IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON TUESDAY THE 19TH DAY OF JANUARY, 2021.
BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO -ADEBIYI
SUIT NO: FCT /HC/PET/127/2019

JOY UFELI IGONOH ----------PETITIONER

AND

ANTHONY NAS SAMUEL ASHWE ----------RESPONDENT

JUDGMENT

By an amended Petition dated 7th day of May the Petitioner filed a Petition against the Respondent praying for a decree of dissolution of the marriage between her and the Respondent contracted and celebrated at the Marriage Registry of the Abuja Municipal Area Council (AMAC) Nigeria on the 20th of June, 2014. Petitioner specifically, prayed for the following:

1. A decree of dissolution of the marriage between the Petitioner and the Respondent solemnized on the 20th day of June 2014 at the marriage Registry of the Abuja Municipal Area Council (AMAC) in FCT, Abuja.
2. An order of this court awarding the sum of N300,000.00 (Three Hundred Thousand) naira only per month in favour of the Petitioner against the Respondent, the money being maintenance allowance to be given to the Petitioner for her up keep.
3. And for such further order or orders that this court would deem fit to make in the circumstances of this case.

On the 8th of May, 2019 the Respondent/Cross Petitioner filed an Answer/Cross Petition seeking for:

> "An order for a decree of dissolution, dissolving the marriage between the parties on the grounds that the marriage has broken down irretrievably on grounds of desertion and lack of mutual trust and respect".

The Petitioner did not reply to the Respondent's Answer to the Petition neither did she Answer to the Cross Petition.

The Petitioner at the trial adopted her witness statement on oath dated 3rd June, 2019 and tendered two (2) exhibits;

a. Marriage certificate dated 20/6/2014 issued by Abuja Municipal Area Council Marriage Registry; Abuja between the Petitioner and Respondent admitted in evidence and marked Exhibit PET1.
b. Letter of employment from UAS Innovations & Solutions Ltd dated 26/7/14 addressed to Petitioner admitted in evidence and marked exhibit PET2.

The Petitioner in summary deposed she was lawfully married to the Respondent at the Abuja Municipal Area Council Marriage Registry; Abuja on the 20/6/2014. That at the time of the marriage the Petitioner was a Part-Time student while the Respondent was a Trader and a businessman. That the Petitioner herself were working with UAS Innovation, House 11 Close 2 God's Own Estate Apo Abuja before the marriage. That before the marriage the Respondent persuaded the Petitioner to resign from her work on a promise that the Respondent will establish a business for the Petitioner but the Respondent failed to honour his word till date. That since the marriage the Respondent has

behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. That the Respondent has refused to consummate the marriage. That after the 6th month of their marriage the Respondent informed the Petitioner of having a baby girl from another woman and then towards the end of the same month the Respondent told the Petitioner that another woman also gave birth to a baby boy for him. That when the Petitioner advised the Respondent that children are blessing from God that both children should be brought home, the Respondent "radically" changed in attitude and behavior towards the Petitioner. That the Respondent stopped eating the food cooked by the Petitioner, was cruel to the Petitioner, formed the habit of coming home very late and ceased discussing family matters with the Petitioner. That towards the end of the 6th Month, the Respondent "forcefully dragged the Petitioner in a shameful and painful manner" into the Respondent's car and forced the Petitioner back to her father's compound. That Petitioner and Respondent have lived apart for a continuous period of at least five years immediately preceding the presentation of the Petition and that the Respondent does not object to the decree being granted. That the Respondent is a business man who earns up to one Million Naira (N1,000,000.00) per month and can afford to provide a maintenance allowance to the Petitioner to the tune of N300,000.00 (Three Hundred Thousand Naira) monthly until the Petitioner re-marries as the Petitioner is now an Applicant.

After conclusion of the Petitioner's evidence in chief, she was duly cross examined on the 14/06/2019, after which the Petitioner closed her case.

The Respondent/Cross Petitioner opened his case. He adopted his witness statement on oath and testified as a sole witness.

