

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 28 JABI, ABUJA.
BEFORE HIS LORDSHIP: HON JUSTICE JOSEPHINE E. OBANOR
THIS 13TH DAY OF JUNE, 2024**

SUIT NO: FCT/HC/PET/615/2023

BETWEEN:

OLUWABUNMI ABOSEDE ADELAJA - PETITIONER

AND

OLANREWaju SAMSON ADELAJA RESPONDENT

JUDGMENT

Via an amended Notice of Petition filed on 20th of March, 2024 the Petitioner seeks the following reliefs;

- (a) A decree of dissolution of marriage on the ground that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent, and therefore the marriage has broken down irretrievably.
- (b) An Order of the Honourable Court granting custody of the two children (minor) of the marriage to the Petitioner.

- (c) An Order of this Honourable Court granting the sum of N2,550,000.00 (Two Million, Five Hundred and Fifty Thousand Naira) only, being the alimony for maintenance of the Petitioner as well as taking care of the children of the marriage.
- (d) An Order of this Honourable Court directing the Respondent to pay the school fees of the children of the marriage up to their university education.
- (e) And for such other reliefs as the Honourable Court may think just and necessary to make in the circumstance.

The petition is supported by a statement and verifying affidavit deposed to by the Petitioner. The marriage certificate between the Petitioner and Respondent, birth certificates of the two children of the marriage, printout pictures of bodily harm, WhatsApp correspondences between the Petitioner and the Respondent, WhatsApp correspondences between the Petitioner and the Respondent's spiritual father were admitted as Exhibits A to K.

The facts deposed to and adopted on oath by the Petitioner on 25th of March, 2024 are that she contracted a statutory marriage with the Respondent on 11th March, 2010 at the Surulere Local Government Marriage Registry, Lagos and cohabited from the time of the marriage until 23rd of October, 2022 when the Petitioner was compelled by the Respondent to pack out of the matrimonial home. That the marriage was blessed with two children Mercy-Young Olanrewaju (M) and Boluwatife Olanrewaju (M). She averred that the marriage was characterized by repeated sexual abuse from the Respondent who constantly demanded anal sex against her wish, violent physical abuse resulting in inflicting pains and injury on the Petitioner, verbal abuse as well as extramarital affairs on the part of the Respondent. She left their matrimonial home after the

Respondent, through his mother and her family, made threats against her. She stated that she and the children were living in constant fear.

The Respondent did not file any response to the petition despite being served with all processes in this suit and hearing notices at all adjournments.

The Petitioner's Counsel on 6th June, 2024 adopted the Petitioner's Final Written Address dated and filed on 30th May, 2024.

Having gone through the Notice of Petition, Statement in support and the Petitioner's Statement on Oath, the issue that calls for the determination of the court is **'whether the Petitioner is entitled to the reliefs sought from this Honourable Court'**.

Section 15 (2) (b & c) of the Matrimonial Causes Act provides that the Court hearing a petition for dissolution of marriage shall hold that the marriage has broken down irretrievably if the Petitioner satisfies the court of one or more of the following facts;

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 has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent;

The Petitioner has deposed in her Statement on Oath that the Respondent has been sexually, physically, and verbally abusive and has also committed adultery during the marriage. These averments have not been challenged or

contradicted by the Respondent, despite having had ample opportunity to do so. It is a well-established principle of law that when a claim is unchallenged or uncontroverted by a Respondent who had the opportunity to refute it but chose not to, the Court is inclined to resolve such issues in favor of the Applicant. Consequently, the Court must give due consideration to the Petitioner's unrefuted assertions in determining the matter. See *James v. FRN &Ors* (2021) LPELR-52843(CA) and *Abu v. Omale&Ors* (2019) LPELR-48738(CA).

I hold that the Respondent having committed adultery and behaved in such a manner that the Petitioner cannot be reasonably expected to live with, the marriage has broken down irretrievably and is hereby dissolved accordingly.

Upon reviewing the evidence presented, the Court notes that the Petitioner has not provided information regarding the means of livelihood or the source of income of the Respondent. Additionally, the Petitioner has not disclosed her own employment status or means of sustenance. In the absence of such crucial financial details, it would be imprudent and unjust for the Court to impose an obligation on the Respondent to pay for welfare or support beyond his financial capacity.

