

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 22ND DAY OF JUNE, 2021
BEFORE: HON. JUSTICE M.A NASIR
COURT NO: 5
SUIT NO: FCT/HC/PET/121/2018

BETWEEN:

CHIDINMA UWAOMA NWOGU --- PETITIONER

AND

JOHN LOUIS OFOEGBU --- RESPONDENT

JUDGMENT

The Petitioner is a legal practitioner working with Eunisell Limited as a Human Resources/Legal Officer. She got married to the Respondent on the 12/11/2014 at the Marriage Registry, Port Harcourt, Rivers State. The marriage is blessed with one child, Jason Kamisyochukwu Ofoegbu, born on the 10/9/2015. Parties cohabited at No. 33 Nvuike (RD) Road, off Okporo Road, Rumudara Rivers State until 5th of January, 2018 when cohabitation ceased.

The Petitioner has taken out this petition for dissolution of her marriage to the Respondent on the grounds that the marriage has broken down irretrievably on the fact of unreasonable behaviour pursuant to Section 15(2)(c) of the Matrimonial Causes Act. The Petitioner has also prayed for custody of Jason, and for maintenance and upkeep in the sum of N200,000.00 (Two Hundred Thousand Naira) monthly.

The Petitioner testified as PW1 on the 7/12/2020 and tendered the following documents:

- Marriage certificate marked as Exhibit A
- Birth certificate from Oak Bend Medical Center, Richmond Texas marked as Exhibit A1.
- Medical Report marked as Exhibit A2
- Letter dated 8/1/2018 addressed to the Comptroller General, Nigeria Immigration Service marked as Exhibit A3

- Copy of the letter written to the Director, Ministry of Welfare and Social Development Port Harcourt marked as Exhibit A4
- E-mail correspondences together with certificate of compliance marked as Exhibit A5,
- School fees receipts collectively marked as Exhibit A6.

The Respondent was served with Notice of Petition but he did not file any process before the Court nor appear in Court. The Petitioner was therefore not cross examined. On the 16/2/2021, the Respondent was foreclosed from cross examination and defence. **B.B. Lawal Esq** who appeared for the Petitioner waived his right to address and urged the Court to proceed to judgment.

The position of the law pursuant to the provision of the Matrimonial Causes Act is that the Court seized of a petition for dissolution of marriage shall hold that the marriage has broken down irretrievably if the Petitioner is

able by the evidence adduced, to satisfy the Court with regard to one of the facts set out under Section 15(2)(a – h) of the Act of the irretrievable break down of the marriage. Where he/she is unable to satisfy the Court as to the existence of at least one of the facts, the Court will dismiss the petition notwithstanding the desire of either or both parties to opt out of the marriage. See Ekerebe vs. Ekerebe (1999) 3 NWLR (part 569) page 514.

The Matrimonial Causes Act in Section 82(1) and (2) requires evidence in reasonable satisfaction of the Court as regards to the standard of proof required of the Petitioner. The Section provides:

“82(1) For the purpose of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court.

(2) Where a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the Court is reasonably satisfied of

the existence of that ground or fact, or as to that other matter.”

The Petitioner in this instance premised the petition on the fact of unreasonable behaviour provided for under Section 15(2)(c) of the Matrimonial Causes Act. The Section provides:

“(2) The court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts–

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

Given the wordings of this Section 15 (2)(c), it is clear that the Petitioner who relies on this ground must establish by cogent evidence that it would be

unreasonable to require him to live with the Respondent. In that wise, the test of whether those behaviours are intolerable to expect the Petitioner to continue to live with the Respondent is objective and not wholly subjective. Therefore, there is every possibility that what the Petitioner terms "intolerable" may not pass this objective test. See Emmanuel vs. funke (2017) LPELR - 43251 (CA)

The evidence of the Petitioner with relation to this ground is as follows:

- The Respondent abused the Petitioner both physically and emotionally.
- The Respondent on numerous occasions brutally and violently attacked, assaulted and battered the Petitioner, sometimes in the presence of their son which caused her to end up in hospital.
- Sometime in 2017, the Respondent threatened to abduct the child and relocate to the Middle East, to

this end she reported to the Nigeria Immigration Service.

