

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT GARKI COURT 10, FCT, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

CLERK: CHARITY ONUZULIKE

SUIT NO: FCT/HC/BW/PET/36/21

DATE: 22/3/2024

BETWEEN

LINDA OLUCHI DUROJAYE.....PETITIONER

AND

ADEKOLA DAVIDS DUROJAYE.....RESPONDENT

JUDGMENT

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

By a Petition dated 12th day of October, 2021 and filed on the same date, prayed essentially for dissolution of her marriage with the Respondent. The said Petition put the following prayers in the following way:

- a. **AN ORDER** for the dissolution of the Marriage on the ground that the marriage has broken down irretrievably.
- b. **AN ORDER** granting the Petitioner primary CUSTODY of the only child of the marriage until he becomes an Adult.

- c. **AN ORDER** granting the petitioner ACCESS to check up on their son, Master Jason Adebowale Durojaye via phone call during the holiday periods, he is with Respondent.
- d. **AN ORDER** that the Respondent be fully Responsible for school fees of the child of the marriage alongside a monthly stipend of the sum of One Hundred and Fifty Thousand Naira Only (N150,000.00) to be made payable to the account number of child which would be supplied during the pendency of this suit.
- e. **ANY ORDER OR FURTHER ORDERS** as this Honourable Court may deem fit to make in the circumstances.

Upon been served with the Petition, the Respondent filed Answers to the Petition dated the 22nd day of November, 2021 and filed on the same date. And when served with the Answers, the **Petitioner did not file any further process in reaction to the Respondent Answers to the Originating Petition.**

At the close of pleadings, hearing commenced on the 16th day of November 2022 and closed on the 16th day of May 2023. At the close of Defence on the 16th day of May 2023. At the close of Defence on the 16th day of May 2023 it was agreed in line with the provision of the Matrimonial Causes Rules that parties should file written addresses. The matter was thus, adjourned to the 30th day of October, 2023 for adoption of the Final Written Addresses of Parties. However, it was not until 16/1/2024 that Counsel adopted their previously filed written addresses.

Learned Counsel to the Respondent, Mr. Amanzi F. Amanzi, submitted sole issue for determination to wit:

“Whether in view of the salary of the Respondent, the proposed Thirty Thousand Naira (N30,000) by the

Respondent is adequate to cater for the child of the marriage”

On her part, Mrs. Juliet Isi Ikhayere who appeared with Mr. M. B. Abdulazeed submitted a different sole issue for determination. That issue is:

“Whether the Petitioner has proved her case to entitle her the orders sought in this suit”

In my view, the issue submitted by the Respondent can completely be subsumed in the issue as framed by the petitioners Counsel. That being the case, I am inclined to treating the sole issue of the Petitioners as the germane issue to be resolved in this case. And in so, doing I will just proceed by way of a single narrative and discussion.

At this juncture, it is pertinent to dwell on relevant facts as found by this Court in this petition:

- (1) The Petitioner is a cosmetologist by profession. She lives at Plot F30A, Igbekebo Close, Phase 4, Kubwa, FCT – Abuja.
- (2) The Respondent is a Consultant Health Management by profession. He lives on the 2nd floor of INEH – MIC Plaza, Plot 1568 Mohammadu Buhari Way, Garki, FCT – Abuja.
- (3) The Petitioner and the Respondent got married on the 24th day of November, 2016 at the Marriage Registry, Abuja Municipal Area Council, Abuja.
- (4) The Marriage is blessed with a 5 year old child by name Master Jason Adebawale Durojaye.

- (5) Cohabitation between the parties have ceased following a protracted disputes between them. In fact, parties have lived apart for a continuous period of OVER ONE YEAR immediately preceding the presentation of this petition.
- (6) Ground for the order seeking dissolution of the Marriage and facts supporting same are given as shown below:

“The Petitioner and the Respondent have lived apart for a continuous period of more than One year preceding the presentation of the Petition; that the marriage has broken down irretrievably and the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent”.

- (a) ***That since the marriage was contracted between the parties on the 24th of November, 2016, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him.***
- (b) ***The Respondent has since the marriage; severally disrespected the Petitioner by using demeaning and abusive words on the petitioner. The Respondent has physically and emotionally abused the Petitioner and has been selfish and wicked towards the Petitioner.***
- (c) ***That the Respondent at all time has not been fulfilling his conjugal responsibilities as the Petitioner will always plead for same.***

