

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 32
CASE NUMBER: SUIT NO. FCT/HC/PET/133/19
DATE: 9th MARCH, 2021

BETWEEN:

YETUNDE YUSUF ARASAH.....PETITIONER

AND

DAUDA YUSUF ARASAH.....RESPONDENT

APPEARANCE

I Buoye .O. Isaac Esq for the Petitioner.

Gbenga Owa Esq for the Respondent.

JUDGEMENT

The Petitioner Yetunde Yusuf Arasah has filed a Petition for the dissolution of her marriage to her husband Mr Dauda Yusuf Arasah.

The said petition is dated 1/2/19 and filed same date and prepared by the Petitioner’s Counsel Ibuoye .O. Isaac Esq, of Ola Olanipekun & Co, Solicitors to the petitioner.

The grounds stated in the notice of Petition for seeking the dissolution order are as follows:-

- (a) The petitioner who married the Respondent on the 31st of May 2014 both have lived in Federal Capital Territory Abuja, since immediately after their marriage up until November, 2017 when petitioner could no longer cope with violence always Exhibited by the Respondent and the fact that the marriage has broken down irretrievably.
- (b) That After the marriage in the Federal Capital Territory, Abuja the petitioner was deceived by the Respondent, and they lived in the Respondent's family house with other family members. After various attacks, curses in the family house and threat on the petitioner's life, the petitioner had to pay for an apartment in No 3, Dextra Crescent by News Engineering Ltd, Dawaki Abuja for herself and the Respondent wherein they cohabited.
- (c) That the marriage was eventually blessed with a child, Ronna Omorose Yusuf-Arasah after the petitioner suffered two life-threatening miscarriages.
- (d) That barely three months into the marriage, the petitioner discovered that she had been deceived into the marriage by the respondent, when she found out that the Respondent's claim of being a believing Christian was totally untrue and a deceit. The Respondent has been unfaithful, abusive. The Petitioner has been the bread winner of the house, she pays all bills, house rent, upkeeps, and general maintenance. She buys and provides foodstuff, clothing for the child alone and provides for their sustenance all

alone. Except for the occasional stipends he sends as the supposed upkeep of their daughter.

- (e) That even though the Respondent is gainfully employed by the Federal Republic of Nigeria, he more often shies away from his responsibilities as a married man and father.
- (f) That the Respondent keeps several Women outside the union. The Respondent assaulted the Petitioner in 2016 when he was confronted with messages and voice conversations he had with other women. He hit the Petitioner violently in the face, forced the keys out of her hands and tore her palm in the process. That that was always the practice anytime the Petitioner caught him cheating he would become very violent and aggressive.
- (g) That the Respondent has an uncontrollable anger which has become an issue that needs medical assistance. That the Petitioner has severally admonished the Respondent to seek help and that he promised to change and control his ferocious anger which made the Petitioner to go back home in 2017 after spending 3 weeks away from their home. That the anger became even worse and the Petitioner needs to stay away and alive to take care of her child.
- (h) That the Petitioner and the Respondent lived a facade of peace and harmony only to the consummation of the child of the marriage but, were constantly scorned with issues of infidelity and incompatibility to each other.
- (i) That a little into the Petitioner's 2nd trimester of the pregnancy of the child of the marriage, after the petitioner had just lost two consecutive

pregnancies, the Petitioner was instructed to be on bed rest by the medical personnel but could not get rest due to the attitude of the Respondent. That she then requested to be admitted into a hospital to save herself and the pregnancy because she was emotionally and physically exhausted. That Petitioner cannot express herself in her matrimonial home, there was hardly any form of understanding whatsoever between the Petitioner and the Respondent as both parties could not reasonably get along without having some sort of brawl between them.

- (j) That on the 12th of November, 2017, when the Petitioner's daughter was barely two months old, the Petitioner was still recovering from C-section when the assault started. All because the Petitioner got help when she was asked not to engage in strenuous activities during her recovery. That the Respondent hit her in the face and pushed her while she was babysitting their daughter who was fast asleep, not minding the baby and the health condition of the Petitioner.
- (k) That after enduring the constant hunger, curses, verbal abuse and humiliation for length of days, the Petitioner began to have heart palpitations, terrible migraines, inability to lactate and fainting spells. That the Petitioner ended up being taken back to the hospital and various tests carried out including but not limited to EKG test. That at that point the Petitioner was left with no option than to vacate her matrimonial home for her parent's home in Gwarinpa for her safety and the child's.
- (l) That every issue as it is related to the petitioner and the Respondent always led to a fight and constant quarrels between them. That during some of the counseling sessions they attended for peace to reign, the Respondent got

really angry at the petitioner and used words like ***“Foolish” “Stupid” “Imbecile,” “Idiot”, “bastard”, “you will die”, “ you will not know peace”, “useless Yoruba people”, “God will punish you”***, cursing her parents, siblings and threatening her life.

- (m) That these issues metamorphosed into both the Petitioner and the Respondent living “separate lives”, in the same home even before physical separation since 16th November, 2017 but no longer as husband and wife wherein the essence of marriage had completely failed.
- (n) That the Petitioner not being able to continue with continuous emotional abuse and the essence for which she was first married was no longer there and completely defeated, out of frustration, she moved to her own place of residence with her child since on 16th November 2017, leaving the Respondent and their jointly rented property behind.
- (o) That since November 2017, till the institution of this present petition, the Petitioner and the Respondent have lived apart more than a year because the Petitioner does not want to lose her life many of the Rampant stories associated with marriages in Nigeria.
- (p) That the parties have lived apart for a period of more than one year preceding this petition and the Respondent does not object to the dissolution of marriage being granted to the Petitioner.
- (q) That despite the Petitioner moving out of the home, she has nonetheless continued to cater for both herself and the child of the marriage.
- (r) That all and every effort from the church (Pastor), families and friends of both the Petitioner and the Respondent to reconcile them have all proven

abortive as the differences between the parties are irreconcilable because the Respondent is not ready to change.

- (s) That the love between them is dead and the Petitioner is fed up of the marriage and she is not to live a day more with the respondent. That the diabolic fetish way of life of the Respondent cannot be expected to live with. The Petitioner has confronted the Respondent severally and got really worried for her safety when she discovered that the Respondent consults spiritualist and saw a conversation between the Respondent and the Mallam (Marabout) on adding ***"something"*** to the Petitioner's meal/drink.
- (t) That the Petitioner has wholeheartedly made up her mind and agreed to separate and proposed a resolution on the custody and maintenance of their child of the marriage as follows:
- i. That the petitioner shall have custody of the child of the marriage giving the fact that she is still an infant.
 - ii. That both the petitioner and the Respondent shall have unfettered access to see the child subject to the convenience of the parties at the time of request.
 - iii. That the Respondent shall be responsible for the school fees of his child and her upkeep until maturity.
 - iv. That the Respondent shall pay for the school fees of the child of the marriage up to her University level.
 - v. That the Respondent shall be responsible for the feeding, clothing, medical bills and accommodation of the child.
 - vi. That the child when she attains the age of 18 years will be free to decide which parent she wants to live with up to her full maturity.