The Respondent/Cross Petitioner in his witness statement on oath avers that he lawfully married the Petitioner on the 20th day of June, 2014 at the Abuja Municipal Area Council (AMAC). That he consummated the marriage before the Petitioner deserted their matrimonial home after six (6) months into the marriage. That the grounds for the dissolution of the marriage by the Petitioner are vexatious, frivolous and calculated to deceive and woo the sympathy of this Honourable Court. That the Petitioner informed him that her father asked her to move out of their matrimonial home after she called him on phone that they had misunderstanding. That he tried within his power and human limit to be the best husband to the Petitioner but all effort failed because the Petitioner "claimed he was not treating her like her ex-lovers and does not have the financial standing she had imagined him to have". That the Petitioner took in but unfortunately aborted the pregnancy without his consent and he later got to know that the reason for that is that his financial condition is terribly poor and she cannot put to bed in such state or circumstance. That before he married the Petitioner she knew what he does for a living which is selling of CD plates in an open kiosk in Automatic Car Wash at Area 11, Garki Abuja and that he does not make more than N70,000.00 (Seventy Thousand Naira) only in a month. That during their marriage celebration the Petitioner's father insisted that he kills a cow but he told him he could not due to his financial standing, that the Petitioner's father insisted and offered to lend him the money which is to be paid back after the marriage. That he paid back the money for the cow to the Petitioner's father weeks after the marriage. He further avers that after their marriage the Petitioner was not doing anything other

than schooling. That he save his business money in the Petitioner's personal account and at the time the Petitioner moved out of their matrimonial home she left with over N300,000.00 (Three Hundred Thousand Naira) only of his money. That the Petitioner also went away with some of his vital documents. That he is not cruel and brutal as alleged by the Petitioner and has never beaten up the Petitioner. That he does not object to the decree of the dissolution of the marriage as the marriage cannot continue in the manner the Petitioner have always conducted herself with little or no regard for him. That it was due to his financial status that the Petitioner had to leave their matrimonial home hence her claim for N300,000.00 (Three Hundred Thousand Naira) only monthly until she re-marries is not only outrageous but in bad faith. That they have lived apart separately for over five years now and he does not intend to continue with the marriage any longer. That he does not have the means to pay maintenance to the Petitioner until she re-marries as he is also trying to make out a living for himself. Finally that the marriage has broken down irretrievably.

At the close of the Respondent/Cross Petitioner's examination in chief both the Petitioner and counsel were absent for three (3) adjournments and on the 12/03/2020 when the matter came up again for cross examination counsel to the Respondent/Cross Petitioner applied that the Petitioner be foreclosed from cross examining the Respondent/Cross Petitioner and case be adjourned for adoption of final written address. The said application was granted and matter was then adjourned to the 9th of April, 2020 for adoption of final written addresses. The final written address of the Petitioner was finally adopted on the 12th of

November, 2020. At the close of the Petitioner's address Godwin Eche Adole Esq. learned counsel to the Respondent/Cross Petitioner informed the court that they are resting their address on that of the Petitioner.

In her adopted final written address dated 21st September, 2020, learned Counsel for the Petitioner, Blessing Ogwuche-Ameh (Mrs.), formulated two (2) Issues for determination, namely –

1. Whether from the facts of this case the Petitioner can reasonably be expected to continue to live the Respondent.
2. Whether the marriage between the Petitioner and the Respondent cannot be said to have broken down irretrievably.

Summarily, learned counsel quoted the Bible passage of Genesis **Chapter 2 verses 21-24(KJV)** based on marriage as an institution created and ordained by God and that same scripture said in the book of **Amos Chapter 3 verse 3 (KJV)** "can two walk together except they agreed?", it therefore stands that a man and a woman must agree in order to be called husband and wife. Counsel submitted that the Petitioner cannot reasonably be expected to continue to live with the Respondent given the verifying affidavit and Petitioners averments on her witness Statement on Oath filed on 13th June, 2019 and urged the court to take a critical look at the acts of hostility and cruelty shown by the Respondent towards the Petitioner which were also recorded on memory card and were testified upon by the Petitioner in the witness box. Counsel submitted that as held in **Okoro v. Okoro (2011) ALL FWLR (572) 1749 @ 1773** that although cruelty is no longer a ground for seeking dissolution of marriage under the Matrimonial Causes Act, it could amount to intolerable behavior that the

Petitioner could not be expected to live with. Thus that act of the Respondent having children 6 months after the marriage amounts to palpable cruelty and adultery and it is the position of the law as stated by the court that only one act is enough to amount to cruelty. Counsel urged the court to hold that the cruel acts of the Respondent are intolerable behavoiur that the Petitioner could not be expected to live with. On whether the marriage between the Petitioner and the Respondent cannot be said to have broken down irretrievably, counsel submitted that the Respondent's cruel, brutal and adulterous act towards the Petitioner has caused untold hardship to the Petitioner. He urged the court to make a decree of dissolution of the marriage to enable the Petitioner regain her psychological and emotional sanity, most especially since the Respondent has moved on with his life and is not in opposition to the decree of dissolution of the marriage.

