IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS:	**JAMILA OMEKE & ORS**
COURT NUMBER:	**HIGH COURT NO. 32**
CASE NUMBER:	**SUIT NO. FCT/HC/PET/277/19**
DATE:	**24/FEBRUARY, 2020**

BETWEEN:

LOUIS EKUNDAYO EDET……PETITIONER

AND

KUBURAT ADIJAT ABOSEDE SOGBENSAN-EDET……RESPONDENT

APPEARANCE
Osaze E. Ebie Esq for the Petitioner.

JUDGMENT

The Petitioner Louis Ekundayo Edet has filed this Petition for dissolution of his marriage with the Respondent, Kuburat Adijat Abosede Sogbensan-Edet. The said Petition was filed on the 7th day of May, 2019.

The Petition which was settled by Ebie Eugele Osaze, legal Practitioner of Agbo Francis & Co, Solicitors to the Petitioner, is supported by a verifying Affidavit of 5 paragraphs deposed to by the Petitioner himself dated 3rd day of June, 2019.

On the 26th day of February 2020, the Petitioner testified as follows:-

That he and the Respondent were married on the 12th day of July, 2016 in Lagos. According to the petitioner, he's praying the Court to dissolve his marriage to the Respondent due to the gruesome and barbaric Acts towards his life.

That against many things, the Respondent has subjected him to many things which resulted in him being a victim of high Blood pressure. He testified that he and the Respondent have a daughter together.

According to the Petitioner (PW1), the Respondent even went as fer as framing him up by conniving with the police on allegation of harboring weapons for armed Robbery; which at the end of the day, he was exonerated.

PW1 testified that since then, he avoided the Respondent, and she ran away with his daughter, tried to extort money from his father by asking for the sum of One Hundred Million Naira and yet again Thirty Million Naira respectively.

The Petitioner informed the Court that he and the Respondent have been separated for 13 Years now. That he has been living alone for the past 13 years and just wants peace in his life and also wants his daughter back.

He testified that since his daughter was taken away from him, he has been taking responsibility, paying her school fees, opening an account for her and depositing ₦20,000.00 Minimum for her welfare and general upkeep.

A CTC of their marriage Certificate was tendered, admitted in Evidence and marked Exhibit A.

The Petitioner urged the Court to dissolve his marriage and if possible to get his daughter back as he doesn't want her to go astray. He stated

that her mother the Respondent has thought her to lie and extort money from him.

He testified further that the Respondent left with their daughter on 4/4/2007, and the Petitioner did not see his daughter till 2011.

That his daughter decided to stay with him in 2016 but her mother the Respondent poisoned her mind and insisted that she (the Respondent) will also stay with him but he said he refused. That when the Respondent left, their daughter wrote him a letter saying since he made her mother leave she was also leaving. He testified further that he and the Respondent have not been having any sexual relations during their separation.

On the part of the Respondent, despite being duly served with the notice of Petition and several hearing Notices, has never appeared in this matter nor filed any process challenging this Petition. Therefore, this Petition is unchallenged.

In the Petitioner's final written address, learned Petitioner's Counsel Osaze E. Ebie, Esq, formulated a lone issue for determination to wit:

> ***"Whether the Petitioner has proved his case on the balance of probabilities or preponderance of Evidence to warrant this Honourable Court to enter Judgment in his favour."***

In his submissions on the sole issue, learned Counsel referred the Court to Section 134 of the Evidence Act, 2011 as well as the cases of **AGALA V OKUSUN (2010) 43 NSCQR 295 (SC); OTANMA V YOUDUBACHA (2006) 25 NSCQR, 10.**

Learned Counsel stated that the Petitioner has discharged the burden of proof placed on him by law and that he has successfully discharged

the said burden which is on the balance of probabilities or on the preponderance of Evidence.

Counsel also referred to Section 132 of the Evidence Act, 2011.

Learned Counsel urged the Court to also consider that the Petitioner's testimony or Claim was not contradicted by the Respondent in spite of the opportunity given to her to do so. He stated further that it is trite law that a party who is given opportunity to be heard but who failed to utilize the opportunity cannot turn around to complain of breach of fair hearing.

