

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA DIVISIONAL DIVISION  
HOLDEN AT JABI**

**THIS TUESDAY, THE 28<sup>TH</sup> DAY OF NOVEMBER, 2023**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**PETITION NO: GWD/PET/8/2019**

**BETWEEN:**

**ASSUMPTA KUZANKA ANKUT .....PETITIONER**

**AND**

**ZAMANI GIDEON WOJE .....RESPONDENT**

**JUDGMENT**

By a Notice of Petition dated 2<sup>nd</sup> May, 2019 and filed same date at the Court's Registry, the Petitioner claimed for the following Reliefs:

- i. A DECREE OF DISSOLUTION OF MARRIAGE with the Respondent on the ground of intolerable behaviour, cruelty, constant threat to life of the petitioner and her children, the respondent and the petitioner have not lived together for a continued period of more than five years immediately preceding the petition, and the respondent has behaved in such a way that the petitioner could not reasonably be expected to live with the respondent any longer.**
- ii. A PERPETUAL INJUNCTION restraining the respondent or his agents, privies or any person acting on his behalf or instruction from threatening, harassing, molesting, embarrassing, intimidating and or assaulting the petitioner.**
- iii. AN ORDER of this Honourable Court granting custody of the two children of the marriage to the Petitioner.**

In response to the Petition, the Respondent filed an answer on 26<sup>th</sup> March, 2021. In the answer, the Respondent in essence situated a cross-petition even if not properly and legally situated and claimed the following Reliefs against the Petitioner as follows:

- 1. An Order Dismissing the Petitioners' Petition seeking for the Order of Dissolution of Marriage.**
- 2. An Order granting custody, control and care of the two Children of the Marriage (Samuel Gwanzwang Zamani (9) and Salma Sabanka Zamani (8)) to the Respondent.**

**Particulars of Order of custody, control and care of the Children sought:**

- i. The Respondent is an educated man (Veterinary Doctor) who can provide the time, attention, and resources for the upkeep and training of the children to any level they desire.**
  - ii. The Respondent has and runs a business of veterinary service and consultancy that will provide for the children. The present address of the business is Suite A12, Oando filling station Gaduwa Abuja.**
  - iii. The Respondent has provided accommodation at Efab Estate, Lokogoma for himself and the Children that will create an atmosphere perfect for growth and development.**
  - iv. The Petitioner and her sisters will be a bad influence on the children as they engage in drinking and nightclubbing.**
- 3. Two Hundred Thousand Naira only (N200, 000) as cost of litigation to defend this suit.**

The Petitioner then filed a Reply to the Respondents answer to the petition on 11<sup>th</sup> August, 2022. With the settlement of pleadings hearing then commenced.

In proof of her case, the petitioner called two witnesses. The Petitioner testified as PW1. She stated that the respondent is her husband and that they got married at Magajin Gari Magistrate Court, Kaduna and Our Ladies of Apostolic Church, Independence Way Kaduna on 27<sup>th</sup> December, 2008.

She stated that as a young girl getting married in 2008, her dreams was for a happy life but that was not to be because 2 days after the marriage, she ended up at Eshaddai Diagnostic Centre, a Psychiatric Hospital situated at Barnawa in Kaduna and there was where she spent her honeymoon. That she was at the Hospital because her husband was exhibiting behaviour nobody could understand and so the hospital was called to come and sedate him and he was then moved to the hospital where they spent two weeks before he was discharged and given medication. She was then living in Gombe, Gombe State.

PW1 further testified that before the discharge, she went and discussed one on one with the Doctor who said that the diagnosis was Schizophrenia.

After the discharge, she prayed and wished the sickness would go away but it did not stop. That the occurrence were now more frequent and that when it starts, the respondent turns very violent and she always calls for help for him to be taken to hospital.

