

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. 34
CASE NUMBER: SUIT NO. FCT/HC/PET/133/19
DATE: 5th DECEMBER, 2019

BETWEEN:

OJO KOREDE PETER.....PETITIONER

AND

OLUWASEUN DEBORAH OJO.....RESPONDENT

APPEARANCE

J.C Paul Esq Appearing for the Petitioner /Applicant.

D.H. Joshua Esq Appearing for the Respondent.

JUDGEMENT

The Petitioner/Respondent Mr. Ojo Korede Peter has filed for dissolution of his marriage to his wife Mrs. Oluwaseun Deborah Ojo herein referred to as the Respondent/Cross-Petitioner.

The said petition is dated 14th February 2019 and filed same day.

The facts relied upon by the Petitioner as constituting the grounds for filing of this Petition are as follows that:-

- (a) The Respondent has willingly deserted the petitioner for a continuous period of more than one (1) year by moving out of her matrimonial home with the child of the marriage sometime on the 9th of November 2016 and has not returned to her matrimonial home since then
- (b) That since the marriage, the Respondent has behaved in such a way that the Petitioner cannot be reasonably expected to live with her, as the Respondent has physically, psychologically, and emotionally abused the petitioner throughout the duration of their marriage, even after moving out of their matrimonial home, the Respondent has on numerous occasions harassed the Petitioner as well as members of the Petitioner's family and ridiculed the reputation and self-esteem of the petitioner physically and verbally.
- (c) That the Respondent, prior to the marriage had a predetermined decision to abandon the Petitioner in their matrimonial home in order to pursue a hidden agenda of securing a permanent residency in the United Kingdom using the protection offered to a child by the U.K laws as subterfuge. That the Petitioner shall rely on the jotting plans of the Respondent disclosing her intention prior to her marriage to the Petitioner.
- (d) That the Respondent saw an opportunity to manifest her intention when the Petitioner invited her to the United Kingdom to stay with him within the duration granted by the Visa to pursue his P.H.D Academic programme during which she got pregnant leading to the delivery of Ayomide Victoria Ojo (the only child of the marriage).

- (e) That the respondent shortly after Ayomide Victoria Ojo was born started showing unusual behaviour such as nagging at every slightest conversation as well as recording statements made, being cantankerous at the Petitioner in the course of requesting for household items, being consistently disrespectful to the Petitioner and other strange attitudes which were ordinarily uncalled for in the normal conjugal setting.
- (f) That the Respondent had without Petitioner's consent being sought and obtained, would surreptitiously leave the home with Victoria Ayomide after the Petitioner had left for his academic pursuit, made a frivolous report at the police station of allegations on domestic violence and Genital mutilation and subsequently abandoned the home for a refugee camp under the pretext of being destitute inspite of the Petitioner making adequate provisions for the family and solely responsible for their needs till when she finally deserted. The Petitioner shall rely on payments evidencing care for the child of the marriage.
- (g) That the Respondent has also been excessively quarrelsome and has also been involved in numerous violent physical altercations with the Petitioner's family members including the 81 year old mother-in-law, which the Petitioner has been continuously constrained to resolve for the sake of the marriage and child of the marriage.
- (h) That the Respondent willfully deserted the petitioner by moving out of her matrimonial home with the child of the marriage sometime in November, leaving the Petitioner in solitude and incommunicado with his daughter and has not returned to her matrimonial home since then.

- (i) That Despite the fact that the Petitioner is responsible enough and willing to take up responsibility as a father to meet the material needs of his daughter as well as build her moral, cultural, emotional and spiritual being, the Respondent has deliberately and spitefully denied the Petitioner access to the child of the marriage and has subjected her to ill-treatment in the Refugee Camp in the far away United Kingdom.
- (j) That finally, the Petitioner has since completed his educational pursuit in the United Kingdom and willing to come home to Nigeria to unite with his daughter but the Respondent has made this impossible.

The Petitioner has verified the above facts in his verifying affidavit filed in support of the notice of Petition dated and filed 14-2-2019, deposed to by the Petitioner himself.

By an ex-parte order dated 5th day of March 2019, the Respondent was served via substituted means i.e by personal service on the mother of the Respondent. Proof of service is shown in the court records by an affidavit of service of the court Bailiff dated 8th day of March 2019.

In the said Notice of Petition, the petitioner is seeking the following orders namely:-

- (a) A Decree of Dissolution of the marriage between the Petitioner and the Respondent herein on the grounds that the Respondent has deserted the Petitioner and their matrimonial home for a continuous period of over one year immediately preceding the presentation of this petition.
- (b) A Decree of Dissolution of the marriage between the Petitioner and the Respondent herein on the grounds that since the marriage, the Respondent

has behaved in such a way that the petitioner cannot reasonably be expected to live with the Respondent.

(c) An order of this Honourable Court granting Petitioner immediate and unhindered access to the child of the marriage under any condition or circumstances.

(d) An order of this Honourable Court granting sole custody of the child of the marriage i.e on the following terms:-

The child (Ayomide Victoria) be allowed to exclusively enjoy a befitting shelter, education, clothing and feeding to be provided by the Petitioner and to be enrolled in a school with good accommodation facility and the Respondent having a restricted access under the supervision of the school authority within the Federal Capital Territory, Abuja.

(e) An order of this Honourable court mandating the Respondent to relinquish immediate custody or possession of the international passport of the child of the marriage to the Petitioner.

The following documents were tendered in evidence through the Petitioner:-

- (1) A certificate of marriage between the Petitioner and the Respondent marked as Exhibit A.
- (2) Original Birth certificate of Victoria Ayomide Ojo dated 8th day of August 2016, marked as Exhibit B.
- (3) Computer printouts of Documents namely:-
 - (1) Apology letter from Mrs. Deborah Ojo on behalf of her mother marked as Exhibit B1.

