

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT COURT 45, ABUJA**

**BEFORE HIS LORDSHIP: THE HON. JUSTICE ELEOJO ENENCHE**

**THURSDAY, FEBRUARY 23, 2023**

**PETITION NO. FCT/HC/PET/62/2022**

**BETWEEN:**

**ALI RAPHAEL ADEJO**

...

**PETITIONER**

**AND**

**OBAJE GRACE OJOMA**

...

**RESPONDENT**

**J U D G M E N T**

**THE PETITIONER** herein, *Ali Raphael Adejo* has approached this court for the dissolution of his marriage by notice of petition for the decree of dissolution of marriage dated 2/2/22 which is supported by 17 paragraph, witness statement on oath seeking the following reliefs:

- “1. A Decree of dissolution of marriage between the Petitioner and Respondent on the grounds that since the marriage the Respondent has behaved in such a manner that the Petitioner cannot reasonably be expected to live with the Respondent; fights, physical and verbal abuse, threat to commits suicide and cruelty, disobedient, high handedness, lack of love as the marriage has broken down irretrievably.

2. AND any such Order or further orders as the Honourable Court may deem fit, just and equitable to make in the circumstances of this case.”

The grounds upon which the petition is predicated are:

- a) The respondent is highly irritable, disobedient, always quarrelsome and difficult to be with to the discomfort of their marriage which has persistently affected her relationship with the Petitioner.
- b) The Respondent is in the habit of quarrelling and verbally abusing and disobeying the petitioner to the extent of instigating her family members to call the Petitioner’s parents at odd hours and insult them without restrain.
- c) The Petitioner and Respondent do not connect as husband and wife and have leaved apart for more than two years. The Respondent had severally engaged in physical, mental and verbal violence against the Petitioner and on a particular occasion had struggled to take the wheel of a moving vehicle from the Petitioner and severally physically assaulted the Petitioner and threatened to commit suicide.
- d) The Respondent take decisions without consulting/ informing the petitioner and take steps whenever she feels like without considering the feelings of the petitioner or care for the effect of her actions on the Petitioner.
- e) The Respondent has consistently been flirting with other persons despite the fact that she is married to the Petitioner.

- f) There is lack of love between the petitioner and the respondent herein.”

In his written statement on oath, which the Petitioner adopted as his evidence in proof of his case, the Petitioner, a trained Military Officer, deposed that he got married to the Respondent who is unemployed on the 30<sup>th</sup> November 2019 (marriage certificate dated 30/11/2019 was admitted as Exhibit P1) and they lived together at a shared residence in Abuja with no child but eventually, have been living apart for more than two years as they no longer connect as husband and wife because the Respondent is highly irritable, disobedient, and always quarrelling, leading to verbal and physical abuse of the Petitioner which has caused discomfort in the marriage. The Respondent is also accused of flirting with other people and making decisions without considering the petitioner's feelings which has led to the emotional and mental breakdown of the Petitioner, thereby causing the marriage to break down irretrievably and leading the Petitioner to request the dissolution of the marriage as love no longer exist between the Petitioner and Respondent. The Petitioner averred that there are no other legal suits between them and have not condoned or connived with the Respondent to bring this petition.

The Respondent filed an answer to the petition dated 25/3/2022 where she denied all the allegations made in paragraphs 8(a) to (e) of the petition while stating that she is an obedient, loving, submissive and humble wife to the Petitioner as she sought for the following reliefs:

- “a. A decree of dissolution of the marriage between the Petitioner and the Respondent contracted on the 30<sup>th</sup> November, 2019 on the grounds that the marriage has broken-down irretrievably.

- b. An Order of Court compelling the Petitioner to pay the Respondent ₦200,000 (Two Hundred Thousand) Naira monthly for welfare and upkeep.
- c. An Order compelling the Petitioner to Pay the Respondent ₦2,000,000 (Two Million Naira) for Anti-Natal, Natal (Delivery) and Post Natal Expenses.
- d. Any further other Order(s) as the Honourable Court may deem fit to make in the circumstances.”

