IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE

COURT CLERKS:	**JAMILA OMEKE & ORS**
COURT NUMBER:	**HIGH COURT NO. 24**
CASE NUMBER:	**SUIT NO. FCT/HC/PET/40/2018**
DATE:	**4/4/2023**

BETWEEN:

KELECHI CHIBUNNA BON-NWAKANMA……PETITIONER

AND

MARGERATE MARY NDIDIAMAKA BON-NWAKANMA …RESPONDENT

APPEARANCES:
C. N. Udekwe Esq appearing with J.M. Mafwil Esq for the Petitioner
Abdulrahman Abubakar Esq for the Respondent.

JUDGMENT

The Petitioner filed this Petition on the 23rd day of November, 2018, seeking for the following Orders to wit:-

> ***"(a). A Decree Nisi for dissolution of the marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably for the following reasons:-***
>
> ***(i). The Respondent has behaved in such a way that the Petitioner cannot be expected to live with the Respondent.***

(ii). And for such further Orders as the Honourable Court may deem fit to make in the circumstances."

The Petition which was settled by C. N. Udekwe Esq, legal practitioner to the Petitioner, is supported by a 5 paragraph Affidavit verifying the Petition deposed to by the Petitioner himself.

Subsequently, however, the Petitioner by a Motion on Notice, sought and obtained leave to amend his Petition. The amended Petition was filed on 26th November, 2020, premised on the following grounds to wit:-

"(1). Section 15(2)(c) of the Matrimonial Causes Act, that since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

(2). Order V Rule 12(2)(c) of the Matrimonial Causes Rules – that since the marriage, the Petitioner has suffered cruelty from the Respondent."

Whereof the Petitioner sought for the following Orders:-

"(A). A Decree Nisi for dissolution of the marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably for the following reasons:-

(i). Intolerable behaviour

(ii). On ground of cruelty on part of the Respondent against the Petitioner."

(B). An Order granting full custody of Abigail Bon-Nwakanma, the only surviving child of the marriage to the Petitioner.

(C). And for such further Order(s) as the Honourable Court may deem fit to make in the circumstances."

Same is equally supported by a 5 paragraphed Verifying Affidavit deposed to by the Petitioner himself.

The Petitioner equally filed a supplementary Petition on the 18th day of December, 2020.

On her part, upon being served with the Notice of Petition, the Respondent initially filed an Answer to the Petition/Cross- Petition on 26th February, 2019. Supported by a 5 paragraphed Verifying Affidavit deposed to by the Respondent herself.

Subsequently, however, the Respondent filed a Further Amended Answer and Cross- Petition dated 11th March, 2021, filed same day, along with a 4 paragraphed Verifying Affidavit deposed to by the Respondent herself. Whereof the Respondent/Cross Petitioner sought for the following reliefs:-

> ***"(a). Decree of Dissolution of the marriage between the Cross-Petitioner and the Cross-Respondent on the ground that the marriage has broken down irretrievably.***
>
> ***(b). Sole custody of Abigail Bon. Nwakanma, the only child of the marriage to the Cross-Petitioner.***
>
> ***(c). The sum of N10, 000, 000.00 (Ten Million Naira) as general damages against the Cross-Respondent for inflicting grievous bodily harm on the Cross-Petitioner and a lifetime medical condition.***
>
> ***(d). The sum of N6, 000, 000.00 (Six Million Naira only) for settlement of property and for the totaled Mercedes Benz CLS S550 (2010 Model)***
>
> ***(e). The sum of N3, 000, 000.00 annually for the upkeep, maintenance and the welfare of the child of the marriage, Abigail Bon. Nwakanma from June 2018."***

The Amended Answer/Cross Petition was settled by Elvis E. Asia/Abubakar Abdulkarhman for the Cross- Petitioner.

Meanwhile, in response to the above, the Petitioner/Cross- Respondent filed a reply to the Further Amended Answer to the Petition and Cross-Petition dated 29th of March 2021 but filed on 31st March, 2021, containing proposed arrangement for the child of the marriage, where the

Petitioner/Cross-Respondent sought for among other reliefs joint custody of the child of the marriage and monthly upkeep allowance and school fees of his daughter in the sum of N100, 000.00 only on monthly basis.

During trial, the Petitioner testified as Pw1 and tendered two Exhibits namely:-

(1). Marriage certificate of the parties dated 22nd June, 2013 marked Exhibits A.

(2). A receipt issued by AUTO V.C. GLOBAL CONCEPT LTD to K.C. NWAKANMA, in the amount of one Million Two Hundred Thousand Naira only, marked Exhibit B.

Pw1 was cross examined by the Respondent/Cross- Petitioner herself.

At the close of the Petitioner's case, the Respondent equally testified and several Exhibits were tendered in evidence through her as follows:-

(1). A bundle of documents containing a certificate of compliance pursuant to Section 84 of the Evidence Act 2011, photocopies of mobile phone text message and bank transaction alerts, a breakdown of school fees and a review of fees for the sage school marked Exhibits C, C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, C13 and C14 respectively.

(2). Photocopies of a Zenith Bank e-mail statement and evidence of transaction on a Polaris Bank Account marked Exhibits C15 and C16 respectively.

(3). Two receipts issued by Aider-wood International School (A.I.S) with receipt numbers 0568 and 0576 marked Exhibits D and D1 respectively.

(4). Two bank slips for instant transfer marked Exhibits D2 and D3 respectively.

(5). Access Bank slip of N295, 000.00 marked Exhibit D4.

(6). A school slip titled "we are going on a field trip" marked Exhibit D5.

(7). 6 Sage School receipts with Nos. 1009, 0983, 1138, 0959, 1085, 0843, marked Exhibits D6, D7, D8, D9, D10 and D11 respectively.

(8). Photocopies of two pages of mobile phone text messages and bank alert marked Exhibits E and E1 respectively.

(9). A Certificate of Compliance pursuant to Section 84 of the Evidence Act, 2011, marked Exhibit E2.

(10). A bundle of documents containing Electricity Bills/payment/emails, Quick tellers, and Sahad Stores, photocopies of POS alerts, marked Exhibits E -3 – E29 respectively.

(11). A bundle of Sahad Stores sales receipts marked collectively as Exhibit F.

(12). A bundle of documents containing a certificate of compliance and 6 pages of e-mail marked Exhibits F1, F2, F3, F4, F5, F6 and F7 respectively.

(15). Medical Reports from St. Emmanuel Eye Care Services, Limi Multi-Speciality Hospital, Dr. Hassan's Hospital & Diagnostic Centre, Zankli Medical Report dated 21st November, 2019 marked Exhibits F8, F9, F10, F11, F12, and F13 respectively.

