

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
DELIVERED THE 18TH SEPTEMBER, 2023
BEFORE HIS LORDSHIP: HON JUSTICE ASMAU AKANBI - YUSUF
SUIT NO: PET/568/2020

BETWEEN:

MRS. GLORY UBONG FRANK PETITIONER/RESPONDENT

AND

MR. SAMUEL UBONG FRANK RESPONDENT/CROSS PETITIONER

JUDGMENT

By an amended Notice of Petition and other processes filed the 29/10/2021, the Petitioner seeks for the following reliefs:

- A DECREE of Dissolution of Marriage on the ground that the marriage has broken down irretrievably, cruelty, separation, cessation of conjugal relations, the parties have lived apart for over two years and the Petitioner cannot reasonably be expected to continue to live with the Respondent.
 - AN ORDER granting the custody of Emefak Frank- male, six (6) years old to the petitioner on the ground that the petitioner is the primary caregiver and on account of the child being a minor of six years of age.
 - AN ORDER directing the respondent to pay the full school fees for the child of the marriage till he graduates from the University and also pay for all school extra-curricular activities.
 - AN ORDER directing the respondent to pay to the petitioner a monthly sum of Fifty Thousand Naira (N50,000.00) as monthly maintenance allowance for the upkeep of the child.
 - AN ORDER directing the respondent to pay to the petitioner a monthly sum of Fifty Thousand Naira (N50,000.00) as rent and maintenance allowance until the next Fifteen years.
 - AN ORDER of perpetual injunction restraining the respondent from taking the child outside the jurisdiction of this honourable court, either on holidays or on any premise whatsoever without the consent of the petitioner until the child attains adulthood.
 - A DECLARATION that the landed property acquired by the petitioner before the marriage belongs to the petitioner and possession of same should be handed over to the petitioner.
- ALTERNATIVELY
- AN ORDER that the church building constructed by the joint effort of the parties on the petitioner's land be sold and the proceeds shared at a ratio of 50:50 between the parties.

- AND such further orders and/or other orders as this court may deem fit to make in the circumstance.

The Respondent/Cross petitioner [now referred to as the Respondent] filed an Answer and cross petition on the 15/6/2022. The Respondent seeks the following relief;

- A decree of dissolution of marriage on ground that the marriage has broken down irretrievably in that the Cross Respondent has deserted the Cross Petitioner for more than three years and has behaved in a manner the Cross Petitioner cannot be reasonably expected to live with.
- An order granting custody of the only child (male) to the Cross Petitioner in that the health of the Cross Respondent could be impacted and her behavior as single parent can adversely affect the upbringing of a male child.
- An order granting the Cross Respondent opportunity to visit the Child at reasonable hours of the day upon a prior notice and not to take the child away from custody and outside the jurisdiction of this Honourable Court.
- And for such orders the Honourable Court may deem fit to make.

The Petitioner filed a Reply to the Respondent's Answer on 26/8/2022; however, pursuant to an Order of this court for extension of time, same was deemed properly filed and served on the Cross petitioner on 14/09/2022.

At the trial, the Petitioner testified as Pw1; the Cross petitioner testified as Rw1; the witnesses were duly cross-examined by their respective counsel.

The highlights of the testimony of the PW1, is that she got lawfully married to the respondent, then (a bachelor), at Apostolic Church, Mararaba, Nassarawa State, Nigeria a place licensed to conduct marriages on the 29th day of October, 2011 according to Christian rites and under the Marriage Act. The petitioner and the respondent had cohabited in the family house of the petitioner immediately after the marriage on 29th October, 2011 and on the 6th of February, 2013, the respondent told the petitioner's father to sell the family house and give him part of the proceeds for him to start up his life, but that the petitioner's father refused and this did not go down well with the respondent.

She gave evidence that on 31st October, 2014 the petitioner gave birth to the only surviving child of the marriage through a caesarean section in the absence of the respondent who had travelled to Akwa Ibom State on the basis of going to make findings into the death of the first child of the marriage who died three hours after delivery on 30th August, 2012 and also to prevent the death of the second child; that he had also accused the petitioner's

