

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT ZUBA

BEFORE HIS LORDSHIP:- THE HON. JUSTICE A. O. EBONG

THIS WEDNESDAY, THE 16TH DAY OF MAY, 2019

SUIT NO: PET/14/2018

BETWEEN:

MR. EMMANUEL ANAYO OBIEKWE PETITIONER

AND

MRS. CHINELO FRANCESCA OBIEKWE RESPONDENT

JUDGMENT

The petitioner in this case, Mr. Emmanuel Anayo Obiekwe, seeks the dissolution of his marriage with the respondent on the ground that same has broken down irretrievably. He desires the Court to so find pursuant to the provisions of sections 15(1), 15(2)(c), 15(2)(d), 16(1)(c)(ii) and 16(1)(f) of the Matrimonial Causes Act, Cap M7 Laws of the Federation of Nigeria (LFN) 2004 (“MCA”).

The parties were married at the Marriage Registry of the Abuja Municipal Area Council on the 11/12/2009, and the marriage is blessed with one child, named Jaden Kenechukwu Obiekwe, born on the 23/5/2013.

Beside praying the Court to dissolve the marriage, the petitioner concedes that custody of the child of the marriage be given to the respondent, but with rights of access for him preferably once in a fortnight, and for 25% of his holiday periods. He offers to take care of the child’s financial maintenance including his educational tuition till his graduation from the university. He also offers the sum of N30,000.00

(Thirty thousand Naira only) monthly, by way of maintenance for the child.

The petition was undefended, but I will return to that later on.

In support of the petition, the petitioner deposed to a verifying affidavit as well as a witness statement on oath which he adopted in court on the 19/11/2018. His case is that the respondent is a woman of violent temper, who abandons the matrimonial home at the slightest provocation. On the 26/3/2010, barely four months into the marriage, she left the petitioner and went to stay with her parents at Kano for about six weeks, following a misunderstanding between them. It took the intervention of friends and elders from his home town to get her to return to the matrimonial home.

In 2012 the parties had another misunderstanding due to the respondent keeping late nights as a result of her banking job. Claiming that the petitioner was rude to her in the course of the said misunderstanding, the respondent again left the matrimonial home to stay with her unmarried colleague for a period of two months. In 2013, the parties had a disagreement relating to expenditure and the respondent flared up and destroyed electronic and other breakable home items to vent her anger on him.

In 2014, the respondent made friends with a lady who turned out to be a divorcee. She not only attended social functions with the said lady without the petitioner's knowledge or consent, but there was no issue of their marriage which the respondent did not expose to the lady in question. In February 2015, the respondent left the matrimonial home claiming she was going to Kano to visit her mother. He later discovered from her mother that the respondent did not visit her in Kano; and when he confronted her with this discovery, she threatened to destroy everything in the house. Finally, on the 22/5/2015, she packed out of the matrimonial home taking the only child of the

marriage with her, without informing the petitioner. He said he got the embarrassment of his life when he went the next day to her office to enquire of her whereabouts and why she did not return home the previous day. She called him unprintable names publicly and got the security men at her bank to walk him out of her office. It was the last time he had contact with her. He later got to know that she had got herself another accommodation at Canaan Estate, Kafe District, Abuja and had been moving her things there quietly, until the 22/5/2015 when she finally left with their child, who was two years old at the time.

The petitioner tendered his marriage certificate as Exhibit P1 and the birth certificate of their son, Jaden, as Exhibit P2. He was not cross-examined.

In his final written address dated 19/12/2018 but filed 14/1/2019, Mr. Anthony Chukwurah posed three issues for determination on behalf of the petitioner, to wit:

- (i) *Whether the petitioner is entitled to the dissolution of the marriage?*
- (ii) *Whether the respondent is entitled to the custody of the only child of the marriage?*
- (iii) *Whether the petitioner is entitled to the ancillary reliefs sought particularly the maintenance order for the child's upkeep?*

On issue 1 he canvassed that relevant evidence which is not successfully challenged or discredited should be admitted and relied upon by the court, on the authority of *NANNA V. NANNA* (2006) 3 NWLR (Pt.966) 1. He argued that the petitioner's evidence was unchallenged as the respondent did not enter appearance or defend the suit. He submitted that if parties have lived apart for a period of three years immediately

preceding the presentation of the petition, the marriage has broken down irretrievably under section 15(2)(f) MCA. He submitted that this is the case with the petitioner who has been deserted by the respondent since 22/5/2015. He prayed the Court to hold the marriage dissolved.

On issue 2, counsel referred to section 1 of the Child's Rights Act 2003 on the need to have the welfare and interest of the child as the paramount consideration on questions of custody. He further urged the Court to have regard to the petitioner's proposed arrangement for the child in paragraph 9 of the petition, in exercising discretion on the issue of custody.

Finally on issue 3, learned counsel submitted that the principles governing the making of maintenance orders are as enacted in section 70(2) and 73(1)(a)&(b) MCA. He conceded that the petitioner has a clear legal duty to maintain his wife and children and provide them with necessaries. But considering that both parties are bankers and earn well, counsel urged the Court to order the sum of N30,000.00 proposed by the petitioner as adequate for the maintenance of the only child of the marriage. He relied on the decision in AKINBONI V. AKINBONI (2002) FWLR (Pt.126) 926 at 938 E-F.

Before I look into the merits of the case, if at all, there are issues of competence and jurisdiction arising from the processes before me that I first need to deal with.

