

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON MONDAY THE 16TH DAY OF NOVEMBER, 2020.
BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO -ADEBIYI
SUIT NO. PET/250/2019

MR. USMAN DANJUMA TANZY -----PETITIONER

AND

MRS. MAGRET MIRILLA TANZY -----RESPONDENT

JUDGMENT

On the 16th of May, 2019 the Petitioner herein, Mr. Usman Danjuma Tanzy, filed this Petition against the Respondent, Mrs. Margret Mirilla Tanzy, seeking for the following reliefs:

- a. A decree of dissolution of marriage on the ground that the Respondent has behaved in such a manner that the Petitioner cannot reasonably live with the Respondent and behaved in a violent manner before separating with the Petitioner and is unrepentant.
- b. custody of the only child of the marriage.
- c. any other order(s) as this Hon. Court may deem fit to make in the circumstance of this case.

On the 28th of August, 2019 the Respondent/Cross Petitioner filed an Answer/Cross Petition seeking for the following reliefs:

- i. An Order dismissing the Petitioner's Petition for being premature, incompetent and for want of jurisdiction by the Honourable Court.
- ii. A Decree of restitution of conjugal Rights in the marriage between the Petitioner and the Respondent/Cross-Petitioner.

- iii. An Order directing the Petitioner to take responsibility and make full payment for the educational advancement of the only surviving child of the marriage.
- iv. The sum of One Hundred Thousand Naira (N100,000) only, as monthly maintenance fee for the Respondent/Cross-Petitioner and the only surviving child of the marriage, Tanze Oprite Yimiki Kaiya.
- v. The sum of Two Million Naira (2,000,000) only as Two years payment for rent of the Three bedroom flat at Plot 1124, Trinitate Close, Mabushi, Abuja, FCT, since October, 2017 to October, 2019.
- vi. The sum of Five Hundred Thousand Naira (N500,000) only, as solicitor's professional fees and cost of this Petition.

The Petitioner's Reply to the Respondent's Answer and Answer to the Cross Petition was filed on the 29th of October, 2019.

The Petitioner in summary deposed that he and the Respondent got married on the 3rd day of December, 2011 at the Abuja Municipal Area Council. That the marriage is blessed with a female child by name Tanze Oprite Yimiki Kaiya, who was born on the 16th of March, 2015. That the Respondent is fond of constant clubbing with different men and he cannot reasonably be expected to live with her. That the Respondent do carry along with her to club the only child of the marriage. That he has single handedly been responsible for the payment of the school fees of their only daughter including her medical bills amongst others. That the immoral conduct of the Respondent got to its peak when the Respondent at the beginning of 2017, started removing her wedding ring from her finger and

thereafter, developed the habits of removing portraits of their wedding from their matrimonial sitting room and hiding them each time he was on trips and bringing in unknown men he verily believed to be her “Buddies”. That at the same time, the Respondent became a domestic terror in the habit of always suspecting him of having extra marital affairs and fond of searching his phones and interrogating every call he received while at home she was also exhibiting intolerable acts of cruelty which compelled Petitioner to inform the Respondent that it will be in the best interest of the parties if both of them can live apart and have been living apart since 1st May, 2017 to date. That the Respondent has exhibited other acts of violence by subjecting him to daily nagging and threats to kill to him on grounds of her suspicion that he was having affairs with other women. That the Respondent has long before 1st may, 2017 persistently refused him conjugal rights including sexual relationship. That during the period of separation, he met the Respondent in her office and sought her permission to take his daughter out which the Respondent obliged only to turn around shortly afterwards to request one of her male friends (named Femi) to report him to Zone 7 Police station Abuja that he abducted her child. That he was arrested at an eatery with his daughter and taken to Wuse Zone 7 Police station, where he was harassed, interrogated and released upon hearing his version of the story. That he and the Respondent have lived apart from each other for a continuous period of two (2) years preceding the date of the presentation of this Petition. That the marriage between him and the Respondent has broken down irretrievably and it will be in the interest of them both to dissolve the marriage in order to avoid any further regrettable acts. That it is in the best interest of justice to grant custody of the only child of the marriage to

him in order to secure her future and make her a responsible member of the society.

