

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 23<sup>RD</sup> DAY OF JANUARY, 2020  
BEFORE: HON. JUSTICE M. A. NASIR  
COURT NO: 10  
SUIT NO: PET/83/2014

**BETWEEN:**

CHIDIMMA IKEAZOR OKEKE ----- PETITIONER/RESPONDENT

**AND**

OBIORAH HERBERT OKEKE ----- RESPONDENT/CROSS-PETITIONER

**JUDGMENT**

By an Amended Notice of Petition dated and filed on the 26<sup>th</sup> June, 2015, the Petitioner Mrs. Chidinma Ikeazor Okeke instituted the instant Petition against the Respondent, Mr. Obiora Herbert Okeke. The prayers of the Petitioner before this Court are as follows:

1. A decree for the Dissolution of marriage celebrated between the Petitioner and the Respondent at All Saints Anglican Church Wuse Zone 5 Abuja on the 12<sup>th</sup> day of December, 2009 on the ground that the conduct of the Respondent is such that the Petitioner cannot reasonably be expected to live with the Respondent.
2. An order of the Court granting the Petitioner full and total custody of the child of the marriage with access to the Respondent from 9:am – 5:pm on Saturdays and Sundays at least 2 times a month at an eatery nearest to wherever the child may be staying at the point in time.
3. An order that the Respondent shall provide a monthly sum of N300,000.00 (Three Hundred Thousand Naira) only for the maintenance and the general up-keep of the child of the marriage, to be

paid into the account of the Petitioner on monthly basis which sum shall be subject to upward review every 2 years to meet with the inflationary trend in the country.

4. An order that the Respondent shall provide and pay for all medical bills in respect of the child of the marriage and the Petitioner wherever the need arise. This also include all medications obtained from time from pharmacies and hospitals without admission.
5. An order that the Respondent shall provide and pay the school fees of the child whether in or outside Nigeria.
6. An order that a monthly sum of N250,000.00 (Two Hundred and Fifty Thousand naira) only should be paid into the Petitioner's account by the

- Respondent for her maintenance and up-keep and this is subject to upward review every 5 years.
7. An order that the Respondent provide a rented accommodation of not less than 3 bedroom in the heart of town in the FCT Abuja for the Petitioner and the child of the marriage for easy accessibility to school for 5 years and thereafter an accommodation of not less than 4 bedroom built in her name to meet her requirement in the near future.
  8. An order restraining the Respondent from threatening or harassing the Petitioner either through phone messages or by any other means whatsoever.
  9. An order compelling the respondent to provide the statement of accounts of all rents earned from the properties situate at Kenyatta and GRA in Enugu

State respectfully as well as other properties owned by the Respondent in this suit, and pay half of all accrued accounts to the said properties to the Petitioner and the child.

10. An order that the Respondent shall provide a generator and the sum of N200,000.00 per month for maintenance and provision of diesel, payment of electricity bill, water and other environmental fees every month.”

The marriage between the parties was celebrated at All Saints Anglican Church Wuse, Zone 5, Abuja on the 12<sup>th</sup> December, 2009. The ground of the Petition is that the conduct of the Respondent is such that the Petitioner cannot reasonably be expected to live with the Respondent and that the marriage has broken down irretrievably.

The Respondent filed an Amended Answer to Petition for Dissolution of marriage and a Cross-Petition dated 20<sup>th</sup> June, 2018. wherein he prayed this Court for the following:

- a. An order dismissing the petition.
- b. An order for dissolution of the marriage between the Petitioner and Respondent on the ground that the marriage has broken down irretrievably.
- c. An order granting and conferring on the Petitioner and Respondent the right of joint Custody and joint managing conservatorship over the child of the marriage, Miss Uche Chukwu Jannamma Okeke to determine her moral, religious, educational and social decisions and needs.
- d. An order granting the Respondent access to the child of the marriage to take possession and custody of the child and spend time with her from 9:am till 5:pm on

Saturdays and Sundays at least two times a month and for the child to spend holidays with the Respondent.