Finally, Learned Counsel urged the Court to grant all the prayers of the Petitioner as contained in the Petition and to enter Judgment in his favour.

Now, the grounds relied on by the Petitioner is that the marriage between him and the Respondent has broken down irretrievably. That the Respondent has deserted the Petitioner since 2007 till date, denied the Petitioner conjugal rights since 2007 till date and abandoned the Matrimonial Home with the one child of the marriage preceding the presentation of this Petition.

That the Petitioner and the Respondent have lived apart for a period of more than one year before presentation of this Petition in accordance with Section 15 (2) (e) of the Matrimonial Causes Act.

Whereof, the Petitioner seeks the following reliefs:-

a) A decree of dissolution of marriage between the Petitioner and the Respondent.
b) Custody of the child of the marriage: Julianet Oluwagbemisola Edet.

c) An order directing the Respondent to only pay visits to the child of the marriage during vacation periods (that is when the child is on school holidays).

Now, under and by virtue of Section 15 (2) of the Matrimonial Causes Act. The Court hearing a Petition for dissolution of marriage, shall hold the marriage to have broken down irretrievably, if the Petitioner satisfies the Court of one of the grounds stated in sub Sections a-h thereof. In the such a situation, the Court would be empowered to grant an order of dissolution of marriage on at least one of the said grounds.

On this premise, I refer to the case of **BIBILARI V BIBILARI (2011) LPELR-4443,(SC),** where the Supreme Court, per Galinje, J. S. C , held at pp 33-32, para C-A, as follows:-

> ***"In a Petition for dissolution of marriage, the Petitioner must plead and prove that the marriage has broken down irretrievably. In doing this, the Petitioner must be able to bring himself within one or more of the facts enumerated in Section 15 (2) (a-h) of the Matrimonial Causes Act, Cap 220 LFN, 1990, before he can succeed in the Petition….."***

See also the case of **AKINBUWA V AKINBUWA (2017) LPELR-42160.**

In the instant case I've considered the testimony of the Petitioner vis-à-vis the grounds predicating the Petition, one of which is that the Respondent deserted the Petitioner since 2007 when she absconded their Matrimonial home and took their only daughter away.

Desertion is clearly a ground for dissolution of marriage as provided under Section 15 (2) (d) of the Matrimonial Causes Act which states:-

"That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition."

According to the Petitioner in his Evidence before the Court, the Respondent has deserted him since 2007 till 2016 when she offered to move back to the Matrimonial home but the Petitioner refused and she left.

He also informed the Court that they are still separated and have not had any sexual intercourse during their separation.

In addition, I have noted that this Petition was filed on 7th day of May, 2019, well over two years since the Respondent had tried to move back in with the Petitioner.

Therefore, it is clear that the Petitioner and the Respondent have lived apart for at least two years prior to filing of the petition and the Respondent has not objected to a decree being made as provided under Section 15 (2) (e) of the Matrimonial Causes Act (Supra) which states:-

"That the parties in 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."

As stated earlier, the Respondent did not challenge this Petition in any way, therefore, I am satisfied that the Petitioner has satisfied the Court of the grounds under Section 15 (2) (d) and 15 (2) (e) of the Matrimonial Causes Act that the marriage in this case, has broken down irretrievably. I so hold.

On the issue of custody of the only child of the marriage. The Petitioner seeks custody of his daughter who was taken away from him at the tender age of 3 years, that is in 2007.

According to the Petitioner his daughter was born on 8/4/2004, therefore the child of the marriage is now at least 16 years old.

I believe from the testimony of the Petitioner that he is financially capable to taking care of his daughter and has been doing so since she was taken away from him. I have also considered his evidence that the Respondent took the child away since 2007 and he didn't see her till 2011. No father should be deprived of having access to his child without good reason.

It is the Petitioner's testimony that the child of the marriage even went back to live with her father till she left when the Petitioner did not allow the Respondent to move back with him.

