

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

ON MONDAY, 31ST DAY OF OCTOBER, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/PET/85/2016

BETWEEN

**OKONKWO ANDREW --- PETITIONER/RESPONDENT
AND**

OKONKWO IFEOMA GINA --- RESPONDENT/CROSS PETITIONER

JUDGMENT

The petitioner [Okonkwo Andrew] filed his Notice of Petition for dissolution of marriage on 20/4/2016. The Notice of Petition was amended on 26/3/2018. On 18/4/2018, the respondent [Okonkwo Ifeoma Gina] filed her Answer to the Petition and a Notice of Cross Petition. The petitioner filed his Answer to the Cross Petition on 17/5/2018. In response to the Answer to the Cross Petition, the respondent/cross petitioner filed a Reply on Oath to the Petitioner's Answer to the Cross Petition on 14/6/2018.

The matter was transferred to me by My Lord, the Hon. Chief Judge vide a Transfer Order dated 3/8/2020. On 30/3/2022, learned counsel for the petitioner applied to withdraw his Petition and same was struck out by the Court.

In the Notice of Cross Petition, the cross petitioner prayed the Court for the following orders:

1. An order for a decree of dissolution of marriage on the grounds that the marriage has broken down irretrievably and the petitioner has behaved in such a way that the respondent/cross petitioner cannot reasonably be expected to live with him, irreconcilable differences and cruelty to the respondent/cross petitioner.
2. A declaration of title to the one plot of land located in Karshi, Abuja which was purchased with the respondent/cross petitioner's funds while in the employment of Nestoil Plc., Port Harcourt, Rivers State.
3. An order of this Honourable Court granting the maintenance of One Hundred and Fifty Thousand Naira [N150,000.00] only monthly, until the respondent/cross petitioner remarries.
4. The sum of N20,000,000.00 [Twenty Million Naira] only general damages against the petitioner for harassment, torture, inhuman and degrading treatment, and for time and efforts wasted in the marriage that have affected the applicant psychologically.
5. The sum of N1,000,000.00 [One Million Naira] only being cost of this suit.
6. And for such order or further orders that this Honourable Court may deem fit to grant in the circumstances of this case.

At the hearing of the Cross Petition, the cross petitioner [Ifeoma Gina Okonkwo] testified as CPW1. She adopted her 82-paragraph statement on oath filed on 18/4/2018 only; she did not adopt her Reply on Oath to the Petitioner's Answer to the Cross Petition filed on 14/6/2018. The CPW1 tendered Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9A-9C, 10, 11A-11C, 12, 13A-13D, 14A-14C, 15, 16, 17, 18 & 19.

The respondent to the cross petition [Andrew Okonkwo] testified as RW1. He testified from the United States of America [USA] via Zoom and adopted his 80-paragraph statement on oath filed on 17/5/2018. He tendered Exhibit 20.

Evidence of the Cross Petitioner:

The evidence of the cross petitioner is that the respondent to the cross petition [hereinafter called "*respondent*"] is her estranged husband who currently works at Monitoring and Evaluating Unit, National Planning and Budget Commission, Abuja. Before she met respondent in August 2009, she was in the employment of Nestoil Plc., Port Harcourt as an accounts officer. She and the respondent got married under the Act in Abuja Municipal Area Council [AMAC] Registry on 13/11/2009. Before the marriage, they agreed that either of them could move to the other party's location after the marriage. She started looking for a job for the respondent in Port Harcourt since her job was paying better, so he could join her in Port Harcourt.

The respondent was later advised by his sister to refuse the offer and urge her to move to Abuja. They started having frictions as a result of the distance and it started to take a toll on their relationship. She narrated how she made efforts to be transferred to Abuja office of Nestoil Plc. without success. The petitioner was then working with Leading Edge Academy [a private enterprise], which was paying a meagre salary. The respondent, despite knowing that her job was the major source of livelihood for the family, insisted that she should resign from her job and join him in Abuja. The respondent involved their families and they asked her to obey him as the head of the family. She decided to obey him and join him in Abuja. The respondent wrote and sent her a resignation letter dated 18/6/2011 to submit to Nestoil Plc. to be effective from 20/7/2011.