mother of being responsible for the death of the deceased child because according to him, no first child in his family has ever died at birth; that the respondent neglected the petitioner in her pregnant state despite knowing that she was diabetic and had high blood pressure which demands all necessary care and attention; that the hospital bill of the petitioner was paid by her parents before the petitioner was discharged since the respondent did not make funds available for the hospital bill; that on 4th November, 2014 the respondent said to the petitioner that the marriage was over, when asked what the problem was, he replied thus "Your mother is the destroyer of this marriage"; that sometime in January, 2016 after the petitioner had given birth to the only child of the marriage, the respondent alone moved out of the family house of the petitioner where they have been living since the celebration of their marriage to his own house and the petitioner had pleaded with him to allow her employ a maid who will assist her in the daily chores around the house but he bluntly refused despite knowing her health status and the doctors advised that she shouldn't involve herself in strenuous activity; that the respondent only obliged her request to remain in her family house pending when her health condition improved; that in mid-2016, the petitioner relocated from her parent's house to the house of the respondent and during this period of cohabitation, the respondent was fond of embarking on several trips without informing the petitioner of his where about and the petitioner only got to know of the respondent's where about from the members of the church where he is the general over-seer;

It is further the evidence of the petitioner that sometime in September, 2016, after series of quarrel, the Respondent reported the issue to his Mother who later came in company of the Respondent's elder brother with his wife and the younger brother in order to make peace between the petitioner and the respondent, without telling the petitioner's parents; that the respondent's family only accused the petitioner of being the cause of the issues in the marriage instead of settling the issues between them; that after the respondent's extended family had left, the petitioner called her parents to tell them about the visit of the respondent's extended family, the petitioner's father later called the respondent to tell him that nothing should happen to his child, that she is the only thing they have.

She further gave evidence that on the 23rd of September, 2016, the respondent told the petitioner to go back to her parent's house to talk to them on the statement "she is the only thing we have let nothing happen to her" which he had taken as an offence against her parents and wanted them to withdraw it, that he would come to get them (the petitioner and their son) when she succeeds in getting her father to withdraw the statement,

that the petitioner pleaded with the respondent so that the issues between themselves can be resolved but he refused and told her to go as her presence was infuriating him and the petitioner had to oblige to his demands in order to allow peace reign and the respondent never went back to get them (the petitioner and their son) as he had said.

The Petitioner's evidence continued that on the 25th of October, 2016, the respondent went to the family house of the petitioner, the petitioner had hoped that the respondent had come to take them back to their home, only for the respondent to tell her that he only came to take his son to the tailor who will make him a new outfit and the petitioner told him that she will want to go along with them being that their child was just a little boy but the request was bluntly refused by the Respondent and the petitioner refused leaving the child with him; that the petitioner returned back to the respondent's house after about two month of staying in her parent's house; that she had been called by a pastor friend of the respondent (Mr. Sebastian Faith) and a female friend of the respondent (Enobong Lawrence) in a bid to foster peace between the petitioner and the respondent and on the 18th of November, 2016, the petitioner slumped at home at about 9:00pm but the respondent had gone out hours before then; that after regaining consciousness, the petitioner called the respondent severally so that he can take her to the hospital, he did not answer, she then called her parents who prayed for her and was later taken to the hospital by the driver who was sent by the respondent the following day; that the medical doctor who attended to her, asked her if she was going through emotional problems and further told her that *"if you want to live long, you have to come out of it if not, we may lose you;*. that on 6th January, 2017, the respondent told the petitioner at about 4:30am that his ex-girlfriend(GOD'SWILL) called him to tell him that she had been pregnant when they separated and she had given birth to a son for him and his name is ABASIAMA and the child will be Ten (10) years in the year 2017; that he would have brought them to the house but he was prevented by two of his church members who had pleaded with him; that that same morning, the respondent also told the petitioner that if not for his son, he would have strangled her to death as she is full of lies, pretence and he told her all manner of abusive words.

She stated that the respondent had never provided for the well fare of his family; that the only time he ever gave the petitioner money was on the 5th of February 2017, when he gave her Five Thousand Naira(N5,000.00) and he made it clear that the money was for his son and not the petitioner and on the 13th of February, 2017, the respondent travelled to Akwa Ibom state without informing the petitioner; that he left the petitioner and their child without money for upkeep; that on the 19th of February, 2017, the respondent

