

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF
DELIVERED ON THE 18TH APRIL, 2023
FCT/HC/PET/293/2021

BETWEEN

EFE NANCY OLORUNSOLA PETITIONER

AND

ADEOYE MICHAEL OLORUNSOLA RESPONDENT

JUDGEMENT

By a Notice of Petition filed and dated the 10/8/2021, the
Petitioner claims against the Respondent as follows: -

1. A Decree of dissolution of the marriage between the
Petitioner and the Respondent held on July 28, 2018 at the
Living Faith Church Orozo, FCT Abuja on the ground that the
marriage has broken down irretrievably in that the
Respondent since the marriage has behaved in a way and
manner that the Petitioner cannot be reasonably expected
to live with him.
2. An Order granting the custody of the child of the marriage
(Wuraola Flourish Olorunshola), a female child and still a
minor to the Petitioner to continue to lovingly care, nurture
and protect her.
3. An Order directing and mandating the Respondent to be
responsible for the education of the child of the marriage by
paying the school fees and other fees incidental to the
proper education of the child of the marriage.

4. An Order directing the Respondent to pay the sum of #250,000(Two Hundred and Fifty Thousand Naira) monthly to the Petitioner for the upkeep and maintenance of the child of the marriage.

Attached to the Notice of Petition, is the petitioner's verifying affidavit, certificate of reconciliation and the Petitioner's sworn depositions.

The facts upon which the Petition was filed are as follows: -

- a. The parties got married under the Living Faith Church, Orozo, Abuja-FCT on July 28, 2018 and the Marriage Certificate issued to parties was pleaded.
- b. Throughout cohabitation, the Respondent conducted himself with constant hostility and cruelty, creating a very tense environment for the Petitioner, a situation that caused the Petitioner mental anguish and negatively affected her health.
- c. The Respondent displayed utter disregard for the sanctity of the marriage relationship between himself and the Petitioner by his various acts which include:
 - i. Telling the Petitioner after she was confirmed pregnant, that he cannot stay with or eat the Petitioner's food because the Petitioner is pregnant.
 - ii. Separating rooms with the Petitioner, moving the Petitioner to the visitor's room in their residence and subsequently sending the Petitioner back to her parent's after the Petitioner survived delivery through a life-threatening Caesarean Section.
 - iii. Causing the Petitioner mental and emotional stress after the delivery of the child of the marriage such that the Petitioner collapsed while she was at her parents on the direction of the Respondent.
 - iv. Failing to care for the Petitioner after she collapsed and was rushed to the hospital only to discover that the Petitioner had complications such that the Petitioner had to undergo myomectomy before returning home, a procedure that resulted in sucking out about two liters of

liquid from the Petitioners stomach. The Petitioner pleaded the myomectomy report and put the Respondent on notice to produce the myomectomy report.

- v. Refusing to care for the Petitioner after she had to return to their home after the myomectomy so that she can go for the daily routine of dressing of the wound resulting from the myomectomy.
- vi. Telling the Petitioner to her face that “This is not what I asked you for” after the Petitioner gave birth to a baby girl through a life-threatening caesarean section, implying that the Respondent would have preferred a male child. she pleaded the birth certificate of the child of the marriage.
- vii. Informing the Petitioner that he does not like the smell of babies and as such cannot cope with the presence of the baby and the Petitioner in the house.
- viii. Staying out of the house till as late as between 12:00 am and 3:00 am every day after the Petitioner had the myomectomy thereby causing the Petitioner more stress and anguish.
- ix. Causing the Petitioner to move out of the house because she couldn't cope anymore with the Respondent's nocturnal activities, lack of care and the Respondent's refusal to change despite the Petitioner's appeals to him.
- x. Refusing the child of the marriage to be dedicated in church according to the Christian faith the Respondent professes because the child is a female child.
- xi. Telling the Petitioner that he never loved her, that she is not his wife and that he hates her.
- xii. Denying any ties with the child of the marriage and telling the Petitioner that the baby is not his but the Petitioner's.

