

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI, ABUJA.**

**CLERK: CHARITY ONUZULIKE
COURT NO. 10**

**SUIT NO: FCT/HC/PET/452/2022
DATE: 28/6/2024**

BETWEEN:

INNOCENT C. EJIOFOR.....PETITIONER

AND

CATHERINE UDOKA EJIOFOR.....RESPONDENT

**JUDGMENT
(DELIVERED BY HON. JUSTICE S. B. BELGORE)**

The Petitioner, Mr. Ejiofor by an Amended petition prayed for the dissolution of Marriage between him and the Respondent. The said amended Petition dated 31st January 2023 was filed on the 2nd February 2023. Upon the receipt of the said amended Petition, the Respondent filed an Answer to the Petitioner's petition and Cross-Petition dated 19th April 2023 and filed on the 20th April 2023. Having received the Respondent's Answer to the Petitioner's reply in response to the Respondent's Answer to petition and the petitioner's defense to the cross petition dated 19th May 2023 and filed on the 30th May 2023. Upon the receipt of the Petitioner's reply in response to the Respondent's Answer to petition and the petitioner's defense to the cross petition above stated; the Respondent finally filed her Respondent's reply to the petitioner's defense to the cross petition dated 20th June 2023 and file on the 27th June 2023.

The Petitioner seeks the following orders or reliefs against the Respondent, to wit:

- a. A DECREE of dissolution of the marriage contracted between the Petitioner and Respondent on the ground that the marriage has broken down irretrievably.
- b. That since the marriage the Respondent has behaved in such a way that the petitioner finds intolerable and cannot reasonably be expected to live with the Respondent on the grounds stated in (a) above.
- c. Custody of the Four children of the marriage
- d. An order that all personal properties of the Petitioner shall not be shared between the Petitioner and the Respondent as same were acquired by the Petitioner in his personal capacity and effort without the help of the Respondent
- e. An Order of this Court compelling the Respondent to hand over all the original copies of the Petitioner's properties in her possession to the Petitioner.
- f. Such further Order or Orders as the Court may deem fit to make in the circumstance.

EVIDENCE

On the 9th November 2023, the Petitioner adopted his Witness statement on Oath attached to his amended petition as PW1. He also adopted his reply to the Respondent's answer to the amended petition/cross petition and same filed on the 2nd February 2023 and 30th May 2023 respectively. On the 10th November 2023, the PW1 tendered several documents in evidence which were admitted and marked Exhibits A to G.

Consequently, the Respondent Counsel conducted cross-examination of the PW1 (Innocent Ejiofor) on the said 10th

Novembre 2023. However, on the 5th December, 2023, Barrister AISHA ALIYU SHEHU adopted her witness statement on Oath as PW2, DEBORAH NKECHI AZOGI as PW3, PIUS PHILIBUS as PW4, and JOHN MOSES as PW5 and having adopted their said witness statement on Oaths herein stated; they were all cross examined by the Respondent's Counsel on the said 5th December 2023.

On the 8th December 2023, the Respondent (CATHERINE UDOKA EJIOFOR) entered her defense as the sole witness as DW1; and tendered several documents as Exhibits having adopted her witness statement on Oaths attached to her answer to the petitioner's amended petition and her cross petition filed on the 20th April 2023 and 27th June 2023 respectively. Upon the adoption of the Respondent's witness statement on Oath of 20th April 2023 and 27th June 2023; the Respondent was cross-examined by the Petitioner's Counsel on the 1st February 2024.

ISSUES FOR DETERMINATION

The Petitioner herein has raised three (3) issues for determination to wit;

- (a) *Whether the Respondent has substantially pleaded or lead any evidence before this Honourable Court to prove her entitlement to the Order of Maintenance sought by her in her answer to Petition and Cross petition for the dissolution of marriage between the Petitioner and the Respondent.***
- (b) *Whether given the circumstances of this petition and all the available evidence before this Honourable Court; the Properties contained in the answer to Petition and Cross petition for the dissolution of marriage between the Petitioner and the Respondent Are Jointly Owned by the petitioner and the Respondent as claimed by the Respondent.***

- (c) *Whether given the circumstances of this petition and all the available evidence before this Honourable Court; the Respondent is entitled to be granted Custody of the Children of the Marriage as claimed by her.*

Respondent's Counsel framed one issue for determination thus:

“Whether given the circumstances of this petition and cross petition, the Respondent/Cross Petitioner has placed enough documentary/oral evidence to entitle her to the reliefs she seeks from this Honourable Court against the Petitioner”

I adopt the Respondent's Counsel's issue for determination.