At the trial the Petitioner testified as PW1 and adopted his witness statement on oath in evidence. He tendered the following documents, which were admitted in evidence and marked as Exhibits by this Court. These are:

1. Certified True Copy of marriage certificate no. 2524 dated 3rd December, 2011 – Exhibits A.
2. Trinitate International Prep. School receipt no. 0053 dated 17/09/19 for the sum of N100,000.00 – Exhibit B1.
3. Trinitate International Prep. School receipt no. 0078 dated 16/06/19 for the sum of N105,000.00 – Exhibits B2.
4. Trinitate International Prep. School receipt no. 0094 dated 18/03/19 for the sum of N105,000.00– Exhibit B3.
5. Trinitate International Prep. School receipt no. 0666 dated 22/09/18 for the sum of N110,000.00– Exhibit B4.
6. Trinitate International Prep. School receipt no. 0086 dated 9/02/18 for the sum of N105,000.00– Exhibit B5.
7. Trinitate International Prep. School receipt no. 0060 dated 11/09/17 for the sum of N110,000.00. – Exhibit B6.
8. Trinitate International Prep. School receipt no. 0075 dated 9/07/18 for the sum of N100,000.00– Exhibit B7.
9. Trinitate International Prep. School receipt no. 0425 dated 12/02/17 for the sum of N90,000.00- Exhibit B8.
10. Trinitate International Prep. School receipt no. 0429 dated 12/05/17 for the sum of N90,000.00– Exhibits B9.

11. Trinitate International Prep. School receipt no. 0428 dated 24/09/16 for the sum of N115,000.00 – Exhibits B10.

After conclusion of the Petitioner's evidence in chief, he was duly cross examined and the Petitioner's second witness PW2 gave his evidence in chief and was cross examined on the 25/02/2020, after which the Petitioner closed his case.

On the 18th of June, 2020, the Respondent/Cross petitioner opened her case. She testified and tendered three documents in evidence. The documents were:

1. Rent demand notice written by Prince George Ihejirika & Co. addressed to Petitioner and dated 15th December, 2018; 14th December, 2019 & 23rd January, 2020 respectively admitted in evidence and marked – Exhibits P11, P12 and P13 respectively.
2. Eric Ibe & Associates receipt No. 0019 dated 6/01/2020 addressed to Respondent for the sum of N500, 000.00 being fees for the cost of this action admitted in evidence and marked – Exhibit P14.

The Respondent/Cross petitioner in her witness statement on oath avers in summary, that she and the Petitioner got married on the 3rd day of December, 2011 at the Abuja Municipal Area Council. That sometimes in the year 2015, she noticed that the Petitioner stopped wearing his wedding ring. That since the 8th day of August, 2017 the Petitioner stopped and refused to have sexual intercourse with her without any just cause. That the petitioner eventually deserted her and the only surviving child of the marriage and started living apart from them on the 1st day of April, 2018. That the only surviving child of the marriage is five (5) years old and as such still in her tender and formative years , very much in

need of full parental care and affection, particularly that of the mother. That before the birth of the only surviving child of the marriage, she and the Petitioner had their 1st child whose name was Karmelita Tanze (female), born on the 28th day of February, 2013. That the Petitioner left her alone to take care of their child at St. Daniel Hospital Otukpo in Benue State, for a period of three (3) days while the Petitioner was at his village, Sisibaki, in Wamba Local Government Area of Nasarawa State and refused to come to the hospital or even send any money for payment of the child's medical bills. That it was her father who took responsibility and paid the medical bills of the child before they were allowed to leave the hospital. That the 1st child of the marriage Karmelita Tanze, eventually died of abdominal obstruction. That she and the Petitioner traveled to his village, Sisibaki, in Wamba Local Government Area of Nasarawa State in June 2017. That after they returned from the journey they continued to cohabit at Plot 1124, Trinitate Close, Mabushi, Abuja, FCT as a family until the 1st day of April, 2018. That on the 6th day of August 2017, he urged the Petitioner to renew the rent of the house which had elapsed but he became angry and started beating her. That Plot 1124, Trinitate Close, Mabushi, FCT Abuja where they cohabited is a three (3) bedroom flat with yearly rent of N1,000,000.00 (One Million Naira). That they are now in arrears of rent for three (3) years because of the failure of the Petitioner to take responsibility and pay same. That she is now facing constant harassment from the landlord of the said flat. That the landlord has served her with several rent demand notices of the said house, through his counsel. That she is now making effort to raise money to pay part of the rent. That the Petitioner's Petition is frivolous, mischievous and malicious. That the marriage between her and the Petitioner have not broken down irretrievably. That she paid the total sum of

N500,000.00 (Five Hundred Thousand Naira) only as solicitor's professional fees and the cost of her answer to the Petition and Cross-Petitioner.