I have read and considered the written address of counsel. Before going into the body of the judgment, I will address the issue of memory card mentioned in the Petitioner's final written address. Learned counsel to the Petitioner in their final written address urged the court to take a critical look at the acts of hostility and cruelty shown by the Respondent towards the Petitioner which were also recorded on memory card and was testified upon by the Petitioner in the witness box. Suffice it to say that the said memory card relied upon was rejected and marked same as it did not meet up with the requirement of Section 84 of the Evidence Act 2011 for the admissibility of Electronic generated evidence. The importance of an exhibit in Court cannot be overemphasised in adjudication. The Court

of Appeal in **UNICAL & ORS V. EFFIONG & ORS (2019) LPELR-47976 (CA)** held that;

> *"A Court of law can only rely on a document tendered as an Exhibit before it and vice versa…"*

On whether a judge can rely on a document he had rejected or document not tendered before him as an exhibit the Court of Appeal in **BABATI V. AG FEDERATION YOBE STATE & ORS (2012) LPELR-20792 (CA)** held;

> *"It is the law as settled in a number of authorities that once a Judge has rejected a document in evidence, he cannot subsequently make use of same nor ascribe any value to same in his Judgment. The same document can neither be re-tendered nor relied upon in the course of Counsel's addresses nor commented upon by the trial Judge, except on appeal. In the same vein, the trial Judge cannot review his ruling on the rejection of the document. This is a duty left to the Court on appeal. The inherent jurisdiction of a Judge to set aside its decisions or orders are limited to judgments, rulings and orders which are nullities. …"*

Having stated thus there is nothing placed before this court by the Petitioner to establish the hostility and cruelty of the Respondent as alleged by the Petitioner as the said memory card was rejected and marked same.

From the evidence before me, the issues for determination are:

1. Whether parties are entitled to a decree of dissolution of Marriage.
2. Whether Respondent/Cross Petitioner has proved that he is entitled to his prayers in his Cross Petition.

3. Whether Petitioner has proved that she is entitled to the claim of N300, 000.00 (Three Hundred Thousand Naira) only per month from the Respondent being a maintenance allowance to be given to the Petitioner for her up keeping.

On the first issue for determination, both parties are not opposed to the Court granting a decree of dissolution of their marriage. Petitioner in her written statement on oath and the Respondent in his statement on oath both allege to the fact that they both find it intolerable to live with one another. It's even made worse by the Petitioner living separately from Respondent for more than two years preceding the filing of this Petition.
With respect to the relief of dissolution of marriage the law is fairly settled that no marriage will be dissolved merely because the parties have agreed that it be dissolved as marriage is a very important institution and it is the foundation of a stable society. The policy of law therefore is to preserve the institution of marriage. That is why marriages will not be dissolved on agreement of the parties to it. A Decree for the dissolution of marriage would therefore only be granted if the Petitioner has proved that the marriage had broken down irretrievably and that the Petitioner finds it intolerable to live with the Respondent. It is provided in **Section 15 (1) of the Matrimonial Causes Act**, that a court hearing a petition for the dissolution of a marriage shall grant the relief if the marriage has broken down irretrievably. **Sub-section (2) of Section 15** sets out facts upon which the court could hold that a marriage has broken down irretrievably. It states: "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 –

(a) that the respondent has wilfully and persistently refused to consummate the marriage;

(b) that since the marriage the Respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

(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;

(d) that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;

(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;

(f) that the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition;

(g) that the other party to the marriage has, for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act;

(h) that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

Therefore, upon proof of any of the factors stated in Section 15(2) (a-h)of the Matrimonial Causes Act, to persuade the Court that the marriage has broken down irretrievably, the Act provides that the Court shall grant a decree of dissolution of the marriage if it is satisfied on all the evidence adduced as held in **UZOCHUKWU V. UZOCHUKWU (2014) LPELR-24139 (CA).**

