

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

27TH DAY OF APRIL, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/NY/PET/07/2020

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

ETIM NWANKWO AMAGHIONWU PETITIONER

AND

IJEOMA ETIM NWANKWO AMAGHIONWU RESPONDENT

JUDGMENT

The Petitioner’s Petition dated and filed on 11/09/2020 amended vide an Amended Petition filed on 9/08/2021 prays as follows:

- (1) A Decree of dissolution of the marriage between the Petitioner and the Respondent.
- (2) An Order granting the Petitioner full custody of the children of the marriage.

The Petition was served on the Respondent and she filed Notice of Answer and Cross-Petition. In her Cross-Petition, she claims the following:

- (1) An Order granting a decree of dissolution of marriage.
- (2) An Order granting custody of the two children.
- (3) An Order mandating the Petitioner to be responsible for the payment of rent or housing, education, welfare of the two children till their graduation from tertiary institution.
- (4) Maintenance of the Respondent.

The Petitioner opened his case and gave evidence for himself. He is Etim Nwankwo. He lives in 2006 Durumi District, Abuja and 37B 110440 Jarner Paa Finland.

He states that the Respondent is his wife. That he knew her through one of his sisters. They had a traditional marriage in 2010. They thereafter moved from Ariba in Abia to Abuja.

That in 2016, they went to AMAC Registry to celebrate their marriage under the Act. That the original Marriage Certificate is with his wife. He has a Certified True Copy (CTC) of the Marriage Certificate. The CTC of the Certificate is Exhibit A.

They went to the Embassy for interview to go on to Finland. That after the interview, the Respondent told him to buy a land. That after the marriage, they resided at Prince and Princess Estate.

They moved to Lokogoma from where he travelled to Finland. He sent her money to build the house in 2017. When he came back in 2017, he asked for the land documents and receipts. She answered that there was no land or receipt. That her brother supported her against him. They asked why he did not take her abroad, the Respondent said she would kill him. She refused to serve him food.

She said it was better for everyone to go his or her way. He gave her ₦250,000.00 within a short period. She said she had only ₦50,000.00. There was no peace in the marriage.

That over 2 years now, there was no contact. That he only had contact with the children. That he has two children of the marriage - a boy and a girl, born in 2011 and 2017. That he has good plan for his children. That he can even take them to Finland.

He prays for custody. He had always sent money to her. In 2020 he sent her money through family people. He showed the recent transfer he made. They are Exhibits B - B4.

He said the marriage cannot be salvaged. He urges the Court to grant the divorce and custody of the children.

Under Cross-Examination, the witness says that he asked for the receipt of land but she said there was no land and

no receipt. That he planned for them to travel abroad. That they went to the Embassy for interview and failed. That Respondent is living in the house they both built at Jikwoyi.

To a question, he answered that he did not pay rent because he has a house. That there is no dispute as to the ownership of the house where Respondent lives.

To another question, he denied saying he would sell the house and send his wife and children to the village.

That sometimes he will not eat breakfast till 1.00 p.m. because the Respondent will not serve him food.

To another question, he said he lives in Finland but visits Nigeria often.

His first child is 10 years while the second is 4 years. He was always sending money. That ₦250,000.00 is small money compared to money he usually sent.

That he did not report the threat to kill him by the Respondent to the Police, but decided to give her and her brothers gap. He was always calling his children on phone every two days.

That he has not been communicating with the children for the past two years. He wants to have custody of the children. That he has not applied for school for his son in Finland. He does not know the name of the school his son attends in Nigeria. That the mother will know better. He does not know the name of the class teacher. He does not know how much the school fees is.

He is doing business in Finland. He was working in the advertisement company. That it is his duty to send money to his family. That he sent last year and even this year.

He sent the money through his elder brother. He did not go to the village to get married to another woman. He is also not married in Finland.

To another question, he said he got married to a woman in Finland in 2005. That they had divorced. He got a daughter with her. He does not have the Divorce Certificate with him.

The above is the case of the Petitioner.

The Respondent testified in support of her Answer. She said she lives in Pikwoyi Village, Airport Road, Abuja. That she swore to a Witness Statement on Oath sworn on 27/06/2022.

In the said Statement, she said the Petitioner neglected and or refused to carry out his responsibility as husband including providing for her and children.

