

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI –ABUJA

HIS LORDSHIP: HON. JUSTICE M.S. IDRIS

COURT NUMBER: 28

Date:-9TH NOVEMBER, 2023

FCT/HC/PET/456/2022

BETWEEN

OGBONNA CHUKWUDI CHUKWUEMEKA----- PETITIONER

AND

OGBONNA OGECHI PATIENCE----- RESPONDENT

JUDGMENT

By virtue of the notice of petition filed on 26th August,2022, the Petitioner sought the dissolution of the marriage between him and the Respondent on grounds that the marriage has broken down irretrievably in that the Respondent since the marriage has been behaving in such a manner that the Petitioner cannot reasonably be expected to live with the Respondent.

The Petitioner got married to the Respondent on 24 day of October, 2016 and the marriage took place at Bwari Area Council. The marriage is blessed with two children:

1. CHIMEREMEZE CHIDUBEM OGBONNA who was born on the 22nd day of May, 2017.
2. CHIMDIUTO FUNANYA OGBONNA who was born on the 27th day of April, 2019.

The facts relied on by the petitioner as constituting the ground for the petition is as follows:

1. That since the marriage the Respondent has been behaving in such a manner that the petitioner cannot reasonably be expected to leave with the respondent.
2. That the Respondent has not been living up to her responsibilities as a wife.
3. That the Respondent some years back started avoiding her responsibilities as a wife.
4. The petitioner made several efforts to make the Respondent to meet her responsibilities as a wife but he was unwilling to change.
5. The petitioner has made all humanly possible effort to make the respondent leave her nonchalant attitude life but no headway as the respondent has consistently refused to change from her intolerable attitudes.
6. The respondent is unbearable, quarrelsome, violent, anger and has no iota of respect for the petitioner.
7. That the parties are now living apart.
8. That the petitioner is capable of taking care of the two children of the marriage.
9. That the respondent as a result of her conduct petitioned the petitioner on the 5 day of July, 2022 to gender unit FCIID on allegation of domestic violence and threat of life and asked the police to help her pack her belongings and unfortunately, on the 22nd July 2022 the police accompany her to pack all her belongings from his apartment.

In response to the Petition, the Respondent filed an answer to the petition and cross petition on 08th February,2023

The Respondent in her answer to the petition, vehemently denied the allegations of the Petitioner. She averred that she does her wifely and

motherly duties and also runs her businesses while taking care of the home. The Respondent states that in 2016/2017 during her National Youth Service Corp (NYSC) while carrying their first Child and in pursuit of peace and happiness in her home, she handed all her monthly allowance fondly called "allowee" to the petitioner as instructed by him. She further states that she has been the one catering for the house hold bills, food stuffs, paying lesson fees, never has the petitioner helped in the kids assignment or school activities, and that contrary to the petitioner's averments, the petitioner is an irresponsible husband who drinks to stupor, he returns mostly at 12am and doesn't spend time with the kids or his wife.

The Respondent alleged that the petitioner went to the village and threatened to kill the Respondent in the presence of her entire family specifically in March 2022. That after her life was threatened in the presence of her family in the village, when she returned to Abuja, she got an apartment and asked the police to help her move out the properties that belonged to her.

In her cross-petition, the Respondent, now Cross- Petitioner sought the dissolution of the marriage on the following grounds:

a. The Cross-respondent denies and deprives the cross-petitioner of conjugal rights and despite several interventions and pleas by the cross petitioner to stop and abate such cruelty and deprivation towards her, the cross respondent failed, refused and neglect to yield her request.

b. That since the inception of the marriage, the cross respondent has behaved in such provoking ways that the cross petitioner cannot be reasonably expected to live with the respondent in the following manner:

II. That the cross-respondent has consistently been in violent and non-stop confrontation with the cross-petitioner to the extent that he beat up the cross-petitioner for questioning his bad life-style as a married man (late night hangouts).

III. That the Cross-Respondent severely has attempted to strangle me (the Cross-Petitioner) to death which made me flee and his continuous physical abuse, gave me a scare and a run for her life.

