

HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY 7TH DAY OF MAY, 2019
BEFORE HIS LORDSHIP: HON. JUSTICE V. V.M. VENDA
SUIT NO: FCT/HC/PET/46/16

BETWEEN:

FOLUSO DEGRATA IDUMUPETITIONER

AND

AMOS OHAME IDUMU.....RESPONDENT

JUDGMENT

The Petitioner by an amended notice of Petition No: FCT/HC/PET/46/2016 dated and filed on the 25th of July, 2018 prays the court for a decree of dissolution of his marriage with the Respondent on the ground(s) that same has broken down irretrievably in that;

1. *Since the marriage, the respondent has subjected the Petitioner to conducts she cannot be reasonably expected to live with.*
2. *Petitioner also prays for the sole custody of Malchizedek Tsidkenu Idumu, the children of the marriage.*

3. *An Order of perpetual injunction restraining the Respondent from interfering with, assaulting, threatening monitoring and/or stalking the Petitioner.*
4. *An Order commanding the Respondent to pay to the Petitioner a monthly stipend, as may be determined appropriate by this Honourable Court, being the Respondent's contribution towards the maintenance and welfare of the children of the marriage, Melchizedek and Tsidkenu Idumu.*

Petitioner also filed her evidence on Oath dated 27/1/2017 and adopted same as her oral testimony in the case wherein she states that she married the Respondent at the Eti-Osa marriage registry in Ikoyi, Lagos state on the 9th of July, 2009 and the marriage is blessed with two children Melchezedek Idumu (M) and Tsidkenu Idumu (M) born 3rd May, 2012 and 11th November, 2014 respectively she states that the Respondent is prone to violent tantrums and whenever he gets upset (which Occurs frequently), the Respondent yells mania call at the Petitioner. That the Respondent does not contribute to the Petitioner's or the children's upkeep and is obsessively possessive.

PW1 informed the court that the Respondent has cut off all relations between herself and her family and her friends. That Respondent stalks her, thereby putting her under siege psychologically.

Witness states that the Respondent goes through her text messages, email messages and publishes the content of same to all and has gone to extreme lengths to tarnish her image and reputation at work by disseminating false and damaging information to Petitioners employers and colleagues. PW1 states further that the Respondent constantly accuses her of witchcraft, poisoning his food and being responsible for his perceived diminished status in life. That the Respondent assaulted Petitioner's relative one Steadman Aborowa on the 3rd of May, 2016 and that on the 25th of November, 2016, Respondent threatened to physically assault Petitioner on the unfounded ground that she had hired assassins to kill him. That in this fit, Respondent violently hit the wall several times with his bare fist, causing petitioner to run for her life and more out of their matrimonial home.

That the Respondent hardly sleeps (Maximum of 3 hours at a stretch).

It is PW1's further evidence that the Respondent has subjected her to unbearable levels of cruelty and conduct that she cannot be reasonably expected to live with and that the marriage has broken down irretrievably and she no longer wishes to be the Respondent's wife hence this Petition. She tendered the marriage certificate as

exhibit “A” and urged the court to grant her prayers in the security interest of herself and her children.

There was no cross examination by the Respondent or his counsel, however, the Respondent filed a 2 paragraphed answer to Petition dated 9th January 2017 wherein he states that:

1. *He is not contesting the dissolution of the marriage, and*
2. *He prays the court to grant him reasonable access to the children of the marriage.*

Wherefore, parties were granted leave to file their final written addresses.

Respondent refused, failed to or neglected to file his final written address.

In Petitioners final written address. Counsel on behalf of Petitioner formulated 2 issues for determination viz:

- a. *Whether the Petitioner’s marriage to the Respondent has broken down irretrievably and in the circumstance, whether the Petitioner is entitled to a decree of dissolution of marriage.*
- b. *Whether the Petitioner is entitled to the grant of custody of children of the marriage and whether the Respondent has a*

duty to provided maintenance for the children of the marriage.

On issue one, counsel submits that from the Petitioners evidence before the court and the Respondents answer to the Petition, the marriage between both parties has broken down irretrievably. Counsel argued that going by the uncontroverted and uncontradicted evidence of the Petitioner before this court, a court has a duty therefore to act on it where it is credible. Counsel cited **MAGAJI VS. NIGERIAN ARMY (2008) 8 NWLR (PT 1089) PG 338 @ 35.**

He submits that, Petitioner's counsel was instructed severally by the Honourable Court to write to the Respondent to remind him of proceedings and adjourned dates in order to secure his attendance in court all to no avail. He urged the court to believe the testimony of the Petitioner and decide this Petition on the evidence. He cited **DUROSARO VS. AYORINDE (2005) 8 NWLR (PT 927) PG 407 @ 412** paragraph to support this.