- (4) Document titled receipts for expenditures by Mr. Peter Ojo on push chair, furnishings and other equipments for his child (Victoria Ayomide Ojo) and house rent payment etc, Exhibit B2.
- (5) Document titled "Receipts for expenditure by Mr. Peter Ojo on Nappies and sundry for his child Victoria Ayomide Ojo marked Exhibit B3.
- (6) Document titled "evidence of house picture where Mrs. Deborah Ojo lived in wolverhampton U.K and Abuja, Nigeria and wedding pictures, marked as Exhibit B4.
- (7) Document titled – evaluation of video clip by Mrs. Deborah Ojo of framing up my aged 82 years old widow (Mrs. Tanimowo Ojo) for skin inflammation on her granddaughter Miss Ayomide Victoria Ojo) with hot water bath marked Exhibit B5.
- (8) Document titled – Evidence of, Document for Mrs. Deborah Ojo's treatment payment and car provided by my sister for her comfort while in Abuja, marked Exhibit B6.
- (9) Document titled – Evidence of receipts of money sent to Mrs. Deborah Ojo whilst in Abuja with my mother marked exhibit B7.
- (10) Document titled witness statement of Mrs. Deborah Ojo mother fighting my sister in my wedding marked Exhibit B8
- (11) Document titled: - Mr. Peter Ojo's house rent payment and water bills and internet bills marked Exhibit B10.
- (12) Document titled: - Evidence of receipt of Deep freezer bought to support Delivery of food items for Mrs. Deborah Ojo during birth of our baby (Miss. Ayomide Victoria Ojo) marked Exhibit B11.

- (13) Document titled:- Mr. Peter Ojo's cancelled Academic conference marked Exhibit B12.
- (14) Document titled:- Mr. Peter Ojo on Deborah Ojo's mother's expenditure and receipts of the visit to the house at Wolverhampton marked Exhibit B13.
- (15) Chart conversation of Mrs. Deborah Ojo with Deaconess Apata marked Exhibit B14.
- (16) Document titled: - document showing first written statement of Mrs. Deborah Ojo marked Exhibit B15.
- (17) Document titled:- Document showing Application for nonmolestation order against Mr. Peter Ojo for wanting to take my child to Shiloh 2016 marked Exhibit B16.
- (18) Document titled:- Document showing contact by west midlands police with Mr. Peter Ojo on F. G. M, pictures of Shiloh programme attendance in Lagos Nigeria and flight itenary from U.K to Abuja Nigeria and from Abuja Nigeria to Lagos Nigeria for Shiloh progrmme marked Exhibit B17.
- (19) Document titled: - Evidence of flight ticket for Deborah Ojo, my sister and mother Journey to U.K for my mother's elder sister's Burial ceremony in Manchester marked Exhibit B18.
- (20) Document titled:- Mrs. Deborah Ojo WOFBI Training Document marked Exhibit B19.
- (21) Document labelled "***Diary revealing plans***" marked Exhibit B20.
- (22) Document titled:- Mrs. Deborah Ojo female Genital mutilation (FGM) witness statements marked Exhibit B21.

(23) Document titled:- Mrs. Tanimowo Victoria Ojo's witness statement on female Genital mutilation marked Exhibit B22.

On the Respondent's part, although she did not appear in this Petition she was represented throughout by counsel and an answer and Cross-Petition for Dissolution of the marriage was filed in response to this Petition dated 5th April 2019 and filed same day by D.H Joshua Esq, Respondent's counsel containing 11 paragraphs.

In the said answer and Cross-Petition, the Respondent/Cross-Petitioner has set out facts as grounds for the irretrievable Breakdown of the marriage as follows:-

- (a) That the said marriage has broken down irretrievably by result of the facts stated hereunder thus:-
 - (i) That the Petitioner has behaved in such a way that is intolerable by the Respondent immediately after the marriage against the Petitioner sometime in 2014.
 - (ii) That the Petitioner at all material times has persistently refused and/or neglected to provide for his household.
 - (iii) That the Petitioner at his pleasure, subjected the Respondent to an element of ridicule, calling her all kinds of names.
 - (iv) That the Petitioner at all material times used hurtful statements that traumatized the Respondent.
 - (v) That the Petitioner has at all material times in the habit of giving the Respondent silent treatment subjecting her to a prisoner.
 - (vi) That the Petitioner has behaved in such a way that the Respondent cannot reasonably be expected to live with the Petitioner.

(vii) That the marriage has been a mere hell Devoid of the necessary consortium and/or love and affection.

In addition, the Respondent has proposed Arrangement for the child of the marriage which is contained in the answer and Cross-Petition.

Also, the Respondent/Cross-Petitioner herein seeks the orders below:-

- (a) That the marriage between the Respondent and the Petitioner be dissolved on the above mentioned grounds.
- (b) That the Respondent be granted custody of the child of the marriage.
- (c) That the Petitioner be allowed access to the child of the marriage at such time as the Honourable Court may deem fit.
- (d) An order mandating the Petitioner to be paying to the Respondent the sum of **₦100,000.00** only as monthly allowance.
- (e) A perpetual injunction restraining the Petitioner, his agents, servants and/or privies whosoever from harassing, threatening of and/or making telephone calls, threatening of and/or making telephone calls to molest and/or disrupt her quiet stay.

In reply to the Respondent/Cross-Petitioner's Answer/Cross-Petitioner, the Petitioner/Respondent filed a reply dated 15/4/19 containing 20 paragraphs.

The petitioner gave evidence as the sole witness in this Petition, on the 18/4/2019. While Pastor Mrs. Felicia Oluwanike Attah, the Respondent/Cross-Petitioner's mother was the sole witness for the Respondent/Cross-Petitioner. She testified as on the 16th of October 2019.

Thereafter, final written addresses on both sides were filed, exchanged and adopted.

The Petitioner's final written address, is dated 4/11/19.

Cross-Petitioner/Respondent's final Address, is dated and filed 1/11/19.

In the Petitioner's final written address, learned Petitioner's Counsel Mr. J. C. Paul Esq, formulated two issues for determination namely:-

- (1) Whether the Petitioner has established his case to be entitled to the reliefs sought?
- (2) Whether the Honourable Court can award custody Based on the surrounding circumstances of this case and the evidence before it.

On the part of the Respondent/Cross-Petitioner, a sole issue for determination is formulated thus:-

- (1) Whether the Respondent/Cross-Petitioner is entitled to the Reliefs sought.