Initially, the Petition was unchallenged and this Honourable Court delivered its Judgment on the 21st day of November 2019, granted a Decree Nisi and also awarded Alimony in respect of the only child of the marriage Miss Ronna Omorose Yusuf Arasah.

However, by a Motion on Notice dated 21st day of February, 2020 and filed same day, the respondent/Applicant through his Counsel Olugbenga Owa Esq, prayed this Honourable Court for the following orders:-

1. An Order staying execution of the Judgment delivered in this suit on the 21st day of November, 2019 by this Honourable Court
2. An Order rescinding the Decree Nisi of this Honourable Court made on 21st November, 2019 for lack of Jurisdiction.
3. An Order setting aside the order of foreclosure of Cross-Examination of the Petitioner and the defence of Respondent/Applicant.
4. And Order recalling the Petitioner for Cross-Examination and granting the Respondent/Applicant an opportunity to adduce his Evidence in this case.
5. For such further other orders as this Court may deem fit to make in the circumstance of this case.

The motion on Notice was argued on both sides and this Honourable Court considered same and in the interest of Justice granted the prayers sought by the Applicant which included setting aside its Judgment dated 21st of November, 2020.

The case was re-opened and the Petitioner was Cross-Examined by Olugbenga Owa Esq Learned Respondent's Counsel on the 9th of June, 2020.

On his part, the Respondent through his Counsel Olugbenga owa Esq filed a Motion on Notice with Motion No. M/7161/2020 and filed same day in which he prayed for extention of time within which he may file his answer to the Petition as well as a deeming order.

The said Application which was met with no objection on the part of the Petitioner, was considered and granted by the Court on the 9th of June 2020.

The Respondent's answer is dated 28th day of May, 2020 and filed same day along with a verifying Affidavit of 5 paragraphs deposed to by the Respondent himself.

Meanwhile, the Petitioner through her Counsel Isaac .O. Ibouye Esq filed Petitioner's reply to the Respondent's answer dated 16th of June, 2020 and filed on 17/6/2020.

The Respondent opened his defence on 7th day of July 2020, by testifying as DW1, the sole witness for the defence. He was also duly Cross-Examined by the Learned Counsel to the Petitioner Isaac .O. Ibouye Esq on the 20th day of September 2020. Respondent filed a reply on points of law on 26/11/2020.

Parties adopted their final written addresses on the 15th day of December, 2020.

Now, in her Evidence-in-chief the Petitioner testified as follows:- In her testimony before the Court, the Petitioner testified that she is an Architect. She testified that she got married to the respondent on the 31st of May 2014 at the Redeemed Christian Church of God in Otako Abuja, and a traditional wedding also took place on the 30th of May 2014, at her Parents house In Gwarinpa, prior to the church marriage.

The Petitioner testified that after the marriage, she and the Respondent moved into the Respondent's family house, she was treated horribly which led to several fights between the Respondent and his niece and her mother the Respondent's sister. According to the Petitioner, in those fights both the Respondent and his relatives Exhibited strange behavior by stripping naked and cursing all in the presence of the Petitioner. The Petitioner stated that in one of those fights, his sister is quoted as saying:- " shebi na this house your father die. This is where you and your wife are going to die.

That she tried to intervene in the fight but the Respondent became really angry and uncontrollable, and that his own sister told her, that the Respondent was ***"Bipolar"***.

According to the Petitioner she advised the Respondent to get help for his problem, which he refused and she testified that in early 2016 he got physical with her, after she had suffered a miscarriage due to constant fights between her and the Respondent.

The Petitioner testified that some of the fights were because of some text messages and phone conversations she had seen between the Respondent and other women, which the Respondent always, denied. But, that eventually, the Respondent after seeing several multiple phone conversations owned up to it but still remained aggressive.

The Petitioner testified that the Respondent forbade her from going to her father's house or " she will die, and also forbade her own family members from visiting her. That the Respondent's behavior was strange. That he cursed her family, and even hit her when she packed her bag to leave for work, after she'd raised the issue of the Respondent's relationship with other women, that he forcefully took her car keys from her hand which resulted in her receiving a cut, and she left the house and walked down the street.

According to the Petitioner, at that time, she hid all that was happening from her family and only informed two of the Respondent's brothers who had to remove her from the house on two occasions. She testified further that she was constantly verbally abused by the Respondent even in the presence of his two brothers who tried to intervene, she stated that at a point she had move to her brother's house and even travelled out of the country to the U.K for two weeks.

The Petitioner stated that during that time, the Respondent did not even look for her.

The Petitioner stated that later on the Respondent tried to reconcile by promising to change his behaviour and promising that it won't happen again.

According to the Petitioner, aside from the text messages with women, she had once seen a message between the Respondent and a mallam " which was" I will give you something to put for your wife to drink", or something to that effect. And that the Respondent was paying the mallams also to do work on her father and brother.

The Petitioner stated she informed her pastor because she was scared. And that the pastor arranged a meeting and kept an saying to the Respondent "***Yusuf I thought you had stopped that***"

The Petitioner stated further that Although the Respondent came from a Muslim background, she met him as a Christian and that he told her he was born again.

That the Respondent called her names when he was angry like idiot, imbecile, stupid Yoruba girl foolish, cursed her father by saying "***Aina is a Bastard***" and that this verbal abuse would occur like four days in a week.

That even during the pregnancy of their daughter the fights continued and she took care of medical bills as the Respondent always said he didn't have his wallet with him. She was emotionally drained, and bedridden as such her mother had to sneak into the house to bring food for her, and she even begged the Doctor to admit her in the hospital as according to her she was emotionally drained and depressed. That the Respondent knew of her health condition when she was in the house but was so insensitive to her plight. And that when she was admitted in

the hospital for there weeks, she had only her family there. She said the Respondent merely dropped her in the hospital and said bye. That the Respondent called the Petitioner to save eighty or eighty five percent of her salary in their joint account, but refused to honour his own side by making the required deposits. That he gave her a paltry sum and insulted her when she discussed the issue by saying she's not a wife, she's not obedient, stupid and she doesn't obey.

The Petitioner also testified that since 2014, she has been paying rent and was even sued by the Landlord, when the Respondent deceived her by saying he had been paying their rent which was not true. That when she called the landlord to make enquiries as to why he was suing her and not the Respondent, the landlord replied "***I cannot deal or talk to that man. He's not well, he is not normal and he has threatened me***"

The Petitioner faced the suit alone according to her, it was her father who sent a lawyer to represent her and that the Respondent didn't say anything.

According to the Petitioner after she and the Respondent had agreed to have their daughter in the U.S, he promised to take care of the finances but that when she was leaving in August 2017, the Respondent gave her **₦17,000.00**, then it was not up to a hundred Dollars. But in spite of that, the Petitioner stated that she thanked the Respondent, added some of her money and made it up to a hundred Dollars. According to her she was just grateful that her baby was still alive.

The Petitioner testified that she had her baby daughter on the 19th of September 2017, Via C-section, but that the Respondent didn't send her any money despite several promises to that effect.