ON THE ORDER OF MAINTENANCE SOUGHT BY THE RESPONDENT **DW1**

The Respondent (herein the Cross Petitioner) adopted her witness statement on Oaths attached to her answer to the petitioner's amended petition and her cross petition filed on the 20th April 2023 and 27th June 2023 respectively. The law is elementary and trite that a Cross Petition is itself a petition for it is same category as a counter claim. The cross petitioner must therefore prove every averment in the cross petition. See the case of **OTTI VS. OTTI (1992) 7 NWLR (PT. 252) 187 AT 212 B-C**. Thus, the Respondent / Cross petitioner in her answer to the amended petition and her cross petition sought several reliefs in her cross petition.

On maintenance wherein the Respondent/cross petitioner prayed this Honourable Court for the **“sum of N800,000.00 (Eight Hundred Thousand Naira) monthly for maintenance of the Children of the marriage which includes their feeding, welfare, medications and clothing”**. The Respondent/Cross petitioner also urged this Honourable Court to make an Order that the petitioner should be paying her the **“sum of N25,000,000.00 (Twenty-five**

Million Naira) annually as her maintenance” which she claimed to be entitled to same.

The law is settled that under the common law, a wife has a right to be maintained by her husband. In the case of **ERHANON VS. ERHANON (1997) 6 NWLR (PT. 510) 667 AT 689 (b)**. The Court held as follows:

“Now, the right of a wife to maintenance as against the husband is not contractual in nature. A man has common law duty to maintain his wife and such a wife then has a right to be maintained”.

See section 70(1) of the matrimonial causes act which provides:

“subject to this section, the Court may in proceedings with respect to the maintenance of a party to a Marriage or children of the marriage other than proceedings for an order pending disposal of proceedings, make such order as it think proper having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances”.

From what has been reproduced above, it is my humble view that the power of this Honourable Court to make order for maintenance is **discretionary**; having regards to the means, earning capacity and conduct of parties to the marriage and other relevant circumstances. ***This was observed by AKPABIO JCA, in ERHAHON VS. ERHAHON (Supra) at 683.***

From the available evidence before this Honourable Court, the means and earning capacity of the Petitioner which is to the effect that the Petitioner’s only source of income is his Monthly salary as a Captain in the Nigerian Navy in the sum of N750,000.00 only, see **Exhibit 24**. Thus, the Respondent/Cross petitioner is urging this Honourable Court to grant her the **“sum of N800,000.00 (Eight**

Hundred Thousand Naira) monthly for maintenance of the Children of the marriage which includes their feeding, welfare, medications and clothing” and the “sum of N25,000,000.00 (Twenty-five million Naira) annually as her maintenance”. However, the question that comes to the mind in granting the reliefs or order of maintenance sought above is whether granting the order of maintenance as prayed for by the Respondent/Cross petitioner will defeat the interest of justice, equity and good conscience and/or occasion untold hardship to the Petitioner in this Petition having regard to the means, earning capacity of the petitioner which is evidenced by his monthly salary as a Captain in the Nigerian Navy which is the sum of N750,000.00 only (Exhibit 24) and all other relevant circumstances. See the case of **DAMULAK VS. DAMULAK (2004) 8 NWLR (PT. 874) 151**. See also the case of **TABANSI VS. TABANSI (2018) 18 NWLR (PT. 1651) SC. 279 (pp. 299-300, paras G-A)**.

Another issue that is called for proper consideration is whether the Respondent/Cross petitioner has placed or lead any evidence before this Court to prove her entitlement to maintenance as prayed in her Respondent/Cross petition. The law is trite that whoever desires a Court to grant his/her reliefs for maintenance under the matrimonial causes proceedings should plead and lead evidence to prove her entitlement to such a reliefs of maintenance. See **Order XIV Rule 4 (1), (2), (4), (7), and (8) of the matrimonial causes rules** as found in the case of **TABANSI VS. TABANSI (2018) 18 NWLR (PT. 1651), Supra**, at page (pp. 302, paras, F-G, 303, PARAS A).