IV. That after my life was threatened in the presence of my family in the village, when i returned to Abuja, i got an apartment and asked the police to help me move out my properties that belonged to me. The cross-petitioner's petition to the police is hereby pleaded and shall be relied upon in this trial.

V. That from the inception of the marriage, the cross-respondent failed to recognize himself as a married man, as his continuous acts constituted recklessness and thoughtlessness, the cross-respondent kept late nights, habitual drunkenness which he never failed to exhibit at the slightest event.

VI. The cross-respondent has become an epitome of disgrace and an embodiment of embarrassment to the cross- petitioner, the cross-petitioner now lives with a stigma from neighbors and colleagues who address her as the girl who married a drunkard and abusive man.

VII. That the cross-petitioner has been nothing short of a submissive, a diligent, a loving and respectful wife who at all times material stood by the cross- respondent, that the best way the cross-respondent saw to repay her humility and tolerance was to subject the cross-petitioner to dehumanization.

VIII. That there is absolutely no trust, love, amity or affection anymore between the cross-petitioner and the cross-respondent and the cross-petitioner is now afraid for her wellbeing and safety should there be continued co-habitation or matrimony with the cross-respondent as it has become clear and unmistakable that the cross-respondent has grown spiteful of her and will not stop at nothing to unleash a grave and unimaginable harm upon the cross-petitioner at any opportunity he gets to actualize same.

IX. The Cross-petitioner avers that she has been the one catering for the house hold bills, food stuffs, paying lesson fees, never has the Cross-Respondent helped with the kids assignment or school activities. The account statement of the Respondent is hereby pleaded and shall be relied upon in this trial.

X. That the unbearable conduct of the cross-respondent towards the cross-petitioner is known by both families.

The Respondent averred that given the cross-Respondent's position (a Marketer) in Access bank Plc, Branch 351, Gwarimpa, FCT, Abuja, the cross- Respondent is financially capable of paying the upkeep of his Children.

She therefore prayed the court for the following reliefs:-

1. The Cross-Petitioner prays this Hon. Court to order the Cross-Respondent to pay the sum of ₦3,000,000.00 (Three Million Naira Only) PER ANNUM for the up-keep of the children pending the hearing and determination of these proceedings.
2. The Cross Petitioner pleads and shall be seeking an order compelling the cross-Respondent to pay the sum of ₦500,000.00 (Five Hundred Thousand Naira) only for miscellaneous expenses such as security fees, light subscription, DSTV subscription, etc for a period of 1 year.
3. The cross-petitioner seeks the following orders and reliefs:
 1. A decree of Dissolution of Marriage between the cross-petitioner and the cross-Respondent on the ground that the marriage between them has broken down irretrievably on the grounds of the facts in this cross-petition.
 2. An Order of this Court granting custody of the two(2) children of the marriage, Chimeremeze Chidubem Ogbonna and Chimdiuto Ifunaya Ogbonna to the Respondent/Cross-petitioner Ogechi patience Ogbonna.

3. An order for Maintenance in a lump sum of ₦3,000,000.00 (four Million five hundred thousand Naira Only) as particularized above in this Cross-Petition.
4. An Order directing the Cross-Respondent to pay the sum of ₦12,000, 000.00(Two Million Naira only) as cost for the petition filed by the Cross-Respondent for being frivolous and vexatious.
5. An Order directing the Cross- Respondent to pay the total sum of ₦3,000,000.00(Three Million Naira only) for the psychological trauma and oppressive conduct which the Cross-Respondent subjected the Cross-Petitioner to during these years of their unenjoyable marriage.
6. An Order directing the Cross-Respondent to pay the sum of ₦8, 500,000.00 (Eight Million Five Hundred Thousand Naira) as the total sum requested for in this petition.

The petitioner filed a reply to the Respondent's answer and cross-petition dated 30th March,2023, wherein he denied the averments contained in the Respondent's Answer and Cross Petition.

On 30th May 2023, the Petitioner adopted his witness statement on oath in support of his petition and tendered Exhibit A (the Marriage Certificate).

