

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: 10TH MAY, 2023

FCT/ HC/PET/453/2022

BETWEEN:

SST. SIMON M. EGAJI-----

PETITIONER

AND

CPL. MERCY FRANCIS THOMAS-----

RESPONDENT

JUDGMENT

This Petition for Decree of Dissolution of Marriage was filed by SSGT. Simon M. Egaji (hereinafter called the Petitioner) on the 24th August/2022, for the relief set out in the face of the Petition as:-

- a. An order of dissolution of marriage between the petitioner and the respondent on the grounds that the marriage has broken down irretrievably; the Respondent had behaved in such a way that the Petitioner could not reasonably be expected to live with her; and Desert.

b. An Order of the Honourable Court granting the petitioner rights to custody of the children as he shall wholly be responsible for the maintenance, education and welfare.

The grounds upon which the Petitioner rely on for the relief of dissolution of marriage as can be gleaned from the pleadings and evidence of the Petition is the fact that both the petitioner and the Respondent has lived apart for a continuous period of two years before filing the petition; that the petitioner has suffered exceptional hardship and depravity by the neglect of the Respondent.

The Respondent filed an answer and cross petition to the petition for dissolution of marriage on 16th November,2022, wherein she accused the petitioner's brother of meting out inhumane treatment to her with the collaboration of the petitioner. She also accused the petitioner of abandoning the matrimonial home. She accused the Petitioner and his brother of indulging in fetish practices, which led to her refusal to further engage in sexual intercourse with the Petitioner.

The Respondent further averred that she has been the one solely responsible for the education and upkeep of the three children of the marriage since 2020. She alleged to have bought a piece of land in the name of her son Eric, and that the petitioner is with the title documents of the said land.

She sought the following reliefs against the Petitioner/Cross Respondent:

- A. That the marriage be dissolved on the grounds of the cross petition.
- B. An Order granting sole custody of the children of the marriage Eric, Pretty and Delight Simon to the Cross Petitioner
- C. An Order directing the cross respondent to handover the title documents procured by the cross petitioner to the cross petitioner and to remain in the name of the son Master Eric Simon.
- D. AN Order granting access to the children to be granted to the petitioner/cross respondent during the holidays.
- E. The sum of **N1, 325,000.00** as cost of education per annum for the 3 children to be paid as maintenance by the Petitioner/Cross Respondent.
- F. That the Cross Petitioner may have such other relief(s) as may be expedient in the circumstance.

The petitioner filed a Reply to the Respondent's Cross Petition on 9th December, 2022, wherein he denied neglecting and maltreating the Respondent

Petitioner testified as PW1 as called no other witness. PW1 adopted his depositions in his Witness Statement on as his oral testimony in support of the Petition. He tendered the following exhibits:

- a. Marriage Certificate – exhibit 1

- b. Access Bank Statement of Account –exhibit2
- c. Photographs – exhibit 3
- d. Flash Drive in Envelope exhibit4
- e. Certificate of Compliance – exhibit5
- f. Petition and Pass – exhibit6A and 6A; and
- g. Invitation Letter and Clearance from Unit – exhibit7

He was cross examined and he closed his case.

The Respondent too testified. She was cross examined and she closed her case.

At the conclusion of hearing, the Respondent filed a final written address dated 6th March2023. The Petitioner also filed a final written address on 9th March, 2023.

Counsel to the Respondent/Cross Petitioner in his final written address raised three issues for determination to wit:-

- i. Whether in view of the evidence before the Court, the Respondent/Cross Petitioner is entitled to sole custody of the children of the marriage.
- ii. Whether the Cross Petitioner/Respondent has proved her case to entitle her to the amount claimed as maintenance for the children of the marriage.
- iii. Whether the Cross Petitioner/Respondent is entitled to benefit from the property acquired in the course of their marriage.

Arguing on issue 1, counsel submitted on behalf of the Cross Petitioner the children of the marriage, being children of tender years will be happier and more comfortable living with their mother. Moreover, the children have been living with the Cross Petitioner in the past two years, and the Cross Petitioner has secured an accommodation for all the children.

On issue 2, Counsel maintained that the Cross Petitioner has proved that the Petitioner has capacity to support the upkeep of the three children with a N50,000.00 monthly allowance per child.

On issue 3, Counsel urged the court to presume that the title documents of the said property if produced by the Petitioner, will be against him. He urged the court to presume that the property belonged to the parties jointly.

On his part, Counsel to the Petitioner/Cross Respondent raised two issues for determination:-

- a. Whether considering the evidence before the Honourable Court, the Petitioner is entitled to the reliefs being sought?
- b. Whether the Respondent is entitled to her reliefs being sought in the cross petition before this court.

On issue 1, counsel submitted on behalf of the Petitioner that from evidence led by the Petitioner, it is clear that the marriage between the

parties have broken down irretrievably, and that this fact is uncontroverted by the Respondent/Cross Petitioner.

On issue 2, counsel argued that the Respondent is not entitled to any of the relieves sought by her in her cross petition. He maintained that the Petitioner has demonstrated that he has capacity to take care of the children of the marriage.

On the Respondent's prayer for the Petitioner to hand over the title documents to a property to her, counsel submitted that the Respondent has not placed anything before the court to prove the purported procurement of the property.

