

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**HOLDEN AT MAITAMA ABUJA**

DATE: 25<sup>TH</sup> DAY OF NOVEMBER, 2021  
BEFORE: HON. JUSTICE M. A. NASIR  
COURT NO: 5  
SUIT NO: PET/265/2018

**BETWEEN:**

DR. CHINEDU SIMEON ARUAH ----- PETITIONER/1<sup>ST</sup> RESPONDENT TO CROSS  
PETITION

**AND**

NKECHINYERE EMMANUELLA ARUAH ----- RESPONDENT/CROSS PETITIONER

**AND**

FAVOUR OCHULO ----- 2<sup>ND</sup> RESPONDENT TO CROSS PETITION

**JUDGMENT**

By a Notice of Petition filed on the 7/6/2018, the Petitioner is praying this Court for an order of dissolution of his marriage to the Respondent celebrated on the 4/12/2010 at the Abuja Municipal Area Council (AMAC) Marriage Registry on the ground that the marriage has broken down irretrievably pursuant to Section 15(1) and (2)(e) of the Matrimonial Causes Act.

Upon service of the Notice of Petition, the Respondent filed an Answer and Cross Petition on the 5/11/2018. The Respondent joined one Favour Ochulo as 2<sup>nd</sup> Respondent to the Cross Petition and prayed the Court for the following reliefs:

- “1. An order dismissing the Petition on the grounds that the Petitioner is guilty of desertion and adultery and has condoned and connived at the conduct of instituting the facts on which the petition is based and is also guilty of collusion.*
- 2. An order of nullity of marriage between the Petitioner and the 2<sup>nd</sup> Respondent to Cross Petition same being void, having been conducted while the Petitioner was married to the Respondent.*
- 3. A decree of dissolution of marriage between the Respondent and Petitioner on the ground that the marriage has broken down irretrievably on the facts of*

*desertion since 1/11/2016, living apart for 2 years immediately preceding the presentation of the petition, cruelty and adultery.*

*3. An order awarding the following properties to the Respondent:*

*i. 2008 Toyota Camry Saloon car with Registration number ABJ184PP.*

*ii. Household furniture, finishing, fixtures, fittings goods, art objects, appliances and equipment in the possession of the Respondent or subject to her sole control.*

*iii. All clothing, jewelry and other personal effects in the possession of the Respondent or subject to her sole control.*

*4. Exemplary and General damages in the sum of N10,000,000.00 (Ten Million Naira) against the Petitioner and 2<sup>nd</sup> Respondent to Cross Petition jointly and*

*severally, for adultery and deprivation of the Respondent's right to consummation or conjugal rights.*

*5. An order granting the Respondent general damages in the sum of N10,000,000.00 (Ten Million Naira) against the Petitioner and 2<sup>nd</sup> Respondent to cross petition, jointly and severally as settlement for acts of cruelty perpetrated against the Respondent resulting in serious emotional and psychological trauma, loss of her family life and untold hardship.*

*6. And any order or orders as the Court may deem fit to make in the circumstances, in the interest of justice.”*

The Petitioner filed a Reply to the Answer and Answer to Cross Petition on the 19/2/2019. The Respondent then filed a Reply to the Answer to Cross Petition on the 7/3/2019.

With issues thus joined, the case proceeded to hearing. The Petitioner testified for himself as PW1 on the

27/3/2019. The following documents were tendered through him:

- CTC of the Certificate of marriage marked as Exhibit A
- Police Investigation Report dated 7/12/2018 marked as Exhibit A1
- Proof of ownership certificate marked as Exhibit A2.

The Respondent also testified for herself as DW1 and tendered the following documents as Exhibits D, D1 – D3.

- First Aid Clinic Card marked as Exhibit D
- National Hospital Card marked as Exhibit D1
- Photographs together with certificate of compliance marked as Exhibit D2
- Two cash receipts marked as Exhibit D3.

