

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 4TH DAY OF MARCH, 2021
BEFORE: HON. JUSTICE M.A. NASIR
COURT NO: 9
SUIT NO: PET/307/2015

BETWEEN:

ADEBIMPE IBUKUN OBADINA OKORO --- PETITIONER

AND

PRECIOUS OREVAOGHENE OKORO --- RESPONDENT

JUDGMENT

The Petitioner, is a legal practitioner working with Seven Up Bottling Company Plc she got married to the Respondent at the Four Square Gospel Church of No. 1 Ipakodo, Ikorodu, Lagos State on the 15th of March, 2008. The marriage is blessed with two male children, Oghenemairo Oladimeji Okoro, born November 28, 2008 and Ogheneyome Oladipupo Okoro, born 19th of February, 2014. Parties cohabited after the marriage at Plot 585, Road 401, Phase 1 FHA, Lugbe, Abuja and finally at Plot 601, Road 401, Phase 1 FHA, Lugbe, Abuja. However

cohabitation ceased in the first week of May, 2015 when the Respondent without justifiable cause deserted the matrimonial home.

As a result of the action of the Respondent the Petitioner has petitioned this Court vide an Amended Notice of Petition filed on the 20/1/2017 for a decree of dissolution of the marriage on the ground that the marriage has broken down irretrievably, in that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him and he has deserted the matrimonial home. The Petitioner has also prayed the Court for the following reliefs:

- An order of Court granting custody of the two children of the marriage.
- An order directing the Respondent to pay the school fees of the children and the sum of N25,000.00

(Twenty Five Thousand Naira) monthly maintenance allowance.

- Settlement of the assets jointly acquired by the parties.
- Access to the children of the marriage at specified periods during their vacation.

The Respondent filed an Answer to the Amended Petition dated 16/10/2018. The Petitioner also filed a Reply to the Respondent's Answer to the Amended Petition.

In her testimony, the Petitioner stated that parties have not been compatible since the marriage and they had many irreconcilable domestic issues. PW1 further stated that from inception, she had religious issues with the Respondent. While she belongs to Four Square Gospel Church, the Respondent belongs to Sabbath religious sect and this became an issue in the relationship. The Respondent will pick up quarrels when asked about the financial situation and started returning home late. It got to a point that he

only comes home to pick up his clothes. PW1 went on to say that the Respondent asked her to leave the matrimonial home and when she refused, it resulted in physical assault.

PW1 added that parties registered a company, Klinspot & Sparkles Ltd, for laundry services. Shortly after the establishment of the company, she got a job in Lagos and left the Respondent with the Business. After a month, the Respondent informed her that he shut down the business. She listed the following properties as her investment in the business:

- Washing machine and Drier – N300,000.00
- Nissan Saloon car – N650,000.00
- Generator – N320,000.00

She also testified that parties acquired a plot of land in the name of Klinspot & Sparkles Ltd. She prayed the Court for settlement of properties and to dissolve the marriage and grant her custody of the children of the marriage.

The following documents were tendered though PW1:

- Certificate of marriage marked as Exhibit A
- Certificate of incorporation and Memorandum of Association marked as Exhibit A1 and A2 respectively
- Offer of terms of grant marked as Exhibit A3
- Photographs marked as Exhibit A4 rejected

Under cross examination, the Petitioner testified that she moved out of the matrimonial home because the Respondent pushed her out and locked the doors. She stated that she gave the Respondent money to buy the washing machine for the business. She further stated that she bought the vehicle for the business, and gave the Respondent the papers for him to register the vehicle. However, the Respondent ended up registering the vehicle in his own name and has custody of the receipt.

At the close of the evidence of the Petitioner, **G.N Bako Esq** of counsel for the Respondent prayed for an

adjournment to enable the Respondent defend the Petition. It was not until 28/1/2019 that the Respondent gave his testimony as DW1.

His evidence is that parties had an issue of where to worship which led to their disagreement that lasted for up to 2 to 3 years. It was a ding dong affair, one day there is peace another day there is war. DW1 further stated that the Petitioner denied him conjugal rights and gave a condition that he has to denounce his church before she resumes any conjugal relationship with him. He said, the Petitioner made life difficult for him that he lost patience and everything began to fall apart in the home. In seeking for peace he involved several pastors who tried to prevail on her concerning her attitude but to no avail. He stated that one time they had a fight and the Pastor of Four Square Gospel Church came with church vehicle and she moved out of the matrimonial home to the Pastors home. A week after moving out she came and requested for the children. He

gave her the children and she returned them on a Sunday. He even told her that when she gets her own apartment, he would let her have the children. She got her place and she took the children for a whole term.