PW1 testified further that they left Gombe in 2010 to Gwagwalada, FCT where the occurrence of the Schizophrenia attack became more frequent and that there is no psychiatrist hospital that she did not go to. That she went to a psychiatric hospital in Kaduna at one point and that they were also on admission at the psychiatric unit of JUTH in Jos. She stated that eventually, she got a psychiatric consultant at the teaching hospital in Gwagwalada who has a private Clinic at Phase 3 in Gwagwalada. That the respondent sees this doctor till today.

PW1 further stated that as the sickness did not go away, the threat to her life was becoming more by the day and that the marriage is blessed with two children, Samuel and Salma.

PW1 stated that even before, they stopped living together, she had always paid rent in full and that the respondent never paid or contributed for payment of rent. She also stated that she pays school fees of the children in full and took care of them completely. That the threat was not only to her but to the children.

PW2 stated that the last episode that led to her living the matrimonial home at Olu Agunloye Estate Gwagwalada was that the respondent had an episode and he grabbed the two children and went into a room and locked himself up with the children. That before he grabbed them, he had gone to church, Ecwa Goodnews Church close to Hajj Camp and on his way back, he had multiple

accidents as he hit more than seven people with his car, a small bus. That the people he hit followed him with the police and that when he got home, he now grabbed the children and went into a room and locked the door.

PW1 stated that she then went outside to beg the people that followed him to the house telling them that he is not well but they refused to listen to her. The police insisted in taking him to the station and she followed them.

That at the station, the respondent disarmed a police officer and started running away. That she and her brother in law followed him, pacified him and collected the gun from him.

The police then locked him up and she had to call his Doctor, one Doctor Uchedu who came to the station and told the police that the respondent was his patient and that they should release him so that he can take him to the hospital, that the police can come and guard him there but the police refused; that they will have to lock him up in the cell.

PW1 stated that the Doctor told them that the police will call him and he left and that was what happened because nobody slept in the cell and the police station. PW1 stated that by 6:00 am, she was at the station with Dr. Uchedu, where he sedated respondent and took him to the hospital.

PW1 testified that she had to pay for the treatment of all the 7 people injured by respondent and the repairs of the car and the treatment and that after this incident she decided to leave.

PW1 stated further that she got a transfer in 2014 from Gwagwalada branch office to Adetokunbo Ademola Wuse 2 Branch, so she moved to town. That she was still living in Gwagwalada after the transfer but in 2015 she moved out of Gwagwalada and that they have since then lived apart.

She tendered in evidence the following documents:

1. Certificate of Marriage between parties dated 27<sup>th</sup> December, 2008 was admitted in evidence as **Exhibit P1**.
2. Statement of Account of Zamani Salma Kuyet together with the certificate of compliance admitted as **Exhibits P2a and P2b**.

3. Statement of account of Zamani Gwazuwang Samuel together with the certificate of compliance admitted as **Exhibits P3a and 3b.**

PW1 stated that the statements of accounts show she has been paying the school fees of the children and prays the court to grant her claims.

Cross-examined, PW1, she stated that been responsible means taking care of your family by providing all the needs of the family. She stated that in that context she can't call her husband a responsible man because there was never a time where he provided for the family. That even when they were together he never paid rent or school fees for the family. She stated that respondent is a good family man if he is in the right state of mind. She agreed she did not bring anything to show payment of rent but that the respondent knows she pays rent. She also agreed that she did not state where they stayed at park Estate, Gwagwalada from 2010 – 2012.

That the respondent was confirmed to some government hospitals between 2008-2010. That she pays for the bills and drugs.

PW1 stated that she had never reported any acts of violence by respondent to the police. That she left City Park Estate where they initially lived because of respondents violence. That she left the matrimonial home, not because of her transfer but the threat to her life which was becoming more frequent. That it took about 8 months after the transfer before she moved out of Gwagwalada to town.

She further stated that she is a senior staff in the Bank and she leaves home with the children by 7:00 am and drop them at school on her way to work. She picks them up at 2:30 pm and take them home. She closes from work at 5:30 pm and go home. That she has her sister who lives with her to take care of them till she returns.