Both witnesses were duly cross examined. It is apposite to mention at this stage that the 2<sup>nd</sup> Respondent to the Cross Petition did not file any process before the Court, but

however she was represented by a counsel who took part in the proceedings and cross examined the witnesses.

At the close of evidence, parties were directed to file written addresses.

Kingsley Obue Esq filed the Respondent/Cross Petitioner's written address dated 16/4/2021 and raised two issues for determination therein as follows:

- “1. Whether the Petitioner has discharged the onus of proof by the evidence led before this Court to entitle the Petitioner to his claims.*
- 2. Whether the Respondent/Cross Petitioner has discharged the onus of proof by the evidence led before this Court to entitle the Respondent/Cross Petitioner to the reliefs claimed in her Cross Petition.”*

C.U. Ebisike Esq filed the 2<sup>nd</sup> Respondent's written address dated 22/6/2021 and also raised two issues for determination:

*“1. Whether from the evidence on record a marriage was conducted between the Petitioner and 2<sup>nd</sup> Respondent to the Cross Petition during the pendency and subsistence of marriage between the Cross Petitioner and the Petitioner.”*

*2. Whether the case of adultery based on the evidence before this Court has been successfully proved.”*

On his part learned counsel to the Petitioner/Cross Respondent **Nkasiobi Ahunna Atasié Esq** filed the written address dated 1/7/2021. Counsel also formulated two issues for determination. The issues are:

*“1. Whether the marriage between the Petitioner and Respondent has broken down irretrievably as to enable this Court dissolve this marriage. put differently whether the Petitioner has satisfied the provisions of Section 15 of the Matrimonial Causes*

*Act as to be entitled to an order dissolution of his marriage with the Respondent.*

*2. Whether the Respondent/Petitioner to the Cross Petition has proved her case to be entitled to the properties she prays this Court to award her.”*

It is trite that petition for dissolution of marriage, can be presented to the Court by either party to the marriage. Generally, for every petition for dissolution of marriage to succeed, the Petitioner must plead and prove that the marriage has broken down irretrievably, the Petitioner would then proceed to give evidence of any of the facts contained in Section 15(2)(a)–(h) of the Matrimonial Causes Act 1990. See: Ekerebe vs. Ekerebe (1999)3 NWLR (Part 596) at 514.

Marriage is the voluntary union for life of one man and one woman to the exclusion of others. See Hyde vs. Hyde (1886) LR 1 P & D page 130 at 133. It is necessary to bear

in mind the fact that although the Matrimonial Causes Act created only one ground of divorce, to wit; that the marriage has irretrievably broken down, yet the facts which may lead to the marriage breaking down irretrievably are categorized under sub - sections (a) - (h) of Section 15(2). Only those facts can suffice to found a petition for divorce. In other words, a Court hearing a petition for divorce ought not to hold that the marriage has irretrievably broken down unless the Petitioner or Cross Petitioner, as the case may be satisfies the Court on one or more of the facts. See Ojeladi vs. Ojeladi (1979) 4 - 6 CCH page 52, Ajai - Ajagbe vs. Ajai - Ajagbe (1978) 10 - 12 CCHJ page 183, Egbueje vs. Egbueje (1972) 2 ECCLR page 747.

This Petition is premised on living apart for 2 years immediately preceding the presentation of the petition. Pursuant to Section 15(2)(e) of the Matrimonial Causes Act. By the said section,

*15(2) “The Court hearing for a decree of dissolution of marriage shall hold the marriage to have broken down irretrievably if, but only if, the Petitioner satisfies the Court of one or more of the following facts–*

*(e) That the parties to 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.”*

For the purpose of the above provision, parties to a marriage shall be treated as living apart unless they are living with each other in the same house hold. Once it is established that parties have lived apart for a continuous period of at least two years before the presentation of the petition, and the Respondent does not object to a decree

being granted, then the Court is bound to grant dissolution as there is no discretion in the matter.

