

IN HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HON. JUSTICE J. ENOBIE OBANOR
ON THIS DAY THE 12TH JULY, 2023

CASE NO.: PET/324/2022

BETWEEN:

AGATARI ONISOJIENI JACOB-JEFFERSON ...PETITIONER

AND

JACOB ENEYE JEFFERSON ...RESPONDENT

JUDGMENT

The Petitioner filed a Notice of Petition on 9th June, 2022 before at the registry of this Court. The said Petition was amended pursuant to an Order of this Court. The said Amended Notice of Petition was filed on 4th May, 2023. The Petitioner by its Amended Notice of Petition sought the following reliefs:

- i. An Order of the Honourable Court that the marriage between the Petitioner and the Respondent contracted on the 9th day of July, 2016 has broken down irretrievably.
- ii. An Order of the Dissolution of marriage between the Petitioner and the Respondent contracted on the 9th day of July, 2016 in that the Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

- iii. An Order of the Honourable Court directing and ordering the Respondent to pay alimony to the Petitioner by way of maintenance upon the dissolution of the marriage between the petitioner and Respondent.
- iv. An Order of the Honourable Court granting the Petitioner permanent custody of the children of the marriage, Miss Janelle Peremoboere Jacob-Jefferson (6 years old) and Master Joseph Peremobowei Jacob-Jefferson (4 years) until they are 18 years of age.
- v. An order of the Honourable Court directing the Respondent to pay the sum of N50,000.00(Fifty Thousand Naira) only monthly to the Petitioner for the maintenance and up keep of the children of the marriage.
- vi. An Order of the Honourable Court directing the Respondent to take up his responsibility and pay the children school fees which is currently assessed at N250,000.00 (Two Hundred and Fifty Thousand Naira) only per term as may be assessed from time to time.

The ground upon which this petition as contained in the Amended Notice of Petition filed in this Court is that the marriage has broken down irretrievably.

The facts relied upon by the Petitioner in support of the ground were stated as follows;

1. That since marriage (sic) the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the respondent.
2. The Respondent has deserted the Petitioner from 2019 till date.
3. The Respondent constantly behave in manners that put a lot of pressure on the mental health of the Petitioner.
4. The Respondent has not shown adequate love, care and concern to the Petitioner.
5. The parties have made so much unsuccessful attempts and effort to reconcile their differences.

The Respondent was duly served with the Notice of Petition and all other process in this Petition. However, the Respondent did not file any Answer to Petition and also did not respond to any of the processes filed in this Petition. The Respondent was also not represented by Counsel.

However, on the 24th May, 2023 when this Petition was set down for hearing, the Petitioner testified for herself and was cross-examined by the Respondent himself. The Respondent also elected to give evidence. This Court, in the interest of justice and since Respondent was not represented by Counsel, granted leave for the Respondent to proceed to testify for himself.

The Petitioner in support of her case tendered the Marriage Certificate while the Respondent tendered the Birth Certificate of

the two Children of the Marriage, his statement of account and a list of expenses made by the Respondent with respect to his family. The documents tendered by the Respondents were marked Exhibits A, B, C, D and E respectively.

Counsel to the Petitioner file a written address which was adopted on 16th June, 2023. And this Petition was set down for judgment.

The summary of this case is that the Petitioner who was then a Spinster was lawfully married to the Respondent, then a bachelor, at the Federal Marriage Registry, Garki, FCT Abuja on the 9th July, 2016. After the marriage, they cohabited at Flat 3, No. 4, Gabriel Ebamielen close, Phase 2, Kubwa, Abuja till sometimes in 2018 when cohabitation ceased.

There are two children of the marriage between the Petitioner and the Respondent; Miss Janelle Peremoboere Jacob-Jefferson born on 30th May, 2017 (6 years old) and Master Joseph Peremobowei Jacob-Jefferson born on 20th November, 2018 (4 years old). The Petitioner is seeking the dissolution of the marriage on the ground that the marriage has broken down irretrievably, custody of the children of the marriage and maintenance.

Counsel to the Petitioner in his final written address formulated a sole issue for determination in this petition thus;

Whether the Petitioner has proven her case to be entitled to the reliefs sought in this Petition.

