

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA-ABUJA
ON MONDAY THE 18TH DAY OF DECEMBER, 2023**

SUIT NO: FCT/HC/GWD/PET/05/2020

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

BETWEEN

SAMUEL DAMILOLA LANWO.....PETITIONER

AND

ABIGAIL OCHANYA AKOR LANWO.....RESPONDENT/

CROSS PETITIONER

JUDGMENT

The Petitioner whose address is beside Plot 563 Churchill Street, Gwgawalada District II Extension, Abuja, initiates this suit under the Matrimonial Causes Act for the dissolution of marriage between him and the Respondent whose address is at Plot 288, Durumi II, Abuja. The Petition is dated 28th May 2020 and filed the 2nd day of June 2020. Reliefs sought against the respondent are as follows:

- a. A Decree of dissolution of marriage between the petitioner and the Respondent on grounds:
 - i. That the marriage has broken down irretrievably

- ii. That since the marriage the Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.
- b. Custody of the only child of the marriage presently living with the respondent's parents.
- c. Such further or other order that this Honourable Court may deem fit to make in the circumstance.

In reaction and/or defence to the petition, the respondent/cross-petitioner filed a Further Answer to the Petition/Cross petition dated and filed the 16/02/2021, wherein she joined one Akatu Valentina as a co-respondent. Reliefs sought by the Cross Petitioner are:

1. A decree of dissolution of the marriage on the ground that the marriage has broken down irretrievably.
2. An Order granting custody of the child of the marriage, Gem Ikeoluwa Lanwo to the Cross-Petitioner and the Respondent given visiting rights.
3. An Order of the Honourable Court that the Respondent pays the sum N200, 000.00 (Two Hundred Thousand Naira) only monthly as his contribution to the upkeep of the only child of the marriage and also that the Respondent should be responsible for the school fees and medical bills of the child of the marriage.
4. Damages of N5, 000,000 against the Co-Respondent for committing adultery with the Petitioner.

In response to the Respondent's Further Answer to the petition, the Petitioner filed a reply on the 28/06/2021; consequently, in reaction to the reply filed by the petitioner, the respondent/cross petitioner filed an Amended Rejoinder dated 30/11/2022.

The hearing of the matter commenced on the 7th day of March, 2022 with the evidence of the Petitioner himself as the sole witness in the matter (hereinafter referred to as PW1) after having resolved all the interlocutory applications. The witness adopt his witness statement on oath filed on the 01/11/2021 and led evidence in support of his pleading. He tendered the following documents without objection in support of his case:-

- i. A letter on Jasper Foundation Academy headed paper addressed to Dr. Samuel Lanwo Damilola dated 3/12/200 admitted as **exhibit A**.
- ii. CTC of Marriage Certificate between Lanwo Samuel Damilola and Akor Abigail O.O **exhibit B**.
- iii. A cash receipt of Jasper Foundation Academy received from Gem Ikeoluwa the sum of N86, 500 dated 19/10/2020, **exhibit C**.
- iv. Flash Drive **exhibit D**.
- v. An Infinix Smartphone **exhibit E**.
- vi. A boxer and black top **exhibit F**.

- vii. Electronic generated document (sms conversation) attached with certificate of compliance admitted in bundle as **exhibit G**.

After two adjournments, the cross examination of PW1 eventually took place on the 19/09/2022.

During cross examination the following documents were tendered by the respondent and marked as follows:

- a. Picture of the petitioner and the child of the marriage **exhibit H**.
- b. An SMS of 14th March 2020 **exhibit H1**.
- c. SMS messages between the parties. One of 19/05/2020 and the other of 20/6/2020 are respectively marked **exhibits H2 & H3**.
- d. An SMS message between the parties, where the petitioner requested the respondent to get the child of the marriage ready for him to pick her the next day 15th January, attached with certificate of compliance **exhibit H4**

PW1 under cross examination testified that the respondent/cross petitioner left their house during the marriage for couple of times but left finally on 22/8/2019, a fact denied by the Cross Petitioner in paragraph 1(c) of the further answer to petition where she rather states that she and the petitioner cohabited until 24th May 2020. The

Petitioner admitted to that fact in his reply to the further answer in paragraph 2 where he states: "the respondent finally left the matrimonial home on the 27th day of May 2020." It is the case of the petitioner that the respondent/cross petitioner left the matrimonial home on her free will and that all efforts by him to explore reconciliation failed against the assertion of the respondent that she and the child of the marriage were thrown out of the house by the petitioner. Also, contrary to the assertion of the respondent/cross petitioner, the petitioner denied ever having romantic relationship with Akatu Valentina his co-worker nor any other co-worker at St. Mary Hospital Gwagwalada where he works. However, admitted having in his possession sometime Valentina ATM card. After the witness had concluded the cross examination, the petitioner closed their case.