The CPW1 further testified that while she was working, she sent money to the respondent from which he bought most household items. She sent a total of N570,000 to him in April 2011 to buy a vehicle and he bought a Honda Civic car with Registration number KUJ 493 HN. She also sent about N340,000 to him to buy land in their names in Karshi, Abuja. When she resigned and joined respondent permanently in Abuja, she started noticing changes in his character and he started using harsh and dehumanizing words on her. As it was difficult to conceive at that time, they went to the hospital in Abuja where it was discovered that the respondent had low sperm count and was placed on medication. He did another test in Onitsha Medical Diagnostic

Centre in 2013 and his sperm count was still below that which could impregnate a woman.

In paragraphs 29, 32, 61 & 62 of her statement on oath, the cross petitioner narrated how respondent battered her using the door against her leg and she sustained injuries; how he knocked her down with the car and she had bruises on her thighs; and how he slapped her, pushed her and verbally abused her. In paragraphs 33-44 thereof, she stated that the respondent was not faithful to their marriage and kept extra-marital affairs with different women. He was always chatting with the women on his phone and did not hide his illicit affairs from her as he even chatted with them most times in her presence. On several occasions, the respondent abused her, beat her and stated that soon, one of the girls would take her place as his wife. At different times, respondent inflicted her with sexually transmitted diseases.

The further evidence of CPW1 is that in January 2014, the respondent insisted that she should undergo fibroid surgical operation at Onitsha, Anambra State without any recommendation from any of their doctors. Due to the love she had for the respondent and in the interest of peace, she agreed and ran some tests, which confirmed the case of fibroid. She underwent the surgery. The money for the surgery was gotten through contributions from her and some family members and friends as the respondent insisted that he had no money. He never gave her any support or care during the period of the surgery but treated her with rejection and hatred. After the surgery, she had

complications as her left tube is now blocked. She had to go to Enugu to stay with her family for about 2 months to recover fully before returning to her matrimonial home.

When she returned home, the respondent started denying her sex during her ovulation period and refused to go for an advanced medical check-up after her surgery, which made it more difficult to conceive. The respondent reminded her that he had succeeded in making her resign from her employment and she cannot do anything but to remain in his house and constitute a nuisance. All her efforts to be productive and enterprising proved abortive as the respondent would counter her efforts rather than support her. She discovered that the respondent was undertaking a building development in Ushafa in Bwari Area Council, Abuja without informing her.

In January/February 2016, matters got worse; respondent would sneak out at night to see his girlfriends and return whenever he liked or travel without informing her. She continued to care for him as her husband. The respondent demanded for the keys to the car which was purchased with her money as it was in her possession since he already bought another car in 2014 after her surgery. Unknown to her, the respondent had already changed the names on the car papers from Andrew and Ifeoma Okonkwo to Andrew Ejike N. Okonkwo. The respondent, who had been denying her conjugal rights, suddenly in April 2016 had sex with her; that was about 2 or 3 days before

she was served with the divorce petition. He also asked the landlord to throw her out of the house.

Ifeoma Gina Okonkwofurther stated that she pleaded with the respondent who later agreed that they travel to the village to settle their issues amicably before their families. He said they must travel separately. She travelled home and waited for him but he never showed up and did not agree to speak with her on phone when she called to find out why he was not home. She later discovered that he hatched the plan by deceiving her to go home while he moved out of their matrimonial home in Dutse Alhaji, Abuja. When she returned to Abuja, she was home alone. She sent messages to apologize to the respondent and asked him to come back home. She had no money to renew the rent and had to pack out of the house. The cross petitioner tendered these documents:

1. Certificate of marriage dated 13/11/2009: Exhibit 1.
2. Vehicle particulars of Honda Civic Saloon car in the name of Andrew & Ifeoma Okonkwo with Registration No. EU 203 ABC: Exhibit 2.
3. Vehicle particulars of Honda Civic Saloon car in the name of Okonkwo Andrew Ejike N. with Registration No. KUJ 493 HN: Exhibit 3.
4. Report of Radiologist of the cross petitioner dated 11/2/2012: Exhibit 4.
5. Medical report of the respondent dated 24/9/2013: Exhibit 5.
6. Laboratory results of the cross petitioner dated 17/3/2015: Exhibit 6.