Counsel argued that the marriage has broken down irretrievably in that the Respondent repeatedly subjects the petitioner to domestic violence, physical assaults, emotional and psychological torture such that are over bearing on the physical and mental health of the Petitioner and all of which constitutes behaviours of the Respondent that the Petitioner cannot reasonably be expected to continue to live with the Respondent as husband and wife. Counsel stated that the Respondent admitted the facts related to his attitude to the Petitioner in his evidence.

Counsel argued that considering the tenderness of the children and parties involved, that custody of the children should continue to be with the Petitioner. He also argued that the Respondent did not contest custody of the children but merely requested to be given access.

Counsel also argued that it is the Respondent's responsibility to take care of his family and urge the Court to also grant the Petitioner the relief sought in respect of maintenance and School fees of the children which the Petitioner assessed in the sum of N250,000.00 (Two Hundred and Fifty Thousand Naira) only per term and as may be assessed from time to time by the Petitioner.

Thus, Counsel urge the court to make an order of dissolution of the marriage between the Petitioner and the Respondent, grant custody of the children of the marriage to the Petitioner and make orders with respect to maintenance.

I shall adopt the sole issues for determination posited by the Counsel to the Petitioner in the determination of this Petition thus:

Whether the Petitioner has proven her case to be entitled to the reliefs sought in this Petition.

The fundamental principle upon which anyone who desires any court to give judgment as to any legal right or liability dependent on the existence of facts which they assert is that they shall prove that those facts which they assert indeed exists. See Section 131(1) of the Evidence Act.

Thus, regardless of the less participation of the Respondent in the Petition, the burden of proof lies on the Petitioner to proof its case. See Section 131(2) Evidence Act. This is also because the burden of proof in a suit or proceeding always lies on that person who would fail if no evidence at all were given on either side. See Section 132 Evidence Act. In this case, the Petitioner.

Therefore, I shall resolve the sole issue with respect to each relief sought.

The relief one and two of the Petitioner is for an order that the marriage has broken down irretrievably. The Petitioner in her evidence and also in the written address of Counsel relied on the fact that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. Indeed, these facts were not denied by the Respondent and in the circumstance are deemed admitted. It is law that facts admitted requires no further proof. It also noted that cohabitation between the parties ceased since 2018. The Petitioner had moved out of the matrimonial home. Also, the Petitioner stated that all attempts at reconciliation has failed and the parties have lived apart since 2019.

It is true that Court grant dissolution of marriage reluctantly. However, when the marriage has broken down irretrievably, the Court would have no alternative than to make an order for the dissolution of the marriage. See **UGBAH v UGBAH (2009) 3 NWLR (PT. 1127) 108 @ 125 PARAS H – A**. Thus, on the strength of the above, I hold that the marriage between the parties have broken down irretrievably.

The Petitioner in its relief four prayed the Court for the custody of the children of the marriage; Miss Janelle Peremoboere Jacob-Jefferson (6 years old) and Master Joseph Peremobowei Jacob-Jefferson (4 years) until they are 18 years of age.

The Petitioner stated that the Children of the marriage are now students of Lifegate Academy, Wuye, FCT which is close to where the Petitioner currently live. The Petitioner stated that the children shall continue to live with the Petitioner.

The nature of custody of children under the Child Rights Acts and the effect of custody is such that the best interest of the child shall be the primary consideration. This is the position of the Court of Appeal held in *OLWOOF OYEKU v. OLWOOF OYEKU* (2011) 1 NWLR (pt. 1227) 177 page 203 per Aboki JCA is that;

"Custody of a child should not be granted as a punitive measure to a party because of his or her conduct which might have contributed to the breakdown of the marriage.

Custody is never awarded as a reward for good conduct nor is it ever denied as punishment for the guilty party's matrimonial offences. See: Alabi v. Alabi (2007) 9 NWLR (Pt. 1039) page 297; Nanna v Nanna (2006) 3 NWLR (Pt. 966) page 1; Damulak v Damulak (2004) 8 NWLR (Pt. 874) page 151; Odogwu v. Odogwu (1992) 2 NWLR (Pt. 225) page 539; Williams v Williams (1987) 2 NWLR (Pt. 54) page 66; Afonja v Afonja (1971) 1 U.I.L.R. 105.

In considering the welfare of the children of a broken marriage, efforts must be made to ensure that such children are not denied the love, care and affection of

either parent. Where one of the parents deliberately placed obstacle towards the attainment of such parental love and affection, he will be in violation of the right of the child.