(16). A letter of gift dated December 3, 2013, marked Exhibits G.

(17). A petition written by Paul Erokoro & Co dated 7th June, 2019, marked Exhibit H.

(18). A Petition written by Margarete Bon. Nwakanma dated 13th November, 2019, marked Exhibit I.

Now, having considered all the processes filed in this Petition and Cross-Petition, and having considered the submissions of Counsel on both sides well canvassed in the respective written addresses of parties, I shall formulate two issues for determination to wit:-

"(1). Whether the marriage in this has broken down irretrievably for the Court to consider dissolution of the marriage?

(2). Whether the Petitioner/Cross-Respondent or Respondent/ Cross Petitioner has satisfied the Court to be entitled to the award of custody as sought by each of the parties?

On issue one, let me begin by stating that under and by virtue of Section 15(1)(2) of the Matrimonial Causes Act, Cap M.15 Laws of the Federation of Nigeria, a Court, hearing a Petition for dissolution of marriage shall hold the marriage to have broken down irretrievably, if and only if, the Petitioner satisfies the Court on at least one of the grounds enumerated under Section 15(2) a – h, thereof.

See : **IKE V IKE & ANOR (2018) LPELR- 44782 (CA) per EKPE, J. C. A** at pages 10-16, paragraphs C-A, where the Court held as follows:-

> ***"For a Petition for the Dissolution of marriage to succeed, the Petitioner has to prove at least one of the ingredients contained in Section 15 (2) of the Matrimonial Causes Act, even if the divorce is desired by both parties".***

In this case, by the amended petition, the Petitioner relies on two grounds for seeking the dissolution of the marriage i.e:

(1). Intolerable behaviour
(2). Cruelty on the part of the Respondent.

Now, for ease of reference, I shall reproduce the grounds enumerated under Section 15(2)(a)-(h) as follows:-

> ***The Court having a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the Petitioner satisfies the Court of one or more of the following facts:-***
>
> ***(a). That the Respondent has willfully and persistently refused to consummate the marriage;***
>
> ***(b). That since the marriage the Respondent has committed***

adultery and the Petitioner finds it intolerable to live with the Respondent

(c) That since the marriage the Respondent behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

(d). That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition.

(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.

(f) That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition.

(g) That the other party to the marriage has for a period of not less than one year, failed to comply with a decree of restitution of conjugal rights made under this Act;

(h) That the other party to the marriage has been absent from the petitioner for some time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

Looking at the above grounds, although cruelty (which is one of the old grounds for seeking dissolution) is not a ground under the Section above, the 1st ground is intolerability which falls under Section 15(2)(c) of the Matrimonial Causes Act (supra).

Therefore, for the Petitioner to succeed, he must of necessity be able to prove same.

In his evidence before the Court when he testified in chief the Petitioner informed the Court that he got married to the Respondent on the 23rd of June 2013 at Saint Mathew Anglican Church Maitama, Abuja and also had a Court Marriage at the Federal Registry located at the Central Area, Abuja, whereof the marriage certificate i.e Exhibit A, was issued to the parties therein.

The Petitioner highlighted several grounds for bringing the Petition first of which is that prior to the marriage he had asked the Respondent about her Genotype and she told him that it was AA, that he had to ask her because he himself is AS.

According to the Petitioner, the Respondent gave birth to their first child in America where she informed the Petitioner that their child is AS when a test was conducted.

He alleged that the Respondent had lied to him about the Genotype from the beginning.

Petitioner testified that he feared having another medically challenged child and decided not to have any more children with the Respondent. But, on advice of a family Doctor, the couple tried and subsequently had another child a boy, who sadly passed away shortly after the birth. The Petitioner alleges that the child died due to negligence of the Respondent who failed to heed to advice of the Doctor that she should not leave the hospital with the child, but stay there overnight.

Petitioner equally alleged that anytime he tried to correct the Respondent on issues, that she would have access to a knife cutting his shoes and clothes. That on one occasion when he fell asleep in the sitting room at about 3:30am, he said he felt someone standing before him, he opened his eyes and saw that it was the Respondent standing there. That when he flew up, the Respondent ran away and he saw her holding something which he said he thought was a knife. Petitioner further stated he went to the kitchen to count the number of knives they had and that out of the seven, it was short of two. He said that at that point he knew he was no longer safe in the house.

Another issue the Petitioner said he has with the Respondent is that she has the habit of giving almost everything he bought for her to Christ

Embassy Church, including a Brand New Mercedes Benz CLS 550 without his consent. He testified that he bought her expensive wrist watches for her and she will give it out to the Church all in the name of paying tithe. Petitioner said it was the same with laptops etc.

Other complaints by the Petitioner include allegations that the Respondent on occasions would harass his neighbours and female colleagues in his office and even threatened a female neighbour with a knife which was reported to the Police. The Petitioner further testified that the Respondent has not been on good terms with his siblings due to the insults she gives them. He testified that he eventually left the matrimonial home in June of 2018.

But, prior to his departure, Petitioner states that he was solely taking responsibility of the upkeep of the house including house and car repairs, going to market himself etc. That he stopped giving money to the Respondent because she would share it with her brothers.

According to the Petitioner, when he witnessed some unusual behaviours from the Respondent he adviced her to visit a psychiatric hospital because he didn't like the way his household was run. He stated that the Respondent gave their househelps harsh treatment as she would beat them mercilessly including an old woman that came as a Nanny.

That on one occasion, she beat up a house help who fainted and was rushed to the hospital where the doctors called the Petitioner and adviced him to control the Respondent's anger to avoid such cases because such cases they are usually reported to NAPTIP.

Petitioner, however, informed the Court that since he left, he has been taking care of his daughter's needs and even opened an account for her in January of that year as he would not send money to the Respondent who would give it to her brothers and the Church.

During cross-examination, he re-reiterated his position that he left the matrimonial home because he was living in fear in the house since the Respondent was in the habit of carrying knives. But, the Petitioner did admitted that he didn't have any proof to show he had been maintaining their daughter since he left their home.

On the issue of their daughter's Genotype, the Petitioner stated that it was the Respondent who informed him that the Genotype is AA at birth and that it was a miracle, since the hospital in America initially said the daughter is AS. Petitioner maintained that the Respondent had been deceiving him on this issue.