- e. An order that the Respondent shall have the right of joint possession and custody of the child to spend holidays with the Respondent to enable the Respondent and the daughter bond together as father and daughter just as the Petitioner and the child are doing.
- f. An order directing that the Respondent shall contribute the sum of N10,000. Monthly for the up-keep and maintenance of the child of the marriage.
- g. And for such other orders as this Honourable Court may deem fit to make in the circumstance.”

Then on the 19<sup>th</sup> October, 2018, the Petitioner filed her Reply to Cross-Petitioner's Amended Answer and Cross-Petition for dissolution of marriage.

The Petitioner testified as PW1 on the 24<sup>th</sup> January, 2018. Her evidence in support of the petition is that immediately after the marriage parties cohabited at No.16 Alh. Nuru Street, Lawanson Surulere, Lagos before they later relocated to Abuja and lived at No.50, 23, Crescent Efab City Estate, Mbor, Life Camp Abuja. She stated that the marriage is blessed with a child; Jannamma Uche Chukwu Okeke born on the 25<sup>th</sup> October, 2011.

The witness also stated that the Respondent put her under immense pressure which caused her emotional trauma. That the Respondent was in the habit of beating her to the point that she lost two pregnancies. When she had an 'Evacuation' at the hospital, the Respondent did not show up until the day she was discharged from the hospital. PW1 went on to state that when she took in a third time, her parents advised that she moved in with them, which she did with the consent of the Respondent. She further stated that she went to her parents to avoid



the beatings and trauma in the house. Eventually, the Petitioner said she was delivered of a baby girl in the USA and the only contribution from the Respondent was the sum of N50,000. That the Respondent was not happy when he heard that she delivered a baby girl and did not even call her until she called him two days after the delivery. The Petitioner further testified that the child Jannamma Uchechuwku Okeke started school at the age of one and she informed the Respondent through e-mail which he did not respond to. The Respondent according to her never visited nor paid school fees. That he paid school fees in full once during the pendency of this suit. The Petitioner informed this Court that she became physically, psychologically and emotionally traumatized due to the behaviour of the Respondent. She prayed this Court to dissolve the marriage and grant her custody of the only child of the marriage.

During cross examination the Petitioner reiterated the fact that she was constantly beaten by the Respondent eventhough it was not the only reason why she lost her pregnancies. She further stated that Munachi is her younger sister adopted by her parents upon the insinuation that Munachi was her child. She even offered to do a DNA test to prove that. She said she never denied the Respondent access to his daughter and that she will contribute to the upbringing of her child. Though she said the Respondent owned several houses, she stated she had no title documents before the Court.

The Petitioner further stated during Cross-examination that the Respondent married her in order to partake in the sharing of her late father's properties. That the Respondent never catered for the only daughter of the marriage before the institution of this Petition. And that she never stopped the Respondent from seeing his daughter.

Then on the 15<sup>th</sup> March, 2018 one Mohammed Baba Sule, was Subpoenaed to testify as PW2. He is a staff of First City Monument Bank (FCMB), Wuse, Zone 4 Branch. PW2 confirmed that he knew the Respondent as a customer of the Bank and also the sole signatory of the account Destiny Distribution Consult Ltd. Under cross examination, he said he could not state the health of the Respondent's account because he was not requested to produce the statement of account.

The Petitioner tendered the following documents:

1. Certificate of Marriage dated 12<sup>th</sup> December, 2009 as Exhibit A.
2. Form CAC 7 200187 dated 9<sup>th</sup> May, 2016 as Exhibit A1.
3. Copy of FCMB Teller with a document attached collectively as Exhibit A2.

4. School Receipt of Sacred Heart Nursery/Primary School dated 20<sup>th</sup> January, 2014 as Exhibit A3.
5. Copies of receipts from Great Blessing School collectively admitted as Exhibit A4.
6. Subpoena Duces Tecum as Exhibit A5.
7. Application forms for opening of Corporate Account admitted as Exhibit A6.
8. Board Resolution for Destiny Distribution Consult dated 5<sup>th</sup> November, 2013 as Exhibit A7.

