

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 34
CASE NUMBER: SUIT NO. FCT/HC/PET/133/19
DATE: 21ST NOVEMBER, 2019

BETWEEN:

YETUNDE YUSUF ARASAH.....PETITIONER

AND

DAUDA YUSUF ARASAH.....RESPONDENT

APPEARANCE

I Buoye .O. Isaac Esq for the Petitioner
Respondent absent and unrepresented.

JUDGEMENT

The petitioner Yetunde Yusuf Arasah has filed a petition for dissolution of her marriage to her husband Mr Dauda Yusuf Arasah.

The said petition is dated 1/2/19 and filed same date and prepared by the Petitioner’s Counsel Ibuoye .O. Isaac Esq, of Ola Olanipekun & Co, Solicitors to the petitioner.

The grounds stated in the notice of Petition for seeking the dissolution order are as follows:-

- (a) The petitioner who married the Respondent on the 31st of May 2014 both have lived in Federal Capital Territory Abuja, since immediately after their marriage up until November, 2017 when petitioner could no longer cope with violence always Exhibited by the Respondent and the fact that the marriage has broken down irretrievably.
- (b) That After the marriage in the Federal Capital Territory, Abuja the petitioner was deceived by the Respondent, and they lived in the Respondent's family house with other family members. After various attacks, curses in the family house and threat on the petitioner's life, the petitioner had to pay for an apartment in No 3, Dextra Crescent by News Engineering Ltd, Dawaki Abuja for herself and the Respondent wherein they cohabited.
- (c) That the marriage was eventually blessed with a child, Ronna Omorose Yusuf-Arasah after the petitioner suffered two life-threatening miscarriages.
- (d) That barely three months into the marriage, the petitioner discovered that she had been deceived into the marriage by the respondent, when she found out that the Respondent's claim of being a believing Christian was totally untrue and a deceit. The Respondent has been unfaithful, abusive. The Petitioner has been the bread winner of the house, she pays all bills, house rent, upkeeps, and general maintenance. She buys and provides foodstuff, clothing for the child alone and provides for their sustenance all

alone. Except for the occasional stipends he sends as the supposed upkeep of their daughter.

- (e) That even though the Respondent is gainfully employed by the Federal Republic of Nigeria, he more often shies away from his responsibilities as a married man and father.
- (f) That the Respondent keeps several Women outside the union. The Respondent assaulted the Petitioner in 2016 when he was confronted with massages and voice conversations he had with other women. He hit the Petitioner violently in the face, forced the keys out of her hands and tore her palm in the process. That that was always the practice anytime the Petitioner caught him cheating he would become very violent and aggressive.
- (g) That the Respondent has an uncontrollable anger which has become an issue that needs medical assistance. That the Petitioner has severally admonished the Respondent to seek help and that he promised to change and control his ferocious anger which made the Petitioner to go back home in 2017 after spending 3 weeks away from their home. That the anger became even worse and the Petitioner needs to stay away and alive to take care of her child.
- (h) That the Petitioner and the Respondent lived a facade of peace and harmony only to the consummation of the child of the marriage but, were constantly scorned with issues of infidelity and incompatibility to each other.
- (i) That a little into the Petitioner's 2nd trimester of the pregnancy of the child of the marriage, after the petitioner had just lost two consecutive

pregnancies, the Petitioner was instructed to be on bed rest by the medical personnel but could not get rest due to the attitude of the Respondent. That she then requested to be admitted into a hospital to save herself and the pregnancy because she was emotionally and physically exhausted. That Petitioner cannot express herself in her matrimonial home, there was hardly any form of understanding whatsoever between the Petitioner and the Respondent as both parties could not reasonably get along without having some sort of brawl between them.

- (j) That on the 12th of November, 2017, when the Petitioner's daughter was barely two months old, the Petitioner was still recovering from C-section when the assault started. All because the Petitioner got help when she was asked not to engage in strenuous activities during her recovery. That the Respondent hit her in the face and pushed her while she was babysitting their daughter who was fast asleep, not minding the baby and the health condition of the Petitioner.
- (k) That after enduring the constant hunger, curses, verbal abuse and humiliation for length of days, the Petitioner began to have heart palpitations, terrible migraines, inability to lactate and fainting spells. That the Petitioner ended up being taken back to the hospital and various tests carried out including but not limited to EKG test. That at that point the Petitioner was left with no option than to vacate her matrimonial home for her parent's home in Gwarinpa for her safety and the child's.
- (l) That every issue as it is related to the petitioner and the Respondent always led to a fight and constant quarrels between them. That during some of the counseling sessions they attended for peace to reign, the Respondent got

really angry at the petitioner and used words like ***“Foolish” “Stupid” “Imbecile,” “Idiot”, “bastard”, “you will die”, “ you will not know peace”, “useless Yoruba people”, “God will punish you”***, cursing her parents, siblings and threatening her life.