asked his Pastor (Sunday Okafor) in the church to give Two Thousand Naira (N2,000.00) to the petitioner and she texted him in appreciation but he told her that the money is meant for his son, that he does not know her; throughout the period of cohabitation between the petitioner and the respondent, the petitioner was emotionally traumatized by the respondent; that on the 19th May, 2017, the petitioner moved out of her matrimonial home to her Parents' house due to the threat to her life by the respondent without her belongings and that of her son and on 2nd July, 2017, the respondent parked the petitioner's belongings and sent them to her through a bus driver but she returned them back to him and he collected them back from the driver; that on 12th July, 2017 at about 8:45 am, the respondent called the petitioner for the first time since the petitioner left their matrimonial home and told her that nothing should happen to his son and she replied him that it was the same statement her parents made which he had taken as an offence; that the respondent called the petitioner on 6th of October, 2017 to check on his son; that he also called the petitioner on 31st October, 2017 which was his son's (Emefak) birthday and spoke to him at about 8:30pm but ever since the 31st of October, 2017 there has been no form of communication between the parties; that during these years of separation from the petitioner, the respondent has failed to perform his fatherly responsibilities to his son, in terms of feeding, clothing, medical bills and school fees etc; that due to her interest in the marriage and to build a future together with the respondent, she had committed her land property which she acquired before the marriage for the purpose of erecting the church building (the church where the Respondent is the General Overseer); that the land is 50 by 50 in size located at sheritti village Abuja FCT; that the land document is dated 11th April 2009 and it was sold to her by one Mr. Jubril Bitrus; that she had committed her money to finance the church building project and the land document titled Agreement of plot of land/house is attached; that the petitioner and the respondent have lived apart since 2nd July, 2017 till date and there is no love between the parties any more as the marriage has broken down irretrievably.

The following documents were admitted in evidence;

- Marriage Certificate celebrated in the Apostolic church dated 2 9/10/2011 marked as Exhibit A
- Agreement of the plot of the land/house dated 11th April 2009 marked as Exhibit B.
- CTC of the FCT Customary Court of Abuja ruling delivered by Hon. Usman B Ibrahim, Hon. Bernard Ezinne, Hon Oluwatosin E Adeoye

The Pw1 was cross examined, there was no re-examination.

The Respondent disagrees that both parties cohabited at the family house on 29th October, 2011 after the marriage; he said that properties given to them from wedding receptions were moved into the Petitioner's father's house and they proceeded to Kaduna at No. 3 Assalamalekun Street, Mando, Kaduna State; that he was an ordained pastor of Apostolic church and a resident Church Pastor in Kaduna and drawing salaries and favour from brethren of the said faith and did not in any form tell the Petitioner's father to sell his house and give him money to start up his life as he has already gotten a running Ministry as his own part of the priestly ordination in 2013 at Sheretti, Abuja; that prior to the birth of their 2nd child, they lost the first child due to Petitioner's health complications arising from high blood pressure and hypertension in Aro Medical Centre, Kaduna operated by Nigeria Air force; that Petitioner spent three months on bed rest prior to giving birth and the Respondent sent for the mother of the Petitioner to be with her as customarily required despite the presence of his church members who took turns to attend to the Petitioner. The Respondent admits he was not around when the child was delivered through caesarian section because he was sent by the church on official assignment to Akwa Ibom for a conference of Ministers and his church assistance was there attending to the Petitioner on the hospital bed at the delivery and never neglected her. He stated that the Respondent enrolled the Petitioner in the hospital and pre-paid all bills, her mother did not pay any bill and was advised medically that because of the health complication arising from high blood pressure and hypertension which she hid from him caesarian section will be the only way to deliver her of the child to avoid the loss of the child or the mother or both.

He continued that after she was discharged from hospital and became strong after the delivery, she convinced him to leave with the mother back to Abuja to be cared for since the harmattan weather was approaching and her situation may be affected which he agreed only to discovered that it was a crafted desertion style by the Petitioner and since then she refused to return to her matrimonial home; that he came to Abuja for them to return back to Kaduna but the mother stood her ground that never will she leave Abuja rather he should relocate to Abuja and the petitioner's father said if he doesn't do that the marriage is over; that he built a house in Abuja behind LEA primary school Sheritti, Abuja in 2014 and completed it for habitation on 6th February, 2015 and he resigned from Apostolic Ministry and established his own Ministry in Abuja but that all the effort he made for her to resume co-habitation was refused till date.

He stated that when his church activities began to expand in 2016 and members started going to visit her and persuaded her to come back to her husband, she came back on 13th June 2016 after abandoning the matrimonial home since 2013, spent one week and then left again; that his parents came to visit in June not September that his parents came to visit not because they came to settle quarrel as none existed barely four days of her return for cohabitation; that the parents advised them to put the past behind them and live as one happy family; that the Petitioner left in June 2016 not September 2016 as alleged and was shocked to receive a call from the Petitioner's father asking why he invited his family to come to his house to molest his daughter and he responded that they only came visiting as they usually do but only that this time, it coincided with when the Petitioner was around and they only advised them as husband and wife; that on the following Monday at exactly one week, the Petitioner packed her bags and left the house back to her parent.