That Petitioner sleeps out at will. He became abusive, violent and denied her conjugal rights. That Petitioner assaulted her severally. That he threaten her and mimic her good image.

That on 1/09/2018, the Petitioner deserted the matrimonial home, all because his siblings want to be in charge of the marriage. That Petitioner has since the marriage behaved in such a way that she cannot reasonably be expected to live with him.

That the marriage is blessed with Prince Etim Nwankwo - male, 10 years, born on 7/11/2011. He is in JSS1 in Bright Management Concept Institution, Lugbe, Abuja and Favour Etim - Female, 4 years old, born on 8/09/2017, Pre-Nursery/Cherry Care School, Lugbe, Abuja.

That Petitioner shall be responsible for the payment of rent/housing, education, welfare of the two children till their graduation from tertiary institution alongside her maintenance.

That she is a business woman. That after the marriage in 2016, he travelled to Finland. That he kept sending money to her and visits Nigeria from time to time. That Petitioner provided the money she used in securing a land at Abuja and built a house for the family.

That Petitioner arrived Nigeria sometimes in 2018 and sought to sell the house and land in question because according to the Petitioner, the house is not up to his standard. She told him to secure a good apartment for the family before selling the house and land in question.

The Petitioner refused but instead sought to send her and the children to the village, which was resisted by her and her people to the displeasure of the Petitioner. That her insistence not to relocate to the village made the Petitioner to desert the marriage on or about 1/09/2018 and refused to return to the matrimonial home and sought to marry another wife.

That the children of the marriage are minors and could best be attended to by her who had nursed them from birth till now. That Petitioner hardly stays at home, does not cook, wash or attend to the children. She urges the Court to grant her reliefs in the Cross-Petition.

Under Cross-Examination, she answered that she finished secondary school. To a question, she answered that she pressured him to travel to Finland. That he refused to pay children's school fees for 2 years. He also refused to give her money to start up a business. He said he married her as housewife but she refused.

On reading paragraph 9 of her Statement on Oath, she said he was sending money. He told her he was done with her. He has since refused to send money for school fees.

He said she should go to her father's house. That she bought clothes for the children. He gave her ₱50,000.00 to travel to the village. That he has not beaten her before.

She does not know what conjugal rights mean. She does not know how much it cost her to build the house. She bought the land for ₱380,000.00. She did not give the land documents to Petitioner.

She does not know the Petitioner's siblings that are envious of her. She has been living with her children. That her husband's elder brother's son was with them before. That when he filed the Petition in 2020, he took the boy to the village.

She is a land/property agent. The above is the Respondent/Cross-Petitioner's case.

Parties filed and exchanged Final Written Addresses. The sole issue submitted for determination is: ***Whether the Respondent/Cross-Petitioner is not entitled to the reliefs sought having regard to the evidence placed before the Court.***

Respondent's Counsel canvasses that the main ground upon which the Respondent/Cross-Petitioner is seeking divorce is desertion. That the Petitioner deserted the matrimonial home on 1/09/2018 till 13/12/2021 when Petition was filed.

That it is more than a year. That Section 15 (2) (d) of the Matrimonial Causes Act is proved. That Exhibits B, B1 - B3 and B4 which are basically transfer of ₦39,998.28, ₦49,998.00, ₦39,998.00 and ₦39,998.28 in December 22, 2017, December 18, 2017 and £1,000 are not helpful.

That the funds transferred are not enough to take care of Respondent alongside the education and welfare of the children. That Exhibits B - B4 have no evidential value.

That her evidence on desertion is not controverted. The Petitioner did not cross-examine the Respondent on this point. That the effect of failure to cross-examine a witness upon a particular matter is a tacit acceptance of the truth of the evidence. That the Respondent/Cross-Petitioner has proved her case for dissolution of the marriage.

Learned Counsel urges the Court to dissolve the marriage and grant custody of the children of the marriage to the Respondent/Cross-Petitioner. That the Petitioner did not place enough material facts to enable the Court grant his reliefs.

The Petitioner's Final Written Address is dated 16/08/2022. He also posited an issue for determination, which is: ***Whether the Petitioner has not shown that his marriage with the Respondent has broken down irretrievably under Section 15 (2) of the Matrimonial Causes Act as to be entitled to the decree of dissolution of marriage.***

He argues that the Petitioner successfully made out two grounds under Section 15 (2) of the Matrimonial Causes Act as to be entitled to the decree of dissolution of marriage, i.e. Section 15 (2)(i) and (ii) of the Matrimonial Causes Act.

