

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 5TH DAY OF MAY, 2020
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/PET/068/17

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

RACHAEL CHUKWUNONSO OKOLO.....PETITIONER

AND

DAVID OGUGUA UDEH.....RESPONDEENT

JUDGMENT

The Petitioner's Petition is dated the 1st day of December 2017 but filed on the 3rd day of January 2018.

The Petitioner prays the Court for the following.

1. A decree of Dissolution of marriage.
2. An Order granting full custody of the only child of the marriage to the Petitioner.
3. An Order for the maintenance of the Petitioner and the only child in the sum of N300,000 per month.
4. An Order for payment of N400,000 per session for the school fees of the child.
5. An Order for the payment of the Petitioner's rent being N700,000.
6. Cost of the Petition and legal expenses in the sum of N500,000
7. N50,000,000 for the Dissolution of the marriage.

8. Medical care of the Petitioner and the only child of the marriage.

The Petition and all other processes were served on the Respondent on the 4th day of April, 2018.

The Respondent failed, refused and or neglected to file an answer to the Petition.

The Petitioner gave evidence in proof of her testimony.

She stated orally that she is Rachael Okolotu. That she resides at Block 15 Flat 5 Phase 2, Site 2, Kubwa.

She is a civil servant.

She knows the Respondent. He is her husband.

On 19/02/15, they got married at the Federal marriage Registry Area 10, Garki.

They were issued with a Certificate at the conclusion of the marriage.

The said marriage Certificate is Exhibit A.

That after the marriage, they cohabited in Ushafa, Bwari Road from 1st November 2014 – 28th September 2015.

They have ceased cohabitation.

The marriage was blessed with Love Nebolisa Chukwuka Udeh.

The child was born on 29/09/15.

The Petitioner said she was thirty years when she got married.

She was born 28/11/84.

The Respondent was born on 28/01/84

That Okolotu was her surname before she got married.

That the Respondent's surname is Udeh.

That there has not been any other divorce proceeding.

That from the inception, the marriage has not been peaceful.

That he married her because he thought she was rich and that her family was well to do.

That after the marriage, he realised it was not so.

He hid his addiction from her.

He is into smoking and drugs.

He takes Codeine, Benylin and Marijuana. That these drugs make him violent and unstable emotionally.

He becomes aggressive, abusive and violent. He has no respect for her family members.

That he lies about her to his family members thereby causing friction.

He told his mother that she called her a witch.

They ceased cohabitation on 29/09/15.

That the only child of the marriage is with her.

That after the baby was born, they were abandoned at their family house. He said, she gave birth to a disable child whereas, she was only born with weakness of the muscle which was eventually cured. He moved out of the house.

There was no move to reconcile them from his family.

She was left alone with the child until last month when he sent half of the school fees of the child.

She has been responsible for the feeding, accommodation, school fees and spiritual development of the child.

The Respondent is not responsible.

He does not know how to be a husband.

The marriage was sponsored by her.

He earns money but he drinks and smokes.

That during the marriage, she was carrying the marriage responsibilities.

He gets irritated quickly and he nags.

He slapped her while she was pregnant, that she smiles when asleep and that she is possessed.

She wants custody and divorce.

That they have agreed that the Respondent pays N10,000 monthly for maintenance and N25,000 for school fees.

That the Respondent should visit the baby twice in a month.

He agreed to pick the baby and stay over one of the weekends and during holidays if he so wishes.

The Respondent also agrees to take care of the child's medical bill.

That her family members made attempts at reconciliation.

They were not successful.

Under Cross-examination, she answered as follows:

She did not leave to an unknown destination with her Aunty after delivery.

That after delivery, she went back to the matrimonial home but found that he had packed out of the house.

To a further question, she answered that after delivery, she went to her family house to be taken care of.

That she did not return to the matrimonial house after delivery.

The above is the case of the Petitioner.

The Respondent failed, refused and neglected to give evidence. His Counsel says the Respondent rests his case on that of the Petitioner.

Parties were ordered to file Written Addresses

The Respondent failed to file his Written Address.

The Petitioner's Written Address is dated the 31/10/19.

Learned Counsel to the Petitioner adopted it as his final oral argument.

The Petitioner raised an issue for determination which is whether or not the Petitioner is not entitled to dissolution of marriage and custody.

He argues that the evidence of the Petitioner is not contradicted by the other side and that the evidence is not incredible.

Learned Counsel submits that by Section 15(2) (e) of the Matrimonial Causes Act, a marriage is said to have broken down irretrievably if it is proved that the Respondent has deserted the Petitioner for a continuous period of over two years and the Respondent does not object to a Decree of Dissolution being made.

That the Petitioner has by evidence satisfied Section 15(2) (e) of the Matrimonial Causes Act.

That the Petitioner has also proved the four ingredients of desertion.

That the Respondent indeed deserted the Petitioner.

The evidence of the Petitioner is unchallenged.

He finally urges the Court to grant the reliefs sought.

I have read the evidence and the Final Written Address of Petitioner's Counsel.

The issue for determination in my view is whether or not the Petitioner has proved her case to entitle her to judgment.

From the evidence of the Petitioner summarised above, the following facts emerge.

1. The Petitioner and the Respondents got married on the 19th day of February 2015.
2. The Respondent without any provocation packed out of the matrimonial home and had not returned till date.

3. He is into smoking and drug addiction.

The Respondent did not contradict the above facts but relied on them. He did not file an answer to the Petition.

The main plank of the Petitioner's case is desertion.

Section 15(2) (d) and (e) states:

“(2) The Court hearing a Petition for a Decree of Dissolution of a 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:

(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.”

The only evidence which is available to the Court is that of the Petitioner. The Respondent also relies on the said evidence

when his Counsel said he rests his case on that of the Respondent.

The evidence is that the Respondent packed out of the matrimonial home as soon as the child of the marriage was born on 29/09/15.

That he has since failed and or refused to return.

It was over two years before the presentation of this Petition filed on 3/01/18. The only child of the marriage was two years at the presentation of the Petition.

She has been with the Petitioner.

The evidence is that the Petitioner is a civil servant. She has a stable income. The Respondent's means of livelihood is not in evidence.

In the circumstance, the Petitioner has proved her case to entitle her to the reliefs sought.

Judgment is therefore entered for the Petitioner against the Respondent as follows:

1. An Order of Decree Nisi is hereby granted dissolving the marriage between the Petitioner RACHAEL CHUKWU-NONSO OKOLOTU and DAVID OGUGUA UDEH celebrated on the 19/02/15.
2. This Decree Nisi shall become absolute after three months.

3. The custody of the only child is hereby granted to the Petitioner while the Respondent shall be allowed reasonable access monthly and or during public holidays.
4. The Respondent shall pay N35,000 monthly for the maintenance and feeding of the child.
5. The Respondent shall be responsible for the medical care of the child of the marriage until the child is able to take care of herself.
6. The Respondent is further ordered to take care of the school fees and all other educational requirements of the only child of the marriage.
7. ₦100,000 cost is awarded in favour of the Petitioner against the Respondent.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

5/5/2020.