The Petitioner states:-

“ But a couple of days later he sent me two hundred Dollars and asked me to buy him a phone which I did.”

The Petitioner testified further that she had to pay **\$300** Dollars for their daughter's Visa and only had **\$285** Dollars. So, she stopped picking the Respondent's calls which eventually led him to send the balance and she was then able to return home.

That upon her return and meeting the house in an unhygienic state, her mother sent help to aid in the cleaning as she was unable to do so. That this situation led to the Respondent finding out cursing the boys doing the cleaning as well as her father. The Petitioner states:-

“ Aina has sent his spies again. Tell Aina he's a bastard Tell Aina I'll deal with him” I tried to calm him down, but next thing, he slaps me on the face while I was carrying the baby. I tipped over luckily on the sofa. One of the boys came over to help me and Yusuf was just yelling. I was trying to avoid him covering my baby, so I told the boys to leave and not to tell their parents, that I will meet them later at the house.”

According to the Petitioner, the fight got worse, she even called his mother to intervene, and was afraid of the Respondent's threat to do something fetish to their daughter.

She states, that after a few days, she started having heart palpitations and fainting spells, was living only on plantain chips and water because the Respondent refused to allow her to leave the house, despite the fact that she was lactating. The Petitioner stated that after taking several tests at the hospital which showed nothing, her doctor asked her what was happening and advised her not to ***“kill herself”***

Again according to the Petitioner when she finally moved out of the house she lived with this Respondent, and for months thereafter, the Respondent showed little interest in seeing his daughter.

She testified that there was an attempt at reconciliation with more promises by the Respondent to desist from his action and she eventually moved back in April 2018 as the counseling was going on.

According to the Petitioner, the Respondent went so far as to physically assault her baby's nanny when she at one time saw heavy marks on her face and she was crying. Upon inquiry, the Nanny informed her that the Respondent had attacked her and beat her up. And that the incident was witnessed by her neighbors who had called earlier to inform her about it. The petitioner stated thus:-

“ I asked her, where was my baby when this was happening. And she said she was actually carrying my baby when it happened.”

In support of the Petition, two certificates of marriage between the Petitioner and the Respondent were admitted in evidence and marked as Exhibits A and B respectively. Exhibit A is a marriage certificate issued by the Redeemed Christian Church of God while Exhibit B is a certificate of marriage celebrated in the RCCG (Jesuit of Nations) at Jabi Abuja marriage Registry dated 31st of May 2014.

Also, a photocopy of a plaint civil Summons from the chief District Court of the Federal Capital Territory Abuja Dutse Alhaji for service on the Petitioner and the Respondent was admitted in evidence and marked as Exhibit C.

Finally, the Petitioner urged the court to dissolve her marriage to the Respondent.

Meanwhile, on his part, respondent in his evidence in-chief, testified as follows:-

That they had a traditional marriage on the 30th of May, 2014 and a church marriage on the 31st of May, 2014. He also confirmed the exhibits before the Court to be their marriage certificate and the fact that they have a beautiful daughter Ronna.

The respondent however informed the court that he is not a violent person. That as a Christian, his faith admonished him to love everyone, but it doesn't say that he must be loved in return. He also informed the court that he was never violent with his wife since his father was a justice of the peace.

He stated that he comes from Ilorin and they don't beat people but talk to people.

According to the respondent, the story about him being naked and fighting with his niece is not true since he lived with her and always mentored them. He also stated categorically that he never deceived the petitioner about where he lived. Likewise, the respondent also categorically denied that he ever consulted any mallam marabouts, that he does his thing and he prays.

The Respondent testified that although the petitioner's salary was more than his, it is far from the truth to say that he never took care of their finances and never contributed to their joint account. That with their agreement on their joint account, the petitioner's salary was left free as he also made contribution to the account and provided for her personal upkeep as well. That if he made any extra cash, he paid it into the joint account, plus the fact that the Petitioner had access to the joint account as she had the ATM Card with her. That even after she left their home she still had the Card and when he made some payments into it she withdrew the money.

The Respondent testified that they had their baby in the U. S and the Petitioner was supposed to stay with his sister but she refused turned it down and also refused to stay with his brother in Maryland. That he usually gave the Petitioner cash when he got it and that's how they saved up for the trip. That when the Petitioner was returning from the U.S, he paid for their child's VISA. He also categorically denied that when the Petitioner had miscarriages he did not

take care of the bills. That despite being Registered with NHIS, the Petitioner turned down the use of the NHIS and opted for NISA premiere hospital, a private Hospital.

The Respondent stated that they had an I. V. F procedure which failed and they paid for it from their joint account. That the underlying condition the Petitioner had was because of her size but the Respondent said he loves her irrespective of that. Another condition which also contributed to the miscarriage was that the Petitioner was diagnosed with polycystic fibrosis.

The Respondent stated that during her bed rest, he never harassed or maltreated her. On the contrary, according to the Respondent the Petitioner used to smoke Shisha laced with Indian Hemp and that he used to talk to her to stop it during the period of her pregnancy.

According to the Respondent even though they had a maid at the house, he said it is not true that he ever had any incident of beating, abusing the maid physically or verbally.

The Respondent also denied having other women aside from his mother who is in his life and his sisters. That categorically, he does not have any relationships outside his marriage sexually or emotionally and that he is not an adulterous person. And that he has never cheated even before getting married.

However, according to the Respondent, the Petitioner had informed him that during their marriage she was in contact with her ex. That they'd met up just before the wedding on the 30th and got back together, but the Respondent said he forgave her for that. But she later found out that both of them had travelled together to Kontagora and that it was repeated a year into their marriage after the 2nd incident happened.

According to the Respondent, the Petitioner left their house on the 30th of August 2018 and that it was the 3rd time she had moved out of the house.

He testified that part of the reason why she left was her father asked him to get another place for his mom. He said he couldn't do that because his mother

always lived with him since his dad died and it would also have been very expensive for him. The Respondent stated that one of his brothers' even offered them a place to stay but the Petitioner turned it down and asked the Respondent to get a loan from his office so they could move. But, because he consulted with colleagues in the office and it was a daunting task, he turned it down. After he told the petitioner and because of all the pressure, he agreed that the petitioner should get a place and they paid from the contributions they had from the wedding.

According to the respondent, he paid for the petitioner to go to U.K after her return from the U.S so she could stay with his sister and he made adequate arrangements for her and the baby.

The Respondent told the Court with regard to the dissolution of marriage, that he still loves his wife and it is against his biblical belief but he cannot force her to love him in return. He also added that when she left he tried to get his sisters from the U.S and U.K, his uncle, his mom who all went to kneel and beg for her return but her dad said no, that because of that he hadn't seen their beautiful child Ronna. However, he did say that in the event, the marriage is dissolved, he has initially proposed to be paying ₦25,000.00 for his daughter's upkeep.

He stated that it was because they were in arrears of payment on their rent that their landlord had sued them. According to the respondent the matter was later settled out of court. He stated that he did make the proposal in hindsight knowing his source of income, the bill, his aged mother whom he takes care of and also himself. He added that he was pleading with the court not to make him see corruption as an option.

