

**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:-23<sup>RD</sup> JANUARY, 2023**

**FCT/HC/PET/495/2021**

**BETWEEN:**

**MRS. ESTHER ADEGBOYE-----**

**PETITIONER**

**AND**

**MR. ALIBI OLUWAMAYOWA-----**

**RESPONDENT**

**JUDGMENT**

The petitioner by a notice of petition no FCT/HC/PET/495/2021 dated and filed on the 1<sup>st</sup> December, 2021 prays this Court for a decree of dissolution and also seeking ancillary orders with respect to the custody of the child of the marriage. The grounds of the petition being:-

- A. That since the marriage, the Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the Respondent.
- B. The Respondent deserted the petitioner and the only child of the marriage for a period of not less than one year immediately preceding filing of this petition.
- C. The petitioner and the Respondent have lived apart for a period of at least two years immediately preceding the presentation of this petition.

Furthermore, the petitioner seeks an order of the Court for the Respondent to pay the sum of ₦100,000.00 (One Hundred Thousand Naira only) as a monthly child support and maintenance to the petitioner, then sum of ₦85,000.00 (Eight Five Thousand Naira only) being the current per term

school fee of the child of the marriage and any other school fee that may arise in future as the child progresses in her academics.

And any further order(s) as this Honourable Court may consider fair and just to make in this circumstance.

The petition is supported by an affidavit, a written address and exhibits marked exhibit AL all filed on the 1<sup>st</sup> December, 2021. The affidavit was deposed to by the petitioner and contains among others the following facts:-

1. That she is the petitioner and has seen and supplied all the facts to which this petition is filed.
2. That the petition was settled by Counsel according to her instructions.
3. That the facts are true and correct to the best of her knowledge, and she makes this oath in good faith believing same to be true.

In the written address, the petitioner states as follows:-

1. That the Respondent started exhibiting new behaviours and being aggressive towards the petitioner after the birth of their child in 2016.
2. That the respondent changed shortly after the wedding with domestic violence despite the petitioner being pregnant.
3. That the Respondent will play sex videos to their daughter which when confronted, he would beat up the petitioner.
4. That the Respondent has not been providing for the family but instead always takes money from the Petitioner with the promise of giving back which he never does.
5. That the respondent has forged the Petitioner's signature to get a loan of N700,000.00.
6. That the Respondent disappeared in July, 2019 and Petitioner currently does not know of his whereabouts.
7. That the well being of the petitioner and their daughter has been her sole responsibility including but not limited to health, feeding, clothing and school fees.

Respondent has not entered appearance nor filed any documents as all efforts to serve him have proved abortive as his whereabouts are unknown.

By section 15 (2) of the Matrimonial Causes Act, the Court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down irretrievably if but only if the Petitioner satisfied the Court of one or more of the following facts:-

- a. That the Respondent has willfully refused to consummate the marriage.
- b. That since the marriage the Respondent has committed adultery.
- c. That the Respondent has deserted the petitioner for a continued period of at least a year.
- d. That the parties to the marriage 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 decree being granted.
- e. 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.
- f. That the other party to the marriage has for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act.
- g. That the other to the marriage has been absent from the petitioner for such time and in such circumstances so as to provide reasonable grounds for presuming that he or she is dead.

The petitioner in her paragraph 73 of witness statement on oath states that the Respondent left their home on the 5<sup>th</sup> July, 2019 and has not been back since. Also, by paragraphs 15 and 17 the Petitioner alleges that the Respondent used to commit adultery and going by the provisions of section 32 of the Matrimonial Causes Act, a person alleged to have committed adultery with a partner in marriage must be joined in the petition to afford him the opportunity to defend such allegation. Where such adulterer is not joined, the Petitioner cannot use any legal procedure for dissolution of the marriage on that ground. See ***EIGBE V EIGBE (2012)LPELR 19609 (CA)***.

On the issue of cruelty, by paragraph 9,18,25 and the general terms of the petitioner's witness statement on oath, the petitioner is alleging cruelty on the part of the Respondent even though cruelty is not one of the grounds set out under section 15 (2) of the Matrimonial Causes Act for divorce, it remains one of the old ground for divorce. Thus a Court can hold that a marriage has broken down irretrievably on the ground that one spouse has been proved to be guilty of cruelty to the other. See ***DAMULU V DAMULU (2004) 8 NWLR (Pt 874) CA.*** from the fact above it becomes imperative on the part of the Court to involve the provision of section 15(1) of the Matrimonial Causes Act that this marriage has broken down irretrievably . I therefore fully declared that this marriage has broken down irretrievably.

I so hold. I therefore grant all the relief sought.

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**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**

Appearance

Nathaniel Adegboye :- for the Petitioner