IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON THURSDAY17THDAY OF DECEMBER 2020
BEFORE HIS LORDSHIP:HON JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 13 APO – ABUJA

SUIT NO: PET/149/2019

BETWEEN:

MRS. CHINWENDU JOY BIADUO… … … … …PETITIONER

AND

MR. OGU IFEANYI BIADUO… … … … … …RESPONDENT

JUDGMENT

Marriage between the Petitioner and Respondent was solemnized at the ***Municipal Area Council Marriage Registry, Abuja, on 15th September, 2006***. The marriage is blessed with two children.

However, the Petitioner presented the instant Petition before this Court on 21/02/2019, on the ground that

the marriage has broken down irretrievably in that both parties of the marriage had lived apart for a continuous period of at least three (3) years immediately preceding the presentation of the Petition.

Specifically, the Petitioner prayed this Court for the reliefs set out as follows:

1. ***A decree of dissolution of the marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably as parties to the marriage have lived apart for a continuous period of at least 3 years immediately preceding the presentation of this Petition.***

2. ***An order granting custody of the children of the marriage to the Petitioner and granting the Respondent reasonable and monitored access to the children.***

3. ***An order that the Respondent shall make available to the Petitioner monthly or quarterly***

payment of an amount that shall be decided by the Court for maintenance of the children.

The Respondent, althoughabsent throughout the proceedings, however filed Answer and Cross-Petition on 16/09/2019. He was equally represented by counsel throughout the proceedings.

The Petitioner testified in line with facts pleaded in the Petition. She tendered in evidence as **Exhibit P1,** original marriage certificate issued to her and the Respondent upon the solemnization of the marriage between them at the *Municipal Area Council Marriage Registry, Abuja, on 15th September, 2006.* The Petitioner testified, crucially, that cohabitation between her and the Respondent ceased on 03/06/2013, the day the Respondent packed out of their matrimonial home at *House 15, 6th Avenue, 61 Road, Gwarinpa, Abuja*; and that ever since he did not return to the matrimonial home.

The Petitioner further testified that her marriage to the Respondent is blessed with two children, namely **Indira ChiagoziemOgu-Biaduo(female),** born on **04/07/2008**; and **AdrielTobechiOgu-Biaduo(male),** born on **28/12/2010**.

The Petitioner also testified that since the Respondent left the matrimonial home, the two children had continued to live with her and that she had solely continued to be responsible for their education, upkeep and welfare.

The Petitioner testified that prior to the institution of the present Petition, she had previously filed a Petition in Petition No. PET/288/16 at the High Court of FCT, which she subsequently withdrew and the same was struck out.

The Petitioner further testified that apart from seeking dissolution of the marriage, she also seeks custody of the two children of the marriage and that she would

leave the issue of maintenance of the children of the marriage to the discretion of the Court.

When cross-examined by the Respondent's learned counsel, the Petitioner further testified essentially, that since the Respondent left the matrimonial home in June, 2013, she had taken the children of the marriage to visit the Petitioner in Ghana, where he resided, in 2013, 2014 and 2015, and that the purpose of the visits was to enable him see his children. She further testified that she last saw the Respondent in December, 2015.

The Respondent failed to turn up in Court to lead evidence in support of his Answer to the Petition and Cross-Petition, despite several adjournments granted at his instance by the Court, as the Court's record bears out.

In the circumstances the Court struck out the Respondent's Cross Petition at the hearing proceedings

of 02/11/2020 and effectively his Answer to the Petition is also deemed abandoned.

Learned counsel for the respective parties proceeded to rendertheir final addresses and summaries orally on 25/11/2020.

To start with, the fact of marriage of the two parties in accordance with the provisions of **s. 24** ofthe **Marriage Act** is not in dispute. The Petitioner clearly established this fact by tendering in evidence as **Exhibit P1,** copy of the Certificate of Marriage issued to the parties upon the celebration of the said marriage at the *Municipal Area Council Marriage Registry, Abuja,* on 15th September, 2006.

