

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**HOLDEN AT JABI ABUJA**

DATE: 12<sup>TH</sup> DAY OF MARCH, 2020  
BEFORE: HON. JUSTICE M. A. NASIR  
COURT NO: 10  
SUIT NO: PET/11/2016

**BETWEEN:**

PIUS CHUKWUMA UKAEGBU ----- PETITIONER

**AND**

IFEOMA ANITA UKAEGBU ----- RESPONDENT

**JUDGMENT**

The Petitioner Mr. Pius Chukwuma Ukaegbu filed this Petition on the 31/10/2016 praying for dissolution of his marriage to the Respondent celebrated on the 21/1/2011 at the Abuja Municipal Area Council (AMAC). The Petitioner also prayed for custody and guardianship of the children of the marriage Chukwuma Caleb Ukaegbu born on the 11/7/2011 and Chidinma Precious Ukaegbu born on the 13/1/2015. The ground of the Petition is that the marriage has broken down irretrievably pursuant to Section 15(2)(c) of the Matrimonial Causes Act.

Upon receipt of the Notice of Petition, the Respondent Ifeoma Anita Ukaegbu filed an Answer to the Petition wherein she prayed the Court to refuse the order for dissolution of marriage. She also prayed the Court to grant her custody of the children of the marriage in the event that the marriage is dissolved, and maintenance for the children and herself until she remarries.

The evidence of the Petitioner before the Court is that the Respondent lived a life full of lies. She steals his money and lived an irresponsible life, keeping late night and sleeping out at the slightest misunderstanding between the parties. Several instances were narrated by the Petitioner when he testified which were corroborated by PW2 one Favour Emmanuel a maid in the house of the Petitioner and PW3 Tahiru Ayuba a Security man working with the Petitioner. PW2 even narrated how she took clothes to the Respondent in a hotel where she had lodged and she witnessed a man come into the room. PW3 also said the Respondent does not sleep in the house when the Petitioner

is away. He also said she brings strange guests to the house both male and female. Under cross examination, both the Petitioner and his witnesses maintained their evidence that the Respondent sleeps outside the matrimonial home and keeps male friends.

The Petitioner further testified that he has been solely responsible for the upkeep and maintenance of the children who have been in his custody.

Upon receipt of the Notice of Petition, the Respondent filed upon an Answer and testified as DW1. She denied sleeping outside the matrimonial home, and denied stealing money from the Respondent. She prayed the Court not to dissolve the marriage because she loved her husband. That the lack of love was from the Petitioner, and his family members did not help matters. She also prayed the Court to grant joint custody of the children. Under cross examination, she said the Petitioner's eldest brother and his uncle are aware that the allegations made by the Petitioner are false, that she could call them as witnesses. She also confirmed

that they had neighbours but she did not have anybody that can testify to confirm her evidence.

At the close of evidence, parties were directed to file written addresses. Nduka Odiaka Esq filed the Respondents written address on the 18/4/2019 and raised two issues for determination as follows:

- “1. Whether by this petition and evidence, the Petitioner has satisfied the Court that his marriage to the Respondent has broken down irretrievably as to entitle him to a decree of dissolution of marriage.*
- 2. Whether from the claims and evidence of the parties, custody of the children of the marriage, Chukwuma Caleb Ukaegbu and Chidinma Ukaegbu should be awarded to the Respondent or to them jointly.”*

Morris Osakwe Esq filed the Petitioners address dated 3/4/2019 and also raised two issues for determination. The issues are:

- “1. Whether the Petitioner has proved his case to make the Court enter judgment for him against the Respondent as per the orders sought.*
- 2. Whether the Courts do grant relief not sought by a party when such party has not filed any counter claim or cross Petition.”*

There are two limbs to the provision of the Section 15(2)(c) of the Matrimonial Causes Act when it comes to unreasonable behaviour. 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 continue to live with the respondent.

“Unreasonable behavior” is the term 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 them. The behavior means more than a state of affairs or state of mind. It imports action or conduct by one spouse

which affects the other. The conduct or act must be such that a reasonable man cannot endure. On what is reasonable the Court must consider in totality the matrimonial history. See Ash vs. Ash (1972)2 WLR page 347.

The only question before the Court is can the behaviour of the Respondent as stated by the Petitioner satisfy the grant of dissolution pursuant to Section 15(2)(c) of the Act? The evidence of the Petitioner that the Respondent lived an irresponsible life and slept outside of the matrimonial home was corroborated by the evidence of PW2 and PW3. The Petitioner said on the 12<sup>th</sup> of October, he woke up in the morning and saw his daughter with the maid, when he enquired about the whereabouts of the Respondent he noticed that she did not sleep in the house. The Security guard also confirmed this to him when he enquired from him.

Under cross examination, the Petitioner stated that he was not the reason why the Respondent slept outside the

matrimonial home. His evidence was corroborated by PW2 and PW3.

In Matrimonial cases, it is highly desirable that the evidence adduced by parties is corroborated by evidence of independent witnesses. This is moreso in undefended suits where the need for corroboration is far greater. See Ibeawuchi vs. Ibeawuchi (1973) 3 ECSLR page 56.

The Respondent on her part said she was going to call the Petitioner's brother and uncle to give evidence on her behalf, but failed to do so. It is trite that a Court may assume that evidence which could be and is not produced could if produced be unfavourable to the person who withholds it. See Aremu vs. Adetoro (2007) 7 SC (part 11) page 1.

From the evidence adduced, and taking into consideration the matrimonial history of the parties, this Court is of the considered view that the conduct of the

respondent is so grave in nature such that no reasonable man is expected to continue to live with.

I am satisfied that the marriage has broken down irretrievably and I hereby grant a decree nisi for its dissolution.

As for custody, in issues related to custody, the paramount consideration which is also the determining factor ought to be what is best for the child in the prevailing circumstance of each particular case. What constitutes the paramount welfare of a child in custody cases comprises of many factors such as the emotional attachment to a particular parent, mother or father and the Court is not to be regulated by any rigid formula. In this instance the Petitioner already has physical custody of the children and by now they have become emotionally attached to him. It will be wrong at this stage to uproot them from their familiar surroundings. It is therefore in the best interest of the children that custody should remain with the Petitioner. It is however necessary, and also in the interest of the children to know



their mother and have access to her. It is noted that the Petitioner in his pleadings stated that the Respondent has been enjoying access to the children and he is willing to allow same to continue. For this reason, the Respondent shall have unhindered access to the two children.

On the whole I order a decree nisi to issue dissolving the marriage between the Petitioner and Respondent celebrated on the 21/1/2011 at the Abuja Municipal Area Council (AMAC). The decree nisi shall become absolute by operation of law after three months.

2. The Petitioner shall have custody of the two children of the marriage Chukwuma Caleb Ukaegbu and Chidinma Precious Ukaegbu while the Respondent shall continue to enjoy unhindered access to the children.

In order to foster the relationship between the Respondent (mother) and her children, the Petitioner shall allow them to spend part of their holiday's with her.

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**Hon. Justice M.A. Nasir**

**Appearances:**

Morris Osakwe Esq – for the Petitioner

E.N. Odiaka Esq – for the Respondent