The Respondent/Cross petitioner was cross examined by the Petitioner's Counsel after which the Respondent closed her case. The matter was then adjourned to the 29th of September, 2020 for adoption of final written addresses based on mutual agreement of Counsel. The final addresses of the parties were adopted on the 29th of September, 2020.

In his adopted final written address dated 24th September, 2020, learned Counsel for the Petitioner, Shareef Ahmed Mohammed Esq., formulated three (3) Issues for determination, namely –

1. Whether the Petitioner has made out a case to be entitled to the order sought for the dissolution of the marriage.
2. Whether the failure of the Respondent/Cross-Petitioner to file a reply to the new issues raised by the Petitioner in his answer to Cross-Petition does not amount to an admission.
3. Whether testimonies of the Respondent/Cross-Petitioner not supported by his pleadings ought to be discountenanced by the Honourable Court and whether she has proved her Cross-Petition.

Some of the authorities relied on by Learned counsel are:-

- a. **BIBILARI V. BIBILARI (2011) LPELR-4443 (CA)**
- b. **IGBOJIMADU V. IBEABUCHI (1998) 1 NWLR Pt. 179 @ 185 R. 14**
- c. **EJIMADU V. DELTA FREEZE LTD (2007) 13 NWLR Pt. 1050 P. 96 at P. 110**

- d. **NWANKWO V. OFOMATA (2009) 11 NWLR Pt. 1153 p. 496 @ 514 paras F-G.**
- e. **ARIRIGUZO V. AMAECHI (2014) LPELR-22829 (CA)**
- f. **JULIUS BERGER NIGERIA PLC & ANOR V. OGUNDEHIN (2013) LPELR-20421 (CA) etc.**

On his part, the learned Counsel for the Respondent/Cross-Petitioner, Eric Ibe Esq, raised two (2) issues for determination, which was:

1. Whether or not the Petitioner/Respondent to Cross Petition has established his alleged ground that the marriage between him and the Respondent/Cross-Petitioner has broken down irretrievably as required under section 15(2) (a-h) of the matrimonial causes Act, 1970, so as to warrant the dissolution of same.
2. Whether, in view of the subsistence of the marriage, subject matter of this suit, vis-à-vis the evidence adduced during hearing of the Petition, the Respondent is entitled to all the reliefs sought in her Cross-Petition.

Counsel relied on authorities like;

- a. **LT. COL. SHEHU IBRAHIM (RTD) V. MERCY IBRAHIM (2006) LPELR-7670 (CA)**
- b. **LT. ADEYINKA A. BIBILARI (RTD) V. NGOZIKA B. ANEKE BIBILARI (2011) LPELR-4443 (CA)**
- c. **ACCESS BANK PLC V. AJAYI (2018) LPELR-43813 (CA)**
- d. **ALHAJI MOHAMMED KARAYE V. LEVI WIKE & ORS (2019) LPELR-49382 (SC)**
- e. **ENGINEERING GOODNEWS AGBI & ANOR V. CHIEF AUDU OGBEH & ORS (2006) LPELR-240 (SC)**

f. SHUGABA UMARU GANA V. FEDERAL REPUBLIC OF NIGERIA (2018) LPELR-4344 (SC)

I have read and considered the written addresses of both counsel and duly incorporated same in the body of this judgment. Before going into the body of the judgment, I will address the contention of learned Respondent's Counsel that Petitioner is not a reliable witness having sworn with the Holy Bible in his oral evidence in court while in the witness statement on oath as a Muslim.

Under cross-examination when asked whether he is a Christian or a Muslim, Petitioner replied that he is a Christian which was contrary to his witness statement on oath wherein he stated that he is a Muslim. This answer was not regularized under re-examination. The content of a witness statement on oath are written depositions in support of cases in court which is adopted in lieu of oral testimony. The Petitioner under cross examination stated;

Question – “you swore with the Holy Bible as a Christian; please look at your witness statement on oath and confirm to the Court in the introduction you stated that you are a Muslim, is that correct?