- On the 5/1/2018, when the Petitioner could no longer bear the emotional torture, she attempted to leave the matrimonial home. When the Respondent became aware of it, he forcefully detained her in the matrimonial home and locked their son in another room. When the Petitioner managed to escape from the matrimonial home, she rushed to a nearby Police Station, but upon returning with the Policemen, the Respondent had absconded with the child. After several attempts at reaching the Respondent, he informed the Police via phone call that he was in Lagos with the child and was relocating to another country.
- The Petitioner rushed and made a formal complaint to the Nigeria Immigration Service, FIDA and the Social Welfare Services, Ministry of Women Affairs.
- The Respondent kept the child under the care of various nannies.

- In an attempt to ridicule and harass the Petitioner, the Respondent made several social media post and made baseless reports/complaints against the Petitioner at various offices including the American Embassy.

There is more to unreasonable behaviour than meets the eye. Such behaviour has to be negative. Allegations of some negative behaviour of a spouse is not enough to warrant the Court holding that the spouse is guilty of unreasonable behaviour. The behaviour must be such that a reasonable man cannot endure it. The conduct must be grave and weighty in nature as to make further cohabitation virtually impossible. See Ibrahim vs. Ibrahim (2007) 1 NWLR (part 1015) page 383.

The duty on the court is to consider whether the alleged behaviour is one in which a right thinking person would come to the conclusion that the Respondent has behaved in such way that the Petitioner could not reasonably be expected to live with him taking into

account the whole of the circumstances, and the matrimonial history of the parties. See Ibrahim vs. Ibrahim (supra), Nanna vs. Nanna (2006) 3 NWLR (part 966) page 1, Katz vs. Katz (1972) 3 All ER page 219.

As earlier noted the Petitioner has testified that the Respondent physically assaulted her and she ended up at the hospital. She tendered Exhibit A2 (Medical Report from St. Martins Hospital Port Harcourt). He locked her in the matrimonial home and seized their son and eventually ran away with their son and she wrote Exhibit A3 and A4 (letter to the Nigeria Immigration Service for abduction of their son and letter to Social Welfare) against the Respondent.

The act of beating or assault amounts to cruelty, which 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. See Adaramaja vs. Adaramaja

(1962) 1 SCNLR 376, Williams vs. Williams (1987) 2 NWLR (part 54) page 66.

Eventhough cruelty is not a ground set out in Section 15(2) of the Matrimonial Causes Act, the fact can be used to show that a party in a petition for dissolution of marriage has behaved or conducted himself/herself in a way that the Petitioner cannot reasonably be expected to live with the Respondent. See Akinbuwa vs. Akinbuwa (1998) 7 NWLR (part 559) page 661.

In considering what constitutes cruelty, Idigbe JSC in **Williams vs. Williams** (cited supra) stated thus:

"The court should consider the entire evidence before it, and although no specific instance of actual violence is given in evidence it should be able, on objective appraisal of the evidence before it, to say whether or not the conduct of the respondent is of such a character as is likely to cause, or produce reasonable apprehension of,

*danger to life, limb or health (bodily or mental)
on the part of the petitioner."*

In this instance, from the uncontroverted evidence of the Petitioner, there has been series of violence meted on her coupled with other misdemeanant conducts of the Respondent. The evidence of violence meted on the Petitioner has remained unchallenged and uncontroverted by the Respondent who did not file any process before the Court. The evidence of the Petitioner herein is not manifestly incredible. In Anakwenze vs. Anakwenze (1972) Suit No. E/19D/72, High Court of East Central State, Enugu Judicial Division delivered on 14th January, 1972, the Court held:

"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 charges of infidelity and neglect could constitute it..."

In this instance I hold that the behaviour of the Respondent is grave and weighty and the Petitioner is not expected to continue to endure same. The marriage has broken down irretrievably and the Petitioner cannot continue to live with the Respondent. Thus the Petition succeeds on this ground.