He continued his evidence that it was not in October 2016 but in December, 2016 that he called the Petitioner to prepare the child to go get measured by a tailor for Christmas clothes but she refused and the mother of the Petitioner forcefully collected the phone and told him the child can only be released when he is 18 years and that she has adopted the child; that Pastor Sebastian Faith and Sis Enobong Lawrence visited the Petitioner severally to persuade her to return from her parent's house to her matrimonial home prior to June 2016 and not after she left the Respondent's Abuja house, which she left on the 20th June 2016 and she never came back; that on 19th June 2016 she returned from the parent's house; that he went over to a church member house who had health a challenge and when he got back and heard the complaint about the Petitioner, he sent a driver who is his assistant and upon reaching the hospital it was discovered that she has no problem but a ploy to return to her father's house; that he has never been married or had a child from anybody or had any amorous relationship with anybody as he was trained from childhood for the gospel of Christ; that his only child is the one with the Petitioner and that he has had no girlfriend all his life because he accepted the gospel of salvation early before puberty and has never had any amorous relationship with any lady to warrant giving birth to a child; that he has never in his life contemplated taking anybody's life and just discovered that the Petitioner is full of lies, pretence and has used all manner of abusive, defamatory words against him for the purpose of getting a divorce; that he provides for his family as an example to other members of his congregation and whenever he visits his child with gifts he drops money for them but the mother of the Petitioner always insults and abuse him even in

the presence of strangers and that on 5th February, 2017, he went to their house and while leaving gave their child the money.

He continued that he does not travel but devote the month to fasting and prayer at Bethel for his Ministry and he is surprised that the Petitioner who does not live with him will say that he travelled in February 13th, 2017 when she deserted the house on 20th June 2016 after one week cohabitation and on the faithful Sunday 19th February, 2017 he was not around when the Petitioner visited the church to worship and after service the presiding pastor gave her transport money as the same pastor Sunday Okafor had visited her on reconciliation mission with others; that the alleged trauma is self-induced; that the Petitioner deserted the Respondent the second time on 20 June 2016 after one week of cohabitation in Abuja, the home of the Respondent ; that on Monday, the Respondent sent a vehicle to take her to the hospital, she instead went to her father's house and sent the driver to go and bring her belongings; that he out of care sent a vehicle to take her to their family hospital only for her to divert the driver to her father's house and told the driver that the doctor said she should leave her husband's house; that on 20th June 2016 he went to the father-in-law's house when she was not returning from the alleged hospital only to be told by the Petitioner that she can't leave the comfort of her mother's house to go and suffer as Pastor's wife and to hear nonsense from church members; that it will be over her dead body to go back; that he had to restrain himself from the effect of shock after leaving Kaduna to Abuja to save his marriage; that he calls at intervals and sends airtime to her phone but on 31st October, 2017 which is the son's birthday, he called in the morning around 8:30am so that they can prepare to take the child out to amusement park to celebrate his birthday but she refused and asked for money so that she can buy a cake and the Respondent obliged; that on one of such calls, a voice of an Igala man beamed as the receiver and warned him never to call and disturb his lover again otherwise he will see his true colour; that he has been a responsible father manning his fatherly responsibilities to his son as he sends food to the Petitioner, money and necessities for their comfort; that he enrolled the child at Prospect Great & Possible International School Limited, Sheretti, Abuja; that the Petitioner deserted him a second time on 20th June 2016 and not 2nd July 2017 as alleged by the petitioner; that the marriage has indeed broken down irretrievably by cruelty, deceit and desertion by the Petitioner and the petitioner has behaved in a manner that the Respondent cannot reasonably be expected to live with.

The following documents were tendered by the Cross Petitioner.

- Prospect Great & Possible International School Limited Admission form marked as Exhibit R1

Above is the case of the Cross Petitioner.

At the close of trial, parties, through their respective counsel, filed and exchanged their final written addresses. The addresses were argued and adopted 11/7/2023.

