDENT

APPEARANCES:

Nafisa Ali Esq for the Petitioner

Respondent absent and unrepresented.

JUDGMENT

The Petitioner filed this Petition on the 15th day of February, 2021 praying for the following Orders/Reliefs namely:-

- “(a). A declaration that the marriage between the Petitioner and the Respondent has broken down irretrievably.***

- (b). A Decree of Dissolution of marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably on account of cruelty, violence, desertion and continuous living apart for over 3 (three) years.***

- (c). **An Order of this Honourable Court granting custody of the 2 (two) children of the marriage (Flourish Dondaniels Otu (male) and Christine Dondaniels Otu (female)) to the Petitioner until they attain the age of majority; with visitation access granted to the Respondent to the children only during holidays.**

Particulars of Request for Custody Order:

The Petitioner lives with the children in a well fenced and secured environment and shall continue to live with them at the said environment and bring them up in the fear of God and high moral standard.

- (d). **An Order of this Honourable Court directing the Respondent to pay monthly and other allowances to the Petitioner, comprising:**
- i. **Monthly maintenance allowance of ₦115, 000 (One Hundred and Fifteen Thousand Naira) to the Petitioner.**

Particulars of monthly maintenance allowance for the children:

- Food & Beverages for children	- ₦40, 000
- Toiletries	- ₦10, 000
- Clothing	- ₦20, 000
- Hospital & health maintenance bill	- ₦20, 000
- Personal effects	- ₦20, 000
- <u>Transportation to and from school</u>	<u>₦ 5, 000</u>
Sub Total	- ₦115, 000

- (ii). **Pay a quarterly sum of N127, 000 (One Hundred and Twenty Seven Thousand Naira), N111, 000 (One Hundred and Ten Thousand Naira) and N110, 000 (One Hundred and Eleven Thousand Naira) respectively to the Petitioner for the children's education, subject however to any increase in the school fees.**

Particulars of children current school fees:

First Term School fees

Flourish Dondaniels Otu	-	₦73, 500	}	₦127, 000
Christine Dondaniels Otu	-	₦53, 500		

Second Term School fees

Flourish Dondaniels Otu	-	₦64, 000	}	₦111, 000
Christine Dondaniels Otu	-	₦47, 000		

Third Term School fees

Flourish Dondaniels Otu	-	₦64, 000	}	₦110, 000
Christine Dondaniels Otu	-	₦46, 000		

- (iii). Pay a yearly sum of N225, 000 (Two Hundred and Twenty-Five Thousand Naira) to the Petitioner being half payment for the rents on the property occupied by the Petitioner and the children; subject however to any increase”**

The Petition which settled by Bayo Adetomiwa Esq, legal Practitioner to the Petitioner, is supported by the Petitioner’s Verifying Affidavit of 3 paragraphs, Petitioner’s Witness Statement on Oath comprised of 30 paragraphs deposed to by the Petitioner herself as well as several annextures.

The Respondent was duly served with the Notice of Petition, Notice of Hearing upon an Order of this Honourable Court dated 23rd of March, 2021, via substituted means to wit: by delivery of the processes to the Respondent on some adult at the last known place of business of the Respondent at Nigeria Customs Broadcasting Network, 56 Hassan Musa Katsina Road, Guzape Extension, Gudu, Abuja.

Other subsequent processes were served on the Respondent via substituted means via email address of the Respondent sequel to a Court Order made on 6th December, 2021.

The grounds predicating this Petition are:

Desertion by the Petitioner and continuous living apart for 3 (three) years.

The Respondent herein, despite being duly served as stated above has failed, neglected or refused to file an answer to the Petition, and has not put up any appearance throughout the course of the proceedings leading up to this judgment.

At trial, the Petitioner adopted her Witness Statement on Oath, and tendered several exhibits which were admitted in evidence and marked as follows:-