Filed alongside her answer to the petition is the Respondent’s witness statement on oath which the court adopted as her evidence in chief wherein she re-echoed that love no longer exist between the parties and her marriage to the Petitioner has broken down irretrievably due to the Petitioner’s overbearing attitude. She went further to state that she is six months pregnant with the Petitioner's child and that the pregnancy was confirmed at two separate health facility (copies of the pregnancy test results were admitted as evidence and marked as Exhibit R1) but the Petitioner denies responsibility. She claims that the Petitioner is over possessive, suspects her of infidelity, temperamental, verbally and emotionally abusive – even while she is pregnant and have on several occasions, in his characteristic manner, pushed the Respondent out of his car due to misunderstanding between them and also, the Respondent’s personal belongings, including her International Passport was taken without her consent and not returned till date.

In his reply to Respondent’s answer/cross petition, the Petitioner stated that the Respondent’s pregnancy was confirmed positive but denies vehemently

that he is not responsible for the pregnancy considering the weak virtue of the Respondent which caused the breakdown of parties' marriage irretrievably. It is his reply that as no paternity test has been conducted to determine that he is responsible for the pregnancy, and that the child is not his until the result reveals he is the father. He further urged the court to dismiss the Respondent's relief b and c contained in the answer for being speculative, vexatious, unmeritorious and unwarranted as he urged the court to discountenance the Respondent's cross petition.

In the final written address in support of the petition, Learned Counsel for Petitioner raised two issues for determination, to wit:

- “1. Whether considering the circumstances, facts and evidence adduced by the Petitioner before this Honourable Court the Petitioner has proved his case to be entitled to the reliefs sought.*
- 2. Whether taking into consideration the facts before this court, the Respondent is entitled to the reliefs sought.”*

Learned Counsel to the Petitioner in addressing the two issues formulated above argued that the Petitioner has proved by uncontroverted pieces of evidence in his petition and also by the admission of the Respondent, that their marriage has broken down irretrievably and urged me to find that such admissions need not be proved further by evidence. He relied on **Section 15 (2)(e) of the Matrimonial Cause Act** as well as the following cases: **AYOKE V. BELLO (1992) 10 NWLR (PT. 218) 320 RATIO 2; CONFIDENCE INSURANCE LTD v. TRUSTEE Of O.S.C.E. (1999) 2 NWLR (Pt. 591) 373 RATIO 13; BANKOLE v. ADEYEYE (2014) All FWLR (Pt. 721) p.1583, PARAS E-F; ODOFIN v. ONI**

(2001) FWLR (Pt. 36) 807; AKANINWO v. NSIRIM (2008) All FWLR (Pt.410) 610.

He contended that a cross-petition in a petition for dissolution of marriage such as this is independent of the main claim and should be treated as a separate action, similar to a counterclaim which requires facts and evidence to support the reliefs sought but in the instant cross -petition, it is counsel's contention that the Respondent failed to comply with the rules governing pleadings as well as **Order 17 Rules (6) and (7) of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules, 2018.** On that note, learned counsel urged the court to dismiss the cross petition for want of being properly. He cited and relied on the following cases: WOKOMA V. WOKOMA (2020) LPELR-49882 (CA); ANI V. NNA (1996) 4 NWLR (Pt. 440) 101 @ 102; MR. INNOCENT UGWUMBA ELUWA v. MRS. FLORENCE OGADINMA ELUWA (2013) LPELR-22120 (CA) Pp. 44-46, paras. D-A.

Further arguing his case, counsel submitted that the Petitioner disputes the paternity of the unborn child. He contends that from the uncontroverted evidence from PW1 and Exhibit P2, the Respondent communicated with several other men while in the marriage with the Petitioner. As such and also as there is no proof before the court confirming the paternity of the child, the issue of care and upkeep cannot arise, and the reliefs sought by the Respondent must fail. He submitted that that the Respondent's written address cannot replace evidence before the court, citing UNION BANK OF NIGERIA PLC & ANOR V. AYODARE & SONS NIGERIA LIMITED & ANOR (2007) LEPLER-3391 (SC); JAMES CHIOKWE V. THE STATE (2012) LPELR-19716 (SC)