On the issue of their deceased son and why he died, still during cross examination, the Petitioner said that he was not around when he lost his son, but when he received the news, he immediately flew back to Abuja and remained adamant that it was the refusal of the Respondent to leave the baby overnight in the hospital that resulted in his death. According to the Petitioner the hospital even gave the Respondent Indemnity Form to fill to absolve them of liability and she still refused to leave the baby in the hospital. But the Petitioner denied that it was lack of coverage for their son's health plan in HYCIEIA that caused the death. He maintained that the health plan covered the family and it was the Respondent who knew everything about it. He equally maintained that the Respondent has on occasion used knife to cut up all his shoes when he was at work.

On whether there was domestic violence at anytime in their marriage, the Petitioner stated that he'd never raised his hands on a woman before. When re-examined, the Petitioner stated that the Respondent never informed him that she was refused medical attention by the H.M.O and that she has never shown him the Genotype report of his daughter.

In her further amended answer to the Petition and cross- Petition the Respondent/Cross- Petitioner denied all the Petitioner's allegations and states that on the contrary it was the Petitioner who was abusive in the marriage who constantly accused her of infidelity and having several admirers. And that for reasons best known to the Petitioner he Petitioner deserted the house in June 2018 and informed the Respondent that he was leaving and never coming back.

That she made all efforts to convince the Petitioner to stay married before he packed and left, but he refused.

In her evidence -in-chief as Dw1, the Respondent/Cross Petitioner denied the allegations against her and went further to allege that there were several violent outburst and instances of domestic violence against her and sexual abuse of their daughter.

According to the Respondent, there were also instances when the Petitioner threatened to not only divorce the Respondent but also to cart and cargo the belongings of the Respondent and their daughter and sent to their father's house and to move in his girlfriend into their home.

Dw1 said:-

> "***On one occasions, he had come home drunk and he all of sudden said to never believe any word our daughter says, who was only three years at the time. And, I had said I don't think it is a good approach as we would normally converse on issues. He looked Ok at the moment I turned to give my daughter a hug, I received a huge blow to the back of my head. This led to cervical spondilosis, a disease of the spine, which I suffer till this day."***
>
> ***Another incident is, on a night he came home and I tried to explain an incident about the generator, reporting the security officer, he gave me a punch to my eye which led to an eye defect that I still experience till this day.***
>
> ***On another evening after obeying his instruction to wait at a family friend's house until they were able bring us back, when he got home he started complaining and yelling that we came home late. After explaining to him and reminding of his instruction that we wait, when I had called him to pick us up since it might take a long time for them to drop us off, he marched towards me and gave me two hard slaps against my ears, which affected my jaw, showing symptoms of a jaw dislocation and I suffer severe pains from this incident. Two months after the delivery of our 2nd child on our way to pick up the children, in response to deliberations about my daughter's school fees, he gave me three punches on my belly, my stomach."***

Dw1 equally went on to mention several other occasions when she alleged that the Petitioner had punched her eye which led to an eye defect which she is still suffering from, and that on another occasion Petitioner slapped

his hand twice against her ears showing symptoms of a jaw dislocation resulting in severe pains.

According to the Respondent on another occasion, he gave the Respondent three punches on her belly. She stated that although the Petitioner used to pay their daughter's school fees, he stopped after he left the matrimonial home. And that since then, the Respondent has been the one solely paying for the upkeep of her daughter including school fees and other expenses.

According to the Respondent on several occasions, the Petitioner threatened to kidnap her daughter and to kill the Respondent.

That the most recent was a text message threatening to kill Respondent's mother and the Respondent and to take away their daughter.

Respondent testified that they had to flee from their home and reported the matter to the Police as well as the American Embassy as her daughter is an American citizen.

The Respondent/Cross- Petitioner equally alleges that she contracted an H.P.V from her husband which led her to receive some treatments due to the advice from the N.G.O through her office who conducted the test on her, stating that if it was not properly treated, within three years, it could cause cervical cancer.

During cross-examination apart from denying that she was angry whenever the Petitioner spends time with friends and colleagues outside the house, the Respondent admitted that she is a Devout Christian, and nobody can tell her anything to stop her giving Tithe in Church. When asked about her allegation of Domestic Violence against the Petitioner, the Respondent admitted she only made a formal report after June 2018.

In reply to the Further Amended Answer to the Petition/Cross- Petition, the Petitioner denied all the Respondent's allegations in her Further Amended Answer to the Petition/Cross- Petition, and equally re-eiterated he stood by all the facts he presented in his amended Petition.

In this case, there's no doubt that the Petitioner's first ground in seeking dissolution of the marriage is hinged on Section 15(2)(c) of the Matrimonial

Causes Act (supra) (which is the same with the Cross- Petitioner's first ground for equally seeking dissolution of the marriage).

It is the submission of Respondent's Counsel in the final Written Address on the issue of dissolution of the marriage vis-a-vis Section 15(2)(c) of the Matrimonial Causes Act (supra) that from the pleadings and evidence before the Court, the Petitioner has failed to establish his Petition. The basis of learned Counsel's argument is that Section 15(2)(c) of the Matrimonial Causes Act is not left at large. Since Section 16(1) of the Act defines and circumscribes the ambit of the ground.

Submitted moreso, that looking at the provisions of Section 16(1) of the Matrimonial Causes Act, which set out in detail what a Petitioner must establish to be entitled to a decree of dissolution of his marriage under Section 15(2)(c) of the Act, the burden is on the Petitioner to prove not only the undesirable behaviour but also that he finds it intolerable. And that if he is unable to do so, his Petition cannot succeed.

Counsel relied on several authorities cited on record including the cases of ***OGUNTOYINBO V OGUNTOYINBO (2017) LPELR-42174 (CA); BIBILARI V BIBILARI (2011) LPELR-4443 (CA).***

In essence, learned Counsel's contention is that none of the circumstances that would justify the dissolution of marriage on grounds of Section 15(2) and 16(1) of Matrimonial Causes Act, have been proved by the Petitioner.

On the issue of genotype, the allegation of violence by the Respondent etc, Counsel submits have not been proved by credible evidence in this case.

Submitted in that regard that although Section 16(1) of the Matrimonial Causes Act may not be exhaustive of the violent behaviours that can justify dissolution of marriage on the basis of Section 15(2)(c) (supra), the facts in Section 16(1)(e) suggests that the act of violence must be in respect of which the Respondent has been convicted.

Argued that in this case, there is no evidence of any act of violence suffered specifically by the Petitioner, none was reported to the Police or even investigated. That such allegation must be proved beyond reasonable doubt, and that in this case, it was not proved by the Petitioner.