In this case, the Petitioner adduced evidence to the satisfaction of the Court that she and the Respondent have lived apart for more than two years immediately preceding the presentation of the Petition. This fact is not disputed by the Respondent/Cross-Petitioner as Respondent also adduced evidence in support of the Cross Petition that they have lived apart for over two years preceding the presentation of the Petition. However, it is trite that the sole ground for instituting an action for dissolution of marriage in Nigeria is that the marriage has broken down irretrievably. This is one and only ground to dissolve a marriage in Nigeria. **Section 15 (2) (a-h) and Section 16 of the Matrimonial Causes Act** states the particulars or facts that the Petitioner must prove in order to sustain the sole ground of the marriage breaking down irretrievably. Hence the Petitioner must successfully satisfy the Court of any one or more of the facts stated in **Section 15 (2) (a-h) of the Matrimonial Causes Act**. Once any of these facts is successfully proved by the Petitioner then the Court can make a decree Nisi. Petitioner in this suit failed to institute Petition for divorce on the sole ground that the marriage has broken down irretrievably rather Petitioner filed for "A decree of dissolution of the marriage between the Petitioner and the Respondent" without stating the sole ground. Hence filing a Petition for dissolution of marriage ought to be upon the sole ground that the marriage has broken down irretrievably

and not even upon the facts in proof of the sole ground as stated under Section 15 (2) (a-h) of the Matrimonial Causes Act. Petitioner in her facts leading to the Petition stated facts in respect of Section 15 (2) (a-e) of the Matrimonial Causes Act rather than use the said Section 15 (2) (a-e) as a fact to prove the sole ground that her marriage has broken down irretrievably. By Section 15(2) of the Act, the Court hearing a petition for dissolution of marriage shall hold the marriage to have broken down irretrievably if, and only if, the Petitioner has satisfied the Court of any one or more of the factual circumstances listed in paragraphs (a) – (h) of that subsection.

Although Petitioner failed to file for dissolution of Marriage on the sole ground as stipulated in Section 15 (2) of the Act as reproduced above, however, while the courts have a duty to follow its rules, this cannot or should not be the case where grave injustice will be done to parties. Petitioner has filed for dissolution of her marriage to the Respondent but came under the facts in prove of dissolution of marriage rather than the sole ground for dissolution of marriage. While this is not the procedure, it is a well established principle that the duty of the court is to decide the rights of the parties and not to punish them for errors if any, in the conduct of their case by deciding otherwise than in accordance with their rights. The rules are designed to assist the parties in putting forward their case before the court. They are not intended to deny parties of the opportunity of presenting their case, thereby resulting in injustice. See **SAVANNAH BANK OF NIG PLC V. JATAU KYENTU (1998) 2 NWLR (Pt. 536) @ 59 para B-C** Per **Edozie JCA (as he then was)**. In essence, irregularity concerning procedure will not vitiate the suit unless miscarriage of justice will be occasioned hence it ought not vitiate the

proceedings as procedure is to guide orderly and systematic presentation of a cause. See **FANFA OIL LTD V. AG FEDERATION (2003) 18 NWLR (Pt. 852) 453, @ 468 Para A-B Per Belgore JSC** (as he then was) where the learned jurist held that procedural laws are to help the substantive law and not to enslave it. It is true the constitution allows for the rules of procedure to be made but it does not make procedure to be master of the law. Consequently, I therefore hold that Petitioner has proven that her marriage to the Respondent has broken down irretrievably.

On the second issue for determination, the Respondent/Cross Petitioner in his Cross Petition prayed for an order for the dissolution of the marriage between him and the Petitioner on the ground that the marriage has broken down irretrievably. This is the sole ground for the dissolution of marriage as stated above. Parties in this suit are in agreement that they stopped cohabiting six (6) months into the marriage which took place on the 20th of June, 2014 making it about six (6) years parties have lived apart and the Respondent is not objecting to the dissolution of marriage.
It is the law that 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 facts – Section 15 (2) (e) provides;

> "That 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."

Section 15 (2) (e) of the Matrimonial Causes Act is divided into two cumulative parts; (i) The petitioner must satisfy the Court 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 (ii) The respondent does not object to a decree of dissolution of the marriage being granted. The two conditions must be present to warrant the Court granting a decree of dissolution of the marriage under Section 15 (2) (e) of the Matrimonial Causes Act as held in **EZEAKU V. EZEAKU (2018) LPELR-46373 (CA)**

In my considered view, the evidence of the Respondent/Cross Petitioner has satisfied the requirement of the Matrimonial Causes Act, 2004, in Section 15 (1) and 2 (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 nisi being granted and for that, the marriage celebrated between the parties ought to be dissolved.