Following the close of the petitioner's case, the respondent/cross petitioner moved his pending application which was without objection granted for leave to amend her rejoinder to the petitioner reply.

The Respondent/Cross Petitioner testified for herself after adopting her witness statement on oath dated 30/11/2022 as her evidence in support of her case and proceeded to tender the following documents:

- i. 2 School fees receipts from Lightway Academy dated 19/01/21, 11/3/21 and for admission form dated 18/01/2021 admitted in bundle as **exhibit DW1**
- ii. Lightway Academic Nursery Report **exhibit DW2**
- iii. Text message between the parties of coming to pick the child on the 15th January **exhibit DW2a**
- iv. Respondent on sick bed **exhibit DW2b**
- v. Whatsapp messages on different dates between the parties and a Flash drive are admitted after overruling the objection of the petitioner as **exhibits DW3 and DW3b and** certificate of compliance **DW3a** respectively.

The respondent/Cross-Petitioner concluded her evidence in chief and closed her case after extensive cross examination on the 02/05/23; thereafter, the parties filed and adopt their final written addresses.

Issues formulated by the Respondent/Cross Petitioner for determination are:

- a. Whether the Petitioner has proved that he is entitled to a Decree of Dissolution of the marriage between himself and the Respondent;
- b. Whether the Respondent/Cross Petitioner has proved that she is entitled to a Decree of Dissolution of the marriage between herself and the Petitioner/Respondent;

- c. Whether the Petitioner has proved that he is entitled to custody of the only child of the marriage;
- d. Whether the Respondent/Cross Petitioner has proved that she is entitled to custody of the only child of the marriage;
- e. Whether the Respondent Cross Petitioner has proved that she is entitled to damages of N5, 000,000 against the Co-Respondent for committing adultery with the Petitioner.

In arguing issue one, the cross petitioner referred and reproduced the provision of section 15(2) of the Matrimonial Causes Act as a guide for the court to consider the ground upon which marriage can be dissolved under the Act and cited in support the case of **Ibrahim v. Ibrahim (2006) LPELR-767028(CA)7-9**. It is the contention of the Cross Petitioner that the general expression from the petitioner in his pleading such as 'the respondent leaving the house on every little disagreement, left the house because she without the consent of the petitioner brought a man, irreconcilable difference, lack of love and affection, willfully and persistently refusal to continue cohabitation, contempt, disdain, negative attitude etc' cannot operate as sufficient grounds for the court to hold that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with her, hence, that the marriage has broken down irretrievable.

The Cross petitioner alleged inconsistencies in the petitioner's pleadings. She urged the court to expunge the witness statement on

oath of the petitioner on the ground that it was not sworn before the commissioner of oath rather that he signed it in the court room. Cited **Aliyu v. Bulaki (2019)LPELR -46513**. To quickly resolve that, I took a cursory look at the said witness statement on oath, I observed that, it is signed by a commissioner on oath, and I know as a fact that commissioners of oath are found in no other place but within the court premises. The application to expunge the witness statement on oath is hereby refused.

On the claim that the respondent left the matrimonial home at her free will; the cross petitioner considered that assertion as untrue by virtue of the **WhatsApp** conversation(Exhibit H3) dated 19/05/2020 between the petitioner and the respondent. He cited the statutory provision of section 125 of the Evidence Act which is to the effect that documents speak for themselves. The cross petitioner emphasized that the pleadings of the petitioner, the witness statement on oath and voice record admitted as DW3A debunks his evidence that he had no sexual relationship with Valentina Akatu.

On careful consideration of issue one which is: **Whether the Petitioner has proved that he is entitled to a Decree of dissolution of the Marriage**. Dissolution of Marriage is not granted for the sake of asking even when the both parties desire it. The law guiding dissolution of marriage in Nigeria and grounds upon which a party can apply for dissolution of marriage are clearly set out 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 (Supra)**. In the instance case, the petitioner based his application for dissolution of the marriage on the following grounds:

- a. That the marriage has broken down irretrievably
- b. That since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

For the court to hold that the marriage has broken down irretrievably to be a ground for the dissolution of the marriage, the Act itself set out under section 15(2) what the court should look at for as follows: 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.