The evidence of the Petitioner in support of the above ground is that soon after the marriage, the Respondent became hostile and disrespectful. He suffered repeated cases of emotional abuse in the hands of the Respondent to the extent that sometime in May, 2015, his friends believing that he was going to commit suicide arrested him and kept him in Garki Police Station. Sometime in 2016 he came back to the house and discovered some concoctions in rubber gallons and bottles which he suspected to have been given to the Respondent by a native doctor. The witness further stated that the Respondent has severally threatened his life and accused him of being a cultist and responsible for her infertility. She took him for prayers at Edo State where he was allegedly cleared of being a cultist. PW1 said the Respondent in bid to destroy him seized his

academic certificates and threatened to destroy them. That it took painstaking investigation by the Police to recover the documents. As a result of the problems characterized in the marriage, the Petitioner said he left the matrimonial home on the 2/5/2016. However, under cross examination the Petitioner said he finally parked his personal belongings out of the matrimonial home around October, 2016

It should be borne in mind that when it comes to living apart under Section 15(2)(e), there are two limbs. First is the living apart for two years. The 2<sup>nd</sup> limb is that the Respondent does not object to a decree being granted. One of the easiest means of proof of absence of objection is vide a letter by the Respondent, or by coming before the Court and stating that there is no objection to a decree being granted.

The Respondent on her part denied that parties have lived apart for two years. The Respondent testified that the

Petitioner deserted her on the 1/11/2016 to live with the 2<sup>nd</sup> Respondent to the Cross Petition. On the 1/11/2016 she said the Petitioner travelled to Dubai on the 23/10/2016. She returned from work only to discover that the Petitioner had returned and packed his belongings and left the matrimonial home. The Respondent said the marriage should not be dissolved pursuant to Section 15(2)(e) as the provisions of the Section were not satisfied.

Parties herein had lived apart from 1/11/2016 to 7/6/2018 which is a period of less than two years. The Petitioner has not satisfied the provisions of Section 15(2)(e) in that parties to the marriage did not live apart for a period of two years preceding the presentation of the petition. The requirement sought for dissolution of the marriage under Section 15(2)(e) was not established. The Petition is thus dismissed.

Now to the Cross Petition. It is settled law that a Cross Petition is a separate and independent action which has to be instituted in accordance with the provisions of the Matrimonial Causes Rules. Such a claim maintains its uniqueness and stands or falls on its own. As the Petitioner is duty bound to lead evidence to prove his claim, so also is the Cross Petitioner bound to lead evidence to prove the Cross Petition. It is like a counter claim which is a cross or independent action completely distinct from the one brought by the original Petitioner, even though it is tried in the original suit. See Ikem vs. Vidah Packaging Ltd & anor (2011) LPELR - 3825(CA), Beloxxi & Co. Ltd & anor vs. South Trust Bank & ors (2012) LPELR - 8021 (CA). The burden rest squarely on the Cross Petitioner to satisfy the Court on the facts alleged in the Cross Petition.

The Cross Petitioner has prayed the Court for an order of nullity of the Petitioner's marriage to the 2<sup>nd</sup> Respondent

to Cross Petition. That at the time of contracting the said marriage, he was still married to the Cross Petitioner. The evidence of the Cross Petitioner is that on the 1/11/2016, while at work, the Petitioner/1<sup>st</sup> Respondent to Cross Petition packed his personal belongings and deserted the matrimonial home to live with the 2<sup>nd</sup> Respondent to Cross Petition with whom he has been engaging in sexual escapades and committing adultery. All efforts to reach the Petitioner/1<sup>st</sup> Respondent to Cross Petition proved abortive. After some days she discovered that the Petitioner/1<sup>st</sup> Respondent to Cross Petition has moved into an apartment at No. 3, Berbera Street, Zone 6, FCT, Abuja and cohabiting with the 2<sup>nd</sup> Respondent to the Cross Petition. That the Petitioner celebrated traditional marriage with the 2<sup>nd</sup> Respondent to Cross Petition in December, 2016. That the relationship has produced a child born on the 3/3/2017.

