

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA-ABUJA
ON TUESDAY THE 17TH OCTOBER, 2023**

SUIT NO: FCT/GWD/HC/PET/14/2020

BEFORE HIS LORDSHIP: HON. JUSTICE A. I. AKOBI

BETWEEN

NICODEMUS UZODIMMA ANYANWU.....PETITIONER

AND

CORDELIA OLUCH ONONIWU ANYANWU.....RESPONDENT

JUDGMENT

This is a suit brought under the Matrimonial Causes Act for the dissolution of marriage contracted under the Act between the parties on the 25th February, 2011. The matter had gone into full hearing and adjourned to 21/03/2023 for judgment. Prior to the 21/03/2023 set down for judgment; the petitioner through his counsel Eze Clifford Esq filed a motion on notice; after considering the merit of the application I granted it. In view of the development, and for interest of justice, I suspended the judgment fixed for 21/03/2023 and continued with the hearing of the matter.

The petitioner whose address on record is at 2-1 Kubwa site 3, Machine Road No. 6 FCT, got married to the respondent of DSS

Quarter Asokoro Abuja at Abuja Municipal Area Council Marriage Registry celebrated same at the Catholic Archdiocese of Abuja, at the Church of Assumption, Asokoro on the 5th March 2011. As evidence of marriage the petitioner tendered Marriage Certificate admitted as exhibit A.

Reliefs sought are:

- a. A declaration that by the action of the Respondent in this suit, the respondent has since the marriage behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.
- b. A declaration that by the action of the respondent in this suit, the respondent has deserted the petitioner for a period of 7 year immediately preceding the presentation of this petition.
- c. A declaration that the marriage between the petitioner and the respondent conducted on 25th February, 2011 at Abuja Municipal Area Council (AMAC) Registry, Abuja, Nigeria and the wedding conducted at Catholic Archdiocese of Abuja, Church of the Assumption, Asokoro on the 5th March, 2011 has broken down irretrievably.
- d. An Order dissolving the marriage between the petitioner and the respondent conducted on 25th February, 2011 at Abuja Municipal Area Council (AMAC) Registry, Abuja, Nigeria and the wedding conducted at Catholic Archdiocese of Abuja, Church of the Assumption, Asokoro

upon the ground that the said marriage has broken down irretrievably.

- e. An Order granting joint custody of the two children of the marriage to the petitioner and the respondent until they become adult.
- f. An order granting the petitioner custody/access to the children of the marriage especially during the third term school holiday. To spend the holiday with the petitioner. The petition is predicated on the ground that the marriage has broken down irretrievably.

The parties unsuccessfully attempted reconciliation; eventually, the matter came up for hearing on the 15/11/2021 and the petitioner testified for himself after adopting his witness statement on oath and tendered the following documents:

- Marriage Certificate – Exhibit A
- WhatsApp chat – exhibit B
- A letter of undertaken – exhibit C
- Re; marriage approval – exhibit D1
- Another Re: marriage approval Exhibit D2
- Laboratory Report – exhibit E
- Car particulars – exhibit F
- Letter of complaint and access to children was objected and rejected

After evidence in chief, the petitioner was cross examined by the respondent's counsel, Agbor Francise Agbor. Under cross examination, the witness testified that the marriage is blessed with

two children- Chidera Adiele (female) and Obinna Patrick (male) who are presenting with the respondent. It is also in evidence that immediately after the marriage the couple cohabitated at Block A Flat 11 SSS Quarter, Asokoro between 2011 to 2013; by 2013 till when this suit was filed that the parties were separated and that the respondent had made it impossible for petitioner to access his children. As a result that he wrote a letter to the Head of Department Social Welfare, FCT wherein he complained what he was going through with the respondent and another letter to the Director General, department of State Service where the respondent works, requesting for access to his children. The letters are before the court as exhibits. The petitioner also complained how the respondent treated his mother badly when she came to help nurse their first born (omugo) in accordance with their custom and practice. He also complained that the respondent had at any slightest opportunity pulled gun on him. And that by 10/01/2014, the respondent colleague forced him out of their matrimonial home and that the respondent has since then denied him access to his children and that he made frantic effort for them to reconcile but the respondent will not allow that.

In the spirit of reconciliation, a principal legal officer with the ICPC Ekoi O. Akponiminsingha Esq who was in court when the proceedings was going on sought the permission of court to allow him intervene into the matter for the purpose of reconciling the parties. The court granted his requested and adjourned the matter. Unfortunately, all his effort put to ensure reconciliation failed.

It is on record that the respondent reacted to the Notice of petition filed by the petitioner by filing on the 08/02/2021, an answer to the petition and a witness statement on oath for which she adopted on 29/09/22 as her testimony to the suit. The case of the respondent after narrating the unpleasant conduct of the petitioner towards her is that the court should dissolve the marriage as requested by the petitioner and grant her total custody of the children of the marriage. The respondent further requested that upon the dissolution of the marriage, the petitioner should provide for the maintenance of the children including their school fees, feeding and make provisions during festive period.