- (m) That these issues metamorphosed into both the Petitioner and the Respondent living “separate lives”, in the same home even before physical separation since 16th November, 2017 but no longer as husband and wife wherein the essence of marriage had completely failed.
- (n) That the Petitioner not being able to continue with continuous emotional abuse and the essence for which she was first married was no longer there and completely defeated, out of frustration, she moved to her own place of residence with her child since on 16th November 2017, leaving the Respondent and their jointly rented property behind.
- (o) That since November 2017, till the institution of this present petition, the Petitioner and the Respondent have lived apart more than a year because the Petitioner does not want to lose her life many of the Rampant stories associated with marriages in Nigeria.
- (p) That the parties have lived apart for a period of more than one year preceding this petition and the Respondent does not object to the dissolution of marriage being granted to the Petitioner.
- (q) That despite the Petitioner moving out of the home, she has nonetheless continued to cater for both herself and the child of the marriage.
- (r) That all and every effort from the church (Pastor), families and friends of both the Petitioner and the Respondent to reconcile them have all proven

abortive as the differences between the parties are irreconcilable because the Respondent is not ready to change.

- (s) That the love between them is dead and the Petitioner is fed up of the marriage and she is not to live a day more with the respondent. That the diabolic fetish way of life of the Respondent cannot be expected to live with. The Petitioner has confronted the Respondent severally and got really worried for her safety when she discovered that the Respondent consults spiritualist and saw a conversation between the Respondent and the Mallam (Marabout) on adding ***"something"*** to the Petitioner's meal/drink.
- (t) That the Petitioner has wholeheartedly made up her mind and agreed to separate and proposed a resolution on the custody and maintenance of their child of the marriage as follows:
- i. That the petitioner shall have custody of the child of the marriage giving the fact that she is still an infant.
 - ii. That both the petitioner and the Respondent shall have unfettered access to see the child subject to the convenience of the parties at the time of request.
 - iii. That the Respondent shall be responsible for the school fees of his child and her upkeep until maturity.
 - iv. That the Respondent shall pay for the school fees of the child of the marriage up to her University level.
 - v. That the Respondent shall be responsible for the feeding, clothing, medical bills and accommodation of the child.
 - vi. That the child when she attains the age of 18 years will be free to decide which parent she wants to live with up to her full maturity.

The Petition is undefended as the Respondent failed to file any process herein, despite appearances by the Respondent in person as well as Representation by a legal practitioner.

However, from the record of the court, and on the application of the Respondent's Counsel Mr Osakome Esq on the 18/04/19, the court granted an adjournment to enable both parties to explore the possibility of settlement out of Court. The court adjourned the matter to 14/5/19 for report of Settlement or hearing as the case may be.

On the 14/5/19 when the matter came up, there was no representation for the Respondent and Mr Ibuoye Isaac learned Petitioner's counsel informed the court that there had been no settlement nor any move towards settlement and applied to proceed with their case, which the court considered and granted accordingly. On this premise, the petitioner gave evidence before the court same day. The evidence of the Petitioner encapsulates all the grounds highlighted in the notice of petition for dissolution of the marriage in paragraphs A-T of the Petition. The petitioner has also attached a verifying affidavit dated 20/12/18 and filed on the 1/2/19

In her testimony before the Court, the Petitioner testified that she is an Architect. She testified that she got married to the respondent on the 31st of May 2014 at the Redeemed Christian Church of God in Otako Abuja, and a traditional wedding also took place on the 30th of May 2014, at her Parents house In Gwarinpa, prior to the church marriage.

The Petitioner testified that after the marriage, she and the Respondent moved into the Respondent's family house, she was treated horribly which led to several fights between the Respondent and his niece and her mother the

Respondent's sister. According to the Petitioner, in those fights both the Respondent and his relatives Exhibited strange behavior by stripping naked and cursing all in the presence of the Petitioner. The Petitioner stated that in one of those fights, his sister is quoted as saying:- " shebi na this house your father die. This is where you and your wife are going to die.