The Respondent also testified that he would like to have unfettered access to his child and the mother to have it as well. He said he loves his child and also craved indulgence of the court that the petitioner can have custody of the baby all things being equal until the child is about 9 years old. That during that period, he would want the child to spend holidays with him and when she's 13, he would want custody and the petitioner can have unfettered access which should allow for bonding and it is good for the society. That if his daughter needs to travel he

wants to be able to give a written consent whenever she's travelling out of the FCT. He also stated that he would want the international passport of his daughter Ronna to be in his custody.

The respondent informed the court that he earns the sum of ₦152,720.00 (A Hundred and Fifty Two Thousand, Seven Hundred and Twenty Naira) only and he tendered his pay slip which was met with no objection and same was admitted in evidence and marked exhibit D.

1. He also mentioned that at the time the petitioner left their home she earned about ₦200,000.00 (Two Hundred Thousand Naira).

In the Respondent's final written address, dated 4/11/2020 and filed on 9/11/2020 two issues were formulated for the Court's determination namely:-

1. Whether the petitioner has laid out and proven legal grounds to warrant the court in dissolving the marriage?
2. What orders can the court make in the circumstances of the case in the event that the marriage is dissolved?

In arguing the issues, Learned Counsel submitted that the Petitioner has woefully failed to prove any of the established statutory legal grounds to warrant the Court in dissolving the marriage. Reliance was placed on Section 15 (1) of the Matrimonial Causes Act, in reference to paragraph 10 of the Petitioner's petition Constituting the legal grounds predicated basis for seeking of decree of dissolution of the marriage.

It is submitted that there's no ground in Law of Matrimonial Proceedings known as "**Love is dead**", that such is not a ground for dissolution of marriage. Likewise the *phrase "tired of the marriage"* Counsel submits is also not a legal basis and ground for dissolution of marriage under the Matrimonial Causes Act. That the duty and role of the Court is to work with and be guided by the law and not with sentiment of the Petitioner or any other party.

On the issue of adultery the learned Counsel submitted that the Petitioner based her Petition on adultery and that paragraph 97 is the only place where adultery was pleaded in the Petition.

It is therefore submitted that this allegation is totally baseless and cannot be sustained in Law. That nobody was mentioned in the process as co-defendant who committed adultery with the Respondent. That Evidence of the Petitioner being at variance with her pleadings should be expunged. Reliance was placed on the cases of **BUHARI VS OBASANJO (2005) 2 NWLR (PT. 910)2v; MAKINDE VS AKINDWALE (2000) 1 SC, 89; ALLIED BANK (NIG) LTD VS AKUBUEZE (1997) 6 NWLR (PT. 509) 374.**

It is submitted that the allegation of adultery in a Matrimonial Causes would fail if the person alleged to have committed the adultery with the Respondent is not joined as a Co-Respondent, such as in this case. Counsel relied on Section 32 (1) of the Matrimonial Causes Act and the case of **EIGBE VS EIGBE (2012) LPELR-19690 (CA).**

On the burden and standard of proof of adultery Learned Counsel submitted that the onus of proving same lies squarely on the Petitioner and must be proved to the satisfaction of the Court. Reliance was placed on the case of **RE: OLAWALE ONILERE VS WILLIAMS & ANOR (1974) LPELR-3490 (SC)** AND Section 82 (1) of the MCA; as well as Section 131 (1) and (2), 132 and 133 (1) Evidence Act 2011, and **OVIASU VS OVIASU & ANOR (1973) LPELR-2836 9SC); AKINYEMI & ANOR (1963) LPELR- 15457 (SC).**

Learned Counsel also referred the Court to the condition stipulated by law in proving adultery. On this premise reliance was placed on the case of **ERHAHON VS ERHAHON (1997) 6 NWLR (PT. 510) 667 and ALABI V ALABI (2008) ALL FWLR (PT. 418) 245; AKINYEMI VS AKINYEMI (Supra).**

That in the instant case, mere suspicion based on text messages and phone conversation that is not before the Court does not pass the test of proof.

That it is trite law that there's no adultery without sexual intercourse with another woman.

The Court is therefore urged to hold that this allegation fails and not to rely on it to dissolve the marriage. Reliance was also placed on the case of **OBAJIMI V OBAJIMI (2011) LPELR 4665 (CA) per JOSEPH SHABAOR IKYEGH, J. C. A.**

On the ground of intolerable Behaviour, it is submitted by the Learned Counsel that the Petitioner made heavy weather on behaviour of the Respondent which borders on physical and verbal abuse, uncontrollable anger, consulting "**mallams**", after claiming he converted to Christianly, lack of paying bills and unreasonableness.

He submits that non of these allegations have been proved to the satisfaction of the Court and the Respondent vehemently denied all the said allegations.

That the Evidence before this Court does not fall within the nature of conduct or behaviour set out under the Matrimonial Causes Act to constitute the ground that there is irretrievable breakdown of the marriage based on Section 15 (2) (c) of the Act.

It is submitted further that the conduct or behaviour envisaged by Section 15 (2) (c) is circumscribed and defined by law-specifically Section 16 of the Matrimonial Causes Act. That the said provision sets out in detail what the Petitioner must establish to be entitled to a decree of dissolution of her marriage under Section 15 (2) MCA. That if the Respondent is unable to prove any of these allegations, the Petition cannot succeed. Reliance was placed on the cases of **NANNA V NANNA (2006) 3 NWLR (PT. 966) 1; BIBILARI V BIBILARI (2011) LPELR-4443 (CA); AKINBUWA V AKINBUWA (1998) 7 NWLR (PT.559) 661; DAMULAK V DAMULAK (2004) 8 NWLR (PT. 874) 151; IBRAHIM VS IBRAHIM (2007) 1 NWLR (PT. 1015) 383 per ARIWOOLA JCA (as then was).**

That in the instant case Section 16 (1) (c) (iv) may be the closest to consider given the pleadings and Evidence. And that the Respondent has not proved this since what the Section envisaged is "**since the marriage, the Respondent has within a period not exceeding five years.....habitually left the Petitioner without reasonable means of support**" that the facts before this Court show

otherwise considering the Respondent paid for his wife's trips to the U. S and U. K the Court does not have any such evidence to support the allegation that the Petitioner was left without any reasonable means of support.

On the allegation of cruelty reference was made to the Evidence of the Petitioner during Cross-Examination and the discrepancies in her Evidence, Counsel submitted that it is clear that the inconsistencies make her an unreliable witness who wants to disparage her husband. Moreso, that the Respondent has denied all these allegations. That in the circumstances the Petitioner has failed to discharge the onus of proof on the ground for dissolution based on Section 15 (2) (c) of the MCA.

Reference was also made to Section 16 (1) of the MCA. That Section 16 (1) (a)–(g) does not vest the Court with discretion as to what conducts amount to intolerable behaviour under Section 15 (2) (c), since the operative word “shall” implies compulsion and not discretion.