Under cross examination by Petitioner's counsel, the Cross Petitioner testified that she has never met the 2<sup>nd</sup> Respondent to Cross Petition, neither does she know where she lives. That she did not attend the wedding between the Petitioner and the 2<sup>nd</sup> Respondent to Cross Petition. Under cross examination by learned counsel to the 2<sup>nd</sup> Respondent to Cross Petition, the Cross Petitioner testified that she did not have evidence to show that the 2<sup>nd</sup> Respondent to Cross Petition was aware of the Cross Petitioner's marriage to the Petitioner. She also said she did not have any marriage certificate to show that there was a marriage between the Petitioner and 2<sup>nd</sup> Respondent to Cross Petition. That she got to know of the relationship through a relative.

The Petitioner himself confirmed his relationship to the 2<sup>nd</sup> Respondent to the Cross Petition, but denied getting married to her.

Learned counsel to the 2<sup>nd</sup> Respondent to Cross Petition urged the Court to discountenance the evidence of the Cross Petitioner for being hearsay and discharge the 2<sup>nd</sup> Respondent to the Cross Petitioner from this proceedings.

Indeed, the production of a certificate of marriage though the best method of proving a marriage is not an indication that there is no marriage when it is not produced. For the Court to presume the fact of marriage, credible evidence has to be led.

The Cross Petitioner in her evidence said she did not have anything to show that Petitioner and 2<sup>nd</sup> Respondent to Cross Petition were indeed married. She only got to know of the marriage through a relative. It is now elementary to repeat the fact that hearsay evidence is inadmissible in law. See Baba – Ahmed & anor vs. Adamu & ors (2008) LPELR – 3838 (CA). In Petition for nullity, the law is that the ceremony of marriage must be strictly proved. See

Anyaegbunam vs. Anyaegbunam (1973) LPELR – 507 (SC). In the absence of any clear evidence of marriage, this Court is not satisfied that there exist a marriage between the Petitioner and the 2<sup>nd</sup> Respondent to Cross Petition. The Court cannot make an order in vacuo. Making an order of nullity of marriage for a marriage that is non-existent is tantamount to making an order in vacuo. Cross Petitioner's relief 2 is unmeritorious and it is hereby dismissed.

The Cross Petitioner anchored the Cross Petition on adultery, living apart for two years and desertion.

On adultery, the Cross-Petitioner stated that the Petitioner/1<sup>st</sup> Respondent to Cross Petition committed adultery with the 2<sup>nd</sup> Respondent to Cross Petition and the adulterous relationship has produced a child.

Adultery as a matrimonial wrong must be specifically pleaded and clearly proved. See Obajimi vs. Obajimi (2011) LPELR CA/1/175/05.

Adultery per se will not be a ground for dissolution of marriage, the Petitioner must in addition find it intolerable to live with the Respondent. Both the commission of adultery and the intolerability must be proved. Adultery is essentially an act which can rarely be proved by direct evidence. It is a matter of inference and circumstance. See Ugbotor vs. Ugbotor (2006) LPELR – 7612 (CA), Alabi vs. Alabi (2008) All FWLR (part 418) page 245 at 248. In this instance, the Petitioner himself under cross examination told the Court that he had a son and the mother of the child is Favour Ochulo the 2<sup>nd</sup> Respondent to Cross Petition. He said he impregnated the 2<sup>nd</sup> Respondent to Cross Petition around October/November, 2016. The question now is whether the Petitioner is guilty of adultery?

The only time a spouse is said to be unfaithful in a marriage is when a spouse keeps extra marital affairs with other people for the purpose of committing adultery, which

is a very private act done by two consenting adults. See Akinyemi vs. Akinyemi (1963) 1 All WLR page 340, Alabi vs. Alabi (supra).