Counsel relied on the case of ***IBRAHIM V IBRAHIM (2007) 1 NWLR (Pt.1015) 383, per ARIWOOLA J.C.A (as he then was).***

Counsel further argued that the allegation of mental incapacity of the Respondent and anger exhibited by the Respondent are a mere figment of Petitioner's imagination since he would allow the Respondent to take care of their child.

Counsel therefore argued in that respect that it is trite that he who alleges must prove and that sentimental cannot take the place of the law. Counsel relied on Sections 132, 135 and 169 of the Evidence Act 2011. ***IMIANA V ROBINSON (1979) 3-4 SC 1; ACHIBONG V ITA (2004) 2 NWLR (Pt.858) 890,*** to name a few, and urged the Court to hold in favour of the Respondent.

On the other hand, learned Counsel argued that the Respondent/Cross-Petitioner has proved her allegation based on Section 15(2)(c)(d) and (f) of the Matrimonial Causes Act.

It is submitted on this premise, on intolerability that Respondent has led uncontroverted evidence before the Court that the Petitioner deserted the Respondent in June 2018 and that he is a drunkard who resorts to violence. Reference was made to the Exhibits particularly F series, i.e the medical reports.

Further submitted that there is also evidence before the Court that the only child of the marriage was sexually abused by the Petitioner by fondling her while putting her on the car seat and inserting his hand in her vagina. That the child confessed this while receiving a sex education talk from her mother, that her father put his hand in her vagina.

That the evidence, Respondent even wrote to the Police in this regard was also tendered before the Court. Furthermore, that it is equally alleged that Respondent contracted a sexually transmitted infection from the Petitioner.

It is the Counsel's contention likewise that apart from intolerable behaviour of the Petitioner, the Petitioner has admitted to have left the Respondent and the only child of the marriage without means of support, thereby proving the grounds under Section 16(1)(b) and (c) of the Act.

It is submitted moreso, that the Respondent's evidence as stated above was not materially controverted during cross examination, therefore it is deemed admitted and should be acted upon by the Court.

Counsel relied on ***MTN V CORPORATE COMMUNICATION INVESTMENT LTD (2019) LPELR-47042 (SC); CAR NIG LTD VS ADEGBOYE (1985) 2 NWLR (Pt.8) 453 @ 461-462 BC.***

Counsel also relied on the cases of ***NANNA V NANNA (2009) LPELR-7485 (CA); ODOGWU V ODOGWU (1992) 2 NWLR (Pt.225),*** in support of his submissions that Respondent/Cross- Petitioner has proved desertion by the Petitioner in this case pursuant to Section 15(2)(d) of the Matrimonial Causes Act.

Counsel equally relied on ***OGUNJOBI V OGUNJOBI (2021) LPELR-52894 (CA); NWANKWO V NWANKWO (2014) LPELR-24396; PERRY V PERRY (1952) 1 ALL ER 1076 @ 1082 and Section 18 of the Matrimonial Causes Act.***

All the above arguments are re-eiterated in Respondent/Cross- Petitioner's reply on points of law, in arguing that the Petitioner has not brought himself within any of the factual situations enumerated under Section 16(1) of the Matrimonial Causes Act to prove intolerability, under Section 15(2)(c) of the Act, and that the Petitioner has equally failed to prove the allegation of cruelty.

Meanwhile, it is argued for the Petitioner in the Written Address particularly in paragraph 3.2 – 3.6 thereof, that the Petitioner has proved the ground of intolerability alleged against the Respondent. And that the facts in Section 16 of the Matrimonial Causes Act are not exhaustive and therefore the Courts have expanded them to accommodate the times in our changing society. Particularly with reference to the opening sentence of Section 16(1) "without prejudice to the generality of the Act."

Therefore, learned Counsel argued that other types of behaviour not mentioned in the section would meet the requirement of Section 15(2)(c) of the Matrimonial Causes Act, subject to the discretion and conviction of the Court.

Counsel equally relied on the case of ***NANNA V NANNA (supra) BIBILARI V BIBILARI (supra)*** and placed reliance on the facts relied upon by the Petitioner in the Petition, to argue that the behaviour of the Respondent is grave and weighty in nature, and a reasonable man cannot endure same.

Submitted on the attempted killing of the Petitioner that Respondent/Cross-Petitioner did not inform the Court of her response to her father which indicates she could not confess to her father as she did to the Petitioner/Cross- Respondent, that indeed she had attempted to kill the Petitioner, and that she did not know what came over her.

Counsel therefore argued that an attempt on the Petitioner's life is a repugnant behaviour as envisaged in the cases of ***KANT V KANT (1972) 1 WLR 955 @ 960; SODIPO V SODIPO (1990) 5 WBNN 98,*** to name a few.

On the assertion in Respondent/Cross- Petitioner's address in their paragraph 47, that the act of violence must be proved beyond reasonable doubt, learned Counsel argued that this assertion is wrong because Section 16(1) of the Matrimonial Causes Act did not contemplate proving beyond reasonable doubt any attempt to kill in a matrimonial proceeding which is civil.

Counsel relied on Section 82(1) of the Matrimonial Causes Act as well as the case of ***OMOTUNDE V OMOTUNDE (No citation).***

Counsel further argued that cruelty can be established where there is reasonable apprehension of such danger to life, health or wellbeing of a person.

Counsel relied on the cases of ***SIYANBOLA V SIYANBOLA (1957) WRNLR 42; OGUNTOYINBO V OGUNTOYINBO (supra).***

Submitted moreso that once there is evidence of probable commission on an action, it will amount to proving same by preponderance of evidence, and the Court is urged to hold that the Respondent's behaviour is within the contemplation of Section 15(2)(c) of the Matrimonial Causes Act, as it amounts to cruelty. Counsel further relied on Order V Rule 12(2) paragraph C of the Matrimonial Causes Rules in interpreting Section 15(2)(2) of the Matrimonial Causes Act. He equally relied on ***GOLLINA V GOLLINA (1963) 2 ALL ER 966.***

Submitted in that regard that the cruel actions as seen from the Respondent/Cross- Petitioner's malicious intent to inflict physical and mental suffering on the Petitioner/Cross-Respondent includes but not limited to negligence, damages to personal effects, constant and deliberate disposition of family properties without consent, use of insulting and annoying words on friends and neighbours resulting in criminal complaints, animosity with siblings of the Petitioner and nagging.

Counsel relied on ***BASSEY V BASSEY (1928) 10 – 12 (CHC), 242; JHONSON V JHONSON (1922) 11 (CHC) 94, OBAYEMI V OBAYEMI (1967) LPELR-25336 (SC)*** to argue that the Courts in these cases considered such behaviours and granted divorce.

