

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 30TH DAY OF MARCH, 2021
BEFORE: HON. JUSTICE M.A NASIR
COURT NO: 8
SUIT NO: FCT/HC/PET/250/2018

BETWEEN:

ABIODUN HENRY AKINPELU	---	PETITIONER
AND		
UKAMAKA ANITA AKINPELU	---	RESPONDENT

JUDGMENT

The Petitioner Abiodun Henry Akinpelu filed this petition for decree of dissolution of his marriage to the Respondent Ukamaka Anita Akinpelu celebrated at the Living Faith Church, Bwari Abuja on the 28/6/2014 on the grounds that the marriage has broken down irretrievably. The Petitioner relied on the fact of desertion pursuant to Section 15(2)(d) and Unreasonable behaviour under Section 15(2)(c) of the Matrimonial Causes Act. The

Petitioner has also prayed the Court for the following reliefs:

“1. Custody of the only child of the marriage to be given to the Respondent and unfettered access to be given to the Petitioner.

2. An order that the Petitioner be jointly responsible with the Respondent for the full and total expenses towards the education, health, holiday expenses and other incidental expenses of the child of the marriage to be secured in such a satisfactory manner as may be directed by the Court.”

The Respondent filed an Answer and Cross Petition on 12/10/2018 premised on the facts under Section 15(2)(c) and (d) of the Matrimonial Causes Act, i.e. unreasonable behaviour and desertion in praying the Court for the following reliefs:

“1. An order dismissing the Petition of the Petitioner for being frivolous, vexatious and speculative.

2. *An order for a decree of dissolution of marriage between the Cross Petitioner and the Cross Respondent.*
3. *An order awarding sole custody of the only child of the marriage, Miss Anjola Akinpelu to the Cross Petitioner with parental access and supervised visitation rights for the Petitioner/Cross Respondent in the daytime during school term as well as school holidays.*
4. *An order for the Cross Respondent to be responsible for providing the costs of maintenance of the only child of the marriage, Miss Anjola Akinpelu at a monthly sum of Fifty Thousand Naira (N50,000.00).*
5. *An order for the Cross Respondent to be responsible to provide and pay the full tuition and school fees for the only child of the marriage at her present school and until her graduation from the university or any higher level of her choice.*

6. *An order for the Cross Respondent to be responsible for the medical bills of the child whenever the need arises.*
7. *An order for the Cross Respondent to pay for the cost of a suitable accommodation for the child or to pay the sum of N200,000.00 per annum.*
8. *An order for the sum of N3 Million as damages against the Cross Respondent for the maintenance of the Cross Petitioner since the desertion and abandonment by the Cross Respondent till date.*
9. *An order for the sum of N5 Million as general damages, aggravated damages for the severe and psychological trauma, heart break, weight loss or consortium suffered by the Cross Petitioner arising from the unreasonable behaviour and desertion by the Cross Respondent.*
10. *An order for cost.”*

With issues joined, the Petitioner adopted his witness statement on oath before the Court and tendered the following documents:

- Marriage certificate marked as Exhibit A rejected.
- Letter of resignation marked as Exhibit A1.

On her part, the Respondent also adopted her witness statement on oath and tendered the following documents in evidence:

- CTC of marriage certificate marked as Exhibit D.
- Receipts 11 in number marked as Exhibit D1.

Both parties were duly cross examined. At the close of evidence parties were directed to file written addresses. **James Idih Esq** filed the Respondents written address on the 8/1/2021 and same was duly adopted by **M.S. Muktar Esq.** Two issues were raised in the written address as follows:

“1. Whether or not from the totality of the evidence adduced the Petitioner has sufficiently proved his case to be entitled to the reliefs sought in his petition.

2. Whether or not from the totality of evidence adduced the Cross Petitioner has sufficiently proved her case to be entitled to the reliefs sought in her Cross Petition.”

On his part **Fredrick C. Olisa Esq** filed the Petitioner’s written address dated and filed on the 22/1/2021. A sole issue was raised therein as follows:

“Whether the Petitioner has proved his case to be entitled to the prayers being sought before this Court.”