On 6th June 2023, the Respondent/ Cross Petitioner testified as her sole witness and tendered three exhibits. The Respondent's Bank Statement as DW1, the Parties Marriage Certificate as exhibit DW2, and the Petition written by the Respondent to the Nigerian Police Force against the Petitioner in complaint of his acts of violence as exhibit DW3.

The case was then adjourned for adoption of final written addresses.

Counsel to the Respondent/Cross Petitioner raised two issues in the written address:

a. Whether the Petitioner/Cross Respondent is entitled to the reliefs sought in the petition.

b. Whether the Respondent/Cross petitioner is entitled to the reliefs sought in the Cross petition.

On the first issue, the Respondent/Cross petitioner answered in the negative.

Counsel argued that the Petitioner failed to lead evidence in support of his claims. That he failed to put before this Honourable court the exact way in which the Respondent was not living up to her responsibilities as a wife.

Counsel urged the court to hold that the petitioner has failed to prove his claims.

Counsel further submitted that the Petitioner/Cross Respondent has failed to adduce sufficient evidence to show that the children of the marriage will be better off in his custody. It is his evidence before this court that he wants to take the children to his grandmother in the village to take care of them. Counsel argued that the Petitioner is ignoring the mother of the children who is alive and well, who has been taking care of them since they were born till this day.

Counsel maintained that the petitioner/Cross respondent's claim that the respondent is unable to take care of the children of the marriage is unfounded. That the Respondent/cross petitioner in giving her evidence stated that she is gainfully employed as a realtor and she also runs a business (the POS business which the petitioner also mentioned in his reply)

Counsel further stated that it is worthy of note that the Petitioner/Cross respondent failed to include the dissolution of marriage as a relief and it is trite law that a court cannot grant a relief not claimed.

ENENDU& ORS V.OFFORMATTA& ORS (2022) LPELR-59126(CA)

On issue 2, counsel submitted that the Respondent/Cross petitioner having adduced sufficient evidence to support the grounds upon which her cross-petition is predicated is entitled to the reliefs sought.

Counsel reasoned that the Respondent/Cross petitioner has adduced sufficient evidence to prove that she is entitled to her relief for dissolution of the marriage. He contended that the Respondent/Cross petitioner in her testimony gave evidence of the cruelty, physical abuse and violence she endured under the Petitioner. She also tendered Exhibit DW3, which is a complaint she wrote to the Nigerian police force pleading for intervention into the situation.

She further testified that these acts of violence and threat to her life prompted her to leave the premises in which she cohabitated with the Petitioner / Cross respondent.

On the issue of custody, Counsel submits that the children of the marriage are better off in the Respondent/Cross petitioner's custody.

Counsel noted that the Children of the marriage are currently in Respondent/Cross Petitioner's custody and are perfectly cared for, a fact the Petitioner/Cross Respondent has not produced one piece of evidence to counter.

Counsel argued that in determining custody of children in divorce cases, the court has the discretion to do so judiciously and judicially.
ERHIAGANOMA v. ERHIAGANOMA (2022) LPELR-57767(CA)

Counsel also argued that the Petitioner/ Cross respondent, as the father of the children who is also gainfully employed and has told this honourable court in his evidence that he works in a bank and is a man of good means should equally be required to contribute towards their upkeep and maintenance.

Counsel further argued that having given evidence on the pain and loss she has suffered due to actions of the Petitioner/Cross Respondent, the Respondent/Cross Petitioner is entitled to damages.

Counsel to the Petitioner, on the other hand, raised a sole issue: Whether the Petitioner has established his case based on preponderance of evidence to entitle him all his relief?

Counsel argued on behalf of the Petitioner that the grounds for the dissolution of the marriage have been stated in the petition before the Court and also the Petitioner in his evidence-in-chief has given evidence supporting the facts so stated in the Petition. He stated that the evidence of the Petitioner before the Court is in full compliance with the provision of Section 135 (1) & 136 of the Evidence Act, which is to the effect that he who asserts must prove. ***CALABAR CENTRAL CO-OPERATIVE THRIFT & CREDIT SOCIETY LTD & 2 OTHER VS BASSEY EBONG EKPO (2008) 6 NWLR PART 1083 PAGE 362 at page 371***

Counsel maintained that the fact that the parties are living together is undisputed and was admitted by the Respondent/Cross Petitioner.