That in addition the Respondent had meted out violence to domestic staff and Petitioner's evidence was uncontroverted. Counsel relied on the case of ***ADAMU V STATE (2018) LPELR-44941 (CA).***

On the Respondent's Cross-Petition, learned Counsel argued that there's no Cross- Petition here since the learned Respondent's Counsel applied to the Court to allow Respondent/Cross- Petitioner to open her case after closing her defence.

Counsel argued that such a procedure was strange and the Court in its wisdom refused to allow it and consequently the Cross-Petition was withdrawn. Therefore, learned Counsel argued that hence so, the Cross-Petition is not before the Court and should be deemed so, that since a Cross-Petition and Cross- Cross-Petition are separate claims, independent of each other, that the Respondent/Cross- Cross-Petitioner has the burden to prove the Cross-Petition whether or not the Cross-Petitioner discharged his own burden. Counsel relied on the case of ***OTTI V OTTI (1992) 7 NWLR (Pt.252) 187 @ 212.***

However, Counsel submitted assuming without conceding that the Cross-Cross-Petition was heard, learned Counsel argued that the Respondent/Cross- Petitioner was unable to prove the allegations of intolerable behaviour of the Petitioner, such as being a drunk and being violent to the Respondent/Cross- Petitioner.

Reference was made to paragraph 9(a)(ix) of Respondent's answer to the Petition, where Counsel submits that Respondent merely denied the fact therein and stated that the Petitioner/Cross-Respondent always comes home late and drunk and sometimes violent but did not specify any of the alleged injury sustained at the times she was violated by the Petitioner/Cross-Respondent at the trial while drunk.

Counsel further argued that the vital consideration when the allegation is made that a man is a habitual drunkard is the condition which his addiction to drink produces and not necessarily or solely the extent to which he partakes to liquor. Counsel relied on the case of ***ALEXANDER V ALEXANDER (1962) 3 FRL, 84.***

Counsel further argued that Exhibits F8 – F13 tendered in evidence in proof of the habitual drunkenness or behaviour of the Petitioner/Cross-Respondent are not tied to any violent actions or behaviour alleged by the Respondent/Cross- Petitioner, particularly when Exhibits F8-F13 were objected to anchored on the doctrine of lis pendis which prevents the admission of the documents made pende lite, pursuant to Section 83(3) of the Evidence Act.

Counsel relied on ***ARAB CONTRACTORS NIG. LTD V UMANAH (2013) 4 NWLR (Pt.1344) 323 at 347, OGIDI V EGBA (1999) 10 NWLR (Pt.621) 4; ABDULLAHI V HASHIDU (1994) 4*** to name a few.

Moreso, learned Counsel argued that Exhibits F8-F13 do not show that facts therein were attributable to were domestic violence, and that the medical reports had to do with the tainted information provided by the Respondent/Cross- Petitioner and not as a result of independent investigation of the hospital, even more so when such reports ought to have been tendered through their makers so they could be cross-examined.

Counsel relied on several cases on this point including ***OPOLO V STATE (1977) 11 SC 6; OMEGA BANK LTD (2005) 8 NWLR (Pt.928) 541 @ 582, Para B, per WIKI TOBI JSC.***

On the two grounds of desertion and lack of sustenance alleged by the Respondent/Cross Petition, learned Counsel argued that these two facts

have equally not been proved by the Respondent/Cross- Petitioner and urged the Court to so hold.

Now having considered all the above evidence and submission made on both sides of the Petition, I shall begin by considering the two grounds predicating the Petition, earlier reproduced.

On the grounds of intolerability, the Courts in plethora of cases have held that for a Court to dissolve a marriage on grounds of intolerability, the act or acts complained of must be grave and weighty in nature, such that a spouse cannot reasonably be expected to live with.

See: ***IBRAHIM V IBRAHIM (2007) 1 NWLR (Pt.1015) 386*** of course in this case the Petitioner considers all the facts presented grounding this Petition to be grave and weighty in nature and therefore intolerable, hence the Petition for dissolution of the marriage.

In Nigeria, a Court cannot dissolve a marriage or declare a marriage to have broken down even though it appears the marriage has broken down irretrievably unless one of the facts listed in Section 15(2) of the Matrimonial Cause Act is established by the Petitioner.

Now, it is trite that where a Petition for dissolution of marriage is founded on Section 15(2)(c) of the Matrimonial Causes Act such as in this case the Petitioner must satisfy the Court with any of the facts specified in Section 16(1) a - h of the Matrimonial Causes Act.

For ease of reference, I hereby reproduce the entire Section 16(1) of the Matrimonial Causes Act to wit:

> ***Section 16(1). Without prejudice to the generally of Section 15(2)(c) of this Act, the Court hearing a petition for a decree of dissolution of marriage shall hold that the Petitioner has satisfied the Court of the fact mentioned in the said Section 15(2)(c) of this Act if the Petitioner satisfies the Court that:***
>
> ***(a). Since the marriage, the Respondent has committed rape, sodomy, or bestiality or***

(b). Since the marriage, the Respondent has, for a period of not less than two years:

(i). Been a habitual drunkard; or

(ii). Habitually been intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug or preparation, or has for a such a period, been a habitual drunkard and has, for the other or parts of the period, habitually been so intoxicated; or

(c). Since the Marriage, the Respondent has within a period of not exceeding five years.

(i). Suffered frequent convictions for crime in respect of which the Respondent has been sentenced in the aggregate to imprisonment for not less than three years; and

(ii). Habitually left the Petitioner without reasonable means of support, or

(d). Since the marriage, the Respondent has been in prison for a period of not less than three years after conviction for an offence punishable by death or imprisonment for life or for a period of five years or more, and is still in prison at the date of the petition; or

(e). Since the marriage and within a period of one year immediately preceding the date of the petition, the Respondent has been convicted of;

(i). Having attempted to murder or unlawfully to kill the petitioner; or

(ii). Having committed an offence involving the intentional infliction of grievous harm or grievous hurt on the Petitioner or the intent to inflict grievous harm or grievous hurt on the Petitioner; or

(f). The Respondent has habitually and wilfully failed, throughout the period of two years immediately preceding the date of the Petition, to pay maintenance for the Petitioner:

(i). Ordered to be paid under an Order of, or an Order registered in, a Court in the Federation or

(ii). Agreed to be paid under an agreement between the parties to the marriage providing for their separation; or

(d). The Respondent:

(i). Is, at the date of the petition, of unsound mind and unlikely to recover; and

(ii). Since the marriage and within the period of six years immediately preceding the date of the petition, has been confined for a period of, or for periods aggregating, not less than five years in an institution where persons may be confined for unsoundness of mind in accordance with law, or in more than one such institution."