Grounds upon which the petitioner instituted this action is listed out in the petition under facts as follows:

- a. The irreconcilable difference have caused the irretrievably breakdown of the marriage between the petitioner and the respondent, efforts to further reconciliation have failed and future attempt is impracticable and not in the interest of the petitioner.
- b. The Respondent show lack of love and affection to the Petitioner; it has never been a concern to the respondent if the petitioner is in good state of health to the extent that living with the respondent becomes disconsolate making the house uncomfortable and un-conducive.

- c. The Respondent willfully and persistently refused to continue cohabitation with the petitioner.
- d. The Respondent exhibit absolute contempt and disdain towards the petitioner frequently subjecting him to barrage of threat and insult.
- e. All positive methods of persuasion employed by the Petitioner and members of his family aimed at encouraging the respondent to reconcile with the petitioner proved abortive.
- f. Since the marriage the Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the Respondent.
- g. The respondent has deserted the petitioner for more than a year without any reason.
- h. The respondent have negative attitude to the marriage.
- i. Both parties have found it difficult to live in peace with each other.
- j. The petitioner brings this petition for a Decree of Dissolution of marriage because of the utterly detestable conduct of the Respondent toward him and the petitioner finds it intolerable to live with the respondent.
- k. Since the marriage, the petitioner and the respondent quarrels over minor issues; the attitude of the respondent suggest infidelity to the mind of the petitioner; it is clear that the parties had irreconcilable issues.

- I. Since the marriage, the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

The respondent in answer to the petition denied all the facts relied upon by the petitioner, for example, she explained that the men that came to their house are their family pastor, the respondent's foster brother (pastor Ojo) with the respondent's father and that she informed the petitioner prior to their coming when she was informed of the visit. The respondent also contrary to the allegation of not loving the petitioner stated in her answer that she neither insults nor disrespect the petitioner, instead that she loves the petitioner despite physical abuses on her. She equally denied the allegation of her stopping conjugal relations with the petitioner, instead, that it is the petitioner that refers to her as disgusting and always comparing her with his mistresses; considering them better than her. In denial to fact (c) reproduced above, the respondent claimed that it was the petitioner that forced her out of their matrimonial home and that she finally left in May 2020 after the petitioner beat her up and pushed her out of the house.

The petitioner in reply to the further answer stated that the respondent after back and forth finally left the matrimonial home on the 27th day of May 2020 following attempt to stab him with a kitchen knife.

After careful examination of the facts upon which the petitioner relied upon, his evidence in support including all the exhibits tendered by him vis-à-vis the provision of section 15(2) of the Matrimonial Causes Act, I have come to the conclusion that most of the complaint against the respondent though denied are basically what I considered as family squabble that are bound to happen in most marriages. For instance, that the respondent is disrespectful, not loving, abusive, insulting, not caring and so forth, unfortunately, are not grounds recognized by the MCA for dissolution of marriage.

However, aside the squabble, the petitioner alleged desertion in paragraph 1(c) under facts. Desertion of matrimonial home is a ground under section 15(2)(d) for the court to hold that the marriage has broken down irretrievably and a good reason for the court to dissolve the marriage. For the court to draw a conclusion that there was desertion, it is not out of place to know what constitute desertion. The Court of Appeal in the case of **Ogunjobi V. Ogunjobi (2021) LPELR-52894 (CA)**, has this to say about desertion: desertion is the withdrawal of support and cessation from cohabitation without the consent of the other spouse and with the intention of abandoning allegiance, fidelity or responsibility and to remain separated forever.

The petitioner stated in paragraph 15 of the reply to the further answer that cohabitation ceased between them from 2019 when the respondent left their home and even when she returns in

March/April there was still no cohabitation. The cross petitioner admitted that fact when she stated in paragraph 20 of the amended rejoinder that the petitioner was in a sexual relationship with the one Valentina Akatu, a nurse at Saint Mary Catholic Hospital, Gwagwalada, Abuja; the reason he stopped having conjugal relations with her.