7. Medical result of the respondent dated 8/1/2014: Exhibit 7.
8. Report sheet in the name of the cross petitioner dated 6/3/2015: Exhibit 8.
9. Offer letter dated 9/3/2011 from Praisefit Ventures addressed to both parties: Exhibit 9A; receipts dated 6/12/2010 and 13/4/2011 from Praisefit Ventures issued to both parties: Exhibits 9B & 9C respectively.
10. Document from Ministry of Lands, Survey and Town Planning dated 7/10/2010: Exhibit 10.
11. Records of Communication: Exhibit 11A, 11B & 11C respectively.
12. Certificate of Compliance pursuant to section 84 of the Evidence Act dated 18/5/2018 signed by the cross petitioner: Exhibit 12.
- 13.4 photographs: Exhibits 13A, 13B, 13C & 13D respectively.
- 14.3 bank deposit slips for N13,500, N340,000 and N11,000 paid by the cross petitioner to respondent's account: Exhibit 14A, 14B & 14C respectively.
15. Cross petitioner's letter to the Group Managing Director of Nestoil Group Plc. dated 29/5/2012 titled: *Application for Re-instatement into Abuja Office*: Exhibit 15.
16. Cross petitioner's statement of account in First Bank: Exhibit 16.
17. Cross petitioner's letter of resignation from Nestoil Plc. dated 18/6/2011: Exhibit 17.

18. Cross petitioner's letter dated 10/12/2009 titled: *Plea for Transfer from Port Harcourt Office to Abuja Office*: Exhibit 18.

19. Document from FCT Health Services, Abuja dated 4/6/2015 in respect of the respondent: Exhibit 19.

During cross examination, CPW1 stated that the petitioner was responsible for the upkeep of the home [financially] and she contributed. Petitioner entered Budget and National Planning Commission with grade level 12 but she did not know his current position. She did not know his salary. She did not know if the petitioner still works with Budget and National Planning Commission.

Evidence of the Respondent to the Cross Petition:

The evidence of the respondent is that he and the cross petitioner got married at the Marriage Registry of AMACon 13/11/2009. There is no child in the marriage. Before their marriage, he was working with Leading Edge Academy in Abuja. Currently, he is in the employment of National Planning Commission as Planning Officer 1, on GL 09 step 5. Before their marriage, the cross petitioner was in the employment of Nestoil Plc. in Port Harcourt. They agreed that after the marriage, either of them could move to the other party's location/visit often. They saw the need to live together. The cross petitioner agreed to relocate to Abuja but requested for 6 months to enable her seek for transfer to Abuja Corporate office of Nestoil Plc.

Sometime in 2009, the cross petitioner became uncomfortable with the risk and financial implication of his moving from Abuja to Port Harcourt. Also, *“for fear of losing me to Abuja women not to snatch her husband from her”*, cross petitioner started making effort to get a transfer. He narrated the efforts she made to be transferred to Abuja office of Nestoil Plc. and the efforts he made to see her Executive Director in that regard but all to no avail. After 18 months, the transfer was not forthcoming. By a letter dated 18/6/2011, the cross petitioner resigned her appointment with Nestoil Plc. without his consent. He applied for several jobs for her in Abuja. Upon the cross petitioner’s arrival in Abuja in July 2011, she attended over 5 interviews without success. His efforts to prepare her on how to attend job interviews proved abortive.