After this the parties filed final written address. The respondent in his final written address is in agreement to the dissolution of the marriage and submitted that court should give common effect to the common intention of the parties. However, the parties are in disagreement on who should have custody of the two children of the marriage. The respondent is praying for full custody of the said children on the ground that they have always shared motherly bond with the respondent. The respondent claimed that the petitioner is a stranger to the two children as they do not know him. They further alleged that since the petitioner left the matrimonial home after 2013, he does not care about the two children. The learned counsel to the respondent Agbo Francis restates the position of the law as to custody of children of marriage. Cited **Willians v. Willians (1987)2 NWLR 66**. In the instant case, the court is called upon in awarding

custody of the two children to consider the attitude of the petitioner who has never supported the children.

On allegation of adultery: respondent denied the said allegation and argued that assumed it is true adultery is not a reason why the respondent should not have the custody of the children. He referred the court to section 71(1) of the Matrimonial Causes Act.

The petitioner also filed a final written address; two issues are formulated and argued upon.

1. Whether from the totality of the evidence adduced before this Honourable Court and in the circumstance of this case, Petitioner has proved his case to entitle him to the reliefs sought.

2. Whether the respondent is entitle to the reliefs contained in the respondents Answer to the Petition.

The learned counsel representing the petitioner also drew the attention of the court to the fact that both parties are at ad idem as to the issue of the dissolution of the marriage, hence, the issue of dissolution of the marriage between the respondent and the petitioner is not in contention. It is also the submission of the petitioner that on the strength of the evidence before this Honourable Court, the Petitioner has proved the grounds of dissolution of his marriage with the respondent it will be safe for the court to dissolve the marriage.

The counsel also alleged in his final written address that the respondent has been in consistent habit of bringing men to the matrimonial home without explanation. He referred to it as adultery

and urged the court to hold that the allegation of adultery against the respondent is proved. Cited **Okaome v.Okaome & Anor (2018) LPELR-1460,**

On the issue of custody of the children of the marriage, the counsel reminded the court of the need to consider interest of the children as paramount in considering the issue of custody. Cited **Odusote v. Odusote (2011) LPELR-9056 (CA),** wherein the court of Appeal per Garba JCA held as follows: "Now both learned counsel for the parties are right when they stated that in custody proceedings, the interest of the children in question is the paramount consideration in the determinant of who among the parents should be granted custody".

Having carefully considered the pleadings of the parties, their evidence, arguments and submissions, I hereby adopt the two issues formulated by the petitioner and I shall address them together. The law guiding dissolution of marriage in Nigeria and grounds upon which a party can apply for dissolution of marriage are set out clearly in section 15 of the Matrimonial Cause Act. The said section 15 provides thus:

1. A petition under this Act by a party to a marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably.
2. 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:-

- a. That the respondent has willfully 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 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 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 of 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.
3. For the purpose of Subsection (2) (e) and (f) of this section, the parties to a marriage shall be treated as living apart unless they are living with each other in the same household.

The provision of section 15 of the MCA reproduced above which set out the grounds for dissolution of marriage is clear and unambiguous. The section does not require the petitioner to prove all the grounds listed therein. The proof of one or two of the ground is sufficient for the grant of dissolution of marriage. **See Ibrahim v. Ibrahim (2006) LPELR- 7670 (CA)**. In the instant case, the respondent is accused of adultery. By the provision of section 15(2) (b) of the Act, if adultery is proved, that is a ground for the court to dissolve the marriage. The law remains settled that he who assert must prove.

The Court of Appeal has this to say in the case of **Ugbotor v. Ugbotor (2006) LPELR-7612 (CA)**, “.....Adultery is defined to be a consensual sexual intercourse between two persons of opposite sexes at least one of whom is married to a person other than to one with whom the intercourse is had. It follows from this definition that to establish adultery first there must be sexual intercourse, secondly, the sexual intercourse must be voluntary and thirdly, at least one of the parties must be married. What is the way to prove adultery? The classical pronouncement on this is by Lord Buck-master when in ROSS VS.

ELLISON (or ROSS) (1930) A.C. 1 at page 7 he said: - "Adultery is essentially an act which can rarely be proved by direct evidence. It is a matter of inference and circumstance. It is easy to suggest conditions which can leave no doubt that the adultery has been committed, but the mere fact that people are thrown together in an environment which lends itself to the commission of the offence is not enough unless it can be shown by documents, e.g. letters or diaries or antecedent conduct that the association of the parties was so intimate and their mutual passion so clear that adultery might reasonably be assumed as the result of an opportunity for its occurrence....." In this case, the petitioner averred in paragraphs 9 and 10 of the Notice of Petition as follows:

9. The respondent have a lifestyle of bringing men into their matrimonial home, especially when the petitioner was out of town for official duties of the witness statement of oath.

