

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA –ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

**COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 24
CASE NUMBER: SUIT NO. FCT/HC/PET/360/2019
DATE: 22/1/2024**

BETWEEN:

MRS. STELLA IFEOMA EMODI.....PETITIONER

AND

MR. ANTHONY IFEATU EMODI.....RESPONDENT

JUDGMENT

APPEARANCES:

Petitioner is in Court.
Sylviana Stephen Esq for the Petitioner.
Chief Chukwudi Igwe Esq for the Respondent.

The Petitioner filed this Petition on the 6th September, 2019 seeking the following Orders:

- “(a). Decree of Dissolution of marriage.***
- (b). Custody of the children of the marriage.***
- (c). The maintenance of the children of the marriage.”***

The Petition is supported by a Verifying Affidavit of 4 paragraphs deposed by the Petitioner herself on 6th September, 2019.

Upon being served with the Notice of Petition, the Respondent filed a response to the Petition on 6th January, 2020, equally supported by a Verifying Affidavit deposed by the Respondent himself.

Meanwhile, in response to same, the Petitioner filed a reply on 10th February, 2020.

The matter being a transfer case to this Court, commenced De-novo on 20th October, 2020.

The Petitioner, during trial gave evidence on 18th February, 2021, and tendered several Exhibits which were admitted in evidence and marked Exhibits A, B, C, D and D1 respectively.

The Petitioner was cross examined on 28th September, 2021 as well as on 3rd November, 2021.

During the cross examination of Pw1, learned Respondent's Counsel tendered exhibits from the bar which were admitted in evidence and marked Exhibits E, E1, E2, E3, E4, E5 and E6 respectively.

On his part, the Respondent testified as Dw1 on 27th October, 2022 as well as on 26th May, 2023. The Respondent was duly cross examined same day.

Final Written Addresses were adopted on 2nd November, 2023.

Petitioner in her evidence in Court as Pw1, testified that she is a Consultant and that she got married to the Respondent on the 8th day of August, 2009 at Saint Mary's Catholic Church, Oka Road, Inland Town, Anambra State.

The marriage certificates were tendered in evidence. She equally informed the Court that the marriage produced three children, boys who have been staying with the Petitioner for the past five years.

On the issue of dissolution of the marriage, the Petitioner informed the Court that while living with the Respondent she never had an affair with anybody. She equally testified that she and the Respondent at that time,

had lived apart for four years before filing this Petition and that the marriage has broken down irretrievably .

Petitioner further testified that the Respondent is abusive and violent towards her.

That, he beat her up to the point of inflicting injuries on her. That on several occasions, he tried to strangle her but for the intervention of their neighbor.

According to the Petitioner, the Respondent has made several attempts to kidnap her by inviting men into the house to beat her up, but she was fortunate to have escaped.

Petitioner testified also, that the Respondent brought three men in army uniform to their house and when they came in and saw her children, they said they will not be party to this violence and refunded the Respondent's money in her presence.

That on 5th January, 2016 at about 1:00pm, while the Petitioner was feeding her children lunch, the Respondent walked in to their house with four hefty men, including him, that they tied her hands and legs, and flogged her with DSTV cable wires.

That, as they were trying to put her in the car, the Petitioner said, the Respondent instructed them to rape her and take her to an unknown place where nobody will ever find her. The Petitioner said, she screamed and shouted. That as they opened the gate to take her out, a passerby saw her and alerted the Police, who arrested the men. The Petitioner tendered exhibits in that regard including Police extract and photographs. They were tendered in evidence without any objection.

Among the photographs is a photograph of the Petitioner and that of the five men, including the Respondent.

The Petitioner testified further that the Respondent often keeps late nights and would sometimes come home drunk. That on weekends, he doesn't even come home at all.

That when the Petitioner questions his whereabouts, he beats her up, that at one time to the point she almost lost her pregnancy.

That due to the Respondent's wayward lifestyle, he lost his job due to sexual harassment. The Petitioner equally testified that she has evidence to prove that.