What other proof of adultery could one ask for than an outright admission, and a child as evidence? The birth of David Aruah during the subsistence of the marriage between the Petitioner and the Cross Petitioner is confirmatory proof of the fact of adultery by the Petitioner. In the Petitioner's testimony under cross examination he stated emphatically that;

*“David Aruah is a baby that one of my girlfriends gave birth to. He is my son. He was born around October, 2017. The mother of the child is Favour Ochulo one of my girlfriends”*

The Petitioner is clearly guilty of adultery.

Having proved one of the facts under Section 15(2)(a - h) of the Matrimonial Causes Act i.e. adultery under

Subsection (b), this fact alone without more can ground a decree of dissolution of marriage. This relief has merit and it is accordingly granted.

It is superfluous to insist on proof of other facts. This is even as the Petitioner/1<sup>st</sup> Respondent to Cross Petition left the matrimonial home on the 1/11/2016. The Cross Petition was filed on the 5/11/2018 a period of more than two years immediately preceding the presentation of the Cross Petition. As earlier noted, Section 15(2)(e) has two limbs, first the living apart and then the absence of objection. There is no dispute to the fact that the Petitioner/1<sup>st</sup> Respondent to Cross Petition left the matrimonial home on the 1/11/2016 and parties have lived apart since then, thus satisfying the first limb. The Petitioner himself has told the Court that he wants the Court to dissolve the marriage.

Accordingly, once it is clear that the parties have lived apart for the statutory 2 years without objection to a decree being granted, the fault of the party who created the situation that necessitated the living apart, is irrelevant. In Agunwa vs. Agunwa (1972)2, Omotunde vs. Omotunde (2001)9 NWLR (Part 718) the Court held that the provision of Section 15(2)(e) and (f) is a non-fault provision. The Court is not supposed to inquire as to the reason for the living apart. In Pheasant vs. Pheasant (1971)1 All ER 587, the Court held that separation or living apart *“is undoubtedly the best evidence of break down and the passing of time, the most reliable indication that it is irretrievable.”*

This Court is satisfied that parties lived apart since 1/11/2016 till date, which is a period of more than two years preceding the presentation of the Cross Petition. The

Court is of the considered view that the Cross Petition also succeeds on this ground.

Having been satisfied that the Cross Petitioner proved the facts under Sections 15(2)(b) and (e) of the Matrimonial Causes Act, this Court is on sound footing to dissolve the marriage as it has broken down irretrievably. Accordingly, the marriage between the Cross Petitioner and the 1<sup>st</sup> Respondent to Cross Petition be and is hereby dissolved, and a *decree nisi* shall issue to that effect. It shall become absolute after the expiration of 3 months.

The Cross Petitioner has prayed for *An order awarding the following properties to the Respondent:*

- i. 2008 Toyota Camry Saloon car with Registration number ABJ184PP.*
- ii. Household furniture, finishing, fixtures, fittings goods, art objects, appliances and equipment in the*

*possession of the Respondent or subject to her sole control.*

*iii. All clothing, jewelry and other personal effects in the possession of the Respondent or subject to her sole control.*

The Cross Petitioner in her testimony did not lead any credible evidence to substantiate this claim. However during cross examination by learned counsel to the Petitioner, the Cross Petitioner said the Petitioner bought a piece of land wherein he built an estate in 2015 – 2016. In another breadth, the Cross Petitioner said parties bought the piece of land together.

In the case of Ibeawuchi vs. Ibeawuchi (2016) LPELR – 41268 (CA), the Court held that:

*“What the Court will consider in the exercise of its discretion in making an award under settlement of property principles, are whether or not the property*

*in question was acquired by the parties or by one of them during the course of the marriage, and if so, what was the contribution of each party to the cost of the acquisition.”*

The Cross Petitioner later said she bought the piece of land from a friend but she did not tender any document as proof of purchase, nor called the friend to substantiate that fact. For the Toyota Camry, the Petitioner tendered Exhibit A2 to show proof of his ownership. I hold that no credible evidence was led by the Cross Petitioner to prove ownership of the properties listed under relief (3) of the Cross Petition. That relief is unavailing and it is hereby refused.