It is submitted for the Respondent in the Written Address as well as the reply on points of law that in this case the Petitioner/Cross-Respondent has failed to establish any of the facts highlighted under Section 16(1) of the Matrimonial Causes Act to the satisfaction of the Court. Counsel relied on authorities including ***OBAHAYA V OBAHAYA (supra)*** a 2022 Court of Appeal decision.

Now from the evidence led by the Respondent lying about her genotype prior to the marriage in this case, the conducts adjudged to the intolerable include, nagging, destroying Petitioner's personal items, giving out their things such as a brand new Mercedes to the Church as Tithe. Others are being abusive to domestic staff, neighbours etc, and so on.

Now while these behaviours are not commendable and very inconveniencing and even serious as it affects the dignity of persons as alleged by the Petitioner, in my view they do not fall within any of the facts listed under Section 16(1) of the Matrimonial Causes Act to qualify as intolerable behaviour.

The Court has no discretion in adjudging intolerable behaviour such must fall within the facts so highlighted.

See: ***OBAHAYA V OBAHAYA (supra); NANNA V NANNA (2006) 5 NWLR (Pt.966); BIBILARI V BIBILARI (2011) LPELR-4443(CA); AKINBUWA V AKINBUWA (1998) 7 NWLR (Pt.559).***

In the case of ***BIBILARI V BIBILARI*** (supra), the Court ***per Galinje JSC held at PP: 33-34, Paras C – A*** thus:-

> ***"In a Petition for dissolution of marriage, the Petitioner must plead and prove that the marriage has broken down irretrievably.***
>
> ***In doing this, the Petitioner must be able to bring himself within one or more facts enumerated in Section 15(2) a – h of the Matrimonial Causes Act Cap 220 LFN, 1990 before he can succeed in the petition."***

See: ***NANNA V NANNA (2006) 3 NWLR (Pt. 966) 1; BIBILARI V BIBILARI (2011) LPELR- 4443 (CA); DAMULAK V DAMULAK (2004) 8 NWLR (PT.874) 151 and OGUNTOYINBO V OGUNTOYINBO (2017)***

LPELR-42174, the Court of Appeal, per Iyizoba JCA held at PP: 8 - 14, Para E – A as follows:-

> ***"...The duty is on the Court to consider whether the alleged behaviour is one in which a right thinking person would come to the conclusion that the Respondent has behaved in such a way that the Petitioner could not reasonably be expected to live with him taking into account the whole of the circumstances, the characters and personalities of the parties..."***

However, I have considered the fact that the Petitioner has alleged that the Respondent has tried to kill him. The learned Petitioner's Counsel in the Written Address has argued that this fact alone constitutes a conduct which is grave and weighty so as to constitute intolerable behaviour on the part of the Respondent.

It is one of the facts highlighted under Section 16(1) of the Matrimonial Causes Act.

However, from my observations having looked carefully at the case of OBAHAYA V OBAHAYA (supra) any element of serious threat to life or apprehension of uncontrollable anger could ground a Petition of this nature.

In this case, the Respondent has denied the allegation that she attempted to kill the Petitioner.

In his evidence, the Petitioner testified that he was asleep one day and he woke up around 3:00 am and saw the Respondent standing over him with an object which he said "I think it was a knife." This means he was not certain whether it was a knife or not. Although during cross-examination he testified that the feared for his life when the incident happened and he even reported to the Respondent's father.

I find his evidence on this issue to be unshaken. The Petitioner maintained that he feared for his life as the Respondent's behaviour made him fearful thereby constituting a conduct which is no doubt intolerable and a fact which he cannot reasonably be expected to live with the Respondent.

Now, on this premise, I would have to agree with the submissions of Petitioner's Counsel that Section 16(1) of the Act is not exhaustive, and in my view threat to life or injury constitutes a grave and weighty behaviour to constitute even cruelty.

Marriage is a contract, and when a party is under apprehension of any kind of danger or threat to their life, the conduct complained of will no doubt be a breach of one's Fundamental Human Rights (particularly right to life) which is protected under Section 33(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). I so hold.

See the case of ***OGUNTOYINBO V OGUNTOYINBO (supra).***

Therefore, looking at the facts and circumstances of this case, even on standard of minimal proof by preponderance of evidence, the Petitioner has been able to prove that the Respondent's behaviour is intolerable and he cannot reasonably be expected to live with her pursuant to Section 15(2)(c) of the Matrimonial Causes Act, thereby proving that this marriage has broken down irretrievably.

The Respondent/Cross- Petitioner has equally asked the Court to dissolve the marriage on grounds of intolerability under Section 15(2)(c) of the Act, desertion under Section 15(2)(c) as well as the allegation that the Petitioner is an habitual drunkard who was violent to the Respondent/Cross-Petitioner, in addition to the allegation that the Petitioner sexually abused the child of the marriage, among other allegations in the Cross- Petition.

Now, let me first of all consider the arguments of learned Petitioner's Counsel that there's no Cross- Petition in this case.

I agree with the Counsel's submission on this issue that the Respondent/Cross- Petitioner had testified and closed her case after she was duly cross-examined, but her Counsel adopted a strange procedure which the Court rightly discountenanced. Let me state that the Respondent/Cross- Petitioner indeed gave her evidence on oath and was duly cross-examined. Any strange procedure which her Counsel attempted to adopt during the hearing cannot be the fault of the Respondent/Cross-Petition so as to nullify her Cross- Petition nor her evidence.

In the circumstances therefore, and in the interest of justice this Court shall adopt evidence led by the Respondent on both her evidence in answer to the Petition as well as her Cross- Petition. I so hold.

Now, coming back to the issues at hand, let me first of all treat the issue of desertion.

Desertion is one of the grounds for dissolution of a marriage and in deserving cases is applicable to both the Petitioner and the Respondent.

This ground is enumerated under Section 15(2)(d) of the Matrimonial Causes Act which provide:-

> ***"That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition."***

Although it is argued for the Respondent in the address that four essential elements of desertion have been established by the Respondent in this case i.e:-

(i). Physical separation;

(ii). Intention to remain permanently separated;

(iii). Absence of other spouse's consent.

(iv). Absence of justification as highlighted in ***ODOGWU V ODOGWU (1992) 2 NWLR (Pt.225); NANNA V NANNA (supra)***.

It must be borne in my mind that from the wordings of Section 15(2)(d) of the Act reproduced above, the desertion in any case, must be for a continuous period of at least one year immediately preceding the presentation of the Petition.

