

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA**

**BEFORE: HON. JUSTICE O.C. AGBAZA**

**COURT CLERKS: UKONUKALU&GODSPOWЕРЕBAHOR  
COURT NO: 12**

**SUIT NO: FCT/HC/PET/08/2019**

**BETWEEN:**

**MRS. TINA OTIBHO ULOHO.....PETITIONER**

**VS**

**MR. EMMANUEL ULOHO.....RESPONDENT**

**JUDGMENT**

By a Notice of Petition dated 25/4/2017 and filed same day, the Petitioner herein seeks the reliefs as contains in Paragraph 9 of the Petition as follows;

1. A Decree of Dissolution of Marriage on the ground that the marriage has broken down irretrievably.
2. Custody of the children of the marriage.
3. Maintenance of a Hundred Thousand Naira (₦100,000.00) as monthly as alimony.
4. The sum of Sixty Thousand Naira (₦60,000.00) as monthly

upkeep for the children of the marriage.

5. Payment of Medical and Educational bills of the children of the marriage.
6. An Order directing the Respondent to release all the Petitioner's properties in his custody and or the matrimonial home to her without any let and hindered.
7. Perpetual Injunction restraining the Respondent from assaulting harassing, threatening, molesting and/or disturbing the Petitioner's life and property howsoever and wheresoever.

The facts upon which the Petitioner relies on for court to dissolve the marriage between the parties as gleaned from the pleadings and evidence are;

1. 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 Petition and other court processes were served on the Respondent by substituted means to wit: by pasting at his last known Address at No, 13 Ogbevoen Street, behind Adolor College Road of Ahuwan Street Ugbowo Benin-City, Edo State pursuant to Order of Court granted on 11/5/2017. On the other hand, Respondent failed to file his Answer to the Petition and was absent throughout trial and also not represented by counsel. The Petition thus proceeded as Undefended.

The Petitioner testified as PW1 and narrated catalogue of acts of the Respondent which she finds intolerable to live with and wants court to grant the relief contained in the Petition. During the Examination-in-Chief of PW1 – Petitioner, the following documents were tendered and admitted in evidence;

1. The Marriage Certificate No. 654 evidencing the marriage celebrated on the 20/4/2011 at the Marriage Registry at Benin – City between the Petitioner and the Respondent admitted as Exhibit “A”.
2. The three (3) Birth Certificate of (1) OlohoEjiregheneOsemekhona born on 2/5/11 (2) UlohoRaphaelOghenetijiru born on 22/1/2013 and (3) Uloho James Ogheneyerowo born on 26/2/2015 collectively admitted and Exhibit “B<sup>1-3</sup>”
3. The two (2) Photographs of the witness admitted as Exhibit “C<sup>1-2</sup>”.
4. The bundle of receipt dated 11/8/06, 30/10/09 31/10/09 and 04/08/15, for various items purchased are collectively admitted and marked Exhibit “D<sup>1-4</sup>” respectively.
5. A bundle of school fees receipt and hospital bill receipt in respect of the children of the marriage is admitted in evidence and marked as Exhibit “E<sup>1-9</sup>” respectively.

At the close of evidence of PW1 – the Petitioner, the case was adjourned for the Respondent to Cross – examine PW1. On the adjourned date,

Respondent was absent in court and was not represented by counsel. Upon the application of the Petitioner's Counsel the Respondent was foreclosed from Cross-examining PW1 and thereafter adjourned for the Respondent to defend the Petition. On the adjourned date, Respondent failed to be in court and no counsel appeared for him, on the application of the Petitioner's Counsel the Respondent was foreclosed from defending the Petition the court called on the Petitioner through her counsel to file their Final Written Address.

On 31/1/19, AdewaleOdeleyeEsq Counsel for the Petitioner adopted their Final Written Address dated 2/11/2018, but filed on 16/11/18 as their oral argument in support of the Petition. In the said Written Address, Petitioner's Counsel formulated four (4) issues for determination that is;

1. Whether the marriage between the Petitioner and the Respondent has broken down irretrievably.
2. Whether the Petitioner is entitled to custody of the three children of the marriage.
3. Whether the Respondent is bound to pay maintenance fee, school fees and upkeep of the three children of the marriage.
4. Whether the Petitioner is entitled to reliefs 6 and 7.

He urge court to grant the reliefs of the Petitioner.