Therefore, in my humble view, there are two issues for determination in this Petition namely.

- (1) Whether the Petitioner has established his case to be entitled to the reliefs sought.
- (2) Whether the Cross-Petitioner/Respondent is entitled to the Reliefs sought.

In the Petitioners final written address, it is submitted by the learned counsel that the Petitioner/Respondent has laid the entire facts before the Court for purposes of dissolution of the marriage between the Petitioner and the Cross-Petitioner/Respondent.

Counsel referred the Court to the provisions of section 15 (1) & (2) A-H of the Matrimonial Causes Act Cap 220 LFN 1990, on the conditions to be satisfied by the Petitioner for dissolution of marriage.

Counsel submits that proof of one of those grounds or facts is in the eye of the law conclusive proof of irretrievable break down of the marriage. Counsel cited the case of ANIDIOBI VS ANIDIOBI (2007)2 NWLR (PT 1017) page 1.

Counsel further submits that the facts presented by the Petitioner /Respondent before the Honourable Court are suitably captured in grounds c, d, and e, in paragraph 1 of the petition and 1-20 of the reply, as well as the facts verified by Petitioner and his testimony before the Court as reasons why the marriage should be dissolved by this Honourable Court.

It is submitted that Exhibits B2, B4, B6, B7, B11, B13, B18 and B19 show that the petitioner has always been not just a responsible husband to the Respondent/Cross-Petitioner, but also a caring husband. That the exhibits listed above show that there were no circumstances showing or depicting any factual situations caused by the petitioner that could have made the Respondent/Cross-Petitioner to desert her matrimonial home. That the Petitioner has in the absence of any other evidence to the contrary, has discharged the burden of proof to entitle the court to dissolve the marriage. Reference was made to the case of PRINCE AMAH VS MRS VICTORIA AMAH SC IN OJO VS AIBANGBE (2008)8 NWLR (PT 1037) 617 (per Oputa JSC.

Counsel urged the court not to act on speculations and submitted that paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 (1) a i-vii, of the Respondent's Cross-Petition be struck-out.

On the conduct of proceedings in matrimonial causes, learned counsel referred the court to order xv part 1 of the Matrimonial Causes Rules, Rule (1) (2) and (3) and submits that where as in this case, the Cross-Petitioner/Respondent introduced in the answer and Cross-Petition facts/reliefs as a Petitioner/Plaintiff, she was duly bound to prove the existence of such facts in order to buttress the facts pleaded and the reliefs sought because if she fails so to do, she would be the loser and urged the court to so hold.

That the burden of proving a particular fact is upon the party who asserts it and who would fail if no evidence is called on either side regard being had to the presumptions which might arise from the pleading of the parties. Reference was made to Sections 131 (1) and 2, 132 and 133(1) of the Evidence Act 2011. The cases of AIKI VS IDOWU (2016) ALL FWLR (PT 293) 361; FAOLALLAH VS AREWA TEXTILES MILLS LTD (1997) NWLR (PT 518) 546 F. A. T. B LTD VS PARTNERSHIP INVESTMENT CO. LTD (2004) FWLR (PT. 192) 167 SC.

It is submitted that the Cross-Petitioner/Respondent has not led evidence in support of her pleadings nay her reliefs so as to shift even the burden of proof on the Petitioner/Respondent.

That the Supreme Court has held that where a party to an action fails to testify in support of facts in his pleadings, those facts are deemed abandoned. Reference was made to the case of UNION BANK OF NIGERIA PLC & ANOR VS AYODARE & SONS LTD & ANOR (2007) LPELR 3391 (SC) PER ONNOGHEN JSC at P50 paragraph c.

Counsel submits that there is no evidence on record touching on the factual circumstances circulated by the Respondent/Cross-Petitioner in all the alleged paragraphs and their reliefs generated thereof. And referred to the case of OSADIM VS TAIWO (2016) 6 NWLR (PT 1189) 155 at 164; OJO VS GHAORO (2006) 10 (PT 987) 12 Ratio 19 where NIKI JO51 JSC at page 232 paragraph A, E and F thereof, reiterated, the position of his learned colleagues of the apex Court that, pleadings do not constitute evidence.

Counsel urged the court to strike out paragraph 13 of the Respondent/cross-Petitioner's answer for lacking credibility. Referred the court to paragraph 9c, of the Petition, paragraph 4d, and 16 of the reply to the cross petitioner's answer

that Cross-Petitioner was guilty of condonation, connivance and collusion with predetermined intention to sabotage the marriage. Reference was made to exhibits B14 and B20.

Learned counsel argued that although Dw1 (mother of the Respondent/Cross-Petitioner) although testified in Court in support of the Cross-Petitioner, her testimony is totally at variance with the pleadings of the Cross-Petitioner. That she had no direct knowledge of what transpired between the petitioner and the cross-petitioner which cannot help the court to determine any of the averments in the cross-petition one way or the other.

That parties are bound by their pleadings and evidence which is at variance with the averments goes to no issue and should be disregarded by the Court.

On Cross-Petitioner's claim for seeking for the sum of ₦100,000 (One Hundred Thousand Naira) only from the petitioner, the court is urged to discredit same, and it is submitted that apart from not giving evidence warranting such award, the Cross-Petitioner has not complied with order xiv Rule 4 of the Matrimonial Causes Rules. As well as the case of *TABANSI VS TABANSI* (2018) 18 NWLR (PT 1651) page 303. And pp 299-300, paragraphs G-A. Counsel humbly urged the court to accordingly dismiss the claim for **₦100,000** as monthly allowance.

On the issue of custody of the only child of the marriage (Miss Ayomide Victoria Ojo) 3 years old counsel referred the court to the proposed arrangement for the child in paragraph 19 of the reply to Cross-Petitioner's answer to the petition. As well as section 71 (1) of the Matrimonial Causes Act, 1990, for the interest of the child as paramount consideration in such circumstances, as the court is given wide discretionary powers in that regard according to the peculiar circumstances of the case. That in such considerations not only is the welfare of

the infant paramount but a condition precedent and that such award is not to be granted as a punitive measure against a party guilty of matrimonial offences nor as a reward for the rival party.