Having carefully considered the evidence, submissions of counsel and the judicial authorities cited, the court finds that two (2) issue calls for determination that is:-

"1. Whether the Petitioner has successfully made out a case to warrant the grant of the reliefs sought

2. Whether the Respondent is entitled to the reliefs sought by her."

By virtue of Section 15(2) of the Matrimonial Causes Act, the Court upon hearing a petition for dissolution of a 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 namely:

a) that the respondent has willfully and persistently refused to consummate the marriage;

- b) that since the marriage the respondent had 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 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 a decree being granted;
- f) that the parties to the marriage have lived apart for a continuous period of at least 3 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 of restitution of conjugal rights made under the law; and
- h) that the other party to the marriage has been absent from the petitioner for such a time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

In effect there are eight grounds for divorce and proof of one of these grounds or facts is in the eyes of the law, conclusive proof of irretrievable breakdown of the marriage. See *IBRAHIM V. IBRAHIM (2007) 1 NWLR*

(Pt. 1015) 383. A Court cannot dissolve a marriage or declare a marriage to have broken down though it appears the marriage has broken down irretrievably unless one of the listed facts is established by the petitioner. The law requires that the petitioner should state clearly the specific ground or grounds for divorce as listed in Section 15(2) above. See *IBRAHIM V. IBRAHIM (supra) and DAMULAK V. DAMULAK (2004) 8 NWLR (Pt. 874) 151.*

The law provides that in matrimonial causes, a matter or fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court. Thus in divorce suits, a decree shall be pronounced if the Court is satisfied on the evidence that a case for the petition has been proved.

Looking at all the factual situations cited by the Petitioner to support his contention that the marriage has broken down irretrievably, I find paragraph (e) of Section 15 (2) of the Matrimonial Causes Act, very relevant and applicable in this case.

Paragraph (e) states: “*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 a decree being granted*”.

Both the Petitioner and the Respondent in this case agreed that they have been living apart since 2013, and the Respondent does not object to a Decree of Dissolution of the marriage being granted, though on a different ground.

The Petitioner in this case also sought for custody of the Children of the Marriage.

Section 71 MCA (1) provides that "In proceedings with respect to the custody, guardianship; welfare, advancement or education of children of a marriage, the Court shall regard the interests of those children as the paramount consideration, and subject thereto, the Court may make such order in respect of those matters as it thinks proper"

The three children of the marriage are all minors. This means that the child needs the care, discipline and support of both parents. Considering the age of the children and other factors, I strongly believe that either of both parents should not press for exclusive custody of the three children. While the Children can continue to stay with the respondent until they attain the age of 21, at which age, they may decide where and who to stay with, the Petitioner must be allowed unfettered access to him; also, the children should not be restricted from going to stay with the petitioner for as long as they. I so hold! This is very important, considering the fact that the petitioner shall be assisting with the school fees, feeding allowances and general upkeep of the children.

I must add that custody of children is an on-going exercise akin to recurrent decimal. It is a day to day or revolving affair. Whenever any of the spouses discovers that conditions have changed or altered for the worse in respect of the interest, benefit and welfare of the children or child in the custody of another person or spouse/ he or she can apply to the Court to review the custody order. The Court upon hearing the

parties would reach a decision in the best interest of the child or children as the case may be. Therefore, all is not lost, as both either the petitioner or respondent still reserves the right to approach the Court for a review of the order for custody of the child in deserving circumstances. - see *AYEGBA V. AYEGBA (1979) 3 LRN 232 AT 235*(per Idoko, J. as he then was, now of blessed memory) citing in support Lord Merriman. P., in *HAYES V. HAYES (1948) 1 WN 361*, where the learned lord said: "Custody is a matter which can be dealt with from day to day; there is no finality about an order for custody in any Court."

Attention is now turned to the Cross petition of the Respondent.

The Respondent demanded in her cross petition for the sum of N1,325,000 per annum as school fees for the three children and a monthly allowance of N150,000.00 to be paid by the Petitioner.

Considering the capacity and rank of the Petitioner as a soldier, I am mindful to order as follows:-

1. The Petitioner/ Cross Respondent shall support the upkeep of the three children of the marriage with a monthly allowance of at least N100,000.00
2. The Petitioner/Cross Respondent shall also support the education of the three children of the marriage by paying the sum of N200,000 per child in every academic session.

On the issue of the title document to a property sought to be recovered by the Respondent, I agree with the Petitioner that the Respondent has not placed anything before the court to prove the purported procurement

of the property. The Respondent having failed to satisfactorily prove her ownership of the purported property, her claim for the title document is accordingly dismissed.

In summary, it is hereby ordered as follows:-

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated on the 11th day of March 2011, between the Petitioner SSGT. Simon M. Egaji, and the Respondent, CPL. Mercy Francis Thomas.
2. An Order granting the custody of three children of the Marriage to the Respondent on the condition that the Petitioner must be allowed unfettered access to them; also, the children must not be restricted from going to stay with the petitioner at any time and for as long as they may wish.
3. An Order that the Petitioner shall support the upkeep of the three children of the marriage with a monthly allowance of at least N100,000.00 and shall also support the education of the three children of the marriage by paying the sum of N200,000 per child in every academic session.
4. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three months from the date of this order, unless sufficient cause is shown to the Court why the decree nisi should not be made absolute.

HON. JUSTICE M.S IDRIS

(Presiding Judge)

Appearance

O. C Adama:- For the Petitioner

J.M Nwadiibia:- For the Respondent