On the ground that the Petitioner is tired of the marriage, Learned Counsel relied on **BIBILARI VS BIBILARI** (Supra) per IYZOBA J.C.A. It is submitted therefore that none of the allegations made fall within the ambit of the conduct envisaged by law. Reliance also placed on Section 167 (d) Evidence Act 2011, to argue that failure to produce the text messages constitute hearsay Evidence, as well as Evidence to support her Evidence that she was the only one paying into the joint account of the family, by producing the Bank statement of account.

On condonation, it is submitted that the Petitioner cooked up heinous stories painting the Respondent Black so as to provide a means to breach her Matrimonial vows and exit a commitment for life. The Court is urged to hold that even if there were Matrimonial wrongs, they were condoned. It is submitted that condonation neutralizes the requirement of intolerability.

That the Respondent says before Court he loves his wife but cannot force her to love him in return/he denied all the allegations. That he also testified that he paid as much bills as he can as a civil servant and an Assistant Director with the Federal Government.

It is further submitted on the ground that the parties have lived apart for more than one year immediately preceding the presentation of this Petition, learned Counsel submitted that the Petitioner is greatly misconceived in law in three aspects relating to this ground. Firstly, counsel submitted that there is no such ground in Section 15 (2) of the MCA. Reference was made to Section 15 (2) (d) of the MCA 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". That there's a great difference between living apart and desertion.

Secondly, that in the instant case, the Evidence shows that it is the Petitioner that was always deserting the Respondent by packing away from the Matrimonial home while the Respondent goes after her to appeal to her return on each occasion.

Thirdly, that the desertion must be for a continuous period of one year immediately preceding the presentation of the Petition.

That there's nothing on the record to show that the parties have even lived apart for one year immediately preceding presentation of the Petition.

Reference was made to the Evidence and admission of the Petitioner during Cross-Examination that she was still cohabiting with the Respondent in May 2018 after her return from her trip to London and that this Petition was filed on 2nd February, 2019. Therefore, it is submitted that the marriage cannot be dissolved on this ground.

It is submitted that the Petitioner has not discharged the legal onus on her to be entitled to the relief of dissolution of marriage by this Court on the grounds presented. But, that in the event the Court dissolves the marriage, the Court is urged to consider all the proposals of the Respondent contained in his answer as regards maintenance of child of the marriage.

It is submitted on consequential orders the Court may grant, that of utmost importance to the Respondent is access to the child of the marriage. The Court is urged to forestall a situation where the child is taken out of the country without the consent of her father thereby permanently denying him access.

As regards maintenance, counsel placed reliance on Section 70 (1) of the Matrimonial Causes Act; **DAMULAK V DAMULAK (2004) 8 NWLR (PT. 874), at 171-172; HAYES VS HAYES (2000) 3 NWLR (PT. 648) page 276; AKINBUWA VS AKINBUWA (1998) 7 NWLR (PT. 558)At page 601; NANNA VS NANNA (Supra); ODUSOTE VS ODUSOTE (2011) LPELR-9056 (CA) ADEJUMO VS ADEJUMO (2010) LPELR-4602 (CA).**

Reference was made to the pay slip tendered in evidence by the Respondent, and his Evidence during Cross-Examination on the income of the Petitioner.

Reliance was also placed on Section 73 (1) (a) of the MCA and the cases of **NEGBENE BOR V NEGBENE BOR (1971) 1 ALL NLR, 210; OLUIBUKUN V OLUIBUKUN 1974 1 ALL NLR (PT. 1) 513.**

In conclusion Learned Counsel submitted that the Petitioner must prove at least one of the grounds contained in Section 15 (2) of the Matrimonial Causes Act even if the divorce is desired by both parties. Reliance was placed in the cases of **AKINBUWA VS AKINBUWA (2017) LPELR-42160, page 4; IKE VS IKE & ANOR (2018) LPELR-44782 (CA).**

That the onus burden/becomes stronger where the order of dissolution is contested based on the grounds relied upon as in this case.

On the part of the Petitioner, Learned Counsel formulated a sole issue for determination in the Petitioner's final written address to wit:

“Whether the Petitioner is entitled to the reliefs sought in her Petition, having regards to the facts and circumstances of this case and especially Section 15 (2) (c) of the Matrimonial Causes Act?

It is submitted by the Learned Counsel that the Petitioner is entitled to the reliefs sought in this Petition having regards to the facts and circumstances of the case, the Evidence adduced by the Petitioner and the pointless defence of the Respondent. Reliance was made on Section 15 (2) (c) of the Matrimonial Causes Act.

It is submitted that the Petitioner has testified under Oath that the Respondent when angry or when he was in a moment of rage, strips himself naked, becomes uncontrollable until full display to the public. That the Respondent has a sickness which is called BIPOLAR diagnosed by a medical practitioner. That despite the persistent plea of the Petitioner, the Respondent has refused to seek help. That as such she cannot reasonably be expected to live with the Respondent in such a state of health, thereby endangering her life.

It is submitted moreso that it is stated in the Petition that the Respondent slapped the Petitioner in the face severally, injured her with Car Keys when dragging out keys from her hand and almost injured the new born baby in the process. That these facts are corroborated in her testimony on Oath before the Court and some repeated during Cross-Examination.

That the marriage has broken down irretrievably and the Petitioner will not be expected to continue to cohabit with such a unhealthy and dehumanizing behaviour of the Respondent.

Reliance was placed on the case of **ADARAMOLA VS ADARAMOLA (1962) 1 SCNLR 376.**

That even though the Respondent deceptively denied even assaulting the Petitioner, but what he could not substantiate was the copious reason why the Petitioner would run for her life on (three) 3 different occasions. That the Petitioner will not be careless till her death before she runs so that guilt will not be placed on her for cohabiting with the Respondent when she knew who she was living with. That the Respondent did admit that the Petitioner is not abusive, very loving and respectful even to his family. That it is **“fun”** being with the Petitioner.

On the issue of cruelty, it is submitted that same can be physical or mental. That this Honourable Court can legitimately draw the conduct of the Respondent i.e calling his father in-law by his first name before the Petitioner when abusing her, an inference. That the use of words such as “foolish, stupid, imbecile, idiot, bastards, you will die, you will not know peace, useless Yoruba people, God will

punish you; physical assaults, curses, name calling and the treatment meted on the Petitioner is such that it is an abuse and it causes an apprehension in her mind and other bodily injuries she has suffered from the assaults by the Respondent, which conduct amounts to cruelty.

That the Petitioner who has a little baby (Omorose Arasah) could not have, without a cause, abandoned her Matrimonial home.

The Court is urged to infer that the Respondent has blatantly refused to tell the truth.

Reference was made to the west's Encyclopedia of American Law 2nd Edition on definition of legal inference in law.

That in physical cruelty, there can be tangible and direct Evidence, but in the cases of Mental cruelty, there may not at the same time be direct evidence. That in the latter case, the Courts are required to probe and infer into the mental process and mental effects of incidents that are brought out in Evidence. The Court is therefore urged to consider the conduct of the Respondent which led the Petitioner to leave her Matrimonial home even though the law has no standard by which to measure the nature and degree of cruel treatment, the court is urged to consider the said conduct of the Respondent and yet again dissolve the marriage of the Petitioner that had already been justifiably dissolved by this Honourable Court.