Order V Rules 9(3) and 11 of the Matrimonial Causes Rules (MCR) provide as follows:

“9 (3) A petition shall be signed –

(a) if the petitioner is represented by a legal practitioner, by the legal practitioner; or

(b) if the petitioner is not represented by a legal practitioner, by the petitioner.”

“11. A petition for a decree of dissolution of marriage shall be in accordance with Form 6.”

Like any other originating court process, it is mandatory under the above-quoted provisions that a petition should be signed either by the petitioner or by counsel on his behalf. Form 6 in the First Schedule to the Rules indicates where the signature of the petitioner is to be inscribed. The present petition which purports to be settled by “*Anthony O. Chukwurah, Esq., Legal Practitioner for the Petitioner*”, is neither dated nor signed as required. The fate of an unsigned court process, particularly an originating process, was explained by the Court in ONWUKWE V. IWUCHUKWU (2017) LPELR-41584(CA) thus:

“Failure of counsel who prepares a court process to sign same ... is not an irregularity which can be waived either by the Court or the parties. The authorities are clear that it is a fundamental defect which goes to the root of the Court’s jurisdiction.”

See also UGBOMAH V. ALLANAH & ORS (2018) LPELR-44832(CA);

The case of OKON V. OKON (2016) LPELR-42056(CA), was an undefended petition for divorce, just like the instant suit. It was filed contrary to the requirements of the MCR. At the judgment stage after taking evidence from the petitioner, the High Court struck out the petition for incompetence. In affirming that decision, the Court of Appeal held at page 13 paras. B - F, as follows:

“Unfortunately for the appellant, he has failed to strictly comply with the foregoing requirements of the Matrimonial Causes Rules... Consequent whereupon, the entire

originating (process) on which the appellant's petition is predicated is rendered incompetent, and liable to be struck out... Indeed, the principle is well settled, that an incompetent originating process by which an action (such as the instant petition) is based, robs the Court of its competence to entertain the matter before it. This is absolutely so, because a Court of law is competent to adjudicate over a matter only when all the conditions precedent for exercising its jurisdiction are duly fulfilled."

What Mr. Chukwurah purported to sign in this case is the verifying affidavit of the petitioner. His failure to sign the petition itself as required by law renders it incompetent and liable to be struck out.

Another issue of concern is whether the respondent truly opted not to defend this petition, and whether she was duly notified of the various sittings of this case. I make this observation based on the unexplained discrepancies in the documents purported to have emanated from her in this suit. The first proof of service filed by the bailiff is dated 30/5/2018, and shows that the respondent was served with the petition as well as hearing notice for same, on the said 30/5/2018. The said hearing notice served along with the petition indicated that the petition would be coming up in court on the 28/6/2018, whereas the case was fixed for the 25/6/2018, and was also taken on that date (i.e. 25/6/2018). The respondent's signature acknowledging receipt of both the petition and the first hearing notice are the same, with her address stated on both processes as "Skye Bank PLC, Plot 71 Yakubu Gown Crescent, Asokoro, Abuja."

Thereafter the following processes were purportedly served on her:

- (i) the petitioner's witness statement on oath dated 2/7/2018;

- (ii) two hearing notices for the sittings of 19/11/2018 and 20/2/2019;
- (iii) the petitioner's final address filed on the 14/1/2019.

A close examination of these later processes shows clearly that the signature and the handwriting on the acknowledgment of service of the documents, are completely different from that endorsed by the respondent on the first set of processes served on her as stated above. As a matter of fact, looking at the two sets of writings, I can state with all assurance that the latter documents were not received or signed for by the respondent.

Furthermore, the petitioner's counsel claimed that the respondent had expressed her intention not to defend the petitioner, and had so written to the Court via a letter dated 19/6/2018 and filed on the 22/6/2018. Again, I have examined the contents of this case file concerning the said letter. What I find puts the said letter in the same mould as the second set of documents purported to have been served on the respondent in this matter. The file contains two copies of a letter alleged to have been written by the respondent to the Registrar of this Court. Neither of the two copies is an original. They are both photocopies but with the respondent's signature apparently scanned thereon from the first set of documents served on her. It is in fact stated at the foot of each copy of the letter that it was "*Scanned by CamScanner.*" The question is, *Who scanned what and why?*

More doubt of the genuineness of the letter also arises from its content. In its last paragraph the writer states thus:

"I only pray this honourable court to ensure my husband takes care of his children."

The petition shows that the couple have only one child from their marriage, and that the respondent had gone away with the child. So, if the letter indeed came from the respondent, which “*children*” would she be asking the Court to ensure that the petitioner takes care of? Such request does not line up with the facts of the petition as pleaded by the petitioner. I do not believe that the letter in question emanated from the respondent.

All the above observations taken together, I am of the view that the respondent was deliberately kept in the dark as to the trial proceedings in this suit, due to the petitioner’s failure or refusal to have her properly served with the subsequent processes filed, and hearing notices issued, in the matter. That affects this Court’s jurisdiction to give any valid judgment in this case.

As I have already found the petition itself to be incompetent, it is hereby struck out.

(SGD)

HON. JUSTICE A. O. EBONG
(16/05/2019)

LEGAL REPRESENTATION

- (1) ANTHONY O. CHUKWURAH, ESQ, with Chibuiké E. Soronnadi, Esq, for the Petitioner.
- (2) No legal representation for the Respondent.