PW1 stated that she does not have a medical report from the doctor in Kaduna who informed her that the condition of respondent was schizophrenia. She stated that she took Lexotan tablets when she had high blood pressure when she was with respondent.

PW1 said she took respondent to JUTH that while in Kaduna, his brother took him to the hospital and she visited him severally. That she took respondent to Peake Hospital and filled the forms. That all the 3 hospitals they took

respondent to after Elshaddai Diagnostic Centre in Kaduna confirmed that the respondent had schizophrenia.

That she opened the accounts for her children. That the respondent has visited her and the children at home and she welcomes him. That the respondent sent N10, 000 on two occasions on Salmas Birthday. That the respondent made attempt to settle their marital dispute through family members and friends.

PW1 further stated that the respondent was residing in Spain in 2008 before the wedding and that if he is in his right state of mind, he maintains his profession as a Veterinary Doctor. The respondent tendered during cross-examination of PW1 the following documents:

1. Copy of the wedding invitation between petitioner and respondent was admitted as **Exhibit P4**.
2. Copy of the wedding programme was admitted as **Exhibit P5**.
3. 3 photographs was admitted as **Exhibits P6 (1-3)**.
4. Marriage certificate issued by Arch Diocese of Kaduna Our Lady of Apostles Parish was admitted as **Exhibit P7**.

She confirmed that the marriage first held at the court because it was a pre-requisite for the church wedding.

The next witness, PW2 was served a subpoena. He is Dr. Uchendu Ifehidichukwu Uzoegbe, a medical practitioner and consultant Neuro Psychiatrist. He has been a medical doctor since 1995. He has been a consultant and psychiatrist since 2009 and he knows defendant who is his patient.

PW2 stated that the diagnosis of respondent is a medical diagnosis that he has a neurological problem and they have been managing him since then.

PW2 said he first saw respondent on 25<sup>th</sup> November, 2013 and he has been managing him since then. He stated that the state of mind of respondent is perfect. That as long as the person is complying with his medication, he can be with a minor. He stated that people assume that once you see a psychiatrist, you are mad which is not always the case.

He stated that when they see a person, they may find he has schizophrenia and these depends on the evidence or facts the affected person presents at the evaluation.

He stated that people who have sleepless nights, anxiety problems, phobia, people who cannot ..... see psychiatrist. That people see psychiatrist for different reasons. That there are also different neurological case like sleep walking etc which makes a person see a psychiatrist but that once you take your medication, you won't have any problem. On the other hand, if you don't take your medications, then you may have problems.

PW2 stated that the respondent has been taking his medication religiously. That once he takes his medication, he does not have any problem and if you don't, you then suffer a relapse.

Further that the respondent has been complying with his directives and comes for check-up and comes to him whenever he asks him to come and that he fully complies with all instructions. That the respondent has done all that is required of him.

Under cross-examination, PW2 stated that the defendant has lived a normal life which poses no threat to his family members as long as he takes his medication. PW2 stated that he did not say that respondent suffers from a mental disorder but that suffers from a neurological situation. PW2 stated that the defendant is not suffering from schizophrenia which is a mental health disorder. That his case is a neurological medical problem and that as long as he takes his medication, he won't have any problem. That the defendant's neurological problem is manageable.

PW2 said he will not be surprised if the petitioner says the defendant has schizophrenia but there is no such diagnosis by them. That there is a set of criteria for such conclusion to be reached. That the defendant clearly has no such condition. That if he the parties want to mutually separate, that has to be their agreement but certainly not on the basis that the defendant has schizophrenia.

With the evidence of PW2, the petitioner closed her case.

The Respondent then opened his defence and cross-petition by testifying as DW1 and the only witness. He is a private practicing veterinary doctor and married to the petitioner and blessed with two children.

He stated that the petitioner was introduced to him by his cousin who is resident in the US while he was then resident in Spain in 2001 and they started a distant relationship between 2001-2008.