To constitute desertion therefore, the petitioner must plead and lead credible evidence to prove the following facts: (a) defacto or physical separation; (b) the manifest intention to remain permanently separated; (c) lack of just cause for withdrawal from cohabitation; and (d) absence of consent of the deserted spouse. A defacto or physical separation of the spouses does not necessarily mean living apart from each other. In law, there are two types of desertion to wit: simple desertion and constructive desertion. Simple desertion occurs where the deserting party abandons the matrimonial home while in constructive desertion, the spouse remains in the home but has abdicated all matrimonial responsibility and has thus by his conduct expelled the other spouse. In that respect, desertion remains a matter of fact and law to be determined by the Court hearing the matter. See **Mrs. Helen Nwosu v. Hon. Dr. Chima Nwosu (2011) LPELR - 465 (CA)**; **Mrs. Helen Anioke v. Mr. Ben Anioke (2011) LPELR - 3774 (CA)**. From the facts presented before me, I believed that the respondent left the house because of the squabble between her and the petitioner; that explains why she came back on the request of the petitioner. I am therefore of the

view that there was no intention from the respondent to permanently remain separated from the petitioner. Even though the petitioner denied that he never sent away the respondent, but I think it is the persistent problems between them that caused the respondent to leave the house. Exhibit H3 a WhatSapps conversation of 19 May 2020 points to that fact. To that extent the petitioner cannot deny that the desertion if any was without his consent and he cannot feign that the coming to an end of cohabitation was without cause. Finally, to constitute desertion the petitioner must prove that the desertion was for a continuous period of at least one year immediately preceding the presentation of the suit. This was not proved. By simple Arithmetic from August 2019 when cohabitation ceased to when the suit was filed is less than one year. The petitioner simply alleged desertion in his pleadings without supporting same with cogent evidence.

In view of the aforesaid, I hold that the allegation of desertion against the respondent is not proved. The petitioner also failed to establish by evidence that parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition or any other period for the court to grant dissolution of marriage in favour of the petitioner. See section 15(2) (e)(f). There is also no evidence of persistent refusal to consummate the marriage on the part of the respondent. What is obvious is that there is a child of the marriage which would not have been possible without consummation.

The petitioner's other allegation against the respondent is that she brought a man to their Matrimonial home without the consent of the petitioner. Adultery as a matrimonial wrong must be specifically pleaded and clearly proved. See **OBAJIMI V. OBAJIMI (2011) LPELR-4665; UZOCHUKWU V. UZOCHUKWU (2014) LPELR-24139**. In the instant case, adultery was not clearly pleaded and no evidence is led to prove same. What is pleaded in paragraph 1(k) under fact is thus: 'since the marriage, the petitioner and the respondent quarrels over minor issues, the attitude of the respondent suggest infidelity to the mind of the petitioner; it is clear that the parties had irreconcilable issues'. It is apparent from the pleadings particularly paragraph 1(k) reproduced above and the evidence led by the Petitioner, that the allegation of presumed infidelity against the respondent was based on suspicion and speculation.

The petitioner from the circumstances of this case based his ground of dissolution on section 15(2)(c) which is that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to continue to live with her. He set out such behavior inter alia as follows: **“respondent leaving the house on every little disagreement, left the house because she without the consent of the petitioner brought a man, irreconcilable difference, lack of love and affection, willfully and persistently refusal to continue cohabitation, contempt, disdain, negative attitude, disrespect, assault”** etc.

The issue of refusal to continue cohabitation which is a ground for dissolution of marriage under desertion has been fully dealt with above.

Section 15 (2) (C) of the Matrimonial Causes Act upon which the petitioner predicated his facts for the dissolution of marriage provide thus: "that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent." The Petitioner who relies on the ground that the Respondent since the marriage has behaved in a way that he cannot reasonably be expected to live with her must establish by cogent evidence that it would be unreasonable to require him to live with the Respondent. The Court of Appeal in the case of **Obahaya v. Obahaya (2022) LPELR-57141 (CA)**, held that "...the test of whether the relied behaviours suffice as intolerable behaviours as contemplated by the Matrimonial Causes Act is objective and not subjective. This is because there could be the likelihood that what the Petitioner terms "intolerable" may not pass this objective test. Let me state immediately that the legal draftsmen for the avoidance of doubt and ambiguity went further to exhaustively list the behaviours that qualify as intolerable behaviours. See SECTION 16 (1) (A)-(G) OF THE MATRIMONIAL CAUSES ACT. It is pertinent to note that the active word in Section 16(1) of the Matrimonial Causes Act is "shall" and "shall" implies compulsion and hence robs the Court of its discretionary powers. Therefore, unless and until any of the conditions outlined in Section 16 (1) (a)-(g) exist with credible

evidence, the Court shall refuse to make an order of dissolution of marriage."