- xiii. Pushing the Petitioner out of his way or making her drag (crawl) around the house on her knees as punishment whenever she tried to resolve the issues between them or appeals to the Petitioner to turn a new leaf so the marriage could work.
 - xiv. Frustrating the Petitioner by constituting himself into a nuisance to the Petitioner and their child by banging on the door loudly whenever he returned home late at night and singing loudly to the irritation of the Petitioner and the child, who at the time would have been asleep, will be forced to wake up in the middle of the night as a result of the disturbances of the Petitioner.
 - xv. Ceasing communication and keeping malice with the Petitioner for months after she was denied visa to the United States of America.
- d. Failing to change his attitude of hostility and cruelty toward the Petitioner despite several entreaties and mediatory efforts from family members and friends.
 - e. Denying the Petitioner her conjugal rights by intentionally and persistently staying out late into the night only to return when the Petitioner must have slept.
 - f. Causing the Petitioner psychological trauma that resulted in depression and acute panic attack such that the Petitioner had to be referred to a behavioral scientist who managed her health situation till she was stabilized. The letter of referral and the behavioral scientist's report are hereby pleaded.
 - g. Forbidding the Respondent's return to their residence after she had to move out of the house when she could not cope with the late-night activities and cruel hostilities of the Respondent and recovery from the behavioral therapy she underwent.
 - h. Insisting on being disconnected from the child of the marriage (Wuraola Flourish Olorunshola) because of her gender and sending monthly stipends of ₦50,000 Naira for that purpose.

- i. Not objecting to threats of a petition for the dissolution of the marriage and informing the Petitioner that he is no longer interested in the marriage.
- j. Failing to establish or seek communication with the child he had with the Petitioner.

The Petitioner proposed the following for the child of the marriage:

1. The petitioner is to have custody of the child of the marriage.
 2. The respondent shall assume responsibility for the financial welfare, health, education and maintenance of the child of the marriage.
 3. Supervised access of the respondent to the child is conceded on reasonable notice of at least two weeks
 4. An undertaking by the respondent not to take the child of the marriage out of the reach of the petitioner without the consent of the petitioner and the petitioner's parent first sought and had, such consent not to be reasonably withheld
 5. The respondent shall be responsible for other palliatives geared at the social, mental, psychological educational and physical development of the child.
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- a. The Respondent agrees with Paragraph 1 of this head of the petition to the extent that the Respondent shall concede custody of the child of the marriage to the Petitioner in view of her tender age but shall seek unrestrained access to the child while in custody of the Petitioner.
 - b. For the purpose of bonding with the Child, the Respondent shall ask for holiday's custody of the child also upon her attainment of the age of 9 (Nine) years.
 - c. The Respondent agrees with paragraph II of this head of the petition and shall continue to be responsible for the maintenance and upkeep, as well as school fees and

- medical expenses of the child, but in the educational institutions and medical facilities of the Respondent's choice, until her attainment of the age of majority.
- d. The Respondent shall continue to pay sum of ~~N~~50,000.00 (Fifty Thousand Naira) only for the upkeep of the child of the marriage until she attains the age of majority.
 - e. The Respondent shall seek to take possession the original birth certificate of Wuraola Flourish Olorunsola born on the 29th April, 2019 to enable the Respondent open a bank account for the baby.
 - f. The Respondent disagrees with paragraphs III, IV and V of this head of the petition and states that the problems of the marriage stems from the attempt by the Petitioner's parent to control the affairs of the Respondent's family, the attempts which the Respondent stoutly stood against.

On being served with the Petition, the Respondent filed an Answer to the Petition on the 6/12/2021. In his Answer to the Petition, he seeks the following reliefs: -

The Respondent shall not oppose the orders sought by the Petitioner in Prayer 1 but shall seek the modification of prayers.