He made attempts at reconciliation, even spoke to her people and her lawyers but she refused. In November, 2017 he said he called her so that parties can resolve the matter amicably, he even told her that he would move from his accommodation in Lugbe so that nobody will know where they were living and so that they could start life afresh. He even got a place in Dawaki but she refused to return. He went as far as going to see her father but still to no avail. Even when she threatened him that unless he signs her travel documents to Canada saying that parties are separated so that she could process her visa, he still signed it for her hoping that she would return to the marriage.

He said there was a time he begged the Petitioner for assistance to pay the children school fees as he had some financial difficulties, but she refused and the children were driven from exams and he had to beg for them to write the exams. Since then, he picked up and started paying the children's school fees.

Under cross examination, DW1 said parties have lived apart since August, 2015. He classified himself as good and generous, he paid all the bills and was not a violent man. He admitted fighting with his wife once and hitting her. He stated that the children used to stay with the Petitioner, but the school they attend is closer to his house and parties agreed that the children should be staying with him. That parties have never had issues with this arrangement.

At the close of evidence, the parties were directed to file written addresses. **Ejumejowo Anthony Esq** filed the Respondents written address dated 27/3/2019 and duly

adopted by C.J. Ignatius Esq. The following issues were raised therein for determination:

- “1. Whether the Respondent has willfully and persistently failed to consummate the marriage since the marriage.*
- 2. Whether the Respondent deserted the Petitioner for at least a period of one year preceding the institution of this suit.*
- 3. Whether the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him.*
- 4. Whether the Petitioner is entitled to the custody of the children.”*

The Petitioner’s written address dated 7/6/2019 was filed and adopted by Nneka Uchendu Esq. learned counsel formulated a sole issue for determination, which is:

“Whether the Petitioner is entitled to her claim for dissolution of marriage as contained in the Petition before this Court.”

Both learned counsel advanced arguments in support of the issues formulated and cited authorities.

It should be noted that the courts are unanimous in their opinion that though irretrievable breakdown is the sole ground of divorce in Nigeria, the court cannot make a finding of irretrievable breakdown of marriage in the absence of proof of any of the facts specified under sections 15(2) (a) – (h) and 16(1) of the MCA. In the case of Harriman v. Harriman [1989] 5 NWLR (Pt 119) 6 the Benin division of the Federal Court of Appeal held that the subparagraphs of section 15(2) are only “a species of the breakdown” provided for under section 15(1) of the MCA as the sole ground for divorce.

The Petitioner has relied on unreasonable behaviour pursuant to Section 15(2)(c) of the Matrimonial Causes Act. “Unreasonable behaviour” under the Act is the term used to describe the fact that a person has behaved in such a way that their partner/spouse cannot reasonably be expected to live with them. It is important to understand there is no definitive list of unreasonable behaviours used in divorce petitions. It could be one or two serious incidents, to many more petty issues. In reality the courts take a very pragmatic view – if two people no longer wish to be married, there has undoubtedly been some form of behaviour (however extreme or minor) which has led them deciding on a divorce or dissolution of their relationship. Where there is a long history of unreasonable conduct, the usual rule is to rely on the first, worst and last events.

The behaviour is what you personally find unreasonable. The test is what a right thinking person, looking at the particular husband and wife, would ask

whether the one could reasonably be expected to live with the other taking into account all the circumstances of the case and the respective characters and personalities of the two parties concerned.

The behaviour of the Respondent which the Petitioner finds unreasonable has to do with his sect being Sabbath eventhough he had told her before marriage that only his parents belonged to the sect. The Petitioner stated that she wouldn't want to proceed with the marriage for religious reasons.

The Respondent on his part confirmed that *“during the several meetings which led to our getting married, the issue of where to worship came up. I agreed to be attending Four Square Gospel Church where I met her.”*

According to the Respondent:

“At a point I realized that God was preparing me for something ‘ministering’”

That he took steps to move back to his former church Sabbath. Even when the Respondent told the Petitioner to remain in her Church with the children while he goes to seek God's plan for him in Sabbath, the Petitioner answered with a resounding No. This was the beginning of all the problem between the parties. Even when the Respondent sought for reconciliation with the Petitioner, her father told him that he will never be forgiven. The religious belief of every human being has to be respected. Infact, it forms one of the fundamental rights of every citizen to freedom of religion.

Section 38(1) of the 1999 Constitution guarantees the right to freedom of thought, conscience and religion. It provides:

“38(1) Every person shall be entitled to freedom of thought, conscience and religion including freedom to change his religion or belief....”