The Petitioner asked the Court to dissolve the marriage.

Under cross-examination, the witness was unshaken with regards to the allegation against the Respondent of violence and abuse he meted out to the Petitioner. She equally re-eiterated her story on what transpired between her, the Respondent and the men in the photographs i.e Exhibits D and D1.

According to the Petitioner, the photographs were taken by a professional photographer attached to the Police, and that the photographs were taken at New Haven Police Station Enugu.

Pw1 equally denied the assertion that she engaged in adultery or that she caused the death of one Late Edward Nnaji while she was drunk and driving.

Still under cross examination the following ensued:-

Q: Will I be right to say that your husband has been a protecting husband to you and the kids?

A: He wasn't. He has never been there. He came home as he wishes.

Q: I put it to you that you're telling lies to the Court?

A: I have not told this Court a single lie. It is the Respondent that is telling the Court lies.

Meanwhile, the Respondent testified as Dw1 during trial.

In his evidence-in-chief, the Respondent informed the Court that he resides in Onitsha Anambra State and currently works with the State Government.

He equally affirmed that he got married to the Petitioner in 2009. He testified that when he got married to the Petitioner he was working in the Banking Sector, but was laid off. He further informed the Court that he doesn't want to be married to the Petitioner. He alleges that the Petitioner has been very insulting to him, extremely violent, abusive, and wayward. He states, that because of this it is not in his best interest as well as hers for them to be together as the essence of marriage has been defeated. He equally states that the marriage is no longer considered healthy as it is now acrimonious.

He testified that the Petitioner had attacked him not once but twice on several occasions.

That she inflicted a wound on his hand with a mirror and attempted to stab him with a kitchen knife.

That the Petitioner burnt his clothes, tore his shirt on several occasions and equally assaulted his mother.

He tendered a certified true copy of Court processes under objection by Petitioner's Counsel but the Court admitted them in evidence and marked them as Exhibits F and F1.

According to the Respondent, the Petitioner equally destroyed his official laptop while he was working in Diamond Bank in Lagos.

He equally alleged that when he came to Court prior to that time and the Court did not sit, the Petitioner struck him in the presence of her Counsel, thus further attesting her violent nature.

He equally alleges that the Petitioner killed a man in Enugu with her vehicle and did not show remorse at all, neither did she pay a condolence visit to widow of the deceased.

That on the contrary, he was the one who paid the condolence visit along with all the staff of Diamond Bank to the widow, she bore the expenses of the burial.

He testified that Petitioner even attacked him during a meeting with FIDA officials, in the presence of some Judges and Magistrates. He said they

were surprised at the Petitioner's behavior and even wondered how she was treating him at home.

The Respondent equally tendered the FIDA Enugu Branch invitation letter as well as FIDA report, they were admitted in evidence and marked Exhibits F2 and F3 respectively.

The Respondent accused the Petitioner of keeping male friends, talking with them on the phone at night in his presence, and that she equally goes out to visit them.

He testified that he tracked her vehicle which she used to visit the Golden Royal Hotel, according to the Respondent to go on her escapades. And that the incident was reported to the Police.

According to the Respondent, the Petitioner did not deny this.

He further alleged that on one occasion, he searched her bag and found a condom there.

That in 2015, Petitioner travelled to Sweden and left him with the kids and he was not even aware of the trip. He said, the Petitioner simply disappeared and he only got know her whereabouts when she called him from Sweden, when she'd left without his permission. He further alleged that the Petitioner had spent that Christmas in Sweden with her lover. That when she returned in 1st week of January 2016, the Respondent said he felt he had already had enough of her waywardness and her unbecoming attitude.

Under cross examination, the Respondent admitted that he and the Petitioner have lived apart then for about six years or less.

Still the following ensued:-

Q: Will I be correct to say that you got injured in the course of your attempt to give a blow to your wife and she dodged, you hit your hand on a mirror and got injured?

A: It is not correct. She was trying to injure me with a mirror and I dodged.