He reiterated the behavior of the Respondent as captured in evidence. The Respondent's refusal to give him the land documents or render account. The Respondent's threat to kill him and her refusal to serve him food. That the above facts are not denied.

That the above behaviours constitute behaviours which the Petitioner cannot reasonably be expected to live with. That Respondent betrayed the trust.

On the second ground, Learned counsel canvasses that for more than 2 years, he had no contact with the Respondent. That the Petitioner has successfully shown that his marriage with the Respondent has broken down irretrievably.

I have carefully read and considered the Final Written Addresses of Counsel and the Respondent's Reply on Points of Law. The issues germane for determination are as submitted by parties in their Written Addresses.

(1) Whether or not the marriage of the Petitioner and Respondent has broken down irretrievably.

(2) Whether or not the Petitioner or Respondent should be awarded the custody of the two children.

The reliefs being sought in the Petition are essentially the same as the reliefs in the Cross-Petition. I shall therefore consider the Petition and Cross-Petition simultaneously.

On the first issue, which is common to all the parties viz: Whether or not the marriage of the Petitioner and Respondent has broken down irretrievably.

The Petitioner's Counsel's contention is that he is entitled to the decree of dissolution of marriage. That the behaviour of the Respondent/Cross-Petitioner is such that the Petitioner cannot reasonably be expected to live with the Respondent.

The evidence is that he gave the Respondent, his wife money to buy land and build a house. That she refused to give him the land documents or make account. That she refused to serve him food particularly breakfast each time he came back from abroad. That she threatened to kill him.

The evidence of the Respondent/Cross-Petitioner is that the Petitioner said the house built by the Respondent is below his standard. He asked that she relocate to the village with her children so that he could sell the house, which she resisted. She asked him to rent a befitting apartment for them to live in. That her refusal to allow him sell the house made him to abandon the house.

By virtue of Section 15 (2) (c) of the Matrimonial Causes Act, a Petitioner is entitled to a decree of dissolution of his or her marriage if he or she can show that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

The test of intolerable behaviour is always objective in the sense that it is not sufficient for the Petitioner to allege that she cannot live with the Respondent because of her behaviour. The behaviour must be such that a reasonable man cannot endure.

In considering what is reasonable, the Court has to consider in totality the matrimonial history of the parties. Allowance has to be made for wear and tear. It is not every squabble or incident that can qualify as a behavior which the Petitioner cannot reasonably be expected to live with.

See **IBRAHIM vs. IBRAHIM (2007) 1 NWLR (PT. 1015) 383.**

NNANNA vs. NNANNA (2006) 3 NWLR (PT. 966) 1.

The conduct of a Respondent that a Petitioner will not be reasonably expected to put up with must be grave and weighty in nature as to make further cohabitation virtually impossible.

I have considered the acts of the Respondent which the Petitioner considered intolerable. The issue or act of threat to kill was not proved. The Petitioner under Cross-Examination said he did not report same to the Police. What it shows is that it is not grave enough to invite the Police into it.

The other acts are daily occurrences in families. In the eye of a reasonable person such acts are not grave and weighty enough to constitute behaviour which may warrant the inference that the other spouse cannot reasonably be expected to live with him.

In the circumstance, the Petitioner has not been able to prove intolerable behaviour.

The second ground for divorce is desertion under Section 15 (2) (e) of the Matrimonial Causes Act. He said he has not had contact with the Respondent for the past two years. That the marriage cannot be salvaged. That Respondent/Petitioner said it is better for them to go their separate ways. That there is no peace in the marriage.

The Respondent/Cross-Petitioner's evidence is that on 1/09/2018, the Petitioner deserted the matrimonial home. That her insistence not to relocate to the village

made the Petitioner to desert the matrimonial home on or about 1/09/2018 and refused to return till date.

In the Cross-Petition, the Respondent/Cross-Petitioner is also seeking for the dissolution of the marriage but on a separate ground which is Section 15 (2) (d) of the Matrimonial Causes Act, that the Petitioner/Respondent to the Cross-Petition has deserted the Respondent/Cross-Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition.

