

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 18TH DAY OF APRIL, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.
PETITION NO.:-FCT/HC/PET/55/2020

BETWEEN:

ADANNA IFEOMA ENWEZOR:.....PETITIONER

AND

IFEANYI ENWEZOR:.....RESPONDENT

Tochukwu Aneke for the Petitioner.
Chinedu G. Udeora for the Respondent.

JUDGMENT.

The Petitioner brought this action against the Respondent vide a Notice of Petition filed on the 11th day of November, 2020 praying the Court for the following reliefs:

- a. A decree of dissolution of the marriage on the ground that the marriage has broken down irretrievably.
- b. Custody of the two children of the marriage who are Enwezor Chizara Laura and Zinachi Audrey Enwezor.
- c. Access to the Respondent to see the kids (who are minors) during school holidays and Christmas holiday.
- d. Monthly allowance of N500,000 to the Petitioner from the Respondent for the maintenance and upkeep of the children.
- e. Order for the Respondent to pay the school fees and medical fees of the children of the marriage.

The Petitioner predicated this petition for the dissolution of the marriage contracted between her and the Respondent on the 27th day of October, 2012 on the grounds of abandonment,

violence and sexual misconduct. She stated that the Respondent wittingly abandoned her and travelled out of the country without her knowledge to an unknown place, saying that he would come back with his mistress, and that this resulted in her taking ill and relocating to her father's house with her children following the trauma attendant to such heart-breaking action meted on her by the Respondent.

Regarding the issue of violence, the Petitioner stated that since after the solemnization of the marriage the Respondent turned her into his punching bag and has thus visited unspeakable acts of physical assault on her resulting in several miscarriages thereby leaving her severely traumatized and bruised.

She averred that a result of the violence meted to her by the Respondent she was admitted to the staff clinic of INEC, first on 24th day of March, 2018, and secondly, on the 4th day of June, 2018 with severe and multiple bruises around her neck region inflicted on her by the Respondent.

On the issue "sexual misconduct", the Petitioner averred that the Respondent has an unbridled libido. That since their two daughters were born, the Respondent severally violated them, and that he has also successively molested their house maids, in addition to the strings of mistresses he maintains all over the country.

In response to the Respondent's Answer and Cross-Petition, the Petitioner filed a Reply and Answer to the Cross-Petition wherein she maintained that she has suffered numerous assaults and life-threatening molestations in the hands of the Respondent who has a violent temper.

The Petitioner averred that the Respondent had on several occasions beaten her for the flimsiest reasons even when she

had all through the subsistence of the marriage carried herself with modesty and decorum as a dutiful wife, mother and entrepreneur and was never unfaithful to the Respondent.

In her answer to the Cross-Petition, the Petitioner/Respondent admitted that she was invited to the Welfare Office at AMAC, Abuja, but denied that it was a mutual agreement that the Respondent/Cross-Petitioner pays N50,000.00 monthly as maintenance for the two children of the marriage.

She stated that she had immediately written a letter of complaint to The Secretary Welfare and Social Development Centre, Abuja narrating how she was verbally assaulted, intimidated and coerced into signing the said agreement.

The Petitioner further averred that the Cross-Petitioner had earlier sexually assaulted one of the children of the marriage and that it will not be in the best interest of the children being minors, to be allowed sleep-overs with the Cross-Petitioner.

On the 21st day of March, 2022, the Petitioner gave evidence as she testified as PW1. She adopted her witness Statement on Oath and tendered the following documents in support of her case:

1. Certificate of Incorporation of Photizo Life Foundation – Exhibit PW1A.
2. Copy of Photograph of the Couple - Exh PW1B.
3. Certificate of Birth – Exhibit PW1C-C1.
4. Photocopy of Data page of Respondent's Int'l Passport – Exhibit PW1D.
5. Printout of WhatsApp Conversations – Exhibit PW1E-E8.
6. Domestic Violence Complaint – Exhibit PWF-F2.
7. Photocopy of Printout of WhatsApp Conversation - Exh PW1G-G2.