Reliance was placed on the case of NANNA VS NANNA (2005) LPELR-7485 (CA).

It is submitted further that the Petitioner also gave account of how she lost her pregnancy due to the numerous assaults, troubles, including denial of peace by the Respondent with the repeated deception of the phrase ***"I love my wife"***.

On the issue of adultery it is submitted that the Petitioner claimed under Oath even under Cross-Examination that she received threatening messages and phone calls from strange women over the years which resulted to more assaults

and abuse whenever she confronted the Respondent, and even mentioned one Florence of Access Bank which the Respondent denied ever knowing.

That the Petitioner also testified that the Respondent threatened to kill her if he should be provoked or she allows any of her family members to come to their house or to be informed of their family troubles. That she was hit and slapped several times over disagreements of these bedfellows. That during Cross-Examination, the Petitioner gave the name and phone number of the lady to buttress her points. And that the Respondent who denied these allegations claims that the strange phone calls from other women are just his friends.

It is submitted that the Petitioner has been rescued by the brother in-law on two occasions when the Petitioner was taken to their house and the Respondent refused to be pacified due to his anger.

That the Petitioner lives in fear and she no longer feels safe for herself and her daughter. Reliance was again placed on the case of **NANNA VS NANNA** (Supra).

It is submitted further that the Petitioner stated that she discovered that the Respondent engages in fetish practices which the Respondent merely denied and brushed aside. That she narrated how she said the conversation between the Respondent and his marabout mallam over plans on how to put ***“something”*** substance in the Petitioner’s food and drink. That she also Claims to have seen tellers indicating payment to the said mallam.

It is submitted that the Petitioner testified and tendered Exhibit C that she has been the one paying Rent and carrying out Responsibilities for the Respondent including upkeep of their daughter and the entire family. That the Respondent does not care and used every deception to collect the hard earned money of the Petitioner through the joint account which he rightly admitted under Cross-Examination that he could not remember ever depositing any money into the said account.

Reference was made to the Evidence of the Respondent under Cross-Examination.

It is submitted that the Respondent also consistently mentioned that the salary of the Petitioner is more than his even though he said it does not constitute part of the problem but obviously agreed that the Petitioner's salary should be saved for family use, when his own should be spent. That since he testified that it was a mother figure who introduced him to the Petitioner, showing she was merely bestowed upon him like a gift, no genuine love exists for the Petitioner.

On the issue of the ex-boy-friend coming back, the allegation that the Petitioner is a smoker and making jabs at her stature, and that all her testimony is false Learned Counsel submitted are some of the reasons why there is no love lost between the two anymore and humbly urged the marriage to be dissolved as earlier done.

On custody of the child (Omorose Yusuf Arasha) Learned Counsel referred the Court to the cases of **TABANSI VS TABANSI (2009)12 NWLR (PT. 1155); MRS LYDIAOJUOLA OLOWUN FOYEKU VS MR JAMES OLUSOJI OLOWUN FOYEKUN (2011) 10 NWLR (PT. 1227) 177 @203**, paragraphs E-F.

It is submitted that both parties have admitted that the child Omorose is a minor who still needs the cuddling and undiluted attention of her mother until she is 21 years of maturity. That generally when a mother of a minor is fit and capable custody is bestowed upon her, which gives her the right to make decision about the child's welfare, Education and upbringing, and does not exclude the right and duties of the Respondent to provide, care for the child with his full support.

Reliance was placed on the case of **OJENIRAN VS OJENIRAN (2018) LPELR-45697 (CA)**

The Court is urged to jettison the prayer of the Respondent on obtaining consent from him on movement of the child as Counsel submitted it is a subtle way to knowing and directing the affairs of the Petitioner.

The Court is also urged to consider the best interest of the child and the criteria and urged the Court to grant custody to the Petitioner who is capable and

when she is 18 years of age can choose to go and reside with the Respondent as a choice.

Reference was made to the dictionary Definition of "*custody*" in the Black's law Dictionary, and the Court is urged to consider the numerous facts for the grant of same.

On what constitutes "*interest of children*" reliance was placed on the case of **WILLIAMS VS WILLIAMS (Supra)**.

On the issue of maintenance of the child and alimony, the Learned Counsel relied on Section 72 of the Matrimonial Causes Act.

Learned Counsel urged the Court to consider the Admission of the Respondent that he owns inherited property and to order monthly payment at the earlier granted sum of ₦70,000.00 (Seventy Thousand Naira only) or more for the Maintenance of the child excluding school fees, hospitals bills, clothing etc.

Reliance was also placed on Section 73 a-b and 74 of the MCA Act on discretionary power of the Court to increase the sum.

Reliance was also placed on the case of **IBEABUCHI VS IBEABUCHI (2016) LPELR-41268**.

In arguing the issue Learned Counsel urged the Court to hold that the Petitioner has contributed to the finance of the Respondent and deserves sharing of the Respondent's salaries, rents and other emoluments.

It is submitted that the Respondent has no iota of right to ask for reliefs before this Court without filing a Cross-Petition. That taking possession and custody of the international passport of the child of the marriage or giving of consent be completely ignored and jettisoned by this Honourable Court.

Reliance was placed on the case of **UZOKWE VS UZOKWE** (no citation).

That given the discretionary powers of this Court under the law, it is suggested that the jointly owned assets of the estranged family be shared and in fact, contribution should not be the major consideration. That intention of Section

72 of the Matrimonial Causes Act will be defeated if the Petitioner takes care of the Respondent's child without reimbursement. That the Respondent was taking care of the needs of the family, the child's food, care when the property was acquired and inherited by the Respondent.

In conclusion the Court is urged to uphold the Judgment of this Court earlier handed down on 21st of November 2019. It is also argued that since the reopening and hearing of the petition no serious addition has been made and there's no distortion of facts as alleged by the Respondent. The Court is urged to grant a Decree Nisi on the Evidence led by the Petitioner which included insulting her father in words "***Aina is a bastard***".

To hold that the marriage has broken down irretrievably since the Respondent has alleged the Petitioner is a smoker of Shisha, her ex-boyfriend came back into her life which are far from the truth and which the Petitioner found as damaging to whatever remains of the possibility of their union.

Finally Learned Counsel urged the Court to grant the prayers as contained in the Petition.

Respondent meanwhile, has filed a reply on points of law dated 26th day of November, 2020.

On the issue of whether it is law that the Respondent must file a Cross-Petition before he can be heard in law on the issue of custody in Matrimonial Causes, it is submitted that such argument is a misconception as it is not the position of the law in Matrimonial Causes. That the correct position in law is that the issue of custody of children under the Matrimonial Causes Act is an ancillary relief, which does not require a Cross-Petition therefore a party to the proceedings may make his proposal for custody. Reliance was placed on the case of **EGBUCHE VS EGBUCHE (2015) LPELR-25868 (CA)**.