Reference was further made to the case of ALABI VS ALABI (2007)2 FWLR (PT 387) 2765 at 2819-2823, paragraphs G-E

Counsel further submits that the discretion of this court in granting custody is unlimited based on the materials and other circumstantial evidence around the child Ayomide Victoria Ojo, especially her right to enjoy and grow with the basic cultural values in her home country (Nigeria). That in consideration of the welfare of the child, the court looks at the care of the child and circumstances of his moral, physical and mental state. Reference was made to the case of WILLIAMS VS WILLIAMS (1987) LPELR-8050 (SC, per OBASEKI, JSC.

Counsel urged the court to award custody under the care and responsibly of the Petitioner/Respondent. Counsel referred the court to the case of MRS HELLEN NWOSU VS HON. DR CHIMA NWOSU (2011) LPELR 4654 (CA).

Learned counsel finally urged the court to give probative value to the evidence given by the Petitioner/Respondent and award all the reliefs sought in the Petition while dismissing the Cross-Petition in it's entirety.

In Cross-Petitioner/Respondent's final address, it is submitted by her counsel H.J Daruwana Esq, of J. O, Olakunle & co, that the Respondent/Cross-Petitioner has filed an answer and cross-petition for dissolution of marriage dated 5/4/19 through her lawyer H. J. Daruwana Esq, seeking for reliefs contained therein.

Learned Counsel submitted that in the said answer, the Respondent/Cross-Petitioner has established the fact that the marriage between her and the

petitioner has broken down irretrievably by invoking Section 15 of the matrimonial causes Act and urged the court to so hold.

Counsel submitted that it is the testimony of their sole witness on oath that since the conjugation of the marriage, the families of both the Petitioner and Respondent have never been in good terms, that there had been a lot of complaints from Petitioner's family.

On the issue of child custody, learned counsel submits that the law is very clear when it comes to the custody of children under marriage and referred the court to the case of AKINBONI VS AKINBONI (2002) 5 NWLR (PT761) 567. That the paramount consideration on issue of custody is the interest of the child in matrimonial proceedings especially in Cases which concern custody, guardianship and welfare of children.

That in that regard, any order made or made by the court its discretion is to be exercised Judicially. Reference was made to the case of SOLANKE VS AJIBOLA (1969)1 NWLR 253; DANTUNBU VS ADENE (1988)4 NWLR (PT. 88) 309. OLADIPO VS OLUFUMILAYO OBAJIMI (2011) 21 WRN, PAGE 9.

Learned counsel submits, that from the authorities cited above, there is no doubt that the only way the interest of Ayomide Victoria will be safeguarded is by granting the Respondent/cross-Petitioner her custody bearing in mind that she is just two (2) years old.

That this is a court of justice and justice will not only be seen but considered to be done if the prayers of the Respondent/Cross-Petitioner is granted.

In conclusion, counsel submitted that on the strength of their arguments, judicial authorities, that the Respondent/cross-Petitioner is entitled to the grant

of the reliefs as prayed in her Answer to the Petition vis-à-vis the testimony of their only witness and urged the Honourable court to so hold.

The Petitioner in his evidence before the court testified that he is a lecturer of higher education and further education, a P. H. D holder at Coventry University and also a Minister at living faith Church since 1993. He gave a detailed narration of the history of his marriage to the Respondent, and events leading up to filing of this Petition. These are suitably captured in grounds c, d and e of the Petition as well as paragraphs 1-20 of the reply.

Now, under and by virtue of section 15 (2) of the matrimonial Causes Act, CAP 220 LFN 1990, the court is empowered to grant an order of dissolution of any marriage where it is satisfied that the marriage has broken down irretrievably.

Therefore, looking at the first relief sought by the Petitioner i.e dissolution of his marriage to the Respondent, before the court can come to that conclusion, it must be satisfied that the alleged grounds for dissolution of marriage fall within section 15 (2) (c) and (d) of the matrimonial causes Act.

The first ground is that of desertion by the Respondent.

Section 15 (2) (d) of the Act provides:-

“That the respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition. “

I also refer to ground (a) of the Petitioner’s Notice of Petition.

The Petitioner testified that on the 9th of November 2016, the Respondent moved out of her matrimonial home with the child of the marriage and has not returned since then.

The Petitioner states:-

“.....But, shockingly, on the 9th of November 2016, I left for work and to my surprise, my mom was locked in the apartment. I had to use my own key to open the door for her. When I opened the door, my mother, who is an 82 years old widow Mrs. Victoria Ojo, told me that my wife threatened her with the police, if she doesn’t get out of the way she’ll call the police on her. And she took my 4 month old baby and left her matrimonial home.”

In her answer to this Petition, the Respondent/cross-Petitioner admits paragraph 1, 2, 3, 4, 5, and 6, 7, 9 (a) of the grounds of Petition.

In effect, the Respondent/Cross-Petitioner does not deny that she left her matrimonial home, and in fact also seeks for dissolution of the marriage

In the said answer to the Petition, particularly in paragraphs 3, 4, 5 i,-viii, she alleges amongst other things that she was maltreated by the Petitioner, she contacted her GP who subsequently made a referral to social services, who advised that the Respondent/Cross-Petitioner should leave the Petitioner. Paragraph 5, (viii) of the answer to the Petition provides:-

“The Respondent/Cross-Petitioner states that the Petitioner having refused to change from the maltreatment, the respondent/cross-Petitioner decided to contact the social services on the 9th day of November 2016, who made an arrangement for the Respondent/Cross-Petitioner to leave the house with Victoria Ojo their daughter and place them in a safe house.”

In his reply, the Petitioner denied the above allegations and vehemently denies paragraph 5; paragraph f of the reply states thus:-

“ Contrary to the averments in paragraph 5 (vii) &(viii), the respondent left her matrimonial home without informing the husband (the Petitioner/Respondent) why and without reasonable cause to justify her exit and that the purported report and the intervention of the social services department was also not true and formed no basis of her abandoning her matrimonial home. The Petitioner/respondent gravely was concerned about the safety of his daughter (Victoria Ojo) as she is innocently harbored in a refugee camp because of the selfish desires of the Respondent/Cross-Petitioner. The Respondent/Cross-Petitioner never suffered any mental, physical or emotional abuse neither with the Petitioner/Respondent nor any of his family members.”