That she tried to intervene in the fight but the Respondent became really angry and uncontrollable, and that his own sister told her, that the Respondent was "**Bipolar**".

According to the Petitioner she advised the Respondent to get help for his problem, which he refused and she testified that in early 2016 he got physical with her, after she had suffered a miscarriage due to constant fights between her and the Respondent.

The Petitioner testified that some of the fights were because of some text messages and phone conversations she had seen between the Respondent and other women, which the Respondent always, denied. But, that eventually, the Respondent after seeing several multiple phone conversations owned up to it but still remained aggressive.

The Petitioner testified that the Respondent forbade her from going to her father's house or " she will die, and also forbade her own family members from visiting her. That the Respondent's behavior was strange. That he cursed her family, and even hit her when she packed her bag to leave for work, after she'd raised the issue of the Respondent's relationship with other women, that he forcefully took her car keys from her hand which resulted in her receiving a cut, and she left the house and walked down the street.

According to the Petitioner, at that time, she hid all that was happening from her family and only informed two of the Respondent's brothers who had to remove her from the house on two occasions. She testified further that she was constantly verbally abused by the Petitioner even in the presence of his two brothers who tried to intervene, she stated that at a point she had move to her brother's house and even travelled out of the country to the U.K for two weeks. The Petitioner stated that during that time, the Respondent did not even look for her.

The Petitioner stated that later on the Respondent tried to reconcile by promising to change his behaviour and promising that it won't happen again.

According to the Petitioner, aside from the text messages with women, she had once seen a message between the Respondent and a mallam " which was" I will give you something to put for your wife to drink", or something to that effect. And that the Respondent was paying the mallams also to do work on her father and brother.

The Petitioner stated she informed her pastor because she was scared. And that the pastor arranged a meeting and kept an saying to the Respondent "**Yusuf I thought you had stopped that**"

The Petitioner stated further that Although the Respondent came from a Muslim background, she met him as a Christian and that he told her he was born again.

That the Respondent called her names when he was angry like idiot, imbecile, stupid Yoruba girl foolish, cursed her father by saying "**Aina is a Bastard**" and that this verbal abuse would occur like four days in a week.

That even during the pregnancy of their daughter the fights continued and she took care of medical bills as the Respondent always said he didn't have his wallet with him. She was emotionally drained, and bedridden as such her mother had to sneak into the house to bring food for her, and she even begged the Doctor to admit her in the hostel as according to her she was emotionally drained and depressed. That the Respondent knew of her health condition when she was in the house but was so insensitive to her plight. And that when she was admitted in the hospital for there weeks, she had only her family there. She said the Respondent merely dropped her in the hospital and said bye. That the Respondent called the Petitioner to save eighty or eighty five percent of her salary in their joint account, but refused to honour his own side by making the required deposits. That he gave her a paltry sum and insulted her when she discussed the issue by saying she's not a wife, she's not obedient, stupid and she doesn't obey.

The Petitioner also testified that since 2014, she has been paying rent and was even sued by the Landlord, when the Respondent deceived her by saying he had been paying their rent which was not true. That when she called the landlord to make enquiries as to why he was suing her and not the Respondent, the landlord replied "***I cannot deal or talk to that man. He's not well, he is not normal and he has threatened me***"

The Petitioner faced the suit alone according to her, it was her father who sent a lawyer to represent her and that the Respondent didn't say anything.

According to the Petitioner after she and the Respondent had agreed to have their daughter in the U.S, he promised to take care of the finances but that when she was leaving in August 2017, the Respondent gave her **₦17,000.00**, then it was not up to a hundred Dollars. But in spite of that, the Petitioner stated that she

thanked the Respondent, added some of her money and made it up to a hundred Dollars. According to her she was just grateful that her baby was still alive.

The Petitioner testified that she had her baby daughter on the 19th of September 2017, Via C-section, but that the Respondent didn't send her any money despite several promises to that effect.

The Petitioner states:-

“ But a couple of days later he sent me two hundred Dollars and asked me to buy him a phone which I did.”

The Petitioner testified further that she had to pay **\$300** Dollars for their daughter's Visa and only had **\$285** Dollars. So, she stopped picking the Respondent's calls which eventually led him to send the balance and she was then able to return home.