The Respondent on his part called a total of three witnesses. He testified himself as DW1 on the 4<sup>th</sup> December, 2018. He confirmed the fact that the marriage is blessed with one child. However, he denied maltreating or beating the Petitioner. In fact, the witness stated that he has never fought anybody in his life. That the Petitioner had miscarriages due to some genetic factors according to the doctor the parties met at Savannah Medical clinic. DW1 further stated that he was deceived into marriage and he

handed all that happened over to God. He stated that the Petitioner never cooked and was not doing any household chores. The marriage according to him was full of trouble and he had to resign from work and parties moved to Abuja so that the Petitioner could be with her parents. The Respondent further stated that he attended a friend's birthday and barely 3 hours he returned to find out that the Petitioner had packed all her things and left the matrimonial home leaving the door open. When he called the Petitioner's mother she told him that the Petitioner was tired of the marriage. He stated that the Petitioner blocked all avenues for him to see his child whom he saw only seven times in 8 years.

Under cross examination, the Respondent stated that the Petitioner's parents are the cause of his problem. He denied that he paid the school fees vide Exhibit D2 during the pendency of this suit. He also said he did not know if Munachi is the Petitioners daughter and that he did not

want the Court to dissolve the marriage. That he had been giving the Petitioner and his daughter pocket money of N10,000 prior to the institution of this suit.

Mr. Usman Philip testified for the Respondent as DW2. He works with the Respondent at National Productivity Centre, Abuja on grade level 9 step 5 earning between N81,000.00 – N85,000.00 monthly. Under cross examination he said he did not know the Respondent prior to joining the organization and he did not know the deduction on the Respondents salary for NHF, Cooperative and Tax.

Finally, one Joshua Adikwu, a staff of FCMB was subpoenaed and he presented the Statement of Account for Destiny Distribution Consult Ltd.

In all, the following were tendered and admitted through the Respondent's witnesses:

1. Copies of Receipts from Amana Medical Centre admitted as exhibit D.
2. Payslip admitted and marked as Exhibit D1 (rejected).
3. Copies of Receipts from Great Blessings School admitted as exhibit D2.
4. Query letter dated 1<sup>st</sup> February, 2010 admitted as exhibit D3 during cross examination by Petitioners counsel.
5. CTC of Court order for adoption of Munachi Ikeazor admitted as exhibit D4 during cross examination of DW1 by the Petitioners counsel.
6. A Copy of Subpoena Ad Testificandum dated 20<sup>th</sup> March, 2019 admitted as exhibit D5.
7. Respondent's letter of Appointment dated 16<sup>th</sup> December, 2011 admitted as exhibit D6.
8. Copy of Subpoena Duces Tecum dated 21<sup>st</sup> March, 2019 admitted as exhibit D7.

9. Statement of Account of Destiny Distribution Consult Ltd. with Certificate of Compliance admitted as exhibit D8.

At the close of evidence, parties were directed to file their final written addresses. Helen Ndubunma Dickson Esq, filed the Respondent/Cross-Petitioner's final written address dated 16<sup>th</sup> April, 2019. Learned Counsel formulated two issues for determination as follows:

- “a. Whether from the totality of evidence adduced before the Honourable Court, the Petitioner has satisfied this Honourable Court to hold that the Petitioner is entitled to the reliefs sought.
- b. Whether the Honourable Court can rely on the evidence led by the Respondent to hold that the Respondent is entitled to the reliefs sought.”

Counsel submitted that there is only one ground for dissolution of marriage under the Act which is that the



marriage has broken down irretrievably, thus the Petitioner must in the circumstance adduce sufficient evidence before the Court to establish any of the facts set out by Section 15(2) of the Act. Counsel added that the Petitioner failed to establish that any particular behaviour of the Respondent in the course of the marriage was sickening and detestable of which a reasonable person would believe that the Petitioner found intolerable to have lived with.