The Respondent filed a Reply on points of law on the 25/1/2021.

For a start, this Court will consider the submission of learned counsel to the Respondent challenging the jurisdiction of this Court to entertain the Petitioner’s case. Counsel submitted in paragraph 10 of his address

that the marriage certificate issued by the Registrar of marriages is a conclusive proof that a marriage was indeed contracted by the parties to it, and the production of the same marriage certificate is a prerequisite for a Petitioner or a Cross Petitioner seeking the dissolution of such marriage. That the burden is on the party alleging marriage or a type of marriage to prove same, and the proof of a marriage under the Act is by production of necessary documents.

Learned counsel went further to submit that the Petitioner has failed to establish whether or not he was married to the Respondent and the type of marriage contracted between them. Failure to discharge the burden of proof, counsel argued the petition for dissolution of marriage is bound to fail. Counsel added that the failure of the Petitioner to tender the marriage certificate before the Court robs him of any cause of action, and also robs the Court of jurisdiction to entertain his claims. He urged the Court to dismiss the Petition. Reference was made to

several cases including Anyaegbunam vs. Anyaegbunam (1973) LPELR - 507 (SC), Chukwuma vs. Chukwuma (1996) 1 NWLR (part 426) 543, Bibilari vs. Bibilari (2011) 13 NWLR (part 1264) 233.

On his part Mr. Olisa for the Petitioner submitted that the marriage between the Petitioner and the Respondent was never at any time discountenanced or denied by the Respondent. That the Respondent tendered the CTC of the marriage certificate. He added that the production of the certificate by the Respondent put to rest the presumption which would have been in the mind of the Court. That it will be out of place for the Respondent to argue that there is no statutory marriage between her and the Petitioner, as to do so will mean to approbate and reprobate at the same time which is not acceptable to our courts. Counsel referred to the case of Motoh vs. Motoh (2011) 16 NWLR (part 1274) 526 and submitted that once there is evidence of celebration of

the marriage followed by cohabitation, the Court could presume the existence of a marriage.

Learned counsel to the Respondent in his reply on points of law reiterated his earlier submission that indeed the parties got married, but having failed to tender the marriage certificate which is prerequisite for the jurisdiction of the Court, the Petitioner's case ought to fail.

Where a Court has no jurisdiction with respect to a matter before it, the juridical basis for the existence of any power with respect to such matter is also absent. This is because power can only be exercised where the Court has the jurisdiction to do so. See Ajomale vs. Yaduat (1) (1991) 5 SC page 200.

Now in the course of trial, the petitioner testified as PW1. He stated that he got married to the Respondent on the 28/6/2014 at the Living Faith Church, Bwari, Abuja. The marriage certificate was marked rejected having not been certified by the relevant authority. On the other

hand, the Respondent testified as DW1 and confirmed that parties got married on the 28/6/2014 at the same Living Faith Church Bwari, Abuja. She also stated that parties earlier got married at the Abuja Municipal Area Council (AMAC) Marriage Registry on the 26/6/2014 and she tendered the CTC of the Marriage Certificate as Exhibit D.

Now to confer jurisdiction on the Court, there must be proof of a marriage under the Act between the parties. The law is that the burden of proof is on the party who asserts. See Obayan vs. Unilorin (2005) 15 NWLR (part 947) page 123 at 140, Organ vs. Nig. Liquified Gas Ltd (2010) All FWLR (part 535) page 293 at 340.

The provision of Section 32 of the Marriage Act relied upon by both learned counsel provide as follows:

“Every Certificate of marriage which shall have been filed in the office of the registrar of any district, or a copy thereof, purporting to be signed and certified as a true copy by the registrar of

such district for the time being, and every entry in a marriage register book, or copy thereof certified as aforesaid, shall be admissible as evidence of the marriage to which it relates, in any Court of justice or before any person having by law or consent of parties authority to hear, receive, and examine evidence.”