In the Respondent's written address, Learned Counsel for the Respondent formulated one issue for determination, to wit:

*"Whether taking into consideration the facts before this court, the Respondent is entitled to the reliefs sought."*

In his submissions, Learned Counsel argued that there is a legal presumption that the Petitioner is responsible for the said pregnancy as he did not lead any evidence in rebuttal and more so, the Petitioner is presumed to be responsible for the welfare of the Respondent and the Child until the paternity of the Child is proved. He cited and relied on **S. 165 of the Evidence Act, 2011** and **S. 71(1) of the Matrimonial Causes Act Cap 220, LFN 1990**. He finally urged the court to grant the reliefs sought.

Having carefully considered the Petition, the Answer and Cross Petition, the Reply to the Answer and Cross Petition as well as the Written Address of both Counsel for the Petitioner and Respondent, it is clearly established that the parties are no longer interested in the union and thereby wants their marriage dissolved. This can be gleaned from paragraphs 12, 13 and 16 of the petitioner's witness statement on oath, paragraphs 3 and 22 of the Respondent's witness statement on oath and paragraphs 3 and 8 of the Petitioner's Reply to Respondent's Answers and Cross Petition which are hereby reproduced respectively below:

Petitioner's Witness Statement on Oath

"12. As a result, I started having emotional and mental breakdown which has been affecting my work and my relationship with my parents because of the extent of harassment they go through from the Respondent's family members. We no longer live like husband and

wife. We simply live like cats and dogs always quarrelling and fighting and not talking to each other at which point the marriage has broken down irretrievably.

13. The marriage between me and my wife lacks love and has broken down irretrievably.
16. I want this Honourable Court to dissolve/nullify the marriage between me and my wife.”

#### Respondent’s Witness Statement on Oath

- “3. That the marriage between me and the Petitioner has broken irretrievably and that the Petitioner caused the breakdown of the marriage due to his overbearing attitude.
22. That there is no love between the parties anymore.”

#### Petitioner’s Reply to Respondent’s Answer and Cross Petition

- “3. The Petitioner admits paragraph 3 of the Respondent’s answer to petition.
8. ...which caused the breakdown of parties’ marriage irretrievably and lack of love and put the Respondent to the strictest proof thereof.”

It is also trite law that where evidence given by another party to a proceeding has not been challenged by the adverse party who had the opportunity to do so, it is always open to the court seized of the matter to act on such unchallenged evidence before it. See **ISAAC OMOREGBE V. DANIEL PENDOR LAWANI (1980) LPELR-2655(SC)**. The Petitioner stated in paragraph 8(c) of the Petition as well as paragraph 9 of his Witness Statement Oath that “*The Petitioner and the Respondent do not connect as husband and wife and have leaved apart for more than two years.The Respondent had severally engaged in*



*physical, mental and verbal violence against the Petitioner and on a particular occasion had struggled to take the wheel of a moving vehicle from the Petitioner and severally physically assaulted the Petitioner and threatened to commit suicide” to which the Respondent denied in her paragraph 11 of her Answer/Cross Petition only to the extent that “she has never abused the Petitioner in any manner neither is she violent rather the Petitioner who being short tempered has severally threatened to beat her up at any slightest provocation. The Petitioner is put to the strictest proof.”* In the light of the above, there is an uncontroverted fact that parties have lived apart for 2 years which is one of the grounds for dissolution of marriage as provided in **S.15(2)(e) of the Matrimonial Cause Act, 1970** which states that the parties to the marriage must 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 a decree being granted.

I hold therefore that the parties having admitted that their marriage lacks love and that same has broken down irretrievably and having lived apart for more than 2 years, preceding this petition, the marriage solemnized at the Federal Marriage Registry, Abuja-FCT on the 30<sup>th</sup> November, 2019 has broken down irretrievably and same ought to be dissolved.