The Petitioner testified on the 2/12/21, she adopted her witness statement on oath filed on the 10/08/2021. The highlights of the facts pleaded and evidence adduced by the Petitioner, is that parties celebrated their marriage on the 28th of July, 2018. She tendered the marriage certificate marked as exhibit A. The Petitioner and Respondent cohabited at Flat 4, opposite Police Barracks, Jabi, Abuja, Nigeria; due to the Respondent's intolerable conduct, the Petitioner moved out of the matrimonial home on the 26th August, 2019. The child of the marriage Wuraola Flourish Olorunsola, was given birth to on the 29th April, 2019. According to the Petitioner, there has been no previous proceedings in court between parties and she has not condoned, connived and is not guilty of collusion in presenting this Petition.

The Petitioner was cross examined; there was no re-examination. Above is the case of the Petitioner.

The Respondent admits the existence of the marriage between him and the Petitioner, the place of birth of parties and place of cohabitation of parties after the marriage but denied that the Petitioner moved out due to the assertions stated in paragraphs a – j, i.e., intolerable behaviour and put the Petitioner to the strictest proof. He admits the child of the marriage; that also there has not been any previous proceeding in any court between parties and no connivance or condonation by parties. The Respondent is not opposed to the orders sought by the Petitioner in prayer 1 but sought modification of other prayers. The following documents were tendered through FCT-IRS Tax Clearance Certificate issued on the 20/11/2022 and 15/03/2019 respectively and Gtbank Transaction Receipts. The documents were admitted and marked exhibits RW1, RW2 & RW3. The Respondent was cross examined; there was no reexamination.

At the close of the Respondent's case, parties filed and exchanged their final written addresses. Pursuant to the order of the Hon. Court deeming the Respondent's final written address filed on the 24/1/2023, Samuel B. Egbewusi Esq.formulatedfour issues for determination, to wit:

1. Whether from the pleading of both parties in this suit and evidence led, the marriage between the parties has broken down irretrievably to have same dissolved by this Honourable Court.
2. Whether the Petitioner is entitled to unilaterally decide on how and where the only child of the marriage is to be maintained
3. Whether the Respondent is entitled to unrestricted but reasonable access to the only child of the marriage continually now as well as a shared custody, especially Holiday Custody, when the child becomes Nine (9) years old.
4. Whether the Petitioner is entitled to Two Hundred and Fifty Thousand Naira (#250, 000, 00.) as monthly allowance for the

upkeep of the only child of the marriage to be paid by the Respondent.

E. K Olorunju Esq. settled the final written address of the Petitioner and same was filed on the 30/12/2022. He raised a sole issue for determination, that is:

Whether the Petitioner is entitled to reliefs sought.

In matrimonial proceedings, the law permits a party to a marriage to present a petition for a decree of dissolution of the marriage upon the ground that the marriage has broken down irretrievably See s.15 (1) MCA. The success of the divorce petition is the establishment of one of the conditions listed in section 15 (2) a-h of the Matrimonial Causes Act. It is not the law that the petitioner should prove all the conditions listed in section 15(2) (a)-(h). The introductory part of section 15 (2) of the Matrimonial Cause Act is clear and admits no ambiguity. It reads:

The court hearing 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:

Therefore, the literal and simple interpretation of this, is that the Petitioner need to prove only one of the facts listed in (a) to (h) to secure the verdict that the marriage between her and the Respondent has broken down irretrievably.

Now, parties herein have asked the court to hold that the marriage between them has broken down irretrievably, therefore the court should grant a decree of dissolution of the marriage. The facts and evidence before the court, discloses that the Petitioner relies on the facts contained in section 15 (2), (c), (d) & (f) of the Matrimonial Causes Act as grounds for the court to hold that the marriage has broken down irretrievably.