He stated that during the courtship, they reached certain agreements for the convenience of parties. Firstly, he stated that the parents of petitioner were Catholics, they agreed that their marriage will in a Catholic Church but thereafter they will be attending his church after the wedding. Secondly, they agreed that he will relocate to Nigeria after the marriage. They got married on 27<sup>th</sup> December, 2008 and they moved to Gombe where she was residing and after his break, he went back to his base in Spain.

DW1 stated that two months later, she called to say she was pregnant, and had to then return/relocate back to Nigeria to be with her in Gombe.

DW1 stated that they lived happily in Gombe and after some time, she said she wanted to be close to her parents in Kaduna, so they agreed to move to Abuja where they opened an office. He was also ..... through a friend for arrange for the transfer of his wife to Abuja from her UBA Office. That when she came to Abuja, she joined him at the City Park Estate Abuja and they lived happily until about 2011 when she started the attitude of abandoning the matrimonial home every weekend to stay with her sisters in town.

DW2 said he tried to find a solution to the problem but the problem continued in 2012 and around that period, the rent expired and he got a new place, a 2 bedroom but she said she was not comfortable staying in a 2 bedroom apartment but he told her that, that was what he could afford.

DW2 said he came home one day and found she parked out and he tried locating her without success. DW1 said he later discovered she had moved to a different accommodation and they separated for nearly a year between 2012-2013. That even when they separated, he sent her text messages but she hardly responded.

DW1 further testified that finally in 2013, they reconnected and he told her to move to his apartment, but she was not willing and he decided to move to where



she was staying where they lived together till 2015 at Gwagwalada before she was transferred to Abuja town. He stated that initially she will go to work in town and come back but after sometime she stopped coming back home in Gwagwalada.

DW1 stated because of her transfer to town, they had series of discussions on where she would lived but that from the discussions she wanted to stay in town and he had no option but to succumb to her wishes.

DW1 stated further that in 2015 when he was about to travel he gave her some money to pay for rent and when he came back they went home for Christmas and that when they came back, she sent him a text message in February, 2016. That she wants to come and pack her things. He asked why and she did not respond and the situation persisted until **July 2016** when she again texted to say she wants to come and pack her things. Despite the intervention of a pastor, she did not change her mind, so he allowed her to pack her things.

DW1 stated that in August, the mother of his wife told him to be visiting the wife to see how the problem can be solved and he kept visiting until about 2018 when he discovered that she went and baptised his children in a Catholic Church without his knowledge and he was not happy about it. She also wanted to make the children take Holy Communion in the church and he was not comfortable with that. He approached the church but they did not deal with the issue very well and then he was served with the petition.

He further stated that he married petitioner till “death do us path” but that if that was not possible, the court should do the needful. That he only wants custody of his children. That as a responsible father and a veterinary doctor by profession, he has the capacity to give his children the best and bring them up as good children.

Cross-examined by counsel to the petitioner, DW1 said petitioner moved out of the house in Gwagwalada in 2015 and that till date the children have been living with her. That they 11 and 12 years old. That as at 2015, they were 4 and 5 years old.

DW1 stated that for the years they lived with her, she was not totally responsible for their upkeep. That every time he visits, he goes with food, clothing, shoes and other things that he buys for them.

DW1 said it is not true that she was solely responsible for their school fees. That when they were in Gwagwalada, he was involved with the school fees of the children.

That it was only when she moved to town and put them in different schools without his consent and knowledge that he now did not participate in paying their school fees. That since she moved to town in 2015, she has been paying the fees.

DW1 stated that he does not have receipts of payment of fees in court but he also gives her cash to pay the fees. DW1 also stated that for payment of rent, he gives petitioner cash.

Finally DW1 said he is a private veterinary doctor and that his office is at Suite A12, NNPC Filling Station, Gaduwa FCT. That he does not have a closing time. That he is self employed and can leave the office anytime.

With the evidence of DW1, the respondent closed his case.