After failing severally in her job interviews, she said she wanted to learn fashion and designing [sewing]. She found a place and he paid N30,000 for her to start a 6-month training in 2012. After 3 months, she started working with Hedge Professional Services in Garki and procured a sewing machine without his consent. He requested her to focus on the sewing and perfect in it so they could get a shop but she refused. In April 2014, she resigned from her job without consulting him. He placed her on a monthly allowance of N14,000; N10,000 was for upkeep and N4,000 for her hair.

The respondent further stated that he was never diagnosed with low sperm count and never refused to go for medical examination when he was sick. He

never laid a hand on the cross petitioner and he did not use force to injure her. When she was working with Nestoil Plc. or any other work, she never contributed to the sustenance of the family and was never the source of livelihood to the family. He shouldered the responsibilities as a man. By the culture of their people, when a man dies and leaves properties, his family members could drive the wife away and claim his properties. To avoid this and for the love he had for the cross petitioner, he included her name in almost all his documents including the documents for the car.

RW1 further stated that the cross petitioner who came over to Abuja to live with him developed the habit of assaulting, annoying him and using abusive words without just cause. She was too hostile and temperamental. On a certain day, when he was trying to reverse in a car, the cross petitioner went to the back and stood so that he would not move further. In the process of moving backward, unknown to her, she hit a stone, fell down and sustain injuries. She angrily picked an object and smashed the windscreen of the Honda Civic Car. In paragraphs 35-41, 56, 60, 65, 66, 68 & 71, he stated acts of the cross petitioner to show that she had no regard for him. For example, she went out of the home at night at will without his consent; and in 2016, she discussed with a medical doctor for IVF without his consent.

The further testimony of the respondent is that he never indulged in extra marital affairs with different women, he never had a chat with numerous women and did not ask any girl to call and warn the cross petitioner. He

never abused or beat her. The cross petitioner never sustained the family. The only things she did were to contribute N500,000 to buy the Honda Civic car and N340,000 to purchase a plot of land. The two properties are all in her possession with all the necessary documents. In November 2013, she destroyed his box and stole the car and land documents. In March 2014, he "*officially handed over*" the Honda Civic car and the land at Karshi to the cross petitioner.

The cross petitioner did not inform him of her medical condition before their marriage until 2010 when she began to bleed profusely for one week. He rushed her to the hospital because she was anaemic. The scan result showed that she had multiple uterine fibroid and ovarian cyst in her two ovaries. Her medical report from Maitama District Hospital shows that she had "*tubal patency*" and it will be difficult for her to conceive in that condition. She refused to carry out surgery until 2014 when she saw that her marriage was at stake. He spent over N200,000 for successful fibroid and ovarian cyst surgery on her.

Mr. Andrew Okonkwo further stated that he never denied the cross petitioner her conjugal rights; rather she was the one that denied him sexual intercourse. When he realized that the cross petitioner could not conceive, he went to the FCT Health & Human Service, Abuja for a medical check-up and a test was carried out on him. The test revealed that he was normal. He was never diagnosed with STD [sexually transmitted disease]. She threatened to

poison him with rat poison in February 2016 and that led to his leaving the house. He stopped eating in the house from February 2016 till April ending 2016 before vacating the house. The respondent tendered his pay slip as Exhibit 20.

During cross examination, RW1 stated that it is not correct that he directly or indirectly influenced the decision of his wife to resign from Nestoil Plc. There was no point in which he discussed her relocation. As a result of resignation and relocation of the cross petitioner to Abuja, he was responsible for her welfare. He lives in the USA for about 1 year. He is not working yet.

Issues for determination:

At the conclusion of trial, EteyaOgana Esq. filed the respondent's final address on 23/5/2022 while Agada Elachi, Ph.D filed the cross petitioner's final address on 26/5/2022. Learned counsel for the respondent formulated one issue for determination, which is:

Whether from the available evidence adduced, the cross petitioner has proved maintenance.