(Petitioner looks at the witness statement on oath)

A: Yes

The said statement on oath of the Petitioner states;

“I, Mr. Usman Danjuma Tanzy, Muslim, Male Adult of Nigeria of No. 83, Trademore Avenue, Trademore Estate Lugbe Abuja do hereby make oath and states as follows”.

The essence of swearing in an affidavit or witness statement is to bring the fact stated therein under oath. A statement or facts extracted under oath is an affirmation by the deponent that facts stated therein is to his

knowledge the truth. An oath under the Oath law in Nigeria (2004) can only be taken under 3 circumstances; By the Bible, by the Quran or by affirmation to tell the truth. Thus the importance of an oath lies strictly in the act of swearing in other words an oath can only be extracted from a deponent by swearing with what he believes in. The contention of the Respondent counsel is that the Petitioner in Court swore by the Holy Bible after stating that he is a Christian but in his witness statement on oath it was stated therein that he is a Muslim. This question was put to the Petitioner and he admitted the use of both the Holy Bible and Holy Quran.

Section 205 of the Evidence Act 2011 provides;

“Save as otherwise provided in sections 208 and 209 of this Act, all oral evidence given or any proceeding must be given upon oath or affirmation administered in accordance with the Oaths Act or Law, as the case may be”.

Nowhere in the Evidence Act does it state that a party must swear with either the Holy Bible or the Quran. What is required is that a party gives evidence on oath or by affirmation. **Section 207 of the Evidence Act 2011** goes further to state that absence of religious belief does not invalidate oath. This being the case, it is the view of this Court that swearing as a Christian after deposing as a Muslim does not make the witness statement on oath defective or voidable as the oath itself is to one God. This does not vitiate the validity of the content of the witness statement on oath rather it revolves on the weight to be attached to the evidence providing always that no substantial wrong or miscarriage of justice has been occasioned by such admission.

In the case of **ALALADE & ORS V. ODODO & ORS (2019) LPELR-46888 (CA)** on when will a statement on oath not constitute evidence to prove pleaded facts the Court of Appeal defined statement and oath as follows;

“...“The meaning of 'statement' in The New Webster's Dictionary is described as 'the art of stating in speech, writing etc.' 'Oath' in the same dictionary is described as 'the invoking of God or some sacred or revered person or thing as witness of the truth of a statement or the binding nature of a promise'. 'A prescribed form used in making such a statement or promise.' A communal reading of the meaning of these words, 'statement' and 'Oath', will show that a statement on Oath is what is written and made on Oath which has invoked the name of God. Thus, anything not within or not contained in the statement cannot be said to invoke the name of God...”

The bedrock of Christianity and Islam is an Omnipotent God. This act of the Petitioner does not vitiate the validity of the content of the witness statement on oath rather it revolves on the weight to be attached to the evidence providing always that no substantial wrong or miscarriage of justice has been occasioned by such admission as it represents a progressive stance in the ongoing quest of the courts to do substantial rather than technical justice. The statement on oath of the petitioner was administered by the commissioner for oaths and this is what makes it legally effective.

From the evidence led in this case and the submissions of Counsel in support of the respective issues they raised, the issues for determination in this case are:

1. Whether the Petitioner/Cross-Respondent has satisfied this Court that his marriage to the Respondent/Cross Petitioner has broken down irretrievably as to be entitled to the reliefs sought in his Petition.
2. Whether the Respondent/Cross Petitioner has satisfied this Court that her marriage to the Petitioner/Cross Respondent is still subsisting and thus is entitled to the reliefs sought in her Cross Petition.

ISSUE ONE: “Whether the Petitioner/Cross-Respondent has satisfied this Court that his marriage to the Respondent/Cross Petitioner has broken down irretrievably as to be entitled to the reliefs sought in his Petition”.

On the first issue, the Petitioner had brought this Petition on the factual ground of behaviour in such a way that the Petitioner cannot reasonably be expected to live with the Respondent under **Section 15(2) (c) of the Matrimonial Causes Act 1970**. The said section is reproduced as follows;

“(c) That since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with.