From the available evidence before this Court and facts elicited from the Respondent during cross examination, it is obvious that the Respondent/Cross Petitioner is gainfully employed, she has means, and she has reasonable capacity to earn more income. It is in evidence that the Respondent/Cross petitioner is an Employee of the Transcorp Hilton Hotel Abuja as Supervisor with an appreciable monthly salary (which she failed to disclose the

amount of her salary to this Court), it is in evidence that the Respondent/Cross petitioner is a Sex Toy merchant (a successful business woman which she failed to disclose her daily or monthly income to this Court). It is also in evidence that the Respondent/Cross petitioner is fully in the business of Freight Forwarding where she is making profit of about N30,000,000.00 (Thirty Million Naira) monthly having claimed to have introduced the petitioner (which she could not establish or link the petitioner in the freight forwarding business). **The law is established that he who asserts must prove.** The Respondent/Cross petitioner in her answer to petition and cross petition asserted that she deserved to be maintained by the petitioner who only has one source of income. The Respondent/Cross petitioner has multiple sources of income and earns more than the petitioner monthly and therefore does not deserve to be maintained by the petitioner in this petition for dissolution of marriage between the petitioner and Respondent/cross petitioner. In her pleadings she stated as follows:

- (a) That part of her business is selling of Sex Toys (see paragraphs 8 and 9 of her witness statement on Oath attached to her reply to the petitioner's answer to the Respondent's cross petition filed on the 27th June 2023.
- (b) During the cross examination on the 1st February 2024; she said that she is an employee as supervisor in Transcorp Hilton Hotel Abuja.
- (c) In paragraph 83 of her answer to petitioner's amended petition and cross petition filed on the 20th April 2023; she said that she introduced the petitioner to freight forwarding business which yields about N30,000,000.00 (THIRTY MILLION NAIRA MONTHLY) and during cross examination on the 14th March 2024, the Respondent said, "I am involved in freight forwarding business partially which enabled me to introduce someone else". It is trite

principle of law that document speaks for itself. See the case of **UMA VS. OKE (2020) LPELR-50131**. There was nothing before this Court to show the petitioner's involvement in the freight forwarding business as claimed by the Respondent, there was no document before the Court bearing freight forwarding business, and there is no evidence before the Court to prove the ("About") N30,000,000 (Thirty Million Naira) monthly profit as claimed by the Respondent (He who asserts must prove). The signature on EXHIBITS 20, 22 and 23 belong to one Mr. UZOMA and not the petitioner (there was no Signature expert to prove that the purported Signature belongs to the Petitioner). The Respondent/cross petitioner during cross examination told this Court that the name of the petitioner is not found in exhibit 22 and 23. This therefore means that the Petitioner is not among the parties whose names are in the said exhibit 22 and 23 and does not have any link with exhibit 22 and 23. We urge this Court to note that the business of freight forwarding in Nigeria demands the incorporation of a freight forwarding company which the Respondent failed to disclose any link between the Petitioner and any Company in relation with freight forwarding business as outlandishly claimed by the Respondent. Also, the Respondent failed to disclose to the Court the bank and any account number through which the freight forwarding business is being run by any person or receives the purported N30,000,000 (Thirty Million Naira) monthly profit. Again, such a company must have directors, registered address, insurance and tax returns all of which the Respondent failed to prove before the Court. It is noteworthy that the petitioner being a serving Naval Officer is prohibited by oath/law to engage in any business including freight forwarding other than the Naval Profession. I therefore dismiss the above heads of claims of the Respondent against the Petitioner for being incompetent and lacking evidential value on the ground

that the Petitioner was never involved in any freight forwarding business with the Respondent; I hold that it is the Respondent who is involved in the said freight forwarding business having said during cross examination that; ***“I am involved in freight forwarding business partially which enabled me to introduce someone else”***.

Maintenance is not awarded to a party in order to kill or oppress the other party who is to pay the maintenance. Maintenance is awarded on equitable ground and it is discretionary in nature which the said discretion the Court must exercise judicially and judiciously having regards to ***“the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances”***. Thus, ***the Petitioner vide Exhibit 24 told this Court that his Salary as a Captain in the Nigerian Navy is the sum of N750,000.00 as against N1,200,000.00 pleaded by the Respondent in her cross petition***. I hold that from the pleadings and evidence elicited from the Respondent/cross petitioner during cross examination, the Respondent cross petitioner has established her sources of income.