8. Medical Report for Chizara Enwezor – Exh PW1H.
9. Photograph of Petitioner’s Bruised face – Exh PW1J.
10. Sundry Receipts of Expenses on Children – Exh. PW1K-K9.
11. Electronic Printout of Invoices for Groceries – Exh PW1L-L20.
12. Electronic Printout of Payment Receipts – Exh PW1M-M8.
13. School Official Receipts – Exh PW1N-N18.
14. Provisional Offer of Admission – Exh PW1P.
15. Transaction Receipts for School fees Payment – Exh PW1Q-Q1.
16. Provisional Offer of Admission – Exh PW1R.
17. Medical Report, Re: Adanna I. Enwezor – Exh PW1S.
18. Hand Book & Continuous Assessment Booklets – Exh Pw1T-T13.
19. Official Letter of Invitation – Exh Pw1U-U1.
20. Letter of Complaint – Exh PW1V.
21. Photocopy of Certificate of Marriage – Exh PW1W.

Under cross examination, the PW1 stated that sequel to her letter of complaint to the Human Rights Commission, she was asked certain questions and was advised to file for divorce.

The Respondent, in response to the Petition, filed an Answer and Cross Petition. He stated that he did not beat the Petitioner on the 14th of June, 2018 or at any other time but that the Petitioner moved out from his house on her own accord on 27th of June, 2018, and that every effort to make her return to his house has proven abortive.

The Respondent admitted that he and the Petitioner occasionally quarrel as couple but that such did not involve any

beating or physical assault as alleged by the Petitioner. He stated that most of the reasons for such quarrel is mostly as a result of the Petitioner's persistent late return to the house and her rendezvous with other men who calls her late at night.

He further stated that he has never beaten the Petitioner since the solemnization of their marriage, and that he is not aware of any letter of complaint to the national Human Rights Commission neither was he ever invited nor notified by the Commission on the alleged complaint.

The Respondent averred that the conversation contained in Exhibit PW1E-E8 were made without prejudice during the period of reconciliation initiated by him to settle with the Petitioner.

He stated that he has never molested his children or any of his housemaids and that he has been a good and responsible father to his children. That the Petitioner has been peddling unfounded lies against him in order to ensure that he does not have access to his children.

While praying the Court to dismiss the Petition of the Petitioner, the Respondent cross-petitioned the Court for the dissolution of his marriage to the Petitioner on the ground that same has broken down irretrievably, for the reason that:

- (a) 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 that the Respondent in the cross petition does not object to the decreed being granted.

On the facts on which he based his cross-petition, the cross petitioner averred that he lived happily with the Petitioner until sometime in 2017 when he started noticing changes in the

behaviour of the Petitioner which led to irreconcilable differences between them. That owing to the misunderstanding between them, the Petitioner moved out of his place on 27th of June, 2018 and has not returned to his house since then.

The Cross-Petitioner further averred that he made unsuccessful effort to reconcile the difference with the Petitioner, all to no avail, as the Petitioner had already made up her mind to quit the marriage and move on with her life. That after his efforts to reconcile with the Petitioner failed, he made effort to visit his children who are now staying with the Petitioner's parents but his effort was blocked by the Petitioner who directed her father's security-man, named Silas not to open their gate for him any time he visits nor allow him to see his children.

He averred that his children's room is still vacant in his house with their toys still in their room, and that the refusal of the Petitioner to allow him access to his children is affecting him as he does not want to be a distant father to his children.

The Cross-Petitioner thus prays the Court for the following orders:

- a. A decree of dissolution of the marriage on the ground that the marriage has broken down irretrievably.
- b. An Order of the Court granting the Respondent access to his children; Chizara Laura Enwezor and Zinachi Audrey Enwezor, once every month from Friday to Sunday when he shall return them to the Petitioner.
- c. An Order of the Court granting the Petitioner primary custody of the children until they are 18 years of age or until the Petitioner remarries.
- d. An order of the Court granting the Respondent custody of the children in the event the Petitioner remarries.