That in the exercise of discretion on custody, the Courts have enjoined that the parties must be heard under Section 36 (1) CFRN 1999 (As Amended). Reliance was also placed on the case of **ABEGUNDE VS ABEGUNDE (2019) LPELR-**

47961; Sections 71 (1) 71 (4) 73 (1) (j) (11) of the Matrimonial Causes Act and the case of **SANNI VS MABINUORI (2014) LPELR-22537 (CA)**.

Now, under and by virtue of Section 15 (2) of the Matrimonial Causes Act Cap M 7 LFN 2004, the Court is empowered to grant an order of dissolution of any marriage where it is satisfied that the marriage has broken down irretrievably.

However, before the Court can come to such a conclusion, it must be satisfied that the alleged grounds for dissolution of marriage falls within Section 15 (2) of the matrimonial Causes Act.

Therefore, unless the Petitioner satisfies the Court on these matters, the Court cannot hold that the marriage has broken down irretrievably as held in the case of **DAMULAK V DAMULAK (2004) 8 NWLR (PT. 874) 154; AKINBUWA V AKINBUWA (2017) LPELR-42160, page 4**.

I have carefully considered the grounds predicating this Petition.

Firstly, as rightly pointed out by the Learned Respondent's Counsel in his written address, there are no grounds in the Matrimonial Causes Act which relate to lack of love in the marriage or being tired of the marriage.

On the issue of Adultery same cannot be proved if the same person alleged to have committed the adultery with the Respondent is not joined as a Co-Respondent, such as in this case.

On this premise, I refer to the case of **EIGBE V EIGBE** (Supra)cited by the Respondents Counsel, where the Court per Bage, J. S. C held at PP 11-12, paras F-C as follows:-

"The provision of Section 32 of MCA, Cap M7 is very clear on a person alleged to have committed adultery with a partner in marriage. The Law mandatorily requires he must be joined in the Petition to afford him the opportunity of defence to such allegation where such a person is not joined, adultery per se, cannot constitute a ground for a decree for dissolution of such marriage. Joinder of adulterers is a must requirement of the law. Where such adulterers are not joined, the Petitioner cannot

use any legal process for dissolution of the marriage on that ground.....”

Therefore in the instant case, since the alleged Co-adulterer was not joined as Co-Respondent in this Petition, this Honourable Court cannot employ it as ground for dissolution of marriage. I so hold.

See also the cases of **OKE V OKE (2006) 4 NWLR (PT. 1008) 224 at 242, C-D; ODUBEKO V FOWLER (1993) 7 NWLR (P-T. 308)637;**

I’ve equally noted all the points addressed by the learned Respondent’s Counsel in the written address, who has argued extensively on the requirements of the law on dissolution of a marriage particularly on proof in the combined provisions of Section 15 (2) (c) and Section 16 (1) of the Matrimonial Causes Act (Supra).

Indeed, the Law is trite that a Petitioner who alleges intolerability has to prove one of the grounds enumerated under Section 16 (1) of the MC Act. I refer to Section 16 (1) MC Act.

However, in the instant case, I’ve observed that although the Petitioner has not proved any of the grounds envisaged under Section 16 (1), the said Section itself provides that the provision is without prejudice to the generality of Section 15 (2) of the Act.

Therefore, in the instant case, the Petitioner in her Evidence, while relying on Section 15 (2) (C) of the Act, has alleged cruelty in that she testified among other things that the Petitioner constantly subjected her to verbal abuses and on two occasions he physically assaulted her and she finds his frequent violent outbursts, rage and uncontrollable anger intolerable to live with.

In her evidence, she mentioned that at one point these traumatic incidences even affected her health while she was pregnant with their daughter. In addition the Petitioner has alleged that the respondent tried to use Mallams (marabouts) to do work on her and her family. That the Respondent does not fulfill his financial obligations and even stopped paying rent since 2014.

However, the Respondent has clearly denied all these allegations, during Cross-Examination the Petitioner was unshaken on all these issues. For instance when asked by Respondent's Counsel about the issue of the marabouts as to her basis being messages she saw in respondent's phone. The petitioner testified thus:-

"That and some other things. Conversations with his brothers as well as physical items that I saw like powder and some other things hidden in the house. And when I told his brother, he said "I thought Yusuf had stopped this and he told me story of things he had to throw out in the past".

On the allegation that the Respondent assaulted their Nanny, Learned Respondent's Counsel put the question to the Petitioner as to whether the Respondent had assaulted their Nanny and whether she had witnessed it. Her reply is as follows:-

"Yes I witnessed part of it and I clearly saw the finger prints on her face".

The petitioner still under Cross-Examination stated that at the time of the assault the Nanny was crying and Yusuf the Respondent was cursing and yelling at her.

On his part, the Respondent in his Evidence-In-Chief, informed the Court that he's not an abusive person and denied ever assaulting the Respondent or anyone. He testified that he never insulted her and has always taken care of her and their daughter.

He made reference to all the efforts he made to get a place for the Petitioner who requested that he gets another place for his mother whom they lived with etc. And that when the Respondent left he'd made all efforts to reconcile but she refused.

On the issue of dissolution of marriage. The respondent testified that in the event of dissolution of their marriage which he prays doesn't get to that, he's made proposals of how take care of his daughter and proposed ₦25,000 monthly and would like to have unfettered access to his child.

The Respondent also made Counter allegations that the Petitioner had returned with her ex who was also at their wedding, that she smoked Shisha laced with Indian hemp among others.

On the issue as to whether the Respondent collects rent, during Cross-Examination he testified that he knows his father has left property but denied that he collects any rent.

In addition when asked, the Respondent stated that their period as a married couple was fun and he loves his wife even if she doesn't love him.

Having carefully analyzed the evidence of the Respondent it is my firm view that the Respondent still loves his wife.

However, it is obvious from the Matrimonial history of the parties in this case that there are clearly problems in the marriage and apparently the Petitioner having finally moved out of the Matrimonial home since 30th August, 2018 has chosen to move on with her life.

Coming back to the issue at hand which is intolerability alleged by the Petitioner as a ground, in addition to the facts earlier mentioned, it is the evidence of the Petitioner that the Respondent has on numerous occasions called her father by name and cursed him in the following words:-

"Aina is a Bastard" Tell Aina I'll deal with him."

Likewise, the Petitioner also testified that when angry the Respondent insults her and her family calling them foolish, stupid, imbecile, idiot, bastard, you will die, you will not know peace, useless Yoruba people, God will punish you.

The Petitioner also testified that all these facts made her to leave her Matrimonial home due to cruelty of the Respondent.

Now, although cruelty is not a ground stated in Section 15 (2) of the Matrimonial Causes Act (Supra), it is one of the old grounds of divorce.

In the case of **ADARAMAJA V ADARAMAJA (1962)1 SCNLR, 376** the Court held:-

“Cruelty in relation to Matrimonial proceedings, is a conduct which is grave and weighty as to make cohabitation of the parties to the marriage virtually impossible coupled with injury or a reasonable apprehension of injury, whether physical or mental. The accumulation of minor acts of ill-treatment causing or likely to cause the suffering spouse to break down under strain therefore, constitutes cruelty.”