I hold that the Respondent cross petitioner is not entitled to maintenance. On the other hand, the Petitioner has only one source of income as a Civil Servant and a Captain in the Nigerian Navy whose monthly salary is the sum of N750,000.00 (Seven Hundred and Fifty Thousand Naira) only as contained in Exhibit 24. I hold that the order of maintenance sought by the Respondent/Cross petitioner is incompetent and liable to be struck out; in that the said reliefs for order of maintenance of the sum of ***N800,000.00 (Eight Hundred Thousand Naira) monthly for maintenance of the Children of the Marriage”*** and the ***“sum of N25,000,000.00 (Twenty-five Million Naira) annually as the Respondent’s personal maintenance is not in compliance with Order XIV Rule 4 (2) of the Matrimonial Causes Rules***. In the case of ***TABANSI VS. TABANSI (2018) 18 NWLR (PT. 1651) SC. 279 (PP. 295, PARAS G-H; 301 F-G)***. The Supreme Court held as follows:

“By virtue of order XIV Rule 4 (2) of the matrimonial causes rules, where a Claimant is by his application for ancillary relief seeking an order with respect to the maintenance of the claimant or of the children of the marriage, the application shall specify;

- (a) The person in respect of whom maintenance is sought**
- (b) Whether the order sought in respect of each of those persons is a permanent order, an order pending the disposal or proceedings or an order for a fixed term or for a life or during joint lives or until further order; and,**
- (c) The amount of the lump sum or the weekly, monthly, yearly or other periodic sum, as the case may be, sought in respect of each of those persons”.**

From the above cited authority, I hold that the Respondent/Cross petitioner failed woefully and did not specify as specifically provided in “b” above **“whether the order sought in respect of each of those persons is a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for a life or during joint lives or until further order;** Thus, the exact word of the law as stated above said; **“the application shall specify”.** This being the case, I dismiss the order of maintenance as sought by the Respondent/Cross petitioner and hold that this Court is not a father Christmas and cannot award an order of maintenance not specifically sought for and in compliance with the law as the Petitioner cannot be expected to be paying maintenance to the Respondent/Cross Petitioner *ad infinitum* and without ending.

In addition, and in furtherance of my view, I say that granting the order of maintenance as sought by the Respondent in her answer to petition and cross petition will make the petitioner a perpetual slave to the Respondent/Cross petitioner which will amount to

great injustice and anarchy in the life and destiny of the Petitioner. I take note that the petitioner has solely been responsible for the Respondent's school fees through Lagos State University, National Institute for Information Technology (NIIT), and National Open University, all of which have enabled the Respondent to secure employment as Supervisor in Transcorp Hilton where she now earns more than the petitioner. I also note that non-compliance with the order XIV Rule 4 of the Matrimonial Cause Rules by the Respondent goes to the root and fatal to the Respondent's case as it is the facts pleaded and Evidence led that the Court relies on in making the award of maintenance. See the case of **TABANSI VS. TABANSI (2018) 18 NWLR (P. 303, PARAS G) Supra**. This Court therefore accept the argument of the petitioner's counsel, the statutory and judicial authorities cited and dismiss the Order of maintenance sought by the Respondent/cross petitioner in her answer to petition and cross petition.

The learned Counsel to the Respondent in fact made no argument on this issue of Maintenance. She apparently conceded to the argument that the Respondent deserves no maintenance in the circumstances of this case.

SETTLEMENT OF PROPERTIES

In paragraph 60, 61, 62, 63, 64 and 65 of the Respondent's Witness on Oaths attached to the Respondent's answer to petition and cross petition filed by the Respondent on the 20th April 2023; the Respondent highlighted and listed several properties like buildings/lands, Cars, Households appliances/Kitchen Utensils and Dinner Sets; which she claimed were joint properties between her and the petitioner during the subsistence of the marriage. In the Petitioner's reply in response to the Respondent's answer to Petition and Cross Petition filed on the 30th May 2023, the Petitioner at Paragraph 4f indicated that some of the properties listed by the Respondent are non-existent, the existing properties were his personal properties which he acquired in his personal

capacity and without any help, contribution or assistance from the Respondent. Also, in the Petitioner's Amended petition filed on the 2nd February 2023 at page 6 on settlement of properties; the petitioner pleaded as follows: **"There are no properties to be settled with the respondent as the entire properties were acquired by the petitioner in his personal capacity and such properties form part of the petitioner's personal efforts and struggles without any input, assistance or help from the respondent"**. Also in the reliefs sought by the Petitioner in his amended petition as stated above, especially the relief d at page 1 thereof; the petitioner urged this Court as follows; ***"An Order of this Court compelling the Respondent to handover all the original copies of the Petitioner's properties in her possession."***