Learned counsel for the Respondent E. Maji Esq. filed the Respondent's final written address, wherein three issues were formulated for determination:

- *Whether the Honourable court on the preponderance of evidence can grant the dissolution of marriage conducted on 29th October 2011 between the Petitioner and the Respondent/Cross Petitioner*
- *Whether the person providing money to purchase a property for a purpose and in another person's, name does not operate as trust.*
- *Whether the Petitioner who is terminally sick of hypertension with proclivity to faint all the time can take care of a child to be entitled to custody of a child and its consequences.*

Victor Abasiakan-Ekim Esq. settled the final written address on behalf of the petitioner. He raised an issue for determination, that is:

Whether in the light of the totality of evidence led by the parties in this suit and considering the claims of the petitioner, whether the petitioner has made out a case to establish her entitlement to the items of relief sought in this suit.

I have carefully considered the facts and evidence presented by the petitioner and respondent as well as the written addresses filed on their behalf by the respective counsel; same shall be relied on where necessary; however, I consider it necessary to streamline the issues formulated by the parties and it is my view that two issues will be appropriate in determining this case. They are;

- Whether based on the evidence adduced by the petitioner, the petitioner is entitled to the reliefs sought on the one hand or
- Whether based on the evidence adduced by the cross petitioner, the cross petitioner is entitled to the reliefs sought on the other hand.

The law is that a Petitioner/Respondent who desires dissolution of a marriage, must discharge the standard of prove stipulated by the Matrimonial Causes Act and establish in evidence that the marriage has broken down irretrievably. See s. 15 (2), s. 82 MCA and upon proof of one or more facts set out under S 15 (2 a -h) of the Act, the court can go ahead to dissolve the marriage.

The law as regard the success of divorce petition is the establishment of one of the conditions listed in section 15 of the Matrimonial Causes Act. It is not the law that the petitioner or the cross petitioner should prove all the conditions listed in section 15(2) (a)-(h).

The introductory part of section 15 of the Matrimonial Cause Act is clear and admits no ambiguity. It reads:

The court hearing a petition for a decree of 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:

The literal and simple interpretation of this is that the petitioner needs to prove only one out of the facts listed in (a) to (h) to secure the verdict that the marriage between him and the cross petitioner has broken down irretrievably.

In the case at hand, it is not in dispute that the petitioner and the Respondent celebrated their marriage on 29th October 2011 at Apostolic Church, Mararaba, Nassarawa State, Nigeria See paragraph1 of the petition as well as the evidence led by the Petitioner; this assertion was admitted by the Respondent. See paragraph 1 of the Answer/cross petition and in support of these assertions, the Petitioner tendered the Marriage certificate, marked exhibit A. Thus, the marriage between the parties is established in evidence. The Petitioner and Respondent became husband and wife on the 29th October, 2011.

Now, parties herein have asked the court to hold that the marriage between them has broken down irretrievably, therefore the court should grant a decree of dissolution of the marriage; each relying on different grounds. The petitioner is relying on s.15 (2) (c) MCA that is, the Respondent has behaved in a manner she cannot reasonably be expected to live with her. The Respondent is not in agreement with the petitioner even though he is not opposed to the dissolution of the marriage, he will prefer that the marriage be dissolved on the ground that the petitioner deserted him since the 20th June, 2016 and has behaved in a manner the cross petitioner cannot be reasonably expected to live with. The Petitioner denied the assertion; that she

left the cross-petitioner's house in 19th May, 2017 after the Respondent threatened to strangle her to death.

The law is that where a party to a petition relies on 15 (2) (c) MCA, he or she must establish by concrete evidence that it would be unreasonable to require her to live with the Respondent. Therefore, the test of whether those behaviours are intolerable to expect the Petitioner to continue to live with the Respondent is objective and not wholly subjective. See BIBILARI v BIBILARI (2011) LPELR 4443(CA) Therefore, there is every possibility that what the Petitioner terms "intolerable" may not pass this objective test. However, Section 16 (1) (a)-(g) exhaustively listed the various behaviours that qualifies as intolerable behaviour that will be unreasonable to require the Petitioner to continue to cohabit with the Respondent under Section 15 (2) (C) M.C.A.

Section 16 (1) MCA states

Indeed, the operative word in Section 16(1) MCA is "shall" and shall implies compulsion and divestment of discretion on the part of the Court. In other words, unless and until any of the conditions listed in Section 16 (1) (a)-(g) exist with credible evidence; the Court shall refuse to make an order of dissolution of marriage.