As it is well known, by the provision of **section 15(1)** of the **Matrimonial Causes Act,** there is only one ground upon which a party may present a Petition for dissolution of marriage; which is that the marriage has broken down irretrievably. See *HammanVs.*

Hamman[1989] 5 NWLR (Pt. 119) 6; Anagbado Vs. Anagbado [1992] 1 NWLR (Pt. 216) 207.

The provision of **section 15(2)(a) - (h)** of the **Act** further sets out the various facts upon which the Court could hold that a marriage has broken down irretrievably. A Petitioner need only to establish any one of those facts as set out in **section 15(2) (a) - (h)**of the **MCA,** in order to prove that the marriage has broken down irretrievably. See also *NannaVs. Nanna [2006] 3 NWLR (Pt. 966)1.*

Learned counsel for the Petitioner contended that the instant Petition is grounded on facts set out in **s. 15(2)(f)** of the **Act,** which provides that:

> ***"15(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-***

(a)

(b)

(c)

(d)

(e)

(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

…."

Learned counsel for the Petitioner further submitted that the uncontroverted evidence before the Court established that the Petitioner and the Respondent had continued to live apart since June, 2013, when the Respondent abandoned the matrimonial home; and that from that time up until 21st February, 2019, when the instant Petitioner was presented before this Court,

there was a period of over three (3) years prescribed by **s. 15(2)(f)** of the **MCA**.

Learned counsel therefore urged the Court, on that ground, to dissolve the marriage.

I had also taken account of the submissions of the Respondent's learned counsel to the extent that the Petitioner having conceded under cross-examination that she visited the Respondent in Ghana in 2015, the three (3) years separation rule could no longer mathematically avail for her.

However, the Respondent's learned counsel's instant submission clearly overlooked the evidence on record. Even though the Petitioner admitted that she took the children of the marriage to Ghana to see the Respondent in December, 2015; she did not admit staying with the Respondent under the safe roof during the visit.

Even if it was so that the Petitioner cohabited with the Respondent in December, 2015, the Petition would still have satisfied the provision of **s. 15(2) (f)** of the **MCA**, in that there was a clear continuous period of at least three (3) years that both parties had lived apart, from the said December, 2015 to 21 February, 2019, when the instant Petition was presented. I so hold.

On the basis of the evidence on record therefore, the Court hereby holds that the Petitioner has satisfactorily established that the marriage between her and the Respondent had broken down irretrievably, in that parties had lived apart for a continuous period of at least three (3) years immediately preceding the presentation of the instant Petition.

With respect to the issue of custody of the children of the marriage, the uncontroverted evidence before the Court is that the Petitioner has been solely responsible for their shelter, education, upkeep and welfare since

the Respondent abandoned the matrimonial home in June, 2013. As at 17/10/2019, the date the Petitioner testified in support of her Petition, she stated that the first child of the marriage was in JS2 and attended a Catholic boarding Secondary school, Karu, Abuja; whilst the second child of the marriage was in Primary 5 at Glisten Academy School, Jabi, Abuja.

The evidence on record is further that since the Respondent left the matrimonial home in June, 2013, he had not once returned to Nigeria to see his children, other than the periods the Petitioner took them to see him in Ghana and that the last time he saw them was in December, 2015, about five (5) years ago.

It is therefore the Court's reckoning that by the Petition's unchallenged testimony before the Court, she has demonstrated capacity and means to solely cater for the children of the marriage in the absence and without the support of the Respondent, who has

failedin his fatherly duty and role, either to see them in the past five (5) years; or to support their upbringing since 2013 when he abandoned the matrimonial home.

As correctly submitted by the Petitioner's learned counsel, the provisions of **s. 71** of the **Matrimonial Causes Act** gives the Court wide discretionary powers to make orders as it thinks appropriate, with respect to the custody of the children, as the circumstances of every case dictate. The paramount consideration however, being the interests of the children, particularly as relating to their welfare, education and advancement.

The principles governing grant of custody of a child in matrimonial causes have been well laid out in a long line of judicial authorities from time immemorial. See *Lafun vs. Lafun [1967] NMLR 401; AfonjaVs. Afonja [1971] UILR 105; Williams Vs. Williams [1987] 2*

NWLR (Pt. 54) 66; Odogwu Vs. Odogwu [1992] 2 NWLR (Pt. 225) 539; Alabi Vs. Alabi [2007] 9 NWLR (Pt. 1039) 297.