It is the submission of counsel that the evidence of the Respondent sufficiently satisfied the provision of Section 15(2)(e) of the Act as the evidence before the Court is that parties lived apart from August 2012, to December 2014 when the Petitioner filed this petition. Counsel cited several authorities in support.

Mr. Emeka Etiaba, Learned Senior Counsel for the Petitioner filed the written address dated 25<sup>th</sup> April, 2019

wherein three issues were raised for determination as follows:

- “i. Whether the marriage subsisting between the parties deserve to be dissolved, having regard to the cases made by them.
- ii. Whether the petitioner is entitled to the custody of the only child of the marriage as proposed by her.
- iii. Whether the case made out by the Petitioner for maintenance of herself and the only child of the marriage is deserving.”

Learned Senior Counsel submitted that the evidence of threat to life, incessant beating and drunkenness qualify as factors that can lead to dissolution of marriage, thus satisfying the provision of Section 15(2)(c) of the Matrimonial Causes Act. He conceded that parties have lived apart for the period of over two years preceding the presentation of the petition. He added that the law is that

the Court is not to inquire into the rightness or wrongness or guilt or innocence of the parties at this stage but to proceed to grant the decree dissolving the marriage as no party is opposed to the dissolution.

The Petitioner as stated earlier has relied on unreasonable behavior under Section 15(2)(c) of the Matrimonial Causes Act.

Firstly, unreasonable behavior is used to describe the fact that a person has behaved in such a way that their partner/spouse cannot reasonably be expected to live with the other. Section 15(2)(c) of the Act provides as follows:

*“15(2) The Court hearing a Petition for decree of dissolution of marriage shall hold the marriage to have broken down irretrievably if, but only if, the Petitioner satisfies the Court of one or more of the following facts:–*

*(c) That since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.”*

From the above provision, irretrievable break down of a marriage may be proved by convincing evidence that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him. It is therefore not enough to adduce evidence that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him. The Court has to consider the entirety of the matrimonial history of the parties while analyzing the conduct complained of, whether same is grave and weighty enough to warrant the Court holding that the conduct is unreasonable in order to hold that the marriage has broken down irretrievably. See Livingstone vs. Livingstone (1974)2 All ER Page 766 at 771.

There are two limbs to the provision of Section 15(2)(c) of the Matrimonial Causes Act. The Petitioner must prove firstly that the Respondent has behaved in a particular manner. Secondly, the Court has to consider whether, in the light of the Respondent's conduct, it will be reasonable to expect the Petitioner to live with the Respondent. Further, by Section 82(1) of the Matrimonial Causes Act, *“a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court.”* See: Bakare vs. Bakare (2016) LPELR - 4034 CA. Thus, it is my opinion that the proof required by Section 82(1) is proof orally by witnesses at the trial in open Court.

The evidence herein is that the Respondent is a habitual drunkard and keeps late nights. That the Petitioner was put under immense pressure and always beaten which led to loss of two pregnancies. The Respondent on the other hand, denied ever beating the

Petitioner or anybody in his life. He stated that the Petitioner lost her pregnancies due to some genetic factors.

I have seen the Petitioner in the witness box and she appeared to be a witness of truth. I believe her testimony that she was constantly beaten and threatened by the Respondent. I am however not satisfied that the beating and physical abuse by the Respondent made the Petitioner lose any pregnancy as there is no medical report to buttress the fact.

In the case of Katz vs. Katz (1972) 1 WLR 955 at 960, the Court gave a guide as to what will constitute 'behaviour' within the meaning of Section 15(2)(c) of the Act as follows:

*"....Behaviour...is an action or conduct by the one which affects the other. Such conduct may either take the form of acts or omissions or may be a*

*course of conduct and, in my view, it must have some reference to the marriage.”*

The Petitioner has testified that she is physically, psychologically and emotionally traumatized. That when she had to go through the pain of evacuation at the hospital after she lost her pregnancy, the Respondent did not show up until the day she was discharged from the hospital. She also said the Respondent was not happy when he heard that she delivered a baby girl. He did not call her until she called him two days after the delivery. The Respondent did not dispute this evidence.