See also the case of **WILLIAMS V WILLIAMS (1984) 2 NWLR (PT.54) 66.**

Therefore on this issue, it is the duty of the Court to determine whether the behaviour of the Respondent is sufficiently grave that the particular Petitioner cannot reasonably be expected to live with the Particular Respondent.

On this please see the case of **IBRAHIM V IBRAHIM (2007)1 NWLR (PT. 1015) 383.**

It has also been held that whilst a single act may not constitute intolerable behaviour, several such acts, may cumulatively constitute it. On this, I refer to the case of **OBAYEMI V OBAYEMI (1967) NWLR 2112.**

The Court has held also, that while a Solitary act of violence will not as a rule constitute intolerable behaviour, persistent acts of molestation, vulgar abuse, use of obscene language, callous spurious charge, of infidelity and neglect could constitute it. That the list is inexhaustible, but except in rare cases. Persistence or repetition is of great relevance.

On this premise, I refer to the case of **ANAKWENZE V ANAKWENZE (1972)** suit No. E/19D/72 High Court of East Central State, Enugu Judicial Division. Judgment delivered on 14th January, 1972.

Moreso, it has been held that the practice of Juju or Charms Constitutes intolerable behaviour.

On this premise, I refer to the case of **SOTOMI V SOTOMI (1976) SUIT NO. HD/37/75.** High Court of Lagos State, Lagos Judicial Division.

Generally, on what Constitutes intolerable behaviour, the Court has held in the case of **OGUNTOYINBO V OGUNTOYINBO (2017) LPELR-42174 (CA)**, at pp 8-14, para E-A, as follows:-

“.....The Duty is on the Court to consider whether the alleged behavior is one in which a right thinking person would come to the conclusion that the Respondent has behaved in such a way that the Petitioner could not reasonably be expected to live with him taking into account the whole of the circumstances, the characters and personalities of the parties.”

Moreso, notwithstanding the provisions of Section 16 (1) of the MC Act, in relation to Burden of proof alleged by a Petitioner under Section 15 (2) (c) of the Act (Supra) the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees to every citizen certain inalienable rights under Chapter iv of the said Constitution.

One of such inalienable rights is the right for the respect of one’s dignity, and that no-one should be subjected to any inhuman or degrading treatment.

The Constitution is the Supreme Law, it supercedes the provisions of the MC Act (Supra).

Therefore, while the MC Act seeks to protect the sanctity of the marriage institution, in addition to that the CFRN 1999 (as amended) seeks to protect the sanctity and dignity of the human person.

Please see Section 34 (1) (a) of the 1999 CFRN (as amended).

Therefore, in the instant case, I have put into consideration the whole Matrimonial history of the parties, and it is my candid opinion that frequent verbal abuses and occasional physical assaults on the Petitioner by the Respondent, and most especially calling the Petitioner’s father by his first name and the phrases ***“Aina is a Bastard”***, and the other facts referred to in the evidence of the Petitioner, no doubt constitute intolerable behavior which a right thinking person cannot reasonably expect the Petitioner to live with in the circumstances. I so hold.

Consequently therefore, I find that the Petitioner has proved the ground for dissolution of her marriage to the Respondent pursuant to Section 15 (2) (c) of the Matrimonial Causes Act. And that the marriage in this case has broken down irretrievably. I so hold.

On the issue of custody and maintenance of the child of the marriage Ronna Omorase Yusuf-Arasah, I've considered the Reliefs sought by both the Petitioner and the Respondent as well as the Respective submissions of Counsel on both sides.

It is trite law that on this issue, the most important guiding principle is the interest of the child. In other words, the welfare of the child is the prime consideration of who should be granted custody amongst the parties. On this premise, I refer to the case of **MRS. LYDIA OJUOLA OLOWUN FOYEKU V MR. JAMES OLUSOJI OLOWUNFOYEKU (2011) NWLR (PT. 227) 177** at 203, paragraphs E-F, where the Court of Appeal held thus:-

“In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, Court of Law, or administrative or legislative authority, the best interest of the child of the marriage shall be the primary considerationcustody 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 the marriage that has broken down irretrievably is not only paramount consideration but a condition precedent for the award of custody.”

See also Sections 70, 71, (1) of the Matrimonial Causes Act, ODUSOTE V ODUSOTE (2012) 3 NWLR (PT. 1288)478.

Again, in the consideration of what constitutes the welfare and interest of the child, the Court in **ALABI V ALABI (2007) 9 NWLR (PT. 1039)279**, set out the criteria 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.***
3. ***The Respective incomes of the parties.***
4. ***The Education of the child.***
5. ***The facts 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 tender age, Custody should normally be awarded to the mother unless other considerations makes it undesirable etc.”***

In the instant case I've considered the fact that both parties have proposed that the Respondent shall have custody of the child of the marriage but with some variations. I've also considered the proposal of the Respondent on the maintenance and upkeep of the child of the marriage, Exhibit D as well as his answer on this issue and his Evidence-In-Chief and under Cross-Examination.

Exhibit D tendered in Evidence by the Respondent shows that he receives a salary in the sum of ₦152, 720.00 (One Hundred and Fifty Two Thousand, Seven Hundred and Twenty Naira) only (per month), as a Federal Civil Servant on Grade Level 15.

There's no other Evidence before the Court to support the Petitioner's assertion that the Respondent collects rent on any property.

Therefore, the Court shall consider only the earnings of the Respondent as shown in Exhibit D.

In conclusion, this Court hereby declares as follows:-

- 1) A decree Nisi is hereby made dissolving the marriage between the Petitioner Yetunde Yusuf Arasah and the Respondent Dauda Yusuf Arasah celebrated at the Redeemed Christian Church of God (Jesuit of Nations) Jabi, Abuja on 31st of May, 2014. The decree shall be made absolute if nothing intervenes within a period of three months from the date thereof.

- 2) The Petitioner shall have Custody of the Child of the marriage Ronna Omorose Yusuf Arasah until she's 15 years old.
- 3) When the child of the marriage is 15 years old, the Petitioner and the Respondent shall have joint Custody till the child is 18 years old when she'll be old enough to decide who she wants to live with.
- 4) From now until the child of the marriage turns 15 years of age, the Petitioner and the Respondent shall have unfettered access to their child subject to convenience of the parties at the time of request.
- 5) Ronna Omorose Yusuf-Arasah shall spend half of her School holidays with her father the Respondent from the age of 13 to allow for bonding.
- 6) The Respondent shall pay the sum of ₦40,000 monthly for upkeep of his daughter. This is excluding medical Bills and school fees. The Respondent shall pay the school fees of his daughter until she completes her University Education.
- 7) The Petitioner shall be responsible for her own accommodation.
- 8) The Petitioner shall be free to travel with Ronna Omorose Yusuf-Arasah anywhere within Nigeria. But, shall obtain a written consent from the Respondent when traveling with the child outside this Country.
- 9) The Petitioner shall have custody of the international passport of Ronna Omorose Yusuf-Arasah.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

9/03/2021