The law is trite that under the statutory law marriage, or marriage under the Act, either of the parties to the marriage can apply to the Court alongside with the divorce petition for the settlement of properties or joint properties. The legal framework for the settlement of properties is contained in section 72 of the matrimonial causes Act. Thus, the property that is to be settled must belong to either of the parties to the marriage. The Court cannot settle or share a property or properties that belongs to neither of the parties to the marriage. However, under the statutory marriage, one of the ways in which the Court assesses Justice, Equity and Fairness in line with section 72 of the Act is when the party seeking for the property or properties to be settled in his or her favour, shows, proves or establishes by credible evidence that she has contributed in concrete terms to the acquisition of the property or properties. The main limitation in making any Order in line with section 72 of the act is as the Court considers just and equitable. In the case of **KAFI VS. KAFI (1986) NWLR (PT. 175)**. The wife in her cross petition and/or answer to petition argued that she gave all necessary moral and financial support to the petitioner (husband) apart from performing all the duties as a wife and all these were established. In the judgment; the Court held as follows: ***"I accept her evidence and therefore***

finds that she contributed towards the purchase of some of the lands on which the houses which is said to belong to the husband petitioner were build and that she contributed towards the development of the said properties as well as to the success of the business of the husband/respondent. The properties can be regarded as product of their joint efforts. She therefore deserves in my ruling to have a property settled on her benefit and that of the children by virtue of section 72 (30) of the matrimonial causes act of 1970, irrespective of what the husband/respondent would want to do further for the children. The husband is therefore Ordered to settle property at 15, Adeola Adeleye Street, Ilupeju Lagos by deed on his wife/applicant accordingly”. Whenever a spouse claims that he/she contributed to the acquisition of a property or construction of a building, the above must be proved before the Court can grant the Order for the property to be shared. In the case of **ONABOLU VS. ONABOLU (2005) 2 SMC 135**. The wife/petitioner claimed among others against her husband that their joint matrimonial property be shared equally between them or sold and the proceeds of sale share equally. The Court having carefully examined all the pieces of evidence given by the wife/petitioner and the husband respondent on the issue of joint ownership of the property found that the evidence of the husband/respondent positively established that he bought the land over which the property was build. In the judgment, the Court held as follows; **“It is settled law that a person who claim to be the joint owner of a property must be able to quantify his contribution. He must give detailed particulars and support them where necessary with receipts of what he bought towards the building of the property”.** See the case of **ADAKU AMADI VS. EDWARD NWOSU (1992) 5 NWLR (PT. 241) 273 AT PAGE 279.**

The question then is, what do I found in this case? It is on the record of this Court that all the landed properties pleaded by the Respondent in her paragraph 60 of the said witness statement on Oath filed on the 20th April, 2023 were not supported with any documentary evidence or any evidence at all to prove their

certainty or existence. ***The law is trite that facts pleaded but not supported with any evidence are deemed abandoned. This Honourable Court is bound by its record.*** On the 10th November 2023, the PW1 was cross-examined by the Respondent's Counsel wherein the PW1 said "While some of the properties listed in the cross petition by the respondent belong to relatives, those belonging to me were acquired solely by me during the pendency of the marriage". It is noteworthy that the Respondent's counsel during cross examination failed to establish the properties that belong to the petitioner and those that belong to the Respondent. On the 1st February 2024, during the cross-examination of the DW1, the DW1 said; ***"I don't have any document to support joint ownership of those properties"*** (referring to the properties mentioned in paragraph 60 of the said witness statement on Oath filed on the 20th April 2023). The Respondent only tendered Exhibits 12, 13, 14, 15 and 16 in respect of the landed properties mentioned in paragraph 60 above. In continuation of the cross examination of the DW1, the DW1 said ***"I have seen Exhibits 12, 13, 15 and 16, "my name is written on exhibit 12 as next of kin and not the owner", "the name on exhibit 13 is George Chidubem Ejiofor, the petitioner's name is Innocent Chidi Ejiofor", "the name on exhibit 14 is Innocent Chidi Ejiofor", "the name on exhibit 15 is Innocent Chidi Ejiofor", "the name on exhibit 16 is Innocent Chidi Ejiofor" and "my name does not appear in all these Exhibits, (exhibits 12, 13, 14, 15 and 16) as Co-Owner"***.