Indeed, the production of a certificate of marriage though the best method of proving a marriage is not an indication that there is no marriage when it is not produced. For the Court to presume the fact of marriage, credible evidence has to be led. It is therefore essential for the Court to know by positive proof, the type of marriage the parties contracted, to enable the Court to decide whether or not it has jurisdiction to entertain the petition at all. Presumption in the law of evidence is simply a conclusion or inference as to the truth of some fact in issue drawn from some other facts either judicially

noticed or else properly proved or admitted to be true.
See Lawal vs. Magaji & ors (2009) LPELR 4427 CA.

In this instance, assuming there was no marriage certificate at all from both parties, judging from all the facts adduced before this Court, there is ample evidence to show that the parties i.e. the Petitioner and the Respondent had been married and living together in a union that produced a child. The said marriage according to facts adduced before this Court took place at Living Faith Church, Bwari, Abuja on the 28/6/2014 and the marriage was blessed with a child, Anjola Akinpelu. It is also in evidence that after the marriage, the parties cohabited for 3 years at No. 86, Deeper Life Road, Opposite Jehovah's Witness Kingdom Hall, Bwari, Abuja.

It is also the contention of the Petitioner that the said marriage had broken down irretrievably, hence the petition before the Court.

In the case of Obiekwe vs. Obiekwe (2010) LPELR 864 the Court held that:

“The non production of a marriage certificate does not in my view, detract from the fact that the union was solemnized at the Holy Cross Catholic Church on the 28/12/85. A marriage in a Catholic Church as agreed by both parties is a recognized monogamous marriage under the ordinances.”

Furthermore, in the case of Ike vs. Ike & anor (2018) LPELR – 44782 (CA) the Court held:

“....a marriage in a licensed place of worship is legally recognized under the ordinances.”

In the instant case, both parties accepted the fact that their union was solemnized at Living Faith Church, Abuja, a licensed place of worship. The submission of learned counsel to the Respondent claiming that this Petition should be dismissed for the non production of the marriage certificate therefore goes to no issue. In any event the Respondent herself tendered Exhibit D to buttress the fact that there was a marriage conducted under the Marriage Act between the parties.

I hold therefore that this Court has jurisdiction to entertain this Petition. The submission of learned counsel for the Respondent is misconceived and it is hereby discountenanced.

The Petitioner has premised this Petition on unreasonable behaviour and desertion. The evidence of the Petitioner is that on 27/5/2017 he returned home from work to discover that the Respondent had deserted the matrimonial home taking all her properties and the only child of the marriage. When he called the Respondent on phone she told him that she had left the matrimonial home for good. The Petitioner further testified that he made several efforts to locate the new residence of the Respondent so that he could see his daughter. However, on 21/8/2017 he received a text message from the Respondent demanding for his account details so that his bride price could be returned to him. All efforts at reconciliation by family members proved abortive. He accused the Respondent of being insensitive

to his needs. That he is currently not working and he can only afford the sum of N10,000 monthly for the upkeep of the child.

Under cross examination, the Petitioner denied being cruel to the Respondent and denied knowledge of any report by the Respondent to one Baba Asaba who is an elder. He reiterated that since the Respondent left the matrimonial home she has denied him access to his child and he has no knowledge of anything concerning his daughters education or health.

The Respondent on her part accused the Petitioner of being stingy and controlling. She stated that the Petitioner stopped her from calling her mother, and did not provide for her and the child. He was too suspicious and even went as far as having access to her bank details and tapping into her phone. She further stated that the Petitioner maltreated her and was cruel to her which made her leave the matrimonial home on the 17/5/2017. She said she was always living in fear while with the

Petitioner. That the Petitioner never contributed to the welfare or education of the child.

Under cross examination, the Respondent stated that she did not make efforts to return to the matrimonial home. She said she is aware that the Petitioner wants to see his daughter, who is currently schooling at Inspire Academy Abuja where she is teaching and earning N105,000. The Respondent admitted that the Petitioner is not working. She further reiterated that the Petitioner beats her and there was barely a week that she did not get beaten. She said in one of the episodes, she reported to the Police at Bwari Police Station and she also reported to her employers when she had neck injury but she did not have anything to show as evidence of the report. She admitted that the Petitioner saw his daughter last in 2018.