Basically, the conducts of the Respondent which the Petitioner adjudged intolerable contained in her witness statement on oath is that the Respondent neglected the petitioner in her pregnant state despite knowing she is diabetic and has high blood pressure; that he did not pay the hospital bills when she was ill; that the respondent had in one occasion told her that his ex-girlfriend gave birth for him and that he has never provided for the welfare of the family; that he told her he has a child out of wedlock etc.

Also, the cross petition alleged in paragraph 9(X) of his Cross petition that the Petitioner has behaved in a manner that he cannot reasonably be expected to live with her.

I have had a careful consideration of Section 15 (2)(c) & Section 16 (1) MCA side by side with the assertions and counter assertions with regards to the conducts complained of by both parties, I find that they fall short of the conditions listed in the aforementioned sections. Both parties didn't substantiate their facts with the evidence required in law. The reasons as provided for in Ss. 15 (2) (c) and 16 of MCA must be grave and weighty for the Court to conclude that parties cannot reasonably be expected to live with. See CHIEF WEME OGBUMGBADA v. SAMUEL CHINDA OGBUMGBADA & ORS (2018) LPELR-44291 (CA)

Going further, the cross petitioner in his cross petition sought for a decree of dissolution of marriage on ground that the marriage has broken down irretrievably in that the Cross Respondent deserted the Cross Petitioner for more than three years. The Petitioner averred that she moved out of the matrimonial home on 19th May, 2017; that the cross petitioner on 2nd July, 2017 packed her belongings and sent them to her through a bus driver, which she returned back to him. In his response, the cross petitioner led evidence that the petitioner left the matrimonial home on 20th June, 2016. The petitioner in her Reply to the Answer, reiterates that she left the house on 19th May, 2017. In determining this fact, recourse shall be made to the matrimonial Cause Rules. Pursuant to order VII r 6(1) & 8 & 9(a)MCR. Flowing from the above, in the absence of any contrary evidence put forward by the cross petitioner, it is established that the petitioner moved out of the matrimonial home on 19th May, 2017. And I so hold.

Now, the petitioner alleged that she moved out of the matrimonial home to her parents' house due to the threat to her life by the cross petitioner. (see paragraph 27 of the witness statement on oath); this assertion was denied by the cross petitioner. (see paragraph 5 of the Answer). I have had a careful consideration of the evidence adduced by parties in this instance, I am of the opinion that the petitioner failed to substantiate her evidence with believable evidence; rather there is evidence, that it was the petitioner, who deserted the matrimonial home; this assertion was not denied by the petitioner. She indeed, stated in evidence that she left the matrimonial home due to threats from the cross petitioner. She however, failed to substantiate her claim. Her reason, was that she left the cross-petitioner's house as he was fond of hurling abuses at her. She averred that she will never lie to get a divorce as no woman wants to get married and get divorced; however, the petitioner failed to buttress her fact with credible evidence on why she left the matrimonial home without just cause. What can be gleaned from evidence put forward by parties as well as the processes filed, is that this petition was presented on the 20th day of November, 2020; the petitioner admits she moved out on 19th May, 2017. Thus, by way of calculation, it means parties have lived apart for three years or thereabout prior to the presentation of the petition. Also, it is obvious that parties are no longer interested in each other as can be seen from their principal reliefs as well as the evidence placed before the court. The Respondent from his reliefs in the cross petition filed sought the dissolution on the ground that the petitioner/cross Respondent has deserted the Respondent/Cross petitioner for more than 3 years and that the marriage has broken down irretrievably. By virtue of s.15 (2) (f) of MCA where it is shown that parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the

presentation of the petition, the court is bound to dissolve the marriage. See ANIOKE V. ANIOKE (2011) LPELR-3774(CA) (Pp. 15-17 paras. F). After considering the evidence put forward by parties and in the absence of any contrary evidence, I am left with no choice than, to dissolve the marriage between the parties. Accordingly, I find that the marriage between the petitioner and the respondent has broken down irretrievably and the marriage between parties is dissolved.

Consequently, I hold that the marriage celebrated between the Petitioner Mrs Glory Ubong Frank and the cross-petitioner Mr. Samuel Ubong Frank at Apostolic Church, Mararaba, Nassarawa State, Nigeria has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between the petitioner and the cross petitioner. The Order Nisi shall become absolute after a period of three months from today.

Furthermore, the petitioner stated in evidence that due to her interest in the marriage and for them to build a future together, she had committed her property (Land) which she acquired before the marriage for the purpose of erecting the church building; that the land is 50 by 50 in size located at Sheritti Village Abuja FCT, she tendered exhibit B to support her assertion; that she also committed her money to finance the church building project of which the Respondent is the General Overseer.