- (d) **The Respondent's job before the marriage to date is one that takes him out of town for not less than 3 weeks to one month and in many of those times, he has stayed 'incommunicado', under the guise of the petitioner's impoliteness or any other flimsy excuse.**
- (e) **The Petitioner suffered severe neglect in the first year of the marriage. For instance: Just a few months into the marriage, the respondent's family began to pressure the Petitioner to get pregnant. Parties tried to conceive a little over the first year and the Respondent severely physically and emotionally abused the Petitioner by beating her mercilessly as well as calling her names like 'useless', 'jobless', 'barren' and the Petitioner lost a little of herself every day, gained so much weight, was mostly alone as the Respondent was never around.**
- (f) **Both parties do not have conjugal relations as often as required so getting pregnant proved difficult and led to increased pressure, especially as the Respondent always travelled for work to Northern states, leaving the Petitioner alone. A little over a year after trying to have children, the respondent had moved from neglect to emotional abuse and toxicity, so much that the Petitioner completely lost herself while the Respondent looked his best with each passing day.**
- (g) **After the first year of marriage, both parties had visited a fertility doctor and were declared medically able to conceive but the Petitioner was placed on fertility medications for 3 months. After the first dose of the fertility medication in January 2018, the**

Respondent travelled officially to Jigawa State in February 2018.

- (h) In a bid to spice up the relationship, the Petitioner decided to pay the Respondent a surprise visit in Jigawa state. On her arrival at the hotel the Respondent was lodged, the Respondent did not hesitate to notify her in clear terms that he did not want her there. The Petitioner's initial plan of staying with her husband for not less than a week was clearly thwarted by the Respondent, as the Petitioner returned to Abuja after only 2 days.**
- (i) The Respondent physically assaulted the Petitioner in March 2018 after his return from Jigawa which gave the Petitioner severe injuries all over the Petitioner's body. It became an issue family and friends tried to intervene and the Petitioner forgave the Respondent; especially after finding out she was pregnant in the same month of March 2018.**
- (j) Throughout the duration of the pregnancy, the Petitioner endured physical, emotional abuse and neglect. Demeaning and fearful words were spoken by the Respondent like "abort the stupid child you are carrying". "I pray you do not carry to term", "both you and the child will die". On one occasion, the Respondent physically abused the Petitioner while she was about 14 weeks pregnant which made the Petitioner bleed heavily and made her think a miscarriage had taken place.**
- (k) After this beating, the Petitioner left her matrimonial home for her aunt's home within Abuja. The**

Respondent never once asked where the Petitioner was, neither did he call. The Petitioner then returned to the matrimonial home after 3 weeks and all the Respondent could say was that he had thought the Petitioner had left his life for good, that his family does exactly what he says and that although the Petitioner still had her both parents alive and living far away, they did not have the means to help her.

- (l) All through the Petitioner's pregnancy, the Respondent never showed any care; even when the Petitioner was very ill at 23 weeks to the point of death; the Respondent refused to register her for antenatal classes after being pleaded with. The Petitioner had no option but to seek medical attention in a paid hospital for which he blamed the Petitioner for going to the hospital where he had to spend his money and not his National Health Insurance Scheme (NHIS) which had until 3 months to be processed for the Petitioner's use.**
- (m) The Petitioner could not cater for herself financially as she lived with the Respondent without an alternative means of livelihood as she had married immediately after her graduation and before her Youth service and she could not opt in for a job considering the overall situation of the marriage and the severe nature of the pregnancy.**
- (n) The Respondent also physically abused the Petitioner after giving birth to their son in the presence of his mother, after diplomatically sending the Petitioner's mom out of the house barely a few weeks after the baby's arrival.**

- (o) The Petitioner had severally brought complaints to the Respondent's office of his several unfair treatments on her while expecting a change but there was none.
- (p) The Petitioner found out 4 years later that the Respondent had been all the while, unfaithful to the Petitioner by his various acts of infidelity and that he had a whole relationship with a certain lady, Raliyah Suleiman for more years than the subsistence of the marriage. In fact, the said Raliyah usually travels with the Respondent for all his trips, as she works as a field staff for the Respondent's office.
- (q) After the Petitioner had found out about the illicit affair in June, she quizzed the Respondent about it, he did not just admit but stated that "he was not willing to stop seeing the said Raliyah because he is in love with her and referred to her as his soul mate". The both parties however got physical and in the process, their son was injured. Feeling insulted, the Respondent sent away the Petitioner and their son away to Ibadan despite the Petitioner pleading that the country was in Lockdown but the Respondent remained adamant stating "There is no situation in any country and you must either leave to Ibadan or Anambra, your hometown". The Respondent added that the option of the Petitioner staying in Abuja with anybody is not on the table and she must leave Abuja if he was to reconsider her as wife. This, the Petitioner had no choice but to oblige to.