That upon her return and meeting the house in an unhygienic state, her mother sent help to aid in the cleaning as she was unable to do so. That this situation led to the Respondent finding out cursing the boys doing the cleaning as well as her father. The Petitioner states:-

“ Aina has sent his spies again. Tell Aina he's a bastard Tell Aina I'll deal with him” I tried to calm him down, but next thing, he slaps me on the face while I was carrying the baby. I tipped over luckily on the sofa. One of the boys came over to help me and Yusuf was just yelling. I was trying to avoid him covering my baby, so I told the boys to leave and not to tell their parents, that I will meet them later at the house.”

According to the Petitioner, the fight got worse, she even called his mother to intervene, and was afraid of the Respondent's threat to do something fetish to their daughter.

She states, that after a few days, she started having heart palpitations and fainting spells, was living only on plantain chips and water because the Respondent refused to allow her to leave the house, despite the fact that she was lactating. The Petitioner stated that after taking several tests at the hospital which showed nothing, her doctor asked her what was happening and advised her not to ***“kill herself”***

Again according to the Petitioner when she finally moved out of the house she lived with this Respondent, and for months thereafter, the Respondent showed little interest in seeing his daughter.

She testified that there was an attempt at reconciliation with more promises by the Respondent to desist from his action and she eventually moved back in April 2018 as the counseling was going on.

According to the Petitioner, the Respondent went so far as to physically assault her baby's nanny when she at one time saw heavy marks on her face and she was crying. Upon inquiry, the Nanny informed her that the Respondent had attacked her and beat her up. And that the incident was witnessed by her neighbors who had called earlier to inform her about it. The petitioner stated thus:-

“I asked her, where was my baby when this was happening. And she said she was actually carrying my baby when it happened.”

In support of the Petition, two certificates of marriage between the Petitioner and the Respondent were admitted in evidence and marked as Exhibits A and B respectively. Exhibit A is a marriage certificate issued by the Redeemed Christian Church of God while Exhibit B is a certificate of marriage celebrated in the RCCG (Jesus of Nations) at Jabi Abuja marriage Registry dated 31st of May 2014.

Also, a photocopy of a plaint civil Summons from the chief District Court of the Federal Capital Territory Abuja Dutse Alhaji for service on the Petitioner and the Respondent was admitted as evidence and marked as Exhibit C.

Finally, the Petitioner urged the court to dissolve her marriage to the Respondent.

The Respondent was in court on the same day and urged the court to mark his presence, while explaining absence of his counsel on that date to be that he was bereaved and couldn't come to court.

The court informed the Respondent then that matter was to be adjourned for cross-examination of the Petitioner, and adjourned same accordingly to the 18/6/19.

On the 18/6/19 O. Osakume Esq appeared for the Respondent and craved indulgence of the court for another adjournment as he was recently bereaved.

Despite the objection of learned Petitioner's Counsel to the adjournment sought, the court, in the interest of Justice further adjourned the matter to 21/6/19 for cross-examination of the Petitioner.

The matter came up on 21/6/19 and yet again counsel to the Respondent and the Respondent were not in court. On Application of Petitioner's Counsel, and considering the history of the case, the court granted counsel's application, and foreclosed Respondent's right to cross-examine the Petitioner and adjourned the matter to 25/9/19 for Defence.

On that date, when the matter came up yet again there was no representation for the Respondent and no correspondence as to the reason for counsel's absence. The Respondent was also not in court. Again, the court considered the application made by Petitioner's counsel, foreclosed Defence of the Respondent and adjourned the matter for adoption of Petitioner's address.

On the date of adoption there was still no appearance nor Representation for the respondent and the court adjourned the matter to today the 21/11/19 for Judgment.

In support of the Petition is a written address filed on the 30th of October 2019.

The final written address prepared by Ibuoye .O. Isaac Esq, learned petitioners counsel is Eloquent and has aptly captured all the grounds on which this petition is predicated, and arguments urging the court to grant the orders sought for in this Petition.

In the said final written address, learned Petitioner's counsel formulated a lone issue for determination thus:-

Whether the Petitioner is entitled to the reliefs sought in her Petition, having regards to the facts and circumstances of this case?

Firstly, Counsel submits that it is a settled principle of law that matrimonial causes is a suit that is sue generis and regulated by the matrimonial causes Act and matrimonial causes rules. As such the Rules of courts are made to be obeyed. Counsel referred the court to the cases of M. C. INVESTMENTS LTD & ANOR VS CORE INVESTMENTS & CAPITAL MARKETS LTD (2012) LPELR-7801 (SC), IMUNZE VS FRN (2014) LPELR-22254 (SC) IBEZIAKO VS IBEZIAKO (2016) LPELR-40958; and submits that there's need for counsel to comply with the Rules of court as held in the case of UNEGBU VS UNEGBU (2004) 11 NWLR (PT 884) 354, Ratio 18, page 34 paragraph A.

