

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON THURSDAY, THE 5TH DAY OF MARCH, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/PET/115/19

BETWEEN:

ROSELINE UKAMAKA IBEFUNE PETITIONER

AND

CHARLES ONYINYECHI SUNDAY IBEFUNE RESPONDENT

BENCH JUDGMENT

There is no Law that empower the Court to force anyone who had filed a petition for dissolution of marriage to continue in the marriage more so, when the Respondent had also stated in an answer to petition that he has no intention of continuing with the marriage.

In this petition the Petitioner had stated that the marriage between her and the Respondent contracted on the 18th August, 2007 and solemnized at St. Pauls Anglican Church at Njete has broken down irretrievably and she is not expected to continue therein.

The respondent has on his own answer stated that he is also fed up and no longer interested in the said marriages as the Petitioner has behaved in such a way that he cannot continue living with her too.

The Petitioner has raised issue of Desertion, assault, Cruelty and bigamy. The Respondent had equally raised issue of adultery, desertion and disrespect. The marriage was blessed with one son Somtochukwu Charles Ibufune aged 11 years plus now in Federal Government Boys College at Apo Abuja FCT.

The full facts relied on in the Petition are hereby deemed adopted as part of this judgment, so also the Answer to the Petition as if they are summarized here seriatim.

On the issue of adultery raised by both parties the Court overruled them because there is no co-respondent or co-petitioner. It is obvious that the marriage has broken down irretrievably as the bottom had dropped off the marriage and the whole contract of marriage spelt out leaving only the shell.

Even the shell of the marriage has cracked beyond repair. The initial issue that the marriage was not contracted under Matrimonial Causes act (MCA) was taken care of in the Ruling of this Court delivered earlier on the 5th November, 2019. That Ruling forms part of this Judgment too as if it is hereby attached seriatim.

Since both parties are no longer interested as seen in the parties testimonies and body language, this Court hereby grant the Reliefs sought in the Petition and not challenged in the answer and therefore Order that the said marriage contracted on the 18th August, 2007 between Charles Onyinyechi Sunday Ibufune and Roseline Ukamaka Ibufune is hereby DISSOLVED. Since both parties have in turn stated based on the facts in support of the Petition and

answer to petition as well as in their respective testimonies that the marriage has broken down irretrievably and that they do not have the intention to continue to live together as husband and wife.

Decree Nisi is hereby made/granted as prayed.

On the Issue of custody of the only child of the marriage, this Court states and holds as follows:

The marriage which has just been dissolved was blessed by one Son as already stated. The Petitioner who has the Custody of the child had told the Court that all she wants is Custody of the child and that the Respondent will have unrestricted access provided he will not be violent. That whatever the respondent can provide she should provide and should do so properly. That an Account be opened so he can pay money into the Account so from there, she can settle the school bill. On his own part the Respondent stated in his Opening Statement by saying on issue of Custody what I call a 3 way plan of shared Custody.

That since there are 3 holidays in a year he will like the Petitioner to have Custody of the boy during Easter period.

(2) That during the long vacation the parties will share custody while during the Christmas vacation he will have Custody. He crowned it by saying that he will take full care of the boy's education, maintenance, welfare etc. That if the Petitioner wants to contribute she can do so. He ended his testimony on issue of custody, thus:

“I can take care of my son 100%”

It is trite law that no matter the Custody plan set by parties in a divorce issue the Court has the last say on what is set down as the Custody plan. Once such plan is set by the Court the parties are bound to follow it unless and until vacated by an Appellate court.

The Court is concerned with the welfare and wellbeing of the child, more so if the child is still a minor.

This Court had considered the welfare and Custody plans of both parents of Somtochukwu, the Court therefore Orders that the right thing to do for the child of this marriage given his age is a SHARED CUDTODY

This is because he needs the intermittent presence of both parents to grow in order to have a well balanced mental and psychological growth and stability.

The Court buys and accepts the shared Custody plan as set out by the Respondent.

The Court also accepts the submission by the Petitioner on issue of having an Account for the child's school fees portal. The Court accept the already existing account used for the payment of the fees of the said child as the account in this case for payment of school fees.

The Court therefore Order that the Petitioner here and now to give the Respondent the code of the school fees portal so that he can access the school portal to enable him pay the fees.

Since the Respondent had told the Court repeatedly that he "will take care of my son 100%" as he puts it the Court will not attach any money qualification on the issue of custody. The shared Custody is ordered thus:

(1)The Petitioner to have custody of the Boy during Easter vacation only.

The Respondent shall has Custody during Christmas vacation
The Petitioner should have custody during the first half of the long vacation while Respondent should have custody in the 2nd Half of the long vacation.

During school Holidays both parents shall have access during the school visiting day and where any parent cannot meet up on a visiting day, they can do so in any other day that the school can permit.

Upon attaining age of 18 the Child shall decide his choice as to who and where he will permanently reside.

The Custody Plan will end at the age of 18 years when the Boy can on his own decide where he will like to stay.

Upon the expiration of 90 days this Order Nisi for the dissolution of the marriage made today, the Order Nisi shall automatically be made Absolute in that the parties may not come to Court for an Order to make the Order Nisi Absolute.

**This is the Judgment of this Court delivered the-----
day of ----- 2020 by me.**

K.N.OGBONNAYA
HON.JUDGE