The Petitioner in this case, placed reliance on exhibit B for the court to declare her right to Sheretti Village Abuja FCT. Under cross examination, the Petitioner admits that she contributed to building the church; that it is not a gift. She is not aware if the church has board of trustees. On the other hand, the cross petitioner states that he was the person, that gave the Petitioner money to help procure a land, so as to enable him set up his Ministry after their marriage; that when he demanded for the agreement or receipt, the Petitioner availed him with a document as there was no reason to doubt the petitioner's sincerity; that the church members contributed money as faith seeds, covenant offering, building materials etc; that the Petitioner didn't make any personal commitment except for the offering as church member.

During cross examination the Cross Petitioner/Respondent stated as follows;

Question: You also stated in your witness statement on oath that you had given your wife money to buy a land pending when you relocate to Abuja to start your ministry.

Answer: Very true

Question: Which year did you give her the money?

Answer: 2010 before we got married

Question: How much did you give to her?

Answer: She told me that the land was #60, 000 and I gave her a#100, 000.

Question: Can you tell the Court the evidence you have that you gave her #100, 000.

Answer: The evidence I have are the witnesses that were there, because it was by hand

Question: So, who are the witnesses

Answer: I had Engr. John Udom in person. Pastor Timothy Gambo and Patrick Ogemeji on phone call.

Question: So, you mean to tell the Court that you told Patrick Ogemeji on phone that you are giving your fiancé a# 100, 000 to get you a property in Abuja.

Answer: Yes, because it was a celebration day. The day I launched my 1st album and I had cash in my hand.

Question: We seek to show the witness Exhibit B, can you read out the name of the buyer.

Answer: The name of the buyer is Glory Monday Joseph of Garki District. This is the first time I am seeing the document.

Question: you told the court that this is the first time you are seeing this document.

Answer: Yes

Question: Also, on the document, can you tell this court the price for the plot of the land?

Answer: I am seeing #50, 000 here.

Question: Can you also on exhibit B tell the court the year on the document.

Answer: I am seeing 11th April 2009

A close look at the evidence adduced by parties, it would reveal that the cross petitioner said he gave the petitioner #100,000 to purchase the land on his behalf in 2010 prior to their marriage. Equally, he mentioned that three of his friends were aware that he gave the petitioner #100, 000 to purchase the

land for him. He however, failed to present them as witnesses or substantiate his assertions with credible and cogent evidence. Failure to call a vital witness is detrimental to the party that so failed. GUBLA V. LAWUYI & ORS (2019) LPELR-48391 (CA). Again, in his evidence in chief, he averred that when the petitioner showed him the document given to her after the purchase of the land, he accepted the document and while being cross examined, he claimed he was just seeing exhibit B; he however failed to present the said document shown to him by the petitioner. It is safe to hold that the cross petitioner failed to substantiate his assertion that he gave the petitioner #100,000.00 to purchase the land, where the church was built on.

Section 72 of the Matrimonial Causes Act which provides thus: -

(1) the Court may, in proceedings under the Act by order require the parties to the marriage or either of them to make for the benefit of all or any of the parties to, and the children of the marriage, such a settlement of property to which the parties are, or either of them is entitled (whether in possession or in reversion) as the Court considers just and equitable in the circumstances of the case.

(2) The Court may, in proceedings under this act, make such order as the Court considers just and equitable with respect to the application for the benefit of all or any of the parties to, and the children of the marriage of the whole or part of property dealt with by ante - nuptial or post nuptial settlement on the parties to the marriage or either of them.

Following the above provision, the settlement of properties is based on discretionary power which must be just and equitable; thus, bearing in mind the provisions of the law in respect to property and having weighed the evidence before the Hon. Court, the petitioner admits that the cross petitioner also contributed to the building and development of the church built on exhibit B. She admits under cross examination, that the cross petitioner has a church on the plot of land. This, therefore means that the cross petitioner is also entitled to the proceeds of sale of the said plot of land. See KAKULU V KAKULU (2016) LPELR 41552 (CA) Accordingly, the church building constructed by the joint effort of parties be valued and sold, the proceeds therefrom be shared equally between the parties. And I so hold. Relief viii of the petition succeeds