Haven taken into account the averments in the Cross Petition and the evidence led in support. What is clear to me is that the marriage between the parties has broken down irretrievably owing to the fact that parties have lived apart from each other without co-habiting for a continuous period of six (6) years preceding the filing of this Petition. There is no child of the marriage. The law is certain that where evidence before a trial court is unchallenged, it is the duty of that court to accept and act on it as it constitutes sufficient proof of a party's claim in proper cases as provided in **KOPEK CONSTRUCTION LTD V. EKISOLA (2010) LPELR-1703 (SC)**. And given that the Petitioner has neither filed a reply to the answer to the Petition nor filed an answer to the Cross Petition, also did not controvert the Cross Petitioner's averments in cross-examination, the

law is that the court is bound to accept the Respondent's narrative as true and act upon it. In **EN C. EMODI & ORS V. MRS. PATRICIA C. EMODI & ORS (2013) LPELR-21221(CA)** it was held that;

> *"Where therefore a plaintiff files his statement of claim raising an allegation of fact against the defendants or one of them, such defendant(s) who do/does not admit the truth of the allegation must file a defence to contradict, controvert, challenge or deny the allegation. Where no defence is filed, the defendant is deemed to have admitted the assertion and the court may peremptorily enter judgment against the defendant".*

I hereby hold that the Respondent/Cross Petitioner has prove that his marriage to the Petitioner/Cross Respondent has broken down irretrievably and I so hold.

On the third issue for determination, it has been held in **NANNA VS. NANNA (2005) LPELR-7485 (CA)** that before a Court makes an order for maintenance, it must take some factors into consideration. These includes (a) the parties income; (b) earning capacity and by implication properties owned by each party (c) financial resources; [d) financial needs and responsibilities; (e) standard of life of the parties before the dissolution of the marriage, their respective ages and the length of time they were husband and wife. See also **Section 70 Matrimonial Causes Act**.

Naturally, the man has the duty of looking after his wife and children. Unfortunately, the couple was not blessed with children. Therefore, the Respondent is obliged to maintain his wife but this is a discretionary power of the Court to grant. However, in **Olu-Ibukun v. Olu-Ibukun (1974) LPELR-2606 (SC)**, it was stressed by the Supreme Court after

referring to the Australian case of Wills v. Wills (1961) 2 ELR 136, that the order for maintenance is not for the purpose of enabling the wife to share the husband's fortune, but to ensure that the wife should be able to live approximately in the position to which she has been accustomed. The Petitioner, did not proffer any evidence to support her claim of N300,000.00 for maintenance neither did she furnish the court with any evidence in other to prove his means of livelihood to establish his financial status and the fact that he can afford to pay the said sum for maintenance. The Court in **MUELLER V. MUELLER (2005) LPELR-12687 (CA) held that;**

> *"A husband must not be impoverished or sent to an early grave under the thin guise of obedience to an invitation by the wife to Court to award her maintenance. Law must not be an instrument of victimisation".*

It is trite law as stated above, that in making a maintenance order as it thinks fit, the Court should have regard to the means, earning capacity and conduct of the parties to the marriage and other relevant circumstance. The Respondent having pleaded and testified to his earning capacity and financial capability and stated in paragraph 18 of his witness statement on oath, I quote; "that I do not have the means to pay any amount for maintenance to the Petitioner until she re-marries as I am also trying to eke out a living for myself because of the way she disorganised my life" and said facts not being challenged, contradicted nor controverted, the Petitioner has not proved her prayer as to maintenance. Having considered the entire evidence before me, and the factors stated in **Nanna Vs, Nanna (supra)**, I hereby hold that the Petitioner is not entitled to the claim of maintenance.

I find this Cross Petition as having been proved. It has merit and it succeeds. I hereby dissolve the marriage and make the following orders:-

i. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **JOY UFELI IGONOH**, and the Respondent, **ANTHONY NAS SAMUEL ASHEW** at the Marriage Registry of the Abuja Municipal Area Council (AMAC) on the 20th of June, 2014.

ii. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three (3) months from the date of this order, unless sufficient cause is shown to the court why the decree nisi should not be made absolute.

Parties: Absent

Appearances: F. M. Agwan for the Respondent. Petitioner is not represented.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
19TH JANUARY, 2021