Q: You are taller and more muscular than the Petitioner. I put it to you that it was you that was violently attacking the petitioner?

A: I am a gentleman to the core. My gentility is not in doubt. I almost became a priest but I missed it by the whiskers. So, you are wrong.

Q: Then why did she start seeking refuge in FIDA office for protection?

A: She was trying to whip up gender sentiment.

Q: If she enjoyed violently attacking and bullying you, why did she run away from you for six years and refuse to disclose her location. Is it not that she did not want to die and ran away?

A: All these escalated because I lost my job and she had an agenda.

Q: You told the Court that you tracked your wife in your car to a Hotel. Is there any track log before this Court?

A: I never mentioned a track log. I said she did not deny it.

Q: You said it is readily available, is it?

A: No.

In the final Written Address of the Petitioner, while submitting on the 1st issue formulated, learned Petitioner's Counsel argued that in this case, the Petitioner is entitled to a decree of dissolution of the marriage having satisfied the grounds of intolerable behavior and living part under Section 15(2)(c) as well as Section 15(2)(e) of the Matrimonial Causes Act Cap M7 LFN, 2004.

Counsel relied on the authorities cited on record including **NANNA V NANNA (2006) NWLR (Pt.966); IBRAHIM V IBRAHIM (2013) 3 SMC, 129.**

I have observed that in the Respondent's final Written Address, issues were not joined by the Respondent on dissolution of the marriage. The

reason is that the Respondent is not challenging the dissolution of the marriage.

Now, under and by virtue of Section 15(1)(2) of the Matrimonial Causes Act (supra), a Court hearing Petition for dissolution of a marriage shall hold the marriage to have broken down irretrievably, if, and only if the Petitioner satisfies the Court of at least one of the grounds enumerated under Section 15(2) a – h, thereof.

In the case of **IKE V IKE & ANOR (2018) LPELR-44782 (CA) per EKPE, J. C. A at pages 10-16, paragraphs C-A** where the Court held as follows:-

“For a Petition for the Dissolution of marriage to succeed, the Petitioner has to prove at least one of the ingredients contained in Section 15 (2) of the Matrimonial Causes Act, even if the divorce is desired by both parties”.

See also: **AKINBUWA V AKINBUWA (1998) 7 NWLR (Pt.559); IBRAHIM V IBRAHIM (2007) 1 NWLR (Pt.1015) 386; BIBILARI V BIBILARI (supra)**, the Court *per Galinje JSC held at PP: 33-34, Paras C – A* thus:-

“In a Petition for dissolution of marriage, the Petitioner must plead and prove that the marriage has broken down irretrievably.

In doing this, the Petitioner must be able to bring himself within one or more facts enumerated in Section 15(2) a – h of the Matrimonial Causes Act Cap 220 LFN, 1990 before he can succeed in the petition.”

In the instant case, both the Petitioner and the Respondent have alleged violence by the other party.

The Petitioner in addition to her testimony has tendered Exhibits D and D1 to prove her allegation that the Respondent had engaged some men and even participated in her abuse before she was rescued. She painted a harrowing picture of what transpired between herself, the other men and her husband the Respondent. As stated earlier, the exhibits were tendered without any objection. As a consequence, they are deemed admitted.

What the Petitioner recounted to the Court is only the stuff of nightmares. Marriage is for parties to live in bliss, love and harmony.

It is not for cruelty, violence torture and inhumane behavior. What the Respondent did to the Petitioner his own legally wedded wife, no matter her sin as alleged by the Respondent, is simply unimaginable, monstrous and barbaric.

This is against the Petitioner's Fundamental Human Rights. That is Right to Life and Right to Dignity of the human person guaranteed and protected under Sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria.

His defence that it was the Petitioner that was violent to him is simply laughable.

Indeed, learned Petitioner's Counsel had put the question to the Respondent as to why would the Petitioner be running away from him and hiding for six years if he was not violent to her.

Exhibit C is the Extract from Crime Diary which proves the occurrence of the incident of alleged conspiracy and kidnapping. It is dated 28th May, 2019.