At trial, the Cross-Petitioner rested his case on that of the Petitioner and did not lead evidence in support of his cross-petition.

The parties explored out of Court settlement which resulted in the filing of Terms of Settlement which they adopted along with their final written addresses. In the said Terms of Settlement, which will be adopted as part of this judgment, the parties agreed on every other issues save that of custody of the children of the marriage, which issue they have submitted for the Court's determination in this judgment.

The learned Petitioner's counsel, Emeka Onyeaka, Esq, in his final written address, submitted a sole issue for determination, to wit;

“Whether or not the Respondent (sic) is entitled to the reliefs sought in this Petition?”

Arguing the issue so raised, learned counsel contended that by abandoning his pleadings and failure to call any witness for his defence, the Respondent admitted all the grave allegations made against him by the Petitioner and that facts admitted need no further proof. He urged the Court to treat the failure of the Respondent to call a witness in support of his defence as an admission of the case of the Petitioner.

Learned counsel further argued that all the documents tendered by the Petitioner and admitted by this honourable Court, are to the effect that the Petitioner has proved her case and claims before the Court.

Relying on **Okpo v. Umet (1998)7 NWLR (Pt.588)451 at 462,** he submitted that the law is that uncontroverted and unchallenged testimonies anchored on documentary proof are sufficient and cogent.

He urged the Court to act on the uncontroverted evidence of the Petitioner.

Regarding the custody and maintenance of children of the marriage, learned counsel argued that considering the sexual misbehaviour and conduct of the Respondent who failed to dislodge the allegations against him but ran away from the Court and abandoned his processes, the little children need affection and protection from further abuse and molestation. He referred to **Odusote v. Odusote (2013)All FWLR (Pt.668)867 @ 888.**

He urged the Court to award custody of the children of the marriage to the Petitioner, with only visiting hours and days allotted to the Respondent, as opposed to his demand for custody and sleep overs.

Furthermore, he urged the Court to grant the reliefs sought by the Petitioner, taking into consideration the terms of settlement of the parties before the Court.

The Petitioner also filed Reply on Points of law to the Respondent's final written address, wherein learned counsel for the Petitioner posited that the objections raised by the Respondent with respect to Exhibits PW1E-E8, are not tenable in law. He contended that the WhatsApp extract tendered by the Petitioner and admitted in evidence by this Court, is just an apology by the Respondent and never a means of discussing any settlement and that same contains some admission. He submitted that the law is trite that what is admitted need not be proved and that the Court is enjoined to look at evidence and materials before it to make its findings. He referred to **Anyalewechi v. Lufthansa German Airlines (2021) LPELR-55213 (CA).**

Learned counsel submitted that Section 26 of the Evidence Act, 2011, and the case of **Alatishe v. Adegunwa (2022)LPELR-58117(CA)** are not apposite to the substance of this case ditto the argument of the Respondent as per the inadmissibility of Exhibits PW1E-E8.

He urged the Court to discountenance paragraphs 2.2 -2.10 of the Respondent's final written address as same are untenable and not supported by any weight of law.

With reference to Exhibit PW1S, learned counsel posited that same was duly certified in line with requirement of Section 104 of the Evidence Act. He relied on **Tasiu (A.T.S.) v. Sammani (2019)LPELR-49189 (CA)** to submit that the law is that such documents tendered pursuant to Section 83(2)(a-c) of the Evidence Act, 2011 will be admissible.

He submitted that the said Exhibit PW1S is admissible and that same was properly admitted.

He urged the Court to discountenance all the objections of the Respondent as to the admissibility of the documents tendered by the Petitioner as same are futile, vexatious, time wasting and not supported by any weight of law.