The evidence of the Petitioner on oath seems to support the above reply to the cross-Petitioner’s answer. In his evidence on oath, the Petitioner/Respondent states that he’s been a responsible husband and father and even tendered several documents to show the steps he took to make his wife and child comfortable.

I refer to Exhibits B2, B4, B6, B7, B9, B11, B13, B18, and B19, tendered through Petitioner. I find his evidence to be unshaken under-cross-examination.

However, although the respondent has not testified in this petition for obvious reasons which is that she is said to be living in a refugee camp according to the Petitioner, she has presented her mother as the sole witness for the respondent/cross-Petitioner.

I have carefully gone through the length and breath of the testimony-in-chief as well as cross-examination of sole witness for the cross-petitioner Pastor Mrs. Felicia Oluwanike Attah, and I have observed that the bulk of her testimony

deals with the facts that she has seen, heard or observed throughout the history of the marriage, subject of this petition.

She has informed the court of her own experiences relating to the wedding, interactions with the family members of the Petitioner, the Petitioner herself, her visit to the U.K, and the fact that her daughter the Respondent/Cross-Petitioner had informed her that she was having problems with the marriage.

In the Petitioner's final written address, the court is urged not to draw conclusion of facts outside available evidence and that paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 (1) ai-vii of the respondents Cross-Petition be struck-out.

And that from the provisions of order xv part 1 of the matrimonial Causes rules, where the Cross-Petitioner/Respondent introduced facts in the answer/cross-petition, he/she is duly bound to prove the existence of such facts in order to buttress the facts pleaded. Sections 131, 132 and 133 of the evidence Act 2011 were also referred to on the issue of burden of proof of a particular fact which is upon the party who asserts it and who would fail if no evidence is called on either side regard being had to the presumptions which might arise from the pleadings of the parties.

I am afraid that in this case, the allegations contained in the answer to the Petition, are not supported by any evidence presented by the Respondent thus far. The evidence of Respondent's sole witness has not substantiated the said allegations which are exclusively within the knowledge of the Respondent /Cross-Petitioner.

On this, I refer to the case of NYIOR VS AKASE (2019) LPELR-4762 (CA) per OTISI JCA held at pp 9-10 paragraphs 8, thus:-

“ I agree completely with the learned trial judge. The position of the law remains as was pronounced in OMOBORIOWO & ORS VS AJASIN (1984) IpeI-2643 (SC) at page 26 thereof that pleadings are nothing but mere averments and Judgments on such pleadings are based strictly on evidence led. The effect of a failure of the party to call evidence in support of his own averment which is denied by the adverse party in the adverse parties pleadings is that such averment is deemed as abandoned.....”

Therefore, pleadings do not constitute evidence. That being said, it is instructive to note that, the respondent, as stated earlier is also seeking for dissolution of the marriage. The Petitioner has stated in his evidence that the Respondent moved out of their matrimonial home on the 9th of November 2016. This petition was filed on 14th of February 2019, which is over two years after the respondent had left the house. It is thereof evident in this case from the evidence presented by the Petitioner that the respondent has deserted the petitioner for a continuous period of at least one year now and thereby satisfies the provision of Section 15 (2) (d) of matrimonial Causes Act. I so hold.

On the issue of intolerability as ground for seeking dissolution of the marriage brought under section 15, (2) c of the Act, that since the marriage, the Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent in ground (b) of the Notice of Petition, it is alleged by the Petitioner that the Petitioner cannot reasonably be expected to live with the Respondent since she has physically, psychologically and emotionally abused the Petitioner throughout the duration of their marriage. And that even after moving out of their matrimonial home, the respondent has on numerous occasions harassed the Petitioner as well as members of the Petitioner’s family

and ridiculed the reputation and self-esteem of the Petitioner physically and verbally.

I have carefully gone through the evidence and Exhibits presented by the Petitioner. Therefore, on the allegation of physical abuse by the respondent on the Petitioner and his family members, I find that the evidence presented by the Petitioner does not support this piece of allegation. And since pleadings do not constitute evidence as held earlier in this judgment, this piece of allegation is hereby discountenanced.

However, with regard, to the allegation of psychological and emotional abuse, the petitioner in his evidence before the court has proven that he is a Responsible husband and father. He testified as to how he made arrangements for his wife to be comfortable right from the beginning of the marriage and the time he left her to join his mother and sister in Abuja upto the time he secured VISA for her through his student VISA to join him in the U. K. the Exhibits tendered through the petitioner are all in support of these facts.

In his evidence, he also made mention of how he made comfortable arrangements for Respondent's mother when she came to Wolverhampton U. K to see her daughter after the birth of their child. He testified that for the respondent's comfort, he moved from a shared apartment in the U.K and paid for a two-bedroom flat and furnished the apartment before the respondent joined him. That he secured a job for the Respondent opened an account for her and she was paid a hundred and thirty pounds a week. The Petitioner states thus:

".....My lord, because of her comfortability and peace in her stay in the U. K, she never paid anything. I paid for the energy bills close to three hundred pounds. I paid for water bills, one hundred and sixty-two pounds.

I do all the shopping and carrying things home from Sainsbury's. While I was not even driving I paid for her train tickets to work. I did a monthly ticket for her train ticket to work. I did a monthly ticket for her with the virgin trains, because I did not have a car then, and I didn't want her to walk to the train station. I paid for the Go-Cars to take her to the train station, I paid three Pounds for each trip. Also, immediately she came the first time I took her for shopping for her office clothes and I paid close to two hundred and fifty pounds for that. And also I bought her suitcase for work."

According to the Petitioner, everything went on fine in the beginning until, when he had to attend a Shiloh programme in Nigeria and their VISA was about to expire on 31st of May 2017. Upon making the enquiry about VISA, the Petitioner said the Respondent categorically told him that she's not coming back to Nigeria. So, he came for the Shiloh programme alone in December 2016.