This is the evidence as presented by both parties.

Now, the petitioner has relied on desertion in bringing this petition. By Section 15(2)(d) of the

Matrimonial Causes Act, a Court is entitled to hold that a marriage has broken down irretrievably if a petitioner satisfies the Court that the respondent *“has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.”*

Generally, desertion means the separation of one spouse from the other with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse. The Courts had in a number of cases stated that in order to establish the offence of desertion, the petitioner, or cross-petitioner must prove the physical separation, the intention to remain permanently separated and the absence of the spouse's consent and justification. See Nulley vs. Nulley (1970)1 ALL ER page 450, Sowande vs. Sowande (1960) LLR page 58.

In the instant petition, there is evidence before this Court that the respondent has deserted the matrimonial

home. The Petitioner said he came back from work only to find out the Respondent had packed her things and left the matrimonial home with the only child of the marriage. The respondent in her Answer to the Petition confirmed that she moved out of the matrimonial home not on her own accord. She said she left the matrimonial home in order to save her life. The Respondent stated that since she married the Petitioner, she had lived in total agony, emotional torture and neglect and lived in fear of the Petitioner.

Therefore it is not in dispute that the Respondent/Cross Petitioner indeed moved out of the matrimonial home. The question is was it of her own free will? The answer herein is in the negative. The Respondent from the evidence which was not contradicted was forced out of the matrimonial home by the Petitioner and she had to move out to ensure her safety and that of her daughter.

Desertion in matrimonial cases are of two types; simple and constructive desertion. In simple desertion, it is the guilty spouse who has abandoned the Matrimonial home whilst in constructive desertion, it is the spouse who remains at home who is in desertion, for he has by his conduct expelled the other spouse. See Nanna vs. Nanna (2006) 3 NWLR (part 966) page 46.

In this instance, I believe the Respondent when she said that it was the Petitioner's conduct that forced her to move out of the matrimonial home. The fact of desertion succeeds. I hold that it was the Petitioner who constructively deserted the Respondent from the 22/5/17 to the 28/5/18 which is a period of one year preceding the presentation of the Petition.

For unreasonable behaviour, this is provided under Section 15(2)(c) of the Matrimonial Causes Act. It provides:

"15(2) 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 -

(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 evidence on record is that the Respondent’s wayward behaviour caused the Petitioner so much pain and agony. That on their wedding day the Respondent invited her former boyfriend one Patrick Igwe to the reception and later sneaked out at night to have a time with him. This he said was reported to the Pastor of their church and some elders. That the Respondent has been abusive and violent and habitually insensitive to the feelings of the Petitioner and was always in the habit of threatening to eliminate and/or kill the Petitioner should he constitute an impediment to the Respondent living a ‘free life’.

In her response, the Respondent denied intentionally inviting Mr. Patrick Igwe to their wedding. In ensuring that all her friends get an invite to the marriage ceremony and to save cost, the Respondent arranged with her mobile phone network providers to send their wedding invitation via bulk short message service (SMS) to all contacts on her phone, and incidentally same was sent to Mr. Patrick Igwe. That while they courted, parties had informed each other of their past relationships in opening up with themselves to each other. Despite the Respondent's plea and explanation, the Petitioner was angry and refused to be pacified and told her that his greatest regret was getting married to her and that his dead mother would not forgive him and that he would frustrate her life. This statement she said defined the Petitioner's behaviour towards her in the three years of their living together in agony and anguish.

It is pertinent to state that the Respondent was not cross examined on the above assertions. From the

testimony of both parties, I do not believe the Petitioner when he said the Respondent was violent and habitually insensitive to his feelings. I am not satisfied that the Petitioner proffered credible evidence which is grave and weighty to warrant the Court to find in his favour. The Petition fails under Section 15(2)(c) of the Matrimonial Causes Act.