On the issue of custody, counsel urged the court to hold that the Petitioner has established sufficiently good and proper case for the custody of the children of the marriage.

Counsel further submitted that the respondent is not entitled to any damages, ***CHIEF APPOLOS N. AMANDI VS. FELIX CHINDA & 6 ORDS (2009) 10 NWLR (PT 1148)page 107.***

I have carefully considered the arguments of parties and all the evidence tendered in support of the Petition and Cross Petition.

Before me are two petitions, the original petition and a cross petition by the Respondent/Cross Petitioner. In determining these two petitions, I find the issues raised by the Respondent/Cross Petitioner helpful. I will therefore adopt these two issues in arriving at my verdict:

- a. Whether the Petitioner/Cross Respondent is entitled to the reliefs sought in the petition.
- b. Whether the Respondent/Cross petitioner is entitled to the reliefs sought in the Cross petition.

In the case of ***BIBILARI V. BIBILARI (2011) 13 NWLR (PT. 1264) 207 at 233***, the Court reminded us that the standard of proof in matrimonial causes is provided for in Section 82 of the Matrimonial Causes Act, which states that: "For the purposes of the Act, a matter of fact shall be taken to be proved if it is established: (a) To the reasonable satisfaction of the Court. (b) Where a provision of the 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 Act does not however define what reasonable satisfaction of the Court means. Thus, in the case of ***OMOTUNDE V. OMOTUNDE (2001) 9 NWLR (PT.718) P.263at 284***, it was held that there is no kind of blanket description or definition of the term "reasonable satisfaction of the Court" but that its application must depend on the exercise of judicial powers and discretion of an individual Judge.

The import of this definition is that, by subjecting the standard of proof to the "reasonable satisfaction of the Judge", the Act has left the determination of the issue to the discretion of the Judge and like all discretionary powers, there is no universal or standard requirement that must be satisfied.

It is my view that, "reasonable satisfaction" must entail a decision based on what a Judge acting judicially and judiciously would do in the circumstances. In other words, it is a conclusion arrived at on the basis of the evidence adduced in support of facts which are asserted at the trial, and not based on the individual whims and caprices of the Judge deciding the matter.

The bottom line of the above is that, a party seeking for a decree of dissolution of marriage must adduce sufficient and credible evidence which will persuade a reasonable Court to exercise its discretion in his favour. Thus, in satisfaction of Sections 131(1) and (2) of the Evidence Act, 2011; and Section 82(1) and (2) of the Matrimonial Causes Act, 1970 (the Act), a Petitioner has the burden to prove by evidence those facts

which he has averred in his quest to secure a decree of dissolution of the marriage between him and the Respondent. If the Respondent also testifies, the evidence led by the parties is placed on the imaginary scale of justice in order to determine where the balance will tilt. Where the evidence adduced by the Petitioner is able to tilt the scale in his favour in that, it reasonably satisfies the trial Judge, the discretion of the Court will be exercised in his favour.

Thus, where the petitioner fails to adduce sufficient evidence in support of the facts pleaded by him, the Court is entitled to resolve the matter against him.

In Nigeria, for a petition for a decree of dissolution of marriage to succeed, the Petitioner must prove one (or more) of the facts contained in Section 15(2)(a) - (e) of the Matrimonial Causes Act, 1970 (the Act). If the Petitioner fails to establish any of those facts, the petition will be dismissed, even if both parties desire that the decree of dissolution of the marriage be granted. Thus, Section 15(1) of the Act stipulates that; "A Petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably."

By Section 15(2) of the Act, a Court hearing a petition for a decree of dissolution of marriage shall hold that the marriage has broken down irretrievable if and only if any of the conditions stipulated in Paragraphs (a) - (h) have been shown or proved to exist.