Section 1 of the Child Rights Act, 2003 provides:

"In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration".

Therefore the interest of the children must be paramount in the grant of custody with regards made to their age and tenderness of the children. Also, the Respondent in this Petition is not contesting custody but want access to the children. It is therefore my considered opinion that the interest of the children will be best served by granting custody in favour of the Petitioner.

The relief three, five and six of the petition is for an order of Court directing and ordering the Respondent to pay alimony to the Petitioner, the Sum of N50,000.00 (Fifty Thousand Naira) monthly for the maintenance of the Children and the sum of N250,000.00 (Two Hundred and Fifty Naira) only as the school fees of the children per term respectively.

The position of our law is with respect to maintenance in matrimonial cause in Nigeria is captured in section 71(1) of the Matrimonial Causes Act thus;

Subject to this section, the court may in proceeding with respect to the maintenance of a party to a marriage, or of children of the marriage, other than proceedings for an order for maintenance pending the disposal of proceedings, make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

Also in **AKINBONI V. AKINBONI (2002) 5 NWLR (PT. 761) 564 @ 582 PARAS. C – D**, the factors required to guide the Court in the assessment of maintenance was highlighted thus;

"As I stated earlier that as assessment of maintenance allowance in a divorce case is within the discretion of the court and such earlier decision or precedent would not be of much help, there are however some guiding principles and factors which assist the trial court in its exercise of assessment. This include the means of or earning capacity or income and assets of both parties, their conduct, the age of the children as well as all other relevant factors or circumstances."

Thus, on one hand, with respect to the relief for alimony by way of maintenance to the Petitioner, as may be gleaned from the evidence before this Court, and even in the argument of Counsel, the Petitioner did not place any facts or demonstrate any such circumstances upon which the Court may exercise its discretion in her favour.

While on the hand, with respect to the relief for N50,000.00 (Fifty Thousand Naira) monthly for the maintenance of the Children of the marriage, this Court would exercise its discretion in favour of the Petitioner in the interest of the children of the marriage. The Respondent also demonstrated his capacity to be responsible for his family and it is the right of the children that their care, protection and maintenance shall be the responsibility of both parents.

However, the Petitioner's request for the sum of N250,000.00 as school fees of the children per term will suffer the same fate as the Petitioner's prayer for alimony. The proposed assessment for the school per term was done solely by the Petitioner and there is nothing before the Court to demonstrate why this relief should be granted as per the prayer of the Petitioner. Considering the age of the children, it is in evidence that they are still in their formative age. It is therefore important that the decisions with respect to their education be made jointly by the parties as a matter of priority.

As stated in **AKINBONI V. AKINBONI (2002) 5 NWLR (PT. 761) 564 @ 582 PARAS. C – D**, in making orders with respect to such maintenance, the Court must be aided with facts and circumstance to help guide the exercise of its discretion. However, in the interest of the children of the marriage, the court shall give directives as may be just and equitable in the circumstance.

Upon the resolution of the issue, judgment is entered as follows;

1. A Decree of dissolution of the marriage between the Petitioner and the Respondent contracted on the 9th day of July, 2016 on the ground that the marriage has broken down irretrievably. I hereby Order a Decree Nisi which will be made a Decree Absolute after three months unless there is a cogent reason to vary same.
2. The petitioner is hereby granted the custody of the children of the marriage; Miss Janelle Peremoboere Jacob-Jefferson and Master Joseph Peremobowei Jacob-Jefferson until they are 18 years of age while the children should be allowed to spend half of their long-term holidays with the Respondent in his place of residence if he wishes and shall not take the children out of Nigeria without the consent of their Mother.

3. The Respondent is also granted right to access to the children of the marriage; Miss Janelle Peremoboere Jacob-Jefferson and Master Joseph Peremobowei Jacob-Jefferson until they are 18 years of age. Such access shall be upon prior reasonable notice given by the Respondent to the Petitioner and at such time and place as may be convenient for both parties and the children.

4. An order directing the Respondent to pay to the Petitioner the sum of N60,000.00 (Sixty Thousand Naira) only monthly for the maintenance, education and upkeep of the children of the marriage.

A handwritten signature in black ink, appearing to read 'J. Enobie Obanor', with a long horizontal flourish extending to the right.

HON. JUSTICE J. ENOBIE OBANOR

Hon. Judge

Appearance:

Benjamin I. Ogar for the Petitioner.