In Anakwenze vs. Anakwenze (1972) Suit No. E/19D/72, High Court of East Central State, Enugu Judicial Division delivered on 14<sup>th</sup> January, 1972, the Court held:

*“while a solitary act of violence will not as a rule constitute intolerable behaviour, persistent acts of molestation, vulgar abuse, use of obscene language,*

*callous spurious charges of infidelity and neglect could constitute it...”*

In cases of unreasonable behavior, the Court may have to consider in its entirety the matrimonial history of the parties, for certain acts though trifling by themselves alone, may in association with other acts or by the sheer force of cumulation assume the shape of unreasonable behavior. See Ibeawuchi vs. Ibeawuchi (1966 – 79) 5 Oputa LR 41. The matrimonial history of the parties showed that the Respondent had not been supportive nor adequately cared for the Petitioner.

The Court of Appeal in Ugbofor vs. Ugbofor (2007) 35 WRN 147 at 162 quoted Collins J, in Atkins vs. Atkins (1942) 2 All ER 637, where he held that:

*“It is not necessary, as it is obvious, in order to bring about the state of things that there should be violence. One knows that dropping waters*



*wears the stone. Constant nagging will become intolerable, and throughout in the course of married life you may be able to point to no single instance which could possibly be described as, in common parlance, 'a row'..."*

The Petitioner stated she had been emotionally traumatized, physically and verbally abused which became unbearable for her and she left the matrimonial home. The feelings of the Petitioner matter in this regard as it takes two to marry and to discharge the marital obligation. I believe the Petitioner's testimony that she had been taking care of the upkeep and medical expenses with the help of her parents. She single handedly paid all hospital bills in America except for N50,000 which the Respondent contributed. The overall conduct of the Respondent in my view is unreasonable and I am satisfied that his behaviour is such that the Petitioner cannot reasonably be expected

to live with. The Petition therefore succeeds under Section 15(2)(c) of the Matrimonial Causes Act.

Furthermore this Court notes that the Petitioner left the matrimonial home and lived apart from the Respondent for at least two years preceding the filing of this petition. This is one of the grounds relied upon by the Cross Petitioner in his Cross Petition.

Now as observed earlier in this judgment, for every petition for dissolution of marriage to succeed, the Petitioner must plead and prove that the marriage has broken down irretrievably, he would, then, proceed to give evidence on any of the facts contained in Section 15(2)(a)–(h) of the Matrimonial Causes Act.

Now by the provisions of Section 15(2)(e) of the Matrimonial Causes Act,

*“The Court hearing a petition for a decree of dissolution of marriage shall hold the marriage*

*to have broken down irretrievably if, but only if, the Petitioner satisfies the Court of one or more of the following facts–*

*(e) That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent does not object to a decree being granted,”*

For the purpose of the above Section, parties to a marriage shall be treated as living apart unless they are living in the same household. In **Black's Law Dictionary, 8<sup>th</sup> Edition, page 756**, “Household” is defined as “A family living together.”

In this instance, the Petitioner testified that she left the matrimonial home on the 31<sup>st</sup> August, 2012 and has lived apart from the Respondent ever since. This petition was filed on the 18<sup>th</sup> December, 2014 which is a period of

over two years. This is a ground for dissolution under Section 15(2)(e) of the Matrimonial Causes Act. The Respondent also filed a Cross Petition which for all intents and purposes stand on the same footing as the Petition. It is akin to a claim and counter-claim. Once they are filed, there are two suits or actions, independently of each other, being tried together for convenience and ease. See Nwanya vs. Nwanya (1987)3 NWLR (Part 62)697, Erhahon vs. Erhahon (1997)6 NWLR (Part 510)667. For the petition, the Petitioner had the initial burden of proof while the Respondent had the burden to prove the Cross-Petition.