Learned counsel submitted in paragraphs 3.8 and 3.9, of the written address that the Respondent has failed or neglected to utilize the opportunity given by the Rules by filing an answer to the Petition and to cross-examine the Petitioner, which is required under the matrimonial Causes rules.

Counsel referred to order vii rule 3 (1) of the M C Rules and the case of BABA PANYA VS PRESIDENT FRN (2018) 15 NWLR (PT 1643) 395 CA, and the case of UDE VS NWARA & ANOR (1993) LPELR-3289 (SC) (1993) 2 NWLR (PT278) 638; (1993) 24 N. S. C. C (PT 1) 236; (1993) 2 SCNJ 47.

Counsel also urged the court to take judicial Notice of its record and to observe that the Respondent had earlier appeared in court but without any

readiness to challenge the testimony of the petitioner and abandoned the suit. Counsel referred the court to Section 122 (2) of the Evidence Act, 2011.

Learned Counsel also drew the attention of the court to the settled principle of law that when the petitioner's case is not denied, challenged or her testimony controverted by oral or documentary evidence, the Petitioner is entitled to judgment. Counsel cited the case of INTERDRILL (NIG) LTD & ANOR VS U. B. A PLC (2017) LPELR-41907 (SC).

As such counsel submits that a trial court is entitled to rely and act on the uncontroverted or uncontradicted evidence. That in such a situation, there is nothing to put or weigh on the imaginary scale of Justice. And in the circumstances, the Onus of Proof is naturally discharged on a minimum proof. In this regard counsel referred the court to the dictum of IGE J. C. A. C at PP-33-39, paragraphs G-H) in INTERDRILL (NIG) LTD & ANOR VS U. B. A PLC (Supra) as well as the case of CAMEROON AIRLINES VS MIKE .E. OTUTU 1211 (2011) I SCM 70 at 92, paragraphs C-E.

Counsel further submits that there was no cross-examination by the Respondent or his counsel. No defence to the suit after several opportunities given by the court prior to foreclosure, and humbly prayed the court to grant the Petitioner's prayers. Counsel cited the case of TIJJANI VS STATE (2017) LPERL-43298 CA, in support of his submission.

On the issue of Adultery, it is submitted for the Petitioner in paragraph 4.2 of the written address, that same can be inferred in this case , since the Respondent's anger was evident when confronted with text messages with other women found in his phone several times. Reference was made to the case of ALABI VS ALABI (2007) LPELR-8203(CA) and also the case of IBEABUCHI VS IBEABUCHI (2016) LPELR-41268.

Counsel further submits that the standard of proof on this issue is on the preponderance of probability and the testimony of the Petitioner remains uncontroverted and unchallenged. Therefore, the court should make the Decree

Nisi and dissolve this marriage having broken down irretrievably. Reference was also made to Section 15 (2) (b) of Matrimonial causes Act.

On the issue of cruelty learned counsel referred the court to the case of NANNA VS NANNA (2005) LPELR-7485 (CA) and submits that on the definition of cruelty as held in the above cited case, the Respondent's actions on the Petitioner, being violent and cruel to her at the slightest provocation shows that he has a medical condition that has failed to abate and he has refused to seek help from medical practitioners.

Learned counsel further submits in paragraph 5.4 of the said written address as follows:-

“ If this Decree of Dissolution is not made, it may signal doom for the safety of the Petitioner, who according to her testimony on oath, has moved out of her matrimonial home on several occasions, when she was assaulted by the respondent. The respondent has wantonly and maliciously, without reasons, unnecessarily inflicted loads of pain upon the body, feelings and emotions of the Petitioner with abusive treatment, calling her names such as stupid Yoruba girl.”

In this regard, counsel made reference to Section 15 (2) of the Matrimonial Causes Act, and submits further that based on the provision of Section 15 (2) © of the Act, coupled with the uncontroverted testimony of the Petitioner, this Honourable court is enjoined to hold that the Petitioner cannot reasonably be expected to live with the Respondent and dissolve this marriage since it has broken down irretrievably.

On custody of the child of the marriage in this Petition, it is submitted by counsel that the Petitioner prays the court to have the custody of the child, and the petition has remained unchallenged.