In other words, a Court hearing a petition for divorce ought not to hold that the marriage has broken down irretrievably unless the Petitioner (or Cross-petitioner), as the case may be, is able to satisfy the Court on one or more of the facts stipulated in Paragraphs (a) - (e) of Section 15(2) of the Act. See ***EZIRIM V. EZIRIM UNREPORTED JUDGMENT OF THE COURT OF APPEAL, LAGOS DIVISION IN FAC/L/56/78 Delivered on the 6th DAY OF FEBRUARY, 1981; IBRAHIM V. IBRAHIM (2007) 1 NWLR (PT.1015) P.383; DAMULAK V.***

DAMULAK (2004) 8 NWLR (PT.874) P.151at 166; OMOTUNDE V. OMOTUNDE (2001) 9 NWLR (PT.718) P.525 AND ODOGWU V. ODOGWU (1992) 2 SCNJP.357.

It would appear that, in a proceeding for dissolution of marriage under Section 15 of the Act, all a Petitioner needs do is to plead and adduce evidence establishing any of the facts enumerated under Section 15(2) of the Act. His duty is not to prove that the marriage has broken down irretrievably but to satisfy the Court that the Respondent is guilty of any or more of the facts listed in the said Section 15(2) of the Act. It is only where any of those facts has been pleaded and proved, that the Court will pronounce that the marriage has broken down irretrievably.

The Petitioner in this case sought the dissolution of the marriage between him and the Respondent on grounds that the marriage has broken down irretrievably in that the Respondent since the marriage has been behaving in such a manner that the Petitioner cannot reasonably be expected to live with the Respondent. He further cited several facts in support of this ground.

All that the court expected from the Petitioner was evidence strong enough to reasonably satisfy the court that the Respondent has done those acts alleged by the Petitioner. It is however regrettable that the Petitioner has not led any reasonably satisfying evidence to show that since the marriage the Respondent has been behaving in such a manner that the Petitioner cannot reasonably be expected to live with the Respondent, that the Respondent is planning to travel outside the country and that the Respondent is incapable of taking care of the two children of the marriage.

Though the fact that the parties are now living apart is undisputed, the Petitioner is not entitled to the two reliefs sought by him.

On the other hand, the Respondent/Cross Petitioner in proving her cross petition, tendered her bank statement to demonstrate capacity to take care of the children of the marriage and also tendered a petition she

wrote to the Police FCIID, complaining of the violence against her by the petitioner.

Now, the general principle of law as encapsulated in Sections 131 and 132 of the Evidence Act is that the burden lies on that person who would fail if no evidence at all were given on either side. In that respect, where a person asserts the existence of certain state of affairs, the law casts the onus on him to prove that which he has asserted. It is simply wrapped up in the latin maxim, *ei quis affirmat non ei, qui negat incumbit probatio* which means; the burden of proof lies on the person who asserts the affirmative of an issue.

Thus, after appraising the totality of the evidence adduced at the trial, I find that the weight tilts in favour of the Respondent/Cross Petitioner.

On the issue of custody of the Children, several factors are usually considered when the court is called upon to determine custody.

In the case of ***OTTI V. OTTI (1992) 7 & 1 WLR (Pt. 252) P. 187***, it was adumbrated that:

"Thus certain relevant criteria must be considered in the determination of the welfare of the child as in this case and they include:- 1. The degree of familiarity of the child with each of the parents (parties). 2. The amount of affection by the child for each of the parents and vice versa; 3. The respective incomes of the parties; 4. Education of the child; 5. The fact that one of the parties now lives with a third party as either a man or woman; and 6. The fact that in the case of children of tender ages custody should normally be awarded to the mother unless other considerations make it undesirable etc."

What constitutes the paramount welfare of a child of a dissolved marriage is a composite of many factors such as emotional attachment to a particular parent; mother or father, the inadequacy of facilities such as education, feeding, and other opportunities for proper upbringing of the child. See also ***ODUCHE VS. ODUCE (2006) 5 NWLR(Pt. 972) P.***

102 AND ODUGWU VS. ODUGWU (1992) 2 NWLR(P.T. 225) P. 539.

The Apex Court in the case of ***ODUGWU VS. ODUGWU (1992) 2 NWLR(P.T. 225) P. 547***, stated what is paramount in considering whether custody of the children of a dissolved marriage should be granted to the mother or the father in these words: "That if the parents are separated and the child is of tender age, it is presumed that the child will be happier with the mother and no order will be made against the presumption unless it is abundantly clear that the contrary is the situation e.g immorality of the mother, infectious disease on the mother and her cruelty to the child."