- (r) Upon the Petitioner's arrival to Ibadan, she was compelled by the Respondent's family to swear to an affidavit under Oaths, which was drafted by them after which she was allowed to return to Abuja a month later.
- (s) After the Petitioner returned back to the house, the physical abuse did not stop.
- (t) The Respondent never hesitated to confirm his adulterous acts before his own mother and family members who always took his side.
- (u) The Respondent asked the Petitioner to leave his house on the 3rd of September, 2020 and has since ceased to be totally Responsible for all his son's needs despite the several pleas from the Petitioner which often results to constant abuses and malice from the Respondent upon request. The Respondent has since been responsible for only part of his son's school fees and sends the sum of Twenty Five Thousand Naira (N25,000.00) monthly; as this sum has been insufficient to cater for his son's feeding, medical bills, clothing and other miscellaneous expenses.
- (v) The Petitioner and the Respondent has since lived apart since the 3rd of September 2020 and all this while, the Petitioner has since allowed the respondent access to their child during the holidays. During this period, the Respondent deprives the Petitioner from checking upon on the child via phone calls as the child is too little and therefore requires the close monitoring of his mother.

(w) ***The Petitioner had suffered heartbreak, frustration, loneliness, rejection, agony and feels psychologically downtrodden.***

(x) ***That the marriage between the Petitioner and Respondent has broken down irretrievably by reason of all the grounds/facts stated in this petition.***

(7) The Respondent did not object to the Dissolution of the Marriage.

For all the above facts see the evidence of PW1 and DW1 and Exhibit 'A' which is the Certificate of Marriage. PW1 is the Petitioner. He simply adopted her sworn statement on oath as her evidence in Chief. She said under cross-examination as follows:

"I sell cosmetics. I have a shop for it. I earn around N100,000 (One Hundred Thousand) Naira a month. This is not enough to cater for the child"

She was not re-examined.

DW1 is the Respondent. He testified under affirmation and adopted his sworn statement on oath as his evidence in this case. Under cross-examination, he said:

"I work with a private organization. I am a Surveyor. I earn around N100,000 monthly. No. I have no other source of income."

This DW1 was also not re-examined.

I had earlier set out the issues formulated by both parties as arising for determination in this suit.

I have considered the arguments of both learned Counsel as can be deciphered from their written addresses. The only grey area or area of dispute between the two Counsel is the amount to be approved by this Court for the maintenance of the only child of this marriage.

I had at the beginning of this Judgment situated the reliefs sought by the petitioner and the evidence led on both side. I shall first deal with the issue of dissolution of marriage. It is clear to me that both parties are at *idem* on this issue. The petitioner want the marriage dissolved and the Respondent have agreed with her. It is as simple as that. Nothing to contest in this area.

In law, the fact that parties have essentially lived apart for more than one year, in fact close to two (2) years now confirms in all material particulars that the marriage has broken down irretrievably.

The prayer for the dissolution of the marriage, with the concession by Respondent agreeing to the dissolution therefore clearly falls within the purview of the ground covered by SECTION 15 (2) of the MCA and should accordingly succeed.

The Marriage in this case has no doubt broken down irretrievably and parties particularly petitioner clearly have no desire to continue with the relationship. If parties to a consensual marriage relationship cannot live any longer in peace and harmony, then it is better they part in peace and with mutual respect for each other, especially here that they are blessed with one lovely kid.

This now takes me to that lone issue. Is the **N30,000** offered sufficient to take adequate care of the child having regard to the circumstances of this case. We must note the following facts quickly:

- (1) The demand for **N30,000** monthly upkeep excludes the school fees and medical fees.
- (2) The Respondent's monthly income, as put in evidence and unchallenged by the petitioner is **N150,000**.
- (3) The Respondent bears the responsibility of providing not only for his nuclear family but also his extended family and he is currently taking care of his aged parents and grand parents.

With the above facts starring me solidly in the face, I am incline to the view that the N30,000 proposed by the Respondent is very adequate. On this, I am at one with the learned Counsel to the Respondent. I rely on **Section 71(1) of Matrimonial Causes Act** which provides thus:

“In proceedings with respect to the custody, guardianship, welfare, advancement or education of children of a marriage, the Court shall regard the interests 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.”

The above provisions makes it abundantly clear that with respect to matters streamlined in the provision including welfare and educational advancement of Children of Marriage, the Court may make such order in respect of those matters as it think proper. So, what I think and found to be PROPER here is **N30,000**.

In the final analysis and in summation, having fully and carefully evaluated the evidence adduced on both sides, I accordingly make the following orders:

- (1) **An Order of Decree Nisi is granted dissolving the marriage celebrated between the Petitioner and Respondent on 24th November, 2016.**
- (2) **The Petitioner is granted primary CUSTODY of the only child of the marriage until he becomes an ADULT.**
- (3) **The Petitioner is granted ACCESS to check up on their son, Master Jason Adebowale Durojaiye via phone calls during the holiday period when he is with the Respondent.**
- (4) **An Order is granted that the Respondent be fully responsible for the school fees of the child of the marriage alongside a monthly stipend of the sum of Thirty Thousand Naira (N30,000) to be made payable to the account to be supplied by the Petitioner.**

Signed
S. B. Belgore
(Judge) 22/3/2024

APPEARANCE:

Juliet E. C. Ikhayere for the Petitioner

Amanzi F. Amanzi with Alhassan Sani Dauda for the Respondent