Having considered the pleadings and evidence of the Petitioner as well as the submission of counsel to the Petitioner, the court finds that only one issue call for determination that is;

“Whether the Petitioner has proved the ground alleged in seeking the decree of dissolution of marriage and therefore be entitled to the reliefs sought”

First, Respondent did not file an Answer to the Petition and did not challenge the evidence of the Petitioner, the implication of this, is the court will deem the unchallenged and uncontroverted evidence of the Petitioner as true and correct and act on it. See the case of CBNVsIgwilo (2007) 14 NWLR (PT. 1054) 393 @ 406. In the case of Afribank (Nig) Ltd VsMoslad Enterprises Ltd (2007) All FWLR (PT. 421) 879 @ 894 Para E – F AkaahsJCA (as he then was) had this to say;

“Where a Defendant does not produce evidence or testify, slight or minimum evidence, which can discharge the onus of proof would be required to ground the Plaintiff’s Claim”

I am, however, quick to add that, that minimum evidence must be credible enough for court to grant the claim of the Petitioner. See Zenegal Ltd VsJagal Pharm (2007) All FWLR (PT. 387) 950 Para F-G.

In the determination of a Petition for dissolution of marriage, under Section 15(1) of the Matrimonial Causes Act, it is competent for a marriage to be dissolved once a court is satisfied that the marriage has broken down

irretrievably and to come to that conclusion, the Petitioner must prove to the reasonable satisfaction of court any of the facts as prescribed by Section 15 (2) of the Matrimonial Causes Act categorized in sub-section (a) – (h).

In the instant case the Petitioner placed reliance upon the grounds of Section 15 (2) (c) of the Matrimonial Cause Act as gleaned from the pleadings and evidence adduced before this court the Section 15 (2) (c) reads;

“That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent”

To succeed under the above, the Petitioner must lead evidence to the reasonable satisfaction of the court of such particular acts or conduct of the Respondent which would warrant the grant of the relief sought. And such acts or conduct must be weighty and grave in nature to make further co-habitation virtually impossible. See the case of Ibrahim Vs Ibrahim (2007) All FWLR (PT. 346) 474 @ 489 Paras H – B. See also the English case of Katz Vs Katz (1972) All E.R 219.

In proof of this ground, Petitioner informed the court that;

“My Husband has never had a steady source of income, I discovered that he does not want to work, whenever he gets a job, he would be sacked shortly because of irresponsible behaviour, one of his

employers once reported him to me that almost all the time, he is not at his duty post. He beat me up at every slightest provocation or threatens to beat me for flimsy reason. An example is when the Landlord comes and I do not have enough money to pay the rent he has never been responsible for our financial and emotional needs”

PW1 – Petitioner told the court further;

“As a result of the emotional trauma I went through I could not concentrate while at work. I made a lot of mistakes, at that time I was working with First Bank it affected my health and many people thought I was mad”

Narrating the acts of the Respondent which she finds intolerable, PW1 – Petitioner said;

“One day, my manager had to call my mum and asked her to come and take me from that house or else I would not come out alive. I had to foot the bill for our Traditional and Church Marriage but ended up embezzling the money and did not pay the complete money. He used to come to my office to harass me. Also waylaid me to beat me up sometimes. He also refused me to bring back our two (2) children when I wanted them back. One particular day, he came to my office to threaten me so I did not go back home, because I know he will beat me so I went to stay with women (sic). It was from there I had

to resign and relocate to Abuja where my parents are so that I can be with my children.

PW1 finally told the court that:-

There was a time I was almost due to give birth to our second child, the Respondent beat me up and the labour started before the due date, but the delivery was successful. There was a time he beat me up while naked and pushed me out, it was neighbor (sic) that gave me a wrapper to cover myself.

From the evidence of the Petitioner which remained unchallenged, the court finds that the behaviour or conduct of the Respondent as stated by PW1 – Petitioner are grave and weighty to make further co-habitation impossible. And this court therefore holds that the marriage has broken down irretrievably.

The Petitioner is seeking an order of custody of the children of the marriage namely; UlohoEjirogheneOsemekhona (f) born on 2/5/11, UlohoRaphaelOghenetigar (m) born on 22/1/2013 and Uloho James Ogheneyeron (m) born on 26/2/2015. In her evidence she has stated the facts of neglect of the children by the Respondent and that the children her presently under her custody and Respondent is not interested on their welfare and education. These facts were never challenged, also in court are receipt Exhibit "E<sup>1-9</sup>" evidencing payment of school fees for the children.