In this instance, the Petitioner feels strongly about her religious affiliation and finds it unreasonable to continue to live with the Respondent. The Respondent also admitted under cross examination that he hit the Petitioner once though the pictures sought to be tendered were rejected for non compliance with the provisions of Section 84 of the Evidence Act, 2011. This led to the irretrievable breakdown of the marriage under Section 15(2)(c) of the Matrimonial Causes Act. It takes two to marry and to discharge the marital obligations. As far as the Petitioner is concerned this marriage is at an end. It will be useless pretending otherwise. In situations like this, the Court has to maintain the equitable balance between respect for the sanctity of marriage on the one hand, and all the social considerations which makes it contrary to public policy to insist on the maintenance of a union which has broken down. See Victoria Edegbuna vs. Michael Edegbunam (1966 - 1979) Vol. 5 Oputal LR page 145, Fidelis Eleje vs. Emmanuel Eleje

cited E/4D/62, Nwanya vs. Nwanya (1966 – 1979) Vol. 5.

Oputa LR at page 80.

In the case of Katz vs. Katz (1972) 1 WLR 955 at 960, the Court gave a guide as to what will constitute ‘behaviour’ within the meaning of Section 15(2)(c) of the Act as follows:

“Behaviour is something more than a state of affairs or a state of mind...behaviour in this context is an action or conduct by the one which affects the other. Such conduct may either take the form of acts or omissions or may be a course of conduct and, in my view, it must have some reference to the marriage.”

The conduct of the Respondent turned out to be grave and weighty in nature and caused cohabitation between the parties virtually impossible. I hold therefore that the marriage between the parties has broken down irretrievably under Section 15(2)(c) of the Matrimonial Causes Act.

On the fact under Section 15(2)(a) and (d) of the Matrimonial Causes Act, this Court is at one with the submissions of learned counsel for the Respondent when he submitted that the Petitioner has failed to prove the fact under Section 15(2)(a) lack of consummation as the evidence revealed that there are two children of the marriage. See Kuti vs. Kuti (1983) suit No. 1/153/82 High Court of Oyo State.

For the fact of desertion, the Petitioner under cross examination stated that she could not remember the date she moved out of the matrimonial home. The Respondent however said it was in August, 2015. Going by the records of the Court, this Petition was filed on the 18/9/2015.

The Court hearing a petition for decree of dissolution of marriage shall hold the marriage to have broken down irretrievably under Section 15(2)(d) if satisfied that the Respondent has deserted the Petitioner for a continuous

period of one year preceding the presentation of the Petition. What is borne out from the records is that there is no desertion by the Respondent for a continuous period of at least one year. Petition therefore fails on the fact of desertion.

The Petitioner has prayed for custody of the two children of the marriage forcefully taken away from her. The Petitioner herself has testified that most of the time, the children are with the Respondent, and whenever the Respondent is busy, he sends them to her. During cross examination, the Respondent stated that parties have an understanding regarding the children; when school is in session, they stay with him and during holidays, they stay with the Petitioner. With this arrangement put in place by the parties, it will not lie in the mouth of the Petitioner to state that the children were forcefully taken away from her by the Respondent.

When it comes to custody, the law behind issues of custody is the best interest of the child being the paramount consideration. See Alabi vs. Alabi (2007) 9 NWLR (part 1039) page 305, Odogwu vs. Odogwu (2006) 5 NWLR (part 972).

The Court in determining custody, the paramount consideration is the welfare of the children in the surrounding circumstances of any giving case, and it is only subject to that any order custody need to be made by the Court. See Buwanhot vs. Buwanhot (2009)16 NWLR (Part 1).

The Petitioner in the Reply to the Answer pleaded that the Respondent voluntarily signed the request for consent form allowing the children to live and school in Canada. However, she did not state this in her evidence. Infact, the Respondent said did not sign the consent form voluntarily. He further said under cross examination that the children used to stay with the Petitioner before, but because their

school is closer to his house, parties agreed that they stay with him and go to the Petitioner during holidays. He said:

“We have an understanding of letting them stay with the both of us without any problem. During school they stay in my house and for holidays they are with her. There has never been any issue on that.”

In this circumstance, the children are already used to the arrangement put in place by the parties regarding custody and the children have adapted to same. It will not be wise and neither will it be in their interest if the arrangement is tampered with. Accordingly, I order that the status quo shall be maintained regarding custody of the children. Parties shall also note that issues of custody and/or maintenance are open ended issues which can be revisited anytime as the need arises.

The Petitioner has asked the Respondent to pay N25,000.00 (Twenty Five Thousand Naira) as monthly maintenance allowance for the two children subject to future review. Section 14(2) of the Child's Rights Act provides:

“Every child has the right to maintenance by his parents and guardians in accordance with the extent of their means, and the child has the right, in appropriate circumstances, to enforce this right in the family Court.”