In this case, the Petition as stated earlier was filed on 28th day of November 2018, while according to the Petitioner, he left the matrimonial home in June, 2018, this clearly falls short of the period envisaged by law to prove desertion. Therefore, I would have to agree with the Petitioner Counsel's

submission in paragraph 8:1 of the address that the Cross- Petition has failed on this ground. I so hold.

I shall now consider the remaining grounds under intolerability.

Now, the Respondent/Cross- Petitioner has alleged in her Answer/Cross-Petition that the Petitioner is a habitual drunkard who sometimes resorts to violence.

That on occasions, he has threatened to kill her and has constantly subjected the Respondent/Cross- Petitioner to violent attacks at every slightest issue, whether real/imagined.

However, it was argued for the Petitioner in paragraph 5:5 of the address that although this fact is alleged in Paragraph 9(a)(ix) of the Respondent's answer to the Petition, she did not specify any of the alleged injury sustained at the times she was violated by the Petitioner at the time whilst drunk.

Submitted moreso in paragraph 5:6 of the address, that the vital question for consideration when the allegation is made that a man is a habitual drunkard is the condition which his addiction to drink produces and not necessarily or solely the extent to which he partakes in liquor.

I have looked carefully at the evidence of the Respondent/Cross- Petitioner as Dw1 and this is an extract of her evidence -in-chief as follows:-

> ***"On one of the occasions, he had come home drunk and he all of sudden said to never believe any word our daughter says, who was three years at the time. And, I had said I don't think it is a good approach as we would normally converse on issues. He look ok at the moment I turned to give my daughter a hug, I received a huge blow to the back of my head. This lead to cervical spondilosis, a disease of the spine, which I suffered till this day.***
>
> ***On another evening after obeying his instruction to wait as a family friend's house until they were able to bring us back, when he got home he started complaining and yelling that we came home late. After explaining to him and reminding of his***

instruction that we wait, when I had called him to pick us up since it might take a long time for them to drop us off, he marched towards me and gave me two hard slaps against my ears, which affected my jaw, showing symptoms of a jaw dislocation and I suffer severe pains from this incident. Two months after the delivery of our 2nd child on our way to pick up the children, in response to deliberations about my daughter's school fees, he gave me three punches on my belly, on my stomach."

In response to the above, the Respondent/Cross-Petitioner equally tendered several Exhibits in proof of her allegations that the Petitioner/Cross-Respondent was violent, and had physically abused her.

Well, I have considered the submissions of learned Petitioner's Counsel particularly on Exhibits F8 – F13, which Counsel contends does not show any findings that the injuries therein were caused by physical violence.

In addition, learned Counsel contends that the documents are tainted having not been tendered by their maker so they could be cross-examined, which is the position of the law.

I would have to agree with Counsel on this issue. The makers of these documents no doubt would be in the best position to explain to the Court their findings and any correlation between the reports and the allegations made against the Petitioner by the Respondent.

Therefore, in the absence of the makers who were not called to testify and be subjected to cross examination, I am afraid the Court cannot ascribe any probative value to them. I so hold.

However, having carefully considered the entire evidence adduced by the Respondent/Cross- Petitioner, particularly her oral evidence before the Court, I am of the firm view that even without the medical reports or Exhibits F8 – F13, her evidence is sufficient to prove that indeed the Petitioner has been violent to her.

Moreso, I've considered another allegation made by the Respondent that the Petitioner sexually abused their daughter. This is an extract of her evidence-in-chief thus:-

"I was abused physically. My daughter was also sexually abused by my husband. After the birth of my 2nd child, my husband, my daughter, my husband, I and the baby as we were leaving NISA PREMIER HOSPITAL IN 2017, I noticed that my husband was fondling my daughter's vagina whilst putting her in the car seat, my daughter also stated whilst re-enforcing a sex education talk as required by the school that her father put his hand in her vagina while they were on our matrimonial bed. I believe this incident occurred whilst I was in the hospital delivering our 2nd child. Those were the two instances I saw him do it aside from the perceptions of my insinuations.

Sequel to that, I reported the incident to the Police not immediately, but after he left. I was courageous enough to finally report to the Police in two occasions. Yes, I have evidence to show in that regard. Yes, this is one of the evidence."

Nevertheless, I've considered the fact that the Respondent/Cross-Petitioner did not raise this issue in her answer or Amended Answer/Cross-Petition. Neither did she cross-examine the Petitioner on this issue having conducted the cross-examination by herself.

Likewise, from her answer to the Petition as well as questions put to the Petitioner during his cross-examination, she implied that she begged the Petitioner not to leave the matrimonial home despite all these serious allegations.

There seems to be a material contradiction here to my mind.

However, I find that the Respondent/Cross- Petitioner hast thus far satisfactorily proved by her evidence that the Petitioner was habitually drunk and had physically assaulted and abused her by punching her several times, on her ears, eyes, stomach etc which is no doubt a cruel behaviour, grave and weighty enough to constitute intolerable behaviour, which the Respondent cannot reasonably be expected to live with. This is also in breach of her constitutional right to life and dignity under Sections 33(1) and 34(1) of the Constitution Federal Republic of Nigeria 1999 (as amended).

Thus, Respondent/Cross- Petitioner has equally been able to bring herself within the combined provisions of Section 15(2)(c) and 16(1)(b)(i) of the Matrimonial Causes Act, I so hold. Further proving that the marriage herein has no doubt broken down irretrievably.

This now brings me to the issue of custody of the sole child of the marriage.

Now, Section 71(1) of the Matrimonial Causes Act, (supra) provides thus:-

> ***"In proceedings with respect to the custody, guardianship, welfare, advancement or education of children of a marriage, the Court shall regard the interest of those children as the paramount consideration; and subject thereto, the Court may make such order in respect of those matters as it thinks proper."***

See: ***ODUOTE V ODUSOTE (2012) 3 NWLR (Pt.1288) 478; EZIAKU V EZIAKU (2018) LPELR-46373 (CA); ODOGWU V ODOGWU (1992) LPELR-2229 (SC); WILLLIAMS V WILLIAMS (1987) 2 NWLR (Pt.54) 66; NANNA V NANNA (2006) 3 NWLR (Pt.966) Page 1041.***

Well, I've considered the respective submissions of Counsel on this issue both persuading the Court to hold in favour of each party. However, the paramount consideration of the Court in that regard shall be the best interest of the child.

The Petitioner has made proposed arrangement for the child of the marriage in the reply to the further amended answer to the Petition.