10: That the petitioner once caught the respondent unaware when the respondent brought a man into their matrimonial home without the petitioner consent and when the petitioner sought to know why she turns it into huge fight. The petitioner followed it up in his Witness Statement on Oath as an evidence in paragraph 21 thus: That the worse of it happened on one faithful day when I was coming back from a trip and entered the house only to found a man in our matrimonial home and my attempt to find out from the respondent the man's mission in our house, she turned wild and engaged me to a fight. The counsel to the petitioner in his final written address using these facts as a base went wild in referring to the respondent as an

adulterous. Without further facts and circumstances that would make the court to circumstantially believe that the respondent is having sexual intercourse with the men or man the petitioner claimed he saw in respondent's house. It is not enough to see a man in a woman's house without stating the details as to the mode and circumstances they were seen together for the court to conclude that they are lovers. The petitioner in this circumstance to succeed in my view must go step further to explain whether he saw the respondent and the said man or men in a compromising manner to suggest to any reasonable man that they have something beyond mere familiarity. I am therefore not persuaded by the argument and submission of the learned counsel in this regard. My opinion would have been otherwise if the evidence is that the respondent was seen at a hotel or brothel with a man. In that light I hold that the petitioner failed to prove allegation of adultery against the respondent.

On the issue of the parties living aside, I am satisfied with the evidence before me that the petitioner and respondent have lived apart since 2014 preceding the presentation of this petition filed in 2020. By the provision of section 15(2)(f) of the Act, if parties to the marriage lived apart for a continuous period of at least three years immediately preceding the presentation of the petition, the court will hold such marriage to have broken down irretrievably and is a ground to dissolve the marriage.

In view of the aforesaid, I hold that the petitioner has successfully proved his case for the court to hold under section 15(2)(f) of the

MCA that the marriage between him and respondent has broken down irretrievably; and because the Act do not require the petitioner to establish all the ingredient in section 15(2) to hold that the marriage is broken down irretrievable for the court to dissolve same. In the light of that I resolved the issues in favour of the petitioner and I hereby dissolved the marriage between the petitioner and respondent contracted on the 25/02/2011 on the ground that the marriage has broken down irretrievably and a Decree Nisi is ordered. Following the dissolution of the marriage, the Marriage Certificate issued on the 25/02/2011 is hereby set aside and the parties are now free to go their own separate ways.

CUSTODY

After having granted dissolution of the marriage between the petitioner and respondent, the next important thing is the issue of the custody of the children of the marriage. The issue of custody of children of the marriage is provided for under section 71 of the MCA and section 69 of the Child's Right Act. In proceedings with respect to custody, the court in exercising its discretion shall have regard to the best interest of the children as the paramount consideration. This principle of law received judicial approval in many judicial pronouncements. See **Williams V. Williams (Supra)**. The petitioner is praying for joint custody of the two children of the marriage while the respondent is asking for the sole custody. The argument of the learned counsel to the respondent on why the respondent should be granted sole custody is that the children do not know the petitioner

as their father and that due to his temperament he is not in a position to see to the happiness of the children and that he had abandoned the children for years. In all this, the respondent did not deny the fact that the petitioner is the biological father of the two children notwithstanding being separated from them for a long time. The children of any marriage inclusive of this, desire the love of both parents. It will not be in the best interest of the children to deny them the love of their father. The children should not be allowed to suffer or be caught in the webs of the problems between their parents. I therefore refused to grant sole custody of the two children to the respondent. In the light, I hereby declared/ordered thus:

1. That the marriage between the petitioner and respondent conducted on the 25/02/2011 at the Marriage Registry AMAC has broken down irretrievably.
2. The Marriage is hereby dissolved.
3. I hereby award joint custody of the two children of the marriage to the both parents. The respondent shall have custody of the children all through save during school long vacations; where the petitioner shall have the children spend holidays with him. While the children are in the custody of the respondent, the petitioner shall on short notice to the respondent have unrestricted access to the children during the weekends. Conversely, when the children are with the petitioner during the long school vacation, the respondent shall have unrestricted access

of visit to the children on short notice to the petitioner. While the children remains in the custody of the respondent, the petitioner is ordered to pay for their school fees, medical bills and the general welfare and the maintenance of the children excluding accommodation. In addition, the petitioner is to pay the sum of N60, 000 (sixty thousand Naira) only monthly to the respondent for the feeding of the two children of the marriage.

I make no order as to the car because it is not one of the reliefs sought.

The Registrar should avail the parties with the judgment within 7 days.

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HON. JUSTICE A.I. AKOBI
17/10/2023

APPEARANCE:

Clifford Eze for the Petitioner
Francis Agbo for the Respondent