Now, the Respondent filed a Cross Petition. Like the Petitioner, the Cross Petitioner has to satisfy the Court in proof of any of the facts listed under Section 15(2)(a - h) of the Matrimonial Causes Act. A Cross Petition is likened to a counter claim which is a different suit altogether and the Cross Petitioner must succeed on her claim pursuant to Section 15(2) of the Matrimonial Causes Act.

On desertion relied upon by the Cross Petitioner, this Court earlier found the Petitioner guilty of constructive desertion. I affirm my findings therein and hold that the Cross Petition succeeds under Section 15(2)(d) of the Matrimonial Causes Act.

For unreasonable behaviour, the Cross Petitioner in her testimony said she suffered hardship and agony at the hands of the Petitioner/Cross Respondent. She said the Cross Respondent never failed to express his hatred towards her and had on several occasions informed her that he hated her with a passion. She further stated that the challenges in their marriage were enormous ranging from physical abuse, non provision of maintenance, lack of sexual relationship, persistent insult to her parents, amongst others. That the Cross Respondent treated her with contempt and demonstrated absolute disregard to her emotional needs. The Cross Petitioner went on to testify that whenever she confronted the Cross Respondent over his attitude and maltreatment, he would beat her up and injure her in the process. This she said led to her leaving the matrimonial home. Efforts at reconciliation yielded some result. However, in a twist of events four days after the Cross Respondent came back from Zamfara, he started behaving in an unusual manner; making long calls with a strange person, and started

removing things out of the house, including their flat screen television to an unknown destination.

On the 22/7/2017 the Cross Respondent invited some people into their house including the Cross Respondent's uncle, his relations, their assistant Church Pastor, Pastor Akin, Rotimi his friend and some other people. In their presence, the Cross Respondent played an audio recording of a phone conversation between the Cross Petitioner and Mr. Patrick Igwe, while providing distorted commentary to the phone conversation. When the Cross Petitioner attempted to record his narrations, the Cross Respondent grabbed her by the throat and it took the intervention of those present to rescue her. He then retrieved the phone from her and smashed it beyond repair.

The Cross Petitioner said she can no longer endure the intolerable behaviour of the Cross Respondent and wants the marriage dissolved.

It is noted that though the Cross Petitioner stated she reported at the Police Station when she was beaten by the Cross Respondent and she sustained neck injury, she did not tender the Police Report. She did not call any witness to corroborate her assertion.

In determining unreasonable behaviour, the Matrimonial history of the parties has to be reckoned with, for certain acts though trifling by themselves alone, may in association with other acts or by the sheer force of cumulation assume the shape of unreasonable behavior. See Ibeawuchi vs. Ibeawuchi (1966 - 79) 5 Oputa LR 41.

In this instance, the Cross Respondent did not file any Reply to the Cross Petition. Therefore the testimony of the Cross Petitioner remained unchallenged and uncontroverted and she was not cross examined on the facts. The matrimonial history of the marriage revealed that the Cross Petitioner had endured long history of emotional torture and she had to move out of the

matrimonial home to ensure her safety and that of her daughter. I believe the Cross Petitioner as her testimony is credible and in the circumstance, I hold that the Cross Petition succeeds as the marriage has broken down irretrievably under Section 15(2)(c) of the Matrimonial Causes Act.

As regards custody, it should be noted that the Petitioner has conceded custody to the Respondent. On her part, the Respondent/Cross Petitioner prayed for an order awarding her sole custody, with parental access and supervised visitation rights for the Petitioner/Cross Respondent. Both parties being at one on the issue of custody of the child being granted to the Respondent/Cross Petitioner, the child who is currently with the Respondent/Cross Petitioner shall remain in her custody.

As for the quantum of access, the Respondent/Cross Petitioner has not given this Court any reason why access to the child by her father (Petitioner) should be

supervised. There is nothing on record militating against the grant of unrestricted access to the Petitioner. It is trite that access is a basic right of the child rather than that of the parents. It is thus ordered that the Petitioner shall have unfettered access to the child of the marriage, Miss Anjola Akinpelu.