By Section 15 (1) of the Matrimonial Causes Act, 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.*

Upon proof of any of the factors stated in Section 15(2) 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.

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. However, Section 15 (2) (a-h) and Section 16 of the Matrimonial Causes Act as reproduced above 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. It is once any of these facts is successfully proved by the Petitioner that 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 based on particulars of facts that must be proved by Petitioner to argue his sole ground that marriage has broken down irretrievably. Hence filing a Petition for dissolution of marriage ought to be upon the sole ground that the marriage has broken down irretrievably and not upon the facts in proof of the sole ground as stated under Section 15 (2) (a-h) of the Matrimonial Causes Act. Petitioner has filed his Petition in respect of Section 15 (2) (c) of the Matrimonial Causes Act that Respondent has behaved in such a way that Petitioner cannot reasonably be expected to live with Respondent rather than use the said Section 15 (2) (c) as a fact to prove the sole ground that his marriage has broken down irretrievably. On this ground, I am of the view that Petitioner has failed to prove his case for dissolution of marriage but I would still go ahead and evaluate evidence of the Petitioner as regards the only child of the marriage because the Child's Right Act 2003 gives the Court the prerogative to put

the interest of the child as paramount in all proceedings involving a child. The child of the marriage is just 5 years old. I am not convinced with evidence of PW1 and PW2 that Respondent was caught clubbing with strange men particularly the corroborative evidence of the PW2 that he saw the Respondent with the only daughter of the marriage alongside a man clubbing in Abuja on the following grounds: first PW2 and PW1 failed to mention the name of the club; PW2 who said he personally saw Respondent and daughter at the club failed to furnish the court with the time he saw them. The word “clubbing” as used by PW1 and PW2 presupposes that Respondent was seen at ungodly hours of the night in company of a toddler at a club and this would have gravely affected the psychology and mental health of the little daughter who still attends school but there is no evidence to that effect; except of course the said “clubbing” was done during the day, but neither does the court have evidence to that effect also. Either way this court is not at liberty to fill in the gaps for either party in their evidence and I therefore hold that evidence of PW1 and PW2 that Respondent had been seen several times “clubbing with strange men in company of the only child of the marriage” is not only shoddy but unreliable and I so hold.

The Petitioner and the Respondent made heavy waters and a lot of submissions on the length of year(s) both parties have lived apart prior to filing of this Petition but this is not part of the reliefs sought. Worthy of note is that facts in a witness statement on oath must be based on the reliefs sought. The Court has a duty to only adjudicate on claims or reliefs placed by parties before it. There is a difference between pleadings and reliefs claimed. Pleadings are mere averments. Every pleading shall contain a statement in a summary form of material facts on which the

party pleading relies for his claims. The trial Court must be confined to the terms of the relief sought, as the Court has no jurisdiction to grant any reliefs beyond and outside the relief claimed. The Petitioner sought for the dissolution of marriage on the ground that the Respondent has behaved in such a manner that the Petitioner cannot reasonably live with the Respondent as stated in the relief sought.

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. Since I have found that the Petitioner has failed to bring his Petition under the sole ground that the marriage has broken down irretrievably but rather on facts to prove that the marriage has broken down irretrievably, I hereby hold that the Petitioner has failed to prove that his marriage to the Respondent has broken down irretrievably.

ISSUE TWO: “Whether the Respondent/Cross Petitioner has satisfied this Court that her marriage to the Petitioner/Cross Respondent is still subsisting and thus is entitled to the reliefs sought in her Cross Petition”.

As earlier stated in the beginning of this judgment, the Respondent/Cross Petitioner had also Cross Petitioned for dismissal of the Petitioner’s Petition on the ground that the Petition is premature, incompetent and for want of jurisdiction by this Honourable Court. In the said Cross Petition, the Respondent/Cross Petitioner had also claimed ancillary reliefs as reproduced above. In his Answer to the Cross Petition, the Petitioner/Cross Respondent had denied the factual allegations contained

in the cross petition, contend further that the Cross Petitioner is not entitled to any payment from him including payment of her solicitor's professional fees and prayed the Court to dismiss same.

In proof of her allegations the Respondent adopts all the facts relating to the marriage as in her answer to the Petition. She further deposed that the Petitioner deserted her since the 1st day of April, 2018 till date. That the Petitioner ceased to have sexual intercourse with her since the 5th day of August, 2017. That she is desirous and willing to have, sexual intercourse with the Petitioner.