For his part, learned counsel for the cross petitioner distilled four issues for determination, to wit:

1. Whether by the evidence adduced before this Honourable Court, the respondent/cross petitioner has fulfilled the requirements for the grant

of an order of the dissolution of the marriage between her and the petitioner/cross respondent.

2. Whether by the evidence adduced before this Honourable Court, the respondent/cross petitioner has met the requirement for a grant of an order of maintenance.
3. Whether the respondent/cross petitioner is entitled to a declaration of title to the plot of land located at Karshi, Abuja.
4. Whether the evidence of the petitioner/cross respondent is contradictory. If so, how should it be treated?

The cross petitioner seeks a decree for the dissolution of her marriage with the respondent and other ancillary reliefs. From the case presented by the parties and the submissions of both learned counsel, the Court is of the opinion that the issue for determination is whether the cross petitioner is entitled to the reliefs sought in her cross petition. The reliefs will be considered in turn.

Relief 1:

The cross petitioner's first relief is an order for a decree of dissolution of her marriage with the respondent. The marriage was celebrated at Abuja Municipal Area Council Marriage Registry, Abuja on 13/11/2009.

Submissions of Learned Counsel for the Respondent:

EteyaOganaEsq. stated that from the outset, both the cross petitioner and the respondent seek from the Court a decree for the dissolution of the marriage on the ground that the marriage has broken down irretrievably in that both parties have since the marriage behaved in such a way that they cannot reasonably be expected to live together.

Submissions of Learned Counsel for the Respondent:

Dr.Agada Elachireferred to section 15[1] of the Matrimonial Causes Act for the ground upon which a petition for a decree of dissolution of marriage may be presented to the Court[i.e. that the marriage has broken down irretrievably] and section 15[2][a]-[h] for the facts upon which the court shall hold that the marriagehasbroken down irretrievably. He cited **Georgewill v. Georgewill [2022] LPELR-56914 [CA],Ofoma v. Ofoma& Anor. [2013] LPELR-20166 [CA]**and other casesto support the principle thatin order to succeed in a petition for a decree of dissolution of marriage, the petitioner must prove one of the facts set out in section 15[2][a]-[h] of the Matrimonial Causes Act.

Learned counsel for the petitioner argued that by the contents of the cross petition and theevidence of the cross petitioner, she has proved the facts in section 15[2][c]& [f] of the Matrimonial Causes Act to show that hermarrriage with the respondent has broken down irretrievably. He emphasized that the evidence before the Court shows that since the marriage, the respondent has behaved in a manner that the cross petitioner cannot be expected to

continually live with him. Also, the respondent has abandoned the marriage since 2016. Both parties have been living apart from 2016. He urged the Court to grant the order sought since the marriage has broken down irretrievably.

Decision of the Court:

Section 15[1] & [2][c], [d] & [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:*

[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.*

[d] *that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.*

[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.

The testimonies of the parties show the allegations of intolerable behaviour made by each of the parties against the other. As rightly stated by Mr. Ogana, both parties desire a decree of dissolution of the marriage. In other words, the respondent is not opposed to the grant of an order for a decree of dissolution of the marriage as prayed by the cross petitioner. Be that as it may, the cross petitioner must adduce evidence to prove that at least one of the facts in section 15[2][a]-[h] of the Matrimonial Causes Act exists in order to satisfy the Court that her marriage with the respondent has broken down irretrievably.

In paragraphs 76-79 of her statement on oath, the cross petitioner stated that in April 2016, she and the respondent agreed to travel home to settle their issues amicably. She travelled to the village but the respondent did not show up. When she returned to Abuja, respondent had moved out of their matrimonial home in Dutse Alhaji, Abuja. In paragraph 73 of his statement on oath, the respondent stated that he vacated the house by end of April, 2016 because in February 2016, the cross petitioner threatened to poison him with rat poison.

From the above pieces of evidence of the parties, it is clear that the respondent left the matrimonial home by end of April 2016 and never

returned. The Court is of the view that the respondent's act of leaving the matrimonial home in April 2016 amounted to desertion of the cross petitioner.