The duty is on the court aside the clearly listed behavior in section 16 of the Act to consider whether the alleged behavior is one in which a right thinking person would come to the conclusion that the Respondent has behaved in such way that the Petitioner could not reasonably be expected to live with him/her taking into account the whole of the circumstances, the characters and personalities of the parties.

Assuming without conceding that the conduct of the petitioner against the respondent or that of the respondent against the petitioner in the instance case should be seriously looked at as unreasonable behavior, the party alleging such conduct must prove same to the satisfaction of the court. The petitioner testified in paragraph 14 of his witness statement of oath how the respondent attempted to stab him with kitchen knife in the process tore his clothes which he tendered in evidence. That assertion was however denied by the respondent in her rejoinder. An attempt to kill or stab as alleged in the instant case is not expressly provided for but in my opinion it should be one of the conduct that should be considered under section 15(2)(c); if sufficiently proved as a ground for dissolution of marriage. Assuming the court decides to act on that piece of evidence or believed the petitioner that the respondent attempted to stab him. Such allegation is considered in law to be a

crime which must be proved beyond reasonable doubt. See **Emmanuel v. State (2015) LPELR-41676 (CA)**. The petitioner simply made such bogus allegation without any proved. I am therefore not persuaded by the petitioner's assertion that the respondent attempted to stab him.

I had earlier on in this judgment listed some of the conduct or facts the petitioner is relying on against the respondent. Without fear of been accused of repetition I restate them here for ease of reference: **“respondent leaving the house on every little disagreement, left the house because she without the consent of the petitioner brought a man, irreconcilable difference, lack of love and affection, willfully and persistently refusal to continue cohabitation, contempt, disdain, negative attitude, disrespect, assault” etc.**

My experience in bench considering the volume of divorce cases that comes before the court on daily basis; I fear that marriage an institution ordained by God (**see Genesis chapter 2 verse 23**) is fast losing its worth. Couples are no longer patient with each other. In every slightest provocation they head to court for divorce without giving it a second thought and without even considering the negative effect it may have on the children of the marriage. It is apt at this point to state that marriage is not a bed of roses; it has its ups and down. Couples are bound to have misunderstanding from time to time; it is therefore my opinion that it is not every conduct or misunderstanding leading to quarrel or even fighting between

couples that should be regarded or considered as behavior which parties cannot reasonably be expected to live together; except when such conduct or behavior is such that no reasonable man can endure it. I therefore hold that those facts relied upon by the petitioner as being unreasonable behaviour cannot fit in under section 15(2)(c) of the MCA. Hence, the petitioner has failed to prove that his marriage with the respondent contracted under the Act has broken down irretrievably for the court to dissolve same.

The Respondent also took a cross petition against the petitioner seeking inter alia for the dissolution of the marriage; alleging that the marriage has broken down irretrievably. The cross petitioner relied on facts such as (i) she was never treated as a wife (ii) always being battered by the petitioner/respondent (iii) cruelty (iv) lack of provision for cross petitioner and the child of the marriage. (v) Denial of conjugal right (vi) Petitioner/respondent do sleep with women in hotel and return with semen stained in his boxer. (vi) that soon after she was thrown out of the house in September 2019, she went back to plead only to see that the petitioner/respondent had moved in the co-respondent; and she was on their matrimonial bed with her underwear.

The Respondent/Cross Petitioner in order to succeed in her claim that the marriage between her and the Petitioner/Respondent has broken down irretrievably, she must prove one or more of the conditions provided under section 15(2) of the MCA. In attempt to do so, she alleged that the Petitioner/Respondent committed

adultery with one Akatu Valentina, who as a condition precedent under section 32 of the MCA joined her as Co-Respondent. She further claimed how the petitioner/respondent do sleep with women in hotel and return with semen stained in his boxer. It is not enough to assert facts without the prove of same especially when such assertion is denied by the adverse party as in this case. The Cross – Petitioner even claimed how the co-respondent was laying on their matrimonial bed with under wear. If the cross petitioner had tendered photograph exhibiting that fact, it would have help her case. The cross petitioner failed to discharge the burden of proved placed on her by law, hence the allegation of adultery against the petitioner/respondent failed. The second facts relied upon by the cross/petitioner is that she was never treated as a wife. I do not intend to waste any time on this because is not a ground for dissolution of marriage and it cannot in my view be seen as falling under section 15 (2)(c) of the MCA.