The grant or otherwise of custody of the children of the marriage is at the discretion of the court, which it must exercise judicially and judiciously



placing reliance on cogent facts and not according to its whims. It is trite that it is interest of the children that is of paramount consideration. See Section 71 (1) of the Matrimonial Cause Act. What a court may consider in the determination of the issue of custody of children of the marriage in Matrimonial Cases, the court held in the case of DamulakVsDamulak (2004) 8 NWLR (PT. 374) 151 @ 156.

“In all matters relating to custody and welfare of the children of the marriage, the dormant issue that calls for careful examination and consideration is absolute interest of that child or children.

Based on the unchallenged evidence of the Petitioner – PW1, it is the firm view of the court that the welfare and interest of the three (3) children of the marriage would be better served if they remain in custody with the Petitioner. I so hold.

On the claim for maintenance of a Hundred Thousand Naira (₦100,000.00) monthly alimony. By Section 70(1) of the Matrimonial Causes Act.

The court may in proceedings with respect to the maintenance of a spouse make such order as it considers proper having regard to the means, earning capacity, conduct of the parties to the marriage and all other relevant circumstances. PW1 – the Petitioner in her testimony informed the court that the Respondent has not been able to secure and hold on to any employment, PW1 also gave a catalogue of the reprehensible conduct of the Respondent throughout the marriage and that she has been the one

fending for the family while failing to state the earning capacity of the Respondent. From these pieces of evidence, the court is of the firm view that this claim cannot stand in the face of glaring evidence of PW1 on the financial position of the Respondent. I so hold.

On relief 4 and 5 of the Petitioner, which is a claim for Sixty Thousand Naira (N60,000.00) as monthly upkeep for the children of the marriage as well as payment of Medical and Educational bills of the children. By the Provision of Section 21(1) of the Matrimonial Causes Act which provides;

“In proceedings with respect to the custody, guardianship, welfare advancement or education of the children of the marriage, the court shall have regard to 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”

There is evidence that the Respondent have not been responsible for the payment of fees and is principally borne by the Petitioner herself. This is not the intendment of marriage were the husband will fail to carry out his various responsibilities to take care of the children. It is against the law of God. It is in the light of this, that the court will exercise its discretion to make this order directing the Respondent to pay the school fees and welfare of the children of the marriage.

Petitioner seeks the court an order directing the Respondent to release all the Petitioner’s properties in his custody and or the Matrimonial home to

her without any let or hindrance. Petitioner in her Petition listed a several properties as contained in Para 45 (a-r)..... of facts relied, which she said was acquired since the marriage, but tendered Exhibits "D<sup>1-4</sup>" which are receipts for purchases of various items without informing the court the items which the receipts supports. In the absence of any information about the receipts vis-à-vis the items listed in her Petition. This court is of the view that the Petitioner is unable to discharge the onus of proof of ownership of those properties, therefore this claim should fail.

On relief 7, an Order of Perpetual Injunction, the Petitioner gave evidence of the beatings and threats of beating, invasion on her at her place of work and being stripped naked. This evidence was not challenged or controverted. It is taken as true. The Respondent cannot be allowed to continue to unleash terror or harassment on the Petitioner, hence need to be stopped. Accordingly this relief should succeed.

From all of these this Petition succeeds in parts. According judgment is hereby entered as follows;

1. The marriage celebrated on the 20<sup>th</sup> day of April 2011 between the Petitioner Mrs. Tina OtibuoUloho and the Respondent Mr. Emmanuel Uloho has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between the parties. This order shall become absolute after three (3) months from today.

2. Custody of the three (3) children of the marriage; Uloho EjiroghenOsemekhona, UlohoRaphealOghenetejiri and Uloho James Ogenenyrovwo are hereby granted to the Petitioner. There shall, however, be reasonable access to the Respondent to the children of the marriage during school holidays or at other time of specific request of the Respondent. This, however, shall not affect the school periods of the children of the marriage.
3. An order directing the Respondent to pay the school fees and provide for the basic necessities for the children of the marriage.
4. An order restraining the Respondent from assaulting, harassing threatening, molesting and/or disturbing the Petitioner's life and property howsoever and wheresoever.
5. Reliefs 3 and 6 fails and are hereby dismissed.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

28/3/2019

ADEWALEODELEYE FOR THE PETITIONER

NO APPEARANCE FOR THE RESPONDENT