The parties then filed and exchanged final written addresses. The address of the Respondent dated 6<sup>th</sup> February, 2023 raised two (2) issues as arising for determination as follows:

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On the part of the petitioner, her final address is dated 3<sup>rd</sup> March, 2023 in which one issue was raised as arising for determination thus:

“Whether the petitioner has proved her case to be entitled to the custody of the children of the marriage.”

I have set out above the issues as formulated by parties as arising for determination. I note that the respondent in issue (2) prays that the court grant custody of the children of the marriage which is a relief predicated in the Orders or Relief prayed for in the **answer** to the petition even though no such **cross-petition** as countenanced by law is properly situated. Indeed during the oral adumbration on the final addresses learned counsel to the respondent conceded that the cross-petition was properly formulated by them. In the circumstances, issue (2) as formulated would lack any legal validity.

Let me therefore quickly at this early stage demonstrate how and or what the law requires of a cross-petition or put more appropriately what is required of the Respondent if he wanted to properly formulate a cross-petition and to seek the reliefs prayed for in the answer to the petition.

The provision of Order VII of the Matrimonial Causes Rules generally provides for pleading in matrimonial proceedings and situates that where a respondent intends to join issues to an action instituted by a petition, then he is expected to file an answer. Where the Respondent however intends to himself or herself institute proceedings for a decree of a kind referred to in paragraph (a) of the definition of “Matrimonial Cause” in Section 114 of the Act, then he or she must properly formulate this action during a process called a cross-petition and such party must comply with the provisions of Order VII Rules 2, (1)-(9) of the MCR. Section 114(1) of the Matrimonial Causes Act (MCA) situates the definition of a cross-petition.

Cross-petition includes an answer in which the respondent to a petition seeks a decree or declaration of a kind referred to in paragraph (a) – (b) of the definition of “matrimonial cause” of this section.

The same Section 114 (1) of the MCA defines what a matrimonial cause means and situates extensively and expansively the nature and type of matrimonial causes.

It is clear that therefore that the nature of the three (3) Orders sought by Respondent in his Answer for divorce, custody and cost are proceedings or matrimonial causes under Section 114 (1) of the MCA for which a cross-petition ought to have been properly formulated or situates.

As stated earlier, learned counsel for the Respondent himself conceded that no proper cross-petition was formulated. In the circumstances issue (2) as distilled by Respondent has no basis or foundation and will be discountenanced.

On the part of the petitioner, only one issue was formulated with respect to custody. I note that in the address, they contended that because, the respondent stated under cross-examination that he has withdrawn his Relief (1) in the Orders sought in his answer, that it meant that the question of the dissolution of marriage sought by petitioner was not in issue. I am not really enthused by this submission.

Learned counsel to the petitioner during the adoption of final addresses submitted that there was no proper cross-petition. If there was no such proper cross-petition, how then the withdrawal of a relief in the non-existent cross-petition impact in anyway the proof of Relief 1 on the substantive petition. Despite this erroneous position advance, the address however still made the case that the petitioner has proved her case to entitle the court to grant the order for dissolution of the marriage.

On the whole, this case will be determined on the contested assertions as streamlined on the petition and the answer by respondent to the petition. Therefore, on a calm evaluation of the pleadings, evidence led and final submissions, only one issue arise for determination as follows:

“Whether the petitioner has on a preponderance of evidence satisfied the requirements for the grant of the reliefs sought in the petition?”

The above issue has brought out with sufficient clarity the pith of the extant dispute and it is on the basis of this issue that I would now proceed to consider the evidence and submissions of counsel. In furtherance of the foregoing, I have carefully read the final addresses on both sides of aisle and where necessary in the course of this judgment, I shall be making references to submissions as made out.

#### ISSUE 1

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I had on the beginning of the judgment situated the reliefs sought by the petitioner and the evidence led o both sides. I shall situate and first treat the issue of dissolution of marriage subject of the first relief claimed by the petition and evidence led