Counsel submits that the child of the marriage is a two (2) year old girl who still needs the tender care and cuddles of her mum. That the mother, the Petitioner is employed and can take good and adequate care of the child if the Respondent fails in his duties and prayed the court to so hold. On this premise

Counsel referred the court to the cases of WILLIAMS VS WILLIAMS (1987) LPELR-8050 (SC); CHINCHEN VS CHINCHEN (1950) W.N 22 (C A); OKWUEZE VS OKWUEZE (1989) LPELR-2539 (SC).

On the issue of maintenance/Alimony, it is submitted by the learned counsel that the court would consider the prevailing circumstances and the capacity of the Respondent.

Counsel submits, that the respondent in the instant case, is a Director in the Federal Ministry of Mines and Steel Development, and he is a man of means. Thus, has the capacity to take care of the child and pay the alimony.

In this regard, reference was made to the case of OLU-IBUKUN & ANOR VS OLU-IBUKUN (1974) LPELR-2606 (SC).

In conclusion, learned counsel submitted that this Honourable Court should hold that the Petitioner has proved her case beyond preponderance of probability required of her, that she has found it intolerable to continue to live with the Respondent and that this Honourable Court should make an order of Decree Nisi and save the Petitioner's life by dissolving this marriage having broken down irretrievably.

Finally Counsel submitted that having solely conducted this case without any iota of Defence, this Honourable Court should grant the prayers as contained in the Petition.

I have carefully considered this Petition, the grounds upon which same is predicated, the verifying affidavit, the reliefs sought, the evidence of the Petitioner on oath, the Exhibits tendered as well as the final written address filed in support of the Petition.

As already observed in this judgment, despite several opportunities given to the respondent, the Respondent did not challenge this Petition in any manner. No answer was filed in response to the petition.

Now, although the court has taken Judicial notice of a motion on notice with motion No. m/7380/19 dated 18th June 2019 and filed on 21/6/19, seeking

for extension of time to file and serve an answer to this Petition, filed by one Ralph Nmeke Esq (Applicant/Respondent) counsel, the said motion was never moved, as such same is hereby deemed as abandoned and accordingly struck-out.

Nevertheless, one must at least acknowledge the fact that the Respondent had appeared in this Petition once, in person and even urged the court to mark his presence. And according to his counsel Mr Osakwe when he appeared for the Respondent on 18/04/19, there was instruction by the Respondent to hold off filing an answer to this Petition, that efforts were made by both families to wade into the matter and settle same. But, from the records of the court, there was no settlement and the matter proceeded to trial.

The orders sought for by the Petitioner as contained in the notice of Petition are as follows:-

1. A decree of dissolution of the marriage on the grounds that.
 - (I) There is no love in the marriage and the love is dead
 - (II) That since the marriage the Respondent has committed adultery and the petitioner finds it intolerable to live with the respondent.
 - (III) That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent;
 - (IV) The petitioner is tired of this marriage the marriage has broken down irretrievably and that the Petitioner and Respondent have lived apart for more than one (1) year immediately preceding the presentation of this Petition.
2. The respondent shall pay monthly alimony (allowance) of **₦100,000.00 (One Hundred Thousand Naira Only)** for the upkeep of his child from henceforth.
3. Custody and maintenance of the child of the marriage on terms proposed by the Petitioner to the Respondent as stated above.
4. The sum of **₦500,000.00 (Five Hundred Thousand Naira Only)** being the cost of legal and professional fees of this Suit to be paid by the Respondent.

5. Any other orders or reliefs as this Honourable Court deems fit to make in the present circumstance.

Now, under and by virtue of Section 15 (2) of the Matrimonial Causes Act cap 220 1990, the court is empowerment to grant an order of dissolution of any marriage where it is satisfied that the marriage has broken down irretrievably.

However, before the court can come to such a conclusion, it must be satisfied that the alleged grounds for dissolution of marriage falls within Section 15,(2)at (a) to (t) of the Matrimonial Causes Act.

Therefore unless the Petitioner satisfies the court on these matters, the court cannot hold that the marriage has broken down irretrievably as held in the case of DAMULAK VS DAMULAK (2004) 8 NWLR (PT 874) 154.

In the case at hand, the Petitioner has testified among other things that she has been deceived by the respondent with regard to place of abode of their marriage, on their finances as well as the fact that she was verbally and physically abused by the Respondent.