- (a). **Exhibit “A”** Marriage Certificate dated 31st August, 2013;
- (b). **Exhibit “A1”** Original Birth Certificate of Dondaniels Christine Otu
- (c). **Exhibit “A2”** Photocopy of Birth Certificate of Dondaniels Flourish Otu
- (d). **Exhibit “B”** – Original of Petitioner’s Employment Letter dated 4th August, 2019
- (e). **Exhibit “B1 & B2”** – Original Rent payment receipt and a school fees payment Receipt for the children respectively.
- (f). **Exhibit “C1 – C28”** – 29 Original School fees payment receipts for the children.
- (g). **Exhibit “C29 – C32”**- 4 Original Medical Cards for the children.
- (h). **Exhibit “D”** – Print-out of text messages sent to the Petitioner by the Respondent.
- (i). **Exhibit “D1”** – Original Diagnostic Report dated 12th March, 2017
- (j). **Exhibit “D2”** – Original Tenancy Agreement dated 11th February, 2020
- (k). **Exhibit “E1-E7”** - Copies of the Respondent’s Land Title Documents comprising Certificate of Deposit, 2 Survey Plans, Irrevocable Power of Attorney issued by AMMAC, Agreement for Sale of Land and Certificate of allocation of Land for Commercial/Industrial Use; and
- (l). **Exhibit “E8”** – Certificate of Compliance with Section 84 of the Evidence Act in support of Exhibit D.

In the Petitioner’s final Written Address, three issues for determination were formulated by learned Counsel to wit:-

- “(i). Whether from the totality of evidence adduced, the Petitioner has established that the marriage has broken down irretrievably to be entitled to a decree of dissolution of the marriage celebrated on 31st August, 2013?***

- (ii). ***Whether from the totality of evidence adduced by the Petitioner, the Petitioner is entitled to full custody of the children of the marriage?; and***
- (iii). ***Whether from the evidence before the Court, the Petitioner is entitled to the relief of maintenance as claimed in the circumstances?”***

Arguing issue one learned Counsel submitted that from the totality of evidence adduced in this case, the Petitioner has disclosed the burden of proof placed on her in establishing that the marriage has broken down irretrievably.

Counsel referred the Court to Section 15(1) and (2) of the Matrimonial Causes Act, Cap M7, LFN 2004; and in particular Section 15(2) sub paragraphs (c), (d) and (e) thereof, as well as Section 15(3) thereof.

On the intolerable conduct of the Respondent as being grave and weighty in this case making cohabitation virtually impossible, so as to qualify as such behaviour envisaged by Section 15(c) of the Act (supra) Counsel referred the Court to the cases of ***NWANKWO V NWANKWO (2014) LPELR-24396 (CA) per Haruna Simon Tsammani, J.C.A, at PP. 30-36, paras E – C; BIBILARI V BIBILARI (2011) LPELR - 4443 (CA), REGINA OBIAGELI NWODO, JCA, PP: 21 -23, Paras C –D.***

Moreso Counsel submitted that Section 16(1) of the Matrimonial Causes Act further enumerates some facts to be established by the Petitioner seeking dissolution of marriage under Section 15(2)(c) of the Matrimonial Causes Act.

Submitted with reference to Section 16(1)(c) of the Matrimonial Causes Act that the uncontested evidence of the Petitioner in paragraphs 6, 7 and 8 of her uncontroverted Statement on Oath is that since the marriage was celebrated in 2013 to 2017, when she left the matrimonial home, she had been the tender of the family as Respondent refused to work. Further, that although Respondent had landed properties i.e (Exhibits E1 – E7) and collects rent, he would neither support the Petitioner nor provide necessaries like food and clothing for the family and demands from the Petitioner in that respect were met with punches and physical assault from

the Respondent. That since 2017, the Respondent has not supported the Petitioner or their children. Reference was also made to paragraph 14 of Petitioner's Statement on Oath and Exhibit D annexed thereof. Therefore, Counsel submitted that the Petitioner has satisfied the requirement under Section 16(1)(c)(ii) of the Matrimonial Causes Act, and urged the Court to so hold.

Reliance was also placed on paragraphs 6, 9 and 10 of the Petitioner's Statement on Oath as well as Exhibit D1 to show that the Respondent was in the habit of physically abusing and beating the Petitioner. That the Petitioner also recounted how the Respondent on 12th March, 2017, beat her up almost to death and how she was rescued to a clinic where she was diagnosed of multiple bruises on her face and upper limb.

That the Petitioner finally left the matrimonial home on the 17th March, 2017 at the instance of the Respondent following the Respondent's consistent threats to kill the Petitioner if she fails to leave his house.

It is thereof submitted for the Petitioner that this is a grave and weighty conduct which can make cohabitation impracticable. The Court is urged to so hold.