Going further, the petitioner testified to the fact, that the cross petitioner failed to contribute reasonably to the welfare and upkeep of her and the child of the marriage; that the full custody of the child of the marriage being a minor and has been under the petitioner's care and can only receive

proper care from the petitioner; that the child cannot stay with the cross petitioner as he is always on the go for his pastoral mission; that the cross petitioner shall have access to the child at reasonable times and should not be allowed to take the child outside the Jurisdiction of the court either on holidays or on any premise without the consent of the petitioner; she further states that the cross petitioner shall be responsible for school fees/expenses of the child of the marriage who is currently in CoMarie Schools Abuja till he graduates from any higher institution of his choice; that the Petitioner shall be responsible for the financial maintenance and upkeep of the child of the marriage till he graduates from the higher institution. The cross-petitioner objects to the granting of the custody of the child of the marriage to the petitioner as the place the Petitioner is attempting to bring up the child, is being used as a beer parlour and pepper soup business. He states that he enrolled the child of the marriage at Prospect Great & Possible International School Limited, Sherreti, Abuja. The assertions of the cross petitioner were also denied by the petitioner. The cross-petitioner states that he has a conducive place in the church parish or parsonage where the child of the marriage, Emefak Samuel Frank, male, born on 31st October, 2014 can be brought up with good morals and in the fear of God; that he enrolled the child at Prospect Great & Possible International School Limited, Sheretti for his Kindergarten; that the Cross Respondent can visit at any interval to see the child upon prior notice. First off, I must state that the exhibit Rw1 tendered by the cross petitioner lacks probative value. The document fails to support the assertion with respect to the fact that the child attended the said school; his assertion was also denied by the petitioner. Both parties, failed to lead credible and concrete evidence to support their assertions and counter assertions with respect to the custody, maintenance and welfare of the child of the marriage. The law is clear on the issues of custody, welfare, advancement or education of children of a marriage; the court is enjoined to consider the interests of the children of the marriage as paramount, and subject thereto, the court may make such orders in respect of those matters as it thinks proper. See s.71 (1) MCA, s.1 Childs Rights Act 2003 & ENWEZOR V ENWEZOR & ANOR (2012) LPELR – 8554 (CA). The evidence obtained from the petitioner under cross examination, that she is a fashion designer, is not supported; also, the proposal of the cross petitioner that the child of the marriage would stay in the church parish or parsonage cannot hold, as I had earlier held, that the church be sold and proceeds from the sale be shared equally between parties. It does appear that the cross petitioner has no roof to lay the head of the child of the marriage. And considering the age of the child, it is safe to hold that the custody of the only child of the marriage shall be granted to the petitioner, as there is no disputing the fact that the

childbeing a minor, it is reasonable to place him under the physical care of his mother and since it is not in evidence that the petitioner suffers from any moral conduct, infectious disease, insanity or cruel to the children, then physical custody wouldn't be denied the mother. See ODOGWU V. ODOGWU (1992) 2 NWLR (PT.225) 539 AT 560 PARAGRAPHS D-E.The cross petitioner shall be allowed to have access to the child of the marriage as directed by the court.

Furthermore, I have considered the facts pleaded vis a vis the evidence presented before the court by the petitioner and cross petitioner, none of them presented credible earnings as to their earnings; I am left with no choice but to exercise my discretion in deciding what is appropriate to the parties. There is no gainsaying both parties shall be involved in the upbringing, welfare and education of the child of the marriage.

I hereby Order as follows: -

- i. The marriage celebrated between the Petitioner Mrs. Glory Ubong Frank and the cross-petitioner Mr. Samuel Ubong Frank at Apostolic Church, Mararaba, Nassarawa State, Nigeria has broken down irretrievably and same is dissolved.The Order Nisi shall become absolute after a period of three months from today.
- ii. The petitioner shall continue to have custody of the only child of the marriage, Emefak Samuel Frank [M] until he reaches the age of majority;
- iii. The cross petitioner is directed to contribute the sum of #50,000 [Fifty Thousand Naira] only every month, towards the maintenance and welfare of the child of the marriage and this payment shall be made on or before the last day of every month;
- iv. The petitioner and the cross petitioner shall have equal rights in taking decisions that affects the child's education;
- v. The petitioner shall have access to the child at a place to be agreed on by parties and upon giving 72 hours' notice to the cross petitioner.

ASMAU AKANBI – YUSUF
[HON. JUDGE]

APPEARANCES:

Victor Abasiakan-Ekim Esq, Florence Samuel Esq. for the
Petitioner.

E.J Omale Esq. for the Respondent.