IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 1ST DECEMBER, 2020

BEFORE: HON. JUSTICE M.A NASIR

COURT NO: 9

SUIT NO: PET/196/2017

BETWEEN:

PHILIP OGBU ALO ------- PETITIONER

AND

CHINYERE ALO ------- RESPONDENT

JUDGMENT

The Petitioner Philip Ogbu Alo filed this petition on the 20/4/2017. The Petitioner is praying this Court for decree of dissolution of his marriage to the Respondent Chinyere Alo. The marriage was celebrated at Obiakpo Local government Area at Rumuokoro Registry, Port Harcourt, Rivers State on the 05/05/2008. The marriage certificate was admitted in evidence as Exhibit A. The Petitioner has also prayed

the Court for custody of the only child of the marriage Daniel Alo.

The Petitioner testified that after the Respondent put to bed her family asked her to relocate to Port Harcourt for 4 months. He narrated an incident where he scolded his son over something and the Respondent challenged him and started shouting and told him that she had drank detergent to kill herself. He told the Court that the Respondent smashed his phone and tore his clothes to shreds because he called her family to report what she had done. He became afraid and had to beg the Respondent for one hour and 45 minutes before she agreed to drink palm oil to neutralize the effect of the detergent she drank. The incident was frightening, therefore he reported to her (Respondent) elder brother because communication with the Respondents mother had broken down. The Respondent's elder brother promised to talk to their

mother and report back to the Petitioner, but he never did.

The Petitioner then decided to send the Respondent back to Port Harcourt with the expectation that the family will communicate with him, but they never did. After much persuasion and pleading from the Respondent and his (petitioners) uncle, the Petitioner eventually took her back. Upon her return, things turned sour again. She threatened the Petitioner that she has returned as a wounded lion. He stated that the Respondent insults him in the presence of their son and threatened to kill him even after he divorces her. The Petitioner has asked for custody of the child of the marriage as he has been the sole provider and is afraid of what the Respondent might do to the child.

The Respondent never filed any process in defence of this petition despite being served with the Notice of

Petition and consistently served hearing notice. The Petitioner was also not cross examined, thus the evidence of the Petitioner remained unchallenged.

G.T. Iorver Esq on behalf of the Petitioner filed the written address dated the 11/2/2020. Learned counsel after reviewing the evidence of the Petitioner, raised a sole issue for determination as follows:

> *"Whether the Petitioner by the evidence before the Court, has made up/established a case for the grant of the reliefs sought in this petition."*

This petition is premised on unreasonable behaviour pursuant to Section 15(2)(c) of the Matrimonial Causes Act. It is necessary for the Petitioner to show that the Respondent's behaviour has been of a particular type and that because of that behaviour it would be unreasonable to expect the Petitioner to live with the Respondent. The

Respondent's conduct must be considered by the Court within the context of all the circumstances. The behaviour here is something more than a state of affairs or a state of mind. Behaviour in this context is action or conduct by one which affects the other. Such conduct may either take the form of acts or omission or may be a course of conduct, and, in my view, it must have reference to the marriage. See Katz vs. Katz (1972) 1 WLR 9655, Bannister vs. Bannister (1980) 10 Fm Law 240.

By the provision of Section 15(2)(c) of the Matrimonial Causes Act a 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 that:

"(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."

The Petitioner in his evidence has shown that the Respondent has the tendency to commit suicide. This fear is what led to the initial cessation of cohabitation between the parties, and further threats to his life has prompted this petition. In his words, the Respondent said even if he succeeds in divorcing her, she will make it her one point agenda to kill him.

Rokskill LJ opined in the case of O'Neill vs. O'Neill (1975) 3 All ER 289, as follows:

"would any right thinking person come to the conclusion that this wife has behaved in such a way that this husband cannot reasonably be expected to live with her, taking into account the whole of the circumstances and the characters and personalities of the parties?

See also Livingstone – Stallard vs. Livingstone – Stallard (1974)2 ALL ER page 766 at 771.

At paragraph 5.4 and 5.5 of the Petitioners final written address, counsel cited the case of Oforlete vs. The State (2000) 7 SCNJ 162 at 179 and submitted that the failure of the Respondent to appear before the Court, after being served with hearing notices and failure to cross examine the Petitioner is suicidal and the mortal implication is that she accepts the truth of the matter as led in evidence by the Petitioner.

The positive evidence given by the Petitioner in support of the petition was not challenged or contradicted by the Respondent who was given opportunity to do so. It is safe therefore for the Court to believe and act on the uncontroverted evidence of the Petitioner as only minimal proof is required in this instance. See Ajidahun vs. Ajidahun (1) SMC page 37,

Garba & 2 Ors. vs. Zaria (2005)17 NWLR (Part 953) at 55.

This Court therefore believes the Petitioner and hold that the conduct of the Respondent is grave and weighty. No reasonable man is expected to continue to live with this behaviour of the Respondent, with the Petitioner not being an exception. The Court is satisfied that the marriage between the Petitioner and Respondent has broken down irretrievably, the provision of Section (15)(2)(c) having been satisfied. I grant an Order Nisi dissolving the marriage, which shall become absolute upon the expiration of three months.

The Petitioner has prayed for custody of the child. The trite position of the law is that the best interest of the child is what the Court seeks to achieve. The question here is, what will be the best interest of the child in this circumstance? In the case of Otti v. Otti

(1992) 7 NWLR (Pt 252) 187 at 210, the Court of Appeal defined custody as essentially concerning the care, control and preservation of a child physically, mentally and morally; it also includes responsibility for a child with regard to his needs like food, clothing, instruction and the like. See also Alabi vs. Alabi (2008) All FWLR (part 418) page 245, Odogwu vs. Odogwu (1992) 2 SCNJ page 357.Section 71(1) of the MCA 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 thereto, the court may make such order in respect of those matters as it thinks proper".*

Section 1 of the Child's Right Act 2003 also provides:

"In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, Court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration."

The issue of custody is very delicate and of very high importance because it touches on the welfare of children, and any decision taken will determine their future ultimately, which is why the Court places very serious priority on it and with keen interest.

Where a party seeks custody of a child of the marriage he is required to set out the proposed arrangement for accommodation, welfare, education, upbringing and other arrangement of the child. The fact that one spouse is in a much better financial position to bring up the child and to provide him with better accommodation may be decisive. But the

determining factor ought to be what is best for the child. The Petitioner herein did not state the arrangement he has made for the child. He did not tell this Court his earnings from anywhere or his earning capacity. Infact he himself stated that the Respondent recently got a job with Halogen Securities as security personnel. Though the Petitioner has been solely responsible for the payment of school fees and the upkeep of the child, he has not told this Court the arrangement put in place for the child.

In the absence of very clear proof that the welfare and the interest of the child will be better preserved and served, I will hesitate in, and decline from making any custody order in favour of the Petitioner.

Thus, I make an order that custody of the child Daniel Alo shall for now remain with the Respondent. Unfettered access shall be granted to the Petitioner. The child should be encouraged by his mother (the

Respondent) to spend some part of his holidays with his Father, the Petitioner.

Signed
Honourable Judge

Appearances:

G.T. Iorver Esq – for the Petitioner

Respondent absent and not represented.