The Cross petitioner also alleged cruelty. The facts are capsulated in her pleadings as follows:

K: making matters worse, the Respondent woke the Cross-Petitioner up around midnight on the 24th day of May 2019 and told her he didn't want to see her in the house by the time he got back from work. The Cross-Petitioner refused to leave the matrimonial home and the Respondent held her neck with his belt till neighbours came to her rescue at her screams of anguish.

I: The Respondent went ahead to lock the cross-petitioner and her child, an infant of less than two years out of their matrimonial home and left for work with the keys. The cross-petitioner only tolerated the respondent's behavior because of their child and she was trying her best to save the marriage. She also prayed for him constantly because she was convinced that he was possessed.

The cross petitioner also alleged in her rejoinder how the petitioner resorted to physical violence against her which resulted to a spike in her blood pressure from the attack. A photograph showing the cross-petitioner on sick bed at the hospital was tendered and admitted as exhibit.

The Court of Appeal has this to say in the case of **Bibilari v Bibilari (2011) LPELR – 4443(CA)**: “Cruelty is not one of the grounds set out under S. 15 (2) of the Matrimonial Causes Act for divorce; it remains however, one of the old grounds for divorce. A Court can hold that a marriage has broken down irretrievably on the ground that one spouse has been proved to be guilty of cruelty to the other. *Damulak v. Damulak* (2004) 8 NWLR Pt 874 C.A 151. What then constitutes cruelty? In considering what constitutes cruelty, the Court should consider the entire evidence adduced even where there is no specific evidence of violence adduced.”

Though, the provision of section 15(2) did not clearly mentioned cruelty as a condition for dissolution of marriage, many judicial pronouncement brought cruelty under section 15(2)(c) of the Act. See **Ugbotor v. Ugbotor (2006) LPELR-7612 (CA)**; wherein the Court of

Appeal heard thus: "A marriage could be said to have broken down irretrievably if it can be established that one spouse had been guilty of cruelty towards the other. No reasonable spouse will be expected to share a state of affairs with other spouse who has been very cruel to her. Section 15(2) (c) of the Matrimonial Causes Act, which deals with this point, provides:- "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 satisfied the Court of one or more of the following facts (a) (b) (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...."

Having looked at the facts in the pleadings and in considering the entire evidence adduced by the Cross-Petitioner even though, denied by the Petitioner/Respondent, I am inclined to believe the Cross-Petitioner that she suffered domestic violence constituting cruelty in the hands of the Petitioner/Respondents a ground for the dissolution of this marriage. I therefore resolved this issue in favour of the Cross-Petitioner and held that the marriage between her and the Petitioner/Respondent contracted under the Act at the Marriage Registry Gwagwalada FCT has broken down irretrievably.

In the light of the above, a decree of dissolution of marriage between the cross-petitioner **(ABIGAIL OCHANYA AKOR LANWO)** and the cross-respondent **(SAMUEL DAMILOLA LANWO)** is hereby granted in respect of the marriage celebrated at Gwagwalada

Marriage Registry, Abuja FCT on the 21st day of April, 2018 on ground that the marriage has broken down irretrievably. Accordingly, a decree nisi in line with section 56 of the Matrimonial Causes Act is hereby issued and will become absolute after three months.

The Cross/Petitioner having failed to prove allegation of adultery against the Co-Respondent, relief for damages against the co-respondent is refused.

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HON JUSTICE A. I. AKOBI
18/12/2023

Judgment for custody is reserved for the parties to address the court on what I considered important to enable me take decision who should be given custody.

ISSUE TWO: Whether the Petitioner has proved that he is entitled to custody of the only child of the marriage.

The marriage between the parties was blessed with a girl child – **Gem Ikeoluwa Lanwo**. After having granted dissolution of the marriage between the parties; the next important thing is the issue of the custody of the only child of the marriage. Both parties are seeking for the custody of the child. The issue of custody of children of 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 (1989)2 NWLR 66 at 68**. In the instant case the petitioner pleaded in her petition that if the custody of the child is given him he will ensure she acquires the best of education and training as he has proper arrangement in place for the child. He also asserted that he has been providing for the child even during the time he and the respondent lived apart and claimed that the respondent left the child of the marriage with her parent.