On the contention by the Respondent that the Petitioner did not prove the allegation of crime contained in her petition beyond reasonable doubt and as such, not entitled to the reliefs sought, learned Petitioner's counsel posited that the law as enshrined in Section 135(1) (sic) is proof beyond reasonable doubt, but not proof beyond any shadow of doubt. He referred to **Egbertamu v. State (2022)LPELR-58933(SC)**.

He submitted that the evidence tendered by the Petitioner has gone a long way in proving the commission of crime and in the

circumstance, has satisfied the requirements of Sections 135(1) & (2), 139 (sic).

Learned counsel posited further, that the Petition of the Petitioner was filed in due procedure and requirements of the Matrimonial Causes Act, fulfilling all the necessary conditions precedent to clothe the Court with jurisdiction to entertain same. He referred to **Ojeniran v. Ojeniran (2018) LPELR-45697(CA)**.

He urged the Court in conclusion, to discountenance the arguments contained in the Respondent's written address as authorities and facts in support of same are not consistent with trite principles of law, recourse being made to the facts and substance of this case.

In his own final written address, the learned Respondent/Cross-Petitioner's counsel, Chinedu G. Udora, Esq, first raised objection to the admissibility of certain documents already in evidence, to wit; Exhibits PW1E-E8, PW1H and PW1S.

In respect of Exhibits PW1E-E8 (WhatsApp communication between the Petitioner and the Respondent), the learned counsel posited that the statement in the WhatsApp printout is a privileged communication made between the parties and without prejudice in the course of a reconciliation attempt by the Respondent.

He submitted that the law is trite that where a party makes an admission in the course of a meeting held to settle dispute, such admission is irrelevant and inadmissible in evidence in an action filed to determine the right of the parties.

He referred to **Alarische v. Adegunwa (2022)LPELR-58117 (CA)**; Section 26 of the Evidence Act, and further submitted that the law forbids the admissibility of a statement made in the

course of settlement to be used in evidence in a Court proceeding against a party who is alleged to make such statement/admission, even where the statement is not expressly marked “without prejudice”.

He argued that the said WhatsApp message tendered by the Petitioner to support her allegation of battery against the Respondent, were statements made by the Respondent to his wife in a sincere attempt to reconcile with her after she left home and to win her back to return to the marriage.

He urged the Court to reject the admissibility of the said exhibit and to mark same rejected.

In respect of Exhibit PW1H (Medical Report from Angelic Care Hospital), learned counsel objected to its admissibility on the ground that same is a documentary hearsay and as such, not admissible in evidence.

He argued that the said document was not made by PW1 and that the maker was not called to tender it or speak to it. He thus urged the Court to reject the said exhibit and mark same rejected.

Learned counsel also objected to the admissibility of Exhibit PW1S (Medical Report from INEC Staff Clinic).

He argued that INEC Staff Clinic is a public office and that the said document tendered by PW1 was a photocopy. He referred to Section 102 of the Evidence Act, 2011.

Placing reliance on Section 105 of the Evidence Act, 2011 and the case of **Tabik Investment Ltd v. Guaranty Trust Bank PLC (2011)LPELR-3131(SC)**, he submitted that a photocopy of a public document is not admissible in evidence, save only certified true copy thereof.

He urged the Court to reject the said exhibit for not being certified true copy of the original letter.

Furthermore, learned counsel submitted that the said document is also not admissible in evidence for being a documentary hearsay, as PW1 is not the author of the document. He referred to Section 83 of the Evidence Act, 2011; **Tasiu (A.T.S) v. Sammani (2019)LPELR-49189(CA)** and **Maku v. State (2021)LPELR-56324(CA)**.

He argued that there was no explanation as to why the maker of the said document was not called to tender the document and give evidence on its content.

He urged the Court to reject the document and mark same rejected.

The learned counsel subsequently raised two issues for determination, namely;

- a. Whether the Petitioner has proved her case to be entitled to the grant of decree of dissolution of marriage?
- b. Whether the Respondent is entitled to the reliefs sought in his cross-petition?