In this instance, the Respondent/Cross-Petitioner prayed for an order dismissing the petition and a decree of dissolution of marriage between the parties on the ground that the marriage has broken down irretrievably. By the Amended Answer to Petition for dissolution of marriage and Cross-Petition, the fact relied upon by the Respondent/Cross-Petitioner is that parties have lived

apart for more than two years preceding the filing of the petition.

The Cross-Petitioner testified as DW1. He testified that the Petitioner does not take care of him and does not cook. That he had resigned his job in Lagos to relocate to Abuja because of the Petitioner. He further stated that he loves his child and has nothing against the Petitioner and her family. That the Petitioner left the matrimonial home without any reason in 2012 and since then parties have lived apart despite several attempts at reconciliation.

In a petition for dissolution of marriage, the fact that the parties have lived apart for a continuous period of two years immediately preceding the filing of the petition, is not conclusive proof upon which a decree of dissolution can be granted. By Section 15(2)(e), it has to be established further that the Respondent does not object to a decree being granted.

The Petitioner herein is not objecting to the dissolution of the marriage. Thus, once it is clear that the parties have lived apart for statutory period of two years without objection to a decree being granted, or three years, regardless of objection, then the Court is bound to grant a dissolution. The provision of Section 15(2)(e) and (f) is a non-fault provision. The Court is not supposed to enquire as to the reason for the living apart. See Agunwa vs. Agunwa (1972)2 ECSR 20 at 22, Parde vs. Parde Suit No. BHC/10/2003. The purpose of the law in this regard is to give a marriage which is already dead a decent burial without necessary apportioning fault. See: Santos vs. Santos (1972)2 NWLR page 289, Fuller vs. Fuller (1973)1 WLR page 730.

The parties having lived apart from 31<sup>st</sup> August, 2012 to 18<sup>th</sup> December, 2014 which is a period of over two years, I hold that the Cross Petitioner has satisfied the Court pursuant to Section 15(2)(e) of the Matrimonial

Causes Act. The Cross Petition therefore succeeds on this ground.

This brings me to the relief for custody. Both parties prayed this Court for the custody of the only child of the marriage Miss Uchechukwu Jannana Okeke. While the Petitioner prayed for the full and total custody of the child of the marriage with access to the Respondent from 9:am – 5:pm on Saturdays and Sundays, the Respondent/Cross-Petitioner on his part is praying for an order conferring on the petitioner and Respondent the right of joint custody.

The term custody is not specifically defined in the Matrimonial Causes Act. However, in Black's Law Dictionary, 8<sup>th</sup> Edition at page 412, custody of children is defined as: *“The care, control and maintenance of a child awarded by a Court to a responsible adult.”*

Thus, custody essentially concerned the care and control of a child physically, mentally and morally; it also

includes responsibility for a child with regard to his needs like food, clothing, instructions and the like. See: Otti vs. Otti (1992)7 NWLR (Part 252) 187 at 210. Further, Section 71 of the Matrimonial Causes Act provides as follows:

*“In proceedings with respect to the custody, guardianship, welfare, advancement or education of children of a marriage, the Court shall regard the interest of those children as the paramount consideration, and subject thereof, the Court may make such order in respect of those matter’s as it thinks proper.”*

From the above provision, the paramount consideration and in fact, the condition precedent is the welfare of the child in the surrounding circumstances of any given case, and it is only subject to that, that any



order for custody need to be made by the Court. See: Odogwu vs. Odogwu (1991)8 NWLR (Part 208) 253 at 258.

Now, taking into consideration the above highlighted principles, the Court has noted that Miss Uche Chukwu Jannamma born on 25<sup>th</sup> October, 2011 is now Eight years old and has been living with her mother, the petitioner/cross-respondent. She has lived with the child taking care of her feeding, clothing and medical bills. The respondent on the other hand said he will give the child the best education when custody is granted to him.