On issue two, counsel on behalf of the Petitioner submits in the affirmative and states that from the combined readings of the provisions of Sec. 71(1) and (4) MCA CAP M7 LFN 2004, it is clear that the court is empowered to make an order as to the custody of a child. It is also obvious that the court can grant custody of the child

of the marriage to one of the parties with right of access (visitation rights) to the child by the other party. He relied on the cases of **DAMULAK VS. DAMULAK (2004) 8 NWLR (PT 874) PG 151 @ 156 AND ALABI VS. ALABI (2007) 9NWLR PT 1039 PG 297.**

NANNA VS. NANNA (2006) 3 NWLR PT 966 PG 1 and submits that it can be deduced from all evidence before this court that it is the wish of both parties in this suit that custody of the children of the marriage Melchezedek and Tsidkenu Idumu be granted to the Petitioner especially when the Respondent made no representation regarding custody of the children.

Counsel submits that regarding an order of this Honourable Court granting the Respondent reasonable right of access (visitation rights) to the children the Petitioner submits that the Respondent may be granted a visitation right of about 2 hours weekly with the children at a public place in the company of the Petitioner or any other adult approved by the Petitioner owing to the Respondents history of abuse and unreasonable behaviour.

On the subject of maintenance, counsel submits that a man has a duty in common law to maintain his children see **TABANSI VS. TABANSI (2009) 12 NWLR (PT 1155) PG 415 @ 417 AND SEC. 70 OF MCA CAP M7 LFN 2004.** Which cases empower the court to

make an order with respect to the maintenance of the wife and children of a marriage.

Counsel submits that the Petitioner requires no maintenance from the Respondent as the Petitioner has largely been responsible for the academic and welfare needs of the children of the marriage and is committed to ensuring that the children are educated to the highest point possible. Despite that, there is need for the court to compel the Respondent to make contributions towards the welfare and education of the children.

Counsel submits that the Respondent merely states that he should be granted access to the children and neglected to make commitments towards their welfare as he did not state his willingness to contribute towards their maintenance when the need arises which is evidence that the Respondent is unwilling to provide maintenance for his children except the court compels him to do so.

Counsel urged the court to make an order compelling the Respondent to make available to the petitioner monthly allowance as maintenance fee in favour of the children of the marriage and grant the Petitioners prayers.

Section 15(2)(c) of Matrimonial Causes Act 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 satisfies the court of one or more of the following facts

(c) that since the marriage the respondent has behaved in such a way that the Petitioner cannot reasonably be expected live with the respondent;

The Petitioner's main ground for the Petition is that the Respondent has subjected the Petitioner to conducts that she cannot be reasonably be expected to live with the Respondent.

What constitutes unreasonable conduct or conduct that the Petitioner cannot be expected to live with was dealt with in the case of **NWANKWO VS. NWANKWO (2014) LPELR-24396 (CA)** wherein the court held that the behaviour complained of in the context of section 15 (2) (c) may be an action or conduct by the Respondent which affects the Petitioner. It may be an act or omission or a course of conduct which must have reference to the marriage. The court held further that, in the determination of what constitutes behaviour of the Respondent which the Petitioner cannot reasonably be expected to live with the Respondent; regard should be had to the duties and obligations of married life which involves the duty of accepting and sharing burdens that may arise in

the course of the marriage. These duties and or obligations may relate to ill-health of a spouse or children, the capacity of the Petitioner to withstand the stress caused by the act or omission of the Respondent, the length of time the Petitioner has been expected to bear with the Respondent, the steps taken by the Petitioner to cope with the situation and the actual or potential effect of the Respondent's behaviour on the Petitioner or his/her health.

To succeed therefore, the Petitioner has to plead and lead evidence on the specific behaviour complained of, and supply particulars thereto.

Some of these behaviours have been mentioned in section 16(1) of the Matrimonial Causes Act.

In the instant case, the Petitioner states that the Respondent is of a violent disposition and that he yells at the Petitioner whenever he is upset. Respondent also does not contribute to the children's or Petitioner's welfare or up-keep and is obsessively possessive. Also that the Respondent tarnishes the Petitioner's image in her office and accuses the Petitioner of witchcraft and poisoning his food. On one occasion the Respondent accused the Petitioner of hiring assassins to deal with the Respondent.

I see all these allegations as grave enough to have challenged the Respondent to re-act to the Petition. Lo and behold the Respondent only sent an answer to the effect that the marriage be dissolved and he granted access to the children of the marriage.

Facts not denied nor contradicted are deemed admitted.

The behaviour complained about must be grave and weighty enough to be considered intolerable. Any intolerable behaviour of the Respondent which is grave and weighty as to make cohabitation virtually impossible will qualify as such behaviour envisaged by section 15(2) (c) of the Matrimonial Causes Act. It is Pertinent to note that behaviour that is intolerable will differ from person to person. This is because, different temperaments will accommodate different levels of behaviour. A Melancholic being a Perfectionist may not tolerate the fast and care-less nature of a sanguine.

To such, all their behaviour will be seen as intolerable. Marriage is for two. Where a particular behaviour of one party is complained of, it is only fair and humane for that party to take steps to bring such behaviours to an end.

I also wish to admonish that during courtship, parties should endeavour to study each other's temperament and disposition. A young man who always expects to be given this or that; always

expecting dashes; always expecting things be done for him will also always leave the family responsibilities to the wife, because he expects her to do everything for him. To such a Petitioner, that behaviour will be considered intolerable.