The petitioner has also alleged that the Respondent has committed adultery, since she has seen several text messages on his phone with other women. And that on the whole, the Respondent has been cruel to her and as such she has found it intolerable to live with the Respondent.

In addition, from the evidence presented by the Petitioner in her testimony on oath is that she was forced to leave her Matrimonial home due to the cruelty of the Respondent.

Now, although cruelty is not a ground stated in Section 15 (2) of the Matrimonial Causes Act, it is one of the old grounds for divorce.

In the case of ADARAMAJA VS ADARAMAJA (1962) ISCNLR, 376; the court held that:-

“Cruelty in relation to Matrimonial proceedings, is a conduct which is grave and weighty as to make cohabitation of the parties to the marriage virtually”

impossible coupled with injury or a reasonable apprehension of injury, whether physical or mental. The accumulation of minor acts of ill-treatment causing or likely to cause the suffering spouse to break down under strain therefore constitutes, cruelty.

See also the case of WILLIAMS VS WILLIAMS (1984)2 NWLR (PT54) 66.

Therefore in this case considering the fact that the evidence of the Petitioner was never challenged nor contradicted or controverted, I'm satisfied that the Respondent was given to violent behaviour among other things, which is no doubt intolerable. And in considering the totality of the Matrimonial history of the parties to the petition, I find strongly that the marriage in question has broken down irretrievably as the Petitioner cannot reasonably be expected to put up with. In this regard please see the case of IBEABUCHI VS IBEABUCHI (Supra) cited by learned Petitioner's Counsel in his final address.

Moreso, it is trite that the court is empowered to act on the unchallenged, credible evidence of a witness. In this case the Petitioner. On this premise, please see the case of OLUFENKE VS ADEAGBO (1988)2 NWLR (PT 75) page 238; MOHAMMED VS ALI (1989)2 NWLR (PT 103) page 349.

In the case of MASIN VS C.S. C KANO STATE (2010)6 NWLR (PT 1190) the Supreme Court held thus:-

“ Evidence that is relevant to the matter in controversy and has not been challenged or debunked remains good and credible evidence that may be used in the just determination of a dispute.

Also, in the case of HEIN NEBEUNG ISENSEE K. G VS U. B. A PLC (2012) 10 NWLR (PT 1326) 357 at 384 paragraph C, the court held thus:-

“ where evidence is uncontroverted, unchallenged and credible, the court will be left with no option than to accept same...”

Therefore, I have reviewed the evidence led herein and find same to be credible and that being the case, I am bound to act on it since it is unchallenged and uncontradicted. I so hold.

The Petitioner is also seeking custody of the child of the marriage and has made some proposals to that effect contained in the notice of petition.

It is submitted for the Petitioner in paragraph 6.2 of the written address, that the child of the marriage is a two (2) year old little girl, who still needs the tender care and cuddles of her mum. And that the, mother, the Petitioner is employed and can take good and adequate care of the child if the Respondent fails in his duties.

Well I have taken all that into consideration on this issue of custody. And although, already stated earlier, the petition is unchallenged, nevertheless, the first thing to note is that the child is question is also protected by the law.

By the provision of Section 69 (1) (a) and (2) of the child rights Act, 2014, every parent is guaranteed to have access to their child. Under the said Section either parent may make an Application for court orders with respect to the custody of the child and the right to access to the child.

In an application seeking custody of a child, it is trite law that the most important guiding principle is the interest of the child. In other words, the welfare of the child is the prime consideration of who should be granted custody amongst the parties.

In this regard please see the case of MRS LYDIA OJUOLA OLOWUN FOYEKU VS MR JAMES OLUSOJI OLOWUN FOYEKU (2011) 10 NWLR (PT-1227) page 177 at 203, paragraphs E-F, where the court of appeal held thus:-

“In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child 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 ODUSOTE VS ODUSOTE (2012)3 NWLR (PT 1288) 478.

In the instant case, the child of the marriage is two years old and is in no doubt in need of motherly care and attention. The child will need a healthy, safe and peaceful environment to be able to thrive both physically and emotionally. Therefore, in the circumstances, I have considered the best interest of the child as paramount. I so hold.

On this premise, I refer to the case of WILLIAMS VS WILLIAMS (1987) LPELR-8050, WHERE THE Supreme Court per Obaseki, JSC held thus:-

“ It seems to me that order for custody must have in view the opportunity of sound Education as well as physical and mental welfare. A parent who will deny these of his or her child is not worthy of an order for custody from the court”

In the case at hand, I have considered the fact that the Petitioner in her testimony on oath has informed the court that she’s an Architect. Therefore, it is my firm belief that if granted custody of the child, who is of tender age, the child will receive good and adequate care. I so hold.