The Respondent/Cross- Petitioner on her part seeks award of sole custody of the child in addition to **₦3, 000, 000** annually for maintenance and **₦10, 000, 000** general damages.

The Respondent/Cross- Petitioner wrote two Petitions to the Police i.e Exhibits I and H, during the pendency of this suit on 7th of June, 2019, as well as on 31st March, 2022.

In Exhibit I, the Respondent/Cross- Petitioner alleged among other things that the Petitioner/Cross Respondent had sexually abused their daughter which according to the Respondent was reported to her by their daughter and that she equally witnessed same on 28th of July 2017.

However, in the said Petition, the Respondent attributed her failure to initially report the matter to the Police to being fearful for her safety and to avert the Petitioner from getting joint custody of their daughter.

Submissions were equally canvassed for the Respondent in her final written address to contend that the Petitioner had sexually molested their daughter hence, the Respondent should be awarded sole custody.

On the other hand, the learned Counsel to the Petitioner has argued extensively on this issue in their address that the Respondent/Cross-Petitioner has not proved her allegations and that her case is full of inconsistencies.

Counsel further urged the Court to expunge Exhibits I and H, since they were procured by an interested party during the pendency of this suit.

Well, I have considered the evidence led and the arguments canvassed in that regard.

Now, let me state here that no doubt such unsavoury allegations bordering on the allegation of sexual abuse of a child by her own father is no doubt a matter of grave concern to the Court.

Having said that, I wish to highlight one or two facts worthy of consideration on this issue. Firstly, although the Respondent has made this allegation, I have observed it was never raised anywhere in her answer to the Petition/Cross- Petition nor in her Amended Answer to the Petition/Cross-Petition.

Secondly, the Respondent conducted the cross-examination of the Petitioner, personally by herself and there was nowhere this issue was raised. The allegation from the records of the Court was raised for the first time during trial.

Thirdly, according to the Respondent/Cross- Petitioner, in her Amended Answer/Cross- Petition, it is averred that when the Petitioner wanted to leave the matrimonial home, she pleaded with him to stay married. I have also observed that this was in line with some of the questions the Respondent had put to the Petitioner during his Cross- examination.

Now the question that comes to mind here is why would any woman who alleges that the father of her child has sexually abused that child beg him to remain in the marriage if that was the case?

Does it mean that, despite all the serious allegations in this case, including alleged attempt to abduct the child of the marriage the Respondent was willing to stay with the Petitioner and for her own daughter to be sexually molested continually?

In my view, the facts do not add up. I would therefore have to agree with the learned Petitioner's Counsel that the Respondent's case is full of inconsistencies.

Further to that the Report or Petition to the Police i.e Exhibit I was made during the pendency of this suit, and no other evidence was led by the Respondent to further corroborate this fact.

Therefore in my humble view Exhibits I and H having been procured during the pendency of this suit are inadmissible. I so hold.

See: ***ARAB CONTRACTORS NIG LTD V UMANAH (supra); OGIDI V EGBA (supra).***

The two Exhibits are hereby expunged.

I find the allegation made on the alleged sexual abuse of the child of the marriage and attempting to abduct her to be unsubstantiated and it is hereby discountenanced. I so hold.

Having said that, and bearing in mind that whatever decision the Court will make has to be in the best interests of the child, I have looked carefully at the proposal made by the Petitioner for joint custody.

It must be borne in mind that a close look at the proposal made in the Petitioner's reply to further Amended Answer to the Petition and Cross-Petition, will show that there's nothing there indicating what arrangements the Petitioner has proposed if granted joint custody. The child is still a minor. She would require a lot of care and attention. The Petitioner has informed the Court that he is a civil servant. So, who will take care of the

child while Petitioner is at work. There are many issues here which Petitioner has not proposed for the Court's consideration.

On the issue of maintenance, the Court shall be guided by the provisions of Section 71(1) of the Matrimonial Causes Act (supra), as well as case cited on record in the respective final written addresses.

I have equally considered all the proposal made by the Petitioner as aforesaid, including that he is on Grade Level 10 as a civil servant, and the proposal to pay N100, 000 monthly for the basic needs and school fees of their daughter.

In this case, it is conceded by Petitioner's Counsel in paragraph 10:4 of the address that in this case, there's no evidence as to the parties earning capacity.

I have equally considered the evidence led by parties and the arguments canvassed for the parties in their respective addresses on the claims of the Respondent to award of N10, 000, 000 for damages as well as N6, 000, 000 for settlement of property and N3, 000, 000.00 annually for maintenance.

However, it is my humble view that the Respondent/Cross-Petitioner has not satisfied the Court with any credible evidence that she is entitled to these reliefs.

On the claims for maintenance, the Respondent has not refuted the Petitioner's claim that he is a civil servant on Grade Level 10. There's equally no evidence before the Court to show that the Petitioner can afford to pay such exorbitant amount for maintenance.

Overall, I have considered the best interest of the child on the award of custody and maintenance and shall impose orders the Court deems fit in that regard.

In conclusion, having found that the marriage in this case has broken down irretrievably, I hereby make an Order Nisi dissolving the marriage between the Petitioner/Cross-Respondent ***MR. KELECHI CHIBUNNA BON-NWAKANMA*** and the Respondent/Cross- Petitioner ***MRS. MARGARET MARY NDIDIAMAKA BON-NWAKANMA*** celebrated at the Federal

Marriage Registry, Abuja and solemnized at ***DIOCESE OF ABUJA, MAITAMA, ABUJA***, on the 22nd day of June, 2013. The Decree shall become absolute if nothing intervenes within a period of 3 (three) months from this date.

Because the child of the marriage is still a minor and has lived with the Respondent/Cross-Petitioner since Petitioner left the matrimonial home in June 2018, sole custody is awarded to the Respondent/Cross-Petitioner, with visitation rights to the Petitioner at the convenience of the parties.

When the child of the marriage turns 18, she may choose which parent she wishes to live with. This is the overall best interest of the child of the marriage.

Any future enrolment or change of school of the child of the marriage shall be consentual.

The Petitioner shall pay the school fees of the child of the marriage in a school that he can afford and subject to the agreement of both parties.

The Court hereby awards **₦70,000.00** monthly for the upkeep and maintenance of the child of the marriage excluding medical bills and school fees to be paid by the Petitioner for the welfare of his child.

Finally, the parties are ordered not to make any publication on account of this proceedings in any manner whatsoever which could be detrimental to the welfare, privacy and dignity of the child of the marriage. This includes any such publication in the mainstream, social media or any medium of communication whatsoever. This is in the best interests of the child.

Signed:

Hon. Justice S. U. Bature
4/4/2023.