It is correct that in deciding to whom to award custody of a child of a broken marriage the Court *“shall regard the interest of the child as the paramount consideration.”* When an issue of custody is raised, the Court is bound to investigate with which parent the interest of the child would be better served. Custody is never awarded as a reward for good conduct nor is it ever

denied as a punishment for the guilty party's matrimonial offence. See Allen vs. Allen (1948) 2 All ER 413.

In this case, it is noted that the child does not sufficiently know the Respondent/Cross Petitioner having lived with her mother since 2012 when she was just a year and two months. It will be wrong to uproot this child from her familiar surroundings, from the care of a mother whom she knows. Beyond this, it is noted that the child is still a minor. It is trite that the degree of familiarity of a child with either parent and the conduct of the parties are some of the factors which the Court must take into consideration in deciding custody proceedings. See Alabi vs. Alabi (2007) LPELR – 8203 (CA). It is safer at this stage and in the overall interest of Jannamma to stay with her mother whom she already has physical custody of.

This Court is not unmindful of the fact that the Respondent/Cross Petitioner has prayed for joint custody

of the child. Joint custody involves both parents showing responsibility and authority with respect to the child. It should be noted that before an order of joint custody is made, the Court must ensure that the parents would co-operate with each other otherwise, it will be an order in futility. I am not satisfied that there is a reasonable prospect that the parties herein would co-operate. I therefore award custody of the child to the Petitioner.

I have taken into consideration the evidence of the Cross Petitioner who stated that he only saw his daughter seven times in eight years. This is certainly unacceptable. It is the right of the child to have access to both parents. Access to both parents is an important factor in the child's emotional development. Section 4 of the Child's Rights Act, 2003 states that *"Every child has a right to survival and development."* In the case of See M vs. M (1971) 1

WLR page 1486 it was held that access is a basic right of the child rather than that of the parent.

It is therefore very necessary that this child should know her father. To that end it is proper to make some provision for access to the child by the Respondent.

The Petitioner has prayed for maintenance for herself and the child of the marriage.

Generally, a man has a common law duty to maintain his wife and such a wife then has a right to be so maintained. With the breakup of the marriage which initially created those rights, duties and obligations, the wife of a broken marriage ceases to have a right to maintenance.

The Petitioner is seeking for:

(1) Monthly maintenance of N300,000 for the child's upkeep which shall be reviewed every two years.

(2) The sum of N250,000 monthly as maintenance and her general upkeep.

(3) The sum of N200,000 per month for maintenance of a generating set, provision of diesel, payment of electricity bill, water and environmental fees.

The Court in awarding maintenance has to consider the factors mentioned in Section 70(1) and (2) of the Matrimonial Causes Act. It provides:

*“Subject to this section and to rules of Court, the Court may,*

*in the proceedings for an order for the maintenance of a party*

*to a marriage, or of children of the marriage, pending the disposal*

*of proceedings, make such order as it thinks proper having regard*

*to the means, earnings capacity and conduct of the parties to*

*the marriage and all other relevant circumstances.”*

From the above provisions, the Court is expected in determining an application for maintenance to consider;

i. The means

ii. Earning capacity and

iii. Conduct of all the parties to the marriage and all other relevant circumstances.

It is pertinent at this stage to state that this relief for maintenance involved also the discretionary power of the Court to be exercised judicially and judiciously. Now what are the relevant and material facts before the Court? The Petitioner averred that *“The cross Petitioner is well off with choice properties in 32 Owerri Road Azata Enugu, 37 Kenyetta Street Uwani Enugu and 49 Imolu Street G.R.A Enugu and he drives an E.class.”*

In her evidence, the Petitioner stated the Respondent/Cross Petitioner has several landed properties

and some of them given out for rent. She further stated that the Cross Petitioner has a company Destiny Distribution Consult Ltd and tendered Exhibits A6 and A7 the Account Opening Form and the Board Resolution. It is apparent that the Respondent/Cross Petitioner is into Consultancy business. The question is what are the earnings from this company without any details provided by the Petitioner?