Exhibit D series i.e the photographs show the Petitioner's legs tied with a long Black cable, and the Petitioner teary eyed and looking extremely distressed to say the least. The other photograph further shows four men with Petitioner's husband smiling in the photograph. It is very chilling. All these Further prove the accounts of the Petitioner, that the Respondent was indeed violent to her.

In the cases of ***ODUSOTE V ODUSOTE (2012) 3 NWLR (Pt.1288) 478; ODOGWU V ODOGWU (SUPRA); ALABI V ALABI (2007) 9 NWLR (Pt.1039) 297; NANNA V NANNA (supra).***

I am not mindful of Exhibits F, F1, F2 and F3 tendered by the Respondent. They further prove that the parties have a turbulent marriage fraught with violence. It is not worth staying married if both feel that their lives are in danger.

Indeed, apart from the allegation by the Petitioner and sufficiently prove, having fled from the matrimonial home, it has been sufficiently proved that the Petitioner and the Respondent have lived apart for about six years. Petitioner left the matrimonial home in 2016.

While this Petition was filed on 6th September, 2019.

Section 15(2)(e) of the Matrimonial Causes Act (supra) provides:-

“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.”

Therefore, from the foregoing, I am satisfied that the Petitioner has been able to prove two grounds i.e. under Section 15(2)(c) and (e) of the Matrimonial Causes Act, and I am therefore satisfied that the marriage herein has broken down irretrievably. I so hold.

On the issue of custody, and maintenance, the Petitioner is asking the Court to award her sole custody of the children of the marriage as well as an order for maintenance. She states in her evidence –in-chief that since she left the Respondent and not until the Petition was instituted, she was solely taking care of the children financially and otherwise. That, she alone paid their school fees for all those years. She states however that from the time of instituting this action, the Respondent had contributed up to N750, 000.00. She equally states that the children’s school fees per annum is N1.1Million.

In the Petitioner’s final Written Address, relying on several authorities cited on record, including Section 71(1) of the Matrimonial Causes Act’ ***ODOGWU V ODOGWU (2006) 5 NWLR (Pt.972); WILLIAMS V WILLIAMS (1987) 2 NWLR (Pt.54-66) per Karibi-Whyte JSC***, learned Petitioner’s Counsel submitted that the Petitioner has always provided for the clothing, feeding, health care and school fees singlehandedly without any support from the Respondent. That unfortunately, the Respondent did not make any attempt to reach out to the children of the marriage for six years until the seventh year when he was served with Court process for dissolution. That this fact was also admitted by the Respondent when he

was cross examined. That this clearly portrays a reckless and flagrant disregard of the Respondent towards the children of the marriage.

Counsel submitted that on the contrary, the Petitioner in addition to taking care of the welfare of the children, has over this long time, made the children to develop a strong attachment to the Petitioner. Thus, separating them from her will have an effect on the children.

Moreso, Counsel argued that the Respondent in paragraph 17 of his response to the Petition, stated that he does not have a job and during cross examination, when he said he is currently not under any full employment as it is an on and off kind of work that he is doing.

According to Counsel, the Petitioner is gainfully employed working as a Consultant with the Nigeria National Petroleum Corporation Ltd. Reliance was placed on Exhibit E series.

Besides, learned Counsel had argued that the Petitioner possesses a very good moral behavior as opposed to the Respondent, as reflected in the character of the children who have been in her custody till date. And urged the Court to grant custody to the Petitioner.

On the maintenance, learned Counsel relied on Section 70(1) of the Matrimonial Causes Act, **AMAH V AMAH (2018) 4 SMC 267; HAYES V HAYES (2000) 3 NWLR (Pt.648) 276 @ 293**; in urging the Court to grant the relief sought by the Petitioner even though the sum of N150, 000.00 per month for maintenance is inadequate according to Counsel, given the economic reality in the country.

On issue of access, the learned Counsel submitted that the Petitioner is not opposed to access of the children of the marriage being granted to the Respondent, subject to the discretion of the Court.