The cross petition was filed on 18/4/2018. The period from end of April 2016 to 18/4/2018 is more than one year. I hold that the cross petitioner has satisfied the Court that her marriage with the respondent has broken down irretrievably in that the respondent deserted her for a continuous period of at least one year immediately preceding the presentation of the petition as provided by section 15[2][d] of the Matrimonial Causes Act. Therefore, cross petitioner is entitled to an order of dissolution of her marriage with the respondent.

Relief 2:

Relief 2 is a declaration of title to the plot of land located at Karshi, Abuja, which was purchased with crosspetitioner's funds while in the employment of Nestoil Plc. in Port Harcourt, Rivers State.

In paragraph 57 of the statement on oath of the respondent, he stated that "*in March 2014, I officially handed over the Honda Civic Salon Car and the land at Karshi to the respondent/cross petitioner as her own forever. ...*" In paragraph 2.5 of the final address of the respondent, EteyaOganaEsq. noted that the respondent "*has ceded*" the landed property to the cross petitioner. In paragraph 7.7 of the cross petitioner's final address, Dr. Agada Elachipointed

out that respondent “*has conceded*” the title to the said property to the cross petitioner and it is binding on him. Since this claim is not disputed, it is granted.

Relief 3:

In relief 3, the cross petitioner seeks an order of the Court granting her maintenance of N150,000 monthly until she remarries.

Submissions of Learned Counsel for the Respondent:

Learned counsel for the respondent posited that for an order of maintenance to be made, the following factors are to be considered: [i] the party’s income; [ii] the earning capacity and by implication properties owned by each party; [iii] financial resources; [iv] financial needs and responsibilities; [v] standard of life of the parties before the dissolution of the marriage; [vi] their respective ages; and [vii] the length of time they were husband and wife. He relied on Nanna v. Nanna [2006] 3 NWLR [Pt. 966] 1 and other cases. He argued that for the cross petitioner to succeed in proving maintenance, she needs to show the income of the respondent, his earning capacity and the properties he owns.

EteyaOganaEsq. referred to the evidence of the cross petitioner during cross examination that she did not know the salary of the respondent and she did not have information whether he is still a staff of National Planning and

Budget Commission. He also referred to Exhibit 20 [i.e. the payslip of the respondent] which revealed that as at March 2017, he was on grade level 09 step 5 as against the assertion of the cross petitioner that he was on grade level 12. From Exhibit 20, the salary of the respondent was N63,087.82 per month. Counsel noted that the testimonies of the cross petitioner in paragraphs 13, 18, 22 & 51 of her statement on oath reveal that she was the one catering for the respondent [and contributing in the marriage] owing to the level of his earning.

The respondent's counsel also relied on section 70[1] of the Matrimonial Causes Act and Order XIV Rule 4[4] of the Matrimonial Causes Rules. The case of **Omonzane v. Omonzane [2020] LPELR-52220 [CA]** was cited to support the view that the provisions of Order XIV Rule 4[4] of the Matrimonial Causes Rules are what should guide the Court in granting an order of maintenance. He submitted that the cross petitioner did not prove any of the listed guide in the said Order XIV Rule 4[4] to warrant the exercise of the Court's discretion in granting the order of maintenance. She did not disclose her income, property and financial commitment. The cross petitioner stated that since she left in 2016, her business has been "*on and off*". Also, she did not demonstrate her earning capacity and salary at Nestoil Plc.

Mr. Ogana further stated that the respondent informed the Court that he was not working in the USA. This means that he does not have means or capacity to earn money. He referred to the cases of **Anyaso v. Anyaso [1998] 9 NWLR**

[Pt. 564] 150 and Akinboni v.Akinboni [2002] 5 NWLR [Pt. 761] 546 to support the submission that maintenance cost cannot be awarded against a party when it is apparent that such party has no means of paying. It was also submitted that it is punitive to order a party to pay maintenance allowance that is more than his income and the cross petitioner's claim for maintenance of N150,000 monthly without any child of the marriage is not tenable in law.