On the factors to be considered and used in determining the issue of custody of children in Matrimonial proceedings, I refer to the case of **ALABI V ALABI (2007) LPELR- 8230 (CA),** per Agube J.C. A at pp 47-49 paras E-D, where the Court held as follows:-

> ***"Award of custody of children of a marriage that has broken down irretrievably as in this case is governed by Section 71 (1) of the Matrimonial Causes Act 1990, which enjoins the Court in proceedings relating to custody, guardianship, welfare, advancement or education of children of the marriage , to take the interest of the children as paramount consideration and the Courts in this regard are given wide discretionary powers which they can exercise according to the peculiar circumstances of each case……."***

Likewise in the case of **AFONJA V AFONJA (1971) 1 UILR 105**, the Western state Court of Appeal, held per Oputa J (of blessed memory) that the award of custody should not be granted as a punitive measure on a party guilty of Matrimonial offences nor as a reward for the rival party.

Similarly, it was held in the case of **LYDIA OJOULA OLOWUNFOYEKUN V MR OLUSOJI OLOWUNFOYEKUN (2011), 8 NWLR (PT. 1227) 177 at 203, paras A-E thus:-**

> ***"…….Custody is never awarded for good conduct, nor is it ever denied as punishment for the guilty party in Matrimonial offences. The welfare of the child of a marriage that has broken down irretrievably is not only paramount consideration but a condition precedent for the award of custody……"***

See also the case of **ODUSOTE VS ODUSOTE (2012) 3 NWLR (PT. 1288) 478; WILLIAMS V WILLIAMS SC 197/1985.**

On the Criteria laid down to be considered by the Court with regard to the welfare and interest of the child of the marriage, the Court set out such criteria the case of ALABI & ALABI As follows:-

1) ***The degree of familiarity of the child with each of the parents (parties).***
2) ***The amount of affection by the child for each of the parents and vice-versa.***
3) ***The Respective incomes of the parties.***
4) ***The Education of the child.***
5) ***The fact that one of the parties now live with a third party as either man or woman, and.***

6) ***The fact that in the case of children of tender ages, custody should normally be awarded to the mother <u>unless</u> other considerations makes it undesirable etc."***

In the instant case, I've considered the fact that the child of the marriage is 16 years old and on the 8/4/2022 will be 18 years.

There's also no doubt from the facts available before the Court that the child of the marriage has for the better part of her life, lived with her mother the Respondent.

Now, although the Respondent has not challenged this Petition, it is my considered opinion that there's no Evidence to suggest that she's an unfit mother notwithstanding any issues she may have or is having with her husband the Petitioner.

There's also no Evidence to suggest that the child of the marriage has not been taken care of by the Respondent. In fact from the Petitioner's Evidence, his daughter moved back to live with him in 2016, but later followed her mother when Petitioner refused to allow Respondent to move back into their Matrimonial home. This shows that there's a great deal of attachment of the child to her mother.

On the other hand, I've considered the fact that despite issues between the parties, the Petitioner has shown that he is indeed a caring and responsible father who has been taking care of his child financially and is still doing so. In addition, the Petitioner wishes to have custody of his daughter who was taken away from him at a very tender age of three.

The primary consideration of the Court, however, is the best interest of the child, in arriving at its final decision.

In the circumstances therefore having earlier found that this marriage has broken down irretrievably, I hereby make an order Nisi dissolving

the marriage between the Petitioner Louis Ekundayo Edet and the Respondent Kuburat Adijat Abosode Contracted at the Federal marriage Registry, Ikoyi Lagos on the 12th day of July, 2006. The decree shall be made absolute if nothing intervenes within a period of three months from the date thereof.

On custody of the child of the marriage Julienet Oluwagbemisola Edet, I make the following orders:-

1) The Respondent shall have custody of the child until she is 18 years old when she can decide which parent she wants to live with.
2) Until the child of the marriage is 18 years of age, the child of the marriage is to spend all school holidays with the Petitioner.
3) During other times, both parents shall have unrestricted access to the child of the marriage subject to fair notice given in advance of such visit.
4) The Petitioner shall be responsible for the general upkeep of the child of the marriage including her Education.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

24/02/2021.