On the issue of maintenance (alimony) it is submitted for the Petitioner in paragraph 7.2 of the final written address, that the court would consider the prevailing circumstances and the capacity of the Respondent and that in the instant case, the Respondent is a Director in the Federal Ministry of mines and steel Development and he is a man of means, he has the capacity to take care of the child and pay Alimony.

The guiding principles are clearly stated in the case of Olu-Ibukun & ANOR VS OLU-IBUKUN (Supra) cited by Petitioner’s Counsel in the address.

In that case, the court held that in such proceedings bordered on maintenance of a child of a marriage, the court may make such orders as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

In this case, the petitioner testified that the Respondent is gainfully employed by the Federal Republic of Nigeria and that he also receives rent on his property.

Unfortunately, the actual place of employment, the earnings and position held by the Respondent was not stated. The issue of the Respondent being a Director is stated only on the face of the Petition and Counsel's written address.

It is well settled now that the Address of the Counsel no matter how Brilliant cannot take the place of evidence. In this regard, I refer to the case of BFI GROUP CORP VS B. P. E (2012)18 NWLR (PT 1332)209 at page 244, paragraph B-C.

Therefore, since no evidence was led to support the fact that the Respondent is a man of means and support Relief No. 2 on the orders sought for in the Notice of Petition since the court cannot speculate on the Respondent's earnings the court shall exercise its discretion judicially and Judiciously having regard to the circumstances of this case. See the case of IDOWU VS IDOWU (2016) ALL FWLR (PT 863) PAGE 1688 AT 1700, Ratio 10.

The Petitioner in the orders sought for in particular Relief No. 4 is seeking for the Sum of **₦500,000.00 (five hundred thousand Naira only)** being the cost of legal and professional fees of this suit to be paid by the Respondent.

The question to ask here is whether the claim above forms part of the cause of action, in this case this Petition?

In the case of MICHAEL VS ACCESS BANK (2017) LPELR-41981 at 48-49, the court held as follow:-

"...It seems to me that a claim for solicitor's fees which does not form part of the cause of action is not one that can be granted. A relief which a claimant in an action is entitled to, if established by the evidence, are those reliefs which form part of the claimant's cause of action."

Still quoting, the court in MICHAEL VS ACCESS BANK (Supra) held further thus:-

“ In NWANJI VS COASTAL SERVICES LTD (2004) 36 WRN 1 at 14-15, it was held that it is an affront to public policy to have a litigant pass the burden of costs of an action including the solicitors fees to his opponent in the suit. Therefore, I think that on the current state of law, a claim for solicitors fees, which does not form part of the claimant’s Cause of action is not one that can be granted.”

Therefore, in the circumstances, I am afraid that the claim for legal professional fees has not been established by cogent and credible evidence or any evidence at all to warrant the grant of the relief sought. On this premise, Relief No. 4 fails and it is accordingly refused.

However on the whole, having already held that the Petitioner in this case has satisfied the court pursuant to Section 15 (2) (a) and (b) of the Matrimonial Causes Act, that her marriage to the Respondent has broken down irretrievably, I hereby make an order Nisi, dissolving the marriage between Mr Dauda Yusuf Arasha and Mrs Yetunde Yusuf Arasha celebrated at the RCCG-Redeemed Christian Church of God (Jesuit of Nations) Jabi, Abuja on the 31st of May 2014. The decree shall be made absolute if nothing intervenes within a period of three months from the date thereof.

It is accordingly ordered as follows:-

1. The Petitioner shall have Custody of the child of the marriage miss Ronna Omorose Yusuf-Arasah (who is still an infant)
2. Both the Petitioner and the Respondent shall have unfettered access to the child subject to the convenience of the parties at the time of request.
3. The Respondent shall be responsible for the school fees of the child up to University level, feeding, clothing, and medical bills of the child up to full maturity.
4. The Petitioner (***having Custody of the child***) is to bear expenses for her own accommodation and that of the child.
5. When the child of the marriage attains the age of 18 years, she will be free to decide which parent she wants to live with up to her full maturity.

6. The Respondent shall pay monthly Alimony (allowance) of **₦70,000.00 (Seventy Thousand Naira Only)** for the upkeep of his child excluding medical bills and school fees.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE

21/11/19