Conversely, the Petitioner in answer to the Respondent's Cross-Petition, adopts all material facts pleaded and contained in the relevant paragraphs of the main Petition and further contend that the Respondent/Cross Petitioner is not entitled to any of the reliefs sought by her in her Cross Petition. The Petitioner denies Respondent's purported claims of desertion and denial of conjugal right by the Petitioner. The Petitioner stated that owing to the Cross Petitioner's persistent immoral conduct of frolicking with other men and her growing domestic violence amongst others, they decided to live apart from 1st May, 2017 and have so been living apart. The Petitioner further states that on the contrary, it was the Cross Petitioner that cut off sexual relation with the Petitioner long before the alleged 5th day of August 2017. The Petitioner states further that he is not interested, desirous or willing to have any sexual relationship with the Cross Petitioner again in his life. That above all, he is no longer interested in the marriage with the kind of woman like the Cross Petitioner who enjoys frolicking with men outside.

I have considered the evidence of the parties. It seems to me that the oral evidence that the Petitioner deserted Respondent/Cross Petitioner since the 1st day of April, 2018 till date in support of the Cross Petition had been denied by the Petitioner/Cross Respondent.

The Respondent/Cross Petitioner on her part confirmed to the court in her witness statement on oath that Petitioner has stopped having sexual intercourse with her thereby denying her of her conjugal rights. Respondent had in her statement on oath as summarized above stated all the ills and ill treatment petitioner has subjected her but she further stated that the marriage has not broken down irretrievably. Respondent in her Cross Petition is seeking for an order dismissing the Petition for being premature, incompetent, frivolous, mischievous and for want of jurisdiction on the grounds that parties to the marriage have lived apart for a continuous period of at least 2 years preceding the filing of the petition. Respondent is also seeking a decree of restitution of conjugal rights in the marriage. Under cross examination Respondent stated:-

Q: In your Cross Petition you said you are now interested to restore conjugal rights?

A: That is not correct. That is not in my Cross Petition.

From the above response of the Respondent extracted under cross-examination, the Respondent/Cross Petitioner is either confused or does not know what she desires. In one vein Respondent is seeking for decree of restoration of conjugal rights in her marriage and in another breath is denying seeking restoration of conjugal rights. The question that comes to fore in this instance is “what is the essence of marriage without conjugal rights”??

This court is of the opinion that a marriage without conjugal rights is partnership that makes both parties to the marriage as tenants living under the same roof; it falls short of the word marriage.

A marriage is a union of both husband and wife in love, commitment and conjugal rights to mention but a few. With the Respondent stating that she is not interested in restoration of conjugal rights is stating that she is not interested in her marriage any longer as I am of the opinion that parties cannot continue to live together in the absence of conjugal rights and this court will not be able to give a decree of restoration of conjugal rights against the desire of the Respondent.

A marriage devoid of conjugal rights is one that has broken down irretrievably and I am of the opinion that parties would find it intolerable to live with one another in the absence of conjugal rights. Although Respondent stated that Petitioner had filed this petition before the expiration of 2 years there is no proof before this court neither has the Respondent been able to convince this court that the Petition was filed prior to the expiration of 2 years of parties living together and I so hold.

Both evidence of Petitioner and Respondent have been shoddy, flawed with inconsistencies and marred with discrepancies to say the least but one thing is certain and it is that there is no peace between the parties and sexual relationship (conjugal rights) between parties no longer exists as both parties have stated under oath that they do not want to restore conjugal rights. Hence this court will grant a decree of dissolution of marriage Evidence of both parties that marriage between parties has broken down irretrievably in the face of both parties insistence that conjugal rights should not be restored is enough amongst others to dissolve this marriage.

In the circumstance, I hereby dissolve the marriage and make the following orders:-

i. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **MR. USMAN DANJUMA TANZY**, and the Respondent, **MRS. MAGRET MIRILLA TANZY** at the Marriage Registry, Abuja Municipal Area Council, on the 3rd of December, 2011.

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.