On desertion, Counsel relied on the case of **NWANKWO V NWANKWO (supra) at PP: 24 – 26, Paras B – E** and the case of **ANIOKE V ANIOKE (2011) LPELR PP: 27 – 29, Paras A – A.**

Reference was also made to Section 18 of the Matrimonial Causes Act, on the meaning of constructive desertion, as well as the case of **TABANSI V TABANSI (2018) 18 NWLR (Pt. 1651) P. 27, per Aka'ahs JSC at P. 294, Para D, and PP. 295 at Paras H – A,** on the elements of desertion. The court is urged to so hold.

On living apart, learned Counsel submitted that in this case the Petitioner has proved in her paragraphs 10 and 15 of her Statement on Oath that the last time she had physical contact and lived under the same roof with the Respondent was on 17th of March, 2017 when she left the matrimonial home and the time between then and filing of this Petition is 4 years.

Counsel relied on the case of **OMOTUNDE V OMOTUNDE (2001) 9 NWLR (Pt. 718) P. 252 at P.284, per Adekeye JCA, at Paras D – E**, and urged the Court to so hold.

On issue two, which is on the award of custody, learned Counsel referred the Court to Section 71(1) of the Matrimonial Causes Act, Section 69(1) of the Child' Right's Act 2003, as well as the case of **ODOGWU V ODOGWU (1992) LPELR-2229 (SC) per Alihu Modibbo Alfa. Belgore, JSC at PP. 31 – 32, Paras E – C**, and submitted that presumption of the law is that a child is presumed to be happier with the mother unless the contrary is proved. Learned Counsel also relied on the case of **MACAULEY V MACAULEY & ANOR (2021) LPELR-54925 (CA) per Barka, JCA, PP. 55 – 56, Paras C – C**.

Learned Counsel submitted that in the instant case, the Petitioner has always been the primary caregiver and the children have always been in her custody and are completely happy with her. Submitted moreso that there's been little or no care and fatherly care from the Respondent through the last 9 years and has intentionally estranged himself from them; therefore custody should be awarded to the Petitioner.

In all learned Counsel urged the Court to consider that the Respondent did not call any evidence and therefore to hold in favour of the Petitioner in this regard.

Reliance was placed on the case of **OKOEBOR V C. O. P. & ORS (supra)**.

On issue three, learned Counsel referred the Court to Section 70(1) of the Matrimonial Causes Act as a guide to the Court on the issue of maintenance of the children of the marriage as well as Section 70(4) of the Matrimonial Causes Act, Exhibits A1 and A2, Section 69(3) of the Child Right's Act, 2003, and the cases of **TABANSI V TABANSI (supra) P.299, para G; ADEJUMO V ADEJUMO (2010) LPELR-3602 (CA) per Aboki JCA, at PP: 11 – 15, Paras D B; KPILAH V NGWU (2018) LPELR-45395 (CA)**.

Learned Counsel submitted that in this case, the Petitioner proved her means and earning capacity in paragraph 27 of her Statement on Oath and Exhibit B (her employment letter). That the Petitioner further demonstrated the earning capacity of the Respondent in paragraphs 23 of her Statement

on Oath stating that the Respondent has landed properties in Abuja, FCT, and Uyo, Akwa Ibom State in Nigeria where he collects rents. The Court was also referred to Exhibits E1 – E7 in that regard.

With respect to the conduct of the parties, learned Counsel submitted that the Petitioner has shown in her evidence that the welfare and maintenance of the children has been her sole responsibility since March, 2017 when she left the matrimonial home at the instance of the Respondent. That the Respondent has blocked the Petitioner's phone number from calling him and sent derogatory text messages to the Petitioner when she demanded assistance from him for the children's school fees. Reliance was placed on paragraph 14 of the Petitioner's Statement on Oath and Exhibit A.

Counsel also referred the Court to Order XIV Rule 4(4) of the Matrimonial Causes Rules on the issue of maintenance as well as **TABANSI V TABANSI (supra) PP. 301 – 302, Paras H – C; OMONZANE V OMONZANE (2020) LPELR- 52220 (CA), per Bada JCA at PP. 22 – 24, Paras D – C.**

The Court is further referred to Paragraphs 20, 21, 22, 27, 17, 22 of the Petitioner's Statement on Oath as well as Exhibits E1 – E7, and Exhibit D15 and Section 73(1)(b) of the Matrimonial Causes Act and Section 69(3) of the Child Rights Act, 2003.

The Court is finally urged to resolve issue 3 in favour of the Petitioner and to also grant all the reliefs sought in this Petition.

Now, under and by virtue of Section 15(2) of the Matrimonial Causes Act Cap M7 LFN 2004, 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 grounds enumerated under subsections (a) – (h).