Considering the age of the children of this marriage and the fact that they are already being cared for by the Respondent/Cross Petitioner, I am of the opinion that the Respondent/Petitioner, being the mother of the children is best suited to have custody of the children at this time. I so hold!

Besides, custody of children is an on-going exercise akin to recurrent decimal. It is a day to day or revolving affair. Whenever any of the spouses discovers that conditions have changed or altered for the worse in respect of the interest, benefit and welfare of the children or child in the custody of another person or spouse/ he or she can apply to the Court to review the custody order. The Court upon hearing the parties would reach a decision in the best interest of the child or children as the case may be.

In ***AYEGBA V. AYEGBA (1979) 3 LRN 232 at 235***(per Idoko, J. as he then was, now of blessed memory) citing in support Lord Merriman. P., in ***HAYES V. HAYES (1948) 1 WN 361***, said: "Custody is a matter which can be dealt with from day to day; there is no finality about an order for custody in any Court."

On the issue of maintenance, I must state that husband and wife, given the changes sweeping across our society today, in so far as the rights and

duties to make financial provisions are concerned, albeit in theory, are gradually moving towards equal footing base. Many wives are today, more financially empowered than their husbands. And so the Courts are fast moving away from the old rule whereby, they virtually ordered financial provisions in favour of the wife. Law, to be useful, must always reflect the norms and developmental stages reached in a society, where it will apply.

It seems to me that given the state of civilization, we have reached in this country today and bearing in mind, the emancipation of the women folks into the sold orbit of financial empire in this country today, it seems to be that the sum, if any, to be awarded for the maintenance of a party to a matrimonial proceeding or even the child or children of the marriage should be determined by among other facts: "(1) the stations in life of the parties and their lifestyles, (2) their respective means, (3) the existence or non-existence of child or children of the marriage, and (4) the conduct of the parties." See **HAYES V HAYES [2000] 3 NWLR (Pt. 648) 276**. A husband must not be impoverished or sent to an early grave under the thin guise of obedience to an invitation by the wife to the Court to award her maintenance. Law must not be an instrument of victimisation.

Having carefully considered the situation in life of the Petitioner as a Banker, and also considering the fact that the Respondent/Cross Petitioner will be saddled with the custody of the children who are minors, and in view of the current economic realities in this country, I hereby order the Petitioner to support the upkeep of the two children of the marriage with a monthly allowance of not less than N100,000.00. He shall also support the education of the two children of the marriage by paying the sum of ₦200,000.00 per child in every academic session.

In summary, the Petitioner's Petition is hereby dismissed, while the Cross Petition of the Respondent/Cross Petitioner succeeds in part. It is hereby ordered as follows:-

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated on the 24th day of October 2016, between the Petitioner/Cross

Respondent Ogbonna Chukwudi Chukwuemeka, and the Respondent/Cross Petitioner, Ogbonah Ogechi Patience.

3. An Order granting the custody of the two children of the Marriage CHIMEREMEZE CHIDUBEM OGBONNA and CHIMDIUTO FUNANYA OGBONNA, to the Respondent/Cross Petitioner on the condition that the Petitioner/Cross Respondent must be allowed unfettered access to them; also, the children must not be restricted from going to stay with the petitioner at any time and for as long as they may wish.
2. An Order that the Petitioner/ Cross Respondent shall support the upkeep of the two children of the marriage with a monthly allowance of at least ₦100,000.00 and shall also support the education of the two children of the marriage by paying the sum of ₦200,000.00 per child in every academic session.

I hereby pronounce that the Decree Nisi shall become absolute upon the expiration of three months from the date of this order unless sufficient cause is shown to the Court why the decree nisi should not be made absolute.

**HON. JUSTICE M.S
IDRIS**
(Presiding Judge)

Appearance

Shehu Michael:- For the Petitioner

KuzayatMagaji :- For the Respondent.