The bank teller for payment made by one Nwakpu Nneka with respect to the Respondent's property and a letter headed "To whom it may concern" were admitted as Exhibit A2. Exhibit A2 showed that Nneka paid N140,000 into Destiny Distribution Consult Ltd account. The other document directed some tenants to pay rent through Destiny Distribution Consult account. It should be noted that the Respondents income from the rents collected and his Consultancy business is not easily calculable from the evidence adduced.

From the Respondents testimony however, he stated that he works with the National Productivity Centre, Abuja on grade Level 9. DW2, one Mr. Usman Philip who works in the same organization stated that the Respondent's earning is in the region of N81,000 to N85,000 monthly. The Respondent offered to pay the sum of N10,000 to his daughter for her up-keep. Statement of Account for Destiny Distribution Consult Ltd was also admitted as Exhibit D8.

Sections 13,14, and 15 of the Child's Right Act (CRA), 2003 provides for the rights of the child to health and health services, parental care, protection and maintenance and right to education respectively. Apart from Sections 70 and 71 of the Matrimonial Causes Act, these Sections of the Child's Rights Act place upon parents the duty and responsibility for providing for their children as of right. In particular, Section 14(2) of the Child's Right Act, 2003 provides thus:



*“Every child has the right to maintenance by his parent or guardians*

*in accordance with the extent of their means, and the child has the*

*right, in appropriate circumstances, to enforce this right in the family*

*Court.”*

In this case, the Petitioner did not provide the Court with sufficient evidence to determine the real income from the Respondent’s business (except what the Respondent presented vide Exhibit D8.) Nevertheless it is the duty of a father to provide for his child. The Petitioner computed various sums for maintenance including housing, feeding, medical and educational expenses. In the light of the circumstance, the Court shall grant this relief in line with what it shall deem as just and reasonable having noted that the Respondent is into business and has landed properties given out for rent.

For the Petitioner however, it is noted that it was the Petitioner who left the matrimonial home and later filed this petition for dissolution of the marriage. The marriage has now been dissolved and why should it not be a complete dissolution including the dissolution of all erstwhile financial bonds and obligations? From the Petitioner's evidence she is a Legal Practitioner and in my view has the capacity and potential to work and take care of herself. I cannot see my way through to making any order for maintenance of the Petitioner by the Respondent, and I make no such order.

The Petitioner also prayed for an order compelling the Respondent/Cross-Petitioner to provide the statement of Accounts of all rents earned from the properties situate at Kenyetta and G.R.A in Enugu State as well as other properties owned by the Respondent, and also pay half of all accrued accounts to the said properties to the Petitioner and the child. Without much ado, this type of

relief arises where there is a claim for settlement of joint properties by the parties. The Petitioner in this instance has not pleaded any fact on joint ownership over the properties stated above with the Respondent, and no evidence was given to that effect. The said relief is deemed abandoned and accordingly dismissed.

There is no evidence also that the Respondent has been threatening the Petitioner through phone messages, that relief is also refused.

On the whole Judgment is entered in following terms:

1. The Petition and Cross Petition succeed and I direct that a *Decree Nisi* shall issue.
2. Custody of the child is awarded to the Petitioner with access given to the Respondent from 9am - 5pm on Saturdays and Sundays at least 2 times in a month. And in the overall interest of the child, the Petitioner shall

encourage the child to spend part of her holidays with the Respondent in order to create the bond between father and child.

3. In the circumstances of this case, I award the sum of N150,000.00 (One Hundred and Fifty Thousand Naira) to be paid monthly into the account of the Petitioner as maintenance allowance for the child of the marriage.
4. The Respondent shall pay all the medical bills for the child as the need arises.
5. The Respondent shall also pay the school fees for the child as and when due in a good school agreed by the parties within Nigeria.

All other reliefs are hereby refused and dismissed.

Signed

Honourable Judge

**Appearances:**

Emeka Etiaba SAN – for the Petitioner with him Deanabasi Essien, Mrs. Joy Etiaba Esq, Kenechukwu Azie (Mrs.)

Helen Dickson Esq – for the Respondent, with her Chuma Ajaegbu Esq