I refer to the cases of **IKE V IKE & ANOR (2018) LPELR-44782 (CA) per EKPE, J. C. A at pages 10-16, paragraphs C-A; IBRAHIM V IBRAHIM (2007)1 NWLR PT 1015 @ (Pg. 405 Paras F-H); AKINBUWA V AKINBUWA (1998) 7 NWLR (PT. 559) 661.**

Likewise the case of **BIBILARI V BIBILARI (2011) LPELR-4443, (SC) per Galinje JSC, at PP: 33 – 34.**

The address of Counsel has dealt extensively with the case presented by the Petitioner.

Indeed from the Petitioner's Statement on Oath it is alleged among other things that the Respondent has been cruel to the Petitioner and their children physically as well as emotionally.

Likewise, Petitioner avers that the Respondent has not been providing for the family, has refused to pay for the school fees and upkeep of the children of the marriage and that the parties have lived apart for at least three years immediately preceding the presentation of this Petition.

Likewise I've also considered the fact succinctly stated on page 2 paragraph 7 of the Notice of Petition which are as follows.

- "a. The Respondent has been excessively hot tempered. This further exacerbated when the Petitioner who was the financial strength of the family lost her job with United Bank for Africa (UBA) in July 2014 and the means of fending for the family became difficult.***
- b. The Respondent who blatantly said "he can never work for anyone" has come landed properties in Uyo, Akwa-Ibom State and Jikwoyi, Abuja FCT from where he collected rents. The Petitioner would only get to know about the rents collected therefrom when the money is finishing.***
- c. The Respondent neglected his family and stopped providing necessities like food and clothing for the children. Anytime the Petitioner demands for money for the children's upkeep, the Respondent would beat her up to a pulp. Entreaties from the Respondent's friends, Church Deacons and Pastors proved abortive as the Respondent persisted in his use of the Petitioner as a punching bag at the slightest opportunity.***
- d. On 12th March, 2017, the Petitioner was beaten up by the Respondent to the point of death. The Petitioner however narrowly escaped to their Church and was consequently***

rushed to the Clinic where she was diagnosed and treated of the multiple bruises on her face and upper limbs.

- e. The Respondent continued to threaten the Petitioner to leave his house or she dies. Out of fear, the Petitioner left the matrimonial home on the 17th March 2017 with her children to Kaduna State. The Petitioner relocated to Abuja, the Federal Capital Territory, in November, 2017 having secured a job in Abuja.”***

Section 15(2)(c) of the Matrimonial Causes Act provides:-

“That since the marriage the Respondent has behaved in such a way the petitioner cannot reasonably be expected to live with the Respondent.”

Section 16(1)(c) (ii) of the Matrimonial Causes Act provides:-

“Since the marriage, the Respondent has within a period not exceeding five years, habitually left petitioner without reasonable means of support.”

In the instant case therefore, it is my humble view that Petitioner has successfully proved ground 15(2)(c) and 16(1) (c) (ii) of the Matrimonial Causes Act. I so hold.

Secondly, since Petitioner has averred that she moved out of the Matrimonial Home on 17th March, 2017 at the instance of the Respondent due to the domestic violence meted out to her by the Respondent, this in my view amounts to cruelty.

Now although cruelty is one of the old grounds for divorce, having considered the evidence by the Petitioner that the Respondent nearly beat her to death, this no doubt becomes a conduct which is grave and weighty which would make it virtually impossible for the Petitioner to continue to live with the Respondent as it may endanger her health and her life.

Right to life is a constitutional guarantee enshrined under Section 33 (of the CFRN 1999 as amended) as well as the right to dignity of the human

person under section 34(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

On the meaning of cruelty I refer to the case of **WILLIAMS V WILLIAMS (1987) 2 NWLR (Pt. 54) 66**, where the Court held that cruelty in relation to matrimonial proceedings is a conduct which is grave and weighty as to make cohabitation of the parties to the marriage virtually impossible coupled with the injury or a reasonable apprehension of injury, whether physical or mental. The accumulation of minor acts of ill-treatment causing or likely to cause the suffering spouse to break down under strain therefore constitutes cruelty.

On intolerable behaviour, I refer to the case of **OGUNTOYINBO V OGUNTOYINBO (2017) LPELR-42174 (CA) at PP: 8-14, Para E – A**. Where the Court held thus:-

“...The duty is on the Court to consider whether the alleged behaviour is one in which a right thinking person would come to the conclusion that the Respondent has behaved in such a way that the Petitioner could not reasonably be expected to live with him taking into account the whole of the circumstances, the characters and personalities of the parties.”