On the ancillary reliefs of custody, maintenance and cost of action as contained in the reliefs of the Respondent/Cross Petition. The Supreme Court Per OBASEKI, J.S.C. in **WILLIAMS V. WILLIAMS (1987) LPELR-8050 (SC)** on whether an order of custody is a penal order held that:-

“An order of custody is not a penal order on either parent and should not be construed as such. It imposes a responsibility not to be lightly taken.”

1. CUSTODY

Custody and maintenance of a child is guided by the **Child’s Right Act 2003 Section 1** which states that in every action concerning a child, the best interest of the Child shall be the primary consideration. **Section 2 of the Child’s Right Act 2003** states that a child shall be given such protection and care as necessary for the well being of the child, taking into account the rights and duties of the child’s parents. Under cross examination the Respondent gave evidence that the Petitioner had been

diligently paying school fees of the only child of the marriage and that Petitioner has equally been responsible for the payment of rents, feeding and health related issues. The child is still of tender age (5years), a female and it is my opinion that it would be with best interest of the child to continue to stay with her mother especially when there is no contrary evidence proving that the mother is not fit and proper to take care of the child. I have also considered Respondent's evidence that the Petitioner had diligently paid the Child's school fees, rents and maintenance. I have also considered the fact that Respondent works with the National Open University and earns a monthly salary. Consequently, it is hereby ordered as follows:-

The parties herein shall have joint custody of the child of the marriage and unfettered access to the child sought by both parties as follows:

A. The Child of the marriage [Tanze Oprite Yimiki Kaiya] will be in custody of her mother, Mrs. Magret Mirilla Tanzy [The Respondent] while school is in session and academic activities are being carried on.

B. The Petitioner, her father, [Mr. Usman Danjuma Tanzy] will have unfettered access to the child, and shall spend time with the child during her birthdays and weekends as agreed by parties.

C. That the child will spend her holidays with her father [Mr. Usman Danjuma Tanzy]. However, when and if the Child enters boarding school, the holiday period shall be shared in equal proportion between the Petitioner and Respondent.

D. That the Petitioner and Respondent will alternate the custody of the child during Christmas holidays.

2. MAINTENANCE OF CHILD

- A. The Petitioner, Mr. Usman Danjuma Tanzy [father] shall continue to pay the school fees of the child of the marriage. This he shall do directly to the school(s).
- B. That the Petitioner Mr. Usman Danjuma Tanzy [father] shall provide the sum of Fifty Thousand Naira [N50,000.00] monthly to the Respondent for the maintenance of the Child of the marriage.
- C. That this amount is subject to review in accordance with economic realities and it is to be paid into the Respondent's personal bank account monthly for the upkeep and maintenance of the child of the marriage.
- D. As for the claim of the Respondent in reliefs vi of the Cross Petition, each party shall bear the cost of action, Hence, the said relief is hereby refused.

On relief V of the Cross Petition, the Respondent/Cross Petitioner tendered exhibits P11, P12 and P13 in proof of rent owed from 2017 till date which are rent demand notice written by Prince George Ihejirika & Co. addressed to the Petitioner. In paragraph 8 of the Petitioner's witness statement on oath he averred that he has single handedly been responsible for the payment of the school fees of their only daughter including her medical bills among others. The Respondent/Cross Petitioner during cross examination on the 18th of June, 2020 affirmed same when asked under cross examination by the Petitioner's counsel:-

Question: - your husband was taking care of you, providing for you and your child including your own accommodation where you lived in Lagos and Abuja.

Answer: - yes

The Petitioner as can be inferred from the evidence before this court having been the one paying the rent and as at the time the rent was owed the marriage between the Petitioner and the Respondent was still subsisting, hence the Petitioner shall pay the sum of N2, 000,000.00 (Two Million Naira) only as two (2) year arrears of rent owed of the three bedroom flat at Plot 1124, Trinitate Close, Mabushi, Abuja FCT. However for the best interest of the child, since the child have been used to a particular level/degree of luxury which must be maintained and for the psychological well being of the Child both parties will contribute hence forth to the payment of accommodation(rent) to the ratio of 50:50. The Petitioner will contribute 50% of the rent while the Respondent contributes 50% taking into consideration the fact that the Respondent (mother) is also working and thereby earning a living.

Parties: Absent

Appearances: Shareef Mohammed appearing with Mohammed Dikko for the Petitioner. Patrick Peter appearing for the Respondent.

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
16TH NOVEMBER, 2020**