The Petitioner states:

" I was baffled and was perplexed because before the Shiloh event, my wife instituted a non-molestation order in the family court in the U.K against me. And it was really heart breaking because she stated in the Document that I wanted to take my beloved daughter Ayomide Ojo to Nigeria for a female genital mutilation Procedure."

According to the petitioner, the allegations also included in the papers is that he only brought one set of clothes for his child. He pleaded with the court to consider the Exhibits that he'd presented to disprove same.

Again, according to the Petitioner in his evidence on oath, the Respondent didn't stop there; she had a video which she took of his aged mother bathing their

child and claimed that there was an inflammation of the baby's skin with hot water.

The Petitioner states:-

"My lord, I also have the video and evaluated video of my wife who prepared the water and poured the water on the baby herself, to say that she had poured hot water on her baby and not raise any alarm.....My lord also, out of curiosity, I was thinking how a mother who is fearing for the safety of her child would at the same time be filming an 82 year old woman bathing and pouring hot water on her child? My lord, the police also invited me for the F G M claim she made against me, my mother and my sister. In her claim, she said she overheard two conversations, one was when my mother was in the U. K with her in the sitting room and talking on the phone with my sister here in Nigeria, planning the FGM.

My lord, I have attended six directional hearings on the F. G. M and it has not been founded.

The police also did a six week investigation and found that there was nothing they closed the case. My lord, it seems this is a stitchup. In the 26 page Document of my wife's chat with Deconesse Apata, which I provide in court, she made mention there she said that "all I am doing is to apply for my own job, so that when get my VISA, I won't need him." She also said "Now that my VISA is expiring, he wants me to go back to Nigeria and I don't want to go back to them. She said "Baba has not made us for the kitchen. So, I will need to find my own VISA quickly before my own VISA expires in March."

The chats referred to and presented by the petitioner is exhibit B14 before the court.

The Petitioner states:-

“My lord, in the U.K, she brought up another case that my mother my sister and myself have performed FGM in Nigeria in secret. And that she found out where we used to do this FGM in secret in Nigeria.”

According to the Petitioner, the Respondent told social services that their child is a destitute and a child in need despite the fact that he the Petitioner works and earns a daily earning. And that the chat with Deaconess Apata and his wife and the interval when the child was taken to the refugee camp is thirteen days.

The Petitioner testified further that the Respondent also made allegations of Domestic sexual Abuse against him which is unsubstantiated.

In answer to the allegations made by the Petitioner, the Respondent/Cross-Petitioner, has also made counter-allegations pleaded in the said answer. I Refer to paragraphs 3-9 of the answer.

These paragraphs alleged among other things that the Petitioner has maltreated the Respondent, the family members maltreated her and corrupted his mind towards her. That the Petitioners family called her names such as a gold digger, stupid, illiterate, idiot among other derogative names. Monitor her phone calls follow her round the house, made her feel like a prisoner and that the mother and sister will call the Petitioner daily to complain about the Respondent/Cross-Petitioner.

The Petitioner has denied all the above allegations. I refer to paragraphs 1-17 of the reply to the answer/Cross-Petition.

The Respondent has not given evidence in this petition to substantiate her claims but also seeks dissolution of the marriage on the ground of intolerability as alleged in the cross-petition.

The Petitioner has presented exhibit B1 to the court as an Apology letter written by Mrs. Deborah Ojo on behalf of her mother fighting the petitioner's sister on their wedding.

The fact that a fight occurred between the Respondent's mother and petitioner's sister was confirmed by Respondent's mother in her evidence before the court. She also gave her own version of events. Yet again, although the Petitioner was cross-examined on all these issues, I find his evidence to be unshaken. I so hold.

Looking at the evidence presented on both sides on this issue, it is my humble view that if there is any intolerability, then to put up with family members on both sides fighting each other on the couple's wedding day and constant interference in the couple's marriage has contributed in some way to the collapse of this marriage. I so hold.

On the whole, the allegations made by the Respondent against the Petitioner on molestation, F.G.M, etc have remained unsubstantiated by the Respondent/Cross-Petitioner, since the facts are within her knowledge.

In this light, I refer to the case of *IBEAWUCHI VS IBEAWUCHI* (unreported) suit No. 0/6D/72 of 19/2/73, where the court held that before the court will come to the conclusion that the petitioner cannot reasonably be expected to live with the Respondent, the entire history of the marriage has to be considered. In other words, the court must consider the totality of the matrimonial history of the parties to the petition.

See also the case of DAMULAK VS DAMULAK (2004) & NWLR (PT 874) 151.

Therefore, in this case, going by the reasons given earlier and the matrimonial history of the parties that the petitioner has gone through psychological and emotional anguish, it is sufficient for the Petitioner not to reasonably be expected to live with the respondent. I so hold.

The petitioner also seeks sole custody, unhindered access to the child and also seeks an order of the court mandating the Respondent to relinquish immediate custody or possession of the international passport of the child of the marriage to the petitioner.

I shall take the issue of custody first.

On this issue, both the petitioner and the Respondent/Cross-Petitioner are seeking custody of the child of the marriage.

In the final written address, it is submitted for the petitioner that a proposed arrangement for the child is made in paragraph 19 of the reply to the Cross-Petition.

The proposed arrangement for the child is that the custody of the child be granted to the petitioner who is the father with means to cater and nature her growth and Development.

Place of residence of the child be Nigeria where she can learn and acclimatize with basic cultural values good for growth and development. That on education/welfare a school with good accommodation facilities within the F.C.T with Respondent/Cross-Petitioner having limited access.

Now, it is a settled principle of law as rightly submitted by both counsel in their respective written addresses that in deciding on who is entitled to custody

of the child of a marriage, the paramount consideration is the interest and welfare of the child.

In this respect, see the case of ODUSOTE VS ODUSOTE (2012) 3 NWLR (PT 1288) 478 at page 504, paragraph g, where it was held thus:-

“.....In proceedings with respect to the custody, guardianship, welfare, Advancement or Education of children of a marriage, the court shall regard the interest of the child as the paramount consideration, and subject thereto, the court may make such order in respect of those matters as it thinks proper.”