Therefore in my view the Petitioner has equally proved this fact as another ground in satisfaction of Section 15(2)(c) of the Matrimonial Causes Act. I so hold.

In addition, since the parties in this case have lived apart for at least 3 years immediately preceding presentation of this Petition i.e 17th March, 2017 to 15th February, 2021 when this Petition was filed, it is another ground for dissolution of the marriage.

On this premise, I refer to Section 15(2)(f) of the Matrimonial Causes Act which 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.”

With the above two grounds, which in my view are sufficient, it is my opinion that the Petitioner therefore has successfully proved the above grounds under Section 15(2)(c) and Section 15(2)(f) of the Matrimonial Causes Act.

On the whole therefore, the Court is satisfied that the marriage has broken down irretrievably and the Petitioner is entitled to an order for dissolution of the marriage. I so hold.

On the issue of custody and maintenance of the children of the marriage, the Court shall be guided by the following provisions namely:

Section 71(1) of the Matrimonial Causes Act which provides:

“In proceedings with respect to the custody, guardianship, welfare, advancement or education of children of a marriage, the Court shall regard the interest 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.”

Section 1 of the Child Rights Act, 2003 which provides:

“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 shall be primary consideration.”

Also refer to the cases of **NANNA V. NANNA (2006) 3 NWLR (Pt. 966) P1;**

WILLIAMS V WILLIAMS (1984) 2 NWLR (PT.54) 66 and ODUSOTE V ODUSOTE (2012) 3 NWLR (PT. 1288) 478;

In the case of **MRS. LYDIA OJUOLA OLOWUNFOYEKU V MR. JAMES OLUSOJI OLOWUNFOYEKU (2011) NWLR (PT. 227) 177** at 203, paragraphs E-F. 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.”

In the instant case having thoroughly considered the evidence adduced by the Petitioner, I am satisfied that she is a fit and excellent mother who has been carrying the whole burden of taking care of her children both financially, emotionally and otherwise. I have no doubt that the children of the marriage are emotionally attached to their mother and therefore in my view it would be in the best interests of the children of the marriage if full custody is awarded to the Petitioner. I so hold.

On the issue of maintenance, I've considered the evidence adduced by the Petitioner including the Exhibits tendered, the well articulated address of Counsel on the issue as well as the fact that the Petitioner's evidence is unchallenged and uncontroverted.

This means that all the facts relied upon by the Petitioner in support of the relief for maintenance are deemed admitted and the Court is at liberty to act on them.

I've also given due consideration to paragraph 11 of the Notice of Petition as well as Order XIV Rule 4(4) of the Matrimonial Causes Rules.

On the effect of unchallenged and uncontroverted evidence, I refer to the cases of ***EKEREBE V EKEREBE (1999) 3 NWLR (Pt. 596) CA, Pg. 525, A – B; GARBA V ZARIA (2005) ALL FWLR (Pt. 283) 25 (CA) P. 35 -36, G-B as well as the case of OYETAYO V MOSOSO (1997) 10 NWLR (Pt. 526) 627.***

Consequently, therefore I hereby make the following Orders:-

- (1). I hereby grant an Order Nisi dissolving the marriage between the Petitioner **Edidiong Dondaniels Otu** and the Respondent

Dondaniels Inyang Sam Otu celebrated at the Believers Love World Inc. (otherwise known as Christ Embassy) Akwa-Ibom State on the 31st August, 2013. 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). **Flourish Dondaniels Otu**
 - (b). **Christine Dondaniels Otu**
3. The Respondent is awarded visitation rights on school holidays and on any other time subject to reasonable notice to the Petitioner at the time of request.
4. Reliefs d (i), (ii), (iii) on the Notice of Petition are accordingly granted.

Therefore the Respondent is hereby ordered to pay the following: -

1. **₦80, 000.00** as monthly maintenance allowance.
2. **₦111, 000.00** and **₦110, 000.00** respectively to be paid to the Petitioner for the children's education, subject however to any increase in the school fees.
3. Pay a yearly sum of **₦225, 000.00** to the Petitioner being half payment for rents on the property occupied by the Petitioner and the children, subject to any increase.

Signed:

***Hon. Justice S. U. Bature
6/7/2022.***