From the above evidence elicited from the DW1 during the cross examination; I hold that the Respondent DW1 did not quantify her personal contribution to the acquisition of the properties contained in exhibits 12, 14, 15 and 16 respectively. Thus, the Respondent DW1 did not give any detailed particulars and did not support her pleadings with any evidence or receipts of what she bought or contributed towards the building or acquisition of the properties contained in the said exhibits 12, 14, 15 and 16. Exhibit 12 is the Petitioner's present residence at No. 6 Fabian Nwora Street, Efab Metropolitan Estate, Karsana FCT, Abuja; which the

Respondent did not prove her contribution to the acquisition of the land where the house is build or show any evidence of her contribution to the development of same as established in the case of **KAFI VS. KAFI (1986) NWLR (PT. 175), Supra.** And **ONABOLU VS. ONABOLU (2005) 2 SMC 135, Supra.**

Perhaps, I should comment briefly on exhibits 13, 15 and 16 on the face of these exhibits, they belong to persons that are not parties to this case. They are therefore of no relevant to this case. Learned Counsel to Petitioner urged me to expunge them from the record because they were not tendered by their maker. I do not think that I should do that. It suffices that the documents are exhibits not in support of the case of the party that tendered them. In this case the Respondent.

In fact, what the Respondent's Counsel wrote at paragraphs 4.7 of his written address says it all on this point: Learned Counsel wrote:

“On the issue of settlement of properties we submit that Section 72 of the Matrimonial Causes Act is instructive and we urge My Lord to rely on same in dealing with this case. We respectfully commend the following cases to My Lord, ETEBU VS. ETEBU (2018) LPELR-46250 (CA) OGHONYONE VS. OGHONYONE (2010) LPELR-4689 (CA) and OGUNLESI VS. OGUNLESI (2019) LPELR-51154 (CA). It is humbly submitted that even though the Respondent/Cross Petitioner may not have shown her financial contribution to the purchase of the properties during the pendency of the marriage, that does not deprive her of the benefits most especially it is uncontroverted that the Petitioner bought the properties in his name during the marriage.”

In short the properties belong to the Petitioner as no contribution to their purchase or acquisition of them by the Respondent was made out.

ON CUSTODY OF THE CHILDREN OF THE MARRIAGE

Given the circumstances of this petition and all the available evidence before this Honourable Court; the Respondent DW1 is not in any way entitled to be granted Custody of the Children of the Marriage which are as follows; **ADANNA GERALDINE EJIOFOR – Female (25/9/2006) 17 years old, HENRY CHIDI EJIOFOR – Male (3/9/2008) – 15 years, GERALD CHINEMEREM EJIOFOR – Male (27/10/2017) – 10 years old and AMARACHI EJIOFOR – Female (9/10/2017) – 6 years old.** It is an established principle of law that in a statutory marriage, Custody of children of the marriage is governed by the matrimonial causes Act and Childs Right Acts which provides that Custody of the children of marriage is not automatically bestowed on any person but will be determined based on **“THE BEST INTEREST OF THE CHILD”**. Thus, pursuant to section 1 of the Child Right Act Laws of the Federation of Nigeria, which provides as follows; **“Best interest of a Child to be of paramount consideration in all actions”**. Section 2 of the Child Right Act which also provides as follows; **“A Child to be given protection and care necessary for his wellbeing”**. In the case of **ODUSOTE VS. ODUSOTE (2012) 3 NWLR (PT. 1288) 478, P. 504**, the Children would include their welfare, education, security and overall wellbeing and development”.