Meanwhile, in the Respondent's final Written Address. Learned Respondent's Counsel argued that the Petitioner did not lead any evidence credible enough to warrant this Honourable Court to grant her custody of the children of the marriage.

Counsel contends that the Respondent has proved to the Court that the Petitioner lacks the adequate moral conduct to take care of the male

children of the marriage. Counsel relied on ***ODUSOTE V ODUSOTE (2012) 3 NWLR (Pt.1288) 478; ODOGWU V ODOGWU (SUPRA); ALABI V ALABI (2007) 9 NWLR (Pt.1039) 297; NANNA V NANNA (supra).***

Submitted moreso that the Respondent testified that the Petitioner is not always around to look after the children of the marriage and she failed to controvert this piece of evidence, hence, it is deemed admitted.

Reliance was placed on ***AKINBUWA V AKINBUWA (1998) 7 NWLR (Pt.5590) 661,*** and other authorities cited on record.

Besides, learned Counsel argued that the children all being male, would be better taken care of by their father since they are transiting to the adulthood, hence they need his presence to teach them among other things, the tradition and the way of life of their community.

Counsel relied on ***OTTI V OTTI (1992) 7 NWLR (Pt.252) 187*** and other cases cited on record in support of his submissions on this issue.

Thus, learned Counsel argued that in the Nigeria context, young boys of the age of the children in this case are reasonably expected to stay close to their father for their socio-economic, cultural, moral and educational welfare. Therefore, they will be more properly trained by the Respondent. The Court is urged to so hold.

Learned Counsel, submitted that the Respondent is gainfully employed at the moment and that he should be able to cater for the said children to the best of his ability.

That it is in evidence that one of the children of the marriage has some health challenges which the Petitioner cannot adequately manage at this stage of the child's life.

That, in their overall best interest, custody should be awarded to the Respondent. Counsel urged the Court to so hold and to grant same.

I have carefully considered the evidence led and submissions of Counsel on both sides of this Petition, and the rich pool of cited authorities.

On the issue of custody and maintenance of children of the marriage the Courts are generally guided by the provisions of Section 71(1) and 70(1) of the Matrimonial Causes Act (supra), which are as follows:-

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

70(1). Subject to this section, the Court may, in proceedings 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 disposition of proceedings, make such order as it thinks proper, having regards to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.”

In this case, it is not in dispute that the children of the marriage have lived with the Petitioner since she left the matrimonial home in 2016 till date. It is equally not in dispute that for at least six years she has singlehandedly provided for their general welfare and upkeep including their education for all those years.

Regardless of any issues which exist between the Petitioner and the Respondent regarding their evidently acrimonious relationship, I do not see anything put forth by the Respondent to prove that the Petitioner is a bad mother. She has tendered Exhibits to prove that she is financially capable of taking care of all the needs of her children.

Besides, on the allegation made by the Respondent that she has engaged in adultery in the past, the Respondent had mentioned in his evidence that she was followed to a hotel, tracked etc. This does not prove that the Petitioner had committed adultery.

Conversely, on the Petitioner's allegation that the Respondent has not been there for his children as regards their welfare and general upkeep including their upkeep, there's no evidence to show that in the past when

he was gainfully employed in Diamond Bank before he was laid off, that he failed in his duty as a father. He simply fell on hard times, in my humble view.

Besides, according to the Petitioner, after this Petition was instituted the Respondent has contributed to the maintenance of the children of the marriage and there's no evidence to show that he has stopped doing so.

Therefore, on the issue of custody, it is trite that custody is not awarded for good conduct, neither is it denied as punishment to a guilty party in matrimonial proceedings. However, of paramount importance, is the best interests of the child or children of the marriage.