On the other hand, this court is also saddled with the responsibility of determining whether the Respondent is entitled to the reliefs sought in her cross petition, especially paragraphs (b) and (c), as paragraph (a) has earlier been granted being a common relief for the both parties. I have gone through the Petitioner’s argument on the issue of cross petition and I agree with the

learned counsel's submission that cross petition is similar to a counter claim, independent of the main claim and therefore the Cross petitioner must prove every averment in the cross petition. See the cases of **NWANYA V NWANYA (1987) 3 NWLR (62) 697 AT 704;** and **OTTI V OTTI (1992) 7 NWLR (252) 187 AT 212.** However, this court will tilt towards the side of justice rather than dwell on the issues of technicality and cannot afford to dismiss the cross petition based on that. In the case of **ELUWA V. ELUWA (2013) LPELR-22120(CA)** per Lawal Garba, JCA stated and I quote –

“I am constrained to say that it is an aberration in judicial procedure in Nigeria for a court to dismiss a party's case on the ground that it is copious or/and that it was not properly presented by the party for that is prejudicial and manifestly inconsistent with the substantial rights of the party. Let me emphasize that the courts of law, particularly the superior ones established by the constitution, do not make a practice of routinely penalizing parties for errors or mistakes of procedure committed in the conduct of their case by counsel with orders which finally terminates the case before the court by way of dismissal. Very rarely and only in exceptional circumstances would such penalties be meted out on hapless parties. The time is long gone and forgotten about when the court on its own motion would penalize a party for non-compliance with Rules of procedure which does not occasion any real prejudice or even complained of by the other party to case in the determination of substantial rights in the case. Courts do not exist for the sake of discipline but for the sake of deciding controversies or disputes between the parties that come before them.”

The Respondent is seeking the order of this court to compel the Petitioner to pay her ₦200, 000 (Two Hundred Thousand Naira) monthly for welfare and upkeep as well as ₦2,000,000 (Two Million Naira Naira) for Ante Natal,

Natal and Post Natal expenses based on the fact that she is pregnant for the Petitioner. The Respondent has proved that she is pregnant by virtue of the two pregnancy test results tendered as exhibit R1 and the unchallenged statement of fact in paragraph 16 of her Answer to the Petition that says she is 6 months pregnant but the veracity of the paternity of the child is still questionable based on the allegations of the Petitioner that Respondent is a flirt, an allegation which the Respondent denied.

Be that as it may, I am inclined to rely on **S. 165 of the Evidence Act** which dwells on the presumption of legitimacy of the unborn child pending the determination of the paternity of child by the Petitioner, if he so wishes. The said section provides thus:

“Without prejudice to section 84 of the Matrimonial Causes Act, where a person was born during the continuance of a valid marriage between his mother and any man, or within 280 days after dissolution of the marriage, the mother remaining unmarried, the court shall presume that the person in question is the child of that man.”

It is pertinent to note that court, however, must take certain factors into consideration when granting an order of maintenance as can be seen in the case of **NANNA VS. NANNA (2005) LPELR-7485 (CA)** where the court held that granting an order for maintenance should be guided by a consideration of the following factors: -(1) Means of the parties (2) earnings capacities of the parties;(3) conducts of the parties; and (4) all other relevant circumstances. Having considered the entire evidence of the Respondent before me, and the factors stated in Nanna Vs Nanna (supra), there is nothing before me to show the means and earning capacity of the Petitioner and therefore,

this court cannot grant the reliefs sought as there was no evidence in the cross petition showing why she should be granted the reliefs sought asides the section that deals with the presumption of legitimacy of a child in a marriage. The Respondent ought to have pleaded her cross petition in order to guide the court on the veracity of the reliefs sought. The court is not a fortune teller and therefore cannot peer into the Petitioner's source of livelihood nor make an order compelling the Petitioner to act beyond his capacity. I therefore hold that the reliefs sought by the Respondent has failed and the cross petition is hereby dismissed.

In all, I pronounce an Order of Decree Nisi dissolving the marriage between **ALI RAPHAEL ADEJO** and **OBAJE GRACE OJOMA** contracted on 30<sup>th</sup> November 2019 at the Federal Marriage Registry Abuja. This order shall by operation of law become absolute at the expiration of three months from today.

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ELEOJO ENENCHE

JUDGE

23/02/23

**Counsel:**

**Noah Adanu, Esq.** – for the Petitioner

**Obe Joseph O. Esq.**– for the Respondent