Also in the case of MRS LYDIAOJOLA OLOWUN FOYEKU VS MR JAMES OLUSOJI OLOWUN FOYEKU (2011) 10 NWLR (PT-1227)page 177 at 203, paragraphs E-F, the court of Appeal held thus:-

“ In every action concerning a child, whether under taken 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 the primary consideration.....Custody 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 a marriage that has broken down irretrievably is not only paramount consideration but a condition precedent for the award of custody.....”

See also the case of WILLIAMS VS WILLIAMS (1987) LPELR-8050 (SC).

In his testimony before court, the Petitioner states thus:

“ My lord, I work and make a daily earning I don't know how come my child is in a refuge and a destitute when the father is not dead nor out of work.”

The Petitioner has also shown through Exhibits B2, B3, B10, B11, which includes receipts for Baby items, furniture etc, that he is a responsible father who has the means and the capacity to take care of his child.

Under-Cross-examination on the issue of keeping receipts on purchases made for his child, the Petitioner stated that as an accountable father he keeps details of everything and that the said receipts were not kept in anticipation of these proceedings.

The Petitioner states under cross-petitioner that in the nonmolestation order sought for by the respondent against him, she also alleged that the Petitioner didn't buy nappies and bought only one pair of clothing for his child. And that according to the Respondent, she doesn't know a responsible father that will buy things for his child and keep receipts.

The petitioner still under cross-examination states.

“ If I’ve not kept all these receipts, how would I be able to prove that I had bought all these things.....If the court is to award custody of my child to me, I will enroll her in school and pay for her Education. I can’t answer the question to say whether the school would give my child the motherly love that a mother would give her child. I don’t know the motherly care my child is getting in a refugee camp. The Respondent can come and tell the court that. My daughter is over two years old now. She’ll be three on July, 8th 2019. My daughter was taken from me at 3 months. I had pictures of me and my daughter in my L.G phone when I was in Wolverhampton, but lost the phone. No, I don’t know the condition of my child now because I have not seen her for over two years. I disagree that if anything bad happened to my child I would

not be made to know. I am in the picture of my child. All the relevant authorities have been furnished with my contact details. My child cannot be in a good condition in a refugee camp.”

The Petitioner also states in his examination-in-chief thus:-

“My lord, ever since I learnt that my child is in a refugee camp, I reported to the special adviser to the president on Diaspora, the letter was sent to her with that respect with all bundles of supporting evidence. I also reported the matter to the Foreign affairs Minister. I reported the matter to the British High Commission in Abuja, I reported to the British home office in the U. K.”

Now, clearly what is not in dispute is that the child of the marriage is presently in a refugee camp or a safe house. There’s no evidence led by the Respondent challenging or contradicting this fact.

The question to ask here is who should be granted custody of the child, the Petitioner or the Respondent/Cross-Petitioner.

A father who has the means and capacity to take care of his child or the mother who the child needs for her psychological welfare but who is currently seeking asylum and holed up with the child in a refugee camp. In the case of ODUGWU VS ODUGWU (1992) LPE LR-2229 SC, the Court per Belgore JSC held at pp 30-31, paragraphs C-B thus.

“Welfare of child is not the material provisions in the house-good clothes, food, air-conditioners, television, all gadgets normally associated with the middle class it is more of the happiness of the child and his psychological development. While it is good a child is brought up by complimentary care of the two parents living happily together, it is psychologically

detrimental to his welfare and ultimate happiness and psychological development if maternal care available is denied him.”

In paragraphs 31-32, the court held further thus:

“If the parents are separated and the child is of tender age, it is presumed the child will be happier with the mother and no order will be made against this presumption unless it is abundantly clear the contrary is the situation e.g immorality of the mother, infectious disease on the mother, insanity, and or her cruelty to the child.”

In instant case, the petitioner has stated in his evidence before the court that the actions of the Respondent were pre-planned.

He alleges that is a clear case of someone who wants to use his child as a sequel to perpetrate lies of F.G.M. And that in his supporting evidence that he’d raised, he could recall that the Respondent went to the extent of collecting legal aid to pursue the allegation of F.G.M to defraud the U.K Tax payer’s money to keep a child in a refuge who has a father and who is not in need.

The Petitioner also states in his evidence that the Judge in the hearing of October 22nd 2018, also affirmed that the respondent/cross-Petitioner has been denied Asylum four times and she’s coming back home.

This fact has also remained unchallenged in this Petition.

In his evidence during cross-examination, the Petitioner states:-

“My child cannot be in a good condition in a refugee camp.”

On her part the Respondent/cross-Petitioner also seeks orders from this Honourable Court namely:-

(a) Dissolution of the marriage.

- (b) That the Respondent/Cross-Petitioner be granted custody of the child of the marriage.
- (c) That the Petitioner be allowed access to the child of the marriage at such time as the Honourable court may deem fit
- (d) An order mandating the Petitioner to be paying to the Respondent the Sum of **₦100,000** (one hundred thousand Naira) only as monthly allowance.
- (e) A perpetual injunction restraining the Petitioner, his agent, servants, and/or privies whosoever from harassing, threatening of and/or making telephone calls, threatening of and/or making telephone calls to molest and/or disrupt her quiet stay.

On the issue of custody, as stated earlier, the paramount consideration is the best interest of the child.

Presently, the said child is said to be living with her mother the Respondent/Cross-Petitioner in a refuge, or refugee camp as the case may be. Now there's no doubt that the essence of seeking Refuge is for safety and shelter from pursuit, danger or difficulty.

From the pleadings presented by the parties in this case and in particular the evidence presented by the Petitioner both in his evidence and the Exhibits tendered through him, the main reason or excuse given by the Respondent for seeking refuge is for the protection of her daughter against FGM, female Genital mutilation. Here I refer to Exhibits B15, B16, B21 and B22 Respectively.

As stated earlier the Petitioner had stated in his evidence before the court that the allegation of F.G.M was dismissed by the court, a fact which remains unchallenged.