In paragraph 8 and 9 of the Respondent’s answer to petition and cross petition filed on the 27th June 2023. The Respondent DW1 made reference to **SEX TOYS** which she unequivocally told this Court that she is a business woman who deals and sells Sex Toys to her Customers wherein the said sex toys are kept in her bedroom from where she takes and sells to her customers. On the 10th November 2023, the petitioner tendered a picture of some sex toys and box containing physical sex toys as **exhibit C and G**

respectively. Thus, during cross examination of the Respondent DW1 on the 14th February 2024, the Respondent DW1 said; ***“yes, I made reference to sex toys in paragraphs 8 and 9 of my answer to petition and cross petition filed on the 27th June 2023”, “My children have unhindered access to my bedroom”*** (the Respondent DW1 read the said paragraphs 8 and 9 to the Court). The above is an admission of selling of Sex toys by the Respondent DW1 at the detriment of the Children of the marriage who has unhindered access to her bedroom. This being the case, the moral character of the Respondent’s DW1 is in question and doubt as she cannot raise Godly Children to the benefit of humanity. On the 5th December 2023, the PW2 was called in evidence in the person of Barrister Aisha Aliyu Shehu, and she adopted her witness statement on oath filed on the 30th May 2023 and cross examined on same. Thus, the PW2 placed heavy reliance on paragraphs 5 and 6 of the said witness statement on Oath and during cross examination; the Respondent Counsel who had the opportunity to challenge the said averment failed to do so and as such the said averments are deemed admitted. The averment contained in the said paragraphs 5 and 6 are dealing with the bad character of the Respondent DW1; in that she is not morally upright to bring up the Children of the marriage in a Godly way. On the said 5th December 2023, the PW4 was called in evidence in the person of PIUS PHILIBUS, who adopted his witness statement on oath filed on the 30th May 2023. Thus, the PW4 placed heavy reliance on paragraphs 3 of the said witness statement on Oath and during cross examination; the Respondent Counsel who had the opportunity to challenge the said averment failed to do so and as such the said averment are deemed admitted. The averment contained in the said paragraphs 3 are dealing with the bad character of the Respondent DW1; in that she is not morally upright to bring up the Children of the marriage in a Godly way. On the said 5th December, 2023, the PW5 was called in evidence in the person of JOHN JAMES, who adopted his witness statement on Oath filed on the 30th May 2023. Thus, the PW5 placed heavy reliance on paragraph 3 and 4 of the said witness statement on Oath and during cross-examination; the

Respondent Counsel who had the opportunity to challenge the said averment failed to do so and as such the said averment are deemed admitted. The averment contained in the said paragraphs 3 and 4 are dealing with the bad character of the Respondent DW1; in that she is not morally upright to bring up the Children of the marriage in a Godly way.

I am not unmindful of the argument of Respondent's Counsel at paragraph 4.5 of his address. He wrote as follows:

Paragraph 4.5:

“The Respondent under cross examination admitted that in the course of his service he has been transferred severally and the children in these periods lived with the Respondent. At what time did the Respondent become a bad influence on the children when the Petitioner after filing the petition paid for an apartment and drove both the Respondent and the children away”

Paragraph 4.6:

“In considering who to award custody, My Lord has all the discretion to ask the children who they will choose to stay with especially as the children are 17 years, 15 years, 10 years and 6 years respectively. They are sensible enough to choose who they can best live with, in their best interest. We commend the case of ODUSOTE VS. ODUSOTE (2012) 3 NWLR (PT. 1288) 478 and submit that in the circumstances of this case the best interest will be for the custody to be granted to the

Respondent who has been there for the children since birth.”

My reaction to the above is that the Court should consider the overall interest of the Children of Marriage, their Education and General wellbeing in granting custody, see the case of **ODUSOTE VS. ODUSOTE (2012) 3 NWLR (PT. 1288) 478, Supra**. It is my view that the Petitioner is the rightful person to be granted custody of the children of the marriage in that, the Petitioner's present status as Nigerian Defence Adviser to New Delhi India and covering several other countries like Japan, South Korea, Singapore, etc provides wide range of opportunities to the children of the marriage in areas of education, health, social and general wellbeing among other opportunities for the overall interest of the children of the marriage in line with the Child Rights Act. The Petitioner is in active service as a Naval Officer and has shown by credible evidence before this Honourable Court his readiness to take care of the Children's Education and general wellbeing in line with the Child Right Act. I so hold and grant Custody of the Children of the marriage to the Petitioner having proven his readiness and willingness for the overall interest of the children of the marriage for their general wellbeing as stated above.

In conclusion, I find merit in this petition and no merit in the cross-petition. All the reliefs of the petitioner are all hereby granted and all the reliefs in the cross-petition are hereby dismissed.

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S. B. Belgore

(Judge) 28/6/2024