

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON TUESDAY, 13TH DAY OF DECEMBER, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/PET/313/2021

BETWEEN

ABIODUN BAIYEWU-TERU --- PETITIONER

AND

BISI TERU --- RESPONDENT

JUDGMENT

The petitioner filed her notice of petition for dissolution of marriage on 26/8/2021. In paragraph 10 thereof, the petitioner seeks these reliefs:

1. The decree of dissolution of the statutory marriage between Abiodun Baiyewu-Teru and Bisi Teru, which marriage was contracted on the 13th day of October 2011 at the Marriage Registry, Abuja Municipal Area Council, Garki, FCT, Abuja on the ground that the marriage has broken down irretrievably with ingredients/particulars of [i] the parties of the marriage have lived separately for three [3] years preceding the filing of this petition; [ii] desertion; and [iii] cruelty of the respondent.

2. Order for the custody of the only child of the marriage viz:Teru Zion Oreoluwa, 8 years old [born on the 2nd day of November 2012] be granted to the petitioner being the mother of the child until maturity/adulthood.
3. An Order that the respondent be responsible forthwith for the education of the only child of the marriage up-till university/postgraduate level.
4. An order for the maintenance of the child of the marriage until she earns her first degree, in the sum of N150,000.00 [One Hundred and Fifty Thousand Naira] only, being monthly payment for the welfare, maintenance of the child of the marriage, which shall be paid monthly to the petitioner by the respondent from the date of dissolution of marriage.

In proof of the petition, the petitioner testified as PW1. Her evidence is that she and the respondent married under the Act on 13/10/2011; the Marriage Certificate dated 13/10/2011 is Exhibit 1. She and the respondent have lived apart for over 4 years due to irreconcilable differences. There has been no spousal support or attempt at reconciliation.

After the evidence of the petitioner on 27/9/2022, the petitioner's counsel, John Samuel Opeyemi Esq., informed the Court that the parties have filed terms of settlement on 26/8/2022 with respect to custody and maintenance of the child of the marriage. He adopted it and prayed the Court to enter same as part of the judgment of the Court in the case. The respondent's counsel, Ene Elijah Esq. also adopted the terms of settlement.

At the end of the trial, the parties filed their final written addresses as directed by the Court. On 24/10/2022, OlutoyeseIbitoye Esq. adopted the petitioner's final written address filed on 18/10/2022 while O. Marx Ikongbeh Esq. adopted the respondent's final written address filed on 24/10/2022.

Submissions of Learned Counsel for the Petitioner:

OlutoyeseIbitoye Esq. formulated one issue for determination, which is whether or not the petitioner is entitled to the reliefs sought having regards to the state of pleadings and the quantum of evidence adduced thereof. He posited that where the evidence of a party is not controverted by an opponent, the facts not contested are deemed admitted. He referred to the case of **Pali v. Abdul [2019] 5 NWLR [Pt. 1665] 320.**

The petitioner's counsel submitted that the evidence of the petitioner is unchallenged and ought to be relied upon by the Court. By section 15[2][f] of the Matrimonial Causes Act, the Court has power to grant an order for dissolution of a marriage based on the fact that the parties have lived apart for a continuous period of three years immediately preceding the presentation of the petition. He relied on the decision in the case of **Omotunde v. Omotunde [2001] 9 NWLR [Pt. 718] 525.**

With respect to the petitioner's relief for custody of the child of the marriage, OlutoyeseIbitoyeEsq. urged the Court to make the terms of settlement filed on 26/8/2022 and adopted by the parties as part of the judgment in the case.

Submissions of Learned Counsel for the Respondent:

O. Marx IkongbehEsq. posed one issue for determination, to wit: whether the marriage between the parties have broken down irretrievably. He submitted that since the petitioner has established that she and the respondent have lived apart for a continuous period of three years immediately preceding the presentation of this petition, the fact under section 15[2][f] of the Matrimonial Causes Act has been made out. On the custody of the child of the marriage, learned counsel also adopted the terms of settlement filed by the parties.

Decision of the Court:

Section 15[1] & [2][f] of the Matrimonial Causes Act provide:

[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:*

[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.*

As rightly stated by the petitioner's counsel, since the respondent did not file an answer to the petition and did not adduce any evidence, the petitioner's evidence is taken as true and the Court can act on it.

In paragraph 8.2 of her petition, the petitioner averred that since 8/3/2018, she and the respondent have lived apart. The petition was presented on 26/8/2021, which is a period of more than three years. The

unchallenged oral evidence of the petitioner is that she and the respondent have lived apart for more than four years as at 13/7/2022 when she gave evidence. Thus, the fact in section 15[2][d] of the Matrimonial Causes Act has been proved by the petitioner. In the circumstance, the petitioner is entitled to an order of dissolution of her marriage with the respondent as the marriage has broken down irretrievably.

In respect of reliefs 2, 3 and 4 relating to custody, education and maintenance of the child of the marriage, the parties filed terms of settlement on 26/8/2022. They urged the Court to adopt same as part of the judgment of the Court. The request is granted since, in my view, the terms of settlement are in the interest of the child of the marriage as provided under section 71[1] of the Matrimonial Causes Act.