It is an established fact that the Petitioner and the Respondent became husband and wife on the 28th July, 2018 [See exhibit A]. also, the Petitioner while being cross examined stated thus;

Q: how long did you stay at a stretch with the Respondent during the marriage;

A: we got married on the 28th of July, 2018 and we separated on the 26th of August, 2019. [See also paragraphs 16, 17, 18 & 19 of the Respondent's Answer and para 21, 22, 23, 24, 25 & 26, 31 & 32 of the witness statement on oath]. The established fact here is, that the Petitioner moved out of the matrimonial home sometime in 2019 or thereabout. Equally, it is not in dispute that parties are ad idem that the marriage between them has broken down irretrievably. [See paragraph 38 of the Respondent's witness statement on oath]. however, parties have raised assertions and counter assertions which they have to prove with cogent and credible evidence. The summary of the evidence of the Petitioner is that the Respondent has not shown her love and care and does not love the child of the marriage because of her gender; however, under cross examination, she admits that the Petitioner performed the naming ceremony of the child and also named the child after the Respondent's mother; that the Respondent paid the hospital bill and her father also supported. She admits under cross examination that while she was still in her matrimonial home, the Respondent sponsored her application for visa at various times, as it was the intention of the Respondent and in agreement with her, to have the child delivered abroad. The Petitioner also admits under cross examination, that while at her parents' place, the Respondent sends money to her, that the Respondent has stopped sending money.

By the above evidence, it is glaring that the Respondent tried his best, but it appears the Petitioner was not satisfied with the efforts of the Respondent. The Petitioner testified that after the delivery of the child of the marriage, the Respondent started making

unsavory comments to her that the child was not what he asked for, meaning that he wanted or would have preferred a male child. This piece of evidence was not substantiated by the Petitioner. Again, under cross examination the Petitioner admits that the Respondent performed the naming ceremony of the child and he gave her, his mother's name. This contradicts the picture painted by the Petitioner in her evidence in chief. The essence of cross examination is to test the veracity of a witness. See *Amadi v nwsu* (1992) nwlr (pt 241) 273. The answers elicited from the Petitioner while being cross examined clearly shows that the testimony of the Petitioner cannot be believed. She failed woefully to support her testimony with credible and cogent evidence. Equally, there is evidence that the Respondent took the Petitioner to the hospital and also paid the bills. It is not out of place for a father to support his child, where the need arises. In fact, the exhibit B tendered by the Petitioner, supports the fact that the Respondent cared for the Petitioner; the content states that the Petitioner was rushed to the hospital on Saturday 24th August, 2019 by the husband and his relatives. There is no where it is stated therein that it was the conduct or attitude of the Respondent that caused the acute panic attack experienced by the petitioner. If anything at all, the Petitioner had in evidence stated that after giving birth to the child of the marriage, the Respondent told her to go back to her parent's house and also due to the continued hostility and lack of care by the Respondent, she became stressed out , therefore she was forced to return to her parents and while she was at her parents, due to the lack of care she had while she was with the Respondent which had taken a toll on her, she collapsed and had to be rushed to the hospital by her parents. Now, she was treated in the hospital and after she was discharged from the hospital, she returned to live with the Petitioner because his residence is close to the hospital, and she had to go for daily dressing. By the evidence of the Petitioner, it is glaring that the Petitioner decides where to live or stay as it suits her.

Going further, the Respondent testified that the Petitioner amongst many attempts cut communications between him and the child of the marriage; that the Petitioner has persistently abused and ridiculed him. This testimony was further buttressed under the cross examination of the Respondent by the Petitioner's counsel. Under cross examination, he was asked thus

Q: since she blocked you from blocked you from all means of communication, you decided to abandon her

A: after she blocked me from all means of communication, I made efforts on my own in one occasion, I came back from abroad I bought toys. I drove down to the family, it was a secured estate, the security resisted me. They had to call her, they communicated to her. She said she was no longer staying there. To press further, I asked her where she is, she said she is wuse II. I drove from orozo that was where I went to. I drove back to town, on getting to town, she asked me to come back to orozo again. On getting to orzo, she asked the security people to collect the items from me and I gave them.