Finally, EteyaOganaEsq.remarked that an order for maintenance must not be arbitrary. Rather, it must be based on empirical evidence and established rules or principles of law. He referred to Igwemoh v. Igwemoh [2014] LPELR-46807 [CA]. The respondent testified that he officially handed over the Honda Civic car and the land at Karshi to the cross petitioner as her own. He reasoned that this is enough concession to maintain her.

Submissions of Learned Counsel for the Cross Petitioner:

Dr. Agada Elachireferred to Section 70[1] of the Matrimonial Causes Act and posited that the Act empowers the Court to order for maintenance of a party to a matrimonial proceeding. He cited the case of Adejumo v. Adejumo [2010] LPELR-3602 [CA] for the principles of assessing maintenance in matrimonial proceedings. In that case, it was held that maintenance means the provision made by a man for a woman who was his wife and that a husband has a duty under the common law to maintain his wife and his children. He also referred to Igwemoh v. Igwemoh [supra].

Learned counsel for the cross petitioner submitted that where the husband decides to depart from his wife, he is still required to maintain her especially to the state she was financially before he deserted her. In the instant case, it is to the state the respondent met the cross petitioner before he married her and decided to abandon her. The respondent owes the cross petitioner the duty to provide for her maintenance particularly since he *“robbed her of the comfortable life she was used to.”* He relied on **Omonzane v. Omonzane [supra]** where the Court of Appeal referred to the provisions of Order XIV Rule 4[4] of the Matrimonial Causes Rules for the factors to guide the courts in granting an order for maintenance under the Matrimonial Causes Act.

In response to the argument of Mr. EteyaOganaEsq.that the cross petitioner failed to meet the requirements of the said Order XIV Rule 4[4], the counsel for the cross petitioner argued that the requirement for disclosure of the earning capacity, property and financial commitment of the respondent is to the extent of the knowledge of the cross petitioner. The cross petitioner is not expected to know the financial capacity of her estranged husband since 2016. Since she has declared what she knows, it suffices. The cross petitioner disclosed to the Court her financial capacity prior to the marriage and prior to the petition filed by the respondent. Exhibit 16 shows her financial capacity before she resigned from Nestoil Plc.

Finally, Dr. Agada Elachireferred to the evidence of the respondent that he has had no employment since his relocation to USA over a year ago. He

submitted that this is a “*blatant lie, a calculated attempt to deceive this Honourable Court and avoid the responsibility of maintaining his lawful wife whom he reduced to the level of a financial beggar after their marriage.*” He reasoned that since the respondent is in the USA for this long, he is “*at an advantaged position financially [considering the current Dollar to Naira exchange rate] and is able to provide substantially*” for the needs and upkeep of the cross petitioner.

Decision of the Court:

Section 70[1] of the Matrimonial Causes Act provides:

Subject to this section, the court may, in proceedings with respect to the maintenance of a party to a marriage, or of children of the marriage, other than proceedings for an order for maintenance pending the disposal of proceedings, make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

Dr. Agada Elachi is correct that by this provision, the Court is empowered to grant an order for maintenance. The provisions of Order XIV rule 4[4] of the Matrimonial Causes Rules set out the facts or particulars which the claimant shall state to support the claim for maintenance. The said provision reads:

In proceedings for ancillary relief, being proceedings with respect to the maintenance of a party to the proceedings or of a child of the marriage, the claimant shall state in his application for ancillary relief particulars of –

- a) *the property, income and financial commitments of the claimant;*
- b) *the capacity of the claimant to earn income;*
- c) *the property, income and financial commitments of the spouse of the claimant, so far as that capability is known to the claimant;*
- d) *the capacity of the spouse of the claimant to earn income, so far as that capability is known to the claimant;*
- e) *any financial arrangements in operation between the claimant and the spouse of the claimant;*
- f) *any order of a court under which one of the parties to the marriage is liable to make payments to the other; and*
- g) *the ownership of the home in which the claimant is residing and the terms and conditions upon which the claimant is occupying or otherwise residing in that home.*