Maintenance of a child is a basic right of the child and no child should be deprived of this right. It is the duty of the parents of the child to provide the necessities of life for the child, regardless of the status of the parents, whether married or divorced. This right of a child to maintenance is not contractual.

The primary basis for the assessment of child maintenance is provided in section 4 of the first schedule to section 55(14) of the Child's Rights Act, in conjunction with section 70 of the Matrimonial Causes Act. The court will have regard to all circumstances of the case, including the income, earning capacity, property and other financial resources of the party to which the maintenance order applies, as well as his financial needs, obligations and responsibilities. Maintenance is not a punitive measure. It is to restore the children of the marriage as much as possible to the same position as they were before the dissolution of the marriage, and to prevent the children from going through any form of deprivation.

By asking for a specific amount as maintenance, the Petitioner has to show the earning capacity, income and liabilities of the Respondent. The only evidence in this regard is that the Respondent is a legal practitioner.

However, it should be noted that maintenance allowance orders are consistent with the award of custody. In this instance, custody is split. The Respondent has custody of the children during school session and the Petitioner has them during holidays. I hold therefore that the Respondent shall continue to pay the school fees of the two children; providing clothing, medical and other incidental expenses. He shall also be responsible for their feeding and maintenance while they reside with him. And the Petitioner shall provide for their maintenance while with her during the holidays.

The request of the Petitioner in respect of the settlement of the assets is governed by the provision of Section 72 of the Matrimonial Causes Act. The Section reads as follows:

“The Court may, in proceedings under this Act, by order require the parties to the marriage, or either of

them, to make, for the benefit of all or any of the parties to, and the children of, the marriage, such a settlement of property to which the parties are, or either of them is, entitled (whether in possession or reversion) as the Court considers just and equitable in the circumstances of the case.”

The Court therefore under the Act is expected to take into consideration in determining the question of settlement of the assets;

1. Whether or not the asset was acquired in the course of the marriage.
2. What was the contribution of each party to the cost of the acquisition.
3. What is just, fair and equitable to do in the circumstance in settling the property.

See Hayes vs. Hayes (2000) 3 NWLR (part 648) 276 at 293,
Mgbeahuruike vs. Mgbeahuruike (2017) LPELR - 42434
(CA).

Now the question is how much did the Petitioner contribute towards the purchase of the property? There must be evidence oral or documentary that the land, property in question acquired by the company was as a result of a joint contribution between the spouses. In this instance, the Petitioner asserted that plot MF504, Sauka Village Extension Layout was jointly acquired by the parties. The offer of Terms of grant, together with the layout and coordinates of the plot were tendered as Exhibit A3. The Respondent corroborated this fact and stated that besides the said Plot MF504, Sauka Village Extension Layout, Abuja, FCT, jointly acquired by the parties, there were other landed properties jointly acquired by the parties. Settlement of properties is based on what the Court considers just and equitable. In other words, a wide discretionary power is

given to the Court by Section 72 of the Act. However, like in all matters of exercise of discretion, it must be done judicially and judiciously based on the circumstances of the case. See Etebu vs. Etebu (2018) LPELR - 46250 (CA), Mueller vs. Mueller (2005) LPELR - 12687 (CA).

It has been admitted by the Respondent that the property was jointly acquired by the parties and this was in the course of the marriage. This Court is therefore empowered to exercise its discretion equitably for the benefit of the parties. In that regard, it is ordered that Plot MF504, Sauka Village Extension III Layout, Abuja FCT should be sold and the proceeds of the sale to be divided equally between the parties.

As for the washing machine, hand drier, generator and the Nissan Salon vehicle, the Petitioner has not led any credible evidence in proof of the fact that it was part of her investment in the company. No document was presented

before the Court evidencing the actual purchase of those equipments. I cannot find my way clear in granting the Petitioners claim regarding these assets.

On the whole, judgment is entered in the following terms:

- The marriage between the Petitioner and the Respondent celebrated at the Four Square Gospel Church of No. 1 Ipakodo, Ikorodu, Lagos State on the 15/3/2008 is hereby dissolved and a decree nisi shall issue to that effect. It shall become absolute after the expiration of three months.
- Custody of the children is given to the Respondent when school is in session and during holidays custody shall be with the Petitioner.
- The property Plot MF504, Sauka Village Extension III Layout, Abuja FCT shall be sold and the proceeds of

the sale to be divided/shared equally between the parties.

Signed
Honourable Judge

Appearances:

Nnenka Uchendu Esq - for the Petitioner

G.N. Bako Esq with him C.J. Ignatius Esq - for the Respondent