**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS**

**COURT: 28**

**DATE: 6TH FEBRUARY, 2023**

**BETWEEN** **FCT/HC/PET/162/2022**

**JOY EBINWOJUMI----------** **PETITIONER**

**AND**

**ERIOLUWA EBINWOJUMI----------** **RESPONDENT**

## JUDGMENT

The Petitioner by a Notice of Petition No. FCT/HC/PET/162/2022 dated and filed on the 23rd March, 2022 prays this Court for:-

A. A decree of dissolution of the marriage celebrated on 6th August, 2014 at the Abuja Municipal Area Council, Marriage Registry.
B. Custody of her only daughter, Sharon Oluwafunmilayo Ebiwonjumi, the only child of the marriage with the Respondent having unfettered visiting rights.
C. The Respondent to take responsibility for the educational needs and welfare requirements of the child of the marriage.

The grounds upon which the dissolution is sought are:-

a. Since the marriage the Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the Respondent.

b. That the Respondent had deserted the petitioner for a continuous period of over one year immediately preceding the presentation of the Petition and the respondent does not object to the decree being granted.
c. The Petitioner had single- handedly been responsible for the welfare and upkeep of their only daughter.
d. The petition is supported by a verifying affidavit deposed to by the petitioner herself, a witness statement on oath and two annexures all filed on the 23rd March, 2022. The facts as averred by the petitioner among others are as follows:-

1. That the marriage is blessed with one child and since the marriage there has not been previous proceedings between the petitioner and the Respondent.
2. That all efforts made by the Petitioner to get the respondent to turn from his hostile ways were thwarted and frustrated by the Respondent.
3. That the marriage has broken down irretrievably, due to the irreconcilable differences and unguarded utterances, and that since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.
4. That the Respondent has deserted the petitioner for a continous period of over a year immediately preceding the presentation of the petition and the Respondent does not object to the decree being granted.
5. That the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent does not object to the decree being granted.
6. That the Petitioner has single handedly been responsible for the welfare and upkeep of the child of the marriage.

The Respondent in answer to the petition states as follows:-

1. He does not object to the petition for a decree of dissolution of the marriage existing between him and the petitioner.
2. He has not condoned or connived in respect of any of the grounds which the Petitioner is seeking divorce.
3. He is able, willing and ready to take absolute responsibility for the welfare and upkeep of his daughter,
4. There are no properties to be settled between himself and the Petitioner.

The Respondent therefore, urge the Court to:-

1. Grant the application of the Petitioner for a decree of dissolution of the marriage between them,
2. Grant him sole custody of his daughter, the only child of the marriage, with the Petitioner having unfettered visiting rights.

The facts as averred by the respondent inter alia are as follows:-

1. That since their marriage, Respondent has never been hospital to the Petitioner nor their daughters.
2. That since the birth of the only child, he has actively been involved in all her affairs and responsibilities and never shirked in his responsibilities as a father.
3. He has painstakingly and at all times been playing his role as a father to their daughter and has been exclusively responsible for her educational and medical bills including her many other welfare needs.
4. He has also been solely responsible for the payment of the caregiver who has been taking care of her since two years.
5. He also provides financial support to the petitioner. Statement of account which supports this claim is herein annexed and marked "B"

6. That he desires to personally supervise and oversee the upbringing of his daughter and is ready to take her and her care giver in while the Petitioner visits them whenever she desires.
7. That he does not want his daughter to grow under the care and influence of any other man that the petitioner is hobnobbing with or may hobnob with in the near future.
8. That he has a saddening experience in the 2nd week of September, 2022 when he went to visit his daughter barely a week after he had paid school fees of about N400,000.00 only. The petitioner and her father made a failed attempt to stop him from having access to his daughter. This situation almost led to a fist cuff but for the intervention of the Petitioner's mother.
9. That the petitioner once attempted to procure travel documents to enable her travel out with his daughter.
10. That he has the means and the moral capacity to bring up his daughter in a manner that will enable her grow up as a responsible child.

In Respondent final written address, he has formulated one issue for determination:-

"Whether from the testimonies of the parties before this Court, the Respondent should be granted custody of the only child of the marriage.

The Respondent refers to section 71 of the Matrimonial Causes Act where in issues pertaining to the custody of a child, the interest and welfare of the child is the first and paramount consideration. Respondent cited ***WILLIAMS V WILLIAMS (1981)2 NWLR (Pt54)66 SC, ODUSOTE V ODUSOTE (2012) 3 NWLR (pt 1288) 478 CA.***

The Respondent also states that what the Court deals with in deciding custody is the lives of human beings and ought not to be regulated by rigid formula. He refers the Court to the case of

***DAMULAK V DAMULAK (2004)8 NWLR (pt.54) 177 CA***. the Court will consider the case of the child's person, morally, physically and mentally. In ***WILLIAMS V WILLIAMS*** it was held that the welfare of the child although the first and paramount consideration is not the sole consideration and the conduct of the parties is a matter to be taken into consideration.

The Respondent is of the opinion that the Petitioner cannot be considered an honest or credible person. This is because in the course of her testimony before the Court, the Petitioner alleged that she was physically abused by the Respondent and it took the intervention of her cousin to rescue her on one of such occasions. However, while being cross- examined she admitted that she had no witness in Court to corroborate this claim. Furthermore, respondent avers that during his examination in chief, he confirmed that he has been living apart from the respondent for more than 5 years. There is no way then, that the Respondent could have been physical with the Petitioner if they are not living together.