Reliefs 4 is for damages of N10 Million against the Petitioner and 2<sup>nd</sup> Respondent to Cross Petition jointly and severally for adultery. Now there are principles on which damages are awarded for adultery. Section 31(1) of the Matrimonial Causes Act provides that:

*“A party to a marriage, whether husband or wife, may, in a petition for a decree of dissolution of the marriage alleging that the other party to the marriage has committed adultery with a person or including that allegation, claim damages from that person on the ground that that person has committed adultery with the other party to the marriage and, subject to this section, the Court may award damages accordingly.”*

By the clear provisions of the above section, the damages envisaged are not against the adulterous spouse but against the other party with whom such a spouse has committed adultery. And in the assessment of damages the following matters are relevant:–

- (i) The value of the adulterous spouse to the Claimant/Petitioner,
- (ii) Injury to the Claimants/Petitioners feelings.

- (iii) The co – respondents means and conduct; and
- (iv) The co – respondent’s knowledge that the adulterous spouse is married. See Alabi vs. Alabi (2007) LPELR – 8203 (CA).

Now from the evidence what loss was occasioned from the adultery of the Petitioner with the co – respondent? Did the co – respondent have any reason to know or suspect that the Petitioner was married to the Cross Petitioner?

The Petitioner during cross examination testified that the 2<sup>nd</sup> Respondent to Cross Petition was not aware of the marriage between him and the Cross Petitioner. That it was when she became pregnant that he opened up and disclosed his marital status. PW1 said he even had to prevail on the co – respondent not to abort the pregnancy. PW1 further stated it was after he deserted the Cross Petitioner that he started the relationship with the Co-Respondent.

The Cross Petitioner herself said she did not have any evidence to show that the 2<sup>nd</sup> Respondent to Cross Petition was aware of the subsisting marriage of the Petitioner.

It is pertinent to state that the Cross Petitioner has not told the Court the loss she suffered as a result of the adultery committed by the Petitioner. Moreso, the evidence before the Court is clear that it was after the parties became estranged that the Petitioner/Respondent started his relationship with the 2<sup>nd</sup> Respondent to Cross Petition. This was after six months of leaving the matrimonial home.

In the circumstance this Court cannot hold the 2<sup>nd</sup> Respondent to Cross Petition liable in damages for adultery. In consequence, Cross Petitioner's Relief 4 is refused and accordingly dismissed. Same fate befalls relief 5 as it has not been substantiated with any credible evidence by the Respondent.

Before I conclude, let me address the submission of counsel for the 2<sup>nd</sup> Respondent who seeks an order striking out the name of the 2<sup>nd</sup> Respondent. It should be noted that the Cross Petitioner has claimed for dissolution of the marriage and one of the facts therein is that of adultery. This fact was proved to the reasonable satisfaction of the Court. The Respondent/Cross Petitioner was by law obliged to join her as a party in the proceedings. See Section 32(1) of the Matrimonial Causes Act. Her claim to have her name struck out is dismissed.

On the whole the Cross Petition succeeds pursuant to the provisions of Section 15(2)(b) and (e) of the Matrimonial Causes Act. I order a decree nisi to issue as the marriage has broken down irretrievably. The decree nisi shall become absolute upon the expiration of three months from today.

All other reliefs are refused and hereby dismissed.

Signed

Honourable Judge

**Appearances:**

L.U. Itiba Esq – for the Petitioner

K.O. Ogbue Esq – for the Respondent/Cross Petitioner

C.U. Ebisike Esq – for the 2<sup>nd</sup> Respondent to Cross Petition