The Petitioner has sought for custody of the only child of the marriage Jason Kamsyochukwu Ofoegbu (male) born on the 10/9/2015. The child is still a minor and the Respondent has not shown any interest in his upkeep. He has also not objected to the child's custody being with the Petitioner having not filed any Answer to the Petition nor a Cross Petition.

By and large, the award of custody of a broken marriage is based on considerations other than the guilt, blameworthiness or innocence of the parties concerned. Custody is never awarded as a reward for good conduct, nor is it ever denied as a punishment for the guilty party's matrimonial offences. See Allen vs. Allen (1948) 2

All ER page 413 at 415. It will therefore be in the best interest of the child to remain in the custody of his mother, the Petitioner.

It is common knowledge that divorce and separation are major life changing events for the adults involved, but they can also be very hurtful and stressful events in the lives of children. Ending the relationship does not mean an end to the parental relationship that adults have with their children. Disagreements may continue, but the way that they are approached can make a difference to the way that the children experience the break up. It is very important for the welfare of the children that they should have a relationship with both parents. This is moreso as access to both parents is a basic right of the child rather than that of the parents.

Therefore neither of the parties, nor the Court can tamper with that right. In the circumstance, the child Master Kamisyochukwu Jason Ofoegbu needs to know and bond with his father. The Petitioner shall therefore

encourage the child to communicate with his father and in that regard, unfettered access shall be given to the Respondent.

The Petitioner has also prayed for maintenance and upkeep allowance for the child in the sum of N200,000.00 (Two Hundred Thousand Naira). She testified that she has been solely responsible for the upkeep of the child with very little assistance from the Respondent. She tendered Exhibit A6 which are receipts of payment of school fees.

The principles guiding assessment of maintenance in matrimonial causes was set out in the case of Nanna vs. Nanna (2004) 3 NWLR (part 966) page 10 where the Court held that by virtue of Section 70(1) of the Matrimonial Causes Act, the Court may in proceedings with respect to the maintenance of a party to a marriage or of children of the marriage, other than proceedings for an order of maintenance pending the disposal of proceedings, make such order as it thinks proper, having regard to the

means, earning capacity and conduct of the parties to the marriage, and all other relevant circumstances. The relevant circumstance must be gathered by the Court itself from the proceedings and evidence of the parties at trial.

The right of a wife and child to maintenance is not contractual in nature. Section 14(2) of the Childs Right 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. In Adejumo vs. Adejumo (2010) LPELR – 3662 (CA) the Court held:

“.....where a husband neglects to discharge his responsibility of maintaining his wife and children, he can be compelled by law...”

The Petitioner testified that the Respondent is gainfully employed by Baker Hughes Limited and operates from their office in Dubai, United Arab Emirates. The Petitioner did not tender any statement of account or pay slip to show the earnings of the Respondent.

I have in this case no evidence of the means of the Respondent and his earning capacity. In the case of Okagbue vs. Okagbue (1966 – 1979) Vol. 5 (Oputa LR) page 111 at 116, Chukwudifu Oputa, J (as he then was) held that:

“an order for maintenance cannot be made in vacuo.”

There is nothing before the Court to serve as a perimeter in assessing and fixing an amount as maintenance. The Court can only fall back on its discretionary power under Section 70(2) to order for

maintenance of a party or child of a marriage, having regard to what is fair and equitable. The Respondent therefore shall assume full responsibility for the maintenance and upkeep, including education and medical expenses of the child of the marriage as the need arises.

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

1. The marriage between the Petitioner and the Respondent shall and is hereby dissolved, and a decree nisi shall issue which shall become absolute after the expiration of three month.
2. The Petitioner shall have custody of the child of the marriage Jason Kamisyochuwku Ofoegbu while the Respondent shall have unhindered access to the child.
3. The Respondent shall be responsible for the maintenance/upkeep, educational and medical needs of the child.

Hon. Justice M.A. Nasir

Appearances:

B.B. Lawal Esq with him A. Achinivu Esq – for the
Petitioner

C. Izunobi (Mrs.) – for the Respondent