The Court is mindful of the necessity to ensure fairness and equity in its decisions. Therefore, in determining the appropriate amount for welfare and support, the Court will consider all relevant factors and make a calculation based on what it deems fair and reasonable under the circumstances. This approach ensures that the welfare obligations imposed do not exceed the Respondent's ability to pay, while also taking into account the needs and best interests of all parties involved.

Section 70 (1) and (2) of the Matrimonial Causes Act aptly provides thus:

"(1) Subject to this section, the Court may, in proceedings with respect to the maintenance of a party to a marriage, other than proceedings for an order for maintenance pending the disposal of proceedings, make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

(2) Subject to this section and to rules of Court, the Court may, in proceedings for an order for the maintenance of a party to a marriage, or of children of the marriage, pending the disposal of proceedings, make such order as it thinks proper, having regard to the means, earnings capacity and conduct of the parties to the marriage and all other relevant circumstances."

From the above provisions, the Court is expected in determining an application for an ancillary relief of maintenance such as the Respondent's to consider the following: i. The means, ii. Earning capacity and iii. Conduct of all the parties to the marriage iv. and all other relevant circumstances. It is pertinent at this stage to state that, the ancillary reliefs sought vide the Respondent's application involved the discretion of the Court, which discretion must be judicially and judiciously exercised. See KPILAH v. NGWU(2018) LPELR-45395(CA)

It was held in the case of AMAH v. AMAH(2016) LPELR-41087(CA)Per IGNATIUS IGWE AGUBE, JCA (Pp 114 - 115 Paras A - A) that:

"The learned Counsel for the Appellant rightly cited Hayes Vs. Hayes (2000) 3 NWLR (Pt.648) 276 at 293 Para H to 294 Para. A where the principle, guiding the assessment of maintenance were enunciated to include:- (a) The Stations of life of

the parties and their life styles. (b) Their respective means, income and earning capabilities/Capacities; (c) The existence or non-existence of child or children of the marriage. (d) The Conduct of parties. (e) The length of time the parties were married; See, *Odusote V. DR. (Mrs.) TemitayeOdusote* (2011) LPELR -9056 (CA); *Adejumo V. Adejumo* (2010) LPELR -3602 (CA) where Section 70 of Matrimonial Causes Act which vests the Court with discretion to award maintenance award and *Hayes V. Hayes* (supra), *Akinbuwa V. Akinbuwa* (1998) 7 NWLR (Pt.559) page - 60 and *Damulak V. Damulak* (2004) 8 NWLR (Pt.874) 157 at 171 - 172. Finally, See *Olu Ibukun & Anor V. Olu-Ibukun* (1974) LPELR -2606 (SC) the illuminating Judgment of Fatayi-Williams pages 13 -15 paras. A-D."

On the whole, this Court finds that the Petitioner's petition has merit and hereby succeeds. Judgment is entered as follows:

1. I hereby dissolve the marriage between the Petitioner and the Respondent contracted on the 11th day of March, 2010 on the ground that the marriage has broken down irretrievably. I hereby order a Decree Nisi which will be made absolute after three months unless there is a cogent reason to vary same.
2. I hereby grant the Petitioner custody of the two children of the marriage Mercy-Young Olanrewaju and Boluwatife Olanrewaju.
3. I hereby order that the Respondent shall be responsible for the school fees of the children up to their university education at an institution to be agreed upon by both parties.

4. I hereby order the Respondent to pay the sum of N150,000.00 (One Hundred and Fifty Thousand Naira) monthly for the maintenance of the children of the marriage.
5. I hereby order that the Respondent shall pay to the Petitioner the sum of N600,000.00 (Six Hundred Thousand Naira) as annual rental accommodation payment for the Petitioner and the children of the Marriage until they attain the age of 21 years.

HON. JUSTICE J. ENOBIE OBANOR

Judge

Appearances:

For the Petitioner; Lawrence Alabi, Esq, Dr. Anne C. Mpamah, Esq. and Ijeomallonuba, Esq.

For the Respondent; No representation