The principles guiding assessment of maintenance in matrimonial proceedings were set out in Hayes v. Hayes [2000] 3 NWLR [Pt. 648] 276 thus: [i] the stations in life of the parties and their lifestyles; [ii] their respective means; [iii] the existence or non-existence of child or children of the marriage; and [iv] the conduct of the parties. See also Amah v. Amah [2016] LPELR-41087 [CA].

In the case of Igwemoh v. Igwemoh [supra], the Court of Appeal, in holding that the order of maintenance of N5 million made by the trial court in favour of the respondent was arbitrary, referred to the unchallenged evidence of the petitioner that for one year before and at the time he testified, he had been unemployed and completely out of job. On the other hand, the respondent testified that she has the means and was profitably engaged in her events management business. The Court of Appeal emphasized the need for a trial court to consider the factors stipulated in section 70[1] of the Matrimonial Causes Act in exercising its discretion in a claim for maintenance.

In the instant case, has the cross petitioner adduced any evidence to support the claim for maintenance of N150,000 per month? From the provisions of section 70[1] of the Matrimonial Causes Act and Order XIV rule 4[4] of the Matrimonial Causes Rules, evidence of the means and earning capacities of the parties to the marriage is critical and fundamental in the exercise of the discretion of the Court in a claim for maintenance. The cross petitioner has the duty to adduce evidence of her income and earning capacity as well as the income and earning capacity of the respondent if his income and earning capacity are known to her.

The cross petitioner did not state her income and earning capacity before the presentation of the cross petition or after the presentation of the cross petition. When she testified on 30/3/2022, she stated that she is “currently off

and on business." However, she did not state her income or her earning capacity from the "off and on business."

On the other hand, the evidence of the respondent is that he is unemployed in USA. Dr. Agada Elachi submitted that this piece of evidence is a "blatant lie". It seems to me that there is no evidence upon which the Court can reach a finding that the said evidence of the respondent is a "blatant lie". It is trite law that a court should refrain from indulging in speculation. See the decisions in A.C.B. Plc. v. Emostrade Ltd. [2002] 8 NWLR [Pt. 770] 501 and Igwemoh v. Igwemoh [supra]. As it stands, respondent's evidence that he is unemployed is uncontroverted. Since the respondent is unemployed, there will be no basis to make an order for him to pay maintenance to the cross petitioner.

The decision of the Court is that there is no evidence of facts or particulars upon which it can exercise its discretion in favour of the cross petitioner to grant the order of maintenance as prayed. Relief 3 is refused.

Relief 4

In relief 4, the cross petitioner claims the sum of N20 million against the respondent for harassment, torture, inhuman and degrading treatment, and for time and efforts wasted in the marriage that has affected her psychologically. Leaned counsel for the cross petitioner did not put forward any argument in support of the grant of this relief. The Court holds without much ado that there is no legal basis to grant this relief. Relief 4 is refused.

Conclusion:

From all that I have said and in conclusion, the claims of the cross petitioner succeed in part. I grant the following orders:

1. A decree *nisi* for the dissolution of the marriage between the cross petitioner [Okonkwo Ifeoma Gina] and the respondent to the cross petition [Okonkwo Andrew] celebrated at the Abuja Municipal Area Council [AMAC] Marriage Registry on 13/11/2009. The decree *nisi* shall become absolute after three [3] months from today.
2. A declaration of title to the plot of land located at Karshi, Abuja.

The parties shall bear their costs.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Learned Counsel:

1. Y. M. Ma'aji Esq. for the petitioner/respondent.
2. Lucia N. Anyanor Esq. for the respondent/cross petitioner; holding the brief of Dr. Elachi Agada.