Q: on the whole, it would be your joy for this marriage to dissolved

A: Yes, because she wanted it;

Q: Do you know anything about your daughter;

A: I know something. There was a competition in Abuja; the children were doing competition that needed money for her to score points. I got a text message from the grandmother on WhatsApp through the link, the higher you pay determines the point she would score. In that competition, when I saw the platform, my daughter was no.3. I credited the platform so that she can become no.1 and the mother chatted me up and said my daughter is saying thank you. That was all I heard.

After a careful consideration of the facts and evidence placed before the court by the Petitioner, it is crystal clear that parties are

no longer interested in the marriage; however, my findings are that the Petitioner failed to substantiate her evidence that the Respondent's attitude is intolerable towards her or the child of the marriage or that he is/was cruel to her, thus, I find and hold that the petitioner failed to prove s.15(2) (c); the Petitioner also failed to prove that the Respondent deserted her and the child of the marriage; rather the evidence before the court shows that it was the Petitioner who chose to move out of the matrimonial home out of her own volition. The Petitioner didn't deny or controvert the facts stated by the Respondent in paras 15, 16, 17, 18, 19 of the Answer as well as the evidence given by him. The law is that facts not denied are deemed admitted. See s.123 Evidence Act.

I have had a careful consideration of the facts stated in the processes before the court, it can be gleaned from the records that the petitioner filed the petition on 10/8/2021; it is further established by evidence that parties started living apart sometime in 2019. i.e the period the petitioner left the matrimonial home. By way of calculation, it is shown that parties have lived apart for a period of two years immediately preceding the presentation of the petition. Section 15 (2) (e) is to the effect that where the parties to a marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent is not opposed to a decree being granted; the court upon establishing that the Respondent has no objection to the dissolution and also if it is shown that parties have lived apart for a period of two years prior to the presentation of the petition, the court is bound to dissolve the marriage. See DR. JOSHUA OMOTUNDE v. MRS. YETUNDE OMOTUNDE (2000) LPELR-10194(CA)

Consequently, I hold that the marriage celebrated between the Petitioner Efe Nancy Olorunsola and the Respondent, Adeoye Micheal Olorunsola on the 28th July, 2018 at the Living Faith Church, Orozo, Abuja in Nigeria has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage

between the petitioner and the cross petitioner. The Order Nisi shall become absolute after a period of three months from today.

On the issues of custody, guardianship, welfare, advancement or education of children of a marriage, the law is quite clear that the court is enjoined to consider the interests of the children of the marriage as paramount, and subject thereto, the court may make such orders in respect of those matters as it thinks proper. See s.71(1) MCA, s.1 CHILDS RIGHTS ACT 2003 &ENWEZOR V ENWEZOR&ANOR (2012) LPELR – 8554 (CA)

The second relief sought by the Petitioner is for the custody of the only child of the marriage Miss Wuraola Flourish Olorunsola which the Respondent concedes to, but wants unrestrained access to the child of the marriage. Also, with regards to the other reliefs sought by the Petitioner, I have taken a careful consideration of the facts vis a vis the evidence presented before the court by the Petitioner and Respondent, none of the parties placed credible evidence to state his or her financial status, however I am convinced that the interest of the child shall best be served if both parties are allowed to be involved in the upbringing, welfare and advancement of the children of the marriage; both parties must contribute financially to the welfare and maintenance of the child of the marriage.

A Decree Nisi having being granted, it is hereby ordered as follows:

- i. That Petitioner shall have custody of the child of the marriage Miss Wuraola Flourish Olorunsola;
- ii. The Respondent shall have unhindered access and right to visit the child at reasonable hours and shall be responsible for the payment of school fees of the child of the marriage in a school jointly agreed to by parties. He is further directed to contribute every month, the sum of #70,000 for the maintenance and welfare of the child of the marriage and this payment shall be made on or before the last day of every month.

ASMAU AKANBI - YUSUF
[HON JUDGE]

APPERANCES:
C. Adie Esq. for the Respondent.
Petitioner present.