In arguing the issues so raised, learned counsel first invited the Court to take cognizance of the terms of settlement filed by the parties regarding the maintenance of the children of the marriage; stating that same has taken care of reliefs 12(d) and (e) of the Petition.

He posited that the live issues in this Petition and cross-petition are the issues of dissolution of marriage and the custody/access to the children of the marriage.

With particular reference to issue one, learned counsel contended that the Petitioner is not entitled to the reliefs sought

in her Petition as she did not prove any of the allegations of fact or grounds for the Petition.

Referring to paragraphs 9 of the Petition and paragraphs 12(b), (c), (d), (e) and 13 of the Petitioner's witness statement on oath, he posited that the fulcrum of the reliefs sought by the Petitioner in this Petition, especially reliefs 12(a), (b), and (c), is founded on allegation of a crime, to wit: violence, fraud, sexual molestation of minors, sexual molestation of housemaids and adultery.

He submitted, with reliance on **NLC & Ors v. Ajiya Integrated Services Ltd & Anor (2020)LPELR-49965(CA)**, that the law is trite that the burden of proof for an allegation of crime in civil matters is beyond reasonable doubt.

He argued that from the Petition before the Court, the allegation of commission of crime of violence, sexual molestation of minors and Respondent's housemaids, as well as illicit financial crime, was directly in issue against the Respondent, and that to succeed in her Petition, the Petitioner must prove these allegations beyond reasonable doubt. That anything short of this means that the Petitioner has failed to discharge the burden of proof placed on her, and her reliefs founded on the said facts, must be refused by this Court.

Arguing further, learned counsel contended that before this Court can even proceed to hear and determine the instant Petition on the dissolution of marriage, especially where the Petitioner is alleging adultery against the Respondent with unnamed persons, the conditions stated in order IX Rule 3 of the Matrimonial Causes Rules, must first be complied with.

He posited that the identification of the name of the person with whom the Respondent was alleged to have committed adultery,

is a condition precedent for a determination of a Petition for a decree of dissolution of marriage except where the Court makes order dispensing with the naming of the person. That failure to name such a person or obtain an Order of the Court to dispense with the name of such a person, robs the Court of the jurisdiction to determine a Petition for dissolution of marriage such as the instant case.

He urged the Court to hold that it lacks jurisdiction to determine this Petition and dissolve the marriage on the ground of adultery, the Petitioner having failed to name either the housemaids with whom the Respondent allegedly committed adultery or the strings mistresses allegedly kept by the Respondent, and therefore to dismiss the Petition.

Learned counsel particularly argued that the Petitioner failed to prove the allegation of sexual misconduct of the Respondent to his children and their housemaids, as the said allegations are all hearsay evidence. That the allegation of purported sexual misconduct on the children of the marriage and the unknown housemaids is information of what the Petitioner alleged to have been told by persons who were not called to testify in this case.

On what constitutes hearsay, he referred to **Arogunade v. The State (2009) 6 NWLR (Pt.1136)165 at 181-182** and Section 37 of the Evidence Act, 2011.

He further referred to Section 126 of the Evidence Act, 2011 on the point that oral evidence must be direct, and argued that from the Petitioner's evidence, it is evident that she did not see the Respondent molest either his children or the housemaids but only sought to rely on what she alleged that her mother told her and what an unnamed housemaid told her. He argued that neither the alleged house maid, nor the Petitioner's mother who

purportedly took his children to Angelic Care Hospital and who was present in Court throughout the hearing of this matter, was called to testify in the matter. He relied on Section 167(1)(d) of the Evidence Act to submit that evidence which is available but not produced is presumed to be adverse to the party withholding it.

He contended that the Petitioner has failed to discharge the burden of proof on her to sustain her claim for decree of dissolution of marriage, and urged the Court to so hold.

On the Petitioner's contention that her evidence was neither challenged nor controverted by the Respondent, learned counsel argued that the Petitioner failed to take cognizance of the rule of evidence on burden of proof and the shifting of burden of proof. He referred to Sections 131 and 133 of the Evidence Act, 2011.