See the cases of **NANNA V. NANNA (2006) 3 NWLR (Pt. 966) P1; WILLIAMS V WILLIAMS (1984) 2 NWLR (PT.54) 66 and ODUSOTE V ODUSOTE (2012) 3 NWLR (PT. 1288) 478MRS; LYDIA OJUOLA OLOWUNFOYEKU V MR. JAMES OLUSOJI OLOWUNFOYEKU (2011) NWLR (PT. 227) 177** at 203, paragraphs E-F. Where the Court held thus: -

“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 of the marriage shall be the primary considerationcustody is never awarded for good conduct, nor is it ever denied as punishment for the guilty party in Matrimonial offences. The welfare of the child of the marriage that has broken down irretrievably is not only paramount consideration but a condition precedent for the award of custody.”

Indeed, in the case of **ELUWA V ELUWA (supra)** cited in paragraph 4:10 of Petitioner's Address, relevant factors were highlighted for the Court's consideration on the issue of custody to wit:-

- “a. Degree of familiarity between the child and each parent respectively.***
- b. The amount of affection between the child and each of the parents.***

- c. The respective income and position in life of each of the parents.**
- d. The arrangement made by the parties for the education of the child.**
- e. The fact that one of the parents now lives as man and wife with a third party who may not welcome the presence of the child.**
- f. The fact that young children should as far as practicable, live and grow up together.**
- g. The fact that in cases of children of tender ages should, unless other facts and circumstances make it undesirable, be put under the care of the mother.**
- h. The fact that one of the parents is still young and may wish to marry and the child may become an impediment.”**

Unfortunately in this case, because of the turbulent marriage of the parties, the children have been robbed of the opportunity to have a normal relationship with their father. The consequence is that since 2016, they have no doubt undoubtedly developed a high degree of emotional attachment, affection and familiarity with the Petitioner.

There's no evidence before the Court that the Petitioner has ever abandoned her children or molested them or deprived them of the basic necessities of life including their educational needs. She has proved that she is fit enough to cater for their needs, financially, morally and otherwise.

The Respondent on the other hand, although is currently employed in his State on what he called “on an on and off basis”, no satisfactory proposal has been made by the Respondent for the Court's consideration on the issue of award of custody in his favour.

The children (1) Obiora Alfred Emodi born 2nd October, 2009 (is now 14 years old), while (2) the twins Arinze Francis Emodi (3) Nnamdi Felix Emodi both born 24th January, 2011 (are now 12 years old) would in my

humble view be most comfortable, safe and secure staying with their mother the Petitioner. Stability is most crucial in a child's development. Therefore, I quite agree with learned Petitioner's Counsel that separating the children from their mother now (whom they have lived with for more than six years now) since 2016, will not be in their best interest.

Now, on maintenance, since the Respondent has already shown commitment by contributing to the welfare of the children of the marriage, even though there's no evidence tendered by him as to his earning capacity, the Court is of the view that he is now financially capable of paying for maintenance of the children of the marriage. I so hold.

Consequently therefore, I hereby make the following Orders:

- (1). The Court hereby grants a Decree Nisi Dissolving the marriage between the Petitioner **MRS. STELLA IFEOMA EMODI** and the Respondent **MR. ANTHONY IFEATU EMODI** celebrated at St. Mary's Catholic Church, Awka Road, Inland Town, Onitsha, in Nigeria on the 8th day of August, 2009. The decree shall become absolute if nothing intervenes within a period of three months from this date.
- (2). The Petitioner is awarded sole custody of the three children of the marriage namely:-
 1. **OBIORA ALFRED EMODI**
 2. **ARINZE FRANCIS EMODI**
 3. **NNAMDI FELIX EMODI**
- (3). The Respondent is awarded visitation rights to the children of the marriage during school holidays subject to supervision of the Petitioner or any other person of her choice. In a place most convenient to the Petitioner, the Respondent and the three children.
- (4). The Respondent shall be responsible for payment of school fees of the children. However, the Petitioner is to contribute at least 30% in that regard.

- (5). The Respondent is ordered to pay **₦120, 000.00** only, monthly for the general upkeep of the children.
- (6). Both the Petitioner and the Respondent shall have a part in decision making as regards the education of the children.

Signed:

***Hon. Justice S. U. Bature
22/1/2024.***