In the instant Petition, the Court is satisfied that the Petitioner is entitled to sole custody of the two children of the marriage, having demonstrated, by her evidence, her capability and means to solely accord them the best possible care, in terms of their education, upkeep and welfare; a responsibility she had continued to solely undertake since 2013 when the Respondent abandoned the matrimonial home.

I must quickly dismiss the Respondent's learned counsel's quest for the Court to grant joint custody of the children of the marriage to both parties. This submission is clearly devoid of any merit as it finds no support or justification from the Petitioner's unchallenged evidence on record. No responsible Court will grant joint-custody to a party who has

shown flagrant lack of care and disinterest in the welfare of his children. In any event, there is no claim for joint custody before the Court in the present action.

On the issue of access, the evidence on record does not suggest that the Respondent has the interest of his children at heart, having abandoned them with the Petitioner for a continuous period of at least five years till date. He is at best an absentee father in all ramifications, going by the evidence on record. In that circumstance therefore, the Court considers that it shall be proper, just and appropriate, to grant the Petitioner the sole prerogative of determining when and how the Respondent shall have access to the children of the marriage until they reach the age of adulthood.

On the issue of maintenance, the Petitioner claims monthly or quarterly allowance at an amount to be determined by the Court. I must however agree with

the Respondent's learned counsel that this relief cannot be granted, the Petitioner having failed to pray for any specific amount in maintenance.

The position of the law is that orders for maintenance, either with respect to a party or children of the marriage in divorce proceedings, is granted by the Court in the exercise of its discretion in accordance with the law and evidence on record. As such, before the Court can make an order for a lump sum under **s. 70** and **73(1)(a)** of the **Matrimonial Causes Act (MCA)**, consideration must be given to factors such as the parties' income, their earning capacity, property, financial resources, financial needs and responsibilities; standard of life before the dissolution of the marriage, their respective ages and the length of time they were together as husband and wife. These factors must be established by evidence led on record; and thus cannot be assumed or presumed or taken for granted

by the Court. See *Ibeabuchi Vs. Ibeabuchi[2016]LPELR-41268(CA);KpilahVsNgwu [2018] LPELR-33219(CA).*

In the present case, the Petitioner failed to give evidence of the factors that will assist the Court in making a fair assessment as to a lump sum that shall be considered as appropriate and just to be paid by the Respondent as maintenance for the children of the marriage. Worse still, the Petitioner failed to claim any specific amount in this regard. As it is well known, the Court does not grant a relief not prayed for. In the circumstances, the relief for maintenance for the children of the marriage cannot be sustained or granted.

In the final analysis, I have been mindful of the injunction that Courts, where the circumstances are appropriate, should grant a Petitioner's decree for dissolution of marriage as painlessly as possible. In the present case, this is a solemn duty that this Court must,

of necessity, carry out. Having therefore come to the regrettable but inevitableconclusion that the marriage between the Petitioner and the Respondent has broken down irretrievably, I hereby grant decree *nisi*, dissolving the marriage celebrated between the Petitioner and the Respondent, in accordance with the **Marriage Act**, at the ***Municipal Area Council Marriage Registry, Abuja, on 15th September, 2006.*** Provided that, pursuant to the provision of **s. 58(1)(a)(i)** of the **Matrimonial Causes Act**, the decree *nisi* made hereby shall become absolute after **three (3) months** from today.

I further grant to the Petitioner, full and sole custody of the two children of the marriage, namely, **Indira ChiagoziemOgu-Biaduo(female),** born on **04/07/2008**; and **AdrielTobechiOgu-Biaduo(male),** born on **28/12/2010,** until they reach the age of adulthood; with a proviso that the Petitioner reserves the sole prerogative of determining when and how the

Respondent shall have access to the children, upon giving reasonable notice of his intention of accessto the Petitioner as occasions may demand.

There shall be no orders as to maintenance and costs.

OLUKAYODE A. ADENIYI
(*Presiding Judge*)
17/12/2020

***Legal representation*:**

OgoUwajeh, Esq. *–for the Petitioner*

Peter Abang, Esq. *–for the Respondent*