Although I have considered the evidence of the only witness for the Respondent/Cross-Petitioner, on this issue, the said witness merely informed the court that she's aware that there were some problems between her daughter the Respondent and the Petitioner which got social services involved and the issue led the parties to court.

Interestingly, in the Answer/Cross-Petition there's not a single mention of the issue of F.G.M. what was mentioned there is the issue of the Petitioner's mother bathing Victoria Ojo their daughter with hot water. Please see paragraphs 5(vi) 5, (vii) and 5, (viii).

In addition to the denials of the Petitioner to the above issue in paragraph 4 (t) Of the reply to the answer/Cross-Petition, the Petitioner has also tendered Exhibit B2-which is an evaluation of a video clip made by the Respondent Deborah Ojo alleging that the Petitioner's mother had poured hot water on their child while giving her a bath.

I have considered carefully the contents of exhibit B5 as well as the point made by the Petitioner in his evidence before the court that in the said Exhibit B5-it was the Respondent herself who was pouring water on her own child and how could a mother who alleged that her child's skin was inflamed with hot water, be the same person who was pouring the hot water on the child by herself?

It is my humble view that the Respondent/Cross-Petitioner has not adequately challenged or controverted this fact. Therefore the allegation above remains unsubstantiated. I so hold.

Having said that, it is noteworthy to point out that in deciding matters of custody the court is to avert its mind to the fact that the claim of the Petitioner

should not be regarded as superior to that of the Respondent, neither must the claim of the Respondent be regarded as superior to that of the Petitioner. For, what is paramount is to consider the best interest of the child.

I Refer to the case of WILLIAMS VS WILLIAMS (Supra).

In the same light, this court is not unmindful of the fact that the child **VICTORIA AYOMIDE OJO** born on Eight of July 2016, (as shown on Exhibit B) is just three years old now, and therefore of tender age. And the court is also not unmindful of the fact such a child of tender age must no doubt be emotionally attached to her mother and will need the care and affection of her mother. The court in reaching its decision has to consider whether in the circumstances the Respondent is capable of giving her child Victoria Ojo the basic necessities of life such as food, shelter clothing, good education in a Refugee Camp?

On this I refer to the case of ALABI VS ALABI (Supra) as well as Section 71 (1) of the matrimonial Causes Act which provides thus:-

“ (1) 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.”

In the case at hand it is my respectful view that no child should live in a Refuge or refugee camp unless for good reasons. I am afraid that I do not see any in this case.

Again I refer to Exhibit B 14, which is the chat conversations between the Respondent/cross-Petitioner and one Deaconesse Apata.

I have carefully and extensively gone through those chats and I have observed that although the Respondent/Cross-Petitioner had confided in the said Deaconesse Apata on various issues relating to her marital problems with the Petitioner, no mention was made on the alleged F.G.M and Hot water bathing of her child by Petitioner's mother. All the Respondent was concerned with is that her VISA was about to expire and that she will not come back to Nigeria.

The petitioner did say in his evidence that between the dates of these chats and the respondent deserting him was a space of about thirteen days.

Again as stated in one of the grounds of the Petition as well as in his evidence before the court, the Petitioner states that the Respondent has made up all these allegations in a bid to stay back in the U.K and has used his child as an excuse to stay in a refuge.

In my considered opinion, looking at all the circumstances of this case the Respondent as it is cannot be in a position to give the child of the marriage the basic necessities of life while staying in a Refuge.

The Petitioner has already proven that he's a Responsible father and is ready, able and willing to take care of his daughter who does not deserve to be in a refuge.

Therefore, considering the best interest of the child as paramount, I find that the Petitioner has established his case to be entitled to the Reliefs sought. The first issue for determination is hereby resolved in favour of the Petitioner. I so hold.

Consequently, and by implication, reliefs (b) and (d) sought for by the Respondent/Cross-Petitioner fail, are refused and accordingly dismissed.

On the last Relief sought for by the Respondent/Cross-Petitioner for perpetual injunction, I have observed that it stands on its own as it is neither pleaded in the answer/cross-petition nor supported by credible or weighty evidence of the sole witness for the Respondent/Cross-Petitioner. It is therefore refused and dismissed accordingly.

Therefore, the second issue for determination is hereby resolved against the Respondent with the exception of Relief 1, which seeks an order of the Court for dissolution of this marriage. I so hold.

On the whole, this Honourable Court has considered this petition and cross-petition and hereby makes the following orders hereunder:-

1. This Court hereby orders a Decree Nisi dissolving the marriage between the Petitioner Mr. Peter Korede Ojo and the Respondent/Cross-Petitioner Mrs. Deborah Oluwaseun Ojo celebrated in the Federal Marriage Registry, Abuja, Nigeria, on the 19th day of November 2013. The Decree shall be made absolute if nothing intervenes within three months of the date thereof.
2. The Petitioner is granted sole custody of the child of the marriage.
3. The Petitioner shall have immediate and unhindered access to the child of the marriage miss Victoria Ayomide Ojo, with the Assistance of the Nigerian and United Kingdom Authorities.
4. The petitioner having sole custody of the child Miss Victoria Ayomide Ojo. Is to provide for her education shelter, clothing and feeding and is to be enrolled in a good school of the Petitioner's choice.
5. It is important for Miss Victoria Ayomide Ojo to have a Relationship with her mother and for the Bond to be maintained, therefore, once the status of the Respondent is determined in the United Kingdom and she leaves the Refuge, she is to have unrestricted access to her daughter Miss Victoria Ayomide Ojo. This is subject to the convenience of both parents at the time of Request.

6. In addition, the Respondent shall have the child on every weekend of the year as well as on every school holiday.
7. The Respondent is ordered to Relinquish immediate custody or possession of the international passport of the child i.e Miss Victoria Ayomide Ojo to her father the Petitioner Ojo Korede Peter. This again, is to be done with the Assistance of the Nigerian and United Kingdom authorities.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE

5/12/19

Petitioner's Counsel: We are grateful for the Judgment. We shall comply with all the orders.

Respondents Counsel: We are grateful.