To some other person it could be borne.

Now, in the instant case, the Respondent did not challenge, controvert nor contradict any of the allegations against him leaving the facts and evidence before the court to be deemed admitted. See the case of **ONYEKWE VS. UDEMGBA (2015) LPELR-40689 (CA)**.

In NNPC PENSION LTD VS. VITA CONSTRUCTION LTD (2016) LPELR-41259 (CA). It was held:

It is beyond speculation that the courts are fully entitled to take as admitted all facts in an affidavit which have remained uncontradicted and unchallenged.

The Petitioner filed her evidence on Oath and served same on the Respondent, yet the Respondent had no contrary response to same. I take it that the Respondent admits the truth of the facts put forth by the Petitioner. I find that the acts complained of by the Petitioner are such that she cannot reasonably be expected to live with the

Respondent thereby leading to the irrevocable breakdown of the marriage and I so find and hold.

In the circumstance I hereby grant a decree nisi dissolving the marriage between Amos Chame Idumu and Foluso De-Grata Shado conducted on the 9th day of July, 2009 at the Eti-Osa Marriage Registry Ikoyi-Lagos. The decree shall be made absolute three months from the date of judgment.

Now, to the issue of custody of the children of the marriage.

The Petitioner prays that she be awarded custody of the two children of the marriage. Custody of children is provided for in section 71(1) of the Matrimonial Causes Act. It states:

In proceedings with respect to the custody, guardianship, welfare, advancement or education of children of a marriage, the court shall regard the interests 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.

The Child's Right Act also provides for the consideration to be given in cases of custody of the children of the marriage. Section 1 thereto provides 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 shall be primary consideration.

The law is and has always been that in custody proceedings, the court, in deciding who to grant custody of the child of the marriage to, should consider the best interest of the child. The interest here includes but not limited to education, happiness, feeding, social life, health care, shelter, spiritual life and so on. Any of the parents of a child is a potential custodian.

The difference is what a particular parent makes out of married life that distinguishes one parent from the other.

If a woman being so and also being a parent chooses to be a drunkard, a smoker, a promiscuous woman, irreligious e.t.c, she has disqualified herself from taking custody of a child and no court will grant her same. The same applies therefore, to the father of a child.

In the instant case the Petitioner informs that the Respondent does not contribute to the upkeep of the Petitioner and/or their children.

Respondent did not contest this fact.

Apart from the fact that the Respondent has not approached the court for the custody of these children, custody cannot be granted a man who is not contributing to the upkeep of the child. He should be regarded irresponsible and I so do.

Petitioner stated that she has largely been responsible for the education and welfare needs of the children i.e. Melchizedek and Tsidkenu Idumu and is committed to further ensure that the children are well educated to the highest point possible. Seeing that the Petitioner is more interested in the wellbeing and welfare of these children I hereby award custody of Masters Melchizedek and Tsidkenu Idumu to the Petitioner. I grant visitation right to the Respondent who shall ensure that he visits the children on giving notice of at least 48 hours to the Petitioner. The couple and the children may so meet at any public place they chose per time, be it an eatery, park or shopping mall. Their stay together for each visit shall be for as long as the two adult members can accommodate. There shall be no rancur at such meeting. It means therefore that whenever the Respondent's mood is not in shape he should refrain from requesting to meet the children as this cannot be done in isolation.

The Respondent shall also contribute to the payment of the children's education by paying the school fees only while the

Petitioner takes care of all other responsibilities of the children. Except that the Respondent must pay N20,000.00 per month for the maintenance of the two children of the marriage.

Where the children have a major health challenge (God forbid) the Respondent shall pay the major part of the hospital bills. I pray this never happens.

There is no evidence of further assault and threat since the Petitioner and the Respondent started living apart. I have no orders as to that.

Each party to bear the cost of litigation where applicable.

This is the Judgment of the court.

Signed
Hon. Judge
7/5/2019

Appearance:

1. Ayotunde Ogunleye Esq. and Ademola Adeleye Esq. for the Petitioner.
2. No appearance for Respondent.

AUTHORITIES:

1. **MAGAJI VS. NIGERIAN ARMY (2008) 8 NWLR (PT 1089) PG 338 @ 35.**
2. **DUROSARO VS. AYORINDE (2005) 8 NWLR (PT 927) PG 407 @ 412.**
3. **DAMULAK VS. DAMULAK (2004) 8 NWLR (PT 874) PG 151 @ 156 AND ALABI VS. ALABI (2007) 9NWLR PT 1039 PG 297.**
4. **NANNA VS. NANNA (2006) 3 NWLR PT 966 PG 1.**
5. **TABANSI VS. TABANSI (2009) 12 NWLR (PT 1155) PG 415 @ 417 AND SEC. 70 OF MCA CAP M7 LFN 2004.**
6. **NWANKWO VS. NWANKWO (2014) LPELR-24396 (CA).**
7. **ONYEKWE VS. UDEMGBA (2015) LPELR-40689 (CA).**
8. **NNPC PENSION LTD VS. VITA CONSTRUCTION LTD (2016) LPELR-41259 (CA).**