In Petitioner's final address, two issues are raised for determination to wit to wit:-

1. *"Whether the PW1 (Petitioner) has shown that she is deserving of a decree of dissolution of marriage between herself and the Respondent, and*
2. *Whether PW1 is deserving of the Oluwanfunmilayo Ebiwonjumi"*

Petitioner cites section 15 (1) of the Matrimonial Causes Act LFN 2004 Cap M7 where it was stated:-

> *Thus*: "*A petition under this Act by a party to a marriage for a decree of dissolution of the marriage upon the ground that the marriage has broken down irretrievably* "

Section 15(2)(e) states thus:-

> "*The Court hearing a petitioner 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 the fact…… that the parties to the marriage have lived apart from a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent does not object to a decree being granted* "

Petitioner avers that it is no doubt that both parties are no longer interested in the marriage having lived apart for a continuous period of at least two years immediately preceding the filing of this petition by the petitioner.

The Petitioner has also stated in her witness statement on oath that the Respondent does not object to the decree being granted, which was affirmed by the respondent in his answer to petition. Counsel thus submits that the requirement of section 15(1) and (2) (e) the Matrimonial Causes Act have been fulfilled. See ***BELLO V AG LAGOS STATE (2007) 2 NWLR (pt 1017) page 115 at 136 and NWOSU V IMO STATE ENVIRONMENTAL SANITATION AUTHORITY 91990) 2 NWLR (pt.135) 688 At 721 and 735.***

On the second issue of whether the Petitioner is deserving of the custody of her only daughter, Counsel answers in the affirmative.

Counsel avers that petitioner has stated in her witness statement on oath which she adopted as her oral testimony that she had been singlehandedly responsible for the welfare and upkeep of the child. Petitioner went further to explain to the Court during her examination in chief that the said child had been with her right from birth and is still just 7 years old which is young to be left out of her mother's sight. She told the Court that the respondent provides the

school fees and hospital bills. Counsel states that the child Rights Act 2003 does not define what custody means but defines parental responsibility in section 277 as " all the right, duties ,power, responsibilities and authority which by law apparent of a child has in relation to the child and his property." However, in seeking to enforce parental responsibility by a party before a Court, the Child Rights Act uses the word "custody in section 69 91), which states that the Court may:-

a) On the application of the father or mother of a child , make such order as it may deem fit with respect to the custody of the child and the right of access to the child of either parent, having regard to:-

i) The welfare of the child and the conduct of the parent, and

ii) The wishes of the mother and father of the child.

In ***ODOGWU V ODOGWU (1992) LPELR- 2229 (SC) pages 31-32, paragraphs E-***C, the Court held as follows:-

" If the parents are separated and the child is of tender age, it is presumed the child will be happier with the mother and orders will be made against this presumption unless it is abundantly clear the contrary is the situation e.g immorality of the mother, infectious disease, insanity, and /or her cruelty to the child.

Counsel avers that these are matters to be tried, even if in judge's chambers where in informal hearing, the children's views could be assessed along with those of the parents, for privacy. See ***OJO VOJO (1969) 1 ALL NLR 453 and APARA V APARA (1968) 1 ALL NLR 241.***

Counsel further states that in coming to the overall conclusion of what would be in the overall interest and welfare of the child, the Court in ***ODOGWU V ODOGWU*** per Salihu Modibbo Alfa Belgore JSC,

determined what constitutes the welfare of a child in pages pp 30-31, paragraphs C-B thus:-

> "*Welfare of a child is not the material provisions in the house- good cloths, food, air conditioners, television, gadgets normally associated with the middle class, it is more of the happiness of the child and his psychological development. While it is good a child is brought up by complementary care of the two parents living happily together, it is psychologically detrimental to his welfare and ultimate happiness and psychological development if maternal care, available, is denied him.*"

See also ***OKAFOR V OKAFOR (2016) LPELR – 40264 (CA) at page 10-11*** **paragraph B**

Furthermore, section 71 of the Matrimonial Causes Act has provided different considerations it takes into account before exercising its discretionary powers in determining who to award the custody of a child thus:-

1. The degree of familiarity of the child with each of the parents.
2. The amount of affection by the child for each of the parties.
3. The respective incomes of the parties.
4. The education of the child etc

Petitioner has stated that the child has been with her right from birth and she is just 7 years old thus, it is safe to say that the child is more familiar with her mother, the petitioner and arguably has more affection for her reason being that she was with the mother since birth. Counsel also submits that the petitioner has a robust source of income being a successful business woman as stated by the petitioner in her examination -in – chief and this was confirmed by the respondent when asked during cross examination what the

petitioner does for a living, concerning the education of the child. Petitioner had always ensured that the school fees sent by the Respondent for the payment of fees of the child had been channeled towards the payment of the fee of the child till date.

Based on the sections of statute law and cases cited above, and all reasons stated, it is safe to say that the marriage has indeed broken down irretrievably, couple having lived apart for 5 years and both agreeing to the separation, it would be pertinent to dissolve the marriage between the petitioner and the Respondent. Concerning the little child involved, it would seem appropriate to give custody to the mother while the father is allowed visiting rights, while also continuing to take responsibility for the child's educational needs and overall welfare until same attend the age of maturity at that time the child of the marriage is at liberty to chose who to stay with .

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**HON. JUSTICE M.S IDRIS**
**(PRESIDING JUDGE**

Appearance

Chibuike Nwodo:- For the Respondent