The Petitioner's evidence is that for two years and more he had no contact with her for the reasons she stated. He refused to contact his family. He deserted the home.

He cannot in my humble view condone, connive and collude on the ground of desertion. He cannot rely on his wrong by deserting the Cross-Petitioner as a ground to seek for dissolution of marriage. This ground also fails.

However, the Respondent/Cross-Petitioner's evidence is that the Petitioner/Respondent has deserted the

Respondent/Cross-Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition.

The Petitioner deserted the home on 1/09/2018 while the Petition was filed on 11/09/2020. It is more than a year. The Respondent/Cross-Petitioner has proved Section 15 (2) (d) of the Matrimonial Causes Act.

The Petitioner is not contesting the dissolution of the Marriage. It is clear that the parties have made up their minds to untangle themselves.

In the circumstance, it is my view and I so hold that the marriage between the Petitioner, ETIM NWANKWO AMAGHIONWU and Respondent, IJEOMA ETIM AMAGHIONWU has broken down irretrievably.

On the issue of custody and maintenance, the evidence is that the children have all along being with the mother, the Respondent/Cross-Petitioner.

The Petitioner tendered Exhibits B - B4 which show that he sent some money at intervals for their upkeep. His evidence under Cross-Examination is that he has not called to speak to them for the past two years.

He is not married. The Petitioner is in Finland. He has not made any arrangement for their education in Finland. The children are 10 and 4 years respectively. He does not know the name of the schools they attend or class teachers. That the mother will know better. He does not know how much the school fees are.

There is avalanche of evidence of the cordiality between the children and the Cross-Petitioner.

The award of custody of the children of the marriage is governed by Section 17 (1) of the Matrimonial Causes Act. The interest of the children is a paramount consideration. The welfare of these two children is not only a paramount consideration but a condition precedent.

I shall consider the care of the children's person, morally, physically and mentally. The welfare and interest of the children is accorded the greatest importance.

The Petitioner has not proved by evidence, the arrangement he has made for the welfare and interest of the children. The children of the marriage are minors. There is evidence that they are attending school. They are living with their mother since birth. They are living in the matrimonial home jointly built by the parties.

It best serves the interest of the children that custody be awarded to their mother, the Respondent/Cross-Petitioner.

In coming to the above conclusion, I had taken into consideration:

- (1) The degree of familiarity between the children and the parties.

- (2) The amount of affection between the children and the parties.
- (3) The respective income and position of life.
- (4) The respective accommodation.

In relation to maintenance of the Cross-Petitioner, for the Court to make an Order for maintenance, she must prove:

- (1) The parties' income.
- (2) Earning capacity with properties owned.
- (3) Financial resources.
- (4) Financial needs and responsibilities.
- (5) Standard of life.

The Cross-Petitioner's evidence is that she is a business woman. She did not give evidence of her financial capacity. There is little or no evidence of the financial capacity of her husband. In the circumstance, she did not prove her entitlement to maintenance.

However, the education, upkeep and maintenance of the children is the responsibility of both parties particularly the Petitioner. He shall not lightly perform that duty.

In totality, the Petition fails and it is dismissed. The Cross-Petition succeeds. Judgment is therefore entered in favour of the Cross-Petitioner against the Petitioner/Respondent to Cross-Petition as follows:

1. The marriage between the Petitioner, ETIM NWANKWO AMAGHIONWU and Respondent, IJEOMA ETIM NWANKWO AMAGHIONWU celebrated on 27/01/2016 is hereby dissolved vide an Order Nisi.
2. The custody of children is awarded to the Respondent/Cross-Petitioner, IJEOMA ETIM NWANKWO AMAGHIONWU.
3. The Order Nisi hereby granted shall become absolute after three (3) months.

4. The Petitioner/Cross-Respondent, ETIM NWANKWO AMAGHIONWU shall be responsible for the education, upkeep and welfare of the children till their graduation from tertiary institution.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
27/04/2023

Respondent/Cross-Petitioner present.

Petitioner/Cross-Respondent absent.

Henry O. Chichi, Esq. for the Respondent/Cross-Petitioner.

RESPONDENT/CROSS-PETITIONER: The Respondent is absent. The case is for judgment.

COURT: Judgment delivered.

(Signed)
HON. JUDGE
27/04/2023