Relying on Section 133(2) of the Evidence Act, 2011, he submitted that the burden of proof will only shift to the Respondent, where the Petitioner adduces evidence which ought to reasonably satisfy the Court that the fact sought to be proved has been established. That otherwise, the burden remains with the Petitioner, and that the case is bound to fail if she does not reasonably discharge the said burden of proof.

He argued that the standard of proof on the Petitioner, being beyond reasonable doubt, and the evidence adduced by the Petitioner in her attempt to discharge the burden of proof on her being hearsay evidence, that same was worthless and of no value, and as such, there was no evidence to either challenge or controvert by the Respondent.

He urged the Court to discountenance the Petitioner's submission on pages 2 to 6 of her final written address and to

hold that the Petitioner did not prove her case and is not entitled to the relief sought in paragraph 12(a) of the Petition.

On custody and access to the children of the marriage, learned counsel submitted, with reliance on **Obahaya v. Obahaya (2022)LPELR-57141**; that the law is trite that in the determination of the issue of the custody of a child, the Court should consider the best interest of the child.

He posited that it is not in doubt that the children in question belong to both parties and that it is in their interest to have a relationship and bonding with both their father and mother while growing up. He noted that Respondent concedes that the primary custody of the children of the marriage be given to the Petitioner until the children are 18 years of age or until the Petitioner remarries.

While urging the Court to grant unhindered access to the children of the marriage to the Respondent, at least, one weekend of every month to enable the Respondent bond with the children, learned counsel argued that the Petitioner founded her relief 12(c) on the allegation of sexual misconduct and child molestation, just to ensure that the Respondent is denied unrestricted access to the children of the marriage. He contended that the Respondent has shown the said allegation to be untrue, even as the Petitioner could not produce any scintilla of evidence in support of the said grave allegations against the Respondent.

He further urged the Court to refuse the Petitioner's prayer 12(c) as granting same will make the Respondent a stranger in his children's live and it will not be in the interest of the children to deny them the right to be familiar and bond with their father. He urged the Court, on the contrary to grant the Respondent

unrestricted access to the children of the marriage as per reliefs 11(b), (c), and (d) of the Respondent's cross petition.

Arguing issue two, on whether the Respondent is entitled to the Reliefs sought in his cross-petition, learned counsel contended that the Respondent is entitled to the grant of the reliefs sought in the cross petition as he has proved that the marriage to the Petitioner has broken down irretrievably on the grounds 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 a decree being granted. He referred to **Pius v. Olorunfemi (2020)LPELR-49579(CA)**.

He further referred to **Ogunnubi v. Ogunnubi (2021)LPELR-53497(CA)** on the point that a party can rely on evidence elucidated under cross examination in proof of his case and would thus not be deemed to have abandoned his pleadings.

He contended that the only burden of proof required of the Respondent to prove his case for the dissolution of marriage is to prove that the parties have lived apart for a continuous period of two years preceding the presentation of the petition in Court and that the Petitioner does not object to it. He submitted that this was satisfactorily proved by the Respondent and admitted by the Petitioner.

Conclusively, learned counsel urged the Court to dismiss the case of the Petitioner and enter judgment in favour of the Respondent as per the reliefs sought in the cross-petition, on the ground that the parties marriage has broken down irretrievably on the basis 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 a decree being granted.

In the determination of this Petition, I will adopt for consideration the issue raised by the Petitioner in her final written address, to wit; “Whether or not the Petitioner is entitled to the reliefs sought in this Petition?”

Section 15(2) of the Matrimonial Causes Act provides the grounds upon which the Court may hold that a marriage has broken down irretrievably and thereby make a decree of dissolution of the marriage. It provides thus:

“(2) 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 satisfies the Court of one or more of the following facts –

- (a) that the respondent has wilfully and persistently refused to consummate the marriage;***
- (b) that since the marriage, the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;***
- (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;***
- (e) that 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 a decree being granted;***

- (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;**
- (g) 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;**
- (h) that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.**

The law made it clear that a decree of dissolution of marriage on the ground that same has broken down irretrievably shall be made "if, and only if", the Petitioner satisfies the Court of one or more of the above facts.