In conclusion, the Court makes the following orders:

1. A decree *nisi* granted for the dissolution of the marriage between Abiodun Baiyewu-Teru and Bisi Teru, which was contracted on 13/10/2011 at the Marriage Registry, Abuja Municipal Area Council, Garki, FCT, Abuja. The order *nisi* shall become absolute after three [3] months from today.

2. With respect to reliefs 2, 3 and 4 relating to custody, education and maintenance of the child of the marriage, Zion OreoluwaTeru, it is hereby ordered:

Legal Custody

2.2 The parties shall have joint legal custody of the child. This shall mean the power to participate in all major decisions affecting the child, including but not limited to all matters pertaining to her educational, medical and spiritual advancement, subject to the recognition that at all times, the best interests of the child shall be the overruling consideration.

Physical Custody and Residence

2.3 The petitioner shall retain physical custody of the child whether in Nigeria or outside of the country. The respondent shall promptly sign and execute any and all documents that give effect to this term of agreement and, in all other material respects, facilitate its effective implementation.

2.4 Physical custody includes but is not limited to the physical control and day-to-day upbringing of the child and all other matters necessary to carry into effect major decisions made by the parties.

- 2.5 The residence shall be a house where the petitioner resides. As such, the child will reside at the petitioner's residence and shall not be taken out of the residence except as spelt out in the terms of this agreement, or with the express permission of the respondent; and as the primary care-giver, the petitioner shall be entitled to child support for the upkeep of the child, which shall be paid by the respondent into a bank account designated by the petitioner not later than the 7th day of every calendar month.
- 2.6 The child shall not live with a third party. In the event that the petitioner for any reason would be unable to live with the child beyond periods of short-term trips not exceeding 2 weeks, then physical custody and residence of the child shall be transferred to the respondent for that period, and immediately returned to the residence once the petitioner returns.
- 2.7 Should either parent choose to move to another country or change residence, he or she shall inform the other parent at least 30 days before such a change, and provide relevant contact details including residential address, work address and phone numbers.

Visitation and Access

- 2.8 The respondent shall have access and visitation rights to the child within reasonable hours of a weekday as long as it does not unreasonably disrupt her educational schedule or that of the petitioner, or impinge on her comfort or privacy.
- 2.9 The respondent shall only take the child out of the residence with the express permission of the petitioner during school weekdays and shall return her not later than 7 p.m. of the same day in order not to inordinately disrupt the child's routine and development, or unreasonably impinge on the privacy or comfort of the petitioner.
- 2.10 The child shall be entitled to telephonic communication with the petitioner once each day during any period of visitation with the respondent. The said communication may be initiated either by the child or the petitioner and shall be exercised at such times as will be least disruptive to the child's normal routine. Conversely, the respondent shall be entitled to the same telephonic communication with the child when he is not exercising visitation.

Weekends and Holidays

- 2.11 The respondent shall also have the right to take the child and keep the child for every alternate weekend. The respondent may take the child after school hours on a Friday and return her to the

residence of the petitioner not later than 7p.m. on Sunday of that weekend. The location and time of collection of the child shall be determined by prior arrangement between the respondent and the petitioner.

2.12 School holidays shall be split in equal proportion between the petitioner and the respondent. However, the wishes of the child as to how she prefers to spend her holidays and weekends will be taken into consideration by both parties at all times.

The only exceptions to the forgoing are as follows:

- i. Father's Day and Mother's Day: The respondent shall have access to the child every Father's Day while the petitioner shall have access on Mother's Day. Alternate days to make up for the visitation period missed may be agreed upon by the parties.
- ii. Child's Birthdays: If the respondent would not otherwise have access to the child on her birthday, he shall nevertheless have access to the child for up to a period of the day agreed upon in consultation with the child.
- iii. Parties' Birthday: If either party would not otherwise have access to the child on his or her birthday, he or she shall

nevertheless have access to the child for up to a period of the day agreed upon in consultation with the child.

- iv. Festive Holidays: Festive holidays such as Christmas and Easter, shall be alternated each year between the parties; however, the wishes of the child as to how she prefers to spend these holidays will be taken into consideration by both parties at all times.

Education

2.13 The parties shall bear in equal terms all expenses connected with the education of the child up to at least a first degree at the University level.

2.14 The choice of school or institution to be attended by the child shall be agreed upon by the parties. The child's preferences and best interests would also be considered.

Maintenance

2.15 Without prejudice to Clauses 2.13, and 2.16, the respondent shall provide monthly child support to the petitioner in the sum of N100,000 in Nigeria; or \$500 if in the United States of America or

elsewhere outside Nigeria, which would aid in covering costs towards her welfare, feeding, clothing and extra-curricular activities.

2.16 The petitioner shall procure a comprehensive annual health insurance plan which would include vision and dental coverage for the child and the respondent shall contribute at least half of the cost of the insurance. The respondent shall also contribute towards the cost of additional medical expenses not covered by insurance should the need arise.

General

2.17 The parties shall observe all the terms of this Agreement with due regard to the general welfare and happiness of the child and particularly in such a manner as will not undermine the psychological or spiritual wellbeing of the child, or her educational advancement, or the regimen of discipline necessary for her upbringing.

I make no order as to costs.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Learned Counsel:

Chidimma Okafor for the respondent.