For maintenance, Petitioner wants an order for joint responsibility with the Respondent for the full and total expenses towards education, health, holiday and other incidental expenses of the child of the marriage.

On the other hand, the Respondent/Cross Petitioner prayed for monthly maintenance of N50,000.00 for the child, full tuition and payment of school fees at her present school until graduation from the University, payment of medical bills, suitable accommodation for the child or to pay N200,000 per annum.

It is the law that every child is entitled to maintenance by his parents or guardians in accordance with the extent of their means. See Section 14(2) of the

Child's Rights Act, 2003. The Petitioner herein is unemployed and this was confirmed by the Respondent/Cross Petitioner. On the other hand, the Respondent has a secured job with Inspire Academy and is earning the sum of N105,000 monthly. The Cross Petitioner has not told this Court the means and earning capacity of the Petitioner in order to assess the adequacy of the amount proposed by her. Under Common Law a man has a duty to maintain his wife and his children. Thus the husband is obliged to maintain his wife and his children and may by law be compelled to do so. See Erhahon vs. Erhahon (1997) 6 NWLR (part 510) page 667. By virtue of the Matrimonial Causes Act, maintenance is now a matter within the discretion of the Court to grant or to withhold. See Olu-ibukun vs. Olu-ibukun (1974) SCNJ of 8th February, 1974.

However, the Courts do not have the habit of making orders in vacuo. It is pertinent to state that issues related to maintenance of children are always handled with the

best interest of the child at the forefront and are also paramount. It is therefore 'open ended' when dealing with these issues. Each party is at liberty to revisit the issue when there is a change in the financial status of the parties.

In this instance, it is noted that the Petitioner had conceded custody to the Respondent. He cannot now abdicate from his duty and role as a father. Every responsible father shall live up to his responsibility towards his child/ren in order to earn the appellation/title of 'bread winner'.

For this reason, the Petitioner shall pay the sum of N30,000 monthly as maintenance allowance for the child of the marriage. Both parties shall (for now) be jointly responsible for the educational needs of the child, to wit; tuition and school fees, medical expenses as the need arises, and any other incidental expenses for Miss Anjola Akinpelu.

The Respondent/Cross Petitioner also claimed damages of N3 Million against the Petitioner for abandonment, and N5 Million general and aggravated damages for the trauma she suffered. The discretion vested in divorce Court to make maintenance order under Section 70(1) of the Matrimonial Causes Act is not a discretion empowering the divorce Court to award compensation or damages upon dissolution of marriage, nor is it as a mark of disapproval of the conduct of one of the parties to the marriage. Quite unlike in tort, in divorce proceedings the Court does not award damages. See Igwemoh vs. Igwemoh (2014) LPELR – 46807 (CA).

This is moreso, as the Cross Petitioner has not from her evidence disclosed any malice, insolence or flagrant disregard to the law in the conduct of the Cross Respondent. This claim has not been proved by any credible evidence, and it is therefore refused.

On the whole, the petition filed is hereby dismissed while the Cross Petition succeeds pursuant to Section

15(2)(c) and (d) of the Matrimonial Causes Act. I order that a decree nisi shall issue dissolving the marriage between the Petitioner –and Respondent contracted at the Living Faith Church Bwari, Abuja on the 28/6/2014 and at the Marriage Registry on the 26/6/2014. The decree nisi shall become absolute after the expiration of three months.

- Custody of the only child of the marriage, Miss Anjola Akinpelu shall remain with the Respondent/Cross Petitioner, while the Petitioner/Cross Respondent shall have unfettered access to the child.
- The Petitioner/Cross Respondent shall pay the sum of N30,000.00 (Thirty Thousand Naira) monthly as maintenance allowance for the child. Other expenses for the child shall be paid jointly by the parties.
- Each party shall bear his/her costs.

Hon. Justice M.A. Nasir

Appearances:

Frederick Olisa Esq – for the Petitioner

Nansok Emmanuel Esq with him M.S. Muktar Esq – for the
Respondent