In the instant Petition, the grounds on which same is presented by the Petitioner are abandonment, violence and "sexual misconduct."

In respect of "abandonment" (desertion), the Petitioner stated that the Respondent wittingly abandoned her and travelled out of the country without her knowledge, to an unknown place and said that he was coming back with his mistress.

Section 15(2)(d) of the Matrimonial Causes Act, requires a Petitioner basing her petition on desertion to establish that the Respondent deserted her for a continuous period of at least one year immediately preceding the presentation of the Petition.

The Petitioner herein did not satisfy this requirement as she did not state the duration of the alleged abandonment by the

Respondent. She merely stated that the Respondent abandoned her and travelled out of the country, without stating how long the Respondent was away before she moved out of their matrimonial home. This is particularly important as the Respondent denied the alleged abandonment and claimed that it was the Petitioner who wilfully left their matrimonial home.

It is therefore my finding that the Petitioner failed to establish desertion by the Respondent as required by Section 15(2)(d) of the Matrimonial Causes Act.

The Petitioner also alleged “sexual misconduct” against the Respondent. By Section 15(2)(b) of the Matrimonial Causes Act, adultery is one of the facts, the existence of which would warrant a Court to hold that a marriage has broken down irretrievably, where the Petitioner is able to establish same against the Respondent.

In the instant case however, the Petitioner failed to adduce credible evidence to establish her allegation of “sexual misconduct” against the Respondent.

The Petitioner further alleged “violence” on her by the Respondent.

In **Ugbotor v. Ugbotor (2006)LPELR-7612(CA)**, the Court of Appeal, per Aderemi, JCA held that:

“A marriage could be said to have broken down irretrievably if it can be established that one spouse had been guilty of cruelty towards the other. No reasonable spouse will be expected to share a state of affairs with other spouse who has been very cruel to her.”

In arriving at the above decision, the Court of Appeal had recourse to the provisions of Section 15(2)(c) of the Matrimonial Causes Act which empowers the Court to hold that a marriage has broken down irretrievably where the Petitioner satisfies the Court that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

Although the allegation of violence was vehemently denied by the Respondent in his answer to the Petition, I am however inclined to believe the testimony of the Petitioner in this regard, particularly given Exhibit PW1J-J1, which is a picture showing the injury inflicted on the Petitioner, and which the Respondent failed to dislodge by cross examination.

It is therefore, my finding that the conduct of the Respondent towards the Petitioner is such that the Petitioner cannot reasonably be expected to live with the Respondent.

Accordingly, I hold that the marriage of the Petitioner to the Respondent has broken down irretrievably.

Before making orders following my findings in this judgment, it is pertinent to note that this marriage was blessed with two children who are currently in the custody of the Petitioner, Chizara Laura Enwezor and Zinachi Audrey Enwezor, who are 9 and 7 years old respectively.

Even though, from the findings of this Court, the marriage of the Petitioner to the Respondent has broken down irretrievably, the fact remains that the children are not parties to the dispute or crisis between their parents. The children are innocent victims of their parents' choices and the Court must protect them. Nevertheless, they need the presence of both of their parents in their lives at these formative years for a healthy and proper

overall development. This consideration will thus inform the orders to be made by this Court in this judgment. See **Nanna v. Nanna (2005)LPELR-7485(CA), Eluwa v. Eluwa (2013)LPELR-22120(CA).**

Flowing from the foregoing, and taking cognizance of Terms of Settlement marked Exh 'A' filed and adopted by the parties, dated 22nd February, 2023 and which is hereby entered as consent judgment, as well as the overall interest of the children of the marriage this Court hereby makes the following orders:

- a. A decree Order Nisi dissolving the marriage between the Petitioner and the Respondent herein on the ground that same has broken down irretrievably.
- b. Custody of the two children of the marriage who are Enwezor Chizara Laura, of 9 years old and Zinachi Audrey Enwezor, of 7 years old, are given to the Petitioner until they are 18 years of age or until the Petitioner remarries.
- c. Access and visitation to the children of the marriage to the Respondent on every 3rd Saturday of each month. Both Petitioner and Respondent must meet at any popular park in Abuja, between the hours of 12 noon and 6pm. During long vacations, the Respondent takes the children for one week (7 days) during which the two children of the marriage stay for sleepover at the Respondent's residence.
- d. Monthly allowance of N100,000.00 to the Petitioner from the Respondent as agreed by the parties in their Terms of Settlement for the maintenance and upkeep of the children of the marriage.
- e. Payment of school fees and medical bills ordered in accordance with the parties' agreement in their Terms of Settlement Exh 'A'.

- f. Upon remarriage by the Petitioner, the children of marriage, namely, Chizara Laura Enwezor and Zinachi Audrey Enwezor, to be returned to the Respondent, who is their father.
- g. The Petitioner to always notify the Respondent of the children's school activities to enable the Respondent participate where parents are required to participate.

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HON. JUSTICE A. O. OTALUKA

The Respondent filed a cross-petition wherein he prayed the Court inter alia, for a decree of dissolution of his marriage to the Petitioner on the ground that same has broken down irretrievably, based on the facts that the parties have lived apart for at least two years immediately preceding the presentation of the Petition and that the Respondent does not object to the decree being granted.

From the evidence adduced before this Court in this case, the parties have lived apart for at least two years, following the crisis that befell their marriage, immediately preceding the presentation of the Petition and the cross-petition.

Also, from the averments in the parties' pleadings as well as evidence adduced at trial, it is apparent that the possibility of the parties resuming cohabitation, is far fetched.

By Section 15(2)(e) of the Matrimonial Causes Act, this Court is empowered to hold that a marriage has broken down irretrievably where it is satisfied 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 did not object to a decree of dissolution of the marriage being granted.

That requirement has been satisfied in this case and accordingly this cross-petition also succeeds.

Therefore, it is my finding, and I so hold, that the marriage between the parties have broken down irretrievably, the parties to the marriage having lived apart for a continuous period of at least two years immediately preceding the presentation of the cross petition, and the Respondent to the cross petition does not object to a decree being granted.

Based on the reasons advanced in the main petition, the orders made in the main petition are repeated in this cross petition.

- a. A decree Order Nisi dissolving the marriage between the Petitioner and the Respondent herein on the ground that same has broken down irretrievably.
- b. Custody of the two children of the marriage who are Enwezor Chizara Laura, of 9 years old and Zinachi Audrey Enwezor, of 7 years old, are given to the Petitioner until they are 18 years of age or until the Petitioner remarries.
- c. Access and visitation to the children of the marriage to the Respondent on every 3rd Saturday of each month. Both Petitioner and Respondent must meet at any popular park in Abuja, between the hours of 12 noon and 6pm. During long vacations, the Respondent takes the children for one week (7 days) during which the two children of the marriage stay for sleepover at the Respondent's residence.
- d. Monthly allowance of N100,000.00 to the Petitioner from the Respondent as agreed by the parties in their Terms of

- Settlement for the maintenance and upkeep of the children of the marriage.
- e. Payment of school fees and medical bills ordered in accordance with the parties' agreement in their Terms of Settlement Exh 'A'.
 - f. Upon remarriage by the Petitioner, the children of marriage, namely, Chizara Laura Enwezor and Zinachi Audrey Enwezor, to be returned to the Respondent, who is their father.
 - g. The Petitioner to always notify the Respondent of the children's school activities to enable the Respondent participate where parents are required to participate.

HON. JUSTICE A. O. OTALUKA
18/4/2023.